

client alert | explanatory memorandum

August 2008

Tax rates changes

The *Tax Laws Amendment (Personal Income Tax Reduction) Bill 2008* received Royal Assent on 23 June 2008. The Bill contains the following amendments:

- changing the personal marginal income tax rates;
- increasing the low-income tax offset; and
- increasing the income threshold at which Medicare levy becomes payable for taxpayers who are eligible for the senior Australians tax offset (SATO).

Tax rates and thresholds

The following table summarises the personal tax rates for residents as assented:

From 1 July 2008		From 1 July 2009		From 1 July 2010	
Taxable income (\$)	Rate (%)	Taxable income (\$)	Rate (%)	Taxable income (\$)	Rate (%)
0 – 6,000	0	0 – 6,000	0	0 – 6,000	0
6,001 – 34,000	15	6,001 – 35,000	15	6,001 – 37,000	15
34,001 – 80,000	30	35,001 – 80,000	30	37,001 – 80,000	30
80,001 – 180,000	40	80,001 – 180,000	38	80,001 – 180,000	37
180,001+	45	180,001+	45	180,001+	45

The low-income tax offsets for the relevant years are:

	From 1 July 2008	From 1 July 2009	From 1 July 2010
Max taxable income (\$)	60,000	63,750	67,500
Offset amount (\$)	1,200	1,350	1,500

The Medicare levy threshold amounts for senior Australians who are eligible for the SATO are:

	From 1 July 2008	From 1 July 2009	From 1 July 2010
Threshold amount, individuals (\$)	28,867	29,867	30,685
Phase-in limit, individuals (\$)	33,961	35,137	36,100
Phase-in limit, couples (\$)	49,412	51,177	52,353

Tax laws amendments

The Government introduced *Tax Laws Amendment (2008 Measures No 4) Bill 2008* into the House of Representatives to amend:

- ITAA 1997 to provide relief from CGT for private health insurance policy holders when their insurer demutualises to a for-profit insurer;
- Schedule 2F of ITAA 1936 to change the definition of "family" and to remove the ability for family trusts to make a one-off variation to the test individual specified in a family trust election; and
- taxation laws generally to make technical corrections and other minor amendments.

A brief discussion of the proposed amendments follows.

CGT and health fund demutualisation

The Bill inserts a new Division 315 into ITAA 1997, which will disregard capital gains or losses made by both policy holders (current and former) and a health fund that arise from transactions that occur as part of the health fund's demutualisation.

Gain or loss of policy holders

The Bill provides that a policy holder's capital gains or losses will be disregarded for CGT events that happen to: (a) an interest the policy holder has in the insurer as a policy holder, either held directly or on trust; (b) a right or any other kind of interest the policy holder has in the insurer; and (c) a right or any other kind of interest that arises under the demutualisation. However, gains or losses that arise on transactions after this time will not be entitled to relief (even if the transaction occurs as part of the broad scheme for reorganising the private health insurer's affairs).

Similar requirements apply to gains or losses made by former policy holders or other insured persons.

Where a policy holder (current or former) or other insured person dies during the demutualisation process, any capital gains or losses that arise to their legal personal representative (LPR) or a beneficiary of their estate under the insurer's demutualisation will likewise be disregarded for CGT events that happen to the above interests or rights that the deceased individual had in the insurer (including interest held on trust).

Gain or loss of insurer disregarded

The Bill also provides that capital gains or losses that arise under the demutualisation process to the insurer will be disregarded.

To be eligible for the CGT relief, the private health insurer must be a tax exempt entity under item 6.3 in section 50-30 of ITAA 1997, and the Private Health Insurance Administration Council must approve the insurer's conversion under the *Private Health Insurance Act 2007*.

Likewise, gains or losses that arise to other entities will also be disregarded if the following requirements are met: (a) the entity must be established for the sole purpose of participating in the private health insurer's demutualisation; (b) the entity must not be a trust that is covered by Subdivision 315-C (which provides for the operation of a lost policy holders trust); and (c) the capital gains or losses realised by the entity must be connected to the allocation or distribution of the insurer's accumulated mutual surplus and arise either prior to, or at the time of, the surplus being allocated or distributed.

Cost base of issued shares or rights

Participating policy holders who receive shares under the demutualisation process (either in the insurer or another company) will be taken to have acquired the shares at the time they were issued. The first element of the cost base of shares issued in the insurer will be equal to the share's market value on the day of issue. Where an insurer distributes its mutual surplus in the form of shares in another company, the first element of the cost base of each of the shares issued in the company is equal to the demutualising private health insurer's

market value on the day shares in the other company are issued divided by the total number of shares issued in the company under the demutualisation and any shares that can be acquired by exercising rights that are issued under the demutualisation process. Similar rules apply to the time of acquisition and cost base of rights issued under the demutualisation process.

Importantly, these market value cost base rules will only apply where the following requirements are met: (a) the shares or rights must be issued simultaneously to all participating policy holders and the trustee of the lost policy holders trust; (b) where shares are issued, the shares must be issued in the demutualised insurer or a company that acquires, and wholly owns, the insurer under the demutualisation; and (c) where rights to acquire shares are issued, the rights must allow only for shares in the insurer or a company that wholly owns the insurer to be acquired and the rights must not have an exercise price. However, subsequent dealings with the shares or rights by the participating policy holders will be subject to CGT.

Lost policy holders trust

Where a trust is set up to hold shares or rights as part of the demutualisation process for lost or overseas policy holders, the Bill also provides for shares and rights issued to the trustee of a lost policy holders trust to be held by the trust and transferred to the policy holders (or their LPR) without adverse or advantageous CGT consequences for either the trustee or the lost policy holder. (However, any capital gains arising from the trustee dealing with the shares or rights in the lost policy holders trust in any other way will, broadly, be assessed to the trustee under section 99A of ITAA 1936.)

The trustee of the lost policy holders trust who receives shares or rights will be taken to have acquired the shares or rights at their issue time. The first element of the cost base of shares or rights issued to the trustee of a lost policy holders trust will be equal to the share's market value on the day of issue. The first element of the cost base of each of the shares issued in a holding company will generally be equal to the share's market value on the day of issue, subject to variation if the holding company owns other assets.

