MLC TechConnect

Guide to concessional contributions

Contents

Disclaimer and important information

Guide to concessional contributions

1 July 2024

This guide explains the concessional contribution rules and the cap that applies when making these contributions.

What are concessional contributions?

Concessional contributions (CCs) are generally contributions that are included in the assessable income of a super fund. Table 1 below summarises the main inclusions and exclusions.

Table 1: Summary of inclusions and exclusions

Main inclusions in CC cap

- Mandated employer contributions eg super guarantee (SG)
- Voluntary employer contributions including:
  - salary sacrifice
  - additional employer CCs made above mandated contributions
  - other amounts paid by an employer to the member's fund eg admin fees or insurance premiums
- Personal contributions made for which a tax deduction is claimed[1]
- Payments by the ATO for SG shortfalls or from the Superannuation Holding Account
- Notional taxed contributions (generally made to defined benefit funds including constitutionally protected funds)
- Unfunded defined benefit contributions
- Contributions to defined benefit accumulation interests where those contributions would ordinarily be CCs under the law
- Amount by which defined benefit contributions exceeds notional taxed contributions
- Certain amounts allocated from a fund reserve or suspense account.

Main exclusions from CC cap

- Transfers from foreign super funds which are included in assessable income of the fund[2]
- Roll-over amounts of untaxed elements which do not exceed an individual's untaxed plan cap amount[3]
- A contribution made to a constitutionally protected fund
- Contributions counted towards the non-concessional contribution cap.

In many cases, CCs are tax deductible to the contributor (eg individual taxpayer or employer). There is an annual cap[4] on contributions that receive favourable tax treatment.

Advice tip

The CC cap applies to an individual. If the individual has more than one super fund, CCs made to all funds count towards the CC cap for the relevant financial year. Before providing advice on making CCs, it is important to check if your client or their employer has made contributions to more than one super fund to ensure they do not exceed their cap.

It is also necessary to consider CCs that are yet to be made for the financial year. For example:

- salary sacrifice amounts (consider the payment frequency for that employer), and
- if an employer pays SG amounts for the April – June quarter in June to allow a tax deduction to be claimed in the current financial year (ordinarily, employers have until 28 July to make these payments).

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1 ITAA97 s290-170
2 ITAA97 s295-200
3 Untaxed plan cap is $1,780,000 for 2024/25 but is reduced by untaxed amounts previously taken from that plan.
4 The cap is set by the *Income Tax Assessment Act 1997* (ITAA97).

Eligibility and acceptance

Several eligibility rules apply to CCs including:

- an annual cap
- age requirements, and
- a work test or work test exemption but only for personal deductible contributions where a member is aged 67 to 74. All other contribution types do not require a work test for members aged 67 to 74 since 1 July 2022.

Annual cap and indexation

An annual cap applies to CCs. In 2024/25 the cap is $30,000. The CC cap is indexed to average weekly ordinary time earnings in increments of $2,500. Individuals with a total super balance below $500,000 at 30 June prior can utilise unused CCs that have accrued since 2019/20, enabling them to make CCs in excess of the annual cap. This is because their personal annual cap includes the unused CCs from the last five financial years, as well as the annual cap for the current year. There are further rules and eligibility criteria for utilising catch-up CCs, which are explained in more detail from page 11.

Age requirements

Mandated CCs (such as SG) can be received at any age. Voluntary CCs must be received no later than 28 days following the end of the month in which the member turns age 75.

The work test[5] must be met for **personal deductible contributions** where the member is at least age 67 at the time a CC is made unless the member meets the work test exemption (explained on page 5). Other types of CCs (including salary sacrifice) do not require a work test to be met . Table 2 summarises the age restrictions when making CCs:

Table 2: Summary of general aged based rules for CCs

<table>
<tr><th>Age</th><th>Ability to make personal deductible contributions</th><th>Mandatory employer contributions including SG</th><th>Other CC types, eg salary sacrifice</th></tr>
<tr><td>Under 67</td><td>Generally no restriction</td><td rowspan="3">Can be received at any age</td><td rowspan="2">Generally no restriction</td></tr>
<tr><td>67 – 28 days following the end of the month the member turns 75</td><td>Can only be made if the work test is met or the work test exemption is utilised. A member must be gainfully employed for at least 40 hours over 30 consecutive days in the financial year the contribution is made to meet the work test</td></tr>
<tr><td>After 28 days following the end of the month the member turns 75</td><td>Mandated contributions only</td><td>Mandated contributions only</td></tr>
</table>

Meeting work test – personal deductible contributions

Where an individual wishes to make a personal deductible contribution and is at least aged 67 at the time of making the contribution, the work test or work test exemption requirements need to be satisfied in the financial year in which they wish to contribute. There is no requirement that the member be gainfully employed at the actual time of making the contribution.

