

the report

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MONTHLY REPORT

Tax Rates Changes

The Bill amending the personal income tax rates for the 2008-09 income year and later income years has become law.

The Bill also increases the low-income tax offset for those income years (\$1,200 for the 2008-09 financial year). In addition, the Bill increases the income threshold at which Medicare levy becomes payable for taxpayers who are eligible for the senior Australian tax offset.

- **TIP:** Taxpayers earning less than \$30,000 for the 2008-09 income year will qualify for the full low-income tax offset. Taxpayers earning between \$30,001 and \$60,000 will qualify for the offset, which will be pro-rated accordingly.

Tax Law Changes

In June 2008, the Government introduced into Parliament a Bill to:

- provide relief from CGT for private health insurance policy holders when their insurer demutualises to a for-profit insurer; and
 - change the definition of "family" and remove the ability for family trusts to make a one-off variation to the test individual specified in a family trust election.
- **TIP:** Taxpayers who hold their private health insurance with NIB should consider the impact of the proposed amendments, which will provide CGT relief when a health fund demutualises.

Taxpayer Alerts

The Tax Office has issued two Taxpayer Alerts warning taxpayers of arrangements that are currently being examined:

1. land impairment trust arrangements which are associated with forestry managed investment schemes.
The Tax Office is concerned about whether these arrangements give rise to a revenue or capital loss and how distributions from the land trust should be treated for tax purposes; and
2. arrangements that have features which are designed to allow a member of a superannuation fund to circumvent the annual superannuation contributions limits.
The Tax Office is concerned that certain features of these arrangements may give rise to taxation and superannuation regulatory issues.

Fuel Tax Credits

The eligibility for fuel tax credits has been expanded from 1 July 2008 to include all taxable fuels that a taxpayer uses in his or her business activities, provided the fuel is not used in a vehicle with a gross vehicle mass of 4.5 tonnes or less travelling on a public road.

According to the Tax Office, the changes to the fuel tax credits scheme means that most businesses, including those operating in construction, manufacturing, wholesale/retail, property management and landscaping, will be able to claim credits.

Broadly, fuel tax credits provide a taxpayer with credits for the fuel tax (excise or custom duty) included in the price of the fuel.

Artworks and Antiques

In a recent decision, the AAT set aside the Commissioner's decision to cancel retrospectively the GST registration of a taxpayer whose sole activity was the acquisition of artworks and antiques. Based on the evidence presented, the Tribunal was satisfied that the taxpayer was carrying on an enterprise despite minimal sales over a number of years

Two basic conditions must be satisfied before a taxpayer can register for GST: the taxpayer must be an entity, and either be carrying on an enterprise or intending to carry on an enterprise.

For GST purposes, the carrying on of an enterprise focuses on the activity or series of activities that a taxpayer engages in, and includes running a business.

Super Rates and Thresholds

The Tax Office has released the 2008-09 indexed superannuation rates and thresholds, which cover contribution caps, concessional taxed superannuation lump sums, employment termination payments, superannuation guarantee and superannuation co-contributions.

The concessional and non-concessional contributions caps are \$50,000 and \$150,000 respectively, which did not change from the 2007-08 income year.

If the assessable income and reportable fringe benefits (if any) of a taxpayer do not exceed \$30,342 for 2008-09, the taxpayer will qualify for the maximum co-contribution of \$1,500.

Child Support and Tax

The Government has announced a range of new measures aimed at boosting the collection of child support payments. The measures include:

- requiring both parents (the liable parent and the recipient parent) to lodge a tax return; and
- stopping salary sacrifice being used to minimise child support obligations.

PAYG Withholding

From 1 July 2008, 50% of the low-income tax offset will be taken into account in determining the PAYG withholding amount for eligible individuals.

The remainder of the offset entitlement will be paid upon assessment of the individual's income tax return.

PAYG Summary

The Deputy Commissioner has issued a Legislative Instrument that removes the requirement for superannuation funds to issue a payment summary to a recipient for a superannuation lump sum benefit paid, where the recipient is classified as having a terminal medical condition.

The Legislative Instrument applies from the 2007 income year.

GST and PAYG Instalment Rate

The Tax Office has advised that the Gross Domestic Product (GDP) factor used to calculate taxpayers' GST and PAYG instalment amounts will increase to 8% from 1 July 2008.

Taxpayers who use the GDP-adjusted notional tax method to calculate their PAYG or GST instalments may see an increase in their instalment amounts from the first quarterly instalment for the 2008-09 income year.

Division 7A Interest Rate

The Tax Office has stated that the benchmark interest rate for the 2008-09 income year for the purpose of calculating the interest component of a loan from a private company to its shareholders (or their associates) is 9.45%.

The tax laws contain provisions that allow loans by a private company to its shareholders (or their associates) not to be treated as an unfranked dividend if the loan is made under a written agreement. One of the requirements of the agreements is that the interest rate to be used in calculating the interest payable on the loan for a financial year must equal or exceed the benchmark interest rate for that financial year.

Car Limits

The Tax Office states that the car depreciation limit for the 2008-09 financial year is \$57,180.

The Tax Office also states that the luxury car tax threshold for the 2008-09 financial year is \$57,180.

GIC and SIC Rates Released

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

Rate	Annual (%)	Daily (%)
GIC	14.75	0.04030054
SIC	10.75	0.02937158

The Tax Office has also released the interest rate for overpayments, early payments and delays in refunds for the first quarter of the 2008/09 income year. The applicable interest rate is 7.75%.

