



WHITEHEAD DINGLEY & BETAR

NEWSLETTER CHRISTMAS 2008

Welcome to the Christmas 2008 issue of our occasional Newsletter.

TAX CUTS

From the 1st July 2008 new rates of tax apply as follows:

0-\$6,000	Nil
\$6,0001 - \$34,000	Nil + 15% over \$6k
\$34,001 - \$80,000	\$4,200 + 30% over \$34k
\$80,001 - \$180,000	\$18,000 + 40% over \$80k
\$180,001 +	\$58,000 + 45% over \$180k

(All tax figures are + 1.5% Medicare levy)

The Low Income Rebate has been increased to a maximum \$750 which effectively means no tax is payable on taxable income below \$11,000.

Remember if you use a computerised payroll system make sure you obtain an update from your Software Supplier.

If using manual tax rate tables, these can be down loaded from the ATO Website at www.ato.gov.au.

SUPERANNUATION CONTRIBUTIONS

The age based contribution limits have been replaced by a capped amount. Briefly, the new contribution amounts are:

- 1 Employer (concessional contributions) up to age 65-\$50,000-with special rules for those over 50 allowing \$100,000).
- 2 Personal (non concessional) up to age 65-\$150,000-with special rules allowing up to \$450,000 in 1 year.

Self employed people who contribute to superannuation can now claim a tax deduction on their "full" contribution, up to the capped amount. The unfair treatment of self-employed super contributors has been removed.

The rules can vary for those over age 65 who may wish to contribute to superannuation. Advice should be sought if you are unsure as to the eligibility rules.

PENSIONS FOR THOSE 60 AND OVER – TAX FREE

Generally, recipients of pensions for people aged 60 or over will be tax-free. This applies to both lump sum and pension streams.

A word of caution however, for those who may receive a pension from an untaxed fund, typically a public sector fund such as the Commonwealth Super Scheme (CSS). This part of your pension will be assessable but is eligible for a 10% tax rebate.

GOVERNMENT CO-CONTRIBUTION

Good news! The **Government Co-Contribution Scheme** has been extended to include eligible self-employed persons. The maximum co-contribution amount is \$1,500 if your income is under the lower threshold of \$28,980. However an after tax super contribution of up to \$1,000 must be made by the taxpayer. So if you meet the criteria, you could turn \$1,000 of super into \$2,500.

The co-contribution payment reduces when income exceeds the lower threshold and cuts out when income exceeds the upper threshold of \$58,980.

Tip: Co-contributions for both employed and self- employed people continue to be a great way to increase your superannuation balance. If you can, take advantage of this co-contribution scheme whilst it lasts. It really is a "free lunch" given by the federal govt.

**SELF MANAGED SUPER FUNDS (SMSF)
POINTS TO NOTE**

With poor performance from many large funds and the benefits of a SMSF due to the concessional tax treatment, the number of new funds continues to grow.

However it is important to understand the taxation, legal and compliance issues relating to a SMSF before making a decision to set one up. Trustees must now sign a declaration stating they understand their responsibilities and the rules regarding the operation of the fund. Trustees cannot rely on ignorance of the law as a defence. All funds need to abide by the governing rules, report to members, & pass an independent audit each & every year.

The ATO has signalled a substantial increase towards audit activity in the area of SMSF. If you wish to know more about the taxation & compliance issues regarding SMSF you should seek our professional advice.

**MEDICARE LEVY SURCHARGE
THRESHOLDS**

The Bill to increase the Medicare levy surcharge thresholds received enactment on 31 October 2008.

The Bill in its final form increased the Medicare levy surcharge thresholds:

- for individuals from \$50,000 to \$70,000; and
- for families from \$100,000 to \$140,000.

The new thresholds apply from 1 July 2008.

DEDUCTABILITY OF LEGAL EXPENSES

In a majority decision, the High Court has found that a former customs officer was entitled to a deduction for legal expenses incurred in defending charges brought against him by his former employer.

The Court said that the deductibility of an expense did not require a direct connection with the income producing activity. Rather, the connection could be direct or indirect, provided the connection was not too remote.

The Court also said that the deductibility of an expense should take into consideration the employment duties imposed on the taxpayer which arose from his occupation.

GST AND CANCELLATION FEES

The Tax Office has released a Draft GST Ruling in which it states the Commissioner's preliminary view on the GST consequences when an entity receives a cancellation fee that arises from a customer cancelling an arrangement (e.g. hotel accommodation and appointment for medical services).

The Draft says that, generally, cancellation fees relate to the provision of a supply by an entity. It also says that where consideration is provided for the supply, the GST consequences should be considered.

However, the Draft notes that the GST characteristic of a (cancelled) supply, is not necessarily determined by the GST status of the intended supply.

REFUNDS FOR INDIRECT TAXES

The Tax Office has also released a Draft Miscellaneous Taxation Ruling in which it sets out the requirements for a notification to be valid when advising the Commissioner of an entitlement to a refund for indirect taxes (e.g. GST and fuel tax).

The Draft states that a notification must:

- be in writing;
- bring the entitlement to the Commissioner's attention;
- identify the entitlement;
- identify the tax period; and
- assert the entitlement.