It is good practice to ensure the work test is met prior to making the personal contribution, otherwise the tax deduction cannot be claimed if the individual fails to satisfy the work test later in the financial year. The ATO determines if the work test has been met and will utilise information contained in the individual's tax return or company's business activity statement.

5 Prior to 1 July 2022, from age 67 a work test was required for all CC types (excluding mandated contributions).

Advice tip

In the financial year an individual turns 67, if they do not satisfy the work test or work test exemption, the personal super contribution must be received by the super fund before their 67th birthday if they intend to claim a tax deduction for all or part of the contribution. The usual timing restrictions apply with regards to the notice of intent to claim a tax deduction.

Work test requirements

The work test is only required for personal contributions that the individual claims as a tax deduction where they are at least 67 at the time of making the contribution. The work test is met if the individual was gainfully employed for at least 40 hours over a consecutive 30-day period in the financial year. 'Gainfully employed' means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment[6].

Voluntary work does not meet the definition of gainful employment. Although there is no clear guidance to define what is accepted to be gainfully employed, some general considerations include:

- whether there is an intention to profit from the activity
- the scale of the operation
- submission of a tax return declaring income earned, and
- whether any advertising or marketing activities are undertaken.

Advice tip

In a case where it is unclear if a particular activity satisfies the requirements, the ATO can be contacted for guidance.

Work test exemption

Recent retirees aged between 67[7] and 74 may be able to make personal deductible contributions without having to meet the work test where they meet the following:

- in the last financial year the person met the work test
- 'total super balance'[8] (TSB) is less than $300,000 at 30 June prior, and
- the exemption has not been used in a prior financial year.

To make personal deductible contributions in a future financial year after the work test exemption has been utilised, the person must meet the work test in that financial year.

The exemption does not operate on a 'use it or lose it' basis. That is, there is no requirement that a person make use of the exemption at the first available opportunity. For example, consider a person who retires but returns to work in a later year. Provided they had not used the work test exemption in a prior financial year, they can use the exemption if they met the work test in the last financial year. Furthermore, the work test exemption can be used on multiple occasions throughout the financial year.

Tax implications

CCs are generally added to the assessable income of a super fund and taxed at 15% within the fund. The effective tax rate may be lower than the superannuation fund rate due to allowable deductions. However, for some clients, the actual amount of tax on CCs may differ based on their income.

Advice tip

It is worthwhile ensuring that your clients provide their TFN to the fund. Where the TFN is not provided by the member by the end of the financial year, a no-TFN tax of 32% also applies[9].

6 ITAA97 s 995-(1)
7 From age 65 in 2019/20
8 ITAA97 307-230
9 Will not apply if the amount of contributions received in the financial year are less than $1,000.

Income of $37,000 or less

Clients with an adjusted taxable income[10] of $37,000 or less receive a Government contribution into their super up to $500, known as the low income super tax offset (LISTO). The amount is equivalent to a refund of tax on $3,333 of CCs, provided eligibility requirements are met. This means clients with income of $37,000 or less may have little to no tax liability on their CCs. To be eligible for LISTO, the individual must:

- not be a holder of a temporary resident visa (New Zealand citizens in Australia may qualify for LISTO), and
- lodge a tax return and 10% or more of their total income[11] comes from business and/or employment; or does not lodge a tax return and 10% or more of their total income comes from employment.

If eligible, the amount of LISTO payable is:

- total concessional contributions x 15%
- up to a maximum of $500 and a minimum of $10 (if entitled to a payment between $0 and $10).

Income exceeding $250,000

If the client's Division 293 income[12] including CCs (within the client's cap) exceeds $250,000 in a financial year, an additional 15% tax (division 293 tax) applies to the CCs above that threshold. Division 293 tax does not apply to excess CCs. The division 293 tax, which is levied on the individual, is in addition to the 15% tax payable by taxed funds on CCs, making an effective total tax rate of 30%.

Please refer to our article **Div. 293 tax explained** for further information.

Taxation concessions and savings

Although advice to make CCs depends on personal circumstances, Table 3 below provides guidance on the effective tax rate payable (including Medicare levy) on CCs for people in different income brackets who do not exceed the CC cap for 2024/25. The greatest tax savings applies for income exceeding $190,000 but where division 293 tax does not apply.

