

# Tax Planning 2022 - SMSF

## In brief

Date	Changes and actions
Pre 30 June 2022	<ul style="list-style-type: none"><li>• <b>Ensure that contributions are made and received by 30 June. If contributions are by EFT, ensure that the contribution is recognised in the fund's bank account as at 30 June</b></li><li>• Where applicable, ensure minimum pension payments have been withdrawn from the fund's bank account by 30 June</li><li>• Review your fund's investment strategy including the appropriateness of any existing insurance held by the SMSF or the need for insurance coverage for fund members</li><li>• Rectify any outstanding compliance issues noted by your auditor</li><li>• Paperwork is in place for any in-specie contributions made to the fund</li></ul>
1 July 2022	<ul style="list-style-type: none"><li>• Superannuation guarantee increases to 10.5%</li><li>• Reduction in age for 'downsizer' contributions to 60 from age 65</li><li>• First home saver super scheme maximum voluntary contribution amount that is available to be withdrawn increases to \$50,000 from \$30,000</li><li>• Removal of the 'work test' for voluntary contributions – excluding personal deductible contributions.</li><li>• Minimum super guarantee threshold removed</li></ul>
30 June 2023	<ul style="list-style-type: none"><li>• Relaxation of SMSF residency requirements*</li></ul>
1 July 2023	<ul style="list-style-type: none"><li>• Minimum pension amounts for super income streams return to default rates</li></ul>

\*subject to the passage of enabling legislation

## What's new

### Superannuation Guarantee increases to 10.5%

The Superannuation Guarantee (SG) rate will rise from 10% to 10.5% on 1 July 2022 and will then steadily increase by 0.5% each year until it reaches 12% on 1 July 2025.

What this will mean to individual members depends on their employment agreement. If the employment agreement states they are paid on a 'total remuneration' basis (base plus SG and any other allowances), then their take home pay might be reduced by 0.5%. That is, a greater percentage of their total remuneration will be directed to their superannuation fund. For those paid a rate plus superannuation, then their take home pay will remain the same, but they will benefit from the increase.

## **Work-test repeal – enabling those under 75 to contribute to super**

Currently, a work test applies to superannuation contributions made by people aged 67 or over. In general, the work test requires that you are gainfully employed for at least 40 hours over a 30 day period in the financial year.

From 1 July 2022, the work-test has been removed and individuals aged younger than 75 years will be able to make or receive non-concessional (including under the bring-forward rule) or salary sacrifice superannuation contributions without meeting the work test, subject to existing contribution caps and total super balance rules.

The work test will still apply to personal deductible contributions.

This change will also see those aged under 75 be able to access the 'bring forward rule' if your total superannuation balance allows. The bring forward rule enables you to contribute up to three years' worth of non-concessional contributions to your super in one year.

## **Downsizer contributions from age 60**

From 1 July 2022, eligible individuals aged 60 years or older can choose to make a 'downsizer contribution' into their superannuation of up to \$300,000 per person (\$600,000 per couple) from the proceeds of selling their home. Prior to 1 July, you needed to be 65 years or older to utilise downsizer contributions.

Downsizer contributions can be made from the sale of your principal residence in Australia that you have owned for the past ten or more years. These contributions are excluded from the age test, work test, and your total superannuation balance (but not exempt from your transfer balance cap).

If you are looking to make a downsizer contribution, please ensure your trust deed allows it.

## **First home saver scheme – using super to save for a first home**

The First Home Super Saver Scheme enables first home buyers to withdraw voluntary contributions they have made to superannuation and any associated earnings, to put toward the cost of a first home. The benefit of this scheme is the concessional tax treatment of superannuation.

From 1 July 2022, the maximum amount of contributions that can be released from superannuation will increase from \$30,000 to \$50,000. The maximum amount of contributions that can be released each year is \$15,000 totalling \$50,000 across all years.

The FHSS does not apply to investment properties – only a first home the individual intends to live in.

## \$450 super guarantee threshold removed

From 1 July 2022, the \$450 threshold that limits superannuation payments to those that earn \$450 or more per month will be removed. This means that employers will need to pay all employees aged 18 or over superannuation guarantee regardless of how much they earn.

For employees under the age of 18, super guarantee is only required if the employee works more than 30 hours per week.

## What is staying the same

### Minimum pension reduction for super income streams extended

The temporary 50% reduction in superannuation minimum drawdown requirements for account-based pensions and similar products has been extended to 30 June 2023.

