

Paying benefits from a self-managed super fund



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 in this publication and it turns out to be incorrect or misleading, and you fail to comply with the law as a result, we must still apply the law correctly. However, we will take the fact that you followed our information into account when deciding what action, if any, we should take.

If you make an honest mistake in trying to follow our information in this publication and you fail to comply with the law as a result, we will take the reason for the mistake into account in deciding what action to take.

If you feel that this publication does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for more recent information on our website at ato.gov.au/smsf or contact us.

This publication was current at **June 2013**.

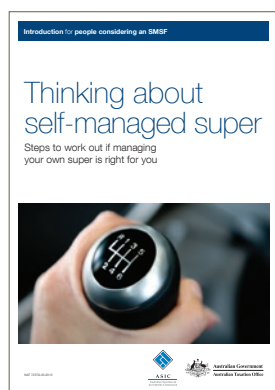
Terms we use

For more information about terms we use in this publication, see 'Super terms explained' at the end of this booklet.

Finding the right information for you

If you need more information about self-managed super funds (SMSFs), refer to our other products:

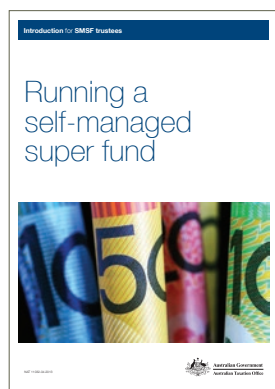
Thinking about self-managed super (NAT 72579) provides you with the steps you need to consider before setting up an SMSF.



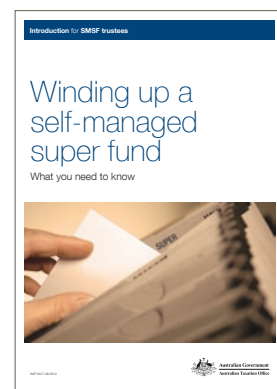
Setting up a self-managed super fund (NAT 71923) provides basic information about how to set up an SMSF.



Running a self-managed super fund (NAT 11032) highlights your responsibilities and obligations as a trustee when operating an SMSF.



Winding up a self-managed super fund (NAT 8107) details the process you need to follow to wind up an SMSF.



Commissioner's foreword

At some stage your self-managed super fund will have one or more members enter the retirement phase. It also means you need to be aware of the additional responsibilities you have when you start paying retirement benefits to members of your own fund.

The strict rules governing self-managed super funds continue as you move out of the accumulation phase and move into paying benefits to your members.

You can pay retirement benefits in a number of ways. Whichever way you pay from your fund, you must ensure the relevant payment rules and regulations are being met. You are still responsible for the continued operation of the fund even if you use a tax, financial or superannuation adviser to help you manage it.

This publication is designed to help you meet your responsibilities in the retirement phase.



Chris Jordan
Commissioner of Taxation



Finding what you need to know

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Self-managed super and you

Like other super funds, SMSFs are a way of saving for your retirement. Generally, the main difference between an SMSF and other types of funds is that members of an SMSF are the trustees. This means the members of the SMSF run it for their own benefit.

SMSFs are not suitable for everyone and you should think carefully before deciding to set one up. It is a major financial decision and you need to have the time and skills to do it. There may be other, better options for your super savings. If you are considering an SMSF for your super savings, the publication *Thinking about self-managed super* (NAT 72579) provides you with some practical information. Licensed financial advisers, tax agents and accountants can also help you understand what is involved.

If you decide that an SMSF is the appropriate vehicle for your super savings, you need to ensure the fund is set up and maintained correctly so that it is eligible for tax concessions, can pay benefits and is as easy as possible to administer. *Setting up a self-managed super fund* (NAT 71923) provides some basic information on this and the steps you need to follow to set up the fund correctly.

Once your SMSF is established, you as trustee control the investment of the contributions and fund earnings. Your SMSF must have a trust deed that forms part of the governing rules for operating the fund. You must also prepare and implement an investment strategy and ensure it is reviewed regularly. There are rules and regulations you must follow to ensure the fund's assets are protected to provide benefits in retirement.

While contributions are being made to the fund it is considered to be in the accumulation phase. The publication *Running a self-managed super fund* (NAT 11032) explains the responsibilities and obligations of trustees operating an SMSF.

When one or more members retire, you as trustee need to understand and follow the requirements of the law and regulations governing the payment of benefits. This publication is designed to assist trustees who are required to make payments out of their SMSF. It is important to note the rules and regulations that apply to funds in the accumulation phase continue even when one or more members retire; however, additional rules apply to the retirement phase.

You should continually reassess the circumstances of the fund and each individual member to determine whether an SMSF is still the most appropriate option for your retirement savings. In some cases you may find that you no longer have the capacity to deal with the complexity or the time required to manage your SMSF.

You may decide that it is not cost-effective to continue to run your own fund. Depending on the circumstances it may be necessary to transfer member benefits to another complying super fund.

Other reasons why you might wind up your SMSF include when all members have left the SMSF (for example, they have rolled over their benefits to another fund or have died) or all the benefits have been paid out. *Winding up a self-managed super fund* (NAT 8107) details the process you need to follow to wind up your fund.

Super reform measures

The government has supported many of the Super System Review's recommendations to reform super, including the self-managed super fund sector.

