Returning contributions

There are rules for accepting contributions that all trustees need to know.

15 December 2022

For your self-managed super fund (SMSF) to receive concessional tax treatment, you must elect to be a regulated super fund and comply with the provisions and regulations of the:

- *Superannuation Industry (Supervision) Act 1993* (SISA)
- *Superannuation Industry (Supervision) Regulations 1994* (SISR).

Before accepting a contribution, you need to know what contributions you can and can't accept. If you get it wrong, your fund can be made non-complying.

This will generally mean that all assets and income of the fund will be taxed at the highest marginal rate in the year the fund is made non-complying. Income continues to be taxed at the highest rate while the fund remains non-complying.

When contributions should be returned

If receive a contribution from or on behalf of your member.

Contributions a fund must not accept

Restrictions that contributions must meet.

Restitution for mistake

Contributions may only be refunded in circumstances tightly prescribed by legislation.

Reporting contributions received

You must report the total contribution and not the contribution less any benefits paid to the member in the same year.

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When contributions should be returned

If receive a contribution from or on behalf of your member.

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When you receive a contribution from or on behalf of your member, you can only return it if:

- you cannot accept the amount under the SISA or the SISR
- the return is authorised by the principles of restitution for mistake.

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Contributions a fund must not accept

Restrictions that contributions must meet.

15 December 2022

The **contributions your SMSF can accept** are restricted by:

- the age of the member for whom the contribution is made

- whether you have a valid tax file number (TFN) for the member
- prior to 1 July 2017, a member's fund-capped contribution limit.

Each contribution must meet the first two restrictions. Contributions made prior to 1 July 2017 must also meet the fund-capped contribution limit.

In an SMSF, all members of the fund are also trustees of the fund. Members should not make personal contributions that the fund cannot accept. Contributions by third parties may be at risk of being against the requirements.

If your SMSF cannot accept the contribution of a member because of these restrictions, you must return the amount to the member or entity who contributed it.

You must return the contribution within 30 days of becoming aware that you cannot accept it. For an SMSF we consider you're aware that a contribution is in breach of the law when you become aware of the contribution itself. This would generally be on the day you receive the contribution.

We expect you to act with care, skill, diligence, and to:

- know which types of contributions breach the super laws
- have a process to work out whether a particular contribution breaches the super laws
- return non-acceptable contributions within 30 days of receiving them.

The ATO view is that the 30-day requirement obliges funds to return contributions without delay. The trustee remains obliged under SISR **subregulation 7.04(4)** to return the amount, even if more than 30 days has elapsed since the trustee became aware of the obligation.

Example: Excess contribution not returned within 30 day timeframe

Alice is 40 years old and a trustee and member of an SMSF. She makes a $1 million member contribution to the fund on 31 January 2017.

During the audit of her fund in August, the approved SMSF auditor points out that the fund has not complied with the super laws because:

- the contribution exceeded Alice's fund-capped contribution limit for the 2016–17 financial year
- the excess amount was not returned within 30 days of it being made.

Although Alice made the contribution, she claims that the fund wasn't aware that it had breached the fund-capped contribution limit. This is because her bank only issues paper statements every six months and she received the statement covering her contribution in early July 2017.

As Alice is both a member and trustee of the SMSF, the fund is taken to have been aware of the fund-capped contribution limit.

It is not reasonable that a trustee, acting with the level of care, skill and diligence required of a trustee of a complying fund, did not check the affairs of the fund within the required timeframe.

In addition to an administration penalty of 20 units, the trustee must return the excess amount. If this does not occur, the Commissioner of Taxation may also give Alice's SMSF a rectification direction requiring the excess amount of the contribution to be returned within a specified timeframe.

Find out about

- Age restrictions on contributions
- TFN restrictions on contributions
- Fund-capped contributions

Age restrictions on contributions

There is no age restriction on your SMSF accepting **mandated employer contributions**. However, there are criteria which need to be met for other contributions. Your SMSF can only accept **non-mandated contributions** which are received on or before the day that is 28 days after the end of the month in which the member turns 75 years of age.

From 2022–23 financial year onwards, your SMSF can accept non-mandated contributions for members under 75 years and there is no requirement to meet the **work test**.

For the 2020–21 to 2021–22 financial years your SMSF can accept non-mandated contributions for members over 67 years of age but not over 75 years of age if they have worked at least 40 hours within 30 consecutive days in that financial year. This is known as the work test.

For the 2004–05 to 2019–20 financial years your SMSF could only accept non-mandated contributions from the members over 65 years of age but not 75 years if they met the work test

You need to be sure the following contributions can be accepted if your member is at or above the relevant age threshold for:

- non-mandated employer contributions
- personal contributions
- spouse contributions
- government co-contributions
- downsizer contributions.

