



# OPINION

## Personal super deductions just get harder

Rule changes for tax breaks will hit part-time workers, writes **Vicki Macdermid**.

**T**HE rules for getting personal superannuation tax breaks are changing again.

This will be news for some and confusing for most, given it's coming so soon after changes made from July 1, 2007, that limited the ability to qualify for personal tax breaks through super.

Before July 2007, the key test to qualify for a personal tax deduction for super contributions was whether it was reasonable to expect that someone else would make contributions for you. If you didn't get employer contributions, you could generally get a personal deduction. If you got contributions from an employer, then you had to pass the 10 per cent rule to qualify. But the key test now is whether or not you are an "employee".

If you are, you have to pass the 10 per cent rule to get a deduction. If not, you can generally have a deduction.

How does the 10 per cent rule work?

To be eligible for a tax deduction for amounts that you contribute to a superannuation fund, you need to get most of your income from sources other than employment.

Where your activities result in you being treated as an employee and more than 10 per cent of your assessable income and fringe benefits comes from this, you

cannot have a tax deduction.

The recent changes made to the deductibility tests have produced some serious anomalies in the law.

Take for example an employee just over age 70, maybe a retiree who has had to go back to work.

This person would not receive superannuation from their employer as they not eligible and they are also denied a personal deduction for contributions because they are still treated as an employee. This person is now unfairly shut out of the superannuation system.

Under the old rules a deduction would have been available.

The same situation arises where a person is on long-term WorkCover and who doesn't attend work. The Tax Office view is that the person is still an employee and WorkCover payments are employment income even though the employer has no obligation to contribute on the person's behalf.

Again, under the old rules a deduction would have been available.

But there are other changes coming that will further limit qualification for tax breaks.

In changes applying from July, salary sacrifice contributions will be included in the 10 per cent rule.

This will affect people who have a comparatively small amount of employment, or who change from self-employed to employed or vice versa, or who otherwise change their work patterns.

Take the example of a person who had been running their own

business for nine months, earned \$70,000 and contributed \$40,000, expecting to get a deduction. They then take a job for three months on \$80,000 a year, receiving \$20,000 salary and \$1800 superannuation in the remainder of the year. The salary (\$20,000) is more than 10 per cent of their total income (\$90,000), so they would lose the right to a deduction on the \$40,000 already contributed.

Under the rules today, this worker could solve the dilemma by salary sacrificing some of their salary from the three months. Once sacrificed, the amount is no longer salary and doesn't come into the 10 per cent rule. But from July 1, the salary sacrificed amount would be added into the 10 per cent calculation, and they would fail the test and lose the deduction.

The new rules coming into play in July can particularly affect any professional running their own business. A common example is a doctor who has a practice but does some sessions in a public hospital, or lectures part-time at university.

Previously they could salary sacrifice some or all the hospital or university salary and top up their deductible contributions personally. From next year, they can't.

The new regime potentially affects anyone who is employed part-time and wants to make personal deductible contributions.

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