A number of these measures are aimed at improving the operation, efficiency and integrity of the SMSF sector and are relevant to the way your SMSF is set up and managed. Some of the changes have been implemented and are included in this publication. Others are awaiting legislative change before being introduced.


- For more information about the changes, visit our website at **ato.gov.au/smsf** and search for 'Changes to super for super funds, including self-managed super funds'.

Paying benefits from an SMSF

You need to know the rules for paying benefits from your SMSF.

When one or more members retire and move into the retirement phase, it is important SMSF trustees understand and follow the requirements of the law and regulations governing paying benefits. The payment standards contained in the law, the sole purpose test and the preservation rules ensure that money in the fund is paid to members in the appropriate manner.

This publication will help trustees who are required to make payments from an SMSF for members in both the accumulation and retirement phases.

 **It is important to note the rules and regulations that apply to SMSFs in the accumulation phase continue to apply even when a member retires.**

Preservation age

Assets and money in an SMSF are to provide for a member's retirement and can be paid to them as a benefit when they have reached the minimum age set by law and retired. This minimum age is known as 'preservation age'.

A person's preservation age depends on their date of birth, as set out in the following table. Super benefits can only be released earlier in very limited circumstances.

Table 1: Preservation age

Date of birth	Preservation age
Before 1 July 1960	55
1 July 1960 – 30 June 1961	56
1 July 1961 – 30 June 1962	57
1 July 1962 – 30 June 1963	58
1 July 1963 – 30 June 1964	59
After 30 June 1964	60

Transition to retirement pension

! Some parts of this measure can be complex. We recommend you seek advice from a financial adviser, accountant or your tax agent to help you decide if this option is right for you.

A transition to retirement super pension can be set up by the fund when the member has reached their preservation age and they are still working.

An SMSF can only pay the member this type of benefit as a pension, not as a lump sum. The trust deed should be checked to see that it allows the SMSF to pay this type of benefit. The pension paid must be a minimum amount in each financial year (see Minimum annual pension payments on page 9) and is limited to a maximum of 10% of the SMSF's pension account balance (at the start of each financial year) in any one year.

SMSFs may also accept contributions on behalf of the member in the transition to retirement phase. There should be two accounts to make this arrangement work – one for paying benefits and another for receiving contributions.

Example: Transition to retirement pension

Judie is 58 years old and decides to reduce her working hours to move into retirement. To supplement the reduced salary she starts a transition to retirement pension from her SMSF by taking small quarterly payments.

➤ For more information, visit our website at ato.gov.au/smsf and search for 'Transition to retirement'.

Retirement

Retirement depends on a person's age, changing priorities, their personal circumstances and future employment intentions. Once a member decides to retire, they can access their super benefits on reaching preservation age or attaining 60 years old.

Example: Retirement

Linda resigns from her job as a bus driver at 62 years old. She does not intend to work in the future and is considered to be retired. Linda can access her super benefits at any time as she has satisfied a condition of release.

Conditions of release

Conditions of release are the events members need to satisfy to withdraw benefits from the super fund. The conditions of release are also subject to the rules set out in the trust deed of your SMSF. It is possible that a benefit may be payable under the super laws, but not under the rules of your SMSF.

The most common conditions of release for paying out benefits are:

- retirement
- attaining 65 years old
- attaining preservation age
- death of a member.

➤ Some of these conditions of release may have cashing restrictions. For more information about cashing restrictions, visit our website at ato.gov.au/smsf and search for 'Conditions of release to access your super before retirement'.

Other conditions of release

There are a number of other circumstances in which benefits can be released, such as:

- compassionate grounds
- permanent incapacity
- severe financial hardship
- terminal medical condition
- terminating gainful employment
- temporary residents leaving Australia.

Some of these conditions permit early access to benefits before reaching preservation age. There are specific rules for each of these and some have restrictions on the way the benefits can be cashed.

- For more information about release of super under exceptional circumstances, visit our website at ato.gov.au/smsf and search for 'Conditions of release to access your super before retirement'.

Checklist for paying benefits to members

This checklist summarises what you will need to consider as a trustee paying benefits from the fund.

- ☐ Professional advice from an accountant, financial planner or actuary before paying a benefit
- ☐ Rules of the trust deed before paying the member's benefit
- ☐ Type of benefit the fund needs to pay
- ☐ Member's preservation age
- ☐ Rules for a transition to retirement pension
- ☐ Conditions of release

Cashing benefits

There are two ways benefits can be cashed:

- **Compulsory cashing of benefits** – the only circumstance where compulsory cashing of benefits is required is when a member dies – your member's benefits need to be paid out as soon as possible after their death.
- **Voluntary cashing of benefits** – this can occur when a particular condition is satisfied – an example would be a member who has reached 65 years old.

The super laws impose cashing restrictions in some circumstances. The particular circumstances will determine whether the benefit can be paid as a lump sum or pension, or in some cases how much can be paid. There are no cashing restrictions in the case of retirement.

- For more information about cashing restrictions, visit our website at ato.gov.au/smsf and search for 'Conditions of release to access your super before retirement'.

Preserved and non-preserved benefits

The SMSF members' benefits in the fund can be classified as one or more of the following:

- preserved benefits
- restricted non-preserved benefits
- unrestricted non-preserved benefits.

