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Changes to reserve allocations

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What are the changes?

From 7 December 2024, the [Treasury Laws Amendment \(Legacy Retirement Product Commutations and Reserves\) Regulations 2024](#)  (the Regulation) changes the way allocations from reserves count towards an individual's contribution caps.

Before 7 December 2024, certain reserve allocations by a complying superannuation plan for an individual counted towards the individual's concessional contributions cap. This could result in excess concessional contributions for the individual.

From 7 December 2024, the Regulation:

- counts those allocations towards the individual's non-concessional contributions cap instead of their concessional contributions cap
- updates the drafting used to describe those allocations, and
- excludes from the non-concessional contributions cap an [additional class](#) of reserve allocation (from a pension reserve), making allocations of that class effectively 'uncapped'.

These changes are not limited to reserves associated with legacy pension products (although the changes may be applicable to such reserves).

See [Other concessional and other non-concessional contributions](#) for more information on when reserve allocations by Australian Prudential Regulation Authority (APRA) funds will need to be reported.

Reserve allocations before 7 December 2024

Before 7 December 2024, 2 classes of reserve allocation counted towards the concessional contributions cap:

1. A particular allocation of an assessable contribution.
2. Any other allocation ('a capped allocation') that did not fall within various specified exclusions.

In other words, for allocations other than assessable contributions (the first class mentioned above), a 'catch-all' mechanism counted towards the concessional contributions cap all allocations that did not fall within the specified exclusions (the second class mentioned above).

The exclusions ('excluded allocations') did not count towards the concessional contributions cap, with the result that they could be made without contribution cap taxation consequences for the member.

Capped allocations before 7 December 2024

An allocation was a capped allocation unless it was an excluded allocation. The excluded allocations were:

- a certain type of rollover superannuation benefit
- an amount of applicable fund earnings transferred from a foreign super fund included in the assessable income of the plan
- a refund of excess capped fees and costs charged to a member
- a 'fair and reasonable allocation', which could be made from any kind of reserve (subject to fund rules and regulatory requirements), being an allocation

- made to each member of the fund, or each member of a class of member
- for which the amount allocated was less than 5% of the value of the member's interest at the time of allocation, and
- that would not have been assessable income of the fund if it were made as a contribution
- the following types of pension reserve allocation
 - an allocation to satisfy a pension liability
 - an allocation on the commutation of an income stream, except as a result of the death of the primary beneficiary, to the recipient to commence another income stream as soon as practicable
 - certain allocations on the commutation of an income stream as a result of the death of the beneficiary.

Reserve allocations from 7 December 2024

From 7 December 2024, the Regulation counts capped allocations towards the non-concessional contributions cap instead of the concessional contributions cap. The mechanism for counting allocations has not changed: a reserve allocation counts towards the non-concessional contributions cap if it does not fall within specified exclusions.

Each class of exclusion specified for the concessional contributions cap before 7 December 2024 has been specified for the non-concessional contributions cap from that date. This means types of allocations that fell within those exclusions before 7 December 2024 continue to be uncapped if made from that date. The Regulation makes no change to the treatment of allocations of certain assessable contributions, which continue to count towards the concessional contributions cap.

The drafting of the 'fair and reasonable' and 'pension reserve' exclusions in the Regulation has been updated. As a result, the exclusions do not mirror those specified for the concessional contributions cap word-for-word. One class of excluded allocation – 'pension reserve allocation except as a result of death – after commutation to commence another income stream' – is not explicitly

specified as an exclusion for the purposes of the non-concessional contributions cap, because it falls within a new pension reserve exclusion discussed below ('excluded cessation allocation').

The table below lists these exclusions for the concessional contributions cap and their non-concessional contributions cap equivalents (legislative references are to the *Income Tax Assessment (1997 Act) Regulations 2021* (ITAR (1997 Act) 2021)).

