



# Non-employer contributions

How to report contributions that are not employer contributions.

## Personal contributions



What personal contributions are and how to report them.

## Capital gains tax cap election amounts



What capital gains tax (CGT) cap election amounts are and how to report them.

## Personal injury election / structured settlement amount



What personal injury election or structured settlement amounts are and how to report them.

## Spouse contributions, child contributions and other third-party contributions



What spouse, child and other third-party contributions are and how to report them.

## Downsizer contributions



What downsizer contributions are and how to report them.

## **Amounts transferred from foreign funds**



What these are and how to report them, including the special arrangements for Kiwi Saver schemes.

## **Other concessional and other non-concessional contributions**



Other contributions and how to report them.

QC 82661

# **Personal contributions**

What personal contributions are and how to report them.

**Last updated** 3 February 2025

### **On this page**

Contributions that are personal contributions

Transfers from non-complying funds

Insurance premiums paid by a member

## **Contributions that are personal contributions**

Personal contributions are generally those made by a member for their own benefit from their after-tax monies, including where a member has claimed a personal tax deduction. Personal contributions can also be made by their employer on their behalf.

Both concessional and non-concessional contributions made by the member are reported here.

There are special rules and concessions that apply to these types of personal contributions:

- Capital gains tax cap election amounts
- Personal injury election/structured settlement amount
- Amounts transferred from foreign funds

These are reported separately in order for us to properly administer them. The personal contributions to which each of these concessions apply are reported at the applicable field, with only the remainder being reported at the **personal contributions** field.

Ensure your processes and systems recognise how the **personal contributions** field interacts with these other separately reported personal contributions.

If a member seeks to have a concession applied to a contribution, and you assess that the concession is not applicable, the contribution should be reported as a personal contribution. For example, if a contribution is made with a capital gains tax election and the provider determines it is invalid because the election was given to the provider after the contribution was made, the contribution should be reported at the **personal contributions** field and not at the **capital gains tax cap election amounts** field.

## Transfers from non-complying funds

A transfer from a non-complying fund is a member contribution. The entire amount should be included at the **Personal contributions** field. The amount should not be reduced or varied by any fees, taxes or interest paid. Note that different rules apply to transfer from foreign funds – for more information, see **Amounts transferred from foreign funds**.

## Insurance premiums paid by a member

Insurance premiums paid to you by the member are personal contributions and are to be reported as Personal contributions.

Some of your members may have an entitlement to super co-contributions arising from insurance premium payments. However, even though you may not be able to accept the super co-

contributions, these super co-contributions could be paid to another provider.

### **Example: insurance premiums paid by a member**

Secure Life Super has a range of risk-only policies where members pay an annual premium and the fund provides cover for death and disability. Stan is one of these members and paid a premium for a risk-only policy of \$1,000 in 2014–15 and again in 2015–16.

Secure Life Super reported for risk policies when they also held accumulation interests for the same members but not for its risk-only policies. Stan was therefore not made aware that the premium payments counted as personal contributions.

In late 2017, the ATO conducted a routine audit of Secure Life Super. It identified that the fund had not lodged for a large proportion of its membership and was not compliant with its reporting obligations.

Following the audit, Secure Life Super reported the outstanding premium amounts as personal contributions in the relevant years. It also reported to us that super co-contributions can't be accepted by the fund for the risk-only accounts.

A failure to lodge administrative penalty was imposed on Secure Life Super for the late reporting.

It was determined that Stan was entitled to super co-contributions for 2014–15 and 2015–16 financial years. As the fund had reported that super co-contributions can't be accepted, we asked Stan to nominate another super fund to which the entitlements will be paid.

# Capital gains tax cap election amounts

What capital gains tax (CGT) cap election amounts are and how to report them.

**Last updated** 3 February 2025

## On this page

What CGT cap election amounts are

Election issues

No TFN

## What CGT cap election amounts are

Capital gains tax (CGT) cap election amounts include:

- small business retirement exemption amounts
- small business 15-year exemption amounts.

Whether a person is eligible to make these elections is a complex matter on which you will not be able to advise members. You should urge your members to seek professional advice before making contributions subject to these elections.

These fields are used for reporting personal contributions that a member validly elects to exclude from counting toward their non-concessional cap based on the capital gains tax small business concessions.

You should report contributions in these fields if you received a valid election (either before or at the same time as the contributions were made). You are obliged to check the validity of this election, but only to the extent that it is possible and reasonable to do so. The following are examples of questions about the validity of the election that we expect you to ask to determine validity:

- Was the election received by you before or on the date the contribution was made?

