



## Refund of Excess Concessional Contributions

Manager  
The Manager, Contributions and Accumulations Unit  
Personal and Retirement Income Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [recc@treasury.gov.au](mailto:recc@treasury.gov.au)

29 June 2012

Dear Sir / Madam

**RE: Superannuation Industry (Supervision) Amendment Regulation (2012 No.) Refund of Excess Concessional Contributions, Retirement Savings Accounts Amendment Regulation (2012 No.) Refund of Excess Concessional Contributions.**

The Financial Planning Association of Australia (FPA)<sup>1</sup> welcomes the opportunity to provide input into the regulations to amend the *Superannuation Industry (Supervision) Regulations 1994* and the *Retirement Savings Accounts Regulations 1997*.

The FPA is supportive of these regulations that will enable superannuation providers to comply with the release authority issued by the Commissioner of Taxation and removing the effect of certain cashing restrictions that would otherwise apply to the payment.

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.

### **Eligible individuals**

The Explanatory Memorandum (EM) states that if all of the four conditions are met, the Commissioner may issue an individual with the notice of offer for a refund:

- the Commissioner is satisfied that the individual has excess concessional contributions for a financial year commencing on or after 1 July 2011;
- the amount of those excess concessional contributions is \$10,000 or less;

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<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.



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- the individual does not have excess concessional contributions for an earlier financial year starting from 1 July 2011 (disregarding any previous application of this measure); and
- the individual has lodged an income tax return for the income year that corresponds to the financial year within 12 months of the end of that year, or within such longer period as the Commissioner allows.

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.

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

### **Administration of excess concessional contributions**

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



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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 was 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.

We look forward to further information in due course and details regarding the refund process.

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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