Preserved benefits

Most money held in the SMSF will be in the form of preserved benefits. All contributions made by or on behalf of a member and all earnings for the period after 30 June 1999, are preserved benefits. They must be held in the SMSF until the super laws and your fund's trust deed allow them to be paid. Preserved benefits may be cashed voluntarily only if a condition of release, such as retirement, is met.

Restricted non-preserved benefits

Restricted non-preserved benefits are usually personal undeducted contributions made by a member between 1 July 1983 and 30 June 1999. These benefits are not preserved but can only be cashed voluntarily if one of the conditions of release listed for preserved benefits is met, or if the member ceases employment with an employer who has paid contributions into the SMSF for the member.

Unrestricted non-preserved benefits

Unrestricted non-preserved benefits do not require a condition of release and can generally be cashed at any time. They include benefits held in the SMSF for which a member has previously satisfied a condition of release and decided to keep the money in the fund.

Types of super benefits

! Before starting to pay any member a super benefit, seek the advice of a professional such as an accountant, financial planner or actuary.

As long as the rules set out in the SMSF's trust deed allow it, benefits to members may be paid as:

- an account-based super income stream (referred to as a super pension)
- a lump sum
- an annuity (can be purchased by an SMSF to pay out an income stream)
- a combination of lump sum and income stream
- a non account-based / defined-benefit pension (in limited circumstances).

Account-based super income stream

Account-based super income streams / pensions have the following general characteristics:

- minimum annual payment
- no maximum amount set (except for transition to retirement pensions)
- can only be commuted in certain circumstances
- capital value and income of the pension cannot be used as security for a borrowing
- cannot be paid to a non-dependent beneficiary.

Lump sum

Lump sums are benefits taken as a single payment. This is contrasted with an income stream, which is a regular series of payments.

Annuity

An annuity is an investment purchased with a lump sum from a life insurance company or registered organisation, under a contract that provides a right to an income stream over a number of years or for life.

Combination of lump sum and income stream

If the trust deed allows this to occur, and the conditions of release and cashing restrictions are met under the super law, a combination of a lump sum and an income stream can be taken.

Non account-based pension

There are limited circumstances in which SMSFs can pay non account-based or defined-benefit pensions to members. Benefit payments for this type of account are calculated using a set formula in the super legislation.

➤ For more information about non account-based or defined-benefit pensions, visit our website at ato.gov.au and search the legal database only for 'SD 2004/1'.

Super income stream starts

A super income stream starts on the first day of the period to which the first payment relates. This is referred to as the commencement day.

When the commencement day occurs must be determined by referring to all of the following:

- terms and conditions of the super pension as agreed by the trustee and member
- rules of the super pension as set out in the SMSF's trust deed
- relevant regulations of the SIS Regulations 1994 (SISR 1994).

However, the commencement day cannot be before the:

- date the member requests or applies to the trustee to start a pension
- day which the member and trustee agree to the terms and conditions that will govern the payment of the pension
- day all of the contributions and rollovers that are intended to form part of the capital supporting the pension have been made.

Super income stream ends

A super income stream ends when there is no longer a member who is entitled, or a dependent beneficiary of a member who is automatically entitled, to be paid a super pension.

The most common reasons for a super income stream to end are:

- failure to comply with pension rules and the payment standards of the SISR 1994
- exhausting the capital supporting the pension
- commutation – changing or reverting a pension fully to a lump sum or another type of pension
- death, unless a dependant beneficiary is automatically entitled to receive an income stream on the death of the member.

➤ For more information about when a super pension starts and ends, visit our website at **ato.gov.au** and go to 'Law, rulings and policy' then to 'Legal data base homepage' and then search for 'TR 2011/D3'.

➤ For more information about the government's 2012–13 MYEFO announcement regarding continuation of a pension benefit after death, refer to the Department of Treasury website at **treasury.gov.au** – Our Ministers – The Hon Bill Shorten MP –Media Releases 2013 - '001 Government Acts to Ensure Tax Certainty for Deceased Estates – Release of Draft Regulation'.

Minimum annual pension payments

The minimum amount for an annual pension payment is worked out by multiplying the member's pension account balance by a percentage factor. The amount is rounded to the nearest 10 whole dollars. The following table shows the percentage factor based on the member's age.

Table 2: Minimum pension payment amount

Age	Percentage of account balance	
	2011–12 and 2012–13	2013–14 onwards
Under 65	3%	4%
65–74	3.75%	5%
75–79	4.5%	6%
80–84	5.25%	7%
85–89	6.75%	9%
90–94	8.25%	11%
95 or older	10.5%	14%

➤ For more information about minimum pension standards, visit our website at **ato.gov.au/smsf** and search for 'Pension standards for self-managed super funds'.

Exempt current pension income

Ordinary income and statutory income a complying SMSF earns from assets held to provide for super income stream benefits is exempt from income tax. This is referred to as exempt current pension income (ECPI).

The ECPI exemption can be claimed by all complying super funds (including SMSFs) currently paying super income stream benefits provided certain conditions are met, including:

- the SMSF has started paying a pension
- all of the SMSF's assets are re-valued at current market value
- the SMSF has paid the minimum annual payment for any pension paid in the year the SMSF is claiming ECPI
- if required, actuarial certificates have been obtained before lodging the *Self-managed superannuation fund annual return* (SAR).

