MLC TechConnect

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Top tips to avoid excess contributions in 2024/25

Here are some tips and traps to help ensure clients don't breach the super contribution caps this financial year.

Background

Penalties for exceeding super contributions caps are now be less punitive compared to when excess penalties were first introduced, however, they still have consequences that impact contribution planning strategies and accumulated superannuation savings. There is also the unpleasant experience of receiving an excess determination from the ATO.

There are some steps that you can take when providing advice to help ensure your advice doesn't create excess contributions or impact a client's contribution strategy.

For more information about excess contributions, penalties and the process when an excess occurs, see our **Guide to concessional contributions** and **Guide to non-concessional contributions.**

Contents

Check myGov – but be cautious

myGov can be a very valuable tool when looking to substantiate a client's key super details. However, it's important to understand where the data comes from and when it's updated.

In some cases, the data won't be up to date and other steps should be taken to ensure that contribution strategies are based on accurate and complete information.

What's on myGov?

myGov provides details about a client's:

- concessional contributions (CCs)
- catch-up CCs accrued
- non-concessional contributions (NCCs) including current bring-forward arrangements
- employer contributions
- total super balance (TSB), and
- transfer balance cap (TBC).

How and when myGov data is updated

It's important to understand that information on myGov is based on information reported by super funds. This means information displayed might not be accurate or available at a particular time.

Timing of key fund reporting

The table below summarises the timing of key fund reporting and the potential impact on myGov data.

Data	Reporting timeframe required by fund to ATO		Potential impact on myGov data
	APRA fund	SMSF	
Contributions received	Within 10 business days[1]	In SMSF annual return (SAR), which isn't generally due until well into next financial year	For clients with APRA funds, in most cases, data is relatively up to date. However, clients who have, or have had, an SMSF or defined benefit fund at some time during the year may find contributions data doesn't reflect actual contributions for a period after the end of the financial year. **Personal deductible contributions** The ATO doesn't classify a personal contribution as counting towards the CC cap until after the client's tax return has been lodged and a deduction is claimed for the contribution. This means part way through a year, myGov may suggest that a client has triggered a bring forward period or exceeded their NCC cap.
Bring forward NCC information	NCCs are reported within the timeframes above. The TSB determines eligibility to make NCCs and trigger bring forward rule – this may not be available until a later time (see below).		Clients who are currently within a bring forward period but didn't fully utilise the full bring forward amount in the period of the bring forward arrangement, are eligible to make top up NCCs if their TSB at the previous 30 June is less than the prevailing general TBC (currently $1.9 m). As TSB information might not be available until well into the financial year, care should be taken where a client's 30 June TSB is expected to be very close to the general TBC. If the client's TSB exceeded the general TBC on 30 June, any NCCs made are excess NCCs. **See Appendix which illustrates what a client might see in myGov prior to TSB information being received by the ATO.**
Catch-up CCs available	Contributions are reported within the timeframes above. myGov data will display '*carry-forward available*' (and provides a 'current as at' date). The TSB used to determine eligibility may not be available until a later time (see below).		Accrued catch-up CCs should be updated as soon as contribution data is received by the ATO (see above). However, this doesn't mean that the person is *eligible to make* a catch-up contribution. One reason is because the client's TSB may not be available particularly in the beginning of the financial year (see below). **See Appendix which illustrates what a client might see in myGov prior to TSB information being received by the ATO.**
Total super balance	Up to 31 October	May be well into the next financial year	TSB data may not be available early in the financial year due to the lodgement dates. Lodgement dates will vary between funds.

[1] Defined benefit funds – 31 October

Advice tip

Checking your client's super statements and your own records against myGov data is critical to ensuring that excess contributions do not arise. Be alert where a client has or had an SMSF or defined benefit interest, as the timing of reporting might impact data on myGov.

Other information sources

<u>Account statements</u>

You should not rely solely on member statements. This is because when determining TSB at 30 June, what's required is the *exit value,* not the *closing balance*. The exit value is the amount that the person would receive if voluntarily leaving the fund at that time (eg a rollover or withdrawal). The exit value can be adjusted for certain expenses associated with selling assets or income yet to be allocated.

When dealing with SMSFs, particularly those with unlisted assets which require a valuation, care should be taken when providing contribution recommendations prior to valuations being completed and an accurate 30 June TSB determined.

