

Advice ain't cheap: when you'll need to spend more than \$3000

Bill Shorten says he wants to shut down a loophole exploited by millionaires to reduce their tax bills but tax specialists insist mum and dad investors will be hit by this too.



Joanna Mather

Superannuation writer

May 4, 2019 — 12.00am

Australian Financial Review (AFR)

The wealth wars took a bitter turn when Labor leader Bill Shorten, in full campaign mode, described tax deductions for accounting advice as “one of the rorts we want to shut down”.

A clearly incensed Michael Croker, the tax leader with Chartered Accountants Australia and New Zealand, accused Shorten of impugning an entire profession with comments that scraped the “bottom of the political barrel”.

The stoush is over [Labor’s plans to cap at \\$3000 a year](#) the amount that taxpayers can claim for [“managing tax affairs”](#).

It's understood the limit will apply to individuals, sole traders, partners and the beneficiaries of trusts, including self-managed super funds. Labor did not, however respond to queries from the *AFR* to confirm this. There is a carve-out for ventures with turnover of up to \$2 million, which may limit the effect on sole traders and partnerships. Incorporated companies are excluded.

”Tax deductions are not a rort, they are a right,” Croker said. “You have the right not to pay too much tax and you have the right to claim navigating arcane, complex, changeable tax laws as a deduction.”

The genesis of Labor's policy lies with figures from the Australian Tax Office showing that in 2014-15, 48 individuals earned more than \$1 million but paid zero tax, and 19 of them claimed an average of \$1.1 million in deductions for the use of lawyers and tax advisors.

With the average claim for managing tax affairs in the vicinity of \$300, Shorten says it's only millionaires who will lose out. Indeed, official estimates are that about 90,000 people – less than 1 per cent of all taxpayers – will be affected by the change, adding \$1.8 billion to the budget over the medium term.

“Allowing high-income individuals to reduce their taxable income to zero and then charging the taxpayer for the privilege is the sort of unfairness Australians are sick of,” Labor said when it announced the policy in 2017. “Should an individual choose to pay an accountant more than \$3000 to manage their tax affairs, that extra expense will be borne solely by them, not subsidised by other taxpayers.”

Many tax specialists reject the notion that only the wealthy claim more than \$3000. They insist there is a range of circumstances in which “mum and dads” would need to spend in excess of \$3000.

Tax office disputes

Aside from the cost of preparing tax returns, the “managing tax affairs” category of deductions includes costs associated with audits, disputes and legal action by the Australian Tax Office and interest on outstanding amounts.

Robyn Jacobson, a senior trainer with education business TaxBanter, says any taxpayer who is subject to review or audit by the ATO will invariably breach the \$3000 cap.

“How could any taxpayer seek a review or appeal a decision of the Commissioner via the Administrative Appeals Tribunal or the Federal Court or the High Court for less than \$3000?” she says.

“It is extraordinary that a taxpayer who spends \$50,000 in legal fees in successfully objecting to and appealing against an amended assessment

before the courts would not be able to claim any more than \$3,000 in proving the ATO was wrong.”

Divorce can be costly

William Buck director of tax services Todd Want says the cost of advice in a divorce can easily run beyond \$5000. Acrimonious splits are especially complex, he says.

Suppose Jack and Jill are divorcing and the couple agrees to a 50:50 split of assets. Jack will keep the main residence and Jill will get the couple’s rental property, both of which have a market value of \$1 million. Jill figures she will sell the rental property because it’s too far from work.

On the face of it, this looks like a fair deal. But Jack is in fact the clear winner because the main residence is exempt of tax whereas when Jill sells the rental property she’ll be up for capital gains tax.

“Without detailed tax advice before entering into the divorce settlement, this scenario could see Jill left with a tax bill that might exceed \$400,000, meaning the real net value of the asset she gets in the divorce is only \$600,000,” Want says.

