

EXPOSURE DRAFT

1 Inserts for

2 **Tax Laws Amendment (2012 Measures**
3 **No. 1) Bill 2012: refunded excess**
4 **concessional contributions**

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EXPOSURE DRAFT

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Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1.		
2.		
3.		

7 **Schedule ?—Refund of excess concessional**
8 **contributions**

9 **Part 1—Main amendments**

10 *Income Tax Assessment Act 1997*

11 **1 At the end of Subdivision 292-G**

12 Add:

13 **292-420 Release authorities for refunded excess concessional**
14 **contributions**

15 *Commissioner may give release authorities*

16 (1) If:

17 (a) the Commissioner makes a determination under
18 section 292-467 (refunded excess concessional contributions)
19 for a person; and

20 (b) the person has one or more *superannuation interests;

EXPOSURE DRAFT

1 the Commissioner may give a release authority in respect of the
2 amount mentioned in subsection (2) to a *superannuation provider
3 that holds such a superannuation interest for the person.

4 (2) The release authority must:

- 5 (a) state the amount that is 85% of the *excess concessional
6 contributions to which that determination relates; and
7 (b) be dated; and
8 (c) contain any other information that the Commissioner
9 considers relevant.

10 Note 1: Only 85% of the excess concessional contributions are stated under
11 paragraph (a) as a superannuation provider is required to pay tax at the
12 rate of 15% on the low tax component of its taxable income: see
13 paragraph 26(1)(a) of the *Income Tax Rates Act 1986*.

14 Note 2: If the release authority relates to a determination as varied under
15 section 292-468, the amount stated in the release authority is as
16 provided in subsection 292-468(7).

17 (3) Despite paragraph (2)(a), if an amount has been paid in accordance
18 with section 292-415 in relation to an *excess contributions tax
19 assessment for a person for the *financial year to which the
20 determination relates, the release authority must state the
21 difference between:

- 22 (a) 85% of the *excess concessional contributions to which the
23 determination relates; and
24 (b) the amount paid in accordance with section 292-415.

25 *Obligations of superannuation providers*

26 (4) A *superannuation provider that has been given a release authority
27 under this section must:

- 28 (a) within 30 days after the release authority is issued, pay to the
29 Commissioner the amount stated in the release authority in
30 accordance with paragraph (2)(a); and
31 (b) within 30 days after the release authority is issued, or within
32 7 days after the payment is made, (whichever is earlier) give
33 to the Commissioner a statement, in the *approved form,
34 advising the Commissioner of the payment.

35 Note 1: Section 288-95 in Schedule 1 to the *Taxation Administration Act 1953*
36 provides for an administrative penalty for failing to comply with
37 paragraph (a).

38 Note 2: Subsection 286-75(1) in Schedule 1 to the *Taxation Administration*
39 *Act 1953* provides for an administrative penalty for failing to comply
40 with paragraph (b).

EXPOSURE DRAFT

Note 3: For the taxation treatment of the payment, see section 303-15. An amount may be included in the person's assessable income under section 292-467 as a result of the determination made under section 292-467.

- (5) However, subsection (4) does not apply if:
- (a) the sum of the *values of every *superannuation interest (other than an interest of a kind mentioned in paragraph (b)) held by the *superannuation provider for the person is less than the amount stated in the release authority; or
 - (b) the superannuation provider holds only one or more of the following kinds of superannuation interests for the person:
 - (i) a *defined benefit interest;
 - (ii) a superannuation interest in a *non-complying superannuation fund;
 - (iii) a superannuation interest that is treated as a separate interest under regulations made for the purposes of section 307-200 in circumstances where the interest is supporting a *superannuation income stream.
- (6) If subsection (4) does not apply, the *superannuation provider must, within 30 days after the release authority is issued:
- (a) return the release authority to the Commissioner; and
 - (b) advise the Commissioner, in the *approved form, that the superannuation provider is not required to comply with the release authority.

Note: Subsection 286-75(1) in Schedule 1 to the *Taxation Administration Act 1953* provides for an administrative penalty for failing to comply with paragraph (b).

Commissioner may vary or revoke release authorities

- (7) The Commissioner may vary or revoke a release authority at any time before a payment is made in accordance with subsection (4).

