

***TD 2013/22 - Income tax: 'concessional contributions'
- allocation of a superannuation contribution with
effect from a day in the financial year after the
financial year in which the contribution was made***



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Taxation Determination

Income tax: ‘concessional contributions’ – allocation of a superannuation contribution with effect from a day in the financial year after the financial year in which the contribution was made

❶ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner’s opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Ruling

1. The amount of a contribution made to a complying superannuation fund (the fund) in one financial year (year 1) for a member of the fund but allocated under Division 7.2 of the *Superannuation Industry (Supervision) Regulations 1994* (SISR) to an accumulation interest of the member in the fund with effect from a date in the subsequent financial year (year 2) is included in the member’s concessional contributions for year 2 as an amount covered under subsection 291-25(3) of the *Income Tax Assessment Act 1997* (ITAA 1997) where the amount is included in the assessable income of the fund under Subdivision 295-C of the ITAA 1997 and is not an amount mentioned in paragraph 292-25.01(3)(a), (b) or (c) of the *Income Tax Assessment Regulations 1997* (ITAR 1997). In such circumstances, the amount is not also included in the member’s concessional contributions for year 1 as a contribution covered under subsection 291-25(2) of the ITAA 1997.

Definitions

2. In this Determination an **accumulation interest** is an interest in a superannuation fund that is not a ‘defined benefit interest’ as defined in section 291-175 of the ITAA 1997.

Example

3. Harry's concessional contributions cap for the 2013-14 financial year is \$25,000. Harry is a member of a complying superannuation fund which is not a constitutionally protected fund. Harry makes a personal contribution of \$25,000 which is received by his fund on 30 June 2014. The Trustees apply this amount to an unallocated contributions account established in accordance with the governing rules of the fund. On 2 July 2014, the trustees allocate the amount of \$25,000 to Harry's member account in the fund with effect from 2 July 2014.

4. Harry's contribution is covered by a valid and acknowledged notice given to his fund under section 290-170 of the ITAA 1997 of his intention to deduct the amount of the contribution.

5. The \$25,000 contribution is included in the amount of Harry's concessional contributions for the 2014-15 financial year as an amount covered under subsection 291-25(3) of the ITAA 1997.

Date of effect

6. This Determination applies to contributions made on or after 1 July 2013 and amounts allocated with effect from a date on or after 1 July 2013, including an allocation with effect from a date on or after 1 July 2013 of a contribution made before 1 July 2013. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

13 November 2013

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Explanation

7. Section 291-25 of the ITAA 1997 is used to work out the amount of the concessional contributions of an individual for a financial year in relation to an accumulation interest the individual has in a superannuation fund. Subdivision 291-C of the ITAA 1997 is used to work out the amount of the concessional contributions of an individual for a financial year in relation to a defined benefit interest in a superannuation fund.

8. In relation to an accumulation interest in a superannuation fund, subsection 291-25(1) of the ITAA 1997 provides that the amount of an individual's concessional contributions for a financial year is the sum of:

- (a) each contribution covered under subsection 291-25(2); and
- (b) each amount covered under subsection 291-25(3).

9. Subsection 291-25(2) of the ITAA 1997 effectively provides that a contribution is covered under that subsection if it is made in the financial year to a complying superannuation plan 'in respect of you', is included in the assessable income of the superannuation provider in relation to the plan, and is not any of the amounts mentioned in paragraph (c) of that subsection.

10. Subsection 291-25(3) of the ITAA 1997 provides that an amount in a complying superannuation plan is covered under that subsection if it is allocated by the superannuation provider in relation to the plan 'for you' for the financial year in accordance with conditions specified in the regulations. Regulation 292-25.01 of the ITAR 1997, which was made for the purposes of former subsection 292-25(3) of the ITAA 1997, as in force immediately before 29 June 2013, has effect, after then, as if that regulation had been made under subsection 291-25(3) of the ITAA 1997.¹ Therefore, regulation 292-25.01 of the ITAR 1997 applies for the purposes of subsection 291-25(3) of the ITAA 1997.

11. Subregulation 292-25.01(1) of the ITAR 1997 effectively provides that regulation 292-25.01 sets out the conditions for the purpose of allocating an amount in a complying superannuation plan for subsection 291-25(3) of the ITAA 1997.

