

Super contribution caps

Impact on your contribution caps if amounts of compensation are received from financial service providers by your super fund

This fact sheet explains the impact on your concessional and/or non-concessional super contribution caps where an amount of compensation is received by your super fund and allocated to your account.

It also explains how you may apply to the ATO to request the Commissioner to exercise a discretion in these circumstances where you have or will exceed your concessional or non-concessional contribution caps.

Your super fund may receive compensation from a financial services provider due to the provision of inappropriate financial advice or where fees were paid but no advice provided. The compensation may include an amount reflecting a refund or reimbursement of adviser fees and/or an amount to compensate for lost earnings. It may also include an interest component.

Whether the compensation is a contribution and therefore counted towards your contribution caps will depend on the circumstances in which the compensation is received, including:

- where your super fund engaged the financial service provider and has a right to compensation
- where you personally engaged the financial services provider and you have a right to compensation
- where there is no right to compensation.

Your super fund engaged the financial service provider and has a right to seek compensation

A trustee of a super fund will generally have a right to seek compensation where it has contracted with the financial service provider for the provision of financial advice to the fund's members.

The compensation received by your super fund from a financial service provider in respect of its right to seek compensation and that is allocated to your account will not be a contribution. Therefore, it will not affect your contribution caps.

Your super fund may be able to clarify for you whether it has the right to seek the compensation.

See also [Compensation received by super funds from financial institutions and insurance providers](#).

You have a right to seek compensation because you personally engaged the financial service provider

If the compensation was paid directly by the financial service provider to your super fund other than at your direction, the compensation will be a **concessional contribution** in the financial year it is received by the fund.

For the tax treatment of concessional contributions, see the [Your compensation payment is a concessional contribution](#) section of this fact sheet.

If the compensation has been paid to your super fund and allocated to your account and one of the following circumstances applies:

- the compensation was paid to you and you subsequently contributed it as a personal contribution to your super fund, or
- you directed the financial service provider to pay the compensation that was payable to you into your super fund,

the compensation will be a **non-concessional contribution** in the financial year it is received by the fund.

However, it will be a concessional contribution to the extent that it is covered by a valid and acknowledged notice of intent to claim a deduction and is allowable as a deduction.

For the tax treatment of non-concessional contributions, see the [Your compensation payment is a non-concessional contribution](#) section of this fact sheet.

There is no right to seek compensation

If an amount was paid to your super fund and allocated to your account and neither you nor the trustee of the super fund has a right to seek compensation, the amount will be a **concessional contribution** in the financial year it is received by the fund.

For the tax treatment of concessional contributions, see the [Your compensation payment is a concessional contribution](#) section of this fact sheet.

Your compensation payment is a concessional contribution

The general concessional contribution cap is \$27,500 from 1 July 2021.

Your concessional contributions cap may be increased by unused concessional contributions cap space remaining from previous financial years if your total super balance at 30 June of the financial year immediately before you make the contribution was less than \$500,000.

If your super contributions exceed the cap, you will receive an excess concessional contributions determination. This means:

- The excess concessional contributions amount is included in your assessable income and taxed at your marginal tax rate. A 15% tax offset applies to account for the contributions tax paid by your super fund (you will be required to lodge a tax return, if you have not done so).
- You may also be liable to pay an [excess concessional contributions charge](#) for excess concessional contributions made before 1 July 2021.
- You can elect to release 85% of the excess concessional contributions from your super fund to help pay any income tax.

Concessional contributions in excess of your concessional contributions cap (that you do not elect to release from super) count towards your non-concessional contributions cap.

Concessional contributions also include:

- employer contributions
- salary sacrifice contributions, and
- personal contributions to the extent the personal contributions are covered by a valid and acknowledged notice of intent to claim a deduction and are allowable as a deduction.

See [Concessional contributions and contribution caps](#) for further information.

Your compensation payment is a non-concessional contribution

The general non-concessional contributions cap is \$110,000 from 1 July 2021.

Your own cap might be different. It can be:

- higher, if you are eligible to use the [bring-forward arrangements](#), or

- nil, if your [total super balance](#) is greater than or equal to the general transfer balance cap (\$1.7 million in the 2021–22 financial year).

