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Contributions

Issued on 1 July 2013.

Summary

A superannuation fund has strict rules set by law for the acceptance of contributions. The client's age, the type of contribution and work status are some of the factors that may determine their eligibility to contribute. Generally, as an unlimited amount of super benefits are tax free from age 60, there are limits on the amount that may be contributed to super each year. Importantly, if the non-concessional contributions cap is exceeded, the client may incur excess contributions tax.

This Technical bulletin covers:

- Rules for the acceptance of contributions
- Types of contributions – concessional, non-concessional, capital gains tax (CGT) cap contributions and personal injury contributions.
- Higher tax on certain concessional contributions for individuals with income over $300,000
- Contribution caps
- Consequences of exceeding the contribution caps
- Consequences of a member not providing their TFN, for contributions

Contribution eligibility rules

Eligibility to contribute may be based on the member's age, type of the contribution and, if applicable, whether the member satisfies a work test. This is summarised in the following table:

<table>
<tr><th>Age</th><th>Allowable contribution types</th><th>Work test required</th></tr>
<tr><td>Under 65</td><td rowspan="2">Personal
Spouse
Child under 18 (other than employer)
Employer mandated*
Employer other (including salary sacrifice and voluntary)
Overseas super transfers
CGT small business
Personal injury
Other third party</td><td>No</td></tr>
<tr><td>From age 65 but before age 70</td><td>Yes – must have worked at least 40 hours during 30 consecutive days (excluding employer mandated contributions)</td></tr>
<tr><td>From age 70 to age 75 (that is, on or before 28th day of month following the end of the month in which the person turns age 75)</td><td>Personal
Employer mandated*
Employer other (including salary sacrifice and voluntary)
Overseas super transfers
CGT small business
Personal injury</td><td>Yes, must have worked at least 40 hours during 30 consecutive days (excluding employer mandated contributions).</td></tr>
<tr><td>From age 75 (that is, after 28th day of month following the end of the month in which the person turns 75)</td><td>Employer mandated*</td><td>No, as mandated contributions only.</td></tr>
</table>

* Employer mandated contributions are SG contributions and contributions required under an award or certified agreement.

Member contributions

Member contributions include any contribution made by or on behalf of the member but does not include employer contributions (eg Super Guarantee or salary sacrifice). Member contributions include personal super contributions (including those for which a tax deduction will be claimed), spouse contributions, personal injury contributions, capital gains tax (CGT) cap contributions, overseas super transfers and other third party contributions.

Acceptance of member contributions

Importance of a Tax File Number (TFN)

A super fund cannot accept a member contribution where the member's Australian Tax File Number (TFN) has not been quoted to the receiving super fund.

Fund-capped contributions

A super fund cannot accept a single member contribution that exceeds:

- where a member is less than age 65 at any time during the financial year – 3 times the non-concessional contribution cap ($450,000 for the 2013/14 financial year), otherwise
- the non-concessional contributions cap ($150,000 for the 2013/14 financial year).

When applying this restriction, the following member contributions are not taken into consideration:

- a contribution (or part thereof) to which a valid and acknowledged 290-170 notice relates (ie notice of intent to claim a tax deduction)
- personal injury contributions
- CGT cap contributions
- Super guarantee shortfall payments
- Transfers from the Superannuation Holdings Accounts (SHA) Special Account.

Age restrictions

A super fund may accept member contributions made by the member in the following circumstances:

Contribution is made:	Acceptance
Prior to 65th birthday	Anytime
After 65th birthday, on or before 28th day of the month following the end of the month in which the member turns 75	If the member has been gainfully employed on at least a part-time basis during the financial year in which the contribution is made*
After 28th day of the month following the end of the month in which the member turns 75	Cannot be accepted**

*Gainful employment is not required where benefits within a First Home Saver Account are contributed prior to age 70. This must occur as a direct transfer.

**Contribution may be accepted at the discretion of the trustee if the trustee is satisfied that the contribution is in respect of a period during which the fund may have accepted the contribution, even though the contribution is actually made after that period.

Gainfully employed on at least a part-time basis ('work test')

Gainfully employed on at least a part-time basis is defined as employed or self employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment, for at least 40 hours in a period of not more than 30 consecutive days in the financial year the contribution is made (between 1 July and 30 June inclusive).

For additional information please refer to Technical Bulletin 29 – Gainful employment.

Refunding member contributions made in breach of the acceptance rules

Where a member contribution has been made in breach of the law, the super fund must refund the contribution to the entity or person that paid the amount within 30 days of becoming aware of the breach. There are two exceptions where the contribution does not have to be refunded:

- In respect of a TFN not quoted to the fund; if the TFN is quoted within 30 days of the amount being received by the trustee of the fund

- In respect of excess fund-capped contributions; where a valid 290-170 notice is received by the trustee of the fund within 30 days of the amount being received by the trustee, covering at least the amount of the excess fund capped contributions.

Note: Some super funds may refund these contributions before the expiration of the 30 days.

Generally, the member contribution to be refunded may be adjusted for investment returns, insurance premiums paid (or restricted to part thereof), administration costs and transaction costs.

Non-concessional contributions

What is a non-concessional contribution?

Generally, a non-concessional contribution is a contribution made by (or for) someone that is not included in the assessable income of the fund and consequently no tax is paid upon receipt by the fund. The term 'non-concessional' reflects that no tax deduction is generally available in respect of the contribution. A non-concessional contribution is made using after-tax money.

Non-concessional contributions generally include:

Type	Description
Personal	Contributions made by (or for) an individual, where no tax deduction is claimed.
Spouse	Contributions made by an individual for their spouse. The contribution counts towards the recipient spouse's cap. Refer to Technical Bulletin 11 – Spouse contributions
Excessive concessional contributions	Amounts in excess of the concessional contributions cap#
Contribution made for a child under 18	Contributions made by a third party to a child under 18 other than: • Those made by the employer of the member • the Government Co-contribution

From 1 July 2013, excess concessional contributions which the member elects to release from their super fund, grossed-up to include contributions tax (ie multiplied by 100/85) is excluded from non-concessional contributions.

What are the non-concessional contributions caps?

Financial year	Age on 1 July of financial year	Non-concessional contributions cap
2013/14	Under 65	$150,000[1] or $450,000[2,3]
	Age 65 or over	$150,000[1]
2007/08 to 2012/13	Under 65	$150,000 or $450,000[2,3]
	Age 65 or over	$150,000

1. This cap equals six times the standard concessional contributions cap
2. This cap equals three times the annual non-concessional contributions cap
3. This applies the bring-forward rule (refer to following section for additional information)

Amounts excluded from the non-concessional contributions cap include:

- Government co-contribution – refer to Technical Bulletin 14 – Co-contributions to super
- CGT cap contributions – refer to page 7
- Personal injury contributions – refer to page 8

An individual's total non-concessional contributions made within a financial year are subject to the non-concessional contributions cap.

Bring-forward rule

Where an individual is less than age 65 at any time within the financial year the individual is allowed to bring forward the next 2 financial years' non-concessional contributions cap. This effectively creates a 3 year period where total non-concessional contributions cannot exceed three times the first financial year's non-concessional contributions cap.

If the non-concessional contributions cap is indexed during this period, the individual will not get the benefit of this indexation.

The bring-forward rule automatically applies where non-concessional contributions within a financial year exceed the annual non-concessional contributions cap, unless the individual is already in a bring-forward period. There is no election required to implement the bring-forward rule.

Example

On 1 December 2013, Rodriguez turned age 65 and retired from full-time employment. On 1 January 2014, he makes a non-concessional contribution of $320,000 for which no tax deduction will be claimed.

