CENTRIC Wealth

Newsletter articles – October 2011

Consultation paper – refund of excess concessional contributions

On 17 August 2011, the Assistant Treasurer and Minister for Financial Services and Superannuation, the Hon. Bill Shorten MP, released a consultation paper on the proposed design for refunding excess concessional contributions made to superannuation.

This measure was originally announced as part of the 2011/12 Federal Budget. Under this measure, the Government will give eligible individuals the option to have excess concessional contributions of $10,000 or less refunded and assessed at their marginal tax rate(s) rather than paying excess contributions tax (ECT) on the amount.

The consultation paper outlines the following proposed changes:

- The refund option will only be available for the first year in which the concessional contributions cap is breached, commencing from the 2011/12 year. Further, only the first eligible breach is refundable
- An individual must lodge their income tax return within one year of the end of the financial year in which the excess concessional contributions were made to be eligible for the offer
- If an individual makes excess concessional contributions of greater than $10,000, they are not eligible for the refund option, nor will they be eligible for the refund option in later years
- A superannuation provider will be notified with a compulsory release authority from the Australian Taxation Office (ATO) to release 85% of the excess concessional contribution from the individual's superannuation account, taking into account the 15% tax payable by the provider. As a result, individuals will pay tax on the amount received at their marginal tax rate(s) and a refundable tax offset of 15% will be applied for the tax already paid on these contributions
- Individuals will be given 28 days to formally accept the offer of a refund
- If the individual does not choose to take the refund option then the ATO will assess ECT in the normal way
- Where an individual has insufficient funds or no longer has any superannuation to make the refund then nothing shall be released. However individuals can still have their excess concessional contributions treated as assessable income and taxed at their marginal tax rate(s) less the refundable tax offset for the year the excess contribution was made; and
- The measure will not apply to members with defined benefit interests.

It is important to note that an accepted refund offer will increase an individual's assessable income and hence taxable income and adjusted taxable income which may have flow on effects to other Government benefits or payments such as superannuation co-contributions, low income tax offset and other means tested benefits.

Submissions on the consultation paper are open until 7 September 2011.

ATO TR 2011/D3 – when a superannuation income stream commences and ceases

On 13 July 2011, the ATO released a draft taxation ruling, TR 2011/D3, which provides the Commissioner's preliminary view about when a superannuation income stream commences and ceases from a tax perspective.

Some of the ATO's views in the draft ruling include:

- That a payment made upon partial commutation from an interest that supports a superannuation income stream is a superannuation lump sum
- That an income stream commences on the first day of the period to which the first payment of the superannuation income stream relates
- That an income stream ceases in the following circumstances:
    1) Failure to comply with pension rules and the payment standards – ie. if the minimum annual pension payment is not met in an income year the income stream is considered to have ceased
    2) Where the capital supporting the income stream is exhausted
    3) Upon receipt of a valid request from a member to fully commute the income stream
    4) As soon as the member in receipt of the income stream dies, unless a dependent beneficiary of the deceased is automatically entitled under the superannuation fund's deed, or the rules of the superannuation income stream, to receive an income stream on the death of the member.

In other words, dependent beneficiaries (ie. a spouse or a dependant child) may be forced to pay tax on fund assets if they are not automatically entitled to receive an income stream on the death of the member.

For a superannuation income stream to be considered to have automatically transferred to a dependant beneficiary on the death of a member, the rules of the superannuation income stream must specify both the person to whom the benefit will become payable and that it will be paid in the form of a

superannuation income stream. Setting up a reversionary pension and therefore nominating a reversionary beneficiary will assist here.

Further, a superannuation income stream is also considered to have transferred on the member's death if a valid binding death benefit nomination is in place at the time of the member's death that entitles a dependant beneficiary to receive a superannuation income stream. The nomination must be binding on the trustee, in respect of both the beneficiary who will receive the benefit, and the form of the benefit. If the trustee may, or is required to, exercise discretion in respect of either of these conditions, the superannuation income stream is not considered to have been automatically transferred.

If there is no entitlement for a superannuation income stream to automatically transfer to a beneficiary on the death of a member, for example, if the trustee has the discretion to pay either a superannuation lump sum or a superannuation income stream to a dependant beneficiary, the superannuation income stream ceases on the member's death.

It should be noted that as a superannuation income stream cannot be transferred to a non-dependant beneficiary, the superannuation income stream ceases and any remaining entitlement must be paid as a superannuation lump sum.

SMSFs will be affected the most as the majority have higher balances and assets such as shares and property which need to be disposed of to pay death benefits.

Comments on the ruling are sought by 26 August 2011. Should the ruling be finalised, it is proposed to be effective from 1 July 2007.

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