ECPI does not include assessable contributions or any non-arm's length income the fund may receive in the relevant financial year.

- ❌ **The amount of exempt current pension income cannot be more than the SMSF's assessable income less assessable contributions and non-arm's length income.**
- **For more information about issues that SMSF trustees may need to consider when a super income stream starts or stops, visit our website at ato.gov.au/smsf and search for 'Super income stream'.**

Calculating exempt current pension income

There are two methods for working out the amount of ECPI you can claim – the:

- segregated method
 - unsegregated method.
- **For more information about calculating ECPI, visit our website at ato.gov.au/smsf and search for 'Self-managed super funds and tax exemptions on pension assets'.**

Actuarial certificate

To calculate ECPI, an actuarial certificate may be required.

- ❌ **SMSFs using the unsegregated assets method will need an actuarial certificate for each year they want to claim exempt current pension income, regardless of the type of super pension benefit being paid.**

The fund **must** obtain an actuarial certificate for ECPI if the:

- SMSF used the segregated assets method and paid any pension other than an allocated, market-linked or account-based pension
- market value of a pension is more than the account balance supporting the pension
- SMSF is using the unsegregated assets method, regardless of the type of super pension benefit being paid.

The fund will **not** need an actuarial certificate for ECPI if either:

- the SMSF used the segregated method and only paid allocated, market-linked or account-based pensions throughout the year
- all SMSF fund members are receiving a pension and the combined account balances of these pensions are equal to the market value of the fund's total assets.

Tax on super benefits

Registering for pay as you go withholding

An SMSF needs to register for pay as you go (PAYG) withholding as soon as they know tax is to be withheld from income streams or lump sums.

- **For more information about PAYG withholding tax, visit our website at ato.gov.au/smsf and search for 'Guide to pay as you go (PAYG) withholding'.**

Payments where tax is withheld

The SMSF must withhold tax from benefit payments made to members under 60 years old if they were paid a pension or a lump sum. The SMSF must also withhold tax if a member is 60 years old or over and the benefit contains an untaxed element.

- **For information about payments requiring withholding tax, visit our website at ato.gov.au/smsf and search for:**
- 'Schedule 34 – Tax table for superannuation income streams' (NAT 70982)
 - 'Schedule 33 – Tax table for superannuation lump sums' (NAT 70981).

Payments where no tax is withheld

The SMSF does not withhold tax when paying a benefit from an income stream or lump sum if the member:

- is over 60 years old and the benefit is from a taxed source
- has died and a benefit is paid to a dependent beneficiary as a lump sum
- has a terminal medical condition
- was a member of the defence force, police or protective service and died in the line of duty and a lump sum payment is made to a non-dependant.

Issuing payment summaries

For pensions, the SMSF must provide a PAYG payment summary by 14 July following the end of the financial year in which the payment was made.


For lump sums, the SMSF must provide a PAYG payment summary within 14 days of making the super lump sum payment.

For more information about

- pensions, visit our website at **ato.gov.au/smsf** and search for 'PAYG payment summary – superannuation income stream' (NAT 70987)
- lump sums, visit our website at **ato.gov.au/smsf** and search for 'PAYG payment summary – superannuation lump sum' (NAT 70947).

For information about how to complete this form, visit our website at **ato.gov.au/smsf** and search for 'How to complete the PAYG payment summary – superannuation lump sum' (NAT 70946).

An SMSF does not need to provide a payment summary where a lump sum was paid because the member has a terminal medical condition.

-  **If you have issued payment summaries, you also need to lodge a *PAYG payment summary statement* (NAT 3447) with us by 14 August of each year.**

An SMSF may be able to lodge payment summaries and PAYG withholding reports online.

For more information about the electronic commerce interface and our other online services, visit ato.gov.au/online-services

If an SMSF provides an electronic PAYG withholding payment summary annual report to us, there is no need to forward copies of payment summaries or complete a *PAYG payment summary statement*.

Super death benefits

When an SMSF member has died, the surviving SMSF trustees must continue to comply with the relevant super and tax laws for paying out death benefits.

A death benefit payment is generally made by the SMSF to another person because of the death of a member of the fund. A super death benefit may generally be paid either as an income stream or a lump sum.

Income streams are usually either a new income stream that is paid to a dependant, or a reversionary income stream that is the continuation of an existing income stream and paid to a dependant.

If a member dies on or after 1 July 2007, a person who is not a dependant of the deceased is not able to receive an income stream.

Dependants

A dependant is someone who had a dependent relationship with the deceased. This includes the spouse, any of the deceased's children or anyone with whom the deceased has had an interdependency relationship. For tax purposes, a dependant must be under 18 years old or financially dependant.

For income tax purposes, a dependant for super death benefit purposes is:

- a surviving spouse or de facto spouse
- an ex-spouse
- a child of the deceased who is under 18 years old
- any person who is financially dependant on the deceased person just before they died
- any person with whom the deceased has an interdependency relationship just before they died.

Financially dependant on the person that died means they relied on them for necessary financial support. Children over 18 years old must be financially dependant on the deceased to be considered a dependant.

