Guide to accessing super

MLC TechConnect

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Contents

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Guide to accessing super

A ‘condition of release’ must be met by fund members before superannuation trustees can release member benefits.

Background

Broadly, superannuation member interests must be maintained for the sole purpose of providing retirement benefits.[1] Superannuation interests benefit from significant tax concessions on earnings. In accumulation phase tax on earnings are limited to a maximum of 15%, and no tax applies to earnings that support retirement phase.[2] However, restrictions regulate when and how super can be accessed. These restrictions are known as ‘conditions of release’.

The two most common conditions of release are when a client retires after age 60 or on reaching age 65. There are conditions of release which allow early access to super in limited circumstances such as where clients suffer from specific medical conditions or experience severe financial hardship.

Accessing superannuation early without meeting a condition of release is illegal. A super member who illegally withdraws their super benefit early may be forced to pay significant penalties and the amount withdrawn is included in that person’s assessable income. Trustees who knowingly allow illegal access to super may incur significant financial penalties and/or gaol terms, while promoters of early release schemes can face civil and criminal penalties.[3]

Preservation

When contributions are made into superannuation and earnings accrue in accumulation phase, these amounts are preserved. Preserved interests cannot be accessed by members unless they meet a condition of release. There are three preservation components:

- preserved
- restricted non-preserved, and
- unrestricted non-preserved.

Preserved component

Since 1 July 1999, all contributions made to super are ‘preserved’. The preserved component cannot be accessed until one of the conditions of release and the superannuation fund rules are met. Any preserved component rolled over from one complying super fund to another, retains this preserved status.[4]

Restricted non-preserved component

Restricted non-preserved components exist because of employment-related contributions (other than employer contributions) made prior to 1 July 1999.

To access the restricted non-preserved component, a member must:

- cease working for an employer who contributed amounts to that fund at any time (ceasing self-employment does not qualify), or
- meet another condition of release (see below).

1 *Superannuation Industry (Supervision) Act* (SISA) s62

2 Since 1 July 2017, TTR pensions that are not in retirement phase are subject to earnings tax of up to 15%. See section on ‘attaining preservation age and commencing a TTR’ on page 10 for further details.

3 SISA s68B

4 Superannuation Industry (Supervision) Regulations (SISR) 6.06

Where the trustee is satisfied that the relevant condition of release has been met, the restricted non-preserved component becomes unrestricted non-preserved.

Advice tip

When a person ceases work for an employer that made a contribution to the fund, the fund should be notified that employment has ceased prior to rolling over any restricted non-preserved amounts, so that this amount becomes unrestricted non-preserved and reported as such to the new fund.

Unrestricted non-preserved component

Unrestricted non-preserved component is the amount of super that has met a condition of release with a 'nil' cashing restriction, which means there is no restriction on access.

The money can remain in the accumulation phase indefinitely, may be withdrawn as lump sums or used to start a retirement phase pension[5] at any time, regardless of age.

Generally, the unrestricted non-preserved status is maintained when rolled between complying super funds[6]. If these amounts leave the super system (ie are paid to the member as superannuation benefits) and later re-contributed to super, the new contribution is preserved, and the member must satisfy another condition of release to access these benefits again.

Conditions of release

There are several conditions that allow clients to access their super benefit, either partially or fully. Conditions of release may have 'cashing restrictions' which restrict the form of the benefit (lump sum or pension) or the amount of benefit that can be paid. Satisfying a condition of release with a 'nil' cashing restriction results in preserved and restricted non-preserved benefits becoming unrestricted non-preserved benefits.

To change the preservation status of the superannuation benefits to unrestricted non-preserved within a fund, the member must notify the relevant fund that they have met a condition of release and provide any evidence required to support their claim.

While the most common condition to be eligible to access super is through retirement, other conditions which can allow clients to access their super include:

- retirement
- attaining age 65
- death
- terminal medical
- permanent incapacity
- temporary incapacity
- transition to retirement
- severe financial hardship
- compassionate grounds
- Departing Australia Super Payment
- balance less than $200

Schedule 1 of the SIS Regulations lists each of the conditions of release that a person can meet to access their super benefits, as well as the cashing restrictions that apply to each condition (also see Appendix). The trust deed and governing rules of a fund may be more restrictive than SIS and a fund may not allow a member to access their benefits under all legislated conditions of release.

Super can also be accessed under the First Home Super Saver Scheme via a release authority.

