2013

EXPOSURE DRAFT

SUPERANNUATION CONCESSIONAL CONTRIBUTIONS CAP

DRAFT EXPLANATORY MEMORANDUM

Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

Abbreviation	***Definition***
cap	concessional contributions cap
ITAA 1997	*Income Tax Assessment Act 1997*
IT(TP) 1997	*Income Tax (Transitional Provisions) Act 1997*

Chapter 1
Superannuation concessional contributions cap

Outline of chapter

1.1 Schedule # to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) and the *Income Tax (Transitional Provisions) Act 1997* (IT(TP) 1997) to increase the concessional contributions cap (the cap) temporarily to $35,000 for the 2013-14 financial year for individuals aged 60 years and over, and to $35,000 for the 2014-15 financial year and later financial years for individuals aged 50 years and over. The temporary cap will cease when the general cap indexes to $35,000.

Context of amendments

1.2 Since 1 July 2007, concessional and non-concessional superannuation contributions have been subject to annual limits.

1.3 Concessional contributions are generally those contributions which are included in the assessable income of a superannuation fund and include employer contributions (including superannuation guarantee and salary sacrifice contributions) and tax deductible personal contributions. These caps limit the amount of money an individual can contribute to superannuation which is taxed concessionally.

1.4 A higher concessional contributions cap applied to individuals aged 50 and over up to and including the 2011-12 financial year.

1.5 For the 2012-13 and 2013-14 financial years, the cap for all individuals is $25,000 (the general cap). For the 2014-15 financial year and later financial years, the cap will be indexed annually based on movements in full-time adult weekly ordinary time earnings for the December quarter, rounded down to the nearest multiple of $5,000.

1.6 On 5 April 2013, the Government announced that it would introduce a temporary higher cap of $35,000 for the 2013-14 financial year for individuals aged 60 years and over, and $35,000 for the 2014-15 financial year and later financial years for individuals aged 50 years and over. The higher cap will cease when the general concessional cap reaches $35,000 by way of indexation.

1.7 The higher cap will encourage individuals to improve the adequacy of their retirement savings at a time in their lives when they are often better placed to make additional contributions to their superannuation. In addition, it recognises that older Australians may not have received superannuation contributions throughout their working life and their superannuation balances may have reduced significantly as a result of the global financial crisis.

1.8 The temporary higher cap of $35,000 replaces the previously announced cap that was to apply from 1 July 2014 for individuals aged 50 years and over with superannuation balances below $500,000, which would provide these individuals with the ability to contribute an additional $25,000 above the general cap. The Government decided not to legislate this cap in light of feedback from the superannuation sector that the balance requirement would be difficult to administer.

Summary of new law

1.9 Schedule # amends the ITAA 1997 and the IT(TP) 1997 to increase the cap to $35,000 for the 2013-14 financial year for individuals aged 60 years and over, and to $35,000 for the 2014-15 financial year and later financial years for individuals aged 50 years and over.

Comparison of key features of new law and current law

New law	***Current law***
For the 2013-14 financial year, a higher cap of $35,000 applies if you are aged 59years or over on 30 June 2013. For all other individuals, a cap of $25,000 applies.	For the 2013-14 financial year, the cap is $25,000 for all individuals.
For the 2014-15 financial year and later financial years, a higher cap of $35,000 applies if you are aged 49 years or over on 30 June of the previous financial year (provided the general cap is less than $35,000). For all other individuals, the 2013-14 cap of $25,000 is indexed annually in line with average weekly ordinary time earnings (AWOTE).	For the 2014-15 financial year and later financial years, the 2013-14 cap is indexed annually in line with AWOTE.

