

## Superannuation contributions : Taxation treatment

The Income Tax Assessment Act 1997 (ITAA 1997) imposes limits (ie, “caps”) on the amount of concessional taxed superannuation contributions that can be made on an individual’s behalf. The contribution caps are quite complicated and this article provides a handy table which can be used to check each individual situation. It does not cover every possibility but goes through the main ones in detail.

Very broadly, there are two types of contributions that can be made to superannuation, ie:

- those that are included in the assessable income of the fund (which include any contributions where the contributor is eligible to claim a tax deduction). As a general rule, any contribution which is included in the assessable income of the fund will be a “concessional” contribution and will count towards the concessional contributions cap unless specifically excluded; and
- those not included in the assessable income of the fund. These contributions are generally “non-concessional” contributions and will count towards the non-concessional contributions cap unless specifically excluded.

In addition there are various other items that traditionally would not necessarily be considered a contribution (eg, a transfer from a foreign fund, directed termination payments), however, under ITAA 1997 such items are treated as contributions. In some cases, these “contributions” count towards the caps, and in other cases they are specifically excluded if certain criteria are met.

### What are the caps?

#### Concessional contributions cap:

- No limits apply at the *contributor* level. This means that all concessional contributions are fully deductible (irrespective of how large the contributions are<sup>1</sup>); however
- each *individual* is subject to a limit on the amount of concessional taxed (ie, at 15%) contributions that can be made on their behalf **from all sources**. This limit is a flat \$25,000 pa (indexed) for most people but a special \$50,000<sup>2</sup> (not indexed) limit applies to individuals who are over age 50 in the years to 30 June 2012;
- any concessional contributions made in excess of this limit will:
  - be taxed at an additional 31.5% (ie, a total of 46.5% tax will apply to the contribution); and
  - count in full (ie, before the imposition of 46.5% tax) towards the “non-concessional” contribution cap (discussed further below).

<sup>1</sup> For an individual taxpayer, a deduction cannot be claimed to the extent that a tax loss results. In other words, the deduction will be limited to the balance of the individual’s assessable income less other deductions.

<sup>2</sup> In May 2010, the Government announced this limit would be permanently extended to \$50,000 for those aged over 50 with superannuation balances of less than \$500,000. This has not as yet been legislated.

### Non-concessional contributions cap:

- The non-concessional contributions cap is six times the concessional contributions cap and for 2011/12 it is \$150,000;
- any concessional contributions made in excess of the concessional limit (ie, \$25,000 / \$50,000) count in full towards the non-concessional contribution cap;
- any contributions made in excess of the non-concessional contribution cap are taxed at the rate of 46.5%;
- the cap generally operates on a “use it or lose it” basis. In other words, if \$150,000 of non-concessional contributions are not made in 2011/12, the 2011/12 cap cannot carry forward to 2012/13; and
- individuals aged 64 or less on 1 July in any year have the ability to “bring forward” the following two years’ worth of the non-concessional contribution cap (ie, a maximum of 3 years “worth” of contributions – currently \$450,000 - can be made at any one time).

### What counts towards the caps?

The items that count towards each of the contributions caps are outlined in the table overleaf.

### When is a superannuation contribution made?

The table below outlines the ATO’s interpretation of when a contribution is made.

Common forms of contribution	When made
An electronic transfer of funds	When received by the fund as generally evidenced by a bank statement
Cash	When received by the fund
By cheque or money order	When received by the fund, as long as promptly presented (ie, generally within a few business days), unless the cheque is: <ul style="list-style-type: none"><li>• subsequently dishonoured; or</li><li>• post-dated in which case the date on which payment can be demanded (ie, the date of the cheque), provided the cheque is presented promptly and not dishonoured.</li></ul>
Transfer of shares or units	When the fund obtains a properly completed off-market share transfer form from the contributor
Property	When either legal or beneficial ownership of the property passes from the contributor to the fund
Promissory notes (related party as maker)	When received by the fund, as long as promptly presented (ie, generally within a few business days), unless the promissory note is: <ul style="list-style-type: none"><li>• subsequently dishonoured; or</li><li>• the promissory note is payable in the future in which case the date on which payment can be demanded, provided the note is presented promptly and not dishonoured.</li></ul>

### **Who monitors the caps?**

The ATO monitors each individual's contributions caps and will make an assessment of the amount of the excess concessional / non-concessional contributions and also the excess contributions tax payable.

