Australian Government

# Your Guide to Superannuation

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# **Key features** of the Australian superannuation system:

- Superannuation contributions and earnings receive concessional tax treatment. A streamlined set of rules govern the level of contributions to superannuation that can be made by or for an individual.
  - Concessional contributions (before-tax) are capped at $25,000 per annum (indexed).
  - A transitional concessional contributions cap of $50,000 exists for members aged 50 or over.
  - Non-concessional contributions (after-tax) are capped at $150,000 per annum (six times the concessional contributions cap – with individuals under age 65 being able to bring forward two years' worth of contributions, giving a cap of $450,000 over three years).
- Under the Superannuation Guarantee (SG) arrangements, all employers are required to make superannuation contributions on behalf of their eligible employees. The minimum level of employer superannuation support is currently 9 per cent of an employee's ordinary time earnings.
- Employers and the self-employed are able to claim a full deduction for superannuation contributions they make.
- Superannuation contributions can be made up to age 75. The SG currently only applies up to age 70.
- Under the Government co-contribution scheme, the Government matches personal non-concessional contributions made by eligible individuals at the rate of at least $1 for each $1 contributed. The maximum co-contribution is reduced as total income rises above $31,920 (2011-12). The upper threshold is $61,920 (for 2011-12).
- Generally, employees are able to choose their own superannuation fund, and fund members can transfer their superannuation benefits between funds.
- Superannuation benefits paid from a taxed source either as a lump sum or as a pension are tax free for people aged 60 and over.
  - Benefits paid from an untaxed source (mainly affecting public servants) are taxed, although at a lower rate for people aged 60 and over.
- Individuals have flexibility as to how and when to draw down their superannuation in retirement. There is no forced payment of superannuation benefits at older ages.
- Generally, superannuation benefits are preserved until a member's retirement, on or after reaching their preservation age (between 55 and 60, depending on their date of birth). People are able to access superannuation benefits in limited circumstances before their retirement, although these 'early release' benefits are generally taxed at higher rates than benefits received after preservation age.


## Disclaimer

This publication is designed to provide individuals with a basic overview of Australia's superannuation system, and does not claim to offer a complete description of each provision in the superannuation law. Superannuation legislation is complex and individual circumstances can significantly alter its general application.

This publication was developed as a reference tool and to provide links to relevant agencies responsible for aspects of the superannuation system. It is not intended for use in providing financial advice.

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# Abbreviations

| | |
|---|---|
| **ADF** | Approved Deposit Fund |
| **APRA** | Australian Prudential Regulation Authority |
| **ASIC** | Australian Securities and Investments Commission |
| **ATO** | Australian Taxation Office |
| **AWOTE** | average weekly ordinary time earnings |
| **CDEP** | Community Development Employment Projects |
| **CGT** | capital gains tax |
| **CPI** | consumer price index |
| **DASP** | departing Australia superannuation payment |
| **EPSSS** | Exempt Public Sector Superannuation Scheme |
| **FIS** | Financial Information Service |
| **FOS** | Financial Ombudsman Service |
| **IDR** | internal dispute resolution |
| **LMR** | Lost Members Register |
| **OTE** | ordinary time earnings |
| **RBL** | reasonable benefit limit |
| **RSA** | Retirement Savings Account |
| **SCT** | Superannuation Complaints Tribunal |
| **SG** | Superannuation Guarantee |
| **SMSF** | self-managed superannuation fund |
| **TFN** | tax file number |

# The superannuation framework

## KEY POINTS

- Under the *Superannuation Guarantee (Administration) Act 1992*, all employers are required to make a prescribed minimum level of superannuation contributions to a complying superannuation fund on behalf of their eligible employees.
- The minimum level of employer superannuation support under the Superannuation Guarantee (SG) arrangements is currently 9 per cent of each eligible employee's ordinary time earnings.
- The choice of fund provisions enable many employees to choose the superannuation fund into which their contributions are made based on matters of importance to them.
- The *Superannuation Industry (Supervision) Act 1993* imposes stringent duties on trustees to manage the assets of superannuation funds prudently and in the best interests of all the members of the fund.
- The Australian Prudential Regulation Authority (APRA) is the prudential regulator for superannuation, and is responsible for ensuring that regulated entities have appropriate systems and practices in place to meet their financial promises to consumers. The Australian Taxation Office (ATO) regulates self-managed superannuation funds.

## The Superannuation Guarantee

Under the *Superannuation Guarantee (Administration) Act 1992,* all employers are required to make a prescribed minimum level of superannuation contributions to a complying superannuation fund on behalf of their eligible employees or incur the SG charge. The minimum level of employer superannuation support under the SG arrangements is currently 9 per cent of each eligible employee's ordinary time earnings.

### ELIGIBILITY FOR THE SUPERANNUATION GUARANTEE

Under the SG arrangements, employers are required to make the prescribed minimum superannuation contribution on behalf of all employees, unless the employee:

- earns less than $450 in a month;
- works part time and is under 18 years of age;
- is 70 years of age or over;
- is paid to do work of a domestic or private nature for no more than 30 hours a week;
- receives payment under the Community Development Employment Projects (CDEP) program;
- is a non-resident who is paid for work done outside Australia; or
- is a resident paid by a non-resident employer for work done outside Australia.
- However, award agreements may override the above exemptions to require superannuation contributions to be made for an employee who falls under one of the above exemption categories.

### CALCULATING THE SUPERANNUATION GUARANTEE EARNINGS BASE

Since 1 July 2008, employers have been required to use an employee's ordinary time earnings (OTE) to calculate the minimum level of SG contributions required for the employee. The OTE of an employee is the total of the employee's earnings in respect of ordinary hours of work. This includes commissions and bonuses which are related to performance.

OTE also includes:

- over-award payments;
- shift loadings;
- allowances; and
- some forms of paid leave (such as sick leave and annual holiday leave).

OTE does not include overtime payments or paid parental leave payments.

Before 1 July 2008, some employers were able to use a different earnings base to calculate the amount of contributions to make on behalf of their employees. Moving to a uniform OTE base ensures all employees are treated in a consistent manner. It also means that employees who perform the same work under the same remuneration arrangements can expect to receive superannuation calculated against the same base.

Further detail, including a checklist for calculating OTE, is available on the ATO website: http://www.ato.gov.au.

## FREQUENCY OF EMPLOYER CONTRIBUTIONS

Since 1 July 2003, employers have been required to make superannuation contributions at least quarterly on behalf of their employees.

## EMPLOYER REPORTING REQUIREMENTS

Employers are not currently required under the SG arrangements to report superannuation contributions to employees. However, employers have a legal obligation under the *Fair Work Regulations 2009* to keep accurate and complete time and wages records and to issue pay slips to each employee. Those records and pay slips must include information about superannuation contributions an employer is required to make for an employee.

## SALARY SACRIFICE TO SUPERANNUATION

A superannuation salary sacrifice agreement is a voluntary arrangement whereby an employee agrees to contractually reduce their salary or wages in return for higher employer superannuation contributions. Such agreements are generally designed to enable the employee to take advantage of the concessional taxation treatment of employer superannuation contributions.

Contributions made as a result of a salary sacrifice agreement are indistinguishable from other employer contributions, which may mean that such contributions count towards the employer's SG obligation for that employee. This may result in the overall contribution possibly being lower than expected by the employee. Further, where the salary sacrifice arrangement reduces the employee's salary or wages, thus reducing the employee's OTE, the employer may calculate their 9 per cent SG obligation on the reduced earnings base. Again, this may reduce an employer's SG obligations.

When entering into salary sacrifice arrangements, employees should consider the overall impact of the arrangements on their take home pay as well as superannuation contributions, and ensure these are detailed in writing.

## THE SUPERANNUATION GUARANTEE AND INDIVIDUALS AGED 70 OR OVER

Employers are not required to make SG contributions for employees who are aged 70 or over.

Employers are able to claim a full deduction for all contributions to superannuation funds made on behalf of their employees under age 75. The age limit for deductible contributions is consistent with the ability of individuals to make personal superannuation contributions up to age 75.

The payment of employer contributions past the SG age limit is a matter for negotiation between employers and employees. This arrangement does not force employers to provide less remuneration but does provide greater flexibility in the method of remuneration.

Employers are able to claim a deduction for superannuation contributions made for employees who are over age 75 where the contributions are required under an award or industrial agreement.

## THE SUPERANNUATION GUARANTEE FOR INDIVIDUALS RECEIVING WORKERS' COMPENSATION

Employers are generally not required to make SG contributions for employees who are in

receipt of workers' compensation and have not returned to work. However, this does not preclude employers paying superannuation as part of workers' compensation arrangements.

The Superannuation Guarantee charge

Under the SG arrangements, employers are required to make superannuation contributions at least quarterly on behalf of their employees. If employers fail to make the required contributions by the due date (within 28 days after the end of the quarter), they must pay the SG charge to the ATO.

The SG charge is comprised of three components. The shortfall component effectively represents the employer contributions not made by the due date; the nominal interest component compensates employees for loss in earnings on those contributions; and the administration component is a fee retained by the ATO. The SG law allows the ATO to deposit the recovered shortfall and interest amounts directly into the relevant employee's superannuation fund. Unlike employer contributions that are made on time, the SG charge is not tax deductible to employers.

The ATO can also impose additional penalties on employers who fail to meet their SG obligations in a timely manner.

The late payment offset ensures that employers do not have to pay the same amount of superannuation twice by allowing employers to use a contribution made after the due date to offset against part of an SG charge liability. As an incentive for employers to comply with their SG obligations in a timely manner, the ATO will continue to impose penalties and interest on employers who do not make their superannuation contributions on time. Employers should contact the ATO for further information on 13 10 20 or via the ATO website: http://www.ato.gov.au.

### WHAT AN EMPLOYEE CAN DO IF THEY BELIEVE THEY ARE NOT RECEIVING THEIR SUPERANNUATION

If an employee believes their employer has not been paying their superannuation contributions correctly they should speak first to their employer, and then to their superannuation fund. If they still have reservations, they can lodge an inquiry with the ATO by calling 13 10 20. For more information please refer to the ATO website: http://www.ato.gov.au.

## Choice of fund

The choice of fund provisions enable many employees to choose the superannuation fund into which their contributions are made based on matters of importance to them, such as fees and charges, death and disability insurance, investment returns or the ability to select ethical investments.

Upon being given a *Standard choice form* by their employer, an employee can (but is not required to) choose a fund. When deciding whether to choose a new superannuation fund, employees need to consider which options suit them best. A change may not necessarily be the best option.

Where an employee does not choose a fund, the employer should contribute to a complying superannuation fund that meets the legislative requirement to offer a minimum level of insurance.

Some employees may not be eligible to choose a superannuation fund, such as those who receive employer superannuation contributions under a collective agreement or an Australian Workplace Agreement. These agreements instead allow employees to directly negotiate their superannuation fund with their employer and are therefore consistent with the choice of fund policy. Also, some employees receiving superannuation under a state award may not be eligible to choose a superannuation fund.

Some employees in certain defined benefit funds and some public sector employees also may not be eligible to choose a fund.

