



Mr Theo Marinis
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NOTE: The author of this response significantly mis-understood several issues. As the election campaign for 2022 has just been announced at the time of writing, I will wait to correspond with whoever the incoming Treasurer will be.

Dear Mr Marinis

Thank you for your correspondence of 7 February 2022, originally directed to the Treasurer, concerning the determination and appeal processes for the excess concessional contribution regime. Your correspondence has been referred to the Minister for Superannuation, Financial Services and the Digital Economy, Minister for Women's Economic Security and she has asked me to respond to you.

Thank you for sharing your experiences and views on the administration of the excess concessional contribution regime. Whilst there are no current Government plans to make any changes to the relevant law or administration the matters you have raised will help inform any future policy development. I would also offer the following general information concerning the excess concessional contributions (ECC) and excess non-concessional contributions (ENCC) regime.

A person may request the Commissioner's discretion at any time after the contributions were made, including after they receive an ECC or ENCC determination, a notice of assessment (NOA) that includes excess concessional charge or associated earnings, or an ENCC tax assessment. The Commissioner can make a written determination to exercise discretion to either allocate all or part of a person's contributions to a different year, or disregard all or part of the contributions. These determinations are based on the amounts and types of contributions reported to the Commissioner.

On occasions when funds incorrectly report contribution details, the onus is on the fund to amend the reporting which will result in an amended determination. In these situations, applying for the Commissioner's discretion is not appropriate, as reporting anomalies are generally not considered to be special or out of the ordinary circumstances and are able to be addressed through the fund's normal administrative processes. If reporting issues remain unresolved a complaint may be lodged with Australian Financial Complaints Authority. See the following for details: www.afca.org.au

The Commissioner's discretion can only be used in limited circumstances. Whether a person's circumstances will be considered special will depend on the individual facts of their case. The following are generally not considered to be special circumstances: financial hardship from having to pay the tax; not knowing the law; incorrect professional advice; making a mistake. Further information, including the relevant form and instructions on how to complete this application, is available on the Australian Taxation Office website, www.ato.gov.au, by inserting 'QC 20122' into the search function.

Once again, thank you for taking the time to write.

Yours sincerely

Adam Hawkins
Assistant Secretary
Retirement, Advice and Investment Division
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