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### **LEVY of Excess Contributions Tax for ALL excess mistakes must be abolished**

There has been much in the press about the huge unfairness and unjustness about Excess Contributions Tax (ECT) being applied to excess contributions to Superannuation due to mistakes made by the member. There were 180,000 members taxed unfairly \$400M at last count. !!

It should be realised that unless the member consciously intended excess contributions to be placed in his fund then they must all be mistakes.

Under the **Law of Unjust Enrichment** mistakes are allowed to be reversed, which supercedes the SIS Act in this regard. Hence the ATO Commissioner, it appears, is acting illegally in preventing withdrawal of excesses.

This applies to both Concessional and Unconcessional excess contributions.

This places the Trustee in a very difficult position. If a member insists that the trustee returns an excess contribution as it was a mistake under the Law of Unjust Enrichment, should the Trustee return the contribution and be penalized by the ATO who has forbidden any reversals, or should he Trustee refuse the member, who can then sue the Trustee for loss of the enrichment and its penalties of ECT?

The allowance of \$10K Concessional withdrawal is a step in the right direction but has many problems. If it is unfair to tax an excess \$10K then it also equally applies to say \$11K as well?. In fact all excess contributions should be allowed to be withdrawn.

Also the administration for all the added conditions attached is costly

Double taxation of 93% can occur with any Concessional excess rolling over as a non concessional contribution. This can trigger a domino landmine effect such that an excess of 1c causes an ECT of \$69,750 !!

This cannot be appealed as “it’s a tax” “you haven’t done anything wrong” OUCH  
The ATO Commissioner has stated on his web page that mistakes are not an excuse, even if your accountant advises you !! – grossly unfair.

To sum up :-

- All ECTS are unfair and unjust on all mistaken excess contributions  
It’s just a huge revenue grab by the government.
- It unjustness causes much grief, anger, depression and more
- Excess contributions should be allowed to be reversed under the **Law of Unjust Enrichment** for mistakes. The ATO should not prevent it.
- The penalties should fit the crime – a huge tax of \$67,750 on 1c must be abolished, they’re grossly unfair
  - Every other country allows excesses to be refunded and so avoid ECT
  - We need our day in court. These penalties are tax based and the ATO is the judge, jury and executioner. They cannot be appealed.. We can even go to court for a parking fine, why not ECT.? Using a tax as a penalty is very unsafe (Google) - its back to Robin Hood days.

- Mistakes are very easy to make with the computer – selecting wrong accounts or specifying the wrong amount. One bank insists on transactions done over the phone. All very error prone.

- Inconsistent. If a member makes a **single** contribution incurring an excess then the trustee **must** return the excess so the member doesn't incur an ECT. However if the member makes an excess payment in two or more contributions the Trustee **must not** return the excess. Hence the member is forced to pay an ECT even though the trustee knew that at the time of payment. What a crazy situation.

- Accountants bad advice is not considered an excuse by the ATO

- The ATO expects every member to understand the SIS Act and know his account balance to 1c!! These are no excuses. The ATO takes no prisoners

- There are many accountants who will sweep your problem under the carpet- for a price. Some of the strategies they use although semi legal will be disallowed in an ATO audit as they will be deemed as tax avoidance. The original ECT will be charged together with interest and other penalties added.

-What a nightmare!! You may be a criminal and loose your trusteeship all for a small mistake rectified immediately

### **Conclusion**

The application of ECT to mistakes is grossly unfair and unjust as it can impose huge ECT on members making small mistakes even if they rectify them immediately. This situation is constantly being discussed at parties and dinner parties , to the detriment of the government, especially with the 50to 60 year old self funded retirees who mostly are being penalised with their Non Concessional excess mistakes

The government is being blamed for not correcting it in the six years since 2006.

Also the Opposition is now coming under fire for not pressurising the government to reform. Instead they spend their time attacking the government on other unfortunate unnamed individuals who have strayed from the path. This is all fun and games for them but they appear to have lost focus on the main issues of the day.

Also the government supporters are continually blaming the Howard / Costello government for bringing the tax in!

All this makes member fearful of Super and prevents extra contributions entering the Super environment.

Super is a big leaky bucket where the holes need to be sealed up. Then this will also attract additional contributions.

At the moment Super is being compared to a holiday in Mogadishu – “do I feel lucky and not get my arms and legs blown off by the super penalty taxes?”

### **The Solution**

When the ATO send out ECT assessment notices allow the members to pay the ECT if they wish or alternatively to withdraw the contribution that invoked the ECT . Hence no ECT is charged. Then all is fair and just. Its so easy to administer.

This is what happens in the rest of the world.

## **STOP LEVYING THIS ATROCIOUS TAX ON SIMPLE MISTAKES**

**Why is the government penalising the very people it is trying to make save?**