Table 3: Tax concessions and savings

Taxable income	Marginal tax rate payable	Tax rate payable on CCs[13]	Super tax concession	Tax saving per $1,000 in CCs[14]
$0 – $18,200	0%	0%[15]	0%	$0
$18,201 – $45,000	18%[16]	0 to 15%	3 to 18%	$30 to $180
$45,001 – $135,000	32%	15%	17%	$170
$135,001 – $190,000	39%	15%	24%	$240
$190,001 +	47%	15% (or 30%[17] for Division 293 tax applies)	32% (or 17% for Division 293 tax)	$320 (or $170 for Division 293 tax)

10 Income includes taxable income (less any assessable amount under First Home Super Saver Scheme), adjusted fringe benefits, target foreign income, net investment loss, tax free pension or benefit, reportable super contributions less deductible child maintenance.

11 Total income for the 10% rule is assessable income, reportable fringe benefits, and reportable employer super contributions. For self-employed clients, total income is not reduced by the deductions that result from carrying on a business.

12 Division 293 income includes taxable income (less any assessable amount under First Home Super Saver Scheme), reportable fringe benefits, total net investment losses and low tax contributions.

13 Assumes contribution cap not exceeded.

14 Assumes contribution does not move client into lower taxable income band.

15 Reflects low income super tax offset and assumes receipt of 11.5% super guarantee.

16 Ignores low income exemptions for Medicare levy

17 Includes Div. 293 tax of 15%.

Main CC types

Employer contributions

Employer contributions are made by an employer on behalf of an employee into their super fund. Employer contributions can be mandated or voluntary.

Mandated employer contributions

Mandated employer contributions are contributions that are required under law. These are contributions:

- to satisfy an employer's SG obligations[18], or
- made under a law, an award or an industrial agreement for the benefit of a fund member.

In general, an employer can claim a tax deduction for super contributions made on behalf of employees.

Voluntary employer contributions

An employer can contribute more than the mandated amount. This may occur to cover expenses such as insurance premiums or fees, or employers may voluntarily contribute more to attract or retain employees. Employees can also elect to salary sacrifice part of their salary and contribute into super (see 'Salary sacrifice').

Member elects to make voluntary CCs

Key factors to consider when assessing whether clients should make voluntary CCs include tax effectiveness, liquidity available to contribute, preservation of contributions and clients' retirement savings expectations.

Voluntary CCs count towards reportable super contributions. As a result, this amount is included in 'income' for the purpose of certain Government benefits and obligations, including:

- Medicare levy surcharge
- Seniors and Pensioners Tax Offset
- Co-contribution and Low Income Superannuation Tax Offset, and
- Education loan programs like HECS-HELP.

When it comes to considering the type of voluntary contribution, employees may have the option between salary sacrifice and personal deductible contributions (PDCs).

Salary sacrifice

Employees can also elect to salary sacrifice part of their salary and contribute into super. Salary sacrifice is an arrangement between an employer and an employee, whereby the employee agrees to forgo part of their future entitlement to salary or wages in return for the employer providing them with benefits of a similar value. Contributions made through a salary sacrifice arrangement (SSA) into super are made with pre-tax dollars, meaning that amount is not taxed at the member's marginal tax rate. The difference between the marginal tax rate and the tax rate[19] on contributions constitutes the benefit of salary sacrifice for the client.

There is no legal obligation for employers to offer salary sacrifice to employees. In these cases, clients could consider either making personal deductible contributions (see page 8) regularly throughout the financial year or as a lump sum toward the end of the financial year.

Only prospective earnings can be sacrificed to be effective. This means an SSA is only valid if the agreement is in place before the employee has earned the entitlement to receive the relevant amount as salary and wages.

It is strongly recommended that a written agreement be put in place which states the terms and conditions of that agreement, including the payment frequency of these contributions. The ATO provides a detailed explanation in **TR 2001/10.**

Salary or wages are the most common types of payments that are sacrificed into super. As only future entitlements can be sacrificed, an effective arrangement cannot be made for salary or wages that have already been earned. This means payments to which an employee is already entitled to (such as earned salary and wages, accrued leave and bonuses or commissions already earned) cannot be salary sacrificed into super.

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18 Currently 11.5% of the ordinary time earnings.

19 High income earners will also incur Div 293 tax.

For example, annual and long service leave paid on termination of employment cannot be sacrificed to super. If a client has entered into an SSA and takes leave before the termination of employment, the SSA is still effective, and salary sacrifice amounts can be directed to super which relate to those salary payments received while on leave. There may be additional benefits of SG and further accrual of leave entitlements.

Example 1 – Salary sacrifice while on leave

Rachel entered into an SSA to forgo $200 salary per fortnight to be directed to super when she started her job. After 12 months, Rachel takes annual leave for three weeks. The salary sacrifice arrangement can continue while Rachel is on annual leave. This is valid, as the arrangement to sacrifice was in place before she had earned the entitlement.

