



MARINIS
FINANCIAL GROUP

T 08 8130 5130
F 08 8331 9161
W marinigroup.com.au
E admin@marinigroup.com.au
A 49 Beulah Road
Norwood SA 5067

7 February 2022

The Hon. Josh Frydenberg
Treasurer
Parliament House
Canberra ACT 2600

Dear Treasurer,

External review - ATO Excess Contribution Tax determination and appeal process

There is a pressing need for an external review of the way in which Excess Superannuation Contribution determinations are appealed and the way the entire Excess Contributions Tax (ECT) process is administered.

This observation is based upon the current protracted appeal resolution process. In my personal circumstances, I was incorrectly notified of an Excess Superannuation Contribution breach. The eventual reversal (and much later refund) of the ECT wrongly deducted, resulted in my request to the ATO to undertake a review of their appeal processes – particularly where it is apparent from the outset that errors have been made.

Whilst the amount in dispute was minimal, in the context of the additional cost to the ATO (which included the involvement of the Inspector General) and my own personal opportunity cost, the value lost to all parties was considerably more than the erroneous Excess Contribution charge.

What is more concerning, and in fact, forms the catalyst for this letter, is that most taxpayers would not be prepared to go to the trouble of attempting to negotiate a system which is ostensibly designed to be non-negotiable – with the result that they would simply pay an unfair penalty.

As an example of the mechanical failure to acknowledge or accept proof of the taxpayer's situation or evidence, I had the surreal experience of being advised by an ATO Appeals officer that even though he was actioning my appeal, nothing could be done about it despite the receipt of evidence from my super fund that I was not in breach of the Concessional Contributions threshold.

My concern is not about the amount overcharged. It is about a system which requires an overhaul to ensure that taxpayers who have been affected by an ATO error are able to receive a prompt and fair hearing, with the issue resolved on appeal, as invited by the current ECT Notice.

As a courtesy, I have attached a copy of a media release which is intended as a constructive criticism of systems which are in need of improvement within our government agencies; it includes a summary of the ATO matter referenced above.

I look forward to receiving your response to my concerns, and perhaps, to an indication of the timeframe in which an external review of the ATO's ECT processes might be initiated.

If you, or the ATO have any questions, please don't hesitate to call me on 04 [REDACTED].

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal stroke that tapers to the right.

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

Encl: Media Release No. 136, 7th February 2022, Taking on government bureaucracy – and winning

Taking on government bureaucracy – and winning

The ATO, as Australia's statutory revenue collection agency, is charged with administering our federal taxation system, superannuation legislation and other related matters. Centrelink's stated purpose is to help eligible Australians to become self-sufficient and to support those in need. The Department of Veterans' affairs (DVA) has a charter to "work with veterans and their families to design, implement and deliver improved services and support for those who have served in the Australian Defence Forces."

As Australians, we are all familiar with the role government agencies play in administering legislation on behalf of our federal government. Many of us) have experienced first-hand the aggravation in dealing with their systems – behemoths which have evolved to a point which makes fairness almost impossible to achieve, said Adelaide based financial strategist, Theo Marinis.

My most recent experiences (on a personal level and as a client advocate) have involved appeals to the ATO and the Department of Veterans Affairs (DVA) on the basis of erroneous determinations. The processes and systems of both agencies proved ill equipped to enter into any meaningful dialogue which would allow a shift from their highly specious positions – which, in the case of the DVA, resulted in a protracted and stressful dispute.

Eventually (and begrudgingly) both agencies acknowledged that the positions they had taken were flawed, and were forced to reverse their decisions – but not without wasting tens of thousands of dollars of taxpayer funds over trivial amounts, as well as creating undue mental stress for my client.

In my own case, after receiving the ATO's advice that I had overcontributed to superannuation, owed additional tax, and would be charged an 'Excess Concessional Contributions Charge' of \$215, I was faced with a decision. A check of my records satisfied me that the determination was in error and was, in fact, based on incorrect information provided to the ATO by my superannuation fund.

Was it worth trying to rectify the error, or was it simply more expedient to pay the \$215 penalty and move on?

In the process of conducting a client review for a retired former ATO employee, it transpired that he too had received a similar Excess Contributions Tax demand, which he paid without argument. Sadly, if an ex ATO employee chose not to question this demand, what chance does the average taxpayer have?

I contacted the ATO and explained their error.

The ATO belligerently stood their ground and so, on principle, I appealed the assessment (as invited by the ATO's own 'amended' Notice of Assessment) only to learn they could not act on my appeal, despite evidence from my superannuation provider which proved their assessment was incorrect.

After a formal complaint to the ATO Ombudsman, the matter was finally resolved in my favour, and eventually, an amount of \$215 was refunded. From my perspective as a former public servant with an understanding of the public system, together with the knowledge that I had not breached any rules or thresholds, I was able to actively enter into a debate with the ATO with relative impunity for my personal outcome.

Unfortunately, there are many Australians who do not have the resources to check whether what is being claimed against them is correct, and many may feel that in the case of small amounts, it is not worth paying a professional to check on their behalf.

