GFM Wealth Advisory

SMSF SMART

Withdrawing Money from Superannuation

Edition #5

190 Through Road, Camberwell VIC 3124 T: (03) 9809 1221 F: (03) 9809 2055 enquiry@gfmwealth.com.au

www.gfmwealth.com.au

Australian Financial Services Licence No. 229401 ABN 69 006 679 394

Withdrawing Money from Superannuation

Edition #5

In our earlier editions of SMSF Smart, we covered the following topics:

- An introduction to SMSFs;
- Being an SMSF Trustee;
- The Trust Deed; and
- Contributing to Superannuation

In this edition of SMSF Smart, we look at withdrawing money from Superannuation.

As always, we encourage you to ask us any questions if you need further information or clarification.

Preservation

Most of your super savings are preserved, or not accessible until you reach your preservation age, or meet one of the other prescribed situations contained in the super legislation. These are commonly referred to as a condition of release.

Where a Trustee of a super fund is reasonably satisfied that a member has met a condition of release with no restrictions, the member's preserved benefits and restricted non-preserved benefits in the fund at that time become unrestricted non-preserved benefits (i.e. accessible).

There are three possible preservation statuses, depending on how and when the money came into the fund.

Preserved

Most of your super will be in the form of preserved benefits. These must be preserved until the time the law allows them to be paid.

All contributions made by or on behalf of a member, and all earnings since 30 June 1999, are preserved benefits.

You can generally access your preserved super when you retire or meet a condition of release such as severe financial hardship or a terminal medical condition.

Restricted non-preserved

Restricted non-preserved benefits generally stem from employment-related contributions (other than employer contributions) made before 1 July 1999.

Investment earnings on any restricted non-preserved amounts are preserved.

You can generally access restricted non-preserved super when you leave the employer who made those contributions for you.

Unrestricted non-preserved

Unrestricted non-preserved benefits do not have any restrictions so that these amounts can be withdrawn at any time.

Unrestricted non-preserved amounts:

- Can be taken in cash or commence a retirement phase income stream
- Are not indexed, and any earnings on these benefits will be preserved
- When rolled over, will continue to remain unrestricted non-preserved

Priority of preservation components upon withdrawal

If you have satisfied a condition of release with a nil cashing restriction, all your benefits will become unrestricted non-preserved. However, if you have met a condition of release with a cashing restriction, benefits will be paid in the following order:

1. unrestricted non-preserved benefits, then
2. restricted non-preserved benefits, then
3. preserved benefits.

Preservation age

Access to super benefits is generally restricted to members who have reached preservation age. A person's preservation age ranges from 55 to 60, depending on their date of birth.

Date of birth	Preservation age (years)
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

Conditions of release

A condition of release is satisfied upon the occurrence of a specific event.

When a condition of release occurs that has a nil cashing restrictions (full access), both preserved and restricted non-preserved benefits become unrestricted non-preserved benefits and are available for access by the member.

The following events will result in a condition of release with nil cashing restrictions:

- Retirement on or after reaching preservation age
- Attaining the age of 65
- A terminal medical condition
- Death
- Permanent incapacity
- Termination of gainful employment with a standard employer-sponsor on or after 1 July 1997, where the preserved benefit at the time of termination is less than $200
- Being a lost member who is found, and the value of whose interest in the fund, when released, is less than $200.

Conditions of release with nil cashing restriction

The following events will result in super benefits becoming fully accessible.

Reaching age 65

Once you reach age 65, your super becomes unrestricted non-preserved. This generally means you will have unrestricted access to your super.

Retirement - reached a preservation age that is less than age 60

For an individual that has attained their preservation age, but under age 60, retirement occurs when both the following are satisfied:

- an arrangement under which the member was gainfully employed has come to an end
- the Trustee is reasonably satisfied that the person intends never to again become gainfully employed for ten hours or more each week.

Retirement - reached age 60

In the case of a person who has attained age 60, retirement occurs when an arrangement under which the member was gainfully employed has come to an end, and either one of the following applies:

- the person attained this age on or before ending employment, or
- the Trustee is reasonably satisfied the person never intends again to become gainfully employed

Permanent incapacity

Permanent incapacity is defined as having ceased paid work, and the Trustee must be reasonably satisfied that you are unlikely to, because of physical or mental ill-health, ever again engage in gainful employment for which you are reasonably qualified by education, training or experience.