## Returns on superannuation investments

Superannuation funds invest in a wide range of assets, including Australian

equities, international equities, fixed interest investments, property and cash.

The Government does not direct superannuation funds to invest in particular asset classes, as this may result in lower retirement incomes for Australians, jeopardising the long term success of the Government's retirement incomes policy. Rather, trustees of complying superannuation funds are required to formulate an investment strategy that has regard to the risk and return of the fund's investments, expected cash flow requirements, diversification and liquidity of investments, and the ability of the fund to discharge its liabilities.

Most superannuation funds have a significant exposure to equities and other growth assets with the aim of maximising returns over the long-term. This can mean that investment returns fluctuate in the short term. However, over the past 35 years superannuation has delivered real returns significantly above inflation.

Many superannuation funds offer members investment choices. In the long run, a balanced portfolio comprised of a mix of growth and defensive assets can be expected to generate higher returns in most years, but can also experience losses in some years. Members who choose a low risk investment strategy could expect smaller variations in their annual superannuation returns, compared to members who choose higher risk investment strategies. However, members choosing low-risk investment strategies could also expect lower returns, on average, over their working life.

Many employees are able to choose a superannuation fund with an investment strategy that meets their needs. Risk averse individuals could choose to place their superannuation savings in a fund that offers a low-risk investment option.

No general Government guarantee applies to superannuation account balances as this would provide an incentive for investors to pursue higher returns through investments that may involve greater risks, including the risk of making capital losses. However, banks, credit unions, building societies and life insurance offices can offer superannuation in the form of Retirement Savings Accounts (RSAs). RSAs are capital-guaranteed by the institutions which offer them, which means that the account will not be subject to negative investment returns.

Members may wish to consider seeking financial advice about the particular strategy which would best suit their circumstances.

## Prudential framework for superannuation

The Australian Prudential Regulation Authority (APRA), as the prudential regulator for superannuation, is responsible for ensuring that regulated superannuation entities have appropriate systems and practices in place to meet their financial promises to consumers. The *Superannuation Industry (Supervision) Act 1993* imposes stringent duties on trustees to manage the assets of superannuation funds prudently and in the best interests of all members of the fund.

Trustees of APRA-regulated superannuation funds must, among other things, demonstrate that they meet minimum standards of fitness and propriety and have in place appropriate risk management mechanisms to identify, measure and manage risks to the trustee and to the fund. Trustees also have a duty to formulate and give effect to an investment strategy that gives consideration to, among other things, appropriate diversification and the need to balance risk and return in the best interests of members.

APRA, as a proactive regulator, has at its disposal a number of powers to intervene to ensure compliance with the regulatory requirements, including powers to disqualify individuals from being trustees of superannuation funds.

### SUPERVISORY LEVY

All superannuation funds are subject to an annual supervisory levy.

The levy for small APRA-regulated funds (having fewer than five members) is a flat fee of $500

per fund, and the levy for larger APRA-regulated funds is set as a proportion of their assets as at the end of each financial year. Funds are levied by APRA after they have provided their final annual returns, which are due in October each year.

## REGULATION OF SELF-MANAGED SUPERANNUATION FUNDS (SMSFS)

Self-managed superannuation funds (SMSFs) may provide an appropriate vehicle for some individuals to build superannuation savings and pay benefits in retirement. Both SMSF trustees and their advisors, however, need to be aware of their roles, obligations and responsibilities.

An SMSF is a trust that performs the same role as other superannuation funds, investing contributions and managing benefits in order to provide an income for its members in retirement. The trustees control the investment of contributions and the payment of benefits, and are responsible for ensuring the fund complies with superannuation law.

Characteristics of SMSFs:

- funds have less than five members;
- no member of the fund may be an employee of another member of the fund, unless they are related;
- each member of the fund is a trustee or director of the corporate trustee; and
- no trustee or director of the corporate trustee of the fund receives any remuneration for their services as a trustee.

The ATO is the regulator of SMSFs. The ATO's role is to ensure SMSFs comply with all relevant provisions in the superannuation laws. The ATO also provides education, assistance and support to trustees and their advisors through a range of information products, standardised forms and other tools.

New trustees are required to obtain a trust deed, register their SMSF with the ATO, and formulate an investment strategy. They are also required to provide a declaration that they understand their duties as a trustee.

SMSFs are required to lodge a single annual return with the ATO, and make a single payment for the fund's income tax liability and supervisory levy. The single form consists of the fund's regulatory return, income tax return and member contribution statements. These streamlined arrangements make managing an SMSF easier and simpler for trustees.

SMSFs are also required to have an annual audit undertaken by an approved auditor. Approved auditors report contraventions of specified rules to the ATO.

Administrative penalties apply to SMSF trustees for failing to lodge documents on time and for making false or misleading statements. Civil and criminal penalties may apply for significant breaches of superannuation law.

The SMSF supervisory levy is $180 per annum (for the 2010-11 income year). The SMSF levy is payable at the same time as the fund's income tax liability.

# Contribution rules

## KEY POINTS

- Anyone under age 65 can make contributions to superannuation. Individuals aged 65 to 74 must meet a work test of 40 hours in a 30-day period to be eligible to make non-mandated employer or personal contributions. Contributions by individuals aged 75 and over are not allowed unless they are mandated employer contributions.
- Concessional (generally deductible) contributions to superannuation are limited to $25,000 per person per annum (indexed). These contributions are taxed at 15 per cent.
  - A transitional period that ends on 30 June 2012 allows individuals aged 50 and over to contribute up to $50,000 of concessional contributions without breaching the annual limit.
- Employers are able to claim a full deduction for all contributions to superannuation on behalf of employees under the age of 75. The SG applies only until age 70.
- Superannuation contributions from an individual's after-tax income (which are non concessional and are also undeducted) are not taxed when contributed. Personal contributions of this nature may also be eligible for the Government co-contribution. Non concessional contributions are limited to $150,000 per annum (calculated as six times the indexed concessional contributions cap).
- People under age 65 are able to bring forward two years of contributions and make a larger contribution of up to $450,000.
- The concessional contribution limit (but not that related to the transitional arrangements) is indexed in $5,000 amounts.
- Breaches of the contribution caps will result in additional tax required to be paid by the individual.

## Concessional contributions

The most common types of concessional contributions are employer contributions (including those made under a salary sacrifice arrangement) and personal contributions for which a tax deduction is claimed by the contributor.

There is a cap on concessional contributions of $25,000 per person per annum (in 2011-12). These contributions are taxed at 15 per cent in the fund. The $25,000 threshold is indexed to Average Weekly Ordinary Time Earnings (AWOTE) but only increases once the increase in the indexed amount is greater than $5,000. This makes it easier for people to understand the value of concessional contributions they may make each year. The threshold applies per person, irrespective of the number of employers contributing on their behalf.

A transitional period allows people aged 50 and over to contribute up to $50,000 (in 2011-12) of concessional contributions without breaching the annual limit. The transitional period commenced on 1 July 2007 and ends on 30 June 2012. A person who turns 50 during this period is able to take advantage of the transitional arrangements from the year in which they turn 50. For example, a person who turned 50 on 1 January 2010 will be able to make $50,000 of concessional contributions in each of the 2010-11 and 2011-12 financial years. The $50,000 cap is not indexed.

People aged 50 and over with balances below $500,000 (not indexed) to make up to $50,000 in concessional superannuation contributions each year from 1 July 2012.

Concessional contributions above the concessional cap also count towards the non-concessional cap.

There are different arrangements for defined benefit schemes.

### TAX TREATMENT OF CONTRIBUTIONS IN EXCESS OF THE CONCESSIONAL CAP

Where the ATO identifies that a person's concessional contributions have exceeded the cap in a financial year, the amount in excess of the cap will be effectively taxed at the top marginal tax rate plus Medicare levy (an additional 31.5 per cent tax will be levied on the individual on top of the original 15 per cent paid by the fund).

The individual is able to elect for their superannuation fund to release monies to pay the tax. The Commissioner of Taxation may exercise a discretion to reduce the amount of excess contributions subject to tax where he/she considers that special circumstances exist.

For contributions made on or after 1 July 2011, eligible individuals will be able to take some excess concessional contributions out of their superannuation fund, and to have them assessed instead as income at their potentially lower marginal rate of tax rather than taxed as excess contributions.

This option will be available where an individual has made excess concessional contributions of up to $10,000 (not indexed) in a particular year. It will only be available for breaches in respect of 2011 12 or later years, and only for the first year in which a breach occurs.

### ADMINISTRATION

Superannuation funds, except those that are untaxed, report to the ATO all concessional contributions (including notional taxed contributions) made for the benefit of an individual.

## Non-concessional contributions

There is a cap of $150,000 a year (in 2011-12) on the amount of (generally) after-tax superannuation contributions a person can accrue. The value of the cap remains at six times the level of the cap on concessional contributions and will increase as the concessional cap moves with indexation.

To accommodate larger contributions, people under age 65 are allowed to bring forward two years of contributions, giving them a cap of $450,000 over three years. For example, a person under age 65 is able to make $450,000 in the 2011-12 financial year but will then be unable to make further after-tax contributions until the 2014-15 financial year. Once a person turns 65 they are only able to make $150,000 of post-tax contributions each financial year provided they satisfy the work test.

Concessional contributions above the concessional cap also count towards the non-concessional contributions cap.

### TAX TREATMENT OF CONTRIBUTIONS IN EXCESS OF THE NON-CONCESSIONAL CAP

Non-concessional contributions in excess of the cap are taxed at the top marginal tax rate plus Medicare levy (that is, currently, 46.5 per cent). This tax is levied on the individual. The individual must nominate one or more superannuation funds to release monies to pay the liability. The balance of the excess contributions, after the compulsory release of monies to the value of the tax, is able to remain in the fund.

To limit inadvertent breaches of the cap, individual superannuation funds are prohibited from accepting contributions in excess of the maximum allowable non-concessional contributions in a year (that is, $450,000 for people aged under 65, and $150,000 for people aged 65 to 74). The Commissioner of Taxation may exercise a discretion to reduce the amount of excess contributions subject to the tax where he/she believes that exceptional circumstances exist.

### ADMINISTRATION

Superannuation funds are required to report the amount of non-concessional contributions to the ATO. The ATO uses this information to determine if a person has exceeded the annual cap.

### EXEMPTIONS TO THE CAP

Contributions above the cap are allowed in the following circumstances:

- proceeds are from the disposal of assets that

qualify for the small business capital gains tax (CGT) exemptions (that is, the 15-year exemption and the $500,000 retirement exemption) up to a lifetime limit of $1.205 million (in 2011-12; indexed). This also applies to assets that would have qualified if they were not pre-CGT assets or if disposed after the permanent disablement of the owner including where the asset was owned for less than 15 years; and

- proceeds are from a structured settlement or court order for a personal injury resulting in permanent disablement.
- The Government co-contribution is not included in the cap.

### CONTRIBUTIONS INCLUDED IN THE NON-CONCESSIONAL CONTRIBUTIONS CAP

The cap generally applies to all after-tax contributions made on behalf of an individual. For example, contributions made directly by a person into their spouse's account to qualify for the spouse contributions tax offset are counted against the receiving spouse's cap.