Table: Excluded allocations before and from 7 December 2024

Class of excluded allocation	Exclusion from counting towards concessional contributions cap – before 7 December 2024 (repealed)	Exclusion from counting towards the non-concessional contributions cap – from 7 December 2024
Fair and reasonable allocation	Former subsection 291-25.01(4)	Subsection 292-90.02(2)
Pension reserve allocation – to satisfy pension liability	Former paragraph 291-25.01(5)(a)	Subsection 292-90.02(3)
Pension reserve allocation except as a result of death – after commutation to commence another income stream	Former paragraph 291-25.01(5)(b)	Subsection 292-90.02(4)

Pension reserve allocation after death – to discharge pension reserve liabilities as a result of death	Former subparagraph 291-25.01(5) (c)(i)	Subsection 292-90.02(5)
Pension reserve allocation after death – paid as lump-sum and death benefit	Former subparagraph 291-25.01(5) (c)(ii)	Subsection 292-90.02(6)

Counting allocations towards the non-concessional contributions cap instead of the concessional contributions cap will affect the amount that can be allocated to some individuals without incurring contribution cap taxation consequences.

For example, some individuals have a nil non-concessional contributions cap. If a reserve allocation counts towards the individual's non-concessional contributions cap in those circumstances, the amount of the allocation will exceed their non-concessional contributions cap.

Example: remediation payment allocations

A superannuation fund maintains an operational risk reserve, the purpose of which includes the remediation of amounts wrongly charged to member accounts.

As part of one such remediation exercise, amounts are allocated to a class of members in the fund on 1 January 2025 in a manner that does not satisfy:

- the 'fair and reasonable' allocation exclusion, or
- any other exclusion from the non-concessional contributions cap.

As the allocations were made for those members on or after 7 December 2024, they count towards the amount of the members' non-concessional contributions for the 2024–25 financial year.

New class of excluded allocation from 7 December 2024

From 7 December 2024, the Regulation also excludes another broad class of pension reserve allocation for an individual. An allocation (an 'excluded cessation allocation') from a reserve of a complying superannuation plan for an individual is excluded if:

- the reserve is a [pension reserve](#) of the plan
- the reserve is used to discharge all or part of a liability of the plan to pay a superannuation income stream benefit from a superannuation income stream of which the individual is the recipient
- the superannuation income stream is commuted or ceases
- the commutation or cessation is not a result of the death of the primary beneficiary
- the amount is allocated from the reserve for the individual as a result of the individual having been (before the commutation or cessation) the recipient of the superannuation income stream, and
- where the reserve relates to more than one superannuation income stream, the allocation is fair and reasonable having regard to
 - for each superannuation income stream that has not been commuted or ceased – the value of the interest that supports the superannuation income stream, and
 - for each superannuation income stream that has been commuted or ceased – the value of the interest, that supported the superannuation income stream, immediately before the superannuation income stream was commuted or ceased.

Definition of pension reserve

From 7 December 2024, the Regulation provides that a reserve is a pension reserve of a complying superannuation plan at a particular time if the reserve is used at that time solely for the purpose (the 'pension liability purpose') of enabling the plan to discharge all or part of its pension liabilities (contingent or not) as soon as they become due. This definition is relevant not only for excluded cessation allocations, but also for the other excluded allocations (other than fair and reasonable allocations).

In addition:

- under the Regulation, certain allocations made as a result of commutation or cessation of a superannuation income stream are deemed to be a use of a reserve for a pension liability purpose, and
- under transitional rules provided by the Regulation, certain allocations are disregarded in working out, for the purposes of excluded cessation allocations, whether a reserve is a pension reserve at a time occurring after commencement.

The new definition of pension reserve and the 2 additions above are only relevant for determining excluded allocations from 7 December 2024. They do not apply when determining whether a reserve is a 'pension reserve' for the purposes of determining whether allocations are excluded from counting toward the concessional contributions cap before that date.

