We enclose a Superannuation Summary for Employers for the year ending 30 June 2020 for the exclusive use of clients of The Mischel & Co Group of Companies.

Dear Client,

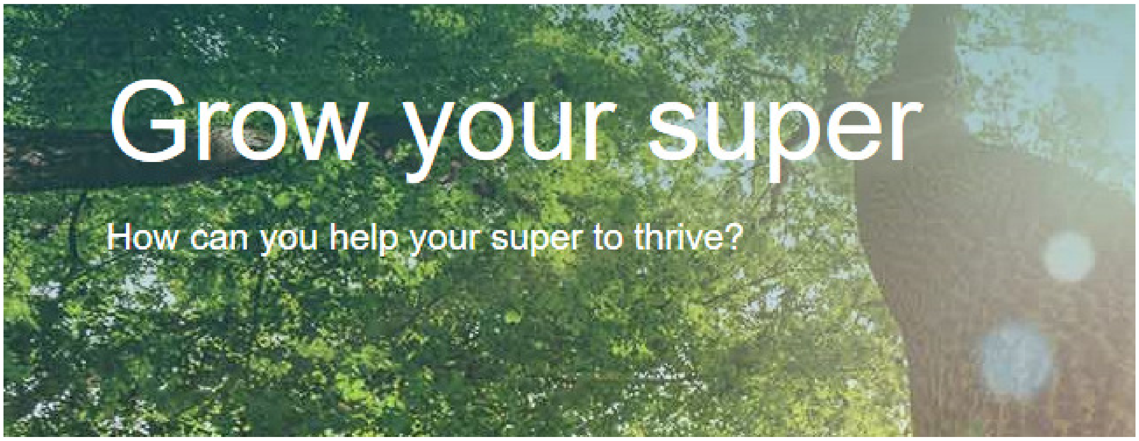
Superannuation Considerations

Superannuation is one of the very few legitimate tax concessions still available to taxpayers. Working out how best to grow your super nest egg can be confusing and selecting the right mix of concessional (before-tax) and non-concessional (after-tax) contributions makes it even tougher.

Whether you make small contributions over time, add a large lump sum, or use the potential tax advantages of contributing through a salary sacrifice arrangement with your employer, you need to carefully consider how best to structure your super contributions.

As part of this consideration Taxpayers should look at the tax benefits of establishing a Self-Managed Super Fund (SMSF) in managing the accumulated benefits that you have currently accumulated or will accumulate over time.

With the advent of being allowed to purchase real estate through a SMSF or associated security trust and acquire it either with a mortgage or without debt, superannuation funds are becoming a common tool in managing your investment towards retirement. They provide significant long-term tax advantages.



Contribution caps for super

Given the generous tax benefits available for holding retirement savings in the super system, the government has put in place strict annual caps or limits on both the amount of concessional (before-tax) and non-concessional (after-tax) contributions that can be made into your super account. If you contribute above the cap, you may have to pay extra tax.

The cap amount and the extra tax you need to pay depend on whether the contributions are:

- Concessional contributions which are made from before-tax income, and
- Non-concessional contributions which are made from after-tax income.

Common examples of concessional contributions include:

- compulsory contributions paid by your employer – such as the super guarantee
- salary sacrifice contributions
- administration fees and insurance premiums paid by your employer
- personal contributions for which you have claimed an income tax deduction
- notional taxed contributions if you are a member of a defined benefit fund
- amounts allocated from a fund reserve.

Common examples of non-concessional contributions include:

- personal contributions that your employer makes from your after-tax income
- contributions your spouse makes to your super fund
- personal contributions not claimed as an income tax deduction

- contributions in excess of your concessional contributions cap which have not been withdrawn from the superannuation fund
- contributions in excess of your capital gains tax cap amount
- most transfers from foreign super funds
- a government co-contribution, and
- the Low Income Super Tax Offset (LISTO).

What are the caps?

Concessional contribution cap

From 1 July 2019, the concessional contribution cap is $25,000 per year, regardless of your age.

If you have a Total Super Balance of less than $500,000 on 30 June of the previous financial year, you can utilise any unused amount of your cap for up to 5 years to make a 'carry-forward contribution'

Concessional contributions generally attract a tax of 15 per cent when made to your fund. If you go over your concessional contribution cap for the year, the excess amount will be taxed at your marginal tax rate, plus an additional excess concessional contributions charge.

