

Dear Client,

We are pleased to supply you with the November 2008 edition of **The Report**.

This edition provides you with the latest important developments in taxation that may affect you or your business, including the following:

- **Tax Laws Amendment** — Proposed amendments to the tax laws which include GST and sale of real property, and FBT and jointly held investment assets.
- **Education Tax Refund** — A Bill proposing to introduce the Education Tax Refund, which will assist families with the cost of educating their children.
- **Medicare Levy Surcharge Thresholds** — An update on the Government's measure to increase the Medicare levy surcharge thresholds for individuals and families.
- **Luxury Car Tax** — Progress of the Government's measure to increase the Luxury Car Tax.
- **Tax Laws Amendment Update** — A Bill concerning shareholders and unit holders rights, and the restriction of GST refunds has been enacted.
- **Borrowings of Money and SMSFs** — A Draft SMSF Ruling explaining the meaning of the phrases 'borrowing money' and 'maintaining an existing borrowing of money'.
- **Death Binding Nominations and SMSFs** — A Draft SMSF Determination stating whether SMSFs are permitted to accept death binding nominations from their members.
- **Exempt Fringe Benefits** — Two Interpretative Decisions issued by the Tax Office relating to exempt fringe benefits.
- **When is an Invoice Issued?** — A recent case regarding the timing of when an invoice is issued for GST purposes.
- **ITC and Termination of Enterprise** — A recent case where the Court found that a company was entitled to claim input tax credit for an expense, even though it had ceased operations.
- **GIC and SIC Rates Released** — Interest rates for the second quarter of the 2008/09 income year.

### **Holidays**

Our office will be closed from 12pm on **Wednesday, 24<sup>th</sup> December 2008** and will reopen at 9am on **Monday, 5<sup>th</sup> January 2009**.

Please contact us if you wish to discuss how the points raised in **The Report** specifically affect you.

Yours sincerely

**GUESTS ACCOUNTING**

# the report

## tax news | views | clues

### Tax Laws Amendment

The Government has introduced a Bill into Parliament to amend certain provisions of the tax laws.

The proposed amendments include ensuring:

- the GST liability on the sale of a real property calculated under the margin scheme will include the value added by the entity which made the original supply; and
- the taxable value of a fringe benefit for an investment asset will be limited to an employee's interest if it is held jointly with an associate of the employee. An 'associate' includes a spouse, immediate family members and children.

### Education Tax Refund

The Government has introduced a Bill into Parliament seeking to implement the Education Tax Refund. Broadly, eligible families can qualify for a 50% refundable tax offset for eligible education expenses up to a maximum of \$750 for children undertaking

primary studies and \$1,500 for children undertaking secondary studies.

- **TIP:** Eligible families should keep all receipts to ensure that they will be able to claim the refund when the Bill is enacted.

### Medicare Levy Surcharge Thresholds

The Government's Bill to increase the Medicare levy surcharge thresholds has been rejected by Parliament.

However, the Government has introduced another Bill seeking to once again increase the Medicare levy surcharge thresholds:

- for individuals it will rise from \$50,000 to \$75,000; and
- for families it will rise from \$100,000 to \$150,000.

The increase to the thresholds is still proposed to apply from the 2008/09 income year.

### Luxury Car Tax

The Government's Bill to increase the luxury car tax (LCT) has received enactment. The amendments in the Bill apply from 1 July 2008.

The LCT regime changes include:

- increasing the LCT from 25% to 33%;
- exempting fuel-efficient vehicles that do not exceed the fuel-efficient car limit from the LCT (\$75,000 for 2008/09);
- providing for refunds of the increase in LCT to eligible primary producers and tourism operators;
- providing for CPI indexing of the LCT threshold from 1 July 2012; and
- ensuring vehicles ordered before 7.30pm (AEST) on 13 May 2008, but not delivered until after 1 July 2008 are not subjected to the increase in tax.

### Tax Laws Amendment Update

In the July 2008 issue, it was stated that the Government introduced a Bill containing amendments concerning shareholders and unitholders rights, and restricting GST refunds.

On 20 September 2008, the amendments were enacted as law.

## **Borrowings of Money and SMSFs**

The Tax Office has released a Draft SMSF Ruling in which it states the Commissioner's preliminary view on the meaning of the phrases 'borrowing money' and 'maintaining an existing borrowing of money'.

The Draft states that both phrases take on their ordinary contextual meaning. In determining whether an arrangement constitutes a borrowing of money, it is necessary to consider the circumstances of the arrangement.

Generally, a trustee of an SMSF is prohibited from borrowing money or maintaining an existing borrowing. However, the superannuation legislation provides exceptions such as where a trustee borrows to settle on the acquisition of certain financial instruments, or to make a payment to a beneficiary.

## **Death Binding Nominations and SMSFs**

The Tax Office has also released a Draft SMSF Determination which sets out the Commissioner's preliminary view on whether a trustee of an SMSF can accept a death binding nomination from a member.

The Draft states that a trustee of an SMSF is permitted to accept a death binding nomination from a member, provided it is permissible under the fund's deed.

A death binding nomination 'binds' a trustee of an SMSF to distribute the superannuation benefits of a deceased member in accordance with the nomination.

In the absence of a nomination, a trustee has the discretion to

distribute a deceased member's benefits in accordance with the superannuation law.

## **Exempt Fringe Benefits**

The Tax Office has issued two Interpretative Decisions (IDs) relating to exempt fringe benefits.

In the first ID, the Tax Office states that a GPS navigation device is a 'portable electronic device' for the purposes of the exempt fringe benefits provision.

According to the ID, a 'portable electronic device' is a device that is easily carried by hand and is based on electronics.

In the second ID, the Tax Office states that a laptop computer provided to an employee, who regularly visits clients, was provided primarily for use in the employee's employment.

The Tax Office states that whether a laptop computer is primarily used in an employee's employment is based on its intended use at the time it was provided to the employee.

## **When is an Invoice Issued?**

In a recent case, the AAT found that a taxpayer had correctly reported the GST liability for an invoice in the correct quarter.

In doing so, the Tribunal affirmed that the date appearing on an invoice should only be taken to be the date the invoice was issued in the absence of any evidence to the contrary.

The date of issue of an invoice is important for an entity who is reporting its GST obligations on an accrual basis. This is because the tax period to attribute the GST liability on an invoice is

determined by reference to the first tax period in which an invoice is issued (if no consideration is received or provided before that time).

## **ITC and Termination of Enterprise**

The District Court of Queensland has reduced the indemnity costs payable by a plaintiff by the input tax credit (ITC) that an applicant could have claimed, even though the applicant was no longer carrying on an enterprise for GST purposes.

The District Court found that in resisting the plaintiff's claims, the applicant had carried on an incidental aspect of its business, while terminating its enterprise. Therefore, the applicant was entitled to claim the ITC.

It is the Tax Office's view that whether an activity relates to the termination of the enterprise is one of fact and degree, which depends on the circumstances of the termination.

## **GIC and SIC Rates Released**

The Tax Office has released the general interest charge and shortfall interest charge rates for the second quarter of the 2008/09 income year:

<b>Rate</b>	<b>Annual (%)</b>	<b>Daily (%)</b>
GIC	14.31	0.03909836
SIC	10.31	0.02816939

The Tax Office has also released the interest rate for overpayments, early payments and delays in refunds for the second quarter of the 2008/09 income year. The applicable interest rate is 7.31%.

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.