Allocations deemed to be for a pension liability purpose

From 7 December 2024, the Regulation provides, for the avoidance of doubt, that certain allocations ('a deemed pension purpose allocation') to a superannuation income stream recipient after the commutation or cessation of that income stream are taken to be made for the pension liability purpose: see subsection 292-90.02(8) of the ITAR (1997 Act) 2021. This ensures a reserve does not cease to be a pension reserve as a result of such allocations, including in at least the 2 following situations:

- The active reserve situation – where the reserve is, apart from the deemed pension purpose allocation, a pension reserve because it is used solely for the purpose of discharging pension liabilities relating to one or more other income streams. The deemed pension purpose ensures the reserve continues to be a pension reserve after a

deemed pension purpose allocation when continuing to discharge pension liabilities. Otherwise, the deemed pension purpose allocation and subsequent allocations to discharge pension liabilities would count towards the non-concessional contributions cap.

- The dormant reserve situation – where the reserve is, apart from the deemed pension purpose allocation
 - not being used for the purpose of discharging pension liabilities (because all income streams the reserve previously supported have been commuted or ceased), and
 - used for no other purpose.

In the dormant reserve situation, the deemed pension purpose allocation does not prevent the reserve from ceasing to be a pension reserve for the purpose of making further cessation allocations.

There is no requirement that a deemed pension purpose allocation must be made within a specific period after the relevant commutation or cessation. If all other requirements for the allocation to be excluded are otherwise met, the allocations can be made long after the commutation or cessation.

Example: dormant reserve

A reserve established and used to support a single superannuation income stream:

- commenced on 1 July 2005, and
- ceased on 1 July 2020.

Between the cessation of the income stream and 6 December 2024, the reserve was not used for any purpose. After 7 December 2024, the trustee allocates the remainder of the reserve to the recipient of the former income stream in circumstances that satisfy all other requirements to be an excluded cessation allocation.

The allocation itself is deemed to be for a pension liability purpose. As a result, the reserve is a pension reserve at the time of the allocation.

Disregarded allocations

The Regulation also contains a transitional provision. That provision disregards certain allocations made before 7 December 2024 in working out whether a reserve of a complying superannuation plan is a pension reserve for the purposes of making excluded cessation allocations.

If one or more allocations before that date are the sole reason the reserve doesn't otherwise meet the pension reserve definition for that purpose, disregarding the allocations ensures the definition is met.

An allocation from the reserve is disregarded if:

- the reserve was used for the purpose of enabling the plan to discharge all or part of a liability of the plan to pay a superannuation income stream benefit from a superannuation income stream
- the superannuation income stream was commuted or otherwise ceased
- the allocation was made after the commutation or cessation, and
- immediately before the commutation or cessation, the reserve was a pension reserve.

In the case where the reserve only ever supported one income stream, if the above criteria are met, allocations after the income stream commuted or otherwise ceased and before 7 December 2024 are disregarded.

In the case where the reserve was used to support more than one superannuation income stream, allocations made after the above requirements are met for the first time in relation to any of those income streams and before 7 December 2024 are disregarded. In effect, this could result in all allocations from the reserve occurring after that commutation or cessation being disregarded, even while the other income streams were still being supported by the reserve.

Example: fair and reasonable allocations disregarded

A reserve was established and used to support 2 lifetime pensions: income stream A and income stream B. Both commenced on 1 July 2005. Income stream A ceased on 1 July

2015, and income stream B ceased on 1 July 2020. The reserve met the definition of a pension reserve immediately before 1 July 2015. Between 1 July 2020 and 6 December 2024, fair and reasonable allocations were made to all members, but the reserve was otherwise used for no other purpose during that time.

After 7 December 2024, the trustee allocates a part of the reserve to the recipient of former income stream A in circumstances that satisfy all requirements for that allocation to be an excluded cessation allocation. In particular, the fair and reasonable allocations do not prevent the reserve from satisfying the requirement that it be a pension reserve because the transitional provision disregards all allocations between 1 July 2015 and 6 December 2024.

The cessation allocation itself is also deemed to be for a pension liability purpose. As a result, the reserve does not cease to be a pension reserve for the purposes of the Regulation because of the allocation, which may be relevant if a subsequent excluded cessation allocation is made to the recipient of former income stream B.

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Classifying and reporting transactions

How to classify contributions, including difficult ones.

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Classifying transactions

When you receive a contribution or report an event, you should determine what type it is to ensure you report it correctly.

