

EXCESS CONCESSIONAL CONTRIBUTIONS FAQ

2025-26 Financial Year

Document provided by

TOWNSENDS BUSINESS & CORPORATE LAWYERS

Tel 02 8296 6222 www.townsendslaw.com.au

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Note: This FAQ only relates to superannuation members who have defined contribution superannuation benefits. This FAQ does not apply to superannuation members who either have notional contributions or have defined benefit interests.

In this FAQ a reference to a Release Authority is a Release Authority issued in relation to an Excess Concessional Contributions Determination.

This FAQ only applies to Release Authorities issued on or after 1 July 2018 pursuant to Division 131 of Schedule 1 of the *Taxation Administration Act 1953*.

Q1. What are Excess Concessional Contributions?

If the total of your concessional contributions for a financial year exceeds the concessional contributions cap for that financial year then you will have excess concessional contributions. The amount by which the total exceeds the cap is the amount of the excess concessional contributions: ie excess amount.

Example

If, in relation to the 2025/26 financial year, your employer is making \$2,000 of concessional contributions a month for you, and you also make a single personal contribution of \$15,000 for which you claimed a tax deduction, then your total contributions would be \$39,000 (12 x \$2,000 plus \$15,000).

As the concessional contributions cap for 2025/26 is \$30,000, your excess concessional contributions for that year will be \$9,000.

It is assumed that you are not entitled to the carry forward of unused concessional contributions cap space. However, if you entitled to carry forward unused concessional contributions cap space of say, \$6,000 – then your concessional contributions cap would be \$36,000 and the excess amount would be \$3,000.

As the excess amount is an aggregate amount over the cap, it is not possible to identify any particular contribution (such as the \$15,000 personal contribution) as being in whole or in part an excess concessional contribution.

In this FAQ, “excess amount” means the amount of excess concessional contributions.

Q2. How is the Excess Amount determined?

Whether you have an excess amount for a particular financial year and the size of the excess amount can only be determined by the ATO using member contribution information provided by superannuation funds and from the annual returns provided by self managed superannuation funds.

Once the ATO has received the contribution information, the ATO will then determine whether you have an excess amount for a financial year and, if so, the size of the excess amount, and advise you by means of the issue of an excess concessional contributions determination.

As the information from which the ATO determines whether you have excess concessional contributions for a financial year can be received after the close of the financial year, a determination in respect of a financial year may not be issued until three or more months after the close of the financial year and most likely after you have lodged your tax return for that financial year.

Q3. What is the tax treatment of the excess amount?

Your excess amount for a financial year is automatically included in your assessable income for that financial year. To reflect the fact that excess concessional contributions have been treated as taxable contributions by superannuation funds (and have borne 15% tax) a 15% tax offset is provided.

If you have already lodged your tax return by the time an excess concessional contributions determination is issued for that financial year, the ATO will issue an amended tax assessment to you to reflect the inclusion of excess amount in your assessable income and the tax offset.

If you have not yet lodged your tax return when the excess contributions determination is issued, you must include the excess amount as assessable income and you are entitled to claim a 15% tax offset.

Q4. What is an Excess Concessional Contributions Determination (ECC Determination)?

An excess concessional contributions determination (ECC Determination) is issued by the ATO to you and it will specify the excess amount. Excess concessional charge no longer applies to excess concessional contribution amounts in respect of the 2021/22 and subsequent financial years.

Q5. What options does a member have when an ECC Determination is issued?

You have three options in relation to an ECC Determination.

First Option

The first option is to accept the Determination as being correct. If you accept that the Determination is correct, then the excess amount must be included in your tax return as assessable income and a 15% tax offset claimed. If you have already lodged your tax return, then the ATO will issue an amended tax assessment to you which will reflect the inclusion of the excess amount and the 15% tax offset. In this case the amended assessment is usually issued at the same time as the issue of the ECC Determination.

Second Option

The second option is to seek a review of the Determination. However, there is little point in seeking a review of the Determination unless you can demonstrate that there has been an error such as incorrectly reporting the amount of concessional contributions or reporting non-concessional contributions as concessional contributions. The review is made using the review procedures applying to income tax assessments.