As Rodriguez has made non-concessional contributions that exceed the 2013/14 non-concessional contributions cap of $150,000 and he was at least under age 65 at some time within the financial year, he has invoked the bring-forward rule. Total non-concessional contributions over the period incorporating the 2013/14, 2014/15 and 2015/16 financial years for Rodriguez are capped at $450,000.

Note: As Rodriguez was gainfully employed on at least a part-time basis within the 2013/14 financial year, he is eligible to make the member contribution. Rodriguez will still be required to satisfy the work test in either the 2014/15, or 2015/16 financial year if he intends to make additional member contributions (up to a maximum $130,000) within those financial years.

ATO's approach to bring-forward rule - 'de-minimis rule'

The ATO has outlined its approach regarding the bring-forward rule and excessive contributions tax in a Tax Agent Issue 55 June 2012. The industry has referred to the ATO's approach in these circumstances as 'de-minimis'. The text below is sourced from the ATO publication:

'Individuals under the age of 65 have an annual non-concessional contributions cap of $150,000, and the law allows them to bring forward the next two years of non-concessional contributions. This effectively gives them a three year threshold of $450,000 and allows them to contribute large amounts, potentially over the annual cap, so long as the $450,000 (in total) is not exceeded in the three year period.

The legislation automatically triggers the bring-forward rule (setting up this three-year threshold) when contributions exceed the annual $150,000 non-concessional contributions cap.

We have seen cases where the bring-forward mechanism has been unknowingly triggered by a small amount over the annual $150,000 cap. Some people have then gone on to contribute up to $450,000 in the next year, or year after. This can result in large excess non-concessional contributions tax assessments.

We take a practical, risk based approach for cases where the annual cap is exceeded by only a small amount that triggers the bring-forward arrangements.

We have recently reviewed and amended a small number of prior year assessments where people have had excess contributions as a result of the operation of the bring-forward rule.'

If your client has exceeded the non-concessional contributions cap due to unknowingly triggering the bring-forward rule, they should contact the ATO to see if the assessment can be reviewed (if not already).

Example

Michelle, age 45, made non-concessional contributions of $150,000 in 2012/13 and $450,000 in 2013/14. She is self-employed and made additional personal tax deductible contributions of $25,000 in 2012/13 and notified the fund of her intention to claim a tax deduction for these contributions.

However when she lodges her tax return for the 2012/13 year, her accountant advises that she can only claim a deduction for personal contributions of $24,850. Consequently she notifies the fund of the reduced amount of the tax deduction she will claim for her personal contributions.

Her total non-concessional contributions in 2012/13 are $150,000 + $150 = $150,150. She has triggered the bring-forward rule as her total non-concessional contributions exceed the annual cap of $150,000. This means the maximum non-concessional contributions she can make in the following 2 years is $299,850 ($450,000 - $151,150), to avoid incurring excess contributions tax.

She has inadvertently triggered the bring-forward rule and her contribution of $450,000 in 2013/14 would normally result in an excess contributions tax liability of $69,820 ($450,000 - $299,850 = $150,150 x 46.5%). However the ATO's approach in applying the de-minimis rule may result in no excess contributions tax liability.

How are non-concessional contributions reported?

Trustees of super funds report contributions to the ATO each financial year. The ATO use this information and the income tax return (if required to be lodged) to determine if the non-concessional contributions cap is exceeded.

The flowchart at the end of this technical bulletin outlines the process of fund reporting and ATO assessment.

Breaching the non-concessional contributions cap

Non-concessional contributions made in a financial year which exceed the relevant cap are subject to penalty tax.

The ATO issues a notice of assessment to pay the tax liability. A pre-assessment letter is generally sent (before the notice of assessment) stating the individual has breached the cap based on the information it has received from super funds. The ATO recognises that incorrect information can be reported by a super fund, and will provide an opportunity for the correct information to be reported. An individual may also amend any personal deductible contributions, if eligible. Generally, an assessment is automatically updated, upon receipt of amended information.

This tax liability is levied on the individual who must use a super fund to release the funds.

How much is excess non-concessional contributions tax?

Non-concessional contributions above the relevant cap incur excess tax of 46.5%.

How is excess non-concessional contributions tax paid?

The tax payable must be released from a super fund using a compulsory release authority provided with the notice of assessment. The compulsory release authority must be given to a super fund within 21 days following the date on the notice, otherwise a penalty of $3,400 and the general interest charge may apply.

Even though the compulsory release authority must be given within 21 days to avoid penalty, the authority can be lodged with a super fund for up to 90 days following the date of the notice. After 90 days, a fund cannot process the release authority.

The fund must release the amount to either the ATO or individual within 30 days after receiving the release authority.

Excess non-concessional contributions tax can be paid as follows:

1. Pay the tax using non-super funds and use the compulsory release authority to instruct the fund to release the money to the individual
2. Use the compulsory release authority to instruct the fund to pay the money to the ATO
3. Pay using a combination of these options.

Where the excess non-concessional contributions tax is not paid within 21 days after the individual receives the notice of assessment, the general interest charge (GIC) may apply. However if the release authority was given to a super fund within 21 days and the super fund makes the payment within 30 days (or any delay in payment was not within the individual's control), the individual can apply to the Tax Office to have the GIC disregarded.

If there is insufficient balance in one particular super fund to pay the liability, a copy of the release authority can be given to other super funds to release the shortfall. If there are insufficient super funds to pay the outstanding liability, the individual is responsible for any shortfall.

If the amount withdrawn using the release authority exceeds the tax payable, the excess is included in the individual's assessable income and an administrative penalty may also apply.

If the compulsory release authority is not provided to a super fund, the ATO will seek direct payment from the super fund. If the liability has already been paid directly by the individual they can request a refund (less any outstanding tax debts or amounts owing to other Government agencies).

A release authority cannot be supplied to a defined benefit fund.

Proportional rules and the release authority

The proportional rules do not apply to the amount withdrawn from the fund using a release authority, that is, the amount withdrawn is not split up into taxable and tax free components.

> Releasing benefits from an accumulation fund reduces the balance of the fund. Consider what impact this will have on the underlying components. Where multiple funds exist, consider whether any benefit can be gained by providing the release authority to a particular fund.
>
> Releasing benefits from an income stream in accordance with a release authority is a commutation. The usual considerations when making a commutation from an income stream apply.

What can you do if you disagree with the assessment?

See section 'What can you do if you disagree with the assessment?' on page 18.

Capital Gains Tax (CGT) cap contributions

Capital gains tax (CGT) cap contributions arise from the application of the small business:

- retirement exemption; and
- 15 year exemption.

CGT cap contributions are not counted against the non-concessional contributions cap (or the concessional cap) and an indexed lifetime limit of $1,315,000 (2013/14) applies. Not counting CGT cap contributions against the contributions caps recognises that often small business owners invest in their business rather than make regular contributions into super and later use the equity in their business to fund their retirement.

Retirement exemption

Where an individual disregards a capital gain by applying the small business retirement exemption, an amount equal to or up to the disregarded capital gain:

- must be contributed to super, if the individual is under 55; or
- may be contributed to super, if the individual is 55 or over.

To qualify as a CGT cap contribution, it must be made before the later of the following:

- the day that the individual is required to lodge their tax return* for the income year that the capital gain was realised
- within 30 days after the receipt of the capital proceeds from the CGT event

*Generally an individual is required to lodge their tax return by 31 October of the following financial year, or for those that used a tax agent in the previous year and will utilise that tax agent again, by 31 March.

