
Glossary

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

<i>Abbreviation</i>	<i>Definition</i>
ATO	Australian Taxation Office
Commissioner	Commissioner of Taxation
ECT	Excess contributions tax
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
RSA	Retirement Savings Account
TAA 1953	<i>Taxation Administration Act 1953</i>
The measure	Refunded excess concessional contributions measure
The offer	Refund offer

Chapter 1

Superannuation – refunded excess concessional contributions

Summary of new law

- 1.1 An eligible individual will have an option to effectively have excess concessional contributions taken out of their superannuation fund and assessed at the individual's marginal income tax rate rather than incurring ECT. This measure only applies where an individual has made excess concessional contributions of \$10,000 (not indexed) or less and did not have excess concessional contributions for an earlier financial year commencing on or after 1 July 2011.
- 1.2 Concessional contributions are defined in section 292-25 of the ITAA 1997 and are generally those contributions which are included in the assessable income of a complying superannuation fund or a RSA. As such they include all employer contributions (including compulsory superannuation guarantee and salary sacrificed amounts) and deducted personal contributions (generally restricted to self employed and those not employed).

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Eligible individuals will be given the option to have refunded excess concessional contributions of \$10,000 or less made in 2011-12 financial year or a later year only if they do not have excess concessional contributions for an earlier financial year commencing on or after 1 July 2011. Where the refund is chosen, excess contributions will effectively be assessable at the individual's marginal tax rate.	Excess concessional contributions are subject to ECT at the rate of 31.5 per cent. This in addition to the 15 per cent withheld by the superannuation or RSA provider to provide for its income tax liabilities.

Detailed explanation of new law

Release authorities for refunded excess concessional contributions

- 1.3 The Commissioner will be able to give a release authority to a superannuation or RSA provider if the Commissioner makes the determination discussed at paragraph 1.11. *[Schedule ?, item 1, subsection 292-420 (1)]*
- 1.4 The release authority must state the amount to be released, which is usually 85 per cent of the excess concessional contributions to which the determination relates or the difference between that amount and any previously received amounts. The release authority must be dated and contain any other information the Commissioner considers relevant. Only 85 per cent of the excess concessional contributions will usually be stated because this takes account of the fact that the relevant excess will usually be attributable to contributions that are assessable and the superannuation or RSA provider will have reduced them by 15 per cent to provide for its income tax liability. *[Schedule ?, item 1, subsection 292-420 (2)]*
- 1.5 A superannuation or RSA provider given the release authority must:
- Release the amount requested by the Commissioner within 30 days of date of issue of the release authority; and
 - Provide a statement in the approved form within 30 days of date of issue of the release authority or within 7 days of payment, whichever is earlier, to advise the Commissioner of the payment. *[Schedule ?, item 1, subsections 292-420 (4)]*
- 1.6 A superannuation provider is not required to comply with the release authority if:
- The sum of the values of the superannuation interests held by the provider for the individual (other than those described in the following dot point) is less than the amount stated in the release authority; or
 - The provider holds only the following superannuation interests for the individual:
 - Defined benefit interests;
 - Interests in a non-complying superannuation fund; or
 - Interests supporting a superannuation income stream.*[Schedule ?, item 1, subsection 292-420 (5)]*
- 1.7 If the superannuation or RSA provider is not required to comply with the release authority, the provider must within 30 days of its issue

date advise the Commissioner that it is not required to comply using an approved form and return the release authority. *[Schedule ?, item 1, subsection 292-420 (6)]*

1.8 Before the Commissioner receives the amount requested, the Commissioner may vary or revoke the release authority. This will allow the Commissioner to make corrections if, for example, new information about an individual's concessional contributions is received. *[Schedule ?, item 1, subsection 292-420 (7)]*

1.9 The individual is entitled to a credit for the amount paid by a superannuation or RSA provider. The timing of the credit depends on whether the Commissioner receives the amount released by the provider before or after the individual's income tax assessment is made or amended. *[Schedule ?, item 1, subsection 292-420 (8)]*

Interest for late payments of money received by the Commissioner in accordance with release authority

