

Working out rule is taxing

DIY
SUPER

Monica Rule



Thanks to what is colloquially known as the work test, life can get complicated when you are aged over 65 and hoping to put money into your superannuation.

And it has got a little bit more complicated, and possibly even a bit easier, after some dealings I have had with the super umpires at the Australian Taxation Office.

Among the many things the tax office oversees is the work test, which dictates that someone aged 65 to 74 must be gainfully employed for at least 40 hours over 30 consecutive days in the financial year they wish to put money into their super.

I have been helping a client who is facing a demand from the tax office for excess contributions tax.

My client is over 65 and at the time she made the contribution she had not met the work test.

My argument was that because she had not met the test at the time she made the contribution, the trustee should not have accepted the contribution.

However, the tax office has said that because she has a self-managed super fund and is self-employed, she would have known that she would satisfy the work test at a later date in the financial year. I certainly did not see that liberal interpretation coming.

The timing of contributions has caused a great deal of confusion for SMSF trustees, members and industry professionals. Adding to the confusion is how we might interpret the term “gainfully employed”, the linchpin of the test.

The definition under the superannuation law means to be employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

The concept of gain or reward envisages receipt of remuneration such as a salary or wages, business income, bonuses, commissions, fees or gratuities, in return for personal exertion. It does not include the passive receipt of income such as the receipt of rent or dividends.

Therefore, if a member only receives passive income such as trust distributions or dividend income, they would not meet the gainful employment test. Unpaid work also does not meet the definition of gainful employment.

The term “part-time” means to be gainfully employed for at least 40 hours in a period of not more than 30 consecutive days in a financial year. So if you work 10 hours a week in one month or 10 hours over four days, that would be sufficient.

The paid work condition only has to be met once in each financial year you make the contribution, after turning 65. This means that once you have met it, you do not need to be gainfully employed for the rest of the financial year or need to meet the work test again each time you make a contribution to your SMSF.

Now, it seems, based on the tax office’s interpretation in my client’s case, that as to when the work test needs to be met depends on whether you are making contributions into an SMSF or a public superannuation fund, and also whether you are self employed.

If you are making contributions into a retail superannuation fund, regulated by the Australian Prudential Regulation Authority, you must meet the work test prior to making your first contribution after turning 65. This is because the trustee of the fund will need to be satisfied that you have met the work test in order to allow you to contribute into the fund.

If you plan to make contributions into your SMSF, it seems that as long as you have met the work test once in the financial year after you turned 65, you can contribute.

This is especially important for members who are self-employed.



Illustration: Toby Wilkinson

If you know that you will be in part-time paid employment at some time during the year after turning 65, you can make contributions into your SMSF even though you may not have worked part-time at the time you make the contribution.

Of course, if you assumed that you will work that year (after turning 65) and then fell ill and were unable to work at all, the contribution would need to be returned to the member within 30 days of the

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THE TIMING OF
CONTRIBUTIONS
HAS CAUSED A
GREAT DEAL OF
CONFUSION FOR
SMSF TRUSTEES

SMSF trustee becoming aware of the illness.

I’m not sure if the decision on my client’s case has wider applications but it seems that if you have an SMSF, as long as you meet the work test in the financial year that you make a contribution, it is not a contravention regardless of whether the contribution was made before or after you satisfied the test.

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