Retirement

Clients aged 60 or over may satisfy one of two retirement conditions of release[7] to access their super. Both require cessation of a gainful employment arrangement. Gainfully employed means being employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment. A gain or reward envisages receipt of remuneration such as salary or wages, business income, bonuses, commissions, fees or gratuities, in return for personal exertion.

5 The transfer balance cap limits the total amount a person can transfer to pension phase in their lifetime.

6 SISR 6.13

7 SISR 6.01(7)

The concept of gain or reward is broad enough to encompass payments other than salary or wages, such as free housing and payment of utilities associated with the housing. However, the gain or reward must be directly related to employment activities and be commensurate with the personal exertion undertaken.

The receipt of passive income (for example income distributions from an investment portfolio or rental income) does not constitute gain or reward from gainful employment. Nor will volunteering or baby-sitting duties where there is no employer/employee relationship.

Once the retirement condition of release is met, the benefits accrued to that point become unrestricted non-preserved. Any further contributions, growth and income in accumulation phase will be preserved until the member satisfies a subsequent condition of release.

Attained age 60 and permanently retired

Permanent retirement requires the member to:

- reach age 60
- have previously ceased gainful employment (can be prior to age 60), and
- satisfy the fund trustee that they never intend to be gainfully employed again, either on a full or a part-time basis (never intend to work 10 or more hours in any week in the future).

Example 1: Never worked

Linda, age 62, has never worked in her life. All her super contributions have been non-concessional. Linda is not eligible to access her super benefit under the retirement condition of release as she has never worked and cannot satisfy the requirement of ceasing a gainful employment arrangement.[8] Linda may commence a transition to retirement (TTR) pension if needing access. Her super will become unrestricted non-preserved upon attaining age 65 (an automatic condition of release). She may access her super benefit in the event of severe financial hardship (see 'Severe financial hardship'), terminal illness, or under compassionate grounds, if eligible.

Example 2: Working less than 10 hours per week

Lucy is 60, has reached her preservation age and is working eight hours per week. She held multiple jobs in the past and does not intend to work more than the current eight hours per week into the future. Lucy can access her super benefit as she:

- has reached her preservation age
- has ceased a gainful employment arrangement in the past, and
- is not and does not intend to be gainfully employed for 10 hours or more in any week in the future.

While the member must genuinely intend to retire when they make the declaration, this does not mean that circumstances cannot change. What matters is the member's genuine intention at the time of making the declaration to the trustee. If circumstances do change and a client returns to work, the unrestricted non-preserved funds is retained and fully accessible to the member.

Example 3: Returns to work after permanently retiring

Anthea was made redundant at age 59 and as her severance package was significant, she decided to retire. Anthea declared to her super fund trustee that she permanently retired when she reached age 60. Her superannuation benefit becomes unrestricted non-preserved.

Two years later, Anthea is approached to undertake contracting work in her area of expertise. There is no issue for Anthea regarding her declaration, as there was a genuine intention to retire when it was made. The unrestricted non-preserved component of her super retains its status even if she decides to return to gainful employment.

Any new contributions made to the fund, as well as earnings (in the accumulation phase) are preserved until Anthea satisfies the trustee that she meets another condition of release.

8 As she has not worked, she is also unable to satisfy any other condition of release linked to employment such as permanent incapacity.

A member who receives or applies to Centrelink for JobSeeker Payment cannot access their super under retirement because it is not possible to make a genuine declaration of permanent retirement. JobSeeker includes requirements to actively seek employment and accept an appropriate role.

Cessation of a gainful employment from age 60

The retirement condition of release is automatically satisfied where an arrangement which the member was gainfully employed has been terminated from age 60 to 64. A change in employment conditions, even if the change is significant, is not a condition of release. The member benefits accrued to the date of termination become unrestricted non-preserved and accessible. All future contributions or earnings are preserved.

Where the member has two or more employment arrangements, ceasing one of these arrangements after age 60 will satisfy this retirement condition of release.[9]

Ceasing an employment arrangement does not include:

- reducing working hours within an existing employment arrangement to less 10 hours (10 or more hours is considered gainful employment)
- changing roles
- moving from full-time to part-time or casual employment with the same employer.

For self-employed people, it may mean winding up or retiring from their business (see below).

Example 4: Transition from full to part-time employment

Catherine, who is 61, wishes to ease into retirement by switching from a full-time managerial role into a part-time administration role (20 hours per week) with the same employer. Catherine can’t access her super benefit because she doesn’t cease employment with her employer.

