



## Refund of Excess Concessional Contributions

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Personal and Retirement Income Division  
The Treasury  
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PARKES ACT 2600

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Dear Sir / Madam

### Refund of Excess Concessional Contributions

The Financial Planning Association of Australia (FPA)<sup>1</sup> welcomes the opportunity to provide input into the proposed option for delivering the refund of excess concessional contributions.

The FPA is encouraged by the measure to help Australians from being unfairly penalised for making an error while contributing to their superannuation and retirement nest egg. While this measure will reduce the number of occasions where the concessional contribution cap is exceeded and individuals penalised, the measure falls well short of delivering a solution for what is a very serious problem.

Other matters that warrant attention include:

- The one-off nature of the relief and the fact that it is applied compulsorily, not at the individual's choice.
- The exclusion of non-concessional contributions in the relief.
- The fact the relief does not apply at all where the excess contributions exceed \$10,000.

During a Senate Estimates Committee<sup>2</sup>, Senator Cormann asked a number of questions relating to the extent of the excess contributions made by Australians. The responses<sup>3</sup> to these questions provided the following information:

- The number of individuals expected to breach the cap has more than doubled from (28,291) 2008-09 to (65,733) 2009-10. It is without question that this has been significantly impacted as a result of the government's decision to half the concessional contribution cap.
- A variety of reasons why people exceeded the contribution caps was provided, however, not one reason related to the taxpayer intentionally or knowingly breaching the caps. The specific reasons included:
  - Incorrect superannuation fund reporting
  - Taxpayers not completing their income tax return correctly

<sup>1</sup> The FPA is the peak professional body for financial planning in Australia. The 8,000 individual professional members of the FPA have an enforceable Code of Professional Practice, including the Client First principle. 5,700 of our members have achieved CFP certification, which is the global standard of excellence in financial planning. FPA practitioner members manage the financial affairs of more than 5 million Australians whose investments are valued at \$630 billion.

<sup>2</sup> 17 December 2010, Senator Mathias Cormann, Senate question number 367.

<sup>3</sup> 4 March 2011, Media Release Senator Mathias Cormann, *Shorten asleep at the wheel as Australians overtaxed on super.*



## Refund of Excess Concessional Contributions

- Taxpayers not understanding the tax treatment of contributions
- Salary sacrifice arrangements, particularly caused by the timing of contributions made by employers. For example, contributions made in respect of one financial year not being received by the fund until the next year.

In addition another ATO<sup>4</sup> document confirmed the following in respect to timing of employer contributions:

We are conscious that circumstances can arise where the actions of an employer may cause a problem for an individual, where the individual had a reasonable expectation that the employer would do something other than what they actually did. For example, where an employer unexpectedly makes early or late payments on either side of the financial year or makes a back payment of contributions relating to earlier years.

It is the FPA's position that these reasons do not warrant the harsh penalty and inflexibility that currently applies, especially in respect to reasons outside of the individual's control.

The main concern is the flow on impact to the non-concessional contribution cap, which if breached as a result of breaching the concessional contribution cap will result in an additional 46.5% tax, meaning that individual could be liable for 93% in tax.

Given the high penalty rate applied to excess contributions and based on our own observations, we believe most excess contributions have arisen due to mistake or accident rather than by intention. Indeed, unfamiliarity with the rules during the initial stages of the legislation has been a major contributing factor. In some situations taxpayers have simply failed to understand the application and limitations of the contribution rules, or have inadvertently contributed amounts in excess of the contribution caps due to extenuating personal circumstances.

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<sup>4</sup> 9 March 2010, ATO Superannuation Consultative Committee: *Excess Contribution Tax Update*, File Ref: 10/443



## Refund of Excess Concessional Contributions

Tax Laws Amendment (2012 Measures No.1) Bill 2012: refunded excess concessional contributions

***Section 292-420: Release authorities for refunded excess concessional contributions***

The FPA support the responsibility of the determination of the excess concession concessional contributions resting with the Commissioner as opposed to the Superannuation Provider. The FPA are however concerned that the process could be quite drawn out and could be an alternative to the situation where the individual has not remedied the excess prior to this time.

*The FPA recommends that further clarification of the interaction of this measure with that allowing a person with excess contributions to apply to the ATO to have all or part of the contribution disregarded or reallocated from the time the contributions are made.*

***Section 292-467: Refunded excess concessional contribution***

Section 292-467(b) clarifies that excess contributions may only be refunded where the total amount of those excess contributions is \$10,000 or less.

*The FPA recommends that this monetary amount be removed to allow all individuals with excess contributions to be eligible for the refund option.*

The FPA supports section 292-467(c) which states that all individuals will be eligible from the 2011/12 financial years. This is irrespective of whether or not they have previously breached the concessional contribution cap.

The FPA are however concerned that the concession is a 'once-only' concession.

*The FPA instead recommends that this concession be able to be applied on an annual basis.*

The FPA does not believe that placing these restrictions is necessary to ensure the integrity of the superannuation system. However it will ensure a simpler and fairer superannuation system for all users.



## Refund of Excess Concessional Contributions

### Flow on effects and Other Issues

An important consideration in the administration of the excess concessional contributions refund is how the refunded amount is to be treated, particularly in the hands of the individual member.

Refunded excess concessional contributions, grossed up for 15% contributions tax, will be treated as assessable income of the individual. As a consequence, consideration must be given to what effect an increased amount of assessable and taxable income may have on the remainder of the individual's financial position.

Adjusted taxable income (ATI) as variously defined is used to determine a broad range of government assistance and taxation benefits, such as social security payments, Family Tax Benefit, Child Care Benefit, superannuation co-contributions, deductions for personal super contributions, Commonwealth Seniors Health Card, senior Australians tax offset and mature age workers tax offset. The amount of refunded excess contributions could therefore have an effect on eligibility for these other measures, particularly if the refunded contributions would have otherwise been excluded from the person's ATI.

The following matters remain unclear on this point:

- Where the excess contribution arises from a combination of RESC and other super contributions, how should the refunded amount be characterised, both for ATI purposes and whether it is employment or non-employment income? Failure to do so will lead to uncertainty and unexpected outcomes.
- As reportable super contributions themselves are included in ATI in some instances, the refunded excess may result in double-counting. This has been highlighted in the consultation paper as a matter requiring further consideration. We would support further discussions on this matter to ensure unintended consequences are avoided.
- Where the excess contribution arises from contributions that are not influenced by the member, whether superannuation guarantee or mandated by an employment agreement, what is the implication of a refund to:
  - the legal obligations and liabilities of the contributing employer and
  - the potential for the member to then access preserved superannuation benefits.

If you have any questions regarding the FPA's submission, please contact me directly on 02 9220 4505 or [dante.degori@fpa.asn.au](mailto:dante.degori@fpa.asn.au).

Yours sincerely

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