Entitlement to credits

- (8) The person is entitled to a credit for an amount paid by a *superannuation provider to the Commissioner in accordance with this section. The credit arises:
- (a) if the Commissioner receives the amount before making or amending an *assessment of the person's taxable income to give effect to the determination—on the day any income tax payable as a result of that assessment or amended assessment

EXPOSURE DRAFT

1 is due and payable (or would be due and payable if no such
2 income tax is payable); or

3 (b) if the Commissioner receives the amount after making such
4 an assessment or amended assessment—on the later of:

5 (i) the day any income tax payable as a result of that
6 assessment or amended assessment is due and payable
7 (or would be due and payable if no such income tax is
8 payable); or

9 (ii) the day the amount is received by the Commissioner.

10 Note: Division 3 of Part IIB of the *Taxation Administration Act 1953* is
11 about the treatment of credits that an entity is entitled to under a
12 taxation law.

13 **292-425 Interest for late payments of money received by the** 14 **Commissioner in accordance with release authority**

15 (1) You are entitled to an amount of interest worked out under
16 subsection (2) if:

17 (a) the Commissioner gives a release authority under
18 section 292-420 to a *superannuation provider that holds a
19 *superannuation interest for you; and

20 (b) the superannuation provider pays an amount to the
21 Commissioner in accordance with that release authority; and

22 (c) you are entitled to a credit mentioned in subsection
23 292-420(8) for that amount; and

24 (d) the Commissioner is required to refund all or part of that
25 credit as mentioned in Division 3A of Part IIB of the
26 *Taxation Administration Act 1953*; and

27 (e) the Commissioner does not so refund all or part of that credit
28 within 60 days after receiving that amount.

29 (2) The interest is to be calculated:

30 (a) on the amount that the Commissioner fails to refund; and

31 (b) for the period:

32 (i) beginning 60 days after the day the Commissioner
33 receives the amount; and

34 (ii) ending on the day the Commissioner refunds the
35 amount; and

36 (c) on a daily basis; and

37 (d) at the *base interest rate for the day the interest is calculated.

38 **2 After section 292-465**

EXPOSURE DRAFT

1 Insert:

2 **292-467 Refunded excess concessional contributions**

3 (1) If:

4 (a) the Commissioner is satisfied you have *excess concessional
5 contributions for a *financial year; and

6 (b) the amount of those excess concessional contributions is
7 \$10,000 or less; and

8 (c) disregarding any previous application of this section, you do
9 not have excess concessional contributions for an earlier
10 financial year beginning on or after 1 July 2011; and

11 (d) you have lodged an *income tax return with the
12 Commissioner for the income year that corresponds to that
13 financial year:

14 (i) within 12 months after the end of that income year; or

15 (ii) within such longer period as the Commissioner allows;
16 and

17 (e) you accept an offer made by the Commissioner in accordance
18 with subsection (3);

19 the Commissioner may make a written determination that, for the
20 purposes of this Division, the excess concessional contributions
21 mentioned in paragraph (a) for that financial year are to be
22 disregarded.

23 (2) If the Commissioner makes the determination:

24 (a) an amount equal to the *excess concessional contributions is
25 included in your assessable income for your income year that
26 corresponds to that *financial year; and

27 (b) you are entitled to a *tax offset for that income year equal to
28 15% of the excess concessional contributions.

29 Note: A superannuation provider is required to pay tax at the rate of 15% on
30 the low tax component of its taxable income: see paragraph 26(1)(a)
31 of the *Income Tax Rates Act 1986*.

32 (3) If the Commissioner is satisfied you have *excess concessional
33 contributions for the *financial year, the Commissioner may issue
34 you a notice, in writing, offering to make a determination under
35 this section. You may accept the offer, in the *approved form:

36 (a) within 28 days after the Commissioner issues you the notice;
37 or

38 (b) within such longer period as the Commissioner allows.

EXPOSURE DRAFT

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- 1 (4) The Commissioner must give you a copy of the determination.
- 2 (5) A determination under this section may be included in a notice of
- 3 assessment.
- 4 (6) The Commissioner may take such action as the Commissioner
- 5 considers necessary to give effect to the determination.