1.10 If the Commissioner is required to refund all or part of a credit as a result of an amount paid by a superannuation or RSA provider in accordance with the release authority and this is not done within 60 days of receiving that amount, interest will accrue on the amount that has not been refunded. *[Schedule ?, item 2, subsections 292-425 (1) and (2)]*

Refunded excess concessional contributions

1.11 If the following conditions are met the Commissioner may issue an individual with a notice of offer for a refund:

- The Commissioner is satisfied that the individual has excess concessional contributions for a financial year; and
- The amount of excess concessional contributions is \$10,000 or less; and
- The individual does not have excess concessional contributions for an earlier financial year starting from 1 July 2011 – this is worked out disregarding any previous application of the refund measure; and
- The individual has lodged an income tax return for the relevant income year within 12 months of the end of that year, or within such longer period as the Commissioner allows. *[Schedule ?, item 2, subsection 292-467 (1)]*

- 1.12 If the individual accepts the refund offer the Commissioner may make a determination that excess concessional contributions for that year are to be disregarded for the purposes of the ECT provisions (that is, Division 292 of the ITAA 1997). *[Schedule ?, item 2, subsection 292-467 (1)]*
- 1.13 The conditions for an individual to be made an offer for a refund mean:
- Once an individual has excess concessional contributions in any financial year from 2011-12, they are no longer eligible for the refund option in any subsequent year. (Note: An individual's eligibility in a particular year could be affected by amendments to their ECT assessments in an earlier year that removes the individual from having made excess concessional contributions, for example, as a result of exercising the section 292-465 Commissioner's discretion.);
 - If the individual exceeds their concessional cap in more than one financial year before receiving notification from the Commissioner then only the first year will be eligible for the refund;
 - Existing ECT processes apply for non-eligible individuals and for those who do not accept the refund offer.
- 1.14 The option does not apply retrospectively, that is to excess concessional contributions made before the 2011-12 financial year. Individual circumstances before 1 July 2011 also do not affect eligibility for refund. This means that any excess contributions made prior to 1 July 2011 are not relevant in determining eligibility.
- 1.15 When the Commissioner issues a written notice of offer to the eligible individual the individual may accept the refund offer within 28 days after issuing the notice or within such longer period as the Commissioner allows.
- An offer can only be accepted using the approved form.
 - If the individual does not wish to accept the offer they could allow the offer to lapse, or contact the ATO, but they are not required to formally reject an offer.
 - A decision not to accept the offer will not result in the individual being entitled for a refund offer in a future year. *[Schedule ?, item 2, subsection 292-467 (3)]*

- 1.16 The written notice of offer will be given at a similar time to the existing letter the Commissioner sends to individuals prior to making an ECT assessment. This letter tells the individual they may have to pay ECT. While the individual cannot object to the offer, the individual will still be able to:
- Advise the Commissioner that the contribution amount is incorrect and discuss with their superannuation provider the need to have the amount of concessional contributions re-reported under section 390-5 of the TAA 1953;
 - Apply for Commissioner's discretion to disregard or reallocate the excess concessional contributions under section 292-465 of the ITAA 1997.
- 1.17 In situations like these, the individual may be granted an extension of time to accept the offer from the Commissioner. [*Schedule ?, item 2, paragraph 292-467 (3)(b)*]
- 1.18 If the individual accepts the offer the Commissioner will make a determination that the excess concessional contributions are to be disregarded. The Commissioner must give the individual a copy of the determination. The individual may at this stage object to the determination. The Commissioner will also send a release authority to the relevant provider seeking to release an amount for the excess concessional contributions. [*Schedule ?, item 2, subsection 292-467 (4)*]
- 1.19 The Commissioner will include the amount of excess concessional contributions in the individual's assessable income for the income year that corresponds with the financial year for the excess contributions. The Commissioner will make, or amend, the individual's income tax assessment accordingly and will therefore give the individual a notice of the relevant assessment. A copy of the determination may be included in this notice of assessment. [*Schedule ?, item 2, subsections 292-467 (2) and (5)*]
- 1.20 The Commissioner will, in making or amending that assessment, allow the individual a tax offset equal to 15 per cent of the excess concessional contribution. This takes account of the fact that the relevant excess will usually be attributable to contributions that are assessable and the superannuation provider will have reduced them by 15 per cent to provide for its income tax liability. [*Schedule ?, item 2, subsection 292-467 (2)*]
- 1.21 This tax offset is a refundable tax offset. [*Schedule ?, items 5 and 7 sections 13-1 and 67-23*]
- 1.22 As mentioned in paragraph 1.9, the Commissioner will also allow the individual a credit for any amount paid to the Commissioner by