Professional judgement should be used to work through the timing requirements and consequences of holding off on making contributions until after adequate information can be ascertained from the fund's accountant and/or administrator, as well as portfolio valuation reports. However, this can be problematic where there is a time limit to make the contribution, such as where a client is:

- turning 67 and won't meet a work test or the work test exemption to make personal deductible contributions (PDCs) so the contribution must be made prior to reaching age 67, or
- turning 75 and wishes to make NCCs.

In these cases, early planning is important to ensure that adequate information is available to make contribution recommendations without causing an excess. This is also an issue where a client's balance is close to a relevant TSB threshold. You should confirm with your compliance team if there are additional licensee standards when providing contributions advice.

<u>Contact super fund</u>

myGov data should be substantiated with direct enquiries to super funds (particularly early in the financial year) with detailed file notes kept, Particularly when making enquiries about TSB, ensure that the *exit value* rather than the *30 June closing balance* is provided, and where possible, obtain written documentation from the fund.

<u>myGov data via client</u>

Financial advisers don't have access to the myGov portal on behalf of clients. If a client has a registered tax agent, that agent may be able to access the information via the ATO Portal or contact the ATO directly (if an authority is held). We've developed a range of guides to help clients navigate through myGov to provide you with key superannuation data including how to print information for your files.

How to track total super balance
Explains how clients can track their own total superannuation balance.

How to monitor carried forward concessional contributions
Explains how clients can monitor their carry-forward CC limit.

Accessing non-concessional contributions information on myGov
Explains how to access NCC details, including information about bring forward arrangements.

Understand NCC requirements

When recommending clients make non-concessional contributions (NCCs) it's necessary to check:

- TSB from the previous 30 June
- whether the client is in a bring-forward period, and
- if making contributions across two financial years, estimating the following year's TSB.

From 1 July 2024, the annual and bring-forward NCC caps increased. However, the general TBC remained unchanged at $1.9m. This means the TSB thresholds for eligibility reduced compared to 2023/24.

TSB thresholds and maximum NCCs

The following table summarises the TSB thresholds and maximum NCCs for 2023/24 and 2024/25:

Thresholds and caps in 2023/24		Thresholds and caps in 2024/25	
TSB as at 30/6/2023	**NCC cap**	**TSB as at 30/6/2024**	**NCC cap**
$1.9m +	$0	$1.9m +	$0
$1.79m to < $1.9m	$110,000	$1.78m to < $1.9m	$120,000
$1.68m to < $ 1.79m	$220,000	$1.66m to < 1.78m	$240,000
< $1.68m	$330,000	< $1.66m	$360,000

Remember the reporting timeframes summarised above. APRA regulated superannuation funds have until 31 October to report TSB values. SMSFs report a member's TSB in the SMSF annual return which is generally due well into the next financial year.

Bring-forward rule triggered

The bring-forward is triggered automatically when total annual NCCs exceed the annual cap if the client is eligible. The maximum amount available under the bring-forward, as well as whether the person has a three year, or a two year bring-forward period, depends upon their TSB on 30 June prior to the financial year in which the bring-forward is initially triggered.

Example 1: Triggering the bring-forward rule

Kay, age 65, has a TSB of $1m at 30 June 2023. She made an NCC of $120,000 in August 2023, triggering the three year bring-forward rule. The maximum bring-forward amount is determined based on the cap in the year triggered (ie $330,000). In 2024/25 and 2025/26, the maximum that Kay can contribute is $210,000 (the residual of the bring forward rule). She doesn't receive the benefit of the increase in the NCC cap from 1 July 2024.

If a person triggers the bring-forward rule but doesn't fully utilise the increased NCC cap in the first year of their bring-forward period, the balance is available in the second or third year (if applicable), subject to:

- TSB at 30 June immediately preceding that year that the residual bring forward NCC contribution is made is below the general TBS (currently $1.9m), and
- the contribution must be received by the super fund on or before 28 days following the end of the month in which the person turns age 75.

If a client makes an NCC that exceeds their residual bring forward NCC cap, including where the residual NCC cap is reduced to nil because the previous 30 June TSB exceeds the general transfer balance cap, the contribution is assessed as an excess NCC. Once the bring-forward period has expired, an eligible client may make further contributions within the annual cap or may trigger the bring-forward provisions again based on normal eligibility requirements including age and TSB.

Check eligibility before making a downsizer super contribution

If a downsizer contribution fails the timing, notification or other eligibility requirements, the contribution is treated as a personal contribution. The fund can only refund a personal contribution received after 28 days following the end of the month when the member has turned 75. This means in all other circumstances, the contribution is re-reported to the ATO as a personal contribution, and the person may have an excess NCC (depending on their other contributions, available NCC cap and TSB).