Example 5: Multiple employers

Jack is 62 and has two jobs with different employers. He has ceased working for one employer but continues to be employed with the other. Jack can access his super benefit because he terminated an employment arrangement after attaining age 60. When this occurs, the future employment intentions of the person are irrelevant.

Amounts held in super at the time of ceasing employment from the first employer become unrestricted non-preserved. Any earnings in accumulation phase and any new contributions are preserved. A subsequent condition of release must be satisfied to release these amounts.

Retirement and self-employed clients

It is easier for employees to demonstrate that an employment arrangement has come to an end. The self-employed, such as a sole trader or partner in a partnership, must consider how to demonstrate that gainful employment has ended. The maintenance of robust documentation is recommended. There is no legislative guidance and clients have to make the final declaration that their self-employed arrangement has ended. Some of the things to consider when determining whether a self-employed person is genuinely retired are:

- whether the tools of trade are sold
- whether the business and/or premises is sold
- all provisions of services provided ceased
- the cancellation of business name and ABN
- the completion of annual tax returns, and
- if the business is retained, there is no further physical exertion in respect of business activities.

Attaining age 65

When a member reaches 65 years of age, their entire super benefit becomes unrestricted non-preserved. This includes current funds, future contributions and any earnings. The super fund automatically changes the member’s super to unrestricted non-preserved.

9 Paragraph 22 of APRA’s Prudential Practice Guide SPG280 Payment Standards

Advice tip – TTR pension

If the member has a TTR pension and reaches age 65, the pension becomes a retirement phase pension. Its balance is reported to the ATO and counts towards the client's transfer balance cap. Care needs to be taken to ensure that a client holding a TTR pension does not exceed their personal transfer balance cap (TBC)[10] on their 65th birthday. This may require part or all the TTR to be commuted back to accumulation phase.

Death

This condition is met when the member passes away and proof has been provided to the trustee. This converts the full interest to unrestricted non-preserved. A super death benefit can only be paid to a 'SIS dependant'. These include a:

- spouse[11]
- child[12] of any age
- financial dependant
- interdependent person, and
- legal personal representative of the deceased.

If the deceased has a valid binding or reversionary beneficiary nomination, the super trustee must pay the death benefit to the nominated beneficiary. However, in the absence of a valid binding or reversionary beneficiary nomination, the rules of the fund determine how the death benefit is paid. In many cases, trustee discretion applies where the trustee decides who is paid the death benefit (eg directly to an eligible beneficiary or to the estate). Other funds may have a rule to pay directly to the deceased estate if no valid nomination is in place.

Death is a compulsory cashing event where the death benefit must be paid as soon as practicable after the member dies and must be paid to the beneficiary as a:

- single lump sum
- an interim lump sum and a final lump sum
- death benefit pension that is in retirement phase, if the beneficiary is eligible to receive a pension[13], or
- a combination of a lump sum and a pension (if the beneficiary is eligible).

Advice tip

If an eligible beneficiary elects to receive the death benefit in the form of a pension, the funds are unrestricted, non-preserved in the name of the beneficiary.

A death benefit cannot be rolled back to accumulation or combined with the beneficiary's own super interests. A death benefit can be rolled over to another superannuation fund as a death benefit. The receiving super fund must immediately pay the death benefit as a death benefit pension and/or or lump sum. For more information on superannuation death benefits, refer to our suite of articles:

- **Guide to superannuation death benefits**
- **Super beneficiary nominations: options, opportunities and obstacles**
- **Planning super death benefit payments for non-tax dependants**
- **Avoiding the pitfalls of super death bed withdrawals**

10 The general TBC is $1.9m for 2024/25 and $2m from 1 July 2025. A client's personal TBC may be between $1.6m and $2m depending on when they commenced their first retirement phase pension and eligibility to access proportional indexation.

11 Includes a defacto spouse and same sex partner but does not include ex-spouse.

12 Includes a natural, step or adopted child, as well as a child of a same sex couple.

13 SISR 6.21(2A)

Terminal medical condition

A member satisfies the terminal medical condition[14] if:

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

A member can be any age when they meet the terminal medical condition of release. The member's total super benefit, including life insurance proceeds, become unrestricted non-preserved.

