IOOF Analysis: Third tranche of draft super reforms released

By Cut+ Paste (http://www.professionalplanner.com.au/author/cut-and-paste/) | October 19, 2016

The Government has released for comment the third tranche of draft legislation for the superannuation reforms to commence 1 July 2017. Here, IOOF Senior Technical Services Manager, Pam Roberts, comments on the reforms and the impacts for advisers.

The third tranche of draft super reforms includes:

· Changes to the non-concessional contributions cap from 1 July 2017

· Integration of the release authority regime for excess concessional and non-concessional contributions and Division 293 tax

The turnaround for comment on the draft third tranche is only a week, indicating that the Government is keen to get the finalised bill (Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016) tabled in Parliament as soon as possible. If the bill is not tabled in Parliament in November, it will be delayed until 2017 as Parliament's last day of sitting for 2016 is on 1 December.

Non-concessional contributions cap from 1 July 2017

From 1 July 2017 the non-concessional contributions cap will reduce to $100,000 per year, calculated as four times the concessional contributions cap. Non-concessional contributions will also be subject to an eligibility threshold whereby people must have less than $1.6 million in super assets to make any non-concessional contributions. This 'total superannuation balance' will be measured on 30 June of the previous financial year (starting 30 June 2017) and comprises the balances in both accumulation and pension phase (less any personal injury contribution amounts), as well as the transfer balance for non account based income streams.

Members who are under age 65 at the start of the financial year will be able to access the bring-forward provisions and contribute up to $300,000 over 3 years. However the ability to bring forward future years' cap amounts for a particular year (the first year) will depend on whether there is sufficient gap between the member's total super balance and the $1.6 million general transfer value cap.

If the gap is equal to or less than the non-concessional contributions cap (ie $100,000 or less), the bring-forward provisions will not apply. If the gap is between 1 and 2 times the cap (ie between $100,000 and $200,000), the member can only bring forward the next year's cap and therefore contribute up to $200,000 over 2 years. If the gap is more than 2 times the cap (ie more than $200,000) the member can bring forward and contribute $300,000 over 3 years.

Even if a member has triggered the bring-forward provisions in a previous year, the $1.6 million eligibility threshold will still be applied each year separate to the operation of the bring forward provision.

Case study

Helen is aged 61 and has a total super balance on 30 June 2017 of $1.38 million. In 2017/18 she makes a non-concessional contribution of $140,000. As she has exceeded the $100,000 non-concessional contributions cap, she triggers the bring-forward provisions. As the gap between her total super balance of $1.38 million and the $1.6 million cap is more than $200,000, she can contribute $300,000 over 3 years.

However on 30 June 2018, due to contributions and investment performance, her total super balance has grown to $1.62 million. As her balance is over the $1.6 million threshold, she is unable to make non-concessional contributions during 2018/19, even though she is still under her cap of $300,000 over 3 years.

During 2018/19 she draws down some of her superannuation and her total super balance drops to $1.58 million on 30 June 2019. As she can now make non-concessional contributions again, she can make and additional $160,000 of non-concessional contributions under the cap of $300,000 over 3 years triggered previously.

These changes impact non-concessional contributions only. Personal contributions which do not count towards the non-concessional contribution cap, such as personal injury contributions or small business capital gains tax exemption contributions, remain unaffected by both the lower cap and the $1.6m threshold.

Transitional rules: pre 1 July 2017 non-concessional contributions cap

The draft legislation also contains the transitional rules that will apply to people who have triggered the bring-forward provisions in the current (2016/17) or previous (2015/16) financial year. Members under age 65 who trigger the bring-forward provisions under the current rules can make up to $540,000 of non-concessional contributions by 30 June 2017 under their existing bring-forward periods.

If the member has not exhausted the $540,000 cap by 30 June 2017, from 1 July 2017 the remaining amount that can be contributed will be adjusted by the new $100,000 annual cap and will also be subject to the $1.6 million superannuation balance limit. If the $540,000 cap has not been exhausted by 30 June 2017, the following applies from 1 July 2017:

· A member who triggers the bring-forward cap in 2015/16 will have their cap reduced from $540,000 to $460,000 ($180,000 for 2015/16 + $180,000 for 2016/17+ $100,000 for 2017/18), less any contributions already made under the active bring-forward period.

· A member who triggered the bring-forward cap in 2016/17 will have their cap reduced on 1 July 2017 to $380,000 ($180,000 + $100,000 + $100,000), less any contributions already made under the active bring-forward period.

It should be noted there is no penalty imposed if, as a result of these changes, the cap from 1 July 2017 is nil. For example, if a person makes a $500,000 non-concessional contribution this financial year and therefore triggers the bring-forward period, their NCC cap from 1 July 2017 will reduce to nil ($380,000 – $500,000) until the end of the bring forward period. No excess will arise for the 2016/17 financial year.

Integrating Release Authorities

In a welcome move the draft bill introduces changes designed to integrate release authorities for excess concessional and non-concessional contributions and Division 293 tax. Currently there is a myriad of different release authorities with different time frames that is confusing to members, financial advisers and super funds alike.

Under the new arrangements, if the ATO makes a determination that the individual member has breached the non-concessional contributions cap or the concessional contributions cap or makes an assessment that Division 293 tax applies, the member will be given 60 days from the issue of the determination/notice of assessment to request a release from their nominated super fund.

The request to release will be provided to the ATO who then issues the release authority to the super fund directly. The super fund has 7 days to make the payment to the ATO who will then on-credit any funds remaining after additional tax liabilities have been met.

If the individual receives an excess non-concessional contributions determination and/or Division 293 tax assessment notice and does not respond (or pay the Division 293 tax) within 120 days, the ATO will issue a release authority directly to the super fund. This avoids the unfortunate situation that currently applies where a member does not respond to an excess non-concessional contributions determination and is subject to the penalty excess non-concessional contributions tax of 47 per cent of the excess. Under the new rules, the penalty excess non-concessional contributions tax will only apply if the member actively chooses to leave the excess contributions in the fund and advises the ATO of this decision.

Update on the second tranche of draft legislation

So far, the controversial and most difficult to implement provisions in the Superannuation Reform Package are those in the second tranche of draft legislation released 28 September. These are in relation to the $1.6 million transfer value cap and the changes to the taxation of asserts backing transition to retirement funds. Some super funds have indicated to the Government that they will not be able to make the required changes in the time frame allowed. Consequently the Government may relook at this component of the reform package.

This third tranche of draft legislation is not controversial as it is consistent with the Government's recent policy releases. It also contains practical solutions to the current confusing range of release authorities.

Commentary from IOOF Senior Technical Services Manager, Pam Roberts

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