How you classify the contribution in your reporting will depend on:

- where the contribution has come from or how the event originated
- the information provided by the contributor at the time of the contribution or event
- the decisions you make about how it will be treated by you.

When you accept a contribution, you need to collect information that will help you to correctly determine what type of contribution it is.

Generally, you should be able to answer the following questions for each contribution:

- Who is the contribution for?
- Who made the contribution?
- What is the contributor's relationship with the member for whom the contribution was made (that is, are they the member themselves, the member's employer, the member's spouse or another third party, such as other family and friends)?
- What was the purpose of the contribution?
- Did the contributor provide a valid notice of election to treat the contribution in a particular way?

Use the information you collect, the [Member Account Transaction Service business implementation guide \(MATS BIG\)](#)  and this protocol to help you correctly classify and report contributions and events. An explanation of each field, which adds to and supports the explanations given in the MATS BIG, is provided in this protocol.

We use the contributions information you and other providers report to us, as well as deduction information from your members' tax returns, to determine which contributions are:

- eligible personal contributions – so we can determine super co-contribution entitlement and eligibility for deductions or schemes, for example, First Home Super Saver Scheme (FHSS)
- concessional contributions – so we can determine low income super amount entitlements for the financial year, and assess member tax liabilities in relation to the concessional contributions cap and Division 293
- non-concessional contributions – so we can assess member tax liabilities and eligibility for deductions or schemes.

Insurance premiums are contributions

Insurance premiums paid to you are contributions. If they are paid by the member, they are considered to be personal contributions. If they are paid by the member's employer (whether directly to the insurer or to you) they are considered employer contributions. This is true in all circumstances, including for risk-only or insurance-only policies where the super benefit afforded provides cover for death, disability or sickness only – that is, contributions are not accumulated in an account for the benefit of the member. The relevant field to report these is specified further in the protocol.

If your liabilities, such as insurance premiums, are paid for by employers or other third parties, you have an obligation to record and report them as contributions attributable to the relevant members.

Your members may be unaware that contributions of this nature are being made for them and may inadvertently exceed the contributions caps. Consider bringing this issue to the attention of your members and associated employers and third parties so that they are able to manage their contributions in an informed way.

Contributions made by an employer that are personal contributions

In some circumstances, contributions made by an employer from an employee's after-tax take-home pay need to be classified as personal contributions. These include where:

- the employer has an obligation to make such contributions and the employee has no choice, for example, under the rules of an

employer-sponsored super fund or the rules of a defined benefit scheme

- the employer is voluntarily directed to make such contributions by the employee, for example, under arrangements authorising a regular pay-roll deduction.

Contributions for spouses or children

Employer contributions should be reported at one of the Employer contributions fields, if they are:

- contributions made by an employer for the employer's spouse – you should not report these at the Spouse contributions field unless the employer is acting in their capacity as the spouse of the member rather than as an employer
- contributions made by an employer for a child employee under 18 years of age – you should not report these at the Child contributions field unless the employer is acting in their capacity as a relative or friend rather than as an employer.

Defined benefits and constitutionally protected funds

As well as reporting any actual employer contributions paid in relation to a member's accumulation interest, if you are a defined benefit scheme or a constitutionally protected fund, you may need to report contributions in relation to a member's defined benefit interest. These contributions are referred to as notional taxed contributions and defined benefit contributions.

These are not reported at the Employer contributions fields, refer to the **Annual obligations and balance amounts** protocol.

Both contribution types are generally intended to reflect what an employer would have needed to contribute in that year to fund the member's expected final benefit. However, they are calculated differently and should not be confused with each other. You should determine the amount for each member with the advice of an actuary.

Employer contributions

When to report employer contributions in the employer contribution fields and when not to.

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Classifying employer contributions

Generally, super contributions made by your member's employer are included in one of the **Employer contributions** fields. However, this is not always the case, and you will need to implement systems and processes to distinguish between:

- employer contributions made by an employer
- personal contributions made by an employer on behalf of their employee.

