Article 1 – Super guarantee rises to 10.5%

The increase to the superannuation guarantee (SG) rate from 1 July 2022 will see more employees entitled to additional SG contributions on their pay. But what happens when income earned before 30 June is paid after 30 June 2022 – will employees be entitled to the higher SG rate of 10.5%?

SG based on when an employee is paid

On 1 July 2022, the SG rate increased from 10% to 10.5%. In some cases, an employee's pay period will cross over between June and July when the rate changes.

However, the percentage employers are required to apply is determined based on when the employee is paid, not when the income is earned. The rate of 10.5% will need to be applied for all salary and wages that are paid on and after 1 July 2022, even if some or all of the pay period it relates to is before 1 July 2022.

This means if the pay period ends before 30 June, but the pay date falls on or after 1 July, the 10.5% SG rate applies on those salary and wages. The date of salary and wage payment determines the rate of SG payable, regardless of when the work was performed.

Example

Nicholas is an employee of ABC Pty Ltd.

If Nicholas performed work:
- In June (or partly in June and partly in July) but he was paid in July, the SG rate is 10.5% and contributions totalling 10.5% of his ordinary time earnings for the September 2022 quarter must be made to his superannuation fund by 28 October.
- In July but was paid in advance (before 1 July), the SG rate is 10% and contributions totalling 10% of his ordinary time earnings for the June 2022 quarter must be made to his superannuation fund by 28 July.

Future SG rates will continue to rise

With Labor elected, employers should prepare for ongoing, annual increases to the SG rate over the coming years. The following already-legislated increases to 12% in 2025 will proceed as follows:

Period	SG rate (%)
1 July 2015 – 30 June 2016	9.5
1 July 2016 – 30 June 2017	9.5
1 July 2017 – 30 June 2018	9.5
1 July 2018 – 30 June 2019	9.5
1 July 2019 – 30 June 2020	9.5
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 onwards	12

Monthly $450 minimum threshold removed

A further change to the SG rules is that from 1 July 2022, the $450 per month minimum SG income threshold has been repealed. This means that employers will be required to make quarterly SG contributions on behalf of low-income employees earning less than $450 per month (unless another SG exemption applies).

Prior to 1 July 2022, an employer was not required to pay SG contributions for an employee who earned less than $450 per month.

This change is estimated to benefit approximately 300,000 people or 3% of employees[1], who are mainly young and/or lower-income and part-time workers, where around 63% are female[2]. These changes will help these workers to start accumulating superannuation earlier as well as help address the gap in superannuation savings between women and men.

[1] Estimates based on ATO Single Touch Payroll data for July 2019, provided to the Retirement Income Review, published in the Retirement Income Review – Final Report. Canberra: Commonwealth of Australia, 2020, pp 298, 301.
[2] Ibid, pp 45, 300-301

Article 2 – What happens to your super in the event of bankruptcy?

Are you a small business owner or work in a profession were you are likely to be sued? If so, have you thought about what might happen to your superannuation should your circumstances change and you become bankrupt?

The risk of bankruptcy

Self-employed people, company directors and 'at risk' professionals such as doctors, dentists, accountants, lawyers, etc are particularly vulnerable to lawsuits from disgruntled clients or former bitter business partners. Should your small business fail or where litigation against you by one of these individuals is successful, there is a risk that you may become bankrupt.

Once bankrupt, your assets are accessible under bankruptcy to repay creditors unless your assets are considered 'exempt divisible property'.

Super can be an exempt asset

Superannuation is generally protected upon bankruptcy from creditors as it is considered exempt divisible property. This protection also extends to lump sums paid to a bankrupt from their superannuation fund on or after the bankruptcy date.

Note that superannuation is only protected if benefits are held in a regulated superannuation fund, approved deposit fund or public sector superannuation scheme.

When is super not protected?

If a bankrupt is a member of a superannuation fund which becomes non-complying, that superannuation interest is not protected under the legislation.

Further, amounts withdrawn from superannuation prior to becoming bankrupt are not protected. In this case, the lump sums withdrawn will form part of the estate claimed by the trustee in bankruptcy. Remember, only lump sum withdrawals accessed after bankruptcy are protected.

Warning – super can be accessed under 'clawback' provisions

There are circumstances where superannuation may be subject to clawback provisions by the bankruptcy trustee where a person (or third parties such as the person's employer or spouse) makes large, "out of character" contributions to their superannuation fund to avoid creditors.

Where this is the case, the court will consider the bankrupt's historical contributions pattern and whether any contributions were out of character in determining whether they were made with the intention to defeat creditors.

Furthermore, the person's main purpose in making the transfer/contribution will be deemed to be for the purpose of defeating a creditor where it can reasonably be inferred from all the circumstances that, at the time of the transfer, the person was (or was about to become) insolvent.

Tip – individuals wanting to use their superannuation as an asset protection strategy should ensure they make consistent and ongoing superannuation contributions to avoid any issues with the 'clawback' provisions. Individuals should also retain suitable records every time a contribution is made in order to be able to prove they were not insolvent at the time of transfer or contribution.

What about super income streams?

Superannuation benefits paid as a pension or annuity do not receive the same level of protection as lump sums from superannuation. This is because the pension and annuity payments are classified as 'income' as opposed to exempt divisible property.

Income received from a pension or annuity receives limited protection up to a certain legislated limit. This limit is indexed twice a year and is based on the number of dependants the bankrupt has.

The current threshold for a bankrupt with no dependants is $61,789 and increases to $84,033 for bankrupts with more than four dependants (figures current as at 27/4/22).

The bankruptcy trustee is generally entitled to claim 50% of amounts exceeding an individual bankrupt's threshold.

