Introduction for **individuals**

Illegal super schemes

Beware of offers to withdraw your super early

Australian Government
Australian Taxation Office

Have you ever been offered help to withdraw your superannuation early? Generally, you cannot access your super until you retire or meet a condition of release.

Some people promoting illegal super schemes will tell you that they can help you access your super now to pay off credit card debt, buy a house or car, or go on holiday.

These schemes are illegal. They will cost you a lot more than the super you access and may get you into a lot of trouble.

If you are approached about a scheme, phone us on 13 10 20 immediately to seek advice and ensure your super is protected.

How illegal super schemes work

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

Promoters of illegal super schemes usually:

- encourage you to transfer your super from your existing super fund to a self-managed super fund (SMSF) to access your super before you are legally entitled to
- target people who are under financial pressure or who do not understand the super laws
- claim that you can use your super for anything you want – which isn't true
- charge high fees and commissions, and you risk losing some or all of your super to them.

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

Illegal super schemes may lead to identity theft

If you participate in one of these schemes, you may become a victim of identity theft. Identity theft happens when someone uses your personal details to commit fraud or other crimes.

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

Rollovers to an SMSF

Most illegal super schemes require you to roll over your super from your super fund into an SMSF.

Contact your super fund first. They can advise you whether you can access your super.

We are working with super funds to protect your retirement savings from illegal early release schemes by strengthening rollover processes.

For more information, refer to ato.gov.au/superschemes

When you can legally access your super

Generally, you can only access your super when you reach preservation age and stop working. Currently, in Australia, the preservation age is 55 years old for those born before 1 July 1960. It then increases gradually. For anyone born after 30 June 1964, the preservation age is 60 years old.

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

To find out if you can legally access your super early, contact your super fund.

For more information about whether you are eligible to access your super early or for a copy of the application form:

- **contact your super fund**
- **visit the Department of Human Services website at humanservices.gov.au and search for 'Early release of superannuation' – they administer access (under limited circumstances) to super benefits under specific compassionate grounds or severe financial hardship**
- **visit ato.gov.au/individuals – 'What do you want to do?' – 'Check your superannuation' – 'Superannuation home' then select 'Accessing your super benefits'.**

Remember, you do not need to pay an application fee to anyone to legally access your super early.

Penalties for illegally accessing super early

Members and trustees of SMSFs

Severe penalties apply for illegally accessing your super early. You cannot claim a deduction for any fee or commission a promoter takes from your super when they help you to roll over your super or set up an SMSF.

You may be required to pay interest and penalties on super you have accessed illegally.

Changes to the law have been proposed, which if passed, will mean that any super you access illegally will be taxed at 45% regardless of your marginal tax rate.

If you illegally access your super early, it is included in your taxable income, even if you return the super to the fund later.

If you set up an SMSF and knowingly illegally access your super early, you may also incur a fine of up to $340,000 and a jail term of up to five years.

If you are an SMSF trustee, you also incur higher taxes and additional penalties, and can be disqualified if you allowed super to be accessed early from the fund. If you are disqualified, you are unable to operate as a trustee of an SMSF.

As a trustee, if you knowingly allow illegal access to super, you may incur penalties of up to $340,000 and jail terms of up to five years, or fines of up to $1.1 million for corporate trustees.

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

If you have been involved in a scheme, contact us immediately. We will take your voluntary disclosure and circumstances into account when determining any penalties.

Promoters

Promoters of schemes that encourage or promote the illegal early release of super may be prosecuted by us and the Australian Securities and Investments Commission (ASIC), as these activities may involve breaches of many laws, including the:

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

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

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

Some people have already received jail sentences for promoting such schemes and assisting people to illegally access their super early.

Tell us about illegal schemes

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

- stop any involvement with the scheme, organisation or the person who approached you
- do not sign any documents
- do not provide them with any of your personal details
- urgently phone us on **13 10 20** and advise us of your situation.

More information

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

- visit ASIC's website for consumers and investors at **moneysmart.gov.au**
- visit **ato.gov.au/individuals** – 'What do you want to do?' – 'Check your superannuation' – 'Superannuation home' then select 'Accessing your super benefits'
- phone us on **13 10 20** or ASIC on **1300 300 630**
- write to us at

  Australian Taxation Office
  PO Box 3100
  PENRITH NSW 2740

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 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** or contact us.

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

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PUBLISHED BY

Australian Taxation Office
Canberra, March 2013

NAT 14542-03.2013
JS 27035