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PERSONAL DEDUCTIBLE CONTRIBUTIONS: TIPS AND TRAPS

Julie Fox

Claiming personal tax deductions for personal super contributions is a valuable new opportunity, if you don't get caught out by any of the common traps. This article outlines the basic eligibility requirements for making personal deductible contributions, includes an adviser checklist to use when recommending personal deductible contributions and provides some examples of common mistakes and tips on how to avoid them.

Potential benefits for your clients

For personal superannuation contributions made on or after 1 July 2017, clients no longer have to earn less than 10% of their income from employment (or not have been employed during the financial year) to be eligible to claim a tax deduction. This makes the tax deduction potentially available to clients who earn 10% or more of their income from employment for the first time.

This opens up the opportunity to claim a tax deduction for any client who:

- is under the age of 75, and
- is eligible to contribute to superannuation, and
- has room left in their concessional contributions cap and
- has enough assessable income to be able to use the tax deduction.

Claiming a tax deduction for personal superannuation contributions may allow clients to reduce their taxable income as well as provide a tax effective way to:

- fund insurance within super
- contribute to super where salary sacrifice is not available
- save for a first home deposit
- make in-specie contributions of direct shares into SMSFs.

Eligibility

To be eligible to claim a tax deduction for a personal superannuation contribution, a client must:

- be under age 75
- make a personal contribution to a complying superannuation fund
- submit a valid notice of intent to claim a deduction for personal super contributions, in the approved form, to the superannuation fund trustee within required timeframes. Please see the tips and traps below on what makes a notice invalid and the required timeframes.
- receive acknowledgement from the trustee that the valid notice of intent has been received before claiming a tax deduction
- claim a deduction in their tax return for an amount that does not

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To avoid recommending personal deductible contributions that will create excess concessional contributions, remember to consider all concessional contributions made or scheduled to be made in a financial year

exceed the amount stated in the notice of intent and does not exceed the client's assessable income less all other deductions

Ineligible contributions

A deduction cannot be claimed for a personal contribution that is:

- a downsizer contribution
- a CGT exempt amount contributed to super as required under the small business retirement exemption
- made to a Commonwealth public sector superannuation scheme in which the client has a defined benefit interest
- made to an untaxed fund
- made by a minor unless the minor derives income from employment or carrying on a business.

Personal deductible super contributions tips and traps

Trap - Concessional contributions cap

The amount of a client's personal deductible contributions must be considered in total with all the client's other concessional contributions for the income year to ensure the contributions are not excessive.

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A client's concessional contributions cap for 2017/18 is $25,000.

Concessional contributions that exceed the client's concessional contributions cap are effectively taxed at a client's marginal tax rate and the client will also be subject to an excess concessional contributions charge.

Tip - Account for all concessional contributions made (and due) in a financial year

To avoid recommending personal deductible contributions that will create excess concessional contributions, remember to consider all concessional contributions made or scheduled to be made in a financial year (e.g. superannuation guarantee, salary sacrifice, employers paying for insurance premiums). See the table below for full details of concessional contributions.

Trap - Incorrectly categorising contribution as an employer contribution

A member who incorrectly classifies a personal contribution as an employer contribution and also claims a tax deduction for the contribution risks receiving an excess concessional contributions tax determination, as the ATO will count the contribution twice.

Super funds need to know what type of contribution a client is making so that it can be reported correctly to the ATO and so the fund knows whether to deduct 15% tax. The ATO then uses the information reported from the fund and the client's income tax return to classify employer and personal contributions into concessional and non-concessional contributions.

A super fund must correct the reporting of a contribution to the ATO within 30 days of becoming aware of the error.

However where the contribution classification is corrected by the fund, the normal timeframes apply for submitting a valid notice of intent to claim a tax deduction. This means in many situations, by the time the mistaken contribution type is identified and corrected by the fund, it will be too late for the client to submit a valid deduction notice, and they will be unable to claim a tax deduction in respect of the contribution.