Trustees have very limited circumstances to be able to refund a contribution. A failed downsizer contribution may impact the person's NCC cap and other NCC contribution strategies. Also, keep in mind that the super fund must accept personal contributions for those up to age 75 (and within the 28 day rule mentioned above. The super fund doesn't assess contribution eligibility against the client's TSB or available cap space when determining whether or not the personal contribution can be accepted.

More information

- **Downsizer contributions** (adviser article)
- **Downsizer tips and traps** (adviser article)
- **KnowHow: Upsize your retirement savings with downsizer contributions** (client article)

Tread carefully with PDCs

It's important to understand the mechanics of personal deductible contributions (PDCs). This includes considering the amount of the contributions, as well as the timing of all CCs that may be received over the course of the financial year, allowing for:

- employer contributions on a potential pay increase or bonus
- salary sacrifice contributions (see 'Review salary sacrifice arrangements' below), and
- CCs to a defined benefit fund (notional taxed contributions).

While it's possible to vary down the amount of personal contributions to be claimed as a tax deduction after a notice of intent is lodged, professional judgement should be used to consider whether it's more appropriate to reconsider the timing of personal contributions, or the amount claimed, to avoid potential adverse consequences. This is explained in more detail below.

Vary or delay personal contribution?

If too much personal contributions have been claimed as a tax deduction resulting in breaching the CC cap, it's possible to vary the amount to be claimed down (including to zero) after an initial notice is submitted to a fund. The amount of personal contribution no longer claimed as a tax deduction is an NCC and could result in:

- an excess NCC where the person has fully utilised their available NCC cap, and/or
- exceeding the annual NCC cap and inadvertently triggering the bring forward rule in a year not intended.

Example 2: Variation of notice of intent which triggers the bring forward rule

In 2023/24, Miles, age 55, made a personal contribution of $115,000 (with a TSB of $1.2 million as at 30 June 2023). A notice of intent was lodged to claim $5,000 of this contribution as a tax deduction. After speaking with his accountant, a variation notice was lodged which reduced the amount claimed as a tax deduction to zero.

As $115,000 remains as an NCC, Miles has triggered the bring forward rule in 2023/24. This impacts strategies if the intention was to maximise the annual NCC cap in 2023/24 and trigger the bring forward in 2024/25. There is no ability to elect the $5,000 above the annual cap to be treated as an excess NCC in the 2023/24 financial year, as the NCC bring forward rule is automatically triggered if the person is eligible and the contribution exceeds the annual cap.

Time limits and eligibility to vary a notice of intent

Similar to the timeframes that apply to the original notice of intent, notices to vary must also be lodged within set timeframes to be valid. Generally, for a variation notice to be valid:

- unless the ATO has denied the tax deduction, it must be lodged by the earlier of:
  - the time the person completes their tax return for the financial year in which the contribution was made, or
  - 30 June of the following financial year
- the fund must still hold the contribution, and
- an income stream cannot have commenced with part or all of the interest.

If the ATO denies the tax deduction and the notice cannot be varied, contributions tax will have been deducted from the contribution, the amount continues to form part of the taxable component of the super interest and the amount counts towards the NCC cap.

Understand work test requirements

The work test or work test exemption applies to those aged 67-75[2] who wish to claim a tax deduction for personal contributions. The work test doesn't need to have been met *prior* to the contribution being made and the notice of Intent being lodged. However, it just needs to have been met at some time during the year for the person to be eligible to claim a tax deduction in their tax return. It's important where contributions are made in anticipation of the work test being met, to understand the consequences if circumstances change. For example, if a client aged 67-75[3]:

- makes a personal contribution
- lodges a notice of Intent and received acknowledgement, in *anticipation* of meeting the work test at a later point during the year, and
- circumstances change and the work test is not met during the financial year

then the client needs to lodge a variation notice to vary the amount claimed as a tax deduction to nil.

[2] Contributions must be received no later than 28 days after the end of the month in which the person turns 75.

This changes the client's NCCs for the year. See above for consequences and considerations, including situations where a variation cannot be accepted. However, if the client has withdrawn or rolled over all the funds or commenced a pension, they cannot lodge the variation.

Review salary sacrifice arrangements

To avoid exceeding a client's CC cap when using salary sacrifice arrangements, consider:

- the SG rate of 11.5% from 1 July 2024 (and 12% from 1 July 2025), and
- when salary sacrifice contributions are made to super.

