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**A big welcome to our November 2008 newsletter. This month as part of our commitment to the ongoing training and professionalism of our staff, we have had one of our Senior Accountants, Tim Hase, prepare the newsletter. Tim has included many relevant topics which affect both individuals and businesses. Drop us a line to let us know what you think of our new approach. Our email address is info@vealepartners.com.au.**

**Should you have any queries with regards to any of the topics mentioned in the newsletter, please contact our office for further information.**

## Bills that have become law

### *Medicare Levy Surcharge threshold increases*

This bill increases the Medicare Levy surcharge threshold to $70,000 for individuals and to $140,000 for families. Therefore, individuals earning less than $70,000 or families with combined income less than $140,000 will not have to pay the extra 1% surcharge if they are not covered by health insurance. Individuals and families with private hospital cover for them and their dependants are not required to pay the 1% surcharge even if their income rises above these thresholds.

Please note however that this Medicare Levy Surcharge of 1% is in addition to the Medicare Levy of 1.5% payable by most individual taxpayers.

The bill also provides for transitional arrangements so that individuals who obtain private health cover before 1st January 2009 avoid the surcharge for the period 1st July to 31st December 2008.

## Some Relevant Treasury Bills Currently Before Parliament (as at 15th October 2008)

### *1. New Education Tax Refund*

This bill introduces an Education Tax Refund which may be applicable to you if you have children at primary or secondary school level. However conditions do exist. To be eligible you need to have received Family Tax Benefit (Part A) payments, or have children that are receiving Youth Allowance or related payment.

There will be a 50% refundable tax offset on eligible education expenses. The maximum tax offsets will be $375 per primary school child per year and $750 per secondary school child per year.

Eligible education expenses includes items such as computers, printers, computer software, internet costs and textbooks.

If this bill is passed, this law will be effective from 1st July 2008, and will affect 2009 tax returns and onward.

2. **National Rental Affordability Scheme**

This bill provides for regulations to prescribe the National Rental Affordability Scheme which will provide refundable tax offsets or cash payment incentives to providers of new dwellings on the condition that they are rented to low and moderate income households at 20 per cent below market rates.

The scheme commences from 1st July 2008. The National Rental Affordability Scheme offers annual incentives for a period of ten years. The two key elements are:

- A Commonwealth Government incentive of $6,000 per dwelling per year refundable tax offset or payment; and
- A State or Territory Government incentive of $2,000 per dwelling per year in direct or in kind financial support.

## November 2008 Rulings Update

### *Self Managed Super Funds*

SMSFR 2008/D4: Self Managed Superannuation Funds: the meaning of 'borrow money' or 'maintain an existing borrowing of money' for the purposes of section 67 of the Superannuation Industry (Supervision) Act 1993.

**Noteworthy points**: Section 67 denies, except in limited circumstances, a super fund from being able to borrow. An obligation to repay is required to meet the definition of borrowing. An expense paid on behalf of a fund by a member is not a borrowing.

## November 2008 Case Update

Bottazzi and Commissioner of Taxation [2008] AATA 890

The Australian Taxation Office in this case amended the taxpayer's assessment to include a capital gain that was initially omitted. The AAT held that, although the amended assessment was issued outside the four year limit, the Commissioner was not out of time, due to fraud or evasion.

Normally the Commissioner has two or four years to amend an assessment if required. However there is no time limit where fraud or evasion is present.

## Other Developments

1. **Legal Responsibilities for self managed super funds**

The Tax Office is reminding trustees of self managed super funds (SMSFs) that there are important rules they must follow. Failing to do so could result in prosecution and severe tax consequences.

An SMSF should be set up for retirement only. The sole purpose test means that an SMSF must be maintained for the sole purpose of providing benefits to members upon their retirement.

Early access to super is only granted in exceptional circumstances and in strict accordance with the law.

2. **Partnership and trust distribution reviews**

As part of the Tax Office's examination of the compliance risks associated with partnership and trust distributions, they are reviewing distributions from partnerships and trusts to the respective partner and beneficiary returns for the years ended 30th June 2004 to 30th June 2007 to ensure that distributions have been correctly disclosed.

