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DOWNSIZER CONTRIBUTIONS

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The downsizer contributions measure was introduced by the Turnbull Government as part of the Government's broader housing affordability package to reduce pressure on housing affordability in Australia. This new super measure became law on 13 December 2017.

This new super measure will allow an individual aged 65 or over to use the proceeds in relation to one sale of their main residence to make 'downsizer contributions' of up to \$300,000 (or \$600,000 if a couple) into super. To be eligible, the contract for sale, not the settlement date, must be entered into on or after 1 July 2018.

It's important to note that the property does not need to be a current home. It can be an individual's former home. This is an exciting development from a financial planning perspective, as it means downsizer contributions can potentially be used by a much larger group of clients than was initially thought. When this measure was announced in the May 2017 Federal Budget, it was understood that only current homes could be eligible, however, the Government has since broadened its scope to include former homes.

Currently, there are contribution restrictions and caps that prevent some older Australian from investing the proceeds of selling their home into Super. Downsizer contributions are not subject to the restrictions listed below that apply to non-concessional contributions (NCCs):

Work test	A downsizer contribution can be made regardless of whether the individual is working or not.
Upper age limit	The under age 75 restriction does not apply to a downsizer contribution. There's no upper age limit when making a downsizer contribution.
Total super balance	A downsizer contribution is not subject to the total super balance test which is relevant when determining an individual's NCC cap. However, once a downsizer contribution is made, it will increase an individual's total super balance.
NCC caps	A downsizer contribution is excluded from being a non-concessional contribution and does not count towards an individual's NCC cap.

Accordingly, this measure will provide greater flexibility for super contributions when selling an eligible property. This article explains the rules and strategies of using downsizer contributions.

Downsizer contribution eligibility

For a contribution to be classified as a downsizer contribution, the following conditions must be satisfied:

Age

The individual must be aged 65 or older at the time the contribution is made

Qualifying property

- The contract for sale (not the settlement date) must be entered into on or after 1 July 2018.
- The property that is sold must be located in Australia and cannot be a houseboat, caravan or other mobile home.
- The property must have been owned by the individual, or their spouse for 10 or more years just prior to disposal. This means the property does not need to be owned by both members of a couple.
- The property must qualify for the main residence capital gains tax (CGT) exemption in whole or part. This means the property does not need to be a current home. It could be an individual's former home which has been subsequently used as an investment property, or left vacant. As long as a property is eligible for at least a partial main residence CGT exemption, the property is able to satisfy this condition.
- The property can be a pre-CGT asset (purchased before 20 September 1985) if this pre-CGT property could have qualified for a whole or partial main residence CGT exemption had the property been a CGT asset (i.e. if purchased after 19 September 1985).
- There is no requirement to actually downsize or purchase another home.

Downsizer contribution cap

The total amount of downsizer contributions that can be made is the lesser of:

- \$300,000 per individual, and
- the total proceeds received by an individual or their spouse from the sale of the property.

For example, if a qualifying property is sold for \$200,000, then this is the maximum downsizer contribution permitted by an individual or couple.

On the other hand, if this property is sold for \$700,000, \$300,000 will be the downsizer contribution cap for an individual. The spouse of the individual can also make a \$300,000 downsizer contribution even if the spouse does not own the property.

90 days' timeframe and approved form

- The contribution must be made within 90 days of the change in ownership (i.e. settlement); and
- A choice must be made by the individual to treat a contribution as a downsizer contribution. This choice must be made in the approved form and given to the super fund before or at the time the contribution is made. It is expected that this form will be similar to the ATO's Contributions for personal injury election form and the Capital gains tax cap election form.

Deductibility

A downsizer contribution cannot be claimed as a tax deduction.

**The quote**

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Example

Amanda (age 60) and Daryl (age 63) are married. Amanda bought an apartment as her principal home in 1990 for \$150,000. She lived there for seven years, got married and moved into her husband Daryl's principal home in 1997. Amanda kept her apartment (valued at \$200,000 in 1997) and has used it as an investment property ever since.

In 2022, Amanda turns 65 and is still working. Daryl is fully retired. She sells her apartment for \$800,000. Amanda wants to maximise super contributions for both Daryl and herself using the sale proceeds and minimise the CGT on selling this property.

Downsizer contributions

Amanda and Daryl can each make a downsizer contribution of \$300,000 to their super as they satisfy the following eligibility conditions:

- The sale contract is entered into after 1 July 2018.
- Both Amanda and Daryl are 65 or over at the time of making the contribution.
- Downsizer contributions are not subject to the work test. The fact that Daryl is no longer working is not relevant.
- Amanda owns the apartment for 10 or more years just prior to the disposal. The property is not required to be owned jointly by the couple.
- This property is eligible for the partial CGT main residence exemption as it was Amanda's residential home between 1990 and 1997.
- Amanda is not required to purchase another property.