6 **292-468 Variations etc. of refunded excess concessional**

7 **contributions determinations**

- 8 (1) This section applies in relation to a determination under
- 9 section 292-467 if, due to information received by the
- 10 Commissioner, the Commissioner is satisfied that the amount of
- 11 *excess concessional contributions mentioned in that section for a
- 12 *financial year is incorrect.
- 13 (2) The Commissioner may revoke the determination at any time
- 14 before receiving a payment made in accordance with subsection
- 15 292-420(4) in relation to the amount, if the Commissioner is
- 16 satisfied that:
- 17 (a) the person to whom the determination relates has *excess
- 18 concessional contributions greater than \$10,000 for the
- 19 *financial year; or
- 20 (b) the person has no excess concessional contributions for the
- 21 financial year.
- 22 (3) The Commissioner may vary the determination at any time before
- 23 receiving a payment made in accordance with subsection
- 24 292-420(4) in relation to the amount, if the Commissioner is
- 25 satisfied that the person to whom the determination relates has
- 26 *excess concessional contributions for the *financial year not
- 27 greater than \$10,000.
- 28 (4) The Commissioner may vary the determination at any time after
- 29 receiving a payment made in accordance with subsection
- 30 292-420(4) in relation to the amount, if the Commissioner is
- 31 satisfied that the person to whom the determination relates has
- 32 *excess concessional contributions for the *financial year:
- 33 (a) greater than the amount of the excess concessional
- 34 contributions mentioned in the determination; and
- 35 (b) not greater than \$10,000.
- 36 (5) The Commissioner cannot otherwise vary or revoke such a
- 37 determination.

EXPOSURE DRAFT

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- 1 (6) The Commissioner must give to the person to whom the
2 determination relates written notice of:
3 (a) the variation or revocation of the determination; or
4 (b) a decision of the Commissioner not to vary or revoke the
5 determination, if the person requested the variation or
6 revocation.
- 7 (7) If the determination is varied:
8 (a) the determination as varied has effect as if it were a
9 determination under section 292-467; and
10 (b) subsections 292-467(5) and (6) apply in relation to the
11 determination as varied; and
12 (c) the Commissioner may issue another release authority in
13 accordance with section 292-420 in relation to the
14 determination as varied.
- 15 (8) Despite paragraph 292-420(2)(a), the release authority issued as
16 mentioned in paragraph (7)(c) of this section must state the
17 difference between:
18 (a) the amount stated in the determination as in force just before
19 the variation; and
20 (b) 85% of the *excess concessional contributions as varied.
- 21 (9) The amount of *excess concessional contributions covered by a
22 determination to which this section applies is disregarded for the
23 purposes of applying Subdivision 292-E in relation to the person to
24 whom the determination relates if the Commissioner is satisfied
25 that:
26 (a) the person has excess concessional contributions greater than
27 \$10,000 for the *financial year to which the determination
28 relates; and
29 (b) the determination cannot be varied or revoked under this
30 section.

31 **292-469 Objections against determinations etc.**

- 32 If you are dissatisfied with:
33 (a) a determination of the Commissioner under section 292-467;
34 or
35 (b) a determination of the Commissioner under that section as
36 varied in accordance with section 292-468; or
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EXPOSURE DRAFT

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(c) a decision of the Commissioner not to vary or revoke a determination under that section in accordance with section 292-468;
you may object against the determination or decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

3 At the end of Division 303

Add:

303-15 Payments from release authorities for refunded excess concessional contributions

- (1) A *superannuation benefit that you are taken to receive under section 307-15, paid in relation to a release authority given in relation to you in accordance with section 292-420, is not assessable income and is not *exempt income.
- (2) Section 307-125 (the proportioning rule) does not apply to such a *superannuation benefit.

EXPOSURE DRAFT

1

2 **Part 2—Other amendments**

3 *Income Tax Assessment Act 1997*

4 **4 Section 10-5 (table item headed “superannuation”)**

5 Before:
returned contributions 290-100
6 insert:
refunded excess concessional contributions 292-467(2)(a)

7 **5 Section 13-1 (table item headed “superannuation”)**

8 Before:
TFN quoted to superannuation or RSA provider after
no-TFN contributions tax paid 295-675
9 insert:
refunded excess concessional contributions 292-467(2)(b)

10 **6 At the end of section 61-570**

11 Add:
12 (3) For the purposes of paragraph (1)(c), reduce (but not below zero)
13 your *reportable employer superannuation contributions by the
14 amount of any contributions disregarded under section 292-467 for
15 you for the *financial year corresponding to the income year.