- Was the election given in respect of contributions made by the member, as opposed to contributions made by another person (such as an employer)?
- Was the election made in the approved form?
- Do you hold the member's TFN?

If you become aware that a CGT cap election was not valid after you have reported the contribution, you will need to re-report the contributions as personal contributions.

The legislation does not stipulate what action can be taken in the scenario where you have received a valid election and subsequently find that it contains errors. Generally, our position is that you can substitute the CGT exemption amount originally elected with the actual exemption amount advised on a subsequent election, treating the subsequent election as an amendment to the original election.

An approach for you to deal with this situation is to treat the form already given as if it were ineffective on the grounds that the particulars provided on the form are incorrect, and to accept another form as an amendment to the original. This approach ensures that the timeframe required by the law to submit the form has been met.

If you have already reported the contribution with an incorrect amount, you will also need to correct your reporting.

For more information, refer to **Small business CGT concessions**.

## Election issues

### Late elections

A late election is one made after the related contribution has been made. A late election is not effective. Therefore, the member's contribution should be reported at the **Personal contributions** field – not at either of the **Capital gains tax election** fields.

You have no discretion in this matter. Members seeking to lodge late elections should be referred to us for advice.

### Retirement exemption elections in excess of \$500,000

Members are not permitted to exclude more than \$500,000 under the small business retirement exemption amount. If they elect to do so in error, you are not permitted to report amounts in excess of \$500,000 at this field. The balance in excess of \$500,000 must be reported at the **Personal contributions** field.

### **Example: retirement exemption elections over \$500,000**

In May 2018, Adam made a personal contribution of \$700,000 and provided his fund (TOP Super Fund) with a CGT cap election for a small business retirement exemption of \$700,000.

The fund contacted Adam to advise that TOP Super Fund cannot report more than \$500,000 to the ATO as a CGT exemption. They suggested Adam seek professional advice about his eligibility to use an alternative exemption type and whether he would have an excess contributions tax liability. Adam said he had already sought professional advice and insisted the election was correct.

In order to report correctly for Adam in the approved form, TOP Super Fund reported \$500,000 at the **Small business retirement exemption** field and \$200,000 at the **Personal contributions** field.

## **Elections not in respect of personal contributions**

The CGT cap election is to exclude personal contributions from the non-concessional contributions cap. It does not apply to any other type of contribution, such as contributions made by the member's employer, spouse, family and friends or business entities associated with the member.

## **Elections not in the approved form**

The CGT cap election must be made using the **Capital gains tax cap election form** (NAT 71161). This is the approved form for providing a CGT cap election. The form must be completed in full and signed by the member on or before the time of the contribution.

## **No TFN**

A personal contribution made with a CGT cap election is a member contribution for the purposes of the contributions standards. Therefore, it **cannot be accepted** if a valid TFN is not:

- provided on the election form or
- already held by you.

For more information, see **Regulation 7.04** of the *SISR Acceptance of contributions – regulated superannuation funds*.

QC 82657

## Personal injury election / structured settlement amount

What personal injury election or structured settlement amounts are and how to report them.

**Last updated** 3 February 2025

### On this page

Using this field

Election issues

No TFN

## Using this field

This field is used for reporting personal contributions that a member validly elects to exclude from counting toward their non-concessional cap, where the contributions have arisen from a structured settlement or order for personal injuries.

If you received a valid personal injury election with the contributions, report them at this field. You are obliged to check the validity of this election, but only to the extent it is possible and reasonable to do so.



The following are examples of questions about the validity of the election that we expect you to ask to determine its validity:

- Was the election received by you before or on the date on which the contribution was made?
- Was the election given in respect of contributions made by the member, or under the member's direction, as opposed to being made by another person (such as an employer)?
- Was the election made in the approved form?
- Do you hold the member's TFN?

A debit will arise in the member's transfer balance account for any structured settlement amounts received and contributed towards their super interest.

To be eligible, the contributions must arise from either:

- a structured settlement payment
- an order for a personal injury payment
- a lump sum workers compensation payment.

The eligibility only applies to the particular amounts that are compensation or damages for personal injury.

The member must have made the contribution within 90 days of the later of:

- the date the member received the personal injury payment
- the date the member entered into an agreement for settlement of a personal injury
- the date on which an order for a personal injury payment was made.