For this reason, it may be worthwhile for an undischarged bankrupt to not commence a superannuation pension or annuity and to keep their superannuation benefits in accumulation phase. Should the bankrupt require funds for living expenses, they could make lump sum withdrawals from their superannuation if they meet a condition of release.

Further, individuals already in pension phase that may be facing bankruptcy may wish to seek advice about commuting their pension back into accumulation phase so they do not receive income payments which may be above the protected income limit. However advice must be sought before undertaking such a strategy to avoid other unintended consequences (ie, tax implications for those under age 60, potential loss of social security benefits, etc).

Bankrupt person cannot act as a trustee

A trustee/director of a superannuation fund that becomes a "disqualified person" is not allowed to remain a trustee and must resign immediately.

An individual is a disqualified person if the person is "insolvent under administration" which includes a person who is an undischarged bankrupt. In addition, a bankrupt trustee/director cannot be a member of a self-managed superannuation fund (SMSF) as the superannuation legislation requires a member to also be a trustee/director.

It is also not possible to appoint a Power of Attorney to replace the bankrupt member as trustee. Therefore, it is not possible for a bankrupt person to remain as a member of an SMSF.

As a result, the trustee of the SMSF has up to six months to rollover the disqualified member's interest. Options to consider are:

- Appoint an independent corporate trustee and become a small APRA fund, or
- The bankrupt member rolls over their benefits into an APRA regulated superannuation fund (ie, a retail or industry superannuation fund).

Want more information?

The Australian Financial Security Authority (www.afsa.gov.au) provides general information and resources on bankruptcy and other debt management options. Individuals should also seek legal advice to understand the implications of the different options for their circumstances.

Article 3 – Accessing your super early

The key purpose of superannuation is to provide individuals with benefits for their retirement, which is when most people will access their superannuation savings. But in some cases individuals may be able to access some of their superannuation early upon meeting certain eligibility rules.

Common conditions of release

A condition of release must be met before you can access your superannuation benefits. The most common conditions of release for paying benefits are when you:

- Have reached your preservation age and retire (see below for preservation age)
- Have reached your preservation age and begin a transition-to-retirement income stream
- Cease an employment arrangement on or after the age of 60
- Turn 65 years of age (even if you haven't retired)
- Pass away.

Preservation age

Access to superannuation benefits is generally restricted to individuals who have reached their preservation age. This is because the preservation rules aim to prevent early access to benefits.

The table below summarises when you may reach your preservation age and therefore access your superannuation benefits:

Date of birth	Preservation age	When preservation age is reached
Before 1 July 1960	55	1 July 2014 or earlier
1 July 1960 – 30 June 1961	56	1 July 2016
1 July 1961 – 30 June 1962	57	1 July 2018
1 July 1962 – 30 June 1963	58	1 July 2020
1 July 1963 – 30 June 1964	59	1 July 2022
1 July 1964 or later	60	1 July 2024 or later

Other conditions of release

Besides the common condition of release events that apply to most cases, there are other special circumstances where at least part of your superannuation benefits can be released before you have reached preservation age.

These less common condition of release events are summarised below.

Other conditions of release	Details
Terminal medical condition	Access to your superannuation can be granted where you have a terminal medical condition and the following requirements are met: ● two registered medical practitioners have certified that you suffer from an illness/injury that is likely to result in death within two years of the practitioner certification being provided, and ● at least one of these practitioners is a specialist in respect of the illness/injury suffered by you, and ● the 24-month certification period has not ended.
Permanent incapacity	Your superannuation fund must be satisfied that you have a permanent physical or mental medical condition that is likely to stop you from ever working again in a job you were qualified to do by education, training or experience (not just any gainful employment). Your occupation and nature of the injury are therefore key.

Temporary incapacity	Temporary incapacity means physical or mental ill-health that causes you to temporarily cease to be gainfully employed but does not constitute permanent incapacity. It's not necessary for your employment to fully cease but, generally, you would not be eligible for temporary incapacity benefits if you were on paid sick leave from your employment for instance.
Severe financial hardship	To qualify, your superannuation fund must be satisfied that either: ● you have been receiving government income support payments continuously for 26 weeks and you were unable to meet reasonable and immediate family living expenses, or ● if you have reached preservation age plus 39 weeks – you have received government income support payments continuously for 39 weeks since reaching preservation age and were not gainfully employed full-time or part-time at the time of making an application to the trustee of your fund.
Compassionate grounds	You can access some of your superannuation on compassionate grounds if you can prove to your superannuation fund that you lack the financial capacity to pay for: ● medical treatment (defined as life-threatening illnesses or to alleviate chronic pain or mental disturbance) and medical transport for you or your dependant ● palliative care for you or your dependant ● making a payment on a home loan or council rates so you don't lose your home ● accommodating a disability for you or your dependant, or ● expenses associated with the death, funeral or burial of your dependant.
First Home Super Saver Scheme (FHSSS)	To help you save for your first home, you can apply to release voluntary concessional (before-tax) and voluntary non-concessional (after-tax) contributions you have made to your superannuation fund since 1 July 2017. You can apply to have a maximum of $15,000 of your voluntary contributions from any one financial year included in your eligible contributions to be released under the FHSS scheme, up to a total of $50,000 contributions across all years. You will also receive an amount of earnings that relate to those contributions.

Need more information?

There are many things to consider before accessing your superannuation, including how it will impact your retirement, taxation and what effect it will have on any other benefits you're receiving.

Please contact us if you would like more information on any of these conditions of release and would like to discuss your options. We will explain the conditions and requirements that need to be met to demonstrate your eligibility which may help you access your superannuation benefits.