Contributions included in basic concessional contributions cap
Employer contributions e.g. superannuation guarantee and salary sacrifice
Personal contributions made by the member for which a valid deduction notice is submitted and acknowledged and the member claims the deduction in their tax return.
Member contributions made on behalf of the member by another person e.g. contribution by a friend (does not include spouse contributions, Government co-contributions, LISTO contributions or child contributions)
Amounts allocated from a fund's reserves to a member's account will be included in the member's basic concessional contributions cap except where: • they are allocated in a fair and reasonable manner to an account for every member of the fund or class of member in the fund, and • the amount that is allocated for the financial year is less than 5% of the value of the member's interest in the fund at the time of the allocation, or • the amount is allocated from a reserve for the purpose of enabling the fund to meet pension liabilities • payments from reserves in lieu of contributions (net of tax) must be grossed up by 1.176 (to include the tax liability) to calculate the amount counted towards the cap. An allocation does not have to be grossed up where the full nominal amount is allocated to a member's account and the trustee then deducts an allowance for tax.
Payments by the Commissioner of Taxation to a super fund from the Superannuation Holding Accounts Special Account
Payments by the Commissioner of Taxation to a super fund of SG shortfall amounts
Any of the above contributions made to constitutionally protected funds from 1 July 2017
Certain contributions to interests in defined benefit schemes from 1 July 2017.

Tip - Check the classification at financial year end, prior to claiming a tax deduction

In June 2018, it may be prudent for some clients (mainly small business clients), who are planning to claim a tax deduction for personal contributions made in 2017/18 to check online that these contributions have been made as personal contributions.

Trap – Claiming co-contribution or spouse tax offset

Where a client makes a personal contribution to superannuation and claims a tax deduction, they will not be able to claim a co-contribution on that contribution.

A personal contribution to superannuation cannot be used as an eligible spouse contribution to claim a spouse contribution tax offset.

Tip - Plan all types of contributions before making them

To avoid missing out on co-contributions or a spouse contribution tax offset, carry out more general contribution planning first. If the client plans to claim a co-contribution, ensure a notice of intent is not submitted for that contribution.

If a spouse tax offset will be sought, ensure the contribution is made by the spouse and not as a personal super contribution.

Trap – Submitting a notice of intent too late

A notice of intent to claim a deduction for personal super contributions will not be valid unless it is submitted in writing to the fund trustee by the earlier of:

- the end of the day the taxpayer lodges their income tax return for the income year in which the contribution was made or
- the end of the next income year following the year of contribution.

The basic timing requirements above are fairly easy to follow, however many employees may be lodging a notice of intent for the first time and will need to be made aware of the strict timing rules.

Trap – Submitting an invalid notice of intent

The real traps for both advisers and clients lie in the circumstances that will make a notice of intent invalid despite meeting the time requirements above. See the tip below for details of the circumstances that make a notice of intent invalid.

Example 1 – Rollovers may deny your client a deduction

Allen makes a personal contribution to his super fund in April 2018 which he would like to claim as a tax deduction when he completes his tax return in October. Allen does not submit a notice of intent at the time of the contribution since he is not sure exactly how much of his concessional contributions cap will remain at 30 June.

In August, Allen meets with a financial adviser who recommends Allen consolidate his three super funds into one fund that offers investment options more suited to Allen's goals, lower fees and suitable insurance options. In September the rollovers are completed.

In early October, Allen lodges a notice of intent to claim a deduction for personal super contributions with the fund that now holds the rollovers from his three previous funds.

Tip - Know what makes a notice of intent invalid

A notice of intent to claim a deduction for personal super contributions will not be valid in any of the scenarios below:

1. the notice is not in respect of the contribution
2. the notice includes all or part of an amount covered by a previous notice
3. when the client submitted the notice:
   - they were not a member of the fund or
   - the trustee no longer held the contribution or
   - the trustee had begun to pay an income stream based in whole or part on the contribution
4. Before the client submitted the notice:
   - the client had made a contributions splitting application in relation to the contribution and
   - the trustee had not rejected the application.

The following examples illustrate how the scenarios above very easily occur in practice.

Allen's notice to the new fund is invalid as Allen has not made any personal contributions to the new fund. He has made three rollovers to the new fund.

