

Super rules need to allow for human error

"The Federal Government needs to change the superannuation laws immediately to allow for mistakes which result in extra super contributions to be unwound without the application of draconian penalties" says Adelaide based financial strategist Theo Marinis.

"The penalty for getting your super contributions wrong is not for the faint-hearted. It results in the excess contribution (concessional or non-concessional) being taxed at 46.5% (possibly even as much as 93%)! Under current law, the penalty is final. There is no way to recoup or appeal the penalty tax, even if the mistake has been discovered before it has come to the attention of the Australian Taxation Office", he said

"At the moment, a person under 50 may only make a concessional (tax deductible) contribution of \$25,000 per annum - or double that if they are older and working. The scope for error, however, (often a simple reporting error) can be high, particularly in family owned 'mum and dad' small businesses, where superannuation contributions can be made up of a mix of concessional and non concessional (non tax deductible) contributions and be processed by inexperienced staff.

"The treatment for excess contributions to super is at odds with the far more reasonable approach used for tax returns containing errors or omissions. These can be amended within three years of lodgement. In such cases, there is a general interest charge only levied for underpayment of any tax as a result of such errors.

"I believe that the current excess contribution rules are patently unfair. Despite the best of intentions and systems, human error will always occur, and the current tax penalty in the absence of any opportunity for fixing it is excessively harsh.

"I am, therefore, calling on the government to legislate to allow an inadvertently excessive contribution to be unwound and withdrawn within a three year period. The process should involve only costs which are reasonable for administration from the perspective of the ATO or any other superannuation or pension authority," Theo said.

"As a result, Treasury would still get all the revenue to which it is entitled - rather than receiving a wind-fall as a result of a mistake, and the government would be fixing a blatant 'revenue raiser' brought in by its predecessor.

"Not only would the change actually make super simpler, it would also help improve public perception of superannuation. It would also serve to demonstrate that bad super rules (e.g. the super surcharge and excess contribution penalties) are eventually eliminated as our retirement saving system evolves and adapts to our changing society," Theo said.

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