

Dear Client,

We are pleased to supply you with the March 2010 edition of The Report, which contains information on a number of important taxation developments up to and including 4 February 2010:

- **R&D Tax Offset Abuse** — The Tax Office has issued a Taxpayer Alert warning taxpayers of investment schemes that abuse the research and development tax offset.
- **Deductions and Refinancing Home Loans** — The Tax Office has issued a Taxpayer Alert describing sham arrangements that are promoted as ‘mortgage management plans’.
- **Uncommercial Offshore Superannuation Trusts** — The Tax Office is scrutinising offshore trust structures masquerading as superannuation funds used by taxpayers to avoid tax on money shifted into Australia.
- **Superannuation Funds and Illegal Early Release** — The Tax Office has implemented steps to improve the self-managed superannuation fund registration process to prevent illegal early release of benefits.
- **Excess Contributions Tax: Commissioner’s Discretion** — The Tax Office has provided guidance on whether the Commissioner will exercise his discretion to disregard excess non-concessional contributions.
- **Payment from Transition-to-retirement Pensions** — The Tax Office has also provided guidance on whether a payment from a transition-to-retirement pension can be taxed as a superannuation lump sum.
- **No Deduction for Misappropriated Money** — The Full Federal Court has held that a taxpayer was not entitled to a deduction for money misappropriated by his agent.
- **FBT Audit and Compliance Activities** — We include a summary of the FBT audit and compliance activities currently being undertaken by the Tax Office.
- **GST: Decreasing Adjustment Note Threshold Increased** — The GST decreasing adjustment note threshold will increase to \$75 or less with effect from 1 July 2010.
- **Goods Taken for Private Use** — The Tax Office have released the reasonable amounts that they will accept as the value of goods taken from trading stock for private use for the 2009/10 income year.

SUPERANNUATION “HOUSEKEEPING”

Personal contributions to clients’ SMSF should be made from the members personal bank account.

Holidays

The office will be closed on the following days:

Monday, 8th March - Labour Day

Tuesday, 30th March to Tuesday, 6th April (inclusive) – Passover & Easter Holidays

Monday, 26th April - Anzac Day.

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

Yours sincerely

GUESTS ACCOUNTING

the report

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R&D Tax Offset Abuse

The Tax Office has issued a Taxpayer Alert warning taxpayers to be cautious of investment schemes that abuse the research and development (R&D) tax offset.

The Tax Office says the schemes involve a company structuring contracts with a registered research agency (RRA) to take advantage of the prepayment concessions in the tax laws.

The Tax Office is concerned the schemes may give rise to various taxation issues, including whether:

- the prepayments rules will apply;
- the expenditure has been incurred; and
- the company and the RRA are dealing with each other at arm's length.

Deductions and Refinancing Home Loans

The Tax Office has also issued a Taxpayer Alert in which it alerts taxpayers about sham arrangements being promoted as 'mortgage management plans'.

The arrangements involve homeowners refinancing their home loans and establishing investment loans to fund the purchase of shares in bogus companies. Homeowners then claim tax deductions for interest incurred on the loans.

The Tax Office says the arrangements may give rise to various taxation issues, including whether:

- the general anti-avoidance provisions may apply to the arrangements; and
- any interest incurred on the investment loans is deductible.

Uncommercial Offshore Superannuation Trusts

The Tax Office has also issued a Taxpayer Alert warning taxpayers that it is closely scrutinising offshore trust structures that masquerade as superannuation funds used by taxpayers in an attempt to avoid tax on money that is shifted into Australia.

According to the Tax Office, taxpayers use the trusts to invest funds received from a related non-resident employer or service entity to earn overseas income. The accumulated monies in the trusts are moved to Australia under the guise of retirement benefits or contributions to a complying superannuation fund after a period of time.

The Tax Office is concerned the structures may breach the provisions of the superannuation laws. The Tax Office is also concerned the structures may give rise to various taxation issues, such as the application of the provisions governing foreign income and the general anti-avoidance provisions.

Superannuation Funds and Illegal Early Release

New steps to prevent the rollover of funds to self-managed superannuation funds (SMSFs) created for the purpose of illegal

early release of benefits have been implemented by the Tax Office.

The steps are being implemented in two stages.

The first stage commenced in January 2010 and introduced improvements to the SMSF registration process to help prevent non-legitimate SMSFs from being displayed on the Super Fund Lookup (SFLU) web page.

As a result of improvements to the registration process, trustees of SMSFs should be aware that:

- a new SMSF application will take seven days to be assessed by the Tax Office and to appear on the SFLU; and
- a superannuation fund will not process a rollover request by an SMSF unless the SMSF is listed on the SFLU.

