



February 2008 Edition

TALKING POINT! – DEFINED BENEFIT MEMBERS

WELCOME

In this special edition of **TALKING POINT!** we specifically cover the changes to the contribution limits announced in the May 2006 Federal Budget and clarifications released since then. These changes came into effect on 1 July 2007. **This edition is specifically for members of defined benefit category. If you are a member of an accumulation category, a separate newsletter has been prepared.**

It is likely that you will, or would have already, received information on these new limits from the trustee of your superannuation plan.

LIMITS ON NON-CONCESSIONAL CONTRIBUTIONS

What are the new limits?

From 1 July 2007, a limit or cap of \$150,000 per annum will be imposed for “post tax” undeducted super contributions (now referred to as “non-concessional” contributions) made by an individual.

To accommodate larger one-off payments, individuals under age 65 at any time in the first year can bring forward two years of future contribution entitlements, giving them a cap of \$450,000 over three financial years. Non-concessional contributions can only be made after age 65 if the “work test” is satisfied, and the \$150,000 p.a. cap will apply without any bring-forward provisions.

What are the penalties for exceeding the new limits?

Contributions in excess of the non-concessional cap will be subject to penalty tax at the top marginal tax rate plus the medicare levy i.e. 46.5%. Where this occurs, the ATO will issue an assessment to the individual advising them of the additional tax liability. The individual must give this to the Fund for payment from their superannuation account together with the relevant release authority (see further details below).

LIMITS ON CONCESSIONAL CONTRIBUTIONS

What are the new limits?

From 1 July 2007, a limit (“cap”) of \$50,000 per annum will apply to tax deductible contributions (now referred to as “concessional” contributions) made on behalf of an individual. A transitional concessional contributions cap of \$100,000 per annum will apply in the financial years 2007/08 to 2011/12 for individuals aged 50 or over at any time in that particular “transitional” financial year.

Concessional contributions include:

- All company contributions (including any additional company contributions made to meet insurance and administration expenses etc);
- Any contributions paid by “salary sacrifice”; and



- Any deductible personal contributions (mainly applies to self-employed people).

Particular care needs to be taken if you are either making significant salary sacrifice contributions or are considering paying bonuses or commissions into superannuation.

How does it apply to Defined Benefit Plans?

The Income Tax Assessment Amendment Regulations 2007 sets out the method of calculating Notional Taxed Contributions (“NTC”). NTC is the amount of concessional contribution (including any compulsory member contribution paid by salary sacrifice) deemed paid by an employer on behalf of an employee as a result of that employee’s membership of a defined benefit fund. NTC are Concessional Contributions and count towards the concessional limit of \$50,000 (or \$100,000).

How is the NTC Calculated?

At its simplest NTC is calculated using the formula

$$1.2 \times (\text{New Entrant Rate} \times \text{Superannuation Salary} - M)$$

where M is the amount, if any, of the member compulsory contribution if paid on an after tax (non-salary sacrifice) basis. The factor of 1.2 makes allowance for tax and expenses. Complications arise where contributions are paid for less than a full year, benefits are improved, salaries are increased by very significant amounts etc. In these cases further advice needs to be obtained.

Provided (broadly) benefits are not improved then no member who was a member of a defined benefit fund at 30 June 2007 will have a NTC greater than \$50,000 (or \$100,000). In this case, no matter what the NTC calculation comes up with, the NTC will be deemed to be no more than the concessional limit. Of course, if additional contributions are made by the employer (salary sacrificed or otherwise) these could well take the contributions above the cap and result in a tax liability to the member, albeit payable from the member’s benefit in the Fund.

The NTC (limited to the cap) together with any other concessional contributions will be reported by the Trustee to the ATO who will calculate any additional tax liability.

Example (for illustrative purposes only)

Jim (aged 52) is a member of the company’s defined benefit fund. Jim’s salary is \$80,000 and he pays no after tax contribution to the superannuation plan. The New Entrant Rate, as calculated by the plan’s actuary, is 12%. His NTC is calculated as above as:

$$1.2 \times (12\% \times \$80,000 - 0) = \$11,520$$

In the example above, Jim will be able to make further Concessional Contributions of up to \$88,480 i.e. \$100,000 - \$11,520 = \$88,480. The “salary” used for calculating the NTC is your “superannuation salary” i.e. the salary on which your superannuation benefits are based. This may differ from your taxable or package salary.



What are the penalties for exceeding the new limits?

“Excess” Concessional Contributions will be taxed at a penalty rate of 31.5%, in addition to the normal contributions tax rate of 15%. This is then equivalent to the top marginal tax rate of 46.5%. Where the limit has been exceeded, the ATO will issue an assessment advising the additional tax payable. The individual must pay this personally unless they provide a “release authority” to the trustee within 21 days of receiving the assessment. In this case, the tax will be deducted from their superannuation account. Employer contributions which exceed the concessional contribution cap (i.e. \$50,000 or \$100,000) will count towards the non-concessional contribution cap (i.e. \$150,000).

Who pays this additional tax?

From 1 July 2007, the responsibility for breaching the Concessional Contribution cap has shifted from the employer to the employee. Irrespective of whether an individual exceeds the Concessional Contribution cap or not, the employer will receive a full tax deduction for **all** contributions made on behalf of their employees under age 75. As the liability for additional tax on exceeding both the non-concessional and concessional caps now falls to members they need to monitor their situation in regards to the cap.

FOR FURTHER INFORMATION

There are still some areas of uncertainty in regard to the calculation of the NTC and it is possible that some things could still change. The Institute of Actuaries of Australia is working with Treasury on these matters and further “clarification” could well follow. As with many superannuation matters we believe members need to fully understand the implications of the actions they are considering. We, therefore, recommend that you take financial advice before taking action on this issue.

If you are interested in finding out more about the changes to superannuation, financial planning services can be provided by Northbridge Financial Solutions. Northbridge Financial Solutions (NFS), authorised under the licence of Community & Corporate Financial Services Pty Ltd (AFS Licence No 225085, ABN 44079121136), is a specialist provider of financial advisory services to corporate superannuation funds and their members. NFS is not aligned with any financial institution.

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