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This article is worth
0.50 CPD POINTS
CRITICAL THINKING

Includes

- Rules for claiming tax deductions on super contributions.
- A worked example.
- Details on the ATO's requirements.

Claiming contribution tax deductions on superannuation

It's never too early to consider end of financial year issues. After all, it always pays to pay attention to detail, particularly for individual fund members who are eligible to claim tax deductions for personal contributions.

This may be the case for clients who think they are self-employed, where in fact they are incorporated. What is assumed to be a personal deductible contribution is in fact an employer contribution. Historically each year quite a number of clients have had double counted contributions.

Then there are clients who are eligible to make deductible personal contributions but they (and/or their advisers) do not appreciate the requirements must be done in the right order, at the right time in the right way. That is, there are no shortcuts as compliance with tax law is strictly prescribed.

For a client to claim a deduction for personal contributions they must give the super fund a valid notice of their intent to claim a deduction and in turn receive the appropriate acknowledgement from the superannuation fund – all within a specified timeframe.

Problems can arise when the client or their adviser assume a hand written note on the form accompanying the contribution, for example an application for

membership form, is sufficient to alter personal contributions to concessional contributions.

Few understand, in these instances, all personal contributions will remain in the member's tax-free component contribution segment until the fund receives the valid and approved forms.

Most guidance publicly available is usually couched in the terms of both being 'valid' and 'approved'. But what do these terms actually mean?

What is valid and what is approved?

Being valid implies something is legally binding due to having been executed in compliance with the law and being able to be officially accepted. In this instance the notice, once accepted, is assumed to be binding on the superannuation fund trustee.

Approved means in a form approved. This could also encompass content, format and medium, by the relevant regulator and most probably by the superannuation fund trustee to be acceptable for execution. But bear in mind a superannuation fund's governing rules can be more severe than the law. The approved form may also be inclusive of an approved procedure.

The tax office and many superannuation funds emphasise the words 'in the approved form', and also within the stipulated timeframes.

So what do we have to do to comply with the *Income Tax Assessment Act 1997 (ITAA97)* requirements?

Hurdle 1. Is the client eligible to claim the relevant tax deduction? There are a number of conditions which must be satisfied to be eligible to claim a deduction. The effect of these conditions is that an individual who is an employee is unlikely to be allowed a tax deduction for personal super contributions.

For a fund member to be eligible to claim a deduction in the relevant financial year, then:

- The member must have made personal contributions to a complying super fund or to an retirement savings account (RSA).
- The member's earnings as an employee must be less than the maximum allowed (ie, they meet the 10 per cent rule requirements).
- The member must meet the relevant age-related conditions.
- The member has given the relevant superannuation fund a valid notice advising the amount intended to claim as a deduction, in the approved form, and within the time limits specified.



- The superannuation fund has acknowledged the member's notice of intent to claim a deduction.

What are the time limits specified?

It varies slightly depending on whether it is an intent to claim a tax deduction or an intent to vary a previous intent to claim. As the Australian Tax Office (ATO) states:

Intent to claim:

You must give a notice of intent to claim a deduction to your super fund on or before whichever of the following days occurs earliest – either:

- The day you lodge your income tax return for the year in which the contributions were made.
- The last day of the income year after the income year in which you made the contributions.

Intent to vary:

You can apply to vary a previous valid notice of intent (to claim) if:

- You have not yet lodged your income tax return and it is on or before 30 June in the financial year following the year you made the contribution, or
- The ATO has disallowed your claim for a deduction and you are applying to reduce the amount claimed as a deduction by the amount that the ATO has disallowed.

Hurdle 2. The super fund has to ascertain whether it can accept an intention to claim a deduction. That is, ensure it is valid from a fund perspective.

