



# client alert

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### 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.

The Tax Office says that these arrangements may involve a breach of taxation and superannuation laws.

Generally, superannuation benefits must be preserved in a member's superannuation fund until a condition of release, such as the member permanently retiring and reaching her or his preservation age (which depends on the member's date of birth).

An early access of benefits is only permitted in certain restricted circumstances. For example, severe financial hardship and compassionate grounds.

## **Main Residence Exemption**

In a recent case, the Administrative Appeals Tribunal held that the CGT main residence exemption was not available to a husband and wife (the taxpayers) on a unit they acquired with the intention of it being their main residence, but which they ultimately never lived in.

The taxpayers purchased a unit in June 2000 with the intention of residing in it. However, due to the nature of the husband's work, they said that it only became practicable for them to reside in the unit in January 2006.

The Tribunal's view was the taxpayers did not move into the unit when it was first practicable to do so. It was also the Tribunal's view that the nature of the husband's work was not sufficient to enable the main residence exemption to be invoked.

⌚ TIP: The Commissioner has stated in a Taxation Determination that the mere intention to occupy a dwelling as a main residence is insufficient to obtain the exemption.

## **Deferral of HELP repayments**

The Administrative Appeals Tribunal has declined a taxpayer's request to defer his compulsory Higher Education Loan Programme (HELP) repayment because the circumstances cited by the taxpayer did not amount to special reasons.

Taxpayers with an accumulated HELP debt may apply to the Commissioner to defer their repayment if making the repayment has caused or would cause serious hardship. Alternatively, the taxpayer may apply if there are other special reasons that make it fair and reasonable to defer the repayment.

If a taxpayer's HELP repayment income is below the minimum repayment threshold for a financial year, no repayment is required.

## **Lump Sum Payment and Assessable Income**

In another case heard by the Administrative Appeals Tribunal, it held that a lump sum payment received by a taxpayer in arrears of weekly compensation entitlements was assessable income.

The Tribunal found that the lump sum payment was a replacement for loss of income. It also found that the taxpayer was not entitled to reduce his assessable income from the payment or claim a deduction for pension amounts recovered by Centrelink out of the payment.

⌚ TIP: Generally, compensation payments which are a substitute for income will be assessable income, even if received as a lump sum.

## **Keep Your Receipts**

In two separate but related media releases, the Government and the Tax Office reminded parents to keep receipts relating to expenses incurred on their children's education if they wish to claim the education tax refund.

From 1 July 2008, eligible families can receive a maximum refund of \$375 for each child undertaking primary studies and \$750 for each child undertaking secondary studies.

The Tax Office states that only expenses which are paid for by parents will qualify for the refund. It also states that if an item is used for different purposes, only the amount that relates to a child's education is eligible for the refund.

## **Beware — Tax Refund Scam**

The Tax Office has issued two separate but related media releases warning taxpayers of two e-mail scams purporting to offer a tax refund.

The scams operate by requesting a taxpayer's credit card and personal details.

Generally, the subject heading of the emails are titled:

- 'Get refunds on your Visa or Master Card';
- 'Notification — Please Read'; or
- 'Australian Taxation Office — Please Read This'.

The Tax Office does not send e-mails requesting personal information including credit card details.

Individuals who receive emails of this nature should immediately delete them.

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.