

Help! I've put too much into my super fund!

One of the great things about superannuation is the concessional tax rate. Concessional contributions, which come from pre tax income, are taxed at 15%.

There are caps imposed on how much you can put into super and still get the concessional tax rate. In the 2007/2008 and 2008/2009 financial years, the concessional contributions cap was \$50,000 for those under 50 years of age and \$100,000 for those who were 50 or older on 30 June 2007. The concessional contributions cap for the current financial year is \$25,000 for those under 50 and \$50,000 for those 50 or over on 30 June 2009. The non-concessional contributions threshold is \$150,000 (which can be averaged across three years - allowing you to exceed the cap in one year and reduce your contributions in others giving you a total of \$450,000 over three years). Further changes will apply from 1 July 2012 when the concessional cap will reduce to \$25,000 per annum, although by that time the amount may have been subject to increase due to indexation.

Excess contributions are not uncommon and many taxpayers inadvertently breach their contribution limits. The problem is that if you breach the concessional contributions cap, the tax on the contributions over the cap is an additional 31.5% on top of the initial 15% paid by the super fund. And, it's very difficult to do anything about it once you have put the cash into the superannuation account. Where both the concessional and non-concessional caps are breached, the excess contributions tax could be as high as 93%.

The exception is when you breach the contributions limit in one transaction, for example, if you wrote a cheque for \$1 million and deposited in your superannuation fund account. Superannuation funds have a fund capped contribution limit to prevent unwanted excess contributions. By law, they must refund the excess contribution to reverse it. No excess tax applies in these circumstances. The problem is, the fund acceptance cap only applies when the contributions limit has been breached in one transaction.

The problem with making excess contributions is that under the law, once the contribution has been accepted by the fund the preservation rules apply (meaning that you can only get the money out once you meet the conditions of release - for example, you turn 60).

In some cases, where an honest mistake has been made, the amount can be refunded. However, if you are over the contributions cap, have changed your mind about the contribution, or you have had a change in income levels so that you cannot utilise the tax deduction, then it is unlikely your excess contribution would be called an honest mistake. However, if you inadvertently banked money into the wrong account (and that account was the superannuation funds account) then that might be an honest mistake if you can prove it.

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A few adventurous taxpayers have tried to get around the contributions cap by amending their trust deeds. Under these arrangements, a clause is inserted into the SMSF trust deed to restrict the trustee from accepting all or part of a contribution if it would cause the member to exceed a contributions cap. If the trustee does accept the contribution the trust deed directs the trustee to hold the contribution in a separate trust, even though the amount has been treated as a contribution and mixed with other assets of the super fund. But the Commissioner is onto this scheme and has stated that he considers the scheme "ineffective" and tax is still likely to apply to the excess contributions.

The important thing is to be aware of what your contributions caps are, the total amounts that have been contributed, and what's contained in your trust deed.

Those most likely to breach the cap are those with multiple employers and those who have entered into salary sacrifice arrangements in past years and have not reviewed the amounts being paid into their superannuation fund. This includes those utilising the transition to retirement strategy.

For advice on managing your SMSF and getting money in and out of your fund, speak to your Accounting North Client Manager today.



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