TapIn Fact Sheet

Last updated: 1 July 2019

Superannuation

Fact Sheet 7 – Downsizer contributions

Table of Contents

Introduction

Eligible individuals have been able to make superannuation downsizer contributions since 1 July 2018.

A downsizer contribution allows people, who may otherwise be prevented from making contributions into superannuation due to their age, work status or contribution cap restrictions, to sell their home and contribute to superannuation based on the proceeds of the sale.

Benefits of downsizer contributions include:

– Contributions can be made if the member does not meet the age 65+ work test (or work test exemption);

– There is no maximum age on making downsizer contributions;

– Contributions can be made regardless of the member's previous 30 June total super balance (TSB);

– Contributions form part of the tax-free component of the contributor's super account and are not counted towards their non-concessional contributions cap;

– Once inside superannuation, the contribution can be used to commence a retirement phase pension (if enough transfer balance cap space is available) which attracts tax-free earnings and tax-free income payments (from a taxed fund). Alternatively, the contribution can remain in accumulation phase where earnings are taxed at a maximum of 15%;

– Downsizer contributions are eligible to attract the Government co-contribution or spouse contributions tax offset if eligibility requirements for these concessions are met[1];

– There is no requirement that the person who has sold an eligible property to purchase another property. For example, a downsizer contribution could be made by someone going into aged care, a granny flat, retirement village, a rental arrangement or moving into another property that they (or a partner) already

[1] For further information, see *TapIn Superannuation Fact Sheet: Spouse contributions* and *TapIn Guide: Government co-contribution.*

own. Where another property is purchased, it can be more expensive than the property disposed of.

Downsizer super contributions cannot be claimed as a tax deduction and form part of the tax-free component of the superannuation interest(s).

The pension transfer balance cap of $1.6 million (indexed) continues to apply. This may limit, or effectively prevent, the transfer of the downsizer contribution from super accumulation phase to a tax-exempt retirement phase pension.

No special Centrelink or Department of Veterans' Affairs (DVA) means test exemptions or concessions apply to the downsizer contribution.

Perhaps the ideal target market for the downsizer contributions strategy will be those who do not qualify for any social security income support and who are paying marginal rate tax on their retirement income (e.g. those in receipt of taxable defined benefit pensions, or other investment or employment income).

Eligibility requirements

The eligibility requirements for making a downsizer contribution are as follows:

- The contribution arises from the sale of an eligible property where the contract of sale exchanged on ***or after 1 July 2018***;
- The proceeds (capital gain or loss) from the sale of the home are ***either exempt or partially exempt from capital gains tax (CGT) under the main residence exemption,*** or would be entitled to such an exemption if the home was a CGT asset rather than ***a pre-CGT (acquired before 20 September 1985) asset***;
- The home being sold is in ***Australia and is not a caravan, houseboat or other mobile home;***
- The home (or land it is situated on) was owned by the contributor (or their spouse or former spouse) for ***10 years or more prior to the disposal***;
- The contributor is ***65 years old or older*** at the time the downsizer contribution is made;
- The downsizer contribution is made within ***90 days of the change of ownership (i.e. usually settlement date);***
- A ***Downsizer contribution into super*** form is submitted to the superannuation fund either before or at the time of making the downsizer contribution;
- A downsizer contribution to super from the sale of another home ***has not previously been made***.

If the above requirements are met, the disposer (and their spouse if age 65+) can contribute up to $300,000 each from the proceeds of the sale.

The eligibility conditions are explained in greater detail in the remainder of this fact sheet.

Eligible property

To qualify for a downsizer contribution, an eligible property must be sold.

A property is an eligible property if:

- Sale contracts are exchanged on or after 1 July 2018;
- Upon sale, the property is:
  - eligible for a full or part CGT main residence exemption, or
  - not eligible for a full or part CGT main residence exemption and the only reason for not being eligible is because the property is a pre-CGT asset,
- Owned by the person (or their spouse or former spouse) for at least 10 years prior to disposal;
- Situated in Australia and not a caravan, mobile home, or houseboat.

Full or partial CGT main residence exemption

The property must be eligible for at least a partial CGT main residence exemption.

This includes a property that may currently be an investment property but was previously the main residence (i.e. is eligible for at least a partial main residence CGT exemption). It could also include a property that is currently a main residence for CGT purposes but was previously an investment property.