The incapacity may have occurred before ceasing employment or could have happened after employment terminated. The Trustee's decision to pay the benefit under the trust deed may take these developments into account.

Death

The death of a member is a full condition of release, resulting in all the deceased's remaining super benefits becoming re-classified as unrestricted non-preserved. These benefits must be distributed to beneficiaries as soon as practicable after death in accordance with the super rules and the SMSF's trust deed.

Termination of gainful employment (restricted non-preserved amounts)

There are no cashing restrictions for restricted non-preserved benefits when a member terminates gainful employment with an employer who had, or any of whose associates had, at any time, contributed to that super fund.

Terminal medical condition

Since 1 July 2007 a terminal medical condition exists, allowing for a nil cashing restriction if the following criteria are met:

- two registered medical practitioners have certified, jointly or separately, that the individual suffers from an illness, or has incurred an injury, that is likely to result in the death of the person within a period that ends not more than 24 months after the date of certification
- at least one of the registered medical practitioners is a specialist practising in an area related to the illness or injury suffered by the person for each of the certificates, and the certification period has not ended.

A temporary resident leaving the country:

Eligible temporary resident visa holders who permanently leave Australia can apply to the ATO to have accumulated super benefits paid out.

Conditions of release with cashing restrictions

Transition to Retirement

If you reach your preservation age but have not retired, you can access your super as a regular income stream as a Transition to Retirement income stream. This income stream cannot be converted to a lump sum (commuted) until you meet the definition of retirement or reach age 65, thereby satisfying a nil cashing restriction. Further, from 1 July 2017, the investment earnings supporting a Transition to Retirement income streams will no longer be entitled to a tax exemption. Once you subsequently meet the a condition of release with nil cashing restrictions, the Transition to Retirement income stream will revert to a retirement phase income stream and the tax exemption on earnings will apply. At this stage, it will also then count towards your transfer balance cap.

Temporary incapacity

The release of funds to cater for temporary incapacity is allowed under the super rules as a non-commutable income stream. Temporary incapacity means physical or mental ill-health that caused the member to cease gainful employment but does not constitute permanent incapacity.

The amount of super released under temporary incapacity must be taken as an income stream (with specific restrictions) cashed from the regulated super fund for:

- The purpose of continuing (in full or part) the gain or reward which the member was receiving before the temporary incapacity
- A period not exceeding the period of incapacity from employment of the kind engaged in immediately before the temporary incapacity.

Compassionate grounds

A person can apply to the Department of Human Services for a determination to release their preserved benefits, or restricted non-preserved benefits, in full or part due to compassionate reasons. The Department of Human Services should be satisfied that you do not have the financial capacity to meet an expense arising from grounds such as:

- Payment on a loan that is required to prevent foreclosure of a mortgage on a principal residence
- To cover costs concerning a dependant's death, funeral or burial
- To pay for medical treatment, medical transport, or related medical modifications to the person's principal home or vehicle for the member or a dependant.

Although the Department of Human Services must be satisfied that an application meets the criteria for early release of super, the final decision to pay out the benefit must be made by the Trustee.

Severe financial hardship:

An application for release under hardship is assessed by the Trustee. The test of hardship depends on the person's age.

Test 1: Any age

A limited amount of superannuation can be accessed if the person:

- Has received Commonwealth income support for a continuous period of 26 weeks
- Still receives income support, and
- Satisfies the Trustee that they are unable to meet reasonable and immediate family living expenses.

If this test is satisfied, the Trustee is limited to paying a single lump sum in 12 months. The minimum amount is $1,000 (or account balance if less than $1,000), and the maximum is $10,000.

Test 2: Age 56 and 39 weeks or older

If the person is aged 56 years and 39 weeks or more, they satisfy a full release of benefits if they:

- Have received Commonwealth income support for a cumulative period of 39 weeks after turning age 56, and
- Are not gainfully employed on the date of application.
- If this second test is satisfied (for people over age 56 years and 39 weeks only), the current superannuation benefits are fully accessible (i.e. nil cashing restriction). The entire balance will become unrestricted non-preserved (subject to any payment restrictions by the superannuation fund's trust deed).

The age 56 relates to the preservation age applicable at the time. Those with an older preservation age will not be able to satisfy Test 2 until they are 39 weeks passed their preservation age.

Paying a lump sum or income stream

Upon retirement, benefits are usually paid as either a lump sum or as a pension. Lump sum benefits may be paid in cash or in-specie. Pensions are required to be paid in cash.

