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JUNE 2009

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MONTHLY REPORT

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Proposed Amendments to the Tax Law

The Federal Government has introduced Tax Laws Amendment (2009 Measures No 2) Bill 2009 into Parliament. The amendments contained in the Bill include:

- increasing access to the small business CGT concessions for taxpayers owning a CGT asset used in a business by an affiliate or entity connected with the taxpayers, and for partners owning a CGT asset used in the partnership business;
- providing a general exemption from CGT for capital gains arising from a right or entitlement to a tax offset, deduction or similar benefit; and
- exempting from tax the Clean-up and Restoration Grants paid to small businesses and primary producers affected by the recent Victorian bushfires.

Small business CGT concessions

The Bill will allow a taxpayer who holds a passively held CGT asset which is used in a business by the taxpayer's affiliate or a connected entity to access the small business CGT concessions, subject to certain conditions.

The Bill will also allow partners in a partnership to access the concessions for CGT assets owned by the partners that are used in the business of the partnership but are not interests in assets of the partnerships, provided certain requirements are satisfied.

Further, the Bill will refine and clarify aspects of the existing small business CGT concessions, including:

- expanding the range of circumstances when a taxpayer's spouse or child will be considered to be an affiliate of the taxpayer;
- exempting small business operators from satisfying the basic conditions for capital gains arising from certain CGT events;
- ensuring the small business CGT retirement exemption applies appropriately to capital proceeds received by individuals in instalments.

The Bill will also clarify that a partner in a partnership cannot be a small business entity.

Generally, the amendments will apply to CGT events happening in 2007/08 and later income years.

Tax benefits and capital gains tax

The Bill will ensure that a capital gain or loss that a taxpayer makes from a CGT event arising from a tax offset, deduction or similar benefit will be disregarded.

For example, the exemption will apply if a taxpayer has a right to receive a reduction in land tax available under an Australian law.

The amendment will apply to the 2009/10 and later income years.

Tax exemption for certain grants

The Bill will exempt from income tax the Clean-up and Restoration Grants paid to small businesses and primary producers affected by the recent Victorian bushfires.

This amendment will apply to grants paid in the 2008/09 and 2009/10 income years.

Deductibility of Self-education Expenses

In a recent decision, the Federal Court held that a taxpayer who was receiving the Youth Allowance was entitled to a deduction for self-education expenses incurred.

The taxpayer was studying a teaching degree and did not derive any income from employment as a teacher.

The court said that the taxpayer's ultimate motive in undertaking the degree was irrelevant to the characterisation of the expenses. Rather, its opinion was that the expenses were incurred as a necessary incident of deriving the Allowance. Accordingly, the court held that the expenses were deductible.

The Commissioner's established view is that, generally, recipients of Commonwealth educational assistance schemes payments are not entitled to a deduction for self-education expenses. This is because the expenses are not incidental and relevant to the payments.

Superannuation Warning

The Tax Office has released a Taxpayer Alert in which it warns self-managed superannuation funds (SMSFs) with pre-existing interests in unit trusts of arrangements involving the transferring of benefits associated with the in-house assets transitional provisions.

The Tax Office says that such arrangements may involve superannuation regulatory issues and taxation issues.

Broadly, the in-house assets rules restrict a regulated superannuation fund from having more than 5% of the total market value of its assets in a related party of the fund. However, transitional provisions may apply to exclude an asset from the in-house asset rules.

- Trustees of SMSF should review, in consultation with their professional advisers, pre-1 July 1999 investments in related trusts.

PAYG Instalments

The Federal Government has announced that it will cut the quarterly PAYG instalments for the 2009/10 income year for taxpayers who calculate their instalments using the Gross Domestic Product method. The reduction will also benefit businesses that pay their GST quarterly.

Data Matching Projects

The Tax Office has released details of three data matching projects it will carry out.

The information collected from the projects will be electronically matched with the Tax Office's data holdings to identify non-compliance with lodgment and payment obligations.

Motor vehicles

The Tax Office will request and collect details of individuals and entities that have acquired a motor vehicle valued at $10,000 or higher from relevant state and territory departments.

Personal services income

The Tax Office will request and collect information on amounts paid to personal service entities from labour hire firms, placement agencies and computer consultancies.

Contract payments from mining companies

The Tax Office will also request and collect information on amounts paid by mining companies to contractors and sub-contractors.

Superannuation Rates and Thresholds

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

The concessional contributions cap will be $55,000 ($50,000 for 2008/09). Concessional contributions are essentially contributions that are included in the assessable income of a receiving superannuation fund.

The non-concessional contributions cap will be $165,000 ($150,000 for 2008/09). Non-concessional contributions include contributions that are not included in the assessable income of a receiving superannuation fund.

Reminder: Individual Tax Rates from 1 July 2009

The resident individual tax rates will change for the 2009/10 income year. The new rates are:

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+	55850 + 45% of excess over 180,000

Low-income tax offset

The maximum amount of offset an individual resident taxpayer will be entitled to will increase to $1,350 for 2009/10 ($1,200 for 2008/09).

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Personal Taxation

Foreign employment income

The Government has announced changes to the tax treatment of foreign employment income.

Under the proposed measures, foreign employment income will generally be taxable, but taxpayers will be entitled to a tax offset for foreign tax paid on the foreign employment income.

The proposed measures will take effect from 1 July 2009

Employee share schemes

The Government has announced that all discounts on shares and options provided under an employee share scheme, whether qualifying or non-qualifying, will be assessed in the income year in which they are acquired. That is, employees will no longer be able to elect to defer taxation on their discount to a later time.

