




ATO Interpretative Decision

ATO ID 2007/225

Superannuation

Superannuation contributions: acceptance of fund capped contributions by a self managed superannuation fund

FOI status: may be released

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Issue

Is a trustee of a self managed superannuation fund required by subregulation 7.04(3) of the *Superannuation Industry Supervision Regulations 1994* (SISR) to return an amount to a contributor if the contribution, when added to contributions made to the fund earlier in the income year by the member, will cause the member to have excess non-concessional contributions for that income year?

Decision

No, the trustee is not required to return all or part of a contribution unless all or part of the contribution itself will cause the member to have excess non-concessional contributions for the income year.

Facts

A 65 year old working member of a self-managed superannuation fund makes the following non-concessional contributions during the 2007-08 income year:

11 July 2007	\$15,000
18 July 2007	\$60,000
14 September 2007	\$36,000
29 September 2007	\$54,000

The total contributions made to 29 September 2007 are \$165,000. The member cannot claim an income tax deduction for any of the contributions. The member's non-concessional contributions cap is \$150,000 for the 2007-08 income year. As the member is aged over 64, the bring forward provisions are not available. The total contributions made to 29 September 2007 exceed the member's non-concessional contributions cap for the 2007-

08 income year. However, the member proposes to contribute another \$10,000 to the fund.

The member, in their capacity of trustee of the self-managed superannuation fund, has asked whether they must return any part of the contribution of \$54,000 made on 29 September 2007. They have also asked whether they are required not to accept the proposed further contribution of \$10,000 because of subregulations 7.04(3) and (4) of SISR.

Reasons for Decision

Subregulation 7.04(3) of the SISR provides that:

In addition to subregulation (1), the regulated superannuation fund must not accept any fund-capped contributions in a financial year in respect of a member that exceed:

- (a) if the member is 64 or less on 1 July of the financial year- three times the amount of the non-concessional contributions cap; or
- (b) if the member is 65 but less than 75 on 1 July of the financial year- the non-concessional contributions cap.

Subregulation 7.04(4) of the SISR provides that:

If a regulated superannuation fund receives an amount that is inconsistent with subregulation ... (3):

- (a) the fund must return the amount to the entity or the person that paid the amount within 30 days of becoming aware that the amount was received in a manner that is inconsistent with subregulation...(3), unless:
 - (i)...
 - (ii) for an amount received in a manner that is inconsistent with subregulation (3) - a valid notice under section 290-170 of the *Income Tax Assessment Act 1997* is received by the trustee of the fund within 30 days of this amount being received by the trustee of the fund: and...

A trustee of a self managed fund should, before accepting a contribution for a member, consider if the contribution is a fund-capped contribution. A person who is 65 years of age at 1 July 2007 will have a fund-capped contribution limit of \$150,000 for the 2007-08 income year.

It has been suggested that there is some ambiguity as to the meaning of subregulation 7.04(3) of SISR. Some suggest it applies on a contribution by contribution basis. Others suggest the words require a trustee to aggregate all of the contributions made by a member to the fund for the income year.

Item 80 of the Explanatory Statement for the Superannuation Industry (Supervision) Amendment Regulation 2007 (No.1) gives guidance on determining if a contribution is a fund-capped contribution by clarifying the words 'fund-capped contributions in a financial year in respect of a member'. It states:

To help prevent a person from inadvertently contributing more than the non-concessional contributions cap, new subregulation 7.04(3) provides that superannuation funds will be required to return an amount of certain member contributions that exceed the cap.

Superannuation funds will not be required to aggregate the total of member contributions received for a person either within the fund or across other funds. The rule applies on a contribution-by-contribution basis, not a yearly basis or any other basis. This measure will reduce the instances of inadvertent breaches where the contribution is a one-off in a financial

year.

The explanatory statement makes it clear that in this case, the trustee is not required to return any part of the \$54,000 and may accept the further contribution of \$10,000. In this case the member will have excess non-concessional contributions for the 2007-08 income year and will receive a non-concessional contributions tax assessment.

Date of decision: 13 December 2007

Year of income: Year ended 30 June 2008

Legislative References:

Superannuation Industry (Supervision) Regulations 1994

Subregulation 7.04(3)

Subregulation 7.04(4)

Other References

Item 80 to the Explanatory Statement for the Superannuation Industry (Supervision) Amendment Regulation 2007 (No.1)

Keywords

Contributions returned

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SMSF trustee

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