

Important announcements

This is an outline of some of the important recent tax issues. The information provided in this publication is a guide only and should not be relied upon as advice from PKF. For more details please contact your PKF Tax adviser.

Temporary Investment Allowance

A 10% Temporary investment allowance was announced by the Federal Government on 12 December 2008. On 3 February 2009 this allowance was increased to 30% and some of the eligibility conditions relaxed. At this stage we do not have the full details of the concession as the legislation has not been released. However, below we have summarised some of the details we do have in the Government's press releases.

Types of eligible assets

- ▶ The allowance can be claimed for spending on new tangible assets and new expenditure on existing assets but does not include the acquisition of second hand assets.
- ▶ The press release indicates that new motor vehicles are eligible for the allowance but it also appears that the eligible cost would be confined to the luxury car limit.
- ▶ The assets must be used in Australia in carrying on a business for which a depreciation deduction is available under subdivision 40B.
- ▶ It excludes capital works, such as land and buildings, trading stock, and intangible assets and rights. It appears software will not be eligible.
- ▶ We have been informed by Treasury that the assets that are depreciated under the small business pooling method instead of under subdivision 40B will be eligible (provided all other conditions are met).
- ▶ Assets that are used only partly for income producing use will be eligible but only to the extent that it is to be used for a taxable purpose. It is not clear whether there will be some form of claw back if the actual use of the assets is not for a taxable purpose or the use changes.

Tax deduction increased from 10% to 30% on assets ordered by 30 June 2009

The investment allowance rate was originally announced to be 10%. This has been increased to 30% for assets that are acquired, or construction commenced after 12 December 2008 and before 1 July 2009 and installed by 30 June 2010.

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10% investment allowance extended to 31 December 2009

In the original announcement the cut off for acquiring or commencing construction of assets for the investment allowance was 30 June 2009 (and installed ready for use by 30 June 2010). This has been extended to 31 December 2009 (and installed ready for use by 31 December 2010) but the rate of investment allowance for assets acquired or commenced construction between 1 July 2009 and 31 December 2009 will remain at 10%.

Small business asset threshold decreased from \$10,000 to \$1,000

To be eligible for the investment allowance as previously announced, assets had to have a value of over \$10,000. The press release says this has been relaxed to \$1,000 or more per asset for small businesses that have an annual turnover of \$2 million or less. For other businesses the threshold remains at over \$10,000 per asset.

Acquisition date

The press releases refer to the assets having to be acquired by either 30 June 2009 (30% rate) or 31 December 2009 (10% rate) but we understand that where an asset is acquired under a contract, the date of entering into the contract must be before these dates. This will usually be the date the assets is ordered but you need to look at all the conditions of the order/contract to be certain.

One-off Cash Bonus for Eligible Australians

In response to the continuing global financial crisis, the Government has announced a new \$12.7 billion stimulus package to assist households and support economic growth. Under the package, there are five key one-off cash payments. Some people will be eligible for more than one of these cash bonuses.

The Bill has passed through Parliament, with some changes in the Senate. The framework of the Bill is summarised below:

Tax bonus payment

A lump sum payment of up to \$900 to certain Australian resident individuals who paid tax in the 2007-08 financial year. To qualify recipients must be residents for tax purposes during the 2007-08 year and they must have a net tax liability on their 2007-08 notice of assessment after taking into account rebates and offsets but not PAYG withholding.

Single income family payment

A one-off payment of \$900 to families who rely on one main income earner. This includes certain sole parent families and certain two parent families where one parent has low income. Families eligible for Family Tax Benefit Part B on 3 February 2009 will receive the payment.

Back to school payment

A payment of \$950 per school aged child (4 to 18 years) will be paid to families entitled to the Family Tax Benefit Part A at 3 February 2009.

Training and learning payment

A \$950 lump sum payment will be paid to eligible recipients to assist with their academic costs for 2009. The payment consists of two categories.

Category 1

The payment will be paid to people eligible, at 3 February 2009 for Youth Allowance (student and apprentices), Austudy, ABSTUDY, Payments under the Veterans' Children Education Scheme (VCES), Payments under the Military Rehabilitation and Compensation Act

Education and Training Scheme (MRCAETS); or Families entitled to Family Tax Benefit Part A for each eligible dependent full-time student aged 21 to 24 years, (on the date of announcement) or who were subsequently determined to be entitled to receive Family Tax benefit Part A on the date of announcement.

The one-off payment will also be available to recipients of Sickness Allowance and Special Benefit (under Age Pension age).

Category 2

From 1 January 2009 until 30 June 2010 recipients of the Education Entry Payment will receive an additional payment on top of the \$208 they would have received. Eligibility to Education Entry Payment will be extended to Youth Allowance (other) recipients and the qualifying period for all eligible recipients will be reduced from 12 to 1 month.

Farmer's hardship payment

A lump sum payment to farmers and certain small business operators who are dependent on income from agriculture who on 3 February 2009 are in receipt of:

- ▶ Exceptional circumstances relief payments for farmers
- ▶ Interim income support for farmers
- ▶ Exceptional circumstances relief payments for small business
- ▶ Interim income support for small business
- ▶ Transitional income support
- ▶ Farm help income support.

Trust Cloning Abolished

The Assistant Treasurer recently announced that the Capital Gains Tax (CGT) exemption that had been available for trust cloning will be abolished as at 31 October 2008. This means that any CGT event occurring after 31 October 2008 under a trust cloning arrangement has the potential to attract CGT. The removal of the exemption is likely to put an end to trust cloning arrangements. However, it appears trust splitting arrangements may still be safe.

