

**SENATE STANDING COMMITTEE ON ECONOMICS QUESTION**  
**(Supplementary Budget Estimates 20 October – 21 October)**

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Question: SBT 61

Topic: Superannuation Concessional Contributions Tax

Senator Bushby asked:

In BET 68, it was noted that no excess contributions tax assessments for 09-10 had been raised (in the context of super concessional contribution caps), that fund reporting would occur in October 2010 and that you were in June, in the process of raising assessments. We are now well into October. Have excess contribution assessments now been raised? To what extent will the commissioner's discretion be used to assist those inadvertently caught out? What circumstances would it be used?

What is the anticipated amount added to revenue out of the change to the concessional contribution caps?

Answer:

Have 2009-10 excess contribution assessments now been raised?

The ATO has not yet raised any excess contributions tax assessments for excess contributions made in the 2009-10 year.

To what extent will the commissioner's discretion be used to assist those inadvertently caught out? What circumstances would it be used?

The Commissioner's discretion may only apply where the Commissioner considers there are special circumstances and the decision is consistent with the objectives of the relevant tax laws. The discretion is very limited, and does not, without additional relevant factors, typically extend to circumstances of inadvertence, error, miscalculation, or poor professional advice.

It is not possible to anticipate all the circumstances in which the discretion may or may not be exercised.

However, ATO website material covers the more common scenarios where taxpayers are applying for the discretion and some examples to help taxpayers understand whether their application is likely to be successful. This material covers the circumstances the ATO sees most usually, and provides a wide range of both positive and negative examples. However, each application is considered on its own particular facts. The updated web content is attached. Specific cases where the discretion would be exercised favourably are at examples 2 and 3 on page 5, example 1 on page 8, and example 2 on page 9.

PSLA 2008/1 *The Commissioner's discretion to disregard or reallocate concessional and non-concessional contributions for a financial year* provides guidance on the application of the law.

Inadvertent errors made by the individual or their adviser are a relatively common cause of excess contributions. Such cases would not typically, in the absence of other relevant factors, have the discretion exercised. The ATO has educational material regarding excess contributions tax available on its website in order to assist taxpayers to understand their obligations.

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In some cases the ATO believes there have been deliberate decisions to exceed the concessional cap (e.g. through salary sacrificing) because there can be advantages in doing so notwithstanding the payment of excess contributions tax.

What is the anticipated amount added to revenue out of the change to the concessional contribution caps?

The estimates from the 2010-11 Budget's changes to concessional contributions caps are given on page 41 of Budget Paper 2.

These estimates do not assume a rise in Excess Contributions Tax. They assume that people do not make excess contributions, but instead the majority of contributions are taxed as wages while some previous contributions are placed in alternative tax effective investments.