Contributions - Contributions types and acceptance criteria

In brief
This technical bulletin provides an explanation of what is currently considered to be a superannuation contribution and the conditions for accepting contributions into superannuation funds, including the work test, TFN rules and the fund cap.

What is a superannuation 'contribution'?
The following payments to superannuation are considered contributions:

- payments made by
  - the member
  - a spouse
  - a third party such as an employer, friend or family member
  - the Government
- directed termination payments;
- contributions arising from the disposal of qualifying small business assets;
- transfers from foreign superannuation funds; and
- contributions made with the proceeds from certain payments for personal injury.

Acceptance criteria for contributions
Three basic criteria must be met before a superannuation fund can accept a contribution. The first is the work test, which only applies once the individual has reached the age of 65, secondly that they must have declared (or their fund already has) their TFN, and lastly that the contribution made is not greater than the fund cap.

The following table summarises the above three criteria for different contribution types.

### Super contributions acceptance criteria summary

<table>
<thead>
<tr>
<th>Contribution type</th>
<th>Work test applies if member is age 65 or over</th>
<th>If no valid TFN, fund will</th>
<th>Fund must reject contribution above fund cap</th>
</tr>
</thead>
<tbody>
<tr>
<td>Member contributions</td>
<td>✓</td>
<td>reject</td>
<td>✓</td>
</tr>
<tr>
<td>Spouse contributions</td>
<td>✓</td>
<td>reject</td>
<td>✓</td>
</tr>
<tr>
<td>Employer contributions (including SG and salary sacrifice)</td>
<td>✓ except SG to age 70 and award</td>
<td>accept but apply additional tax at 30 June or on exit</td>
<td>n/a</td>
</tr>
<tr>
<td>Contributions arising from disposal of qualifying small business asset</td>
<td>✓</td>
<td>reject</td>
<td>not rejected if relevant election form provided</td>
</tr>
<tr>
<td>Contributions arising from certain personal injury payments</td>
<td>✓</td>
<td>reject</td>
<td>not rejected if relevant election form provided</td>
</tr>
<tr>
<td>Transfers from foreign superannuation funds</td>
<td>✓</td>
<td>reject</td>
<td>except where APRA approval is given</td>
</tr>
<tr>
<td>Directed termination payments</td>
<td>✓</td>
<td>reject</td>
<td>n/a</td>
</tr>
</tbody>
</table>

**Important notes:**

- Although superannuation funds are allowed to accept employer contributions without a valid TFN, some funds have decided NOT to accept these
Superannuation funds may choose NOT to accept certain types of contributions such as third party family or friend contributions.

In addition, only certain funds are authorised to accept superannuation transfers from the United Kingdom despite these transfers being treated as a contribution under Australian law. The UK imposes additional restrictions such that transfers sourced from the UK can only be made to Australian superannuation funds that are approved by Her Majesty’s Revenue & Custom as a Qualifying Recognised Overseas Pension Scheme (QROPS).

You should check with your client’s superannuation fund regarding these issues.

1. Eligibility to contribute

The first criterion generally depends on the age of the individual and/or having met the work test.

The work test requires the individual to have been gainfully employed on at least a part-time basis (ie, for at least 40 hours in a period of not more than 30 consecutive days) in the financial year in which they wish to make or have contributions made on their behalf. Completion of the work test must be done prior to the contribution being made.

Gainfully employed means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment. The concept of ‘gain or reward’ envisages receipt of remuneration such as salary or wages, business income, bonuses, commissions, fees or gratuities, in return for personal exertion. The member must have completed the required hours before the trustee is able to accept the contribution.

The eligibility rules are outlined below.

