

Push to ease up on penalty taxes



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A prominent superannuation adviser has called on the government to improve the contribution rules by putting less focus on penalty taxes and allowing more contributors to escape penalties.

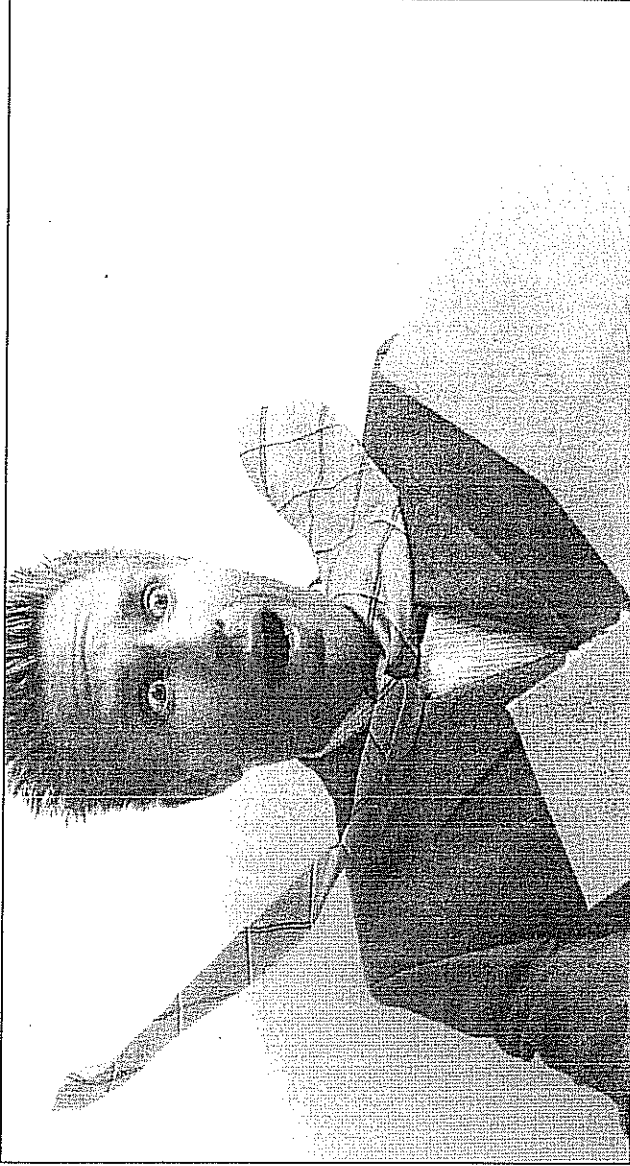
Actuary Meg Heffron, a principal with do-it-yourself super administrator Heffron, says there are aspects of the contributions regime that could be a lot fairer. The real impact of some of these is only just becoming obvious, even though it is just over two and a half years since the government introduced contribution limits as the main basis for granting super tax concessions.

The main unjust effect, reckons Heffron, is the fact that contributions greater than the limits face the punishment of penalty taxes that can often be out of proportion with the "crime" of exceeding limits.

An example of not being able to escape penalty taxes includes people with more than one job. Sometimes the combined value of their compulsory employer contributions under the super guarantee requirements exceeds the concessional limits.

Under the present system, a person might have two or more jobs. It is entirely possible compulsory contributions, when added together, will exceed the caps, especially the \$25,000 limit for those under age 50.

For example, a 45-year-old who has two positions, each



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case, the concessional contributions entitlement would be limited to \$15,000. The additional \$10,000 would ultimately be checked against their non-concessional contributions limit and if found to be excessive would expose them to a penalty tax of 46.5 per cent.

Heffron says the inequity in the contributions rules as far as the 10 per cent test is concerned is not in the fact that you can't claim the tax deduction because you have failed the test. There are many provisions in the Australian taxation system that revolve around thresholds and eligibility tests.

While failing the 10 per cent test and not being able to claim a deduction is consistent with the overall tax system, being hit with penalty taxes is unfair.

It contrasts with the system that existed before the 2007 changes where someone who failed the 10 per cent test would only miss out on a tax deduction without any further impost.

Heffron says there are ways the government could improve the system.

One is to allow any offending contributions to be refunded within a certain time limit.

The other, which would be better as far as the 10 per cent rule is concerned, is allowing everyone a single dollar annual limit to be divided as they wished between concessional and non-concessional contributions, with the concessional contribution limit set at the maximum allowed.

The punishment of penalty taxes can often be out of proportion with the 'crime' of exceeding limits.

relevant notices that entitle them to claim the tax-deductible contributions which are acknowledged by the trustee.

During the year, however, they wind up their business and get a job, the outcome of which sees them fail the 10 per cent test and be disqualified from claiming a personal tax deduction.

Heffron says this can lead to excessive non-concessional contributions that will be taxed at a penalty rate of 46.5 per cent.

Not only will they fail to secure the tax deduction they expected but must also pay the penalty of the top rate of tax on the personal tax-deductible contribution.

A similar outcome would arise if they were able to meet the 10 per cent test but had less than \$25,000 in assessable income. Say, for example, assessable income of only \$15,000. In this

paying \$150,000 a year, will receive \$27,000 combined in compulsory contributions.

Another example where someone can be caught with penalty taxes is where they have switched during the year from being self-employed to being employed.

Self-employed people can make personal deductible contributions if no more than 10 per cent of their income in a financial year is from an employer.

Heffron says this can become a problem where someone has been working for themselves, running a small business as a sole trader for example.

During this time they make maximum tax deductible super contributions and even non-concessional contributions on the basis that the 10 per cent test will be met. They lodge all