



## 2012 tax landscape: What to expect

Several announcements were made by the government in the May 2011 federal budget and its 'mini budget' released last November that will have an impact on the tax landscape for 2012.

### Dependent spouse tax offset

From July 1, 2011 taxpayers with a dependent spouse born on or after July 1, 1971 have no longer been eligible for the Dependent Spouse Tax Offset. This means the offset will be gradually phased out as the population ages. Dependent spouses eligible for Family Tax Benefit part B are not affected, nor are taxpayers whose dependent spouse is a carer, who is an invalid or permanently unable to work, and taxpayers eligible for the zone, overseas forces or overseas civilian tax offsets. Tax returns for the current financial year will be the first to be effected by the change.

### Baby bonus cut

The baby bonus is to be cut from \$5,400 to \$5,000 from September 1, 2012 and the government will pause indexation of the bonus until July 1, 2014. Apart from that, the 'maternity immunisation allowance' of \$258 will be terminated from July 1, 2012. The government will instead tie the Family Tax Benefit scheme eligibility criteria to a staged immunisation program.

### Students

The discount available to students electing to pay their HECS student contribution up-front will be

reduced from 20% to 10%, and the bonus on voluntary payments to the Tax Office of \$500 or more will be reduced from 10% to 5% – both taking effect from January 1, 2012.

### Other tax reforms to be delayed

The start date of the standard deduction for work related expenses will be deferred until July 1, 2013.

The start date of the 50% tax discount for interest income will be deferred until July 1, 2013.

Also, the start date of the phase down in interest withholding tax for financial institutions will be deferred until 2014-15. And the start date of the new tax system for managed investment trusts will be deferred until July 1, 2013, allowing more time for consultation with stakeholders about how to best implement the elements of the package.

### Small business vehicle deduction

Small businesses will be able to claim up to \$5,000 as an immediate deduction for buying a motor vehicle with effect from July 1, 2012. The rest of the value of the vehicle can be pooled in the general small business pool (depreciated at 15% in the first year, then 30%). The Entrepreneur Tax Offset will be abolished from the same date.

Continued – page 2

### About this newsletter

Welcome to Wiseman & Co's client information newsletter, your monthly tax and super update keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics covered, please contact us via the details below.

Tel: 03 1111 2222 | Email: [info@wiseman.com.au](mailto:info@wiseman.com.au)

Content in partnership with **Taxpayers AUSTRALIA INC**

### Also in this issue:

Family trust tax rules facing big reforms.....	3
Age limit on super contributions to be scrapped.....	4
Emergency money from your super fund; the rules.....	5
Common GST mistakes to watch for .....	6
Selling up? Don't forget the 'going concern' GST exemption .....	7
Upcoming key lodgement dates .....	8



### Co-contributions reduced, concessional cap paused, low-income catch-up tweaked

The government announced that the superannuation co-contribution matching rate will be reduced from July 2012. It also says the maximum payment level for co-contributions is to be pulled back, from \$1,000 to \$250 a year, the result of scaling back the co-contribution rate to 50% of a personal contribution, up to \$500 annually. The threshold for the payments will also fall from \$61,920 to \$46,920.

There will also be a pause in the indexation of the superannuation concessional contributions cap for one year over 2013-14, so that it remains at \$25,000. It is expected that the cap will then rise to \$30,000 for 2014-15. The \$50,000 cap for over 50-year-olds ends on June 30, 2012 anyway, and reverts to the \$25,000 that everyone else wears, regardless of age.

The only other scenario is for superannuants who have less than \$500,000 put away in super, where the cap has been left at \$50,000.

The low income superannuation contribution is also going to see changes to the eligibility criteria applied, such as giving the Tax Office responsibility for determining recipients of the rebate rather than make lodging a tax return a qualifying condition (a condition that became untenable once the government realised the tax-free threshold increase under the carbon pricing plans would negate a lot of people having to lodge a tax return anyway).

Under this initiative, individuals earning up to \$37,000 a year will effectively pay no tax on their superannuation guarantee contributions from mid-2012. However other changes from these latest reforms also means that:

- individuals who receive less than 10% of their income through employment or business will not be eligible
- individuals only receive a payment if their entitlement is at least \$20, to reduce administration costs.

### Living-away-from-home allowance and benefits

The government says, effective July 1, 2012 it will introduce reforms 'to stop individuals from being able to exploit the tax exemption' for the living-away-from-home allowance and benefits.