When a client owns more than one property that could qualify for a (full or partial) main residence CGT exemption, the client only needs to make the decision as to which property will have the CGT exemption when the client disposes of an eligible property. The client's tax return will include details of disposal of any property for which a main residence CGT exemption is claimed. Importantly, the client must consider the overall CGT impact of making a downsizer contribution from the proceeds of sale of one eligible property over another where the client owns more than one property which could qualify for a partial CGT exemption.

Pre-CGT main residence

A downsizer contribution can also be made from the sale of a dwelling that is not a CGT asset because it was acquired prior to 20 September 1985.

For a sale of a pre-CGT asset, the person can only have a downsizer contribution if they would have been entitled to a whole or partial main residence exemption if the dwelling had been a CGT asset.

Ten-year ownership period

The property must have been owned by the person, their spouse or former spouse for at least ten years prior to disposal.

Member of a couple

The ten-year ownership period can include period(s) when only one member of the couple owned the property, for example when a property was inherited from a deceased spouse who was the prior sole owner.

The ten-year ownership period can also include a period when the property was held by the trustee of the deceased estate of the owner.

Example 1: Transfer ownership interest between spouses

In 2015, Andrew and Tara are both 70 years old.

They have been married for 50 years and have lived in their family home for the past 40 years. The title for their home is solely in Andrew's name.

Andrew passes away in mid-2015. He leaves the family home to Tara. On 1 December 2016 the title for the home formally passes to Tara, however due to the operation of subsection ITAA 1997 128-15(2), Tara is taken to have acquired the asset on the day Andrew died.

After a few years, Tara decides to sell the home so that she can move into a retirement village. The contract for the sale of the home settles on 1 December 2019.

Tara satisfies the 10 year ownership test for the purposes of the downsizer rules because at all times over the period starting on 1 December 2009 and 1 December 2019, the ownership interest in the home was held by Andrew (for the first 5 and a half years) and Tara (for the last 4 and a half years).

Relationship breakdown

The ten-year ownership period can also include a period when the residence was acquired by a sole owner who is now a member of a new couple because of a property settlement following a relationship breakdown (i.e. include ownership period prior to the relationship breakdown, even if the property had only been owned by the former spouse).

Knock down and rebuild

Where clients have knocked down and re-built a dwelling or purchased vacant land and subsequently constructed a dwelling, the 10 year ownership period must be satisfied in relation to the underlying land only.

Example 2: 10 year ownership condition – knock-down, rebuild

Anh bought a block with a derelict house on it in 2015. In 2016 Anh knocked down the house. In 2017 she gained development approval to build a new house on the block. In 2018 the new house was completed, and she moved in.

In 2025, Anh wishes to sell the house and make a downsizer contribution from the proceeds. She satisfies the 10 year ownership test even though there were periods within those 10 years when there was no dwelling on the block.

Sale of a farm

Downsizer contributions can also be made upon sale of a farm. The part of the farm which is the taxpayer's main residence (and up to two adjoining hectares used only for domestic purposes) can be eligible for the main residence CGT exemption.

Furthermore, in a case such as this, the taxpayers will be able to make downsizer contributions from the proceeds received on sale of the entire farm – that is, the size of their downsizer contributions will not be limited to the portion of proceeds that would otherwise represent the value from the main residence.

In addition, to continue the example of the sale of a farm, the taxpayers may also be eligible for the small business CGT exemptions and the additional contribution opportunities which arise from using these concessions. In a case such as this, the value of the main residence would be 'carved out' from the total sale proceeds, and as previously noted, exempt from CGT under the main residence exemption anyway. Note the 'over 65 work test' (or work test exemption) applies to those age 65 or over who use the small business CGT concessions to make super contributions.

Example 3: Sale of a farm

Justin owns an income producing farm with a total of 200 hectares of land which he has owned for 15 years. Only Justin's name is on the title.

Justin and his wife, Caitlyn have lived in the residence on the farm for the past 15 years. Justin sells the farm including the main residence for $3 million dollars. Under the existing CGT rules in Subdivision 118-B ITAA 1997, Justin is entitled to disregard the capital gain on the main residence and the adjacent land, up to 2 hectares, which is not used to produce income.