Your client can give a valid notice to the superannuation fund if all of

the following apply:

- They are still a member of that super fund.
- The superannuation fund trustee still holds the contribution(s) being claimed.
- The notice does not include all or a part of an amount covered by a previous notice.
- The trustee has not begun to pay a superannuation income stream based in whole or in part on the contribution.
- You have not lodged an application (which hasn't yet been dealt with by the fund) to split the contribution for which you intend to claim a deduction.

What is meant by 'the superannuation fund trustee still holds the contribution'?

This is particularly important if your client has elected to do automatic rollovers to another superannuation fund where they hold standalone life insurance policies in superannuation.

Special rules apply for full or partial voluntary rollovers, for situations where there has been a successor fund transfer or a MySuper transfer.

If you have chosen to rollover or withdraw a part of your super account held by your fund before lodging the intention to claim then a valid notice of intent cannot be given for the entire contribution.

The proportioning rule applies and part of the rollover will consist of a tax-free proportion.

Furthermore part of the tax-free component will include an appropriate proportion of the new contributions that were intended to be deductible contributions.

This is explained in ATO Taxation Ruling TR 2010/1 which states:

71. A superannuation provider will no longer hold a contribution, or at least a part of it, if the member has chosen to roll over or withdraw a

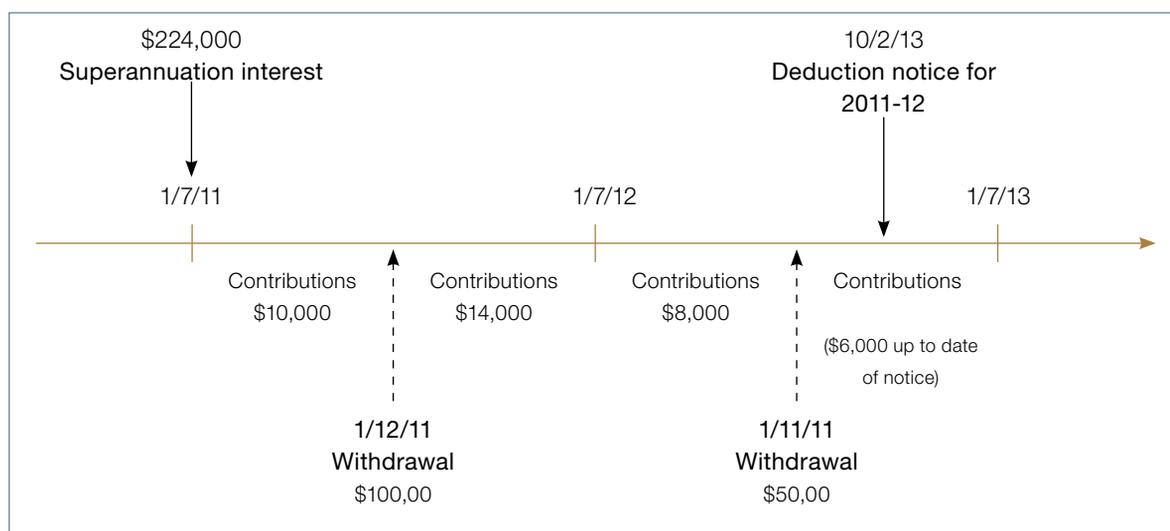
part of the superannuation interest held by the provider. In such a case, a deduction notice cannot be given for the entire contribution. A valid deduction notice will be limited to a proportion of the tax-free component of the superannuation interest that remains after the roll over or withdrawal. That proportion is the value of the relevant contribution divided by the tax-free component of the superannuation interest immediately before the roll over or withdrawal.

Naturally this is compounded when multiple rollovers or withdrawals occur. This can best be describe within a case study from Taxation Ruling TR 2010/1 (see below).

This example assumes no investment earnings or administration fees. All calculations have been rounded to the nearest dollar.

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GRAPH: VALID NOTICE OF INTENTION TO DEDUCT - MULTIPLE WITHDRAWALS



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On 1 July 2011 Mark had a superannuation interest valued at \$224,000 including a tax-free component of \$74,000. Mark pays superannuation contributions of \$2,000 on the twentieth day of each month.