<table>
<thead>
<tr>
<th>Age of member</th>
<th>Eligibility to contribute</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 65 years</td>
<td>Contributions can be made by the member or made on a member’s behalf at any time.</td>
</tr>
<tr>
<td>Aged 65 to 69 years</td>
<td>Mandated contributions (award, certified agreement or Superannuation Guarantee (SG)) can be made at any time. For other contributions such as personal, employer (above award, agreement and SG requirements) or spouse contributions, the member must have met the work test.</td>
</tr>
<tr>
<td>Aged 70 to 74 years</td>
<td>Mandated contributions (award or certified agreement) can be made at any time. For other contributions such as personal or employer (above award and agreement requirements) contributions, the member must have completed the work test. For members aged 70 and over, spouse contributions cannot be made and SG is not required.</td>
</tr>
<tr>
<td>Aged 75 years and over</td>
<td>Generally, only mandated employer contributions (award or certified agreement but not SG) are allowed. Additionally, member and employer contributions received on or before 28 days after the end of the month in which the member turns 75 can be accepted where the member has completed the work test.</td>
</tr>
</tbody>
</table>

2. Tax file numbers (TFN)

In addition to the limitations based on age and work test requirements as described above, the only contribution type that a superannuation fund can accept without the member’s tax file number are employer contributions (see Important notes: page one).

No-TFN Tax
Where a valid TFN is not held for a member on 30 June each year (or earlier upon exit) the fund will be required to withhold additional tax of 31.5% (in addition to the usual 15% tax currently withheld) from assessable contributions. After the tax had been withheld, it is possible to reclaim this tax back by supplying the member’s TFN to the fund within 3 financial years of the tax being withheld; however, claiming the tax back through the ATO is a lengthy process.
3. Fund cap

The third criteria for a fund to be able to accept a contribution requires the contribution to be below the fund cap. A superannuation fund is required to reject the amount of any single fund capped contribution that exceeds:

- if the member is 64 or less on 1 July of the financial year — three times the amount of the non-concessional contributions cap ($450,000 in 2010/11); or
- if the member is 65 but less than 75 on 1 July of the financial year — the non-concessional contributions cap ($150,000 in 2010/11).

Superannuation funds are not required to aggregate total member contributions received for a person either within the fund or across other funds. The fund cap applies strictly on a single contribution basis, not a yearly basis or any other basis.

Example 1

**Fund cap applying on a single contribution basis**

Bill is 45 years old and wishes to make a personal contribution to superannuation. His superannuation fund has recently rejected his $500,000 cheque. If instead, Bill contributed this same amount but as 2 separate contributions of $250,000, then his fund would be able to accept the entire amount.

What types of contributions are assessed against the fund cap?

Fund capped contributions are defined as all contributions made by, or on behalf of, the member except for the following:

- all employer contributions;
- after tax contributions where a personal tax deduction notice has been presented to and accepted/acknowledged by the fund;
- contributions arising from certain personal injury payments (if the election notice is issued to the superannuation fund);
- contributions arising from the disposal of qualifying small business assets (if the election notice is issued to the superannuation fund);
- directed termination payments; and
- Government co-contributions.

The fund must ‘reject’ contributions above the fund cap

If a single contribution which exceeds the fund cap is received, a superannuation fund must either:

- return the entire contribution; or
- return just the excess amount above the fund cap.

The amount must be returned within 30 days of becoming aware that a contribution in excess of the fund cap has been accepted unless a valid personal tax deduction notice has been provided within the 30 days which brings the “fund capped” contribution below the fund cap.

Example 2

**Contributing a directed termination payment**

Jeff, aged 65, left employment on 20 June 2010. Jeff is eligible to receive a transitional termination payment and he has chosen to contribute the entire amount into superannuation as a directed termination payment.

For his superannuation fund to accept the contribution, Jeff will need to:

- have completed the work test (ie. have been gainfully employed for at least 40 hours in a period of not more than 30 consecutive days) in the financial year in which the contribution is made; and
- provide his TFN (if a valid TFN is not already held on file for him).

The directed termination payment is excluded from the fund cap. Therefore, the superannuation fund will not reject the contribution regardless of the amount of the payment.

