

EXPOSURE DRAFT

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Inserts for
**Tax and Superannuation Laws
Amendment (2014 Measures No. 7) Bill
2014: Excess non-concessional
superannuation contributions tax
reforms**

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details

- 1.
 2. Schedule # The day after this Act receives the Royal Assent.
 - 3.
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Schedule #—Excess non-concessional superannuation contributions tax reforms

Income Tax Assessment Act 1997

1 Subsection 292-85(1)

Repeal the subsection, substitute:

- (1) You have *excess non-concessional contributions* for a *financial year if:
- (a) you receive one or more *excess non-concessional contributions determinations for the financial year; and
 - (b) the excess amount stated in the most recent of those determinations exceeds the sum of any amounts paid to you in response to release authorities issued, in relation to those determinations, under section 96-12 in Schedule 1 to the *Taxation Administration Act 1953*; and
 - (c) section 292-467 of this Act does not apply to you for the financial year.

(1A) The amount of your *excess non-concessional contributions* is:

- (a) if no amounts were paid to you as described in paragraph (1)(b)—the excess amount stated in that most recent determination; or
- (b) otherwise—the amount of the excess worked out under paragraph (1)(b).

Note: Any excess non-concessional contributions determination you receive after the first one for a financial year is an amended determination.

2 Subsection 292-465(1)

After “for the purposes of this Division”, insert “and Subdivision 97-B in Schedule 1 to the *Taxation Administration Act 1953*”.

3 After section 292-465

Insert:

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292-467 Direction that the value of superannuation interests is nil

(1) The Commissioner must, by writing, direct that this section applies to you for a *financial year if:

- (a) you receive one or more *excess non-concessional contributions determinations for the financial year; and
- (b) as a result of those determinations, you make one or more elections under paragraph 96-7(1)(a) or (b) in Schedule 1 to the *Taxation Administration Act 1953*; and
- (c) in the case of elections under paragraph 96-7(1)(a) in that Schedule—the sum of any amounts paid to you in response to any release authorities issued, in relation to those elections, is less than the total amount stated in the most recent of those determinations; and
- (d) the Commissioner is satisfied that the *value of all of your remaining *superannuation interests is nil.

Note 1: The direction means you have no excess non-concessional contributions for the financial year (see paragraph 292-85(1)(c)), even though not all of that total amount has been released to you.

Note 2: The direction does not prevent an amount from being included in your assessable income (see subsections 303-17(2) and (3)).

Note 3: Any excess non-concessional contributions determination you receive after the first one for a financial year is an amended determination.

(2) The Commissioner must give you a copy of the direction.

(3) A direction under this section may be included in a notice of assessment.

(4) To avoid doubt:

- (a) you may object under section 292-245 against an *excess non-concessional contributions tax assessment made in relation to you on the ground that a direction was not made under this section; and
- (b) for the purposes of paragraph (e) of Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977*, not making a direction under this section is a decision forming part of the process of making an assessment of tax under this Act.

4 After section 303-15

Insert:

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1 **303-17 Payments from release authorities etc.—released**
2 **non-concessional contributions and associated earnings**

3 *Superannuation benefits paid under release authorities*

- 4 (1) A *superannuation benefit is not assessable income and is not
5 *exempt income if it is paid to you in response to a release
6 authority issued under section 96-12 in Schedule 1 to the *Taxation*
7 *Administration Act 1953*.

8 *Amount included in assessable income*

- 9 (2) Your assessable income for an income year includes an amount if:
10 (a) you receive one or more *excess non-concessional
11 contributions determinations for a *financial year that
12 corresponds to the income year; and
13 (b) you make one or more elections under paragraph 96-7(1)(a)
14 or (b) in Schedule 1 to the *Taxation Administration Act 1953*
15 in relation to those determinations.
- 16 (3) That amount is equal to the amount of associated earnings stated in
17 the most recent of those determinations.
- 18 (4) However, if:
19 (a) the sum of all the amounts paid to you in response to release
20 authorities issued in relation to those determinations (the
21 ***total released amount***) is less than the amount of the excess
22 stated in the most recent of those determinations; and
23 (b) section 292-467 does not apply to you for the *financial year;
24 the amount included in your assessable income for the income year
25 is equal to the amount of associated earnings that would have been
26 stated in that most recent determination if the total released amount
27 had been the amount of the excess stated in that determination.

