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QC 101120

Illegal super schemes – beware of offers to withdraw your super early

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Last updated 22 December 2022

About superannuation

Superannuation, or 'super', is money put aside over your working life to provide an income to you in retirement.

Super is important because the more you save, the more money you will have for retirement.

Some people promote super schemes telling you they can help you access your super now to do things like pay off credit card debt, buy a house or car, or go on holiday.

These schemes are illegal and can end up costing you a lot more than the super you access.

If you are approached about a scheme like this, phone us on **13 10 20** immediately for advice and to make sure your super is protected.

If you prefer to speak with us in a language other than English, call the Translating and Interpreting Service (TIS National) on **13 14 50**. The service will call us with an interpreter so we can help with your query.

How illegal super schemes operate

Illegal super schemes usually involve someone offering to help you access your super early.

Promoters of illegal super schemes usually:

- claim that you can use your super now for anything you want – which isn't true
- encourage you to transfer your super from your current super fund into a self-managed super fund (SMSF) that they will often assist you to set up
- tell you how to meet a condition of release by using fraudulent documentation
- charge high fees for the services they provide
- request your identity documents which they can use to steal your identity.

Illegal super schemes often target people who are under financial pressure or who do not understand the super laws.

Taking your super out from any super fund without meeting what is called a 'condition of release', or encouraging others to do so, is illegal.

Illegal super schemes may lead to identity theft

If you participate in one of these schemes, you may also become a victim of identity theft. This is when someone uses your personal details and pretends to be you to commit fraud or other crimes.

Once your identity has been stolen and misused, it can take years to fix.

Rollovers to an SMSF

Most illegal super schemes require you to transfer your super from your current super fund into a newly established SMSF. This is called a 'rollover'.

Before you rollover or transfer your super, contact your super fund. They can advise you whether you can access your super.

We are working with super funds to strengthen rollover processes and protect your retirement savings from illegal schemes.

When you can legally access your super

Generally, you can only access your super when you reach 'preservation age' and stop working.

Currently, in Australia, the preservation age is 55 years old for those born before 1 July 1960. It then increases gradually. For anyone born after 30 June 1964, the preservation age is 60 years old.

There are some special circumstances where you can legally access your super early. These include specific medical conditions or when you are experiencing severe financial hardship.

To work out whether you are eligible to access your super early:

- contact your super fund
- see more about early access.

You do not need to pay an application fee to anyone to legally access your super early.

Temporary residents

As a temporary resident, you may be eligible to have your super paid to you when you leave Australia. This is called a departing Australia super payment (DASP).

You can apply for a DASP if all of the following are true:

- you visited Australia on a temporary visa (excluding visa subclasses 405 and 410)
- your visa is no longer in effect
- you have left Australia

This payment is not available to Australian or New Zealand citizens or permanent residents.

Penalties for illegally accessing super early

Severe penalties apply for illegally accessing your super early. You cannot claim a deduction for any fee a promoter takes from your super.

If you illegally access your super early:

- you may be required to pay interest and penalties on super you have accessed
- it is included in your taxable income, even if you return the super to the fund later

If you have been involved in a scheme, contact us immediately to lodge a voluntary disclosure. We will take your circumstances into account when determining further action.

Members and trustees of SMSFs

A trustee is the person who manages the super fund. The difference between an SMSF and other types of funds is that members of an SMSF are the trustees. This means they run the SMSF for their own benefit.

If you are an SMSF trustee and allow super to be withdrawn early, you:

- may incur administrative penalties
- can be disqualified.

If you are disqualified, you cannot operate as a trustee of an SMSF and your name will be published online.

There may be other penalties, depending on your involvement in the scheme.

Promoters

People who encourage or promote the illegal early access of super are called 'promoters'. They can be prosecuted by us and the Australian Securities and Investments Commission (ASIC) for breaches of:

- *Superannuation Industry (Supervision) Act 1993*
- *Corporations Act 2001*
- *Australian Securities and Investments Commission Act 2001.*

Breaches may include misleading conduct and giving financial product advice without an Australian financial services licence.

