

## TAXATION NEWS

### Federal 2011/12 Budget Summary

A number of changes have been made to rates and thresholds affecting all taxpayer groups. Here are just a few:

#### **Personal Taxation**

- Personal income tax rates now incorporate the 0.5% flood levy for incomes over \$50,000.
- The dependant spouse offset will not be available for a dependant spouse born on or after 1<sup>st</sup> July, 1971.
- Minors will no longer be able to apply the Low Income Tax Offset against their unearned income, meaning that minors will incur the highest marginal tax rate on trust distributions, interest and dividends (except for the first \$416 of taxable income).
- Proposed legislative amendments will prevent deductions being claimed against all government assistance payments, including the Youth Allowance.

#### **Fringe Benefits Tax**

- The statutory formula used to calculate the taxable value of car fringe benefits will be changed. A single flat rate of 20% will apply irrespective of the distance travelled by the vehicle in any year. The rates will apply to vehicles purchased after 10<sup>th</sup> May, 2011 and will be phased in over the next three FBT years.

#### **Business**

- No significant changes for next financial year, except for some minor CGT rollover amendments.
- From 2012-13, the introduction of an instant write-off of the first \$5,000 cost of a new business motor vehicle.

#### **Superannuation**

- The minimum pension drawdown relief has been reduced from 50% to 25%. This means that, for example, a minimum drawdown for a 65 year old pensioner, previously reduced from 4% to 2%, will now be 3% for 2011-12.
- Individuals who exceed their concessional contribution cap in the 2011-12 year and onwards, will have the option of receiving a refund of up to \$10,000 of the excess amount from their superannuation fund and be taxed at their marginal tax rate.
- The Self-Managed Superannuation Fund levy will increase from \$150.00 to \$180.00.
- The concessional contributions cap for individuals aged 50 and over will not be indexed; rather it will be \$25,000 higher than the low rate cap. Hence, when the low rate cap is indexed, the higher contributions cap will increase by the same dollar amount.

### Cash Economy Letters Encouraging Compliance, Says Tax Office

According to the Tax Office, its cash economy letter program is encouraging positive compliance behaviour among small business taxpayers. This financial year, the Tax Office aims to send over 100,000 letters to taxpayers who it believes may be participating in the cash economy. The Tax Office said it will mostly send letters to business operators reporting outside the small business benchmarks for their industry, or to those who, in the Tax Office's view, have reported insufficient business income to meet their expected living expenses.

The Tax Office has developed small business benchmarks which it uses to compare the performance of a business against other similar businesses that are operating in the same industry. The benchmarks are published on the Tax Office

website. The benchmarks can be used by businesses to help assess if they are likely to be selected for an audit or review.

Despite their apparent success with this initiative, the ATO has acknowledged that its cash sale benchmarks, released late last year, are not accurate and have now been withdrawn. The ATO will refresh the data used to calculate the benchmarks and will release new ones later this year.

If your business is operating outside the relevant benchmark, it may be useful to review record-keeping practices or to review how your business operates. Please contact our office for any assistance.

## **Eye Glasses Discount Deal Throws New Light on GST Calculation**

A retailer of spectacles has won a court case regarding the correct calculation of GST in relation to spectacles it sold to customers under a special promotion. Broadly, the taxpayer offered its customers spectacle frames at a discount provided they purchase the lenses at full price. The lenses are GST-free, whereas the frames are a taxable supply – together the spectacles are referred to as a "mixed supply". The Full Federal Court agreed with the taxpayer that the discount should only be applied to the frames, and not apportioned between the lenses and the frames as contended by the Commissioner.



## **Trust Law Changes On the Way**

The Government has announced that it intends to review and rewrite the highly complex area of trust tax law to deal with ongoing uncertainties regarding its proper application. Two proposed measures have been flagged by the Government for implementation sooner rather than later:

1. changes to enable the streaming of capital gains and franked distributions; and

2. changes to allow trust beneficiaries to continue to use the primary production averaging and farm management deposit provisions in a loss year.