Under the reforms announced to the LAFHA regime:

- access to the tax exemption for temporary residents will be limited to those who maintain a residence for their own use in Australia, which they are living away from for work purposes, such as under 'fly-in/fly-out' arrangements
- individuals will be required to substantiate their actual expenditure on accommodation and food beyond a statutory amount.

Treasury says that no permanent resident legitimately using this tax exemption for accommodation and food expenses will lose any entitlements, and also that the reforms will not affect other tax concessions, such as those that apply to travel and meal allowances, and remote area fringe benefits.

The reforms will apply from July 1, 2012, which Treasury says will give it time to undertake a consultation process so that appropriate transitional arrangements can be put in place, including for regional areas. ■

**DISCLAIMER:** All information provided in this publication is of a general nature only and is not personal financial or investment advice. It does not take into account your particular objectives and circumstances. No person should act on the basis of this information without first obtaining and following the advice of a suitably qualified professional advisor. To the fullest extent permitted by law, no person involved in producing, distributing or providing the information in this publication (including Taxpayers Australia Incorporated, each of its directors, councillors, employees and contractors and the editors or authors of the information) will be liable in any way for any loss or damage suffered by any person through the use of or access to this information. The Copyright is owned exclusively by Taxpayers Australia Inc (ABN 96 075 950 284).

# Family trust tax rules facing big reforms

Treasury has released a consultation paper on the 'modernising' of the rules on taxing family trusts, with Assistant Treasurer Bill Shorten making the point in his media release that plans for reforming trust laws do not include taxing them as companies.

Shorten says the consultative process is an opportunity for more than 660,000 trusts to have their say in their own financial future, that the interaction of the trust and tax laws had been an ongoing issue for a long time, and that resolving these issues is important 'for all the farmers and small businesses in Australia who use trusts to manage their financial affairs'.

The consultation paper explores the issues that hamper the 'effective operation of the trust income tax provisions in Division 6 [of the Act]' as well as any broader impediments to the effective taxation of trusts. 'The options are designed to achieve fair and consistent tax outcomes, while assuring the community that using trusts does not provide inappropriate opportunities to manipulate the tax system,' Shorten says.

Documentation attached to the consultation paper highlights five 'principles' that Treasury says will inform the review process:

- tax liabilities in respect of the income and gains of a trust should 'follow the money', in that they should attach to the entities that receive the economic benefits from the trust
- the provisions governing the taxation of trust income should be conceptually robust, so as to minimise both anomalous results and opportunities to manipulate tax liabilities
- the provisions governing the taxation of trust income should provide certainty and minimise compliance costs and complexity
- it should be clear whether amounts obtained by trustees retain their character and source when they flow-through, or are assessed, to beneficiaries
- trust losses should generally be trapped in trusts subject to limited special rules for their use.

The government says it remains committed to its broader fiscal strategies however, so that any reformation will have to be done in ways that are revenue neutral. But it has identified some key issues that are in need of addressing, including:

- the interaction between the distributable income and taxable income of a trust



- the method by which the taxable income of a trust is allocated to either the beneficiaries or trustee of the trust
- whether the amounts received by a beneficiary retain their character and source (and when 'streaming' of those amounts is effective for tax purposes)
- the scope of Division 6 and other taxing provisions applying to trusts.

In another but related matter, the Board of Taxation considered the definition of 'fixed trust' as part of its review of the tax arrangements applying to managed investment trusts (MITs), and announced that MITs with clearly defined rights will be treated as fixed trusts. However the government says it is aware that the current restrictive definition of 'fixed trust' is an issue for trusts other than MITs and says a review of different options for a more workable approach is warranted.

Treasury has announced that it will release a separate discussion paper on the appropriateness of the current definition of 'fixed trust' for public consultation early in 2012, which will allow the government to consider the problems with the current definition and announce its response around the middle of the year.

For the consultation paper at hand however, the cut-off date for making submissions is February 10, 2012. For further instructions on making a submission, contact us on 03 1111 2222 or email [info@wiseman.com.au](mailto:info@wiseman.com.au). ■

# Age limit on super contributions to be scrapped

As many readers will be aware, the government has proposed for some time that the superannuation guarantee (SG) should be raised from 9% to 12% of a worker's salary, and announced in the 2010-11 federal budget that this would be achieved incrementally from 2013 to 2019.