16 **7 Section 67-23 (after table item 12)**

17 Insert:
14 refunded *excess the *tax offset available under paragraph
concessional contributions 292-467(3)(b)

18 **8 At the end of section 290-160**

19 Add:
20 (3) For the purposes of paragraphs (2)(a) and (c), disregard any
21 *excess concessional contributions disregarded under
22 section 292-467 for you for the *financial year corresponding to the
23 income year.

24 **9 At the end of section 290-230**

EXPOSURE DRAFT

1 Add:

- 2 (5) For the purposes of subparagraph (2)(c)(iii), reduce (but not below
3 zero) the *reportable employer superannuation contributions by the
4 amount of any contributions disregarded under section 292-467 for
5 your spouse for the *financial year corresponding to the income
6 year.

7 **10 Subsection 995-1(1) (paragraph (a) of the definition of**
8 ***reportable superannuation contributions*)**

9 Repeal the paragraph, substitute:

- 10 (a) the individual's *reportable employer superannuation
11 contributions (if any) for the income year, reduced (but not
12 below zero) by the amount of any contributions disregarded
13 under section 292-467 for the individual for the *financial
14 year corresponding to the income year; and

15 ***Superannuation (Government Co-contribution for Low***
16 ***Income Earners) Act 2003***

17 **11 At the end of section 6**

18 Add:

- 19 (3) In working out the person's total income (or 10% of that income)
20 for the purposes of paragraph (1)(b), disregard any *excess
21 concessional contributions (within the meaning of the *Income Tax*
22 *Assessment Act 1997*) disregarded under section 292-467 of that
23 Act for the person for the financial year corresponding to the
24 income year.

25 ***Taxation Administration Act 1953***

26 **12 After paragraph 14ZW(1)(aab)**

27 Insert:

- 28 (aac) if the taxation objection is made under section 292-469 of the
29 *Income Tax Assessment Act 1997*:
30 (i) in relation to a determination—60 days after the
31 Commissioner issues the determination or, if that
32 determination is varied, 60 days after the varied
33 determination is issued; or

EXPOSURE DRAFT

1 (ii) in relation to a decision not to make a determination—
2 60 days after the making of the decision not to make the
3 determination; or

4 (iii) in relation to a decision not to vary a determination—60
5 days after the making of the decision not to vary the
6 determination; or

7 **13 Subsection 250-10(2) in Schedule 1 (after table item 38B)**

8 Insert:

38BA amount in accordance 292-420(3)(a) *Income Tax Assessment Act 1997*
with refunded excess
concessional
contributions release
authority

9 **14 At the end of section 280-100 in Schedule 1**

10 Add:

11 (4) Despite subsection (1), you are not liable to pay *shortfall interest
12 charge to the extent that the additional amount relates to assessable
13 income mentioned in paragraph 292-467(2)(a) of the *Income Tax*
14 *Assessment Act 1997* (refunded excess concessional contributions).

15 **15 At the end of section 288-95 in Schedule 1**

16 Add:

17 (3) A *superannuation provider that has been given a release authority
18 in accordance with section 292-420 of the *Income Tax Assessment*
19 *Act 1997* and that fails to comply with paragraph 292-420(2)(a) of
20 that Act is liable to an administrative penalty of 20 penalty units.

21 ***Taxation (Interest on Overpayments and Early Payments) Act*** 22 ***1983***

23 **16 Subsection 3(1) (paragraph (a) of the definition of *income*** 24 ***tax crediting amount*)**

25 After “Division 770”, insert “or subsection 292-420(5)”.

26 **17 Subsection 3(1) (paragraph (c) of the definition of *income*** 27 ***tax crediting amount*)**

28 After “rules”, insert “(other than a tax offset that arises under paragraph
29 292-467(2)(b) of the *Income Tax Assessment Act 1997*)”.

EXPOSURE DRAFT

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Part 3—Application of amendments

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18 Application

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The amendments made by this Schedule apply in relation to excess concessional contributions for the financial year beginning on 1 July 2011 and later financial years.

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