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Changes to concessional contributions – constitutionally protected and unfunded defined benefit funds

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This information is for people who are:

- members of a constitutionally protected fund (CPF) with either an accumulation or defined benefit interest
- members of an unfunded defined benefit fund.

From 1 July 2017, there are changes to the definition of concessional contributions for constitutionally protected funds (CPFs) and unfunded defined benefit funds – these contributions will count towards your concessional contributions cap.

What are CPFs and unfunded defined benefit funds?

Constitutionally protected funds (CPFs) are untaxed super funds that do not pay income tax on contributions or earnings they receive. Some state governments operate CPFs for their employees (for example, West State Super and Gold State Super in Western Australia and Triple S in South Australia). Funds created for members of the judiciary are also often CPFs.

In an **unfunded defined benefit fund** your benefits are not financed until just before they become payable to you. Unfunded defined benefit funds mostly cover government employees – for example, the Commonwealth Superannuation Scheme (CSS), Public Superannuation Scheme (PSS) and the Defence Force Retirement and Death Benefits Scheme (DFRDB). Many unfunded super funds also have funded components (these are known as partially unfunded).

The changes do **not** apply to funded defined benefit schemes.

What has changed?

Effective 1 July 2017, contributions made (and certain other amounts allocated for interests) in CPFs and unfunded defined benefit funds will count towards your concessional contributions cap ($25,000 in 2017–18). This is in the same way as they would for other super funds. However, these contributions and amounts on their own cannot result in you exceeding your concessional contributions cap for a financial year.

Counting CPF and unfunded defined benefit fund contributions towards your concessional contributions cap means that your ability to make further concessional contributions to other funds is limited. There may be tax consequences for your other concessional contributions.

There are also changes to the eligibility requirements for deductions for personal super contributions. You cannot claim a deduction for personal contributions made to:

- CPFs
- other untaxed funds that exclude your contribution from their assessable income
- certain other defined benefit funds.

For further information refer to Guidance note for super 9 – *Change to personal super contributions deductions.*

New rules for accumulation interests

Prior to 2017–18, contributions to an accumulation interest in a CPF were not counted towards your concessional contributions cap.

Effective 1 July 2017, contributions to CPFs will be included as concessional contributions if the amounts would normally be assessable income of the fund (except for their income tax exemption).

Therefore, contributions made on your behalf (for example, by your employer, including super guarantee and amounts specified in a salary sacrifice agreement) will be counted towards your concessional contributions cap.

New rules for defined benefit interests

Before 1 July 2017, most concessional contributions to defined benefit interests in CPFs and unfunded defined benefit funds did not count towards your concessional contributions cap (apart from the productivity component in some defined benefit schemes). This means you can make concessional contribution to other super funds, in addition to those made to these defined benefit interests.

Effective 1 July 2017, where you have a defined benefit interest, the amount of your concessional contributions for a financial year is the sum of:

- contributions and amounts to accumulation interests, where those contributions would ordinarily be concessional contributions under the law
- notional taxed contributions for each of your defined benefit interests
- the amount by which your defined benefit contributions exceeds your notional taxed contributions.

Notional taxed contributions

Special rules apply to working out the amount of your concessional contributions in a defined benefit fund. Your concessional contributions include your notional taxed contributions.

Notional taxed contributions generally represent the equivalent employer contributions made if you are a member of an accumulation fund. These contributions are calculated using formulas in the *Income Tax Assessment Regulations 1997*. The estimate is necessary, as contributions made to a defined benefit fund are not always attributable to particular members.

Prior to 1 July 2017, if you held defined benefit interests in a CPF, you did not have an amount of notional taxed contributions for these interests. For 2017–18 onwards, your fund will need to calculate your notional taxed contributions for your defined benefit interest in a CPF.

Grandfathering transitional rules

Grandfathering transitional rules apply when determining notional taxed contributions for certain **funded** defined benefit interests held on 5 September 2006 or 12 May 2009. If your notional taxed contributions for such an interest would exceed the concessional contributions cap for the relevant year, they will instead be treated as being equal to the cap. Therefore, when calculating your concessional contributions for one of these interests, your notional taxed contributions will be taken as your grandfathered amount.

The grandfathering transitional rules will **not** apply for defined benefit interests in CPFs and unfunded defined benefit interests. However, they do apply for funded or partially unfunded defined benefit interests.

For further information refer to Law companion guideline 2016/11 - *Superannuation reform: concessional contributions – defined benefit interests and constitutionally protected funds*

If defined benefit contributions exceed notional taxed contributions

Effective 1 July 2017, an additional amount may be included in your concessional contributions if you have a defined benefit interest in an unfunded or partially unfunded scheme, including a CPF. This is to ensure the amount of concessional contributions better reflects the amount of accrued benefits (funded and unfunded) for the defined benefit interest for the financial year.