As Justin qualifies for a partial main residence exemption on the sale of the property, and his wife

Example 3: Sale of a farm

Caitlyn would have qualified had her name been on the title deed, they are entitled to make a downsizer contribution of up to $300,000 each into their superannuation as this is less than the sale price of the property.

There is no need to apportion the sale price of the property based on which part of the property was eligible for the main residence exemption and which part was not for the purposes of working out the maximum amount Justin and Caitlyn can contribute to their superannuation accounts.

Unusual cases

It is expected that in most cases it will be obvious that the property that is sold will be an eligible residence and allow the seller(s) to make the downsizer contribution.

However, there may be situations where the property's eligibility for the main residence CGT exemption is doubtful. In these cases, it is suggested that a private ruling from the Australian Taxation Office (ATO) should be sought.

For example, subject to further guidance from the ATO, an eligible residence could potentially include a property which is basically commercial in nature (e.g. a hotel), but where the owners also live on-site as full-time managers in a separate and identifiable part of the property and do not own another property for which they will claim a main residence CGT exemption.

It should also be noted that in some situations a property (or part) can lose its main residence CGT exemption. This includes, for example, where part of a property is sub-divided and sold separately from the land which includes the actual main residence. Where this occurs, eligibility to make a downsizer contribution on the sale of the sub-divided parcel of land will be lost.

Dwelling on the land sold

Apart from loss of eligibility for the main residence exemption, if the land no longer includes a 'dwelling', the sale proceeds will be ineligible to be a downsizer contribution.

A key requirement is that there must be a dwelling on the land that is sold. For example, where a home is destroyed by fire neither sale proceeds of the then vacant land or insurance proceeds will be eligible to be a downsizer contribution even though the property that is sold may still qualify for the main residence CGT exemption.

CGT and the main residence CGT exemption is a complex area of tax law and TapIn can only provide 'high level' guidance in this area. Specific advice from the client's tax adviser will be required in all cases.

How much can be contributed?

A downsizer contribution to super can be made regardless of the individual's 30 June TSB. However, once a downsizer contribution is made, it will increase the person's TSB for the future application of that test.

Downsizer contributions will not be included in any contribution cap of the individual.

A maximum contribution of $300,000 per person is permitted. However, this is also potentially limited by the actual sale proceeds of the house (see Examples 5).

An individual is limited to making downsizer contributions from only one property in their lifetime and is subject to an aggregate downsizer contributions cap of $300,000 per person. However, an individual may make more than one downsizer contribution from the proceeds of sale of a single eligible property if the individual's total downsizer contributions do not exceed $300,000. In such cases, each contribution must be covered by the prescribed election form.

For example, downsizer contributions from the proceeds of sale of one property could be contributed to more than one super fund. The downsizer election form will be required for each downsizer contribution.

Member of a couple

Even if only one member of a couple was the property owner, both may be eligible to contribute up to $300,000 each (limited by the actual sale proceeds).

If a couple sell their home under a single contract and are both eligible to make a downsizer contribution, they are free to choose how to apportion the total capital proceeds between them, provided that neither of them contributes greater than $300,000.

If only one member of a couple is eligible, the eligible person can use the total capital proceeds from the sale up to $300,000.

Remember to make a downsizer contribution, the contributor must be age 65 at the time the contribution is made. Furthermore, the contribution must be made within 90 days of change of ownership.

See section on 'Timing of contribution' for further information.

Sale proceeds

'Sale proceeds' is basically the arm's length sale price of the eligible residence. Amounts deducted for agent's fees, secured or other loan repayments and other expenses can be disregarded when assessing the amount of 'sale proceeds'.

'Proceeds', or 'capital proceeds', is extensively defined in the *Income Tax Assessment Act 1997* (ITAA 1997). In most cases where an 'arm's length' sale between unrelated parties occurs, 'capital proceeds' will be the gross sale price. That is, the amount of money you have received or are entitled to receive plus the market value of any other property you received or are entitled to receive in respect of the disposal of the asset.

The downsizer legislation refers to *'capital proceeds received from the disposal…'* as being eligible to be downsizer contributions. The ATO has confirmed that proceeds must be received in order to make a downsizer contribution. If an eligible residence is disposed of to a spouse or other related party for no consideration, a downsizer contribution will not be available (even if the disposer has other funds available to make the contribution).