Advice tip

Unlike SG or other employer contributions required under an award or workplace agreement, there is no legislative timeframe specifying when salary sacrifice contributions must be made to super. It is recommended that a timeframe be specified in the SSA. This could be, for example, at the same time as SG is paid or within three business days of being withheld from salary.

Personal deductible contributions

Generally, all individuals who are eligible to contribute may claim a tax deduction for personal super contributions. However, clients aged 67 – 74 must satisfy the work test or work test exemption in the year the contribution is made to be eligible to claim the deduction. The ability to claim a deduction enables some clients to make personal deductible contributions (PDC) and potentially target the CC cap where it is not possible through other voluntary contributions. An example is a client who is employed and receives SG contributions that are within the CC cap but their employer does not offer salary sacrifice arrangements.

A personal super contribution counts towards the non-concessional contribution cap unless a valid 'notice of intent' to claim a tax deduction for the contribution is submitted and the amount is claimed in their tax return[20], provided the ATO does not disallow the claim.

Clients can use the ATO 'Notice of intent to claim or vary a deduction for personal super contributions' form (NAT 71121), the form provided by their super fund, or submit a written request that includes all the details specified by the ATO. The notice of intent can be lodged with the contribution, however, if this does not occur, it must be supplied by the earlier of the:

- date the tax return is lodged for the year the contribution was made, or
- end of the financial year following the financial year in which the contribution was made.

A client must obtain acknowledgement of receipt from their super trustee before they or their registered tax agent completes their individual tax return for the year that the contribution was made.

A notice of intent cannot be accepted by the fund if the:

- client has exited the fund
- contribution(s) being claimed has been paid out as a lump sum or used to start a pension
- client has already submitted a contributions-splitting application in respect of that contribution that has not been rejected by the fund
- client has requested a release under the First Home Super Saver Scheme (FHSSS)
- notice includes all or part of an FHSSS amount that has been re-contributed to the super fund
- contribution is a downsizer contribution
- contribution is a recontribution of a Covid-19 released super payment, or
- contribution counts towards the lifetime CGT cap.

PDCs also cannot be made to a:

- Commonwealth public sector superannuation scheme in which a defined benefit interest is held
- Constitutionally protected fund or other untaxed fund
- other super funds specified in the regulations, or if
- the person is aged less than 18 at the end of the tax year unless they have income from employment or carrying on a business.

[20] S290-170 of ITAA97

Advice tip

A valid notice cannot be revoked by a client. However, a valid notice can be varied to reduce the contribution amount claimed within the same timeframe allowed for the original notice to be submitted and acknowledged.

If a contribution is made, then an amount is rolled over or withdrawn and then a notice is submitted, only a proportional deduction can be claimed.[21]

If a super interest is transferred in part or in full to commence an income stream before the notice is submitted, no deduction can be claimed at all.[22]

Any new personal contribution made in a financial year after a withdrawal or rollover has been processed, or after an income stream commences, can be claimed by completing a valid notice for that new contribution.

Where a deduction is denied by the ATO or not acknowledged by the super trustee, the amount counts towards the client's NCC cap. If the client exceeds their NCC cap, the amount becomes an excess NCC and be subject to the excess NCC tax regime.

Advice tip

A client cannot create a tax loss by making a PDC[23]. This means PDCs should, at most, be limited to the client's assessable income for the year, less any other deductions. Generally, there is no value in claiming a deduction against income on which no tax is payable, when considering the tax-free threshold, the Low Income Tax Offset and any other non-refundable offsets, for example the Seniors and Pensioners Tax Offset.

See our technical article for information on the **Steps to claiming a super deduction.**

Contributions to defined benefit schemes and untaxed funds

Employer contributions including salary sacrifice made into certain constitutionally protected funds (CPFs) and defined benefit (DB) schemes count towards a client's CC cap. Refer to Appendix A for more information on CPF and DB funds.

CCs into CPFs

CCs into an accumulation account in a CPF generally represent employer SG and salary sacrifice contributions. PDCs are not allowed to CPFs as these are untaxed funds, and contributions are not taxed in the fund[24]. A CC to CPFs counts towards the annual CC cap, but cannot create an excess CC by itself. The following example demonstrates the impact of contributing to a CPF.

Example 2 – Contributions to CPFs and retail accumulation fund

Julie is a member of a CPF and a retail accumulation fund. In 2024/25, her employer contributes $40,000 to her CPF and she salary sacrifices $10,000 to her retail fund. For 2024/25, Julie's CCs total $50,000 ($40,000 + $10,000). However, CCs into her CPF are not seen to exceed the $30,000 annual cap.

In 2024/25, Julie's modified CCs are $40,000 ($30,000 to the CPF and $10,000 to the retail fund). She has exceeded her CC cap by $10,000 ($40,000 - $30,000). The penalty for exceeding the cap is outlined later.