### **What actually happens when a contributions cap is exceeded?**

The ATO will issue the individual with an excess contributions tax assessment notice as soon as possible after making its assessment. The ATO will also issue an appropriate "release authority" form with the assessment notice. The release authority form will be dated and will state the amount of excess concessional / non-concessional contributions tax payable.

The individual is personally liable for the excess contributions tax, however:

- any excess concessional contributions tax liability can, at the election of the individual, be paid personally or withdrawn from their superannuation balance(s); and
- any excess non-concessional contributions tax liability *must* be withdrawn from their superannuation balance(s). In the event that the value of the superannuation balance(s) is less than the tax liability, the shortfall must be paid personally by the individual.

Payments must be made within 21 days of the date of the notice of assessment (otherwise the GIC will apply), however, the ATO have advised that they generally have the discretion to defer the payment date to 60 days after the date of the assessment notice.

The mechanics of what happens when a contributions cap is exceeded is explained overleaf.

### **Refunding excess concessional contributions**

A consultation paper was released by Treasury in August 2011 in relation to the refunding of excess concessional contributions to certain individuals. This measure, when legislated, will provide eligible individuals with the option to have excess concessional contributions in respect of the 2011/12 or later income years refunded to them and taxed at their (potentially lower) marginal rate of tax, rather than incurring excess contributions tax. The measure will apply to those individuals who have breached the concessional cap for the first time, by \$10,000 or less.

### **Low Income Earners Government Superannuation Contribution**

A consultation paper was released by Treasury in June 2011 in relation to the Low Income Earners Government Superannuation Contribution (LIEGSC). The LIEGSC, when legislated, will provide a new government payment to low income earners from 2012/13 to improve the inequity they currently face due to the convergence of the lowest marginal tax rate (15%) with the contributions tax rate (15%).

Currently, concessional contributions are taxed at a flat rate of 15%, which means low income earners get little or no income tax concessions on their concessional contributions, or they are taxed more heavily on them than their normal income. The Government proposes to overcome this inequity by providing a new payment for eligible low income earners. The amount payable under the LIEGSC will be calculated by applying a 15% rate to concessional contributions (up to \$500 pa) for eligible individuals on adjusted taxable incomes of up to \$37,000.

### What counts towards the caps?

<b>Made by / Arising from:</b>	<b>Counted against the concessional contributions cap</b>	<b>Counted against the non-concessional contributions cap</b>	<b>Not counted towards either cap</b>
<b>A member for their own benefit</b>	Contributions claimed as a tax deduction	Contributions not claimed as a tax deduction	N/a
<b>An employer</b>	All counted in full – includes super guarantee (both normal contributions and shortfall payments), award, salary sacrifice	N/a	N/a
<b>The Government</b>	N/a	N/a	Government co-contributions
<b>The member's spouse on behalf of the member (recipient spouse)</b>	N/a	Count against the recipient spouse's cap	N/a
<b>Anyone other than an employer on behalf of a child aged under 18</b>	N/a	Count against the recipient child's cap	N/a
<b>Anyone on behalf of another person (where the recipient is not the contributor's spouse nor a child aged under 18)</b>	Count towards the recipient's cap	N/a	N/a
<b>Transfers from foreign superannuation funds</b>	N/a	The part of the transfer which is not assessable income of the fund	The part of the transfer that is assessable income of the fund because the member has elected (in the prescribed form) to have the tax paid by the fund rather than personally
<b>Transfers from other complying superannuation funds</b>	N/a	N/a	The entire amount of the rollover irrespective of the components
<b>Directed termination payments (1 July 2007 – 30 June 2012)</b>	Amount by which the taxable component exceeds \$1m (not indexed)	N/a	The remainder of the directed termination payment

