



ATO Interpretative Decision

ATO ID 2008/90

Superannuation

Superannuation contributions: return of fund capped contributions by 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 subregulations 7.04(3) and 7.04(4) of the Superannuation Industry Supervision Regulations 1994 (SISR) to return the whole of a fund-capped contribution to a contributor if it is greater than three times the amount of the non-concessional contributions cap for that financial year?

Decision

No. As the member was aged 64 or less on 1 July of the financial year the trustee is only required to return that part of the fund-capped contribution that exceeds three times the amount of the non-concessional contributions cap for the financial year.

[Had the member been aged 65 or more but less than 75 on 1 July of the financial year, the trustee would have been required to return that part of the fund-capped contribution that exceeds the non-concessional contributions cap for the financial year].

Facts

A person, aged 55 years is a member of his self-managed superannuation fund (ABC Fund). During the 2007-08 financial year the member made a contribution to ABC Fund by transferring an amount from his overseas bank account. After conversion to Australian dollars the amount of the contribution was \$452,000. The full amount of the contribution was a non-concessional contribution.

The member, in his capacity as trustee of ABC Fund, has asked whether the fund has to return the full amount of the contribution or only \$2,000, being the amount by which the contribution exceeds three times the non-concessional contributions cap.

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.

A trustee of a self-managed superannuation fund should, before accepting a contribution for a member, consider if the contribution is a 'fund-capped contribution'. The meaning of 'fund-capped contributions' is given in subregulation 7.04(7) of the SISR. They are member contributions, as defined in subregulation 5.01(1) of the SISR, but exclude certain contributions - none of which apply in the current case.

In this case, the member is less than 64 on 1 July 2007. The ABC fund must not accept a fund-capped contribution for the member that exceeds three times the amount of the non-concessional contributions cap. For the 2007-08 financial year three times the amount of the non-concessional cap is \$450,000. For the purposes of this regulation, the \$450,000 is not reduced by other non-concessional contributions made by the member to the ABC Fund (or any other fund) in that financial year or earlier financial years.

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...

It has been suggested that subregulation 7.04(4) of the SISR requires the full amount of a fund-capped contribution that exceeds the relevant amount to be returned to the entity or person who made the contribution. However, it is only the amount in excess of the relevant amount that has been received in a manner that is inconsistent with subregulation 7.04(3) of the SISR.

Item 80 of the Explanatory Statement to the Superannuation Industry (Supervision) Amendment Regulation 2007 (No.1) supports the view that it is only the amount in excess of the relevant amount that is required to be returned. 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...

In this case, the amount of \$2,000 is required to be returned to the member as \$2,000 is the amount that the contribution of \$452,000 exceeds three times the non-concessional contribution cap for the 2007-2008 financial year of \$450,000.

Date of decision: 5 May 2008

Year of income: Year ended 30 June 2008

Legislative References:

Superannuation Industry (Supervision) Regulations 1994

subregulation 5.01(1)
subregulation 7.04(3)
subregulation 7.04(4)
subregulation 7.04(7)

Related ATO Interpretative Decisions

ATO ID 2007/225

Other References

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

Keywords

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