There is no legislative timeframe for salary sacrifice contributions to be made and it's recommended that this requirement is documented as part of the salary sacrifice agreement. For clients with an existing salary sacrifice arrangement, it's important to review the agreement and other contribution strategies to ensure that total CCs don't breach the person's CC cap.

It's also important to check the timing of salary sacrifice contributions, particularly at the beginning and end of the year, to understand which financial year the contribution is made. A contribution is made when received by the super fund.

A similar issue applies for the timing of SG contributions. For the final quarter of the financial year (April – June), employers have until 28 July to make SG payments without penalty. Contributions received by the super fund on or after 1 July count towards the client's CC cap in financial year received.

Advice tip

For client's wanting to fully utilise their CC cap, it may be beneficial to consider making a personal contribution towards the end of the financial year and lodging a Notice of Intent in the following financial year. This allows advisers to determine the total contributions and the client's likely tax position for that financial year. For more information about the considerations relating to salary sacrifice and PDCs, see our article **Salary sacrifice vs PDCs**. Remember that any personal contributions made that are not claimed as a tax deduction count towards the client's NCC cap.

Don't forget certain insurance arrangements

It's important to account for all super interests and contributions, including amounts paid by an employer to cover the costs of account fees or insurance premiums within super. These amounts are CCs and count towards the CC cap. Similarly, insurance only super accounts and employer contributions made to these accounts to cover the premiums are also contributions assessed against the client's contribution caps.

Advice tip

Where a PDC is made to an insurance only super account to cover the premium, it's common for clients to think of this as a direct debit to pay an insurance premium, and they may fail to disclose these amounts as contributions to their adviser. myGov provides details about employer contributions and CCs which may help to ensure all funds and contributions are accounted for.

Sufficient income to offset deduction

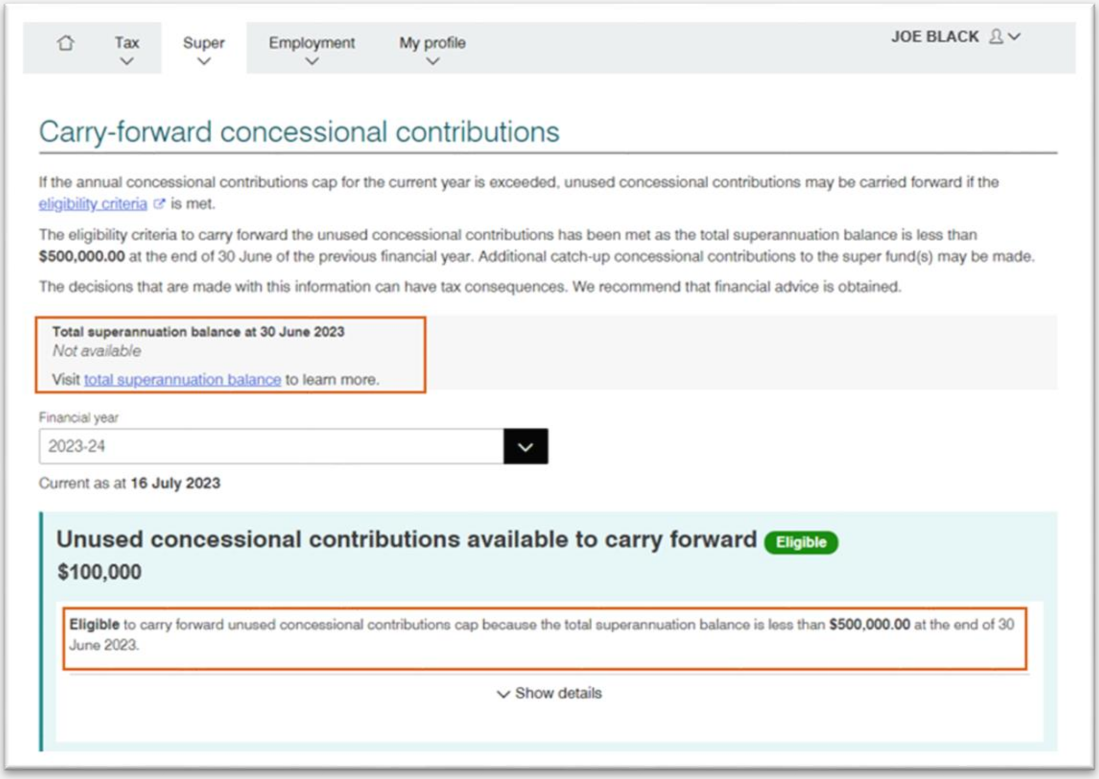
The legislation limits the amount of a tax deduction for super contributions to the client's assessable income. It's not possible to create an income loss[3]. An income loss is when deductions exceed assessable income. For example, if a client is eligible to use the unused catch up CCs and makes $50,000 personal contribution which is claimed as a tax deduction, the client must have at least $50,000 of assessable income to offset the deduction. However, in such a situation, it would not be valuable to claim a deduction below the point the client pays no tax personally, as individual taxpayers receive the benefit of the tax-free threshold, the low income tax offset and, the seniors and pensioners tax offset (if at least age 67).

