

# CLIENT ALERT

December 2008

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## Tax Compliance Program 2008/09

The Commissioner has released the Tax Office Compliance Program 2008/09, which sets out the Tax Office's compliance priorities for that year.

### Individuals

The key compliance activities that the Tax Office will focus on include:

- capital gains from the sale of property, shares and other assets;
- contributions to superannuation which exceed the annual contributions limit;
- remuneration packages of senior executives and directors;
- work-related expense claims. In particular, the Tax Office will focus on nurses, medical practitioners and chefs; and
- 'out of pattern' claims for self-education, car and travel expenses.

### Micro enterprises

Micro enterprises refer to small businesses and self-managed superannuation funds (SMSFs). Key priorities that the Tax Office have identified include:

- assisting employers in managing their tax obligations (e.g. PAYG withholding obligations, superannuation guarantee obligations and FBT obligations);
- assisting micro businesses in managing their tax debts;
- developing new tools for trustees of SMSFs to help them achieve a high level of compliance with superannuation and tax laws;
- ensuring capital gains on sales of assets and investments are correctly reported, including the correct application of small business CGT concessions;
- ensuring offshore income including dividends and interest, royalties and rental income are correctly reported; and

- expanding its compliance activities on the cash economy.

### Small to medium enterprises

Small to medium enterprises refer to taxpayers with an annual turnover of between \$2 million and \$250 million and highly wealthy individuals. Key priorities include:

- monitoring private companies loans and payments to shareholders and their associates to ensure compliance with the tax laws;
- increasing its focus on high wealth individuals and following up where necessary with reviews and audits;
- examining business restructures where the primary objective is to receive a tax advantage rather than for preparing a business for sale; and
- seeking judicial clarification on a number of trust issues including the effectiveness of clauses in trust deeds that seek to equate trust income with trust taxable income.

### Superannuation

The Tax Office has highlighted several compliance priorities including:

- ensuring members do not access their superannuation early except where permitted; and
- reviewing lost superannuation accounts and following up with the account owners by telephone

### Partnership and trust distributions

The Tax Office has advised that it will be reviewing distributions from partnerships and trusts to the respective partner and beneficiary returns for the years ended 30 June 2004 to 30 June 2007.

The Tax Office will send letters to tax agents where there are discrepancies in the distributions. Further, the Tax Office says that if a voluntary disclosure is made, it will result in a reduction or waiving of any penalties provided an amendment is lodged within 28 days of the date of the letter.

## Social security payments

### Increase to Pension

From 20 September 2008, pensions and income support payments and allowances will increase, including the:

- age pension;
- wife pension;
- carer payment;
- disability support payment;
- parenting payment;
- rent assistance; and
- maternity immunisation allowance.

## Education Tax Refund

The Government has introduced a Bill into Parliament seeking to implement the Education Tax Refund. Broadly, eligible families can qualify for a 50% refundable tax offset for eligible education expenses up to a maximum of \$750 for children undertaking primary studies and \$1,500 for children undertaking secondary studies.

- **TIP:** Eligible families should keep all receipts to ensure that they will be able to claim the refund when the Bill is enacted.

## Medicare Levy Surcharge Thresholds

The Government's Bill to increase the Medicare levy surcharge thresholds has been rejected by Parliament.

However, the Government has introduced another Bill seeking to once again increase the Medicare levy surcharge thresholds:

- for individuals it will rise from \$50,000 to \$75,000; and
- for families it will rise from \$100,000 to \$150,000.

The increase to the thresholds is still proposed to apply from the 2008/09 income year.

## Luxury Car Tax

The Government's Bill to increase the luxury car tax (LCT) has received enactment. The amendments in the Bill apply from 1 July 2008. The LCT regime changes include:

- increasing the LCT from 25% to 33%;
- exempting fuel-efficient vehicles that do not exceed the fuel-efficient car limit from the LCT (\$75,000 for 2008/09);
- providing for refunds of the increase in LCT to eligible primary producers and tourism operators;

- providing for CPI indexing of the LCT threshold from 1 July 2012; and
- ensuring vehicles ordered before 7.30pm (AEST) on 13 May 2008, but not delivered until after 1 July 2008 are not subjected to the increase in tax.

## Borrowings of Money and SMSFs

The Tax Office has released a Draft SMSF Ruling in which it states the Commissioner's preliminary view on the meaning of the phrases 'borrowing money' and 'maintaining an existing borrowing of money'.

The Draft states that both phrases take on their ordinary contextual meaning. In determining whether an arrangement constitutes a borrowing of money, it is necessary to consider the circumstances of the arrangement.

