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Thanks for everyone's hard work on this. This is not an easy policy to implement but it looks like a great job has been done.

I only have one comment/suggestion. The challenge was always going to be working out what the "associated earning" of the excess contribution were. The methodology you have used is a very simple one and one that the Commissioner will be able to calculate without additional data.

However, in the simplicity of this model there is the possibility for unintended outcomes.

While unintended outcomes might arise from the use of the GIC rate to estimate the earnings when lower rates of return might be more appropriate (remember the GIC rate has a penalty component in it while the SIC does not), I believe the use of the start of the year in which the excess contribution was made for assessing the period in which for which the earnings are calculated can lead to substantial overstatements of earnings.

For example (taken from the draft EM example 1.1 and modified):

Belinda makes a $550,000 non-concessional contributions on 30 June 2014 and therefore exceeds her non-concessional contributions cap by $100,000. She lodges all her returns promptly in July and August 2014 and the Commissioner issues Belinda an excess non-concessional contributions determination on 1 November 2014.

Even though the $100,000 excess contributions have only been in her super fund for 4 months (30 June 2014 to 1 November 2014) she is taken to have associated earnings calculated as follows:

0.02646575% (9.66%/365) x ($100,000 plus the sum of the earlier daily proxy amounts) for the 489 day period from 1 July 2013 until 1 November 2014 (not a 120 day period from 30 June 2014 to 1 November 2014).

The result of this formula is that the associated earnings equal $13,814.

Because the fact that the excess contribution was made on 30 June 2014 is ignored and rather it is assumed that the excess contributions were made on 1 July 2013, the earning are substantially higher than what the actual earnings would have been.

The methodology that the draft law used to estimate the earnings in this example gives $13,814. To actually get earnings of $13,814 on $100,000 over the period of 30 June 2014 to 1 November 2014 would require an annualised return rate on 39.7%. Obviously this means the estimate of the earnings is nowhere near the actual earnings.

In this example I have used the date for the excess contributions on 30 June 2014. I understand this exaggerates the over estimate when compared to using the date of 1 July 2013 - However, I would think it is much more likely that excess contributions are made near the end of the financial year rather than at the beginning of the year

Put simply, as in almost all cases of excess contributions the method that the draft law used to estimate earnings will be greater or substantially greater than the actual earnings, this law is once again putting a penalty on excess contributions, albeit in an indirect way. The penalty is that the amount of associate earnings that is greater than the actual earnings are refunded from the super fund so that the individual loses some of their non concessional cap - effectively the cap is reduced.

Going back to the example above, if Belinda had actually had no earnings on the $100,000 in the 4 months the amount was in the fund (as has been the case for anyone with equity investments in the last four months), she would still have the $550,000 in her fund. The fund would have to refund her $113,814, leaving $436,186 in her fund. Note that this is less than the 2014 cap of 450,000 - in effect the penalty has been that the individual's cap has been reduced to $436,186.

As I said early, my guess is that you chose a fix date because it was simpler and so the Commissioner could assess what the associate earnings are. But would not any date be just a simple. Why not consider 1 January rather than 1 July? I understand that is might mean that some high risk taxpayer might put in a massive non concessional contribution on 1 July hoping that the return they get on the amount is at least the GIC rate and therefore get some of the earnings at 15% rather than 49%. However, the risk in this would make this unlikely. But as the law is currently proposed, if the GIC rate is a good estimate of returns in super funds, then almost all of the associate earnings will overestimate actual earnings, and in many cases substantially overestimate it, and in doing so the law is penalising the individual by reducing their non concessional contribution cap by the difference between the actual earnings and the estimate in the calculation of "associated earnings".

Regards

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