The period may be longer than 90 days if the Commissioner allows.

For contributions made from 1 July 2007, you must receive a completed **Contributions for personal injury election** (NAT 71162) form from the member on or before the date on which the member made the contribution.

You are not required to investigate these matters when you receive an election. However, if you become aware that these eligibility requirements have not been met then you should treat the member's

election as invalid and advise them that the amount will be reported to the ATO at the Personal contributions field.

Whether a person is eligible to make this election is a complex matter on which you will not be able to advise your members. You should urge your members to seek professional advice before making contributions subject to this election.

You should not change your reporting at this field even if a member later provides you with a notice of intention to claim a deduction for these amounts. The law allows a member to elect to deduct a personal injury/structured settlement contribution in the same way as they deduct other personal contributions. That is, you do not adjust the personal contributions reported when you receive a notice of intent to claim a deduction when the amount has been reported at the personal contributions field – nor should you do so when it has been reported at the personal injury/structured settlement field.

## **Election issues**

### **Late elections**

If members seek to lodge late elections, you should refer them to us for advice since this is not a matter in which you have any discretion.

### **Elections not in respect of personal contributions**

The personal injury election is to exclude personal contributions from the non-concessional contributions cap. It does not apply to any other type of contribution.

### **Elections in the approved form**

This election must be made using the **Contributions for personal injury (NAT 71162)** form. This form is the only approved form. It must be completed in full and signed by the member or the member's legal representative either before or at the time of the contribution.

## **No TFN**

A personal contribution made with a personal injury election is a member contribution for the purposes of the contributions standards. It cannot be accepted if a valid TFN is not:

- on the election form or
- already held by you.

QC 82658

## Spouse contributions, child contributions and other third-party contributions

What spouse, child and other third-party contributions are and how to report them.

**Last updated** 3 February 2025

### On this page

Spouse contributions

Child contributions

Other third party contributions

## Spouse contributions

Contributions included at this field are:

- contributions made by the member's spouse
- contributions made for a child, where the spouse and [child contributions](#) have not been separated for reporting purposes.

### Contributions made by the member's spouse

If a person advises that they are making a contribution for the benefit of a member in their capacity as the member's spouse, then the contribution needs to be reported at this field.

Spouse includes a person:

- to whom the member is married (and is not separated from on a permanent basis)
- with whom the member is in a relationship that is registered under certain state or territory laws (including registered same-sex relationships)
- who lives with the member on a genuine domestic basis in a relationship as a couple (known as a de-facto couple and including same-sex couples).

You should not include at this field contributions made by a spouse living separately and apart from the person on a permanent basis, even if the couple remains married. If a contribution is received for a member from a spouse who is living separately or former spouse, it is reported at **other third party contributions**.

If the spouse of a member is also their employer, the contributions they make for the member must be reported according to the capacity in which they make a particular contribution. For example, contributions made in the capacity of an employer to meet super guarantee obligations will be reported as employer contributions, while extra contributions made only because of their personal relationship as a couple will be reported as spouse contributions.

## Child contributions

Contributions made for a child means any contributions made for a member who was under 18 years old at the time the contribution was made. It excludes:

- personal contributions made by the member themselves
- employer contributions made by a person acting in their capacity as the employer of the member (even if they are also a parent or relative of the member).

Contributions made by a parent of the member are not reported as contributions made for a child, unless the member is less than 18 years old. This is true regardless of whether the child is financially dependent upon the parent or not. If the child is 18 years or older, contributions made by a parent should be reported at the field other third party contributions.

## Other third party contributions

Other third party contributions are not personal contributions or employer contributions and do not fit the other special categories.

At this field include contributions made by third party contributors, such as:

- contributions made by the member's former spouse
- contributions made by a person to whom the member is married but is now living separately and apart from on a permanent basis
- contributions made by a parent, child or other relative of the member, where the member is 18 years or older
- contributions made by a friend of the member
- policy entitlements paid by insurance companies in the form of super contributions
- statutory compensation paid by government agencies in the form of super contributions
- contributions made by a person or organisation making a contribution out of charity, by way of a gift to the member
- contributions made by the employer of the member's spouse or other relative
- contributions made by the ATO or other government agencies to compensate members for errors in their administration of the law.

A good way to distinguish between contributions made by third party contributors is to consider the following distinction:

- contributions made by a third party on their own initiative or obligation, for the benefit of a member should be reported as other third party contributions
- contributions made by a third party under the member's direction or instruction, dealing with monies to which the member would otherwise have been personally entitled, should be reported as personal contributions.

