

CLIENT ALERT

June 2009

From 1 July 2009, reportable superannuation contributions, including salary sacrificed superannuation, will be taken into account when evaluating a taxpayer's entitlement to a number of benefits, including the superannuation co-contribution, the Baby Bonus, and dependant tax offsets, as well as various liabilities, such as the Medicare Levy Surcharge and child support.

Contributions received by the super fund on or before 30 June 2009 will be assessed against the existing concessional contribution caps, and will not be included in 'adjusted taxable income'.

Editor: Although there is only a month left until the end of the 2009 income year, call us to talk about the possibilities of sacrificing, this year, unearned future income beyond 30 June 2009.

Small Business Tax

Break Boost

The Small Business and General Business Tax Break has been increased to 50% for small business entities (or SBEs) – i.e., basically small businesses with an annual turnover of less than \$2 million.

A deduction of 50% (instead of the 30% or 10% deduction) will be available to SBEs that order an eligible asset between 13 December 2008 and 31 December 2009, and install it ready for use by 31 December 2010.

Editor: Note that, even though the 50% deduction may be available for assets purchased after 30 June 2009, it can only be claimed in the 2009 tax return if the asset is acquired and installed by 30 June 2009 (otherwise, it may still be claimed, but in a future tax return).

All other businesses can continue to access the Tax Break at 30% for eligible assets contracted for prior to 30 June 2009 (and installed by 30 June 2010), and 10% for eligible assets that they commit to investing in between 1 July 2009 and 31 December 2009 (which are installed by 31 December 2010).

The following is a sample of frequently asked questions on the new Investment Allowance. If you need any detailed advice, please contact our office.

What does 'new' mean?

The Investment Allowance will be available for new, tangible depreciating assets or new expenditure on existing assets. 'New' refers to assets that have not been used before by anyone, anywhere, except where an asset has only been used for reasonable testing and trialling.

Do cars qualify?

New motor vehicles used principally for business purposes are an example of the kind of assets that could qualify for the Tax Break.

Are demonstrator vehicles new?

Demonstrator vehicles can qualify as 'new' assets, provided they have only been used for reasonable testing and trialling.

Do buildings qualify?

No. The Tax Break will be available for new tangible depreciating assets for which a deduction is available under the core provisions of Div.40 and new expenditure on existing assets.

Capital works covered by Div.43 will not qualify for the Tax Break.

Important: This is not advice. Clients should not act solely on the basis of the material contained in the 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. There, it should be regarded as confidential and not be made available to any person without our prior approval.

Will the Tax Break be reduced for non-business use?

Unlike depreciation deductions, the Tax Break will not be apportioned for any non-business use of the asset.

However, a taxpayer must be able to demonstrate that the asset was to be used in Australia and for the principal purpose of carrying on a business.

Will it bring forward the depreciation claims or is it on top of these deductions?

The Tax Break will provide a bonus deduction rather than bringing forward normal deductions for depreciation. This means that, over time a taxpayer could effectively claim deductions of up to 150% of the asset's value.

Will the car limit apply to the Tax Break?

Yes, the car limit will apply to eligible luxury cars.

The car limit for 2008/09 is \$57,180. This means that, at the 50% rate, the maximum bonus deduction available for a car in 2008/09 is \$28,590.

Superfund audits on the rise – 11,000 audits planned in 2009/10

In a recent speech in Sydney, Neil Oleson, Deputy Commissioner of Taxation, indicated that the Tax Office was targeting SMSFs and their auditors.

Compliance issues

Mr Oleson indicated that to date, the Tax Office has concentrated on putting its efforts into educating and assisting those involved in the system to meet their roles and obligations.

"We now have some 200 compliance staff focussed on self-managed fund issues."

We have gone from completing around 3,600 compliance cases in 2006/07 to around 10,400 cases in 2007/08. In 2008/09 we are well on track to completing over 11,000 cases."

SMSFs and borrowing money

Trustees of self managed superannuation funds (SMSFs) are generally prohibited from borrowing money except in specific circumstances (*Editor: such as under the new rules for certain limited recourse loans, where the lender only has a claim against a certain asset of the SMSF*).

Because there has been some confusion about this, the Tax Office (ATO) has explained what a 'borrowing' is, and how to determine whether an SMSF contravenes this general prohibition.

Borrowing money

A borrowing is an arrangement that exhibits two necessary characteristics:

- a temporary transfer of an amount of money from one entity (the lender) to another (the borrower); and
- an obligation or an intention on the part of the borrower to repay that amount to the lender (which may be

satisfied by the provision of an asset).

When does an arrangement contravene the prohibition?