The additional amount included in your concessional contributions is the amount your 'defined benefit contributions' exceeds your notional taxed contributions. This requirement may also apply to defined benefit interests in CPFs. Defined benefit contributions are calculated following rules set out in the *Income Tax Assessment Regulations 1997*.

For funds that are unfunded or partially unfunded, your defined benefit contributions will typically be greater than your notional taxed contributions and, therefore, you will have an additional amount included in your concessional contributions.

Note that defined benefit contributions continue to be used in calculating whether you are liable to pay Division 293 tax. The threshold for this tax has changed from $300,000 to $250,000 from 2017–18, but the calculation of Division 293 tax has not changed.

Excess concessional contributions

The change to include contributions and amounts for CPFs and unfunded defined benefit funds as concessional contributions is only intended to limit your ability to make other contributions. It is not intended to disadvantage those who have super interests subject to the grandfathering transitional rules.

Counting these amounts against your concessional cap means that additional contributions are only possible if you have remaining cap space. However, concessional contributions for CPFs and unfunded defined benefit funds on their own cannot result in you having excess concessional contributions, even where they exceed your cap.

Where the sum of certain concessional contributions that relate to your CPF and defined benefit funds (known as 'capped amounts') exceeds your concessional contributions cap, these contributions will be taken to be equal to your concessional contributions cap and will not create an excess. This change disregards any increase to your concessional cap due to the carry forward of unused concessional cap space.

The capped amounts are:

- concessional contributions to a CPF (this includes all concessional contributions to all interests in CPFs (whether accumulation or defined benefit)
- your notional taxed contributions where the grandfathering transitional rules apply or would apply if your notional taxed contributions exceeded your concessional contributions cap, and
- the amount by which your defined benefit contributions (excluding any interests in respect of your CPF) exceed your notional taxed contributions (excluding any interests in respect of your CPF).

If grandfathering transitional rules apply, the reference to notional taxed contributions is the grandfathered notional taxed contribution amount.

Where the sum of the capped amounts is taken to be equal to your concessional contributions cap, any other amounts included in your concessional contributions may create excess concessional contributions for that financial year.

What you need to do

What you need to do before 1 July 2017

Situation	Action
If you have made contributions to a CPF or unfunded defined benefit fund prior to 1 July 2017.	Contributions to CPFs and unfunded defined benefit funds do not count towards your concessional contributions cap before 1 July 2017. The changes start from 1 July 2017. Concessional contributions to a CPF or unfunded defined benefit fund cannot on their own result in you exceeding your cap. However, they may limit your ability to make further concessional contributions to other funds. Check with your employer about your: ■ salary sacrifice agreements and amounts being paid to CPFs or other types of funds ■ contributions to CPFs and defined benefit funds. You may need to arrange for any or all of the additional concessional contributions to your other types of super funds to be stopped at the end of the financial year if they will put you over your concessional contributions cap in 2017–18. Contact your super fund(s) to review your arrangements with CPFs, unfunded defined benefit funds and other super funds to be ready for the next financial year starting on 1 July 2017. Your fund(s) can also provide information about the calculation of your notional taxed contributions and defined benefit contributions (if applicable). If you are already making personal contributions to your CPF or certain other untaxed funds, you can no longer claim a personal super contributions deduction for these contributions for 2017–18 or future years.

What you need to do from 1 July 2017

Situation	Action
If you make concessional contributions (on or after 1 July 2017) to CPFs or unfunded defined benefit funds, as well as other types of funds.	Contributions and amounts relating to CPFs and unfunded defined benefit funds count towards your concessional contributions cap. Concessional contributions to a CPF or unfunded defined benefit fund count towards your concessional contributions cap but cannot on their own result in you exceeding your cap. However, they may limit your ability to make further concessional contributions to other funds. Contact your super fund(s) to review your arrangements with CPFs, unfunded and other super funds. Your fund(s) can also provide information about the calculation of your notional taxed contributions and defined benefit contributions (if applicable). Check with your employer about your: ■ salary sacrifice agreements and amounts being paid to CPFs or other funds ■ contributions to CPFs and defined benefit funds. You may need to arrange for any or all of the additional

	concessional contributions to your other types of super funds to be stopped if they will put you over your concessional contributions cap. You are not eligible to claim a personal super contributions deduction for contributions made to your CPF or certain other untaxed funds.
If you have only made concessional contributions to a CPF or unfunded defined benefit fund	If you make concessional contributions to a CPF or unfunded defined benefit fund only, these contributions and amounts on their own cannot result in you exceeding your concessional contributions cap for a financial year. However, these contributions count towards your concessional contributions cap and limit your ability to make further concessional contributions to other funds.

