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We hope this newsletter finds you well at the beginning of the new financial year. We start the new financial year with great hope for improvement with financial markets, for our businesses and our own financial positions. We encourage you to make an appointment to discuss your options and to see how we can help you navigate the minefield of this year's tax requirements.

# JULY 2009 CASE UPDATE

***Deductibility of education expenses:***

**1. Yan and Commissioner of Taxation [2009] AATA 377**

The Administrative Appeals Tribunal (AAT) has held that a taxpayer could not claim a deduction for her education expenses as she could not show a required connection between those expenses (incurred obtaining her Master of Applied Commerce (Accounting) and Graduate Certificate of Wealth Management) and her job at the time the expenses were incurred (being an accounts manager and personal assistant).

*No deduction is allowable for self education expenses where the study is to enable a taxpayer to obtain new employment or to open up a new income earning activity (even in the taxpayer's present employment). The expenses are incurred at a point too soon to be regarded as incurred in gaining or producing assessable income.*

*Self education expenses may be deductible only where the education better enables the taxpayer to discharge existing duties or earn present income.*

**2. Appeal: Anstis v Commissioner of Taxation [2009] FCA 286**

The Commissioner has lodged an appeal against the decision of the Federal Court that a student taxpayer who received assessable income in the form of Youth Allowance payable under the *Social Security Act 1991* was entitled to a deduction for her expenditure in pursuing a teaching degree on travel to and from teaching grounds, student administration fees, text books etc, as these outgoings were incurred in the gaining or producing of her assessable income (being the Youth Allowance).

A recipient of Youth Allowance is required throughout the relevant period to undertake full-time study (which is satisfied if they are enrolled at an educational institution, undertake at least three quarters of the normal amount of full-time study in respect of the relevant course and are making satisfactory progress towards completing the course). Since the taxpayer had to spend money to satisfy these requirements and receive Youth Allowance, they were incurred in gaining or producing her assessable income.

*The Tax Office has issued a notice following this recent decision saying that it will continue to apply the Commissioner's established view that self-education expenses are not deductible against various Commonwealth educational assistance schemes.*

***Fringe Benefits Tax Issue:***

**Jetto Industrial Pty Ltd and Commissioner of Taxation [2009] AATA 374**

It was held by the AAT that a taxpayer was liable to Fringe Benefits Tax (FBT) on the provision of a car to an employee, as the car was garaged or kept at or near place of business and residence and so was deemed available for private use for the entirety of the years in question. Whether or not the car was used exclusively for business purposes was not relevant. As the taxpayer had not kept a log book during the relevant years, the taxable value of the benefit (and the FBT) was assessed using the statutory formula method.

## July 2009 Rulings Update

**SGR 2009/2 Superannuation guarantee: meaning of the terms 'ordinary time earnings' and 'salary or wages'**

The Tax Office has issued a ruling in which the Commissioner states his view regarding the treatment of payments made to employees for the purposes of the superannuation guarantee (SG).

The ruling has been modified from the draft ruling previously released to include several important changes. These changes include:

- Christmas bonuses are now considered to be ordinary time earnings (OTE) and to be included when determining the minimum SG payable for an employee; and
- Regular overtime payments made outside an employee's ordinary hours of work will generally not be included in OTE and therefore not included in calculating the required level of SG for the employee.

*Employers must use OTE as the earnings base when calculating the 9% minimum level of quarterly superannuation guarantee support for their employees.*

## HOT TOPIC: SMALL BUSINESS & GENERAL BUSINESS TAX BREAK

The Tax Break forms part of the Government's *Nation Building and Jobs Plan* and replaces the 10% investment allowance that was announced back in December 2008. There have been several significant changes made to the concession since that time.

The measure is a temporary initiative targeted toward boosting new capital investment by business and building confidence in the Australian economy in the face of global recession and, to date, has received an overwhelmingly positive response from the business community.

The following points outline the conditions of the Tax Break and provide an understanding of how it works.