Furthermore, "found" policy holders will be taken to have acquired each of the shares or rights at the same time as the trustee of the lost policy holders trust acquired them, and at the trustee's cost base. Likewise, if a lost policy holder dies before receiving shares or rights from the lost policy holders trust, their LPR or beneficiary (as the case may be) will be taken to have acquired the shares or rights at the same time they were acquired by the trustee of the lost policy holders trust, and at the trustee's cost base.

Deceased policy holder

If a policy holder dies during the demutualisation process before receiving shares or rights, those shares or rights will typically be issued to their LPR who will be taken, for CGT purposes, to have acquired each of the shares or rights at their issue time and received the same first element of the cost base for each of the shares or rights that the deceased would have received. Further, any capital gains or losses arising to the LPR from each of the shares or rights passing to a beneficiary of the deceased's estate will be disregarded.

Likewise, a beneficiary of the deceased's estate who receives these shares or rights will be taken, for CGT purposes, to have acquired each of the shares or rights at the same time as the LPR acquired them for a cost base equal to the share or right's cost base in the LPR's hands.

Cash payments

If a private health insurer distributes its mutual surplus in the form of a cash payment, the recipient policy holder (current or former) or other insured person will not need to include any amount in their assessable income as a result of receiving that payment, provided the payment is made in connection with the individual having rights or other assets in the demutualising insurer varied or cancelled.

Date of effect

These amendments apply to demutualisations that occur on or after 1 July 2007.

Current law

Currently, policy holders of a health insurer do not have any CGT relief when the insurer converts, by demutualising, to a for-profit insurer.

Implications for taxpayers

Policy holders who held private health insurance with NIB on 20 March 2007 and received either shares or a cash payment from the sale of shares (through participating in the Pre-listing Share Sale Opportunity) under the demutualisation of NIB, which took place on 1 October 2007, will be affected by the amendments.

The Tax Office has stated that the amendments, if enacted, will apply to the demutualisation of NIB. Therefore, it will allow taxpayers to lodge their 2007-08 tax returns without including any capital gain from the receipt of NIB shares. In addition, the Tax Office states that it will advise taxpayers the amount (if any) to include in their tax returns at a later time.

The Tax Office has advised that the capital proceeds received from the disposal of NIB shares will depend on whether a taxpayer sold the shares by participating in the Pre-listing or by selling on the ASX. If the taxpayer sold his or her shares through the Pre-listing, the amount received was \$0.85 per share. If the taxpayer sold his or her shares on the ASX, the capital proceeds was the amount received.

Taxpayers who still hold their NIB shares on 1 July 2008 would not have made a capital gain or loss from the demutualisation. However, the Tax Office advises taxpayers to maintain records of the cost base for the shares and their time of acquisition for CGT purposes.

The first element cost base of each of the shares issued will be equal to the share's market value on the day of issue, which is 1 October 2007. The Tax Office says that it will work with NIB to provide policy holders with information about the share's market value on the day of issue.

Family trust amendments

The Bill proposes to amend Schedule 2F to ITAA 1936 to change the definition of "family" in the family trust election rules and to remove the ability for family trusts to make a variation to the test individual specified in a family trust election. (These amendments were announced in the 2008-09 Federal Budget: see the June issue.)

Definition of "family"

The Bill will amend Schedule 2F to change the definition of "family" in the family trust election rules to limit lineal descendants to children or grandchildren of the test individual or of the test individual's spouse, i.e. the definition of "family" that existed before the change introduced by the *Tax Laws Amendment No 4 Act 2007* will be restored.

The amendment will take effect from 1 July 2008.

Pre-No 4 Act definition of "family"

Prior to the enactment of the No 4 Act of 2007, the family of an individual was defined as:

- a) any parent, grandparent, brother, sister, nephew, niece, child, or grandchild of:
 - i. the individual; or
 - ii. the individual's spouse; or
- b) the spouse of the individual or anyone who is a member of the individual's family of the above.

Variation to test individual

The Bill will also amend Schedule 2F to prevent family trusts from making a one-off variation to the test individual specified in a family trust election (other than in relation to a marriage breakdown), which was also introduced by the No 4 Act of 2007.

A transitional measure is contained in the Bill to allow family trusts that meet the conditions specified in section 272-80(5A) of Schedule 2F to ITAA 1936 to make a one-off variation valid for the 2007-08 income year. A family trust that makes such a variation will revert back to the test individual specified in the original family trust election from the 2008-09 income year.

If an interposed entity election has been made or is made in relation to a family trust for the 2007-08 income year, the test individual for the purpose of the interposed entity election will be the new individual specified

in the variation made under section 272-80(5A). For the 2008-09 income year and later income years, the test individual for the purpose of the interposed entity election will revert back to the test individual specified in the original family trust election.

The following example is from the EM to the Bill.

The trustee of the Bennetts trust has made a family trust election pursuant to section 272-80 and has specified Peter as the test individual.

The trustee instead wanted to make the family trust election so that Aaron, Peter's child, was the test individual of the trust. The trustee of the Bennetts trust resolves to make a one-off variation to the family trust election to specify Aaron as the test individual for the 2007-08 income year and later income years. Under the old law, the trustee would have been able to make the variation in the Bennetts' trust return for the 2007-08 income year and later income years (assuming the conditions to do so were met).

As a variation of the test individual of a trust cannot now be made other than specifically in relation to the 2007-08 income year or a marriage breakdown, the trustee will only be able to make a one-off variation to specify Aaron as the test individual of the trust for the 2007-08 income year. Peter, who was the original test individual specified by the trustee, will become the test individual again for the 2008-09 income year and later income years.

The amendment will take effect from 1 July 2008.

No 4 Act and variation of test individual

Prior to the enactment of the No 4 Act of 2007, a family trust was not allowed to vary the test individual specified in a family trust election.