First withdrawal

On 1 December 2011 Mark withdraws \$100,000. Prior to the withdrawal Mark's account balance was \$234,000 including a tax-free component of \$84,000 (\$74,000 plus \$10,000 in contributions). The balance after withdrawal is \$134,000 including a tax-free component of \$48,103.

The withdrawal affects the amount Mark can include in a valid deduction notice for the contributions made from 1 July 2011 until the withdrawal (1 December 2011) as only a proportion of these contributions are still held by the fund. The proportion of the \$10,000 in contributions still held by the fund is:

Tax free component of remaining interest	x	<u>Contributions</u> Tax free component of interest before withdrawal
\$48,103	x	<u>\$ 10,000</u> \$84,000 \$5,727

Second withdrawal

Mark makes a second withdrawal of \$50,000 on 1 November 2012. Prior to the withdrawal Mark's account balance was \$156,000 including

a tax-free component of \$70,103 (\$48,103 plus \$14,000 plus \$8,000). The balance after withdrawal is \$106,000 including a tax-free component of \$47,634.

This second withdrawal also affects the amount Mark can include in a valid deduction notice for contributions made in the 2011-2012 income year. Additionally, it affects the amount that can be included in a valid deduction notice for contributions made in the 2012-2013 income year insofar as the contributions (\$8,000) were made before the withdrawal.

Valid deduction for the 2011-12 income year

For the 2011-2012 income year, Mark had made contributions of \$10,000 prior to the withdrawal on 1 December 2011. As calculated above, only \$5,727 of those contributions remained in the fund after the first withdrawal. After the first withdrawal, further contributions of \$14,000 were made in the 2011-2012 income year. The proportion of the contributions made in the 2011-2012 income year that are still in the fund after the second withdrawal and for which Mark could present a valid deduction notice for 2011-2012 is:

Tax free component of remaining interest	x	<u>Contributions</u> Tax free component of interest before withdrawal
\$47,634	x	<u>\$5,727 + \$14,000</u> \$70,103 \$13,404

Valid deduction for the 2012-13 income year

For the 2012-2013 income year, Mark had made contributions of \$8,000 between 1 July 2012 and the second withdrawal on 1 November 2012. The proportions of these contributions which are still held by the fund after the second withdrawal and for which Mark could give a valid notice for 2012-13 are:

Tax free component of remaining interest	x	<u>Contributions</u> Tax free component of interest before withdrawal
\$47,634	x	<u>\$8,000</u> \$70,103 \$5,436

On 10 February 2013 Mark presented a valid deduction notice for \$13,404 for contributions made during the 2011-2012 income year. These contributions cease to be part of the tax-free component and become part of the taxable component. The balance of Mark's interest is reduced by \$2,011 (15 per cent of \$13,404), being the tax payable by the fund on the contribution which is now assessable income of the fund.

The balance of Mark's interest after presentation of the notice is \$109,989 (\$106,000 + \$6,000 - \$2,011), comprising a tax free component of \$40,230 (\$47,634 + \$6,000 - \$13,404) and a taxable component of \$69,759 (\$109,989 - \$40,230).

Provided Mark does not make another withdrawal before he presents a deduction notice for

the 2012-2013 income year a valid notice can be given to the fund for \$21,436. This comprises the contributions made between 1 July 2012 and 1 November 2012 that remain in the fund after the withdrawal (\$5,436) and contributions made between 1 November 2012 and 30 June 2013 (\$16,000).

Hurdle 3. The superannuation fund trustee has to ascertain whether the notice is in the approved form.

The ATO has an approved form on its website titled a Notice of intent to claim or vary a deduction for personal super contributions form (NAT 71121) however each superannuation fund may have its own version of this form.

It may be used for two purposes being:

- The initial intention to claim, and
- The intention to vary down to a lesser amount.

A variation can never increase the amount of the deduction. To do this you need to lodge an additional notice of intent for subsequent contribution payments.

