



[Home](#) / [Individuals](#) / [Super](#) / [In detail](#) / [Growing your super](#)  
/ [If you exceed your non-concessional contributions cap](#)

## If you exceed your non-concessional contributions cap

For most people the non-concessional contribution cap (limit) is **\$110,000** per financial year (from 1 July 2021).

To work out if you have exceeded the non-concessional contributions cap, we assess the information reported to us by your super fund and in your return (if you lodged it) and consider your age (date of birth).

You must not apply to your super fund to release an amount relating to exceeding your cap. You must wait until we have sent you your determination letter and you have selected your option for paying the tax. We will then send your fund a release authority.

If you exceed your non-concessional contributions cap:

- we will send you a determination which explains your options
- you **must lodge a tax return for that year**. If you can't lodge your tax return by the due date, and you do not want us to issue a determination before you lodge, you will need to request a lodgment deferral
- we will manage the release of money from your super
- you may need to pay extra tax.

### Find out about:

- [Your options if you exceed the cap](#)
- [Special circumstances](#)
- [How to make an election \(?anchor=Howtomakeanelection#Howtomakeanelection\)](#)
- [Tips to help you avoid exceeding the non-concessional contributions cap \(?anchor=Tipstohelpavoidexceedingthenonconcession#Tipstohelpavoidexceedingthenonconcession\)](#)

### Your options if you exceed the cap

You have **60 days** to elect one of the two options for paying your tax when you receive our determination letter.

You cannot change your election decision once you make it.

If you believe the ENCC determination is wrong, see [If the information used for excess contributions is wrong \(?anchor=Iftheinformationusedforexcesscontributio#Iftheinformationusedforexcesscontributio\)](#).

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## You have two election options when you receive your determination letter

Option	Tax	Taxable income
<p><b>Option 1</b> With <u>Option 1</u> you release <b>both</b>:</p> <ul style="list-style-type: none"> <li>the entire excess contributions amount from your super</li> <li>85% of the associated earnings (this is an amount calculated by us to approximate the amount earned from the excess contributions while in the fund).</li> </ul> <p>We will add the full amount of associated earnings to your assessable income and give you a 15% tax offset. We will issue you with an amended notice of assessment. A change in your assessable income may impact government benefits or payments you receive or make (e.g. childcare subsidy). You need to <u>make an election</u> (<a href="#">? anchor=Howtomakeanelection#Howtomakeanelection</a>), choosing Option 1 to release.</p>	<p>May pay tax on your associated earning at your marginal tax rate, including Medicare levy.</p>	<p>Increases</p>
<p><b>Option 2</b> With <u>Option 2</u> you:</p> <ul style="list-style-type: none"> <li>do not release an amount in relation to the excess</li> <li>are assessed for excess non-concessional contributions tax.</li> </ul> <p>You choose to leave the excess contributions and associated earnings in your super. We will send you a Notice of Assessment taxing you on your entire excess non-concessional contributions at the 47% tax rate. This tax will need to be paid from your super. We will send a release authority to your fund to release your tax amount and pay it to us. You need to <u>make an election</u> (<a href="#">? anchor=Howtomakeanelection#Howtomakeanelection</a>), choosing Option 2 if you want the tax to be paid from your super. <b>If you are with a Defined Benefit Fund</b>, making an election and choosing Option 2 is the only option available to you. Your tax will need to be paid from your own pocket.</p>	<p>Pay 47% tax on the entire excess non concessional contributions.</p>	<p>No change</p>

## Other scenarios

Scenario	Tax	Taxable income

<p><b>If you do not make your election we will act on your behalf.</b></p> <p>If we do not hear from you within 60 days of sending you a Determination letter, we will default you to Option 1 as this attracts the least amount of tax.</p> <p>If your super fund does not allow this, we will proceed with Option 2.</p> <p>You must <u><a href="#">make an election</a></u> (<u><a href="#">?anchor=Howtomakeanelection#Howtomakeanelection</a></u>), if you want:</p> <ul style="list-style-type: none"> <li>• to choose which super fund to release the money from</li> <li>• this process to commence earlier.</li> </ul>	<p>Option 1: May pay tax on your associated earning at your marginal tax rate, including Medicare levy.</p> <p>Option 2: Pay 47% tax on the entire excess non concessional contributions.</p>	<p>Option 1: Taxable income increases</p> <p>Option 2: No change to taxable income</p>
<p><b>If we assess you have no money left in super, including pensions or interests in defined benefit funds, we will send you a Direction letter confirming this.</b></p> <p>You do not have to release money from your super.</p> <p>We will add the full amount of associated earnings to your assessable income and give you a 15% tax offset.</p> <p>We will issue you with an amended notice of assessment.</p> <p>A change in your assessable income may impact government benefits or payments you receive or make (e.g. childcare subsidy).</p>	<p>You may pay tax on your associated earnings at your marginal rate, including Medicare levy.</p>	<p>Taxable income increases</p>

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### Example: ENCC determination letter received

For 2018–19, Reginald's total superannuation balance was \$1,704,861.82. This means his non-concessional cap was \$0.

