



Excess Concessional Contributions

The concessional contribution cap is \$27,500 from 1 July 2021. With the ability to carry forward unused concessional contributions over a 5 year rolling period available in some cases, it can make it more complicated to know what concessional contribution cap applies to an individual. This fact sheet will give a general overview of the current position on what happens when the concessional contributions cap is exceeded.

How do excess concessional contributions get reported to the ATO?

Excess concessional contributions are assessed by the ATO based on the information reported to them via an individual's personal tax return and their super fund annual return.

When the concessional contributions cap is exceeded the following occurs:

- The excess amount is included in the individual's assessable income in their personal tax return
- The excess amount is taxed at the individual's marginal tax rate and a non-refundable 15% tax offset is provided to compensate for the tax already paid by the SMSF

Notification process

The ATO will issue an excess concessional contributions determination. This determination will advise the amount that has been included as assessable in the personal tax return and what actions need to be taken.

The ATO will also issue a Notice of assessment that includes the excess concessional contributions amount in the assessable income and the non-refundable 15% tax offset. If the excess contributions are reported to the ATO after the personal tax return is lodged, they will amend the tax return and send both an amended Notice of assessment and an excess concessional contributions determination.

Options once assessed by the ATO

Once the ATO issue the determination and Notice of assessment/amended notice of assessment there are 60 days to make an election to do one of the following:

1. Elect to release up to 85% of the excess concessional contributions. This amount can then be used to pay the extra tax and ECC charge.
2. Leave the excess amount in super. This will mean the individual will need to pay the extra tax and any ECC charge, if applicable, from personal funds. The excess will then count towards the non-concessional contribution cap.

If the information is wrong, the individual will need to investigate and if there are any mistakes the relevant figures may need to be re-reported to the ATO to rectify. For example, contributions may have been reported as concessional when they were non-concessional.

Excess Non-Concessional Contributions

Where an individual does not elect to withdraw the 85% of the excess it will then count towards the individual's non-concessional contribution cap. This can have a flow on effect if the non-concessional cap has already been reached (refer to our fact sheet on Excess Non-Concessional Contributions to see what happens in that situation). Where a concessional contribution causes the non-concessional contribution cap to be exceeded then the effective rate of tax can be as high as 94%.

Excess Contribution Charge

As it's a requirement to wait until the ATO advise that the cap has been exceeded before it can be rectified, there is a time lag and an excess concessional contribution charge will apply to any contributions made prior to 1 July 2021. The charge is payable in relation to the year in which the excess concessional contributions have arisen and applies to the additional income tax liability that arises from the excess contributions. It is calculated from the start of the beginning of the financial year in which the excess contributions were made and finishes the day before the due date for the income tax assessment for that financial year. The ECC charge rate is determined quarterly by the base interest rate for the day (the monthly average yield of 90 day Bank Accepted Bills published by the RBA) plus an uplift factor of 3%. The compounding interest formula is applied to the additional income tax liability for each day of the ECC charge period. The charge does not apply to excess contributions made on or after 1 July 2021.

Electing to release funds

Once an election has been made to release an excess it cannot be withdrawn or revoked. It's also important to check that there are still sufficient funds to release before making an election. Where 85% of the excess is released, none of the excess will be treated as non-concessional contributions. If less than 85% is released, then part of the excess will be treated as non-concessional contributions.

Once the election is processed by the ATO they will issue a release authority to the super fund. The super fund has 20 business days to release the amount and send it to the ATO. The ATO then uses the funds to apply to any outstanding tax or an individual's Australian Government debts before refunding any remaining balance to the individual. If the fund cannot release the amount then the individual will have 60 days to make a new election to another super fund account, otherwise the tax liability will need to be paid from personal funds.

Example

During the 2020/21 financial year Jemima has a concessional contribution cap of \$25,000. This is prior to indexation of the cap and due to her Total Superannuation Balance exceeding \$500,000 she cannot carry forward any unused cap from prior years.

She has contributed \$35,000 for the year.

There is therefore an excess concessional contribution amount of \$10,000.

Jemima lodges her personal tax return with taxable income of \$80,000. The ATO includes the excess contributions of \$10,000 which results in taxable income of \$90,000. \$90,000 will be assessed at her marginal tax rate and she will have a tax offset of \$1,500 (15% of the \$10,000 excess contributions)

Excess concessional contribution charge also arises on the additional income tax liability from the start of the 2021 financial year and is added to the assessed tax liability.

A Notice of Assessment is issued including the additional tax liability and the excess concessional contributions charge.

The choice then arises to leave the \$10,000 in super and pay the additional tax liability and excess concessional contributions charge from personal money. The excess will then also count towards the non-concessional contribution cap. Alternatively, she can elect to release \$8,500 (85% of the excess) and use the funds to pay the additional tax liability and excess concessional contributions charge.

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