Where a company or trust disregards a capital gain by applying the small business retirement exemption and distributes this amount in accordance with the small business concessions, to an individual who is:

- under 55, the company or trust must contribute the payment to a superfund on behalf of the individual (generally within 7 days); or
- 55 or over, the individual can make a contribution equal to or up to this amount as a CGT cap contribution. This contribution must be made within 30 days after the payment is made by the company or trust.

A $500,000 lifetime limit applies to the retirement exemption hence the $1,315,000 CGT cap can never be fully utilised where the 15 year exemption is not available.

Example

Mary's company has applied the small business retirement exemption and has made a respective payment of $400,000 to her. Mary is 58 and wishes to contribute these monies to super. Mary has a variety of choices, including:

- make a non-concessional contribution of $400,000 invoking the bring-forward provisions
- make a non-concessional contribution of $150,000 and a CGT cap contribution of $250,000
- make a CGT cap contribution of $400,000.

In making a decision, Mary needs to consider the possibility of making additional non-concessional contributions or CGT cap contributions in the same or a future financial year.

Note: As Mary is at least age 55, there is no requirement under the small business concessions for this amount to go into super.

15 year exemption

Where an individual disregards a capital gain by applying the small business 15 year exemption an amount equal to or up to the capital proceeds from the CGT event can be contributed to super as a CGT cap contribution.

In the case of the disposal of a pre CGT asset or a capital loss, treat it as if a capital gain was actually made. If the 15 year exemption could have been applied to this assumed capital gain, then an amount equal to or up to the capital proceeds can be contributed to super as a CGT cap contribution.

The CGT cap contribution must be made before the later of the following:

- the day the individual is required to lodge their tax return* for the income year that the capital gain was realised
- within 30 days after the receipt of the capital proceeds from the CGT event.

*Generally an individual is required to lodge their tax return by 31 October of the following financial year, or for those that used a tax agent in the previous year and will utilise that tax agent again, by 31 March.

Where a company or trust disregards a capital gain by applying the small business 15 year exemption (or could have assuming that a capital gain was made in the case of a capital loss or pre CGT asset) and makes a payment to an individual equal to or up to their stakeholder's participation percentage of the capital proceeds from the CGT event (within 2 years of the CGT event), the individual can make a contribution equal to or up to this payment as a CGT cap contribution. This contribution must be made within 30 days after the payment is made by the company or trust.

Example

Evan (68) had directly owned his farm since 1983 and made no significant capital improvements (pre CGT asset). He now intends to sell the farm. Evan does not need to apply the small business CGT concessions as the farm is a pre 1985 asset. However Evan can still use the CGT contribution cap as the 15 year exemption could have applied to his gain.

Evan receives $800,000 in proceeds from the sale of the farm and can satisfy the work test making him eligible to contribute to super. Evan can make a CGT cap contribution of up to $800,000 (the proceeds of the sale).

Distinct differences

There are distinct differences between the retirement exemption and the 15 year exemption and their interaction with the CGT cap.

	Retirement exemption	15 year exemption
Amount eligible for CGT cap	Relates to capital gain disregarded	Relates to capital proceeds received
Pre CGT assets (Pre 85)	N/A	Assume post CGT asset
Capital loss instead of a capital gain	N/A	Assume a capital gain was made

Member must provide 'Capital gains tax cap election' form

For a contribution to qualify as a CGT cap contribution the member must provide a completed 'Capital gains tax cap election' form to the complying super plan when (or before) making the contribution. This form can be obtained from the ATO website:

CGT cap form

Personal injury contributions

Personal injury contributions are not counted against the non-concessional contributions cap. There is no limit to the amount of personal injury contributions that can be made to a super fund.

To qualify as a personal injury contribution the contribution must arise from the settlement of a claim in respect of a personal injury to the member:

Qualifying personal injury payments	Details	When contribution must be made
Structured settlements	• Settlement of a claim for compensation or damages for personal injury suffered by the person; • claim is based on the commission of a wrong, or on a right created by statute; • settlement takes the form of a written agreement between the parties to the claim (whether or not a court order is required to make the agreement effective).	Within 90 days of the later of: • receipt of payment; or • date agreement (or court order) takes effect
Lump sum worker's compensation payment	Settlement of a claim in relation to a personal injury suffered by the person under a law of the Commonwealth or of a State or Territory relating to workers compensation.	Within 90 days of the receipt of the payment
Court order for a personal injury payment	• Order is made in respect of a claim for compensation or damages for personal injury suffered by the person; • the claim is based on the commission of	Within 90 days of the later of: • receipt of payment; or • date the court order is made.

Qualifying personal injury payments	Details	When contribution must be made
	a wrong; or on a right created by statute; • order is not an order for a structured settlement.	

In addition to the above, the following conditions must be satisfied to qualify as a personal injury contribution:

- 2 legally qualified medical practitioners must have certified that, because of the personal injury, it is unlikely that the member can ever be gainfully employed in a capacity for which they are reasonably qualified because of education, experience or training; and
- the member or their legal personal representative gives the fund a completed 'Contributions for personal injury' form when (or before) making the contribution. This effectively notifies the fund it is a personal injury contribution. This form can be obtained from the ATO website:

Personal injury form

Where compensation relates to both personal injury and loss of property, the personal injury contributions can only apply to the amount that is identified in a settlement agreement or order as being solely in payment of compensation or damages for personal injury. To make personal injury contributions a possibility, it would be prudent to ensure that any court order or written agreement specify the amount of the payment that relates to personal injury.

Example

Beatrice (40) receives a $400,000 compensation payment for personal injury. Settlement was a result of a court order. Beatrice contributes these funds into super. Within the same financial year (2013/14), Beatrice also made a non-concessional contribution of $200,000 (from the sale of an investment).

To ensure Beatrice utilises the personal injury exemption, she must:

- contribute the $400,000 within 90 days of receipt
- obtain 2 certificates from legally qualified medical practitioners to qualify the injury
- provide the 'Contributions for personal injury' form to the superfund on or before making the contribution

If Beatrice does not provide the form, she may unintentionally create an excessive contributions tax liability. In this case, the $400,000 contribution is not recognised as a personal injury contribution. Then her total non-concessional contributions for the 2013/14 financial year are $600,000 resulting in excess non-concessional contributions of $150,000 and a tax penalty of $69,750.

A fund cannot accept the form after receiving the contribution, so Beatrice must provide the form at the time of making the contribution (or earlier).

Concessional contributions

What is a concessional contribution?

Generally, a concessional contribution is a contribution made by (or on behalf of) a person that is included in the assessable income of the fund. Accordingly, it is subject to tax at up to 15%. However the rate of tax on certain concessional contributions is 30% for individuals earning over $300,000 - refer to following section. The term 'concessional' reflects the tax deduction generally claimed by an employer or individual in respect of the contribution.

Concessional contributions include:

Type of concessional contribution	Description
Employer salary sacrifice amounts	Refer to Technical Bulletin 10 – Salary sacrificing into superannuation.
Employer Super Guarantee (SG)	Employer contributions satisfying their SG obligations including the shortfall component of SG charge paid to a fund by ATO. Refer to Technical Bulletin 13 – Superannuation guarantee.
Employer notional taxed contributions	The amount representing the equivalent employer contributions that would be made if an employee was in an accumulation fund rather than a funded defined benefit fund. Refer to Technical Bulletin 01 – Defined benefit funds.
Voluntary employer contributions	Any employer contributions exceeding their super guarantee obligations, including fund costs paid by the employer (eg

Type of concessional contribution	Description
	administration fees and insurance premiums).
Personal tax deductible contributions	Refer to Technical Bulletin 35 – Tax deductible superannuation contributions.
Certain allocations from a reserve	Refer to Technical Bulletin 84 – Contributions and SMSFs
Certain foreign super fund transfers	The amount transferred from a foreign fund that is in excess of the vested amount at the time of the transfer. Refer to Technical Bulletin 08 – Foreign pensions.
Third party (family and friend) contributions	Contributions made by a third party other than: • those made by the spouse of the member • those made for a child under 18 • the Government Co-contribution

Higher tax on concessional contributions for individuals with income over $300,000

Since 1 July 2012, individuals with income greater than $300,000 will incur an additional 15% tax on certain concessional contributions. 'Income' for the purposes of this measure is the total of the following:

- Taxable income
- Total reportable fringe benefits
- Total net investment loss (includes both net financial investment loss and net rental property loss)
- Low tax contributions

Less the taxable component of super lump sums up to the low rate cap between preservation age and 59 (inclusive).

