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The Treasury

SUPERANNUATION – REFUND OF EXCESS CONCESSIONAL CONTRIBUTIONS

SUMMARY OF CONSULTATION PROCESS

The Government announced on 10 May 2011 that it would provide eligible individuals with the option to have excess concessional contributions taken out of their superannuation fund and assessed as income at their marginal rate of tax, rather than incurring the effective rate of excess contributions tax.

This measure was included in the Tax and Superannuation Laws Amendment (2012 Measures No. 1) Bill 2012, which was introduced into Parliament on 1 March 2012.

Consultation process

Consultation on a discussion paper was conducted between 17 August 2011 and 7 September 2011. 22 submissions were received.

Consultation on the exposure draft to the legislation was conducted between 21 December 2011 and 20 January 2012. 6 submissions were received.

Submissions can be viewed by clicking on the following link.

<http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=2274>

Summary of key issues

The key issues:

A number of submissions were concerned with the dollar eligibility threshold imposed on this measure. Several suggestions were made for the \$10,000 limit, including that the limit should be above \$10,000 or the \$10,000 should be indexed. The \$10,000 threshold was set to give those who exceeded their concessional caps by a less significant amount the opportunity to avoid paying the excess contributions tax (ECT) the first time it happens.

Many submissions also suggested that the refund offer should not just be for once-off breaches but rather an ongoing option, or at least allow individuals a choice for when to accept the offer. To offer the refund more than once or allow deferral of the choice would be a more substantial change to the policy than this measure.

Some submissions argued that individuals such as those on low incomes should be exempt from the need to lodge an income tax return. Lodgement of an income tax return is necessary for the Commissioner of Taxation to determine the individuals' correct marginal tax rate to apply to the excess concessional contributions subject to the refund offer and hence will remain part of the eligibility criteria for the refund offer. However, there will be opportunities for these individuals to seek additional time to lodge their income tax returns from the Australian Taxation Office (ATO).



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Some submissions suggested that this measure should be made retrospective. That is, a refund offer should apply to excess concessional contributions made prior to 1 July 2011. If the measure were made retrospective this would have added significant cost and complexity to the legislation and to the administration of the measure by the ATO, funds and individuals, in particular in cases where previous ECT assessments had already been issued.

Some submissions have argued that this measure will make ECT issues even more complicated than the current situation. The ATO will handle the majority of the administrative processes. The design has been chosen to minimise complexity, in particular, the ATO will handle the majority of the administrative processes.

Concern was also raised where funds may be unable to comply with the request to release money for the purpose of this measure. In these cases the eligible excess concessional contributions will still be included in the individual's assessable income and be subject to personal income tax instead of attracting the potentially higher ECT rate. This will enable the broad policy outcome to still be achieved. Whilst this may mean the individual has a tax bill to pay from their own sources this will typically be a lower outcome than the ECT alternative.

It was noted in response to the submissions on the discussion paper released on 17 August 2011 that details about how to deal with cases where contribution amounts have been amended were not provided nor detailed solutions to address the flow on effects to various Government benefits. The exposure draft of the legislation dealt with this issue. The Commissioner will have power to vary or revoke a determination if the Commissioner is satisfied the determination was incorrect, for example because of amended reported contributions. It should be noted that not all situations will be able to be fully rectified. To do so would result in further and significant cost and complexity and still may not achieve the intended outcomes.

Various Government benefits and payments are means tested. Assessable income and certain types of contributions to superannuation are often included in these tests. Accepting a refund may in some cases cause a double counting of the excess concessional contributions, once as a (reportable) superannuation contribution and again as assessable income. Where this double count occurs the law for this measure will ensure that this double count is reversed. It should be noted that the work tests that apply to personal contribution deductibility and co-contribution entitlement have also been frozen so that acceptance of a refund offer will not alter the percentage result in these cases. Some submissions did note that in some cases individuals may still find some of their Government benefits or payments affected. This will only occur where the contribution was not included in the tests when first contributed but now form part of the tests as assessable income.

It was noted in some submissions that excess non-concessional contribution breaches are not addressed and still remain a concern. This is outside the scope of this measure.

There were several suggestions made in response to the discussion paper and exposure draft that have been adopted as they will assist the effectiveness of the announced measure. These include: the Commissioner may allow additional time for lodgement of the relevant income tax return; the superannuation fund will have a maximum of 37 days to provide the release authority amount and the relevant payment statement as opposed to 60 days; the Commissioner may issue a release



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authority for less than 85 per cent of the excess concessional contributions if ECT had previously been paid for the same year based on an incorrect contribution amount; the Commissioner may choose not to penalise a fund in certain circumstances other than those explicitly listed in law where it cannot comply with the release authority; the fund is no longer required to return the release authority if it is unable to comply with the release authority; the Commissioner will have power to vary or revoke a determination if the Commissioner is satisfied the determination was incorrect; and reverse double counting of money in adjusted taxable income and other income tests as a result of accepting the refund offer.

The submissions also suggested areas where further or clarifying explanation in the final explanatory memorandum would be helpful. The final explanatory memorandum has been amended to address these concerns.

Feedback

Feedback on the consultation process for this measure can be forwarded to chris.timotheou@treasury.gov.au or taike.li@treasury.gov.au. Alternatively, you can contact Chris Timotheou on 02 6263 2884 or Taike Li on 02 6263 4438.

Thank you to all participants in the consultation process.