If you exceed your non-concessional contributions cap in a financial year, you will receive an excess non-concessional contributions determination. This determination will provide you with two options:

- You can elect to release the excess contributions and an amount of associated earnings from your fund. We will manage the release of money from your super. We will also include the associated earnings in your assessable income (you will be required to lodge a tax return if you have not done so). Amounts from some defined benefit funds may not be able to be released.
- You can elect not to release the excess non-concessional contributions. You will receive an excess contributions tax assessment in which the excess non-concessional contributions will be taxed at the highest marginal rate. The excess non-concessional contributions tax must be released from your super fund.

See [Non-concessional contribution and contributions caps](#) for further information.

Commissioner's discretion where you have exceeded your contributions cap

If you have or will exceed your concessional or non-concessional contribution caps in a financial year, you may apply to the ATO to request the Commissioner to exercise a discretion to disregard excess contributions or reallocate them to another year.

When the Commissioner may exercise the discretion

The Commissioner may exercise this discretion if:

- there are special circumstances, and
- exercising the discretion is consistent with the object of the contributions caps provisions, which is to ensure contributions are made to a person's super gradually over time.

Special circumstances are unusual or out-of-the-ordinary factors that lead to an unjust or unintended outcome.

When making a decision, we also consider:

- whether the contributions would be more appropriately allocated to another financial year
- whether it was reasonably foreseeable that you would have excess contributions when the contribution was made
- the extent to which you had control over the making of the contribution

- whether there are other relevant factors.

When an amount of compensation is correctly payable to you but it is paid directly to your super fund, we will generally consider the payment to have been outside of your control if you have no control over whether the contribution is paid, when it is paid or who it is paid to. This may include Australian Financial Complaints Authority (AFCA) or regulator interventions that result in compensation being paid to your super fund.

In those circumstances, we may consider it appropriate to exercise the discretion so the contribution arising from the compensation payment does not count towards your contributions cap in the year in which it is made.

However, we will also consider any other relevant factors in deciding whether there are special circumstances.

When the Commissioner is unlikely to exercise the discretion

If the compensation is paid to you and you contribute it to your super fund, or you direct the financial service provider to pay the compensation to your super fund for your benefit, we would be unlikely to exercise the discretion on the basis of that circumstance alone as making the contribution would have been within your control.

Other factors would need to be present that, when considered together, would amount to special circumstances.

If a compensation payment is a non-concessional contribution in a financial year, it may result in you triggering the 'bring-forward' of your non-concessional contributions cap. This will mean that you may not exceed the cap in the first year. If you subsequently make a contribution in the second or third years of the bring-forward period which results in you exceeding your cap, there would generally have to be special circumstances in relation that contribution made in the later year for us to exercise the discretion.

Applying for the Commissioner's discretion

You, or your authorised representative, can apply for the Commissioner's discretion if you have or will exceed your contributions caps in a financial year.

An application can only be made once the contribution you are seeking to have disregarded or reallocated has been made to the fund.

To apply for the discretion, you need to:

- send us a completed [Application – excess contributions determination](#) form (NAT 71333), and
- include all supporting evidence relevant to your circumstances, including
 - correspondence from the financial adviser or your super fund in relation to the compensation payment
 - any determination made, for example by AFCA, or agreement reached with the financial adviser in relation to the compensation payment.

Other impacts to consider

Compensation that you receive personally and then contribute to your super fund, or that you direct to be paid to your super fund, may have income tax consequences for you. See [Compensation paid from financial institutions](#) for further information.

If the compensation payment is a concessional contribution, there may be Division 293 tax consequences if your combined income and concessional contributions exceed the income threshold for the financial year you receive the contribution. From 1 July 2017, the threshold is \$250,000. For further information, see [Who Division 293 tax applies to](#).

More information

For more information:

- see Law Administration Practice Statement [PS LA 2008/1 The Commissioner's discretion to disregard or allocate to another period superannuation contributions for excess contributions purposes](#)
- call the ATO on 13 10 20 between 8.00am and 5.00pm, Monday to Friday.

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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 in this publication and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it but we will not charge you a penalty. Also, if you acted reasonably and in good faith we will not charge you interest.

If you make an honest mistake trying to follow our information in this publication and you owe us money as a result, we will not charge you a penalty. However, we will ask you to pay the money, and we may also charge you interest. If correcting the mistake means we owe you money, we will pay it to you. We will also pay you any interest you are entitled to.

If you feel that this publication does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

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