We enclose a Superannuation Summary for Employers for the year ending 30 June 2021 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

Cap	Current cap	Cap from 1 July 2021
Concessional contributions cap	$25,000	$27,500
Non-concessional contributions cap	$100,000	$110,000

Concessional contribution cap

The current concessional contribution cap for the 2021 financial year is $25,000, regardless of your age, this is set to increase to $27,500 from 1 July 2021.

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

Carry-forward (catch-up) super contributions

If you feel like you've missed the boat when it comes to building your retirement savings, it could be time to use an often-overlooked contribution opportunity. Making a carry-forward contribution can be an easy way to boost the balance of your super account, but it's one many people ignore.

Carry-forward contributions are not a special type of super contribution; they simply apply rules allowing super fund members to use any of their unused concessional contributions cap (or limit) on a rolling basis for five years.

This means if you don't use the full amount of your concessional contribution cap ($25,000 in 2019/20 and 2020/21), you can carry forward the unused amount and take advantage of it up to five years later. After five years, any unused amounts expire.

To make a carry-forward contribution, your Total Super Balance (TSB) must be under $500,000 at 30 June in the previous financial year. For example, if you want to make a carry-forward concessional contribution in 2020/21, your TSB must have been under $500,000 on 30 June 2020.

Your TSB is calculated by adding together all the amounts you have in the accumulation phase of super, plus the retirement phase value of your super and any rollovers in transit between super funds at 30 June.

If your TSB falls below $500,000 at a later date, you are once again eligible to apply any of your unused concessional contributions cap in a future financial year.

Accordingly, this rule will suit individuals who:

- have not fully utilised their CC caps in the 2018–19 financial year or a later financial year, such as lower income earners or those who are on unpaid leave for all or part of the year or do not work for the full financial year; and
- may wish to defer the making of a deductible contribution to a year in which they expect to have additional taxable income which could result in a higher marginal tax rate applying.

Non-concessional contribution cap

The current non-concessional contribution cap is $100,000, this is set to increase to $110,000 from 1 July 2021 subject to your total super balance. If you are aged 65 to 74 years, you must meet the At Work Test to be able to make a non-concessional contribution.

The bring forward rule enables you to bring forward one or two years' worth of Non Concessional Contributions (i.e. $200,000 cap over two years or $300,000 cap over three years) depending on your total superannuation balance on 30 June of the previous Financial Year.

There is no requirement to elect to use the Bring Forward Rule. It is automatically triggered in the first Financial Year in which a Non-Concessional Contribution exceeds the annual limit.

To use the bring forward rule you must be 64 or younger on 1 July of the relevant financial year of the contribution. It should also be noted that Individuals with balances close to $1.6 million are only able to bring forward the annual cap amount for the number of years that would take their balance to $1.6 million.

The following table sets out the bring forward cap and bring forward period depending on the individual's total superannuation balance on 30 June of the previous financial year:

1 July 2017 – 30 June 2021		**After 1 July 2021**	
Total Superannuation Balance (TSB)	**Contribution and bring forward available**	**Total Superannuation Balance (TSB)**	**Contribution and bring forward available**
Less than $1.4m	$300,000	Less than $1.48m	$330,000
$1.4m -$1.5m	$200,000	$1.48m – $1.59m	$220,000
$1.5m – $1.6m	$100,000	$1.59m – $1.7m	$110,000
Above $1.6m	Nil	Above $1.7m	Nil

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 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 on their behalf and is set at a percentage of each employee's Ordinary Time Earnings (OTE).

On 1 July 2021, the Superannuation Guarantee (SG) rate will rise from 9.5% to 10% – the first rise since 2014. It will then steadily increase each year until it reaches 12% on 1 July 2025.

The Australian Government determines the Super Guarantee rate and the minimum rate currently legislated over the next 5 years are set out below:

Annual superannuation guarantee rate changes

	SG rate
1 July 2020 – 30 June 2021	9.5%
1 July 2021 – 30 June 2022	10%
1 July 2022 – 30 June 2023	10.5%
1 July 2023 – 30 June 2024	11%
1 July 2024 – 30 June 2025	11.5%
1 July 2025 – 30 June 2026	12%

OTE generally includes the employee's regular wage plus any shift loadings, commissions, paid leave and some allowances. It doesn't matter whether the employee is full time, part time or casual, superannuation has to be paid for:

- an employee aged 18 or over who earns $450 or more (before tax) per calendar month; and
- an employee under age 18 working over 30 hours per week, who earns $450 or more (before tax) a calendar month.

