

CLIENT ALERT

September 2009

New tax rates and thresholds from 1 July 2009 excluding Medicare

Editor: Following is a snapshot of the new Individual Resident tax rates and thresholds applying from 1 July 2009, with the changes from last financial year highlighted in bold.

Taxable Income (\$)	Tax Payable
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

Work-related expenses: Back on the ATO's radar

The Australian Taxation Office (ATO) is launching a work-related expenses program telling people what they can claim in their 2009 returns.

The Tax Office looks closely at tax returns from last year and identifies particular occupations where:

- ◆ average amounts of claims are high;
- ◆ there is an increase in the number of people making claims; and
- ◆ there are a lot of people making claims for the first time.

This year, the ATO will write to around 180,000 employees in the following occupations outlining common mistakes and providing advice on how to avoid these mistakes in this year's tax return:

- truck drivers;
- sales and marketing managers;
- sales representatives; and

- electricians.

Some of the mistakes the ATO has seen from employees in these occupations include:

- claiming motor vehicle expenses associated with transporting bulky tools when not entitled;
- failing to keep appropriate records to support claims for internet and mobile phone use;
- over-claiming home office expenses such as rent, rates and electricity;
- not keeping an up-to-date log book when required for claiming motor vehicle expenses; and
- claiming the living-away-from-home allowance when they're not entitled to it.

Taxpayer Alerts: Inappropriate loss schemes

The ATO is closely reviewing three arrangements that attempt to falsely generate claims for inappropriate tax losses.

Although the ATO expects to see an increase in tax losses in the current economic environment, they will be carefully scrutinising claims to ensure taxpayers only claim losses to which they are entitled.

Re-characterising capital losses as revenue losses

The ATO warns it is paying close attention to people who attempt to claim losses as share traders on a revenue account where previously they claimed to be long-term investors eligible for the CGT 50% discount.

Cash-strapped small business – Help from the ATO

The ATO has announced new measures to help small businesses that are struggling to manage their tax debts in the current economic climate.

12 month GIC-free payment arrangements

Businesses with an annual turnover of less than \$2 million with an activity statement debt can apply to the ATO for a GIC-free payment arrangement from now until 30 June 2010.

Editor: 'GIC' is the 'General Interest Charge', or interest payable on the debt, currently 10.13%

They will have the GIC remitted for a maximum period of 12 months, provided the payment arrangement is maintained.

Deferred activity statement payment due dates

Small businesses can also request a deferral of payment on their next activity statement.

Businesses with short term cash flow problems that pay quarterly and annually may be granted a deferral of up to two months, with those that pay monthly eligible for up to one month.

Activity statements still have to be lodged on time, but no interest will apply for the period of the deferral.

Editor: Please contact us if you would like us to approach the ATO on your behalf.

Super guarantee 2009/10: Maximum superannuation contribution base

The maximum superannuation contribution base for 2009/10 is \$40,170. This is the maximum limit on any individual employee's earnings base for each quarter of 2009/10.

Editor: That is, the maximum amount of super an employer is required to contribute for a particular employee is 9% of this maximum superannuation contribution base each quarter.

CGT improvement threshold

For the 2009/10 income year, the improvement threshold, which is used for working out when a capital improvement to a pre-CGT asset is a separate asset, and for capital improvements to CGT assets where a rollover may be available, is \$124,258.

Superannuation and SMSFs

The ATO is also about to increase its pressure on trustees of SMSFs and their approved auditors.

In the last 12 months they made 60 – 70 funds non-complying, and more cases are coming through. One fund, whose trustees extracted funds for their own use, had to pay penalty tax of 45% on the value of the assets of the SMSF – a costly decision.

Related party transactions of SMSFs under review

The ATO is warning SMSF trustees to be careful about people offering to set up an agreement between their SMSF and a related party to purchase assets, particularly properties.

These arrangements may breach the in-house asset rules that the SMSF must follow to be considered a complying super fund.

Editor: The in-house asset rules are one of the many investment restrictions that apply to SMSFs.

Basically, only 5% of an SMSF's assets can be "in-house assets", which are investments in related parties or lease arrangements with related parties (subject to some exceptions).

The arrangements the ATO is concerned about use a paid third party to set up an agreement (sometimes referred to as 'a joint venture agreement') between the fund and a related trust to purchase an asset that provides income for the trust and the fund.

The ATO believes that these arrangements are an attempt to circumvent the in-house asset rules, as the related party transaction is really an investment in the related trust by the SMSF.

Claiming the Tax Break on laptops

*Editor: The following advice from the ATO about laptops will be relevant to any small business (basically being a business with a turnover of less than \$2 million) looking to acquire a laptop before 31 December 2009, or **any** business which did in fact acquire a laptop between 13 December 2008 and 30 June 2009.*

To claim the Tax Break, the relevant asset must basically have been acquired for the principal purpose of carrying on a business.