a superannuation or RSA provider in accordance with a release authority. This will mean that most individuals will have no tax debt to pay as their income tax account with the Commissioner will be in credit.

1.23 Where an account is in credit, that is the Commissioner owes money to the individual, the amount must be refunded to the individual. This is a credit the individual is entitled to under a taxation law for the purposes of paragraph 8AAZL(1)(b) of the TAA 1953.

1.24 However, the individual may receive a reduced refund, or no refund at all if:

- The individual has an outstanding debt with the Commissioner for another type of tax - for example, the refund may be offset against an income tax debt that they owe (section 8AAZL of the TAA 1953);
- The individual has an outstanding debt to another Commonwealth agency which has required the Commissioner to pay any refund to them to cover other debts - for example, the Child Support Agency or Centrelink.

1.25 Where there is no superannuation or RSA provider that is required to comply with a release authority, the excess concessional contribution will still be included in the individual's assessable income and the tax offset allowed. However, no credit will be allowed as no amount has been paid by a superannuation provider. If this means the individual's account is not in credit, they may have a tax bill to pay. *[Schedule ?, item 2, subsection 292-467 (2)]*

Variation etc. of refunded excess concessional contributions determinations

1.26 The Commissioner would normally be expected to vary or revoke a determination if it was made using incorrect information. However, there are practical limits to what can be achieved by such a variation or revocation, particularly where an amount has already been paid to the Commissioner by a superannuation or RSA provider under a release authority. These practical limits are recognised by restrictions on the Commissioner's power to vary or revoke a determination. *[Schedule ?, item 2, section 292-468]*

1.27 The Commissioner will have the power to vary or revoke a determination if, due to information received by the Commissioner, the Commissioner is satisfied that the amount of excess contributions previously determined is incorrect. *[Schedule ?, item 2, subsections 292-468 (1)]*

- 1.28 Where a payment under a release authority has *not* been received by the Commissioner and the Commissioner is satisfied that:
- the correct amount of excess concessional contributions is greater than \$10,000, or
 - the individual has no excess concessional contributions,
- the Commissioner may revoke the determination. *[Schedule ?, item 2, subsection 292-468 (2)]*
- 1.29 If the correct amount of excess concessional contributions is greater than \$10,000, the revocation of the determination will mean the Commissioner can make an ECT assessment for the correct amount. Further, the individual will not be eligible for the refund in any subsequent year.
- 1.30 If the individual has no excess concessional contributions, the revocation of the determination will mean the Commissioner will also revoke any release authority issued to a superannuation or RSA provider. There will usually be no income tax assessment (original or amended) to amend if no payment has been received. *[Schedule ?, item 1, subsection 292-420 (7)]*
- 1.31 Where a payment under a release authority has *not* been received by the Commissioner and the Commissioner is satisfied that the correct amount of excess concessional contributions is not greater than \$10,000, the Commissioner may vary the determination. *[Schedule ?, item 2, subsection 292-468 (3)]*
- 1.32 Where there is a variation of a determination because the individual's excess concessional contributions have increased (but are \$10,000 or less), the individual is not entitled to make a new choice in relation to the increased excess concessional contributions.
- 1.33 The Commissioner will issue a new release authority to give effect to the variation of the determination. This release authority will be for the difference between 85 per cent of the amount of the correct excess concessional contributions and 85 per cent of the amount of excess concessional contributions covered by an earlier release authority. *[Schedule ?, item 2, subsections 292-468 (7) and (8)]*
- 1.34 Where a payment under a release authority *has* been received by the Commissioner, the Commissioner cannot revoke that determination. *[Schedule ?, item 2, subsections 292-468 (2) and (5)]*
- 1.35 Where a payment under a release authority *has* been received by the Commissioner, the Commissioner may vary the determination if

satisfied the amount of excess concessional contributions to which the determination relates has increased but is \$10,000 or less. [*Schedule ?, item 2, subsections 292-468 (4)*]