The Government will also limit access to the $1,000 upfront tax exemption to employees with an adjusted taxable income of less than $60,000.

These measures will apply to shares and options acquired after 7.30 pm AEST on 12 May 2009.

Private health insurance rebate

The Government announced that high income earners will receive a reduction in their private health insurance rebate and face an increase in Medicare levy surcharge should they opt out of their health cover.

From 1 July 2010, the Government will introduce three new 'Private Health Insurance Tiers' for high income earners:

- ***Tier 1***: for singles earning more than $75,001 (couples/families $150,001), the rebate will be 20% for those up to 65 years (25% for those over 65, and 30% for those over 70 years). The Medicare levy surcharge for avoiding private health insurance will remain at 1%.
- ***Tier 2***: for singles earning more than $90,001 (couples/families $180,001), the rebate will be 10%, for those up to 65 years (15% for those over 65, and 20% for those over 70 years). The surcharge for avoiding private health insurance will be increased to 1.25%.
- ***Tier 3***: for singles earning more than $120,001 (couples/families $240,001), no rebate will be provided. The surcharge for avoiding private health insurance will be increased to 1.5%.

Low and middle-income earners are not affected by the proposed changes.

Seniors Health Card

The Government said that it will not include gross income from superannuation income streams from a taxed source when determining an individual's eligibility for the Commonwealth Seniors Health Card, a measure which was due to come into effect on 1 July 2009.

However, the Government will proceed to include income that is salary sacrificed to superannuation in the income assessment, which will take effect from 1 July 2009.

Medicare levy low-income thresholds

The Government has released the Medicare levy low-income thresholds for the 2008/09 income year. The threshold will increase for singles to $17,794 and to $30,025 for individuals who are members of a family.

The additional amount of threshold for each dependent child or student will also be increased to $2,757.

The Medicare levy low-income threshold for pensioners below Age Pension age will also be increased from 1 July 2008 to $25,299.

Seniors Supplement for self-funded retirees

The Government will provide a Seniors Supplement from 20 September 2009.

The Supplement will be available to self-funded retirees who are eligible for the Commonwealth Seniors Health Card or the Department of Veterans' Affairs Gold Card with current Seniors Concession Allowance. It incorporates existing payments of Seniors Concession Allowance and the higher rate of Telephone Allowance.

The Seniors Supplement will be $790.40 a year for singles and $1,190.80 a year for couples combined. Payments will be made quarterly.

Business Taxation

Small Business and General Business Tax Break

The Government has announced the one-off bonus tax deduction available to small businesses under the Small Business and General Business Tax Break will increase to 50%, where a small business acquires an eligible asset between 13 December 2008 and 31 December 2009, and the asset is installed or ready for use by 31 December 2010.

Repeal of unlimited amendment periods

The Government announced that it will repeal certain provisions in the income tax laws that currently provide the Commissioner with an unlimited period in which to amend an item in a taxpayer's income tax return.

The Government stated that the amendments will take effect from the date of Royal Assent of the relevant enabling legislation.

Assets and deemed dividend rules

The Government will extend the deemed dividend rules to payments by way of a licence or right to use real property and chattels, such as cars, boats and real estate.

This measure will reduce the opportunities for private companies to allow their shareholders or associates to use company assets for free, or at less than their arm's length value, without paying tax.

It is proposed this measure will apply from the 2009/10 income year.

Use of non-commercial losses restricted

The Government will tighten the application of the rules on the use of

non-commercial losses to prevent high-income individuals from offsetting excess deductions from non-commercial business activities against salary and other income.

From 1 July 2009, taxpayers with an adjusted taxable income of over $250,000 will only be able to deduct expenses from non-commercial business activities against the income from those activities. Any excess deductions will be quarantined to the business activity.

Taxpayers will still be able to apply to the Commissioner for relief from the rules if there are exceptional circumstances, or because the nature of the activities means that a taxpayer is temporarily carrying on an uncommercial business but the activities they are undertaking are nonetheless independently assessed as commercially viable.

Superannuation Measures

Changes to concessional contributions cap

The Government will cut the superannuation concessional contributions cap to $25,000 per annum (down from $50,000 per annum) from 1 July 2009.

The transitional concessional contributions cap, which applies until the 2011/12 income year, for individuals aged 50 to 74, will be reduced to $50,000 per annum (down from $100,000 per annum).

From 1 July 2012, the concessional contributions cap for those aged 50 and over will revert to the lower $25,000 cap (or applicable indexed amount at that time).

The Government has not amended the non-concessional contributions cap.

Superannuation co-contribution

The Government has announced that it will temporarily reduce the superannuation government co-contribution matching rate that is payable on eligible personal superannuation contributions, with effect from 1 July 2009.

The temporary matching rates as proposed are:

- for the 2009/10, 2010/11 and 2011/12 income years, $1 for each dollar of contribution, up to a maximum of $1,000 per annum;
- for the 2012/13 and 2013/14 income years, the rate is $1.25 for each dollar of contribution, up to a maximum of $1,250 per annum; and
- for 2014/15 and later income years, the rate is $1.50 for each dollar of contribution, up to a maximum of $1,500 per annum.

Reduction in pension drawdown

The Government will extend its decision to reduce by 50% the minimum annual payment amounts for account-based pensions for the 2009/10 income year. That is, self-funded retirees will only have to draw down half of the minimum amounts from their account-based pensions for 2009/10.

Other Measures

Increase in ASIC fees

In the 2009/10 Federal Budget, the Government stated that it will index fees and charges collected by the Australian Securities and Investments Commission (ASIC) to the Consumer Price Index from the 2010/11 income year

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