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July/August 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.

Tax Law Amendments

The Tax Laws Amendment (2009 Budget Measures No 1) Act 2009 has been enacted. The Act:

- amends the income tax exemption on foreign employment income;
- temporarily reduces the superannuation government co-contribution; and
- reduces the superannuation concessional contributions cap.

The amendments took effect from 1 July 2009.

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

The Act will also reduce the transitional concessional

Over Please....

ROCKHAMPTON

7 Archer Street,
 P.O. Box 1406
 Rockhampton 4700.
 Telephone: (07) 4927 4588
 Facsimile: (07) 4922 2654

Email: eea@evansedwards.com.au
 www.evansedwards.com.au

YEPPON

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

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

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.

WorkCover Data Matching Project

The Tax Office has announced that it will request and collect business names and addresses from each state's and territory's WorkCover Authority for the 2007 and 2008 calendar years.

The information collected from the projects will be electronically matched with the Tax Office's data holdings to identify non-compliance with registration, lodgment and payment obligations.

Proposed Tax Law Amendments

The Federal Government has introduced a Bill into Parliament. The amendments contained in the Bill include:

- increasing the aggregated research and development (R&D) expenditure cap from \$1 million to \$2 million for eligibility to the R&D tax offset; and
- making minor technical corrections to the taxation laws, including the small business CGT concessions, and FBT on donations.

R&D offset

Currently, an eligible company can claim a refundable R&D tax offset for its R&D expenditure, subject to satisfying certain conditions.

One of the conditions is that the aggregated R&D expenditure of the company and its affiliates does not exceed \$1 million. The lifting of the expenditure cap to \$2 million provides an incentive for companies to increase their R&D activities.

Minor technical changes

The proposed amendments include:

- ensuring a pre-CGT asset that is deemed a post-CGT asset due to the operation of the CGT provisions of Div 149 of ITAA 1997 can be distributed tax-free under the small business CGT concessions, subject to certain requirements being met; and
- ensuring donations made through salary sacrifice arrangements do not result in an FBT liability.

Deemed Dividends

In a recent case, the AAT held that a taxpayer, who was a director and shareholder in a private company, was liable to the deemed dividends provision for monies deposited in her bank account. The payments were debts due to the company. The company had directed its debtors to pay the money owed into the taxpayer's account.

Broadly, the deemed dividend provisions treat certain payments, loans and debt forgiveness by a private company to its

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shareholders (or their associates) to be assessable income in the form of unfranked dividends.

- A private company should ensure that all payments are deposited to its own bank account.

GST and Credit Card Surcharge Fees

The AAT has affirmed that the GST treatment of credit card surcharge fees, imposed by a taxpayer when payments are made by credit card, depend on the GST characterisation of the underlying supply.

Simply put, if an underlying supply is GST-free, the fee will be GST-free. Conversely, where the underlying supply is a taxable supply, the fee will attract GST.

Superannuation Guarantee Charge

The AAT has upheld superannuation guarantee charge default assessments against a partnership for failing to make minimum superannuation contributions for an independent contractor operating within its business.

After considering the factors that indicate the existence of an employee/employer relationship, the Tribunal held that the contractor was an employee.

Indicators that suggest an employee/employer relationship exists include:

- the level of control between an individual and the other party;
- the mode of remuneration;
- the provision for annual leave; and
- the right to suspend or dismiss an individual by the other party.

- The classification of an individual as an employee or as an independent contractor is not based on the legal terms used in a contract. All of the facts and circumstances of the particular situation must be considered.
- An individual engaged for their labour can be deemed to be an employee for superannuation guarantee purposes even where the individual is a contractor.

Superannuation Guarantee Regulations

The Federal Government has registered an instrument to clarify that employers are not required to provide superannuation guarantee contributions for paid parental leave and ancillary leave payments made to their employees on or after 1 July 2009.

Parental leave includes maternity leave and paternity leave. Ancillary leave includes payments for service with the Defence Force Reserves and or for jury duties.

Superannuation Rates and Thresholds

The Tax Office has released the following superannuation rates and thresholds for the 2009/10 income year:

- **Superannuation guarantee maximum contribution base:** \$40,170 for each quarterly contribution period. An employer does not need to provide the minimum 9% superannuation guarantee support for an employee's ordinary time earnings above this limit.

- **Superannuation co-contribution income**

The lower total income threshold to qualify for the maximum co-contribution is \$31,920. The higher income threshold where the co-contribution completely phases out is \$61,920.

Rates and Thresholds

The Tax Office has also released the following rates for the 2009/10 income year:

- **CGT improvement threshold:** \$124,258
- **Car depreciation limit and luxury car limit:** \$57,180
- **Overtime meal allowance expenses:** \$24.95
- **Benchmark interest rate for the deemed dividends provision:** 5.75%

GIC and SIC Rates

The Tax Office has also released the general interest charge (GIC) and shortfall interest charge (SIC) rates for the first quarter of the 2009/10 income year (ie 1 July 2009 to 30 September 2009):

Rate	Annual (%)	Daily (%)
GIC	10.13	0.02775342
SIC	6.13	0.01679452

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