

SMSFs receiving employer contributions need to be aware of the SuperStream regulatory changes for payment of contributions

SuperStream imposes a requirement for SMSFs to receive contributions and data in a new electronic standard. These measures were originally planned to apply from 1 July 2014 but a draft legislative instrument proposes to defer the date for compliance to 3 November 2014.

Under the new rules SMSFs will be required to receive contributions using an eCommerce standard so that contributions can be received by direct credit or BPay and the contribution data message is received electronically via a nominated electronic service address. This is different to an email address.

Medium and large employers

From 1 July this year (if the deferral to 3 November is not legislated) it will be compulsory for employers with 20 or more employees (medium and large employers) to pay contributions to an SMSF electronically.

It is estimated by the Australian Taxation Office (ATO) that there are about 150,000 SMSFs that are impacted and the ATO wrote directly to a number of these Funds earlier this year.

If a deferral to 3 November applies, during the transition period of 1 July 2014 to 2 November 2014:

- superannuation entities may choose to have the capability to receive contribution standard-compliant messages from employers; and
- a medium or large employer can send employee registration and contribution messages in any electronic format that a superannuation entity is willing to accept. Contributions must also be made using an electronic payment method acceptable to the trustee.

Small employers

The main difference in the SuperStream rules applicable to small employers (those employers with 19 or fewer employees) compared to medium and large employers is that the start date is 1 July 2015 rather than 1 July 2014. As a result small employers must generally be SuperStream ready from 1 July 2015.

Small employers can also utilise the free services offered by the Small Business Superannuation Clearing House to streamline their compliance.

Exemption for SMSFs with related party employers

Contributions made to an SMSF from a related party employer are exempt from SuperStream. These can therefore be made using existing processes.

Typically, this will cover the situation where a business is run and controlled by one or two members and the business contributes to their SMSFs.

In this case, the payment and data standards are not compulsory. However, they can be used if preferred.

Superstream requirements

To make contributions in line with the SuperStream requirements there are three pieces of information that an employer will need: These are:

- The fund's Australian Business Number (ABN);
- Confirmation of the fund's bank account details; and
- An electronic service address receipt of a contribution data message.

If an employer is not provided with this information they may send contributions to their default super fund.

Nearly all SMSFs have an ABN and a suitable bank account to receive the contributions. However, all SMSFs that wish to receive employer contributions under the new rules will be required to have access to an electronic service address.

Electronic Service Address providers

An electronic service address can be obtained via a range of service providers with a register of providers available from the ATO web site.

For example, Australia Post is a service provider and has an SMSF gateway subscription service expected to cost around \$50 per annum.

A number of our clients have a Macquarie Cash Management Account as a fund bank account. Macquarie is listed on the ATO register of providers and will be providing a free service for their clients. Our superannuation software provider APS Desktop Super has also advised they are establishing a service.

Many of our clients may not be impacted as they have related employers only or just pension members. However, if say ad hoc contributions are to be received from a non-related employer a SuperStream provider will be required.

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ATO Compliance

The ATO is responsible for ensuring employers and SMSF trustees comply with their obligations under the standard.

The ATO's compliance statement confirms that the focus will be on education and support for employers and SMSF trustees during the first twelve months that they are required to comply with SuperStream. The ATO has stated, for instance, that in the event that the new system is not working temporarily (e.g. due to internet problems), an employer can still discharge their super guarantee obligations by using alternative channels (paper or electronic) and by informing the fund of the reasons for sending it in this format.

However, after the first twelve month period, there are significant penalties that can be imposed for non-compliance with the new SuperStream rules.

Conclusion

In the longer term SuperStream may provide benefits due to processing efficiencies but in the short term it is likely to add to the cost and complexity of running a fund.

However, SMSF trustees and employers need to ensure they are getting ready for SuperStream. In due course we will contact clients we believe are impacted to assist in taking appropriate action.

STOP PRESS

The Government on 26 May 2014 announced that the date by which superannuation funds must comply with the SuperStream contributions data standards has been pushed back to 1 July 2015.

ATO new penalty powers apply from 1 July 2014

The ATO's additional powers to deal with breaches of the Superannuation Industry (Supervision) Act 1993 (SIS Act) by self-managed superannuation funds (SMSFs) is now law and will apply to breaches of the SIS Act from 1 July 2014.

These penalties will significantly increase the ATO's ability to deal with non-compliance with options less extreme than making an SMSF non-compliant.

From 1 July 2014, the ATO has the power to:

- issue a rectification direction;
- issue an education direction; and
- impose an administrative penalty of up to \$10,200 for each breach personally liable by the offending trustee or director.

