

Division 6.7—Spouse contributions-splitting amounts

6.40 Interpretation

In this Division:

allocated surplus contribution amount means an amount that is allocated from a regulated superannuation fund surplus, by a trustee, to meet an employer's liability to make contributions.

applicant means a member who makes an application under subregulation 6.44(1).

concessional contributions has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

concessional contributions cap has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

contributions segment has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

contributions-splitting superannuation benefit means a payment made in accordance with subregulation 6.45(2).

crystallised segment has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

defined benefit component has the meaning given by regulation 6.31.

directed termination payment has the meaning given by section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*.

element taxed in the fund has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

element untaxed in the fund has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

foreign superannuation fund has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

maximum splittable amount, in relation to a financial year, means:

- (a) for taxed splittable contributions—the lesser of:
 - (i) 85% of the concessional contributions for that financial year; and
 - (ii) the concessional contributions cap for that financial year; and
- (b) for untaxed splittable contributions—100% of the amount of the untaxed splittable contributions made in the financial year; and
- (c) for untaxed splittable employer contributions—100% of the concessional contributions cap for that financial year.

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preservation age has the meaning given by regulation 6.01.

relevant financial year, in relation to an application made under:

- (a) paragraph 6.44(1)(a), means the last financial year that ended before the date of the application; or
- (b) paragraph 6.44(1)(b), means the financial year in which the application is made.

splittable contribution has the meaning given by regulation 6.42.

superannuation benefit has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

superannuation interest has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

superannuation lump sum has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

taxable component has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

taxed splittable contribution has the meaning given by regulation 6.41.

untaxed splittable contribution has the meaning given by regulation 6.41.

untaxed splittable employer contribution has the meaning given by regulation 6.41.

6.41 Meaning of *taxed splittable contribution*, *untaxed splittable contribution* and *untaxed splittable employer contribution*

- (1) Subject to subregulation (2), a ***taxed splittable contribution*** is:
 - (a) a contribution that will be included in the assessable income of an entity as:
 - (i) a taxable contribution for section 274 of the Tax Act; or
 - (ii) a contribution under Subdivision 295-C of the 1997 Tax Act; or
 - (c) an allocated surplus contribution amount.
- (2) Each of the following is not a ***taxed splittable contribution***:
 - (a) a roll-over superannuation benefit within the meaning of Division 306 of the 1997 Tax Act;
 - (b) an amount allotted under this Division;
 - (c) a superannuation lump sum that is paid from a foreign superannuation fund.
- (3) Subject to subregulation (4), an ***untaxed splittable contribution***:
 - (a) is a contribution made by a fund member or by another person to a regulated superannuation fund; but
 - (b) does not include a contribution of that kind that:
 - (i) is made after 5 April 2007; and

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- (ii) will not be included in the assessable income of an entity as:
 - (A) a taxable contribution for section 274 of the Tax Act; or
 - (B) a contribution under Subdivision 295-C of the 1997 Tax Act.
- (4) Each of the following is not an **untaxed splittable contribution**:
 - (a) a payment made to a superannuation fund by an employer, or by another person under an agreement to which the employer is a party, for the purpose of providing superannuation benefits for, or for dependants of, an employee of the employer;
 - (b) a roll-over superannuation benefit within the meaning of Division 306 of the 1997 Tax Act;
 - (c) an amount allotted under this Division;
 - (d) superannuation lump sum that is paid from a foreign superannuation fund.
- (5) Subject to subregulation (6), an untaxed splittable employer contribution:
 - (a) is a contribution made by the Commonwealth, a State or a Territory to a public sector superannuation scheme; but
 - (b) does not include a contribution of that kind that will be included in the assessable income of an entity as:
 - (i) a taxable contribution for section 274 of the Tax Act; or
 - (ii) a contribution under Subdivision 295-C of the 1997 Tax Act.
- (6) Each of the following is not an untaxed splittable employer contribution:
 - (a) a roll-over superannuation benefit within the meaning of Division 306 of the 1997 Tax Act;
 - (b) an amount allotted under this Division;
 - (c) a superannuation lump sum that is paid from a foreign superannuation fund.

