



# Media Release

## Senator Mathias Cormann

### *Shadow Assistant Treasurer*

### *Shadow Minister for Financial Services and Superannuation*

11/0304/MC

4 March 2011

### **Shorten asleep at the wheel as Australians overtaxed on super**

The number of Australians hit with additional tax on their super contributions has more than doubled in the wake of Labor's broken promise not to change superannuation laws.

The revelations were made in an answer to a question on notice received in the Senate.

More than 65,000 Australians so far have been found to have breached their concessional super contribution cap during the 2009/10 financial year, up from about 28,000 the previous year.

The dramatic increase is a direct result of Labor's decision to halve concessional contribution caps down to \$25,000 per annum, contrary to firm commitments made in the lead-up to the 2007 election.

The government is taxing those excess contributions at the top marginal rate of 46.5 per cent no matter what, with the Gillard government set to collect another \$140 million in additional tax revenue because people were caught out by Labor's unexpected super change.

This is just another Labor Party tax grab.

Clearly people are not making those mistakes on purpose as they are very obvious and transparent.

They can be caused by a variety of circumstances, many of them out of the control of the individual involved.

People should be able to correct any inadvertent errors without being taxed at an inappropriately high income tax rate for them – in particular when the breach is caused by a broken Labor Party promise.

Australians inadvertently breaching non-concessional contribution caps can be hit by an effective tax rate as high as 93 per cent.

It is time that the Minister for Superannuation Bill Shorten took some action to fix these problems.

This issue has been raised with him by industry stakeholders again and again.

So far he has sat on his hands and done nothing.

It is time Bill Shorten started to focus on doing the job he's got, rather than to waste all his time chasing the job he wants.

#### **MEDIA CONTACT:**

Senator Cormann

0411 874 546

## TREASURY

### SENATE QUESTION

Notice Given: 17 December 2010

(Question No. 367)

**Senator Cormann:** To ask the Minister representing the Assistant Treasurer—With reference to the superannuation contributions in excess of the concessional and non-concessional contribution caps:

- (1) For each of the following financial years: 2007-08, 2008-09 and 2009-10:
  - (a) how many individuals made contributions above the concessional and non-concessional contribution caps respectively;
  - (b) what was the average amount paid above the concessional and non-concessional contribution caps respectively;
  - (c) what was the total amount of taxation collected as a result of contributions above the concessional and non-concessional contribution caps respectively;
  - (d) what was the average amount of tax paid per individual on contributions above the concessional and non-concessional contribution caps respectively;
  - (e) what was the average amount of excess concessional contributions that counted towards the relevant individual's non-concessional contribution caps for the same period; and
  - (f) what was the average amount of excess concessional contributions that counted towards the individual's non-concessional contribution caps that created excess non-concessional contributions for the same period.
- (2) For the period 10 May 2006 to 30 June 2007, what is the answer to each of the questions raised in (1)(a) to (1)(f) for the non-concessional contributions made during that period.
- (3) For the financial years 2009-10 and 2010-11:
  - (a) how many people does the Australian Taxation Office (ATO) expect to make contributions above the concessional and non-concessional contribution caps; and
  - (b) how much tax is this estimated to raise.
- (4) Has the ATO investigated the reasons or received explanations from the taxpayers for contributions above the concessional and non-concessional contribution caps respectively.
- (5) What were the reasons for contributions above the concessional and non-concessional contribution caps respectively.
- (6) Is the ATO aware of how many contributions above the concessional and non-concessional contribution caps respectively were made inadvertently, for example, due to lack of knowledge of precise timing of superannuation contributions from different sources (such as personal contributions, salary sacrifice contributions and compulsory employer contributions); if so, what proportion of contributions fall into these categories.
- (7) How much did it cost the ATO to administer the concessional and non-concessional contribution caps respectively for each of the following financial years:
  - (a) 2007-08;
  - (b) 2008-09; and
  - (c) 2009-10.
- (8) How much does the ATO estimate it will spend administrating the concessional and non-concessional contribution caps respectively in the 2010-11 financial year.