Amanda and Daryl must make the downsizer contributions within 90 days of settlement. They must each elect to treat their contribution as a downsizer contribution by using the approved form which needs to be provided to their respective super fund before, or at the time the contribution is made.

Non-concessional contributions

Daryl cannot make any NCCs in 2022 as he is over 65 and cannot satisfy the work test.

Given Amanda can satisfy the work test, she can potentially make the NCCs subject to her total super balance as at 30 June of the previous year and her age at 1 July of the contributing financial year.

Capital gains tax (CGT)

Amanda's apartment is eligible for the partial CGT main residence exemption as it was Amanda's residential home between 1990 and 1997. However, CGT applies for the period between 1997 and 2022 when the property was used as an investment property.

When calculating the capital gains, a special rule (section 118.192 of ITAA 1997) applies to modify the cost base of Amanda's apartment as it was first used to produce income after 20 August 1996. The market value of this property at the time Amanda first used it to produce

income (\$200,000 in 1997) becomes the cost base for calculating her net capital gain.

Assuming Amanda does not have any current or brought forward capital losses, the net capital gain on selling her apartment is calculated as below:

- Gross capital gains: \$800,000 - \$200,000 = \$600,000
- Net capital gain after applying the 50% CGT discount: \$600,000 / 2 = \$300,000
- The \$300,000 net capital gain forms part of Amanda's assessable income.

Personal deductible contributions

In the year of the CGT event, Amanda can potentially use personal deductible contributions to manage her capital gains. She can use:

- her general concessional contribution cap in that year
- any unused concessional contributions cap space accrued from 1 July 2018 if her total super balance at prior 30 June is below \$500,000.

Planning points and strategies

1. Under the downsizer contribution rules, there is no requirement to actually downsize or purchase another home.

– If an eligible client is purchasing a new property using the sale proceeds but has cash or other investments outside super, they can still potentially take advantage of downsizer contributions.

– A downsizer contribution could potentially be used as a re-contribution strategy. If an individual has no cash or other investments outside super, they could make a withdrawal from their super/pension and re-contribute this as a downsizer contribution to increase the tax-free component for estate planning purposes.

2. Given the contributors must be 65 or over, they have unlimited access to the amount invested in their super regardless of their working status. There's no need to worry about locking their money away in super.

3. The income for the Commonwealth Seniors Health Card (CSHC) purposes is based on the adjusted taxable income plus deemed income on non-grandfathered account based pensions. The amount kept in super accumulation phase is not subject to deem-ing. The downsizer contribution could be beneficial for certain clients who either must keep the amount in accumulation because they have already used up their transfer balance cap, or voluntarily keep the amount in accumulation to avoid being deemed under the income test, so they can retain the CSHC. In the latter case, the cost is the 15 per cent tax on earnings on their super accumulation which could be a worthwhile trade-off for certain clients in need of significant ongoing medical attention.

4. If the proceeds are relating to the sale of a business property where the owner also lives on site and it is the owner's main residence, there's no need for the

sale proceeds to be apportioned so that only the capital proceeds relating to the sale of the owner's main residence are able to be used to make a downsizer contribution.

Considerations

1. A downsizer contribution is not subject to the total super balance test which is relevant when determining an individual's NCC cap. However, once a downsizer contribution is made, it will increase an individual's total super balance and can affect future NCC and catch-up concessional contributions.
2. A downsizer contribution is not excluded from the pension transfer balance cap and may not be transferred to the tax-free retirement pension phase if the individual has already used up their transfer balance cap. However, as mentioned above, retaining an amount in a super accumulation account may help an individual become eligible for or retain a CSHC.
3. Unfortunately, there is no Centrelink means test exemption for the downsizer contributions. The sale proceeds contributed to super under this measure will count towards the Age Pension assets test. They will also be deemed under the income test for an individual over qualifying Age Pension age. As a result:

- if an eligible client sells a family home which is exempt from the means test and makes a downsizer contribution to their super, their Age Pension entitlement could be materially affected
- on the other hand, if an eligible client sells a former home which has been used as an investment property and is already included in the Age Pension means test, the downsizer contribution may not have any impact on the client's Age Pension entitlement, and
- the current rules where an individual sells their residential home with an intention to purchase a replacement home, the proceeds can be exempt for up to 12 months under the Centrelink/DVA assets test remain unchanged. Unfortunately, proceeds may still be deemed under the income test. **FS**



The quote

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