6.42 Meaning of *splittable contribution*

- (1) Subject to subregulations (2) and (3), a **splittable contribution** is:
 - (a) a contribution to a regulated superannuation fund on or after 1 January 2006; or
 - (b) an allocated surplus contribution amount that is allocated on or after 1 January 2006.
- (2) Each of the following, received for a member of a regulated superannuation fund, is not a **splittable contribution**:
 - (a) a roll-over superannuation benefit within the meaning of Division 306 of the 1997 Tax Act;
 - (b) an amount allotted under this Division;
 - (c) a superannuation lump sum that is paid from a foreign superannuation fund;
 - (d) a directed termination payment or an amount that would form part of the contributions segment of the superannuation interest.

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- (3) A contribution by the Commonwealth, a State or a Territory to a public sector superannuation scheme in relation to a benefit that accrued in a financial year that commenced before 1 July 2005 is not a splittable contribution.

6.43 Application of Division 6.7

- (1) This Division applies to:
- (a) an accumulation interest; and
 - (b) a defined benefit interest that is not a defined benefit component.
- (2) This Division does not apply to an interest:
- (a) that is subject to a payment split; or
 - (b) on which a payment flag (within the meaning of Part VIIIB or VIIC of the *Family Law Act 1975*) is operating.

6.44 Application to roll over, transfer or allot an amount of contributions

- (1) A member of a regulated superannuation fund may, in a financial year, apply to the trustee of the fund to roll over, transfer or allot an amount of benefits, for the benefit of the member's spouse, that is equal to an amount of the splittable contributions made to that fund by, for, or on behalf of the member in:
- (a) the last financial year that ended before the application; or
 - (b) the financial year in which the application is made—where the member's entire benefit is to be rolled over, transferred or cashed in that year.

Note: This arrangement applies at the request of the member, and is not an arrangement by which the member's superannuation interest is subject to a payment split under Part VIIIB or VIIC of the *Family Law Act 1975*. Part 7A of these Regulations deals with those payment splitting arrangements.

- (2) However, the application is taken to be invalid:
- (a) if in the financial year in which it is made:
 - (i) the member has already made an application in respect of the relevant financial year; and
 - (ii) the trustee:
 - (A) is considering the application; or
 - (B) has given effect to that application; or
 - (b) if the amount of benefits to which the application relates exceeds the maximum splittable amount; or
 - (c) subject to subregulation (3), if, at the time of application:
 - (i) the member's spouse is aged 65 years or more; or
 - (ii) both:
 - (A) the member's spouse is aged between the relevant preservation age and 65 years; and
 - (B) the member's spouse satisfies the condition of release specified in item 101 of Schedule 1.

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- (3) Despite paragraph (2)(c), an application is not taken to be invalid under that paragraph if the application includes a statement by the member's spouse to the effect that, at the time of application, the spouse:
- (a) is aged less than the relevant preservation age; or
 - (b) both:
 - (i) is aged between the relevant preservation age and 65 years; and
 - (ii) does not satisfy the condition of release specified in item 101 of Schedule 1.
- (4) The applicant must specify, in the application, the amount of the benefit from the following:
- (a) the member's taxed splittable contributions;
 - (b) the member's untaxed splittable contributions;
 - (c) the member's untaxed splittable employer contributions;
- that the member seeks to split for the benefit of the member's spouse.

Note: An amount rolled over, transferred or allotted under this Division is a contributions-splitting superannuation benefit.

6.45 Decision on application

- (1) A trustee may accept an application made under subregulation 6.44(1) if all of the following conditions are satisfied:
- (a) the application complies with regulation 6.44;
 - (b) the trustee has no reason to believe that the statement mentioned in subregulation 6.44(3) is untrue;
 - (c) the amount to which the application relates is not more than the maximum splittable amount for the relevant financial year.

