



## Ruling compendium – TR 2010/1

### **❶ Relying on this Compendium**

This Compendium of comments provides responses to comments received on draft Taxation Ruling TR 2010/1DC2 *Income tax: superannuation contributions*. It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

### **Summary of issues raised and responses**

All legislative references in this Compendium are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

| Issue number | Issue raised                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | ATO response                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| 1            | <b>General comment</b><br>The Ruling applies retrospectively, requiring updates to address the defunct maximum earnings test; however, the final update to the Ruling should also modernise examples (for example, Example 10 of the Ruling references 2012) and provide clarity on the current law regarding deductible contributions, particularly the interaction with the work test and work test exemption.                                                                                                                                                                               | While the Ruling applies retrospectively, the maximum earnings test content was omitted given its repeal since 1 July 2017. Previous versions of the Ruling can still be accessed via the history function available in our Legal database.<br><br>Feedback regarding updating the income years in the examples has been noted, however, we consider that the application of the principles in the examples remains current. |
| 2            | <b>Scope of the draft update</b><br>Paragraph 1 of the Ruling makes it clear the Ruling is intended to apply to contributions to a superannuation fund, an approved deposit fund or a retirement savings account. It notes that aspects of the Ruling are relevant to the meaning of 'contribution' in the <i>Superannuation Industry (Supervision) Act 1993</i> and the <i>Superannuation Industry (Supervision) Regulations 1994</i> . While these contain standards relevant to the payment of amounts to superannuation funds and approved deposit funds, standards relevant to payment of | No changes have been made in the final update to the Ruling as the specific provisions in the <i>Retirement Savings Account Act 1997</i> and <i>Retirement Savings Account Regulations 1997</i> that reference 'contribution' are not administered by the Commissioner.                                                                                                                                                      |

| Issue number | Issue raised                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | ATO response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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|              | <p>amounts to retirement savings accounts are set out in the <i>Retirement Savings Account Act 1997</i> and <i>Retirement Savings Account Regulations 1997</i>.</p> <p>For completeness, we recommend that reference to these is inserted into paragraph 1 during the final update to the Ruling.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 3            | <p><b>ATO compliance approach</b></p> <p>The compliance approach previously outlined in Appendix 2 to the draft update has been removed from the draft update which issued on 27 November 2024. This absence of clear guidance creates uncertainty about whether the ATO intends to apply both the non-arm's length income (NALI) and contribution provisions simultaneously, raising concerns about the potential for double taxation.</p> <p>Without a compliance framework, a non-arm's length arrangement could be subject to taxation as NALI under section 295-550, while also being treated as a contribution. This dual treatment could result in excessive tax liabilities and significantly diminish a member's retirement savings.</p> <p>We urge the Commissioner to adopt a pragmatic compliance approach that upholds fairness and proportionality. This approach should address the interaction of contribution rules and NALI provisions, considering both general and specific non-arm's length expenditure (NALE).</p> | <p>The Commissioner considers that the principles as outlined in <i>GYBW and Commissioner of Taxation</i> [2019] AATA 4262 should apply and that no advantage should be obtained through non-arm's length dealings that have the effect of circumventing the operation of the contribution cap provisions.</p> <p>In the final update, the wording of paragraph 276E of the Ruling clarifies the compliance approach for each relevant time period. That is, for arrangements that have occurred:</p> <ul style="list-style-type: none"> <li>from 1 July 2018 to 27 July 2021 – the compliance approach in paragraph 276C of the updated Ruling applies</li> <li>from 28 July 2021 to 27 November 2024 – the compliance approach in paragraph 276C of the updated Ruling will be considered on a case-by-case basis on application by a trustee of a fund, and</li> <li>from 28 November 2024 – no compliance approach will apply for the reasons outlined in paragraph 276D of the updated Ruling.</li> </ul> |
| 4            | <p><b>Date of effect</b></p> <p>The retrospective application of NALE provisions (effective from 1 July 2018) could require years of contribution caps to be recalculated, exposing members to associated earnings penalties backdated to 1 July of the year the contribution was made. This is a punitive outcome that is very disproportionate and unjust.</p> <p>The Commissioner should consider exercising the discretion under Law Administration Practice Statement PS LA 2008/1</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <p>See our response to Issue 3 of this Compendium.</p> <p>Paragraph 8B of Law Companion Ruling LCR 2021/2 <i>Non-arm's length income – expenditure incurred under a non-arm's length arrangement</i> confirms that the non-arm's length expenditure provisions do not apply to expenditure incurred or expected to have been incurred before 1 July 2018. However, it is noted that the exclusion does not limit the potential application of other NALI provisions, depending on the facts of each case.</p> <p>Footnote 8A has been added to paragraph 8B of LCR 2021/2 to clarify that the other NALI provisions in section 295-550 can still apply to expenditure</p>                                                                                                                                                                                                                                                                                                                                      |