The penalties will also apply to contraventions that were made prior to 1 July 2014 and continue after that date.

For example, if a fund has lent money to a member or relative and the loan still exists on or after 1 July 2014 the trustees will be liable for a penalty. The loan should immediately be repaid to the fund with appropriate commercial interest.

Under the proposed measures, penalties will vary according to the type of breach. In the example above, each individual trustee will be personally liable for a penalty of \$10,200.

For an SMSF with a corporate trustee each director will be jointly and severally liable for a penalty of \$10,200.

The penalty cannot be paid using the resources of the SMSF and doing so would be considered a serious breach likely subject to more significant penalties from the ATO.

Under the proposed administrative penalties the ATO must impose the penalty when they become aware of a relevant breach from 1 July 2014.

If trustees are making progress in resolving contravention(s) by 1 July 2014 the ATO would consider these circumstances in any request to remit any imposed administrative penalties.

To avoid these penalties make sure your SMSF is fully compliant with the super laws so that you do not become personally liable for a penalty or other sanctions.

Examples of some of the new penalties are shown in the table below.

SIS Section	Compliance Breach	Penalty
160 (4)	Failure to undertake a trustee course as directed by the regulator by the time required	5 penalty units (\$850)
254 (1)	Failure to provide the Commissioner with information in the approved form	5 penalty units (\$850)
347A (5)	Failure to provide statistical information to the Commissioner with information in the approved form	5 penalty units (\$850)
35B	Failure to prepare accounts for the fund for a financial year	10 penalty units (\$1,700)
103 (1)	Failure to keep a particular books and records of the fund for at least 10 years	10 penalty units (\$1,700)
103 (2)	Failure to keep copies of minutes and records of decisions of the fund for at least 10 years	10 penalty units (\$1,700)
103 (2A)	Failure to keep a particular election for in-house asset purposes for at least 10 years	10 penalty units (\$1,700)
104 (1)	Failure to keep records relating to the change of trustees	10 penalty units (\$1,700)
104A (2)	Failure to complete and retain for 10 years the declaration of responsibilities as a trustee of an SMSF	10 penalty units (\$1,700)
105 (1)	Failure to retain member or beneficiary report for the fund	10 penalty units (\$1,700)
34 (1)	Failure to ensure that the prescribed operating standards are complied with at all times	20 penalty units (\$3,400)
106A (1)	Failure to notify the Commissioner in the change of status of the entity	20 penalty units (\$3,400)
65 (1)	Lending money or providing financial assistance to a member or relative	60 penalty units (\$10,200)
67 (1)	Breaches of the rules that limit the fund borrowing	60 penalty units (\$10,200)
84 (1)	Failure to comply with the in-house asset rules for related party investments	60 penalty units (\$10,200)
106 (1)	Failure to notify the regulator of significant events about the SMSF	60 penalty units (\$10,200)

2014-15 Federal Budget changes

The superannuation system or the taxation of superannuation was not a prominent feature of the 2014-15 Federal Budget, which was in line with the Government's election promise of no unexpected detrimental changes to superannuation in its first term. The key superannuation changes and some other measures are explained below.

Excess non-concessional contribution refunding

For any excess contributions made after 1 July 2013 that are over the non-concessional contribution (NCC) cap, the Government will allow taxpayers to withdraw the excess NCCs and any associated earnings from their superannuation fund. Earnings withdrawn from the fund will be taxed at the taxpayer's marginal tax rate. If the taxpayer chooses to leave the excess NCC in their fund, then they will be taxed on these contributions at the top marginal tax rate.

Superannuation Guarantee

The Superannuation Guarantee (SG) Rate will increase to 9.5 per cent from 1 July 2014, instead of remaining at 9.25% as previously announced by the Government. The SG rate will then be frozen at 9.5 % until 30 June 2018, and on 1 July 2018 it will resume increasing by 0.5% increments until it reaches 12% in 2022-23. The new table is as follows:

	Financial Year	Rate (%)
	2013-14	9.25%
	2014-15	9.50%
	2015-16	9.50%
	2016-17	9.50%
	2017-18	9.50%
	2018-19	10.00%
	2019-20	10.50%
	2020-21	11.00%
	2021-22	11.50%
	2022-23	12.00%

Centrelink Pensions

Increasing of Age Pension Age to 70 from 2035

The Government will increase the Age Pension age to 70 from 2035. From 1 July 2025, the Age Pension qualifying age will continue to rise by six months every two years, from the qualifying age of 67 years that will apply by that time, to gradually reach a qualifying age of 70 years by 1 July 2035.