CCs into DB interests

Where a client has a DB interest, the amount of CCs for a financial year is the sum of[25]:

- accumulation contributions
- notional taxed contributions, and
- DB contributions.

21 Refer to example 10 in TR 2010/1.
22 Refer to example 11 in TR 2010/1.
23 ITAA97 s26-55
24 ITAA97 s290-155
25 LCG 2016/11

Accumulation contributions

CCs include employer contributions, salary sacrifice and PDCs (taxed funds only). PDCs are not permitted in untaxed DB interests, because if these deductions were permitted for untaxed fund members, they would receive a tax advantage over members of taxed funds.

Notional taxed contributions

These are calculated for clients in funded or partially funded DB interests. The amount of notional taxed contributions is an estimate of the amount of CCs that would be equivalent to employer contributions made into an accumulation fund. A fund actuary calculates the amount of notional taxed contributions based on a legislative formula[26].

Grandfathering transitional rules[27] apply when determining the notional taxed contributions for certain funded DB interests held on 5 September 2006 or 12 May 2009. To understand if the grandfathering transitional rules apply to your client's DB interest, contact the fund directly.

If notional taxed contributions for grandfathered interests exceed the annual CC cap, the contributions are treated as being equal to the annual cap. The grandfathering transitional rules do not apply to unfunded DB interests.

DB contributions

These comprise an additional amount of CCs for unfunded or partially unfunded DB interests, to better reflect the amount of accrued benefits for the year. A fund actuary calculates the amount of DB contributions based on a legislative formula.

For unfunded and partially unfunded schemes, DB contributions are generally greater than notional taxed contributions, and there is an additional amount to be included in CCs for the financial year. For fully funded DB interests, the DB contributions generally equal the notional taxed contributions for the financial year. The following examples outline the impact of CCs to various fund types and demonstrate when modified rules apply. The examples do not cover all scenarios.

Example 3 – Fully funded DB interest (grandfathering applies)

In the 2024/25 financial year, Jacob salary sacrificed $5,000 into his accumulation fund. He also has a DB interest that is fully funded and can apply the grandfathering transitional rules.

As his DB interest is fully funded, his DB contributions are equal to his notional taxed contributions (before applying the grandfathering transitional rules). In 2024/25, the DB fund's actuary calculated Jacob's notional taxed contributions and DB contributions as $32,000.

In 2024/25, Jacob's CCs are:

- $5,000 salary sacrifice, and
- $32,000 of notional taxed contributions.

As Jacob's DB interest applies the grandfathering transitional rules, his CCs are limited to the annual CC cap of $30,000 for that fund. In 2024/25, Jacob's CCs has exceeded the annual CC cap by $5,000, resulting from the additional salary sacrifice.

Example 4 – Partially funded DB interest (no grandfathering)

Andrew has a DB interest and an accumulation fund. In 2024/25, Andrew's CCs are:

- $10,000 PDCs
- $28,000 of notional taxed contributions, and
- $32,000 of DB contributions.

His total CCs for 2024/25 are $42,000 (ie $10,000 + $28,000 + ($32,000 - $28,000)). As Andrew's DB interest is not subject to the grandfathering transitional rules, no further modifications were required. That means Andrew exceeded his annual CC cap by $12,000 (ie $42,000 - $30,000) in 2024/25.

26 ITAR Subdivision 292-D
27 *Income Tax (Transitional Provisions) Act 1997* s291-170

Allocation from fund reserves

Amounts allocated from fund reserves to accumulation interests generally count towards the recipient's CC cap unless:

- it is allocated to all members of the fund, or a class of members to which the reserve relates (eg members of a sub-fund) on a fair and reasonable basis, and the amount allocated for the financial year is less than 5% of the value of the member's interest in the complying superannuation plan at the time of the allocation
- it is used to satisfy a pension liability that is due during the financial year
- it arises from the commutation of a pension which is allocated to the primary beneficiary and used to commence another pension for that person, or
- on the death of the primary beneficiary, the amount is allocated to fund a death benefit pension to an eligible beneficiary or paid as a death benefit lump sum.

Example 5 – Reserves

James, aged 62, commenced a $650,000 commutable lifetime pension in his SMSF in July 2000. He wants to commute and move to an account based pension. The current account balance is $750,000 with the commutation value being $400,000. On commutation, $350,000 will be transferred to a reserve in the SMSF.

The trust deed allows the reserve to be left to accumulate, paid out on death or allocated to any fund member. If the trustees allocate all the reserve from the commutation of James' pension to another fund member or to an accumulation account for James, the allocation counts towards the recipient's CC cap and this would result in an excess. If the reserve is applied entirely to purchase a pension for James, it is exempt from his CC and NCC caps.

