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To:	Sue Morton		
Fax No:	02 6277 3130		
Subject:	Senate Committee on Superannuation		
Date:	23rd May 2002	No Pages (incl. cover):	4

Dear Sue

Please find copies of my correspondence with the ATO about the case I used as Example 1 in my amended submission to the Senate Committee on 22nd May 2002.

As you will see some of the figures have been rounded. But the situation is still the same.

As a point of clarification the \$ 75,000 per annum income referred to in the correspondence, relates in Example 1 to the total of income and super contributions. This is because for the Surcharge, ATI is income and super.

I will also email you in Word format a copy of my Addendum to make it easy to be included.

Should you have any further queries please do not hesitate in contacting me.

Yours sincerely

Phillip Whiteley.



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Fax sent to ATO ON 10/11/2000

Phone:		
Facsimile:		
Email:		

To:	Kelly - Australian Taxation Office, Surcharge Unit		
Fax No:	02 9794 4999		
From:			
Subject:	Adjusted Taxable Income/Surcharge		
Date:	Friday, 10 November 2000	No Pages (incl. cover)	1

Dear Kelly

Further to our conversation, I am just confirming the nature of my query. I have a client who became resident in 1982. The client is looking to transfer their Superannuation from England to a superannuation fund here. If he transfers the super, tax will be deducted from the transfer based on the amount of increase/growth in transfer values between the date of residency and the date the transfer takes place. The amount of tax deducted is calculated by adding this growth to his income for the year and it is then charged at his marginal tax rate.

Because he became resident a long time ago a considerable amount of the transfer value will be classified as growth in this case about \$ 142,000. He has income of \$75,000pa. So if he transferred the funds he would have a notional income, for working out the tax, of about \$217,000

The question is due to this increase, would the ATI for surcharge purposes, for his superannuation contributions for employment here, be at his actual income (\$75,000) or at the higher amount. So by transferring would this create a surcharge liability on his superannuation contributions here ?

I don't expect an answer that relates specifically to the case above, I've provided these details as a way of explaining my question. As I deal with a number of people who transfer funds it will be useful to clarify the situation for future reference.

I thank you in advance for your help. Should you have any further queries please feel free to contact me.

Yours sincerely

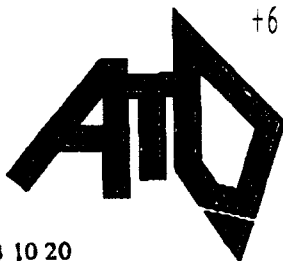
FAX
8:30
10/11/00

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RECEIVED TIME 23.MAY. 11:17

PRINT TIME 23.MAY. 11:19

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**Australian Taxation Office**

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Telephone: 13 10 20
Facsimile: (08) 9268 6250

Our Reference: DWMS142135
Contact Officer: Chris Scaife
Contact Phone: (08) 9268 6169
Your Reference:

4 January 2001

SUPERANNUATION CONTRIBUTIONS TAX: ADJUSTED TAXABLE INCOME

I refer to your facsimile of 10 November 2000 in relation to the definition of adjusted taxable income (ATI) for superannuation surcharge. You specifically asked about the treatment of lump sum payments from eligible non-complying superannuation funds, in this case a fund in England.

Superannuation surcharge is levied under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* (SCT) on surchargeable contributions paid to taxpayers whose Adjusted Taxable Income (ATI) exceeds the threshold amount. For the year ended 30 June 2001, the threshold amount for surcharge is \$81 493.00.

Section 43(a) of the SCT defines ATI to include a member's taxable income, where taxable income is assessable income reduced by allowable deductions.

Section 27CAA of the Income Tax Assessment Act 1936 (ITAA) includes payments from eligible non-resident non-complying superannuation funds to be assessable income. Broadly speaking, unless those payments are termination payments made within six months of the termination of employment or of becoming a resident, in which case they would be exempt from tax under section 27CD of the ITAA.

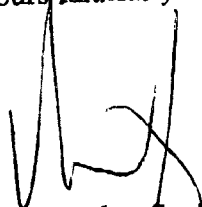
Therefore, in the scenario set out in your letter, where a taxpayer's income for a year is \$75 000.00 and a payment from an English superannuation fund is received which includes growth of \$142 000.00, the ATI would be approximately \$217 000.00.

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If you have any further queries on this matter you can contact me on (08) 9268 6169, telephone the Superannuation Helpline on 13 10 20 (for the cost of a local call) and ask for extension 86169 or email on Christopher.Scaife@ato.gov.au.

Yours faithfully



(Christopher Scaife)

for Leo Bator

DEPUTY COMMISSIONER OF TAXATION