Concessional contributions may also be taxed at 30% if your taxable income plus super contributions for the year exceeds $250,000

Non-concessional contribution cap

The non-concessional contribution cap for 2019-20 is $100,000, provided your total super balance on 30 June 2019 was less than $1.6 million.

If you are under 65 years old, you may be able to make non-concessional contributions of up to three times the annual cap in a single year being $300,000. If eligible, you automatically gain access to future year caps when your contributions in one year exceed the annual cap. This is known as the 'bring-forward' option. The cap amount that you can bring forward, and whether you will have a bring forward period of two or three years, will depend on your total super balance.

The non-concessional cap rules changed significantly from 1 July 2017, and transitional rules may still apply if you triggered a bring forward in 2015-16 or 2016-17 years. If your account balance is over $1.6m then you cannot make any non-concessional contributions.

Contributing in excess of the cap

You can contribute more than the caps, but you should be aware that you may have to pay additional tax on the excess amounts.

If you go over your concessional contribution cap for the year, you may have to pay your marginal tax rate on the excess amount, rather than the 15 per cent concessional rate. An additional excess concessional contributions charge will also apply – this is a notional interest charge to reflect the fact the tax is being paid later than the tax on your other income for the year. If you have excess concessional contributions, you may choose to withdraw up to 85 per cent of your excess concessional contributions from your super fund to help you pay the extra tax liability.

If you go over your non-concessional contribution cap for the year, you may be able to withdraw the excess amount and 85 per cent of any earnings on that amount. The earnings amount will be included in your income tax assessment and taxed at your marginal rate (the excess contribution amount will not be subject to tax). However, if you choose to leave your excess contributions in your fund rather than withdraw them, you will pay tax at the top marginal rate (currently 47 per cent) plus the Medicare levy on the excess amount.

Super rules

Superannuation obligations for employers

Superannuation law sets out the various rules that employers must follow in Australia. There are several key rules which are detailed below, and sticking to these will mean you are well on your way to having your employer super obligations under control. A good starting point is to make sure you are paying all super on time and in full.

Top mistakes to avoid

The ATO reports that common superannuation mistakes include:

- Not paying enough super for employees
- Missing the due dates
- Not keeping accurate records
- Not passing on the employees TFN to their super fund
- Not understanding when super should be paid for contractors
- Error recovery - if a date or amount is missed then a Superannuation Guarantee Charge Statement should be lodged and often it isn't

Rule 1 - Pay the Superannuation Guarantee

The Super Guarantee (SG) is a compulsory contribution all employers are required to make on behalf of each of their eligible employees. The contribution is paid directly to each employee's nominated super fund, or a default fund on their behalf.

The amount paid is set at a percentage of each employee's Ordinary Time Earnings (OTE). The Australian Government determines the Super Guarantee rate which, in 2019/20 and 2020/21, is set at 9.5%.

OTE generally includes the employee's regular wage plus any shift loadings, commissions, paid leave, some allowances and has to be paid for an employee if they're 18 years or over and were paid $450 or more (before tax) in salary or wages in a calendar month. It doesn't matter whether the employee is full time, part time or casual. The maximum income on which employers must pay the Super Guarantee. In 2019/20 it is $55,270 per quarter ($221,080 per year).

Employees who are under 18 years old must meet the above conditions and work for more than 30 hours per week to be entitled to Super Guarantee.

Rule 2 - Offer a choice of funds

In most cases, businesses must allow their employees to choose their own super fund, however there are three exceptions to this rule:

1. Employment is governed by an industrial workplace agreement which specifies the fund or funds into which payments must be made
2. The employee is a member of a 'defined benefit fund' that meets certain conditions
3. Some public sector employees of the state and federal governments

When a new employee joins their employer, he or she may nominate their preferred super fund. As long as it complies with superannuation law, and the employee has given the employer all the appropriate information, then the employer must pay the necessary super contributions into that fund.

Likewise, an existing employee can notify their employer of their nominated super fund at any time. In both cases, employees should fill out a Standard Choice form and return it to the employer as soon as possible. By law the employer is required to give new staff members a superannuation Standard Choice form within 28 days of them starting work.

If an employee doesn't specify a preferred super fund, then the employer must pay their employees super into a default fund. While there's no limit to the number of times an employee can request a change of preferred fund, generally the employer only needs to act on their request once every 12 months.