The amount of 'proceeds' may further limit the amount that can be contributed using the downsizer contributions strategy.

Where clients are using some or all of the sale proceeds for other purposes such as purchasing another home or to repay debt, they are still able to contribute based on the 'gross' capital proceeds (up to the maximum $300,000 limit) if they have other available funds.

If a person is trading up to a more expensive property it is still possible to take advantage of the downsizer contribution rules, assuming in this situation that they have other available cash and/or assets to contribute.

Example 4: Downsizer contribution restricted to capital proceeds received

Rob and Sue (both age 65+) sell their eligible country residence for $400,000. They also have $200,000 in the bank.

Rob and Sue are limited to contributing a combined total of $400,000 (not exceeding $300,000) for either of them as downsizer contributions.

For example, Sue could contribute $300,000 and Rob could contribute $100,000.

Example 5: Downsizer contribution restricted to $300,000 threshold

John and Betty (both age 65+) sell their eligible residence for $700,000.

Both John and Betty could contribute up to $300,000 each as downsizer contributions.

They could contribute the remaining $100,000 as an NCC subject to meeting the over 65 work test[2] and their previous 30 June TSB.

Example 6: Downsizer contribution using funds from other investments

Gary and Janice (both over age 65) sell their eligible residence for $1,100,000 and immediately buy a new main residence for $1,100,000. They also have $1,000,000 in a term deposit.

Although they have no 'net' proceeds left from the property transactions, they have sold an eligible property for $1,100,000, which means that they can use $600,000 ($300,000 each) from their term deposits to make a downsizer contribution.

Example 7: Downsizer contributions restricted by age

In 2020, Diana (67) and Gary (62) decide to sell their home. At the time of disposal, Diana is aged 67 and Gary is 62.

Gary is not eligible to make downsizer contributions, as he is under 65 at the time the contribution is required to be made.

The home is sold under a single contract. The total capital proceeds from the sale are $500,000. As joint tenants, Diana and Gary each have capital proceeds of $250,000 for the disposal of their ownership interests.

If Diana has not made a downsizer contribution previously, she is eligible to make a downsizer contribution.

In calculating her total available maximum downsizer contribution amount, Diana can include the capital proceeds from her own interest and from Gary's interest, for a total of $500,000. As this amount is greater than the total maximum contribution amount of $300,000, Diana can make downsizer contributions up to $300,000.

[2] Unless the work test exemption is met.

That is, an individual aged 65 to 74 can make voluntary contributions if:

- they met the work test in the previous financial year, and
- their TSB on 30 June the previous financial year is less than $300,000, and

they have not made use of the work test exemption in a previous financial year.

As Gary is under 65, he may be able to contribute part of the sale proceeds to superannuation as a non-concessional contribution.

Where to make the contribution

Clients making a significant contribution under downsizer provisions should also consider making the contribution into a new/separate superannuation account.

Doing so would enable them to subsequently start a new pension with these funds, locking in a 100% tax-free component which could be valuable for estate planning purposes.

For further information, see *TapIn Superannuation fact sheet: Re-contribution strategy.*

Age requirements

Super funds can only to accept 'downsizer' contributions from those age 65 or over at the time the contribution is made (regardless of whether the person meets the work test).

There is no maximum age limit.

Timing

The downsizer contribution must be made within 90 days of change of ownership (unless allowed a longer period by the ATO). This is usually the date of settlement.

A longer period will not be allowed by the ATO where the seller who wants to extend the 90-day period so they can reach age 65 and be eligible to make the downsizer contribution.

In such a situation it may be possible to delay the sale or settlement of the eligible property so that the seller can reach age 65 within 90 days after settlement and so become eligible to make the downsizer contribution.

Example 8: No extension of time

Trent (64 years 1 month) and Pamela (65) decide to sell their home. The capital proceeds received from the sale are $500,000.

Despite meeting all the other conditions for eligibility, Trent will not be 65 within the 90 days after settlement and will not be able to make a downsizer contribution.

Trent applies to the ATO for an extension of time to 12 months after the disposal to enable him to make a downsizer contribution.

Example 8: No extension of time

The ATO will not grant this extension on the basis that the timing of the sale was within Trent's control and the timeframe requested is far in excess of the usual 90 days.