From the 2019–20 financial year onwards, your SMSF can also accept voluntary contributions for an additional 12-month period from the end of the financial year in which your member last met the work test, provided your member meets the following criteria. This is known as the work test exemption. Your member cannot have relied on the exemption in a previous financial year.

Table 1: Eligibility criteria for the work test exemption

Year	Age	Total super balance
2019–20	65-74	Less than $300,000
2020–21 and 2021-22	67-74	Less than $300,000

The table below looks at age restrictions in more detail.

For your SMSF to accept a **downsizer contribution** the member must have reached the eligible age, there is no maximum age limit and no requirement to meet the work test.

From 1 January 2023, the eligible age to make a downsizer contribution is 55 years of age and over. From 1 July 2022, it was 60 years of age or over, and prior to this, it was 65 years of age and over.

Member meets the work test (or work test exemption)

Age	2004–05 to 2019–20	2020–21 and 2021–22	2022–23 onwards
Under 55	All contributions can be accepted, except downsizer contributions.	All contributions can be accepted, except downsizer contributions.	All contributions can be accepted, except downsizer contributions
55 – 59 years	All contributions can be accepted, except downsizer contributions.	All contributions can be accepted, except downsizer contributions	All contributions can be accepted, including downsizer contributions after 1 Janua 2023.
60–64 years	All contributions can be accepted, except downsizer contributions.	All contributions can be accepted, except downsizer contributions	All contributions can be accepted
65–66 years	All contributions can be accepted	All contributions can be accepted	All contributions can be accepted
67–69 years	All contributions can be accepted	All contributions can be accepted	All contributions

			can be accepted
70–74 years	You can only accept: • mandated employer contributions • downsizer contributions personal contributions and other non-mandated contributions received, on or before 28 days after the end of the month in which the member turns 75 years old.	You can only accept: • mandated employer contributions • downsizer contributions • personal contributions and other non-mandated contributions received, on or before 28 days after the end of the month in which the member turns 75 years old. • spouse contributions	All contributions can be accepted
75 years or older	You can only accept: • mandated employer contributions • downsizer contributions.	You can only accept: • mandated employer contributions • downsizer contributions.	You can only accept: • mandated employer contributi downsizer contributions

Member does not meet the work test (or satisfy the work t exemption criteria from 1 July 2019)

Age	2004–05 to	2020–21 and	2022–23

	2019–20	2021–22	onwards
Under 55	All contributions can be accepted, except downsizer contributions.	All contributions can be accepted, except downsizer contributions.	All contributi can be accepted, except downsizer contributions
55 – 59 years	All contributions can be accepted, except downsizer contributions.	All contributions can be accepted, except downsizer contributions.	All contributi can be accepted, including downsizer contributions after 1 Janua 2023.
60– 64 years	All contributions can be accepted, except downsizer contributions.	All contributions can be accepted, except downsizer contributions.	All contributi can be accepted
65– 66 years	You can only accept: • mandated employer contributions • downsizer contributions	You can only accept: • mandated employer contributions • downsizer contributions • voluntary contributions	All contributi can be accepted
67– 69 years	You can only accept: • mandated employer contributions • downsizer contributions	You can only accept: • mandated employer contributions • downsizer contributions	All contributi can be accepted

70–74 years	You can only accept: • mandated employer contributions • downsizer contributions.	You can only accept: • mandated employer contributions downsizer contributions	All contributi can be accepted
75 years or older	You can only accept: • mandated employer contributions • downsizer contributions.	You can only accept: • mandated employer contributions • downsizer contributions.	You can only accept: • mandated employer contributi • downsizer contributi

For members who are 75 years old or older, if the contribution is made more than 28 days after the end of the month in which the member turned 75 years old, the only acceptable contributions are **mandated employer contributions** and downsizer contributions.

TFN restrictions on contributions

Every member of the fund needs to supply their tax file number (TFN) for super purposes.

If your member has not given you their TFN, you can only accept **employer contributions**. All other contributions must be returned to the contributor within 30 days unless the member gives you their TFN within that period.

If any of your members haven't supplied their TFN, their contributions will be taxed at a higher rate – see **Assessable contributions**.

You must ensure that you correctly report member TFNs to us every year, or we may:

- make you return contributions for the member
- tax their contributions at a higher rate.

Find out about

- Fund-capped contributions

Fund-capped contributions

The fund-capped contribution limit does not apply for any contributions made from 1 July 2017.

For fund-capped contributions made prior to 1 July 2017, there was a limit on the amount you could accept in any single contribution. A fund-capped contribution was generally the largest contribution amount your fund could accept.