Civil and criminal penalties, including significant fines and jail terms, may be imposed.

Tell us about illegal schemes

If you have been approached by anyone telling you that you can access your super early:

- Stop any involvement with the scheme, organisation or the person who approached you.
- Do not sign any documents.
- Do not provide them with any of your personal details, such as your Tax File Number (TFN) or passwords.
- Urgently phone us on **13 10 20** and advise us of your situation. If you prefer to speak with us in a language other than English, you can call the Translating and Interpreting Service (TIS National) on **13 14 50**. The service will call us with an interpreter so we can help with your query.

More information

For more information about super, visit [Your superannuation basics](#).

For more information about when you can and can't access your super early:

- visit the [ASIC website](#)
- visit [Early access to your super](#)

- phone us on **13 10 20** or ASIC on **1300 300 630**.

If you prefer to speak with us in a language other than English, you can call the Translating and Interpreting Service (TIS National) on **13 14 50**. The service will call us with an interpreter so we can help with your query.

We have information in languages other than English.

QC 39601

Your superannuation basics

A basic guide about what superannuation is, how to save it and what you can do to grow it.

Last updated 10 June 2022

What is superannuation?

Superannuation, or 'super', is money put aside by your employer over your working life for you to live on when you retire from work.

Super is important for you, because the more you save, the more money you will have for your retirement.

You can only withdraw your super money in certain circumstances – for example, when you retire or turn 65 years old.

How do I save super?

For most people, your employer pays money – 'contributions' – into a super account for you. This is called the 'super guarantee'. They pay these contributions on top of your salary and wages. There are laws about how much super your employer must pay.

From 1 July 2022, your employer may need to contribute to your super regardless of how much you are paid per month. If you're under 18, you need to work more than 30 hours in a week to be eligible.

Your eligibility is determined when you are paid salary and wages, not when the income is earned. This means if you are paid on or after 1 July 2022, you will be paid super regardless of how much you have earned. This applies even if some of the pay period is before 1 July 2022.

Up until 1 July 2022, you needed to be paid \$450 or more (before tax) in a calendar month to be paid super.

This applies whether you work casual, part-time or full-time hours, and if you are a temporary resident. You may also be eligible if you are a contractor who is paid primarily for labour, even if you have an Australian business number (ABN).

How is money paid into my super?

Your employer is required to pay a minimum amount based on the **current super guarantee rate** of your ordinary time earnings into super. This is set to gradually rise over the coming years.

Ordinary time earnings are what you generally earn for ordinary hours of work, including over-award payments, certain bonuses, allowances, and some paid leave. Payments for overtime hours are generally not included in ordinary time earnings.

You can also add your own money into your super savings, and sometimes the Australian Government [puts money in too](#).

What if my employer is not paying the correct super?

Talk to your employer. Ask them:

- how often they are paying your super
- which fund they are paying it into
- how much they are paying.

You can also use the [Estimate my super tool](#) to work out if:

- you are eligible for super guarantee contributions
- your employer is paying the correct amount.

Check your last Member statement from your super fund or contact the fund to confirm your employer has paid your super.

If you still believe your employer is not paying the super you're entitled to, you can phone us on **13 10 20**.

Should I be wary of promoters offering early access to super?

Beware of promoters offering various plans to gain early access to your super savings before you retire. The promoters of these plans will tell you they can help you access your super savings for reasons such as paying off debts, buying a house or car, or even going on holiday. These schemes are illegal and heavy penalties apply if you participate.

Example: Phil avoids a trap

I've been saving up for a car for the last few months. One of my workmates told me about his friend, who can help me draw out some of my super money to help pay for the car.