Pamela is still eligible to make a downsizer contribution of up to $300,000.

As Trent is under 65, he may be able to contribute part of the sale proceeds to superannuation as a non-concessional contribution.

Fund notification requirements

Where a downsizer contribution is made, a prescribed election form must be provided *before* or *with* the contribution.

The *Downsizer contribution into superannuation form (NAT 75073-06.2018)* is available on the ATO website here. Alternatively, super funds can design their own approved form.

Regardless of which form is used, the election form must be provided **prior to or with the contribution,** notifying the super fund that the contribution is from the proceeds of eligible downsizer. This concept is like the notice requirements for those making contributions under the small business CGT concessions and those contributing amounts of personal injury compensation/structured settlement claims.

Incorrect contributions

Where it is subsequently determined that a downsizer contribution did not meet the necessary criteria (e.g. following a determination by the ATO), the super fund trustee must return the contribution. The contribution must be returned within 30 days of the trustee becoming aware that the contribution has been wrongly made.

Notwithstanding this, if the individual otherwise qualified to have part (or all) of the incorrectly claimed downsizer contribution accepted as a NCC (e.g. the individual met the work test or work test exemption applies and the prior 30 June TSB limitations), the contribution may be retained in the superannuation system as an NCC – and accordingly counted toward the individual's NCC cap.

Centrelink issues

A person's principal home is exempt from the Centrelink asset and income tests.

On the other hand, superannuation assets held by those who have already reached their Age Pension age, are broadly assessed under the Centrelink asset and income tests.

Unfortunately, there are no special Centrelink means test exemptions applicable to amounts contributed to super under this 'downsizer' measure.

As such, individuals who sell their home (i.e. a non-assessable asset) and use some/all of the proceeds to make a superannuation contribution, may see a reduction in their social security benefits due to all or part of the asset becoming assessable.

Having said that, it's worth noting that the proceeds freed-up as a result of a genuine downsizer have broadly similar Centrelink income and assets test implication whether contributed to super using the downsizer measure or instead invested in the individual's own name.

In addition, someone who sells a property that is already assessed by Centrelink (e.g. an investment property that was previously their residence) may also benefit from the downsizer contribution. Their assets test position will be substantially the same however the application of deeming rates to the sale proceeds may impact their income test assessment.

Home sale proceeds 12 month exemption

When a Centrelink recipient sells their residence, the sale proceeds can typically be exempted from the assets test for up to 12 months, to the extent that the sale proceeds will be used to purchase another residence. However, deeming rules will usually apply to the sale proceeds under the income test, depending on how the proceeds are spent/invested.

For further information, see *TapIn Social security fact sheet: Principal residence*.

It's worth noting that this asset test exemption can also apply when proceeds are contributed to super, if the client's intention is to use the proceeds to purchase another residence. This could be useful as, for someone aged 65 (or over) who makes a downsizer contribution, there is no impediment to subsequently withdrawing the contribution.

Sheltering strategy

With the Age Pension qualifying age progressively increasing to age 67, there may be additional scope for those below their Age Pension qualifying age to use the 'sheltering strategy'. Under this strategy, assets are contributed to the superannuation fund of someone below their Age Pension age where superannuation is exempt from Centrelink means testing.

This strategy will become more practical as the Age Pension qualifying age progressively increases to the currently legislated age 67. For example, consider the sheltering benefits of downsizer contributions made by someone aged 65, but less than their Age Pension qualifying age of say 67.

However, this sheltering strategy may still result in an adverse means testing outcome as any sale proceeds, in excess of the amount contributed to super, will be assessed (unless intended to be used for purchase of another residence, as discussed above).

If the level of assets assessed under the asset test exceeds the assets test cut-off thresholds, this may result in a reduction (or loss) of Centrelink entitlements. Furthermore, a determination will also need to be made based on an individual's income test before being able to ascertain any adverse Centrelink impacts from downsizer.

For further information, see *TapIn Social security fact sheet: Sheltering money in superannuation*.

Further resources

The ATO has published the following material in relation to downsizer contributions:

- ATO Guidance Note 2018-2: Downsizer contribution
- ATO LCR 2018-9: Housing affordability measures: contributing the proceeds of downsizer to superannuation

Disclaimer