

# the report

## tax news | views | clues

### Tax Law Changes

In March 2008, the Government introduced into Parliament an amending Bill to:

- allow taxpayers to claim a deduction in relation to an amount misappropriated by an employee or agent following the disposal of an asset;
- extend the period within which employers can make a superannuation contribution – after the quarterly due date, and still be eligible to use the late payment offset to reduce their superannuation guarantee charge liability;
- exempt from income tax the entire amount received from either a research fellowship under the Endeavour Awards Program or an Endeavour Executive Award, regardless of whether the recipient is a full- or part-time student; and
- exempt the first \$1,000 of an early completion bonus paid to an apprentice by a State or Territory.

### Self-education Expenses

In a recent decision, the AAT affirmed that a taxpayer was not entitled to a deduction for self-

education expenses. The Tribunal found that the expenditure was not incidental or relevant to the taxpayer's income-producing activities and did not have the essential character of an income-producing expense.

Generally, self-education expenses are deductible if they are incurred in maintaining or improving a taxpayer's skills and knowledge in his or her present occupation.

However, self-education expenses incurred before employment commences (as in this case) or to obtain new employment are not deductible.

### Taxpayer Alerts

The Tax Office has issued three Taxpayer Alerts warning taxpayers of certain arrangements that are currently being examined. The Taxpayer Alerts pertain to the following situations:

1. Non-arm's length arrangements where a taxpayer uses borrowed funds to acquire an interest, such as units in a trust where the latter uses those funds to purchase income-producing property.

The Tax Office is of the view that such arrangements do not provide a sufficient connection

between the expenditure and the production of future income and/or capital gains.

2. Non-arm's length arrangements under which a SMSF derives income through a direct or indirect interest in a closely-held trust. The tax implication is similar to that for the arrangement described above.
3. Arrangements under which the trustee of a SMSF enters into certain limited limited-recourse borrowings, which may breach the superannuation law. This Alert does not deal with taxation issues other than those relating to the application of the superannuation law.

### Super Update

In its Super Update March 2008, the Tax Office reminded employers of two important changes that will take effect from 1 July 2008:

- ordinary time earnings must be used to calculate employees' superannuation guarantee contributions, and
- employer-nominated super funds must offer minimum levels of life insurance death cover to members.

## Acquisition of Assets by SMSF

The Tax Office has released a Draft Self Managed Superannuation Fund Ruling stating its position on when a contribution of assets to an SMSF by a related party of the fund will not contravene the SIS Act.

Generally, a trustee of an SMSF is prohibited from intentionally acquiring assets from a related party of the SMSF. However, certain exceptions can apply.

The Draft states that a trustee intentionally acquires an asset if the trustee means to acquire the asset. Further, the legal owner of the asset is not a decisive factor.

Situations that will not result in a contravention of the superannuation law are:

- the trustee accepting a contribution of money; and
- a related-party making a monetary payment to a third party to extinguish a liability of the SMSF.

The Draft states that for any of the exceptions to apply, the acquisition of an asset must be at market value and consideration be given to the in-house asset rules.

## SMSF Tax Return

A single annual return, which will incorporate a super fund income tax return and the member contributions statement, will be used from the 2007/08 income year onwards. Some of the key changes are set out below:

- the annual supervisory levy will be included in the fund's notice of assessment. The levy has been increased from \$45 to \$150 per year starting from the 2007/08 income year; and

- the annual return will include ongoing disclosure questions for trustees to ensure that they are aware of their obligations.

## ECRP to Farmers

The Tax Office has released a Draft Determination stating that an exceptional circumstances relief payment (ECRP) paid to a farmer is not primary production income.

The ECRP is ordinary income and, therefore, will be assessable.

## Stapled Securities

Readers will recall we highlighted in the March 2008 issue that the Tax Office issued a Tax Alert warning taxpayers that it was examining the tax implications of investing in stapled securities.

The Tax Office has followed up on the Alert with a Draft Determination stating that a taxpayer is not entitled to an income tax deduction upon the sale of a stapled security at a loss, or upon the occurrence of an Assignment Event.

## FBT Rates

The Tax Office has released the FBT thresholds and rates for the 2008/09 FBT year (i.e. the FBT year commencing on 1 April 2008).

### Benchmark interest rate

The interest rate to be used in calculating the taxable value of a loan fringe benefit and a car fringe benefit under the operating cost method is 9% per annum.

### Exemption threshold

The small business record-keeping exemption threshold is \$6,766.

## Deeming Rates

The deeming rates for social security payments have increased from 20 March 2008. The new rates are:

- 4% for the first \$39,400 of a single pensioner's financial investments (\$65,400 for pensioner couples and \$32,700 for each member of an allowee couple); and
- 6% for financial investments above those amounts.

## Car Expenses Rates

The Tax Office has released the cents per kilometre rates to be used for calculating deductions for the 2007/08 income year:

Engine capacity (cc)	Rotary engine	Rate per km (\$)
0 – 1,600	0 – 800	0.58
1,601 – 2,600	801 – 1,300	0.69
2,601 +	1,301 +	0.70

## GIC and SIC Rates Released

The Tax Office has released the general interest charge and shortfall interest charge rates for the fourth quarter of the 2007/08 income year:

Rate	Annual (%)	Daily (%)
GIC	14.69	0.04013661
SIC	10.69	0.02920765

The Tax Office has also released the interest rate for overpayments, early payments and delays in refunds for the fourth quarter of the 2007/08 income year. The applicable interest rate is 7.69%.

Important: This is not advice. Clients should not act solely on the basis of the material contained in this Bulletin. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Bulletin is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.