Reginald makes a personal contribution of \$100,000. This means he exceeded his non-concessional contribution cap by \$100,000.

**Reginald must not apply to his super fund to release any amount relating to exceeding his cap from his fund.** He must wait until we have sent him his determination and he has selected his option to pay tax. We will then manage the required release by sending his fund a release authority.

We send him a Determination letter on 15 November 2019 outlining the following information:

Total superannuation balance as at 30/6/2018	\$1,704,861.82
Non-concessional contribution cap	\$0.00
Non-concessional contributions	\$100,000.00

Excess non-concessional contributions (ENCC) for this determination	\$100,000.00
Excess non-concessional contributions tax (Option 2)	\$47,000.00
Associated earnings amount	\$ 13,140.00
<b>Associated earnings period</b>	<b>1 July 2018 to 15 November 2019</b>
<b>Associated earnings rate</b>	<b>8.96%</b>
<b>85% of associated earnings amount</b>	<b>\$11,169.00</b>
<b>Amount to be released from your super fund(s) under Option 1</b> (\$100,000 + (85% × \$13,140))	<b>\$111,169.00</b>

The amounts Reginald would pay under the options are as follows.

### **Option 1: Reginald chooses to release excess from his super fund**

Reginald received an ENCC determination for the 2018–19 income year with the following information:

- ENCC of \$100,000
- Associated earnings of \$13,140
- Amount to be released from his fund under Option 1 is \$111,169.

Reginald goes to ATO Online via myGov and makes a valid election choosing Option 1 to:

- release the amount of \$111,169 from his fund
- be taxed on his associated earnings in his income tax return at his marginal tax rate.

The associated earnings of \$13,140 are included in his assessable income for the 2018–19 income year. He also receives a tax offset of \$1,971 ( $\$13,140 \times 15\%$ ). Reginald is sent an amended Notice of Assessment.

The ATO sends Reginald's fund a release authority to release \$111,169 from his fund and pay it to the ATO. When we receive this amount, we offset any applicable ATO or Commonwealth debts from this amount then refund the balance to Reginald.

### **Option 2: Reginald chooses to not release an amount in relation to the excess and chooses to be assessed for excess non-concessional contributions tax.**

Reginald goes to ATO Online via myGov and elects **Option 2**

**Note:** Reginald **must** select this option if his only superannuation interest is held in a defined benefit fund, and the fund cannot or will not voluntarily release from it.

We will send Reginald an ENCC tax assessment for \$47,000.

We will also issue his super fund with a release authority to pay the ENCC tax liability amount to us.

If Reginald's only fund is a defined benefit fund which will not accept release authorities, then he will need to pay us the \$47,000 from his own pocket.

**Other option: Reginald does not make his election within 60 days of receiving his determination:**

We default Reginald to option 1, unless his super fund does not allow the excess non-concessional contributions to be released. In that situation, we will proceed with option 2. We will send Reginald an ENCC tax assessment for \$47,000.

**Find out more:**

- [Option 1 – release the excess from your super funds](#)
- [Option 2 – release no amount in relation to the excess and be assessed for excess non-concessional contributions tax](#)

**Option 1 – release the excess from your super funds**

You can elect to release all your excess non-concessional contributions plus 85% of your [associated earnings](#) from your super funds.

If you do, we will amend your income tax assessment to include

- your associated earnings in your taxable income
- a non-refundable tax offset of 15% of the associated earnings.

You pay tax on associated earnings at your marginal tax rate.

Your taxable income may increase. This could affect any income support payments, child support or Centrelink benefits.

**How this option works**

- Go to ATO Online via myGov or use the [Excess non-concessional contributions election form \(/Forms/Excess-non-concessional-contributions-election-form/\)](#) to tell us you choose Option 1 and which super funds you wish to release the money from
- We will
  - ask your super fund to release excess amounts and associated earnings to us
  - amend your income tax assessment and issue with an amended notice of assessment
  - pay your tax and/or other Australian Government debts owing
  - refund the balance to you.

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If a fund is not able to release all or part of the elected amount, we will let you know. You will have another 60 days to make a new election for another fund.

### **What happens if full amount cannot be released**

If your only remaining super interest is in a defined benefit fund and that fund cannot or will not release the amount, you can lodge an election for Option 2 to initiate the issuing of the ENCC tax assessment.