28 **5 Subsection 995-1(1)**

29 Insert:

30 ***excess non-concessional contributions determination*** has the
31 meaning given by subsection 97-25(2) in Schedule 1 to the
32 *Taxation Administration Act 1953*.

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Taxation Administration Act 1953

6 After section 14ZVB

Insert:

14ZVC Objections relating to non-concessional contributions

Taxation decisions to which section applies

- (1) This section applies to the following taxation decisions:
 - (a) an assessment against which a taxation objection may be made under section 175A of the *Income Tax Assessment Act 1936*;
 - (b) an excess non-concessional contributions determination (within the meaning of the *Income Tax Assessment Act 1997*);
 - (c) an assessment against which a taxation objection may be made under section 292-245 of the *Income Tax Assessment Act 1997*;
 - (d) a determination under section 292-465 of the *Income Tax Assessment Act 1997*, or a decision not to make a determination under that section;
 - (e) a direction under section 292-467 of the *Income Tax Assessment Act 1997*, or a decision not to make a direction under that section;
 - (f) 2 or more taxation decisions that are taken to be a single taxation decision under subsection (2).

Decisions treated as single decision for common objection ground

- (2) If:
 - (a) a person makes a taxation objection at a particular time, on a particular ground, against a taxation decision to which this section applies; and
 - (b) at that time, the person also objects, or could also object, on that ground, against another taxation decision to which this section applies;then, for the purposes of this Part, those taxation decisions are taken to be one taxation decision.

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Limited objection rights because of earlier objection

- 1
- 2 (3) A person cannot object under this Part against a taxation decision
3 to which this section applies on a particular ground if:
- 4 (a) the ground was a ground for an objection the person has
5 made against another decision to which this section applies;
6 or
7 (b) the ground could have been a ground for an objection the
8 person has made against another decision to which this
9 section applies.

7 After paragraph 14ZW(1)(aac)

10

11 Insert:

12 (aaca) if the taxation objection is made on a particular ground under
13 any of the following provisions:

- 14 (i) section 175A of the *Income Tax Assessment Act 1936*;
15 (ii) section 97-35 in Schedule 1 to this Act;
16 (iii) section 292-245, 292-465 or 292-467 of the *Income Tax*
17 *Assessment Act 1997*;

18 within the same period that the person must lodge a taxation
19 objection on that ground under section 292-245 of the *Income*
20 *Tax Assessment Act 1997*; or

8 Part 2-35 in Schedule 1 (heading)

21

22 Repeal the heading, substitute:

23 Part 2-35—Excess superannuation contributions

24 9 Section 96-1 in Schedule 1

25 Repeal the section, substitute:

26 96-1 What this Subdivision is about

27 You may elect to release from your superannuation interests:

- 28 (a) up to 85% of your excess concessional contributions for
29 a financial year; and
30 (b) your non-concessional contributions that exceed your
31 non-concessional contributions cap for the financial
32 year, and any associated earnings.
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1 Superannuation providers will usually be required to pay an
2 amount from the superannuation interests. However, for certain
3 interests the provider may choose whether or not to pay.

4 Released concessional contributions are paid to the Commissioner.
5 You get a credit for the released amount. Surplus credits are
6 refunded to you under Division 3A of Part IIB.

7 Released non-concessional contributions and associated earnings
8 are paid to you.

9 **10 Section 96-5 in Schedule 1 (heading)**

10 Repeal the heading, substitute:

11 **96-5 Electing to release excess concessional contributions**

12 **11 Subsection 96-5(1) in Schedule 1**

13 After “*excess concessional contributions determination”, insert “for a
14 *financial year”.

15 **12 Subsection 96-5(1) in Schedule 1 (note 1)**

16 Omit “Division 97”, substitute “Subdivision 97-A”.

17 **13 Paragraph 96-5(5)(b) in Schedule 1**

18 Omit “section 96-40”, substitute “subsection 96-40(1)”.

19 **14 After section 96-5 in Schedule 1**

20 Insert:

21 **96-7 Electing to release non-concessional contributions etc.**

22 *Original determinations*

23 (1) If you receive an *excess non-concessional contributions
24 determination for a *financial year, you may:

- 25 (a) elect to release the total amount stated in the determination
26 from your *superannuation interests; or
27 (b) elect not to release that amount because the value of your
28 superannuation interests is nil; or
29 (c) elect not to release that amount for some other reason.