Third Option

The third option is to request the ATO to exercise its discretion (under s291-465) to disregard one or more concessional contributions or to reallocate one or more concessional contributions to another financial year. However, the ATO will only exercise this discretion if there are special circumstances. This special circumstances requirement has been held to be a demanding threshold to overcome.

If you take the second or third options and they are unsuccessful (or to the extent they are unsuccessful), then the first option will apply.

Q6. If the member accepts the ECC Determination as being correct, what then happens?

The amount of your excess concessional contributions is automatically included in your assessable income and you will be provided with a 15% tax offset.

Example

Assuming the excess amount for 2025/26 is \$12,000, then the \$12,000 will be added to your taxable income for 2025/26 and you will be entitled to a tax offset of \$1,800 (being 15% of the excess amount). The ECC Determination for 2025/26 will usually be made in the second half of the following financial year (after super funds reported their 2025/26 contribution information to the ATO).

If you have already lodged your tax return for 2025/26 by the time the ECC Determination is made, the ATO will issue you with an amended income tax assessment for the additional tax payable by reason of the inclusion of the excess amount in your assessable income with due allowance for the 15% tax offset.

The offset is provided in recognition that the excess concessional contributions have already been subject to tax at the superannuation fund level.

As to the tax you are required to pay by reason of the inclusion of excess concessional contributions, you have two options:

First option - is to pay the tax or additional tax yourself.

- (a) The consequence of this option is that the excess amount will now be counted as a non-concessional contribution in respect of the financial year in which they were paid for the purposes of the non-concessional contributions cap. This may have two flow-on effects – such as triggering the commencement of the three-year “bring forward” of non-concessional contributions or even causing the excess amount (to the extent it causes the non-concessional contributions cap to be exceeded) to be taxed as excess non-concessional contributions;
- (b) the second option is to request the ATO to issue a Release Authority in respect of the excess concessional contributions.

To the extent that an amount is released pursuant to the Release Authority, the released amount (grossed up by 1.1765 – being the reciprocal of 85%) is applied to reduce your excess concessional contribution amount which are treated as non-concessional contributions.

If you fully utilize the Release Authority, your excess concessional contributions will be disregarded for the purposes of determining your non-concessional contributions for that financial year.

Q7. What is a Release Authority?

A Release Authority is an authority issued by the ATO to a trustee of a superannuation fund which holds a superannuation interest of the member. The authority authorises the trustee to release from the member's superannuation interest and pay to the ATO an amount equal to the amount specified in the Release Authority. The ATO will then apply the payment to reduce the member's tax liability arising by reason of the inclusion of the excess amount in the member assessable income (and any other tax liability owing by the member to the ATO). The balance will then be paid by the ATO to the member.

When the ECC Determination is issued, the ATO will also issue you a request for the issue of a Release Authority. The ATO will only issue the Release Authority upon your request but not otherwise.

Q8. How does a member request the issue of a Release Authority?

When the ECC Determination is issued to the member, the ATO will also issue a request form for the member to request that the ATO issue a Release Authority.

If you wish to utilise the Release Authority, you must complete the request form and return it to the ATO within 60 days of the issue of the ECC Determination.

To be valid the request must:

- specify the total amount to be released (this cannot exceed but could be less than 85% of the excess amount);
- identify one or more superannuation interest or interests from which the total amount is be released;
- if two or more superannuation interests are identified – then the request must specify the amount to be released from each interest;
- be in the approved form; and
- be given to the ATO within 60 days (or such longer period as the ATO allows) of the issue of the ECC Determination.

Q9. Once the Release Authority has been requested, what then happens?

The ATO will issue a Release Authority for each superannuation fund which holds an identified superannuation interest or interests. The Release Authority for each fund will specify the amount to be released from the superannuation interest, or from each superannuation interest if more than one interest has been identified for that fund.

A Release Authority is valid for only 120 days from the date of the Authority: it is stale after 120 days and cannot be relied upon by a trustee.