Age	Default minimum drawdown rates (%)	Reduced rates by 50% for the 2019-20 to 2022-23 income years (%)
Under 65	4	2
65-74	5	2.5
75-79	6	3
80-84	7	3.5
85-89	9	4.5
90-94	11	5.5
95 or more	14	7

### Concessional and non-concessional contribution caps

The concessional contribution cap for the 2022-23 financial year will remain at \$27,500. Concessional contributions are contributions made into your super fund before tax such as superannuation guarantee, salary sacrifice or personal deductible contributions.

You may be able to utilise your concessional contributions cap to make a personal deductible contribution of up to \$27,500 (less any employer contributions) plus any unused amounts back to 1 July 2018 if you meet the eligibility for the carry forward unused concessional contributions (see Carry forward unused concessional contributions below). This can save you tax and may be particularly beneficial if you have higher than usual income such as a capital gains.

The non-concessional cap will remain \$110,000 for the 2022-23 financial year. Non-concessional contributions are after tax contributions made into your super fund.

The bring forward rule enables those under the age of 75 (age 67 prior to 1 July 2022) to contribute three years' worth of non-concessional contributions to their super in one year.

That is, you may be able to contribute up to \$330,000 in one year depending on your total superannuation balance.

<b>Total Superannuation Balance (TSB)</b>	<b>Contribution and bring forward available</b>
Less than \$1.48m	\$330,000
\$1.48m - \$1.59m	\$220,000
\$1.59m - \$1.7m	\$110,000
Above \$1.7m	Nil

## Carry forward unused concessional contributions

If members have unused concessional contributions, that is, they did not contribute the full concessional contribution cap in 2018-19, 2019-20, 2020-21 or 2021-22, then they can carry forward these amounts for five years on a rolling basis if their total superannuation balance is below \$500,000 on 30 June (of the year you intend to access the unused amount).

For example, if a member's total concessional contribution in the 2021-22 financial year was \$10,000 and they meet the eligibility criteria, then they can 'carry forward' the unused \$17,500. They may then be able to make a higher deductible personal contribution in a later financial year. If they are selling an asset and likely to make a taxable capital gain, a higher deductible personal contribution may assist in reducing their tax liability in the year of sale.

Remember:

- Your total superannuation balance must be below \$500,000 on 30 June of the prior year before you utilise any carried forward amount (within the 5 year term); and
- In some cases, an additional 15% tax can apply (30% total) to concessional contributions made to super where income and concessional contributions exceeds certain thresholds (\$250,000 in 2021-22). Your income could be higher than usual in the year when you sell an asset for a capital gain.

This is an excellent concession to help you top up your superannuation.

## Your personal transfer balance cap

The transfer balance cap (TBC) limits how much money you can transfer into a tax-free retirement account. From 1 July 2021, the general TBC increased from \$1.6m to \$1.7m but your personal cap depends on your circumstances.

The Australian Taxation Office (ATO) calculates your personal TBC based on the information lodged with them (this is available from your myGov account linked to the ATO). If your superannuation is in retirement phase, it is important to ensure your Transfer Balance Account compliance obligations are up to date. If any changes have occurred within your SMSF, for example if a member of your fund has retired, it is essential that you let us know so we can manage the reporting requirements.

# Fund 'housekeeping'

## Cryptocurrency in the ATO spotlight

The ATO has specified that gains from cryptocurrency are an area of focus again this year. For SMSFs however, managing cryptocurrency is not simply an issue of recognising transactions correctly, it is also about ensuring fund compliance.

SMSF Trustees need to ensure that any investment in cryptocurrency is in line with the investment strategy of the fund, the trust deed allows for it at the time the investment is made, and it is an appropriate investment. In particular, the sole purpose test in the *Superannuation Industry (Supervision) Act 1993* requires that the fund is maintained for the sole purpose of providing retirement benefits to its members, or to their dependants if a member dies before retirement. Trustees need to ensure that the risks associated with these currencies are in the best interests of the fund. A minute documenting the decision to invest in the cryptocurrency would be beneficial.

For tax purposes, gains and losses in the fund are generally treated in the same way as other assets in the fund. That is, capital gains tax may apply to any gains made on the sale of the currency.

