

CLIENT ALERT

March 2009

New 'Investment Allowance'

The Government has announced that it will introduce a 10% temporary investment allowance to encourage capital investment by Australian businesses.

The allowance will be in the form of an additional tax deduction equal to 10% of the cost of an eligible asset.

It will apply to most new tangible depreciating assets – which includes most items of plant and equipment – over \$10,000 which are acquired or ordered by the end of the 2008/09 financial year.

The allowance will be available for businesses which start to hold or start to construct the asset after 12.01am AEDT 13 December 2008 and before the end of June 2009.

Assets must be ready for use by the end of June 2010.

Since issuing the above concessions the Government has now 'upped the ante', increasing both the amount and the scope of this allowance.

The Treasurer has stated that the Government will introduce an investment tax break for all Australian businesses, which it is calling the 'Small Business and General Business Tax Break'.

Small businesses

Small businesses can claim an additional **30%** tax deduction for eligible assets costing \$1,000 or more that they acquire from **13 December 2008 to 30 June 2009**, and install by 30 June 2010.

For eligible assets costing \$1,000 or more that they acquire from **1 July 2009 to 31 December 2009**, they can claim a **10%** deduction where they are installed by 31 December 2010.

This deduction is on top of the usual capital allowance deduction (i.e., depreciation) claimable for the asset in the taxpayer's income tax return.

To benefit from this tax break a small business must have a turnover of \$2 million a year or less.

Other businesses

Other businesses can receive the same deductions for eligible assets greater than \$10,000.

Which assets are eligible?

Assets eligible for the allowance are most new tangible depreciating assets and new expenditure on existing assets used in carrying on a business.

Land and trading stock are excluded from the definition of depreciating assets, and will not qualify for the deduction.

Example

A small business that buys and installs a \$2,000 computer before the end of June 2009 can claim an additional \$600 deduction (i.e., 30%) in its 2008/09 tax return.

Time to review SMSF investment strategies

Editor: In these troubled financial times, the ATO has issued a timely reminder to trustees of SMSFs that they should regularly review their fund's investment strategy, so that they can make the best possible investment choices.

Trustees need to prepare and implement an investment strategy for their fund, and the investment strategy should be unique to the requirements of that SMSF and its members.

It should be reviewed regularly and updated as required, and allow the trustees to be able to measure investment performance against their retirement income goals.

An investment strategy must reflect the purpose and circumstances of the fund and consider:

- investing in such a way as to maximise member returns, taking into account the risk associated with the investment;
- appropriate diversification and the benefits of investing across a number of asset classes (for example, shares, property, fixed deposit) in a long-term investment strategy;
- the ability of the SMSF to pay benefits as members retire and pay other costs incurred by the fund; and
- the needs of members (for example, age, income level, employment pattern and retirement needs).

All investment decisions must be made in accordance with the investment strategy.

SMSFs paying death benefits

Under superannuation legislation, trustees of super funds are generally prohibited from following directions or instructions from anyone else.

One exception to this rule allows members of a fund to direct their trustee about who should receive

a payout of a death benefit. This is called a **binding** death benefit nomination (or BDBN).

An example of such a BDBN might be where, on their death, a member wanted to make specific provision for payments to be made to certain dependants, or even direct to the legal personal representative (or "LPR") of their estate.

The ATO has now confirmed that an SMSF's trust deed may permit members to make (lawful) death benefit nominations that are binding on the trustee, and can set out how they should be made.

However, trustees of super funds are still bound to generally only distribute to dependants or the deceased person's estate.

FBT exemption for laptop with upgrades

The ATO has confirmed that, where an employee is reimbursed by their employer for the purchase of a laptop computer, the cost of including additional memory in the computer (and similar upgrades) at the time of purchase will form part of the cost of the laptop for fringe benefits tax (FBT) purposes.

Reasons for Decision

The provision of certain 'eligible work related items', including 'a portable electronic device' (such as a laptop computer), by an employer to an employee can be exempt from FBT.

This exemption also applies to any computer upgrades made at the time of purchase involving built-in internal components which are not peripheral items and which are ordered and itemised on the one invoice (even at a separate cost), including:

- additional memory;
- bigger hard drive;
- internal modem; or
- wireless LAN module.

However, where the employee requests peripheral items such as cables, modems or cradles or an extension to the warranty that is offered, and these come at an additional cost, the exemption will not extend to these items.