The ATO will accept that a laptop computer will be used for the principal purpose of carrying on a business if, when the taxpayer first acquires and then uses the laptop computer, it is reasonable to conclude that they will use it for more than 50% of the time for the purpose of carrying on a business.

Car depreciation limit for 2009/10

The Tax Office has advised that the car depreciation limit for the 2009/10 financial year is \$57,180 (unchanged from the 2008/09 year).

Government's "tax break": Hire purchase agreements

Editor: The small business and general business tax break (also known as the 'tax break' or 'investment allowance') was originally announced by the Government on 12 December 2008 but went through a number of changes before the legislation was passed.

It basically gives small businesses a bonus deduction of 50% (30% or 10% for other businesses) for depreciating assets acquired between 13 December 2008 and 31 December 2009.

If a taxpayer wishes to claim the tax break in respect of an asset they are acquiring under a hire purchase arrangement, it is the date of the hire purchase contract that is the relevant date for establishing eligibility for the tax break, and not the time any purchase order for the asset is placed with the supplier.

For example, if a taxpayer placed an order with a supplier in August 2008 for a new depreciating asset, but did not enter into the hire purchase agreement with the financier until the asset was delivered in April 2009, then the relevant date for establishing eligibility for the tax break is April 2009, *not* August 2008.

ATO: Be careful when claiming losses on shares

The ATO recognises that the global economic downturn has decreased the value of many people's investments over the past year, and that some taxpayers may be 'confused' about the difference between capital losses (share holding) and revenue losses (share trading).

They remind taxpayers that the taxation of their investments in prior years is relevant when working out the treatment of a loss in the current year, so if there has been minimal change in the nature of their investment activity, it is likely that the same tax treatment applies in the current year.

For example, if a taxpayer has previously sold shares and claimed the 50% CGT discount, and has then realised a loss in the current year, they would be expected to claim this as a capital loss.

Taxpayers who seek to reclassify their activities may be asked to provide evidence that

demonstrates a change in the nature of their activities or that they have declared their income incorrectly in the past.

Resident minors' effective 2009/10 tax-free threshold

The increase in the low-income tax offset to \$1,350 for 2009/10 (from \$1,200 in 2008/09) effectively means that \$3,000 can be distributed to minors tax-free in the 2009/10 year.

Ordinarily, and excluding the offset, once a minor's income exceeds \$1,307, the entire amount is taxed at 45%.

However, applying the low-income tax offset of \$1,350 means that no income tax will be payable until the minor's taxable income exceeds \$3,000, i.e., \$1,350 divided by 0.45 = \$3,000.

Superannuation Contribution Caps 2009/10

For the 2009-10 financial year, concessional contributions (formerly known as deductible contributions) are limited to \$25,000 per person (for individuals aged under 50 years) or \$50,000 per person (for individuals aged 50 years or over and these "transitional" contributions cease to apply on 1 July 2012).

The caps on non-concessional contributions (formerly known as undeducted contributions) remains at \$150,000 per person in 2009-10. Members aged under 65 may still utilise a "bring-forward" strategy to make up to \$450,000 in non-concessional contributions averaged over three years in the one income year.

Deductions for personal superannuation contributions

A deduction for personal superannuation contributions made by an individual during an income year may be available where certain conditions are satisfied.

Although the deduction is normally available to self-employed taxpayers who make personal superannuation contributions, a deduction may also be available to an individual who was an **employee** at any time during the income year. However, an employee will **only** be eligible to claim a deduction where they satisfy the **10% rule**.

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The following table summarises the former (or pre-July 2009) 10% rule as well as the **new** 10% rule that applies from 1 July 2009 as part of the recent income test reforms.

Former income test (10% rule) (pre-July 2009)	New income test (10% rule) (from 1 July 2009)
Less than 10% of the sum of the following must be attributable to employment: <ul style="list-style-type: none">▪ Employee's assessable income.▪ Employee's reportable fringe benefit total.	Less than 10% of the sum of the following must be attributable to employment: <ul style="list-style-type: none">▪ Employee's assessable income.▪ Employee's reportable fringe benefit total▪ Employee's RESCs

An individual's Reportable Employer Superannuation Contributions ('**RESCs**') for an income year is defined as follows:

- a) An amount contributed to a superannuation fund on behalf of an individual during an income year by their employer or an associate of their employer, excluding employer superannuation guarantee contributions; and
 - b) The individual has, or has had, or might reasonably be expected to have or have had, the **capacity to influence** either:
 - The **size of the contribution**; or
 - The **way the amount is contributed** so that their assessable income is reduced.
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