1.36 No other revocation or variation is allowed. [*Schedule ?, item 2, subsections 292-468 (5)*]

1.37 Where correct information shows that an ECT assessment was incorrect and a refund determination could have been made, the existing law (Subdivision 292-F of the ITAA 1997) allows the Commissioner to amend the ECT assessment. The new provisions will allow the Commissioner to issue a determination for a refund offer.

1.38 Where an amount has been received by the Commissioner under a release authority given pursuant to a refund determination and the Commissioner is satisfied the individual was not eligible for the determination because they actually had excess concessional contributions greater than \$10,000, the Commissioner cannot vary or revoke the determination. Instead, the Commissioner will be required to assess the individual for ECT. However, the ECT assessment will be made by disregarding the amount already included in the individual's assessable income. [*Schedule ?, item 2, subsections 292-468 (9)*]

Example 1.1

Excess concessional contributions \$10,000 or less change to more than \$10,000 after payment received

The Commissioner determined an individual had excess concessional contributions for a financial year of \$5,000 and was eligible for a refund offer under the measure. The individual accepted the Commissioner's offer to make a determination to disregard the excess contributions. The individual's superannuation provider paid \$4,250 to the Commissioner under a release authority.

The Commissioner amended the individual's income tax assessment to include \$5,000 in assessable income and allow an offset of \$750. The Commissioner also applied a credit of \$4,250 to the individual's tax liability.

The Commissioner receives new information about the individual's concessional contributions and is satisfied that the individual had \$13,000 excess concessional contributions for the financial year.

The Commissioner cannot revoke or vary the determination. Instead, the Commissioner must assess the individual for ECT on \$8,000.

1.39 Where the Commissioner is satisfied the individual had no excess concessional contributions, the individual will be eligible for a refund offer in a future year. *[Schedule ?, item 2, paragraph 292-467 (1)(c)]*

1.40 The Commissioner will give individuals a written notice of a variation or revocation. If an individual asks the Commissioner to vary or revoke a determination, the Commissioner will also notify the individual of any decision not to vary or revoke the determination. This notification will ensure the individual can exercise their right to object to the Commissioner's decisions. *[Schedule ?, item 2, paragraph 292-468 (6)]*

Objections against determinations etc.

1.41 Once a determination is made by the Commissioner under section 292-467, the individual may object to the determination in the manner set out in Part IVC of the TAA 1953. This right to object also applies to a varied determination made under section 292-468 and a decision made under section 292-468 not to vary or revoke a determination made under section 292-467. Part IVC of the TAA 1953 allows an individual to appeal to the Administrative Appeals Tribunal. Time limits are imposed on the period for objections. The objection must be made within 60 days after the relevant determination or decision. *[Schedule ?, item 2, sections 292-469, item 12, paragraph 14ZW(1)(aac)]*

Payments from release authorities for refunded excess concessional contributions

1.42 The payment made by a superannuation or RSA provider in accordance with a release authority is a superannuation benefit as defined in section 307-5 of the ITAA 1997. However, as an amount is to be included in an individual's assessable income for the income year that corresponds to the financial year for which the individual has excess concessional contributions, this superannuation benefit is made non-assessable, non-exempt income. *[Schedule ?, item 3, subsections 303-15 (1)]*

1.43 The proportioning rule does not apply to the released amount. This is consistent with the current release authority treatment. *[Schedule ?, item 3, subsections 303-15 (2)]*

Consequential amendments

Items 6, 9 and 10

1.44 A number of provisions of Commonwealth laws contain 'income' tests that have regard to both:

- Assessable income or an amount derived from it such as taxable income, adjusted taxable income or total income; and
- Either:
 - Reportable employer superannuation contributions; or
 - Reportable superannuation contributions.