Current law

Currently, the definition of "family" includes any lineal descendant of a nephew, niece or child of a test individual or the test individual's spouse.

In addition, a one-off variation to the test individual specified in a family trust election is available if the new test individual was a member of the original test individual's family at the election commencement time.

Changes introduced by the No 4 Act of 2007

The No 4 Act of 2007 amended Schedule 2F of ITAA 1937, which was achieved by:

- allowing family trust elections and interposed entity elections to be revoked in limited circumstances;
- allowing the variation of the test individual specified in a family trust election in limited circumstances;
- broadening the definition of "family" to include lineal descendants;
- ensuring that the death of a family member does not, by itself, result in another family member ceasing to be a member of the family; and
- exempting distributions made to former spouses, former widows/widowers and former step-children from family trust distribution tax.

The Government has announced that it would only make amendments to reverse the definition of "family" and one-off variation to the test individual specified in a family trust election.

Minor amendments

The Bill will make various minor amendments to the taxation laws generally in relation to incorrect terminology, grammatical or punctuation errors, missing asterisks from defined terms, inoperative material, ambiguities and the addition of non-operative notes to assist in navigating the tax law.

The amendments will be made to a range of sections across the following Acts: *Fringe Benefits Tax Assessment Act 1986*; ITAA 1936; ITAA 1997; *Income Tax (Transitional Provision) Act 1997*; *Taxation Administration Act 1953*; and *Superannuation Guarantee (Administration) Act 1992*; GST Act; *Taxation*

(Interest on Overpayments and Early Payments) Act 1983; and Income Tax (Deferred Interest Securities) (Tax File Number Withholding Tax) Act 1991.

These amendments will apply from the date of Royal Assent to the Bill, unless otherwise stated. Where a retrospective date applies, this will not disadvantage taxpayers.

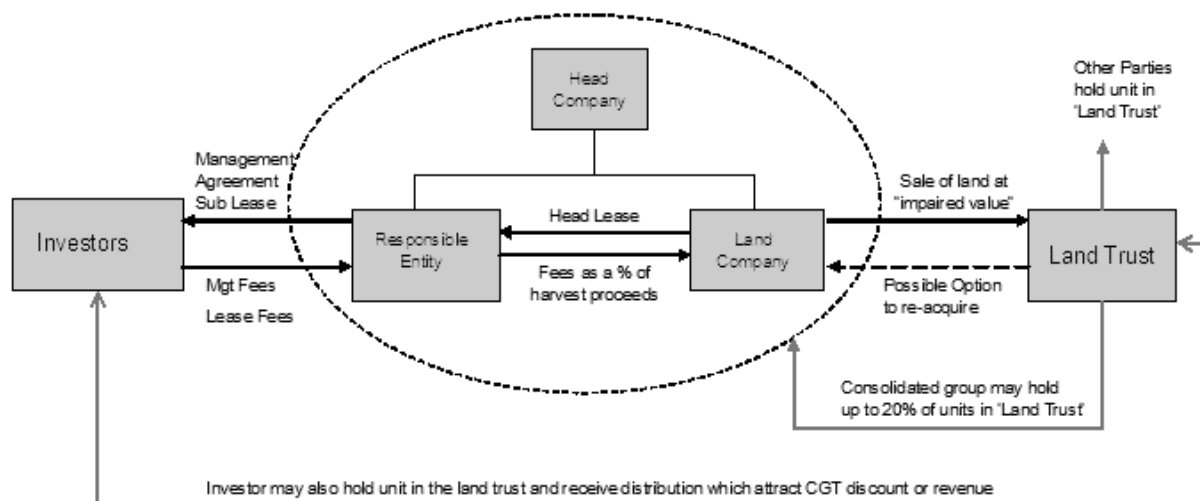
Taxpayer Alerts

The Tax Office has released two Taxpayer Alerts warning taxpayers of certain arrangements that are currently being examined.

Land impairment trust arrangements

In Taxpayer Alert TA 2008/11, the Commissioner warns taxpayers that he is currently examining land impairment trust arrangements associated with forestry managed investment schemes (MIS). In the media release accompanying the Alert, the Commissioner said that these arrangements involve land being sold at a loss because it is leased for growing trees under a forestry MIS until an agreed date, usually many years in the future.

The structure of the arrangement is summarised diagrammatically below:



Source: Taxpayer Alert 2008/11

Features which concern Tax Office

The Tax Office says that, depending upon the individual facts and circumstances, it considers that arrangements that have the above features may give rise to taxation issues, including whether:

1. the sale of land by the land company to the land trust is at an impaired value and, if so, whether it gives rise to a revenue or capital loss;
2. the distributions from the land trust to unit holders (these may include growers, the forestry manager or other entities) should have a capital or revenue character;
3. the sale of land by the land company to the land trust is at an impaired value and, if so, whether it gives rise to a revenue or capital loss;
4. the distributions from the land trust to unit holders (these may include growers, the forestry manager or other entities) should have a capital or revenue character;
5. the proceeds from disposal of the units in the land trust by unit-holders should have a capital or revenue character;

6. the forestry MIS arrangement will meet the requirements of Division 394 of ITAA 1997 (particularly the 70% direct forestry expenditure test);
7. the potential application of Part IVA to cancel a tax benefit arising from a scheme involving some or all of the transactions in the arrangement; and
8. any entity involved in the arrangement is a promoter of a tax exploitation scheme for the purposes of Division 290 of Schedule 1 to TAA 1953.

The Alert states that if a taxpayer is an entity covered by the defined class of entities in a current forestry MIS product ruling, the tax implications outlined in that Ruling will apply, provided that the forestry MIS arrangement is implemented in accordance with the Ruling. Specifically, the entity's entitlement to deductions under section 8-1 of ITAA 1997 will not be affected by its entry into the land trust arrangement. However, the taxation consequences of distributions from these land trust arrangements are not covered by such product rulings.

