MLC TechConnect

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Steps to claiming a deduction for super contributions

Certain requirements must be met to ensure clients are eligible to claim personal super contributions as a tax deduction.

Background

Claiming a tax deduction on personal super contributions can be an effective way for clients to increase retirement savings and reduce their personal tax liability. This strategy applies to both self-employed and employed clients.

This article outlines the requirements and steps to ensure your clients are eligible to claim the deduction for their personal contributions made to super.

Checklist of steps

- ✓ Meet age and work test requirements
- ✓ Consider assessable income
- ✓ Consider the CC cap
- ✓ Make a personal contribution
- ✓ Submit a valid notice of intent to the super fund within required timeframes
- ✓ Receive an acknowledgement prior to lodging the tax return

Steps required

1. Meet age and work test requirements

After determining that a super contribution is appropriate, ensure the client is eligible to claim a deduction for personal contributions to super.

For clients aged 18 – 66, there is no work test requirements.

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Clients who are aged 67 to 74 must meet a work test to be eligible to claim a deduction on personal contributions. To satisfy the work test the client must be employed or self-employed for at least 40 hours over 30 consecutive days in the financial year.

Alternatively, recent retirees may be eligible to claim a deduction for personal super contributions if they meet the requirements for the work test exemption. The work test exemption can be applied for clients between 67 and 74 if they meet the following:

- in the previous financial year the client met the work test
- ‘total super balance’ (TSB) is less than $300,000 at 30 June prior, and
- the exemption has not been used in a prior financial year.

Clients who have reached age 75 must ensure their super contribution is received by their super fund before the 28th day of the month following the month in which they turn 75[1]. Additional rules apply for individuals under age 18 (at the end of the financial year). They must have derived income from carrying on a business or from being an employee. Refer to Appendix - example 1.

[1] S290-165 (2) ITAA97.

2. Consider assessable income

Clients cannot claim a deduction for an amount that reduces their assessable income, less other allowable deductions, to less than nil.

ITAA97 section 26-55 states that a deduction for super contributions cannot create or increase a tax loss for the client in their income tax return.

If assessable income is less than the amount to be claimed as a deduction, the deduction is limited to the amount of assessable income earned (a valid variation notice can be lodged – see **'Receive an acknowledgement'** below).

Non-residents may only benefit from a tax deduction if they have Australian assessable income (income taxable in Australia that is not subject to final non-resident withholding tax which required a tax return to be lodged for that income).

Advice tip

A deduction that reduces taxable income to below the tax-free threshold is not recommended, as the client incurs tax on contributions unnecessarily. Concessional contributions (CC) are taxed at up to 15% inside super. If the client's total income is within the tax-free threshold (including available tax offsets), a non-concessional contribution (NCC), if eligible, may be considered instead.

With changes to income tax rates and thresholds from 1 July 2024, the tax rate on taxable income up to $45,000 per annum is 16% (excluding Medicare levy). The savings from making a personal contribution and claiming a super deduction between the effective tax-free threshold and $45,000 is limited to 1% (16% personal tax v 15% super contributions tax).

NOTE: Clients with low taxable income may be exempt or pay a reduced rate of Medicare levy based on their income and family situation.

3. Consider CC cap

Employer and personal tax-deductible super contributions count towards an individual's concessional contribution cap. Clients must consider the amount of employer contributions (including SG and salary sacrifice) made on their behalf before making a personal tax-deductible contribution. The CC cap is $30,000 per annum in the 2024/25 FY. Some clients may be eligible for a higher CC cap for the financial year under the CC catch-up regime. This allows eligible clients to make CCs in the current financial year if there is an unused CC cap from previous five financial years and their total super balance at the prior 30 June was less than $500,000.

CCs exceeding these caps should generally be avoided. Any excess is included in the client's taxable income and taxed at marginal rates less a 15% tax offset to compensate for contributions tax paid in the super fund. Clients can elect to have the excess amount refunded out of super or retained in super. If retained in super, the gross amount of excess CCs (ie before contributions tax) counts towards the client's NCC cap.

Our **'Guide to concessional contributions'** explains the impact on the contribution caps, depending on whether the refund is elected or not.

4. Make a personal contribution

Once all the conditions and restrictions outlined above have been considered, the client can make a personal super contribution. The client must contribute to their own super fund account (except to a defined benefit interest or a constitutionally protected fund). The contribution cannot be made by an employer, even if the person is employed by a related entity, such as a private company or family trust, or as a spouse contribution.

Advice tip

Ensure that the correct contribution type is selected – ie personal. This includes when using electronic or paper forms, as well as using the correct code (eg BPay) when transferring money. If unsure of which code to use, check with the individual super fund.

The contributions are usually made in the form of cash, which can be electronically transferred (ie BPay or direct debit). Generally, a contribution to super is considered ‘made’ when received into the fund’s bank account or accepted by the trustee (eg a cheque)[2]. However, it’s also possible to make ‘in-specie’ personal super contributions into certain super funds, including SMSFs, subject to various conditions. This is achieved by transferring ownership of an asset from the person to their super fund.

