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2011 CLIENT UPDATE

june tax insight



FLOOD LEVY NOW LAW

The legislation to implement the Government's proposed temporary flood levy has been enacted. The legislation imposes a one-year levy on taxpayers to help raise the revenue needed to assist the reconstruction work following the destruction by the floods and Cyclone Yasi in Queensland earlier this year. The 0.5% to 1% levy will apply to individuals with taxable incomes above \$50,000, and will apply for the 2011-12 income year only. However, there are specific classes of taxpayers who are exempt from the levy.

Employers will need to identify their employees who earn more than \$50,000, and withhold the levy from their salary or wages. Employees who are exempt from the levy may lodge a flood levy exemption declaration form with their employer.

EMPLOYEES NOT CONTRACTORS, SAYS COURT

In a recent decision, the Federal Court held interpreters engaged by a business to provide interpreting and translating services were "employees" for superannuation guarantee purposes and were not independent contractors. *The correct classification of an individual as an employee or as an independent contract is critical. This is because employers are liable to provide the minimum level of superannuation guarantee for their employees. A failure to do so will result in employers being liable to a non-deductible superannuation guarantee charge.*



LAND SALE CASE SHEDS LIGHT ON "GOING CONCERN" GST-FREE CONCESSION

In a recent decision, the Federal Court held that a supply (sale) of land by a taxpayer was not a supply of a going concern, and therefore was not GST-free. Although the Court acknowledged the taxpayer was in the business of property development, it found that business ended when the taxpayer decided to sell the land. Ultimately, the Court found the sale of the land was not a "supply of a going concern" as the sale did not supply "all of the things necessary for the continued operation of an enterprise".

For a supply to be considered a supply of a going concern (and therefore GST-free), various conditions must be satisfied. These conditions include the supplier supplying to the recipient all the things necessary for the continued operation of the enterprise, and the supplier carries on the enterprise until the day of supply.

PERSONAL SERVICES ENTITIES ATO TAKES A CLOSER LOOK

The Australian Tax Office (ATO) has announced that it will request and collect information on amounts paid to personal services entities by 39 labour hire firms, placement agencies and computer consultancies. Under the project - known as the Personal Services Income (PSI) data-matching project - data requested will include name and address details of the individual who is the main service provider to the entity. The ATO said it anticipates that records relating to approximately 100,000 individuals and entities who have received contract payments from the 39 entities will be matched.

If you are concerned this data-matching program will affect you, please contact our office.

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SELF-MANAGED SUPER FUNDS AND COLLECTABLES

The Government has introduced legislation into Parliament to change the superannuation law to implement strict rules on trustees of self-managed superannuation funds (SMSFs) who make, hold or realise investments that are considered to be “collectables or personal use assets” – for example, artwork, jewellery, antiques, wines, cars and recreational boats. Once enacted, the new rules will apply to investment made before, on or after 1 July 2011. The Government had earlier indicated that it would implement a 5-year transitional period to allow trustees to dispose of existing assets that do not satisfy the new rules.

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

TIP: *The proposed changes are highly complex and new developments are likely to occur quickly. Please contact our office if you have any questions.*

CAR EXPENSES RATES PER KILOMETRE FOR 2010-11

The Government has announced the “cents per kilometre” rates for calculating tax deductions for car expenses for the 2010-11 income year – note they are unchanged from 2009-10.

<i>small car</i>	<i>medium car</i>	<i>large car</i>
63c/km	74c/km	75c/km
(non-rotary engine up to 1600cc, or rotary engine up to 800cc)	(non-rotary engine 1601-2600cc, or rotary engine 801-1300cc)	(non-rotary engine 2601cc and above, or rotary engine 1300cc and above)

GST AND GOODS SOLD WITH DISCOUNTED COMPONENTS

The ATO has released its official view of the Full Federal Court’s decision in a case which concerned the correct calculation of GST on goods sold that are partly taxable and partly GST-free. The case involved a taxpayer that 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. The ATO said the Commissioner accepts that it was open to the Court to make its conclusions regarding the correction apportionment and it will not appeal to the High Court. As a result, the ATO said some optical suppliers may be able to seek a refund for overpaid GST (if certain requirements are met).



FBT RATES & THRESHOLDS 2011-12

The ATO has announced important FBT rates and thresholds for the 2011-12 FBT year that commenced on 1 April 2011. Some of the key rates and thresholds include:

the benchmark interest rate is 7.80% pa
(was 6.65% pa for the 2010-11 FBT year).

the record-keeping exemption threshold is \$7,391
(was \$7,190 for the 2010-11 FBT year).

FEDERAL BUDGET wrap up

PERSONAL TAXATION

PERSONAL TAX RATES – NO CHANGE, BUT REMEMBER THE FLOOD LEVY

The Government did not make any changes to the currently legislated tax rates which apply for the 2010–11 and following years. However, taxpayers should not forget that, from 1 July 2011 for one year, those rates will include the flood levy, where applicable.

MEDICARE LEVY THRESHOLDS INCREASED FOR 2010–11

From the 2010–11 income year, the Medicare levy low-income thresholds will be increased for singles to \$18,839 (up from \$18,488 for 2009–10) and to \$31,789 for those who are members of a family (up from \$31,196 for 2009–10). The additional amount of threshold for each dependent child or student will also be increased to \$2,919 (up from \$2,865).