Additionally for the process to be complete the fund must have issued to your client an acknowledgment that they have received the notice, but this acknowledgment does not have to be received in the stated timeframes stipulated for giving your notice of intent.

However it should be noted the acknowledgement of the notice is required before the client



can claim the deduction in their personal tax return.

Example of increasing a personal super contributions deduction claim

John makes a contribution of \$20,000 and lodges a notice with his super fund to claim a deduction for \$15,000.

Later (but within the set timeframes) he decides to increase his deduction to \$18,000.

John must send his super fund another notice, advising that he now also intends to claim \$3,000 as a deduction.

His super fund will now have two valid notices – one for \$15,000 and one for \$3,000.

John should receive two acknowledgment notices from the fund.

The ATO has indicated to super fund trustees that there are three types of 'approved notice of intent' forms, (but remember the fund rules may be more severe than the law requires). They are:

- The ATO version in paper form (NAT 71121).
- A 'fund-branded' paper form which the trustee provides as long as it specifies all the information contained in NAT 71121 plus the completion instructions.
- A letter from the member, stating that they wish to claim a tax deduction for a specific amount of their personal super contributions and containing at least the mandated information.

It may be that the client's superannuation fund, due to prudent risk mitigation reasons, does not accept hand written intention to claim instructions. However, if they do then the following information must be included for the instruction to be valid:

- A statement that they wish to claim a tax deduction for a specific amount of their personal super contributions containing at least the following information:

1. First name
2. Family name
3. Date of birth
4. Fund name
5. Fund member account number
6. The financial year in which the contributions were made
7. The amount covered by their notice
8. The amount they intend claiming as a tax deduction
9. A declaration that they are lodging the notice by the due date, that is, by the earlier of the following:
 - The day they lodged their income tax return for the year in which they made the contributions
 - The end of the income year following the one in which they made the contributions
- A statement that the information contained in their letter is true and correct
 1. Their signature
 2. The date (day, month and year).

Summary

The process of claiming a tax deduction can be complicated - your client has to be eligible, the intention has to be valid, in the approved form, and within the prescribed time frames.

QUESTIONS

1. The notice of intent to claim or vary a deduction has two purposes. Which of the following is not one of those purposes?

- A. the initial intention to claim.
- B. the intention to vary up to a higher amount.
- C. the intention to vary down to a lesser amount.

2. You must give a notice of intent to claim a deduction to your super fund on or before whichever of the following days occurs earliest – either:

- A. The day you lodge your income tax return for the year in which the contributions were made.
- B. The last day of the income year after the income year in which you made the contributions.

3. Which of the following is not a factor in lodging a notice of intent to claim a tax deduction for personal contributions?

- A. Advising the amount intended to be claimed as a deduction.
- B. Giving notice in the approved form.
- C. Giving notice within the specified time limits.
- D. Giving notice to the ATO.

To answer questions www.fpa.com.au/cpdmonthly

It is important to ensure any intention to claim is lodged before any withdrawals, roll overs or pension commencement activity occurs. A simple hand written instruction claiming the amount is a personal deductible contribution on an application form is not valid even if the member signs and dates it. So if there is a desire to submit a hand written instruction you must ensure:

- It includes all of the required information, and
- It is timely, and
- The client's fund accepts hand written instructions.

Most importantly the entire process is incomplete until the fund member receives confirming acknowledgement from their superannuation fund.

Breckon joined the IOOF TechConnect team in April 2012 and has more than 30 years' experience assisting advisers with legislative research and technical strategies.

Prior to joining IOOF, Breckon was a technical manager, business development for MLC, and has worked as a technical marketing manager for Aviva Australia. He has also held diverse management roles with AXA, dealing in both wholesale and retail sectors.

Breckon is an active member of the industry; he has been involved in various industry bodies, and is a regular contributor to industry magazines and journals. Martin has an MBA and Diploma of Financial Services (Financial Planning).