

Non-Concessional Contribution Bring Forward Rule for < 75 year olds from 2022/23

Understand the limitations of the new Non-Concessional Contribution Bring Forward Rule for < 75 year-olds

On 27 October 2021, the [Treasury Laws Amendment \(Enhancing Superannuation Outcomes for Australians and Helping Australian Businesses Invest\) Bill 2021 \(New Legislation\)](#) was introduced into Federal Parliament. Amongst a number of tax and superannuation measures included in the new legislation is an extension of the maximum 3 year non-concessional contribution bring forward rule (**bring forward rule**) in s 292-85 ITAA 1997 from 1 July 2022 to include individuals aged < 75 years at any time in the relevant contribution year (see page 2 below for further details).

By contrast, the current bring forward rule requires the contributing individual to be aged < 67 years at any time in the relevant contribution income year (see page 3 below for further details).

Importantly, the New Legislation Explanatory Memorandum (**EM**) highlights an important difference between the New Legislation change and all previous iterations of the bring forward rule. The combination of the following statement at EM paragraph 4.29 (emphasis added):

*‘...the amendments provided by this Schedule are **not intended to enable individuals approaching 75 years of age to bring forward non-concessional contributions from future years (i.e. during which they will be aged 75 years or over) where they will not have eligible cap space. Individuals will only be able to access the bring forward arrangements for years in which they have cap space.**’*

and the text of the bring forward rule provision in s 292-85(3) ITAA 1997 (which allows the bring forward rule to operate only where an individual’s non-concessional contribution caps ‘for the following 2 financial years...’ can be added to their current year cap) means that individuals turning 74 or 75 in any year from 2022/23 onwards will be unable to access a three year bring forward rule. This is the case notwithstanding that the New Legislation bring forward rule is technically available for individuals aged < 75 at any time in the relevant contribution year from 1 July 2022. The practical effect of the above limitation can be illustrated by highlighting the differences between:

- the proposed bring forward rule under the New Legislation from 2022/23 (see page 2); and
- the existing (2020/21) bring forward rule (see page 3); and

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New Legislation 2022/23 Bring Forward Rule Operation

Unlike previous/existing bring forward age limits (see page 3 below) as soon as the new age 75 year bring forward age limit is exceeded from 1 July 2022 the individual's ability to make any non-concessional contributions is generally removed after age 75. Reading the table below from right to left, there is therefore no non-concessional annual cap in years shown in column B which is available to bring forward to any part of column A. The resulting limitation is illustrated in **columns A3 and A2 below** and arises because, in practice, non-concessional contribution caps only arise for years occurring prior to **column B** and therefore only years prior to column B can be effectively brought forward.

As a consequence, despite the proposed bring forward rule technically applying to < 75 year old's from 1 July 2022, due to the effect of **column B** below:

- **column A3** illustrates that if, for example, an **individual turns 75 during 2022/23** (or any later year) then they could only contribute a maximum \$110,000 (i.e. that year's annual non-concessional contribution cap); and
- if an **individual turns 74 during 2022/23** (or any later year) then only a 2 year bring forward (currently a maximum \$220,000) would be possible, reflecting the sum of the A2 and A3 year annual caps (see **column A2**).

IMPORTANT

The outcomes below will be important when planning for clients' use of the new bring forward rule age cap from 2022/23.

Non-Concessional Contributions (Non-CC) BRING FORWARD Rule based on < 75 year old age limit from 2022/23				
Birthday during contribution income year (if 2/7 onwards [^])	Any Birthday up to and including 73rd Birthday [^]	74 th birthday [^]	75 th birthday [^]	76 th Birthday onwards [^]
	A1	A2	A3	B
Maximum Possible Bring Forward in non-concessional contribution year	\$330,000* (3 years)	\$220,000* (2 years)	\$110,000* (1 year)	NIL Annual Non-CC Annual Cap (= nothing to bring forward to earlier years)

NOTES

- * Assumes NO restrictions apply to the bring forward amount due to either full or partial use of the bring forward rule in the previous 2 years and/or due to the individual's Total super Balance at the previous year end (see Table 3 of the ATO document '[Bring-forward arrangements](#)' for current details).
- It is noted that the New Legislation's proposed removal (from 1 July 2022) of any work test for non-concessional contributions made up to age 75 will increase the ability of any < 75 year old to make non-concessional contributions in general from 1 July 2022, but subject to the bring forward limitations shown above at columns A2 and A3.
- [^] If the individual's birthday is on 1 July, the ability to use the bring forward rule (i.e. Column A3) would instead end in the income year before the 75th birthday (i.e. because the individual would NOT be < 75 at any time in the income year of their 75th birthday in this case). In turn, column B would commence a year earlier for those with a 1 July birthday (i.e. in the income year of the 75th birthday) and columns A1 and A2 would also apply a year earlier than shown above.

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Comparison to Existing 2020/21 Bring Forward Rule Operation

By contrast to the proposed bring forward rule age cap from 2022/23 (see page 2 above for details) as illustrated in the table below, currently at any time up to and including the year when the existing (i.e. 2020/21) bring forward rule age limit is reached (i.e. any time shown in **column A** below) a maximum 3 year bring forward non-concessional contribution (currently \$330,000) could potentially be made (subject only to the general bring forward eligibility restrictions in the Note below). The difference between the current and the New Legislation bring forward rule from 2022/23 arises because under the current rule there are multiple years shown in **column B** which both:

- arise after the current bring forward age limit is reached (i.e. currently 67 years as shown in **column A**); and
- involve a general ability to use an annual non-concessional cap during the column B period (currently \$110,000 p.a.) which is therefore available to be brought forward for bring forward use in column A years.

Non-Concessional Contributions (Non-CC) BRING FORWARD Rule based on < 67 year old age limit from 2020/21		
Birthday during contribution income year (if 2/7 onwards [^])	Any Birthday up to and including 67 th Birthday [^]	68 th to 75 th Birthday [^]
	A	B
Maximum Possible Bring Forward in non-concessional contribution year	\$330,000* (3 years)	\$110,000 annual cap (generally available to bring forward to column A)

The bring forward rule has always previously operated in a similar manner to the above, including at lower age limits/caps applicable in previous years. When planning to use the proposed New Legislation bring forward rule 75 year old age cap (likely to apply from from 2022/23) it will be important to:

- understand the very different operation under that new rule for those at or close to the 75 year bring forward rule age cap (see columns A2 and A3 at page 2 above); and
- to contrast the new approach from 2022/23 with the above less restrictive scenario which currently allows up to 3 years of bring forward for anyone within the 67 year age cap.

NOTES

* Assumes NO restrictions apply to the bring forward amount due to either full or partial use of the bring forward rule in the previous 2 years and/or due to the individual's Total super Balance at the previous year end (see Table 3 of the ATO document '[Bring-forward arrangements](#)' for current details).

The current \$110,000 annual non-concessional maximum cap may be subject to indexation in future years.

[^] If the individual's birthday is on 1 July, the ability to use the bring forward rule (i.e. Column A) would instead end in the income year before the 67th birthday (i.e. because the individual would not be < 67 at any time in the income year of their 67th birthday in this case). In turn, column B would commence a year earlier for those with a 1 July birthday (i.e. in the income year of the 67th birthday)

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WANT MORE DETAILS?

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