The Medicare levy low-income threshold for pensioners below Age Pension age will also be increased from 1 July 2010 to \$30,439 (up from \$27,697). This increase will ensure that pensioners below Age Pension age do not pay the Medicare levy while they do not have an income tax liability.



LOW INCOME TAX OFFSET: A LITTLE EXTRA IN THE PAY PACKET

From 1 July 2011, the Government will increase the proportion of the low income tax offset (LITO) that is delivered through workers' week-to-week pay packets from 50% to 70%. This change means that instead of being compensated after they put in their tax return at the end of the year, lower income earners are taxed less during the year. According to the Government, someone with an annual income of \$30,000 will get an extra \$300 during the year in their regular pay.



DEPENDENT SPOUSE REBATE FOR SPOUSES UNDER SPOTLIGHT

The Government announced it will phase out the tax offset for dependent spouses aged less than 40 (ie born on or after 1 July 1971) "to help encourage more Australians into paid employment".

This change will mean taxpayers with a dependent spouse aged less than 40 years will no longer be eligible for the dependent spouse tax offset (DSTO) from 1 July 2011. However, the change will not affect certain dependent spouses – for example, spouses who are permanently unable to work or who are carers.

NO MORE DEDUCTIONS FOR YOUTH ALLOWANCE RECIPIENTS

The Government will amend the tax law to prevent deductions being claimed against all government assistance payments, with effect from 1 July 2011. The announcement is in response to a 2010 High Court decision which had held that a Youth Allowance recipient could claim a deduction for certain expenses incurred in gaining the payment. The Government says the change is designed to maintain the integrity of the deductions system.

MINORS NO LONGER ENTITLED TO LOW INCOME TAX OFFSET ON UNEARNED INCOME

The Government will remove the ability of minors (children under 18 years of age) to access the low income tax offset (LITO) to reduce tax payable on their unearned income, such as dividends, interest, rent, royalties and other income from property, with effect from 1 July 2011. According to the Government, this is to discourage income splitting between adults and children. However, income earned by minors from work will still be eligible for the full benefit of the LITO.



SUPERANNUATION

EXCESS CONTRIBUTIONS TAX NEW LIMITED REFUND

The Government will provide eligible individuals who breach the concessional contributions cap by up to \$10,000 with a one-off option to request that these excess contributions be refunded to them. This new refund option will only apply to first time breaches from 1 July 2011. The Government expects that this reform will help to reduce the number of occasions where the concessional contributions are exceeded resulting in an excess contributions tax (ECT) assessment.

MINIMUM PENSION DRAWDOWNS FOR 2011-12

The minimum annual payment amounts for pensions and annuities will be reduced by 25% for 2011-12 and will return to normal in 2012-13. In this respect, the Government will begin to phase out the 50% pension drawdown relief that has been provided for 2008-09, 2009-10 and 2010-11 financial years.

Reducing the minimum payment amounts by 25% for account-based, allocated and market linked (term allocated) pensions from 1 July 2011 seeks to provide some assistance to holders of these products to recoup capital losses incurred as a result of the global financial crisis.



CONCESSIONAL CONTRIBUTIONS: HIGHER CAP FOR THOSE AGED 50 AND OVER

The Government will set the proposed higher concessional contributions cap at \$25,000 above the general concessional cap, for eligible individuals aged 50 and over with total superannuation balances of less than \$500,000.

The Government has confirmed that the higher cap will enable eligible persons over 50 to be able to contribute \$25,000 more per year than other workers subject to the general concessional contributions cap of \$25,000. As a result, when the general concessional contributions cap increases with indexation from \$25,000 to \$30,000, the higher cap will increase by the same dollar amount. ***This measure will apply from 1 July 2012.***

BUSINESS TAXATION

SMALL BUSINESS MOTOR VEHICLE INSTANT TAX WRITE-OFF

The Government will provide Australian small businesses with an instant tax write-off of the first \$5,000 of any motor vehicle purchased from 2012-13. The Treasurer said that, for example, a tradesman on a 30% marginal tax rate, buying a new \$33,960 ute would receive an extra tax benefit of \$1,275 in the year he purchased the vehicle. The remainder of the purchase value can be transferred into the general small business depreciation pool, which is depreciated at 15% in the first year and 30% in later years.

These reforms will be available to all small businesses, including sole traders and businesses operating through trusts, partnerships and companies.

The new small business instant write-off for the first \$5,000 of any motor vehicle will effectively replace the Entrepreneurs Tax Offset (ETO), which will be abolished with effect from the 2012-13 income year.



FBT AND CARS - FLAT 20% VALUATION RATE TO APPLY

The Government announced what would amount to implementation of a Henry Tax Review recommendation that the current statutory rates for valuing car fringe benefits be replaced with a single statutory rate of 20%, regardless of the number of kilometres travelled.

The changes will apply to new vehicle contracts entered into after 7:30pm (AEST) on 10 May 2011, and will be phased in over four years.

People who use their vehicle for a significant amount of work-related travel will still be able to use the "operating cost" (or "log book") method to ensure their car fringe benefit excludes any business use of the vehicle.