- A separate one off tax deduction, in addition to normal depreciation, is available in relation to an eligible asset purchased within certain time frames. It is either at the rate of 50%, 30% or 10% of the cost of the asset.

- The deduction is claimed in the year it is first used or installed ready for use.

- Assets must be over $1,000 for small business (less than $2m turnover) and over $10,000 for larger businesses.

- As a general rule, a taxpayer must satisfy the relevant minimum expenditure threshold for each individual asset in respect of which the Tax Break is to be claimed. This means that expenditure on different assets generally cannot be added together in determining whether the threshold has been met. However, expenditure incurred in relation to multiple assets can be added together for the purposes of determining whether the taxpayer has met the relevant threshold, where they form part of a set of assets, or a batch of assets that are identical, or substantially identical.

- 50% deduction available to small business where asset purchased after 13th December 2008 but before 31st December 2009, and installed ready for use by 31st December 2010.

- 30% deduction available for larger businesses where asset purchased after 13th December 2008 but before 30th June 2009, and installed ready for use by 30th June 2010.

- 10% deduction available for large businesses where asset purchased after 13th December 2008 but by 31st December 2009, and installed by 31st December 2010.

- To be eligible it must be a new tangible depreciating asset for which a deduction is available under the core provisions of Division 40 (Capital Allowances) of ITAA 1997 (i.e. Subdivision 40-B). This includes most plant and equipment, including tractors and forklifts. However intangibles and rights are excluded. Computer software is excluded because it is an intangible asset.

- The asset must be used principally for carrying on a business. In other words, the majority of the use of the asset by the taxpayer will be in carrying on a business. The Tax Break will not be available to taxpayers who acquire non-business assets for income producing purposes (e.g. employees, property investors, etc.).

- There is no apportionment of the Tax Break for any estimated non-business use of the asset.

- The asset must be new, not second hand. However a taxpayer may also be entitled to claim the Tax Break in relation to an existing tangible depreciating asset. This situation may arise where a taxpayer incurs 'new' expenditure on improving a tangible depreciating asset they already hold. In this case only the amounts that the taxpayer has paid in order to bring an asset they already hold to its present condition and location (and typically includes relocation costs, installation costs and capital improvements that do not constitute a tax deductible repair) that are

eligible for deduction. It is therefore technically possible for a taxpayer to claim the Tax Break on capital improvements made between the relevant dates in relation to tangible depreciating assets they originally acquired prior to 13th December 2008.

- Holder of the asset is the only one that is entitled to the Tax Break. This is the entity that is entitled to claim depreciation.

**Asset Holder eligible for deduction:**

Leased assets (not luxury car) - Lessor

Leased luxury car – Lessee

Assets under hire purchase - Hirer

## MOTOR VEHICLES

- Cars purchased can be eligible for the Tax Break. However business taxpayers using the 'cents per kilometre' method for determining car expense deductions are excluded from eligibility for the Tax Break. Taxpayers using the 'log book' method or 'one-third of actual expenses' method are eligible for the Tax Break as they are able to claim depreciation under Division 40. However a car in respect of which the '12 per cent of original value' method is used is specifically included for the purposes of the Tax Break, but remains ineligible for depreciation.

- Car cost limit applies for the Tax Break. As the Tax Break uses the same asset cost as the capital allowance regime, the first element of the cost of a luxury car for the purposes of claiming the Tax Break is reduced to the car limit. The limit for the 2008-09 financial year was $57,180.

- A demonstration vehicle may still be regarded as new. A car that has only been used by potential customers in for testing and trialling purposes will still be 'new' for the purposes of the Tax Break. However, if instead, the dealer had regularly used the car for home to work travel (i.e. in addition to the test driving by potential customers) the car would not be considered 'new' and the taxpayer would be ineligible to claim the Tax Break for the purchase of the car. Therefore if you are contemplating buying a demonstration vehicle, it would be advisable to get a written declaration from the dealer stating it was not used by them for any private use.