



MARINIS
FINANCIAL GROUP

8th July 2013

Senator Mathias Cormann
Shadow Assistant Treasurer and
Shadow Minister for Financial Services and Superannuation
PO Box 6100
Senate, Parliament House
CANBERRA ACT 2600

Dear Mr Cormann,

A GREAT OPPORTUNITY TO GET SUPER RIGHT!

I am really looking forward to a change of government along with the problems and red tape associated with superannuation being fixed.

What would be great is if the bureaucrats could be reminded that super is about Australians funding themselves and not about revenue raising.

The "magic pudding" for the budget is that retirees with super are not such a burden - and the more they spend the more GST is collected.

One thing Bill Shorten has half-fixed is the unwinding of some of the awful Excess Contribution Taxes (ECT) but as usual, he has only gone halfway.

Attached is a scenario where a \$1,000 error could cost a superannuant, acting in good faith, almost \$140,000 in a non-concessional-contributions (NCC) situation.

Clearly that sort of penalty is just wrong. (I have regularly written to the media and to the present Government on the issue.)

To avoid this kind of situation occurring to my clients, I have had no choice but to implement a work-around. I now write to the ATO (and receive a reply) checking every individual client's exposure - I estimate this costs the ATO **at least** \$175 on each occasion which is clearly a waste. While the legislation remains flawed I expect more advisers will do the same.

At minimal impact to the budget the new ECT regime that now applies to Concessional Contribution (CC) ECT amounts can be applied to NCC ECT mistakes to ensure fairness, equity and reduce needless red tape.

Senator Cormann, I wish you every success. I hope you are able to return our Superannuation system to being "people" focussed and encourage Australians to put the most dollars in so they can get the most dollars out - when they retire.

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Sincerely

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Financial Strategist
Authorised Representative

Encl:

- 31/07/2012 - Media Release No: 47 – Billion-Dollar –a-Year Headache for ATO
- 13/08/2012 – The Advertiser - Your Money Article – Heed Contribution Cap
- 14/08/2012 - Professional Planner Article – Former ATO Man Turns from Insider to Activist
- 07/09/2012 - ECT Letter to Bill Shorten MP



Billion-Dollar-a-Year Headache for ATO With Thousands of Taxpayers Liable for More Tax

"The government has vigorously promoted its Household Assistance Package but not its new tax trap, and the windfall the Government can expect from financial year 2012/13 is enormous" says Adelaide based financial strategist Theo Marinis.

"From 1 July 2012 many tens of thousands of Australians will find they are hit by up to 93% in Excess Contribution Tax. This is because they did not change their direct debit or payroll arrangements for their superannuation to reflect the precise timing that the reduced contribution limits (a reduction from \$50,000pa to \$25,000pa for people over 50) came into law."

"In the majority of such cases the failure to ensure that their contributions are reduced will relate to centralised payroll arrangements, the inability (including time) for the employee to control the exact timing of the required changes, or simply because employers and/or employees are generally unaware of the disproportionate tax penalties which apply to superannuation contributions paid above the new limits after 1 July 2012."

"Unfortunately, people should not make the mistake of thinking "I'll just fix it all up next year" as they can with their income tax. According to budget figures only four per cent of applications to overturn this inequitable Excess Contributions Tax are approved due to the murky 'special circumstances' rule."

"Over the last six months I have written to the ATO on behalf of more than 100 of my clients to ensure they are not in breach of the superannuation contribution caps. Based on the information the ATO has provided in response, this action has the potential to save my clients tens of thousands of dollars in Excess Contribution Tax, which in my view, is the most greedy and mean spirited tax in the land."

"Furthermore, I urge every financial planner in the country to take similar action even if it means a \$1,000,000,000* headache for the Government (via the ATO) to reply.

"And they should do it quickly".

"If financial advisers and individual super fund members do not take this approach, the penalty tax collected by the federal government will result in considerable hardship to many hardworking people (including families) who seek simply to fund their own retirement, rather than to be a cost to future generations."

"In my view, a far fairer approach to the treatment of excess contributions would mirror the personal income tax system. If an unwitting mistake is made, the ATO will allow three years to fix it. If a penalty applies, it should be applied as a 'general interest' charge as normally imposed by the ATO. Any Excess Contribution should simply be forcibly withdrawn from the fund to ensure there is no benefit to contribute more than the prescribed limits".

"Senator Shorten says he has fixed the problem by allowing people a one-off fix for amounts of less than \$10,000, but in my view this is political window dressing. It is time to stop playing politics with Australia's superannuation system, one of the key pillars of our economic prosperity and acknowledged as the second best retirement system in the world."