You should take reasonable steps to ensure you collect correct information from your members when these contributions are made.

Make sure you don't routinely characterise all contributions made by third party contributors as personal contributions.

### **Example: personal contribution made by a third party**

Quynh's grandmother died and Quynh inherited a share of her house. The trustee of the estate sold the house and distributed the proceeds to the beneficiaries. In accordance with Quynh's instructions, the trustee paid \$120,000 into Quynh's super fund. Based on the information Quynh provided about the contribution, the super fund reported it as a personal contribution.

### **Example: other third party contribution made as a gift**

When Paul's grandfather died, his grandmother sold the family home and decided to distribute the proceeds to her grandchildren. She was concerned they would squander her gift, so decided to contribute the money to each grandchild's super fund. Paul gave her his super fund's details, and she contributed \$120,000 into his super fund for him. The super fund correctly reported the contribution as an Other third party contribution.

### **Example: other third party contribution made under an insurance obligation**

Tom's employer did not offer generous leave conditions, so Tom took out income replacement insurance. When Tom was very ill for 8 months, he was forced to use leave without pay for some of the time. Under his insurance policy, regular payments were made to him to replace his salary during that time. In addition, the insurance company made payments directly to Tom's super fund, in lieu of the contributions his employer might have made

for him had he not been on sick leave without pay. Tom's super fund correctly reported these contributions as other third party contributions.

QC 82659

## Downsizer contributions

What downsizer contributions are and how to report them.

**Last updated** 3 February 2025

### On this page

Using this field

What a downsizer contribution is

Downsizer contribution into superannuation form

Determining the validity of the contribution

No TFN

Ineligible downsizer contributions

## Using this field

This field is used for reporting contributions made by an eligible member from the sale of an eligible dwelling in accordance with section 292–102 of the Income Tax Assessment Act 1997 (ITAA 1997). These are referred to as 'downsizer contributions'.

You should urge members to seek professional advice before they make a downsizer contribution.

## What a downsizer contribution is

Downsizer contributions are contributions which you have received from members who have sold their eligible dwelling. The member must

self-assess their own eligibility, which includes:

- the contract of sale was entered into on or after 1 July 2018
- the member has reached the eligible age (noting there is no maximum age limit) at the date of making the contribution; the eligible age is as follows
  - from 1 January 2023, 55 years old or older
  - from 1 July 2022, 60 years old or older
  - from 1 July 2018, 65 years old or older
- the member satisfies both an ownership test and a main residence test
- the member made the contribution within 90 days from the time the change of ownership occurs (unless the Commissioner has granted an extension)
- the member has not previously made a downsizer contribution from the sale of any dwelling including multiple partial disposals of their ownership interest in the same dwelling.

Members may choose to make multiple contributions from the sale of one primary residence up to the maximum amount that they can contribute.

The maximum amount that an individual can contribute to all providers from the sale of the one home is the lesser of:

- \$300,000; or
- the proceeds of the sale of the home, less any other downsizer contributions that have been made by the individual or a spouse.

For more information on the downsizer contributions, see:

- *LCR 2018/9 Housing affordability measures: contributing the proceeds of downsizing to superannuation*
- *GN 2018/2 Downsizer contribution*

## **Downsizer contribution into superannuation form**



The member must supply the approved **Downsizer contribution into super form** to you when making a downsizer contribution. If you provide your own form for your members, it must include all the information that the **approved form** contains.

- The form must be completed in full, signed and provided by the member or the member's legal representative either before or at the time of contribution.
- If making multiple contributions from the sale of the one main residence, the member must complete a separate form for each contribution.
- You are obliged to check the validity of the form but only to the extent that it is possible and reasonable to do so.

## **Determining the validity of the contribution**

The following are examples of questions that we expect you to ask to determine the validity of the contribution:

- Do you hold the member's TFN?
- Has the member reached eligible age?
- Was the form signed by the member or the member's legal representative either before or at the time of the contribution and given to you when the contribution was made?
- Does the form supplied by the member meet the requirements of the **approved form**?
- Was the contribution made by the member, or under the member's direction, as opposed to another person (such as an employer)?

## **No TFN**

A downsizer contribution is a member contribution for the purposes of the contributions standards and so cannot be accepted if a valid TFN is not:

- on the **Downsizer contribution into super form**, or
- already held by you.