In the media release, the Commissioner said the Tax Office was "particularly focusing on whether the arrangement really gives rise to a revenue or capital loss and how future distributions from the land trust should be treated for tax purposes". The Commissioner also advised that taxpayers who have claimed deductions for any losses they incurred under these arrangements should contact the Tax Office for assistance. He added that if taxpayers contact the Tax Office before it contacts them for an audit, they will be entitled to a reduction in any penalties that might apply.

Non-cash contributions to super funds

In Taxpayer Alert TA 2008/12, the Commissioner warns taxpayers that he is currently examining arrangements that have features which are designed to allow a member of a superannuation fund to circumvent the new superannuation contributions limits that came into effect from 1 July 2007.

According to the Alert, these arrangements generally involve self-managed superannuation funds (SMSFs) but need not be limited to SMSFs.

The Commissioner says that such arrangements have one or more of the following features:

1. an in-specie contribution is made to a fund and the fund does not recognise and record the contribution at the true market value of the asset in its accounts;
2. an expense is paid on behalf of the fund (e.g., by an employer of members of the fund) and does not subsequently seek reimbursement from the fund. Alternatively, the fund pays the expense but seeks reimbursement from another person (e.g., an employer of members of the fund);
3. an improvement is made to an asset of the fund by a person (e.g., a member of the fund or their associate) to increase the asset's value without seeking reimbursement from the fund; and
4. all units in a non-leveraged unit trust or shares in a company are owned by a person (e.g., a member of the fund or their associate) in conjunction with the trustee of a fund, and further units or shares are issued or the rights attached to the units or shares are altered so that the value owned by the fund is increased.

The Tax Office considers that these arrangements may give rise to taxation and superannuation regulatory issues, including whether:

1. the trustee of the fund has properly recognised that the arrangement involves a contribution to the fund that must be allocated to a member and reported for the purposes of the excess contributions taxes under Division 292 of ITAA 1997 at its market value;
2. the contributor is subject to the correct amount of tax when an asset is contributed to the fund;
3. the general value-shifting regime in Division 725 of ITAA 1997 applies when rights in respect of particular investments by the fund are varied and value shifting occurs; and
4. the exclusion of superannuation contributions from FBT applies if the contribution is for the benefit of an employee.

In the media release accompanying the Taxpayer Alert, the Commissioner said that the Tax Office will "follow up on excess contributions to superannuation so people need to make sure they don't exceed the cap

or they will receive an excess contributions tax assessment". Further, the Commissioner said that taxpayers need to consider any income, capital gains and fringe benefits tax implications when transferring assets into a superannuation fund.

Annual contributions limits

Broadly, the tax treatment and the annual contributions limits are set out in the table below:

Type of contribution	Annual contribution limit – per person (\$)	Excess contributions tax¹ (%)
Concessional	50,000 ²	31.5
Non-concessional	150,000	46.5
TFN not quoted	N/A	46.5

1. A member who has exceeded his or her annual contributions limit for a financial year is personally liable to pay excess concessional contributions tax.
2. For people aged 50 and over, the annual cap is \$100,000 until 30 June 2012. From 1 July 2012, the annual concessional contributions cap drops to a universal \$50,000, regardless of age.

Excess contributions tax

If a member exceeds the annual contributions limits, the member is liable for excess contributions tax, which he or she is personally liable to pay. In addition, a member who exceeds the non-concessional contributions cap for a financial year must withdraw an amount from his or her superannuation fund that is equal to the tax liability by providing a release authority to the superannuation provider.

The Commissioner will issue an excess contributions tax assessment in relation to a financial year. The excess contributions tax must be paid within 21 days of receiving the assessment. (General interest charge is payable on unpaid amounts starting from the day the excess contributions tax was due to be paid.) Furthermore, the Commissioner must give a taxpayer a "release authority" in respect of the excess contributions tax a member is liable to pay after making an assessment. The release authority allows the member to withdraw from his or her superannuation fund (other than a defined benefit interest) the amount to pay the excess contributions tax.

For an excess concessional contributions tax assessment, the member can choose whether or not to give the release authority to the complying superannuation fund holding his or her superannuation interest to withdraw up to the amount of the excess contributions tax. The release authority must be given to the superannuation fund within 90 days after the date of the release authority.

For an excess non-concessional contributions tax assessment, the member must give the release authority to his or her superannuation fund within 21 days after the date of the release authority to withdraw an amount equal to her or his tax liability. The balance of the excess contributions remains in the fund. If the member fails to give the release authority within 21 days to the superannuation fund, an administrative penalty of 20 penalty units (i.e. \$2,200) applies.

Expansion of fuel tax credits

The eligibility for fuel tax credits has been expanded from 1 July 2008 to include all taxable fuels that a taxpayer uses in machinery, plant and equipment for his or her business activities, provided the fuel is not used in a vehicle with a gross vehicle mass (GVM) of 4.5 tonnes or less travelling on a public road.

According to the Tax Office, the changes mean that most businesses are now eligible for the scheme, including those operating in construction, manufacturing, wholesale/retail, property management and landscaping.

The Tax Office has provided the following examples of business equipment that a business can claim credits for:

- all-terrain bikes (off-road use)
- asphalt pavers
- augers
- backhoes
- blower vacuums
- bobcats
- bulldozers
- cement mixers
- chainsaws
- compactors
- compressors
- cranes
- crushers
- dredges
- drills
- excavators
- front end loaders
- graders
- hoists
- lawn mowers
- motorcycles (off-road use)
- outboard motors
- pumps
- rollers
- wacker-packers
- whipper-snippers
- winches

Eligibility for the fuel tax credits

For a business to claim fuel tax credits, the following criteria must be met:

- the business is registered for both GST and fuel tax credits; and
- the fuel and business activities are not specifically excluded (see below).

The Commissioner has stated that an entity's entitlement to fuel tax credits is not affected by whether the entity was (or was not) registered at the time the fuel was acquired (see ATO ID 2007/43).

Additional eligibility requirements may apply if a business is claiming a credit for a heavy diesel vehicle that was manufactured before 1 January 1996, or if the total credits to be claimed in a financial year are likely to exceed \$3 million.