At the same time, the government announced its plan to increase the age limit for receiving the SG from 70 to 75 (at present, the SG contribution payment of 9% cuts out at age 70).

But with the introduction of the first piece of legislation to increase the SG to 12%, tabled in Parliament in early November 2011, Assistant Treasurer Bill Shorten added a surprise sweetener – that the age limit on making superannuation contributions will not be raised, but will be scrapped altogether.

In his speech, Shorten said: 'Currently, the superannuation guarantee only applies to people under 70. I have decided to remove the age limit for superannuation guarantee contributions altogether. This means that an additional 18,000 Australians aged 75 and over will get the benefit of superannuation if they continue working.' The proposed change is due to commence on July 1, 2013.

Senior Australians have welcomed the news, with National Seniors chief executive Michael O'Neill saying the move gets 'a big tick' from the older workers he represents. 'Currently, employers are not required to pay superannuation towards workers aged over 69. Basically, this means the clock ticks over and you lose your super,' he says. 'It sanctions, at the highest level, the notion that seniors are worth less than their younger colleagues, and contradicts the bi-partisan view that we will all work longer as the population ages.'

But regardless of age, compulsory superannuation payments are going up. The full 3% increase in the compulsory SG will operate from 2019, with minor incremental increases as follows:

- 2013-14; 0.25%
- 2014-15; 0.25%
- from 2015; 0.5% annual increase until 2019.



Shorten noted that an employee aged 30 earning around \$70,000 today will retire with an extra \$108,000 in superannuation due to these increases to compulsory super contributions.

The Australian Institute of Superannuation Trustees (AIST) recently conducted a poll that showed more than two thirds of Australians supported the increase to the SG. 'It's nearly 10 years since super contributions were last increased and yet we've known for many years that 9% is simply not enough for a comfortable retirement,' says chief executive Fiona Reynolds.

The additional boost of continuing SG payments after age 70, as well as the increased rate of SG, has also been welcomed by the Association of Superannuation Funds of Australia (ASFA). The move would secure and improve retirement savings for most workers, says ASFA chief Pauline Vamos.

The Age Discrimination Commissioner, Susan Ryan, says the announcement is a significant achievement in the fight against age discrimination. 'This amendment sends a strong and positive message to older employees, and to their employers, that age should not be a barrier to employment, nor should it be a barrier to equal employee rights and entitlements,' she says. ■

# Emergency money from your super fund; the rules

Compassionate reasons can serve as grounds for withdrawing pre-retirement or preserved super to cover medical and related emergencies – but strict rules apply.

Administered by Medicare Australia, the compassionate grounds benefit allows super to be withdrawn in one or more of five specific circumstances, after taking into account a member's financial capacity.

Responsibility for this aspect of superannuation has recently been taken over by Medicare Australia from the Australian Prudential Regulation Authority (APRA) because of Medicare's better customer service infrastructure.

The member of a superannuation fund seeking funds under the compassionate grounds benefit provisions must provide proof that without access to money from their super fund, the specific expense could not be met.

The trust deeds of the super fund, whether that fund is an SMSF or private or industry fund, must also permit the payment of this type of benefit.

The special circumstances warranting early release of money from the super fund apply where:

- a member, or their dependant, requires medical or dental treatment. Certification is needed from two medical practitioners, including one specialist, that the treatment is essential to treat a life-threatening illness or injury, or to alleviate chronic pain or mental disturbance



- medical transport is required in order for the member or dependant to access the specified treatment. This also needs to be signed off by the same two medical practitioners
- it is needed to pay for a member's palliative care, or the palliative care, death, funeral or burial costs of a member's dependant
- home or car modifications are needed in the case of severe disability being suffered by the member or their dependant
- money is needed for mortgage repayments to prevent the forced sale of a home. Proof is required in the form of official notification from the lender that foreclosure is imminent. A maximum of three months' mortgage repayments and 12 months' interest on the outstanding loan balance can be made available.

Any benefits released are subject to normal superannuation fund tax rules, with the taxable component facing a 20% benefits tax plus Medicare of 1.5% (so a total 21.5%) where the member is under 60. Early release due to terminal illness is tax free. ■

## Did you know...

**Who are Australia's taxpayers?** Just for a bit of fun the Tax Office's Revenue Analysis Branch decided to summarise the make-up of the population by distilling Australia's taxpayer statistics down into a representative village of 100 people.