Division 293 tax

The additional 15% tax (or 'Division 293 tax') applies to low tax contributions to the extent that 'income' exceeds $300,000.

Example

Joe's 'income' for the 2012/13 year is $320,000 which includes $25,000 of low tax contributions. The additional 15% tax applies on his low tax contributions to the extent that his income exceeds $300,000. Income in excess of $300,000 is $20,000, which is less than his low tax contributions ($25,000). He is liable to additional tax of $20,000 x 15% = $3,000.

If Joe's income was $325,000 or more, he would be liable to an additional 15% tax on his total low tax contributions of $25,000 ($3,750 additional tax).

What are low tax contributions?

Low tax contributions are generally concessionally taxed contributions.

Low tax contributions will equal concessional contributions, where a client with only accumulation interests, makes concessional contributions within the concessional contributions cap.

Low tax contributions include:

- Employer contributions to an accumulation interest (eg super guarantee, salary sacrifice, other employer)
- Personal contributions for which a tax deduction is claimed
- Defined benefit contributions (valued by an actuary)
- Salary packaged contributions to constitutionally protected funds in respect of State higher level office holders

However excluded from low tax contributions are:

- Excess concessional contributions before 30 June 2013 which are subject to excess concessional contributions tax (31.5%). See next section for more information.
- Excess concessional contributions from 1 July 2013 (which are included in assessable income and a 15% tax offset applies).
- Contributions (including defined benefit contributions) that are not salary packaged contributions to constitutionally protected funds in respect of State higher level office holders
- Contributions in respect of defined benefit interests in a fund established under the Judges' Pension Act 1968.

Division 293 tax and excess concessional contributions

From 1 July 2013

Excess concessional contributions may be:

- Included in assessable income and a 15% tax offset applies; or
- Disregarded or allocated to another financial year.

2012/13 financial year

Excess concessional contributions may be subject to excess concessional contributions tax, refunded, disregarded or allocated to another financial year.

The table below summarises whether the excess concessional contribution is included in low tax contributions and the $300,000 income threshold, in each of these circumstances.

Type of excess concessional contribution	Is the amount included in low tax contributions?	Is the amount included in the $300,000 income threshold?
Excess concessional contributions from 1 July 2013	No	Yes
Subject to excess concessional contributions tax[1]	No	No
Refund of excess concessional contributions[2]	No	Yes
Commissioner applies discretion to disregard excess concessional contribution	Yes	Yes
Commissioner applies discretion to allocate excess concessional contribution to another financial year	Yes Included in low tax contributions in the year in which contribution is made.	Yes Included as income in the year in which contribution is made.

1. Applies to excess concessional contributions made before 30 June 2013.
2. Using option to refund excess concessional contributions of up to $10,000, made in 2012/13.

Division 293 tax does not apply to excess concessional contributions.

Former temporary residents are excluded

Former temporary residents are not liable to pay Division 293 tax (they are entitled to a refund of the tax, if already paid). Departing Australia Superannuation Payments are excluded as the withholding tax on the payment effectively recoups any tax concessions on contributions.

Judges

Defined benefit contributions to a super fund established under the Judges' Pension Act 1968 are excluded from low tax contributions. However they are included in 'income' to determine whether Division 293 tax applies to low tax contributions made to other funds.

State higher level office holders

State higher level office holders are individuals declared by regulations. Draft regulations indicate they are:

- State Ministers and their staff
- State Governors and their staff
- Members of State Parliament
- Heads of State Government Departments (or equivalent senior office holders)
- State judges

Low tax contributions, for State higher level office holders do not include contributions to a constitutionally protected fund except for contributions made as part of a salary packaging arrangement. However in working out whether income exceeds $300,000, all contributions to constitutionally protected funds are included in income. State higher level office holders with income in excess of $300,000, may be liable to Division 293 tax on salary packaged contributions to constitutionally protected funds and low tax contributions made to other funds.

Defined benefit interests

Clients with defined benefit interests (whether funded or unfunded) are equally affected by Division 293 tax. The amount of 'defined contributions' included in low tax contributions will be determined by an actuary in accordance with regulations.

Draft regulations indicate that the calculation of defined contributions will be different to the calculation of notional taxed contributions (used to work out an individual's concessional contributions). Unlike notional taxed contributions, grandfathering will not apply to defined benefit contributions.

How Division 293 tax is collected

Accumulation interests

For accumulation interests, the ATO will issue the individual with a notice of the amount of their assessed 'Division 293 tax' for the year. The amount is generally payable within 21 days of the notice. A 'release authority' is also issued to the individual, which allows the release of funds from any accumulation interest to pay all or part of the tax. An individual can also use their own funds to pay the tax.

Defined benefit interests

Liability to Division 293 tax in respect of a defined benefit interest is deferred and generally payable within 21 days of the first benefit being paid. Benefits released for severe financial hardship or on compassionate grounds will not trigger liability to pay the deferred Division 293 tax. All other benefits (eg retirement, death or rollover to another fund) will trigger liability to pay the deferred tax. Interest accrues on the outstanding deferred tax debt each year based on the long term bond rate for that financial year.

The ATO will issue the individual with a determination of the deferred Division 293 tax and notify the super fund of the deferred tax debt. A release authority is also issued to the individual to allow them to make a voluntary payment to reduce the tax debt, using funds released from an accumulation interest. An individual may also use their own funds to make a voluntary payment.

The super fund must notify the ATO, when the individual requests the first benefit to be paid (or a death benefit becomes payable). The ATO will then issue the individual with a notice of the assessed Division 293 tax. A release authority is also issued to the individual to allow the release of funds to pay all or part of the debt but only from the super fund which holds the relevant defined benefit interest. An individual may also use their own funds to pay the tax.

Division 293 tax - other issues for both accumulation and defined benefit interests

- The general interest charge is payable if the tax is not paid by the due date.
- The ATO requires information from the individual's tax return and information reported by the super fund in the member contributions statement or SMSF annual return, before assessing Division 293 tax. In most cases, the ATO will not have the fund information within 6 months of the individual lodging their tax return, resulting in a delayed assessment of Division 293 tax.
- If the individual dies, the ATO will issue the assessment of Division 293 tax to the deceased's legal personal representative (ie the executor, if there is a Will), who is liable to pay the tax from the deceased's estate.
- Special rules apply to work out the proportion of Division 293 tax that relates to an accumulation interest and a defined benefit interest, where an individual holds both interests and the amount of low tax contributions subject to the tax is less than the actual amount of low tax contributions.

What are the concessional contributions caps?

Concessional contributions are limited by the concessional contribution caps.

