Nash Solutions
Tax + Business + Wealth

TECHNICAL ISSUES – Excess Concessional Superannuation Contributions

We can assist to maximise your superannuation in the most tax effective manner.

Concessional Contributions Caps

For the 2013/14 year, there are two concessional contributions caps you need to be aware of when considering contribution strategies, namely:

- $25,000 cap for anyone aged 59 or under;
- $35,000 cap for anyone aged 60 years or over:

Salary Sacrifice

Salary sacrificing simply means paying for something out of your pre-tax income rather than your after-tax income. And although you may still get taxed on this money as a super contribution, it is at a rate less than your marginal income tax rate.

The most common type of salary sacrificing is into superannuation. In this case, your contribution to your super is taxed at 15%. For someone paying tax at the higher income tax rates this is a substantial saving, as well as a welcome encouragement to help you save for retirement.

For example, imagine that you are paying tax at the top rate of 46.5% (including the 1.5 percent Medicare levy). For every $100 of pre-tax salary you earn, after tax you only receive $53.50. But if you salary sacrifice $100 into your super you will receive $85 after tax (the super contribution is taxed at 15%). This is a very welcome increase in savings of $31.50 more for every $100 dollars.

And there's a further tax break. The interest or investment return earned in the super fund is taxed at 15%, while any interest earned outside the super fund is taxed at your top marginal tax rate.

Caution re over-contributing

Excess concessional superannuation contributions post 1 July 2013

Under the previous regime, penalty tax of 31.5% was payable in addition to the 15% contributions tax. This meant excess CCs were taxed at a flat rate of 46.5%, regardless of assessable income.

From 1 July 2013, excess concessional superannuation contributions (CCs) will be taxed at the individual's marginal tax rate (including the Medicare levy).

The ATO will make a determination on the excess CCs and the amount will be added to the individual's assessable income for the same financial year in which the excess contribution applies, where it will be taxable at their marginal tax rate.

The legislation provides a tax offset of 15% representing contributions tax paid in a taxed super fund. This tax offset is not refundable and cannot be carried forward or transferred.

Certain rules remain unchanged, such as:

- ATO discretion to disregard or reallocate excess contributions upon application, and
- taxpayers being able to object to a determination of an excess assessment.

Election to refund excess concessional contributions

The legislation allows a client the choice of:

- retaining the excess CCs in super, and
- have up to 85% of the excess CCs released from super.

If an election is made to have part or all of the excess CCs refunded, this amount, grossed up to allow for 15% tax on contributions, is no longer treated as an excess CC. It also means that amount will not be assessed against the non-concessional contribution cap (NCC).

However, if the individual retains an excess amount in super, the excess CCs continue to be counted against the NCC cap and, if the NCC cap is exceeded, penalty tax is applied under the existing rules at 46.5%.

The ATO will provide the client with the option of having 85% of the excess CCs released from super. The client needs to respond to the ATO with an election and the ATO will issue a release authority to the client's super fund to release the specified amount. The ATO will collect this amount and remit it, net of tax, to the individual.

Most super fund trustees are required to pay the release amount. Certain super fund trustees can choose not to release the amount. This applies to:

- defined benefit interests;
- super interests in a non-complying super fund, and
- a super interest that supports a superannuation income stream.

Super fund trustees are required to notify the ATO of any amounts paid out within seven days.

Generally amounts paid out of super must be in proportion to the tax-free and taxable amounts of the interest. This does not apply to a release under these rules.

The amount received under a release authority is not assessable income and not exempt income. This avoids double counting this amount.

Inclusion in assessable income

Excess CCs are now included in assessable income. Assessable income is used in many definitions of "income" when determining people's entitlements to certain Government benefits and their liability to pay additional levies or surcharges.

As the amount increases assessable income, it also has the potential to increase "taxable income" and "adjusted taxable income". Examples where individuals may be impacted are:

- Medicare levy surcharge;
- Government co-contribution;
- Low income super contribution;
- Commonwealth Seniors Health Care Card, and
- Family Tax Benefit.

Planning Points

- Salary Sacrificing to Superannuation
- Getting the Superfund Investment Strategy right
- Monitor concessional contributions so that Excess Contributions Tax is not triggered

Please contact us for more information.

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