| Issue number | Issue raised                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | ATO response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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|              | <p><i>The Commissioner's discretion to disregard or allocate to another period superannuation contributions for excess contributions purposes</i> which provides for disregarding or reallocating superannuation contributions in situations involving excess contributions. To enhance clarity and minimise administrative burdens, PS LA 2008/1 should be revised to reflect the ATO's views as outlined in the Ruling.</p> <p>Additionally, with the removal of the Commissioner's compliance approach in Appendix 2 to the draft Ruling, we urge that the Commissioner's discretionary powers are not confined to post 28 July 2021 arrangements. Instead, these powers should extend to arrangements occurring between 1 July 2018 and the date the final update to the Ruling is issued.</p>                                                                                                                                                                                             | <p>incurred or expected to have been incurred before 1 July 2018 where the requirements in those provisions are met.</p> <p>We note that PS LA 2008/1 is referred to in footnote 97 in paragraph 276E of the Ruling. No changes will be made to PS LA 2008/1 with respect to the position we have outlined on the compliance approach in Appendix 2 to the final Ruling.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 5            | <p><b>Contribution examples in the draft Ruling</b></p> <p>1. Contribution made by paying a fund's expenses<br/>We agree with the outcome of Example 1 of the Ruling. However, if the contribution is not recorded then we assume that section 295-550 may apply. The NALI impact should be discussed in the final update to the Ruling.</p> <p>2. No contribution made by a free service<br/>We agree with the outcome of Example 2 of the Ruling. We consider that the final update to the Ruling should note that Jasmine performs her tasks in her trustee capacity, not her professional capacity. Reference should be made to relevant paragraphs of LCR 2021/2.</p> <p>3. Contribution made by forgiving liability<br/>We agree with the outcome of Example 3 of the Ruling. Similar to Example 1 of the Ruling, if the contribution is not recorded then we assume that section 295-550 may apply. The NALI and NALE impact should be discussed in the final update to the Ruling.</p> | <p>The purpose of Examples 1 to 3 of the Ruling is only to demonstrate whether, on the facts of the examples, a contribution has been made. The purpose of the examples is not to explain the operation of the NALI provisions. In considering the application of the NALI provisions, a small complying superannuation fund needs to consider whether it has incurred less expenditure, or no expenditure, under a scheme than it might have been expected to have incurred in gaining or producing ordinary or statutory income if the parties to the scheme had been dealing with each other at arm's length. For further guidance on the application of the NALI and NALE provisions, see LCR 2021/2.</p> <p>However, we would note:</p> <ul style="list-style-type: none"> <li>• In Example 1 of the Ruling, a contribution is being made when Jane pays for the entire liability of the fund. If the facts were that the contribution is recorded at less than market value in the fund's account and the member's superannuation interest, the trustee is required to update the fund's accounts and member's superannuation interests to reflect the appropriate market value.</li> <li>• In Example 2 of the Ruling, Jasmine, on the facts available, will be undertaking the services to the fund in her trustee capacity applying her skills and knowledge, consistent with our view in LCR 2021/2.</li> </ul> |