If your fund invests in cryptocurrency, there are a few practical issues. Your SMSF auditor needs to confirm the ownership, existence, and value of the cryptocurrency. As a result, the digital wallet for the currency should be in the name of the fund or the trustee. If the investment can only be recorded in the name of an individual it is up to the trustees to verify that the investment is kept separate from personal assets. Also, you need to be able to trace transactions to identify trades, the value of the trade, and the time and date they occurred.

## SMSF compliance status removed if annual returns late

If your SMSF's annual return is more than two weeks overdue and you have not requested a deferral, the ATO will move your fund's status on Super Fund Lookup from 'Complying' to 'Regulation details removed'. The result is that your fund may not be able to accept contributions from employers or rollovers from APRA regulated funds.

## Non-arm's length income expenditure

Where expenses incurred by the fund are not at arm's length and below market rates, any income derived by the relevant asset could be deemed to be non-arm's length income and taxed at the top marginal tax rate. For example, where services were provided to your SMSF property by a company related to a fund member at reduced rates, all the income derived from the property would be taxed at the top marginal rate.

The question of whether the non-arm's length income rules apply depends on the capacity in which the trustee undertakes those activities. Essentially, if you or a related entity are providing services to your superannuation fund in a capacity other than as trustee, and you (or the related entity) currently provide that service to the public, an

arm's length fee should be charged for this service. Failure to do so could result in non-arm's length income applying to the income derived from the applicable asset the expense relates to.

If you are uncertain, please contact us and we can work with you to ensure your fund is not at risk.

## Valuing SMSF assets

SMSFs are required to value their assets at market value. Depending on the situation, a market valuation may be undertaken by a:

- Registered valuer
- Professional valuation service provider
- Member of a recognised professional valuation body, or
- A person without formal valuation qualifications but who has specific experience or knowledge in a particular area.

For real property, the valuation may be undertaken by anyone as long it is based on objective and supportable data. A valuation undertaken by a property valuation service provider, including online services or a real estate agent is acceptable.

However, where the value of the asset represents a significant proportion of the fund's value or where the nature of the asset indicates that the valuation is likely to be complex, you should consider the use of a qualified independent valuer.

In general, real estate does not necessarily need a formal valuation each year by a licenced valuer unless there is a significant event that occurs during the year which may affect the previous valuation. A significant event could be one that directly involves the property itself, the fund on a general level such as one of the fund's members going into pension mode, or if the asset represents a significant portion of the fund's value.

## Contributions must be received by 30 June

To claim a tax deduction for super contributions (as an employer or as an individual), the payment needs to be received by the fund no later than 30 June. Merely incurring a liability is not enough.

If you are making a personal superannuation contribution that you want to claim as a tax deduction, you need to write to your fund in their approved form and advise them of the amount you intend to claim as a deduction. The superannuation fund then needs to acknowledge your notice of intent and agree to the amount you intend to claim as a deduction. This will normally be in the form of a notice or certificate from the fund to confirm the tax deductibility of the contribution.

## Review and rectify any outstanding compliance issues

If your auditor has highlighted any breaches or issues in previous year fund audits, you should review and rectify these issues by 30 June. The penalty for illegal access to the SMSF's funds without meeting a condition of release is \$12,600 per trustee.

The ATO have a number of powers to address non-compliance:

- Education directions - require the trustee/director to complete an ATO approved education course within a specific timeframe. An administrative penalty of \$2,100 applies for non-compliance.
- Rectification directions - requiring the SMSF's trustee/director to take specific action to rectify the contravention within a specific timeframe.
- Administrative penalties - penalties from \$1,110 to \$13,320 apply to specific breaches. Each individual trustee is liable for the penalty and directors of a corporate trustee are jointly and severally liable. The penalties are payable by the trustee/ director and not refunded by the SMSF.
- Informal arrangements to rectify minor breaches.
- Enforceable undertakings.
- Disqualification of a trustee.
- Allowing the SMSF to wind up.
- Notice of non-compliance.
- Freezing an SMSF's assets.
- Civil and criminal penalties where the fund:
  - Breaches the sole purpose test.
  - Lends to members of the fund.
  - Breaches the borrowing rules.
  - Breaches the in-house asset rules.
  - Enters into prohibited avoidance schemes.
  - Fails to notify the regulator of significant adverse events.
  - Breaches the arm's length rules for an investment.
  - Promotes an illegal early release scheme.

These powers also enable the ATO to look back to any breaches from previous years that were unresolved at 30 June 2021.