Eligible fuels

A business can claim fuel tax credits for any taxable fuel that it acquires, manufactures, or imports for use in the carrying on of its business, provided the fuel is not specifically excluded.

The term "taxable fuel" refers to fuel where excise or customs duty is required to be paid on it. Examples of taxable fuels are diesel, petrol, kerosene, heating oil, toluene and fuel oil.

Excluded activity and fuels

A business is not entitled to a fuel tax credit if:

- the fuel is used in a vehicle with a GVM of 4.5 tonnes or less travelling on a public road; or
- the fuel is used in an aircraft and the fuel was entered for home consumption for that use.

The following are not eligible fuels for the purpose of the fuel tax credits scheme:

- aviation fuels; and
- alternative fuels such as liquefied petroleum gas (LPG), compressed natural gas (CNG), liquefied natural gas (LNG), ethanol and biodiesel.

Diesel blends

A business is entitled to claim fuel tax credits for a diesel blend if the latter is a blend of diesel and biodiesel, and the blend meets the fuel standard for diesel under the Fuel Quality Standards Act 2000.

Rates of credits

Business activity	Eligible fuel	Rate per litre (as at 1 July 2008)
Vehicle greater than GMV of 4.5 tonne travelling on a public road ¹	All taxable fuels	\$0.1851 ²
Emergency vehicles greater than GMV of 4.5 tonne travelling on a public road ¹	All taxable fuels	\$0.1851 ²
Specified activities eligible since 1 July 2006 in: <ul style="list-style-type: none"> ▪ agriculture ▪ fishing ▪ forestry ▪ mining ▪ marine transport ▪ rail transport ▪ nursing and medical 	All taxable fuels	\$0.38143
Burner applications	All taxable fuels	\$0.38143
Non-fuel uses, such as mould released or ingredient in manufacturing	All taxable fuels	\$0.38143
Packaging fuels in containers of 20 litres or less for non-internal combustion engine use	Mineral turpentine, white spirit, kerosene and certain other fuels	\$0.38143
Supply of fuel for domestic heating	Heating oil and kerosene	\$0.38143
Electricity generated by a commercial generation plant, a stationary generator or a portable generator	All taxable fuels	\$0.38143
Emergency vessels	All taxable fuels	\$0.38143
All other activities, machinery, plant and equipment	All taxable fuels	\$0.190715

1. Diesel vehicles acquired before 1 July 2006 can equal 4.5 tonne GVM.
2. From 1 January 2009, the rate will reduce to \$0.17143 per litre.

Income tax and fuel tax credits

Fuel tax credits received by a business are assessable income. In addition, the credits are also included in the calculation of the business's PAYG instalment income.

Acquisition of artworks and antiques

In a recent AAT case, the Tribunal set aside the Commissioner's decision to retrospectively cancel the GST registration of a taxpayer whose sole activity was the acquisition of artworks and antiques. Based on the evidence presented by the taxpayer, the Tribunal was satisfied that it was carrying on an enterprise and entitled to be registered for GST: AAT Case [2008] AATA 461, AAT, Ref No WT2006000907, Sweidan SM, 28 May 2008.

Background

The taxpayer was a company and was registered for GST since 1 July 2000.

Between July 2000 and November 2005, the taxpayer had spent approximately \$4.8 million on acquisitions of artworks and antiques, which were treated as creditable acquisitions and input credits were claimed. These claims were made on the basis that the acquisitions had been made in the course of an "enterprise". For the same period, the taxpayer had only sold three items, which were sold by engaging art dealers. However, the taxpayer had suffered financial losses as a result of the sale.

The taxpayer had kept the artworks and antiques in the private residences of a director.

In November 2005, the Commissioner cancelled the taxpayer's GST registration, which was backdated to 1 October 2001. The Commissioner's contention was that the taxpayer was not carrying on an enterprise for the purposes of section 9-20 of the GST Act, but rather the activities of the taxpayer were a private recreational pursuit or hobby.

The Commissioner also contended that a taxpayer who was a long-term investor in serious art and antiques could not be said to be carrying on a business, either in substance or form. He said that the keeping of the artworks and antiques in the private residences of the director, where they were readily available for private enjoyment, supported this contention. He argued further that the classification of the artworks as "fixed assets" meant that the items were regarded as "long-term investments" rather than as "trading stock".

The taxpayer's contended that the repetitive nature of its activities and their frequency were indicative that it was carrying on an enterprise. Further, the amounts expended in acquiring the artworks and antiques were consistent with commercial activity.

Decision

The Tribunal held that the taxpayer at all relevant times was carrying on an enterprise. It was of the view that in its ordinary meaning, an enterprise consisted of an activity or activities comprising one or more transactions entered into for business or commercial purposes.

In reaching its decision, the Tribunal considered the indicators that exemplified the carrying on of a business, which were established by case law and enounced in Taxation Ruling TR 97/11. The Tribunal rejected the Commissioner's contention that the taxpayer's activities amounted to a hobby. It found that there were no facts to support this contention. On the contrary, the Tribunal observed that the evidence had shown the activities of the taxpayer were "conducted in accordance with a pre-formulated policy, coupled with a carefully devised investment strategy". The Tribunal noted that the taxpayer retained specialist art consultants, kept detailed accounting records, and insured and properly stored the artwork, which were characterised by system, repetition and regularity. The Tribunal also noted that a profit motive existed because the artworks were acquired with the intention of eventually selling them at a profit.

The acquisition of an asset, even by way of a long-term investment, could still be acquired with the purpose of eventually disposing of it by way of or in the course of the business based on a legal precedent established by case law, the Tribunal stated. As such, the Tribunal rejected the Commissioner's contention that an acquisition of an asset as a long-term investment could not be viewed as being an acquisition for business or commercial purposes.

The Tribunal was of the view that "the test of whether [a taxpayer] has, objectively viewed, as a matter of fact commenced or continued to engage in an enterprise, being an activity or series of activities comprised of one or more transactions entered into for business or commercial purposes, done in the form of a business or

in the form of an adventure in the nature of trade". Therefore, the Tribunal found that all indicators of what constituted the carrying on of a business were present and that the taxpayer's activities were an enterprise for the purposes of GST Act. Accordingly, the Tribunal held that the taxpayer was entitled to be registered for GST.