Note: A superannuation fund trustee may voluntarily provide a service that allows a member to rollover, transfer or allot an amount to the applicant's spouse (a *splittable contribution*). The fund is not required to offer the service.

- (2) A trustee that accepts an application in accordance with subregulation (1) must as soon as practicable, and in any case within 30 days after receiving the application, roll over, transfer or allot the amount of benefits for the benefit of the receiving spouse.
- (3) If the application requests a split of untaxed splittable contributions, the trustee may give effect to the application only if the amount specified in the application is no more than the crystallised segment that would form part of the superannuation interest that would be payable if the member withdrew the member's entire benefits at the time of the trustee giving effect to the application.
- (4) If the application requests a split of taxed splittable contributions, the trustee may give effect to the application only if the amount specified in the application is no more than the element taxed in the fund of the taxable component that would form part of the superannuation benefit that would be payable if the member withdrew the member's entire benefits at the time of the trustee giving effect to the application.

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- (5) If the application requests a split of untaxed splittable employer contributions, the trustee may give effect to the application only if the amount specified in the application is no more than the element untaxed in the fund of the taxable component that would form part of the superannuation benefit that would be payable if the member withdrew the member's entire benefits at the time of the trustee giving effect to the application.

6.46 Receiving spouse

For this Part, if a trustee accepts an application made under subregulation 6.44(1), the applicant's spouse is a *receiving spouse*.

S995-1(1)

"concessional contributions" has the meaning given by sections 291- [25](#) and 291-165.

"concessional contributions cap" has the meaning given by section 291-20.

INCOME TAX ASSESSMENT ACT 1997 - SECT 291.25

Your concessional contributions for a financial year

(1) The [amount](#) of your *concessional contributions* for a * [financial year](#) is the sum of:

- (a) each contribution covered [under subsection](#) (2); and
- (b) each [amount](#) covered [under subsection](#) (3).

Note: For rules about [defined benefit interests](#), see Subdivision 291-C.

(2) A contribution is covered [under this subsection](#) if:

(a) it is made in the * [financial year](#) to a * [complying superannuation plan](#) in respect of you; and

(b) it is included in the [assessable income](#) of the * [superannuation provider](#) in relation to the plan, or, by way of a * [roll-over superannuation benefit](#), in the [assessable income](#) of a * [complying superannuation fund](#) or * [RSA provider](#) in the circumstances mentioned in [subsection](#) 290-170(5) (about [successor funds](#)); and

(c) it is *not* an [amount](#) mentioned in [subsection](#) 295-200(2); and

(d) it is *not* an [amount](#) mentioned in item 2 of the table in [subsection](#) 295-190(1); and

(e) it is *not* an [amount](#) mentioned in [subsection](#) 99G(6) of the *Superannuation Industry (Supervision) Act 1992* that is refunded in accordance with that [subsection](#).

(3) An [amount](#) in a * [complying superannuation plan](#) is covered [under this subsection](#) if it is allocated by the * [superannuation provider](#) in relation to the plan for you for the year in accordance with conditions specified in the regulations.

(4) For the purposes of [paragraph](#) (2)(b), disregard:

- (a) table item 5.3 in section 50- [25](#) (about [income tax](#) exemption for [constitutionally protected funds](#)); and
- (b) Subdivision 295-D (about excluded contributions).

[Guide](#) to Subdivision 291-C

INCOME TAX ASSESSMENT ACT 1997 - SECT 291.20

Your excess concessional contributions for a financial year

- (1) You have [excess concessional contributions](#) for a * [financial year](#) if the [amount](#) of your * [concessional contributions](#) for the year exceeds your * [concessional contributions cap](#) for the year. The [amount](#) of the [excess concessional contributions](#) is the [amount](#) of the excess.
- (2) Your [concessional contributions cap](#) is:
- (a) for the 2017-2018 [financial year](#)—\$25,000; or
 - (b) for the 2018-2019 [financial year](#) or a later [financial year](#)—the [amount](#) worked out by indexing annually the [amount](#) mentioned in [paragraph](#) (a).

