Dealing with an excess super contributions determination

The ATO has begun issuing determinations to individuals who exceeded their concessional super contributions cap for the 2017-18 financial year. These determinations will also trigger amended income tax assessments and additional tax liabilities. Individuals can elect for the ATO to withdraw their excess contributions from their super fund to pay any additional personal tax liability. The key is to be aware of the time limits and avoid the pitfalls when making elections to release excess contributions.

Concessional contributions include all employer contributions, such as the 9.5% superannuation guarantee and salary sacrifice contributions, and personal contributions for which a deduction has been claimed.

A higher volume of excess concessional contributions (ECC) determinations will be issued for 2017-18, following the reduction in the concessional cap to $25,000. Taxpayers who receive an ECC determination should also expect an amended income tax assessment. This is because excess concessional contributions are automatically included in the individual’s assessable income (and a 15% tax offset will apply for the contributions tax already paid by the super fund). An ECC Charge (approx 5%) is also payable to take account of the deferred payment of tax.

Individuals have 60 days from receiving an ECC determination to elect to release up to 85% of their excess concessional contributions from their super fund to pay their amended tax bill. Otherwise, individuals will need to fund the payment themselves.

If a person makes a valid election, the ATO will issue a release authority directly to the individual’s nominated super fund. The fund will then pay the release amount to the ATO and the taxpayer will receive a credit equal to the amount released. This credit will be used by the ATO to first pay any tax or government debts (eg child support) before refunding any balance to the individual.

Taxpayers below the top marginal rate should have no tax debt on the released excess concessional contributions included in their assessable income. Those on the top marginal tax rate are expected to have a slightly higher tax liability for their excess concessional contributions, due to the additional ECC Charge.

Before making an election to release excess concessional contributions, consider the following:

* As an election is irrevocable, first ensure that the determination is correct and that the contributions have been correctly reported by the super fund to the ATO for that income year.
* Individuals with multiple super accounts should request the ATO to release any excess contributions from the account with the largest taxable component. This may help to improve the tax outcome on any benefits paid in the future.
* Consider whether to only elect to release enough of the excess contributions to cover the additional personal tax liability (rather than the entire 85% of excess contributions). Otherwise, a taxpayer will simply end up with less money in the concessionally-taxed superannuation environment (defeating the whole purpose of the contributions in the first place).
* Pay the tax and ECC Charge by the assessment due date, otherwise the higher general interest charge (approx 9%) will be applied until the debt is paid.
* Finally, review any salary sacrifice arrangements to ensure the individual does not exceed their contributions limits in future years.

Need more guidance?

Talk to us today if you have received an ECC determination from the ATO, or suspect that you may exceed the $25,000 concessional cap for an income year. We can help to confirm that any extra tax payable has been correctly assessed by the ATO, before making an irrevocable election to withdraw the excess contributions, where appropriate. We can also help to organise your super arrangements for a more efficient tax outcome. Time limits apply so act now.

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