On that basis, it found the taxpaying village is divided into 52 males and 48 females. Four declared capital gains, four salary-packaged a car, and 10 received the government's superannuation co-contribution.

People lodged their tax returns in different ways:

- 71 through a tax agent
- 19 using e-tax
- 10 by paper.

Tax returns came from people in all sorts of occupations:

- 24 were blue collar workers
- 38 were white collar workers
- 14 came from the service sector
- 24 didn't specify their occupation.

Sixty five claimed work-related expenses, and of these:

- 27 claimed under \$500
- 11 claimed between \$500 and \$1,000
- 27 claimed over \$1,000.

# Common GST mistakes to watch for

It is just over a decade since GST first appeared on the tax landscape. It may not have been an anniversary that warranted cake and bubbly, but did perhaps serve as an occasion to take a look at what doesn't seem to be working so well with businesses and the GST system.



Small business has by and large been able to adapt to the GST regime – warts and all – and accounting software and computer systems have been developed and widely adopted to automate many tax compliance needs.

But mistakes still do creep in, and the Tax Office has identified the more common GST errors and omissions that businesses make. Over-claiming credits is on the Tax Office's radar, but also issues relating to record keeping, cash businesses and lax BAS habits.

Not surprisingly, many of the problems highlighted by the Tax Office are attributed to a misinterpretation of the legislation (the surprising thing being that this needed to be pointed out, given the complexity of the GST rules) with the classification of taxable supplies as 'GST-free' or 'non-taxable' high on its list of examples.

## Error watch list

Here are some of the mistakes the Tax Office has noted being made by small businesses. The list is not exhaustive, but may serve to underline areas that others have come to grief on – so you don't make the same blunders.

- Claiming a credit without a valid tax invoice. Lodging a BAS without such back-up could get you in hot water, so get a duplicate invoice from the supplier. The Tax Office has (from July 1, 2010) given some slack to the regulations, but still...
- Wrongly claiming GST credits on super or salary payments.

- Incorrect claims for GST-free purchases such as basic food items, some health services or exports.
- Claiming the total credits for a car bought for more than the luxury car limit (the maximum GST credit that can be claimed is \$5,224 – any GST paid on top of that is unfortunately not creditable, however the unclaimable GST amount may form part of the cost of the car for tax depreciation purposes).
- Incorrectly claiming GST credits on bank fees, such as cheque book fees, annual or monthly fees. Bank fees are 'input taxed' so the bank does not charge GST to its customers. There is however GST on credit card merchant fees, and so a credit can be claimed for these.
- Mistakenly putting in a claim for credits from government charges such as land tax, council rates, water rates, car registration and ASIC filing fees, where no GST has been included in these.
- Not reporting the GST on some government grants and incentive schemes that are received inclusive of GST.
- Incorrectly claiming full credits on entertainment expenses when the business has elected for FBT purposes to use the 50/50 split method (which allows only 50% of input credits to be claimed).
- Wrongly claiming a credit on the full cost of an insurance policy. There is a stamp duty component in the premium that is not subject to GST (although the actual amount of GST should be spelled out on the renewal form).
- Sole traders and partnerships not apportioning input tax credits on expenditure that is for partly business and partly private use, such as vehicle expenses. Small businesses (with annual turnover up to \$2 million) that lodge for GST quarterly or monthly can apportion private use annually rather than with each BAS.

And these mistakes can involve some serious money. Using a recent financial year as an example, the Tax Office says that of the 1,864 GST-generating taxpayers it contacted, it was able to raise an extra \$363 million in GST liabilities. Of the small business market, the Tax

Office found that most GST revisions in this exercise came from the retail trade (17% of adjustments), rental, hiring and real estate services (14%) and construction (13%). You can download a copy of the Tax Office report 'GST and integrity of business system risk' from its website.

BAS preparation can be tripped up by things such as transposing figures when completing the form, claiming a credit even though a valid tax invoice has been lost or misfiled (and not replaced by the supplier), and incorrectly transferring GST information between associated businesses. Also figuring largely in identified mistakes is the claiming of an entire tax

invoice amount when part of the transaction is not subject to GST.