**Hot Topic: Salary Packaging after the 2008 Budget changes**

The Fringe Benefits Tax (FBT) laws have changed significantly with the Budget earlier this year. This has a major impact for planning salary packaging.

**1. The FBT exemption for eligible work related items and the 'double dip'**

In the 2008 Federal Budget, the Government announced that from 13th May 2008, s.58X of the FBT Act would be amended so that for all eligible work related items, an FBT exemption only applies where the item is provided to the employee 'primarily for use in the employee's employment' (e.g. a laptop computer is now only exempt under s.58X where it is to be used primarily for a work related purpose).

Furthermore, as a result of amendments made as part of the 2008 Budget, the opportunity for an employee to 'double dip' has been removed where a benefit is exempt under s.58x. That is, if an asset is FBT exempt because of s.58X (e.g. laptop computer), an employee is no longer able to also claim depreciation in relation to the asset, even where it is solely for work related purposes.

However, the 'double dip' strategy is still an effective strategy where an employee is salary packaging depreciable assets that are subject to the 'otherwise deductible' rule (e.g. assets costing $300 or less)

These changes are now law and apply from 13th May 2008. Under the transitional provisions, where an asset is acquired before 13th May 2008 and is FBT exempt under s.58X, then an employee is unable to claim depreciation in relation to that asset from the 2009 income year onwards.

**2. Salary packaging staff lunches**

Prior to Budget announcements, employees were able to salary package their 'day to day' lunches (i.e. pay for lunches out of pre tax dollars) and apply s.41 FBT exemption to effectively halve the cost of meals for the employee (since no adjustment for either FBT or GST was required).

However, from 13th May 2008, as part of the 2008 Budget amendments, the exemption does not apply to staff lunches provided as part of a salary sacrifice arrangement. Under the transitional rules, the exemption can still apply where the salary sacrifice agreement was entered into prior to 13th May 2008, the employee's salary was reduced prior to 13th May 2008 and the staff lunch is provided to the employee before the end of the 2009 FBT year.

**2. Salary packaging joint rental property expenses**

In the past, a very popular salary packaging strategy involved an employee salary packaging all of the rental property expenses (other than capital allowance deductions) associated with a jointly held rental property (e.g. a rental property owned jointly with their spouse). Under such an agreement, the employer would reimburse these expenses and the employee's pre-tax salary would be reduced accordingly.

Prior to Budget changes, FBT was not generally payable on such reimbursements. This was because the 'otherwise deductible rule' could apply. The fringe benefit in these circumstances was deemed to be provided to the employee only.

The above salary packaging strategy was most effective where a negatively geared rental property was owned jointly and one spouse had a higher marginal tax rate than the other spouse, as the actual tax benefit of the deductions were naturally much less for the low income spouse.

However, the FBT law will be amended to ensure the 'otherwise deductible rule' does not apply to reduce the taxable value of an associate's share of a jointly provided benefit.

The measures will apply to all new salary sacrifice arrangements from 13th May 2008. Employees with existing arrangements are able to continue to apply the current law until the end of the 2009 FBT year.

**Other salary packaging opportunities remain:**

Although the Budget changes have reduced the effectiveness of specific salary packaging strategies, salary packaging can still be very worthwhile. The more traditional measures remain; for example the concessions in relation to superannuation contributions and company cars.

**Work Related Expenses:**

- Nurses, medical practitioners and chefs are being currently focused on by the Australian Taxation Office in relation to work related expense deductions.

- Motor vehicle claims can be disallowed where no valid log book exists and the log book method has been used for claiming a deduction.

- Meal claims for travel are only deductible where the employee is away overnight.

- Laundry of clothing is only allowed where the clothing itself is deductible. Where the clothing is conventional, no deduction is allowed.

- Home office running expenses can be claimed on a time basis using the set rate of 26c per hour. This covers expenses such as electricity, gas and depreciation on office furniture.

**Should you have any queries with regards to any of the topics mentioned in the newsletter, please contact our office for further information.**

**With Christmas fast approaching, it is important for individuals and businesses to consider their cashflow to survive the festive season.**

**Our office will be closed for the festive season from 12 pm on Tuesday 23rd December 2008 and will reopen on Monday 12th January 2009.**

**Wishing you all the very best for the festive season.**