Assets in family trust not safe from ex-spouse

The High Court has held that the assets of a family trust were "property" of the parties to the marriage for the purposes of the *Family Law Act 1975*, and should therefore be taken into account in dividing the assets between the husband and wife.

In particular, it held that the husband made variations to the trust deed, and then basically distributed all of the property of the trust to the children, knowing the marriage was in trouble, and that he was "looking to defeat an anticipated order for property settlement" dealing with the property of the parties, including the assets of the Trust.

Therefore, the Court was able to ignore that variation and distribution ("setting them aside") and then held that the assets of the trust should be included in the marriage's asset pool, and also upheld the order that the husband find some way of paying the wife an additional \$2.2 million.

Tax bonuses

The Government will be providing five one-off payments in March and April 2009 for low and middle income households and individuals as part of its \$42 billion 'Nation Building and Jobs Plan'.

The payments will not be taxable and will not be counted as income for social security purposes.

1. Tax Bonus for Working Australians

This bonus payment will be available to Australian resident taxpayers who paid tax in the 2007/08 financial year (after taking into account available tax offsets and credits).

The payment is subject to an income threshold test which determines that a:

- \$900 bonus will be paid to eligible taxpayers with a 2008 taxable income of up to \$80,000;
- \$600 bonus will be paid to eligible taxpayers with taxable incomes exceeding \$80,000 and up to \$90,000; and
- \$250 bonus will be paid to eligible taxpayers with incomes exceeding \$90,000 up to and including \$100,000.

Taxpayers will not need to apply for the payment: the ATO will automatically make the payment after determining eligibility. However, the tax bonus will only be paid to those who have their 2007/08 return in by 30 June 2009.

Editor: The ATO has advised people to contact them on 1300 686 636 by the middle of March if they need to change address or bank details, so as to ensure the money goes into the right bank account or the cheque is delivered to the correct address in early April 2009 (e.g., if our address or bank account is recorded on your 2008 tax return).

2. Single Income Family Bonus

This one-off bonus payment of \$900 is for families with children that have one main income earner (i.e., families who, on 3 February 2009, were eligible to receive Family Tax Benefit (FTB) Part B).

The payments will be made automatically by Centrelink from 11 March 2009.

3. Farmer's Hardship Bonus

The Government will provide a one-off payment of \$950 to farmers and rural-dependent small business owners who, on 3 February 2009, are receiving certain income support and exceptional circumstances relief payments.

The payments will be made in the fortnight commencing 24 March 2009.

4. Back to School Bonus

This payment of \$950 is for families eligible for FTB Part A on 3 February 2009 for each eligible child of school age (aged 4 to 18 on 3 February 2009).

5. Training and Learning Bonus

This \$950 payment consists of two categories, the first being for eligible students, and the second being an additional incentive for social security recipients to return to education and training.

Tips for claiming donations to emergency relief funds

The Tax Office has announced a practical approach to ensure those donating to help the victims of the Victorian bushfires and Northern Queensland floods can do so with minimum fuss.

People who give to 'bucket donations' can claim a tax deduction equal to their contribution up to \$10 in their 2008/09 tax return without the usual need to keep a receipt.

If people use the web or phone to make a donation over \$10, their web receipt or credit card statement will be enough. Others should be provided with a receipt for their contributions.

This also will apply to donations collected through third parties such as banks and retail outlets.

Taxpayers should remember that only donations to organisations that have been endorsed can be claimed as a tax deduction – these are listed as 'deductible gift recipients' at www.ato.gov.au.

Reminder about the Education Tax Refund

The Treasurer has called on parents to make sure they keep their receipts to make the most of the new Education Tax Refund.

Eligible families will be able to claim a 50% refund every year (through their tax return at the end of the financial year) for key education expenses up to:

- ❑ \$750 for each child undertaking primary studies (maximum refund of \$375 per child, per year); and
- ❑ \$1,500 for each child undertaking secondary studies (maximum refund of \$750 per child, per year).

The Education Tax Refund will apply to some of the most common back-to-school items, including:

- ◆ laptops, home computers and associated costs;
- ◆ home internet connections;
- ◆ printers;
- ◆ education software;
- ◆ trade tools for use at school;
- ◆ school text books; and
- ◆ stationery.

Who is eligible?

Parents entitled to FTB Part A for children in primary or secondary school for the relevant financial year are eligible for the Education Tax Refund, as well as parents who would be eligible, but for the fact that the child receives certain payments or allowances, such as Youth Allowance, Disability Support Pension, and ABSTUDY Living Allowance.

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