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1 Note 1: For excess non-concessional contributions determinations, see
2 Subdivision 97-B.

3 Note 2: The released amount will be non-assessable non-exempt income, but
4 an amount equal to your associated earnings on those excess
5 contributions will be included in your assessable income (see
6 section 303-17 of the *Income Tax Assessment Act 1997*).

7 Note 3: If the value of your superannuation interests is between nil and that
8 total amount, you could first make an election under paragraph (a) and
9 then a further election under paragraph (b) (see subsection (5)).

10 *Amended determinations*

- 11 (2) However, if that determination is an amended determination that
12 increased the total amount, any new elections under subsection (1)
13 are to be made as if that new total amount were reduced by:
- 14 (a) if you made an election under paragraph (1)(a) for each
15 earlier *excess non-concessional contributions determination
16 you received for the *financial year—the sum of any amounts
17 paid to you in response to release authorities issued in
18 relation to those determinations; or
 - 19 (b) otherwise—the total amount stated in the most recent of
20 those earlier determinations.

21 *Requirements for election*

- 22 (3) You make an election under paragraph (1)(a) by identifying:
- 23 (a) one or more superannuation providers who hold one or more
24 *superannuation interests for you; and
 - 25 (b) the amount each superannuation provider is to release.
- 26 (4) An election under paragraph (1)(a), (b) or (c) must:
- 27 (a) be in the *approved form; and
 - 28 (b) be given to the Commissioner within:
 - 29 (i) 60 days after the Commissioner issued notice of the
30 *excess non-concessional contributions determination or
31 amended excess non-concessional contributions
32 determination; or
 - 33 (ii) a further period allowed by the Commissioner.

34 *Unsuccessful release—making a further election*

- 35 (5) If:
- 36 (a) you make a valid election under paragraph (1)(a); and
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1 (b) the Commissioner gives you a notice under
2 subsection 96-40(2) stating an amount that a *superannuation
3 provider did not pay in relation to the release authority issued
4 in relation to that election;

5 you may make a further election under paragraph (1)(a) or (b) for
6 the release, or non-release, of that amount.

7 Note: That further election would be under paragraph (1)(b) if the value of
8 your superannuation interests is now nil.

- 9 (6) The further election must comply with subsection (3) and
10 paragraph (4)(a), and must be given to the Commissioner within:
11 (a) 60 days after the Commissioner issued the notice mentioned
12 in paragraph (5)(b); or
13 (b) a further period allowed by the Commissioner.

14 *Election is irrevocable*

- 15 (7) An election under this section is irrevocable.

16 **15 Section 96-10 in Schedule 1 (heading)**

17 Repeal the heading, substitute:

18 **96-10 Release authorities for elections under section 96-5**

19 **16 Subsection 96-10(1) in Schedule 1**

20 Omit “in relation to *excess concessional contributions you have for a
21 *financial year”.

22 **17 After section 96-10 in Schedule 1**

23 Insert:

24 **96-12 Release authorities for elections under section 96-7**

- 25 (1) If you make a valid election under paragraph 96-7(1)(a), the
26 Commissioner may issue a release authority to:
27 (a) each *superannuation provider identified in the election; and
28 (b) any other superannuation provider who holds one or more
29 *superannuation interests for you.
- 30 (2) The release authority must:

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- 1 (a) state the total amount to be released by the *superannuation
2 provider from *superannuation interests held by the provider
3 for you; and
4 (b) be dated; and
5 (c) contain any other information that the Commissioner
6 considers relevant.