Examples of transactions or circumstances that are a 'borrowing' based on common terms and conditions include:

- a loan of money, whether secured or unsecured (and whether or not it is a 'limited recourse loan', although such loans may be exempt if they satisfy the new rules);
- a margin lending account once drawn upon; and
- a bank overdraft once drawn upon.

Examples of transactions or circumstances that are not a 'borrowing' based on common terms and conditions include:

- ◆ bona fide contributions to SMSFs that are accepted and dealt with in accordance with the superannuation rules;
- ◆ the liability of an SMSF to pay benefits to members as they fall due;
- ◆ arrangements under which expenses are paid on behalf of the SMSF trustee by an agent or any other person where reimbursement is immediately sought from, and made by, the SMSF; and
- ◆ normal commercial delays in the payment of expenses incurred by an SMSF trustee.

Note: Even if an arrangement is not a borrowing, or falls within one of the specific exceptions, trustees must also make sure they don't fall foul of other superannuation rules, including the sole purpose test and the prohibition against granting a charge against an asset of the SMSF.

ATO data matching programs

The ATO has announced that it will be undertaking a number of data matching programs to identify taxpayers who may not be meeting their taxation obligations.

The ATO will request and collect:

- details of approximately 2.5 million individuals or entities that have purchased or acquired a motor vehicle valued at \$10,000 or higher, from the Roads and/or Traffic Authorities of each State and Territory;
- information on amounts paid to personal services entities by labour hire firms, placement agencies and computer consultancies; and
- information on amounts paid by mining companies to contractors and sub contractors.

Income tax: 2008/09 cents per km rates

The 2008/09 cents per kilometre rates for claiming deductions for car expenses have been released.

Engine capacity (non-rotary)	Engine capacity (rotary engine)	Rate (cents)
0 – 1,600cc	0 – 800cc	63
1,601 – 2,600cc	801 – 1,300cc	74
2,601cc+	1,301cc+	75

FBT: Record keeping exemption threshold

The record keeping exemption threshold for the FBT year commencing 1 April 2009 is \$7,063 (replacing the amount of \$6,766 from the previous year.)

FBT: Benchmark interest rate

The benchmark interest rate for the FBT year commencing 1 April 2009 is 5.85% p.a (replacing the rate of 9.00% that applied for the previous FBT year).

Editor: The ATO has also released the following for the 2009/10 FBT year:

- the amounts that are considered to be a reasonable food component of a living-away-from-home allowance (LAFHA);
- the cents per km rates for motor vehicles other than cars (for FBT purposes); and
- the indexation factors for the purpose of valuing non-remote housing.

Please contact our office if you would like to know more about these.

FBT car parking threshold

The car parking threshold for the FBT year commencing on 1 April 2009 is \$7.25 (up from the amount of \$7.07 that applied in the previous FBT year).

Other Budget changes

Further initiatives announced in the 2009 Federal Budget include:

From 1 July 2009, the income tax exemption for **foreign employment income** will basically be abolished;

- From 1 July 2010, the Private health insurance rebate will effectively be reduced to nil for single taxpayers with a taxable income greater than \$120,000 and couples with joint taxable incomes greater than \$240,000;

- The **age pension age** (for both men and women) will be gradually increased from age 65, commencing on 1 July 2017, and reaching age 67 on 1 July 2023;

- Taxation of shares or rights acquired under **Employee Share Schemes** will be reformed;

- From 1 July 2009, the **deemed dividend rules will be extended** to include situations where a shareholder of a private company (or their associate) uses company assets such as real estate, cars and boats, for free or at a discounted rate.

- The Government will **halve the minimum payment amounts** for account-based pensions for 2010 (e.g., the current minimum 4% drawdown for people under the age of 65 will be reduced to 2%).

2008/2009 Year-end Checklist for Business

Many of our business clients like to review their tax position at the end of the financial year and evaluate any year-end strategies that may be available to legitimately reduce their tax. Traditionally, year-end tax planning for small businesses is based around two simple concepts – i.e., accelerating business deductions and deferring income.

However, Small Business Entities (SBEs) have greater access to year-end tax planning due to particular concessions that only apply to them. The SBE system commenced on 1 July 2007 and, unlike the previous Simplified Tax System ("STS"), SBEs do not need to elect to be an SBE – they can pick and choose which of the concessions they wish to use each year (although restrictions still remain in relation to the SBE depreciation rules). The basic requirement to be eligible for the SBE concessions is that the business taxpayer's annual turnover (including some related entities) is less than the \$2 million threshold.

The following are a number of areas that may be considered for all business taxpayers.

Maximising deductions for non-SBE taxpayers

Non-SBE business taxpayers should endeavour to maximise deductions by adopting one or more of the following strategies:

- Prepayment strategies.
- Accelerating expenditure.
- Accrued expenditure.