Q10. Must the Release Authority be given to the trustee of the fund which has received the excess concessional contributions?

The short answer is no. The Release Authority can be given to the trustee of any superannuation fund which holds a superannuation interest of the member.

The Release Authority can even be given to a trustee of a superannuation fund which has not received any concessional contributions in respect of the member – so long as the superannuation fund holds a superannuation interest of the member.

In choosing which superannuation interests are to be accessed under a Release Authority, the member may select a superannuation fund which only holds “preserved” amounts in respect of the member.

Q11. What does a trustee do when it receives a Release Authority?

The trustee must determine whether the Release Authority is still valid when received (ie the authority must be provided to the trustee within 120 days of the date of the authority).

If the Release Authority has been provided within time, the trustee must pay the requested amount to the ATO within 10 business days of receiving the Release Authority. The amount paid will be debited against the account of the member in the superannuation fund as if it were a fund expense relating to the member.

The trustee must also advise the ATO, in the approved form, of the payment. This advice must be given to the ATO within 10 business days of receiving the Release Authority.

Q12. In what circumstances can the trustee decline to pay the requested amount?

The trustee can only decline to action a Release Authority if:

- the Release Authority is stale – ie it was submitted to the trustee more than 120 days after the issue date of the Authority; or
- the trustee no longer holds the identified superannuation interests of the member.

Q13. What if the trustee can only pay part of the requested amount?

The trustee can decline to pay the requested amount if the value of the identified superannuation interests is less than the requested amount.

In this case, the trustee must pay the value of the identified superannuation interest and advise the ATO of the existence, amount and reason for the underpayment.

The ATO must be advised, using the approved form, of the non-payment or underpayment within 10 business days of receiving the Authority.

Q14. If there has been an underpayment, what happens?

In this case the trustee must notify the ATO of the existence, amount and reason for the underpayment.

The ATO will then advise the member of the underpayment and the member can request the ATO to issue another Release Authority in respect of another superannuation interest of the member.

The member must make the further request within 60 days of being advised of the underpayment.

Q.15 What happens if you make no request for a Release Authority within 60 days?

You are under no obligation to request the ATO to issue a Release Authority.

If you have not requested the issue of a Release Authority within 60 days (or such longer period as the ATO allows), no Release Authority will be issued.

In this case, you will be personally liable to pay the tax arising by reason of inclusion of the excess amount in your assessable income.

Additionally, the excess amount will be treated as non-concessional contributions for the purposes of determining whether you have exceeded the non-concessional contribution cap..

Example

You receive an ECC Determination in respect of 2025/26 that you have excess concessional contributions of \$8,000.

As you have not actioned the request to issue a Release Authority within the 60-day time limit, you have lost the right to have the ATO issue the authority.

Your non-concessional contributions for 2025/26 will be increased by \$8,000.

The ATO will seek to recover the tax payable by reason of the increase in your assessable income by \$8,000 by the normal enforcement means.

To the extent the ATO is unsuccessful in obtaining released money to satisfy the assessment, the ATO will seek to recover the unpaid amount directly from the member using the normal tax recovery methods.

Q16. What are the superannuation and taxation consequences of using a Release Authority?

A Release Authority permits the member to access their superannuation interest irrespective of the preservation status of that interest.

A payment pursuant to a Release Authority is treated as a non-assessable non-exempt amount and therefore is not assessable income of the member, is not taxed as a superannuation lump sum, and is not reported in the member's taxation return (s303-15 of the *Income Tax Assessment Act 1997*).

The payment has no tax components as the payment is not subject to the proportioning rule (s131-75 of Division 131 of Schedule 1 of the *Taxation Administration Act 1953*).

The payment is treated as a debit to the superannuation interest rather than the payment of a benefit from the superannuation interest. This means that the payment will, in effect, reduce the taxable component of the superannuation interest.

In relation to the preservation components, the amount paid pursuant to the Release Authority must be offset against the various preservation components of the member's interest in the superannuation fund in the following order: first against the unrestricted, secondly against the restricted and finally against the preserved.