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The Treasury

SUPERANNUATION EXCESS NON CONCESSIONAL CONTRIBUTIONS TAX

SUMMARY OF CONSULTATION PROCESS

The Government announced on 13 May 2014 that it would ensure inadvertent breaches of the non-concessional contributions cap did not incur a disproportionate penalty and to ensure that the treatment of excess concessional and non-concessional contributions is broadly consistent. This measure was included in Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014, which was introduced into Parliament on 4 December 2014.

The measure provides individuals with the option of withdrawing superannuation contributions in excess of the non-concessional contributions cap, made from 1 July 2013, and an earnings amount associated with the withdrawn amount. The associated earnings will then be taxed at the individual's marginal tax rate.

Consultation process

Consultation with key stakeholder groups commenced soon after the Budget measure was announced.

Consultation on an exposure draft of the legislation and explanatory memorandum was conducted between 10 October and 24 October 2014. A consultation roundtable was held in Sydney on 17 October 2014. The formal round of consultation resulted in 18 submissions from industry bodies, financial services firms and individuals.

Submissions were generally supportive of the measure.

Summary of key issues

How should associated earnings be calculated?

The draft legislation uses the General Interest Charge as a proxy rate of associated earnings.

A number of stakeholders wanted to use superannuation funds' actual investment earnings in relation to the excess contribution amount. Others thought that the General Interest Charge was too high and that the lower Shortfall Interest Charge was more appropriate.

Following consultation it was concluded that calculation of actual earnings would significantly increase complexity of the legislation. Further it was decided that setting the earnings rate at the General Interest Charge would reduce incentives for deliberate breaching of the new laws to obtain tax benefits.

The Treasurer has power to set an alternative, lower rate in calculating associated earnings for a particular year, for example to respond to a significant market downturn.



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Over which time period should associated earnings be calculated?

The draft legislation calculates earnings from the beginning of the financial year in which the excess contribution was made (1 July) to the day of the Commissioner's determination of excess contributions rather than starting from the date of the actual excess contribution.

There was a divergence of views regarding the start date of the earnings period, with some submitting that to start from 1 July could be punitive. Various options were proposed, including allowing individuals to nominate the start date and, in cases where funds are no longer held in superannuation, the end date. However, other stakeholders supported a 1 July start date.

The Government considers that allowing individuals to nominate the time period would significantly increase complexity and come at a revenue cost.

Taxation of associated earnings

Stakeholders noted that in the exposure draft, associated earnings could be double taxed, once in the superannuation fund and then in the hands of the individual under this measure.

The Government has rectified this problem by providing that only 85 per cent of associated earnings will be required to be withdrawn, given that the amount could already have borne tax at 15 per cent within the fund. Individuals will be taxed on the entire associated earnings but will receive a 15 per cent non-refundable tax offset, which will reduce the individual's liability.

Period for superannuation providers to report and make payments

The exposure draft allowed superannuation providers 7 days to report and make payments. Stakeholders noted that 7 days was too short a period for making payments. The Government has decided to allow superannuation providers 21 days from the date of issue of the release authority or a further period allowed by the Commissioner.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au. Alternatively, you can contact Jessica Carew on 02 6263 2548.

Thank you to all participants in the consultation process.