

Superannuation – Downsizer superannuation contribution

The downsizer superannuation contribution provides an opportunity for older eligible Australians to sell their home and make a contribution to superannuation from the proceeds.

NOTE: In the 2021/22 Federal Budget, the Government announced a proposal to reduce the eligibility age for downsizer contributions from 65 to 60. Legislation needs to pass before this change becomes law. The Government has indicated the commencement date of the change is expected to be 1 July 2022.

How it works

General eligibility

To be eligible to make a downsizer contribution the following must be satisfied:

1. You are aged 65 or over at the time the contribution is made
2. The contribution is from the proceeds of the sale of a single eligible property in Australia
3. You do not claim a tax deduction for this contribution
4. You have owned the property for at least 10 years prior to the sale
5. You claim the capital gains tax (CGT) main residence exemption on the sale of this property (wholly or partly)
6. The contribution is made within 90 days of settlement
7. An election is made to treat the contribution as a downsizer contribution (either before or when the contribution is made)
8. The contract for sale of the property was entered into on or after 1 July 2018; and,
9. You have not previously made a downsizer contribution in relation to another sale.

Below we consider some of the requirements in further detail.

Eligible property

The property must have been your home in Australia but does not include a houseboat, caravan or other mobile home.

Capital gains tax main residence exemption

You must be eligible to claim the CGT main residence exemption on this property. This exemption may be in part or for all of the ownership period.

If your home was purchased prior to 20 September 1985 (i.e. a pre-CGT asset), the tests for the main residence exemption are applied to determine whether or not you would have otherwise been eligible to apply the concession to determine if the dwelling is an eligible residence.

10 year ownership period

You are required to have owned the property for at least 10 years. This is measured from the original settlement date to the date that legal ownership passes to the new owner (settlement date).

For couples, only one member needs to satisfy the ownership requirements to allow both to make a downsizer contribution. This may arise where the property is only held in one person's name. As long as the non-owner spouse satisfies all the other criteria, a downsizer contribution can be made.

For couples, the ownership test can be satisfied by the total period of time owned by each individual. For example, if the property was solely owned by one member of a couple for over 10 years and it was inherited by the spouse upon their death, the period of ownership of the deceased spouse will count towards the ownership period of the surviving spouse. This may also arise in the event of relationship breakdown.

There is no requirement that the home was used as the main residence for the entire ownership period, at the time of sale, or for the minimum ownership period of 10 years.

Downsizer contributions

The maximum downsizer contribution that an individual can make is the lesser of:

- \$300,000 or
- Proceeds received on the sale of one eligible property.

Where members of a couple wish to make downsizer contributions in respect of the same dwelling, the total downsizer contributions made in respect of the same eligible property must not collectively exceed the lesser of \$300,000 each or the total sale proceeds.

The contribution must be made to a superannuation fund within 90 days of settlement of the property (i.e. change of ownership). You must elect to have this amount treated as a downsizer contribution in the approved form. This form must be given to the trustee of the superannuation fund before or at the time the contribution is made so the amount can be correctly classified.

If the form is not completed correctly, and provided at the appropriate time, the contribution is treated as a non-concessional contribution (see below). The trustee of the superannuation fund may refund the contribution if unable to accept the amount, because for example you haven't met a work test and therefore are not eligible to make non-concessional contributions.

NOTE: In the 2021/22 Federal Budget, the Government announced a proposal to remove the work test for non-concessional contributions for those aged 67-74. Legislation needs to pass before this change becomes law. The Government has indicated the commencement date of the change is expected to be 1 July 2022.

If the amount can be accepted, it will be assessed against your non-concessional contribution cap and cannot be refunded. This situation may also arise if the Australian Taxation Office (ATO) becomes aware that the contribution does not satisfy the criteria to be a downsizer contribution and will notify the superannuation fund trustee.

The normal criteria for making superannuation contributions do not apply when an eligible downsizer contribution is made. This means that:

- no work test applies
- the contribution is not limited by the total superannuation balance test; and
- the contribution does not count towards any superannuation contribution caps.

The downsizer contribution must be made within 90 days of the settlement of the property. An application can be made to the ATO to have this timeframe extended. The extension is at the discretion of the ATO and the request for an extension of time should be completed prior to the expiration of the 90 day period.

