

# client alert

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July, 2009

## Tax Law Amendments

The Federal Government has introduced a Bill into Parliament which seeks to:

- set the PAYG instalment factor at 2% for the 2009/10 income year; and
- allow taxpayers who are voluntarily registered for GST and choose to remit GST annually to also remit their PAYG instalments annually.

## Small Business and General Business Tax Break

The *Tax Laws Amendment (Small Business and General Business Tax Break) Act 2009* provided a one-off bonus deduction for businesses that purchase eligible assets. It received Royal Assent in May 2009.

The Act incorporates various amendments, which include:

- increasing the rate of the bonus deduction for “small business” entities to 50%;
- clarifying the rate of the bonus deduction to be used on a batch/set of identical assets where a taxpayer is a “general business”; and

- clarifying that a taxpayer who chooses to self-construct an eligible asset is not precluded from the bonus deduction.

The rate of the bonus deduction remains unchanged for “general businesses”. That is, either 30% or 10% depending on the acquisition time of an eligible asset.

## 2009 Federal Budget Follow-up

The Government has introduced a Bill into Parliament seeking to implement three measures announced in the 2009/10 Federal Budget. The Bill will:

- amend the provisions relating to the income tax exemption on foreign employment income;
- temporarily reduce the matching rate and maximum co-contribution for the superannuation government co-contribution; and
- reduce the superannuation concessional contributions cap.

## Foreign employment income

Foreign employment income derived by a taxpayer engaged in continuous foreign service for 91 days or more will only be

exempted from income tax if the service is attributed to specific activities. For example, the delivery of Australia’s overseas aid program by the taxpayer’s employer.

## Superannuation co-contribution

The Bill will temporarily reduce the matching rates and maximum co-contribution for the government co-contribution as below:

- for the 2009/10 to 2011/12 income years, \$1 for each dollar of contribution, up to a maximum of \$1,000 per annum;
- for the 2012/13 and 2013/14 income years, the rate is \$1.25 for each dollar of contribution, up to a maximum of \$1,250 per annum; and
- for 2014/15 and later income years, the rate is \$1.50 for each dollar of contribution, up to a maximum of \$1,500 per annum.

## Superannuation concessional contributions cap

The Bill will reduce the concessional contributions cap to \$25,000 per annum from 1 July 2009.

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Boroughs Australia Pty Limited  
 ABN 74 119 217 944  
 Level 6, Skygarden,  
 77 Castlereagh Street  
 Sydney NSW 2000  
 T: +61 2 9930 7700 F: +61 2 9930 7777

The Bill will also reduce the transitional concessional contributions cap, which applies until the 2011/12 income year for individuals aged 50 to 74, to \$50,000 per annum.

The non-concessional contributions cap will remain at \$150,000 for the 2009/10 income year.

## **Medicare Levy Thresholds 2008/09**

The Federal Government has introduced a Bill into Parliament seeking to increase the Medicare levy and Medicare levy surcharge low-income threshold amounts for individuals, families and pensioners below age pension age for the 2008/09 income year.

The proposed threshold for singles is \$17,794 and \$25,299 for pensioners under age pension age.

The proposed threshold for families with no dependants is \$30,025. The additional amount to the threshold for each dependant child or student will be \$2,757.

## **Superannuation Guarantee Ruling**

The Tax Office has issued a ruling in which the Commissioner states his view regarding the treatment of payments made to employees for the purposes of the superannuation guarantee (SG).

The ruling has been modified from the draft ruling previously released to include several important changes. These changes include:

- Christmas bonuses are now considered to be ordinary time earnings (OTE) and to be included when determining the minimum SG payable for an employee; and

- regular overtime payments made outside an employee's ordinary hours of work will generally not be included in OTE and, therefore, not included in calculating the required level of SG for the employee.

The ruling does not discuss whether parental leave and ancillary leave (eg jury duty leave) are taken into account when calculating the minimum SG for an employee.

## **Taxpayer Alerts**

The Tax Office has issued five Taxpayer Alerts warning taxpayers of arrangements that it is currently reviewing. These alerts relate to:

1. the non-commercial use of negotiable instruments to pay a benefit from a self-managed superannuation fund (SMSF) or make a contribution to the SMSF;
2. the advice provided by a company to its shareholders that monies received in relation to unexercised entitlements for a share offer should be treated as a capital gain and the CGT discount may potentially apply;
3. the re-characterising of capital losses as revenue losses on the disposal of shares by individuals where previously they claimed to be long-term investors eligible for the CGT 50% discount;
4. the selling of interests in managed investments schemes (MIS) by promoters to groups of individual investors on the basis that they will be 'partners' in a partnership and will be able to claim upfront deductions for their interests in a MIS; and

5. the attempts by a taxpayer to create or claim a capital loss arising from the artificial receipt and surrender of an interest in a discretionary trust as a default beneficiary.

The Tax Office says these arrangements may give rise to taxation issues, including the application of the general anti-avoidance provisions.

Additionally, the Tax Office says the arrangements described in the first alert in the above list may breach the provisions of the superannuation legislation.

## **Deductibility of Self-education Expenses**

The Tax Office has issued a notice following the recent decision of the Federal Court that a taxpayer who was receiving the Youth Allowance was entitled to a deduction for self-education expenses incurred.

The Tax Office says that it will continue to apply the Commissioner's established view that self-education expenses are not deductible against various Commonwealth educational assistance schemes.

## **Access to Skygardens Building and our offices**

As part of works for the Westfield Sydney development, access to the Skygarden commercial tower will only be available via Castlereagh Street from mid August 2009. There will be no direct access via Pitt Street Mall.

Westfield Concierge and directional signage will be in place to assist you for access to the lift lobby and our office.

Important: This is not advice. Clients should not act solely on the basis of the material contained in this Bulletin. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Bulletin is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.