[3] ITAA97 s26-55

Appendix – myGov screenshots

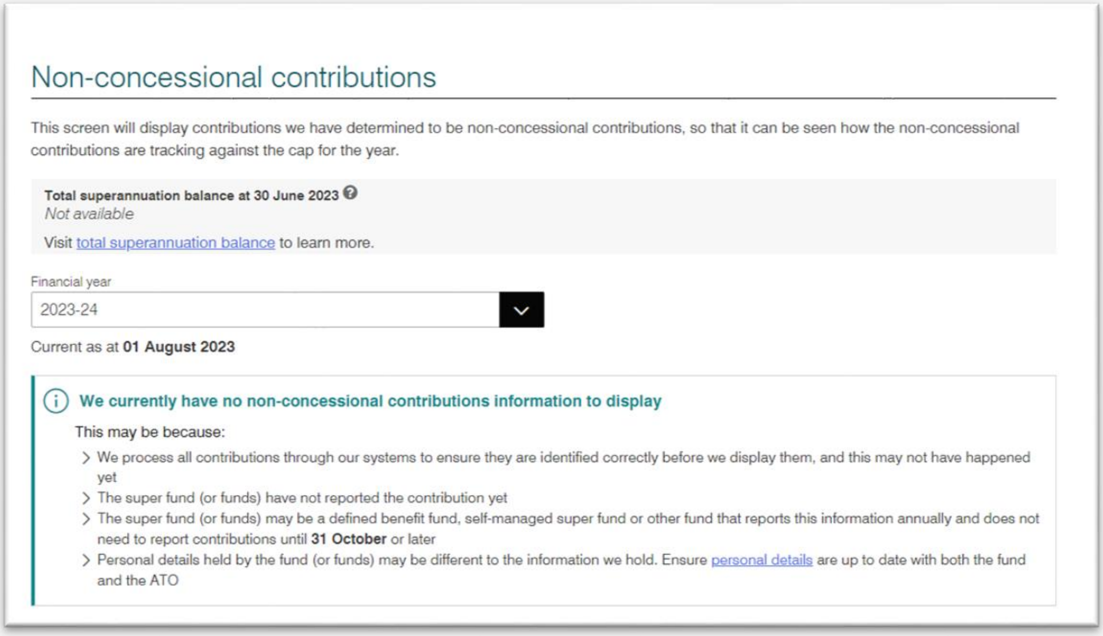
The below images show snapshots of myGov data and some of the tips and traps.

Image 1: Catch-up CC data accessed before funds have reported TSB for the prior 30 June



- In this image, the TSB as at 30 June 2023 is noted as 'unavailable'. This can create a situation where a client may have 'eligible' shown (as seen above) but is not eligible as the actual TSB exceeds $500,000. Always cross check the TSB shown on this page with the list of super funds under 'Superannuation/Fund details'. Fund details provides a list of the client's super funds, the balance and the valuation date which allows you to check which financial year it relates. This assists in identifying those funds that have not yet reported and seeking an exit value directly from the provider.
- Under Fund Details, some funds may show 'Not reported', which may arise if this is a new fund, such as a successor fund transfer and this fund has not reported a value for the first time.
- We have had reports that in cases where a client has not made CCs in a prior year, myGov will not provide details about carry-forward eligibility.

Image 2: NCC data accessed before funds have reported TSB for the prior 30 June



- The above shows information for the current financial year. In this case, no NCCs have been received. However, there is the ability to change the financial year which will assist in identifying NCCs made in previous financial years.
- As this record was accessed in August 2023, TSB information was not currently available. It’s important to remember that NCC eligibility is based in part on the client’s prior 30 June TSB. When accessing NCC data ensure that the client’s 30 June TSB is validated in other ways.

Contact details

For further information, please contact MLC TechConnect on **1800 645 597**

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