Financial year	Age on 30 June of financial year	Concessional contributions cap
2013/14	Under age 60	$25,000[1]
	Age 60 or over	$35,000[2]
2012/13	Any age	$25,000
2011/12	Under 50	$25,000
	Age 50 or over	$50,000
2010/11 & 2009/10	Under 50	$25,000
	Age 50 or over	$50,000
2008/09 & 2007/08	Under 50	$50,000
	Age 50 or over	$100,000

1. This cap will be indexed on 1 July 2014 to increases in average weekly ordinary time earnings (AWOTE) but will only increase in $5,000 increments. It is expected that this cap will be indexed to $30,000 by 1 July 2014 and then to $35,000 by 1 July 2018.
2. This higher unindexed cap will apply in the 2014/15 financial year to individuals aged 50 or over as at 30 June 2015. This higher cap will cease to apply when the standard cap indexes to $35,000.

Breaching the concessional contributions cap from 1 July 2013 - refund of excessive concessional contributions

Concessional contributions made from 1 July 2013 that exceed the concessional cap will be automatically taxed at marginal rates with an interest penalty and there will be an option to refund an amount from the super fund.

The total amount of excessive concessional contributions is automatically added to assessable income (that is, there is no choice) and taxed at marginal rates. A 15% non-refundable tax offset is available to compensate for the contributions tax paid by the super fund. The tax offset is calculated as 15% of the excess concessional contributions.

Example (sourced from explanatory memorandum)

In 2013/14, Mary has excessive concessional contributions of $10,000 and other taxable income of $60,000. The automatic inclusion of excessive concessional contributions means Mary's total assessable income is $70,000 and her marginal tax rate is 34% (32.5% plus 1.5% Medicare levy).

Including $10,000 in Mary's income results in $3,400 additional tax (34% x $10,000) and she receives a tax offset of $1,500 (15% x $10,000).

The amount of Mary's tax liability that is attributable to her excessive concessional contributions is:

= $3,400 - $1,500 (additional tax minus tax offset)

= $1,900

Excessive concessional contributions charge

For contributions from 1 July 2013, excessive concessional contributions tax is abolished and replaced with an excessive concessional contributions charge.

An excessive concessional contributions charge is an interest penalty and applies on the increase in tax liability as a result of adding excess concessional contributions to assessable income. The ATO does not have discretion to remit the charge and it is not a deductible expense.

The excessive contributions charge begins to apply on the first day of the income year relating to the excessive concessional contributions and ceases to apply on the day prior to the due date of the individual's first notice of assessment.

The charge is payable at the same rate as the shortfall interest charge (SIC) which is based on the 90 day bank accepted bill (as published by RBA) plus a 3% uplift factor. The SIC rate is adjusted quarterly and the rate for the July – Sep 2013 quarter is 5.82%. The charge is calculated daily and compounds daily.

The general interest charge (GIC) also applies for late payments.

Example

Following on with the above example of Mary, the excessive concessional contributions charge is payable on $1,900 at the shortfall interest charge (SIC) rate. Mary lodges her tax return for 2013/14 on 31 August 2014 and pays her outstanding liability in respect of her return on 21 September 2014.

Later on, the ATO determines Mary has excess concessional contributions for the 2013/14 year. On 30 November 2014, the ATO issues Mary with an amended assessment and excessive concessional contributions determination. Any extra tax is payable within 21 days after the notice of the amended assessment (21 December 2014).

The following charges apply:

Excessive contributions charge

Applies on $1,900 from the first day of the financial year (1 July 2013) to the day prior to the due date of the Mary's first notice of assessment (20 September 2014), based on the SIC rate.

Shortfall interest charge

Mary is also liable for SIC on the shortfall between the amount of tax she originally paid and the amount of tax identified in her amended assessment. She must pay SIC on the value of the shortfall for the period beginning 21 September 2014 and ending on the day she pays her liability under the amended assessment or no later than 21 December 2014 (the date when the payment is due). The amount of this shortfall includes her excess concessional contributions charge liability.

Mary must pay the additional amounts of income tax, excess concessional contributions charge and amount of SIC, within 21 days of receiving the notice of liability – 21 December 2014. If she does not pay in time, she must pay GIC on any unpaid amounts. The following table summarises her extra tax liabilities.

Liability	Calculated as:	Due date*
Additional amount of income Tax	$1,900 (see previous example)	21 December 2014
Excessive contributions charge	SIC rate applies to $1,900 from 1 July 2013 to 20 September 2014	21 December 2014
Shortfall interest charge (SIC)	SIC rates applies to shortfall of tax (which includes excessive contributions charge) from 21 September 2014 to 21 December 201 (or earlier date of payment) earlier date d	21 December 2014

* If any of the liabilities are not paid by the due date, the General Interest Charge will apply.

Electing to release funds

Although the addition of the excessive concessional contributions to assessable income is automatic, clients can elect to release up to 85% of the excessive concessional contributions amount (or a nil amount) from their super fund. The amount is capped at 85% as the fund has effectively incurred 15% contributions tax on these amounts.

Requirements of an election

The election must be in the approved form and:

- Identify the amount to be released (if more than one interest, the amount to be released from each interest)
- Identify the superannuation interest/s from which the amount is to be released
- Must be given to the ATO within 21 days after receiving the excess concessional contributions determination (or further period allowed by the ATO).

The election is irrevocable.

Superannuation interests from which funds may be released

If a valid election is made, the ATO must issue a release authority to the relevant superannuation provider. Although the ATO may revoke or vary a release authority before it receives a payment.

A superannuation provider must:

- Pay the amount stated in the release authority to the ATO (or lower amount*), within 7 days after the release authority is issued (failure to comply results in a penalty of $3,400); or
- Notify the ATO that it is not required to comply with the release authority, within 7 days after the release authority is issued.

* A lower amount may be paid if the elected amount exceeds the superannuation interest or the fund chooses not to voluntarily release funds.

Voluntary release of funds

A superannuation provider may voluntarily release funds from a defined benefit interest or a superannuation income stream. If it chooses not to release such amounts, the amount released may be less than the amount stated in the release authority or nil. A further election can be made by the individual, in relation to unreleased amounts, upon notification from the ATO.

Impact on non-concessional contributions cap

Excessive concessional contributions continue to count against the non-concessional contributions cap. However, if a client elects to release an amount from their super fund, the amount of their excessive concessional contributions that counts against the non-concessional contributions cap is reduced by 100/85 of the amount released. Accordingly, if a client releases the full 85% of their excessive concessional contributions, there is no amount of the excessive concessional contribution assessed on their non-concessional contributions cap.

Example (sourced from explanatory memorandum)

In 2013/14, Lucy (67) has $10,000 excessive concessional contributions. After including these contributions, her non-concessional contributions total $155,000, which exceeds her $150,000 cap.

Although Lucy can elect to release up to $8,500 (85% x $10,000), Lucy elects to release $4,250 of her excessive concessional contributions from the super fund. This reduces the amount assessed against her non-concessional contributions cap by:

100/85 x amount released

= 100/85 x $4,250

= $5,000

The amount assessed against Lucy's non-concessional contributions cap is now $150,000 ($155,000 minus $5,000).

Clients who have breached the concessional contribution cap from 1 July 2013 can withdraw up to 85% of the excessive amount. Clients may wish to withdraw for cashflow purposes or to manage the non-concessional contributions cap. However the addition of excessive concessional contributions to assessable income occurs automatically.

Refund of excess concessional contributions to individual

The ATO obtains the amount from the super fund and remits it to the individual, less any outstanding tax debts. Interest is payable by the ATO if it does not refund the amount to the individual within 60 days of receiving the payment from the superannuation provider.

Income tax treatment of amounts released

The amount released is not assessable income and is not exempt income. The proportioning rule does not apply to the amount. See 'Proportioning rules and release authority' on page 6 for more information.

How are concessional contributions reported?