An interdependency relationship is generally a close personal relationship between two people who live together, where one or both provides for the financial, domestic and personal support of the other.

From 1 July 2007, for income tax purposes any person is included in the definition of a death benefit dependant if they receive a super lump sum because the deceased died in the line of duty as a member of the defence force, the Australian Federal Police or the police force of a state or territory, or as a protective service officer.

Any person who does not fall into one of the categories listed above is a non-dependant for super death benefit purposes.

Tax on super death benefits

! Withholding tax on super benefits or super death benefits can be complex. We recommend you seek advice from a financial adviser, accountant or your tax agent.

Registering for pay as you go withholding

An SMSF needs to register for pay as you go (PAYG) withholding as soon as they know tax is to be withheld from income streams or lump sums.

> For more information about PAYG withholding tax, visit our website at ato.gov.au/smsf and search for 'Guide to pay as you go (PAYG) withholding'.

For information about payments requiring withholding tax, visit our website at ato.gov.au/smsf and search for:

- 'Schedule 34 – Tax table for superannuation income streams' (NAT 70982)
- 'Schedule 33 – Tax table for superannuation lump sums' (NAT 70981)
- 'How to complete the PAYG payment summary – superannuation lump sum' (NAT 70947)
- 'How to complete the PAYG payment summary – superannuation income stream' (NAT 70987).

Calculating tax on super death benefits

The taxable component of a super benefit may consist of an element taxed in the fund or an element untaxed. This will depend on whether the benefit is paid from a taxed or untaxed source. SMSF trustees must determine these elements before paying any super death benefits.

Lump sum payment to a dependant of the deceased

A super lump sum that is paid to a dependant of the deceased is not assessable income and is not exempt income where the dependant is a death benefits dependant of the deceased for tax purposes. The SMSF does not withhold tax from that payment. There is no need for the SMSF to complete a payment summary.

Lump sum payment to a non-dependant of the deceased

The taxable component of a super lump sum death benefit received by a non-dependant is assessable income. The element taxed in the SMSF will be taxed at the maximum rate of 15% (plus the Medicare levy). The element untaxed in the SMSF will be taxed at the maximum rate of 30% (plus the Medicare levy).

Example: Taxed element in the SMSF

Bill was a member/trustee of an SMSF. Bill has died and his friend David, who is 50 years old and not a dependant of Bill, receives a \$200,000 lump sum super death benefit from Bill's SMSF on 1 August 2012. The fund must withhold the appropriate amount of tax and provide David with a payment summary to advise him the amount consists wholly of an element taxed in the fund.

David includes the \$200,000 income on his tax return for the year. He receives a tax offset and pays no more than 15% tax on this amount.

Example: Untaxed element in the SMSF

Bob was a member/trustee of an SMSF. Bob has died and his adult sister Judith, who is not a dependant, receives a \$300,000 lump sum death benefit from Bob's SMSF. The fund must withhold the appropriate amount of tax and provide Judith with a payment summary that advises \$100,000 was taxed in the fund and \$200,000 was untaxed in the fund.

Judith includes \$300,000 on her tax return for the year. She receives a tax offset and pays no more than 15% tax on the \$100,000 and no more than 30% tax on the \$200,000.

! Lump sum super death benefits paid to non-dependants of Australian Defence Force and police personnel who have died in the line of duty will receive the same concessional tax treatment as a lump sum super benefit paid to a dependant.

Lump sum payment to the trustee of a deceased estate

There is no requirement for an SMSF to withhold any tax from a lump sum death benefit paid directly to the trustee of a deceased estate. However, your SMSF must provide a payment summary to the trustee within 14 days of making the lump sum payment. The amount of the tax-free component and taxable component of the payment are included on the payment summary at the relevant labels.

Paying a super income stream death benefit

Super income stream death benefit to dependants

Dependants (but not non-dependants) may receive a super income stream death benefit and the SMSF trustee must withhold correct tax amounts. The tax varies based on the age of the deceased and the age of the dependant when they received the benefit. How the super income stream is taxed also depends on the components of the super income stream.

➤ For more information about withholding from super pensions, visit our website at **ato.gov.au/smsf** and search for 'Tax table for superannuation income streams' (NAT 70982).

For more information about completing payment summaries, visit our website at **ato.gov.au/smsf** and search for 'How to complete the PAYG payment summary – superannuation income stream form' (NAT 70986).

Dependants 60 years old or over, or the deceased was 60 or over

An SMSF does not need to withhold tax from a super pension death benefit made to a dependant 60 years old or over, or where the deceased was 60 years old or over. Also the SMSF does not need to issue a payment summary.

! An exception applies where the taxable component of the super pension death benefit includes an element untaxed in the SMSF. SMSFs must withhold tax on the element untaxed in the SMSF as set out in the relevant PAYG withholding tax table.

As the dependant is entitled to a tax offset equal to 10% of the element untaxed in the SMSF, the amount of tax withheld must be adjusted to take the tax offset into account. Where the dependant does not provide their tax file number before the payment is made, tax is withheld at the rate of 46.5%, including the Medicare levy, from the total taxable component.

Super income stream death benefit to non-dependants

From 1 July 2007, a person who is not a dependant of the deceased is not able to receive a super income stream. The benefit paid to the non-dependant will be a lump sum.