Members can access their benefits as lump sums, pensions or a combination of both. Lump sum withdrawals are tax free during the certification period.[15] However, there are no tax concessions for income payments from pensions commenced where the terminal medical condition of release has been met (including no tax-free uplift[16] and no entitlement to a 15% tax offset if under age 60). Some trustees may enforce additional restrictions or may not allow for a pension to commence after the member meets the terminal illness condition of release.

Any remaining benefit when the member passes away will be a super death benefit. The death benefit will be taxed according to whether it is received by a tax or non-tax dependant and its proportion of tax components at the time it is paid.[17]

Advice warning

If a person meets the terminal medical condition of release in their current fund and requests for an amount to be rolled over to another complying super fund, the amount is treated as if it has been cashed out as a tax-free terminal illness benefit and contributed as a non-concessional contribution when it is received by the new fund. The amount is not recognised as a rollover under tax law. The amount is preserved and, depending on the amount, can cause the client to breach contributions rules and caps.

To find out more about accessing super under the terminal medical condition, see our adviser article **Planning considerations for terminally ill clients**.

Permanent incapacity

The permanent incapacity condition of release is often referred to as 'total and permanent disablement (TPD).' Under this condition of release, the member must satisfy the trustee that they are unlikely, because of ill-health (physical or mental), to engage in gainful employment for which the member is reasonably qualified by education, training or experience.[18]

A trustee will request two legally qualified medical practitioners to certify that the person meets the permanent incapacity definition. The trustee and doctors may take a conservative view on this requirement and consider other options for the member prior to approving this condition. For example, if the member is a surgeon who has a damaged hand, the member may not meet permanent incapacity if the member can be a medical educator.

If the trustee is satisfied that a member meets permanent incapacity, the benefit accrued up to that point becomes unrestricted non-preserved. This may include insurance proceeds from a successful claim on a TPD policy held within the super fund. The unrestricted non-preserved benefit can be:

- cashed as a lump sum or rolled to another provider (see below for increased tax-free component)
- paid as a pension (taxable component taxed at individual marginal rate with a 15% offset) or
- remain in super accumulation account.

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14 SISR 6.01A

15 ITAA 1997 s303-10

16 See Permanent incapacity – Increased tax free component of a disability lump sum.

17 ITAA 1997 s302-195

18 SISR 1.03C

Increased tax free component of a disability lump sum

Where a superannuation member benefit is paid as a disability lump sum benefit, the tax free component is increased. To qualify as a disability lump sum benefit, the trustee must be satisfied that the member meets the permanent incapacity condition at the time of payment.

The tax free component of a disability lump sum is increased (but capped at the amount of the benefit) using the following formula:

$$\text{Amount of benefit} \times \frac{\text{Days to retirement}}{\text{Service days + Days to retirement}}$$

Where:

Days to retirement – is the number of days from the day on which the person stopped being capable of being gainfully employed to his or her last retirement date

Last retirement date – if a person's employment or office would have terminated when he or she reached a particular age or completed a particular period of service—the day he or she would reach the age or complete the period of service (as the case may be); or in any other case—the day on which he or she would turn 65

Service days – number of days in the service period for the lump sum.

Note: Do not double count days which are both in service days and days to retirement.

The remaining balance of the disability lump sum benefit is the taxable component. Standard lump sum member benefit tax rates apply to the taxable component of the lump sum if paid before age 60. To find out more about accessing super under permanent incapacity, see our adviser article **Providing advice to clients who are permanently incapacitated**.

Advice tip

If the person is eligible for a Disability Support Pension, consider leaving all or part of their benefit in the accumulation phase, where it is not means-tested while the person is below Age Pension age.

The interest is unrestricted non-preserved from the date of assessment by the trustee and can be accessed. However, any new contributions or earnings are preserved.

The tax-free uplift may not be automatically applied to future withdrawals. The trustee applies the uplift when satisfied that this benefit is being paid due to disability. Therefore, some trustees may request new evidence that the client continues to meet the definition of permanent incapacity in the future. The amount of time before new evidence is required depends on the trustee (eg after 1 year or 2 years).

Temporary incapacity

A superannuation fund can pay a non-commutable income stream[19] to a member who meets the temporary incapacity condition of release. This condition of release is met where the member temporarily ceases to be gainfully employed due to physical or mental ill-health that does not constitute permanent incapacity. A trustee requires documentation from the member's doctor to be reasonably satisfied a member has met the temporary incapacity condition of release. Payments from an income stream can only:

- continue for the period of temporary incapacity
- be for the purpose of continuing pre-disability income, and
- comprise amounts that are not paid from the member's minimum super interests, such as personal or mandated employer contributions. Generally, payments are from proceeds paid from an income protection policy held within super or voluntary employer contributions that do not fall into a member's minimum super interest.

