

# August 2009

## Client Alert

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#### Proposed Tax Law Amendments

The Federal Government has introduced a Bill into Parliament. The amendments contained in the Bill include:

- increasing the aggregated research and development (R&D) expenditure cap from \$1 million to \$2 million for eligibility to the R&D tax offset; and
- making minor technical corrections to the taxation laws, including the small business CGT concessions, and FBT on donations.

#### R&D offset

Currently, an eligible company can claim a refundable R&D tax offset for its R&D expenditure, subject to satisfying certain conditions.

One of the conditions is that the aggregated R&D expenditure of the company and its affiliates does not exceed \$1 million. The lifting of the expenditure cap to \$2 million provides an incentive for companies to increase their R&D activities.

#### Minor technical changes

The proposed amendments include:

- ensuring a pre-CGT asset that is deemed a post-CGT asset due to the operation of the CGT provisions of Div 149 of ITAA 1997 can be distributed tax-free under the small business CGT concessions, subject to certain requirements being met; and
- ensuring donations made through salary sacrifice arrangements do not result in an FBT liability.

#### Tax Law Amendments

The Tax Laws Amendment (2009 Budget Measures No 1) Act 2009 has been enacted. The Act:

- amends the income tax exemption on foreign employment income;
- temporarily reduces the superannuation government co-contribution; and
- reduces the superannuation concessional contributions cap.

The amendments took effect from 1 July 2009.

#### Deemed Dividends

In a recent case, the AAT held that a taxpayer, who was a director and shareholder in a private company, was liable to the deemed dividends provision for monies deposited in her bank account. The payments were debts due to the company. The company had directed its debtors to pay the money owed into the taxpayer's account.

Broadly, the deemed dividend provisions treat certain payments, loans and debt forgiveness by a private company to its shareholders (or their associates) to be assessable income in the form of unfranked dividends.

- A private company should ensure that all payments are deposited to its own bank account.

#### GST and Credit Card Surcharge Fees

The AAT has affirmed that the GST treatment of credit card surcharge fees, imposed by a taxpayer when payments are made by credit card, depend on the GST characterisation of the underlying supply.

Simply put, if an underlying supply is GST-free, the fee will be GST-free. Conversely, where the underlying supply is a taxable supply, the fee will attract GST.

## Superannuation Guarantee Charge

The AAT has upheld superannuation guarantee charge default assessments against a partnership for failing to make minimum superannuation contributions for an independent contractor operating within its business.

After considering the factors that indicate the existence of an employee/employer relationship, the Tribunal held that the contractor was an employee.

Indicators that suggest an employee/employer relationship exists include:

- the level of control between an individual and the other party;
  - the mode of remuneration;
  - the provision for annual leave; and
  - the right to suspend or dismiss an individual by the other party.
- The classification of an individual as an employee or as an independent contractor is not based on the legal terms used in a contract. All of the facts and circumstances of the particular situation must be considered.
- An individual engaged for their labour can be deemed to be an employee for superannuation guarantee purposes even where the individual is a contractor.

## Superannuation Guarantee Regulations

The Federal Government has registered an instrument to clarify that employers are not required to provide superannuation guarantee

contributions for paid parental leave and ancillary leave payments made to their employees on or after 1 July 2009.

Parental leave includes maternity leave and paternity leave. Ancillary leave includes payments for service with the Defence Force Reserves and or for jury duties.

## Superannuation-related Taxpayer Alert

The Tax Office has issued a Taxpayer Alert warning self-managed superannuation fund (SMSF) trustees about people offering to set up agreements between funds and related parties to purchase assets.

The Tax Office says that such arrangements may breach the superannuation legislation, including the sole purpose test.

## Share Transaction Data Matching Program

The Tax Office has announced that it will conduct an ongoing share market transaction CGT data matching program.

The program will focus on the income tax obligations of taxpayers in relation to the disposal of shares. It will also focus on GST registration obligations of entities.

## Superannuation Rates and Thresholds

The Tax Office has released the following superannuation rates and thresholds for the 2009/10 income year:

- **Superannuation guarantee maximum contribution base:** \$40,170 for each quarterly contribution period. An employer does not need to provide the minimum 9% superannuation guarantee support for an employee's ordinary time earnings above this limit.
- **Superannuation co-contribution income thresholds:** The lower total income threshold to qualify for the maximum co-contribution is \$31,920. The higher income threshold where the co-contribution completely phases out is \$61,920.

## Rates and Thresholds

The Tax Office has also released the following rates for the 2009/10 income year:

- **CGT improvement threshold:** \$124,258
- **Car depreciation limit and luxury car limit:** \$57,180
- **Overtime meal allowance expenses:** \$24.95
- **Benchmark interest rate for the deemed dividends provision:** 5.75%

## GIC and SIC Rates

The Tax Office has also released the general interest charge (GIC) and shortfall interest charge (SIC) rates for the first quarter of the 2009/10 income year (ie 1 July 2009 to 30 September 2009):

Rate	Annual (%)	Daily (%)
GIC	10.13	0.02775342
SIC	6.13	0.01679452

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