However, a super death benefit pension that started before 1 July 2007 and is being paid to a non-dependant is taxed in the same way as a super death benefit pension paid to a dependant.

Anti-detriment payment

! We recommend you seek advice from a licensed financial adviser, accountant or your tax agent before making any anti-detriment payments.

An anti-detriment payment is an additional lump sum payment that can be made from a complying super fund on the death of a member to a:

- trustee of the deceased estate
- spouse or former spouse of the deceased
- child (including an adult child) of the deceased.

An anti-detriment payment is not available where the death benefit is paid as a pension.

The term 'anti-detriment' payment originated in the now repealed section 279D of the *Income Tax Assessment Act 1936* (ITAA36) and is now referred to as a 'tax saving amount' in section 295-485 of the *Income Tax Assessment Act 1997* (ITAA97). The new provisions are intended to replicate the old and, for simplicity, we will continue to use the term anti-detriment payment.

The anti-detriment payment increases the deceased member's lump sum death benefit to negate the effect of tax while the member's benefit was accumulating in the fund. If the SMSF pays an anti-detriment payment, the trustee can claim an income tax deduction.

Where only part of the death benefit is paid to a spouse, former spouse or child of the deceased or only part is paid as a lump sum, a pro rata deduction may be available.

If the lump sum payment is made through the estate of the deceased member, the amount of the deduction available is dependant on the extent to which a spouse, former spouse or child of the deceased is expected to benefit from the estate.

To ensure this claim is made correctly, trustees must claim the deduction in the financial year in which the lump sum (not instalments) is paid. The lump sum should be paid as soon as practicable following the death of the member. These requirements ensure that associated SIS regulations are not at risk of being breached.

This deduction can be used to reduce the tax payable by the fund in the year of the payment. Alternatively, if a tax loss is generated, it can be carried forward to future years. Trustees of SMSFs should consider whether the fund is expected to generate sufficient taxable income to use this deduction.

Trustees also need to consider if there are sufficient funds in the SMSF to pay the extra anti-detriment amount. Some SMSFs set aside earnings in a reserve over a number of years or rely on the proceeds of an insurance policy to fund these payments. If an SMSF is using a reserve to source the extra payment, it is important to note that an allocation from the reserve could be a concessional contribution and count against the deceased member's concessional contribution cap, for excess contribution tax purposes.

➤ For more information about anti-detriment payments paid by a complying super fund to a trustee of a deceased estate, visit our website at ato.gov.au and search the legal database for 'ATO interpretative decisions' (ATOIDS).

Binding death benefit nomination

A binding death benefit nomination is supplied to the trustee of the SMSF by the member requesting the fund to pay their benefits to a nominated beneficiary. The super law does not require an SMSF member to have a binding death benefit nomination to pay out death benefits. However, if the SMSF does have one, it will need to follow the requirements of the SMSF's trust deed and the operating standards of the super law.

- For more information about binding death benefit nominations, visit our website at **ato.gov.au** and search the legal database only for 'SMSFD 2008/3'.

For more information about the day-to-day running of an SMSF, visit our website at **ato.gov.au/smsf** and search for 'Running a self-managed super fund' (NAT 11032).

Reporting and administration obligations

SMSF annual return

You still need to lodge an SMSF annual return each year to:

- report income tax
- report super regulatory information
- report member contributions
- pay the supervisory levy.

You need to do this even if the fund does not receive any contributions.

- For more information, visit our website at **ato.gov.au/smsf** and search for 'Running a self-managed super fund' (NAT 11032).

Trustee declaration

If you are a new trustee or new director of a corporate trustee, you need to complete and sign the *Trustee declaration* within 21 days of becoming a trustee or a director of the corporate trustee.

If you are an existing trustee (appointed before 1 July 2007), you need to ensure that new trustees complete the declaration.

Once you have completed the declaration, keep it with your records. You do not need to send it to us.

- To download a copy of the *Trustee declaration* (NAT 71089), visit our website at **ato.gov.au/smsf** and search for 'trustee declaration'.

Supervisory levy

SMSFs need to pay the supervisory levy with their SMSF annual return. The amount payable is included on the annual tax return for the relevant financial year.

- For more information, visit our website at **ato.gov.au/smsf** and search for 'Reform of SMSF levy arrangements'.

Tax

You need to understand SMSF tax requirements. Your tax responsibilities should not be left solely with any of the following:

- tax agents
- accountants
- super fund administrators
- financial planners.

We want to make sure all trustees are aware of how the tax laws may affect their SMSF and the consequences of non-compliance with the tax laws.

- For more information about SMSF tax requirements, visit our website at **ato.gov.au/smsf** and search for:
 - 'Self-managed superannuation fund annual return instructions' (NAT 71606)
 - 'Completing the self-managed super fund annual return'.

Appointing an auditor

As a trustee of an SMSF, you are required to appoint an auditor to audit your fund each year, at least 31 days before the due date of the SMSF annual return. Your auditor must form an opinion as to whether both of the following apply:

- your financial statements are a fair representation of the financial position of the fund
- your fund has complied with the relevant super law.

An amendment has been proposed to change the period for appointing an auditor to 45 days. If accepted this amendment will apply from 1 July 2013.

