



POINT

SUPER

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## Getting your personal super deductions right

Recent changes to the law mean many more Australians can now claim deductions for their personal superannuation contributions. But while the eligibility requirements have been lowered, the process for claiming deductions contains many traps. Do you know what steps to take and what to look out for?

The ATO is running a campaign to make sure Australians understand the requirements for deducting a personal superannuation contribution. Thanks to recent reforms, potentially anyone can now claim a deduction (subject to certain age limits). However, it is essential to get the process right.

### What contributions can I deduct?

Provided you are eligible, superannuation contributions you make for yourself from your after-tax income are deductible. However, when you choose to deduct these amounts, they become concessional contributions (CCs) and count towards your annual CC cap of \$25,000. This requires careful management because your CC cap also includes employer contributions such as compulsory superannuation guarantee amounts and salary-sacrifice contributions.

The ATO says a common mistake is for individuals to incorrectly claim a deduction for pre-tax contributions such as extra salary-sacrifice amounts. Although employer contributions also count towards your CC cap, it is only personal contributions you make from your own after-tax funds that you are entitled to deduct.

When you make a personal contribution from after-tax income and you don't claim a deduction, the amount counts towards your non-concessional contributions (NCC) cap.

### Am I eligible?

Prior to 1 July 2017, only substantially self-employed individuals could deduct personal superannuation contributions. This rule has been abolished, so now even those who earn significant amounts of income as employees can potentially deduct their personal contributions. This is good news for workers whose employers do not offer salary-sacrificing.

Today, the main eligibility requirement concerns age. You can deduct a personal contribution, as long as you make the contribution within 28 days of the end of the month in which you turn 75. And remember, you must meet a "work test" in order to make contributions if you are aged 65 or over (proposed in the Budget to increase to age 67 from 1 July 2020). Special rules apply to individuals under 18 years.

Restrictions also apply to contributions to certain Commonwealth public sector schemes and constitutionally protected funds and other untaxed funds.

### What do I need to do?

Getting the process right is vital because an administrative misstep can jeopardise your deduction and result in your contribution counting as an NCC rather than a CC.

You must give the trustee of your superannuation fund a notice of your intention to claim a deduction. You can use the ATO's form for this purpose, or your fund's own form. The form must be lodged with the trustee by the earlier of:

- the day you lodge your tax return for the income year in which you made the contribution; and
- the end of the income year after the income year in which you made the contribution.

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The trustee must give you an acknowledgement that they have received the notice before you can make the deduction claim in your tax return.

Watch out for the following traps:

- Your notice will not be valid (and therefore, you cannot claim a deduction) if the trustee had started to pay an income stream from any part of the contribution when you gave the notice.
- It will also not be valid if you had rolled over all of your benefits out of the fund, or withdrawn all your benefits, when you gave the notice.
- You can only deduct the exact amount you specify in your notice. If you need to change this amount, you need to complete additional paperwork.
- If you intend to split the contribution with your spouse, there are additional important timing issues to watch.

### Plan ahead

Because of the technicalities that can arise when claiming these deductions, it's best to make your contributions as part of a pre-planned strategy and with expert advice. Contact us today to begin your contributions planning. We'll ensure you get it right, and help you get the most out of the available contributions measures to grow your retirement savings.

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## Top three SMSF contraventions: is your fund at risk?

SMSFs can be a great investment vehicle for those prepared to get the compliance side of things right. The ATO takes SMSF regulation seriously and has now revealed the top three contraventions it sees among SMSFs. What are they, how do these problems arise and what steps can you take to ensure your SMSF avoids these traps?

The ATO has recently highlighted the top three compliance breaches it sees among SMSFs – a helpful insight into the areas that are frequently tripping up SMSF trustees.

The ATO says it will work with cooperative trustees to help them rectify breaches and get their fund back on track. But even with the best intentions, fixing these problems can be expensive, time-consuming and stressful.

Our handy breakdown of the top three compliance traps will help you avoid these headaches.

### Loans or financial assistance to members (21.1%)

SMSFs may not lend money, or provide other “financial assistance”, to a member of the fund or a relative of a member. This sounds like a simple enough rule, but it's

not just loans of money (both documented and undocumented) that fall foul of this restriction – giving “financial assistance” is a broad concept and the ATO interprets this to include scenarios such as:

- selling an asset to a member or relative below market value, or purchasing an asset above market value;
- paying for services performed by a member or relative in excess of what the SMSF requires (or paying inflated prices for such services); and
- financial assistance provided indirectly, eg where an SMSF enters into an arrangement with another entity who in turn provides financial assistance to an SMSF member or their relative.

Assistant Commissioner Fleming says financial stress is often a driver of SMSF contraventions. Members facing personal financial difficulties may be tempted to skew the terms of an SMSF arrangement to benefit themselves personally. If you are experiencing financial stress, seek advice about your options (including whether you may be able to validly access your superannuation benefits on financial hardship or compassionate grounds).

### In-house assets (18.7%)

The in-house asset (IHA) rules limit the amount that SMSFs can invest in arrangements controlled by related parties. There are three types of IHAs:

- a loan to a related entity (eg a loan to the members' family trust);
- an investment in a related company or trust (eg buying shares or units in a company or unit trust that the members or their associates control); and
- an asset of the fund (other than commercial property) leased to a related entity.

SMSFs are not permitted to hold IHAs worth more than 5% of the fund's assets. This means SMSFs must have no or very minimal IHAs.

The rules here, including certain exceptions that apply, can be quite technical. In particular, the rules regarding when a person or entity (such as a company or trust) is “related” to the SMSF are broader than some trustees might imagine. The key is to seek professional advice before transacting with any party that is, or could be, related. If you later discover your fund has an IHA issue, at a minimum you will need to dispose of the problem investments.

### Failure to keep personal assets separate from the SMSF (12.8%)

SMSF trustees must keep the fund's money and assets separate from those the trustees own personally. This means cash should be kept in a separate bank account in the fund's name, and the fund's ownership of assets (eg property and shares) must be carefully registered.

**Important:** Clients should not act solely on the basis of the material contained in Client Alert. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. Client Alert is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.

Appointing a company as trustee of the SMSF that is used solely to act as the trustee of that fund is a great practical step to ensure compliance with this rule. This helps the members and their advisers to identify SMSF assets and reduces the chances of any confusion.

### **Stay off the ATO's radar**

Proactive planning is the best way to ensure your SMSF investments are compliant and your retirement savings are secure. Contact us for expert assistance with your SMSF's proposed investments.

### **Take control of your super**

Talk to us today about building your retirement savings. As well as the tips above, we can help you explore the full range of measures available, including strategies to boost your spouse's super (through "splitting" and other arrangements), "downsizer" contributions (relating to proceeds from the sale of your home) and more.

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