

SMART MONEY BUDGET & YOU



THE SMALL BUSINESS OWNER

Viv Hardy, in her fifties, runs her own public relations business, Callidus PR, and her own self-managed super fund. She's disappointed by the commitment to lower caps on contributions for those older than 50 who have more than \$500,000 in super. "The whole purpose of setting up a do-it-yourself fund is to provide for your retirement in a way that you've become accustomed to living," she says. "Not only are the caps unworkable, but complying with them is also going to drive up costs."

Viv regards the measure to allow those who've gone over the pre-super contribution limit by up to \$10,000 to get it back and pay tax at their marginal tax rate as "too little, too late". It would be more useful to grant the Taxation Office greater discretion to make "informed decisions on a case-by-case basis" rather than imposing a blanket penalty tax for those who exceed the caps.

She supports the better deal for mental health. "I have a family member who has had issues on this so it is very welcome."

She'll be taking another look at cars and the fringe benefit tax, but says, "It's all back to the future with having to keep log books again."

Debra Cleveland

Offset strategy rubbed out



JOHN WASILIEV
DIY SUPER

Do-it-yourself superannuation funds that prefer to trade, rather than hold investments for long periods, were dealt a blow by a federal budget decision to require such shares or managed fund units to be taxed as long-term investments rather than trades.

The attraction in trading, says superannuation lawyer Daniel Butler, of DBA Lawyers, was the flexibility it allowed when claiming investment losses. Losses on long-term investments can only be offset against capital gains on similar investments, but short-term trading losses could be offset against ordinary fund income such as dividends, rent and interest – or even fund contributions.

Short-term losses could also be offset against capital gains.

But since budget night this strategy is no longer possible.

Super fund auditor Craig Fishburn, of Fishburn Consulting, says the new rule means that if a super fund has bought shares with a short-term trading view and made more losses in a year than gains, these losses must be quarantined until a future year when there are gains available.

Kevin Smith, a director of Professional Super Advisers, says the new rule is not expected to have a major impact on DIY funds because most treat shares, managed funds and land as long-term investments for tax purposes regardless of whether they are bought with a short- or long-term view.

One thing the budget emphasises is that a super fund should fundamentally be regarded as an investment vehicle rather than a trading vehicle.

Butler explains that if an ordinary investor engages in frequent trading of shares, for example, the investments can be treated as trading assets.

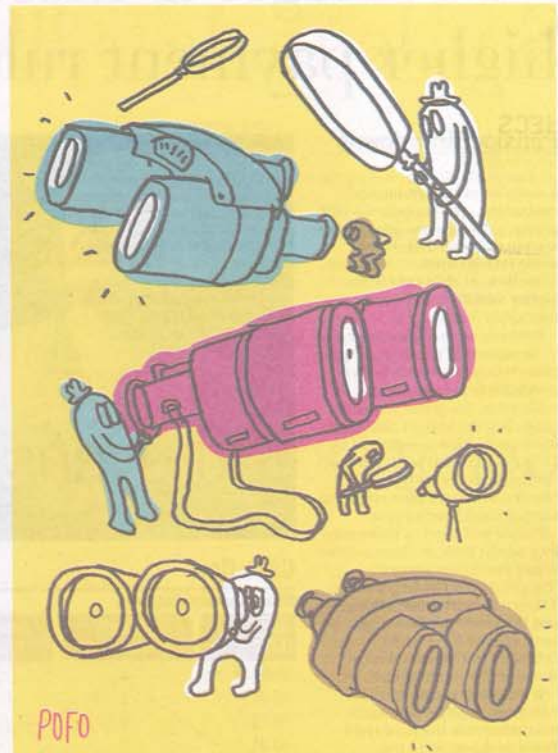
It had also been an option only available for DIY funds with substantive trading activities that constituted a trading business.

Some have operated discrete portfolios, one with trading investments – called a revenue account – and the other with long-term investments, described as a capital account.

It has been possible for funds to reallocate investments in long-term portfolios to trading portfolios by treating the transfers as sales at either the cost of the investment or the market value. When trading stock converts to capital account, investments such as shares are treated as if they are sold for their cost and the fund is deemed to have bought it back for the same amount.

