



Our most valued clients - we are pleased to provide you with the August 2009 edition of our newsletter, which contains information on a number of important developments.

If you have any queries or would like to suggest a topic for inclusion in a future newsletter, please do not hesitate to contact Tim Hase, one of our Senior Accountants and preparer of our monthly newsletters.

Legislative Developments

Exposure Draft – Non-Commercial Losses

In the last Federal Budget, changes were announced to tighten the non commercial losses rules for individuals with an adjusted taxable income in excess of \$250,000. An exposure draft has recently been released on this to implement the changes.

These amendments aim to overcome the discriminatory way the current non-commercial losses rules apply. This is because at the moment taxpayers with high income are more able to meet one of the four objective tests.

The changes will mean that in order to be able to claim non-commercial losses against other income, the taxpayer will now have to have an adjusted taxable income of less than \$250,000 and meet one of the four tests. However, in cases where an individual does not meet the income requirement, the Commissioner does have discretion to allow the non-commercial losses be applied against other income where it is demonstrated that the business is genuinely commercial.

Taxation Determinations

Luxury Car Limit

TD 2009/13 Income tax: what is the car limit for the 2009-10 financial year?

It states in this determination that the car depreciation limit for the 2009/10 income year is \$57,180, the same as the previous year.

In addition, the Tax Office has released Luxury Car Tax Determination LCTD 2009/1, in which it states the luxury car threshold for the 2009/10 income year is also \$57,180.

Travel and overtime allowances

TD 2009/15 Income tax: what are the reasonable travel and overtime meal allowance expense amounts for 2009-10 income year?

Overtime meal allowance expenses:

The reasonable amount for overtime meal allowance expenses for the 2009/10 income year is \$24.95 (\$23.60 for 08/09).

For the substantiation exception to apply, the meal allowance must be a bona fide meal allowance paid or payable under a law of the Commonwealth or of a state or territory, or an award, order, determination or industrial agreement in force under such a law.

The term 'bona fide meal allowance' is defined in TR 2004/6 as an amount that could reasonably be expected to provide for the costs of food and drink in connection with overtime worked. The amount of the overtime meal allowance must relate to the purpose for which it is said to be paid. A token amount paid without regard to likely expenses is not a bona fide overtime meal allowance.

Domestic travel allowance expenses

The ruling states the reasonable amounts for:

- Accommodation at daily rates (for domestic travel only);
- Meals (showing breakfast, lunch and dinner); and
- Deductible expenses incidental to travel.

The applicable reasonable amount will depend on an employee's annual salary.

The reasonable amounts for meals only apply to meals that would normally be eaten within the time of day from the commencement of travel to the end of travel covered by the allowance.

The incidental expenses reasonable amount applies in full to each day of travel covered by an allowance, without the need to apportion for any part-day travel on the first and last day.

Division 7A Benchmark Interest Rate

TD 2009/16 Income tax: what is the benchmark interest rate applicable for the year of income that commenced on 1 July 2009 for the purposes of Division 7A of Part III of the Income Tax Assessment Act 1936 and how is it used?

In this Taxation Determination, it states the benchmark interest rate for the purposes of the deemed dividend provisions of Division 7A of ITAA 1936 for the 2009/10 income year is 5.75% (9.45% for 2008/09).

August 2009 Case Update

Australian Rules Football – Deductible Fee

Spriggs v Commissioner of Taxation; Riddell v Commissioner of Taxation [2009] HCA 22

The High Court has held that a professional Australian Rules football player and professional rugby league player were entitled to a deduction for the fee each of them paid to their managers for negotiating a contract to play with a new club. Each of them was carrying on a business exploiting their sporting

prowess and associated celebrity, and the management fees were outgoings 'incurred in gaining or producing' or 'necessarily incurred in carrying on a business for the purpose of gaining or producing' assessable income, and not an 'outgoing of capital, or of a capital nature'.

Super Guarantee Charge

Griffiths & Ors and FCT [2009] AATA 482

The Administrative Appeals Tribunal (AAT) has upheld superannuation guarantee charge default assessments against a partnership for failing to make minimum superannuation contributions for an independent contractor operating within its business.

After considering the factors that indicate the existence of an employee/employer relationship, the Tribunal held that the contractor was an employee.

Indicators that suggest an employee/employer relationship exists include:

- the level of control between an individual and the other party;
 - the mode of remuneration;
 - the provision for annual leave; and
 - the right to suspend or dismiss an individual by the other party.
- The classification of an individual as an employee or as an independent contractor is not based on the legal terms used in a contract. All of the facts and circumstances of the particular situation must be considered.
- An individual engaged for their labour can be deemed to be an employee for superannuation guarantee purposes even where the individual is a contractor.

GIC and SIC Rates

The Tax Office has released the general interest charge (GIC) and shortfall interest charge (SIC) rates for the first quarter of the 2009/10 income year. The rates are:

Rate	Annual (%)	Daily (%)
GIC	10.13	0.02775342
SIC	6.13	0.01679452

Superannuation Rates & Thresholds

The Tax Office has released the following superannuation rates and thresholds for the 2009/10 income year:

Superannuation guarantee maximum contribution base - \$40,170 for each quarterly contribution period (up from \$38,180 for 2008/09). An employer does not need to provide the minimum 9% superannuation guarantee support for an employee's ordinary time earnings above this limit.

Superannuation co-contribution income thresholds – The lower total income threshold to qualify for the maximum co-contribution is \$31,920 (up from \$30,342 for 2008/09). The higher income threshold where the co-contribution completely phases out is \$61,920 (up from \$60,342 for 2008/09).

Share Transaction Data Matching Program

There has been an announcement by the Tax Office that it will conduct an ongoing share market transaction CGT data matching program.

Its main focus will be on the income tax obligations of taxpayers in relation to the disposal of shares.

The Tax Office will seek agreement from the following organizations to provide data in accordance with an agreed delivery program:

- ASX Limited;
- Computershare Limited;
- Link Market Services Limited; and
- Registries Limited.

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