

Super ‘trick’ risks Part IV(a) prosecution

Proponents of a ‘money shuffle’ reported by the ABC on 2 April 2020 under the headline ‘**Coronavirus economic downturn has inspired a superannuation tax loophole**’ have forgotten one important point: people who exercise this strategy risk prosecution under Part IV (a) – the general anti-avoidance rule of the Income Tax Act, says Adelaide based financial strategist Theo Marinis.

Under the “arrangement” discussed in the article, a person can organise their affairs to take advantage of the temporary super rules to benefit by \$10,000.

Next the article suggests you use those funds to contribute back into super as a personal Concessional Contribution, to offset against your taxable income and save thousands in personal tax.

The authors are right – in theory only.

However, the Australian Tax Office has seen every scam under the Southern Cross. It has, and will undoubtedly deploy Part IV (a) of the Tax Act, which put simply, enables the ATO to disallow any “scheme or arrangement” designed to avoid income tax, even if that “scheme or arrangement” is possible under the law.

Quite clearly the scheme mentioned in the ABC article is designed solely to do that – and therefore, will almost certainly, be disallowed under this “catch all” provision of the tax act.

As a former employee of the ATO, I can assure you that they will be on the lookout for ANY circular superannuation transactions. It will also be VERY easy for the ATO to monitor such transactions, given that they must approve who can qualify for the release of funds from super under this short-term rule change.

That, I would suggest, is one reason why the ATO must approve super releases case by case. It will be very easy, therefore, for the ATO to reconcile benefits released from super against contributions made during this short-term super rule change.

People who use this strategy will I am certain, be hit by the full weight of the law.

There is also a huge ethical issue here.

It is almost as if some people are becoming ‘Corona Virus Collaborators.’ What they are proposing is to take advantage of a national crisis for purely self-centred reasons.

Whilst it is legal to minimise tax liability, people should not be sucked into ‘cute’ schemes such as this. There are plenty of ethical ways to arrange our affairs to minimise tax without attempting to rot the taxation system when the country is at war with this virus.

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