

Another taxpayer falls foul of excess super contributions

In a very expensive tax lesson, a taxpayer has lost her appeal to the Administrative Appeals Tribunal (AAT) and ended up with a tax bill for almost \$61,000.

She had claimed that “special circumstances” existed in her case because she had contributed an amount, withdrew a sizeable sum and then basically re-contributed it again taking her over the \$450,000 contribution limit.

In her words, the excess contribution should be disregarded because they were part of the “same money... rolling around in the tin”.

Facts

The taxpayer made a non-concessional contribution of \$400,000 into a super fund in May 2009, triggering the ‘bring forward’ provisions of the \$450,000 super cap.

In July 2009, she withdrew just over \$200,000 from the super fund and deposited into a term deposit.

She subsequently established an SMSF and in February 2010 contributed \$205,000 - \$23,905 deductible and \$181,095 non-concessional.

In May 2012, the ATO advised her that she had exceeded the non-concessional contributions cap by \$131,095, and after dismissing her objection, issued an assessment for \$60,959.

Decision

The taxpayer said that no special circumstances existed.

“In cashing in \$200,589 of her superannuation benefits, the taxpayer was free at the point to do whatever she chose to do with that money.”

“The fact that she chose to reinvest what appears to be the amount plus some other funds into her SMSF is a matter for her.”

The 2010 contribution was simply a new non-concessional contribution made by the taxpayer and could not be described as the same amount as that which originally went into superannuation.

Note: The government has proposed that, from the 1st of July 2013, taxpayers will have the option of withdrawing excess contributions (and any associated earnings) so that such inadvertent breaches are not punished so harshly.

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