Excess Contributions Tax: Commissioner's Discretion

The Tax Office has provided guidance on whether or not the Commissioner will exercise his discretion to disregard excess non-concessional contributions where:

- the contributions were initially made as concessional contributions but due to unforeseen inability to claim a tax deduction were treated as non-concessional contributions; or
- the excess contributions arose due to a banking error made by a party other than the trustee of a superannuation fund.

The Tax Office reiterates that the Commissioner will only exercise his discretion if there is:

- the existence of 'special circumstances'; and
- the object of the tax laws governing superannuation contributions are met.

Payment from Transition-to-retirement Pensions

The Tax Office has also stated its view on whether a member of an SMSF with a transition-to-

retirement account-based pension, where the entire balance of the pension is preserved money, can make an election such that a payment from the pension is taxed as a superannuation lump sum rather than a superannuation income stream benefit.

The Tax Office says an election can be made to tax a payment as a superannuation lump sum if the pension is commuted, where the necessary conditions are satisfied.

- **TIP:** The tax treatment of a superannuation lump sum and a superannuation income stream benefit is different. Generally, less tax is paid on lump sums than income payments.

No Deduction for Misappropriated Money

In a recent case, the Full Federal Court dismissed a taxpayer's appeal against the denial of his claimed deduction of \$2.3 million for money misappropriated by his investment manager.

The taxpayer sold a parcel of shares and transferred the proceeds to the manager. However, the funds were misappropriated by the manager.

In his 2002 tax return, the taxpayer included a net capital gain of \$2.3 million from the sale of the shares. However, he also claimed a deduction for the misappropriation, which was disallowed.

FBT Audit and Compliance Activities

With the 2009/10 FBT year drawing to a close, it is important to note the FBT audit and compliance activities currently

being undertaken by the Tax Office.

The activities include:

- car fringe benefits and data matching;
- incorrectly claimed FBT rebates;
- lodgment of FBT returns; and
- reduction of FBT liabilities and employee contributions.

GST: Decreasing Adjustment Note Threshold Increased

The Government will increase the decreasing adjustment note threshold for the purposes of GST.

With effect from 1 July 2010, the threshold is \$75 or less.

Goods Taken for Private Use

The Tax Office has released the amounts which it will accept as estimates of the value of goods taken from trading stock for private use for the 2009/10 income year by taxpayers in certain specified industries.

These industries include:

- bakery;
 - butcher;
 - caterer;
 - deli;
 - fruiterer/greengrocer;
 - mixed business (eg general store);
 - restaurant/café; and
 - takeaway food shop.
- **TIP:** Taxpayers should ensure the value attributed to goods taken from stock for private use is fair and reasonable, and have regard to their own circumstances.

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.

Gross-up Rates

	Yes	No
Are you entitled to a GST refund on the provision of the fringe benefit? <i>If yes, the Type 1 gross-up rate applies: 2.0647. If no, the Type 2 gross-up rate applies: 1.8692.</i>		
Are fringe benefits that are reportable on employees' PAYG payment summaries grossed-up using the Type 2 gross-up rate? <i>Reportable fringe benefits are grossed-up using the Type 2 rate, regardless of the gross-up rate used in calculating the FBT payable on a benefit.</i>		

Checklist — Types of Benefits

Type of fringe benefit	Yes	No
Car fringe benefit		
Was a vehicle made available to an employee (or the employee's associate) for private use and the vehicle is owned or leased by you, an associate of yours or a third party pursuant to an agreement with you? <i>If yes, a car fringe benefit may arise.</i>		
Was the vehicle designed to carry less than one tonne or fewer than nine passengers? <i>If yes, a car fringe benefit may arise. If no, the fringe benefit may be a residual benefit.</i>		
Was the vehicle provided a taxi, panel van, utility truck or a non-passenger road vehicle designed to carry a load of less than one tonne? <i>If yes, an exemption from FBT applies, provided the only private use of the vehicle was for work-related travel and other private use by the employee (or the employee's associate) was minor, infrequent and irregular.</i>		
Did the employee contribute to the running costs of the vehicle? <i>The value of the benefit is reduced by the employee's contribution if appropriate evidentiary documents have been maintained.</i>		
Has an election been made to use either the statutory formula method or the operating costs method? <i>The statutory formula method must be used unless an election has been made to use the operating costs method.</i>		
Has the valuation method been switched from the previous year? <i>If the statutory formula method was used in the previous year and the operating costs method has been elected in this current year, has a logbook been maintained?</i>		

