

## Excess Non-Concessional Contributions

The non-concessional contributions cap is \$110,000 from 1 July 2021, however the ability to contribute to super is dependent on an individual's Total Superannuation Balance and satisfying certain age based criteria. The ability to bring forward non-concessional contributions over a 3-year period in some cases further complicates matters and when there is uncertainty around what an individual's non-concessional contribution cap is, then excess non-concessional contributions can arise. This fact sheet will give a general overview of the current position on what happens when the non-concessional contributions cap is exceeded.



### How do excess non-concessional contributions get reported to the ATO?

Excess non-concessional contributions are assessed by the ATO based on the information reported in a super fund's annual return and by considering the individual's date of birth as age is relevant to the ability to make contributions and use the bring forward rules.

### Notification process

The ATO will send the individual a determination letter regarding any excess non-concessional contributions. The determination will outline options available to that individual. Under no circumstances should the excess contributions be refunded directly.

### Options once assessed by the ATO

Once the ATO issue the determination letter then there are 60 days to make an election to do one of the following:

1. Elect to release both the excess contribution amount and 85% of the associated earnings (this is the earnings attributed to the excess contributions explained in more detail below). 100% of the associated earnings are then added to the individual's assessable income and a 15% tax offset is available. This will result in an amended notice of assessment being issued and tax will be payable on the associated earnings at the individual's marginal tax rate including Medicare.
2. Do not make an election to release the excess contribution amount and be assessed for excess non-concessional contribution tax in the super fund. The excess contributions and associated earnings will remain in super. The entire excess is taxed at 47% and a Notice of assessment is issued. The tax needs to be paid from the super fund. A release authority is sent to the fund to release the tax and pay it to the ATO.

If the information is wrong, the individual will need to investigate and if there are any mistakes the relevant figures may need to be re-reported to the ATO to rectify. For example, contributions may have been reported as non-concessional when they were concessional.

### Associated earnings

This amount is calculated to determine the amount of earnings attributed to the excess contribution during the period while it was held in super. It is calculated based on the following factors:

- Excess non-concessional contributions amount.
- Associated earnings rate – average of the general interest charge rates for the 4 quarters of the financial year in which the excess contributions were made.
- Associated earnings period - being from 1 July of the financial year the contributions were made up to the date of the determination letter issued by the ATO.

The excess non-concessional contribution is then subject to the associated earnings rate on a daily compounding basis for the associated earnings period.

### Electing to release funds

Once an election is made it cannot be changed. Its also important to note where an election is not made within the 60 day period the ATO will by default choose option 1 however if the super fund doesn't allow the release then option 2 will proceed.

## Example

During the 2020/21 financial year Jeremy has a non-concessional contribution cap of nil as his Total Superannuation Balance exceeds \$1.6 million as at 30th June 2020. He has contributed \$100,000 for the 2020/21 financial year.

There is therefore an excess non-concessional contribution of \$100,000.

Jeremy needs to wait until the ATO issue a determination letter with the ability to select one of the available options to pay the tax. If the determination letter was issued on 31st August 2021 the options would be as follows:

### Option 1

He can release the excess amount and 85% of the associated earnings as follows:

Excess Non-Concessional Contribution	\$100,000
Associated Earnings Rate	7.06%
Associated Earnings Period (start of financial year where excess contributed to date of ATO determination)	1/7/2020 - 31/08/2021
Associated Earnings Amount (daily compounding)	\$8,609
85% of Associated Earnings	\$7,318
Amount to be released Option 1 (Excess plus 85% of Associated Earnings)	\$107,318

\$8,609 being the total associated earnings would be added to his personal assessable income and a 15% tax offset would apply.

### Option 2

If an election to release the excess and associated earnings is not made then the excess contribution and associated earnings remain in super and the excess contribution is taxed at 47% to the super fund. The tax on the excess would be \$47,000 (47% of \$100,000 excess contribution).

Where a fund receives personal contributions that the member is not eligible to make due to the age based criteria (including the work test), then the contribution should be returned to the member within 30 days of becoming aware that the contribution is in breach of the contribution rules. All other contributions that the fund can accept must stay in super and follow the process above to be rectified.



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