Allen's notice would also be invalid if he sent it to the old fund (where he made the contribution) for two reasons: when he gives the notice in early October, he is no longer a member of the fund and the fund no longer holds his contributions.

A notice of intent cannot be varied downward if the client is not a member of the fund at the time the variation is made. So where a client is not certain of how much they will have remaining in their concessional contributions cap, consideration should be made to delay the rollover. Once the amount to claim as a tax deduction has been determined, the notice submitted to the super fund and the notice acknowledged by the super fund, it is then safe to proceed with the rollover.

Tip - Submit all notices and receive acknowledgement from the fund prior to rolling over any super funds

Example 2 – Rollovers may reduce your client's deduction

Steven has a superannuation interest valued at $50,000, comprising of a tax-free component of $27,500 and a taxable (taxed) component of $22,500. He makes a $25,000 personal contribution in February 2018. The fund records this contribution against the contributions segment for Steven's superannuation interest. To this end, that amount would be counted against the tax-free component of any superannuation benefit paid to Steven. The value of his superannuation interest is $75,000.

In June 2018, Steven rolls over $50,000, leaving him with an interest of $25,000. The $50,000 rollover comprised of a $35,000 tax-free component and a $15,000 taxable component.

The tax-free component of the remaining superannuation interest is $17,500.

As the superannuation fund no longer holds the entire $25,000 contribution, the maximum amount Steven can claim as a deduction is calculated as follows:

Tax-free component of remaining interest × Contribution ÷ Tax-free component of interest before rollover
= $17,500 × $25,000 ÷ $52,500
= $8,333

Tip - Ensure the amount specified in the notice of intent does not exceed the amount that is calculated to remain in the fund after a rollover or withdrawal

Example 3 – Paying for insurance premiums from one super fund for insurance held in a second super fund

Superannuation fund trust deeds may allow members the ability to take out standalone insurance held with another superannuation fund. When this involves insurance premiums paid by rolling over amounts from a member's superannuation account to an external super fund (which offers the life insurance policy), care must be taken where the client also wishes to claim a tax deduction for their personal contributions made in the financial year.

If any part of the client's super balance is transferred to an external fund, the client will not be able to claim a full deduction on the contributions made in the financial year since at the time of the notice the trustSe no longer holds the contribution.

Tip - Submit all notices of intent and receive acknowledgement from the fund prior to transferring super to another fund to pay insurance premiums

Example 4 – Cash out and recontribution to spouse's super

Don is 65 and has $1,900,000 in his super accumulation account. His super currently has a tax free component of $570,000. Don decides to cash out $300,000 and give this to his wife so that she can contribute $300,000 to her super account while she is still able to apply the bring-forward rule.

The withdrawal reduces the tax free component of Don's super to $480,000.

Don had also planned to claim a tax deduction on a $15,000 personal contribution he made in the current income year. Due to the $300,000 withdrawal, when he submits his notice of intent to the trustee the fund no longer holds the entire $15,000 contribution. Don may only claim a deduction on $12,631.60 of that contribution, as calculated below:

If Don has submitted his notice of intent to claim $15,000 as a tax deduction, and received acknowledgment from the fund prior to cashing out the $300,000, then this would be a valid notice of intent.

Tip - Submit all notices of intent and receive acknowledgement from the fund prior to withdrawing amounts from super

Example 5 – FHSS releases may deny your client a deduction

Bec makes a $15,000 personal contribution to super in June 2018 to save for a house deposit. In September 2018 she commits to finding her first home and applies to release the $15,000 under the First Home Super Saver (FHSS) Scheme. Bec doesn't read the application carefully and accidentally declares that she does not plan to claim a tax deduction on the $15,000 contribution.

In March 2019 Bec purchases her first home and uses the FHSS released amount towards the purchase.

In June 2019 Bec catches up on her past taxes and submits a notice of intent to her super fund so that she can claim the $15,000 as a tax deduction. The super fund notifies Bec that her notice is invalid as the fund no longer holds her contributions.

Tip - Submit all notices of intent and receive acknowledgement from the fund prior to releasing any first home super saver contributions.

