

# client alert

tax news | views | clues

December 2008/January 2009

## 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.

## Deductibility 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 Asset

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.

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.