

December 2011

SPECIAL POINTS OF INTEREST:

- Asset transfers to SMSFs must be on-market soon
- Financial hardship and compassionate grounds
- Don't borrow from your SMSF
- SG support coming for workers 70+

INSIDE THIS ISSUE:

Changes ahead for asset transfers

Grounds to access your super early

Don't borrow from your SMSF

Super guarantee for workers 70+

CHANGES AHEAD FOR ASSET TRANSFERS

Important changes affecting asset transfers to your SMSF are expected to apply from 1 July 2012. The changes ban 'off-market' transfers of assets by related parties to SMSFs.

Background - which assets can be transferred to your SMSF?

As a general rule, you or a related party cannot transfer assets into your SMSF. However, exceptions apply to allow a restricted range of assets to be transferred to your fund, including:

- ASX-listed shares; and
- business real property (e.g., a retail shop).

Other limited exceptions apply.

EXAMPLE—Bill owns a house that is currently tenanted to residential tenants. He wants to transfer the asset into his SMSF.

Bill cannot transfer the asset into his fund because it is not business real property.

EXAMPLE—Edward owns shares in BHP Ltd that he wants to transfer over to his SMSF.

Is Edward allowed to transfer the asset to his SMSF?

Yes, the super rules allow Edward to transfer ASX-listed shares to his SMSF.

Why are asset transfers popular?

Transferring assets such as ASX-listed shares to SMSFs is popular because it means you can make super contributions without using cash.

Other advantages can apply once the shares are in your SMSF, including concessional tax rates on any dividend income and future capital gains.

EXAMPLE—Amy transfers \$10,000 of Westpac shares to her fund as a personal, after-tax contribution.

Amy has boosted her super contributions without using any cash reserves. The fund also gets the full benefit of franking credits on any

dividends. Amy's SMSF will also potentially pay no CGT if the shares are sold whilst she is drawing a pension.

Why is the Government changing the rules?

'Off-market' transfers are banned from 1 July 2012 due to concerns that these transfers (mainly shares) allow you to manipulate your capital gains tax liability and super contribution levels.

EXAMPLE—Ben decides to transfer 4,000 BHP shares into his fund on 1 December 2011. At the time of the transfer, his shares are worth \$33.

Two weeks later the shares drop to \$26. Ben chooses the date on the transfer form to be 14 December to reduce his CGT on the transfer and also lower his super contributions.

His CGT has reduced because the sale price of his BHP shares has fallen from \$33 to \$26.

This is an example of the manipulation the Government is concerned about.

What is going to happen under the new rules?

From 1 July 2012, you must sell the shares on the ASX and then buy them

back again in your fund.

EXAMPLE—Continuing on the example, Ben wants to transfer his BHP shares on 1 December 2012 (i.e., when the changes apply).

Under the

proposed new rules, Ben must:

1. sell his shares on-market and wait for settlement of the trade; and
2. transfer the proceeds to his SMSF and then repurchase the shares on-market at the prevailing market price.

Note, this change is not yet law.





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“However, the Government has now decided to completely remove the upper age limit for SG contributions from 1 July 2013.”



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GROUNDS TO ACCESS YOUR SUPER EARLY

You generally cannot access your super before you reach 55 years of age and retire. However, if you experience severe financial hardship or meet other compassionate grounds you can potentially access your super early.

Severe financial hardship

‘Severe financial hardship’ means you:

- cannot meet immediate living expenses; and
- have been in receipt of Commonwealth government support for at least 26 weeks.

If you meet this test (and are still receiving support payments) you can apply to the Department of Human Services to access your super early. Other conditions apply.

DON’T BORROW FROM YOUR SMSF

You may be tempted over the festive season to make a short-term loan from your SMSF to cover extra expenses.

You cannot borrow from your SMSF

The super rules specifically state that fund members and relatives cannot borrow money from their SMSF.

A misunderstanding exists that you can borrow from your SMSF provided the borrowing does not exceed 5% of the fund’s value.

This is incorrect - the super rules state that your SMSF will breach the rules if

Compassionate grounds

You can also apply to DHS for early release of super on the following compassionate grounds:

- to pay medical treatment/transport for you or a dependant;
- make a loan payment to stop your mortgaged house being sold;
- if you or your dependant are severely disabled – costs to modify your home or car for special needs;
- to pay palliative care costs for you or a dependant if impending death;
- to cover a dependant’s funeral, burial or death expenses; or
- similar expenses agreed with DHS.

you (or a relative) borrows any money at all from the fund.

EXAMPLE—Graham went on a holiday with his family to the USA to go sightseeing and shopping for 6 weeks.

To make sure he had enough spending money, Graham borrowed \$4,000 from his SMSF for two weeks. He repaid the loan on his next pay period.

Does the short-term loan breach the rules?

Yes, the short-term loan will breach the super rules.

SUPER GUARANTEE FOR WORKERS 70+

Currently, super guarantee (SG) support from your employer stops when you reach age 70.

SG upper age limit completely removed

Previously, the Government had intended to raise the SG age limit from age 70 to 75.

However, the Government has now decided to completely remove the upper age limit for SG contributions from 1 July 2013.

This means that eligible employees

aged 70+ will soon receive SG support, even though they are older than 75 (the change is not yet law).

EXAMPLE—Evelyn, aged 72, is a teacher working full-time. Her employer is not required to make SG contributions for her because she has reached age 70.

What is likely to happen from 1 July 2013?

Assuming Evelyn otherwise qualifies for SG support, her employer will need to pay SG for Evelyn.