Generally, a four year time limit for entitlements to refunds for indirect taxes applies.

ALLOWANCES AND FOREIGN EARNINGS

In a recently released ATO ID, the Tax Office states that allowances received by an Australian resident taxpayer to cover various expenses related to the taxpayer's employment in a foreign country were partially assessable income.

The Tax Office says that if allowances related to amounts paid to cover expenditure incurred by a taxpayer prior to engaging in, and after the completion of, foreign service, the allowances are assessable income.

Foreign earnings derived by an Australian resident taxpayer engaged in service in a foreign country for a continuous period of not fewer than 91 days are exempted from tax, subject to certain exceptions.

ABOLISHING TRUST CLONING

The Government has announced that it will remove the 'trust cloning' exception which disregards any capital gains arising when a taxpayer:

- creates a trust over a CGT asset by declaration or settlement; or
- transfers a CGT asset to an existing trust.

The exception, generally, applies when the new trust and old trust have the same terms and beneficiaries.

Trust cloning is a common practice used for succession planning and asset protection purposes.

SUPERANNUATION GUARANTEE

The Tax Office has released a Draft Superannuation Guarantee Ruling in which it states the Commissioner's preliminary view on whether payments to employees are ordinary time earnings (OTE) and/or 'salary or wages'.

Since 1 July 2008, employers are required to use OTE in calculating the superannuation guarantee (SG) for their employees.

If employers provide less than the required SG or pay the SG late, they will be liable to pay a non-deductible SG charge which is calculated using salary or wages.

While the Draft has not significantly departed from the Commissioner's established view, his view relating to certain payments appears to have changed.

The Draft states that Christmas bonuses do not form part of salary or wages. However, the Commissioner currently considers these bonuses to be included in salary or wages.

The Draft also states that maternity leave and jury duty leave payments are OTE. Currently, the Commissioner considers that these leave payments do not form part of OTE.

SMSFs AND IN HOUSE ASSETS

The Tax Office has also released a Draft SMSF Ruling in which it explains the Commissioner's preliminary view on the core concepts in the definition of 'in-house asset'.

The core concepts are 'asset', 'loans', 'investment in', 'lease' and 'lease arrangement'. Broadly, the in-house asset rules prevent SMSFs from lending money to or investing in assets held by its members.

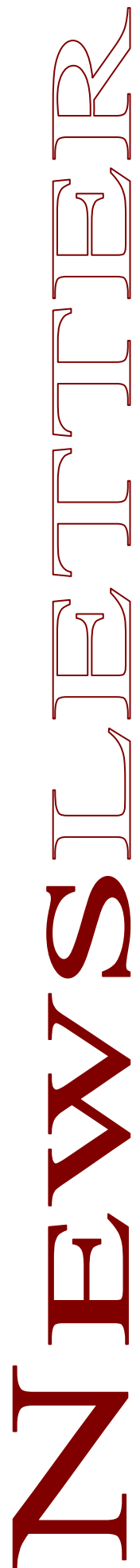
Contravention of the rules may result in an SMSF becoming non-compliant.

TRUSTEE OF SMSF CHARGED

In a media release, ASIC said that a trustee of an SMSF has been charged for breaching the sole purpose test as required by the superannuation legislation.

This is the second case that ASIC has brought against trustees of SMSFs.

Broadly, the sole purpose test requires a trustee to ensure that an SMSF is maintained for the provision of benefits upon a member's retirement or the member attaining 65 years of age.



TIP: A trustee who contravenes the sole purpose test may be liable for a civil penalty which attracts a fine of \$220,000 and/or five years imprisonment.

SOCIAL SECURITY PAYMENTS DEEMING RATES FOR INCOME TEST.

From 17 November 2008, the social security income test deeming rates have been lowered to take account of deceased returns on financial investments.

The new deeming rate is 3% for the first \$41,000 of a single person's financial investments (\$68,200 for a couple). For financial investments over the threshold, the rate is 5%.

Payments affected by the new rates include the Age Pension, Disability Support Pension and Department of Veterans' Affairs payments.

LUMP SUM PAYMENTS

The Government's Economic Security Strategy will provide a one-off lump sum payment of \$1,400 for singles and \$2,100 for couples combined, which will be paid during the fortnight commencing 8 December 2008.

Eligible recipients include those receiving an Age Pension and holders of a Commonwealth Seniors Health Card.

HAPPY CHRISTMAS & A PROSPEROUS NEW YEAR

I wish to thank all of our clients for their support over the year. It has been a "full" year, what with the Sub Prime crisis and a looming recession I guess we'll all breath a sigh of relief as its end approaches. I should hope all is well with you and your loved ones and take this opportunity to wish you all a happy Christmas and a Prosperous New Year and to thank you for your support.

CLOSURE OVER CHRISTMAS

Our office will be closed over Christmas from mid-day Friday 19 December 2008 to 9am Monday 12 January 2009.

Please note - this newsletter is for the general information and exclusive benefit of clients and associates of Whitehead Dingley & Betar. It contains brief comments not intended to be the basis for decision making nor to be taken as a substitute for specific advice. Please contact this firm to discuss any matters that may be relevant to your individual situation.

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