Rule 3 - Provide a Standard Choice form

The Standard Choice form is the official document used by an employee to tell the employer which fund they want their super paid into.

If the employers staff members are entitled to choose their own super fund, then the employer must provide them with a Standard Choice form within 28 days of:

- Them starting employment
- Receiving a written request for a Standard Choice form (unless the employee has received a Standard Choice form in the last 12 months)
- The employer realising that contributions can no longer be made into the employee's preferred fund (e.g. the fund no longer complies with Australian superannuation regulations)
- Changing the employers default superannuation fund

Once an employee has chosen their own super fund, the employer has two months in which to start making payments into that fund.

If the employer discovers that the employee is not actually a member of the fund they have nominated, the employer should avoid making any payments into that fund until the employee has joined. It is up to the employee to ensure they are properly registered with their chosen fund. The employer can tell them that, if they haven't joined by the next payment date, you'll automatically pay the required super contribution into the default super fund.

Rule 4 - Calculate income correctly

Because Super Guarantee contributions are based on an employee's income, it is vital that their income is calculated correctly. Contributions are set as a percentage of regular 'Ordinary Time Earnings'. This includes the employee's regular wage plus any shift loadings, commissions, paid leave and some allowances.

There are a number of items which are generally *excluded* from ordinary time earnings, which are detailed below:

- overtime (other than regularly rostered overtime)
- fully expended expense allowances, such as car allowances
- reimbursed expenses

- benefits subject to fringe benefits tax
- jury top-up payments
- parental leave payments
- annual leave loading
- accrued annual leave, long service leave and sick leave paid as a termination lump sum
- redundancy payments
- gratuities
- payments for domestic or private work under 30 hours a week

Rule 5 - Keep proper records

Every employer is required to keep records detailing whether employees have or have not been offered a choice of fund, they are also required to:

- Keep records to confirm the default fund is compliant and meets minimum life insurance requirements
- Keep records for five years to show that all financial obligations have been met
- Keep copies of written information provided to employees and proof that superannuation contributions have been made to the employee's chosen funds or the default fund.

Rule 6 - Keep employees informed

Under the Fair Work Act, the employer is obliged to include super contribution amounts on employee payslips. Employers are also required to tell employees (within 28 days of starting work) which default fund their contributions will be paid into if they don't provide details of a preferred super fund.

Rule 7 - Assist employees with salary sacrificing if requested

While employers are not allowed to give financial advice to employees (unless the employer holds a Financial Services Licence), the employer can assist employees if they want to boost their super through salary sacrificing, which must have the agreement of both the employer and employee.

A salary sacrifice super contribution is a before-tax payment out of an employees' wage into their super fund and may carry with it some good tax advantages for the employee.

The employer should enter into a written agreement with their employee which states the terms and conditions of the salary sacrifice arrangement. Salary sacrifice arrangements can only apply to future payments not past earnings, and there are limits to how much a person can voluntarily contribute, before they lose the tax concessions.

Super funds do not differentiate between employer SG contributions and salary sacrifice amounts therefore they are both assessed against an individual’s concessional contributions cap.

Employers are required to keep written records of all salary sacrifice agreements made between them and their employees as they are required to report these amounts on the individual’s payment summary (reportable employer super contributions).

Rule 8 - Submit Tax File Numbers as required

By law, employers must pass their employees' tax file numbers (TFN) on to their super fund for authorised purposes and this must be done no later than:

- The day on which the employer makes their first super contribution for that employee *or*
- Within 14 days of receiving their employees TFN, if not available at time of the first contribution

If a super fund does not have a TFN for one of its members, then that member can be taxed at a much higher rate and the super fund will not be able to accept any voluntary contributions made by, or on behalf of the individual. This means that eligible individuals could miss out on the co-contribution and other benefits.

Rule 9 – Make Super Contributions by the due date

Super guarantee (SG) payments must be made to complying funds or retirement savings accounts (RSAs) by the quarterly due dates, which are 28 days after the end of each quarter. Some super funds require employers to make contributions monthly. When you register with a fund with this requirement, you are agreeing to make monthly contributions to that fund.

You need to pay and report super electronically to ensure it meets Super Stream requirements. You pay super for eligible employees calculated from the day they start with you. You must make the payments at least four times a year, by the quarterly due dates.