Butler says a transitional rule in the budget suggests that assets held or accounted for before budget night are unaffected. He believes this suggests any gain or loss on a disposal of shares by a fund after budget night is now held on capital account (with no retrospectivity) but that any gains and losses before that time will be on revenue account in accordance with the trading stock rules.

He reckons the change highlights that when financial markets are rising most people preferred to own investments where they can claim a discount on any capital gains. But when



markets are retreating they like to have opportunities to utilise losses, especially against income such as super contributions, by treating some investments as trading stock.

Another possible issue being addressed by the change is the risk that funds that trade a lot will be regarded as carrying on a business.

This would be closely scrutinised by auditors and the regulator to ensure all the relevant super tests have been satisfied, including the sole-purpose test, which requires funds to be run only as long-term retirement vehicles.

HOW FUNDS FARED

■ The annual levy paid by DIY funds to the Australian Taxation Office will increase from \$150 to \$180 from this financial year.

■ DIY funds with members who are minors will be able to use a corporate trustee after the budget proposed to alter key superannuation legislation to allow a parent or guardian to be the director of the body corporate.

YOUR BUDGET QUESTIONS JOHN WASILIEV

Don't leave it too late to make contributions

I'm in my early 60s and want to salary sacrifice as much into superannuation as I can while I'm still working. How can I avoid making contribution mistakes?

In a list of reasons why people have exceeded tax-concessional super contribution limits, the Australian Taxation Office put salary sacrifice arrangements right at the top. The major mistake is related to contributions made towards the end of the financial year. Late contributions intended to apply to the current year should be transferred before June 30. But due to employer mistakes, they often don't make it until July and carry the risk of being added to the following year's contributions limit.

If this results in an excess contribution then it can lead to penalties, although from next year such oversights will be helped by the right to withdraw any excess up to \$10,000. This was announced in the budget but will only apply to contributions made after July 1, so you will need to monitor your concessional contributions closely in the period up to June 30 this year.

While your concessional limit in

2010-11 and 2011-12 year will be \$50,000, you will really need to be on the ball in 2012-13, when the cap falls to \$25,000 if your total super savings are greater than \$500,000. This change was confirmed in the budget.

I wonder how many people caught by excess contribution penalties faced my situation? The ATO claimed I'd put \$100,000 into super and was \$50,000 over my limit. But at 65, I earned \$51,160 from which I directed my employer to pay \$50,000 to my super account. My tax agent filled in the tax return and the ATO looked up my employer and saw they had put in \$50,000 so concluded I had put in \$100,000 (counting twice). Apparently, the \$50,000 should not be entered on the tax form anywhere.

Your example highlights a number of important points. In the computer age, the ATO has an ever-widening range of sources of information about our finances which it cross references and then uses as part of its activities. One reason high on the list of the ATO's reasons for why people exceed contributions caps is

Ask us

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The Tax Office has an ever-widening range of sources of information about our finances.

taxpayers do not complete income tax returns correctly.

Presumably the matter has been sorted out. Mistakes such as yours will probably be among the 22,000-odd cases so far recorded in 2009-10 where penalty tax was not actually charged after an excess contribution was noted.

I was interested in last weekend's question about super and the government disability pensions, especially after all the attention the pensions got in the budget. If someone who is 58 and taking a transition to retirement pension then qualifies for government disability payments, can they stop or reduce the super pension to gain a higher disability benefit? Yes, this strategy could be considered, says financial adviser Bill Jones, of ANZ Financial Planning. If someone taking a super pension becomes medically eligible for government disability support they can convert or commute the super pension back to the accumulation phase to gain a higher government benefit.

The first issue to consider, says Jones, is whether the disability

pension meets your income needs.

For a single person, the disability support pension is \$335.45 a week, or \$670.90 a fortnight.

If someone has some super savings, they could supplement their government income by paying themselves a super pension. If they have already started a super pension, they could convert or commute it and then restart a pension with an amount that only pays them the extra they need.

For example, if you need \$200 extra per week and have super of \$360,000 paying you a pension, you could commute this back to super accumulation, but start a new pension with a portion of your super, say \$104,000.

At the transition to retirement pension maximum withdrawal rate of 10 per cent of the account balance, this should meet the extra income needs. Because super in the accumulation phase is not counted under the income or assets rules for anyone under age 65 receiving a government benefit, having less super exposed to testing should result in a better benefit payment.