Prepayment strategies – non-SBE

Any part of the prepayment relating to the period up to 30 June is deductible in full.

In addition, non-SBE taxpayers may generally claim the following prepayments in full:

- expenditure under \$1,000;
- salary and wages; or
- expenditure required to be incurred under law.

Editor: Prepayments can be a little confusing, so before you commit to making a payment please feel free to call us with any queries or assistance if required.

Accelerating expenditure – non-SBE

This is where a business taxpayer brings forward the expenditure on regular, on-going deductible items. Business taxpayers are generally entitled to deductions on an "incurred basis".

Therefore, there is no requirement for the expense to be paid by 30 June 2009 (unless they

account on a cash basis). As long as the expense has genuinely been incurred, it will generally be deductible.

Checklist

The following may act as a checklist of possible accelerated expenditure:

- Depreciating assets** costing \$100 or less can be written off in the year of purchase. Depreciating assets costing less than \$1,000 can be allocated to a low value pool and depreciated at 18.75% (which is half of the full rate of 37.5%) in their first year regardless of the date of purchase.
- Repairs** – repairs to office premises, equipment, cars or other business items.
- Consumables/spare parts.**
- Client gifts.**
- Donations.**
- Advertising.**
- Fringe benefits** – any benefits to be provided, such as property benefits, could be purchased and provided prior to 30 June 2009.
- Superannuation** – contributions to a complying superannuation fund, to the extent contributions are actually made (i.e., they cannot be accrued).

Note that the age-based limits on the deductibility of superannuation contributions were removed from 1 July 2007, basically

meaning all employer contributions are now deductible. However, an employee who receives employer contributions in excess of their own concessional contributions cap may have to pay more tax.

Accrued expenditure – non-SBE

Non-SBE taxpayers (and some SBE taxpayers) are entitled to a deduction for expenses incurred as at 30 June 2009, even if they have not yet been paid.

The following expenses may be accrued:

- ◆ **Salary or wages and bonuses** – the accrued expense for the days that employees have worked but have not been paid as at 30 June 2009.
- ◆ **Interest** – any accrued interest outstanding on a business loan that has not been paid as at 30 June 2009.
- ◆ **Commercial bills** – the discount applicable to the period up to 30 June, where the term of the bill extends past 30 June 2009.
- ◆ **Commissions** – where employees or other external parties are owed commission payments.
- ◆ **Fringe benefits tax** – if an FBT instalment is due for the June 2009 quarter for example, but not payable until July, it can be accrued and claimed as a tax deduction in the 2009 income year.
- ◆ **Directors' fees** – where a company is definitively committed to the payment of a director's fee as at 30 June 2009, it can be claimed as a tax deduction.

Maximising deductions for SBE taxpayers

Deductions can be maximised for SBE business taxpayers by **accelerating expenditure** and **prepaying** deductible business expenses. Former STS taxpayers using the STS cash method cannot accrue expenses, but other SBE taxpayers on an accruals basis can also accrue expenses (see above for accruing expenditure).

Accelerating expenditure – SBE

Former STS taxpayers using the STS cash method* are generally only entitled to deductions if they have paid the amount by 30 June 2009. This includes general deductions, tax-related expenses, and repairs.

* The requirement for STS taxpayers to use the cash method ceased from 1 July 2005.

All SBE taxpayers can choose to write-off depreciable assets costing less than \$1,000 in the year of purchase. Also, assets costing \$1,000 or more with an effective life of less than 25 years can be depreciated at 15% (which is half the full rate of 30%) in their first year (if such assets were acquired on or after 13 December 2008, the SBE may also be entitled to an additional 50% deduction).

Therefore, where appropriate, SBE business taxpayers should consider purchasing these items by 30 June 2009.

Note: SBE taxpayers (including former STS taxpayers) choosing to use the SBE depreciation rules are effectively 'locked in' to using those rules for all of their depreciable assets.

Prepayment strategies – SBE

SBE taxpayers making prepayments before 1 July 2009 can choose to claim a full deduction in the year of payment where they cover a period of no more than 12 months (ending before 1 July 2010). Otherwise, the prepayment rules are the same as for non-SBE taxpayers.

The kinds of expenses that may be prepaid include:

- Rent** on business premises or equipment.
- Lease payments** on business items such as cars and office equipment.
- Interest** – check with your financier to determine if it's possible to prepay up to 12 months interest in advance.
- Business trips.**
- Training courses** that run on or after 1 July 2009.
- Business subscriptions.**
- Cleaning.**

Information Required

We will need you to bring the following information to help us prepare your income tax return:

- Stocktake details as at 30 June.
- Debtors listing (including a list of bad debts written off) as at 30 June. *Note: In order to claim a deduction, the debt must be written off on or before 30 June.*
- Creditors listing as at 30 June.