Concessional contributions above the concessional cap (that is, excess concessional contributions subject to the excess concessional contributions tax) also count towards the non-concessional contributions cap. This ensures that people cannot circumvent the non-concessional cap by making excessive concessional contributions.

If a contribution is an excess concessional contribution and by virtue of being included in the non concessional contributions cap, causes a person to have an excess non-concessional contribution tax liability, that contribution is effectively taxed at 93 per cent. This provides a powerful incentive for people not to attempt to circumvent the contribution caps.

### CONTRIBUTIONS SPLITTING AND THE LOW INCOME SPOUSE OFFSET

Under the contributions splitting policy, a member of a superannuation fund may split their concessional (before-tax) contributions with their spouse. Contributions splitting is designed to provide low-income or non-income earning spouses with the opportunity to accumulate superannuation assets in their own name and under their own control.

The maximum amount of contributions that can be split is the lesser of 85 per cent of the member's concessional contributions for a financial year and the concessional contributions cap for the financial year.

In addition, a rebate of up to $540 is available to a taxpayer who contributes to superannuation on behalf of a non-income earning or low-income spouse. The offset is calculated as 18 per cent of contributions up to a maximum of $3,000. This limit is reduced where the spouse's total income (assessable income plus reportable fringe benefits) exceeds $10,800 and phases out completely where the spouse's total income is $13,800 or more.

## Age limits

Anyone under age 65 can make contributions to superannuation.

Individuals aged 65 to 74 must meet a work test to be eligible to make personal contributions. Once a person has worked at least 40 hours within a period not exceeding 30 consecutive days, they can contribute into superannuation for the rest of that financial year. This work test is designed to accommodate more flexible working arrangements and recognise that Australians aged 65 to 74 who wish to work may prefer irregular part time or short term contract work rather than working every week.

People aged 75 and over are not allowed to make personal contributions to superannuation.

## Deduction rules

### EMPLOYERS

Employers are able to claim a full deduction for all contributions to superannuation funds made on behalf of their employees who are under the age of 75.

### THE SELF-EMPLOYED

Personal contributions made by the self-employed (that is, where less than 10 per cent of the individual's assessable income and reportable fringe benefits is attributable to employment as an employee) are treated in the same way as contributions made by employers for the benefit of employees. Such contributions are eligible for a full deduction until the self-employed person reaches age 75.

### PERSONAL DEDUCTION ELIGIBILITY

A person's eligibility to claim a deduction for personal contributions is limited by how much of their assessable income and reportable fringe benefits is attributable to employment as an employee, mirroring the test currently used for determining eligibility for a Government co-contribution. Generally, to be entitled to claim a deduction, less than 10 per cent of an individual's assessable income and reportable fringe benefits must be attributable to employment as an employee.

A person, including a self-employed person, who wishes to claim a tax deduction for a superannuation contribution is also required to notify their superannuation fund, in the approved form, by the time they lodge their income tax return or at the end of the following financial year after the contribution was made, whichever is earlier. The notification generally cannot be varied after this time. This ensures the fund includes such contributions in its assessable income so they can be taxed at 15 per cent, and the ATO has the relevant information to count the contribution against the relevant cap and to determine eligibility for a Government co-contribution.

## Other assessable (taxable) contributions

### CERTAIN TRANSFERS FROM OVERSEAS SUPERANNUATION FUNDS

Where a superannuation benefit is paid from an overseas fund more than six months after the individual becomes an Australian resident, a tax liability may arise. The tax liability arises in respect of an amount (the taxable amount) which generally reflects earnings on the overseas superannuation while the individual was an Australian resident.

- Where the benefit is paid directly to the individual, the taxable amount is included in their assessable income and taxed at their marginal tax rate.
- Where the benefit is transferred to an Australian superannuation fund, the member can elect to have the taxable amount instead treated as an assessable contribution in the Australian fund (and therefore subject to the 15 per cent tax).

Applying the 15 per cent tax on earnings is consistent with the accepted principle that Australian residents should be subject to tax on their worldwide savings. The earnings on the overseas superannuation are exempt from the concessional contributions cap.

The remaining part of the benefit transferred to Australia (the amount of the transfer exceeding the taxable amount) is counted against the non-concessional contributions cap. If the transfer is made within six months of the individual becoming a resident there is no 'taxable amount', so the whole transfer is tested against the non-concessional contributions cap.

### ROLLOVERS FROM UNTAXED TO TAXED SCHEMES

Rollovers of untaxed benefits from an untaxed scheme to a taxed scheme are subject to contributions tax at the point of transfer. Withholding arrangements apply to the transferring fund (the untaxed scheme) when transferring a benefit. Benefits paid or transferred from untaxed schemes are also subject to the untaxed plan cap ($1.205 million in 2011-12). Amounts in excess of the cap will be taxed at the top marginal tax rate plus Medicare levy.

### SALARY SACRIFICE TO SUPERANNUATION

A salary sacrifice agreement is a voluntary arrangement between an employer and an employee where the employee agrees to forego part of their total remuneration, which would otherwise be received as salary or wages, in return for the employer providing other benefits.

In the case of a superannuation salary sacrifice agreement, an employee agrees to contractually reduce their salary or wages in return for higher employer superannuation contributions.

Because an employer pays salary sacrifice contributions on behalf of the employee and the contributions receive concessional tax treatment of 15 per cent in the fund's hands as a result, they are classed as concessional contributions and are therefore also subject to the cap on concessional contributions of $25,000 per person per annum (in 2011-12).

## The Government co-contribution scheme

Under the Government co-contribution scheme, the Government matches dollar for dollar personal undeducted contributions made by eligible individuals, with a maximum contribution of $1,000. The maximum co-contribution falls as income rises above $31,920 (for 2010-11 and 2011-12) with no co contribution being payable for a person whose income is at or above the upper income threshold ($61,920 for 2010-11 and 2011-12). To qualify for the maximum payment in a given income year, a person must make $1,000 of personal undeducted contributions into a complying superannuation fund, and satisfy the other conditions specified below.

The co contribution is not subject to tax when paid into a superannuation fund or when paid out to the person as an end benefit. The co contribution is required to be preserved in the superannuation environment until the person reaches their preservation age (currently 55 for those born before 1 July 1960, increasing to 60 for those born after 30 June 1964).

The co contribution scheme is administered by the ATO and in most cases it is paid directly into a person's superannuation fund. It is generally not available to offset unpaid tax liabilities. The ATO uses contribution and account details provided by superannuation funds, together with the income details from a person's income tax return, to determine eligibility for the co contribution. Therefore, whilst there is no need to apply for the co contribution, a person must lodge a tax return so that the ATO can determine their income for this purpose.

The co contribution scheme was extended to the self employed for eligible contributions made on or after 1 July 2007. Self employed persons and employees are subject to the same criteria to be eligible for the co contribution, with a special rule that removes expenses incurred in carrying on a business for the purposes of the income threshold test.

### CONDITIONS OF THE CO-CONTRIBUTION

To be eligible for a Government co-contribution:

- the personal superannuation contribution to be matched by a co contribution payment must be made to a complying fund or RSA, to provide retirement benefits for the person or, in the event of their death, to provide benefits to their dependants;
- the person must earn 10 per cent or more of their total income as an employee or while carrying on a business or a combination of both;
- the person must be less than 71 years of age at the end of the relevant income year in which the matched contribution is made; and
- the person must not be a temporary resident in the year in which the matched contribution is made.

### CO-CONTRIBUTION THRESHOLDS

The co contribution lower income threshold (that is, $31,920 in 2011-12) is indexed annually in line with the growth in full time adult

AWOTE. The upper income threshold is also increased to maintain the same income range over which the maximum is reduced (that is, it will always be $30,000 more than the lower income threshold).

Under the temporary pause to indexation of the co-contribution income thresholds announced in the 2011-12 Budget, the co-contribution lower and upper income thresholds will remain at $31,920 and $61,920 for the 2011-12 and 2012-13 income years.

For an individual on more than $31,920 (in 2011-12) and making a personal contribution, the Government will still make some matching contribution, but the maximum amount is reduced until it cuts out at $61,920 (in 2011-12).

An individual's maximum co-contribution is reduced by 3.333 cents for each dollar by which the person's total income exceeds the lower income threshold for receiving the full co-contribution.

### LOW INCOME EARNER GOVERNMENT CONTRIBUTION

The Government will provide a superannuation payment to eligible low income earners. The amount payable will be calculated by applying a 15 per cent matching rate to the concessional contributions made by or for individuals on adjusted taxable incomes of up to $37,000, with an annual maximum amount payable of $500 (not indexed). The amount will be paid into a superannuation account of an individual to directly boost their retirement savings. Concessional superannuation contributions made in the 2012 13 and later income years will be eligible for the payment.

## Contribution incentives for the self-employed

### AGE LIMIT AND DEDUCTION RULES

The self-employed (and other individuals who are currently eligible for a deduction) are eligible to claim a full deduction for their superannuation contributions up to age 75.

### CO-CONTRIBUTION SCHEME AND THE SELF-EMPLOYED

The Government co-contribution scheme is available to the self-employed provided they satisfy the eligibility criteria.

The co-contribution income thresholds for the self-employed are determined by adding the assessable income of an individual (including any reportable fringe benefits, if applicable) and then reducing that amount by their expenses incurred in carrying on a business.

# Taxation of benefit payments

## KEY POINTS

- Generally superannuation benefits are preserved until retirement, on or after reaching preservation age. A member's preservation age varies between 55 and 60, depending on their date of birth.
- Superannuation benefits paid from a taxed source either as a lump sum or a pension are tax free when paid to an individual aged 60 and over.
  - Superannuation benefits paid from a taxed source before age 60 are generally subject to tax.
- Superannuation benefits paid from untaxed schemes are also taxed, but at reduced rates when paid to those aged 60 or over.
  - The taxation treatment for lump sum benefit payments from an untaxed source varies depending on the age of the member and the amount withdrawn.
  - Pension payments from an untaxed superannuation source to an individual over the age of 60 are taxed at marginal tax rates with a 10 per cent tax offset. Payments to individuals below age 60 are taxed at marginal tax rates without an offset.
- Given the generous taxation concessions provided for superannuation savings, restrictions are placed on the early withdrawal of these savings to ensure they provide for genuine retirement income. An individual may be able to access their superannuation benefits before reaching their preservation age in certain circumstances, including: severe financial hardship; on specified compassionate grounds; permanent incapacity; and for individuals suffering from a terminal medical condition.
- The taxation treatment of a death benefit varies depending on whether the payment is made as a lump sum or a pension, whether payment is made to a death benefits dependant or a non dependant, and whether there is an element taxed or untaxed in the fund.
- The Medicare levy is generally payable on all superannuation benefits where a tax rate of greater than zero applies.

