

Changes to Substantially Self Employed Rules

Salary sacrifice and the concessional contribution rules

As announced in the 2008 Federal Budget, changes commence on 1 July 2009 which include "salary sacrifice" superannuation contributions as "notional assessable income".

This measure was introduced as many of those sacrificing their salary into super were seen to be artificially eligible for many tax rebates that they would not otherwise have been entitled to.

"Substantially self employed" persons can currently claim personal tax deductions for superannuation contributions provided that no more than 10 per cent of their assessable income is from salary and wages.

The changes from 1 July 2009 to notionally assess salary sacrifice super contributions as salary and wage income, may see many self employed persons fail this "10 per cent rule" and be unable to claim personal tax deductions for super contributions.

Example

- ▶ David (age 52) has an employment package of \$80,000 including \$6,605 of superannuation guarantee (SG) contributions and \$50,000 of salary sacrifice contributions.
- ▶ During the year ended 30 June 2009, David realised a capital gain of \$220,000 from the sale of a property.
- ▶ As David's salary income net of superannuation contributions is \$23,395 is less than his total assessable income of \$243,395, David made an additional self employed concessional contribution to superannuation of \$40,000, taking his total contributions to \$96,605 and reducing his taxable income by an extra \$40,000.
- ▶ If David sold the property after 1 July 2009, he no longer has the ability to make the additional superannuation contribution given his adjusted salary income would have been \$73,395 after taking into account his salary sacrificed contributions.
- ▶ The halving of the concessional contribution limits will also have an effect on these strategies in the 2009/10 financial year.

Ensuring you get a deduction for personal contributions

Claiming a personal income tax deduction for contributions made prior to commencement of income stream

The Australian Taxation Office has recently reaffirmed the conditions around claiming a deduction for personal contributions in respect of benefits applied to commencing an income stream (e.g. account based pension).

Should personal contributions form part of the benefits being applied to an income stream, the member must notify the trustee of the fund of their intention to claim a deduction prior to its commencement in order for the notification to be effective.

Should notification not occur prior to commencement of the income stream, the contribution will be considered to be a non-concessional contribution by both the fund and the member.

Example

- ▶ David decided to commence an account based pension from his fund effective on his 60th birthday on 1 September 2009.
- ▶ David is self employed and made a contribution of \$50,000 to his fund in August 2009. During the year ended 30 June 2008, David had made non-concessional contributions of \$450,000.
- ▶ David provided a notice to the fund on 7 June 2010 in respect of his intention to claim a tax deduction of \$50,000.

- ▶ As the pension had commenced on 1 September 2009 and he did not notify the fund of his intention to claim a deduction for the contribution before the pension commenced, David was not entitled to claim the deduction and the contributions made were classed as non-concessional contributions. Furthermore, as David had made \$450,000 of non-concessional contributions in the previous year, the non-concessional contribution of \$50,000 in the 2010 year will be taxed at 46.5% as David has exceeded the non-concessional cap.
- ▶ Effectively \$42,500 of after tax benefits is now reduced to \$26,750. David will also pay tax on additional income of \$50,000 (as much as \$23,250) as he cannot claim a deduction for the contribution.

Should you require assistance additional information, contact

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