Legislative framework

The requirements to be registered for GST are contained in Division 23 of the GST Act. For a taxpayer to be eligible for GST registration, two fundamental requirements must be fulfilled – the taxpayer must be an entity, and either be carrying on an enterprise or intending to carry on an enterprise: see section 23-10. Although the terms of entity and enterprise are defined in the GST Act, no formal indicators have been enshrined in the legislation that must be considered in determining whether an activity or series of activities constitutes the carrying on of an enterprise.

Section 9-20 of the GST Act defines an enterprise as an activity or series of activities, which includes the carrying on of a business. The term "business" is defined in section 195-1 of the GST Act to include "any professional, trade, employment, vocation or calling, but does not include occupation as an employee". The definition of "business" contained within the GST Act mirrors that of section 995-1 of ITAA 1997. Unfortunately, neither the GST Act nor ITAA 1997 definitions state whether an activity or series of activities amounts to the carrying on of a business. Therefore, the indicators of what constitutes the carrying on of a business have, traditionally, been formulated by various court and tribunal decisions. Taxation Ruling TR 97/11 provides the Tax Office's view of when a business is being carried out.

(See the April 2008 issue for a write-up of the indicators of when an entity is carrying on a business.)

Superannuation rates and thresholds

The Tax Office has published a summary of the 2008-09 indexed superannuation rates and thresholds. These rates and thresholds include the superannuation contributions caps, the threshold amounts for concessional taxed superannuation lump sums, employment termination payments, superannuation guarantee and superannuation co-contributions.

Contributions caps

Contribution	2008-09	2007-08
Concessional ¹	\$50,000	\$50,000
Non-concession ²	\$150,000	\$150,000

1. For members aged 50-74, the annual concessional contributions cap is \$100,000 until 30 June 2012.
2. For members aged under 65, the "bring forward" rule will be triggered automatically when contributions in excess of the non-concessional contributions cap are made in a financial year.

CGT cap amount

A taxpayer can exclude superannuation contributions from his or her non-concessional contributions cap up to the indexed lifetime CGT cap amount. The cap amounts for the 2008-09 and 2007-08 income years are as shown below:

Income year	Cap amount
2008-09	\$1.045 million
2007-08	\$1 million

Superannuation benefits

Benefit	2008-09	2007-08
Low rate cap amount	\$145,000	\$140,000
Untaxed plan cap amount	\$1.045 million	\$1 million

Employment related payments

Life benefit and death benefit employment termination payments

Payment	2008-09	2007-08
Cap amount for life benefit termination payment	\$145,000	\$140,000
Cap amount for death benefit termination payment	\$1.045 million	\$1 million

Transitional employment termination payments

The taxable component of a transitional termination payment will be taxed at no more than 15% up to the lower cap amount and no more than 30% on the amount which exceeds the lower cap but does not exceed the upper cap amounts. Amounts in excess of the upper cap amount will be taxed at the top marginal rate. The cap amounts for transitional employment termination payments are as shown below:

Income year	Lower cap amount	Upper cap amount
2008-09	\$145,000	\$1 million
2007-08	\$140,000	\$1 million

Genuine redundancy payments and early retirement scheme payments

Income year	Base limit	For each complete year of service
2008-09	\$7,350	\$3,676
2007-08	\$7,020	\$3,511

Superannuation guarantee – maximum contribution base

An employer does not need to provide the minimum 9% superannuation guarantee support for an employee in a quarter for the part of the employee's earnings above the maximum contribution base.

Income year	Per quarter
2008-09	\$38,180
2007-08	\$36,470

Superannuation co-contribution

The lower assessable income threshold to qualify for the maximum co-contribution and the higher income threshold where the co-contribution completely phases out are:

Income year	Lower income threshold	Upper income threshold
2008-09	\$30,342	\$60,342
2007-08	\$28,980	\$58,980

Child support and tax

The Government has announced a range of new measures aimed at boosting the collection of child support payments (CSP). The measures include:

- requiring both parents to lodge a tax return. For the 2007-08 financial year, all CSP parents must lodge a tax return unless their taxable income was less than \$18,252 and they received Australian Government pensions, allowances or payments (see below for a detailed explanation); and
- stopping salary sacrifice being used to minimise child support obligations. The Child Support Agency is working with the Tax Office to automatically add salary sacrifice amounts to income for child support purposes, to ensure child support assessments are correct and people are not salary sacrificing in order to reduce their child support income.

Related amendment

The Commissioner has issued a Legislative Instrument that requires all individuals who are either a liable parent or a recipient parent under a child support assessment to lodge a tax return for the year ended 30 June 2008, unless the individual's taxable income for the year was less than \$18,252 and received Australian Government pensions, allowances or payments, which are listed below.

Category	Description
Allowances and payments	<ul style="list-style-type: none"> ▪ Parenting payment (partnered) ▪ Newstart allowance ▪ Youth allowance ▪ Mature age allowance ▪ Partner payment ▪ Sickness benefit ▪ Widow allowance ▪ Austudy payment ▪ Exceptional circumstances relief payments or farm help income support ▪ Interim income support payment ▪ Cyclone Larry income support payment or Cyclone Monica income support payment
Education payment and the individual was age 16 or older	<ul style="list-style-type: none"> ▪ ABSTUDY living allowance ▪ Payment under the Veterans' Children Education Scheme ▪ Payment under the Military Rehabilitation and Compensation Act Education and Training Scheme
Commonwealth labour market programs	<ul style="list-style-type: none"> ▪ Training for Employment Program allowance ▪ New Enterprise Incentive Scheme allowance ▪ Textile, clothing and footwear special allowance