- You should appoint your auditor early to allow enough time to do the audit and lodge the SMSF annual return on time. For more information, visit our website at **ato.gov.au/smsf** and search for 'Appointing an auditor'.

Record-keeping requirements and telling us about changes

- For information about record keeping and how to tell us about changes to your fund, visit our website at **ato.gov.au/smsf** and search for 'Running a self-managed super fund' (NAT 11032).

Winding up an SMSF

There are many reasons why you might need to wind up your SMSF, including when all the members have left or all the benefits have been paid out.

- Once your SMSF is wound up, it cannot be reactivated.
- For more information, visit our website at **ato.gov.au/smsf** and search for 'Winding up a self-managed super fund' (NAT 8107).

Check you have met your reporting and administration obligations

Consider the following when checking if you have met your reporting and administration obligations.

- ☐ Appoint an auditor to audit your SMSF.
- ☐ Lodge your SMSF annual report each year by the due date providing all the information required, including valuing assets at market value and paying the supervisory levy.
- ☐ If you are having trouble lodging by the due date, seek an extension of time to lodge.
- ☐ Lodge accurate *Rollover benefits statements* (NAT 70944) when rolling over benefits into other funds.
- ☐ Keep minutes outlining investment decisions and how decisions are made, including those made on storage of collectables and personal-use assets.
- ☐ Keep records to explain the transactions of your SMSF.
- ☐ Keep annual operating statements and annual statements of the SMSF's financial position.
- ☐ Keep records to show who the trustees of your SMSF are and copies of their consent to act as trustees.
- ☐ Keep copies of annual returns and information provided to members.
- ☐ Keep required income tax and deduction documentation as part of your record-keeping obligations.
- ☐ Notify us of any change of details for the SMSF – for example, changes of trustees or members.
- ☐ Keep the original copy of the *Trustee declaration* with your records.
- ☐ Make sure you keep any actuarial certificates you have with your records.

Understanding compliance and penalties

Our compliance approach

Our compliance approach has traditionally focused on help and education. Recently, we have increased our compliance activity on high-risk funds and our focus on timely lodgment. For SMSFs, compliance activities will be more extensive than in the past.

If you are a trustee of an SMSF, we expect you will:

- know, understand and meet your responsibilities and obligations
- lodge your SMSF annual return every financial year
- pay the supervisory levy.

We want to make sure trustees, auditors, tax practitioners and financial planners are aware of the rules governing SMSFs.

If you are genuinely making an effort to meet your obligations, we will work with you to rectify any breaches.

If you become aware of a problem that results in your SMSF being non-complying, we encourage you to contact us so we can work with you to rectify the problem.

As the regulator of SMSFs, we take all possible steps to ensure that enforcement action in relation to contraventions is appropriate and taken only after due consideration has been given to all the circumstances, including those where we think the assets of your fund are at risk.

Compliance program

We regularly update and publish the compliance program that applies to all taxpayers, including SMSFs.

- For a copy of our most recent compliance program, visit our website at **ato.gov.au** and search for 'Compliance program' (NAT 7769).

Penalties

There are a range of regulatory penalties and sanctions that we may apply when we identify contraventions.

- For more information about penalties, refer to *Running a self-managed super fund* (NAT 11032).

Super terms explained

Actuarial certificate

An actuarial certificate may be required when a super fund provides a pension to qualify for exemptions from tax. The purpose of a certificate is to determine the portion of the SMSF's income that is exempt from tax. Only income derived from pension assets is exempt from tax. The actuarial certificate will provide the percentage of your SMSF's income that is tax exempt.

Accumulation phase

The phase in which the fund is receiving contributions and rollovers, which add to the super accounts of members in anticipation of funding their retirement at a future point.

Age pension

If you have reached pension age, depending on your eligibility, you may be entitled to an Australian Government age pension.

Annuity

Regular payments, typically fortnightly, monthly or yearly, and usually purchased with a lump sum from a life insurance company.

Anti-detriment payment

Also referred to as a 'tax saving amount', this is an increased lump sum payment from a super fund on the death of a member. This amount is paid as an additional amount over the member's balance and represents the amount the deceased would have received if no tax had been paid on their entitlement while it was held by the super fund.

Assessable income

This is a person's ordinary income and statutory income before deductions are taken into account. Reportable employer super contributions do not form part of a person's assessable income, but are added to it for a number of income tests using expanded definitions of income.

Benefits

The amount you are paid as a super pension, lump sum or a combination.

Commutation

To change or revert a pension to a lump sum or another type of pension.

Conditions of release

Conditions of release are the events your member must satisfy to withdraw benefits from their super fund. The conditions of release are also subject to the rules of your SMSF (as set out in the trust deed). It is possible a benefit may be payable under the super laws, but cannot be paid under the rules of your SMSF.

Dependant

A dependant is:

- a spouse, a former spouse or de facto spouse, including a same sex spouse
- a child of the deceased under 18 years old
- any person who relied on the deceased for financial support at the time of their death, or any person who lived with the deceased in a close personal relationship where one or both of them provided financial and domestic support and personal care.

Exempt current pension income

Ordinary income and statutory income a complying SMSF earns from assets held to provide for super pension benefits is exempt from income tax. This is referred to as exempt current pension income (ECPI).

Legal personal representative

The executor of the will or administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person.