Luckily, I checked the ATO website and found out it was illegal. The money I would have taken out would have been taxed at 45%. I would have also faced fines and possibly jail time on top of that – a very expensive mistake.

This information is also available in other languages.

How do I choose a super fund?

Most people can choose the super fund they want their contributions paid into. If you're eligible, your employer must give you a **Superannuation standard choice form** within 28 days of the day you started working for them, so you can make that choice in writing.

From 1 November 2021, your employer may have an extra step to take to comply with choice of fund rules if you don't choose a super fund. They may need to request details of a **stapled super fund** from us if you do not nominate a super fund.

A **stapled super fund** is an existing super account which is linked, or 'stapled', to an individual employee so that it follows them as they

change jobs.

We will notify you if your employer makes a stapled super fund request and the fund details we have provided.

All employers have a nominated super fund, or 'default fund', where they make super guarantee payments for their employees who have not selected a preferred fund and do not have a stapled super fund.

If you want to have your contributions paid into an existing super account but can't remember your super fund account details, you can use myGov to see all of your super accounts.

The **YourSuper comparison tool** will help you compare MySuper products and choose a super fund that meets your needs.

It's never too early to engage with your super. Choose your own super fund and engage regularly because the choices you make today will help shape lifestyle options for you in the future.

How do I keep track of my super savings?

Making sure your super fund has your Tax File Number (TFN) will make it easier to keep track of your super, move it between accounts, and receive super payments from your employer or the government.

You can check whether your fund has your TFN by looking at the statements they send you.

Keep track of your super using myGov

You can create a myGov account and link the ATO to it so you can:

- see details of all your super accounts, including any you have lost track of or forgotten about
- use the **YourSuper comparison tool** to compare the performance and fees of your super accounts against other MySuper products
- find ATO-held super. If the government, your super fund or your employer can't find an account to transfer your super to, we hold it on your behalf
- combine multiple super accounts by transferring your super into your preferred super account – if this is a fund-to-fund transfer, it will generally be actioned within three working days.

Next steps:

- Create or sign in to your [myGov account](#) and link to the ATO
- Use our online services
- Access myGov via the ATO app

How do I increase my super?

As well as the contributions your employer pays, you can add to your super by making your own contributions. You may be able to 'salary sacrifice' to super from your before-tax income or contribute to super from your after-tax income.

There are limits called 'caps' on the amount you can contribute to your super each financial year without having to pay additional tax. If you contribute more than these caps, you may have to [pay additional tax](#). If you are planning on contributing more than \$27,500 to your super (including employer contributions), seek advice from a suitably qualified professional.

Government super contributions

If you're a low-income or middle-income earner, you may be eligible for super contributions from the Australian Government.

Lodge your tax return so we can check if you are eligible for a super co-contribution payment up to \$500. It's important you lodge a return even if you don't think you will get a refund. You don't need to apply for the super co-contribution.

How do I access my super benefits?

Generally, you can access your super money when you retire. However, there are some circumstances where you can access your super savings early, such as severe financial hardship and specific medical conditions.

If you legitimately need some of your preserved super earlier, ask your super fund about whether you may be able to access it before applying.

Temporary residents leaving Australia

If you are a temporary resident working in Australia and you are eligible for super, your employer has to make super guarantee contributions for you. You may be paid your super money once you have left Australia. This payment is called a Departing Australia super payment (DASP).

New Zealand citizens and permanent residents of Australia are not eligible for this payment.

To see if you're eligible, and to apply for the DASP online or by downloading the paper application form, visit [Temporary residents and super](#).

Super money from overseas

If you are bringing your own money or pension funds from overseas, there may be special tax rules you need to know about. Speak to your financial adviser or migration agent.

More information

If you want to know more about super, visit ato.gov.au/individuals/super or phone us on **13 10 20**.

If you do not speak English well and want to talk to a tax officer, phone the Translating and Interpreting Service on **13 14 50** for help with your call.

QC 38449

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year

before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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