If you make a mistake on your BAS, it can always be fixed. Generally the way to do this is to correct a previous BAS, but in some circumstances you can make up for the error on a future BAS. Ask us for guidance if you wish to do this.

For a good proportion of the above problem areas, accurate record keeping will go a long way to making sure these sorts of errors cannot slip through. But a weather eye will still need to be kept on one-off or sundry items not in the usual ambit of the business's core transactions, and that may not be accounted for correctly. ■

## Selling up? Don't forget the 'going concern' GST exemption

As mentioned, the goods and services tax (GST) was introduced more than a decade ago, and yet tax professionals report that the 'going concern' exemption for GST can still cause confusion when a business is sold. But getting familiar with the 'going concern' concept can mean some very real tax benefits.

A 'going concern' refers to an enterprise's ability to continue functioning as a business. And if a business is deemed to be a going concern, then the sale of the business is GST exempt.

The Tax Office says a supply of a going concern occurs when:

- 'a business is sold, and that sale includes all of the things that are necessary for the business to continue operating', and
- the business is carried on, 'up until the day of sale'.

The GST exemption can be very handy for both sides of the sale transaction, as having the going concern exemption means that the buyer of the business does not have to find extra funds to cover the GST, and therefore pays less up front for the business.



Although the buyer will be entitled to get the GST back through the input tax credit system, this will not happen until well after completion of the transaction. And, while the Tax Office will eventually refund the GST, if stamp duty is payable on the sale of the business it will be calculated on the total purchase price, which includes the amount for GST.

### What are the requirements for the exemption?

While many in business may be generally aware of the going concern exemption, there is another set of requirements that must be satisfied before the exemption applies.

Specifically, the GST legislation says that the sale will be GST-free if it meets certain requirements, including:

- the sale is 'for a payment or consideration'
- the purchaser 'is registered, or required to be registered, for GST', and

## Upcoming key lodgement dates

- 'the seller and the purchaser have agreed, in writing, that the supply is of a going concern'.

A written agreement, commonly known as a 'sale of business contract', must be entered into on or **before** the transfer of the going concern business.

This document will usually specify that the business (that is, the 'supply') is a going concern before the contracts are exchanged. This is an important point for the rule to apply, because it shows that all concerned parties expressly acknowledge that the business is indeed a going concern.

That the vendor supplies 'all of the things that are necessary' for the continued operation of an enterprise does not necessarily mean absolutely everything in the business, but refers to those things without which it could not function. Generally, this includes the necessary assets such as premises, plant and equipment and customer contracts, as well as the operating structure and processes such as ongoing advertising.

And while the vendor needs to carry on the business 'up until the day of sale', the legislation only specifies that the business is deemed to be transferred on the date on which 'effective control and possession' of the business is handed over to the buyer. While this date generally refers to the settlement date, 'the day of sale' may occur before or after the settlement date.

While there are advantages for a buyer of a business in terms of cash flow and stamp duty savings, the liability risk (in case the Tax Office does not view the sale as a supply of a 'going concern') ultimately lies with the seller, as it is the 'supplier' in any transaction that is required to remit GST to the Tax Office.

For this reason, some vendors include a clause in the sale contract requiring the buyer to indemnify the vendor for any GST that may be payable in the event that the Tax Office does not view the transaction as one of a going concern. ■



## Upcoming key lodgement dates:

The following deadlines are for lodgement with the Tax Office. Please make sure to get your documentation into this office in plenty of time to allow proper processing.

<b>15 January 2012</b>	Income tax return for taxable large/medium business taxpayers as per latest year lodged.  all entities other than individuals - unless required earlier (payment for companies and super funds was due 1 December 2011).  Income tax return for taxable head company of a consolidated group - including new registrants - that has a member who has been deemed a large/medium business taxpayer in the latest year lodged (payment was due 1 December 2011).  <b>Note:</b> You cannot adopt a later lodgement date on the basis that you will be non-taxable in the current year.
<b>21 January 2012</b>	Quarterly PAYG instalment activity statement - head companies of consolidated groups - quarter 2, 2011-12.  Monthly activity statement for December 2011.
<b>28 January 2012</b>	Superannuation guarantee contributions, for quarter 2, 2011-12 - contributions to be made to the fund by this date.
<b>31 January 2012</b>	Quarterly TFN report for closely held trusts for TFNs quoted to a trustee by beneficiaries in quarter 2, 2011-12.