Trustees of super funds report contributions to the ATO each financial year. The ATO use this information and the member's individual income tax return (if required to be lodged) to determine if the concessional contributions cap is exceeded.

The flowchart at the end of the technical bulletin outlines the process of fund reporting and ATO assessment.

Breaching the concessional contributions cap (before 1 July 2013)

Concessional contributions made in a financial year which exceed the cap (except those refunded under the 'one-off' option – see next section) are subject to penalty tax.

The ATO issue a notice of assessment to pay the tax liability. A pre-assessment letter is generally sent (before the notice of assessment) stating the individual has breached the cap based on the information the ATO has received from super funds. The ATO recognises that incorrect information may be reported by a super fund, and will provide an opportunity for the correct information to be reported. An individual may also amend any personal deductible contributions, if eligible. Generally, an assessment is automatically updated, upon receipt of amended information.

This tax liability is levied on the individual. They can choose to pay the tax liability directly (from non-super monies) or nominate a super fund to release benefits.

For financial years up to 30 June 2013, the penalty for excessive concessional contributions is 31.5% on the excessive amount. This amount is referred to as excessive concessional contributions tax.

Refer to the following ATO document 'Completing the voluntary release authority and statement' for additional information on releasing super benefits to pay the tax liability.

Voluntary release authority

'One-off' option to refund of excess concessional contributions up to $10,000

For contributions in the 2011/12 and 2012/13 financial years, clients have the choice to refund excessive concessional contributions if it is their first excess since 1 July 2011 and the amount of the excess is within $10,000. Once the choice is made with the ATO, an amount is refunded from the super fund and the tax return is amended to include the excessive concessional contributions.

An individual is eligible if all of the following are satisfied:

- The excess concessional contributions are made in 2011/12 or 2012/13 financial years;
- The excess concessional contributions are $10,000 or less;
- It is the first financial year that an excess concessional contribution has arisen since 1 July 2011 (regardless of the amount of the excess)
- The individual's tax return for the relevant year is lodged by 30 June of the following financial year (or a later period as the ATO allows).

Other details of the refund offer:

- The ATO provides eligible individuals a choice to refund contributions via a notice of offer. If an individual chooses not to refund, they must generally pay the excess tax.
- If a client receives an offer from the ATO to refund the excess concessional contributions, whether exercised or not, they are generally no longer eligible for a refund under this measure.

- If excess concessional contributions exceed the $10,000 limit in the 2011/12 year, the individual is not eligible for a refund in that year or the 2012/13 year.
- If a client wants to refund excess concessional contributions, they need to complete the 'Choice to include excess concessional (before-tax) contributions in assessable income' form sent to them by the ATO with the refund offer. The completed form must be returned within 28 days of the date on the offer (or a later period as the ATO allows).
- The ATO will send the super fund a refund release authority for 85% of the total excess concessional contributions (as 15% tax has already been paid within the fund)
- A super fund will not release the funds to the ATO if the:
  - Sum of the interests held by the fund is less than the amount in the authority.
  - Amount relates to a super income stream.
  - Amount relates to a defined benefit interest.
  - Amount relates to a fund that is non-complying.
- The ATO adds the total excess concessional contributions to the individual's assessable income in the same year the contributions were made. They are taxed at the individual's marginal rate and a refundable tax offset equal to 15% of the total concessional contributions applies (which recognises the tax already paid by the super fund).
- Any remaining credit is first applied to any ATO or Commonwealth agency debts, before it is refunded to the individual.
- The ATO adjust an individual's reportable employer super contributions (RESC) to ensure there is no double counting. That is, although an amount is added to assessable income, RESC is reduced by the same amount (but RESC cannot fall below zero). RESC is included in adjusted taxable income for certain benefits such as the co-contribution and Family Tax Benefits.
- The amount added to assessable income is disregarded for the purpose of the 10% test for personal deductible contributions and the 10% test for the co-contribution and low income superannuation contribution.
- The refunded excess concessional contributions will not count towards the individual's non-concessional contributions cap.
- The individual receives a notice of amended assessment and statement of account, along with any refund.

Example

Anne is 45 and has total super guarantee and salary sacrifice contributions of $24,500 for the 2012/13 financial year.

Her employer pays $1,000 for the annual premium on her life and total and permanent disability (TPD) insurance held within her super fund. This $1,000 employer contribution is a concessional contribution (which Anne has not taken into account when planning the amount of her salary sacrifice contributions).

This means Anne's total concessional contributions are $25,500, which exceed her concessional contributions cap of $25,000 by $500. As her excess contributions do not exceed $10,000 and it is her first breach after 1 July 2011, she can accept an offer to refund the $500 excess contributions and have this amount taxed at her marginal rate.

The one-off option to refund assists clients who breach the concessional contributions cap by up to $10,000 for the first time since 1 July 2011, in the 2011/12 or 2012/13 year and who pay tax at a marginal rate lower than 46.5% or the excess results in a breach of the non-concessional contributions cap.

If a client has started an income stream with all of their super balance, they cannot use the refund option (unless they roll back to the accumulation phase). Clients should leave a sufficient amount in accumulation phase if they wish to apply for the refund, or delay starting an income stream until the refund is complete.

How much is excess concessional contributions tax? (1 July 2007 to 30 June 2013)

From 1 July 2007 to 30 June 2013, concessional contributions which exceed the concessional cap incur excess tax of 31.5%. This is in addition to 15% contributions tax in the fund, resulting in a total tax of 46.5% (top marginal rate).

Excess concessional contributions count towards the non-concessional cap. Contributions in excess of the non-concessional cap attract excess contributions tax of 46.5%.

There are considerations for clients on the top marginal tax rate with excessive concessional contributions:

- The 15% contributions tax and the 31.5% excess concessional contributions tax may be deducted later than if the money had been received as a salary or wages and subject to PAYG withholding. This will temporarily increase the amount of money invested. Whether this is good or bad depends on whether the investment returns are positive or negative over this period.
- The excess concessional contributions add to the taxable component. Alternatively if the amount had been received in cash (rather than salary sacrificed above the cap) and a non-concessional contribution was made, the tax free component would increase.

How is excess concessional contributions tax paid? (1 July 2007 to 30 June 2013)

Excess concessional contributions tax in respect of the period 1 July 2007 to 30 June 2013, can be paid as follows:

1. pay the tax using non-super funds
2. pay the tax using non-super funds and use the voluntary release authority to instruct the fund to release the money to the individual
3. use the voluntary release authority to instruct the fund to pay the money to the ATO
4. pay using a combination of these options.

A voluntary release authority is sent to the individual by the ATO. The release authority allows a super fund to release benefits for payment of the excess concessional contributions tax.

If the individual wants to use their existing super fund to pay the concessional contributions tax liability, they must lodge the release authority with the fund within 90 days following the date of the notice. After 90 days, a fund cannot process the release authority. The fund must release the amount to either the ATO or individual within 30 days after receiving the release authority.

Where the excess concessional contributions tax is not paid within 21 days after the individual receives the notice of assessment, the general interest charge (GIC) may apply. However if the release authority was given to a super fund within 90 days and the super fund makes the payment within 30 days (or any delay in payment was not within the individual's control), the individual can apply to the Tax Office to have the GIC disregarded.

If there is insufficient balance in one particular super fund, a copy of the release authority can be given to other super funds to release the shortfall.

If the amount withdrawn using the release authority exceeds the excess concessional contributions tax payable, the excess is included in the individual's assessable income and an administrative penalty may also apply.

A release authority cannot be supplied to a defined benefit fund.

Proportional rules and the release authority

See section 'Proportional rules and the release authority' on page 6.

