

ATO Link and CCH links: [Impact Statement](#) (released 17/6/11). [FITR ¶269-480](#).

2011 ATC ¶20-248

Media neutral citation: [2011] FCAFC 37

**Full Federal Court, Melbourne,**

**17 March 2011**

*Superannuation — Excess contributions tax — Contributions caps — Commissioner’s discretion to disregard contributions in relation to a financial year — Discretion to disregard or reallocate excess non-concessional contributions to a different income year in limited special circumstances — Whether AAT had jurisdiction to review objection decision — Income Tax Assessment Act 1997, s 292-465 — Taxation Administration Act 1953, Pt IVC.*

**Keane CJ & Gordon J:**

## Introduction

## FACTS

“One set of generic, modern language provisions governing taxation objection, review and appeal procedures will be included in the [TAA]. ... These changes will apply to all taxation decisions made on or after 1 March 1992 (the date fixed for proclamation), including decisions in relation to assessments made before that date ...

...”

“(1) The Commissioner must make an assessment (an *excess contributions tax assessment*) of:

- (a) if a person has \*excess concessional contributions for a \*financial year — the amount of the excess concessional contributions; and
- (b) the amount (if any) of \*excess concessional contributions tax which the person is liable to pay in relation to the financial year.

(2) The Commissioner must make an assessment (also an *excess contributions tax assessment*) of:

- (a) if a person has \*excess non-concessional contributions for a financial year – the amount of the excess non-concessional contributions; and
- (b) the amount (if any) of \*excess non-concessional contributions tax which the person is liable to pay in relation to the financial year.

(3) The Commissioner must give the person notice in writing of an \*excess contributions tax assessment as soon as practicable after making the assessment.

(4) The notice may be included in a notice of any other assessment under this Act (including an assessment under this section).