7 **18 Subsection 96-20(1) in Schedule 1**

8 Omit “that has been”.

9 **19 After subsection 96-20(1) in Schedule 1**

10 Insert:

11 (1A) A *superannuation provider issued with a release authority under
12 section 96-12 must, within 7 days after the release authority is
13 issued, pay to the individual the lesser of:

- 14 (a) the amount stated in the release authority; and
15 (b) the sum of the *maximum available release amounts for each
16 *superannuation interest held by the superannuation provider
17 for the individual in *superannuation plans.

18 (1B) A payment under subsection (1A) must be paid from the *tax free
19 component of each of the individual’s *superannuation interests
20 held by the *superannuation provider, before being paid from the
21 *taxable component of any of those interests.

22 Note 1: Subsection 288-95(3) provides for an administrative penalty for
23 failing to comply with this section.

24 Note 2: For the taxation treatment of the payment, see section 96-60.

25 **20 At the end of section 96-20 in Schedule 1**

26 Add:

27 (3) Despite paragraph (1A)(b), the *maximum available release
28 amount for a *defined benefit interest is not to be included in the
29 sum worked out under that paragraph.

30 **21 Section 96-25 in Schedule 1 (heading)**

31 Repeal the heading, substitute:

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1 **96-25 Voluntary compliance with a release authority relating to**
2 **voluntary release interests and defined benefit interests**

3 **22 Subsection 96-25(1) in Schedule 1**

4 Omit “that has been”.

5 **23 Subsection 96-25(2) in Schedule 1**

6 Repeal the subsection, substitute:

- 7 (2) A *superannuation provider issued with a release authority under
8 section 96-12 may, within 7 days after the release authority is
9 issued, pay to the individual the lesser of:
10 (a) the amount stated in the release authority; and
11 (b) the sum of the *maximum available release amounts for each
12 *defined benefit interest held by the superannuation provider
13 for the individual in *superannuation plans.
- 14 (3) A payment under subsection (2) must be paid from the *tax free
15 component of each of those *defined benefit interests before being
16 paid from the *taxable component of any of those interests.
- 17 (4) For the purposes of paragraph (1)(a) or (2)(a), reduce the amount
18 mentioned in that paragraph by any amount the provider pays
19 under section 96-20 in relation to the release authority.

20 **24 Subsection 96-35(1) in Schedule 1**

21 Omit “that has been”.

22 **25 After subsection 96-35(1) in Schedule 1**

23 Insert:

- 24 (1A) A *superannuation provider issued with a release authority under
25 section 96-12 must notify the Commissioner:
26 (a) of a payment it made in accordance with the release authority
27 and this Subdivision; and
28 (b) whether the superannuation provider complied with
29 subsection 96-20(1B) or 96-25(3) when making the payment.

30 **26 Paragraph 96-35(2)(a) in Schedule 1**

31 After “section 96-10”, insert “or 96-12”.

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27 Section 96-40 in Schedule 1

Repeal the section, substitute:

96-40 Notifying individual—unsuccessful release attempt

- (1) The Commissioner must notify an individual if, in relation to the individual's election under section 96-5, the Commissioner:
 - (a) receives a notice from a *superannuation provider under subsection 96-35(2); or
 - (b) does not receive a payment from a superannuation provider of the full amount stated in a release authority within the time mentioned in subsection 96-20(1) or 96-25(1).
- (2) The Commissioner must notify an individual if, in relation to the individual's election under paragraph 96-7(1)(a), the Commissioner:
 - (a) receives a notice from a *superannuation provider under subsection 96-35(2); or
 - (b) does not receive a payment from a superannuation provider of the full amount stated in a release authority within the time mentioned in subsection 96-20(1A) or 96-25(2).
- (3) A notice under subsection (1) or (2) must:
 - (a) be in writing; and
 - (b) identify the *superannuation provider; and
 - (c) state how much of the amount stated in the release authority was not paid to the Commissioner.

96-42 Notifying individual—successful releases under section 96-12

- (1) A *superannuation provider issued with a release authority under section 96-12 must notify an individual of a payment made to the individual in accordance with the release authority and this Subdivision.
- (2) The notice must be given:
 - (a) in the *approved form; and
 - (b) within 7 days after the release authority is issued.