Contributions must be received by the fund by 30 June of the relevant financial year to allow the client to claim a tax deduction for that financial year. For example, a contribution must be received by the fund on or before 30 June 2025 to claim a tax deduction in the 2024/25 financial year.

A fund may have an earlier cut-off date for contributions, including in specie contributions or if required to action a direct debit, made close to the end of the financial year. You should check cut-off dates with the product provider if clients are making ‘last minute’ super contributions.

Care should be taken with electronic transfers to ensure that the amount is received on time by the trustee. As outlined above, the contribution is made when received by the super trustee regardless of when the client initiated the transaction.

These types of contributions are not tax deductible:

- foreign super fund transfer
- family and friend contributions
- spouse contribution
- government co-contribution
- Downsizer super contributions
- Personal injury contributions
- small business CGT cap contributions.
- First Home Super Saver Scheme released amounts recontributed into super upon not buying a home

Furthermore, personal deductible contributions can’t be made to:

- Commonwealth public sector superannuation schemes in which your client has a defined benefit (DB) interest. Clients should check their eligibility to claim a tax deduction with the relevant scheme.
- constitutionally protected funds (CPF) or other untaxed funds where contributions are not included in the fund’s assessable income, or
- other super funds specified in the regulations.

If a client cannot claim a tax deduction for contributions to that scheme, they may open a super account with a retail super fund to make the contribution. Our **‘Guide to concessional contributions’** outlines how CCs made to CPFs, DB interests and public offer funds are assessed against the CC cap.

5. Complete valid notice of intent

A personal super contribution is an NCC and counts towards the NCC cap unless a valid ‘notice of intent’ is submitted as per ITAA97 s290-170 and the tax return is lodged claiming the amount as a deduction.

Clients can use the ATO form (NAT 71121), a form provided by their super fund, or submit a written request that includes all the details specified by the ATO[3]. The notice of intent can be lodged with the contribution, however, if this doesn’t occur, it must be supplied by the earlier of:

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

Note: There is no change in the process or notice of intent form when claiming a tax deduction using carry forward CC cap. There is no need to apply to the ATO to use the carry forward cap. Clients can look up their carry forward CC cap and total super balance in their ATO myGov account. Their total super balance must be below $500,000 as at 30 June of the previous financial year.

For a deceased individual, the executor of their estate may give a notice of intent to claim a deduction to the fund. The same notice of intent timing requirements apply.

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

- client has exited the fund
- contribution(s) being claimed have been withdrawn as a lump sum (see **Appendix** – example 2)
- contribution(s) being claimed were rolled to another fund (see **Appendix** – example 3 and 4)
- contribution (s) being claimed were used to commence a pension (see **Appendix** - example 5)
- client has submitted a valid contributions-splitting application to the fund
- client has requested a release under the First Home Super Saver Scheme (FHSSS), or
- notice includes all or part of an FHSSS amount that has been re-contributed to the super fund.

[2] TR 2010/1

[3] Tax Administration Act 1953 Sch 1 s388-50

Advice tip

Clients who plan to split all or part of their personal deductible contributions with their spouse, must provide their notice of intent to claim the deduction and receive acknowledgement from the super fund trustees before applying to split their concessional contributions.

A proportionate deduction based on a formula contained in Tax Ruling **TR 2010/1** may be available if only part of the amount is withdrawn or rolled over. However, no deduction can be claimed if a pension commences prior to a valid notice of intent being submitted, regardless of the amount used to commence the pension.

6. Receive an acknowledgement

Your clients must ensure they receive a confirmation from the super fund trustees that the fund has received and recorded the notice of intent as valid. This acknowledgement is required under ITAA97 s290-170.

Once the notice has been recorded, it cannot be revoked. However, a client can vary their notice but only to reduce the amount being claimed (including to nil). The variation notice must be provided by the earlier of:

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

The notice can only be varied after this time if the amount requested as a tax deduction has been disallowed by the ATO.

A variation notice (including where the ATO has disallowed the deduction) is not effective if, when it is submitted, the taxpayer has ceased to be a member, the fund no longer holds the contribution, or the fund has commenced to pay a pension based in whole or in part, on the contribution.

Advice tip

Amounts claimed as a tax deduction count towards reportable super contributions. As a result, the deduction may affect income tests for the purpose of certain Government benefits and obligations, such as the:

- Medicare Levy Surcharge
- Seniors and Pensioners Tax Offset
- Low Income Superannuation Tax Offset
- Higher Education Loan Program (HELP), and
- Student Financial Supplement Scheme (SFSS) repayments.