19 SIS Reg 6.01(2)

The member cannot receive more than the amount they were receiving prior to the incapacity. A member who is unemployed at claim time may be ineligible for the temporary incapacity condition of release, as they were earning no income prior to their incapacity.

When a member is on any form of paid leave, including paid sick leave, they are still considered to be gainfully employed, as they receive 'gain or reward'. Paid sick leave must therefore cease prior to temporary incapacity payments commencing as the person is likely to still be receiving their pre-disability income. A super funds' trust deed must also allow this type of payment to be made by the fund. To find out more about the temporary incapacity condition of release and holding income protection insurance in super, see our adviser article **Holding income protection via super**.

Attaining age 60 and commencing a TTR pension

Upon attaining age 60, super benefits may be accessed as a Transition to retirement (TTR) pension. Pension payments are restricted to between 4% and 10% of the commencement value in the first year and the 1 July balance in succeeding years. Where the TTR pension commences during the financial year, subject to the rules of the fund:

- the minimum income payment may be pro-rated
- no minimum income payment may be required for June commencements
- the 10% maximum pension payment may not be pro-rated, and
- the member may select which preservation components* (unrestricted non-preserved, restricted non-preserved and preserved) to commence the pension.

* If a client only selects unrestricted, non-preserved component to commence the income stream, this is an account based pension and assessed against the client's transfer balance cap. A TTR includes a portion of restricted or preserved component.

Once the pension has started, the pension payments are drawn from the preservation components in the following order[20]:

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

Advice tip

Given this fixed drawdown order, members with unrestricted non-preserved benefits may want to commence a TTR pension with preserved and/or restricted non-preserved benefits only and leave the unrestricted non-preserved benefit in the accumulation phase where it can be accessed at any time.

Care should be taken as some trustees may change the restricted non-preserved and unrestricted components to preserved upon commencing a TTR.

Generally, lump sum payments from the TTR can only be paid if:

- it contains an unrestricted non-preserved component (subject to the rules of the fund)
- another condition of release is satisfied allowing access to lump sums
- death of the member
- payment of an outstanding surcharge liability
- Family Law Split amount or court order, and
- payment of excess contributions tax.

Advice tip

TTR pensions aren't in retirement phase and don't qualify for a tax exemption on earnings unless the member:

- reaches age 65, or
- notifies their pension provider they have satisfied either the retirement, terminal medical condition or permanent incapacity condition of release.

20 SISR 6.22A

Severe financial hardship

A member may apply to the super fund trustee to release their super due to severe financial hardship. The requirements to meet this condition depend on the member's age.[21]

Member is at least age 60 and 39 weeks22

The member must satisfy the trustee that they:

- are not gainfully employed on a full-time or part time basis when they apply (ie they are not working 10 or more hours a week at the time of the request), and
- have received relevant Commonwealth income support payments for a cumulative period of 39 weeks after reaching age 60, from Centrelink, DVA or a Commonwealth Community Development Employment Program organisation (see below for definition of Commonwealth income support payments for this purpose).

There are no restrictions on the amount or payment frequency for members of this age.

Example 6

Mary is aged 61 and has been receiving a Disability Support Pension for more than 39 weeks. Mary applies for an early release of her super under severe financial hardship grounds. Her super trustee approves the financial hardship claim and the accumulated interest up to that date is reclassified as unrestricted, non-preserved. Mary can take any amount from her super.

If the above conditions are not met and less than age 60

The member must:

- satisfy the trustee that they are unable to meet reasonable and immediate family living expenses, and
- provide written evidence that they have received relevant Commonwealth income support payments for the previous 26 consecutive weeks from Centrelink, DVA or a Commonwealth Community Development Employment Program organisation.

A member or family (whichever is applicable) cannot meet reasonable and immediate living expenses where the:

- income of the member (or family) cannot meet everyday living expenses, and
- assets (excluding the family home) of the member (or family) cannot be reasonably used or sold to cover expenses.

The trustee will determine the expenses that must be paid and whether all liquid money has been exhausted. Individual trustees may have different requirements in relation to providing evidence and/or declaration. For example, if the member has money in a savings account, the trustee may not approve the claim. The payment is restricted to one lump sum between $1,000 and $10,000 before tax (or up to the member's account balance if less than $10,000). The member can make a financial hardship claim per trustee once in a 12-month period (from the date of the first payment). If a member has more than one fund, they may make applications to each fund at the same time.