Note: Subdivision 960-M shows how to index [amounts](#). However, annual indexation does not necessarily increase the [amount](#) of the cap: see section 960- [285](#).

Five year carry forward of [unused concessional contributions cap](#)

- (3) However, your [concessional contributions cap](#) for the * [financial year](#) is increased in accordance with [subsection](#) (4) if:
- (a) your * [concessional contributions](#) for the year would otherwise exceed your [concessional contributions cap](#) for the year; and
 - (b) your * [total superannuation balance](#) just before the start of the [financial year](#) is less than \$500,000; and
 - (c) you have previously unapplied * [unused concessional contributions cap](#) for one or more of the previous 5 [financial years](#).
- (4) Apply your unapplied * [unused concessional contributions cap](#) for each of the previous 5 * [financial years](#) to increase your * [concessional contributions cap](#) (but not by more than the excess from [paragraph](#) (3)(a)).
- (5) For the purposes of increasing your * [concessional contributions cap under subsection](#) (4), apply [amounts](#) of * [unused concessional contributions cap](#) for previous * [financial years](#) in order from the earliest year to the most recent year.

Your [unused concessional contributions cap](#)

- (6) You have [unused concessional contributions cap](#) for a * [financial year](#) if the [amount](#) of your * [concessional contributions](#) for the year falls short of your * [concessional contributions cap](#) for the year. The [amount](#) of the [unused concessional contributions cap](#) is the [amount](#) of the shortfall.
- (7) However, you do not have [unused concessional contributions cap](#) for a * [financial year](#) earlier than the 2018-2019 [financial year](#).

INCOME TAX ASSESSMENT ACT 1997 - SECT 290.165

Age-related conditions

Condition if you are [under](#) 18

- (1) If you were [under](#) the age of 18 at the end of the [income year](#) in which you made the contribution, you must have * [derived](#) income in the [income year](#):
- (a) from the [carrying on](#) of a * [business](#); or
 - (b) attributable to activities, or circumstances, that result in you being treated as an employee for the purposes of the [Superannuation Guarantee \(Administration\) Act 1992](#) (assuming that [subsection](#) 12(11) of that Act had not been enacted).

Work test condition for ages 67 to 75

- (1A) If you made the contribution during the period starting on the day you turn 67 and ending on the day that is 28 days after the end of the month in which you turn 75:
- (a) you must have been * [gainfully employed](#) for at least 40 hours in any period of 30 consecutive days during the [income year](#) in which the contribution was made; or
 - (b) if you do not satisfy [paragraph](#) (a)—you must satisfy the following requirements:
 - (i) you were [gainfully employed](#) for at least 40 hours in any period of 30 consecutive days during the [income year](#) (the [previous income year](#)) ending before the [income year](#) in which the contribution was made;
 - (ii) you had a * [total superannuation balance](#) of less than \$300,000 at the end of the previous [income year](#);
 - (iii) you have not [deducted](#) a contribution in the previous [income year](#) or any earlier [income years](#) on the basis of satisfying the requirements in this [paragraph](#);
 - (iv) no contribution made by you, or in respect of you, in the previous [income year](#) or any earlier [income years](#), was accepted by a * [superannuation fund](#) or an * RSA [under](#) a prescribed provision of regulations made for the purposes of the [Superannuation Industry \(Supervision\) Act 1993](#) or the [Retirement Savings Accounts Act 1997](#) .

Maximum age condition

- (2) You cannot [deduct](#) the contribution if it is made after the day that is 28 days after the end of the month in which you turn 75.