

Tax Act discriminates against small business

Discrimination 1

A long standing provision of the Tax Act prevents small business owners from claiming tax deductible superannuation contributions where the owner has at least 10% of their taxable income from an employer. This is generally referred to as the 10% rule. As an example let's say a small business owner makes a taxable profit of \$70,000 and also has a part-time job that paid him gross of \$8,000.

The small business owner's employer pays compulsory employer contributions of 9.5% of the gross pay of \$8,000, which amounts to \$760. Because the \$8,000 represents 10.26% of the small business owner's taxable income the owner cannot claim personal deductible contributions to superannuation.

Compare this to employees who have gross income from employment of \$78,000. Those employees will have compulsory employer contributions paid for them of 9.5% of their gross pay of \$78,000, which amounts to \$7,410. This is \$6,650 more than that going into superannuation for the small business owner who has a part-time job on the side. In addition employees can top-up their superannuation contributions by making salary sacrifice contributions to take total contributions to either \$25,000 or \$35,000 depending on the age of the employee.

Similarly, if a small business owner had a taxable income of \$78,000 from business, with no employment income, the 10% rule does not apply. In that case the age based limit of either \$25,000 or \$35,000 would apply. That means the total discrimination could be as high as \$34,240 in the amount of concessional contributions that the small business owner with a part-time job could make.

With the move to age based caps on the amount of contributions why is the 10% rule retained? What purpose does it serve? Surely the age based limits should apply to all taxpayers regardless of the source of their income?

Discrimination 2

The second discrimination against small business owners that was recently introduced by the Labor Government was that all personal deductible superannuation contributions are added back to their taxable income when calculating their adjusted taxable income (ATI). The ATI is used when assessing access to a number of government benefits, including access to the private health insurance rebate.

As an example we have an employee, who is single, with gross employment income of \$87,999 and no other income or deductions and therefore a taxable income also of \$87,999. The employee's employer will pay compulsory employer contributions of 9.5% amounting to \$8,360 giving a total package of \$96,359. That employee is entitled to the full 30% health insurance rebate on health insurance premiums paid.

Compare this with a small business owner who has a taxable income of \$96,359 from his business with no other income, but claims personal superannuation contributions of \$8,360 to give a taxable income of \$87,999. For health insurance rebate purposes the whole \$8,360 for personal deductible contributions is added back to give the business owner an ATI of \$96,359. As the ATI exceeds \$88,000 the business owner is only entitled to a 20% health insurance rebate on health insurance premiums paid.

This is discrimination against the small business owner.