Commonwealth income support payments for this purpose, generally includes means tested pensions and benefits from either DVA or Centrelink. This includes:

- Age pension, Service pension (including age, invalidity, partner or carer) or income support supplement
- JobSeeker Payment
- Disability support pension
- Carer payment
- Parenting payment
- Sole parent pension
- Youth allowance (other than full time study)
- Special benefit
- Special needs pension
- Veteran payment
- Drought relief payment or exceptional circumstances relief payment under Farm Household Support Act
- A payment from the Community Development Employment Projects Scheme
- A payment of income support for the purposes of the Farm Family Support Scheme.

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21 SISR 6.01(5)(a)
22 SISR 6.01(5)(b)

However, certain payments and concession cards are not included in this definition (such as DVA TPI payment or Low Income Health Care Card). Standard lump sum member benefit tax rates apply to the taxable component of the lump sum. To find out more about severe financial hardship condition of release, see our article **Early access to super: financial hardship and compassionate grounds**.

Compassionate grounds

Preserved and restricted non-preserved benefits can be withdrawn from super on compassionate grounds to meet a limited number of unpaid expenses.

A member applies directly to the ATO to release their super under compassionate grounds. However, a member of an exempt public sector superannuation scheme (EPSSS) must apply directly to the EPSSS, which is subject to State and Territory law, for the release of their super.

Where a compassionate ground exists, the super fund can pay a single lump sum, up to the amount determined in writing by the ATO. Grounds upon which the ATO release superannuation benefits are:

- to pay for medical treatment or medical transport for the member or their dependant
- two registered medical practitioners (at least one a specialist) certify that the medical treatment is needed to treat a life-threatening illness/injury, alleviate acute/chronic pain or an acute/chronic mental disturbance and the treatment is not readily available through the public health system
- transport for medical attention by land, water or air and must be in relation to the medical treatment outlined above
- to make a payment on a loan to prevent foreclosure of a mortgage on a member's home or the mortgagee selling the home in any 12-month period, this amount cannot exceed an amount equal to the sum of three months of repayments and 12 months interest on the outstanding balance of the loanto modify the home or vehicle to accommodate the special needs of the member, or their dependant, arising from severe disability
- to pay for palliative care for the member, in the case of impending death
- to pay for expenses associated with the palliative care (in the case of impending death), death, funeral or burial of a dependant
- any other case which the ATO believes to be consistent with the above.

A member can apply online via myGov and find information about the application process, documentation and evidentiary requirements at **ato.gov.au**. The ATO will assess eligibility within 14 days. When the ATO approves a release, they will notify the client by phone or SMS and send a letter to the client's myGov inbox. A copy of the letter is also sent to the client's super fund. The client must contact the fund to process their payment. Standard lump sum member benefit tax rates apply to the taxable component of the lump sum and the super fund must withhold as required.

To find out more about compassionate condition of release, see our article **Early access to super: financial hardship and compassionate grounds**.

Departing Australia Superannuation Payment

Departing Australia Superannuation Payment (DASP) rules apply to certain temporary residents departing Australia. Only people who have been in Australia on a temporary resident visa and are not any of the following can apply for their super to be released:

- New Zealand citizens
- past or present Australian citizens or permanent residents
- holders of retirement visa subclass 405 or 410, and
- people in Australia currently or that left less than six months prior.

A pension cannot be commenced with super benefits released under the DASP rules. A superfund is required to pay a member's benefit to the ATO as an unclaimed member benefit where a temporary resident does not claim their super fund within six months of their visa expiring or departure from Australia (whichever happens last). The member can apply for the release of their super benefit when the member has left Australia and their temporary visa is cancelled. The member may apply for the super benefit from:

- their super fund if their benefit is with the superfund, or
- the ATO if it is held by the ATO.

Tax is withheld from the taxable component before the balance is paid to the member.

Table 2: Withholding tax on DASP payments

Tax components[23]	Not a working holiday maker	Working holiday maker[24]
Tax-free component	Nil	Nil
Taxable component (taxed element)	35%	65%
Taxable component (untaxed element)	45%	65%

To find out more about how differing residency status may impact super access rules, see our adviser article **Temporary residents and superannuation**. More information on DASP, requirements and the withdrawal process are also located on **ato.gov.au**.