NOTE: Currently, employees need to earn $450 per month to be eligible to be paid the superannuation guarantee. This threshold will be removed so all employees will be paid super guarantee regardless of their income earned. The measure will have effect from the start of the first income year after Royal Assent of the enabling legislation, which the Government expects to have occurred prior to 1 July 2022.

For 2020/21 the maximum income on which employers must pay the Super Guarantee superannuation contribution is $57,090 per quarter ($228,360 per year). An employer does not have to pay super guarantee for the part of earnings above this limit.

This means that the maximum super guarantee amount an employer is required to contribute is the equivalent of 9.5% of $57,090 per quarter (equivalent to $228,360 for the year), which works out to be a contribution of $5,423.55 per quarter.

RULE 2 – COMPLY WITH NEW STAPLED SUPER EMPLOYER OBLIGATIONS

Currently, when an employer hires a new staff member, the employee is provided with a Choice of Fund form to identify where they want their superannuation to be directed. If the employee does not identify a fund, the employer directs their superannuation into a default fund.

When someone has multiple funds, it often erodes their balance through unnecessary fees and often insurance.

From 1 July 2021, where an employee does not identify a fund, legislation before Parliament will require the employer to link the employee to an existing superannuation fund. That is, an employee's superannuation fund will become 'stapled' to them. An employer will not simply be able to set up a default fund, but instead will be required to request that the ATO identify the employee's stapled fund.

If the ATO confirms no other fund exists for the employee, contributions can be directed to the employer's default fund or a fund specified under a workplace determination or an enterprise agreement (if the determination was made before 1 January 2021).

Legislation enabling this measure is currently before the Senate.

RULE 3 - 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
- non-resident employees paid for work done outside Australia;
- resident employees paid by non-resident employers for work done outside Australia;

RULE 4 - KEEP PROPER RECORDS

Every employer is required to keep records detailing whether employees have or have not been offered a choice of fund prior to the introduction of the New Stapled Super Employer Obligation, 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.
- Under the Fair Work Act, the employer is obliged to include super contribution amounts on employee payslips.

RULE 5 - 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 6 - 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 7 – 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).

SINGLE TOUCH PAYROLL

From 1st July 2021, Single Touch Payroll (STP) will become mandatory for all employers including small businesses (those with 19 or fewer staff) and businesses with closely held employees (e.g., directors of family companies, salary and wages for family employees of businesses). No further extensions will be granted.

Under the STP requirements employers must submit their Wages, PAYG Withholding and super information to the Tax Office when they process their payroll (be it weekly, fortnightly or monthly), rather than when they lodge their monthly or quarterly BAS return.

For employers with closely held employees, there are some concessions on how reporting is managed with the option to report one of three ways:

1) reporting actual payments in real time,
2) reporting actual payments quarterly or
3) reporting a reasonable estimate quarterly.

These concessions allow a level of flexibility in relation to determining and making payments to closely-held payees. However, if your business is impacted, it will be important to plan throughout the year to prevent problems occurring at year end.

Want to claim a tax deduction on super payments?

CLEARING HOUSES PAYMENT DUE DATES

"WARNING" TO CLAIM A DEDUCTION IN YOUR 2021 TAX RETURN

The due date for claiming a tax deduction for super contributions in the year ended 30 June 2021 through the Small Business Superannuation Clearing House (SBSCH) **is 23 June 2021**

A clearing house distributes super contributions to your employees' funds on your behalf. If an employer uses the SBSCH clearing house, 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 accepts them.

To ensure you can claim a deduction for the 2020–21 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 2020/21 income year.

Employers who do not use SBSCH will need to check with their own clearing house the cut off payment dates to make sure enough time is allowed for payments to be processed before 30 June 2021

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, change in the super fund's ABN or Unique Superannuation Identifier (USI). 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 if you do not want to make a claim in the current year, the quarterly due date for the June 2021 contribution is **28 July 2021**.

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).

With the new reporting requirements under Single Touch Payroll, 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 and 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.

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.

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 information contained in this newsletter is a combination of the interpretation and thoughts of this firm together with the various government, institutional and professional association reporting that has been made available.

***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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