EMERSON RANDELL YOUNG

SMSF NEWSLETTER

April 2015

SPECIAL POINTS OF INTEREST:

1. **Relief for taxpayers who go over their non-concessional contributions limit**
2. **ATO urges trustees to plan ahead for the unexpected**
3. **ATO warns against schemes to access your superannuation through loan arrangements**

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Law changes bring relief for taxpayers

Succession planning for SMSFs

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LAW CHANGES BRING RELIEF FOR TAXPAYERS

New laws have been introduced to offer relief for individuals who have exceeded their non-concessional contributions cap.

Background

Traditionally, non-concessional (e.g., after-tax) contributions that exceed your cap were automatically taxed at 47% (46.5% before 1 July 2014). This punitive tax rate applied irrespective of your own marginal tax rate, and whether you made a genuine mistake.

Furthermore, excess contributions tax essentially amounts to double taxation because non-concessional contributions are typically made from after-tax income. Policy wise, these severe tax consequences are intended to ensure that the superannuation concessions (such as the concessional tax rate on fund earnings) are appropriately targeted.

INFO–The non-concessional contributions cap is $180,000 for the 2015 income year ($150,000 for the 2014 and earlier income years). If you are 64 or less on 1 July, you **generally** bring forward the next two years worth of contributions if your non-concessional contributions are more than $150,000 in an income year ($180,000 for the 2015 income year) - conditions apply.

Reforming the rules

New laws allow individuals a choice to withdraw excess contributions together with 85% of the associated earnings amount. The changes apply to non-concessional contributions for the 2014 and later income years.

Under the changes, the implications of **electing to withdraw** the excess contributions are:

- excess non-concessional contributions tax will not apply nor are the withdrawn contributions assessable;
- 85% of a deemed 'associated earnings' amount **must** also be withdrawn. This is a Government defined earnings rate designed to approximate earnings on the excess contributions whilst they were held in the fund; and
- 100% of the associated earnings amount is assessable, with a 15% non-refundable tax offset. These amounts are reported on your personal tax return.

IMPORTANT–The ATO controls the election process and the withdrawal of excess contributions. You cannot simply withdraw the excess contributions yourself.

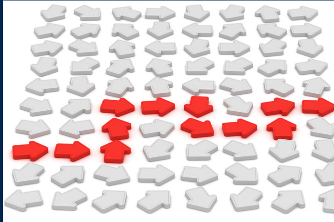
If you **do not elect** to withdraw the excess contributions, the following consequences arise:

- excess contributions tax of 47% (46.5% for 2014-15) will arise;
- no 'associated earnings' income amount must be included in your tax return; and
- no tax offset on associated earnings can be claimed by you;

EXAMPLE–Belinda exceeds her non-concessional contributions cap by $100,000 in the 2015 income year. The ATO assessment shows the excess contributions of $100,000, and associated earnings of $13,814. Generally, Belinda's options will be:

- **Do nothing** – Belinda will incur excess non-concessional contributions tax of $47,000 (ie, $100,000 x 47%); or
- **Elect to release $111,741** (ie, $100,000 + [85% x $13,814]). Belinda includes $13,814 in her tax return with a non-refundable tax offset of $2,073. The excess contributions are not assessable.

TIP–The ATO expects to issue elections to individuals with excess non-concessional contributions for the 2014 income year over the coming months.



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"New trustee penalties apply from 1 July 2014. Trustees may be personally liable for a fine of $10,200 for lending to members and relatives."

SUCCESSION PLANNING FOR SMSFS

The ATO has recently commented on the importance of succession planning within your superannuation fund. In particular, it highlighted the need to forward plan before it is too late.

What can go wrong?

Many retirees typically have two members, with one member usually taking an active role in managing the fund. Problems can arise where the trustee actively managing the fund experiences a diminished capacity (such as dementia).

If one member dies or becomes incapacitated, the remaining fund member with little superannuation knowledge or experience must restructure or manage the fund.

Not only can this result in bad investment choices, but it can lead to non-compliance with the tax and superannuation laws. For example, if minimum pension payments are not made, this usually result in the fund losing the tax exemption on earnings from pension assets.

This can lead to retirement savings being dissipated, and lifestyle benefits being lost.

WARNING– If a trustee has no mental or legal capacity to make decisions, this may also require expensive court costs to resolve.

What can be done?

The ATO stated that forward planning could be undertaken in a number of ways, including:

- making plans well before retirement;
- obtaining more assistance with the day to day running of the fund;
- appointing an enduring power of attorney who can stand in the place of the member, without causing the fund to stop being an SMSF;
- considering winding up and transferring to a large superannuation fund, if the members attain a certain age, or their health declines; and
- speaking with family members and advisers to assist making plans beyond retirement.

ATO ALERT – USING SUPER TO GET A MORTGAGE

The ATO has warned SMSF trustees against investing in entities which effectively provide them access to their superannuation savings to take out a mortgage.

How the arrangement works

The ATO has stated that arrangements are currently being promoted where the following takes place:

1. the SMSF deposits money into a unit trust or pooled investment trust (less a management fee);
2. the money is lent back to an SMSF member, their company or an entity that they control; and
3. the money is then used to help the members obtain a personal or business related mortgage - meaning that they have accessed their superannuation savings early.

INFO–New trustee penalties apply from 1 July 2014. Trustees may be personally liable for a fine of $10,200 for lending to members and relatives.

What is the ATO view?

The ATO considers that these arrangements contravene the superannuation laws for the following reasons:

- the arrangement allows individuals and their associates access to their superannuation savings, instead of using their own assets held outside of the fund; and
- by accessing superannuation savings before retirement, the fund is in breach of the 'sole purpose test'. This is because the fund is being used for a purpose other than providing retirement benefits to members.

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