12. Subregulations 292-25.01(2) and (3) of the ITAR 1997 effectively together provide that an amount is allocated in a way covered under subsection 291-25(3) of the ITAA 1997 if the amount is allocated under Division 7.2 of the SISR, is included in the assessable income of the complying superannuation plan under Subdivision 295-C of the ITAA 1997, and is not any of the amounts mentioned in subregulation 292-25.01(3) of the ITAR 1997 (which are the same types of amounts mentioned in paragraph 291-25(2)(c) of the ITAA 1997).

¹ See item 115 in Part 7 of Schedule 1 to the *Tax Laws Amendment (Fairer Taxation of Excess Concessional Contributions) Act 2013*

13. Division 7.2 of the SISR provides rules for the allocation of contributions to members. For the period between 1 July 2007 and 30 June 2013, Division 7.2 of the SISR comprised regulations 7.06, 7.07 and 7.08, which prescribed rules applying only to an accumulation interest, as defined in the SISR,² in a regulated superannuation fund.

14. In that period, subregulation 7.08(2) of the SISR was an operating standard which required a trustee who received a contribution in a month in relation to an accumulation interest to allocate the contribution to a member of the fund:

- (a) within 28 days after the end of the month; or
- (b) if it is not reasonably practicable to allocate the contribution to the member of the fund within 28 days after the end of the month – within such longer period as is reasonable in the circumstances.

15. From 1 July 2013, Division 7.2 of the SISR contains operating standards and data and payment standards concerning the allocation of contributions to members of regulated superannuation funds. In broad terms, there are now two different time periods within which a trustee of a regulated superannuation fund who receives a contribution in relation to an accumulation interest will be required to allocate the contribution to a member of the fund.

16. In broad terms, under Subdivision 7.2.1 of the SISR, a trustee of a regulated superannuation fund (other than a self managed superannuation fund) who receives such a contribution, that is made, in accordance with the data and payment standards, by an employer for a member of the fund, will be required to allocate the contribution to the member within three business days after receiving both the contribution and certain information relevant to the contribution.³

17. In broad terms, under Subdivision 7.2.2 of the SISR, a trustee of a regulated superannuation fund who receives a contribution in relation to an accumulation interest in circumstances where the contribution is not required to be allocated in accordance with Subdivision 7.2.1 of the SISR, will be required to allocate the contribution to a member of the fund within the time periods stated in paragraph 14.⁴

18. Although Division 7.2 of the SISR requires allocation of a contribution to a member to occur by a certain time, there is nothing in the Division that specifies the date from which that allocation has effect. In some situations, trustees allocate the amount of the contribution to a member's accumulation interest with effect from a date later than when the contribution is received by the trustee.

19. Subregulation 292-25.01(4) of the ITAR 1997 effectively provides that amounts allocated from a reserve are also treated as being allocated in a way covered under subsection 291-25(3) of the ITAA 1997 unless an exclusion in subregulation 292-25.01(4) of the ITAR 1997 applies. However, subregulation 292-25.01(4) of the ITAR 1997 does not apply to an amount that is covered by subregulation 292-25.01(2) of the ITAR 1997.

² 'Accumulation interest' is defined in subregulation 1.03(1) of the SISR to mean a superannuation interest that is not a defined benefit interest. The term 'defined benefit interest' is itself defined in regulation 1.03AA of those regulations.

³ See regulation 7.07H of the SISR for the relevant allocation requirements and regulation 7.07J of those regulations for the application of the regulations in the period between 1 July 2013 and 30 June 2015 in respect of contributions made by a 'medium to large employer' or a 'small employer', as those terms are defined for the purposes of that regulation.

⁴ See regulation 7.08(2) of the SISR.

20. At first blush, it might be thought that the amount of a contribution made to a complying superannuation fund for a member of the fund and allocated under Division 7.2 of the SISR to an accumulation interest of the member in the fund, is included in the member's concessional contributions:

- (a) under subsection 291-25(2) of the ITAA 1997, for the financial year in which the contribution was made to the fund; and
- (b) under subsection 291-25(3) of the ITAA 1997, for the financial year in which the amount is allocated to the member's accumulation interest with effect,

where the amount is included in the assessable income of the fund under Subdivision 295-C of the ITAA 1997 and is not an amount mentioned in paragraph 292-25.01(3)(a), (b) or (c) of the ITAR 1997.

