Xpress Super

Downsizer Contributions and SMSFs

Housing affordability has long been an issue in Australia. As part of the 2017 Budget, the government introduced a measure aimed at reducing pressure on housing affordability. Under the measure, older Australians were given the ability to contribute the proceeds of the sale of their home into superannuation without it counting towards the contribution caps.

The aim was to encourage older people to downsize from larger family homes that were no longer suitable for their needs and free up housing for younger, growing families. Being able to contribute the proceeds into the concessionally taxed superannuation environment was intended to be the incentive they needed to go ahead with downsizing their homes.

How does the downsizer measure work?

How does the downsizer measure work?

From 1 January 2023, if you are over 55 years of age you are able to make a contribution (not counted towards your concessional or non-concessional contributions caps) into super of up to $300,000 from the proceeds of selling your home. This effectively means $600,000 per couple can potentially go into super for a couple wanting to use the measure for the same home.

As a result, a broader group of people now have access to contribute into their SMSF as the following restrictions will NOT apply if you are wanting to use this as an option:

- No contributions over age 75
- Restriction on making non-concessional contributions where the total superannuation balance exceeds $1.7 million

Where the above restrictions aren't a limiting factor for you, the downsizer contribution can be made in addition to other voluntary contributions (of course subject to contribution rules and non-concessional contributions cap).

What are the eligibility criteria to use the downsizer measure?

As per the ATO's website, you are eligible to make a downsizer contribution to super if you can answer YES to all of the following eligibility criteria:

- Are 65 years old or older at the time you make a downsizer contribution (there is no maximum age limit). Before, 1 July 2022 to 31 December 2022, the eligibility age was 60 years old or over.
- The amount being contributed is from the proceeds of selling your home where the contract of sale exchanged on or after 1 July 2018.
- The home was owned by you or your spouse for 10 years or more prior to the sale – the ownership period is generally calculated from the date of settlement of purchase to the date of settlement of sale.
- The home is in Australia and is not a caravan, houseboat or other mobile home.
- The proceeds (capital gain or loss) from the sale of the home are either exempt or partially exempt from capital gains tax (CGT) under the main residence exemption, or would be entitled to such an exemption if the home was a CGT asset rather than a pre-CGT (acquired before 20 September 1985) asset.
- You have provided your super fund with the Downsizer Contribution into Super Form either before or at the time of making the downsizer contribution.
- You made the downsizer contribution within 90 days of receiving the proceeds of sale, which is usually at the date of settlement (note an extension of time can be applied for with the ATO where there are circumstances outside of the member's control – such as ill health, death in the family, moving house).
- You have not previously made a downsizer contribution to super from the sale of another home.

Importantly, if the home that was sold was only owned by one spouse, the spouse that did not have an ownership interest may also make a downsizer contribution, or have one made on their behalf, provided they meet all of the other requirements listed above.

Important considerations

- The contribution amount is a maximum of $300,000 each and cannot exceed the actual total proceeds of the sale of the home.
- The downsizer contribution is not a concessional or non-concessional contribution and will not count towards the contribution caps.
- The contribution forms part of the tax-free component of the member's interest in their SMSF.
- The contribution can still be made even if members have a total superannuation balance greater than $1.7 million.
- It will affect a member's total superannuation balance the following 30th June as it is recalculated each year.
- It will count towards the transfer balance cap which limits the amount that a member can have in retirement phase. The cap is currently $1.7 million but is subject to indexation.
- The contributions can only be made for the sale of one home. It can't be accessed again for the sale of a second home.
- Once selling a home and making a downsizer contribution, there is no requirement to buy a new home.
- Downsizer contributions are not tax deductible. They are excluded from the definition of a non-concessional contribution and reported as downsizer contributions.
- Downsizer contributions will be taken into account for determining eligibility for the age pension, as proceeds in an SMSF count towards the asset and income test.
- Multiple contributions can be made from the proceeds of the sale of one home. The contributions must still not exceed the limit of $300,000 and need to fall within the 90 day period of receiving the proceeds at settlement (unless an extension has been granted by the ATO).

The following examples a provided as a guide to how this measure can work in practice:

Example 1
A couple both aged 67 decide to sell their family home and move into a smaller more suitable residence. They sell their house for $900,000. The balance of their super accounts does not prohibit them from contributing under the downsizer rules. Using the downsizer measure they could contribute $300,000 each ($600,000 in total). As they are both under age 75, they may also have the potential to make other voluntary contributions with the remaining proceeds of the sale of their home subject to the standard contribution rules and caps.

Example 2
A retired couple age 77 decide to sell their family home and move into a smaller more suitable residence. They sell their house for $900,000 and would normally be restricted by the age limit of 75 so would not normally be able to put any funds into super. Using the downsizer measure they could contribute $300,000 each ($600,000 in total), regardless of their superannuation balances.

What if the contribution is made and subsequently it is determined that the eligibility criteria were not met?

In the situation where the eligibility criteria are not satisfied but the contribution was made on the assumption that it was acceptable, then the SMSF will need to look at whether the contribution(s) can be accepted as personal contributions under the standard contribution rules based on age, work test status, total superannuation balance and contribution cap limits.

Where the fund can accept the contribution it will then count towards the relevant contribution cap and may be subject to excess contribution rules if it exceeds the allowable limit. However, if it cannot be accepted, then the contribution will need to be returned. If the SMSF cannot accept the contribution, it must be returned within 30 days of becoming aware that it cannot accept it (generally from the day the contribution is received).

What steps should you follow to make a downsizer contribution to an SMSF?

In the situation where the eligibility criteria are not satisfied but the contribution was made on the assumption that it was acceptable, then the SMSF will need to look at whether the contribution(s) can be accepted as personal contributions under the standard contribution rules based on age, work test status, total superannuation balance and contribution cap limits.

Where the fund can accept the contribution it will then count towards the relevant contribution cap and may be subject to excess contribution rules if it exceeds the allowable limit. However, if it cannot be accepted, then the contribution will need to be returned. If the SMSF cannot accept the contribution, it must be returned within 30 days of becoming aware that it cannot accept it (generally from the day the contribution is received).

What steps should you follow to make a downsizer contribution to an SMSF?

Step 1. Check the eligibility requirements will be met.

Step 2. Consider how the sale and contribution will affect any age pension entitlements.

Step 3. Seek professional advice to ensure all arrangements are satisfactory.

Step 4. Enter into a contract to sell your home.

Step 5. Complete the ‘Downsizer Contribution into Super Form (NAT 75073).

Step 6. Make the downsizer contribution within 90 days of the change of ownership (settlement).

Where can you find more information in relation to Downsizer contributions?

Law Companion Ruling 2018/9 ‘Housing Affordability Measures: Contributing the proceeds of downsizing to superannuation’ from the ATO is a detailed ruling on how to interpret the rules surrounding this type of contribution.