

Work Test Exemption

Depending on a member's age, the work test is a key test to be contemplated when making contributions to an SMSF, and SMSF trustees must be satisfied it has been met before accepting contributions. From 1 July 2020, changes have been made to lift the work test to apply from age 67 (previously 65). There is an exemption to the work test available in some circumstances that allows recently retired members to make contributions without needing to satisfy the work rest requirements in the contribution year.

What is the work test?

Anyone under the age of 67 can contribute to super without satisfying any employment requirements. In most circumstances a member aged 67-74, must satisfy the work test to be eligible to contribute to their SMSF, unless the contribution is a mandated employer contribution or downsizer contribution neither which require the work test to be satisfied.

The work test requires the member undertakes at least 40 hours of gainful employment within a period of 30 consecutive days. This must be satisfied in the same financial year prior to making a contribution.

The Superannuation Industry (Supervision) Regulations 1994 defines gainfully employed as “employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment”.

To be considered gainful employment a person must provide a service and be remunerated it. The ATO have provided the following information on what gainfully employed means – “Gain' or 'reward' is the receipt of remuneration such as wages, business income, bonuses and commissions, in return for personal exertion from these activities”.

Voluntary unpaid work does not count as gainful employment. Similarly, trustees that undertake activities such as managing their own investment portfolio would not satisfy the definition of gainful employment.

What is the work test exemption?

For members aged 67 to 74 an exemption is available subject to meeting certain conditions. Introduced from 1 July 2019, the exemption allows a member to contribute to super in the year following their retirement.

A member will be eligible for the work test exemption if the following criteria are satisfied:

- The work test was met in the financial year preceding the financial year in which the contribution was made
- The member's Total Superannuation Balance was less than \$300,000 at the end of the previous financial year
- The work test exemption has not been relied upon in a previous financial year

That final point ultimately means a person who has a broken work pattern post age 67 cannot utilise the work test exemption more than once.

It should be noted that all contributions that are not mandated employer contributions or downsizer contributions must be made within 28 days following the month an individual turns 75. This should be kept in mind for anyone utilising the work test exemption who is 74 at 1 July and met the gainful employment test in the previous year.

Incorrect contributions

If a non-working member makes a contribution, post age 67, and did not satisfy the criteria for the work test exemption the trustees are unable able to accept any contribution. If a contribution is inadvertently made it must be returned within 30 days.

Example

Sally, aged 68, met the gainful employment test during the 2019/20 year, prior to retiring in May 2020. Sally had a balance in her SMSF of \$250,000 so she made a non-concessional contribution of \$100,000 in August 2020. In addition to her SMSF Sally also had a retail superannuation fund with a balance of \$120,000 meaning her total superannuation balance at 30 June 2020 was \$370,000. Sally was ineligible to make a work test exemption contribution so the \$100,000 needs to be returned by the trustees.

If a working member, or a member who qualifies for the work test exemption makes a contribution that exceeds their non-concessional cap then the trustees cannot return the excess amount and the member will be assessed for excess non-concessional contributions.

A work test declaration should be signed each financial year in which contributions are made after turning 67. Trustees/members are responsible for ensuring they have met the requirements prior to making contributions and evidence should be retained to substantiate this for audit purposes.

Summary of where the work test applies

The work test and age-based limits from 1 July 2020, can be summarised as follows:

	Employer Mandated	Employer Non-Mandated	Member	Spouse
Work test is required where the member is over 67 years of age	N/A	Yes	Yes	Yes
Age Limit	None	75	75	75

Proposed changes to the rules

The above rules apply at the time of writing. As part of the 2021/22 Federal Budget, the Government have proposed to remove the work test for individuals aged 67-74 for making voluntary contributions such as non-concessional contributions or salary sacrificed contributions. Personal deductible contributions for individuals aged 67-74 will still be subject to meeting the work test. These changes are expected to come into effect from 1 July 2022 and are not law at this time.

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