Detailed explanation of new law

Concessional contributions cap

1.10 The cap for individuals aged 59 years or over on 30 June 2013 will increase from $25,000 to $35,000 for the 2013-14 financial year. ***[Schedule #, items 1 and 2, Note 2 to section 292-20 of the ITAA 1997 and paragraph 292-20(1)(a) of the IT(TP) 1997].***

1.11 For the 2014-15 financial year and later financial years, the cap for individuals aged 49 years or over on 30 June of the relevant previous financial year is $35,000. ***[Schedule #, item 2, paragraph 292-20(1)(b) of the ITTP 1997]***

1.12 Under the previous higher concessional cap (up to and including the 2011-12 financial year), individuals became eligible for the higher cap in the year they turned 50 years old (that is, eligibility was based on an individual's age as at 30 June in the relevant financial year). However, if an individual died before their 50th birthday, they did not qualify for the higher cap and their estate could be issued with an excess contributions tax assessment which would not have been the case had they reached 50 years. Determining eligibility by reference to an individual's age as at 30 June in the financial year preceding the relevant financial year in which the higher cap applies ensures that these individuals also qualify for the higher cap.

1.13 The temporary higher cap does not apply if the general cap for all other individuals is $35,000 or more (as determined annually by indexation, see subsection 292-20(2) of the ITAA 1997), that is, when the general cap reaches $35,000, the temporary higher cap will cease to apply. ***[Schedule #, item 2, subsection 292-20(2) of the ITTP 1997]***

1.14 The amendments made by this Schedule do not affect the amount of the non-concessional contributions cap for individuals that meet the age requirements. Subsection 292-85(2) of the ITAA 1997 provides that an individual's 'non-concessional contributions cap' for the 2009-10 financial year and later financial years is the amount that is six times the general concessional contributions cap for the year. The non-concessional contributions cap will continue to be six times the general concessional contributions cap. ***[Schedule #, item 2, subsection 292-20(3) of the ITTP 1997]***

Example 1.1

Victoria's birthday is 12 May 1954. She is 59 years old on 30 June 2013. For the 2013-14 financial year, Victoria's concessional contributions cap is $35,000, and her non-concessional contributions cap is $150,000 (where the general concessional contributions cap is $25,000).

Example 1.2

Amir's birthday is 2 February 1965. He is 49 years old on 30 June 2014. For the 2014-15 financial year, Amir's concessional contributions cap is $35,000, and his non-concessional contributions cap is $150,000 (assuming the general concessional contributions cap is $25,000).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Schedule # — superannuation concessional contributions cap

1.15 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

1.16 Schedule # to this Bill amends the *Income Tax Assessment Act 1997* and the *Income Tax (Transitional Provisions) Act 1997* to increase the concessional contributions cap temporarily to $35,000 for the 2013-14 financial year for individuals aged 60 years and over, and to $35,000 for the 2014-15 financial year and later financial years for individuals aged 50 years and over. The temporary cap will cease when the general cap indexes to $35,000.

1.17 Savings invested in superannuation are not generally taxed at an individual's personal tax rate. Instead, contributions and earnings are generally taxed at a concessional flat rate of 15 per cent (below most individuals' personal tax rate) in the accumulation phase.

1.18 To ensure that the fiscal cost of the concessions is sustainable, annual caps are placed on the amount of concessional contributions that an individual can make without being subject to higher rates of tax under the excess contributions tax provisions. Currently, all individuals can make concessional contributions of up to $25,000 per annum without incurring a liability for excess contributions tax.

Human rights implications

Non-discrimination

1.19 Schedule # engages the right to non-discrimination contained in articles 26 of the International Covenant on Civil and Political Rights (ICCPR).

1.20 Article 26 of the ICCPR provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, article 26 provides that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The UN Human Rights Committee has not attempted to define the term ‘other status’, however it is considered to include age.

1.21 The temporary higher cap will encourage older Australians to improve the adequacy of their retirement savings at a time in their lives when they are often better placed to make additional contributions to their superannuation. In addition, it recognises that these individuals may not have received superannuation contributions throughout their working life as the superannuation guarantee arrangements were progressively introduced from 1992.

Conclusion

1.22 Schedule # is compatible with human rights because to the extent it engages and limits the right to non-discrimination, that limitation is considered reasonable, necessary and proportionate to achieve the policy objective of improving retirement incomes for older Australians.

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