In **SMSFRB 2018/1**, the ATO deems it necessary for an SMSF that uses a reserve to be able to clearly articulate the purpose for the reserve. Further, where reserves are kept, the trustee must formulate and give effect to a strategy for their prudential management that is consistent with the investment strategy and its ability to discharge its liabilities, as and when they fall due[28]. Any unexplained new reserves or increases in existing reserves by an SMSF is likely to attract scrutiny from the ATO.

ATO's view on using reserves to reduce TSB

The ATO has issued guidance on the use of reserves in SMSFs in **SMSFRB 2018/1.** The ATO outlines types of arrangements that the Commissioner will scrutinise carefully with a view to determining whether Part IVA of the ITAA36 applies. One concern includes an arrangement where an intentional use of a reserve is made to reduce a member's TSB below $500,000 to allow access to catch-up CCs (explained in next section).

This may allow the member to either claim a higher deduction for personal super contributions or have a higher amount of their salary and wage income subject to a salary sacrifice arrangement for an income year. Further, the earnings from these CCs may be taxed at a lower tax rate than would have been the case if the earnings were derived outside of superannuation.

Part IVA of the ITAA 1936 applies to a scheme if a tax benefit is obtained in connection with the scheme and the main purpose of the scheme, or a part of it, is to enable the taxpayer to obtain that tax benefit.

The ATO has not provided any other commentary on other arrangements relating to reducing a client's TSB which may result in the ability to make larger contributions or a greater tax deduction.

Catch up CCs

Eligible individuals can accrue unused CCs and carry these amounts forward to enable them to make CCs in excess of the annual cap in subsequent years. Amounts are carried forward on a five financial year rolling basis. For the 2024/25 financial year, unused amounts accrued from 1 July 2019 can be carried forward and used in future financial years if certain conditions are met.

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28 SISA s52B (2)(g)

$500,000 total super balance

To make use of carried forward CCs, an individual's total superannuation balance (TSB) must be below $500,000 on 30 June of the previous financial year. A person's TSB includes the sum of all:

- accumulation interests
- pension interests (including transition to retirement pensions)
- in transit rollovers, and
- a member's proportion of outstanding LRBA balance, where an SMSF has borrowed to invest since 1/7/2018, if the LRBA is with a related party or the member has satisfied a full condition of release
- **less** amounts contributed to superannuation as structured settlements.

See our **Know how – How to track your total super balance** to find out more about how the rules work and how your client can track their balance through **myGov**.

Accumulating unused cap amounts

Contributions made in excess of the annual CC cap, where a person has unused cap amounts from one of the five prior financial years, are deducted from unused amounts from the earliest to the latest financial year. Unused amounts which have not been utilised within five years will not be available to carry forward.

Example 6 – Making catch-up CCs

Joe's employer makes SG contributions on his behalf each year of $10,000. He makes no additional CCs from the 2019/20 to the 2023/24 financial year. From 1 July 2019, he accrues any unused CC cap amounts and may carry forward each amount to be used in the subsequent five financial years. To be eligible to make catch-up contributions, his TSB must be less than $500,000 on 30 June of the previous financial year.

In the 2024/25 financial year, Joe wishes to make a PDC to super of $60,000. Together with the SG contribution of $10,000, Joe's total annual CCs will be $70,000. Joe's annual cap for the 2024/25 financial year will be exhausted first.

The remaining $40,000 will then reduce Joe's unused CCs from the earliest financial year.

The caps used for these contributions are:

- $30,000 for 2024/25
- $15,000 carry-forward from 2019/20 and 2020/21, and
- $10,000 carry-forward from 2021/22.

	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
SG contributions	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000
PDCs	Nil	Nil	Nil	Nil	Nil	$60,000
Total CCs	**$10,000**	**$10,000**	**$10,000**	**$10,000**	**$10,000**	**$70,000**
Annual cap[29]	$25,000	$25,000	$27,500	$27,500	$27,500	$30,000
Unused cap accumulated for this year	$15,000	$15,000	$17,500	$17,500	$17,500	$0
Total unused cap available to carry-forward	$15,000	$30,000	$47,500	$65,000	$82,500	$42,500

29 Assumes for simplicity that the CC cap is not increased in 2025/26.

Catch-up contribution CGT offset strategy

The catch-up regime creates a planning opportunity for many clients. For example, individuals who are retired and do not receive SG, under the age of 67 and only have passive investment income may benefit from seeking financial and tax advice, to consider whether any tax efficiencies can be created by carefully planning when disposing of assets.