You also have a duty to ensure this categorisation is understood and applied by your members and by their employers when they provide information to you. For example, you may need to work with an employer who incorrectly characterises members' salary sacrifice contributions as personal contributions.

Employer superannuation guarantee

These are:

- contributions made by an employer specifically to meet super guarantee requirements under the Superannuation Guarantee Administration Act 1992
- any super guarantee charge we contributed for a member – these are paid in lieu of contributions that an employer failed to pay for the member
- any amounts we contributed for a member by transfer from their super holding accounts (SHA) special account – but only to the extent that they are characterised as a taxable component. The taxable component represents employer contributions (such as super guarantee charge) that we have been holding in the SHA special account for the member.

Reporting contributions from the ATO

Historically, providers have reported all contributions to the ATO including those that have been sent to them via the ATO. From 2018–19 onwards, some contributions which are sent from the ATO to you no longer need to be reported, such as government co-contributions and low income super amounts.

The contributions received by you from the ATO that are still required to be reported from 2018–19 onwards are those listed above to be included at the employer super guarantee field. Any recoveries of these amounts must also be reflected in your reporting (either through an adjustment, or a cancel and re-report).

Employer salary sacrifice

These contributions are made by the employer as a result of a salary sacrifice arrangement, where the member agrees to forgo part of their before-tax salary or wage in return for their employer providing a super benefit of a similar value.

These contributions should not be confused with compulsory member contributions made before-tax which are funding a defined benefit. These are included in the actuarial calculation of notional taxed contributions and defined benefit contributions.

Employer award

These are contributions paid in addition to those required under the super guarantee obligations imposed by industrial agreements, awards, trust deeds or governing rules.

These may include amounts contributed by an employer:

- from a member's before-tax salary, in order to meet the mandated personal contributions to an accumulation scheme (where the member's voluntary component would be reported as Employer salary sacrifice and the mandatory component reported in this field as Employer award)
- under a Commonwealth, state or territory law governing the super entitlements of public sector employees.

Employer voluntary

These are contributions made as part of a remuneration package. They may exceed the minimum legal requirements imposed by industrial agreements, awards, trust deeds or governing rules.

Alternatively they can be contributions to fund costs such as insurance premiums paid for a member, where the contributions are not mandated in accordance with Part 5 of the Superannuation Industry (Supervision) Regulations 1994.

The type of employer contributions reported may have an impact on your member's:

- liability to certain taxes – for example, Division 293
- availability to participate in certain schemes – for example, the FHSS Scheme where only the salary sacrificed employer contributions would be available for release.

It's important for employers and providers to correctly characterise and report each contribution, using the Employer contribution categories.

Example: insurance premiums paid by the employer

Chef Pty Ltd sponsors a super fund for its employees called Chef Super Fund. Colin is a senior employee of the company and a member of the super fund.

The trustees of the fund insure the lives of the fund's members. The trustees are the policy holders. The aim of the insurance is to fund the super benefits payable upon Colin's death or permanent incapacity.

Chef Pty Ltd, as employer sponsor, complies with a certified agreement to pay the fund's annual life insurance premiums (\$1,200) for Colin and does so on 1 June 2019. The insurance premium paid is in addition to the normal SG obligations for Chef Pty Ltd.

When Chef Super Fund reports for Colin for the 2018–19 financial year, it reports:

- the \$1,200 insurance premium at the **Employer – award** field (see note)
- \$4,900 at the **Employer – super guarantee** field
- \$20,000 at the **Employer – salary sacrifice** field which Colin has salary sacrificed through a regular payroll deduction.

However, Chef Super Fund did not make Colin aware of the effect of these insurance premiums on his contributions.

Colin had set his salary sacrifice agreement to \$20,000, which he believed kept his employer contributions (including the super guarantee component) from exceeding his concessional contributions cap of \$25,000. However, with the premiums included he had exceeded the cap and was not aware until he received a letter from us about his potential liability for excess contributions tax.

Note: Where the payment or reimbursement of insurance premiums paid by the employer are made on a voluntary basis and are not mandated, there may be instances where an employer reports these insurance payments at the 'Employer – voluntary' field.

QC 82660

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