Traditionally in Australia, people have preferred to receive lump-sum payments to receiving income streams. The main reason being that in the past, the amount of money saved in superannuation has been relatively small (e.g. the money a person received at retirement could be used to pay off the mortgage, buy a car or go on an overseas trip).

The attitude towards spending the lump sum soon after retirement is slowly changing. People are becoming much more aware of the need to provide for retirement, and contributions under the Superannuation Guarantee system are starting to accumulate into sizeable amounts.

It is for these reasons that income streams are becoming more popular.

Under the SIS Act, there are limited types of pensions that can commence from the SMSF:

- Account-based pensions

This is calculated using the superannuation member's account balance when the pension commences and after that at 1 July in each subsequent Financial Year. A minimum annual pension amount applies.

- Transition to Retirement pensions

A Transition to Retirement pension is a type of account-based pension that can commence once you reach preservation age. This enables you to keep working and supplement your income with some of your superannuation. The main restriction is that the pension must be paid as an account-based pension and that you cannot convert it into a lump sum. There are restrictions on the maximum pension amount that can be paid.

- Market-linked income streams

A market-linked income stream can only commence in very limited circumstances.

Transfer Balance Cap

From 1 July 2017, a $1.6 million cap on assets that can be transferred to a superannuation retirement phase income stream tax-free took effect. This is subject to CPI indexation (in $100,000 increments) after that.

The Transfer Balance Cap generally limits the amount of assets you can transfer to tax-free superannuation retirement phase income streams.

If an amount greater than the Transfer Balance Cap is transferred to a superannuation retirement phase income stream, you will generally be required to remove the excess amount from the retirement phase of superannuation. You may also be liable for an excess transfer balance tax.

A person commences to have a transfer balance account on the later of 1 July 2017 and when they start a superannuation retirement phase income stream. The transfer balance account will track the net amount a person has transferred into the tax-free retirement phase of superannuation.

Australian Financial Services Licence No. 229401

Specific rules apply to the payment of superannuation death benefits paid as superannuation retirement phase income stream, defined benefit income streams and annuities.

Payments from super upon death

It is compulsory for the SMSF to pay or commence paying a member's superannuation benefit on their death.

Superannuation benefits on a member's death can be paid to the dependants and/or the legal personal representative of the deceased member.

A superannuation lump sum death benefit is an amount that, in the event of a person's death, is paid to a dependant or legal personal representative of the deceased.

A superannuation death benefit income stream can be a new income stream or a continuation of an existing income stream, and there are restrictions depending on the beneficiary.

Who is a dependant for purposes of paying benefits?

A dependant for purposes of paying superannuation is a person who is ordinarily dependent on a person for support. It includes the spouse (including a member of a same-sex couple), a child of the person and anyone who is in an interdependency relationship with the person. The spouse and child are included, irrespective of whether they are financially dependent on the person for support.

Ordinarily dependent: A person who is ordinarily dependent on the person is usually someone who is financially dependent on them for support.

An interdependency relationship exists where two persons:

- Have a close personal relationship;
- Live together;
- Provide financial support; or
- Provide domestic support or personal care.

If they do not satisfy the above conditions, they will be considered to be in an interdependency relationship only if one of them suffers from a physical, mental or psychiatric disability.

Death benefit nominations

The payment of a death benefit is ultimately a matter of Trustee discretion, subject to the payment standards and the governing rules of the SMSF.

You can direct how your SMSF death benefits are to be paid after your death, so long as this is allowed in the trust deed. This direction is called a binding death benefit nomination.

A binding death benefit nomination is a written direction that directs the Trustee to pay your death benefits to certain dependants and/or the legal personal representative in the proportions set out therein in the event of your death.

If the binding death benefit nomination is valid and in effect at the date your death, the Trustee must pay your SMSF monies to the beneficiaries nominated in the proportions set out in the nomination.

In Summary:

An SMSF Trustee must ensure the relevant payment rules and regulations are being met.

The payment standards and cashing restrictions are prescribed operating standards that apply to the operation of the SMSF as a regulated superannuation fund and must be complied with at all times.

Getting the right advice and expert guidance is crucial with SMSFs. The decision and rules for paying a benefit can be quite complex. While there is greater control with an SMSF, there is also more responsibility. The ATO encourages individuals to engage professionals to help set up and run an SMSF, and this is where GFM Wealth Advisory can help.