## ANSWER

**Senator Sherry:** The Assistant Treasurer has provided the following answer to the Honourable Senator's question:

## 1 (a).

**Table 1: Individuals potentially exceeding contributions caps 2007-08/2008-09/2009-10<sup>1</sup>**

<b>Financial year</b>	<b>Contribution Caps</b>	<b>Number of Individuals</b>
2007-08	Concessional only	30,222
	Non-concessional only	3,687
	Concessional & Non-concessional	724
	<b>Total</b>	<b>34,633</b>
Likely 2007-08 excess contributions tax assessments <sup>2</sup>		22,561
2008-09	Concessional only	28,291
	Non-concessional only	4,798
	Concessional & Non-concessional	853
	<b>Total</b>	<b>33,942</b>
Likely 2008-09 excess contributions tax assessments <sup>2</sup>		23,059
2009-10 <sup>3</sup>	Concessional only	65,733
	Non-concessional only	4,339
	Concessional & Non-concessional	541
	<b>Total</b>	<b>70,613</b>
Likely 2009-10 excess contributions tax assessments <sup>2</sup>		48,721

1. These figures are current as at 17 January 2011 and are based on information reported to the ATO. These figures will change as new information is received by the ATO.
2. Not all individuals identified as exceeding the contribution caps will receive an assessment. A number of cases will be subject to correction of reporting errors by funds. Additionally, the ATO takes a practical, risk based approach in relation to cases where the caps are exceeded by only a small amount.
3. Figures for 2009-10 will change as self managed super funds and some individuals are not required to lodge 2009-10 information until May and June of 2011.

## 1 (b).

**Table 2: Average excess contributions 2007-08/2008-09/2009-10<sup>1,2</sup>**

<b>Financial year</b>	<b>Contribution Caps</b>	<b>Average excess</b>	<b>Median excess</b>
2007-08	Concessional	\$10,514	\$2,865
	Non-concessional	\$62,801	\$5,553
	Concessional & Non-concessional	\$144,989	\$5,961
2008-09	Concessional	\$13,096	\$3,249
	Non-concessional	\$74,634	\$18,463
	Concessional & Non-concessional	\$206,028	\$15,960
2009-10 <sup>3</sup>	Concessional	\$6,901	\$2,993
	Non-concessional	\$48,853	\$25,000
	Concessional & Non-concessional	\$89,861	\$9,532

1. These figures are current as at 17 January 2011 and are based on information reported to the ATO. These figures will change as new information is received by the ATO.
2. Not all individuals identified as exceeding the contribution caps will receive an assessment. A number of cases will be subject to correction of reporting errors by funds. Additionally, the ATO takes a practical, risk based approach in relation to cases where the caps are exceeded by only a small amount.
3. Figures for 2009-10 will change as self managed super funds and some individuals are not required to lodge 2009-10 information until May and June of 2011.

**1 (c) and (d).** The ATO does not separately record the concessional and non-concessional components of excess contributions tax collections.

The ATO has largely completed the process of issuing assessments in respect of 2007-08 and has commenced issuing assessments for the 2008-09 financial year. Assessments have yet to issue for the 2009-10 financial year so no data can be provided at this time.

Table 3 shows total excess contributions tax collected from individuals for the 2007-08 and 2008-09 financial years and the average amount that has been collected per individual to 7 January 2011.

These figures will change as we continue the process of issuing assessments and further amounts are collected by the ATO or amounts in dispute are resolved.

**Table 3: Excess contributions tax collected 2007-08/2008-09**

<b>Financial year</b>	<b>(c) Total collected</b>	<b>(d) Average collected per individual</b>	<b>Median collected per individual</b>
2007-08	\$58,242,663	\$6,142	\$2,198
2008-09	\$44,103	\$2,100	\$941

**1 (e) and (f).** As individuals may have made other non-concessional contributions, but not necessarily up to the cap, only a portion of excess concessional contributions will also count as excess non-concessional contributions. This is reflected in the data below.