For further information on directed termination payments, refer to Technical Bulletin – Contributions: Transitional Termination Payments.
Contribution above fund cap with valid personal tax deduction notice (PTDN)

Peter, age 67, is a self employed mechanic who has recently sold a $275,000 investment property incurring a $75,000 capital gain on the sale. We will assume that Peter has completed the work test and that his TFN has already been provided to the fund.

Peter contributes the entire $275,000 into superannuation along with a valid PTDN for $50,000. As he is over the age of 65, Peter’s fund cap is $150,000. However, as the $50,000 does not count towards the fund cap, his superannuation fund can accept a total of $200,000. The fund must return $75,000 to Peter within 30 days of being aware of the fund cap breach.

A transfer from foreign superannuation fund is regarded as a contribution rather than a rollover and will count against the contribution caps as set out in the table below.

<table>
<thead>
<tr>
<th></th>
<th>Non-concessional cap</th>
<th>Concessional cap</th>
<th>Fund cap</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxable component¹</td>
<td>×</td>
<td>×</td>
<td>✓</td>
</tr>
<tr>
<td>Balance (ie tax free component)</td>
<td>✓</td>
<td>×</td>
<td>✓</td>
</tr>
</tbody>
</table>

As the entire foreign superannuation fund transfer is a member contribution, the fund must assess the contribution against the fund cap. As shown above, the taxable component¹ of a foreign super transfer is assessed against the fund cap but not against the member’s concessional or non-concessional contributions cap.

Where the total foreign transfer exceeds the fund cap but the tax-free component (ie the total transfer less the amount covered by the election to have tax paid by the fund) is within the individual’s non-concessional contributions cap, then an application can be made to APRA² to waive the fund cap rules and allow the fund to accept the entire transfer.

Example 3

Example 4

Alicia, aged 50, wants to transfer her UK superannuation benefits (totalling approximately $500,000) to her Australian superannuation fund (which has QROPS status under UK law). She has been a resident of Australia for longer than 6 months and has calculated the estimated growth portion on her UK benefit as $55,000. Alicia wants to have tax on the entire growth portion paid by her Australian superannuation fund (rather than including this amount in her assessable income).

Alicia’s contacts her Australian superannuation fund as she is concerned that the $500,000 will breach the $450,000 fund cap and be rejected. The Trustee offers to assist her in applying to APRA to have the fund cap rules waived on the grounds that the tax free portion of the transfer will be $445,000.

Alicia’s super fund will be able to accept her entire foreign super fund transfer if APRA approve an exemption from the fund cap requirement. Alicia will also need to ensure that she has provided her TFN to her super fund. No work test applies as Alicia is less than age 65 at the time she makes the contribution.

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¹ Under section 305-80 of ITAA 1997, the taxable component of a foreign super fund transfer is the amount of the growth portion, if any, covered by an election made by the member to have tax paid by the super fund (rather than including the amount in their assessable income).

² Approval from APRA must be granted prior to the fund being able to accept the contribution. It is our understanding that approval from APRA may only be given where the tax free component of the transfer is below the member’s non-concessional contributions cap.
Tips and Traps

→ For details on how to make a contribution see Technical Bulletin: Employer Contributions and the Concessional Cap.

→ To qualify for the CGT Retirement exemption, only those aged less than their preservation age (currently 55) need to contribute the exempt amount into a complying superannuation fund or retirement savings account (RSA). Additionally, while those aged 65 and over might not be able to contribute the exempt amount to superannuation (ie. if they do not meet the work test or are aged 75 and over), they can still claim the exemption.

Legislative references

SIS Regulations
Reg 7.01 (definitions)
Reg 7.04 (acceptance of contributions)

Income Tax Assessment Act 1997
Section 305-80 (Election to have tax paid by the fund on a foreign super transfer)
Section 292-90 (Your non-concessional contributions for a financial year)

TR 2010/1 (Tax Ruling: Superannuation contributions)

ID 2008/90 (Superannuation contributions: Return of fund capped contributions by self managed superannuation funds)

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