2008/2009 Individual Tax Return Checklist

Your Checklist

- Claims for deductions ✓
- Receipts for deductions ✓
- Car claims and log books ✓
- Car record keeping ✓

Please review the information below and contact our office if you need assistance.

Tax saving strategies prior to 1 July 2009

Accelerating tax claims

As personal income tax rates are set to decrease from 1 July 2009, there may be an additional advantage to be had by accelerating any income tax deductions into the current income year.

The tax rates for resident individual taxpayers for the **2008/2009** income year are as follows:

Income threshold	Tax payable
0 – \$6,000	Nil
\$6,001 – \$34,000	Nil + 15% on excess over \$6,000
\$34,001 – \$80,000	\$4,200 + 30% on excess over \$34,000
\$80,001 – \$180,000	\$18,000 + 40% on excess over \$80,000
\$180,001 and over	\$58,000 + 45% on excess over \$180,000

Note: The Medicare levy is in addition to these rates

Common work-related claims made by individuals

The following outlines common types of deductible expenses claimed by individual taxpayers, such as employees and rental property owners, plus some strategies that can be adopted to increase deductions for the 2008/2009 income year.

1. Depreciable plant, etc, costing \$300 or less

Salary and wage earners and rental property owners will generally be entitled to an immediate deduction if plant costing \$300 or less is purchased before 1 July 2009.

Some purchases you may consider include:

- fax machines;
- beepers and pagers;
- books and trade journals;
- briefcases/luggage or suitcases;

- calculators, electronic organisers;
- software;
- stationery;
- tools of trade.

2. Clothing expenses

Purchase or pay for work-related clothing expenses prior to the end of the income year, such as:

- compulsory, non-compulsory (and registered), occupation specific and protective clothing;
- other expenses associated with such work-related clothing such as dry cleaning, laundry and repair expenses.

3. Self education expenses

Consider pre-paying the following self education items before the end of the income year:

- ◆ course fees (but not HECS-HELP fees), student union fees, and tutorial fees;
- ◆ interest on borrowings used to pay for any deductible self education expenses.

Also bring forward purchases of stationery and text books (i.e., those which are not required to be depreciated).

4. Other work-related expenses

Employees can prepay any of the following expenses prior to 1 July 2009:

- union fees;
- subscriptions to trade, professional or business associations;
- magazine and newspaper subscriptions;
- seminars and conferences;
- income protection insurance (excluding death and total/permanent disability).

Note: When prepaying any of the expenses above before 1 July 2009, ensure that any services are provided within 12 months of the payment and before 1 July 2010. Otherwise, the deductions must be claimed over the period of the prepayment.

Information Required

We will need you to bring information to assist us in preparing your income tax return.

Please check the following and bring along payment summaries, statements, accounts, receipts, etc., to help us prepare the return:

Income/Receipts

- payment summaries for salary and wages;
- lump sum and termination payments;
- government pensions and allowances;
- other pensions and/or annuities;
- allowances (e.g., entertainment, car, tools);
- interest, rent and dividends;
- distributions from partnerships or trusts;
- details of any assets sold that were either used for income earning purposes or which may be caught by capital gains tax.

Deductions (in addition to those mentioned above):

- ◆ award transport allowance claims;
- ◆ bank and government charges on deposits of income, and deductible expenditure;
- ◆ bridge/road tolls (travelling on business);
- ◆ car parking (when travelling on business);
- ◆ conventions, conferences and seminars;
- ◆ depreciation of library, tools, business equipment, incl. portion of home computer;
- ◆ gifts or donations;
- ◆ home office running expenses:
 - cleaning
 - cooling and heating
 - depreciation of office furniture
 - lighting
 - telephone;
- ◆ interest and dividend deductions:
 - account keeping fees
 - ongoing management fees
 - interest on borrowings to acquire shares
 - advice relating to changing investments (but not setting them up);
- ◆ interest on loans to purchase equipment or income earning investments;
- ◆ motor vehicle expenses (business);
- ◆ overtime meal allowances;
- ◆ rental property expenses – including:
 - advertising expenses
 - council/water rates
 - insurance
 - interest
 - land tax
 - legal expenses/management fees
 - genuine repairs and maintenance
 - telephone expenses
 - travelling to inspect property;
- ◆ superannuation contributions by sole traders or substantially unsupported taxpayers;
- ◆ sun protection items;
- ◆ tax agent fees;
- ◆ telephone expenses (business);
- ◆ tools of trade.