## Ineligible downsizer contributions

Where a downsizer contribution is found to be ineligible, you will need to assess whether it can be accepted as a personal contribution under your fund acceptance rules and [regulation 7.04](#) of the SISR.

If it is accepted as a personal contribution it should be reported as such. The amount will then count towards the members non-concessional contributions cap.

If you cannot accept the contribution you are required to return it to the member and it does not need to be reported as a contribution.

QC 82654

## Amounts transferred from foreign funds

What these are and how to report them, including the special arrangements for Kiwi Saver schemes.

**Last updated** 3 February 2025

### On this page

[Transferring to Australia](#)

[Transfers from KiwiSaver Schemes](#)

[Transfers from reserves](#)

## Transferring to Australia

A member can transfer their interest or entitlement in a foreign fund to an Australian superannuation fund. They may pay income tax on this transfer but only on the applicable fund earnings. The applicable fund earnings are, in general terms, the earnings on the member's foreign super interest that accrued:

- since they became an Australian resident, or

- from when they terminated their foreign employment until the transfer takes place.

If they complete the transfer within 6 months of meeting the conditions above, the applicable fund earnings will be nil.

A member can elect to include the applicable fund earnings in the assessable income of their Australian superannuation fund as an alternative to paying income tax on the amount themselves. To make this election they must either:

- complete and give you the form **Choice to have your Australian fund pay tax on a foreign super transfer (NAT 11724)**
- provide the same information in a form you give them.

## Your reporting obligations

All amounts received from a foreign fund transfer (other than a KiwiSaver scheme) are contributions (according to the ordinary meaning discussed in taxation ruling TR 2010/1) and must be reported.

There are 3 possible components for other foreign fund transfers **which are not KiwiSaver schemes**:

- [applicable fund earnings \(elected\)](#)
- [excess foreign fund amount](#)
- [non-assessable foreign fund amounts](#)

### Applicable fund earnings (elected)

This is the amount the member has chosen to include in the assessable income of their provider (shown at section D, question 17 on the form **Choice to have your Australian fund pay tax on a foreign super transfer (NAT 11724)**). You should report this field as nil if the member did not make this choice.

### Excess foreign fund amount

This is the difference between:

- the amount in the foreign fund vested in the member at the time the foreign transfer occurs
- the amount actually transferred to the Australian superannuation fund by the foreign fund.

This difference can arise, for example, when a foreign employer allocates an additional discretionary payment to the member as a golden handshake or in recognition of years of service.

Generally, foreign fund earnings are regarded as vested in the member, even if they are not calculated and applied to the member's account until the transfer occurs, even if earnings won't be applied to other members' accounts until a later date.

You should be careful not to confuse the excess foreign fund amount with the amount the member chooses to include in your fund's assessable income.

### **Non-assessable foreign fund amounts**

This is the entire foreign fund transfer amount less:

- any amounts included in the field **excess foreign fund amount**
- any amounts included in the field **applicable fund earnings (elected)**.

This amount often makes up most of a foreign fund transfer.

## **Transfers from KiwiSaver Schemes**

Transfers from KiwiSaver Schemes under trans-Tasman portability arrangements are not treated the same as other foreign fund transfers. There are different rules for deciding which part of the transfer should be included.

There are 3 possible components of a transfer from a KiwiSaver Scheme:

- any amounts that are Australian sourced amounts returning to Australia (that have previously been reported by an Australian superannuation fund) should not be reported
- any amounts that are New Zealand-sourced amounts that were previously transferred to Australia and are now returning from New Zealand should not be reported as these have previously been reported by an Australian superannuation fund
- the remainder of the KiwiSaver tax-free transferred amount should be reported at **non-assessable foreign fund amounts**. This will be treated as a non-concessional contribution and count towards the member's non-concessional cap.

You should not accept these transfers from New Zealand unless you have built systems and processes to allow you to do so, including to:

- store details of KiwiSaver tax-free components, and pass these details to other providers with a rollover
- comply with the regulatory rules that apply to these components (such as no rollovers to SMSFs and preservation of New Zealand-sourced amounts until age 65)
- comply with the tax rules that apply when these amounts are paid to the member as a benefit
- report the KiwiSaver tax-free amount when first transferred from New Zealand.

## Transfers from reserves

Generally, all amounts transferred or allocated from reserves should be reported as either assessable or non-assessable amounts. The meaning of assessable and non-assessable is provided within the ordinary meaning of contributions (as provided in taxation ruling TR 2010/1).