Non-concessional contributions

Non-concessional contributions generally consist of contributions from after-tax income, such as personal non-tax deductible contributions and spouse contributions.

The annual non-concessional contribution cap for the 2021/22 financial year is \$110,000. But if you are under age 67 on 1st of July in a financial year you may be able to trigger the 'bring-forward' rule to make larger contributions.

The 'bring-forward' rule effectively groups contributions over a three year period. It allows you to bring forward up to two years' worth of non-concessional cap in addition to the current year's cap. But you can only contribute up to \$330,000 over the three year period. The bring-forward rule is automatically triggered if you are eligible and exceed your annual non-concessional limit. Once triggered, your non-concessional contribution cap will not be indexed for the balance of your bring-forward period.

In addition, you must have total superannuation savings of less than \$1.7 million at 30 June of the previous financial year to be eligible to make any non-concessional contributions in the following year. Whether or not you're eligible to use the bring-forward rule will depend on your 'total super balance'. These rules are complex and you should seek further advice to understand how these rules apply in your situation.

If you exceed your non-concessional contribution cap, you can choose to have the excess contributions and associated earnings (as calculated by the Australian Taxation Office) refunded with penalty tax only applied to the earnings. If not withdrawn, the excess contributions are taxed at the highest marginal tax rate. The tax payable must be withdrawn from superannuation.

Benefits

The benefits of making a downsizer superannuation contribution may include:

- it helps to boost your superannuation savings.
- If the amount remains in the accumulation phase of superannuation, earnings that accrue on this amount are taxed at up to 15% rather than your marginal tax rate which could be higher.
- If the amount is used to commence a superannuation income stream, earnings that accrue on this amount are taxed at 0% rather than your marginal tax rate which could be higher.
- You are able to make a superannuation contribution without the need to satisfy normal eligibility criteria (including the work and total super balance tests).
- The contribution is not assessed against your contribution caps.
- Lump sum withdrawals can be made which are received tax-free.

Risks, consequences and other important things to consider

These may include:

- You must be eligible to make a downsizer contribution by meeting the relevant criteria (see above).
- The contribution must be made within 90 days of the change of ownership of the property (i.e. the date of settlement).
- The maximum amount that can be contributed as a downsizer contribution is the lesser of:
 - \$300,000 per eligible individual, or

- the total proceeds from the sale of the property.
- An election must be made in the approved form to elect the amount as a downsizer contribution. This information is provided by the superannuation fund trustee to the ATO and ensures the amount is not assessed against your non-concessional contribution cap.
- If you make the contribution and are either ineligible, do not complete a valid election form, or don't submit the form by the time the contribution is made, the contribution is treated as a non-concessional contribution. The trustee of the superannuation fund may refund the contribution if unable to accept the amount (for example because you don't meet the work test). If the amount can be accepted, it will be assessed against your non-concessional contribution cap. If you exceed your cap, additional tax implications apply, and you could pay tax up to 45% plus Medicare and other levies that may apply.
- You are not eligible to claim a tax deduction for a superannuation contribution which is a downsizer contribution.
- The contribution can only be from the sale proceeds of a single disposal. Although you may make more than one contribution from the proceeds of that sale, these contributions combined must still be within the maximum limits and received within 90 days of settlement.
- It is important that you seek advice from a registered tax agent to understand your eligibility for the capital gains tax exemption for main residence for this property as this is one of the criteria for being eligible to make a downsizer contribution. This includes understanding the implications for other properties that have been your main residence which you still own, CGT payable on a property that was not your home for the entire period of ownership or any actions that impact the CGT main residence exemption.
- The contribution will increase your superannuation savings. This amount will be counted in your total superannuation balance. If your total superannuation balance exceeds the general transfer balance cap at 30 June of the previous financial year, you are unable to make non-concessional contributions.
- For social security purposes, your superannuation interest is an assessable asset and subject to deeming once you are over Age Pension age. There is no social security concession for downsizer contributions.
- If you are a Centrelink/Department of Veterans' Affairs (DVA) customer, you are required to notify Centrelink/DVA within 14 days of changes that could impact your entitlement. This would include the sale of the property and contribution to superannuation.
- The sale of the property may impact the calculation of the means tested fee for aged care.
- The value of your home may be subject to a cap for calculating aged care fees. If you sell your home, the entire proceeds may be assessed when calculating aged care fees and the cap no longer applies.

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