Note: Subsection 286-75(2AAA) provides an administrative penalty for failing to comply with this section.

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1 **28 Section 96-60 in Schedule 1 (note)**

2 Omit “section 303-15”, substitute “sections 303-15 and 303-17”.

3 **29 Division 97 in Schedule 1 (heading)**

4 Repeal the heading, substitute:

5 **Division 97—Excess contributions determinations**

6 **30 Subsection 97-5(3) in Schedule 1**

7 After “amend”, insert “or revoke”.

8 **31 At the end of Division 97 in Schedule 1**

9 Add:

10 **Subdivision 97-B—Excess non-concessional contributions**
11 **determinations**

12 **Guide to Subdivision 97-B**

13 **97-20 What this Subdivision is about**

14 The Commissioner must give you a determination stating:

- 15 (a) the amount by which your non-concessional
16 contributions exceed your non-concessional
17 contributions cap; and
18 (b) a proxy amount for your associated earnings on this
19 excess.

20 **Table of sections**

21 **Operative provisions**

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Operative provisions

97-25 Excess non-concessional contributions determinations

- (1) If your *non-concessional contributions for a *financial year (the *contributions year*) exceed your *non-concessional contributions cap for the contributions year, the Commissioner must make a written determination stating:
- (a) the amount of the excess; and
 - (b) the amount of your associated earnings worked out under section 97-30; and
 - (c) the total of the amounts in paragraphs (a) and (b).
- (2) A determination under this section is an *excess non-concessional contributions determination*.
- (3) The Commissioner may amend or revoke a determination at any time.
- (4) Notice of the determination may be included in any other notice given to you by the Commissioner.
- (5) Notice of a determination given by the Commissioner under this section is prima facie evidence of the matters stated in the notice.

97-30 Associated earnings

- (1) You are taken to have associated earnings equal to the sum (rounded down to the nearest dollar) of the amounts worked out under the following formula for each of the days during the period:
- (a) starting on the first day of the contributions year; and
 - (b) ending on the day the Commissioner makes the first *excess non-concessional contributions determination you receive for the contributions year.

$$\text{Proxy rate} \times \left(\text{Excess} + \text{Sum of earlier daily proxy amounts} \right)$$

where:

excess means the amount of the excess referred to in paragraph 97-25(1)(a).

proxy rate means the lower of:

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- 1 (a) the rate worked out under subsection 8AAD(1) for the first
2 day of that period as if the base interest rate (within the
3 meaning of subsection 8AAD(2)) for that day were the
4 average of the base interest rates for each of the days of the
5 contributions year; and
6 (b) a rate determined under subsection (2) for the contributions
7 year.

8 *sum of earlier daily proxy amounts* means the sum of the amounts
9 worked out under the formula for each of the earlier days (if any)
10 during that period.

11 Note: Any excess non-concessional contributions determination you receive
12 after the first one for the contributions year is an amended
13 determination.

- 14 (2) The Minister may, by legislative instrument, determine a rate for a
15 specified *financial year.

16 **97-35 Review**

17 If you are dissatisfied with an *excess non-concessional
18 contributions determination made in relation to you, you may
19 object against the determination in the manner set out in Part IVC.

20 **32 After subsection 286-75(2) in Schedule 1**

21 Insert:

22 (2AAA) You are also liable to an administrative penalty if:

- 23 (a) you are required under section 96-42 (releasing
24 superannuation) to give a notice to an entity (other than the
25 Commissioner) in the *approved form by a particular day;
26 and
27 (b) you do not give the notice in the approved form to the entity
28 by that day.

29 **33 Section 288-90 in Schedule 1**

30 Omit “paragraph 292-405(1)(b)”, substitute “subsection 292-405(1)”.

31 **34 Subsection 288-95(3) in Schedule 1**

32 Omit “concessional”, substitute “superannuation”.

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1 **35 Application of amendments**

2 The amendments made by this Schedule apply in relation to
3 non-concessional contributions for the 2013-14 financial year and later
4 financial years.

5