

# client alert

tax news | views | clues

May/June 2009

## Proposed Amendments to the Tax Law

The Federal Government has introduced Tax Laws Amendment (2009 Measures No 2) Bill 2009 into Parliament. The amendments contained in the Bill include:

- increasing access to the small business CGT concessions for taxpayers owning a CGT asset used in a business by an affiliate or entity connected with the taxpayers, and for partners owning a CGT asset used in the partnership business;
- providing a general exemption from CGT for capital gains arising from a right or entitlement to a tax offset, deduction or similar benefit; and
- exempting from tax the Clean-up and Restoration Grants paid to small businesses and primary producers affected by the recent Victorian bushfires.

## Small business CGT concessions

The Bill will allow a taxpayer who holds a passively held CGT asset which is used in a business by the taxpayer's affiliate or a connected entity to access the small business CGT concessions, subject to certain conditions.

The Bill will also allow partners in a partnership to access the concessions for CGT assets owned by the partners that are used in the business of the partnership but are not interests in assets of the partnerships, provided certain requirements are satisfied.

Further, the Bill will refine and clarify aspects of the existing small business CGT concessions, including:

- expanding the range of circumstances when a taxpayer's spouse or child will be considered to be an affiliate of the taxpayer;
- exempting small business operators from satisfying the basic conditions for capital gains arising from certain CGT events;
- ensuring the small business CGT retirement exemption applies appropriately to capital proceeds received by individuals in instalments.

The Bill will also clarify that a partner in a partnership cannot be a small business entity.

Generally, the amendments will apply to CGT events happening in 2007/08 and later income years.

## Tax benefits and capital gains tax

The Bill will ensure that a capital gain or loss that a taxpayer makes from a

CGT event arising from a tax offset, deduction or similar benefit will be disregarded.

For example, the exemption will apply if a taxpayer has a right to receive a reduction in land tax available under an Australian law.

The amendment will apply to the 2009/10 and later income years.

## Tax exemption for certain grants

The Bill will exempt from income tax the Clean-up and Restoration Grants paid to small businesses and primary producers affected by the recent Victorian bushfires.

This amendment will apply to grants paid in the 2008/09 and 2009/10 income years.

## Superannuation Warning

The Tax Office has released a Taxpayer Alert in which it warns self-managed superannuation funds (SMSFs) with pre-existing interests in unit trusts of arrangements involving the transferring of benefits associated with the in-house assets transitional provisions.

The Tax Office says that such arrangements may involve superannuation regulatory issues and taxation issues.

### ROCKHAMPTON

7 Archer Street,  
 P.O. Box 1406  
 Rockhampton 4700.

Telephone: (07) 4927 4588  
 Facsimile: (07) 4922 2654

Email: [eea@evansedwards.com.au](mailto:eea@evansedwards.com.au)  
[www.evansedwards.com.au](http://www.evansedwards.com.au)

### YEPPOON

Suite 1/16 Queen Street,  
 P.O. Box 1685,  
 Yeppoon 4703.

Telephone: (07) 4939 1766  
 Facsimile: (07) 4939 1304

Email: [eea@yeppoon.evansedwards.com.au](mailto:eea@yeppoon.evansedwards.com.au)

### EMERALD

Visiting office only  
 2/111 Egerton Street  
 P.O. Box 2843,  
 Emerald 4720.

Telephone: (07) 4987 6001  
 Facsimile: (07) 4987 6176

### BRISBANE

9 Pittwin Road North,  
 P.O. Box 709,  
 Capalaba 4157.

Telephone: (07) 3245 4566  
 Facsimile: (07) 3245 4640

Email: [mail@eea-accountants.com.au](mailto:mail@eea-accountants.com.au)

Broadly, the in-house assets rules restrict a regulated superannuation fund from having more than 5% of the total market value of its assets in a related party of the fund. However, transitional provisions may apply to exclude an asset from the in-house asset rules.

- Trustees of SMSF should review, in consultation with their professional advisers, pre-1 July 1999 investments in related trusts.

### **PAYG Instalments**

The Federal Government has announced that it will cut the quarterly PAYG instalments for the 2009/10 income year for taxpayers who calculate their instalments using the Gross Domestic Product method.

### **Reminder: Individual Tax Rates from 1 July 2009**

The resident individual tax rates will change for the 2009/10 income year. The new rates are:

<b>Taxable income (\$)</b>	<b>Tax payable (\$)</b>
0 — 6,000	Nil
6,001 — 35,000	15% of excess over 6,000
35,001 — 80,000	4,350 + 30% of excess over 35,000
80,001 — 180,000	17,850 + 38% of excess over 80,000
180,001+	55,850 + 45% of excess over 180,000

### **Low-income tax offset**

The maximum amount of offset an individual resident taxpayer will be entitled to will increase to \$1,350 for 2009/10 (\$1,200 for 2008/09).