**Table 4: Average excess concessional contributions counting towards the non-concessional cap<sup>1</sup>**

<b>Financial year</b>	<b>(e) Average excess concessional contributions counting towards the non-concessional contributions cap</b>	<b>(f) Average excess concessional contributions counting towards the non-concessional contributions cap and resulting in excess non concessional contributions</b>	<b>(f) Median</b>
2007-08	\$71,757	\$50,811 <sup>2</sup>	\$1,894
2008-09	\$100,890	\$80,555	\$4,655
2009-10	\$44,700	\$31,351	\$3,633

1. These figures are current as at 17 January 2011.
2. There were 267 cases in 2007-08 where assessments were raised in these circumstances. The average total contributions in these cases was \$481,758 (with a median total of \$550,776).

**2 (a). Table 5: Individuals exceeding the transitional non-concessional cap (10 May 2006 – 30 June 2007)**

<b>Contribution Caps</b>	<b>Number of Individuals</b>
Non-Concessional	1,863

The ATO does not hold data relating to individuals who potentially exceeded the transitional cap. Table 5 above provides details relating to the number of assessments issued. These figures are current as at 17 January 2011 and exclude 208 individual assessments where the Commissioner applied his discretion.

**2 (b). Table 6: Average excess transitional non-concessional cap contributions (10 May 2006 – 30 June 2007)**

<b>Contribution Cap</b>	<b>Average excess contributions</b>	<b>Median Excess contributions</b>
Non-concessional	\$67,050	\$6,859

These figures are current as at 17 January 2011 and further information may be received by ATO resulting in the reduction of these assessment amounts.

**2 (c) and (d). Table 7: Excess contributions tax collected (10 May 2006 – 30 June 2007)**

<b>Transitional period</b>	<b>(c) Total collected</b>	<b>(d) Average collected per individual</b>	<b>Median collected per individual</b>
10/05/06 – 30/06/07	\$41,452,563	\$27,748	\$7,749

These figures are at 7 January 2011 and will change as further amounts are collected by the ATO or amounts in dispute are resolved.

**2 (e) and (f).** Not applicable as transitional provisions only apply to non-concessional caps.

**3 (a).** Table 1 in part 1(a) provides information on the number of individuals that have potentially exceeded one of the contributions caps in 2009-10. These figures are current as at 17 January 2011 and are based on information reported to the ATO. This information will change as described in the footnotes to the table.

The ATO does not currently have an estimate for the number of individuals that may exceed a contribution cap. Variables impacting on likely numbers include:

- 2009-10 is the first year that the contribution caps were reduced
- the factors contributing to an individual exceeding a contribution cap are varied (see question 5) and will be different for individuals from year to year
- recent compliance action by the ATO may influence behaviour by taxpayers and their advisers.

**3 (b).** The 2009-10 Budget contained estimates (not separately identified) of excess contributions tax associated with ensuring taxpayers met their superannuation obligations, including excess contributions tax, during the global financial downturn (page 390, 2009-10 Budget Paper No. 2). The estimates from the 2010-11 Budget's changes to concessional contributions caps are given on page 41 of 2010-11 Budget Paper No. 2.

These estimates do not assume a rise in excess contributions tax. They assume that people do not make excess contributions, but instead seek to take employer contributions and some personal contributions as personal income and that some personal contributions are invested in vehicles which are as tax effective as superannuation.

4. No, The ATO does not have a mechanism to systematically collect this information from taxpayers, nor has it commissioned or undertaken market research to investigate the reasons taxpayers made contributions above the concessional and non-concessional contribution caps. However, the ATO does receive feedback from some taxpayers and their representatives through inquiries, correspondence, requests for review and ATO consultative bodies. While this information provides some indications of causes it may not be representative of the entire impacted population.