Exceeding both caps (1 July 2007 to 30 June 2013)

For the period 1 July 2007 to 30 June 2013, the combination of exceeding both of these caps may result in some excess contributions being taxed at up to 93%.

Example

Will exceeds his concessional contribution cap by $5,000. He has already utilised his non-concessional contribution cap for the same financial year.

The following taxes apply to the excess concessional contributions of $5,000:

Tax	Amount
Contributions tax 15%	$ 750
Excess concessional contributions tax 31.5%	$1,575
Excess non-concessional contributions tax 46.5%	$2,325
Total tax incurred (93%)	$4,650

Note: If the $5,000 excess concessional contributions were employer contributions made to a super fund that does not have the member's TFN, an additional 31.5% no-TFN tax ($1,575) would apply to the concessional contribution. Total tax incurred would be $6,225 (124.5%). The TFN can be submitted to the fund and the no-TFN tax may be claimed back. See section 'No-TFN contributions'.

What can you do if you disagree with the ATO assessment?

If you disagree with the ATO assessment, there are generally two approaches to proceed:

1. Contact the super fund to check if there was an error reporting or accepting the contribution. The fund should fix an error and re-report the correct contribution information to the ATO. Generally all super contributions are preserved and cannot be refunded unless there was a genuine mistake. The trustee must be satisfied the contribution was never intended to be made at all to be considered a genuine mistake. This is generally difficult to prove. Any contributions repaid under the cooling-off provisions (ie the free-look period) must be rolled over to another super fund/provider and cannot be accessed until a condition of release is met.
2. Contact the ATO to disregard or re-allocate contributions if special circumstances exist (see section 'ATO discretion' below).

If the client still disputes the ATO decision, they may raise a formal objection with the ATO. This should be arranged via the accountant or tax adviser.

Your client can request an amendment or lodge an objection to the assessment within four years from ATO assessment.

ATO discretion

The ATO has discretion to disregard a contribution or allocate a contribution to a different financial year for the purposes of excess contributions tax. However this discretion is only exercised if there are special circumstances. This discretion is retained even though new rules apply to excess concessional contributions from 1 July 2013.

Special circumstances are considered unusual, exceptional, abnormal or uncommon circumstances and there is an unjust, unfair or otherwise inappropriate outcome. The ATO assess special circumstances on a case-by-case basis.

When deciding whether to disregard or reallocate contributions, the ATO consider the following:

- if the individual has control over the amount or timing of the contribution. Where contributions are made outside of an employer's regular pattern and the individual relied on this pattern, this may be a special circumstance.
- if the contributions would be more appropriately allocated to another financial year.
- if it was reasonably foreseeable to exceed the cap when the contribution is made.

The following factors are not generally considered special circumstances:

- financial hardship
- not understanding the law
- incorrect advice
- making a mistake
- the contribution was intended to be for a different financial year
- an employer pays super guarantee contributions for the June quarter in the next financial year (as employers can make super guarantee payments by 28 July for the June quarter)
- Amounts salary sacrificed in one financial year are contributed by the employer in another financial year
- There was no allowance for the number of pay periods in a year, eg 53 weekly pays, 27 fortnightly pays or 13 monthly pays in a year
- the super fund received the contribution in another financial year

If you believe special circumstances exist and want to apply to the ATO to disregard or reallocate contributions, use the form in the link below.

ATO application

The application must be sent to the ATO within 60 days of receiving the notice of assessment. The ATO may accept requests after this date if the individual can show they were unable to apply within the 60 days.

Example

Angela's employer pays superannuation guarantee (SG) contributions for the June quarter in July. Angela enters a salary sacrifice agreement with her employer so that her combined SG contributions and salary sacrifice for the 2013/14 financial year will be equal to her concessional contributions cap of $25,000.

Unfortunately, in the 2013/14 financial year, Angela's employer breaks with their longstanding practice and pays the SG contributions ($2,000) for the June quarter (ending 30 June 2013) in the 2013/14 financial year. Angela's total concessional contributions for the 2013/14 financial year are $27,000 and she receives a determination of excess concessional contributions of $2,000.

Angela applies to the ATO to use discretion. She claims that she is only in breach of her concessional contributions cap because her employer has broken with their normal practice, which she relied upon when implementing her salary sacrifice agreement.

The ATO may apply discretion to reduce her assessment or to reallocate the $2,000 to the year in which it would normally have been paid.

No-TFN contributions

Concessional contributions (see table on page 9) will be subject to a further 31.5% no-TFN contributions tax where:

- they are made after 1 July 2007; and
- the member has not quoted their tax file number (TFN) to the super fund, by the end of the financial year.

An exception applies to members who had an interest in the fund prior to 1 July 2007. If the total concessional contributions are $1,000 or less in a financial year, such members are exempt from the additional no-TFN contributions tax.

The liability for no-TFN contributions tax is that of the super fund. It includes the amount as no-TFN contributions income which is subject to 31.5% tax.

No-TFN contributions tax applies primarily to employer contributions as a fund cannot accept member contributions without the member's TFN. However since 1 July 2007, employers must pass on an employee's TFN to their super fund within 14 days of receiving a completed Tax File Number Declaration. Consequently no-TFN contributions tax will generally only apply to:

- new employees who have not quoted their TFN to their employer
- existing employees who have not quoted their TFN to their super fund (and to their employer since 1 July 2007).

Such employees can either:

- provide their TFN directly to their super fund; or
- complete a new TFN declaration form and give it to their employer; or
- give their employer authority to provide their TFN to their super fund by completing this ATO form:

TFN form

Refund of No-TFN contributions tax

If a member subsequently quotes their TFN to their super fund (or employer), the additional no-TFN contributions tax may be refunded (by the ATO, as a refundable tax offset to the super fund) and credited to the member's account.

Only no-TFN contributions tax which has already been paid by the super fund and which relates to any of the 3 years prior to the year in which the member provides their tax file number can be refunded.

Example

Manuel's employer has commenced paying SG contributions to a new super fund on 1 May 2013. He has not provided his tax file number to his employer since 1 July 2007 or to the new fund as at 30 June 2013.

The total concessional contributions made to this fund in the 2012/13 year are $800. As Manuel did not have an interest in the fund as at 1 July 2007, no exemption from no-TFN contributions tax applies. Therefore his super fund is liable to additional tax of $252 (31.5% x $800 contributions).

If Manuel quotes his TFN to his employer or to the super fund in the 2013/14 financial year, his super fund can claim a tax offset for the no-TFN contributions tax paid in respect of the previous year and credit the $252 to Manuel's account.