## Preservation age

Generally superannuation benefits are preserved until retirement, on or after reaching preservation age. As shown in the table below, a member's preservation age varies between 55 and 60, depending on their date of birth.

| Date of Birth | Preservation Age |
|---|---|
| Before 1 July 1960 | 55 |
| 1 July 1960 – 30 June 1961 | 56 |
| 1 July 1961 – 30 June 1962 | 57 |
| 1 July 1962 – 30 June 1963 | 58 |
| 1 July 1963 – 30 June 1964 | 59 |
| After 30 June 1964 | 60 |

## Payment rules

### VOLUNTARY WITHDRAWAL

Members are able to access their superannuation once they reach their preservation age and retire. No restrictions apply once the member reaches age 65.

### PROPORTIONAL DRAWDOWN OF BENEFITS

When any part-payment of a superannuation benefit is made, the benefit is taken to comprise tax free and taxable components in the same proportions as these components make up of the member's total benefit. This applies to both lump sums and pensions.

### PENSION RULES

The 2007 changes to superannuation introduced new simplified minimum standards for pensions. All pensions that meet the simplified minimum standards are taxed the same on payment. Investment earnings on assets supporting these pensions are tax exempt.

In broad terms, pensions can meet the new standards in either of two ways – by meeting a minimum annual payment requirement expressed as a proportion of the product's account balance, or by satisfying a simplified set of rules designed to ensure that the capital in the income stream is drawn down over the term.

For account-based pensions, the minimum annual payment amounts are designed to ensure the capital in the pension is generally drawn down over time. There is no maximum payment amount, with the exception of pensions which are or were commenced under the 'transition to retirement' condition of release. These pensions are limited to a maximum annual drawdown of 10 per cent of the product's account balance.

In response to concerns about the impact of the global recession on the account-based pension portfolios of self-funded retirees, the Government announced in February 2009 that it would reduce the minimum payment amounts for account based pensions by 50 per cent for 2008 09. This relief was subsequently extended to the 2009-10 and 2010-11 financial years. The 2011-12 Budget provided further drawdown relief, in the form of a 25 per cent reduction in the minimum annual payment amounts, for 2011-12. The minimum payment amounts will revert to their normal levels from 2012-13.

These temporary reductions in the minimum payment amounts apply to account based, allocated and market linked (term allocated) pensions for 2008-09 2009 10, and 2010-11 and 2011-12.

The minimum pension payment percentages are set out in the following table.

| Age | Per cent of account balance | Per cent of account balance (for 2008-09, 2009-10 and 2010-11) | Per cent of account balance (for 2011-12) |
|---|---|---|---|
| Under 65 | 4 | 2 | 3 |
| 65 – 74 | 5 | 2.5 | 3.75 |
| 75 – 79 | 6 | 3 | 4.5 |
| 80 – 84 | 7 | 3.5 | 5.25 |
| 85 – 89 | 9 | 4.5 | 6.75 |
| 90 – 94 | 11 | 5.5 | 8.25 |
| 95 or more | 14 | 7 | 10.5 |

### BENEFITS NOT WITHDRAWN

There are no age-based compulsory cashing rules, with members able to keep their benefits in a fund indefinitely. However a member's benefits in a fund must be cashed upon their death.

Where a person chooses not to draw down on their fund assets as a pension, then earnings on these assets are subject to tax at a rate of 15 per cent.

## Taxed schemes

Most people are in a taxed superannuation fund, which means their superannuation fund pays tax on superannuation contributions they receive and earnings such as interest from investments.

### RULES FOR BENEFITS PAID FROM TAXED SCHEMES TO INDIVIDUALS AGED 60 AND OVER

*LUMP SUMS*

All lump sum benefits paid from a taxed source to an individual aged 60 or over are tax free.

*PENSIONS*

All pension payments from a taxed source are tax free when paid to individuals aged 60 or over. This applies to all pensions irrespective of their commencement date.

*REPORTING*

Individuals aged 60 and over do not need to include either lump sum superannuation benefits or superannuation pensions from a taxed fund made after 30 June 2007 in their tax returns.

### RULES FOR BENEFITS PAID FROM TAXED SCHEMES TO INDIVIDUALS AGED UNDER 60

*LUMP SUMS*

Lump sum payments from a taxed source contain a tax free component and a taxable component.

- The tax free component includes undeducted contributions and non-concessional contributions made from 1 July 2007. This component is entirely exempt from tax.
- For those aged 55 to 59 years, the taxable component (the total value of a superannuation interest less the tax free component) is tax free up to the low rate threshold and taxed at a maximum rate of 15 per cent plus the Medicare Levy above the threshold. For those aged under 55, this component is taxed at a maximum rate of 20 per cent.
- The low rate threshold is $165,000 (for 2011-12) and is indexed to AWOTE in $5,000 amounts.

*CALCULATING THE PRE-JULY 1983 COMPONENT*

Most superannuation funds should have calculated the pre-July 1983 amount (funds had until 30 June 2008 to do so). This was calculated on the value of the benefits as at 30 June 2007, using the legislative formulas. The amount forms part of the crystallised segment and is consolidated into the tax free component. Once calculated, the crystallised segment becomes a fixed component that will not change in the future and forms part of the new tax free component.

*PENSIONS*

The taxable component of a superannuation pension is assessable income. A superannuation pension offset of 15 per cent of the taxable component applies to pensions paid from a taxed source if the individual is aged 55 to 59 years. A 15 per cent tax offset is also available on the taxable component of a disability superannuation benefit received as an income stream.

Once the pension recipient turns 60, their pension (if from a taxed source) is tax free.

*REPORTING*

Individuals aged under 60 are required to report details of lump sums and pensions in their tax return.

## Untaxed/unfunded schemes

In some superannuation schemes the employer's funding of the member's benefit does not occur until the person is ready to retire, and hence no contributions or earnings tax has been paid on this element of the member's benefit. Employer-funded benefits from these superannuation schemes, which mainly affect public servants, are considered to be from an untaxed source.

Some state schemes, while funded, are exempt from Australian Government taxation. Benefits from these schemes are also considered to be from an untaxed source.

### BENEFITS PAID FROM UNTAXED SCHEMES TO INDIVIDUALS AGED 60 AND OVER

*LUMP SUMS*

The untaxed element of a benefit paid from an untaxed source is taxed at no more than 15 per cent up to $1.205 million (in 2011-12), with the top marginal tax rate applying to benefits in excess of that amount (the Medicare levy may also apply to these rates). The $1.205 million (the 2011-12 untaxed plan cap) applies on a lifetime basis to each member of the fund. The cap is indexed to AWOTE and increases in amounts of $5,000.

*PENSIONS*

The untaxed element of pension payments is included in assessable income and taxed at marginal rates. However, pension payments are eligible for a 10 per cent taxation offset. The return of contributions which are made towards the pension from the pensioner's own after-tax income, and certain other amounts, are tax free.

*REPORTING*

Individuals are required to include the untaxed element of lump sums and pensions in their tax return.

### BENEFITS PAID FROM UNTAXED SCHEMES TO INDIVIDUALS AGED UNDER 60

*LUMP SUMS*

For untaxed elements paid to those aged 55 to 59, a rate of no more than 15 per cent applies to benefits up to a threshold of $165,000 (for 2011-12), a rate of 30 per cent applies to benefits in excess of this amount up to $1.205 million (for 2011-12) and the top marginal tax rate applies above that amount (the Medicare levy may also apply to these rates). For those aged under 55, a maximum rate of 30 per cent applies up to $1.205 million and the top marginal tax rate applies above this amount (the Medicare levy may also apply to these rates).

*PENSIONS*

The untaxed element of pension payments is included in assessable income and taxed at marginal rates. Unlike payments for those aged 60 and over, they are not eligible for the 10 per cent tax offset.

*REPORTING*

Individuals who receive benefit payments with untaxed elements are required to lodge a tax return and report these payments as assessable income.

### TAXED BENEFITS IN UNTAXED SCHEMES

Untaxed schemes can also pay benefits on which tax has previously been paid. This can include personal contributions, and earnings on those contributions, as well as funded amounts which have been taxed within the fund.

These taxed elements of a benefit are tax free if paid to a person aged 60 or over. The tax rules for taxed benefits for people aged less than 60 also apply where relevant.

### ROLLOVERS TO TAXED SCHEMES

Where a benefit is rolled over from an untaxed scheme to a taxed scheme, the transferring fund will withhold tax at the top marginal tax rate plus the Medicare levy for that part of the benefit above $1.205 million (in 2011-12). The first $1.205 million of the benefit to be transferred will be treated as a taxable contribution by the receiving fund and is subject to the 15 per cent contributions tax. The remainder will form part of the exempt component in the receiving fund and (after the tax is withheld) will not be taxed further.

## Transition to retirement

The transition to retirement policy allows people who are still in the workforce to access their superannuation as a non commutable pension once they reach their preservation age. Allowing people to access superannuation without having to retire or leave their job provides them with more flexibility in developing strategies in their transition to retirement.

Under the policy, a person can access their benefits in the form of a 'complying' pension or an account-based pension. In the case of an account-based pension, no more than 10 per cent of the account balance (at the start of each year) can be withdrawn in any one year.

A person is not able to commute (stop) an account-based pension and cash out their benefit as a lump sum while they are still working. However, once a person retires or reaches age 65, they can commute the pension and access their full benefits. The policy also enables people who purchase an account based pension to commute the income stream at any time and return their benefits to their superannuation fund.

As the policy is not compulsory, the decision to offer access to benefits under the transition to retirement condition of release is at the discretion of superannuation fund trustees.

## Superannuation and family law

The *Family Law Act 1975* allows separating couples to split their superannuation on marriage or relationship breakdown (including de facto and same-sex relationships) in one of two ways: an interest split or a payment split arrangement.

Under an interest split arrangement, superannuation may be split on relationship breakdown before a condition of release is met. In this situation, at the point of relationship breakdown, the member and the member's former spouse are allocated their own share of the member's superannuation that exists at that time. These allocated amounts must be separately preserved in the superannuation system until a condition of release is met. That is, the member's former spouse cannot receive their entitlement to the member's superannuation until they meet a condition of release in their own right.

Under a payment split arrangement, a Family Court splitting order or superannuation agreement provides that particular superannuation benefits are to be split when they become payable, typically, when the member meets a condition of release. That is, the member's former spouse cannot receive their entitlement to the member's superannuation until the member has met a condition of release.

A payment split does not create a new superannuation interest for the member's former spouse. Instead, when a splittable payment is made to the member, the member's benefit is reduced to reflect the payment made to the member's former spouse.

### DEFINED BENEFIT FUNDS

Generally, interest splitting applies automatically for accumulation funds, which are the vast majority of superannuation funds. However, for some types of funds, for example defined benefit funds, the availability of interest splitting depends on the governing rules of the particular fund.

Trustees of defined benefit funds are able, but not compelled, to alter their governing rules to allow for interest splitting. Requiring interest splitting could impose unreasonable obligations and costs on the fund and the sponsoring employer that could be passed to members.

Former spouses of members of defined benefit funds whose rules do not currently permit interest splitting will not generally be able to access their entitlement until the member meets a condition of release.

## Early release of superannuation

An integral part of the Government's retirement incomes policy is to ensure that all members of the community have an adequate level of income in retirement. Given the generous taxation concessions that promote self-provision in retirement, restrictions are placed on the early withdrawal of superannuation savings to ensure they provide for genuine retirement income.

