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Tax Insights

$500,000 lifetime non-concessional contribution cap **DUMPED, but...**

Snapshot

In the May 2016 Federal Budget a number of significant and far-reaching superannuation changes were announced.

The majority of the Budget announcements are due to be effective from 1 July 2017. However the major announcement in relation to a $500,000 lifetime cap for non-concessional superannuation contributions (which was to apply from 3 May 2016 and count non-concessional contributions since 1 July 2007) has now been dumped and is to be replaced with an annual limit of $100,000 but only where super balances do not exceed $1,600,000.

An individual under 65 can continue to 'bring forward' 3 years of non-concessional contributions. However, an individual with a superannuation balance of more than $1.6 million will no longer be eligible to make non-concessional contributions.

According to the Treasurer's announcement, it is expected all these change will commence from 1 July 2017.

To compensate for the additional cost to the budget, the following changes were also made to the May 2016 Budget proposals:

- The removal of the 'work test' requirement for a member between 65 and 75 will not proceed
- The proposed catch-up concessional contribution for a member with a superannuation balance less than $500,000 will be deferred by 12 months to 1 July 2018

What does this mean for the year ending 30 June 2017?

For the current financial year, an individual's annual non-concessional contribution cap remains at $180,000. For individuals aged 64 or under on 1 July 2016, they are able to bring forward 3 years of non-concessional contributions in the 2017 year, i.e up to $540,000 (depending on whether the 3 year bring forward has been triggered in the preceding 2 years).

Timing of non-concessional contributions will be significant for someone who:

- is turning 65 in the 2017 financial year or shortly thereafter; or
- already has more than $1.6 million in their superannuation balance, but still wishes and is eligible to contribute and build up their super balance; or
- wishes to maximize their non-concessional contributions in the 2017 year.

Where the maximum available contribution isn't made in the 2017 year, transitional provisions will be introduced that would have the effect of clawing back the maximum contribution for the 2018 and 2019 years to take into account the reduced annual contribution cap of $100,000 applying to those years.

Unresolved matters

Proposed exceptions to lifetime cap

The Treasurer had previously issued a clarification in June 2016 on the scope of the $500,000 lifetime limit on non-concessional contributions. In particular, there were 2 exceptions proposed relating to pre-existing contracts and existing borrowings.

It is unclear how the abandonment of the $500,000 lifetime non-concessional contribution cap will impact on those proposed exceptions.

For pre-existing contracts or commitments as at 2 May 2016, it is unclear, where the completion of pre-existing contract is to occur post 1 July 2017, if an exception will apply to the $100,000 non-concessional contribution cap and/or the ability to make further non-concessional contributions if the individual's superannuation benefit already exceeds $1.6 million.

For SMSFs with existing borrowings, including Limited Recourse Borrowing Arrangements, it is unclear if the members are able to contribute further non-concessional contributions prior to 31 January 2017 (or 1 July 2017 perhaps) to comply with the Taxation Office's Practice Compliance Guideline 2016/5 for loans from related parties. For example, for a member who has already maximised their non-concessional contributions (contributed $540,000 in 2015 or 2016 year), whether they are able to make further non-concessional contributions prior to 31 January 2017 to enable the SMSF to pay down the loans?

In addition, it is unclear if exceptions previously announced or mooted under the $500,000 lifetime non-concessional contribution cap will be provided for under the new non-concessional contribution cap proposals, such as:

- Divorce
- Foreign superannuation fund transfers
- Fraud
- Personal injury settlements
- Small business CGT concession contributions

Contributions in accordance with previous lifetime limit announcement

Another unresolved matter is what is to happen if an individual has made contributions in accordance with the previously proposed $500,000 lifetime non-concessional contribution cap post the May 2016 Budget but will (with the dumping of that cap) have excess contributions in the 2016 or 2017 years.

Will the individual be given the opportunity to retain the contributions in the fund without penalty or be required to withdraw the excess contribution under normal excess contribution arrangements?

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The removal of the $500,000 lifetime non-concessional contribution cap backdated to 1 July 2007 is a positive change and provides some greater certainty for individuals in planning their contributions.

At the time of writing, the Labor Party has not provided any formal statement as to its agreement with the policy change and whether or not it will support these changes through the legislative process.

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