Type of fringe benefit	Yes	No
Statutory formula method		
What were the opening and closing odometer readings for the vehicle? <i>The statutory percentage to be used is determined by the total kilometres travelled during the FBT year: see FBT Rates and Thresholds, page 4.</i>		
Were any non-business accessories (eg window tinting and rust-proofing) fitted to the vehicle during the FBT year? <i>If yes, the base value of the car is increased by the (GST-inclusive) cost price of the accessories.</i>		
How long has the vehicle been owned? <i>If owned for more than four years on 1 April 2009, the cost base of the vehicle is reduced by one-third. However, this reduction does not apply to non-business accessories fitted after the acquisition of the vehicle.</i>		
Were there any days during the FBT year when the vehicle was unavailable for private use? <i>The taxable value of the car benefit is reduced by the number of days during the FBT year in which the vehicle was not used or available for private use by the employee (or the employee's associate).</i>		
Was the vehicle acquired during the FBT year? <i>The number of kilometres travelled for the part of the year when the vehicle was acquired must be annualised.</i>		
Operating costs method		
Was the vehicle acquired during the FBT year? <i>If yes, has a log book been kept for a minimum continuous period of 12 weeks?</i>		
What were the opening and closing odometer readings for the vehicle? <i>The readings must be recorded to enable total kilometres travelled for the year to be calculated.</i>		
Have you made a reasonable estimate of the business kilometres travelled and the business use percentage? <i>This must be in writing, which is normally evident by the maintaining of a log book.</i>		
Was the vehicle replaced during the FBT year? <i>If the vehicle was replaced, the previously established business percentage may be transferred to the replacement vehicle, provided the percentage had not changed.</i>		
What is the written down value of the vehicle as at 1 April 2009? <i>The deemed depreciation and deemed interest is calculated based on the written down value of the vehicle as at 1 April 2009.</i>		
Have you determined the total operating costs of the vehicle for the FBT year? <i>Deemed depreciation and deemed interest must also be included in the operating costs of the vehicle.</i>		
Car parking fringe benefit		
Did you meet the costs or part thereof for the car parking expenses of an employee, provided that the car being parked is designed to carry a load of less than one tonne or fewer than nine passengers and the following conditions are present: <ul style="list-style-type: none"> the car is parked on the business premises; the car is used by the employee to travel between home and work and is parked at or in the vicinity of employment; the car is parked for periods totalling more than four hours between 7 am and 7 pm; and a commercial car parking station is located within one km of the premises where the car is parked and the operator of the parking station charges more than \$7.25 for all-day parking. <i>A car parking benefit potentially arises if the answer is yes.</i>		
Does your business meet the requirements to be classified as a small business entity (SBE) for income tax purposes? <i>An exemption from car parking fringe benefits arises if your business is an SBE.</i>		
Has an election been made for calculating the number of car parking benefits provided: actual usage records method, statutory formula method, or 12-week register method? <i>If no election is made, the actual usage records method must be used.</i>		

Type of fringe benefit	Yes	No
Has an election been made for calculating the value of car parking benefits provided: commercial parking station method, market value basis, or average cost method? <i>The commercial parking station method will automatically apply if no election has been made.</i>		
Entertainment fringe benefit		
Has an election been made to use either the 50/50 split method or the 12-week register method? <i>If no election is made, the taxable value is based on actual expenditure incurred.</i>		
If using the 12-week register method, is the register still valid? <i>A register is only valid for the FBT year in which the register period ends and the next four FBT years, provided that the total GST-inclusive entertainment costs do not vary by more than 20% between each FBT year.</i>		
Did the employee (or their associate) contribute to the provision of the benefit? <i>The taxable value of the benefit is reduced by any contributions.</i>		
Loan fringe benefit		
Was a loan made to an employee (or their associate) during the FBT year? <i>A fringe benefit may potentially exist.</i>		
Was the interest rate charged on the loan lower than the notional FBT interest rate (5.85%)? <i>The taxable value of the benefit is the amount by which the notional interest rate calculated on the loan for the year exceeds the amount of interest that has actually accrued on the loan during the year.</i>		
Was the interest on the loan paid at least every six months? <i>If interest is not paid at least every six months, a new loan equivalent to the deferred interest component will arise.</i>		
Did the employee use the loan for income-producing purposes, and therefore would be entitled to a deduction (in their personal tax return) in respect of the interest incurred? <i>The taxable value of the benefit is reduced by the amount by which the employee would be entitled to a deduction, provided a declaration has been given setting out particulars to the use of which the loan was put to.</i>		
Property fringe benefits		
Was any property provided in respect of an employee's employment? <i>Property includes all tangible and intangible property. Examples of property are goods, shares and real property.</i>		
Have employer-provided property (in-house property fringe benefits) and those provided from other sources (external property fringe benefits) been identified? <i>The taxable values for the former and latter are calculated differently.</i>		
If the benefit is an in-house property fringe benefit, has the \$1,000 exemption been applied? <i>The first \$1,000 of the benefit is exempt from FBT. The taxable value is 75% of the amount after the \$1,000 exemption has been applied less the amount (if any) paid by the employee.</i>		
If the benefit was an external property fringe benefit, were you dealing with the external party at arm's length? <i>Where the dealing was not at arm's length, the taxable value is the amount the employee could reasonably be expected to pay to acquire the property under an arm's length transaction, reduced by any employee contribution. For an arm's length transaction, the taxable value of the benefit is the expenditure incurred for the property reduced by any employee contribution.</i>		
Was the employee entitled to a deduction (in their personal tax return) if they had incurred expenditure equal to taxable value of the benefit after reduction for any consideration paid by the employee (the otherwise deductible rule)? <i>The taxable value of the benefit can be further reduced by the amount that the employee could have deducted. This further reduction applies to both in-house property fringe benefit and external property fringe benefit.</i>		
Is an employee declaration required? <i>The otherwise deductible rule requires an employee declaration setting out details sufficient to establish the connection between the property provided and the income-producing activities of the employee. However, if the property was provided exclusively in the course of the employee's employment, a declaration is not required.</i>		

