



## TECHNICAL UPDATE

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### Contribution Limitations – If the “CAP” fits

The introduction of contribution caps announced in May 2006 has the greatest potential to impact on members future retirement benefits.

Below we address the consequences of exceeding the ‘concessional’ and ‘non-concessional’ contribution caps and provide some guidance to ensure maximum contribution benefit.

### EXCESS NON-CONCESSIONAL CONTRIBUTIONS

From 1 July 2007 the Trustee of a Fund must not accept an amount greater than:

- three (3) times the amount of the non-concessional cap if the member was under 65 on the 1<sup>st</sup> of July of the year of the contribution; or
- the non-concessional cap if the member was between 65 and 75 on the 1<sup>st</sup> of July of the year of the contribution.

A Fund that receives an excessive contribution not accompanied by a valid notice intention to claim a deduction must refund the excess amount within 30 days of becoming aware of the contribution. In relation to this excessive contribution the member must provide the trustee with the valid notice within 30 days of the contribution being made.

It should be noted that the Trustee of a Fund is only permitted to refund excess amounts if a single contribution exceeds the Cap. Trustees are not required to aggregate contributions received during the financial year. If a member exceeds the non-concessional cap by making multiple contributions that are individually below the cap there is no provision for these to be returned to the member and the Trustee must report them to the ATO who will issue the member with an excess cap tax assessment.

#### IN THIS ISSUE

EXCESS NON-  
CONCESSIONAL  
CONTRIBUTIONS

EXCESS  
CONCESSIONAL  
CONTRIBUTIONS

NON-TAXABLE  
PORTION OF AN  
OVERSEAS  
TRANSFER

CGT CAP –  
LIFETIME LIMIT

THINGS TO  
CONSIDER



## EXCESS NON-CONCESSIONAL CONTRIBUTIONS Continued ...

The tax payable on the excess non-concessional contribution is 45% plus Medicare. The member will also be issued with a compulsory release authority that must be presented to their Fund of choice to release the benefits up to the amount of the assessment. This release must be provided to the Fund as early as possible as the assessment must be paid within 21 days of receipt by the member.

For the purposes of determining excess non-concessional contributions, the following amounts will be counted against the cap:

- Non-concessional contributions
- Excess concessional contributions
- Non-taxable portion of an overseas transfer
- Amounts in excess of the CGT Cap lifetime limit (currently \$1 million)

The non-concessional cap is currently \$150,000 or \$450,000 over three years.

## EXCESS CONCESSIONAL CONTRIBUTIONS

There is no limit on the amount of concessional contributions a Fund can receive that are taxed at 15%. However any amount over the concessional cap will result in the member receiving an excess concessional tax assessment which will be calculated at the rate of 30% plus Medicare. To ensure the integrity of the contribution caps the legislation also provides that any amount in excess of the concessional cap will be counted against the non-concessional cap. The effect of this is that a member contributing over the concessional cap and up to or over the non-concessional cap will be taxed firstly 31.5% on the excess concessional cap and an additional amount of 46.5% on the amount exceeding the non-concessional cap.

This means care needs to be taken when entering into salary package arrangements.

Note: a member is only entitled to one concessional cap limit inclusive of employer and personal deductible contributions.

The concessional contribution cap is currently \$50,000 with a transitional amount of \$100,000 available for members over the age of 50 at the time of the contribution up until 30 June 2012.



## NON-TAXABLE PORTION OF AN OVERSEAS TRANSFER

Careful planning is required if a member wishes to transfer benefits from an overseas fund to an Australian superannuation fund. A benefit accrued prior to the members arrival in Australia is deemed non-taxable. If a transferred amount consists of a non-taxable amount greater than the non-concessional cap the amount must be returned to the overseas Fund. An alternative option may be to transfer overseas benefits in multiple payments. This option has a downside as the growth portion of the transfer can be taxed at the Superannuation Fund rate (15%) only if 100% of the members benefit is transferred.

## CGT CAP – LIFETIME LIMIT

Each individual has a lifetime CGT Cap which is currently \$1 million. This eligible contribution cap must meet the following conditions.

The contribution must be made into the Fund by the later of the date by which their personal tax return relevant to the CGT event is lodged (31 October) or 30 days after receipt of the capital proceeds. If the sold asset was held by a company or trust the contribution payment must be made to the Fund within 30 days.

In addition the member must lodge a capital gains tax election either prior to or on the date the contribution is made to the Fund.



## THINGS TO CONSIDER

Given the potential for paying higher tax members need to be aware of how much they are contributing in each instance but more importantly how much they have contributed previously, during the same Financial Year.

Excess non-concessional contributions that are assessed for tax must be released by a fund to pay the tax liability. The tax assessed on excess concessional contributions can be paid by either the fund or the member.

With careful planning and astute record keeping the introduction of contribution caps should not create a tax problem for members of Self Managed Superannuation Funds.

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