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Contributions tax to double for some

Introduction

It has been reported that the tax on concessional contributions is set to double for those earning more than $300,000.

Consider Bob, who earns a salary of $350,000.

In the 2013 financial year Bob's employer would typically be obligated to make superannuation contributions of about $16,400. (The $16,400 is calculated as 9% multiplied by the 'maximum contribution base', which is the maximum amount on which the 9% must be paid.)

Naturally, when the $16,400 amount is contributed to a complying superannuation fund it forms part of the fund's assessable income. Assessable income (less deductions) of a complying superannuation fund is typically taxed at 15%. Therefore, *currently*, the $16,400 contribution typically gives rise to a $2,460 (ie, $16,400 x 15%) tax liability.

However, under the reported changes, this would give rise to a liability of $4,920 (ie, $16,400 x 30%).

Has this been on the cards for some time?

Possibly.

In 2008 and 2009 there were comments that high earners were disproportionately benefitted by superannuation contributions.

Naturally, one way to address this disproportionality is a surcharge on higher earners. Some wondered whether this would occur.

However, in the 2010–11 Federal budget, the government instead announced it would provide a superannuation contribution tax rebate for low earners. This rebate is to apply to concessional contributions (including employer contributions) made by or for individuals with adjusted taxable incomes of up to $37,000 (not indexed).

Can borrowing lower the liability?

Probably not.

Assume that Bob has an SMSF where the trustee borrows.

Typically the interest on the borrowing can be deducted against all assessable income of the SMSF (subject of course to the usual considerations about the deductibility of interest).

Therefore, if the SMSF trustee has interest deductions that exceed the SMSF's investment income by $16,400, then these excess deductions could be used to offset the contribution income. Currently, a negatively geared position of $16,400 saves Bob's SMSF $2,460 in tax (ie, $16,400 x 15%).

Accordingly, it has been noted that being negatively geared in an SMSF is not very attractive because a $1 deduction is typically only worth a maximum of 15¢.

On first blush it appears that this reported change might increase the attractiveness of negative gearing. That is, this reported change seems to suggest that a negatively geared position of $16,400 might save of $4,920 (ie, $16,400 x 30%).

However, the reported changes seem unlikely to allow for this.

Rather, much like the old contributions surcharge, it is likely to be a separate tax and 'immune' from income tax deductions.

Is this a reintroduction of surcharge?

Maybe.

When the surcharge was original 'abolished' in 2005, the explanatory memorandum announced that:

> the surcharge legislation is not being repealed. The legislation is still required to remain in force to allow the Commissioner of Taxation to continue to issue assessments for the 2004-05 or previous financial years and to collect outstanding surcharge liabilities, including debts that remain within surcharge debt accounts.

Accordingly, the mechanisms for surcharges are already law.

It would literally be a case of just amending a few lines to reintroduce a surcharge.

The specifics

It has been reported that how much a person earns will be calculated as:

- taxable income

- *less* child support payments
- *plus* superannuation guarantee charge contributions
- *plus* salary sacrifice contributions
- *plus* target fringe benefits
- *plus* foreign income
- *plus* adjusted fringed benefits
- *plus* tax free pensions and benefits
- *plus* total net investment loss.

Naturally, this casts a very wide net and will bring a lot of income into the calculation. Because total net investment loss is added back in the calculation, being personally negatively geared will also not impact the liability.

Also, it is noteworthy that tax free pensions and benefits are being added back. Currently tax free pensions from superannuation funds are not assessable income and are not exempt income. Accordingly, they are typically not even shown in the recipient's income tax return.

However, presumably that information will need to be captured by the Australian Taxation Office. Accordingly, the reporting requirements for all individual taxpayers — not just those earnings more than $300,000 — may well need to be amended to cover not assessable income as well as not exempt income.

Practical implications

Contributions sooner rather than later

There is no suggestion that the changes will apply retrospectively. Accordingly, any high earners holding off making concessional contributions until next year may well reconsider this.

Tax free component

The reported changes reinforce that the superannuation taxation regime is not immutable. Rather, it is subject to change. Therefore, even those aged 60 or more (for whom all superannuation benefits are currently tax free) will no doubt start to have a preference for the tax free component rather than the taxable component as a hedge against legislative risk.

Watch this space

The above is based to a degree on speculation and reported changes. We await the Federal budget next week for official confirmation and further details.

The implications of the Federal budget will be discussed in great detail in the 'update' component at the end of our upcoming SMSF Strategy Seminars (see below).

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