As these restrictions may cause undue hardship for some people because of their personal circumstances, the legislation provides for the early release of superannuation benefits in certain limited circumstances, such as: severe financial hardship; a limited number of compassionate circumstances; permanent incapacity; and for individuals suffering from a terminal medical condition.

The early release of superannuation benefits is not permitted on any grounds other than those specified by the relevant legislation. The final decision on whether a release is permitted on any grounds rests with the trustees of the applicant's superannuation fund, subject to the governing rules of the fund.

### SEVERE FINANCIAL HARDSHIP

In order to be eligible for early release of superannuation benefits on severe financial hardship grounds, an applicant must be able to:

- show they have been in receipt of a qualifying Commonwealth income support payment for a continuous 26 week period; and
- satisfy their trustee that they are unable to meet reasonable and immediate family living expenses.

If a member satisfies both of these tests, the fund trustee may, in any 12-month period, release to them one lump sum payment. The lump sum payment is to be no more than a gross amount of $10,000 and no less than

$1,000, or the balance of the member's benefit if that is less than $1,000.

Qualifying Commonwealth income support payments for the purpose of early release include: social security or service pensions; certain social security benefits; income support supplements (excluding Austudy and Youth Allowance for full time students); exceptional circumstances relief payments; and CDEP program payments.

*SEVERE FINANCIAL HARDSHIP FOR THOSE OVER 55*
If members are aged 55 years and 39 weeks or over, they may secure the release of their total benefit on severe financial hardship grounds. They must be able to show that they are in receipt of a Commonwealth income support payment and have been for a cumulative period of 39 weeks after reaching age 55, and must not be gainfully employed on a full-time or part time basis on the date of application to their fund trustee.

In all cases, applicants need to provide their trustee with a letter from Centrelink, the Department of Veterans' Affairs or a CDEP grantee organisation confirming they meet one of these tests.

## COMPASSIONATE GROUNDS

Benefits may be released on compassionate grounds only in very limited circumstances. These circumstances are defined in regulations and cover: expenses in respect of medical treatment; medical transport; modifications necessary for the family home or motor vehicle due to severe disability; and a dependant's palliative care or funeral expenses. Benefits may also be released on compassionate grounds to prevent foreclosure of a mortgage or exercise of a power of sale over the member's principal place of residence. Benefits can also be released to meet expenses in other cases where the release is deemed consistent with one of these grounds.

APRA is responsible for the administration of early release of superannuation benefits on specified compassionate grounds. More detailed information concerning eligibility and application forms can be obtained by calling APRA on 1300 131 060 or alternatively, via its website at: http://www.apra.gov.au.

## PERMANENT INCAPACITY

A trustee may authorise the early release of a member's benefits where they are reasonably satisfied the member is unlikely, because of ill health (whether physical or mental), to engage in gainful employment for which the member is reasonably qualified by education, training or experience.

The definition of 'permanent incapacity' was amended with effect from 1 July 2007 to allow people who have never worked, or who were not working at the time they were incapacitated, to access their superannuation prior to preservation age. The new definition removes the requirement for the member to have ceased gainful employment due to permanent incapacity.

## TERMINAL MEDICAL CONDITION

A new condition of release has been introduced which gives individuals suffering from a terminal medical condition unrestricted access to their superannuation benefits, irrespective of their age or workforce status.

In broad terms, a person will be taken to have a terminal medical condition if two registered medical practitioners have certified that the person suffers from an illness or has incurred an injury that is likely to result in their death within a period of 12 months. At least one of the certifying medical practitioners must be a specialist practising in an area related to the person's illness or injury.

Superannuation lump sums are tax free where paid to individuals with a terminal medical condition. The tax free treatment applies to superannuation lump sums paid to eligible individuals on or after 1 July 2007.

Under the previous rules, lump sum payments were generally subject to a tax rate of 20 per cent where paid from a taxed source.

### WHERE AN INDIVIDUAL DOES NOT MEET THE CRITERIA FOR EARLY RELEASE

If a person is unable to gain early access to their superannuation benefits, there are organisations that provide free and confidential financial counselling to people who are experiencing personal financial difficulties. These services are not restricted to Centrelink customers, and individuals do not have to be referred to the service by Centrelink. The Australian Securities and Investments Commission website (located at: http://www.MoneySmart.gov.au) provides contact details for several financial counselling organisations.

### APPEALING AGAINST A DECISION

*SEVERE FINANCIAL HARDSHIP*

An individual may request an internal review of a decision made by their fund trustee with regard to their application for early release of superannuation benefits on severe financial hardship grounds. However, if the individual has not been in receipt of a qualifying Commonwealth income support payment for 26 weeks, their fund has no discretion to approve the release of their benefits.

Should the individual remain unsatisfied with the result of the internal review, they can contact the Superannuation Complaints Tribunal (http://www.sct.gov.au) regarding their application for early release of superannuation benefits on severe financial hardship grounds.

*COMPASSIONATE GROUNDS*

An individual can request an internal review of a decision made by APRA with regard to their application for early release of superannuation benefits on specified compassionate grounds. Should the individual remain dissatisfied with the result, they may appeal to the Commonwealth Ombudsman for investigation of the decision. The Commonwealth Ombudsman can be contacted on 1300 362 072, or alternatively, via their website: http://www.ombudsman.gov.au.

*REQUESTS TO THE MINISTER*

The current laws governing early access to superannuation have been in place for some time and do not allow the consideration of early release on any basis other than as stipulated in the legislation. The regulatory arrangements were developed on a bipartisan basis and do not provide ministers with any discretion to intervene in individual cases.

## Death benefits

The taxation treatment of a death benefit varies depending on whether the payment is made as a lump sum or a pension, whether payment is made to a death benefits dependant or a non dependant, and whether there is an element taxed in the fund or an element untaxed in the fund.

The tax free component of a superannuation death benefit is tax free income (non-assessable, non exempt income) in all cases.

The superannuation system provides favourable tax treatment to death benefits paid to a deceased member's dependants.

A death benefits dependant for tax purposes is: the deceased member's spouse or a former spouse; the deceased member's child under 18; a person in an interdependency relationship with the member just before the member's death; or any other person who was financially dependent on the member just before the member's death. The definition of a death benefits dependant is contained in the Income *Tax Assessment Act 1997* (section 302 195).

Lump sum death benefits are tax free if paid to a dependant, irrespective of whether they are paid from a taxed or untaxed source.

Death benefits may be paid to a dependant as a pension. The taxation of the pension depends on the ages of both the deceased member and the dependant, and whether it is paid from a taxed or untaxed source.

Death benefits are able to be paid as a pension to a dependent child, although when the child reaches 25 years of age, the balance in the fund will have to be paid as a lump sum (tax free) unless the child is permanently disabled.

Death benefits paid to non-dependants (such as an adult child) must be made as a lump sum (that is, pensions may not revert or be paid to a non-dependant on the member's death) and are taxed concessionally. Pensions that commenced before 1 July 2007 are taxed as if they are received by a dependant.

The taxable component of a death benefit paid to a non-dependant is taxed concessionally at 15 per cent when paid from a taxed source or 30 per cent when paid from an untaxed source (the Medicare levy may also apply to these rates).

Death benefits paid to the non-dependants (such as a parent) of defence and police personnel who die in the line of duty are tax free. Defence and police personnel include a member of the Australian Defence Force, the Australian Federal Police or a state or territory police force, or a Protective Service Officer.

The table below summarises the tax treatment of death benefit payments to dependants and non dependants.

The Medicare levy may also apply to the rates in this table.

| DEATH BENEFIT PAYMENTS TO DEPENDANTS | | | |
|---|---|---|---|
| Age of deceased | Death benefit | Age of recipient | Taxation treatment |
| Any age | Lump sum | Any age | Tax free (non-assessable, non-exempt income) |
| Aged 60 and over | Pension | Any age | Taxable component:<br>■ Element taxed in the fund is tax free (non assessable, non-exempt income).<br>■ Element untaxed in the fund is taxed at marginal rates. Recipient is entitled to a 10 per cent tax offset on this amount. |
| Aged under 60 | Pension | Aged 60 and over | Taxable component:<br>■ Element taxed in the fund is tax free (non assessable, non-exempt income).<br>■ Element untaxed in the fund is taxed at marginal rates. Recipient is entitled to a 10 per cent tax offset on this amount. |
| Aged under 60 | Pension | Aged under 60 | Taxable component:<br>■ Element taxed in the fund is taxed at marginal rates. Recipient is entitled to a 15 per cent tax offset on this amount.<br>■ Element untaxed in the fund is taxed at marginal rates. |

| DEATH BENEFIT PAYMENTS TO NON-DEPENDANTS | | | |
|---|---|---|---|
| Age of deceased | Death benefit | Age of recipient | Taxation treatment |
| Any age | Lump sum | Any age | Taxable component:<br>■ Element taxed in the fund is taxed at 15 per cent.<br>■ Element untaxed in the fund is taxed at 30 per cent. |

### REMOVAL OF DISCRIMINATION IN COMMONWEALTH LEGISLATION AGAINST SAME-SEX COUPLES – SUPERANNUATION

Amendments were passed by Parliament in December 2008 to remove discrimination against same-sex couples, and their children, in Commonwealth superannuation legislation. The amendments provide members of same-sex couples and their children with the same treatment under the superannuation regulatory framework as applies to opposite-sex de facto couples and their children. The changes ensure that same-sex partners, and their children, qualify as dependants for the purposes of superannuation death benefit payments.

Previously, same-sex couples who were members of regulated funds were able to access their partners' death benefits provided they could establish either an 'interdependency' or a 'financial dependency' relationship, however same-sex members of public sector funds had no entitlements.

## Temporary residents

Individuals who enter Australia on a temporary visa and who later depart and cease to hold the visa, are able to withdraw superannuation they have accumulated in a fund through a departing Australia superannuation payment (DASP). This payment is subject to a final withholding tax.

Temporary residents who do not take their superannuation benefits with them when they depart Australia will have their superannuation paid to the Commonwealth. The amount can be claimed back at any time subject to a final withholding tax.

## Invalidity payments

Benefits paid on the permanent disablement of a member are eligible for an increased tax free component of the benefit taken due to permanent disability. Once the person is aged 60 or above the entire benefit becomes tax free.

Since 1 July 2007, eligibility for a disability benefit has been extended to the self employed.

Benefits which are paid on the temporary disablement of a member (such as salary continuance benefits) are regarded as 'replacement of income' benefits rather than 'retirement income' benefits. Therefore, these benefits are treated as income of the member regardless of their age. Funds must provide relevant information to the member to include these benefits in their tax returns.

# Making it easier to find and transfer superannuation

## KEY POINTS

- The transfer of benefits between funds can be enacted using a standard portability form, which is available on the ATO website. Once a person has provided all necessary information to the transferring fund, that fund must transfer the benefit within 30 days.
- The ATO maintains a Lost Members Register (LMR) which lists the names of people who have been reported by their superannuation funds as lost. Members are encouraged to use the ATO's SuperSeeker facility, together with the standard portability form, to consolidate their lost accounts.