Example 6 - Commencing a pension may deny your client a deduction

Silvia has a superannuation interest valued at $175,000. She makes a $25,000 personal contribution in March 2018 so that her interest is valued at $200,000.

Before lodging a notice of intent to claim a deduction for personal super contributions, Silvia commenced a pension using $150,000 of her $200,000 interest.

Since Silvia's fund has commenced to pay a superannuation income stream based in part on the contribution, any notice Silvia then gives to her fund to deduct the contribution will be invalid.

Despite leaving $50,000 of her interest in accumulation (which is in excess of the $25,000 contributed) if Silvia submits a notice of intent to her super fund after the pension commences, her notice will be invalid and Silvia will be unable to claim a tax deduction in respect of any of the contribution.

Alternatively, if Silvia has submitted a notice of intent to claim a deduction for personal super contributions and received acknowledgment from her super fund, prior to commencing her pension, she could be eligible to claim a $25,000 tax deduction (subject to meeting all other eligibility rules).

Amount that may be covered by a valid notice after the withdrawal = **Tax-free component of remaining interest** X $\frac{\textbf{Contribution}}{\textbf{Tax-free component of interest before withdrawal}}$

= **$480,000** X $\frac{\textbf{\$15,000}}{\textbf{\$570,000}}$

= **$12,631.60**

Tip - Submit all notices and receive acknowledgement from the fund prior to commencing any pension (of any size)

Example 7 – Contribution splitting

A client may split up to 85% of personal deductible contributions (up to the concessional contributions cap) made in a financial year to a spouse.

The notice of intent process must be completed prior to applying to split a personal deductible contribution (otherwise it is still a non-concessional contribution and is not splittable).

Ashwin made $25,000 of personal contributions during the year. He would like to split these contributions to his wife's super account. Until Ashwin completes the notice of intent process these contributions will remain personal non-concessional contributions and cannot be split.

Ashwin must submit, to his super fund, a valid notice of intent to claim $25,000 of personal contributions as a tax deduction. Ashwin must also receive acknowledgment of his notice from the fund. The fund then categorises the $25,000 contribution as a concessional contribution and withholds 15% tax.

Ashwin may then apply to split up to $21,250 (85% x $25,000) of concessional contributions to his wife's super account.

Trap – Claiming an incorrect amount in the tax return

The amount of the tax deduction a client may claim in their tax return for personal superannuation contributions is limited to an amount that does not exceed the amount stated in the notice of intent and does not exceed the client's assessable income less all other deductions. The claim will be denied if it contributes to a tax loss.

So, even though the amount in a notice of intent may be valid, it does not guarantee that the ATO will accept the deduction.

Example 8 – Deduction denied by ATO

Kelly is a sole trader. His income and deductions for the financial year are as follows:

- Assessable income - $50,000
- Business deductions - $40,000
- Taxable income - $10,000

A tax loss occurs when deductions exceed the total of assessable income plus net exempt income. If Kelly has further tax deductions in excess of $10,000 he will create a tax loss.

Kelly made a $25,000 personal contribution to his super fund in the same financial year. He submitted a valid notice of intent to his super fund, which was acknowledged in writing. Kelly then claimed a $25,000 tax deduction in his tax return.

The ATO only allows Kelly to claim a tax deduction for personal super contributions of $10,000, as anything more would contribute to a tax loss for Kelly.

The $15,000 of deductions denied by the ATO would mean these contributions are counted as non-concessional contributions by the ATO.

Kelly could contact his fund to have $15,000 of his personal deductible contributions re-categorised as personal non-concessional contributions by submitting a downward variation of his previous notice using the ATO notice of intent to claim or vary a deduction for personal super contributions.

Normally Kelly can vary his original notice of intent downwards, only if he submits the variation to his fund before the earlier of:

- the day he lodges his tax return for the income year in which the contributions was made and
- the end of the income year following the year of contribution.

However, special timing rules apply in cases like Kelly's where the ATO denies the deduction and the client wants to vary their notice downward. Kelly can submit his downward variation after the timeframes above in this scenario (assuming the fund still holds the contributions and an income stream has not been commenced).

If the fund re-categorises the contribution as non-concessional Kelly will have the 15% tax reimbursed to his account.