Category	Description
	<ul style="list-style-type: none"> ▪ Green Corps training allowance ▪ Other taxable Commonwealth education or training payments ▪ Income support component from a Community Development Employment Project ▪ CDEP Scheme participant supplement ▪ Northern Territory CDEP transition payment ▪ Equine Workers Hardship Wage Supplement payment
Pensions and allowances	<ul style="list-style-type: none"> ▪ Age pension ▪ Bereavement allowance ▪ Carer payment ▪ Disability support pension (where the taxpayer is of age pension age) ▪ Education entry payment ▪ Parenting payment (single) ▪ Widow B pension <hr/> <ul style="list-style-type: none"> ▪ Wife pension (where the taxpayer or their spouse is of age pension age) ▪ Age service pension ▪ Income support supplement ▪ Defence Force Income Support Allowance (DFISA), where the pension, payment or allowance to which it relates is taxable ▪ DFISA-like payments from the Department of Veterans' Affairs ▪ Invalidity service pension (where taxpayer or spouse is of age pension age) ▪ Partner service pension

PAYG withholding

The *Taxation Administration Amendment Regulations 2008 (No 1)* were registered on 25 June 2008. The Regulations will deliver half of the benefit of the low-income tax offset to eligible individuals via withholding schedules from 1 July 2008. That is, from 1 July 2008, 50% of the low-income tax offset will be taken into account in determining the PAYG withholding amount for eligible individuals, with the remainder of the offset entitlement to be paid upon assessment of their income tax return.

Low-income tax offset

The low-income tax offset for 2008-09 is \$1,200. The maximum tax offset begins to phase out at 4 cents per dollar where a taxpayer's taxable income is over \$30,000. To ensure that all taxpayers who are entitled to the offset receive half of their entitlement through withholding, the portion of the low-income tax offset to be delivered through withholding will phase out at 2 cents per dollar for income over \$30,000.

PAYG summary

The Deputy Commissioner has issued a Legislative Instrument that removes the requirement for superannuation funds to issue a payment summary to a recipient for a superannuation lump sum benefit paid where the recipient is classified as having a terminal medical condition. The Legislative Instrument applies to the 2007 income year and onwards.

GST and PAYG instalment amounts

The Tax Office has advised that, from 1 July 2008, the Gross Domestic Product (GDP) uplift factor used to calculate a taxpayer's GST and PAYG instalment amounts will increase to 8%. It says that taxpayers who currently use the GDP-adjusted notional tax method to calculate their PAYG or GST instalments may see an increase in their instalment amounts from the first quarterly instalment for the 2008-09 income year.

Div 7A interest rate

The Tax Office has advised that the benchmark interest rate for the 2008-09 income year, for the purposes of Division 7A of ITAA 1936, is 9.45% (up from 8.05% for 2007-08).

Car limits

In Taxation Determination TD 2008/17, the Tax Office states that the car depreciation limit for the 2008-09 financial year is \$57,180 (up from \$57,123 in the previous year).

In Luxury Car Tax Determination LCTD 2008/1, the Tax Office states that the luxury car tax threshold for the 2008-09 financial year is \$57,180.

GIC and SIC rates

The Tax Office has released the general interest charge (GIC) and shortfall interest charge (SIC) rates for the first quarter of the 2008-09 income year. The rates are:

Rate	Annual (%)	Daily (%)
GIC	14.75	0.04030054
SIC	10.75	0.02937158

The Tax Office has also released the interest rate for overpayments, early payments and delays in refunds for the first quarter of the 2008-09 income year. The applicable interest rate is 7.75%.

Other tax information

Bills receiving Royal Assent

Tax Laws Amendment (Budget Measures) Bill 2008

This Bill received Royal Assent on 30 June 2008. The Bill contains the following amendments, which were announced in the 2008-09 Federal Budget:

- FBT: meal-cards and work-related items;
- employee share schemes: changes to method of making the "discount" election and removal of double taxation; and
- depreciation rate for in-house software.

(See the July issue for a write-up on the Bill.)

First Home Saver Accounts Bill 2008 and related Bills

The Bill and related Bills received Royal Assent on 25 June 2008, which implements the First Home Saver Accounts scheme.

Tax Law Amendments (Measures No 2) Bill

This Bill received Royal Assent on 24 June 2008. The Bill, as assented, also contains measures from the *Tax Law Amendments (Measures No 1) Bill* and the *Tax Law Amendments (Measures No 3) Bill*:

Amendment	Date of effect	Origin of amendment	Reference
CGT market value substitution rule	Applies from 1 July 2006	<i>Tax Law Amendments (Measures No 2) Bill</i>	June 2008 issue
Superannuation guarantee relief for late payment	Applies from the date of Assent. (Transitional provisions exist)	<i>Tax Law Amendments (Measures No 2) Bill</i>	June 2008 issue
Deductions for misappropriated amounts	Amendment commences on date the Bill receives Assent and applies to amounts misappropriated in the 2007-08 and later income years	<i>Tax Law Amendments (Measures No 2) Bill</i>	June 2008 issue
Deduction for carbon sink forests	Amendments covering the income years 2007-08 to 2011-12 (inclusive) apply to the 2007-08 income year and later income years. Amendments covering the income year 2012-13 and later years apply to the 2012-13 income year and later income years.	<i>Tax Law Amendments (Measures No 1) Bill</i>	April 2008 issue
Tax-free super lump sum payments to terminally ill	Applies to payments made on or after 1 July 2007	<i>Tax Law Amendments (Measures No 1) Bill</i>	April 2008 issue
Beneficiary tax offset	Applies to payments made on or after 1 July 2007	<i>Tax Law Amendments (Measures No 1) Bill</i>	April 2008 issue
Tobacco grants	Applies to payments made in the 2006-07 and later income years	<i>Tax Law Amendments (Measures No 1) Bill</i>	April 2008 issue
Farm management deposit scheme changes	Applies from 1 July 2002	<i>Tax Law Amendments (Measures No 1) Bill</i>	April 2008 issue
Income tax exemption for Endeavour Awards scholarships	Applies to scholarships received from 1 July 2007	<i>Tax Law Amendments (Measures No 2) Bill</i>	June 2008 issue
Early completion bonuses exemption for	Applies to bonuses received from 1 July 2007	<i>Tax Law Amendments (Measures No 2) Bill</i>	June 2008 issue