Quarterly payment due dates for super payments

Quarter	Period	Payment due date
1	1 July – 30 September	28 October
2	1 October – 31 December	28 January
3	1 January – 31 March	28 April
4	1 April – 30 June	28 July

When a due date falls on a weekend or public holiday, you can make the payment on the next working day.

You can make payments more regularly than quarterly if you want to (for example, fortnightly or monthly) as long as your total SG obligation for the quarter is paid by the due date. If you haven't paid the minimum amount on time and to the correct fund, you may have to lodge a Superannuation guarantee charge statement and pay the superannuation guarantee charge (SGC)

Clearing houses

A clearing house distributes super contributions to your employees' funds on your behalf. If an employer uses a clearing house, the employee's super contribution is counted as being paid on the date the super fund receives it, **not** the date the clearing house receives it.

Employers need to check with their clearing house to make sure you allow enough time for your payments to be processed before the quarterly due dates

Being late with your superannuation guarantee payments will cost you

Employers be warned. If you are late in making superannuation payments for your employees the consequences can be far ranging, from missing out on eligible tax deductions to Company Directors potentially being held personally liable for any unpaid Super Guarantee Charges (SGC).

From 1st July 2019, **Single Touch Payroll (STP)** will become mandatory for all employers. Under the new STP requirements employers must submit their PAYG Withholding and super information when they process their payroll (be it weekly, fortnightly or monthly), rather than when they lodge their monthly or quarterly BAS return.

With the new reporting requirements, the Tax Office will have the ability of data matching in real time what the employer is require to pay in SG contributions for the quarter to the actual date an amount paid. The potential consequences for missing or not making the right superannuation payments on time is now far ranging and the consequences include:

- **Loss of tax deductions on late contribution payments**.

Tax deductions for superannuation contributions are available only for actual payments made before the due date. If a payment is made after a due date, be it a day late or much longer, a tax deduction is denied.

- **Additional costs to pay which are not tax deductible**

A Super Guarantee Charge (SGC) statement is required to be lodged with the tax office where an employer does not pay the minimum amount of super guarantee (SG) for their employees into the correct fund by the due date.

The employer not only must pay SG shortfall payment amount, but a $20.00 administration fee per employee per quarter and interest of 10% on the late payment amount, none of which are tax deductible.

If you do have to pay the SGC, there may be some relief depending on your situation. These can include using the late payment offset rules to reduce the amount of SGC payable or carry the late payment forward as a prepayment of a future superannuation contribution.

- **Director can be personally liable**

Directors of companies can now be made personally liable for any unpaid SG Payments and unpaid PAYG withholding tax.

Missing a superannuation payment will not only cost you time and money it could also cost you personally which have far more reaching consequences by directors being made personally liable for the SG debt.

The Mischel & Co. Group
Accountants & Advisors

“WARNING” TO CLAIM A DEDUCTION IN YOUR 2020 TAX RETURN

The due date for claiming a deduction for super contributions in the year ended 30 June 2020 through Small Business Superannuation Clearing House (SBSCH)

is 23 June 2020

Super payments are only considered to be paid for the purpose of claiming a tax deduction once they have been received by the super fund, not the date the Small Business Superannuation Clearing House (SBSCH) accepts them.

To ensure you can claim a deduction for the 2019–20 income year, you need to allow processing time for your super payments to be received by your employees' super funds before the end of the 2019–20 income year.

Payments need to be accepted by the 23 June 2020.

Remember to check with your employees if you need to update their super fund details in your SBSCH account including, a change of ownership of a superannuation product. If there has been a change in ownership, the super fund's ABN or Unique Superannuation Identifier (USI) may have been changed for your employee’s super account. Super funds will inform members (your employees) of any such changes, which your employee should give you.

There is no change to when SG quarterly payments are due, the next quarterly due date is 28 July 2020.

Conclusion

It is vital now more than ever that superannuation contributions are paid on-time by employers given the new reporting requirements under STP. Late payment will result in a tax deduction being denied, may attract the super guarantee charge (SGC), which is not tax-deductible or even worse a tax / super audit.

If you have any questions in relation to the above or if there are personal funds that you would like to move into superannuation and achieve a 15% tax rate on the earnings from these funds, please contact us to discuss the possibilities further.

The content of this information memorandum is general information only and hasn't taken your circumstances into account. It's important to consider your particular circumstance before deciding what is right for you as it does not reflect all the superannuation legislation and announcements but simply highlights those points which we believe are most likely to affects our clients.

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