Examples

Main points	**Example**
■ *Member of a CPF with no defined benefit interest* ■ *Employer contributes to a CPF and salary sacrifices to another super fund that is not a CPF*	*Giuliana has an interest in a CPF. During 2016–17, Giuliana's employer contributes $30,000 to the CPF for her. Giuliana also makes a salary sacrifice contribution of $20,000 to another super fund which is not a CPF.* *Giuliana's concessional contributions in 2016–17 are $20,000, as the contributions made to the CPF are not included in Giuliana's concessional contributions.* *During 2017–18, Giuliana's employer again contributes $30,000 to her CPF. Giuliana continues to make a salary sacrifice contribution of $20,000 to another super fund which is not a CPF.* *For 2017–18, Giuliana's concessional contributions would be $50,000 ($30,000 plus $20,000), as contributions made to CPFs are included in concessional contributions from 1 July 2017.* *However, the concessional contributions to Giuliana's interest in a CPF ($30,000) cannot create an excess, even though they are greater than Giuliana's concessional contributions cap for 2017–18 ($25,000). Therefore, the amount of those concessional contributions is modified to equal her concessional contributions cap.* *Giuliana's modified concessional contributions for 2017–18 are $45,000, being the:* ■ *$25,000 in contributions made to her CPF (modified as above), plus* ■ *$20,000 in concessional contributions to her other super fund.* *She has exceeded her concessional cap for 2017–18 by $20,000 ($45,000 less $25,000).*
■ *Member of a CPF with a defined benefit interest that is partially funded* ■ *Employer*	*Anna has a defined benefit interest in a CPF. During 2016–17, Anna has no notional taxed contributions for her interest in the CPF. Anna continues to make a salary sacrifice contribution of $15,000 to another super fund which is not a CPF. For 2016–17, Anna's concessional contributions are $15,000.*

contributes to a CPF and salary sacrifices to a separate accumulation super fund	*During 2017–18, an actuary advises the super provider of her CPF to calculate her notional taxed contributions as $30,000 and her defined benefit contributions as $35,000. Anna continues to make a salary sacrifice contribution of $15,000 to her separate super fund.* *For 2017–18, as contributions made to CPFs are included in concessional contributions, Anna's concessional contributions would be $50,000, the sum of:* ▪ *$15,000 (salary sacrifice contribution to her accumulation interest)* ▪ *$30,000 (the notional taxed contribution)* ▪ *$5,000 (the amount by which her defined benefit contributions ($35,000) exceeds her notional taxed contributions ($30,000)).* *However, Anna's concessional contributions to the CPF of $35,000 ($30,000 plus $5,000) cannot create an excess and are greater than Anna's concessional contributions cap. Therefore, these capped amounts are taken to be equal to her concessional contributions cap of $25,000.* *Consequently, Anna has excess concessional contributions of $15,000, being the difference between:* ▪ *the modified concessional contributions of $40,000 ($15,000 plus $25,000), and* ▪ *her concessional contributions cap for 2017–18 ($25,000).*
▪ *Member of a defined benefit fund with a defined benefit interest for which the grandfathering transitional rules apply* ▪ *Member of a CPF with an accumulation interest* ▪ *Employer contributes to both funds*	*Anh has notional taxed contributions and defined benefit contributions (of $26,000 for 2017–18) to a defined benefit super interest that is not a CPF. The defined benefit interest meets the requirements under the grandfathering transitional rules. Anh also has employer contributions to an accumulation interest in a CPF of $27,000.* *Under the grandfathering transitional rules, Anh's notional taxed contributions are treated as equal to her concessional contributions cap (that is, $25,000), as $26,000 exceeds this cap. Therefore, Anh's concessional contributions would be $53,000, being the sum of:* ▪ *$27,000 (concessional contribution to accumulation interest)* ▪ *$25,000 (the notional taxed contribution from her defined benefit interest with grandfathering transitional rules applied)* ▪ *$1,000 (the amount by which her defined benefit contributions ($26,000) exceeds her notional taxed contributions ($25,000)).* *However, the sum of Anh's capped amounts is also $53,000, being the sum of:* ▪ *$27,000 (concessional contributions to a CPF)* ▪ *$25,000 (notional taxed contributions where the grandfathering transitional rules apply),* ▪ *$1,000 (the amount by which Anh's defined benefit contributions ($26,000) exceeds her notional taxed contributions ($25,000). This excludes any interests in respect of a CPF).*

	Anh's capped amounts ($53,000) are greater than her concessional contributions cap ($25,000) and, are therefore, treated as being equal to her concessional contributions cap. For 2017–18, Anh has concessional contributions of $25,000, rather than $53,000. *If Anh had made other concessional contributions to another type of fund, they would create an excess and Anh would have to pay additional tax at her marginal rates.*

References

ATOlaw topic(s)	Superannuation ~~ Income tax - individuals (superannuation) ~~ Other
Legislative references	▪ LCR 2016/11 *Superannuation reform: concessional contributions – defined benefit interests and constitutionally protected funds*
Related Rulings/Determinations	
Case references	
Other references	▪ GN 2017/9 *Change to personal super contributions deductions*
ATO references	
BSL	SPR