Contribution Reserving

15 October 2014

On 13 November 2013 the ATO released Tax Determination 2013/22[1] (the **Determination**) which provides further confirmation on the allocation of superannuation contributions. This Determination is very similar to the preceding Interpretative Decision 2012/16[2] which was released in March 2012. However, as the information provided in a Tax Determination is a public ruling, the ATO must apply the law in the way it describes, meaning it provides greater protection for taxpayers. The Determination applies from 1 July 2013.

The Determination considers the scenario where a concessional contribution is received by a complying superannuation fund and added to an 'unallocated contribution account' before being allocated to a member in the following financial year.

Allocation of contributions

Prior to 1 July 2013 under Division 7.2 of the Superannuation Industry (Supervision) Regulations 1994 (**SIS Regulations**), when a contribution was received by a super fund it had to be allocated to a member within 28 days from the end of the month in which it was received.

From 1 July 2013 Division 7.2 of the SIS Regulations[3] contains broadly two different time periods within which a trustee must allocate a contribution to a member of a fund.

Subdivision 7.2.1 applies to super funds which are not self-managed super funds and generally requires a contribution to be allocated to a member within 3 business days.

Subdivision 7.2.2 applies to self-managed super funds and generally requires a contribution to be allocated within 28 days from the end of the month in which it was received.

In this respect nothing has changed for self-managed super funds.

Contributions tax

A fund will be required to pay contributions tax on concessional contributions received in the financial year even if they are not allocated to a member in that year.

Therefore, all concessional contributions received by a fund each year should be claimed as assessable contributions in the annual return even if they are applied to an 'unallocated contribution account' rather than allocated to a member.

Contributions are included in a fund's assessable income under Subdivision 295-C of ITAA 1997[4].

The contribution reserve strategy

From a tax perspective, where a member makes a large concessional contribution in one year which would otherwise exceed their contribution cap, it may be possible to make that contribution to the fund in June and then allocate the contribution to the member in July of the following financial year.

The contribution would be included in the fund's assessable contributions in the year it was received, but it would not count towards the member's contribution cap until it was allocated to the member in the following financial year.

1 Australian Taxation Office, Taxation Determination.

2 Australian Taxation Office, Interpretative Decision.

3 Commonwealth Consolidated Regulations, Superannuation Industry (Supervision) Regulations 1994.

4 Commonwealth Consolidated Regulations, Income Tax Assessment Act 1997.

The tax determination

The Determination (Item 27) confirms that a concessional contribution received by a fund and applied to an 'unallocated contributions account' established in accordance with the governing rules of the fund is:

- included in the assessable income of the fund in the year it was received
- is counted towards a member's contribution cap in the year it was allocated to the member.

There is no double counting the contribution as a concessional contribution in the financial year that it was made and in the year that it was allocated to a member.

The Determination makes no direct reference to a contribution reserve, however, the 'unallocated contributions account' it does refer to seems to have the characteristics of a reserve.

Documenting your contribution strategy

When using 'contribution reserves' to claim a tax deduction for concessional contributions in one year and allocating them to a member in the next year, it is important to consider whether the fund's deed supports reserving. In addition, the ATO have raised questions in the past where funds have used contribution reserving strategies so it is essential that the strategy is well documented.

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17500/1014