21. If that were so, the financial year for which the amount would be included in the member's concessional contributions under subsections 291-25(2) and (3) of the ITAA 1997 could be the same, or it could be different where the amount is allocated with effect from a date different from when the contribution was made.

22. Dixon J in *Executor Trustee and Agency Company of South Australia Ltd v. Federal Commissioner of Taxation* (1932) 48 CLR 26 said at 44:

No interpretation of a taxing Act should be adopted which results in the imposition of double taxation unless the intention to do so is clear beyond any doubt. The arrangement and the substance of the provisions [under consideration] suggest very strongly that they were intended to be complementary and mutually exclusive.

23. It is the Commissioner's view that subsections 291-25(2) and (3) of the ITAA 1997 should not be interpreted so that they result in double taxation.

24. The Explanatory Statement to *Income Tax Assessment Amendment Regulations 2007* (No. 3), which introduced regulation 292-25.01 of the ITAR 1997, supports this view.

25. After explaining that '[i]n general, an amount that is allocated under Division 7.2 of the [SISR] that is assessable income under Subdivision 295-C of the [ITAA 1997] is covered by [regulation 292-25.01]', that Explanatory Statement set out the following example of where regulation 292-25.01 would apply:

For example, a fund accepts all employer contributions into a reserve. These amounts are then allocated to the member within 28 days of the end of the month in compliance with Division 7.2 of the SIS Regulations. The Regulation will ensure that concessional contributions made through this type of arrangement are counted against the concessional contributions cap.

26. The Explanatory Statement then followed that example with the statement that:

[t]his approach will not result in double counting against the concessional contributions cap as contributions that are allocated directly to a reserve when made will only be counted against the contributions cap when allocated to a member.

27. It is the Commissioner's view, therefore, that the amount of a contribution made to a complying superannuation fund for a member of the fund and allocated under Division 7.2 of the SISR to an accumulation interest of the member, is included in the member's concessional contributions under subsection 291-25(3) of the ITAA 1997 for the financial year in which the allocation of the amount to the member's accumulation interest has effect, where the amount is included in the assessable income of the fund under Subdivision 295-C of the ITAA 1997 and is not an amount mentioned in paragraph 292-25.01(3)(a), (b) or (c) of the ITAR 1997. In such circumstances, the amount of the contribution is not also included in the member's concessional contributions under subsection 291-25(2) of the ITAA 1997 for the financial year in which the contribution was made to the fund.

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- allocated amounts – concessional contributions
- concessional contributions
- excess concessional contributions

Legislative references:

- ITAA 1997 290-170
- ITAA 1997 291-25
- ITAA 1997 291-25(1)
- ITAA 1997 291-25(2)
- ITAA 1997 291-25(2)(c)
- ITAA 1997 291-25(3)
- ITAA 1997 Subdiv 291-C
- ITAA 1997 291-175
- ITAA 1997 292-25(3) (repealed as of 29 June 2013)
- ITAA 1997 Subdiv 295-C
- ITAR 1997 292-25.01
- ITAR 1997 292-25.01(1)
- ITAR 1997 292-25.01(2)
- ITAR 1997 292-25.01(3)
- ITAR 1997 292-25.01(3)(a)
- ITAR 1997 292-25.01(3)(b)

- ITAR 1997 292-25.01(3)(c)
- ITAR 1997 292-25.01(4)
- SISR 1994 1.03(1)
- SISR 1994 1.03AA
- SISR 1994 Div 7.2
- SISR 1994 Subdiv 7.2.1
- SISR 1994 Subdiv 7.2.2
- SISR 1994 7.06
- SISR 1994 7.07
- SISR 1994 7.07H
- SISR 1994 7.07J
- SISR 1994 7.08
- SISR 1994 7.08(2)
- TAA 1953
- Tax Laws Amendment (Fairer Taxation of Excess Concessional Contributions) Act 2013

Case references:

- Executor Trustee and Agency Company of South Australia Ltd v. Federal Commissioner of Taxation [1932] HCA 25; (1932) 48 CLR 26

Other references:

- Explanatory Statement to Income Tax Assessment Amendment Regulations 2007 (No. 3)

ATO references

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