Balances less than $200

Where a member's superannuation balance is less than $200, the member may withdraw that balance as a tax free lump sum[25] where the member:

- terminates gainful employment with an employer who has contributed to the super fund under an arrangement between that employer and the super fund trustee, or
- was a lost member who is found.

First Home Super Saver Scheme

The First Home Super Saver Scheme (FHSSS) allows eligible individuals to access voluntary super contributions to purchase their first home. A maximum of $15,000 of voluntary contributions made in any one financial year, subject to a total of $50,000 across all financial years may be accessed to purchase a first home. In addition, associated earnings on eligible voluntary super contributions may also accessed.

Only voluntary contributions made from 1 July 2017 are eligible, which are personal contributions and salary sacrifice contributions.

Voluntary contributions may be withdrawn under the FHSSS if the individual:

- has not held a freehold interest in Australian real property before
- is aged 18 years or older
- intends to occupy the property for at least six months of the first 12 months of ownership, and
- has not previously had a release from superannuation under this scheme.

An individual who previously owned property in Australia may still be eligible, if it is determined they have suffered a financial hardship that resulted in a loss of ownership of all property interests.

A summary of the process of accessing funds under the FHSSS is:

1. application to the ATO requesting a determination on the maximum amount that can be withdrawn (a FHSS determination must been requested before the release authority - step 2)
2. member requests ATO to issue a release authority for all or part of the maximum amount to their super fund
3. super fund releases the amount to the ATO, and
4. ATO pays the net amount to the member after deducting tax (if applicable).

Individuals can sign a contract to purchase or construct their first home during the period of up to 90 days before requesting the release authority and end 12 months after the date of the release authority. However, the ATO will generally grant an additional 12 month extension if a contract has not been signed. Individuals must notify the ATO in writing within 90 days of signing the contract.

CCs released and associated earnings are assessable and included in income in the year of release less 30% tax offset.

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23 Superannuation (Departing Australia Super Payments Tax) Act 2007 s5

24 A working holiday maker is a person who holds Subclass 417 (Working Holiday) or 462 (Work and Holiday) visas or certain related bridging visas.

25 ITAA97 s301-225

If the released amount is not used for the purchase of the first home, the amount can be recontributed to super otherwise the additional First Home Saver Super tax of 20% is applied on the assessable amount. For further information on eligibility, processes and technical information refer to the **ATO site**.

Appendix – Summary of conditions of release

The table below summarises the cashing restrictions for each of the conditions of release. This information is general in nature and any payments are subject to the fund's trust deed and governing rules. Unless otherwise stated below, when a condition of release with a nil cashing restriction is met, the full amount can be withdrawn as a lump sum or used to commence a pension.

Condition of release	Cashing restrictions
Attained age 60 and permanently retired	Nil
Cessation of a gainful employment arrangement on or after age 60	Nil
Attaining age 65	Nil
Death	Nil. Can be paid as a lump sum or pension to certain eligible dependents. Pensions are subject to the transfer balance cap rules (modified for children of the deceased).
Terminal medical condition	Nil
Permanent incapacity	Nil
Temporary incapacity	The payments must be made from a non-commutable income stream paid from a regulated super fund for: ▪ the purpose of continuing (in whole or part) the gain or reward which the member was receiving before the temporary incapacity, and ▪ a period not exceeding the period of incapacity from employment of the kind engaged in immediately before the temporary incapacity.
Attaining age 60 (transition to retirement pension)	The maximum pension payment that can be received each year is 10%. Lump sum withdrawals can only be made in limited circumstances. These conditions apply until the client meets a condition of release with nil cashing restrictions.
Severe financial hardship	**If at least age 60 and 39 weeks** Nil cashing restrictions **If the above condition is not met** For a person taken to be in financial hardship in each 12 month period (beginning on the date of first payment), a single lump sum not less than $1,000 (except if the amount of the person's preserved and restricted non-preserved benefits is less than that amount) and not more than $10,000 before tax.
Compassionate grounds	A single lump sum, not exceeding an amount determined by the ATO.
Departing Australia Superannuation Payment	Paid as a single lump sum.
Balances less than $200	Paid as a single lump sum.
FHSSS	Eligible voluntary contributions of up to $15,000 from any one financial year and $50,000 in total, together with 85% of associated earnings can be withdrawn to purchase the member's first home. Where voluntary contributions are concessional contributions, 85% of the amount can be released.