## Portability

Individuals can request the transfer of their benefits by using the standard portability form, which is available on the ATO website. Once a person has provided all necessary information to the transferring fund, that fund must transfer the benefit within 30 days. Trustees are also required to follow up incomplete requests for transfers promptly.

Generally, all funds are required to accept the standard form for requests for portability of whole superannuation balances. The form includes standard proof of identity requirements to ensure uniformity amongst funds. The standard form makes it easier for most members to provide the necessary information. A superannuation fund also has the discretion to accept lesser proof of identity documents before transferring or rolling over an amount.

The standard portability form may be accessed via the ATO website, located at: http://www.ato.gov.au [NAT 71223].

Members are advised to contact their superannuation fund prior to exercising portability in order to clarify any exit fees or charges which may apply.

### EXCEPTION TO THE 30 DAY RULE

APRA may suspend or vary the requirement of a fund to transfer a member's benefit within 30 days if it believes, on reasonable grounds, that the transfer would have a significant adverse affect on the financial position of the fund or the interests of other members of the fund. This is consistent with the requirement for trustees to act in the best interest of all members.

### FUNDS WHICH ARE EXEMPT FROM THE PORTABILITY REGIME

The portability regulations provide an exemption for unfunded defined benefit schemes because of the potential financial consequences for the employer-sponsors of these schemes. Applying the portability arrangements to unfunded defined benefit schemes could require a significant and unexpected bring forward of expenditure for the employer.

Certain state government superannuation schemes are classed as Exempt Public Sector Superannuation Schemes (EPSSSs) and are not directly subject to the detailed requirements of the *Superannuation Industry (Supervision) Act 1993* and related regulations, which provide for portability. However, in the 1996 Heads of Government Agreement on Retirement Incomes, the States agreed to adhere to the principles of Australian Government retirement income policy as reflected in Commonwealth legislation. Accordingly, it is expected such schemes would offer portability in a manner

consistent with the portability requirements, unless they were a type of scheme exempted under those regulations (for example, unfunded schemes).

### TRANS-TASMAN RETIREMENT SAVINGS PORTABILITY SCHEME

On 16 July 2009 the Treasurer announced the signing of a memorandum of understanding with New Zealand which lays the foundation for a new scheme which will enable Australians and New Zealanders to take their retirement savings with them when they move across the Tasman.

Once enacted, the scheme will permit transfers of retirement savings between certain Australian superannuation funds and New Zealand KiwiSaver funds. Currently, members of Australian superannuation funds may only transfer their retirement savings within the Australian superannuation system.

Participation in the scheme will be voluntary for eligible funds, as well as for individuals wishing to transfer their retirement savings.

Further information can be found in the Treasurer's joint press release with the New Zealand Finance Minister, the Hon Bill English, of 16 July 2009 which may be found at http://www.treasurer.gov.au.

Australia is now working towards enacting the legislation necessary to give effect to this new regime.

## Lost Members Register (LMR)

When a member becomes lost, their superannuation provider is required to report their account details to the ATO. The ATO maintains the LMR which lists these details.

### HOW MEMBERS BECOME LOST

Members may become lost where:

- their superannuation fund has been unable to contact them, either because the fund does not have the member's address, or because mail sent by the fund to the member has been returned;
- their superannuation fund has not received contributions or rollovers for the member in the preceding five years; or
- the member's account was transferred to the superannuation fund from another fund that reported the member as lost.

### LOCATING AND TRANSFERRING LOST ACCOUNTS

Individuals who have lost track of their superannuation can search the LMR by:

- telephoning the ATO on 13 28 65;
- contacting their superannuation fund; or
- going through the SuperSeeker facility on the ATO's website at http://www.ato.gov.au/super.
- A member wishing to use the SuperSeeker facility will need to provide their name; their date of birth; and their tax file number (TFN).

If SuperSeeker finds a possible match, it will provide the member with the name and contact details of the superannuation fund which may hold their lost superannuation. Members can then contact the fund to discuss what they intend to do with their account.

Individuals can consolidate their multiple superannuation accounts using the standard portability form (which may be accessed by telephoning the ATO on 1300 720 092 or via the ATO website located at: http://www.ato.gov.au [NAT 71223]). A fund has 30 days after receiving all of the necessary information from a member to transfer the member's account to the specified fund.

- **Superannuation accounts with less than $200**

A fund member who was previously lost, and whose benefit in the fund is less than $200, may cash their benefit from the superannuation system without attracting tax. Members should speak with their superannuation fund for more information.

Where a member's benefit in a fund total less than $200, those benefits can also be accessed tax free when the member terminates gainful employment with an employer-sponsor of the fund.

## PAYMENT OF SMALL AND UNIDENTIFIABLE LOST SUPERANNUATION ACCOUNTS TO UNCLAIMED MONIES

From 1 July 2010, small and unidentifiable lost superannuation accounts have been paid to unclaimed monies to enhance efficiency in the superannuation system.

Superannuation providers are required to transfer a lost member's account to unclaimed money where the balance of the account is less than $200, or where the account has been inactive for five years and the provider has insufficient records to identify the owner of the account.

Previously, lost account balances were only paid to the Commonwealth as unclaimed monies when a member reached age 65 and could not be found by a superannuation fund trustee, or when a member died and the trustee could not ensure the benefit was received by the person entitled to the benefit. Recent changes also allow the superannuation of a former temporary resident to be paid to unclaimed monies.

The first transfer of small and insoluble lost accounts to unclaimed monies occurred on the basis of the lost members return for the period 1 January – 30 June 2010. Transfers applied to small and insoluble accounts belonging to lost members at 30 June 2010 who had not been found prior to providers lodging the related unclaimed money return.

Individuals who have their accounts transferred to unclaimed monies will be able to reclaim these amounts from the Commissioner of Taxation.

# Other measures

## Non-quoting of tax file numbers (TFNs)

The provision of member TFNs to superannuation funds is important for the effective administration of the superannuation system, in particular for monitoring contributions against the concessional and non-concessional contributions caps.

To encourage TFN quotation and ensure concessions are appropriately targeted, a 'no-TFN tax' applies to employer contributions made to an account without a TFN ('no-TFN account').

A superannuation fund is only able to accept member contributions for or on behalf of a member if the member's TFN has been quoted to the fund. This includes contributions for which the member intends to claim a deduction.

### EMPLOYER CONTRIBUTIONS

Employer contributions made to a no-TFN account are generally taxed at the top marginal tax rate plus Medicare levy, comprised of the ordinary 15 per cent fund tax on contributions plus the 31.5 per cent no TFN contributions tax. For accounts created before 1 July 2007, if total taxable contributions to the account do not exceed $1,000, the additional tax does not apply. This liability threshold is not available if the account was opened on or after 1 July 2007.

The additional tax liability is imposed on the income of superannuation funds, although funds in most cases will make a deduction from the member's account.

Funds are not required to calculate their income tax liability until 30 June each year, giving members until that date to quote their TFN to avoid liability for the no-TFN contribution tax.

If a member quotes their TFN after the end of the income year but before the fund lodges its return containing the withheld no-TFN tax, the no-TFN tax offset can be accounted for in the fund's return and credited immediately to the member's account. More generally, individuals have three years following the end of the income year in which the no-TFN contribution was made to quote their TFN for the purposes of the offset.

The no-TFN tax offset may be recovered with interest if the additional tax was levied because of employer failure to pass on a TFN to the superannuation fund. A penalty also applies to employers who fail to pass on a TFN. The ATO is responsible for enforcement of the penalty regime.

Legislative and other arrangements have been put in place to increase TFN quotation to minimise the number of accounts subject to the additional tax. Where an employee quotes a TFN for employment purposes it is automatically taken to be quoted for superannuation purposes. Generally, the employer must pass this on to a superannuation fund within 14 days of the TFN being quoted.

The ATO uses its systems to attempt to match TFNs to members where non-quotation has occurred, and contacts members to organise for identified TFNs to be provided to their superannuation fund.

The ATO can also correct a mistaken TFN or notify a fund that a quoted TFN is invalid. For more information, see the ATO website: http://www.ato.gov.au.

### MEMBER CONTRIBUTIONS

Member contributions made to a no-TFN account are required to be returned to the member (or the payer if different from the member) by the fund. This includes contributions that would otherwise be deductible (concessional contributions) if made to an account with a TFN.

### BENEFIT PAYMENTS FOR INDIVIDUALS AGED UNDER 60

For lump sum benefit payments where a TFN is not quoted, the taxable component is subject to tax withholding at the top marginal tax

rate of 46.5 per cent, or 45 per cent for foreign residents. The pre-July 1983 component is classed as tax free, and is exempt from tax regardless of whether or not a TFN has been quoted. There are also withholding tax consequences for superannuation income streams where a TFN is not quoted, dependent on the age of the beneficiary and other factors.

## Employment termination payments (ETPs)

An upper limit applies to the amount of employment termination payments (ETPs) that can receive concessional taxation treatment.

ETPs are comprised of two components — tax free and taxable. The tax free component is the portion of the ETP that relates to invalidity or to pre-1 July 1983 employment (with the employer making the payment). This is exempt from tax. The taxable component is the remainder of the ETP after the tax-free component is calculated. This is taxed at 15 per cent for amounts up to $165,000 (in 2011-12, indexed) for recipients aged 55 and over and at 30 per cent for those aged under 55. Amounts in excess of $165,000 are taxed at the top marginal tax rate (plus Medicare levy). ETPs must be made within one year of termination.

Generally, ETPs cannot be rolled over into superannuation funds.

### TRANSITIONAL ARRANGEMENTS

Transitional arrangements exist for individuals with ETPs specified in existing employment contracts as at 9 May 2006, provided payment is made prior to 1 July 2012. Under these arrangements, amounts are taxed at 15 per cent up to $165,000 in 2011-12 (30 per cent if under 55), 30 per cent up to $1 million and the top marginal rate plus Medicare levy for amounts over $1 million. This upper limit is not indexed.

These ETPs can also be rolled into superannuation until 1 July 2012. However, any amounts above $1 million that are rolled over will have the excess above $1 million taxed at the top marginal tax rate plus Medicare levy.

Amounts of less than $1 million are treated as a taxable contribution to the fund but do not count against the $25,000 cap on concessional contributions.

### OTHER EMPLOYER PAYMENTS

The taxation treatment of bona fide redundancy payments and approved early retirement scheme payments is concessional. The tax free component is worked out on the basis of a base amount plus an amount for each complete year of service ($8,435 and $4,218 respectively for 2011-12)

# Announced reforms

## Stronger Fairer, Simpler: A Tax Plan for our Future

On 2 May 2010, the Government announced, as part of *Stronger, Fairer, Simpler: A Tax Plan for our Future*, measures to deliver substantial improvements in retirement savings and a fairer distribution of superannuation taxation concessions.

