

Applying for early release of superannuation due to COVID-19 in the Context of Bankruptcy

The Government enacted measures on 25 March 2020 to assist individuals and businesses experiencing economic distress, caused by the COVID-19 virus. One such measure enables eligible individuals to apply to receive tax-free early release of funds held in their superannuation account. The tax-free withdrawals of up to \$10,000 will be available via application from mid-April 2020 and another application can be submitted for up to a further \$10,000 from 1 July 2020.

The early release of super may relieve some of the financial burden people are experiencing in meeting financial obligations or general costs of living. For those individuals with larger financial problems who may be facing bankruptcy to deal with those problems there are potential pitfalls associated with early release of super.

In the unfortunate event that an individual is declared bankrupt, how will super released under the scheme be treated in their bankruptcy?

Early access to superannuation BEFORE bankruptcy

When superannuation is withdrawn from a superannuation account prior to the commencement of bankruptcy, the superannuation funds that remain in the individual's possession at the time of becoming bankrupt are no longer protected and would be an asset which can be claimed by the Trustee in Bankruptcy.

Take the following scenario for example. An individual applied and successfully received \$10,000 from their superannuation fund, due to the COVID-19 virus, on 15 May 2020. They subsequently presented a Debtor's Petition and their bankruptcy commenced on 29 May 2020. At the time of bankruptcy, they still had \$8,000 of the early superannuation payment in their bank account. The Trustee in Bankruptcy is able to claim the funds as an asset available for the creditors of the Bankrupt Estate.

Also, if an individual receives the early release of superannuation and pays the money directly to a creditor or related party prior to bankruptcy, to either prevent the asset from being paid to the Bankrupt Estate, or to provide funds to a specific creditor in preference to other creditors. The Trustee in Bankruptcy may be able to void the transfer and the funds will be paid back to the Bankrupt Estate.

If an individual receives the early superannuation funds prior to bankruptcy, it is recommended that they retain records to demonstrate how the funds were used for the Trustee to review and consider.

Early access to superannuation AFTER bankruptcy

The early release of superannuation due to the COVID-19 virus withdrawn after the date of bankruptcy will be considered protected property and not available to the creditors of the Bankrupt Estate. Furthermore, if the withdrawn superannuation is used to purchase an asset, the asset will also be protected. In other words, the funds retain the same protection as the funds in the superannuation account at the commencement of the bankruptcy.

If bankruptcy is inevitable and an individual is considering applying for early access to funds in their superannuation account, it is likely to be in their best interests to apply for the funds after the bankruptcy has commenced.

Every situation is different and if you or your client are concerned about the implications concerning the early access to superannuation during these uncertain times, particularly if bankruptcy is being considered, please contact us at Shaw Gidley and talk with an experienced, independent advisor for a confidential and informal discussion catered to unique individual circumstances.

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WHEN EXPERIENCE MATTERS