Example 7 – Using catch-up contributions to offset CGT

Mike is 59 and has retired. He has super interests totalling $340,000. He has a holiday house that he is considering selling in a few years. Mike fully utilised the CC cap in 2019/20 and made no CCs in 2020/21 and subsequent years. Assume that the property has a discounted capital gain of $200,000 when disposed. If Mike sold the property in 2024/25, he could make a PDC of $107,500 to reduce his capital gains tax liability.

If, however, he decided to wait until 2025/26 to sell the property, he may be eligible to make a PDC of $137,500 (assuming he does not make any CCs in 2024/25 and CC cap is not indexed). This is equal to his annual CC cap for that year of $30,000, plus his carried forward unused CC cap amounts from 2020/21 to 2024/25 financial years. To be eligible to make catch-up contributions, his total super balance on 30 June 2025 must be less than $500,000.

The difference in tax outcomes is summarised in the table below. If Mike's total income[30] for Division 293 tax purposes exceeds the $250,000 threshold, he would also need to consider the impact of the additional 15% tax in super on the portion of CC that exceeds the $250,000 threshold and the potential market conditions if he defers the property sale to the next financial year.

Note: As property sales are generally made by contract, the date the contract entered into is the date of the CGT event.

Tax payable if holiday home is sold in:		
Financial year	**2024/25**	**2025/26**
Personal tax + contribution tax	$20,388 + $16,125	$10,725 + $20,625
Total tax payable	**$36,513**	**$31,350**

Note: The example above is designed to show the benefit of using the catch-up measure. It has been simplified to illustrate the planning opportunity. Future increases to the concessional contributions cap, subsequent fluctuations in the market value of the property, Medicare levy and any potential changes to the personal income tax rates have not been considered. Realistically, other considerations are likely to outweigh the tax issues. Advice should be sought from a registered tax agent and licenced real estate agent as required, where specific advice falls outside the scope of advice under legislation or licensee requirements.

Exceeding the CC cap

The 2024/25 CC cap is $30,000 for all individuals, regardless of age. The ATO determines excess CCs and the amount is added to the client's assessable income for the same financial year in which the excess contribution applies, where it is taxable at their marginal tax rate.

The ATO provide a tax offset[31] of 15%, which represents tax on contributions paid in a taxed super fund. This tax offset is not refundable and cannot be carried forward or transferred. The ATO has the discretion to disregard or reallocate excess contributions upon application and taxpayers can object to a determination of an excess assessment.

30 Income includes taxable income (less any assessable first home super saver amounts), reportable fringe benefits, total net investment losses and low tax contributions.

31 ITAA97 s291-15.

Election to refund excess CCs

The client has the choice of:

- retaining the excess CCs in super, or
- releasing up to 85% of the excess CCs from super.

If an election is made to have part or all the excess CCs refunded, this amount, grossed up to allow for 15% tax on contributions, is no longer treated as an excess CC. It also means that amount is not assessed against the NCC cap[32]. However, if the client retains an excess amount in super, the excess CCs will be counted against the NCC cap. If, as a consequence, the NCC cap is also exceeded, the rules relating to excess NCCs apply, see our **Guide to non-concessional contributions.**

When the ATO issues an excess CC determination, it provides the client with the option to elect to release up to 85% of the excess CCs from super. The client has 60 days from date of issue to request the ATO to issue a release authority which can generally be done via myGov. The ATO then issues a release authority to the client's super fund to release the specified amount. The ATO collects this amount and remits it, net of tax, to the client.

Most super fund trustees must pay the release amount. Certain super fund trustees can choose not to release the amount. This applies to:

- defined benefit interests
- super interests in a non-complying super fund, and
- a super interest that supports a superannuation income stream.

Super fund providers must pay the ATO within 10 business days of receiving the release authority. The amount received under a release authority is not assessable income and not exempt income. This avoids double counting of this amount.

Inclusion in assessable income

Excess CCs are included in assessable income, irrespective of whether the excess amount is released or not. Assessable income is used in many definitions of 'income' when determining a person's entitlements to certain Government benefits and their liability to pay additional levies or surcharges. As the amount increases assessable income, it also has the potential to increase taxable income. Examples where clients may be impacted are:

- Medicare levy
- Medicare levy surcharge
- Private health insurance rebate
- Government co-contribution
- Low income super tax offset
- Child support
- Commonwealth Seniors Health Card, and
- Family Tax Benefits.

Interaction with Division 293 tax

The Division 293 tax is only applied on contributions within the CC cap that exceed the $250,000 threshold and is not levied on excess CCs. As a person's excess CCs add to their assessable income, and taxable income is used to determine their liability for Division 293 tax, this may have flow on implications when determining their final Division 293 tax liability.