## Review the fund's investment strategy

Trustees are required to 'regularly review' the fund's investment strategy. We recommend that trustees review the strategy and document the review at least annually or when the circumstances of the fund change.

Where an SMSF has entered into a borrowing arrangement to acquire an asset, trustees should seek advice to structure insurance cover either inside or outside the SMSF to assist in meeting the on-going obligations of the debt repayments. The fund's ability to meet the on-going debt repayments can be severely jeopardised where one member of the fund dies, as the fund may have needed to utilise contributions that were being made for that member to meet the repayments. Such a scenario could result in the fund having to sell the property.

## Review insurance inside your SMSF

SMSF trustees need to consider the need for insurance cover for the fund members when formulating and reviewing the fund's investment strategy.

Superannuation funds are only able to offer or take out new insurance cover where the definitions are consistent with the death, terminal illness, permanent incapacity and temporary incapacity conditions of release under the *Superannuation Industry Supervision Act*.

It's important that you review insurance inside your SMSF not just for compliance with the law but also effectiveness. An important issue to consider is how any insurance inside your fund should be structured; that is, from where the premiums are paid from the fund and what account any policy proceeds will be paid to inside the fund.

Correctly structuring insurance inside your fund can be complex. We recommend that SMSF Trustees seek the advice of their financial adviser to achieve the most tax effective outcomes for insurance proceeds, especially on the death of a member.

## Lodgement deferrals

If you are having trouble paying your tax liability, please let us know as soon as possible so we can negotiate a deferral or payment plan with the ATO on your behalf.

## Contributions you didn't know you made

A contribution to a fund can be more than just a deposit of money into the bank account of a superannuation fund. It could include:

- Money
- In-specie asset transfers
- Paying fund expenses
- Increasing the value of a fund asset
- Forgiving a fund's debt
- Meeting a fund liability
- Rendering services to the fund at less than market value
- Guarantor arrangements
- Some Discretionary Trust distributions

Trustees can often be surprised by what is considered to be a contribution, for example:

- **In-specie transfer** - If an asset is transferred or acquired from a related party for less than fair market value, the difference may be treated as a contribution.
- **Capital improvements** - Capital improvements to existing fund assets for no consideration or less than arm's length consideration may be treated as a contribution.
- **Debt forgiveness** - A contribution is made if a loan, entered into by the fund is forgiven by the lender (related party). The contribution is made when the deed of release is executed that then relieves the fund from the obligation of repaying the debt.

- **Guarantor arrangements** - A contribution occurs if a guarantor to a debt of the fund (trustees in their own right) satisfies a loan obligation of the fund and then forgoes the right of redemption against the fund (trustees) itself.

## What we need from you

This is a general list of what we need to complete your fund's tax and accounting requirements.

- Bank statements (including any new accounts including term deposits) from 1 July 2021 to 30 June 2022.
- Contributions:
  - A breakdown by member of the types of contributions received by the fund.
- Pensions:
  - Documentation supporting any pensions commenced during the 2021-22 financial year.
- Investments:
  - Portfolio valuation as at 30 June 2022 and transaction history reports (if applicable)
  - All documentation from your portfolio or wrap provider including year end tax statements
  - All dividend & tax statements
  - Buy & sell contracts for shares sold or purchased
  - Any other documentation received during the year that relates to takeovers, restructures, bonus shares, consolidations etc., for shares held by the fund. Usually these documents advise you to retain them for taxation purposes
  - Any other document relating to an investment held within the fund which has not been covered above
- Property:
  - Agent statements (either monthly or annual) if using an agent to manage property, otherwise, all invoices and rent receipts for the year ending 30 June 2022
  - A copy of the current lease/rental agreement (if not already provided)
  - Documents for property bought or sold, including the date you entered the contract and the date the asset was first used or installed ready for use
  - Rental appraisal & market valuation from an agent (if you are using one to manage your property)
- Rollovers:
  - Copy of any Rollover Benefits Statements for money rolled into the fund during the period 1 July 2021 to 30 June 2022
- Insurance:
  - Copy of life insurance policy annual renewal documentation form (the ownership of the policy should always be in the name of the superannuation fund)
  - Copy of documentation relating to any new insurance policies from 1 July 2021.
- Other:
  - If you have transactions in your fund that do not fall into the above categories, please ensure that you provide us with full details

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