Significant Taxation Cases

Court Cases

Sportspeople - in business or an employee? *Commissioner of Taxation v Spriggs [2008] FCAFC 150*

The Full Federal Court overturned the decision in the single court and held that the management fees paid by two footballers were not deductible because the footballers' engagement with their respective clubs was of an employment nature.

The Court held that the management fees paid by the footballers for negotiating new contracts were for the purpose of obtaining employment and were therefore not deductible. Expenses incurred in obtaining employment are generally not deductible as they are incurred "at a point too soon", meaning they are incurred prior to the derivation of assessable employment income.

The taxpayers are currently seeking approval for an appeal in the High Court.

Big win for agricultural Managed Investment Schemes

Hance v F C of T [2008] FCAFC 196

The Full Federal Court has held that expenses incurred in connection with an agricultural managed investment scheme would be deductible. The Court found that the taxpayers were conducting a business on their Almondlots with the purpose of producing almonds for sale at a profit on the following basis:

- ▶ The continuation of the operation over an extended period of time
- ▶ The repetitive nature of the work involved in farming each Almondlot
- ▶ The return in the form of almond crops
- ▶ Each taxpayer had an ongoing commitment to paying the manager to do what is necessary in order to facilitate commercial production of almonds over a lengthy period of time
- ▶ In light of the manager's authorisation to pool almonds for sale, each taxpayer was likely to obtain a return for his product.

Tribunal Cases

A car log book is not enough - *Confidential v FC of T [2008] AATA 927*

The issue before the Tribunal was whether the car log book method was justified as a basis for claiming deductions for motor vehicle expenses. Although keeping a log book is a precondition for using the log book method, other evidence such as pattern (or change in pattern) of car use and the number of cars used should also be considered when estimating the business usage percentage of a car

The Tribunal concluded that the taxpayer had not properly substantiated his claims under the logbook method. The log book had not been completed progressively or after each trip and the log book entries were inconsistent with other evidence.

Trust interest not effectively disclaimed - *Confidential v FC of T [2008] AATA 927*

In a recent Tribunal case it was held that a taxpayer who received a gift of a beneficial interest in a trust did not effectively disclaim his interest in the trust. Hence the taxpayer remained entitled to income under the trust and the trust distributions were assessable to him. An entitlement arose even though the taxpayer was unaware of the interest.

Overseas holiday "tax deductible" - *Sanchez v C of T [2008] AATA 89*

The issue before the Tribunal was whether a travel consultant could obtain a tax deduction for overseas travel even though the activities were of a "holiday" nature.

The Tribunal held that the nature of the trips undertaken by the taxpayer were not irrelevant or unconnected to the derivation of his assessable income and that the trips he undertook were not just holidays.

Allowance not a LAFHA - *The Compass Group Pty Ltd v FC of T AATA 845*

The Tribunal has decided that an allowance paid to an accountant to assist with renting a property closer to his workplace was not a living away from home allowance for FBT purposes. Even though the accountant had accepted a more senior position which required him to work longer hours.

The Tribunal held that while the employee intended to return to his usual place of residence located 60 kilometres away from his employment, it was the employee's choice to move. His employer did not request or require him to move.

Significant Income Tax Rulings/ Determinations

Taxation Rulings

Tax-Free redundancy? - TR 2008/D6

A worker whose employment is terminated due to genuine redundancy can receive a tax-free redundancy payout (up to certain limits). However, if the ruling is finalised without amendment, it would restrict or even remove the availability of these tax concessions in situations involving dual capacity employees (e.g. company directors who are also employees) and fixed-term contract/project workers.

When can SMSF's borrow? - SMSFR 2008/D4

Trustees of Self Managed Superannuation Funds (**SMSF**) are prohibited from borrowing money or maintaining an existing borrowing of money, subject to specific exceptions such as the use of an instalment warrant.

The trustee of an SMSF is not prohibited from borrowing money in the following circumstances:

- ▶ Funding a payment to a beneficiary
- ▶ Covering settlement of certain securities transactions
- ▶ Allowing the SMSF to acquire an asset under certain limited recourse arrangements
- ▶ Funding payment of the superannuation surcharge.

Legislation Update

Tax refund for computers - Tax Laws Amendment (Education Refund) Bill 2008

The government has introduced a refundable tax offset to assist taxpayers with the cost of certain education expenses such as for home computers, home internet connection, school textbooks and stationary items. The education tax refund will apply to education expenses incurred from **1 July 2008**.

Taxpayers who are entitled to the Family Tax Benefit (FTB) Part A are eligible to receive a 50% tax offset on certain education expenses up to:

- ▶ \$750 for each child enrolled in a primary school course (maximum refundable tax offset of \$375 per child, per year); and
- ▶ \$1500 for each child enrolled in a secondary school course (maximum refundable tax offset of \$750 per child, per year).

Increased relief from Medicare Levy Surcharge – Tax Laws Amendment (Medicare Levy Surcharge Thresholds) (No 2) Bill 2008 -

Amendments have been made to increase the threshold for payment of the Medicare levy surcharge. The increased threshold will have the effect of reducing the number of individuals and families that will be required to pay the additional 1% Medicare levy surcharge. The new thresholds will apply from the 2008-09 income year ie from **1 July 2008**.

New Medicare levy surcharge thresholds

The new Medicare levy surcharge thresholds will be as follows:

- ▶ For individuals the threshold will be \$70,000 (previously \$50,000);
- ▶ For families the threshold will be \$140,000 (previously \$100,000).

This means individuals with taxable incomes above \$70,000 and families with taxable incomes above \$140,000 (higher if more than 1 child) who do not have appropriate private patient hospital cover will be required to pay the additional 1% Medicare levy surcharge.

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