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Superannuation contributions : who can contribute and when?

The Regulations to the Superannuation Industry (Supervision) Act (1993) set out detailed rules governing who can contribute to superannuation funds and when. The rules are often confused 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.

One point to watch in particular is that the *taxation* of superannuation contributions is governed by the Income Tax Assessment Act 1997. Please refer to our separate article "Superannuation contributions : Taxation treatment" for information on the contribution caps and the tax treatment of contributions.

The table only considers members up to age 75 because as a general rule, contributions cannot be accepted after 75. There are, however, two exceptions:

- mandated contributions can always be accepted regardless of the individual's age; &

- all other contributions permitted up to age 75 (as set out in the table) can be made up until 28 days after the end of the month in which the member turns 75 as long as the member has been gainfully employed on at least a part time basis during the financial year in which the contributions are made. For example, a member who met this work test some time before his 75th birthday in (say) April could have contributions accepted on his behalf up until 28 May.

  Note, however, the latter exception does not extend to the ability to claim a tax deduction for the contribution. In other words, if a tax deduction is to be claimed in respect of the contribution, it must be made within 28 days of the end of the month in which the member turns 75.

Note also that while the table sets out the strict criteria governing the acceptance of contributions, the relevant regulations also permit the trustee to accept a contribution if the trustee is reasonably satisfied that the contribution was actually in respect of an earlier period when the contribution could legitimately have been made. For example, if a member retires on his 65th birthday in June and his final pay (together with superannuation contributions) is made in July, the final contributions could still be accepted on the basis that they relate to a period before his 65th birthday.

From 1 July 2009, the rules enabling an individual to claim a personal tax deduction for superannuation contributions have changed. In particular, certain salary sacrifice contributions, known as "Reportable Employer Superannuation Contributions" (ie, RESCs) will be included in the definition of "income" used for the "10% test". RESCs are all employer contributions the employee ***could have chosen*** to receive as salary or wages rather than superannuation contributions. A contribution made to meet an employer's Superannuation Guarantee obligations, for example, is **not** a RESC.

An individual will satisfy the "10% test" for 2009/10, if they receive less than 10% of:

- assessable income; plus
- reportable fringe benefits; plus
- RESCs

from work-related activities.

	Age of the person for whom the contribution is made (the member)	
	Less than 65	**65 but less than 75**
Non-concessional contributions		
Member contributions Contributions by, or on behalf of, a member of the fund but does not include employer contributions made on behalf of the member	Yes: • regardless of work status; providing • the member contribution, in isolation, does not exceed three times the non-concessional contribution cap (ie, currently $450,000)	Yes: • if the member has been gainfully employed on *at least* a part-time basis during the financial year before the contributions are made (ie, if the person has worked at least 40 hours in a period of not more than 30 consecutive days in that financial year); and providing • the member contribution, in isolation, does not exceed the non-concessional contribution cap (ie, currently $150,000). Note that once the member has reached age 70, member contributions can only be accepted if made by the member on their own behalf.
Transfers from foreign funds The amount of the transfer reduced by the portion to be treated as assessable income of the Australian superannuation fund.	Yes: • regardless of work status; providing • the non-assessable portion of the transfer, in isolation, does not exceed three times the non-concessional contribution cap (ie, currently $450,000)	Yes: • if the member has been gainfully employed on *at least* a part-time basis during the financial year before the contributions are made (ie, if the person has worked at least 40 hours in a period of not more than 30 consecutive days in that financial year); and providing • the non-assessable portion of the transfer, in isolation, does not exceed the non-concessional contribution cap (ie, currently $150,000).
Eligible Spouse contributions	Yes: • regardless of work status of the recipient spouse; providing • the eligible spouse contribution, in isolation, does not exceed three times the non-concessional contribution cap (ie, currently $450,000)	Yes: • if the recipient spouse has been gainfully employed on *at least* a part-time basis during the financial year before the contributions are made (ie, if the person has worked at least 40 hours in a period of not more than 30 consecutive days in that financial year); and providing • the eligible spouse contribution, in isolation, does not exceed the non-concessional contribution cap (ie, currently $150,000). Note that once the recipient spouse has reached age 70, no further eligible spouse contributions can be accepted on their behalf.