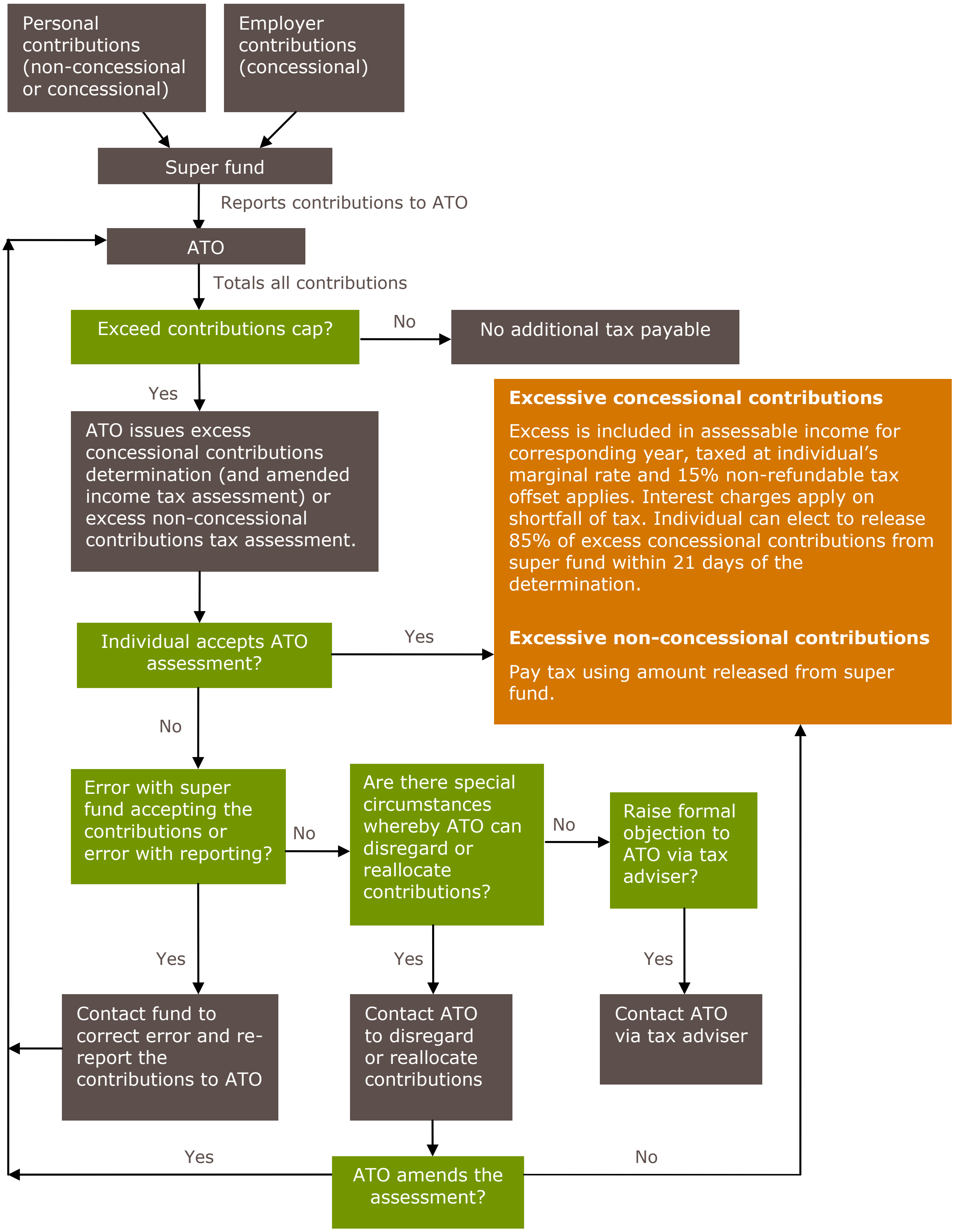
Tax components

Contributions (or a part thereof) that are included in the fund's assessable income (ie taxed within the fund) will form part of the taxable component (taxed element) of a superannuation benefit. Whereas contributions which are not taxed within the fund will form part of the tax free component of a benefit.

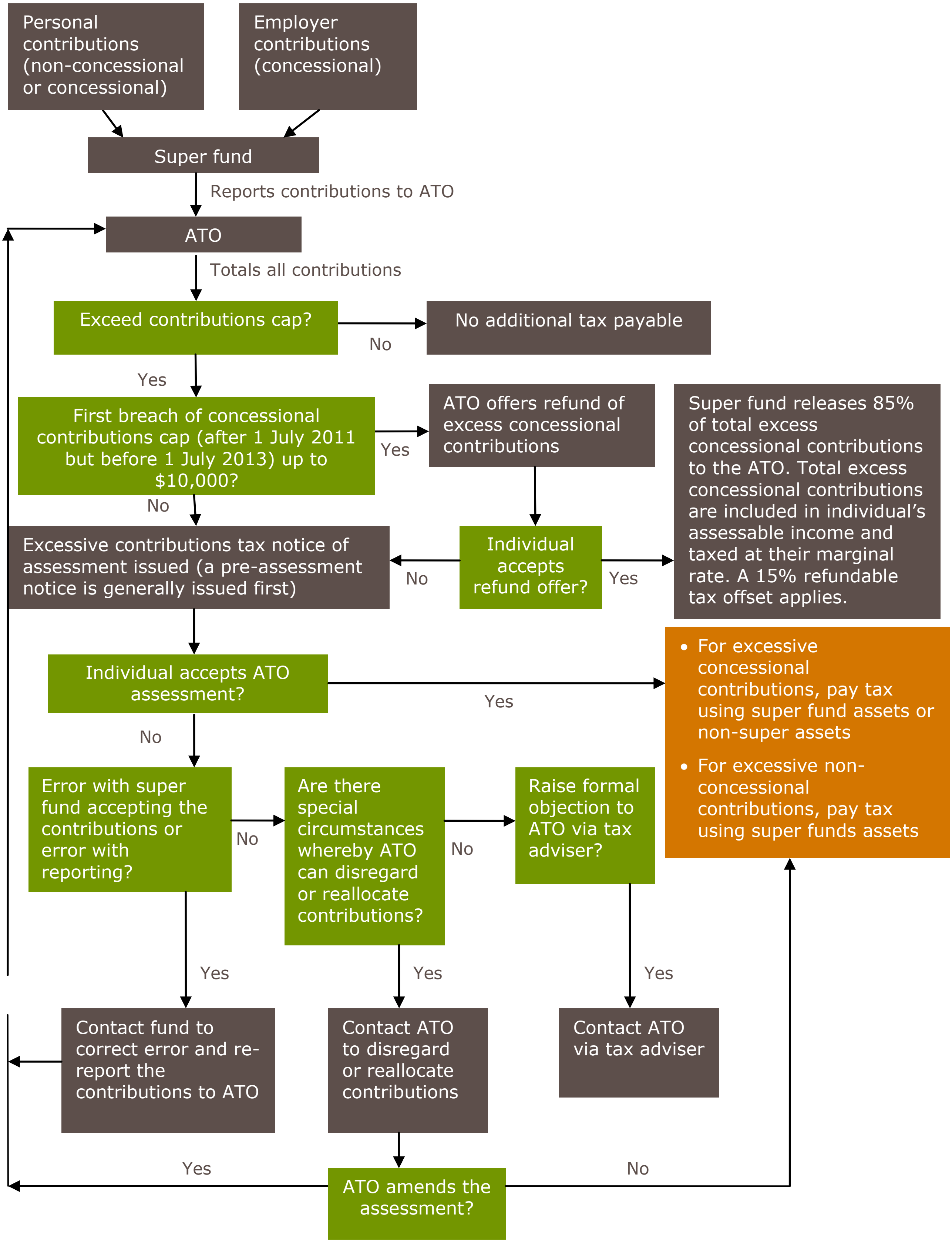
Contribution	Forms part of:
Concessional contributions (see table on page 9)	Taxable component
Non-concessional contributions: • Personal contribution (no tax deduction is claimed) • Spouse contribution • Child contribution (not made by employer)	Tax free component

Contribution	Forms part of:
Government co-contribution	Tax free component
CGT cap contributions	Tax free component
Personal injury contributions	Tax free component
Non-assessable part of foreign super fund transfer	Tax free component
Assessable part of foreign super fund transfer (where member has chosen to have this taxed within the fund)	Taxable component
Assessable part of foreign super transfer (where member pays tax on this amount at their marginal rate)	Tax free component
Superannuation Guarantee shortfall	Taxable component

Reporting of contributions and excessive contributions tax assessment from 1 July 2013



Reporting of contributions and excessive contributions tax assessments (1 July 2007 – 30 June 2013)



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