Pension

Except in the term 'age pension', a pension includes a benefit provided by your SMSF or Australian Prudential Regulation Authority (APRA) regulated fund, if the benefit is taken under the SIS regulations and for the purposes of the SIS Act.

Pension age

The pension age is 65 years old for men and 64 years and six months for women, gradually rising to 65 for women by 1 July 2013. The pension age will rise for both men and women to 65 years and six months by 1 July 2017 and will continue gradually rising to 67 years old by 1 July 2023.

Personal super contribution

Personal contributions an individual pays into their SMSF from their after-tax (net) income.

Preservation age

The age when you can access your super benefits. Preservation age will rise from 55 years old to 60 years old between 2015 and 2024.

Reversionary pension

Any pension that on your death continues to be paid to your nominated beneficiary.

Rollover super benefit

A rollover super benefit is a super lump sum or a super member benefit directly transferred from one complying super fund to another complying super fund.

Self-managed superannuation fund

A self-managed super fund (SMSF) is a super fund that elects to be regulated by us and has between one and four members who, in general, are trustees or directors of a corporate trustee.

Superannuation (super)

Money you and/or your employer puts aside during your working life to provide you with money to live on when you retire. Employers are required by law to pay an additional amount based on a proportion of an employee's salaries and wages (currently 9% increasing to 12%) into a complying super fund.

Super benefit

A super benefit may be paid as either a super lump sum or super pension benefit.

Super income stream

A regular series of payments from a super fund meeting the requirements of the SIS regulations.

Super interest

Super interest means an interest in:

- a super fund
- an approved deposit fund
- a retirement savings account (RSA)
- a super annuity.

A super interest is generally any amount, benefit or entitlement that a member holds in a fund.

The total value of a member's super interest at a particular time is the total amount of all super lump sums, benefits or entitlements that could be payable from the interest at a particular time. Typically this is the member's total account balance in the fund.

Super lump sum

A super lump sum is a super benefit taken as a lump sum payment rather than as a pension.

Taxable contributions

Contributions to a super fund subject to the 15% contributions tax. These concessional contributions include employer contributions, salary sacrifice contributions and personal contributions for which you have notified your SMSF that you intend to claim an income tax deduction.

Taxed source

A taxed source is a super fund where tax is paid on contributions and earnings. Most people have their super accounts in taxed funds.

Transition to retirement

Since 1 July 2005, people who have reached their preservation age can withdraw part of their super benefits as a pension while they are still working. This pension can be no more than 10% of their super account balance per year.

Trustee

A trustee is:

- a person who holds property in trust for another
- the person who administers a trust in accordance with its trust deed and with the law (who very often exercises various discretionary powers).

A superannuation trustee is a person or company that holds and invests the fund's assets for the benefit of the members. Super legislation defines trustee as the person who manages the SMSF, scheme or trust.

Untaxed source

An untaxed source is where a benefit is paid from an untaxed super fund, or where a benefit is paid from a taxed super fund consisting of proceeds from a life insurance policy.

Winding up

Winding up your SMSF is the final stage of running your SMSF. It requires dealing with all of the assets of the SMSF where the SMSF has no assets left, and all the reporting and other administrative obligations of a trustee.

More information

Obtaining our publications

You can download the SMSF publications by going to our website at **ato.gov.au/smsf** and looking under 'In detail' – 'Print publications'.

To obtain a copy of our publications or for more information:

- go to our website at **ato.gov.au** and search for 'Order ATO products online'
- phone us on **13 10 20** between 8.00am and 6.00pm, Monday to Friday
- phone our publication ordering service on **1300 720 092**
- write to us at
Australian Taxation Office
PO Box 3100
PENRITH NSW 2740

Useful services

If you do not speak English well and need help from the ATO, phone the Translating and Interpreting Service on **13 14 50**.


If you are deaf, or have a hearing or speech impairment, phone the ATO through the National Relay Service (NRS) on the numbers listed below:

- TTY users, phone **13 36 77** and ask for the ATO number you need
- Speak and Listen (speech-to-speech relay) users, phone **1300 555 727** and ask for the ATO number you need
- internet relay users, connect to the NRS on **relayservice.com.au** and ask for the ATO number you need.

Notifying us of a change

To tell us about changes to your SMSF, you can:

- use our online service at **abr.gov.au** if you have a primary digital certificate or AUSKey
- phone us on **13 10 20**
- lodge a *Change of details for superannuation entities* (NAT 3036) form.

 **You cannot tell us about a change in the structure of an SMSF by lodging the SMSF annual return.**


Get the latest SMSF information

As an SMSF trustee you must continue to be aware of changes to regulatory and compliance issues.

Stay informed by subscribing to our free newsletter, which provides updates about the latest changes affecting SMSFs. To subscribe, go to our website at **ato.gov.au/smsf** and search for 'SMSF News'.

We can offer you specific advice

If you are unsure about any of your duties and responsibilities as a trustee, we can provide specific advice – that is, our view on how the super laws apply to your SMSF's specific transaction or arrangement. This advice is in addition to our SMSF rulings and determinations, booklets, website content and other general written advice.

 **To apply for specific advice, go to our website at **ato.gov.au/smsf** and search for 'How to apply for SMSF specific advice'.**

