



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.



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Former ATO man turns from insider to activist



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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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