- From 1 July 2013, the superannuation guarantee rate will be increased from 9 per cent to 12 per cent, with the increase gradually phased in over a period of seven years. The increase will commence with two smaller steps of 0.25 (of a percentage point), in 2013-14 and 2014-15, followed by steps of 0.5 in every year until the superannuation guarantee reaches 12 per cent in 2019-20.
- From 1 July 2013, the superannuation guarantee age limit will be increased from 70 to 75.
- From 1 July 2012, individuals aged 50 and over with total superannuation balances below $500,000 at a prescribed date will be able to make up to $50,000 in concessional superannuation contributions. This is $25,000 above the general concessional contribution cap, which was scheduled to apply from 1 July 2012 and will allow these individuals to make 'catch up' contributions when they are most able.
- A new low income earner's Government contribution of up to $500 annually will be provided for individuals on adjusted taxable incomes of up to $37,000. This will effectively return the tax payable on compulsory superannuation guarantee contributions for workers with incomes up to that amount. Concessional superannuation contributions made from 2012-13 will be eligible with the first contributions paid in 2013-14.

## Stronger Super

On 16 December 2010 the Government announced reforms to enhance the efficiency of the superannuation system and help maximise retirement income for members.

### MYSUPER

The Government has announced that it will introduce a simple, low cost superannuation product called MySuper, which superannuation funds will be able to offer from 1 July 2013. Following a transitional period, MySuper products will be the only products eligible to accept contributions from employers on behalf of employees who do not choose a fund.

MySuper is designed to improve the simplicity, transparency and comparability of default superannuation products, providing a product members can rely on, whether or not they take an active role in managing their superannuation savings. MySuper will improve outcomes for the majority of members who do not wish to be actively involved in choosing their superannuation arrangements, while maintaining freedom of choice for those members who do.

Trustees of MySuper products will be required to develop a diversified investment strategy, in keeping with a primary duty to act in the best financial interests of their members as measured by net investment returns and level of risk over the longer term. This heightened obligation to optimise net returns is estimated to reduce the total fees paid by superannuation fund members by around $1.7 billion per year over the longer term. Additionally, MySuper will restrict unnecessary or excessive fees, by:

- banning commissions in relation to retail investment products and group insurance;
- introducing new standards for the payment of performance fees to fund managers;
- banning entry fees charged to new members;
- limiting exit fees to cost recovery; and
- ensuring switching fees are not payable to the trustee in their personal capacity.

**SuperStream** 'SuperStream' is the name given by the Super System Review to its package of recommendations designed to enhance the back office of superannuation, improve the productivity of the superannuation system and make the system easier to use.

The Review identified significant costs imposed by the inefficiency of existing administrative processes. These include the excessive costs and complexity arising from manual processing of both money transfers and data, the lack of standardised formats, and poor and incomplete data.

As part of Stronger Super, the Government supports the broad direction of the review's SuperStream recommendations and has established a consultative sub-group to progress the design and implementation of the SuperStream measures.

## SMSFS

As part of Stronger Super, the Government supports and will implement many of the Super System Review's recommendations to reform the SMSF sector.

The SMSF registration and rollover processes will be amended to reduce the incidence of funds being illegally released from SMSFs. Proof of identity checks will be required for all people joining an SMSF. New penalties will be introduced, including criminal and civil sanctions for illegal early release scheme promoters.

The ATO will be provided with new regulatory powers to prevent and penalise breaches of the superannuation legislation. A sliding scale of administrative penalties will be introduced for less serious cases of non-compliance and will be payable by the trustee. Additionally, the ATO will have the power to issue directions to rectify contraventions by a specific date, and to enforce mandatory trustee education for less serious non-compliance.

Knowledge and competency requirements will be developed for SMSF service providers. ASIC will develop a mandatory SMSF specialist knowledge component of Regulatory Guide 146 to impose minimum training requirements on financial advisers providing services to SMSFs.

ASIC will be appointed as the registration body for SMSF approved auditors. Approved auditors will be required to meet independence, competency and knowledge standards.

SMSFs will continue to be allowed to invest in collectables and personal use assets, provided they are held in accordance with tightened legislative standards. The standards will apply to new investments from 1 July 2011, with all holdings to comply by 1 July 2016.

## TAX FILE NUMBERS

From 1 July 2011 superannuation fund trustees will be allowed to use tax file numbers as the primary identifier of member accounts and to facilitate the consolidation of multiple member accounts. Safeguards will be in place to ensure that member privacy is protected, including that it will remain voluntary for a member to quote their tax file number to their superannuation fund.

## SECURING SUPER

Through the Securing Super reforms employees will receive:

- information on their payslips about the amount of superannuation actually paid into their account; and
- quarterly notification from their superannuation fund if regular payments cease.

This will help ensure that superannuation entitlements are paid in a timely manner, and that employers and employees are given more information about their superannuation payments (including superannuation guarantee payments and salary sacrificed payments).

# Agencies involved in superannuation – roles, responsibilities and contact information

## Australian Prudential Regulation Authority (APRA)

The Australian Prudential Regulation Authority (APRA) is the prudential regulator of the Australian financial services industry. It oversees banks, credit unions, building societies, general insurance and reinsurance companies, life insurance companies, friendly societies, and superannuation entities other than self-managed superannuation funds.

APRA's role is to protect the interests of depositors, insurance policyholders and superannuation fund members by ensuring that regulated entities have appropriate systems and practices in place to meet their financial promises to consumers.

In superannuation this involves ensuring that all funds have in place a comprehensive risk management framework that establishes policies and procedures, risk management processes, internal controls and independent review processes covering both the trustees' and the superannuation entity's operations.

APRA's regulatory powers only extend to prudential matters of the entities it regulates. As such it does not get involved in the day-to-day commercial dealings that individual consumers have with financial institutions it regulates, as these matters are the responsibility of the Australian Securities and Investments Commission.

APRA also plays an important role in preserving the integrity of the retirement incomes system by administering the legislation that permits the early release of superannuation under 'specified compassionate grounds'.

Although APRA must be satisfied that an application meets the criteria for early release of superannuation under specified compassionate grounds, the final decision lies with the trustee of the member's superannuation fund. As a first step, members should contact their fund to make sure it will allow the early release of superannuation benefits. Regardless of APRA's approval the member will not be able to access their benefits if the fund does not allow early release.

**Contact information**

- Via the APRA website at http://www.apra.gov.au, or by telephoning the information line on 1300 131 060.

## Australian Securities and Investments Commission (ASIC)

The Australian Securities and Investments Commission (ASIC) is Australia's corporate, market and financial services regulator. It is responsible for the administration of the *Corporations Act 2001* and related legislation, registering and regulating all companies, and licensing and monitoring financial services markets and businesses in Australia.

ASIC is the consumer protection regulator for financial services, protecting investors, superannuants, depositors and insurance policy holders. It also has powers to protect consumers against misleading or deceptive and unconscionable conduct affecting all financial products and services, including superannuation.

With regard to superannuation, ASIC responds to inquiries relating to independent superannuation calculators and worksheets for comparing superannuation funds; information about investment strategies within superannuation and retirement income products; licences held by financial advisors; and reports of suspected misleading or deceptive conduct relating to superannuation.

### THE ROLE OF MONEYSMART

MoneySmart is the consumer website of ASIC. Through MoneySmart, consumers can access:

- ASIC's Unclaimed Monies Online Search for lost money from bank accounts, company shares and life policies (this is distinct from lost superannuation, which is the responsibility of the Australian Taxation Office (ATO): see below);
- financial calculators (including superannuation, account-based pension or term-allocated pension calculators) to compare products, test advice and help plan a financial future;
- warnings about the latest financial scams; and
- consumer reports and booklets produced by ASIC.

### CONTACT INFORMATION

For general inquiries relating to ASIC, via the ASIC website at http://www.asic.gov.au, or by telephoning the general information line on 1300 300 630. For inquiries relating to MoneySmart services, the MoneySmart website is at http://www.MoneySmart.gov.au.

## Australian Taxation Office (ATO)

The Australian Taxation Office (ATO) is the Australian Government's principal revenue collection agency. The ATO's role is to administer legislative systems that fund public goods and services, safeguard retirement incomes and give effect to social and economic policy.

In respect of superannuation, the ATO has regulatory responsibility for:

- monitoring employers' compliance with their obligations under Superannuation Guarantee (SG). The SG legislation requires employers to pay a minimum of 9 per cent of each eligible employee's earnings base (ordinary time earnings from 1 July 2008) to a complying superannuation fund or retirement savings account every quarter. Failure to make the required contributions on time incurs a SG charge. The ATO is responsible for investigating employee complaints where employers have not met their SG obligations and collecting the SG charge;
- determining eligibility and distributing payments as part of the Government co contribution scheme;
- administering the contribution caps. Where a contribution cap is exceeded, excess contributions tax may be payable;
- overseeing aspects of Australia's bilateral social security agreements which address the issue of 'double superannuation coverage'. Under these agreements, an Australian employer is exempt from having to make compulsory superannuation or similar contributions in the country the employee is temporarily located, provided the employee remains covered in Australia by the SG arrangements. An online system allows eligible applicants (generally employers) to apply for a Certificate of Coverage (COC) but paper applications can be lodged. The ATO processes applications and if approved sends the COC to the employer;
- regulating self-managed superannuation funds (SMSFs). SMSFs differ from other superannuation funds as the members of the fund are also the fund's trustees. As such, members of SMSFs control the investment of their contributions and the payment of their benefits. The ATO has a supervisory role aimed at optimising voluntary compliance with the regulatory provisions imposed on SMSF trustees, auditors and actuaries. Among other things, the ATO administers obligations imposed upon SMSFs in respect of lodging annual income tax and regulatory returns, and member contribution statements;
- administering the Lost Members Register (LMR) which is a record of superannuation accounts funds have classified as lost. Funds report lost member information to the ATO twice a year. The ATO helps funds and individuals search the LMR through SuperMatch (an online search system for use

by funds); SuperSeeker (an online system for use by fund members); and SuperSeeker – self help (an interactive telephone system for use by fund members);

- administering the departing Australia superannuation payments (DASP) scheme which allows temporary residents to access their superannuation benefits without needing to satisfy the retirement condition of release. Temporary residents may only access their benefits through the DASP scheme if they have visited Australia on an eligible temporary visa; the visa has expired or been cancelled; and they have departed Australia. The payment is subject to a final withholding tax; and
- managing the superannuation holding accounts (SHA) special account which was established in 1995 to receive small superannuation amounts from employers who could not find a fund that would accept the contributions. The SHA special account closed to employer deposits on 30 June 2006, as there are now many superannuation funds or retirement savings accounts willing to accept small amounts. The SHA special account is a default deposit option for unclaimed SG contributions and Government co-contribution amounts. Payments from SHA special account may be made to individuals or their legal representative provided they meet a condition of release. For more details, see the ATO website.

### CONTACT INFORMATION

Via the ATO website at http://www.ato.gov.au, or by telephoning: **13 28 64** for choice of superannuation fund inquiries; **13 10 20** for general tax inquiries; **1300 720 092** for ATO publications; **13 14 50** for translating and interpreting services; and either **13 36 77** for services for individuals with hearing and speech impairments (if they have appropriate TTY or modern equipment) or **1300 555 727** (for speech-to-speech users).

## Financial Information Service (FIS) – Centrelink

The Financial Information Service (FIS), which is operated by Centrelink, is an education and information facility available to all Australians. FIS helps people to make informed decisions about investment and financial issues for their current and future financial needs. It is independent, free and confidential and provides services through seminars, by telephone and appointment.