	Age of the person for whom the contribution is made (the member)	
	Less than 65	**65 but less than 75**
Contributions on behalf of a person aged under 18	Yes: • regardless of work status of the recipient; providing • the contribution is not made by, or on behalf, of the recipient's employer; and • the contribution, in isolation, does not exceed three times the non-concessional contribution cap (ie, does not exceed $450,000).	Not applicable
Concessional contributions		
Employer Contributions		
• "Mandated" Contributions (ie, Super Guarantee contributions or contributions made under an industrial Award or agreement certified by an industrial authority)	Yes	Yes, however, note that many awards stop requiring contributions after 65 and the SG legislation stops requiring contributions after 70. Note also that contributions can still be accepted beyond age 75 if they are made under an industrial Award or agreement certified by an industrial authority.
• Other employer contributions	Yes	Yes, if the member has been gainfully employed on *at least* a part-time basis during the financial year before the contributions are made (ie, if the person has worked at least 40 hours in a period of not more than 30 consecutive days in that financial year). Note that a tax deduction will only be available to the employer for these contributions if they are made within 28 days after the end of the month in which the member turns 75.
Personal contributions for which a tax deduction is claimed Note that the member must give the trustee a valid notice of their intent to claim a tax deduction. There is a prescribed form for this purpose. Note also that the definition of income used for the "10% test" changed with effect from 1 July 2009.	Yes	Yes, if the member has been gainfully employed on *at least* a part-time basis during the financial year before the contributions are made (ie, if the person has worked at least 40 hours in a period of not more than 30 consecutive days in that financial year). Note that a tax deduction will only be available to the member for these contributions if they are made within 28 days after the end of the month in which the member turns 75.
Directed termination payments The taxable component of the directed termination payment above the $1m (not indexed) lifetime limit	Yes, regardless of work status of the recipient	Yes, if the recipient has been gainfully employed on *at least* a part-time basis during the financial year before the contributions are made (ie, if the person has worked at least 40 hours in a period of not more than 30 consecutive days in that financial year).

	Age of the person for whom the contribution is made (the member)	
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Contributions on behalf of another person excluding a spouse or person aged under 18	Yes, regardless of work status of the recipient	Yes, if the recipient has been gainfully employed on *at least* a part-time basis during the financial year before the contributions are made (ie, if the person has worked at least 40 hours in a period of not more than 30 consecutive days in that financial year). Note that once the recipient has reached age 70, such contributions can no longer be accepted.
Other contributions (neither concessional nor non-concessional contributions)		
Government co-contribution	Yes, regardless of work status.	Yes, if the member has been gainfully employed on *at least* a part-time basis during the financial year before the contributions are made (ie, if the person has worked at least 40 hours in a period of not more than 30 consecutive days in that financial year). Note that Government co-contributions cease after age 70.
Transfers from foreign funds The amount of the transfer which is treated as assessable income of the Australian superannuation fund. Note the member must advise the Australian superannuation fund trustee, in the prescribed form, of the amount to be taxed in the Australian fund.	Yes, regardless of work status	Yes, if the member has been gainfully employed on *at least* a part-time basis during the financial year before the contributions are made (ie, if the person has worked at least 40 hours in a period of not more than 30 consecutive days in that financial year).
Directed termination payments • the taxable component of the directed termination payment up to the $1m (not indexed) lifetime limit; plus • the tax free component of the directed termination payment	Yes, regardless of work status of the recipient	Yes, if the recipient has been gainfully employed on *at least* a part-time basis during the financial year before the contributions are made (ie, if the person has worked at least 40 hours in a period of not more than 30 consecutive days in that financial year).
Contributions relating to some CGT small business concessions In order to ensure that the contribution is not counted as a non-concessional contribution (and counted against the non-concessional contribution cap) the Trustee must be notified in the prescribed form on or before the time the contribution is made of: • which small business CGT concession is to apply; and • the amount to be excluded from the non-concessional contribution cap.	Yes, regardless of work status.	Yes, if the member has been gainfully employed on *at least* a part-time basis during the financial year before the contributions are made (ie, if the person has worked at least 40 hours in a period of not more than 30 consecutive days in that financial year)

	Age of the person for whom the contribution is made (the member)	
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Contributions arising from structured settlements or orders for personal injuries In order to ensure that the contribution is not counted as a non-concessional contribution (and counted against the non-concessional contribution cap), the contribution must be made within 90 days of the latter of the following : • the day the personal injury payment was received; • the day the agreement for settlement of the personal injury was entered into; or • the day the court order for the personal injury payment was made. In addition, the Trustee must be notified, in the prescribed form, no later than the time when the contribution is made that the contribution is being made as a result of the personal injury.	Yes, regardless of work status.	Yes, if the member has been gainfully employed on *at least* a part-time basis during the financial year in which the contribution is made (ie, if the person has worked at least 40 hours in a period of not more than 30 consecutive days in that financial year).