These changes are proposed to apply for the 2010–11 and later income years.

## **Tax Planning Time**

It's that time of year again when business clients should be making plans for that all important 30<sup>th</sup> June deadline. If you have a good estimate of your profit, then you've made a good start! Here are a few planning tips that might help you save a few dollars from your tax bill in 2011:

### ***Deferring Income***

- Income received in advance of services to be provided will generally not be assessable until the services are provided.
- Taxpayers who provide professional services may consider, in consultation with their clients, rendering accounts after 30 June to defer the income.
- Consider whether the requirements to be classified as a small business entity are satisfied to access various tax concessions such as the simpler depreciation rules and the simpler trading stock rules.
- Individuals operating personal services businesses should ensure that they satisfy the relevant test to be excluded from the Personal Services Income regime or seek a determination from the Commissioner.

## **Maximising Deductions**

### ***Business taxpayers***

- Debtors should be reviewed prior to 30 June to identify and to write off any bad debts.
- Review the asset register to identify any low-cost and/or low-value assets that may be pooled to access an accelerated rate of depreciation.
- Write off any depreciating assets which are no longer being held for use because a deduction may be available.
- Review trading stock for obsolete stock for which a deduction is available.
- Employees' superannuation contributions should be paid before 30 June to obtain a deduction and to avoid the Superannuation Guarantee Charge.

### ***Non-business taxpayers***

- Outgoings incurred for managed investment schemes may be deductible.

- Assets costing \$300 or less may qualify for an immediate deduction subject to certain conditions.
- A deduction for personal superannuation contributions is available where the 10% rule is satisfied.

## **Capital Gains Tax**

*Consider the following strategies:*

- Deferring the disposal of assets owned for less than one year in order to access the CGT discount, where available.
- For Individual taxpayers, contributing some or all of a capital gain to their superannuation fund because a deduction may be available for personal superannuation contributions.
- Whether a rollover relief is available to defer any capital gains.
- The availability of the small business CGT concessions which can disregard, reduce or defer a capital gain arising from the disposal of an asset which has been used by an entity in the course of carrying on its business.

## **Companies**

- The franking percentage for distributions to shareholders should be the same for each franking period to avoid a franking deficit tax.
- Loans, payments and debt forgiveness by private companies to their shareholders and associates should be repaid by the earlier of the due date for lodgement of the company's return for the year or the actual lodgement date. Alternatively, appropriate loan agreements should be in place.
- Companies should carefully consider whether any deductions are available for any carry forward tax losses, including analysing the continuity of ownership and same business tests.

## **Trusts**

- Taxpayers should review trust deeds to determine how trust income is defined. This may have an impact on the trustee's tax planning.
- A recent High Court case confirmed that it is correct to apply the proportionate approach if the net income of a trust for tax purposes exceeds its accounting income.
- The Court also affirmed that the trustee can distribute capital gains as income of the trust for tax purposes if the trust deed permits it.
- Avoid retaining income in a trust because the income may be taxed at 46.5%.
- If a trust has an unpaid present entitlement to a corporate beneficiary, consideration should be given to paying out the entitlement by the earlier

of the due date for the lodgement of the trust's income tax return for the year or the actual lodgement date to avoid possible tax implications.

- The Tax File Number withholding arrangements have been extended to closely held trusts (except were specifically excluded). The arrangements impose new reporting and payment requirements for trustees of trusts subject to the new provisions.