### What counts towards the caps?

Made by / Arising from:	Counted against the concessional contributions cap	Counted against the non-concessional contributions cap	Not counted towards either cap
<p><b>Contributions arising from structured settlements or orders for personal injuries</b>            Note that:</p> <ul style="list-style-type: none"> <li>• certain conditions must be met; and</li> <li>• the Trustee must be notified, in the prescribed form, no later than the time the contribution is made that the contribution is being made as a result of the personal injury</li> </ul>	N/a	N/a	Entire amount
<p><b>Contribution equal to all or part of the capital <u>proceeds</u> from the sale of a small business CGT asset for which you can disregard any capital gain (ie, s 152-B of the ITAA 1997 applies – the 15 year exemption)</b></p> <p>Note that certain conditions must be met</p>	N/a	Excess over lifetime limit <sup>3</sup> of \$1.205m (indexed)	<p>The amount to be excluded from the non-concessional contribution cap as notified to the Trustee in the prescribed form at the time the contribution was made.</p> <p>A lifetime limit of \$1.205m (indexed) applies.</p>
<p><b>Contribution equal to all or part of the capital <u>gain</u> from the sale of a small business CGT asset which you can disregard (ie, s 152-D of the ITAA 1997 applies - the small business CGT retirement exemption)</b></p> <p>Note that certain conditions must be met</p>	N/a	Excess over lifetime limit <sup>2</sup> of \$500,000	<p>The amount to be excluded from the non-concessional contribution cap as notified to the Trustee in the prescribed form at the time the contribution was made.</p> <p>The CGT retirement exemption limit is \$500,000.</p>

<sup>3</sup> Note that the relevant lifetime limit (ie, the relevant CGT cap amount of either \$1.205m or \$500,000), is reduced by the amount of each contribution for which a small business CGT exemption is applied

### What counts towards the caps?

Made by / Arising from:	Counted against the concessional contributions cap	Counted against the non-concessional contributions cap	Not counted towards either cap
<b>Reserve / surplus allocations</b>	<p>Concessional contributions not immediately allocated on receipt by the fund but instead allocated at a later date from the reserves of the fund. These contributions count against the cap at the time of allocation.</p> <p>All other reserve allocations except for allocations:</p> <ul style="list-style-type: none"> <li>• that are &lt; 5% of member's interest and distributed in a fair and equitable manner;</li> <li>• from a pension reserve, given to the pensioner and immediately applied to provide a pension; or</li> <li>• from a pension reserve, arising from the commutation of the pension on death and giving rise to a death benefit</li> </ul> <p>count towards the cap at the time of allocation.</p>	<p>Non-concessional contributions not immediately allocated on receipt by the fund but instead allocated at a later date from the reserves of the fund. These contributions count against the cap at the time of allocation.</p>	<p>See exceptions outlined for concessional contributions at left .</p>
<b>Excess concessional contributions</b>	N/a	Any concessional contributions made in excess of the concessional limit (ie, \$25,000 / \$50,000)	N/a

