

## Traps with Salary Sacrificing into Super

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Many employees who salary sacrificed into super in the lead up to 30 June 2009 to take advantage of the \$100,000 and \$50,000 concessional contribution caps which were halved from 1 July 2009 will unwittingly be hit with excess concessional contributions tax in the current financial year.

The extra tax will be imposed because for many employees the salary sacrifice super amounts deducted from their pay during the June 2009 quarter will not have been paid by their employer into the superannuation fund until the following July. This means that these contributions will be counted towards the lower \$50,000 and \$25,000 contribution caps in the current financial year.

It should be noted that the compulsory 9% superannuation guarantee contributions are also included in these concessional contribution caps.

### Example

Joshua is a specialist medical practitioner aged 55 and employed by a public hospital. He salary sacrificed \$20,000 into super just before 30 June 2009 to take advantage of the higher contribution limits. These amounts were paid by the hospital into the super fund in July 2009. Joshua has so far salary sacrificed \$40,000 into super this financial year.

On this basis Joshua's super fund has received \$60,000 in salary sacrificed contributions this financial year meaning that he has already exceeded his \$50,000 concessional cap this financial year by \$10,000. In addition to the 15% contributions tax that will be deducted from Joshua's super balance, excess concessional contributions tax of 31.5% will be paid on the \$10,000. Joshua will also be hit with excess concessional contributions tax of 31.5% on the super guarantee contributions made by the hospital as they are also counted in the \$50,000 concessional cap.

Note that contributions in excess of the \$50,000 and \$25,000 concessional caps are counted towards the \$150,000 or \$450,000 over 3 years non-concessional (or after-tax) contribution caps. If Joshua has already contributed the maximum \$450,000 in after-tax contributions this financial year, he will also have exceeded his non-concessional cap by \$10,000, meaning that excess non-concessional contributions tax of 46.5% or \$4,650 will be imposed.

### Monitoring

It is very important that taxpayers monitor on an on-going basis the level of concessional and non-concessional contributions they make into super to ensure that these contribution caps are not exceeded as the consequences of making excess contributions can be harsh as noted above. Unfortunately for many employees who salary sacrifice into super, the deductions shown on their pay slips will not record the actual amounts counted towards their concessional caps due to the fact that amounts deducted in the June quarter of any year will count towards the cap in the following financial year when the employer actually pays the amounts into the superannuation fund.

The other difficulty for employees is that they also need to be aware of super guarantee contributions made by their employer as these also count towards the \$50,000 and \$25,000 concessional caps.

The best course of action that employees should adopt before salary sacrificing into super, or making an after-tax super contribution, is to call their superannuation fund to obtain the amounts (i.e. salary sacrifice, super guarantee and after-tax contributions) that have so far been paid into the fund during the financial year. Better informed decisions about making future contributions can then be made at that time to avoid excess contributions tax that can be imposed where the relevant caps are exceeded.

Consulting your accountant or financial advisor is always recommended.

### **ATO discretion**

The ATO have a discretion to disregard or reallocate excess contributions in special circumstances which may extend to situations where an employee salary sacrifices into super towards the end of the financial year, but the employer pays the contributions to the super fund in the next financial year.

A written request needs to be lodged with the ATO following the receipt of an excess contributions tax assessment requesting exercise of this discretion. This will create additional administration and cost to the employee.

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