"This issue cuts to the heart of the superannuation system. Government should be doing everything it can to encourage people to put extra funds into the system, not to introduce draconian penalties," Theo said.

**As a former ATO employee, and as someone who has run a business for more than a decade, I estimate that every letter received, logged and responded to will cost authorities at least \$175. Therefore, if even half of all super-fund members (5.69 million people) write annually to get official confirmation of the exact timing and the amounts of their superannuation contribution payments, the ATO will need to outlay around a billion dollars annually. The Commissioner would also need to recruit significant staff to manage these enquires, at a time when government agencies and departments are seeing substantial budget cuts!*

Based on Deputy Commissioner Olessen's recent statistic that is in excess of 50,000 people were impacted by ECT in the 2010/2011 financial year prior to the reduction in the Concessional Contribution Cap from 1st July 2012. Source: Money Management 21st June 2012.

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Disclaimer

The information in this article reflects Theo Marinis' understanding of existing legislation, proposed legislation, rulings etc as at the date of issue. While it is believed the information is accurate and reliable, this is not guaranteed in any way. The information is not, nor is it intended to be comprehensive or a substitute for professional advice on specific circumstances.

The information given in this article is of a general nature and has not taken into account the investment objectives, financial situation or particular needs of any particular person. Before making an investment decision on the basis of the advice above, a prospective investor needs to consider, with or without the assistance of a professional adviser whether the advice is appropriate in the light of their particular investment needs, objectives and financial circumstances.

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Heed contribution cap

Anthony Keane

WORKERS who salary sacrifice into superannuation are being urged to check with their pay office now to make sure they are not breaching tighter new contribution caps.

Adelaide financial strategist Theo Marinis says excess contribution taxes of up to 93 per cent threaten the super contributions of pre-retirees who have not adjusted their payroll arrangements to reflect the reduced limit for tax-deductible contributions – down from \$50,000 to \$25,000 this financial year.

“People should not make the mistake of thinking ‘I’ll just fix it all up next year’ as they can do with their income tax,” says Marinis, managing director of Marinis Financial Group.

“According to Budget figures, only 4 per cent of applications to overturn this inequitable excess

contributions tax are approved.” Marinis says he has written to the tax office on behalf of more than 100 clients to ensure they don’t breach contribution caps and says other financial advisers should do the same.

“A far fairer approach to the treatment of excess contributions would mirror the personal income tax system. If an unwitting mistake is made, the ATO will allow three years to fix it,” he says.



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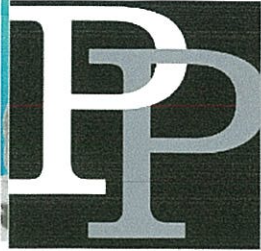
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PROFESSIONAL PLANNER

“We’re starting to see a lot of different ways that advisers are adapting and trying to evaluate those inputs better,” says Micheal Kitces.



SEARCH »

Former ATO man turns from insider to activist



SIMON HOYLE
Editor -
Professional
Planner Magazine

14 August, 2012 | 6 comments | print

Financial planners have been urged to contact the Australian Taxation Office (ATO) to seek clarification of their clients’ concessional and non-concessional superannuation contributions to avoid running foul of contribution rules and paying punitive penalties.

Genuine mistake? Bad luck – you’re gone,” says Theo Marinis of the ATO approach.

Theo Marinis (right), an Adelaide-based financial planner, says that contrary to the widely held belief that the ATO is uncooperative on this issue, provided the inquiry is structured correctly – and includes the necessary “nomination of a representative form” (NAT 12412) – the ATO will provide the information requested.



Marinis says he routinely seeks and receives non-concessional contribution (NCC) information from the ATO on behalf of his own clients. He estimates that he has received well over 100 ATO responses to requests for such information.

A letter to Marinis from ATO deputy commissioner, Neil Olesen, says that while it is the taxpayer’s obligation to provide accurate and correct information to the ATO, the tax office is “able and obligated” to provide information on a taxpayer’s non-concessional contributions position if requested.

“Our service standard as outlined in the Taxpayers’ Charter for responding to these requests is 28 days from the date of the ATO receiving the request,” it says.

Marinis says all advisers should be keeping track of their clients’ non-concessional and concessional contributions to avoid accidentally triggering the excess contribution tax (ECT).

He says he uses information from the ATO to cross-check data provided by his clients’ super funds, too. In one case, a transposition error had resulted in a client being “credited” with \$160,000 in a superannuation fund that had never existed. Had that error not been found, the client would have faced a potentially crippling tax bill.