| Issue number | Issue raised                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | ATO response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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|              | <p>We have no further comments about Examples 4 to 11 of the Ruling.</p> <p><b>Increasing the capital of a fund</b></p> <p>It is crucial for the ATO to clarify the interaction of the NALE and contribution rules. For instance, in the final update to the Ruling, Examples 1, 2 and 3 should acknowledge distinctions in the treatment of accounting, advisory and audit services in line with LCR 2021/2. These examples should also reflect concepts outlined in LCR 2021/2, particularly the delineation between trustee and non-trustee duties, which significantly impact on how expenses are treated</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <ul style="list-style-type: none"> <li>In Example 3 of the Ruling, a contribution is being made when Gus and Pina forgive the invoiced liability. If the facts were that the contribution is recorded at less than market value in the fund's account and the member's superannuation interest, the trustee is required to update the fund's accounts and member's superannuation interests to reflect the appropriate market value.</li> </ul>                                                                                                                                                                                                                                                                                                            |
| 6            | <p><b>Ordinary meaning of contribution</b></p> <p>Paragraph 4 of the Ruling says:</p> <p style="padding-left: 40px;">In the superannuation context, a contribution is anything of value that increases the capital of a superannuation fund provided by a person whose purpose is to benefit one or more particular members of the fund or all of the members in general.</p> <p>This is a particularly important point. There are a range of transactions that have the net effect of benefiting particular members of a superannuation fund or all the members in general.</p> <p>To illustrate, take Example 2 of LCR 2021/2DC. This is deemed to be a scheme that would see section 295-550 apply. However, arguably this transaction has the effect of benefiting particular members of Mikasa's self-managed super fund (SMSF) because the fund has not incurred an ordinarily expected outgoing.</p> <p>Is the ATO saying that specific transactions will not only attract the NALI and NALE provisions but also the arm's length price should be classified as a contribution as per <i>GYBW and Commissioner of Taxation</i> [2019] AATA 4262?</p> | <p>See our responses to Issues 3 and 5 of this Compendium.</p> <p>In respect of Example 2 of LCR 2021/2, it is noted that Mikasa engages an accounting firm to provide services to the fund and does not charge for those services. These circumstances give rise to the application of the NALI provisions for the acquisition of accounting services by the fund on a non-arm's length basis for no charge.</p> <p>The circumstances as described in Example 2 of LCR 2021/2 do not give rise to a contribution within the meaning of paragraph 4 of the Ruling. Mikasa, by engaging an accounting firm to provide accounting services to her SMSF for no charge, does not increase the capital of the fund and therefore, there is no contribution.</p> |

| Issue number | Issue raised                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | ATO response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| 7            | <p><b>Insurance benefit maybe treated as a contribution</b></p> <p>Paragraph 138 of the Ruling has been revised in the draft update to provide that where it is objectively determined that the purpose of the insurance payment is to benefit a member of the fund, the payment may be treated as a contribution.</p> <p>It would be helpful to clearly articulate the specific types of insurance benefit to which the update to paragraph 138 refers.</p> <p>To avoid unintended speculation as to the meaning of the changes in paragraph 138, we seek clarification on the basis for this change in position within the Ruling.</p> <p>We anticipate the update to paragraph 138 is specifically referring to an additional income protection benefit feature (typically known as a 'contribution replacement benefit') that represents employer superannuation contributions to the fund while a member is unable to work and in receipt of income protection benefits. We recommend that this is confirmed or clarified prior to the final update. This is important to make it clear that the update to paragraph 138 is not seeking to capture proceeds from other permissible insurance benefits, such as death and total and permanent disablement proceeds and income protection benefits that are paid directly to insured members.</p> <p>We do not support any departure from the established ATO view, and established industry practices, regarding the treatment of insurance proceeds received by SMSFs, unless accompanied by clear legislative amendments.</p> <p>The new language implies that such proceeds could instead be reclassified as contributions when tied directly to a member's benefit. This creates a potential departure from established practice.</p> <p>Furthermore, the use of the words 'objectively determined' introduce ambiguity. What evidence or criteria will the ATO</p> | <p>In circumstances where the insurance payment has the effect of increasing the capital of a superannuation fund, and it is objectively determined that the purpose of the payment is to benefit one or more members of the fund or all members in general, the payment is a contribution. This is consistent with the ordinary meaning of contribution in paragraph 4 of the Ruling.</p> <p>For example, where funds have taken out insurance policies for temporarily injured employees unable to work, this provides a payment to the fund for the benefit of the member's superannuation account that is broadly equivalent to the superannuation guarantee that would have formed part of the member's account had they been able to continue working. While a proper consideration of the facts, circumstances and terms of the insurance contract is always required, such payments may be considered contributions.</p> <p>Where benefits are paid by insurers directly to insured members, for example, under death and total and permanent disablement or income protection policies, the payment will not have the effect of increasing the capital of the fund and is not a contribution.</p> |