**What actually happens when a contributions cap is exceeded?  
Excess concessional contributions**

Options	Action required		
	By	Action	Timeframe
1 <b>Individual pays tax personally without drawing on superannuation</b>	N/a	N/a	N/a
2 <b>Individual pays tax personally and seeks reimbursement from superannuation fund</b>  Note that an ATO administrative penalty of 20 penalty units will apply to an individual in the event that an excess amount is paid in relation to the release authority.  Note that an ATO administrative penalty will apply to the Fund trustee if they fail to comply with the release notice (20 penalty units) / provide the required statement within the requisite timeframe (minimum of 1 penalty unit, maximum of 25 units)	Individual	Send completed “ <b>voluntary release authority</b> ” form (provided by the ATO) to superannuation fund that holds a superannuation interest	Within 90 days after the date of the release authority.  Note that a Fund trustee cannot release money if a release authority is received outside this timeframe. As a result, the individual will lose the ability to withdraw funds from their superannuation in order to pay the tax.
	Fund trustee	Pay amount specified in the release authority to the individual	Within 30 days of receiving release authority from the individual
	Fund trustee	Provide both the ATO and individual a statement (in the approved form) that the amount has been released	Within 30 days of releasing the amount
3 <b>Individual chooses to have superannuation fund pay the tax</b>  Note that an ATO administrative penalty of 20 penalty units will apply to an individual in the event that an excess amount is paid in relation to the release authority.  Note that an ATO administrative penalty will apply to the Fund trustee if they fail to comply with the release notice (20 penalty units) / provide the required statement within the requisite timeframe (minimum of 1 penalty unit, maximum of 25 units)	Individual	Send completed “ <b>voluntary release authority</b> ” form (provided by the ATO) to superannuation fund that holds a superannuation interest	Within 90 days after the date of the release authority.  Note that a Fund trustee cannot release money if a release authority is received outside this timeframe. As a result, the individual will lose the ability to withdraw funds from their superannuation in order to pay the tax.
	Fund trustee	Pay amount specified in the release authority to the ATO	Within 30 days of receiving release authority from the individual
	Fund trustee	Provide both the ATO and individual a statement (in the approved form) that the amount has been released	Within 30 days of releasing the amount

**What actually happens when a contributions cap is exceeded?  
Excess non-concessional contributions**

<b>By</b>	<b>Action</b>	<b>Timeframe</b>
<p><b>Individual</b></p> <p>Note that an ATO administrative penalty of 20 penalty units will apply to an individual in the event that excess amounts are paid in relation to the release authority</p>	<p>Send completed “<b>compulsory release authority</b>” form (provided by the ATO) to superannuation fund that holds a superannuation interest</p>	<p>Within <b>21</b> days after the date of the release authority in order to ensure an ATO administrative penalty will not be imposed on the individual. The penalty is currently 20 penalty units (ie, \$2,200).</p> <p>Otherwise, within 90 days of the date of the release authority. Note that Fund trustee cannot release money under this compulsory release authority if it is received outside this 90 day timeframe (see below)</p>
<p><b>Fund trustee</b></p> <p>Note that an ATO administrative penalty will apply to the Fund trustee if they fail to comply with the release notice (20 penalty units)</p>	<p>Pay amount specified in the release authority to the ATO</p>	<p>Within 30 days of receiving release authority from the individual</p>
<p><b>Fund trustee</b></p> <p>Note that an ATO administrative penalty will apply to the Fund trustee if they fail to provide the required statement within the requisite timeframe (minimum of 1 penalty unit, maximum of 25 units)</p>	<p>Provide both the ATO and individual a statement (in the approved form) that the amount has been released</p>	<p>Within 30 days of releasing the amount</p>
<p><b>Australian Taxation Office</b></p> <p>If the individual fails to give the “<b>compulsory release authority</b>” form to a superannuation fund that holds a superannuation interest within the 90 day timeframe, or if the individual requested release from a fund that does not hold a sufficient superannuation interest to cover the payment, the ATO may give the release to any superannuation fund that holds a superannuation interest on behalf the individual.</p>	<p>ATO sends “<b>Authority to release contributions tax</b>” to any superannuation fund that holds a superannuation interest for the individual.</p>	<p>N/a</p>
<p><b>Fund trustee</b></p> <p>Note that an ATO administrative penalty will apply to the Fund trustee if they fail to comply with the release notice (20 penalty units)</p>	<p>Pay amount specified in the release authority to the ATO</p>	<p>Within 30 days of receiving release authority from the ATO</p>
<p><b>Fund trustee</b></p> <p>Note that an ATO administrative penalty will apply to the Fund trustee if they fail to provide the required statement within the requisite timeframe (minimum of 1 penalty unit, maximum of 25 units)</p>	<p>Provide both the ATO and individual a statement (in the approved form) that the amount has been released</p>	<p>Within 30 days of releasing the amount</p>