Generally, a trustee of an SMSF is prohibited from borrowing money or maintaining an existing borrowing. However, the superannuation legislation provides exceptions such as where a trustee borrows to settle on the acquisition of certain financial instruments, or to make a payment to a beneficiary.

## Death Binding Nominations and SMSFs

The Tax Office has also released a Draft SMSF Determination which sets out the Commissioner's preliminary view on whether a trustee of an SMSF can accept a death binding nomination from a member.

The Draft states that a trustee of an SMSF is permitted to accept a death binding nomination from a member, provided it is permissible under the fund's deed.

A death binding nomination 'binds' a trustee of an SMSF to distribute the superannuation benefits of a deceased member in accordance with the nomination.

In the absence of a nomination, a trustee has the discretion to distribute a deceased member's benefits in accordance with the superannuation law.

## Exempt Fringe Benefits

The Tax Office has issued two Interpretative Decisions (IDs) relating to exempt fringe benefits.

In the first ID, the Tax Office states that a GPS navigation device is a 'portable electronic device' for the purposes of the exempt fringe benefits provision.

According to the ID, a 'portable electronic device' is a device that is easily carried by hand and is based on electronics.

In the second ID, the Tax Office states that a laptop computer provided to an employee, who regularly visits clients, was provided primarily for use in the employee's employment.

The Tax Office states that whether a laptop computer is primarily used in an employee's employment is

based on its intended use at the time it was provided to the employee.

## GIC and SIC Rates Released

The Tax Office has released the general interest charge and shortfall interest charge rates for the second quarter of the 2008/09 income year:

Rate	Annual (%)	Daily (%)
GIC	14.31	0.03909836
SIC	10.31	0.02816939

The Tax Office has also released the interest rate for overpayments, early payments and delays in refunds for the second quarter of the 2008/09 income year. The applicable interest rate is 7.31%.

## FBT tip for Xmas time

When holding Christmas parties, employers are generally liable to pay fringe benefits tax (FBT) on the cost of food and drink (meal entertainment) which is provided to employees and their families. FBT does not apply to meal entertainment provided to clients and suppliers.

However, if the employer calculates its FBT on the 'actual' basis (i.e., rather than the 50/50 formula method), then it may be able to completely eliminate this FBT liability using the 'minor benefits exemption'.

Generally speaking, if the value of the Christmas party provided to an employee or family member is less than \$300 per head, it may be exempt from FBT as a 'minor benefit'. This can also apply to gifts made to employees and family members.

Surprisingly, for the purposes of the \$300 minor benefit threshold, the following tips should be considered:

- **TIP:** Where a benefit is provided to both an employee and their family member (e.g., a spouse), the benefits are applied separately to the \$300 threshold; and
- **TIP:** Where a gift is associated with a Christmas party (e.g., it is provided at the party), each benefit (i.e., the gift and the party) is applied separately to the \$300 threshold.

However, note that no deduction can be claimed for entertainment benefits provided to employees, where the minor benefit exemption applies.

## Christmas gifts

Clients often ask what are they allowed to give away as Christmas gifts.

The following types of gifts are not considered to be entertainment and are therefore deductible:

- a Christmas hamper, a bottle of whisky, wine, etc.; and
- gift vouchers, a bottle of perfume, flowers, a pen set, etc.

Examples of entertainment gifts include tickets for sporting events or the movies, and holidays.

Briefly, the general FBT and income tax consequences for non-entertainment gifts are as follows:

- gifts to employees and family members – FBT is payable (except where minor benefit exemption applies) and a tax deduction is allowed.
- gifts to clients, suppliers, etc. – no FBT, and a tax deduction is allowed.

## Claiming a rebate for a dependant receiving a super pension

A taxpayer who contributes to the maintenance of a dependant (e.g., a spouse) may be entitled to a dependant tax offset or rebate. However, the amount of the rebate may be reduced depending on the separate net income (SNI) of the dependant.

Broadly, SNI is the ordinary income of the dependant, less expenses which are regarded, according to ordinary accountancy and commercial principles, as a direct charge against the income.

The ATO has confirmed that, when calculating the SNI of a dependant who is receiving an account-based pension (ABP), the SNI can be reduced by a proportionate amount of the personal superannuation contributions made during the accumulation phase of the pension.

## Tax return processing delays

The Tax Office has advised that, since they are currently receiving a greater number of income tax returns than usual for this time of year, they are experiencing some processing delays.

Their focus is on finalising original income tax returns, so there will be delays in the processing of amendment requests and in returning calls about the progress of returns during this time.

They will action original returns in the order they are received, unless there is genuine hardship.

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. Therefore, it should be regarded as confidential and not be made available to any person without our prior approval.