32 ITAA97 s292-90(1A).

Appendix A - CPF and DB funds

Constitutionally protected funds

Constitutionally protected funds (CPFs) are funds that are untaxed super funds that do not pay income tax on contributions or earnings they receive due to constitutional limitations on the Commonwealth Government. These funds cover employees of state Governments in South Australia and Western Australia and for some members of the judiciary (such as judges' pension funds).

Funded DB interests

A DB fund is a superannuation fund that determines a member's entitlement based on a formula which may have several factors such as the time with that employer, contributions made, final salary and age. Therefore, the end benefit is not determined by other aspects such as investment returns. Depending on the fund, a lump sum, lifetime pension, or a combination of both may be offered to members. These are fully financed with contributions and earnings each financial year.

Unfunded DB interests

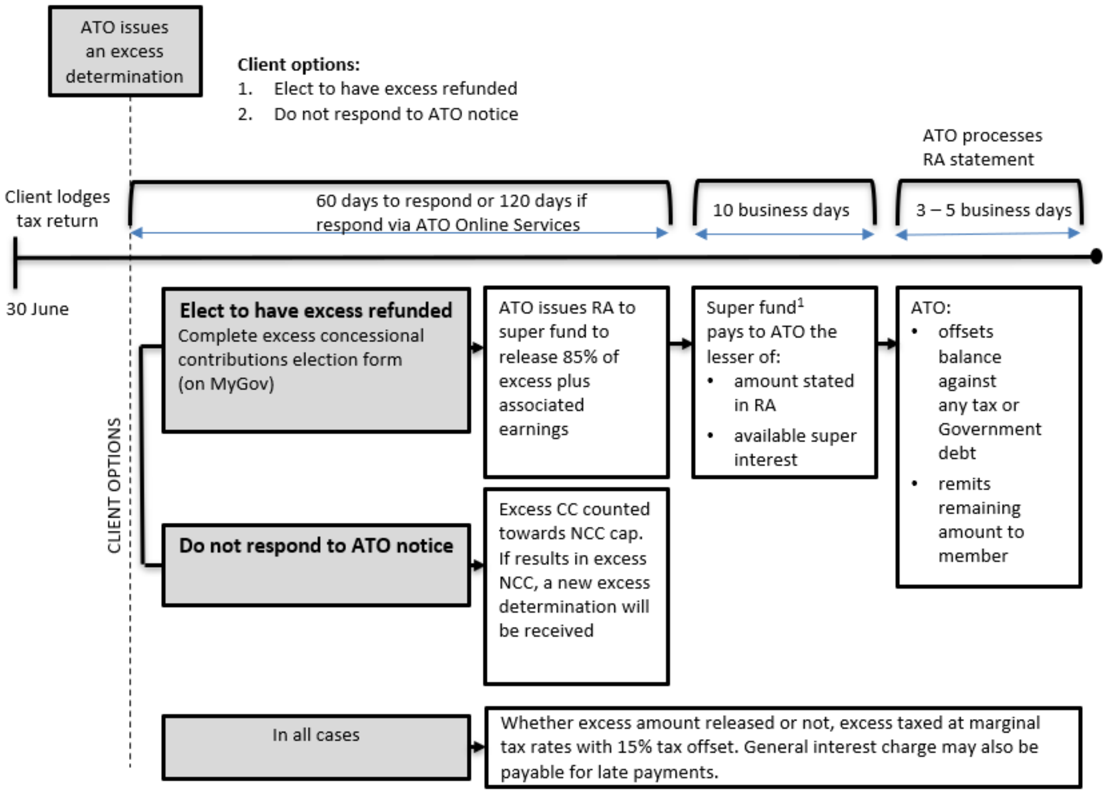
These are schemes where contributions are made into the fund just prior to a benefit becoming payable to an individual. Some unfunded schemes can be partially funded, known as, **partially unfunded** interests. Unfunded defined benefit funds mostly cover Government employees – for example, the Commonwealth Superannuation Scheme (CSS), Public Superannuation Scheme (PSS) and the Defence Force Retirement and Death Benefits Scheme (DFRDB).

Table 4: CC assessment for DB funds

CC type	Assessment
Accumulation contributions	Sum of: ▪ SG ▪ salary sacrifice, and ▪ PDCs.[33]
Notional taxed contributions (NTC)	**Funded** and **partially funded** DB interests have an actuarially assessed amount counted to the CC cap.
DB contributions (DBC)	Actuarially assessed – for a **funded** DB interest the **NTC equal to the DBC** (nothing counts to CC cap).
	Actuarially assessed – for **unfunded and partially funded** DB interests, **DBCs are greater than NTCs.** (The difference between the two counts towards the CC cap.)

33 Taxed funds only.

Appendix B - Excess concessional contribution flowchart



1. The super fund sends the ATO an RA statement (NAT 71777) stating the amount that was released and the reason if any amount was not released (in whole or part).