| Issue number | Issue raised                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | ATO response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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|              | <p>require to confirm whether or not insurance proceeds will be treated as contributions?</p> <p>Detailed examples should also be provided in the final update to the Ruling to help industry understand the intent and application of the ATO's view, showing the interaction with <i>Superannuation Industry (Supervision) Regulations 1994</i>, contribution caps and the evidence required for an 'objective determination'.</p> <p>Without such clarity, we recommend removing the statement entirely.</p>                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 8            | <p><b>In-specie contributions</b></p> <p>We do not agree with the ATO's strict view adopted in paragraph 25C of the draft update to the Ruling. In our view, a superannuation fund trustee with the consent of a member, can validly agree to treat a transfer of an undervalued asset as an in-specie contribution, to reflect the true market value of the asset.</p> <p>Revising or softening the ATO's view in paragraph 25C would ensure that compliance is maintained without penalising funds for practices that align with legislative intent and have operated effectively over many years.</p> <p>We recommend that the ATO review its position on the interaction between the Ruling and LCR 2021/2 with respect to in-specie asset transfers. We urge the ATO to acknowledge and preserve long-established industry practices and provide more examples that reflect real transactions.</p> | <p>We consider that the view as outlined in the Ruling is the better view and that paragraph 25C of the Ruling, as updated, provides sufficient guidance and the principles to be applied.</p> <p>Where the terms of a contract make it clear that the asset is being purchased by the fund, the difference between the consideration paid (if any) by the fund and the market value of the asset purchased under the contract cannot represent the value of an in specie contribution. This is because there is no other asset being transferred to the fund that can be regarded as being an in specie contribution. The difference between the consideration (if any) paid by the fund and the market value is not an asset being transferred to the fund.</p> <p>An in specie contribution can be made in conjunction with a fund purchasing part of an asset where a contract makes it clear the fund is only acquiring part of the asset. In such situations, the fund purchases the interest in the asset specified under the contract and receives the in specie contribution of the remaining interest in the asset.</p> <p>For further guidance on the application of NALI, see paragraphs 27 to 30 and Examples 3 and 5 of LCR 2021/2.</p> |
| 9            | <p><b>Transferring an existing asset (in specie contribution)</b></p> <p>Paragraphs 20 to 24 of the Ruling deal with the transfer of beneficial ownership of an existing asset. The lack of clarity on conditions surrounding the trigger for the transfer of beneficial ownership across various asset types creates ambiguity.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p>We consider that paragraphs 20 to 24 of the Ruling are long-standing positions that accurately reflect the operation of the law.</p> <p>The main focus of the update was to amend the Ruling in conjunction with updates made to LCR 2021/2 to reflect the amendments to section 295-550 under the <i>Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Act 2024</i>.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