7. Lodge tax return

Your clients must lodge their tax return and claim the amount for the relevant financial year. When the amount being claimed as a deduction is accepted by the ATO, it counts toward the CC cap for the financial year in which the contribution was made. The reallocation from counting towards the NCC cap to the CC cap is undertaken by the ATO.

Advice tip

An individual with a total superannuation balance (TSB) of $1.9 million[4] or more at the previous 30 June can make personal super contributions[5] and claim as a tax deduction. However, if the individual doesn't complete the deduction process, or the deduction is denied by the ATO, the contribution remains an NCC. This will lead to the amount being excess NCC (if your client has fully used their NCC cap or their TSB was $1.9 million or more at the previous 30 June) and subject to the excess NCC regime.

[4] The TBC for 2024/25 is $1.9m.
[5] There is no obligation on super trustees to consider a member's TSB. Trustees consider whether a contribution can be accepted under the legislation.

Appendix

Example 1 – individuals under the age of 18

David has turned 17 in the current financial year and has a portfolio of investments which earn $12,000 per annum. He has a capital gains tax liability which he wishes to reduce by making a contribution to super and claiming a tax deduction.

David does not receive income from being an employee or from carrying on a business. He is not eligible for a tax deduction for personal super contributions as he does not meet the requirement for him to derive income from carrying on a business or employment).

Next financial year David will be 18 by the end of the financial year making him eligible to claim a tax deduction for personal super contributions.

Example 2 – Fund no longer holds the contribution

The trustee no longer holds a contribution, or at least part of it, if the member has rolled over or withdrawn a part of the super interest after the contribution has been made. A valid deduction notice is limited to the amount of the personal contribution that remains in the fund after the partial withdrawal or rollover, calculated as:

Step 1 – Work out the tax free amount of the rollover

$$\text{Roll-over amount} \times \frac{\text{Tax free component of interest before roll-over}}{\text{Value of super interest before roll-over}}$$

Step 2 – Work out the tax free component of the remaining interest

$$\text{Tax free component of interest before roll-over} - \text{Tax free component of the roll-over (worked out in Step 1)}$$

Step 3 – Work out the remaining amount of the personal contribution

$$\text{Tax free component of the remaining interest (worked out in Step 2)} \times \frac{\text{Personal contribution}}{\text{Tax free component of interest before roll-over}}$$

Example 3 – full rollover

Craig (52) makes a personal contribution into the ABC Super Fund with the intention to claim a tax deduction.

During the year, Craig decides to roll over the entire account into the XYZ Super Fund. Craig does not provide the ABC Super Fund with a notice of intent to claim a tax deduction before the rollover. At the end of the financial year Craig realises that the XYZ Super Fund cannot accept a notice of intention to claim a tax deduction in respect of the amount rolled over.

Craig should have provided the ABC Super fund with a notice of intention to claim a tax deduction prior to rolling over.

Alternatively, if he wasn't sure of his eligibility to claim a tax deduction (or how much to claim as a tax deduction), he would need to remain with the ABC Super Fund until his tax position became clear.

Example 4 – partial rollover

Ralph (48) super balance is $50,000 with a $20,000 tax free component. He makes a $30,000 personal contribution in March 2024. The fund balance is now $80,000 ($50,000 tax free component). In June 2024, Ralph rolls over $50,000 leaving behind $30,000 in the fund. The amount of contribution that remains in the fund after $50,000 is rolled over is calculated as follows:

Step 1 – Work out the tax free amount of the rollover

$$\text{Roll-over amount} \times \frac{\text{Tax free component of interest before roll-over}}{\text{Value of super interest before roll-over}}$$

= $50,000 x $50,000 / $80,000 = $31,250

Step 2 – Work out the tax free component of the remaining interest

$$\text{Tax free component of interest before roll-over} - \text{Tax free component of the roll-over (worked out in Step 1)}$$

= $50,000 – $31,250

= $18,750

Step 3 – Work out the remaining amount of the personal contribution

$$\text{Tax free component of the remaining interest (worked out in Step 2)} \times \frac{\text{Personal contribution}}{\text{Tax free component of interest before roll-over}}$$

= $18,750 x $30,000 / $50,000

= $11,250

Ralph lodges a notice with the intention to claim a deduction for the $30,000 contribution. The notice is not valid as the super holds only $11,250 of the original personal contribution. Ralph can lodge a valid deduction notice for an amount up to $11,250.

Example 5 – commencing a pension

Philip (62) is a sole trader and made a personal contribution to super of $20,000. He intends to claim a tax deduction for the entire contribution. His account balance is now $100,000.

After making the contribution, Philip commenced a transition to retirement income stream with $80,000 of his super benefits. He intended to claim a tax deduction for the remaining $20,000. At the end of the financial year, Philip submits a notice of intent to claim a tax deduction to his super fund in respect of the $20,000 contribution. The super fund rejects this notice because part of the contribution was used to commence the transition to retirement income stream.

Contact details

For further information, please contact MLC Technical Services on **1800 645 597.**

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