1.45 Where a determination is made under this measure, an individual's assessable income for a particular year will be increased by the amount of their excess concessional contributions for that year. This increase will affect any amount based on or derived from assessable income. Further, if an individual has reportable employer superannuation contributions, some or all of their excess concessional contributions may be attributable to the reportable contributions. This could result in an amount being counted twice, once as income and once as superannuation contributions.

1.46 These consequential amendments deal with cases where some or all of the excess concessional contributions that are the subject of the determination are reportable employer superannuation contributions or reportable superannuation contributions.

1.47 The amendments will ensure that the relevant excess concessional contributions subject to the determination are not included twice in the income test calculation for the individual. [*Schedule ?, item 10, subsection 995-1(1)*]

Example 1.2

Salary = \$165,000

SG contributions = \$14,850 (@ 9%)

Additional salary sacrificed contributions = \$15,000

Reportable employer superannuation contributions = \$15,000

Excess concessional contributions amount = \$4,850 (\$14,850 + \$15,000 - \$25,000)

Adjusted taxable income = \$180,000 (\$165,000 + \$15,000)

Individual chooses to refund the excess concessional contributions amount:

Assessable income increases by \$4,850

Adjusted taxable income:

- increases by \$4,850 (due to assessable income increase), and
- decreases by \$4,850 (adjustment to reflect assumed refunded reportable employer superannuation contributions)
- no overall change to adjusted taxable income

Items 8 and 11

- 1.48 The refund will not be used to reassess whether an individual is entitled to deduct personal superannuation contributions. *[Schedule ?, item 8, subsection 290-160(3) of the ITAA 1997]*
- 1.49 Nor will the refund be used to reassess whether an individual has satisfied the 10 per cent income in paragraph 6(1)(b) of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*. That test is one of several used to determine whether an individual is eligible to be paid a co-contribution under that Act. That test is also proposed to be used for the low income superannuation contributions. *[Schedule ?, item 11, subsection 6(3) Superannuation (Government Co-contributions for Low Income Earners) Act 2003]*

Items 13 and 15

- 1.50 The amount a superannuation or RSA provider is required to pay in accordance with a release authority will be treated as a tax related liability of the provider. This will enable the ATO to sue the superannuation provider for the amount if it is not paid as required. *[Schedule ?, item 13, subsection 250-10(2)]*
- 1.51 No general interest charge is payable if the amount is paid late as there is no provision imposing it. However, a superannuation or RSA provider is liable for an administrative penalty for a failure to pay the amount on time. *[Schedule ?, item 1, Note 1 to subsection 292-420(4) ITAA 1997 and item 15, subsection 288-95(3) in Schedule 1 to TAA]*
- 1.52 An administrative penalty also applies where the superannuation or RSA provider does not provide the accompanying payment statement to the Commissioner in time under the existing subsection 286-75(1) in Schedule 1 to the TAA 1953. *[Schedule ?, item 1, Note 2 to subsection 292-420(4)]*

Item 14

- 1.53 Individuals will not be liable for shortfall interest charge under the TAA 1953. The excess concessional contribution amount under the choice was held in superannuation and received concessional taxation

before taken out and treated as assessable income. The income tax payable is notionally outstanding and hence overdue. However, the individual will not be liable retrospectively for an interest charge on this amount where an individual's income tax assessment is amended to give effect to their choice. [*Schedule ?, item 14, subsection 280-100(4)*]

Item 16 and 17

- 1.54 Interest will not be payable to the individual under the *Taxation (Interest on Overpayments and Early Payments) Act 1983* on the refund amount other than under the circumstances outlined in section 292-425 of the ITAA 1997. [*Schedule ?, item 16 and 17, subsection 3(1)*]

Application of amendments

- 1.55 These amendments apply in relation to excess concessional contributions for the financial year beginning on 1 July 2011 and later financial years.
- 1.56 No transitional provisions are required to give effect to the measure.