Dealing with excess before-tax super contributions

Making extra before-tax contributions into super (called concessional contributions) can help boost a person's retirement savings.
But fund members need to be aware of the implications for when they exceed the concessional contributions cap.

Since 2013-14, when the excess concessional contributions refunding scheme came into effect, individuals exceeding their concessional contribution cap will accrue a tax liability.

The excess concessional contribution (CC) amount will be added to the individual's assessable income for the relevant year and taxed at their marginal tax rates plus an excess CCs charge (as explained below). The individual will, however, be entitled to a 15% non-refundable tax offset to compensate for the tax already paid by their fund(s) on the same excess amount.

The ATO will determine whether there are any excess CCs once the individual's fund has finalised its reporting requirements and the individual has lodged their personal tax return for the relevant income year.

Upon exceeding their CCs cap, the individual will receive an excess CC determination from the ATO advising them that their excess CCs amount has been included as assessable income in their tax return. Together with the determination, the ATO will issue the individual with an income tax return notice of assessment or notice of an amended assessment.

Case study

- Greg is 54 years old and subject to a marginal tax rate of 34.5% (including the Medicare levy).
- Greg's only superannuation interest is in his self-managed superannuation fund (SMSF). His total superannuation balance (TSB) on 30 June 2019 was $1.8 million.
- Greg had super guarantee (SG) and personal deductible contributions totalling $30,000 in CCs made into his SMSF during 2019-20.
- Greg's CCs cap for 2019-20 was $25,000, giving him an excess CCs of $5,000.
- The total CCs amount of $30,000 is reported to the ATO as part of the super fund's 2019-20 annual return.
- Greg lodges his personal income tax return for 2019-20 on 31 August 2020 and receives a notice of assessment with payment due 21 September 2020.
- However, the ATO determines that Greg has exceeded his CCs cap for 2019-20 by $5,000. On 1 November 2020, it issues Greg with an excess CCs determination and amended notice of assessment with payment due on 21 December 2020.

First, the CCs (totalling $30,000) would be included in the SMSF's assessable income for 2019-20 and taxed at 15% (that is $4,500).

Secondly, the ATO would add the excess CCs of $5,000 to Greg's assessable income for 2019-20 and recalculate his income tax for that year allowing for a 15% tax offset to reflect the tax already paid by the SMSF. This gives Greg the following tax liability: $5,000 taxed at a marginal tax rate of 34.5% ($5,000 x 34.5% = $1,725). Less 15% tax offset ($5,000 x 15% = $750). Total $975.

continued overleaf

Dealing with excess before-tax super contributions cont

EXCESS CONCESSIONAL CONTRIBUTION CHARGE

When an individual has their tax payable increased due to having their excess CCs included in their assessable income, they will also have to pay an excess CC charge (essentially an interest charge) that applies to the extra tax liability. The excess CC charge:

- applies from 1 July in the year in which the excess contribution was made until the day before the individual is due to pay their income tax liability under their first assessment notice for that income year
- is calculated by the ATO and compounded daily at a rate equal to the 90-day bank accepted bill (as published by the Reserve Bank of Australia) plus a 3% uplift factor.
- is contained (along with the period and rate of the excess CCs charge) in the excess CC determination received by the individual from the ATO, and
- is not a deductible expense and the ATO cannot exercise its discretion to remit it.

Following on from Greg's scenario earlier, the excess CC charge will apply to his extra tax liability amount of $975 (not the full $5,000 excess CCs) from 1 July 2019 to 20 September 2020 (being the day before tax is due to be paid under his first notice of assessment).

SHORTFALL INTEREST CHARGE

An individual's tax liability may also increase by the shortfall interest charge (SIC) that applies to the shortfall between the amount of tax the individual paid originally, and the amount of extra tax identified in their amended tax return (which includes the excess CCs and applicable 15% tax offset).

The SIC rates are the same as the excess CC charge, and is applied to the shortfall amount from the time the original tax liability was payable until the day before the extra tax liability related to the amended assessment for the excess CCs is due. The SIC is charged on the total of the extra tax payable due to excess CCs, plus the amount of the excess CC charge.

In Greg's case, Greg may need to pay the SIC on the extra income tax liability of $975 plus the excess CC charge amount. Many taxpayers seem to be unaware of the SIC until they receive an amended assessment from the ATO. ■