Examples of where allocations from reserves are generally not reported as assessable amounts include:

- amounts allocated to all, or to a class of members to which the reserve relates, on a fair and reasonable basis
- amounts allocated for the sole purpose of discharging super income stream liabilities that are currently payable
- allocations following the commutation of a pension, where the amount in the reserve is allocated to a member who is the primary beneficiary of the pension and it is used to support another income stream for that member.

### **Example: transfer from reserves not reported**

Wellington Super had accumulated earnings in an investment reserve. On 1 May 2013, the trustees distributed the balance of the reserve to members to whom the reserve related in proportion to their interest in the fund on that day.

In the 2012–13 financial year, Wellington Super reported these amounts in the member contribution statement (MCS) field All contributions received for the current year and did not report any amounts as either assessable or non-assessable transfers from reserve.

For 2018–19 financial year onwards these distributed earnings amounts would not be reported to the ATO in the member account transaction service (MATS).

### **Example: transfer from reserves reported as non-assessable**

Wellington Super accepted member contributions into a reserve. These amounts are then allocated to the member within 28 days of the end of the month. These amounts are not considered assessable contributions for the purposes of the fund's income tax liability and are reported at the field Transfers from reserves – non-assessable.

### **Example: transfer from reserves reported as assessable**

Wellington Super had accumulated employer contributions into reserve.

These amounts were then allocated to the member within 28 days of the end of the month. The amounts are considered assessable contributions for the purposes of the fund's income tax liability and Wellington Super reported them at the field Transfers from reserves – assessable.

# Other concessional and other non-concessional contributions

Other contributions and how to report them.

Last updated 18 June 2025

## On this page

Directed termination payments

Allocations from reserves

Allocations in lieu of employer contributions

Contributions that can't be reported in any fields

## Directed termination payments

The concessional treatment of directed termination payments was a transitional measure that ended on 30 June 2012.

If you receive payments from employers after this date that purport to be directed termination payments, report the entire payment as a **personal contribution**.

If you contact the member or their employer and decide the contribution was made in error – that is, in the belief that directed termination payments could still be made – you can decide not to accept the contribution (and therefore not report it).

## Allocations from reserves

From 7 December 2024, unless specified as an exclusion, allocations from reserves are reported as non-assessable amounts.

These allocations count towards the non-concessional contributions cap of the member.

Some exclusions include but are not limited to:

- certain assessable contributions such as allocations in lieu of employer contributions

- fair and reasonable allocations.

### **Example: non-assessable allocations from a fund's reserves**

A trustee of a fund is required to make remediation payments to certain fund members. They perform a remediation exercise and allocate \$150,000 from the fund's reserves to 100 separate member's accounts.

The fund reports for each member a non-assessable amount transferred from reserves of \$1,500.

## **Allocations in lieu of employer contributions**

An allocation from a reserve in lieu of an employer contribution is generally:

- reported as an assessable amount
- not reported as an employer contribution.

To calculate the amount to be reported, multiply the employer contribution (before 15% tax is applied) by 1.176. This will reflect the employer contribution that would have been required to fund the amount actually allocated. However, this 'grossing-up' method results in a reporting requirement that does not precisely reflect the equivalent contribution that an employer would have made.

Application of these regulations is a complex matter. You should obtain advice from suitably qualified people.

### **Example: allocations from a fund's reserves**

A trustee of a fund allocates \$8,500 from the fund's reserves to a member's account. This is 15% less than the \$10,000 that the member's employer might otherwise have contributed.

The fund reports for the member an assessable amount transferred from reserves of \$9,996 ( $\$8,500 \times 1.176$ ). This is not



the amount of the allocation (\$8,500) and not precisely the amount of the equivalent employer contribution (\$10,000).

For more exclusions, see Income Tax Assessment Regulations 1997 (ITAR) regulation 292-90.02.

## Contributions that can't be reported in any fields

Other concessional and non-concessional contributions received for the member that can't be reported in any other fields may include contributions (according to the ordinary meaning in Taxation Ruling TR 2010/1 *Income tax: superannuation contributions*) that are not reported elsewhere.

Currently, there are no other amounts that we consider fit these categories. Providers should lodge a request using the [Super Enquiry Service](#) before using these fields.

Read the protocol and [MATS Business Implementation Guide \(BIG\) \(DOCX, 426KB\)](#) [↗](#) carefully and only use these fields when there is genuinely no other fields applicable.

QC 82662

## Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

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