

## Taxation Update

### Car limit for the 2010/11 year

The car limit for the 2010/11 financial year is \$57,466 (up from \$57,180 for the 2009/10 year).

#### Example

On 9 July 2010 a taxpayer purchases a motor vehicle for \$65,000 wholly for use in carrying on their business.

In working out the vehicle's depreciation for the 2010/11 income year, the cost of the vehicle for tax purposes is reduced to \$57,466.

#### Luxury car tax

The luxury car tax threshold for the 2010/11 financial year is also \$57,466 and is used to determine if luxury car tax is payable.

The fuel-efficient car limit for the 2010/11 financial year is \$75,375 (up from \$75,000 for the 2009/10 year).

### Important Changes to company loan rules

The company loan rules in the tax law can deem that a loan made by a private company to a shareholder (or a related party) is actually a dividend and that they need to pay tax on it (with no access to franking credits) – these are called Division 7A loans.

Two changes have been made recently to Division 7A which considerably expand its operation.

#### 1. Companies that are beneficiaries of trusts

Where a trust distributes income to a corporate beneficiary, but does not pay that income to the company (e.g., the trust keeps the cash to keep running a business), the ATO now believes that the unpaid amount may be deemed to be a loan by the company back to the trust.

Fortunately, the ATO has agreed that, in most cases, this will only apply where a trust distributes income to a company on or after 16 December 2009.

However, amounts distributed after that date will need to be paid out, kept separate from other

trust resources, or officially lent back to the trust under a written loan agreement to avoid Division 7A applying.

#### 2. Use of company assets

New legislation has basically removed the scope for private companies to allow shareholders and their associates (including their relatives) to use company assets – such as real estate, cars and boats – for free, or at less than their arm's length value, without paying tax.

Under the new law, which applies from 1 July 2009, if a shareholder (or their associate) uses a company asset but does not pay the company a reasonable amount for that usage (and no exceptions apply), the company is deemed to have paid a dividend to that person.

Exemptions are available for some farmers and small businesses (including an exemption for the use of assets that could otherwise be claimed as a tax deduction by the user if they paid for that use), and the minor use of assets is also exempt.

*If you are concerned about either of these developments, please contact our office, as we may be able to apply some strategies to minimise the effects of these changes.*

### PAYG payment summary reporting requirements – changes for 2009/10

Reportable employer superannuation contributions are those contributions you make for an employee where all of the following apply:

- your employee influenced the rate or amount of super you contribute for them
- the contributions are additional to the compulsory contributions you must make under any of the following:
  - the superannuation guarantee law
  - an industrial agreement
  - the trust deed or governing rules of a super fund
  - federal, state or territory law.

*From 1 July 2009, reportable superannuation contributions are included in various income tests to ascertain whether the employee is able to access various benefits (or is liable for various obligations), such as certain tax offsets, super co-contributions, the Medicare levy surcharge,*

and a range of Centrelink and Child Support benefits and obligations.

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### Private health insurance and the Medicare levy surcharge

One of the conditions that must be satisfied so that a person will not be liable to pay the Medicare levy surcharge (an extra 1% on top of the ordinary 1.5% Medicare levy) is that they, and all of their dependants, are covered by an insurance policy that provides private patient hospital cover.

Any excess payable under such an insurance policy must be less than \$500 for a policy under which only one person is insured, and \$1,000 in relation to any other policy, in any 12 month period.

The ATO has recently confirmed that, when considering whether a person with private health insurance is liable for the Medicare levy surcharge, any "co-payment" they are liable to make under the policy (such as a fixed daily amount or a percentage of the cost of a treatment or service) is not the same as excess and is not taken into account.

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### Benchmarks and dealing with the cash economy

Second Commissioner of the ATO, Mr Bruce Quigley, recently spoke about how the ATO intends to use its new "benchmarking program".

"Our small business benchmarks program . . . continues to expand. We have now benchmarked the key business ratios of over 100 different businesses."

"We use the benchmarks to identify businesses that may be avoiding their tax obligations.

"We have recently begun sending letters to approximately 1,000 businesses that are reporting income that is significantly outside of the benchmarks.

"These businesses will be advised that they are required to meet their obligations and/or provide us with records to support the income declared.

"Where they do not fulfil these requirements **we will raise a default assessment based on the information available to us through the benchmarks.**

If you receive a letter from the ATO along these lines, make sure you speak to us first before replying!

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.

### Tax does not end when you die

In 1981, we were told that death and probate duties were abolished across Australia. Treasurer Paul Keating then introduced Capital Gains Tax in 1985. At that time, the government said that there would be no tax on your family home or when you die. How times have changed. In the 2009/10 financial year, according to the ATO Statistics, more CGT was paid in that one year than the entire history of death duties.

Even your family home is not exempt – unless you undertake full Estate Planning. You can put many weapons in your Will. The most effective weapon to dampen the effects of CGT and its deadly State brother, Stamp Duty, is the 3 Generation Testamentary Trust.

A 3 Generation Testamentary Trust is simply a trust put in your Will to give your beneficiaries flexibility in dealing with your gifts to them. It does also have many other benefits.

#### Children under 18 years

The tax man only allows children under 18 years of age to receive a few thousand dollars per year (\$3,666). The minor then pays tax at 66%. This is a penalty tax on minors. However, this is not the case with a 3 Generation Testamentary Trust. It operates through your Will only at death and offers the benefits of tax effective income splitting without attracting the penalty tax. Minors benefiting under a 3 Generation Testamentary Trust get the same tax concessions as adults. For example, the first \$6,000 of income is completely tax free and the highest tax rate of 46.5% starts at \$180,000, compared with a tax rate of 66% starting after \$3,666 for a normal trust. If a beneficiary has children or grandchildren under 18 years of age, massive tax savings are available.

#### Death taxes on Super

This is influenced by their status as a 'dependant'. Sadly, only your spouse, people you maintain and children under 18 automatically get your Super tax free. Everyone else, including children over 18 and grandchildren, pay either 16.5% or 31.5% tax. Proper Estate Planning ensures that your estate goes to those you care about and not the Tax Man.

Every year, Australian tax payers voluntarily pay the Tax Office millions in 'Death Taxes'. Are you going to be one of them.

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