FIS officers provide information to increase individuals' confidence in dealing with investment related issues; encourage individuals to better understand their financial affairs; explain the advantages of reducing personal debt and using credit sensibly; alert individuals to the level of risk associated with different financial product types; explain the relevant roles of professionals in the financial industry; encourage individuals to increase their savings and plan effectively for retirement; and help individuals maximise their overall retirement incomes.

FIS officers provide information on a wide range of issues including:

- advantages and disadvantages of different investment options, concepts and strategies;
- superannuation and annuities;
- interaction of taxation and investment;
- property settlement following separation or divorce;
- redundancy or retrenchment;
- compensation payouts;
- impending retirement;
- death of a spouse or partner;
- accommodation choices for older people; and
- aged care issues.

FIS officers are not financial planners or financial counsellors, and as such, do not give or sell advice or purchase investment products. FIS officers do not make recommendations about

particular types of investments or tell individuals how to invest their money. Further, FIS officers do not have the authority to make decisions about an individual's pension or make calculations of an individual's rate of payment (but they may be able to approximate the amount).

### CONTACT INFORMATION

Via the Centrelink website at http://www.centrelink.gov.au, or by telephoning either **13 23 00** for general information or **13 63 57** to obtain information regarding free seminars run by FIS or to make a reservation.

## Financial Ombudsman Service (FOS)

On 10 July 2008, the Banking and Financial Services Ombudsman, Financial Industry Complaints Service and Insurance Ombudsman Service merged to form the national Financial Ombudsman Service (FOS). FOS has three divisions corresponding to the old merged schemes: Banking & Finance Division; Investments, Life Insurance and Superannuation Division; and General Insurance Division.

The FOS independently and impartially tries to resolve disputes between consumers, including some small businesses, and participating financial services providers. The merger means that independent dispute resolution services for up to 80 per cent of Australian banking, insurance and investment disputes can now be provided under one roof.

Membership of FOS is open to any financial services provider carrying on business in Australia. The FOS independent dispute resolution processes cover complaints about financial services including banking, credit, loans, general insurance, life insurance, financial planning, investments, stockbroking, managed funds and pooled superannuation trusts.

If a consumer is unhappy with a financial, insurance or investment product or service, they should complain to the participating company and ask it to resolve their dispute in accordance with its Internal Dispute Resolution (IDR) process. All participating companies are required by law to have an IDR process. Where the individual is unable to resolve a problem with their provider, the FOS provides accessible, fair and independent dispute resolution services as an alternative to taking the dispute to court.

The service is free to consumers. Individuals do not need to obtain legal or other advice when lodging a dispute unless they wish to. Decisions made by the FOS are binding on the industry member. However, where a consumer is dissatisfied with a decision, they retain the right to proceed with a court action.

The FOS is governed by an independent board of consumer and financial services industry representatives.

### CONTACT INFORMATION

Via the FOS website at: http://www.fos.org.au, or by telephoning the information line on **1300 780 808.**

## Superannuation Complaints Tribunal (SCT)

The Superannuation Complaints Tribunal (SCT) is an independent body, established by the Government to provide an alternative to the court system for the resolution of certain superannuation complaints. Under its governing statute, the *Superannuation (Resolution of Complaints) Act 1993*, the SCT performs its day-to-day functions at arm's length from the executive government. Accordingly, the Assistant Treasurer and Minister for Financial Services and Superannuation, the Hon Bill Shorten MP, is unable to intervene in individual matters within the SCT's statutory responsibilities.

The SCT tries to resolve complaints through conciliation. Where this is not possible, it formally reviews the decision(s) or conduct to which the complaint relates. The SCT is required to be fair, economical, informal and quick.

The SCT can deal with complaints regarding:

- the decisions and conduct of trustees of most superannuation funds and Approved

Deposit Funds (ADFs), including the conduct and decisions of people acting on behalf of the trustee, and the decisions of insurers in relation to insurance benefits provided through funds;

- the decisions and conduct of life companies as providers of immediate and deferred annuities (annuity policies), including the conduct and decisions of people acting on behalf of the life company; and
- the decisions and conduct of providers of retirement savings accounts (RSAs), including the conduct and decisions of people acting on behalf of the RSA provider and the decisions of insurers in relation to insurance benefits where the premiums are paid from the RSA.

Before making a complaint to the SCT, individuals must first lodge a complaint under their fund's IDR processes. If, after having made a complaint to their fund, they are not satisfied with the response or do not receive a response within 90 days, individuals can then lodge a complaint with the SCT.

Decisions made by the SCT can be overturned on a question of law. Appeals to the Federal Court on a question of law are permitted under section 46 of the *Superannuation (Resolution of Complaints) Act 1993*. An appeal must be lodged no later than the 28th day after the day on which the SCT's determination was received.

The SCT is precluded under legislation from dealing with complaints about SMSFs.

### CONTACT INFORMATION

Via the SCT website at http://www.sct.gov.au, or by telephoning the information line on **1300 780 808.**

# Glossary

**After-tax contributions**

Contributions made with after-tax money, such as take-home pay. These are also called non-concessional, personal or undeducted contributions.

**Age pension**

The Government financial safety net provided to seniors who have limited resources.

Average weekly ordinary time earnings (AWOTE)

The average wage of employees in Australia, published by the Australian Bureau of Statistics.

**Before-tax contributions**

Contributions to superannuation in respect of which a deduction has been claimed (either by the employer or the individual). These can be made by employers for Superannuation Guarantee purposes, and also include salary sacrifice contributions. Contributions made by the self-employed, for which they can claim a tax deduction, are also included. These may also be called concessional, taxable or deducted contributions.

**Benefits**

The amount paid from a superannuation fund as a superannuation pension, lump sum or a combination of both.

**Benefits tax**

The income tax paid on benefits from superannuation, by way of either a lump sum or a pension. From 1 July 2007, benefits paid from a taxed source to individuals aged 60 and over are tax free.

**Complying superannuation fund**

A superannuation fund that receives concessional tax treatment because it is regulated under the relevant superannuation legislation and has not been issued with a notice of non-compliance.

**Concessional contributions**

Employer contributions and personal contributions claimed as an income tax deduction. Employer contributions include Superannuation Guarantee contributions and salary sacrifice contributions. These are taxed in the fund at a lower concessional rate of 15 per cent, which is often referred to as contributions tax.

**Concessional contributions cap**

The limit on concessional contributions which may be made in a year. Contributions over the limit are subject to excess concessional contributions tax.

**Death benefits dependant**

A death benefits dependant includes the deceased member's spouse; a child under 18; a person who is financially dependent on the member; or a person in an interdependency relationship with the member, at the time of the member's death.

**Deducted contributions**

Superannuation contributions made by an individual or an employer which are used to claim an income tax deduction.

**Defined benefit fund or scheme**

Fund where a member's benefit does not depend solely on contributions or earnings, but on other factors such as years of service and average salary.

**Employment termination payment**

A lump sum payment made to an employee when their employment is terminated. These payments must generally be made within 12 months of termination, and usually receive concessional income tax treatment.

**Employer contributions**

Payments made by an employer (or someone associated with an employer) on behalf of

an employee to a superannuation fund. Can include Superannuation Guarantee obligations, plus any salary sacrifice amounts.

**Excess concessional contributions**

Concessional contributions made to superannuation funds that are in excess of an annual cap ($25,000 in 2011-12).

**Excess non-concessional contributions**

Non-concessional contributions made to superannuation funds that are in excess of an annual cap ($150,000 in 2011-12). Excess concessional contributions are also counted towards this limit.

**Excess concessional contributions tax**

The tax (30 per cent plus the Medicare levy ) that is imposed upon contributions which exceed the concessional contributions cap. Individuals are personally liable for the tax, but are able to ask their superannuation fund to release money to pay it.

**Excess non-concessional contributions tax**

The tax (45 per cent plus the Medicare levy) that is imposed upon contributions which exceed the non concessional contributions cap. Individuals are personally liable for the tax, and must ask their superannuation fund to release an amount of money equal to the tax.

**Indexed caps**

The concessional contributions cap will be indexed annually to average weekly ordinary time earnings and rounded down to the nearest multiple of $5,000. This means that indexation will only increase the cap in increments of $5,000. The non-concessional contributions cap will always be six times the concessional contributions cap.

**Government co-contribution**

A matching payment made by the Government into the superannuation fund of eligible people on low to middle incomes.

**Non-concessional contributions**

Amounts that count towards the non concessional contributions cap, that is, personal contributions that are not claimed as an income tax deduction. These include contributions made by an individual's spouse into their superannuation account.

**Non-concessional contributions cap**

The limit on non-concessional contributions which may be made in a year. The non concessional contributions cap is calculated as six times the concessional contributions cap. Contributions over the limit are subject to excess non concessional contributions tax.

**Ordinary time earnings (OTE)**

The OTE of an employee is the total of the employee's earnings in respect of ordinary hours of work. This includes commissions and bonuses which are related to performance.

OTE also includes: over-award payments; shift loadings; allowances; and some forms of paid leave (such as sick leave and annual holiday leave).

**Age Pension age**

Currently 65 for men and 64 for women, gradually rising to 65 for women by 2014. As announced in the 2008-09 Budget, from 2017 the qualifying age for the Age Pension will steadily increase from 65 to 67 by 2023.

**Personal contributions**

Contributions made by an individual to their superannuation account. These are only deductible in certain circumstances.

**Reasonable benefit limit (RBL)**

A cap on the amount of superannuation and similar benefits an individual could receive on a concessionally taxed basis up until 30 June 2007. RBLs were abolished from 1 July 2007.

**Salary sacrifice contributions**

Contributions made to a superannuation fund by an employer (at the employee's request)

from the employee's before-tax salary. These contributions count toward the employee's concessional contributions cap.

**Superannuation pension**

A regular series of payments made from a superannuation fund to a member.

**Superannuation co-contribution**

See Government co-contribution.

**Superannuation Guarantee (SG) contributions**

The minimum level of superannuation support that an employer must provide for eligible employees. The rate is currently 9 per cent of each eligible employee's ordinary time earnings.

**Taxable contributions**

Contributions made to a superannuation fund that are subject to tax in the fund at the rate of 15 per cent (often referred to as contributions tax). These are generally concessional contributions including employer and salary sacrifice contributions, and personal contributions claimed as an income tax deduction.

**Taxed source**

A taxed source is generally a superannuation fund where tax is paid on contributions and earnings. Around 90 per cent of Australians have their superannuation in taxed funds.

**Transition to retirement**

Since 1 July 2005, people who have reached their preservation age can withdraw part of their superannuation benefits as a pension while they are still working. This pension can be no more than 10 per cent of their superannuation balance at the start of the relevant year.

**Undeducted contributions**

Superannuation contributions made by an employee or an employer for which an income tax deduction is not claimed. Sometimes referred to as after-tax contributions.

**Untaxed source**

An untaxed source is typically a government superannuation scheme for public servants where the benefits paid from the scheme are at least partly sourced from amounts other than contributions and earnings that have been subject to tax in the fund.