

Total superannuation balance and small business CGT contributions post 30 June 2017

dba.dbalawyers.com.au/contributions/total-superannuation-balance-small-business-cgt-contributions-post-30-june-2017/

Philippa
Briglia

Philippa Briglia, Lawyer, and Bryce Figot, Special Counsel, DBA Lawyers

Introduction

One important point that may have been overlooked in the midst of the reforms is that while members with a total superannuation balance ('TSB') of \$1.6 million or more on the last 30 June will not be able to make any non-concessional contributions ('NCCs') (ie, their NCCs cap will be nil), their TSB does not preclude them from making small business CGT contributions (provided they have satisfied the relevant criteria under s 292-100 of the Income Tax Assessment Act 1997 (Cth) ('ITAA 1997')).

The reasons for this are outlined below.

NCCs vs small business CGT contributions

Under s 292-100 of the ITAA 1997, additional NCCs can be made above the normal NCCs cap. Broadly, these contributions must be sourced from the proceeds of sale of certain small business assets under two of the CGT concessions listed under div 152 of the ITAA 1997 (ie, where the taxpayer is eligible either for the small business 15-year exemption in subdivision 152-B (15-year exemption) or the small business retirement exemption in subdivision 152-D (retirement exemption)). These contributions are often referred to as small business CGT contributions, or 'SBCGT contributions'. SBCGT contributions are capped by the CGT cap amount, which is \$1,445,000 for the 2018 financial year ('FY'). The CGT cap is indexed annually under s 292-105(3) ITAA 97.

Other conditions that must be satisfied in order to make a SBCGT contribution include:

- the contribution must be made to a complying superannuation fund;
- the choice to elect to exclude the SBCGT contributions from your NCC cap must be made in the approved form (currently NAT 71161 available on the ATO website); and
- the contribution must be made before the later of 30 days after the proceeds are received and the time the contributor lodges a tax return.

Some confusion may have arisen due to the fact that amounts contributed under the CGT cap are treated the same way as NCCs when calculating the taxable and tax free components of a member's superannuation benefits, but do not count towards the annual NCCs cap or the bring forward provisions.

From 1 July 2017, a member's NCCs cap is tested against their TSB as at the last 30 June. Where a member has a TSB (indexed) of \$1.6 million or more as at 30 June the previous FY, the member's NCCs cap will be nil. For example, if a member has a TSB (broadly calculated by adding the member's accumulation and retirement phase balances across all complying funds with any amounts being rolled over) of \$1.6 million or more as at 30 June 2017, the member will have an NCCs cap of nil in the 2018 FY, and in any subsequent years unless their TSB falls below \$1.6 million as indexed (see s 292-85(2)(b) ITAA



1997).

Ability to make SBCGT contributions not limited by TSB

Importantly, s 292-90(2)(c)(iii) of the ITAA 1997 provides that SBCGT contributions do not constitute NCCs to the extent the SBCGT contribution does not exceed the relevant CGT cap amount. Therefore, a member with a TSB of \$1.6 million or more as at 30 June 2017 may make SBCGT contributions in the 2017 FY, provided the relevant criteria in div 152 of the ITAA are satisfied.

* * *

This article is for general information only and should not be relied upon without first seeking advice from an appropriately qualified professional. Those who wish to apply the small business CGT concessions should seek expert advice beforehand as there are complex rules that must be satisfied.

The above does not constitute financial product advice. Financial product advice can only be obtained from a licenced financial adviser under the *Corporations Act 2000* (Cth).

Note: DBA Lawyers hold SMSF CPD training at venues all around. For more details or to register, visit www.dbanetwork.com.au or call 03 9092 9400.

For more information regarding how DBA Lawyers can assist in your SMSF practice, visit www.dbalawyers.com.au.

DBA LAWYERS

6 July 2017

Download date: 18/07/2017 Copyright © DBA Lawyers Pty Ltd.

Any information provided on this website (including any blog posts) are mere summaries and general information provided for educational purposes only. This is no substitute for expert advice. Anyone seeking to rely on this content should obtain expert advice to confirm particular issues especially as the law is subject to ongoing changes and substantial penalties can be imposed.

As a law firm DBA Lawyers Pty Ltd is not licensed to give financial product advice under the *Corporations Act 2001* (Cth).