“Meanwhile, Jack still gets \$1 million. The emotions involved in a divorce situation, and the information asymmetry that can often exist between the parties, can make seemingly simple scenarios much more complicated. Throw in the split of a family business or family trusts and it becomes even more complex.”

Empty nesters

Murray Howlett, a tax advisor with Pilot Partners, says he advised a downsizing retired couple who wanted to sell their outer city acreage. “They were seeking to subdivide the acreage and sell it in order to extract maximum value,” Howlett says.

“The tax laws surrounding the treatment of small-scale, one-off transactions are such that there is some doubt as to whether the sale will be considered a capital gains tax event or a business transaction,” he says.

“Moreover, does the main residence exemption for capital gains tax still apply? The advice is not seeking to avoid tax but to ensure that the couple correctly applied the law in a difficult circumstance.” Howlett says the provision of advice and application for an ATO ruling brought his bill to \$5500.

There is no question that the more assets and income a person has, the more likely they are to spend large sums on advice. Firms offering legal and accounting advice argue that uncapped deductions are justifiable because Australia’s system of self-assessment puts the burden on taxpayers, who face hefty penalties for getting things wrong. “Australia’s tax laws now run to many thousands of pages,” Tax Institute Tim Neilson said in a letter to Shorten in April. “Ordinary Australians did not ask for that. It has been inflicted on them by successive governments.”

Expats have complex affairs

Atlas Wealth managing director Brett Evans says Australians working overseas sometimes need to spend more than \$3000 on tax advice.

The rules governing residency for tax purposes are especially complex, he says, and some taxpayers may need to do more than one return a year if they’ve been living and working overseas. Jacobson agrees that issues such as the treatment of foreign income and access to superannuation make [the affairs of those working abroad especially complex](#).

"Just determining whether someone is a resident or a non-resident can be a difficult exercise," she says. "Harding’s case, which is currently before the courts and may yet progress to the High Court, is a clear example of the complexity involved." Glenn Harding, who moved from Australia to Bahrain in 2009, is locked in a dispute with the ATO over whether he was a tax resident of Australia for the 2011 income year.

Small business

Tax Institute tax counsel Stephanie Caredes says starting a small business is one scenario in which somebody might spend more than \$5000 on tax advice. She gives the example of "Kate", who has a full-time job but makes scented candles as gifts for family and friends.

"If Kate seeks advice from a tax lawyer, she will find a number of issues need to be considered, such as whether she has a profit-making intention, what tax registrations she might need, tax structuring considerations if she sets up a small company rather than working as a sole trader and, if she decides to upgrade her website, whether she can deduct costs." Caredees says the bill would be likely to total between \$6000 and \$8000.

Sophisticated taxpayers

Hamilton Wealth Management partner Will Hamilton says the \$3000 cap will discourage new business creation and entrepreneurship. "Our country is built on innovation and with that comes the need to structure businesses legally and efficiently," he says.

Shaw Lawyers principal Andrew Shaw says taxpayers should be encouraged to use expert advisers to ensure compliance.

"The notion that capping tax deductions for tax advice at \$3000 will deter large-scale tax evasion is absurd," he says. "If a taxpayer is charged, say, \$100,000 in fees for complex tax advice to set up an offshore structure that will save them \$1 million in tax, the loss of a tax deduction for the fees won't deter the arrangement."

Yet the cap will affect taxpayers who do the right thing, Shaw says, citing the ATO's "early engagement" and "tax assurance" programs, which are designed to encourage cooperation and enable remedies if issues are identified.

The initiatives are voluntary and advice provided qualifies for a deduction. Shaw says an individual taxpayer responding to a request from the ATO under one of these programs might spend \$50,000 on tax and accounting fees. Other scenarios in which somebody might spend in excess of \$10,000 include the consolidation of several businesses into a single operating company and the sale of land to developers, Shaw says.

Joanna Mather writes about superannuation from our Sydney newsroom. *Connect with Joanna on [Twitter](#). Email Joanna at jmather@afrc.com*