5. Based on the current body of information, there appears to be a variety of causes for contributions which exceed the caps. These include:

- taxpayers failing to take into account available information when planning their contributions for a financial year
- incorrect superannuation fund reporting
- taxpayers not completing their income tax return correctly
- taxpayers not providing superannuation funds sufficient contribution information.

Specific to the concessional contribution cap:

- salary sacrifice arrangements, particularly caused by the timing of contributions made by employers. For example, contributions made in respect of one financial year not being received by the fund until the next year.

Specific to the non-concessional contribution cap:

- taxpayers not understanding the tax treatment of contributions
- taxpayers acting on professional advice
- superannuation funds not returning contributions which the fund was unable to accept at law as required.

6. No, as noted at (4), the ATO has not specifically investigated the reasons taxpayers have made superannuation contributions in excess of the contribution caps in a financial year.
7. The ATO does not separate its administration costs into concessional and non-concessional components. The ATO costs shown at Table 8 refer to the administration of excess contributions tax in total.

In 2007-08 almost half (\$2.5 million) of the costs were associated with answering enquiries and a quarter (\$1.5 million) associated with putting in place the administrative systems to support the contribution caps.

In 2008-09, just under half of the costs (\$3.4 million) related to identification and issue of assessments to taxpayers who had exceeded the \$1 million transitional cap. Letters were also issued to 30,000 taxpayers warning them that they had exceeded the caps in 2007-08. These activities increased requests for review and interpretative assistance which represented 18 per cent (\$1.3 million) of expenditure.

In 2009-10, just over a third (\$4.6 million) of the costs were attributed to the issue of 2006-07 assessments and, towards the end of the year, 2007-08 assessments. Requests for review, application of the Commissioner's discretion and interpretative advice also drove 35 per cent (\$4.6 million) of expenditure.

**Table 8: ATO Administration Expenditure on Excess Contributions Tax**

<b>Financial Years</b>	<b>Actual Costs</b>
2007-08	\$ 5,180,857
2008-09	\$ 7,641,137
2009-10	\$ 12,975,218

8. The ATO does not separate its budget for administration costs into concessional and non-concessional components. The ATO estimate of costs shown at Table 9 refers to excess contributions tax in total. These costs include system build and maintenance, accounting, processing, provision of advice, marketing, communication and compliance activities.

In 2010-11 it is expected that there will be a substantial increase in costs over previous years (refer Table 8) as assessment activity relating to the 2007-08 year is finalised and commences on the 2008-09 and 2009-10 years. \$10.6 million, or just under a third of estimated expenditure, is expected to be attributed to the cost of issuing these assessments. Dealing with requests for review, applications of Commissioner's discretion and interpretative advice are expected to account for just under a quarter (\$7.9 million) of 2009-10 expenditure. Compliance activity and answering taxpayer enquiries are each expected to account for approximately 10 per cent of expenditure (\$3.8 million and \$3.6 million respectively). Around 15 per cent of costs are attributed to resolving issues that have delayed the issue of 2007-08 and 2008-09 assessments until the 2010-11 year and to consider systems improvements, including changes that may be required should the \$50,000 transitional cap for persons aged 50 and over be extended as announced in the 2010 Federal Budget.

**Table 9: ATO Estimate of Administration Expenditure on Excess Contributions Tax**

<b>Financial Year</b>	<b>Estimated Costs</b>
<b>2010-11</b>	\$ 34,640,110

***Endorsement: Internal ATO use only***

<b>Position</b>	<b>Who</b>	<b>Date</b>
NPM	Neil Olesen	16/2/11
2 <sup>nd</sup> Commissioner	Bruce Quigley	18/2/11
Commissioner	Michael D'Ascenzo	18/2/11
Minister's office	Chief of Staff	