Tip - When claiming a tax deduction for personal contributions, check the amount does not exceed assessable income less the total of other deductions plus net exempt income.

Trap – Clients with assessable income below the tax-free threshold

A client who does not have assessable income above their effective tax-free threshold will not receive a tax benefit from claiming a tax deduction for personal superannuation contributions.

Tip - Consider the client's effective tax-free threshold

A client's tax-free threshold will depend on whether they are single or a member of a couple, type of income and age. Claiming a tax deduction for personal super contributions in excess of the amount that would bring the client's taxable income down to their effective tax-free threshold should not be recommended. A client would be better advised to maintain contributions as personal non-concessional contributions in these circumstances.

Effective tax free thresholds for 2017-18

Marital Status	Type of income	LITO	SAPTO	Tax free amount	Medicare Levy
Single	Ordinary income	Yes	Yes	$32,279	Nil
Single or member of a couple	Ordinary income	Yes	No	$20,542	Nil
Single or member of a couple	Pension income below age 60	Yes	No	$49,753	$995
Member of a couple	Ordinary income	Yes	Yes	$28,974	Nil

Trap – Clients with income and low tax contributions above $250,000

A client will be subject to an extra 15% Division 293 tax on taxable contributions where their total income plus low tax contributions exceed $250,000. Division 293 tax reduces the tax concession on su-

perannuation contributions for high income earners. It may still be beneficial to make personal deductible superannuation contributions in these scenarios, but an adviser will need to consider the impact, and make the client aware of, any Division 293 tax such a strategy creates.

Example 9 – Impact of Div 293 tax

Judy made a $25,000 personal superannuation contribution for which she claims a personal tax deduction.

Judy's other income components for Division 293 tax are listed in the table below.

	Amount
Assessable income	$240,000
Less deductions	$25,000
Plus reportable fringe benefits	$10,000
Plus net investment loss	$10,000
Total income for Div 293 tax	$235,000
Plus low tax contributions	**$25,000**
Total	$260,000

Since the total of Judy's income (for Div 293 purposes) plus her low tax contributions equals $260,000, she is $10,000 over the $250,000 Div 293 threshold.

This means $10,000 of Judy's $25,000 concessional contributions are subject to an additional 15% Div 293 tax. Judy is in the highest marginal tax bracket (45% + 2% Medicare), so she still gains a 17% tax benefit from making the $10,000 contribution that is subject to Div 293 tax.

Judy would receive an assessment notice from the ATO for $1,500 of Div 293 tax. She would have the choice of paying the tax out of her own pocket or having the tax amount released from the fund to the ATO.

Tip - Consider Div 293 tax in modelling and forewarn client of tax notice

Advisers need to consider the impact of Div 293 tax on strategies involving personal deductible contributions and forewarn clients to expect a Div 293 tax assessment notice from the ATO that will need to be paid by the due date on the notice.

Trap – Total superannuation balance > $1.6M

An individual with a total superannuation balance of $1.6 million or more is not restricted from making personal deductible super contributions (concessional contributions).

However, if the deduction is denied by the ATO, the contribution will be classified as a non-concessional contribution. Individuals with a total superannuation balance of $1.6 million or more on 30 June, have a non-concessional contribution cap of nil in the following financial year, so any non-concessional contribution will be excessive. Excess non-concessional contributions are taxed at 47% if not withdrawn from the fund.

Tip - Take extra care when total super balance is $1.6M or more

For this reason, extra care should be taken when making personal deductible super contributions for clients with total superannuation balances of $1.6 million or more.

Trap – Client has maximised non-concessional contributions for the income year

An individual who has maximised their non-concessional contributions for the income year is not restricted from making personal deductible super contributions (concessional contributions).

However, if the deduction is denied by the ATO, the contribution will be classified as a non-concessional contribution, and would be an excessive non-concessional contribution.

Excess non-concessional contributions are taxed at 47% if not withdrawn from the fund.

Tip - Take extra care when the client has maximised their non-concessional contributions for the income year

For this reason, extra care should be taken when making personal deductible super contributions for clients who have maximised their non-concessional contributions cap for the income year. **FS**