



MARINIS
FINANCIAL GROUP

Financial Strategies (SA) Pty Ltd
Trading as **Marinis Financial Group**
ABN 54 083 005 930
Australian Financial Services
Licence No: 326403

T 08 8130 5130
F 08 8331 9161
M 0412 400 725
E admin@marinisgroup.com.au
A 67 Kensington Road
Norwood SA 5067
W marinisgroup.com.au

7th September 2012

The Hon. Bill Shorten MP
Minister for Employment and Workplace Relations
Minister for Financial Services and Superannuation
Parliament House
CANBERRA ACT 2600

Dear Sen. Shorten

EXCESS CONTRIBUTIONS TAX (ECT)

Someone on your staff is not advising you well on ECT – it is a real issue - and it is hurting ordinary people.

Any system which can cause a \$1,000 Non Concessional Contribution (NCC) mistake to penalise a person \$139,000 is wrong*. The ECT system did not foresee such unfortunate penalties when passed by Parliament. After all, tax cheats are only taxed at 46.5%!

Your adviser needs to understand that not every working Australian gets a regular pay cheque. For example, farmers, trades persons, small business people, freelance journalists receive sporadic and unpredictable money. Many people have more than one employer such as some doctors or academics.

Working people often get a “balloon” payment when they finish employment, such as a redundancy or a “golden handshake”. This final pay cheque should go straight to their super and keep them off the public purse for as long as possible, but the current ECT laws make buying a boat or going overseas more attractive!

The current ECT system fundamentally does not allow for human error – and a one-off \$10,000 Concessional Contribution (CC) ‘fix-up’ limit is simply a PR move to say the problem is fixed.

Even this “remedy” only deals with CC cap breaches, there is no relief for NCC Bring-Forward breaches, such as that mentioned above and demonstrated in the table below!

The Parliament, and you as the relevant Minister, have an obligation to review and amend legislation that is not functioning as intended to the very great detriment of many honest, ordinary, Australian people. You **MUST** do something about this!

Your adviser thinks about super from the wrong angle. We should encourage all Australians to put as much away for retirement as possible, up to a reasonable limit – not setting financial traps for those who want to provide for themselves in retirement as ECT does.

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This is my final correspondence to you on the subject. I hope you will use this letter to challenge your adviser, to shake them into some real world thinking and to amend the legislation.

Sincerely

Theo Marinis B.A., B.Ec., CPA., CFP®
Financial Strategist
Authorised Representative

* An example of a Bring-Forward Strategy gone wrong – and the awful penalty for a simple mistake!

FINANCIAL YEAR	DATE	NCC AMOUNT
2010	July 2009 June 2010	\$ 1,000 due to an NCC for Co-contribution purposes \$150,000 NCC having overlooked previous \$1,000 NCC*
2011	June 2011	\$150,000 NCC
2012	June 2012	\$450,000 NCC based bring forward NOT triggered
TOTAL NCC's ASSESSED		\$751,000 (2010 – 2012)
ECT PENALTY		\$301,000 taxed at 46.5% = \$139,965

THIS PENALTY IS TERRIBLE FOR EFFECTIVELY ONLY A \$1,000 OF OVERLOOKED CONTRIBUTION. THIS WAS **CERTAINLY NOT** WHAT THIS LEGISLATION WAS DESIGNED TO AVOID!

* **HOWEVER THE THREE YEAR BRING-FORWARD WAS TRIGGERED UNINTENTIONALLY BY THE OVERLOOKED \$1,000 NCC IN JULY 2009**