Amendment	Date of effect	Origin of amendment	Reference
apprentices	from 1 July 2007	<i>(Measures No 2) Bill</i>	
Tax exemption for rent assistance and Carer Payment	Applies to payments made on or after 1 July 2007	<i>Tax Law Amendments (Measures No 3) Bill</i>	June 2008 issue
Deductible gift recipients	Various	<i>Tax Law Amendments (Measures No 2) Bill</i>	June 2008 issue

Pensioners tax offset 2007-08

The Tax Office has released the shade-out thresholds for the pensioners tax offset for the 2007-08 income year. The following table summarises the thresholds:

Status	Maximum offset	Shade-out threshold	Cuts at
Single	\$2,129	\$20,194	\$37,226
Couple (each)	\$1,610	\$16,734	\$29,614
Couple (sep. due to illness)	\$1,982	\$19,214	\$35,070

Medicare levy low-income thresholds: SATO

The Medicare levy low-income thresholds and shading-in ranges for senior Australians entitled to SATO for 2007-08 are summarised in the table below.

Where an individual's taxable income is between the relevant threshold amount and the phase-in limit, the Medicare levy is 10% if the excess taxable income over the threshold limit. Where an individual's taxable income exceeds the relevant threshold amount, the full 1.5% is becomes payable.

Status	Lower income threshold	Upper income threshold
Senior Australian	\$25,867	\$30,431
Senior Australian w/spouse and 0 dependants	\$37,950	\$44,647
Senior Australian w/spouse and 1 dependant	\$40,632	\$47,802
Each additional dependant	\$2,682	\$3,155

Dependant tax offsets – 2008-09 financial year

Category	Maximum offset ¹ (\$)	Maximum separate net income which offset cuts out (\$)
Dependant spouse ^{2,3}	2,159	8,917
Child-housekeeper (with dependant child/student) ^{2,4}	2,108	8,713
Child-housekeeper (no dependant child/student)	1,759	7,317
Invalid relative	792	3,449
Parent or parent-in-law	1,583	6,613
Sole parent (notional only) ⁵	1,607	N/A
Housekeeper (with dependant child/student) ^{2,4}	2,108	N/A

Category	Maximum offset ¹ (\$)	Maximum separate net income which offset cuts out (\$)
Housekeeper (no dependant child/student) ²	1,759	N/A

1. Reduced by \$1 for every \$4 by which separate net income of the dependant exceeds \$282.
2. The dependent spouse, child-housekeeper and housekeeper offsets (also referred to as "rebates") are generally not available for any part of the income year during which the taxpayer or the taxpayer's spouse is eligible for Family Tax Benefit Part B. Where the offset is not available, it is notionally retained for the purposes of calculating the zone and overseas forces offsets and, in the case of the child-housekeeper and housekeeper offsets, for Medicare levy purposes.
3. The dependent spouse offset is the same, irrespective of whether the taxpayer has dependent children or students (see footnote 4). However, the higher spouse (with dependent child/student) offset is notionally retained for the purposes of calculating the zone and overseas forces offsets. The notional higher spouse offset is \$2,508 (\$2,440 for 2007-08).
4. A "child" is a child under 21 (not being a student), and a "student" is a person under 25 receiving full-time education at a school, college or university, whose separate net income does not exceed \$1,785 pa. The former child and student rebates (\$376 for a student and the first child, \$282 for each additional child) have been notionally retained for the purposes of calculating the zone and overseas forces offsets. They are not indexed.
5. The sole parent rebate was replaced by Family Tax Benefit B. It is notionally retained (but not indexed) for the purposes of calculating the zone and overseas forces offsets.

Reasonable amounts for allowances

In Taxation Determination TD 2008/18, the Commissioner sets out the reasonable travel and overtime meal allowance expenses amounts for 2008-09. The following table summarises the amounts:

Allowance	Annual salary (\$)	Amount (\$)
Overtime meal allowance – per meal	N/A	23.60
Travel allowance expenses for employee truck drivers	\$90,000 and below	\$77.55 p/day ¹
	\$90,001 and above	\$84.60 p/day ²

1. \$18.85 for breakfast, \$21.55 for lunch and \$37.15 for dinner.
2. \$21.10 for breakfast, \$21.55 for lunch and \$41.95 for dinner.

For travel allowance expenses, the reasonable amounts are given for: (i) accommodation at daily rates (for domestic travel only); (ii) meals (showing breakfast, lunch and dinner); and (iii) deductible expenses incidental to travel, for various salary levels;

For overseas travel allowance expenses, the reasonable amounts are shown in Schedule 1 to this Determination. Table 1 of Schedule 1 sets out the cost group to which a country (or part of a country) has been allocated. Table 2 of Schedule 1 sets out the reasonable amount for meal expenses and incidental travel expenses for each cost group for specified employee salary ranges. If the employee travels to a country that is not shown in Table 1 of Schedule 1, the employee can use the reasonable amount for Cost Group 1 in Table 2 for the relevant salary range.

Effective life of depreciating assets

The Commissioner has released Taxation Ruling TR 2008/4, which sets out his view on the effective life of depreciating assets acquired on or after 1 July 2008. Broadly, the Commissioner has made changes to the following asset classes:

- construction and trade tool assets;

- beer manufacturing assets;
- cereal food assets;
- glass manufacturing assets;
- malt manufacturing assets;
- pasta manufacturing assets;
- wine manufacturing assets;
- packaging services - fruit and vegetable pack houses assets used off farm;
- fences and livestock assets;
- horticulture - crop farming post-harvest assets;
- horticulture - fruit industry assets;
- mushroom growing assets;
- pig farming assets; and
- water assets used in primary production.

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Thomson Legal & Regulatory Limited ABN 64 058 914 668
35 Cotham Road, Kew Vic 3101

Tel: 1300 304 197

Fax: 1300 304 198

Email: LRA.Service@thomson.com

Website: www.thomson.com.au