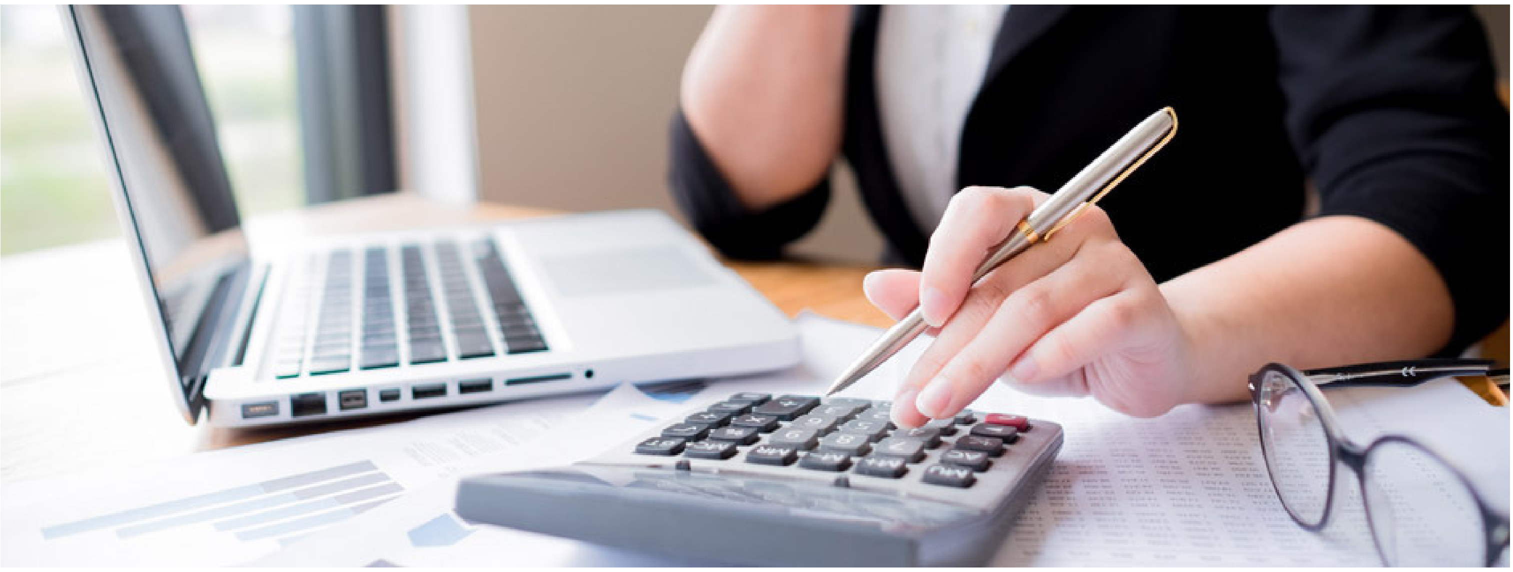
Logical Thoughts



Division 293 Tax Threshold

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From 1 July 2017, the income threshold above which individuals pay an additional 15% tax on certain superannuation contributions reduced from $300,000 to $250,000. In December 2018, the ATO began issuing over 90,000 Division 293 notices for the 2017/18 income year. It is estimated that approximately 44,000 individuals will receive their first Division 293 notice early in 2019.

Importantly, there are no strategies that can be used to reduce an individual's liability for Division 293 tax. However, understanding the options that are available and how the Division 293 notice process works will assist individuals who receive a notice.

Overview to the Lower Income Tax Threshold

People with Division 293 income greater than $250,000 will pay 15% additional tax on certain superannuation contributions. The tax is a personal tax rather than a tax deducted from super contributions by a fund. However, individuals may elect to release funds from super to pay the tax (see the Choices section below).

Division 293 income includes taxable income, reportable fringe benefits and total net investment losses.

Individuals who are not generally high-income earners may still be liable for Division 293 tax if they receive certain one-off payments during a year. Such payments include eligible termination payments, the taxable component of a superannuation death benefit and capital gains.

However, the taxable component of a super lump sum benefit (other than a death benefit) is not included where it is received by individuals from preservation age to age 59, and it is up to the current low-rate cap of $205,000.

