Early access to your super when the going gets tough

With the prolonged drought and bushfires affecting many farmers and rural businesses across the country, questions are often raised about accessing existing superannuation to ease their financial stress.

When going through difficult times, it may be frustrating that you aren't able to access your superannuation account, especially when you need it the most. If you are experiencing severe financial hardship or have a medical disability you just can't afford, you may have the right to apply to have some of your superannuation released before you retire.

Eligibility for early release of benefits

Superannuation is meant to be a long-term investment to provide benefits in retirement (or death benefits). To qualify for all the tax and associated benefits, a superannuation fund must have this as its "sole purpose".

Once a person reaches the age of 65 (or dies), access to their superannuation is unrestricted. Prior to that time, one may be able to access the money before retirement if the person meets an alternative "condition of release," often in dire situations such as a total and permanent disability or terminal illness.

However, the superannuation legislation also recognises that there can be other legitimate situations where the release of monies before the intended time may be appropriate, these include:

- Compassionate grounds – to cover items such as; medical expenses, home modifications to cater for disability, housing loan payments to prevent foreclosure and funeral expenses of dependents
- Severe financial hardship – for amounts up to $10,000 in any year
- Transition to retirement – provided the person has reached their "preservation age"

Applying due to severe financial hardship

If you've spoken to a financial adviser/counsellor and are confident that early access to superannuation is the right course of action, you can apply for early release based on severe financial hardship. The rules for accessing super on the grounds of financial hardship are quite specific, limited in their application and are often misunderstood.

You are eligible for access under financial hardship if you:

- Are unable to meet reasonable and immediate living expenses such as mortgage payments, rent arrears, medical expenses etc.
- Are receiving an income support payment
- Have been receiving income support payments for at least 26 weeks in a row

A super withdrawal due to severe financial hardship is paid and taxed as a super lump sum. If the condition is met, you will be limited to withdrawing a maximum of $10,000 within a 12-month period.

The eligibility rules are different if you're over "preservation age" and haven't retired. You must:

- have reached your preservation age plus 39 weeks
- not be gainfully employed
- have received the income support payments for at least 39 weeks since reaching preservation age

How to apply

Applications for release of superannuation on compassionate grounds must be made to the Australian Taxation Office. Applicants need to provide appropriate documentary evidence to prove the intended use of the funds and demonstrate that the expenses could not be met from alternative sources. Importantly, the relevant expenses must not have already been paid. If approved, the Taxation Office will issue an authority to the fund concerned for a release of the funds.

Applications based on severe financial hardship are made to the trustee of the fund concerned. The general requirement is that the applicant must have been on some form of government support payment for a minimum of 26 weeks and can demonstrate financial hardship. In the case of self- managed superannuation funds, the trust deed of the fund should be checked to ensure that it allows for such payments.

Example – financial hardship:

Fred and Lucy are farmers in their early fifties whose financial situation has been severely impacted by the continuing drought. Their cash reserves have been exhausted by continuing feed bills for their remaining livestock. They have been receiving Farm Household Allowance for the past nine months and are struggling to pay for basic living expenses including food and school expenses for the children. They have a self-managed superannuation fund with balances of $350,000 each.

Fred and Lucy could apply to the trustee on the basis of severe financial hardship for the release of up to $10,000 each. This would need to be properly documented and their position verified with appropriate evidence.

Note that as Fred and Lucy are under their “preservation age”, any financial hardship payments would be treated as taxable lump sums – the final amount of tax applicable will vary depending on the taxable/tax-free components of their balances and their other taxable income – it could range from 0% to 22%.

Transition to retirement

Transition to retirement strategies can provide a legitimate means of accessing superannuation benefits before normal retirement. The important qualifier here is that the person must have reached their preservation age which will range from 55 to 60 depending on the year of birth. The following table illustrates this:

Date of Birth	Preservation age
Before 1/7/1960	55
1/7/1960 to 30/6/1961	56
1/7/1961 to 30/6/1962	57
1/7/1962 to 30/6/1963	58
1/7/1963 to 30/6/1964	59
After 30/6/1964	60

Example – transition to retirement strategy

John and Noelene are cattle graziers who have planned well for recurring drought conditions. In good years they have invested in additional superannuation contributions to their self-managed fund and both have accumulated Farm Management Deposits. The current severe drought conditions have placed considerable strain on the family budget. They are keen to maintain their breeding stock and plan to progressively draw down the FMDs to fund fodder and supplements. This will ensure that when the drought breaks, they will be well placed to quickly rebuild and generate solid cashflows. In the meantime, they estimate they will require up to $100,000 per annum to assist with living expenses and pay the fees for their twin boys who are in their final two of years at boarding school.

John is 60 and has $1 million in superannuation and Noelene is 54 and has $700,000 in her superannuation account. After taking appropriate advice, John decides to commence a transition to retirement pension with the full balance of his accumulation account. He will be required to withdraw the minimum amount of 4% ($40,000) and can draw up to the maximum of 10% per annum – that will allow for the withdrawal of up to $100,000 per annum. Note that Noelene could not follow this strategy as she has not yet reached her preservation age and therefore has not satisfied a condition of release. As John has turned 60, the receipt of the pension amounts from the fund will be tax-free in his hands.

Once the drought breaks and normal cashflows return, they plan to commute the transition to retirement pension back to accumulation phase and top-up contributions as their financial position improves.

Risks of accessing your super early

While accessing your superannuation may seem like an easy solution when going through a financial crisis, it is important to consider all the associated risks and consequences. Individual circumstances vary and these can include:

1. Tax may apply to withdrawals
   If you are below preservation age, you may be required to pay tax on any money you get from your superannuation. The tax varies depending on your circumstances and the taxable/tax free components of your superannuation balance.
2. Fees & charges
   You may need to pay your super fund a fee to have your super released early.
3. Reduced retirement benefits
   Early withdrawals can have compounding effects on the future balance of your superannuation with consequential impacts on your retirement plans.
4. Impacts on other government benefits
   Changes to your income due to superannuation benefits received may affect your eligibility for other benefits such as Family Tax Benefit, childcare allowance, etc.
5. Watch out for scams
   In recent years there have been a number of so-called "early access" schemes that have been promoted to facilitate the illegal early release of monies from superannuation accounts. Appropriately, the regulators have acted promptly against these schemes and there are severe penalties for promoters and trustees who engage in this unlawful conduct.

BOB LOCKE – CHARTERED ACCOUNTANT & SMSF SPECIALIST

Bob Locke has been an accountant and taxation expert for 35 years. His company, Practical Systems Super, provides an all-in-one SMSF solution with a full administrative service, SMSF management software, and independent, licensed advice, tailoring their package to meet the individual needs of trustees and SMSF professionals.

To find out more about Practical Systems Super, visit www.pssuper.com.au, or call 1800 951 855.