People born before 1 July 1958 will not be affected by this change.

Also, there has been no change to the preservation age for superannuation benefits.

Indexing the Age Pension by the Consumer Price Index

The Age Pension is to be indexed to the Consumer Price Index (CPI) from 1 September 2017. Currently, pension payments are indexed in line with the higher of the increases in the CPI, Male Total Average Weekly Earnings or the Pensioner and Beneficiary Living Cost Index. This change will likely result in lower future pension increases.

Resetting the Pension Deeming Rate Thresholds

The income deeming thresholds used in the pension income test will be reset to \$30,000 for singles (currently \$46,600) and \$50,000 for couples (currently \$77,400) from 20 September 2017. The deeming rules assume financial assets are earning a certain amount of income, regardless of the income actually earned for the purpose of determining eligibility to social security payments. The Government is making this change to better target pension payments, by tightening the income test.

Maintaining Eligibility Thresholds for Australian Government payments for three years

Eligibility thresholds for pension and pension related payments will be maintained for three years from 1 July 2017. Major pension related payments include the Aged Pension, Carer Payment, Disability Support Pension and the Veterans' Service Pension.

Commonwealth Seniors Health Card changes

There are proposed to be a number of changes to the CSHC. These changes are:

- Indexing the current income limits for the CSHC by the CPI in line with its election commitment to do so.
- Including untaxed superannuation income in the eligibility assessment for the CSHC from 1 January 2015. All superannuation account-based income streams held by CSHC holders before the 1 January 2015 will be grandfathered under the existing rules.
- The Government will achieve savings of \$1.1 billion over five years from 2013-14 by ceasing the Seniors Supplement for holders of the CSHC from 20 September 2014.

The Temporary Budget Repair Levy

The Government will introduce a three year temporary levy (the Temporary Budget Repair Levy) on high income individuals from 1 July 2014 until 30 June 2017. The Temporary Budget Repair Levy will apply at a rate of two per cent on an individual's taxable income in excess of \$180,000 per annum. A number of other tax rates that are currently based on calculations that include the top personal tax rate will also be increased.



Increase in the Contribution Caps

Concessional Contributions Cap

Following a temporary freeze with the indexation of the concessional contribution caps for two years, the 2014/2015 financial year will see an indexation increase of the current \$25,000 cap up to \$30,000.

The ATO has recently updated its key rates and thresholds, confirming the indexation.

The indexation will not apply to the temporary higher cap of \$35,000 currently available to those individuals 59 and over as at 30 June 2013 (for 2013/2014). However, this temporary higher cap will extend to individuals 49 and over at 30 June 2014 to apply for the 2014/2015 financial year.

Year	Aged 59 or over on 30 June 13	Aged less than 59 on 30 June 13
2013/14	\$35,000	\$25,000
Year	Aged 49 or over on 30 June 14	Aged less than 49 on 30 June 14
2014/15	\$35,000	\$30,000

Non-Concessional Contributions Cap

The indexation of the concessional contribution cap has an important flow-on effect to the non-concessional contribution cap, with this post-tax contribution cap being calculated as six times the concessional contribution cap.

Therefore, from 1 July 2014 the non-concessional contribution cap (personal contributions not claimed as a tax deduction) will increase to \$180,000. Those individuals under age 65 at 1 July 2014 will be eligible to utilise a higher bring-forward amount of \$540,000 (up from \$450,000).

Financial Year	Non-concessional contributions
2013-14	\$150,000
2014-15	\$180,000

Non-Concessional Contributions – Bring Forward Rule

People aged under 65 years old may be able to make non-concessional contributions of up to three times their non-concessional contributions cap over a three year period. This is known as the “bring forward” rule.

For the 2013/2014 year, you can make up to \$450,000 in one year, representing your cap for the current year, and the following two years.

The bring forward cap is also increasing as follows:

Financial Year	Non-concessional contributions
2013-14	\$150,000 × 3 = \$450,000
2014-15	\$180,000 × 3 = \$540,000

It is important to note that the bring forward cap applies from the first year the non-concessional contribution cap is exceeded (e.g. if \$160,000 is contributed in 2013/14, the \$450,000 cap applies for the 3 year period).

This means if you commence a bring forward in 2013/14 year your cap for the three years is based on the 2013/2014 cap of \$450,000. You cannot then take advantage of the increase in the non-concessional cap that occurs from the 2014/2015 year, that is, \$540,000 (an additional \$90,000).



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