| Issue number | Issue raised                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | ATO response                                                                                                                                                                                                                                                                                                                                                                                   |
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|              | <p>It is a well-accepted legal position that at the settlement of a transaction, the transferor must provide the transferee with all necessary documentation to facilitate the registration of legal title transfer. At that time, the transferee assumes beneficial ownership and possession of the land, notwithstanding that the legal title remains in the name of the transferor. That is, at the time of settlement, the beneficial interest in the asset transfers to the transferee, notwithstanding that the transferor is still the registered proprietor of the legal title which will be subsequently transferred to the transferee.</p> <p>It is noted that delays may occur in the transfer of legal title, depending on factors such as the time it takes for the particular register of the legal titles to effect that transfer, or for it to be reviewed by the relevant title registry or State Revenue Office.</p> <p>Feedback indicates that when a trustee decides to conduct an off-market transfer to acquire an asset, the date of beneficial ownership change should be documented in the trustee resolution. The requirement in paragraph 24 of the Ruling relates to the legal ownership transfer registration process, raising questions about how this prerequisite, which is simply a step before registration, can be considered a trigger for a change in beneficial ownership of the asset.</p> <p>To address this issue, a control mechanism could be inserted in the final update to the Ruling to ensure any time delay between the trustee resolution, the execution of the off-market transfer form, and the registration of the transfer of legal title should be effected in a reasonable time.</p> | <p>While we have also taken the opportunity to make minor additional adjustments, these were to reflect the repeal of certain legislative provisions. As we have not undertaken an extensive review of all positions in the Ruling, comments on these paragraphs are outside the scope of this update.</p>                                                                                     |
| 10           | <p><b>Increasing the value of, or shifting value to, an asset owned by the superannuation provider</b></p> <p>Paragraphs 32 to 32B of the draft update to the Ruling are limited and lack the detail needed to understand the topic. Taxpayers and advisers alike may be left with uncertainty about the specific points being addressed.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <p>We note that paragraphs 29 to 32 of the Ruling have set out long-standing views concerning arrangements involving the increase of value, or shifting of value, to an asset owned by a superannuation fund. Paragraph 32A and 32B of the Ruling reference the possible interactions with the NALI provisions depending on whether the parties to the arrangement are dealing on an arm's</p> |

| Issue number | Issue raised                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | ATO response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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|              | A reference to the updated LCR 2021/2 should be incorporated into the final update to the Ruling to enhance clarity and guide readers seeking additional information. In the alternative, we recommend amending the Ruling to include more detailed information.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | length basis. A reference to LCR 2021/2 is included at footnote 7D of the Ruling.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 11           | <b>Characterisation of amounts</b><br>Paragraph 17 of the Ruling addresses the treatment of roll-over superannuation benefits and transfers from overseas superannuation funds as ‘contributions’ given they increase the capital of the fund. It may be helpful, in the final update to the Ruling, to also address in this section the transfer or payment of various amounts from the ATO, including unclaimed superannuation, amounts held in the superannuation holding account, superannuation co-contributions and the low income superannuation tax offset.                                                                                                                                                                                                                                                                                                                                        | See our response to Issue 10 of this Compendium.<br>The main focus of the update was to amend the Ruling in conjunction with updates made to LCR 2021/2 to reflect the amendments to section 295-550 under the <i>Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Act 2024</i> .<br>While paragraph 17 of the Ruling provides some guidance for roll-over superannuation benefits, any additional changes regarding transfer or payment of various amounts from the ATO, including unclaimed superannuation, amounts held in the superannuation holding account, superannuation co-contributions and the low income superannuation tax offset, are outside the scope of this update.      |
| 12           | <b>Deducting personal contributions</b><br>In the draft update to the Ruling, substantial edits and deletions have been made to the section dealing with the deduction of personal contributions.<br>We note, however, that the revised section does not address: <ul style="list-style-type: none"> <li>the need for a person who was under 18 years old at the end of an income year to have derived income from the carrying on of a business or income attributable to employment activities, in order to claim a deduction for a personal contribution</li> <li>the need for a person over 67 years old to satisfy the work test (or an exemption) in order to claim a deduction for any personal contribution</li> <li>the inability of a person to make personal contributions or claim a deduction for those contributions after age 75 if the contributions are made more than 28 days</li> </ul> | We consider that paragraphs 62 to 72A of the Ruling contain sufficient guidance on deducting personal contributions.<br>The main focus of the update was to amend the Ruling in conjunction with updates made to LCR 2021/2 to reflect the amendments to section 295-550 under the <i>Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Act 2024</i> .<br>While we have also taken the opportunity to make minor additional adjustments, these were to reflect the repeal of certain legislative provisions.<br>As we have not undertaken an extensive review of all positions in the Ruling, comments in respect of deducting personal contributions are outside the scope of this update. |