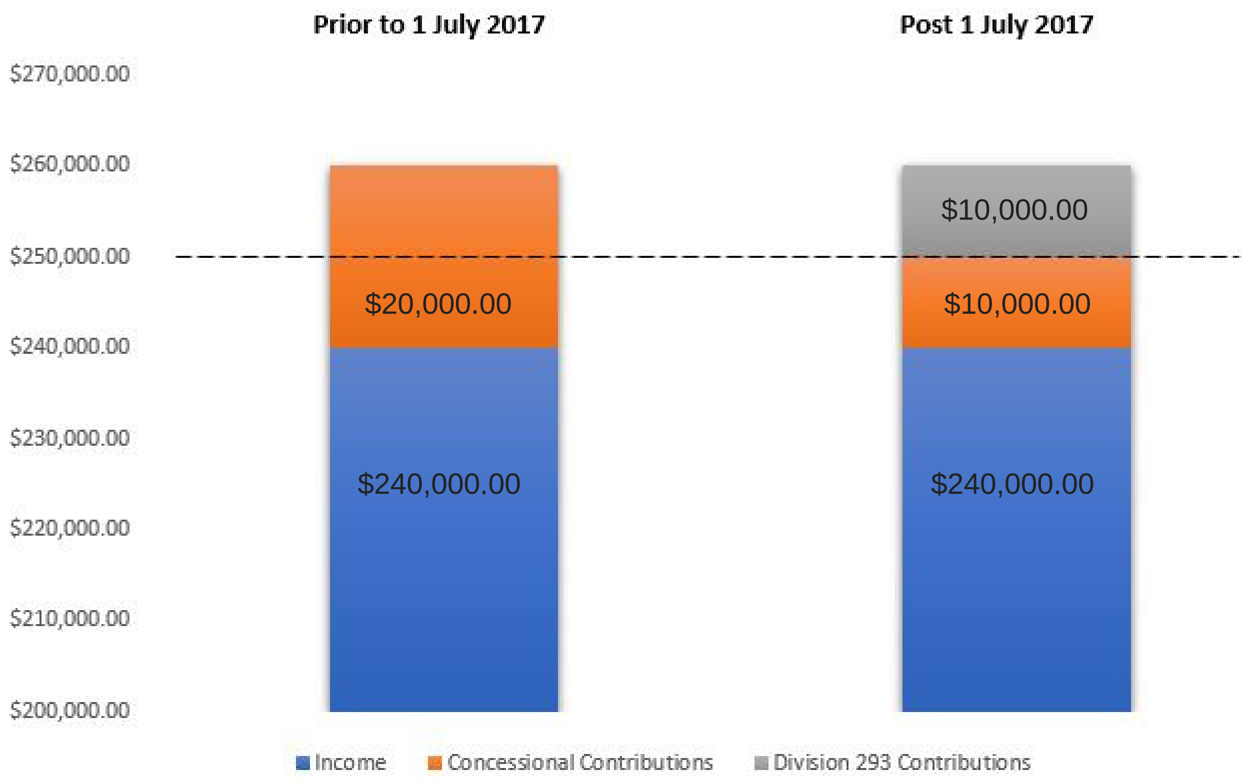
Division 293 Contribution Definitions

Division 293 Contributions Includes	The additional tax does not apply to
• Employer contributions • Personal deductible contributions • Contributions for a defined benefit interest (valued by an actuary) • Employer contributions (including salary sacrifice) to a constitutionally protected fund	• Excess concessional contributions • Non-concessional contributions • Contributions to certain Government funds for senior personnel, unless they are salary sacrifice contributions • Contributions for certain Judges to defined benefit funds

Division 293 tax is 15% of the lesser of the amount of the Division 293 contributions and the amount of Division 293 income and Division 293 contributions above the $250,000 threshold.

Case Study

Bill has Division 293 income of $240,000 and Division 293 contributions of $20,000, totalling $260,000.



Division 293 threshold = $300,000
Additional tax payable on contributions = $0

Division 293 threshold = $250,000
Additional tax payable on contributions = $1,500

Division 293 tax is therefore payable on $10,000, being the lesser of $20,000 or $260,000 – $250,000 = $10,000. The Division 293 tax amount is 15% of $10,000 or $1,500.

