SUBMISSION - Reforming the Superannuation Excess Non-concessional Contributions Tax

TAX AND SUPERANNUATION LAWS AMENDMENT (2014 MEASURES NO 7) BILL 2014: Excess non-concessional superannuation contributions tax reforms

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I agree that the proposed reforms provided in this Bill are sensible however; the imposition of a construction for the calculation of *associated earnings* is fraught.

In the first instance, the calculation is NOT straightforward as stated to be the purpose in paragraph 1.33 of the *Explanatory Memorandum*. Working through the Example 1.1 in the EM demonstrated that the calculation is unnecessarily complex.

Secondly, the reference to the GIC as the benchmark for the calculation will potentially produce a result that is excessive and unjust. I have worked in and around superannuation funds for 20 years and it is only in rare years that income is above 9% per annum and almost never across all asset classes. Reported returns include capital gains and if we are to calculate *associated earnings* at rates close to 10% for inclusion in personal income, a portion would represent capital gains and therefore not necessarily be 100% assessable.

If you find the calculation in the draft legislation to be preferred, I urge you to apply a blanket discount of 2% to recognise real income amounts not amounts in line with a composite earnings rate reported by superannuation funds. Investment earning rates has been misunderstood in the development of this provision.

Thirdly, what is the position in respect of the superannuation fund that releases the excess non-concessional contributions? Do they exclude a notional amount of earnings from their taxation obligations?

It is unlikely, as you don’t want to upset the super industry, so, in reality, the tax haul from an individual making an excess non-concessional contribution will still be in gouging territory, (as it was under the first system provided in the “Simple Super” changes of May 2006).

By way of example, using the facts in Example 1.1 of the EM.

Earnings on $100k for 489 days are around $8k (assume 6%pa income). Tax on this is $1,200 paid by the superfund. The example states a further $13,814 is taxable at marginal rates. If you assume top marginal tax plus medicare and budget deficit repair totalling 47%, a further $6,552 in tax is paid. This is a notional rate of 97% on the actual earnings of $8k.

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