## **Superannuation**

- A re-contribution strategy may produce tax benefits for taxpayers under age 60.
- Low-income earners (including self-employed persons) should consider making a personal superannuation contribution to qualify for the government superannuation co-contribution payment.
- For the 2010/11 income year, pensioners have the option to draw half of the year's minimum required pension amount.
- The reduction in the concessional contributions cap to \$25,000 (\$50,000 for those aged 50-74) since 1 July 2009 means that more individuals are now at risk of inadvertently breaching their annual contribution cap. A review of various arrangements involving superannuation (eg salary sacrifice) would be prudent. We also remind you that the cap includes concessional contributions from all sources, i.e the 9% super guarantee payments from all employment in any one year and salary sacrificed amounts. In addition, some life insurance arrangements involve making payments to a master superannuation fund and may be reported by the life office as concessional super contributions. You may need to check your policies or with your insurance agent to confirm the situation.

## **Contractor vs Employee – New light on an old chestnut!**

A recent Federal Court case has confirmed that there are a number of elements to determining an employee from an independent contractor for tax and superannuation purposes.

In *On Call Interpreters and Translators Agency Pty Ltd v FCT (No.3) 2011*, the Court held that a group of interpreters providing services to its clients were employees for superannuation guarantee purposes and not contractors.

The case reminds us that the Courts and the ATO will consider many features in a relationship. Some of the questions to be posed are:

- What control did the employer have over the worker's obligation to work and the assignments to be undertaken?
- Are the workers portraying themselves as representing the employer or are they seen to be representing themselves?
- Are the workers remunerated for an agreed result?
- Does the worker have the ability to delegate and direct the work received?
- Who bears the risks associated with the work performed and who is liable for rectification?
- Who provides the work setting and materials needed to perform the tasks?

*A related party includes all fund members, family members and the member's own business or business entity.*

2. If the asset is stored elsewhere, the decision must have been made by the trustees and a written record of that decision must be made and retained for at least ten years.
3. The asset must be insured within seven days of its acquisition by the Fund.
4. If an asset is transferred to a related party, it must be done at the market value as determined by a licensed valuer.

Employers wishing to establish a contracting relationship with a worker should consider these questions as a starting point and seek professional advice on their obligations for superannuation and PAYG Withholding. If you want more information, please contact us.

It is proposed that the regulations will initially **not** apply to collectables and personal use assets held by a self managed fund at 30<sup>th</sup> June 2011. Trustees will have until 30<sup>th</sup> June, 2016 to either make their assets comply with the regulations, or sell or transfer them out of the fund at market value. All assets purchased after 1<sup>st</sup> July this year will need to immediately comply with the regulations.

## SUPERANNUATION NEWS

### **Draft Regulations on Collectables – Can you pass these tests?**

The draft regulations governing the holding of artworks in a superannuation fund have finally been released for community review.

There are no hidden surprises in the proposals which are in line with previous government announcements. The regulations define what is considered an investment in collectables and personal use assets. They include artworks, antiques, cars, boats and sporting or social club memberships. The rules are:

1. An asset cannot be used by or leased to a related party or stored in a private residence of a related party.



<b>21<sup>st</sup> June</b>	<b>Business Activity Statement – May 2011</b>
<b>14<sup>th</sup> July</b>	<b>Issue of PAYG Withholding Statements to employees</b>
<b>21<sup>st</sup> July</b>	<b>Business Activity Statement – June 2011</b>
<b>30<sup>th</sup> June</b>	<b>Last day to deposit super contributions for 2010/11</b>
<b>28<sup>th</sup> July</b>	<b>Business Activity Statement – April to June 2011</b>
<b>21<sup>st</sup> August</b>	<b>Business Activity Statement – July 2011</b>

Personal Tax Rates From 1 July 2011 Including Flood Levy	
Income (\$)	Rate (%)
0-6000	Nil
6,000-37,000	15
37,001-50,000	30
50,001-80,000	30.5
80,001-100,000	37.5
100,001-180,000	38
180,001+	46

**Want to help the planet and reduce our carbon footprint? Well you can by electing to receive your copy of the OMW Newsletter by email. Just send us your preferred email address to: [newsletter@omw.com.au](mailto:newsletter@omw.com.au) along with your full name for correct client identification.**