### **Tax Planning**

Simply put, tax planning is the arrangement of a taxpayer's affairs so as to comply with tax laws at the lowest possible cost which involves

objectively assessing and actively managing tax risk.

Common tax planning techniques are deferring the derivation of assessable income and bringing forward allowable deductions.

### **Deferring Income**

- Income received in advance of services to be provided will generally not be assessable until the services are provided.
- Taxpayers who provide professional services may consider, in consultation with their clients, rendering accounts after 30 June to defer the income.
- Consider whether the requirements to be classified as a small business entity (SBE) are satisfied. A SBE can access various tax concessions such as the simpler depreciation rules and deductions for many prepayments.
- Individuals operating personal services businesses should ensure that they satisfy the relevant test to be excluded from the Personal Services Income regime. Alternatively, a determination to be excluded can be sought from the Commissioner.

### **Maximising Deductions**

#### **Business taxpayers**

- Debtors should be reviewed prior to 30 June to identify and write off any bad debts.
- Capital assets costing \$100 (GST inclusive) or less are eligible for an immediate deduction.
- Review the asset register to identify any low-cost and/or low-value assets that may be pooled to access an accelerated rate of depreciation.
- Business-related capital expenditure may be deductible,

including establishment of business premises, research into likely markets or profitability of a business and due diligence reports.

- Write off any depreciating assets which are no longer being held for use because a deduction may be available.
  - Employees' superannuation contributions should be paid before 30 June to obtain a deduction and to avoid the Superannuation Guarantee Charge.
  - Review trading stock for obsolete stock for which a deduction is available.
  - A one-off bonus deduction of 50%, 30% or 10% for eligible tangible depreciating assets purchased between 13 December 2008 and 31 December 2009 may be available.
- Tip: Contact your advisor for further details.

#### **Non-business taxpayers**

- Investors should consider prepaying interest on margin loans to obtain a deduction.
- Outgoings incurred for managed investment schemes may be deductible following a Full Federal Court decision.
- Assets costing \$300 or less may qualify for an immediate deduction subject to certain conditions.
- A deduction for personal superannuation contribution is available where the 10% rule is satisfied.

#### **Capital Gains Tax**

- Consider deferring the disposal of an asset to the 2009/10 income year to take advantage of the changes to the individual tax rates.

- Consider deferring the disposal of shortly-held assets to access the CGT discount, where available.
- Consider crystallising any unrealised capital losses in the income year if a significant capital gain is anticipated. Individual taxpayers can consider contributing some or all of the gain to her or his superannuation fund where a deduction is available for personal superannuation contributions.
- Consider whether a rollover relief is available to defer any capital gains.
- Consider the availability of the small business CGT concessions which can disregard, reduce or defer a capital gain arising from the disposal of an asset which has been used by an entity in the course of carrying on its business.

## Companies

- The franking percentage for distributions to shareholders should be the same for each franking period to avoid a franking deficit tax.
- A private company has four months after the end of the income year to provide its shareholders with a distribution statement for dividends paid.
- Loans, payments and debt forgiveness by private companies to their shareholders and associates may give rise to unfranked dividends assessable to the shareholders and associates. As such, loans or payments should be repaid by the earlier of the due date for lodgment of the company's return for the year or the actual lodgment date. Alternatively, appropriate loan agreements should be in place.

## Trusts

- A minor (ie aged under 18) can receive up to \$2,667 in non-taxable distribution for the 2008/09 income year.
- Avoid retaining income in the trust because the income may be taxed at 46.5%.
- If a company is owned by a discretionary trust, consider whether a family trust election (FTE) is needed to ensure any losses or bad debts incurred by the company will be deductible.
- If shares are owned by a discretionary trust, consider the necessity for the trustee to make a FTE to ensure any franking credits attached to the dividends will not be 'wasted'.
- If a FTE has been previously made, avoid distributing outside the family group to avoid the family trust distributions tax.

## Superannuation Strategies

- A re-contribution strategy may produce tax benefits for taxpayers under age 60.
- Low-income earners (including self-employed persons) should consider making a personal superannuation contribution to qualify for the government superannuation co-contribution payment.
- Consider splitting contributions between spouses to effectively transfer concessional contributions to the older spouse who will reach age 60 first.
- A tax offset may be available to taxpayers who made eligible contributions to a superannuation fund on behalf of their low-income or non-working spouse.
- Taxpayers who have reached their preservation age should

consider the benefits of a transitional to retirement pension.

- The government has introduced a measure allowing pensioners the option to draw only half of the year's minimum required pension amount for 08/09 and 09/10

## Developments since 1 July 2008

Taxpayers should note recent tax law changes, which include:

- the Education Tax Refund – eligible families can claim a tax refund for qualifying expenses incurred on their children's education, subject to a maximum limit;
- the Medicare levy surcharge thresholds for individuals and families have increased; and
- the Fuel Tax Credits Scheme has been expanded thereby most business taxpayers can claim credits for fuel used in their businesses.

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.