

Illegal early access to super - what every SMSF trustee needs to know

BONUS (14)

As an SMSF trustee, you're responsible for making sure your fund complies with superannuation laws. One of the most important rules is simple: your super must be preserved until you meet a condition of release.

Accessing your super too early might seem tempting in tough times, but doing so can be illegal and carry serious consequences.

Super is for retirement – not everyday expenses

Superannuation is designed to support you in retirement. The law strictly limits when you can access it.

You can only withdraw your super if you meet a condition of release, such as:

- Reaching preservation age (60) and retiring
- Turning 65
- Permanent incapacity
- Certain compassionate grounds or severe financial hardship (subject to strict criteria)

If you take money out of your SMSF outside of these rules, it is considered illegal early access.

Be wary of schemes and promoters

Some trustees are approached by promoters claiming they can help you:

- Use your SMSF to pay off personal debts
- Access your super to cover living expenses
- Set up structures that allow early withdrawals

These claims are misleading and often illegal.

As a trustee, you are legally responsible for the decisions you make even if someone else advised you to do it.

If something sounds too good to be true, it probably is.

The consequences can be severe

Illegal early access isn't a minor breach, it can have serious and lasting impacts.

If you access your super unlawfully, you may face:

- Additional tax liabilities, with the amount withdrawn included in your assessable income and taxed at your marginal rate
- Penalties and interest charges
- Disqualification as an SMSF trustee
- Your name being published on the disqualified trustee register

Beyond the financial impact, this can also harm your personal and professional reputation and reduce the savings you've worked hard to build for retirement.

What to do if you've made a mistake

If you've accessed your super early or been involved in a scheme, it's important to act quickly.

You can contact the ATO through its voluntary disclosure service. Coming forward early may help reduce penalties and your specific circumstances will be taken into account.

Help protect yourself and others

If you come across someone promoting illegal early access to super, you can report them to the ATO using a tip-off form.

Speaking up helps protect not only yourself, but also other trustees from falling into similar traps.

Final thoughts

Managing an SMSF comes with greater control but also greater responsibility.

Before making any decisions about accessing your super:

- Make sure you meet a valid condition of release
- Be cautious of unsolicited advice or schemes
- Seek guidance from a qualified professional if you're unsure

Your super is there for your future. Protecting it today helps ensure it's there when you need it most.