Division 293 Notice and Choices

The ATO issues an Additional tax on concessional contributions (Division 293) notice to individuals which specifies the additional amount of tax that is payable and the due date for payment. The ATO has recently redesigned the Division 293 notice to provide information clearly and concisely. This includes providing the full assessment calculation to make it easier for people to understand how their tax has been calculated. This will also make it easier to identify any erroneous assessments due to incorrect reporting of information.

When an individual receives a Division 293 assessment, they can choose to pay the tax from their personal resources. Alternatively, they can elect to have the amount released from their super fund to pay the tax. The timeframe for making the election is 60 days. However, this may be a greater time frame than the date upon which payment of the tax is due.

The election can be made to release the tax amount from any super fund (other than some defined benefit funds). There is no requirement for the release to be made from the fund that received the contributions.

If an election to have the amount released from super is made, the ATO will send the super fund a release authority and the fund will make the payment to the ATO. Funds are required to make the payment within 10 business days from the date the release authority is issued by the ATO.

Importantly a fund must not release an amount until they have received the ATO release authority. This requirement is sometimes misunderstood by SMSF trustees.

Conclusion

Understanding the choices available and the process involved in paying Division 293 tax can assist in ensuring that any tax payable is completed in a manner most appropriate to an individual’s circumstances.

For a bit of light relief, we offer the tax system explained using the beer analogy

Suppose that once a week, ten men go out for beer and the bill for all ten comes to £100. If they paid their bill the way we pay our taxes, it would go something like this…

The first four men (the poorest) would pay nothing.
The fifth would pay £1.
The sixth would pay £3.
The seventh would pay £7.
The eighth would pay £12.
The ninth would pay £18.
And the tenth man (the richest) would pay £59.
So, that's what they decided to do.

The ten men drank in the bar every week and seemed quite happy with the arrangement until, one day, the owner caused them a little problem. "Since you are all such good customers," he said, "I'm going to reduce the cost of your weekly beer by £20." Drinks for the ten men would now cost just £80.

The group still wanted to pay their bill the way we pay our taxes. So the first four men were unaffected. They would still drink for free but what about the other six men? The paying customers? How could they divide the £20 windfall so that everyone would get his fair share? They realized that £20 divided by six is £3.33 but if they subtracted that from everybody's share then not only would the first four men still be drinking for free but the fifth and sixth man would each end up being paid to drink his beer.

So, the bar owner suggested that it would be fairer to reduce each man's bill by a higher percentage. They decided to follow the principle of the tax system they had been using and he proceeded to work out the amounts he suggested that each should now pay.

And so, the fifth man, like the first four, now paid nothing (a 100% saving).
The sixth man now paid £2 instead of £3 (a 33% saving).
The seventh man now paid £5 instead of £7 (a 28% saving).
The eighth man now paid £9 instead of £12 (a 25% saving).
The ninth man now paid £14 instead of £18 (a 22% saving).
And the tenth man now paid £49 instead of £59 (a 16% saving).

Each of the last six was better off than before with the first four continuing to drink for free.

But, once outside the bar, the men began to compare their savings.
"I only got £1 out of the £20 saving," declared the sixth man. He pointed to the tenth man, "but he got £10!"
"Yeah, that's right," exclaimed the fifth man. "I only saved a £1 too. It's unfair that he got ten times more benefit than me!"
"That's true!" shouted the seventh man. "Why should he get £10 back, when I only got £2? The wealthy get all the breaks!"
"Wait a minute," yelled the first four men in unison, "we didn't get anything at all. This new tax system exploits the poor!"
The nine men surrounded the tenth and beat him up.

The next week the tenth man didn't show up for drinks, so the nine sat down and had their beers without him. But when it came time to pay the bill, they discovered something important – they didn't have enough money between all of them to pay for even half of the bill!

And that is how our tax system works. The people who already pay the highest taxes will naturally get the most benefit from a tax reduction. Tax them too much, attack them for being wealthy and they just might not show up anymore. In fact, they might start drinking overseas, where the atmosphere is somewhat friendlier.