SMSF and Financial Assistance

The Tax Office has released an SMSF Ruling in which it explains the prohibition on trustees of SMSFs giving financial assistance to a member of a fund (or a relative of the member) using the resources of the fund.

The Ruling reinforces that providing financial assistance to a member (or a relative of the member) will contravene the superannuation legislation, regardless of whether such assistance was requested by the member or given through a third party

According to the Ruling, financial assistance includes any arrangement or transaction whereby the assets of the SMSF are converted into other assets, diverted, diminished or put at risk, or there is prejudice to the financial position of the SMSF.

SMSF and Sole Purpose Test

The Tax Office has also released an SMSF Ruling, which outlines the Commissioner's approach to the application of the sole purpose test in the superannuation legislation.

The objective of the sole purpose test is to limit the provision of superannuation benefits to a range of prescribed retirement or retirement-related circumstances, such as on or after a member retiring or attaining 65 years of age. Where an SMSF is maintained for other purposes, it will contravene the sole purpose test.

The Tax Office says that in determining the purpose for which an SMSF is being maintained requires a survey of all of the events and circumstances relating to its maintenance.

The Ruling notes that investments such as works of art, antiques, classic cars and wine will, generally, pose particular issues in relation to the application of the sole purpose test.

- **TIP:** While investments in collectables are not prohibited per se, an SMSF wanting to invest in such investments will need to ensure that the fund's deed permits it and the trustee must show how acquiring these assets will satisfy the sole purpose test.

Self-education Expenses

In a recent case, the AAT has affirmed the Commissioner's decision to deny a taxpayer a deduction for self-education expenses.

The Tribunal held that the taxpayer had not shown that the expenses were incidental and relevant to the gaining of assessable income.

Generally, self-education expenses incurred before employment commences or to obtain new employment are not deductible.

- **TIP:** The Tax Office has indicated that one of the areas it is focusing on is anomalous or "out-of-pattern" self-education claims.

Business Establishment Costs

In two separate but related Interpretative Decisions, the Tax Office states the deductibility of business establishment costs for a proposed business to be carried on.

Generally, a taxpayer is entitled to a deduction for capital expenditure incurred for a business proposed to be carried on.

The deductibility of the expenditure depends on the facts of each case and requires the taxpayer to reasonably conclude that the proposed business would commence within a reasonable time.

TPD premiums deductions

The Tax Office has stated its preliminary view on the deductibility of total and permanent disability (TPD) insurance premiums where the policy is held through a superannuation fund.

The definition of "disability superannuation benefit" may not be aligned between the tax law and the wording of a TPD insurance policy. Therefore, the Tax Office has said that a fund may not be entitled to a deduction for premiums paid.

Decision Impact Statement on "Shed Case"

Readers will remember the bizarre decision by the AAT where it held that a shed used by a taxpayer qualified as a main residence from our April 2008 issue.

The Tax Office has since released a Decision Impact Statement outlining its view of the application of the CGT main residence exemption following the decision.

The Tax Office has stated that the decision reinforces its view that the determination of whether a dwelling is a taxpayer's main residence depends upon the circumstances of each case.

Compliance Matters

Marine vessels and data matching

The Tax Office has announced that it will request and collect details of taxpayers who have registered a marine vessel from the relevant State marine vessel registering bodies.

The data collected will be electronically matched with its data holdings to identify non-compliance with tax obligations.

Cash economy and businesses

In July and August, the Tax Office sent out letters to businesses in the retail, construction and consumer services industries, which have high volumes of cash transactions.

The Tax Office will send follow-up letters in September and October to selected businesses that it has identified as likely to present risks in connection with cash economy participation.

The Tax Office says it is likely that some of the taxpayers identified under the program will be subject to further review

➤ **TIP:** Taxpayers should contact us to discuss any potential compliance issues that the Tax Office has identified in the letters.

Outstanding lodgements

The Tax Office has sent letters to tax agents that include a list of clients who have outstanding income tax returns and/or activity statements.

Clients with outstanding returns and/or activity statements should contact us to ensure any outstanding tax obligations are completed and lodged as soon as possible to avoid any compliance actions by the Tax Office.

Excess Superannuation Contributions

According to the Tax Office, it has identified "potential" cases of individuals exceeding the \$1 million cap on non-concessional superannuation contributions made during the transitional period from 12 May 2006 to 30 May 2007.

Individuals who exceed the superannuation contributions cap in a financial year are liable for the excess contributions tax.

To identify the actual excess contributions tax assessments to be issued, the Tax Office said that it will conduct a pilot investigation of 200 representative cases.

Minors and tax-free threshold

The maximum "unearned income" that a resident minor can earn for the 2008-09 income year is \$2,667.

Effectively, a resident minor can receive up to \$2,667 in trust distributions for 2008-09 before incurring a tax liability, unless the minor has other sources of income.

Generally, income derived by a minor is taxed under a separate rate. However, exceptions apply, such as income from full-time employment.

Overpaid income tax instalments

The Tax Office has announced that it has completed a review of credit balances on activity statement accounts of taxpayers.

A taxpayer whose account has a credit balance that arose from overpayments of income tax instalments will have the balance transfer to their income tax account. The credit will then be issued in a taxpayer's next income tax assessment.

Taxpayers who do not want the credit to be issued in their next assessment should contact us to request for a refund from the Tax Office.

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