We will then:

- send you an ENCC tax assessment. The excess non-concessional contributions will be taxed at the highest marginal tax rate **plus** Medicare Levy
- issue your super fund with a release authority to pay the ENCC tax liability amount to us. If your fund is unable to release some or all of the amount you will need to pay the liability from your own sources
- amend your income tax assessment to remove or reduce the associated earnings.

If you have no money left in super (including income streams or defined benefit interests) we will:

- send you a letter telling you that you do not need to release any amount
- still include the associated earnings in your income tax assessment.

### **Associated earnings**

Associated earnings are an amount calculated to approximate the amount earned from the excess contributions while they were in your super fund.

How associated earnings are calculated

The associated earnings amount is calculated using three key elements:

- your excess non-concessional contributions (ENCC)
- the associated earnings rate – this is the average of the general interest charge rates for the four quarters of the financial year in which the ENCCs were made. This proxy rate may be more or less than the earnings rate applied by your super fund.
- the associated earnings period – This is from 1 July of the financial year in which the ENCCs were made through to the date of the original ENCC determination letter.

The associated earnings rate is applied to the ENCC amount on a daily compounding basis for the length of the associated earnings period.

We do not have discretion to change the associated earnings rate or period.

### **See also:**

- [Associated earnings rate \(for excess non-concessional contributions\)\\_\(/rates/key-superannuation-rates-and-thresholds/?page=4#Associated\\_earnings\\_rate\\_for\\_excess\\_non\\_concessional\\_contributions\\_\)](#)

- [General interest charges \(/general/interest-and-penalties/general-interest-charge/\)](/general/interest-and-penalties/general-interest-charge/).

## Effect on your assessable income

When the associated earnings amount is included in your assessable income, the increase may have flow-on effects for a range of government income tests used for calculating offsets, surcharges, benefits and payments, such as:

- child support
- Centrelink benefits
- super co-contributions
- Medicare levy surcharge
- Division 293 tax
- eligibility for pay as you go instalments.

Option 2 – release no amount in relation to the excess and be assessed for excess non-concessional contributions tax

If you elect to leave the ENCC in your super funds you will receive an ENCC tax assessment. The excess amount is taxed at the highest marginal tax rate **plus** Medicare levy.

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**Table 7: ENCC tax rate**

Financial year	ENCC tax rate
2020–21	47.0%
2019–20	47.0%
2018–19	47.0%

We will:

- send you an ENCC tax assessment
- issue your super fund with a release authority to pay the ENCC tax liability amount to us.

If your only fund is a defined benefit fund which is unable or unwilling to release this amount, you will need to pay us the amount yourself.

## See also:

- [Excess contributions tax and how funds report your contributions \(/Individuals/Super/In-detail/Withdrawing-and-using-your-super/Excess-contributions-tax-and-how-funds-report-your-contributions/\)](/Individuals/Super/In-detail/Withdrawing-and-using-your-super/Excess-contributions-tax-and-how-funds-report-your-contributions/).

If you do not make a request within 60 days of receiving your determination

If we do not receive your request, we will:

- ask your super fund to release excess contributions and 85% of the associated earnings to us
- amend your income tax assessment
- pay your tax and/or other Australian Government debts owing
- refund the balance to you
- issue you with an updated income tax notice of assessment.

## Special circumstances

If you exceed your non-concessional contributions cap due to special circumstances, you can apply to the Commissioner for a determination. The Commissioner may make a determination that some or all your contributions are [disregarded or allocated to another year](#) ([?anchor=Requesttodisregardorreallocateyourcontri#Requesttodisregardorreallocateyourcontri](#)).

Applying to have contributions disregarded or reallocated

Complete and send us the [Application – excess contributions determination](#) ([/Forms/Application---excess-contributions-determination/](#)). (NAT 71333) form.

**Note:** You don't have to use our form. You can send us a written statement, but it **must** include all the information we request in our form.

After completing your application or written statement, either:

- fax it to **1300 669 846**
- lodge through Business portal or Online Services for agents (your agent can lodge this for you)
- email it to [SuperAdvice@ato.gov.au](mailto:SuperAdvice@ato.gov.au) (<mailto:SuperAdvice@ato.gov.au>). Be aware that email is not a secure environment and the privacy of personal information sent by this unencrypted channel cannot be guaranteed.
- mail it to us at

**Australian Taxation Office**  
**PO Box 3100**  
**PENRITH NSW 2740**

## Next step:

- [How to make an election](#) ([?anchor=Howtomakeanelection#Howtomakeanelection](#)).

## Find out about:

- [Tips to help avoid exceeding the non-concessional contributions cap](#) ([?anchor=Tipstohelpavoidexceedingthenonconcession#Tipstohelpavoidexceedingthenonconcession](#)).



## **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.

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