| Issue number | Issue raised                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | ATO response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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|              | <p>after the end of the month in which the person turned 75.</p> <p>This may leave readers with the false impression there are now no age or work-related conditions relevant to the making or deductibility of personal contributions.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 13           | <p><b>Personal superannuation contributions that are not deductible</b></p> <p>In the draft update to the Ruling, paragraph 72A has been inserted to outline the types of personal contributions that are not deductible. To substantiate this exclusion, footnote 24E references subparagraph 290-155(1)(a)(iii) of the ITAA 1997 and section 290-155.01 of the <i>Income Tax Assessment (1997 Act) Regulations 2021</i> (ITAR 2021). For completeness, we consider the final update to the Ruling should also reference paragraph 290-155(1)(b) of the ITAA 1997 and section 290-155.05 of the ITAR 2021 as these provisions also treat certain contributions to prescribed funds as being non-deductible where the trustee makes an election.</p> | <p>In the final update to the Ruling, footnote 24AE has been revised to also include reference to paragraph 290-155(1)(b) of the ITAA 1997 and section 290-155.05 of the ITAR 2021.</p>                                                                                                                                                                                                                                                                                                               |
| 14           | <p><b>Personal superannuation contributions that are not deductible</b></p> <p>We note that section 290-155(3) allows the Commissioner to publish information about lists of funds to which contributions may not be deductible because of these elections. We recommend that the Commissioner considers publishing this list on the ATO website at a fixed location, with the address of that location specifically included in this Ruling.</p>                                                                                                                                                                                                                                                                                                    | <p>The main focus of the update was to amend the Ruling in conjunction with updates made to LCR 2021/2 to reflect the amendments to section 295-550 under the <i>Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Act 2024</i>.</p> <p>While we have also taken the opportunity to make minor additional adjustments, these were to reflect the repeal of certain legislative provisions. Publishing the list requested is outside the scope of this update.</p> |
| 15           | <p><b>Personal superannuation contributions that are not deductible</b></p> <p>We note that the bullet points of paragraph 72A of the draft update to the Ruling do not provide a comprehensive list of personal contributions that are not deductible. In particular, the list does not include contributions that are subject to either the small business 15-year exemption or the small</p>                                                                                                                                                                                                                                                                                                                                                      | <p>The main focus of the update was to amend the Ruling in conjunction with updates made to LCR 2021/2 to reflect the amendments to section 295-550 under the <i>Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Act 2024</i>.</p> <p>While we have also taken the opportunity to make minor additional adjustments, these were to reflect the repeal of certain legislative provisions.</p>                                                                    |

| Issue number | Issue raised                                                                                                                                                                                                                                                  | ATO response                                                                                                                                                                                                                                                                                                                                                                             |
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|              | business retirement exemption from capital gains tax. We recommend that in the final update to the Ruling either the list is expanded to be comprehensive, or the introductory wording is clarified to make it clear the bullet points are not comprehensive. | As we have not undertaken an extensive review of all positions in the Ruling, comments that request changes in respect of deducting personal contributions are outside the scope of this update.<br><br>However, a revision has been made in the final update to the Ruling to confirm that paragraph 72A of the Ruling is an inclusive, rather than an exhaustive list of all examples. |

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