The fund-capped contribution limit applied per contribution, not to the total member contributions to your fund.

If you received a contribution for your member which was more than their fund-capped contribution limit, you must return the excess amount (above the limit) to them within 30 days.

The fund-capped contribution limit, by age of member

Member's age at 1 July	Fund-capped contribution limit
Under 65 years old	Three times the **non-concessional contributions cap** for that financial year.
Over 65 years old	The **non-concessional contributions cap** for that financial year.

For example, the fund-capped contribution limits for the 2016–17 financial year were:

- $180,000 if the member was 65 years old or over on 1 July 2016
- $540,000 if the member was under 65 years old on 1 July 2016.

When you worked out the fund-capped contribution amount, you should not have included any amount:

- for which you gave an acknowledgment notice to your member after they had validly notified you that they intended to claim a personal super contribution deduction for the amount

- that your member gave you a valid election to exclude an amount from their non-concessional contributions because:
  - they received it as a result of personal injury
  - it qualified for the small business capital gains tax (CGT) concession
- that related to a directed termination payment
- where the payment was made by us because it was government contributions such as co-contributions, low income super contributions or low income superannuation tax offset.

Example 1

In the 2016–17 financial year Rosa was 72 years old and made a personal super contribution of $200,000. Rosa's fund checked her member details and determined that her fund-capped limit was $180,000.

Her fund returned the excess part of her contribution ($20,000) to Rosa within 30 days.

After the end of the financial year, Rosa's fund reported personal contributions of $180,000 for her.

Example 2

In the 2016–17 financial year Henry was 55 years old and made a contribution of $575,000. At the same time, he gave a valid notice that he intended to claim $35,000 as a personal super contribution deduction.

Henry's fund checked his member details and determined that his fund's capped limit was $540,000. After deducting the amount covered by the notice, the fund capped contribution amount was $540,000. Therefore the fund did not have to return any amount to Henry.

Henry's fund reported personal contributions of $575,000 for him for the financial year.

Henry's fund also reported an assessable personal contribution of $35,000 for the financial year at Label R2 of its SMSF annual return.

Example 3

Nerissa was 60 years old and made two contributions of $400,000 in the 2015–16 financial year, totalling $800,000 in personal contributions.

Individually, neither one of Nerissa's contributions was greater than her fund-capped contribution amount for the financial year. Therefore, her fund could not return any part of the contributions to her.

The fund must report $800,000 as Nerissa's personal contributions for the year.

For more information, see:

- ATO ID 2007/225 *Superannuation contributions: acceptance of fund capped contributions by a self-managed superannuation fund*
- ATO ID 2008/90 *Superannuation contributions: return of fund capped contributions by self-managed superannuation fund*
- ATO ID 2012/79 *Superannuation contributions: the operation of subregulation 7.04(3) of the Superannuation Industry (Supervision) Regulations 1994 in the context of in-specie contributions of listed shares*

Find out about

- Restitution for mistake
- Reporting contributions received

Restitution for mistake

Contributions may only be refunded in circumstances tightly prescribed by legislation.

15 December 2022

Contributions generally cannot be returned to a member because:

- they regret making the contribution
- they or their agents made an error in their decision to contribute.

Contributions returned in accordance with the law of restitution don't count towards the member's contributions cap. The fund must amend its reporting to account for returned contributions.

In circumstances where the law of restitution does not apply, a fund must continue to report the contributions that were received, even if they were returned.

While we will scrutinise these decisions, we recognise there are many circumstances where a decision to amend will be entirely correct. A failure to amend would be a failure to report correctly.

See also

- ATO ID 2010/104 *Superannuation – Excess contributions tax: restitution of a 'mistaken' contribution*

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Reporting contributions received

You must report the total contribution and not the contribution less any benefits paid to the member in the same year.

15 December 2022

As an SMSF, you must report all contributions made for the member each financial year in the *Self-managed superannuation fund annual* *return*.

You must report the total contribution and not the contribution less any benefits paid to the member in the same year.

If your fund returns an amount as required by Regulation 7.04(4), the fund is taken to have never accepted the amount as a contribution and therefore doesn't need to report it. You have a 30-day period of grace to remove the contributions from the super system without breaching the preservation or contribution rules. After this period expires, you will not be able to take advantage of the defence provided by subregulation 7.04(5) of the SISR and will be in breach of the rules.

Contributions returned in accordance with the law of restitution don't count towards the member's contributions cap. The fund may have to amend its reporting to account for returned contributions.

If your fund returns a contribution inconsistent with the law of restitution the fund must continue to report the contribution for the member, even if it was returned.

Next step

- Download the relevant **Self-managed superannuation fund annual return**

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Our commitment to you

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 and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.