Which brings me to the second and far more concerning case. It relates to that of my client (a Vietnam veteran with over 20 years' ADF service) who received a notice from the DVA in late 2020

to the effect that he had not advised them of his correct asset position – back in 2014! In conjunction with my office, he had, in fact, supplied the DVA with the information he was required to provide.

The DVA claimed no record of receiving the information, demanding back payment of an ‘over-paid’ pension amount of \$6,000.

The back-story is complex, but put simply, DVA didn’t understand its own ‘grandfathering’ rules relating to the assessment of Account Based Pensions, and secondly, their other financial data was incorrect. DVA were assessing financial assets that my client and his wife didn’t have.

Despite our appeal and supporting evidence to prove that an error had been made, DVA ignored our communications and ‘recovered’ the alleged overpayment, even though we had not exhausted the available appeals processes.

Clearly, the department assumed we would go away and stop bothering them.

My client suffers from PTSD, due to conditions which have been accepted by DVA as service related, and despite recently receiving treatment from medical teams from the same department at the inpatient centres at the Adelaide Repatriation Hospital, DVA had still pursued action to ‘recover’ the funds they claimed that he and his wife had been overpaid.

When an internal DVA process dismissed the evidence and our appeal, I offered to take the matter to the Administrative Appeals Tribunal (AAT) in an endeavour to reclaim the money which he and his wife did not owe. My offer was made (and accepted) on the basis that there would be no fee involved for the services I would provide to my client in this matter. However, at the AAT hearing, DVA engaged a government solicitor, at a cost of thousands of dollars to Australian taxpayers.

From that point onwards, the Department went to war against its own beneficiary, based on an inability to administer their own rules, and regardless of his mental health (which they were also paying tens of thousands of dollars to maintain).

I debated DVA’s lawyer before the AAT mediator on at least three occasions, with the result that the matter was partly resolved, with the DVA finally and belatedly acknowledging that my client’s Account Based Pension had indeed been incorrectly assessed. Grudgingly, the department refunded \$4,000 of the \$6,000 they had ‘recovered’ from him. This adversarial process would have cost the Government many more tens of thousands of dollars, as it did in time wasted for all parties.

The DVA then assumed we would be satisfied and leave it at that!

Our claim was not about the money. It was about the principle of fairness and having the ability to appeal mistakes without fear of intimidation and heavy handedness.

In the end, justice was finally achieved, but only as the result of a letter to DVA’s Minister, Mr Andrew Gee on my client’s behalf. With the minister’s intervention, and the resulting assistance from a very competent and professional member of the department’s Adelaide Debt Management unit, we were able to establish conclusively that the department’s assessment of my client’s position was completely inaccurate.

The outcome? A refund of the remaining funds, and a formal apology to my client and his wife – all within a period of 48 hours.

This result, which brought great relief, was achieved only with ministerial intervention. It reflects much which is broken within a system seemingly incapable of rectifying a simple mistake. Instead, it became a dispute which dragged on over a period of more than 12 months – at a considerable financial cost to the Australian taxpayer, and with a serious impact on to my client’s mental health.

In an ideal world, our bureaucrats would recognise that legislation which is to be administered without confusion should be a prerequisite. Current and successive governments (and their agencies) might also be more willing to understand and accept that mistakes are made, as

demonstrated by the two cases outlined above – and let's not forget the Centrelink Robo-debt fiasco.

In the interim, and the real word, I call on the government to launch a rethink within the public service about the departmental drivers which cause agencies to spend more dollars to chase small amounts.

The adoption of a more corporate approach by writing off small costs where costs are due (particularly where there is any doubt of their validity) governments will actually save money; costs in terms of staff time and legal fees are often more than the recovery amount.

In the case of the DVA and my client, the flow-on costs of medical support (as a result of what he felt crushed his service record, reputation and integrity) has cost the department far more than the amount he is alleged to have owed. Sadly, this is not an isolated case; veterans coming back from being broken should not be treated like criminals – a practice which causes further veteran heartache, and adds unnecessary costs to the department.

No one wants a dispute with the ATO or the DVA or any other government agency, but it is very confronting for law abiding citizens to receive correspondence from their government which is not just officious, but erroneous. Many will just 'cop it on the chin', as they will not have access to the resources and/or the determination to fight it.

Our bureaucratic systems and processes must be reviewed to apply financial logic, and to put a human face on our government agencies." Theo said.

Theo Marinis is Managing Director of Marinis Financial Group

-o0o-

For further information, please contact:



Theo Marinis B.A., B.Ec., CPA., CFP®
Financial Strategies (SA) Pty Ltd
Trading as Marinis Financial Group
T 08 8130 5130
F 08 8331 9161
E admin@marinisgroup.com.au
W marinisgroup.com.au
A 49 Beulah Road
NORWOOD SA 5067

Disclaimer

Performance data quoted represents past performance and does not guarantee future results.

The information in this article is general information only. It is not intended as financial advice and should not be relied upon as such. The information is not, nor is intended to be comprehensive or a substitute for professional advice on specific circumstances. Before making any decision in respect to a financial product, you should seek advice from an appropriately qualified professional on whether the information is appropriate for your particular needs, financial situation and investment objectives. The information provided is correct at the time of its creation and may not be up to date; please contact Marinis Financial Group for the most up to date information.