Type of fringe benefit	Yes	No
Expense payment fringe benefit		
Did you pay or reimburse an employee (or their associate) for any expenses incurred by them? <i>Potentially, an expenses payment fringe benefit arises.</i>		
Was the payment or reimbursement for an item that was used solely for an income generation purpose? <i>If there was no private usage of the item, a fringe benefit does not arise. However, the employee must supply a 'no-private-use declaration'.</i>		
Did the employee contribute towards the provision of the benefit? <i>The taxable value of the benefit (which is the amount of the expenditure paid or reimbursed) is reduced by the amount of the employee's contribution.</i>		
Would the 'otherwise deductible rule' apply? <i>The taxable value of the benefit can be further reduced if the employee would have obtained a deduction in her or his tax return. This further reduction applies to both the in-house property fringe benefit and the external property fringe benefit.</i>		
Work-related items (provided after 13 May 2008)		
Did you provide an employee with any of the following work-related items on or after 7.30pm (AEST) on 13 May 2008: <ul style="list-style-type: none"> • a portable electronic device (eg a laptop and a GPS navigation device); • an item of computer software; • an item of protective clothing; • a briefcase; or • a tool of trade? <i>If yes, an exemption from FBT may be available.</i>		
Were the items provided primarily for use in the employee's employment? <i>If yes, an exemption from FBT applies.</i>		
Did you provide the employee more than one of each of the above listed items, unless the item is a replacement item? <i>If yes and the addition item is not a replacement item, the addition item will not be exempted from FBT.</i>		
Minor, infrequent and irregular benefits		
Were there any infrequent and irregular benefits with a notional taxable value of less than \$300 per benefit being provided? <i>A benefit with a notional taxable value of less than \$300 does not automatically attract an exemption from FBT unless it is infrequent and irregular.</i>		

FBT Rates and Thresholds

	FBT year ending 31 March 2010	FBT year ending 31 March 2009
FBT tax rate	46.5%	46.5%
Type 1 gross-up rate (ie entitled to a GST credit for the provision of a benefit)	2.0647	2.0647
Type 2 gross-up rate (ie not entitled to a GST credit for the provision of a benefit)	1.8692	1.8692
Reportable fringe benefits threshold (ie a total gross-up value exceeding \$3,738) ²	\$2,000 ¹	\$2,000 ¹

	FBT year ending 31 March 2010	FBT year ending 31 March 2009
Car parking threshold	\$7.25	\$7.07
Statutory car rates (statutory formula method) for car fringe benefit:		
Kilometres travelled	Statutory	Statutory
Less than 15,000	26%	26%
15,000 – 24,999	20%	20%
25,000 – 40,000	11%	11%
Above 40,000	7%	7%
Cents per kilometres for motor vehicle (where the benefit is a residual benefit):		
Engine capacity	Rate per kilometre	Rate per kilometre
0 – 2,500cc	44 cents	42 cents
Over 2,500cc	53 cents	51 cents
Motor cycles	13 cents	13 cents
Deemed depreciation rate (operating cost method) for car fringe benefits:		
Date of car purchase	Depreciation rate	Depreciation rate
On or after 10 May 2006	25%	25%
From 1 July 2002 to 9 May 2006	18.75%	18.75%
Up to and including 30 June 2002	22.5%	22.5%
Benchmark interest rate ³	5.85%	9.00%
Minor and infrequent benefits threshold ⁴	\$300	\$300
Record keeping exemption threshold	\$7,063	\$6,766

- (1) Threshold based on the total taxable value of fringe benefits provided to an employee.
- (2) The actual reportable fringe benefits amount shown on a PAYG summary is always grossed-up using the Type 2 gross-up rate.
- (3) The benchmark interest rate is used to calculate the taxable value of a loan benefit and the deemed interest of a car fringe benefit where an employer chooses to use the operating cost method.
- (4) Threshold is based on the taxable value of a benefit and applies to each benefit provided during the FBT year.

