

I don't think so, Mr Tax Man

In mid-October 2020, Adelaide based financial strategist Theo Marinis received an email from the ATO, courtesy of the MyGov website. Allegedly, he had exceeded the Concessional Superannuation Contribution cap in the 2020 financial year by the obscene amount of \$1,052.98.

The ATO also confirmed they had (very kindly) already amended his tax return, with the reminder that they were owed additional tax, plus an 'Excess Concessional Contributions Charge' of \$219.04. The deadline was 23 November 2020 to pay the outstanding amounts.

Theo, a former ATO employee with approximately 5 years (spanning the late 1980s and early 1990s) as a superannuation advisory officer under his belt, was in no doubt that the ATO had got it all wrong. For a moment he wondered if it was worth trying to rectify the error, but a moment was all it took to run a quick check.

A review of his super statements verified his monthly direct debit contributions of \$2,004.41 totalled \$24,052.97 for the 2020 financial year (\$747.03 below the maximum Concessional Contribution threshold) and therefore, no excess!

"Most people would simply pay the \$200 penalty and move on, as the time and hassle involved in chasing up a problem of this size is probably not worth it. But I am not wired that way," Theo said.

"Particularly in view of the fact that during my time as an ATO employee the ATO's claim was: **The correct amount of tax, no more, no less!**

"The 4 page 'Objection' form sourced from the ATO website (to which was attached the superannuation contributions statement, and a 'you are wrong' answer to the question 'What are your reasons for the objection') was duly despatched to the ATO by express post. Three days later a text message acknowledging receipt of the 'objection' arrived, and we now continue to await a response and a reversal. There is no expectation, however, that there will be any apology from the ATO for the time and inconvenience caused by their bungling.

"It is clear that the whole set of Excess Contributions Tax (ECT), Total Super Balance (TSB) and Transfer Balance Cap (TBC) rules are overly cumbersome – resembling something which could only be designed by bureaucrats who don't live in the real world." Theo said.

"As recently as November 2020, whilst in the process of conducting a review for one of my clients (also a retired ATO employee) it transpired that he too had received a similar Excess Contributions Tax demand, which he had paid without any challenge. Sadly, if an ex-ATO employee chose not to question this demand, what chance does the average taxpayer have?

"In a separate situation, another of my clients, a Vietnam veteran, recently received a notice (an unfounded accusation) that in 2014 he had not advised the DVA his correct asset position. This simply was not the case; he had done so on my advice at the time, and we had, in fact, also supplied the DVA with the information he was required to provide.

"The DVA now claim they have no record of receiving the information and are demanding back payment of an 'over-paid' pension amount, even though it is their error. Under Centrelink and DVA rules, in such a situation where information has been provided, an overpayment cannot be claimed back – but rather, further pension payments are reduced, based on the correct assessment. However, this relies on proof, and fortunately, as my client is able to produce his records; we are currently 'objecting' to this DVA demand on his behalf.

“In the meantime, this man, who has served his country and carried the burden of that war throughout his life, has been made to feel, in his own words ‘like a criminal.’

“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.

“In my case, you might say \$200 is not a big deal, but to me it is matter of principle, and matter of pushing back on a poorly designed (and poorly administered) system. Who knows how many others have also received ECT notices and paid up? One million super fund members at \$200 each is a lot of money!

“From my position as a former public servant with an understanding of the public system, together with the knowledge that I have not breached any rules or thresholds, I don’t feel the slightest bit concerned for my personal outcome. The ATO and other government departments, however, must recognise that a lot of people are subjected to considerable stress by these ham-fisted demands.

“It is very confronting for law abiding people to receive correspondence from their government which is not just erroneous, but offensive. Many will just ‘cop it on the chin’, as they will not have access to the resources and/or the determination to fight the bureaucracy. Such errors need to be reviewed, with systems adjusted to put a ‘human face’ on government agencies.” Theo said.

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