Keep away from the trigger

Marinis says advisers need to keep track of concessional contributions as well. He says that if a client breaches the concessional contributions cap, the excess is treated as a non-concessional contribution. If that client is also running a non-concessional contributions strategy, the excess concessional contributions could be added to their non-concessional contributions, take them over their cap and trigger the ECT.

Marinis says if a client exceeds the non-concessional contributions cap by as little as \$1000 they can end up being hit with a tax bill of more than \$139,000. It does not matter in the eyes of the ATO whether the cap breach is deliberate or accidental.

“Genuine mistake? Bad luck – you’re gone,” Marinis says.

The curative headache

Marinis says part of his motivation in mobilising the financial planning community is to create a headache for the ATO and the government and to have the ECT modified or, ideally, repealed.

Marinis, a former ATO employee, estimates that it costs at least \$175 every time the ATO receives a letter and has to log and respond to the correspondence.

If as many as half of all superannuation fund members contacted the ATO, Marinis estimates it would cost the tax office \$1 billion to respond, which would be a significant administrative issue and would easily outweigh the revenue generated by the tax.

Marinis says he accepts the motivation behind the ECT – that is, to ensure people do not make excessive contributions to superannuation – but argues that the penalties should be much less severe.

“I understand the tax, but the penalties are horrendous,” he says.

“[The government says] it is to make sure people do not put too much into super. Well, take it out. They have already got a compulsory release mechanism so they can tell a fund to pay it back out. Pay the excess [contribution] back out, but pay a far more modest penalty.”

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7th September 2012

The Hon. Bill Shorten MP
Minister for Employment and Workplace Relations
Minister for Financial Services and Superannuation
Parliament House
CANBERRA ACT 2600

Dear Sen. Shorten *Mr Shorten,*

EXCESS CONTRIBUTIONS TAX (ECT)

Someone on your staff is not advising you well on ECT – it is a real issue - and it is hurting ordinary people.

Any system which can cause a \$1,000 Non Concessional Contribution (NCC) mistake to penalise a person \$139,000 is wrong*. The ECT system did not foresee such unfortunate penalties when passed by Parliament. After all, tax cheats are only taxed at 46.5%!

Your adviser needs to understand that not every working Australian gets a regular pay cheque. For example, farmers, trades persons, small business people, freelance journalists receive sporadic and unpredictable money. Many people have more than one employer such as some doctors or academics.

Working people often get a "balloon" payment when they finish employment, such as a redundancy or a "golden handshake". This final pay cheque should go straight to their super and keep them off the public purse for as long as possible, but the current ECT laws make buying a boat or going overseas more attractive!

The current ECT system fundamentally does not allow for human error – and a one-off \$10,000 Concessional Contribution (CC) 'fix-up' limit is simply a PR move to say the problem is fixed.

Even this "remedy" only deals with CC cap breaches, there is no relief for NCC Bring-Forward breaches, such as that mentioned above and demonstrated in the table below!

The Parliament, and you as the relevant Minister, have an obligation to review and amend legislation that is not functioning as intended to the very great detriment of many honest, ordinary, Australian people. You MUST do something about this!

Your adviser thinks about super from the wrong angle. We should encourage all Australians to put as much away for retirement as possible, up to a reasonable limit – not setting financial traps for those who want to provide for themselves in retirement as ECT does.

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This is my final correspondence to you on the subject. I hope you will use this letter to challenge your adviser, to shake them into some real world thinking and to amend the legislation.

Sincerely

Theo Marinis B.A., B.Ec., CPA., CFP®
Financial Strategist
Authorised Representative

* An example of a Bring-Forward Strategy gone wrong – and the awful penalty for a simple mistake!

FINANCIAL YEAR	DATE	NCC AMOUNT
2010	July 2009 June 2010	\$ 1,000 due to an NCC for Co-contribution purposes \$150,000 NCC having overlooked previous \$1,000 NCC*
2011	June 2011	\$150,000 NCC
2012	June 2012	\$450,000 NCC based bring forward NOT triggered
TOTAL NCC's ASSESSED		\$751,000 (2010 – 2012)
ECT PENALTY		\$301,000 taxed at 46.5% = \$139,965

THIS PENALTY IS TERRIBLE FOR EFFECTIVELY ONLY A \$1,000 OF OVERLOOKED CONTRIBUTION. THIS WAS **CERTAINLY NOT** WHAT THIS LEGISLATION WAS DESIGNED TO AVOID!

* **HOWEVER THE THREE YEAR BRING-FORWARD WAS TRIGGERED UNINTENTIONALLY BY THE OVERLOOKED \$1,000 NCC IN JULY 2009**



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