Murray
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Accountants & Business Consultants

CPA

Monthly Client Update

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The changing tax landscape for 2012

Numerous announcements made by the government in its May 2011 federal budget, its November 2011 'mini budget' and throughout the course of 2011 will have an impact on the tax landscape of 2012.

Here we examine some of the developments taxpayers should take heed of for the year ahead.

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 affected by the change.

Baby bonus cut and new child immunisation incentive

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.

Teenagers to benefit from FTB changes

Families with teenagers could receive a boost under changes to the Family Tax Benefit (FTB) that came into effect on January 1, 2012. The government expects about 630,000 teenagers aged 16-19 in the next five years, who are currently enrolled in school or an equivalent vocational course, to benefit from the increase to FTB part A of about $150 a fortnight over the course of five years. However, the eligibility for FTB part A will be limited to children up to the age of 21 down from the previous limit of 24 years old. A person who turned 22 prior to 1 January 2012 but is under 25 can still be an FTB child of the recipient until the earlier of completion of their current course of study or turning 25.

Flood levy to end on June 30

Implemented to aid the recovery efforts of Australian regions devastated by natural disasters, the flood levy applicability ends on June 30, 2012. It only applies to earnings above $50,000, and is 0.5% up to $100,000, and 1% above that.

HECS up-front discount and tax bonus cut

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 changes having taken effect from January 1, 2012.

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About this newsletter

Welcome to Murray Business Solution'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.

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Trust law shake-up

One of the big changes to trust law in the last calendar year was the provision of tax-effective distribution, or streaming, of capital gains and franked dividend income to beneficiaries (where they are 'specifically entitled'). However, the trust law landscape is due for more of a shake-up in 2012 with the government aiming to 'modernise' the interaction of trust and tax laws. More details will be made available as they come to hand.

Vehicle deduction for small businesses and entrepreneur tax offset abolished

Small businesses will be able to claim up to $5,000 as an immediate deduction for buying a motor vehicle from July 1, 2012 onwards. The remaining 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.

Increase in immediate asset write-off threshold to $6,500

Subject to the enactment of the Minerals Resource Rent Tax legislation, small businesses which adopt the simplified depreciation rules will be able to write off the acquisition of depreciating assets costing less than $6,500.

Decrease in super co-contributions, break in concessional cap

The government announced that the superannuation co-contribution matching rate will be reduced from July 1, 2012. It also says the maximum payment level for co-contributions is to be reduced from $1,000 to $250 a year as 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 a year over 2013-14 so that it remains at $25,000. The $50,000 cap for over 50-year-olds will end on June 30, 2012 except for persons with a total superannuation account balance of less than $500,000. For all others, the cap will revert to $25,000.

In a further development, the federal government has established a new superannuation round table that will work on giving Australians more options to boost their retirement incomes. It will also study compliance cost issues and proposals to broaden options in the drawdown phase such as annuities and deferred annuities. It will gather representatives of the industry, small businesses, employees and the community as well as technical experts and academics. The round table will be chaired by Assistant Treasurer Bill Shorten and is expected to report its findings by December 2012.

Living-away-from-home allowance & benefits

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

Change in income tax rates

The introduction of a price on carbon from July 1, 2012 heralds the onset of changes in the personal tax rate scales as well as an increase of the tax-free threshold from $6,000 to $18,200. Included in the carbon pricing package are measures intended to assist households in meeting cost increases attributed to the carbon price. *See table below.*

Tax Scales	2011-12		2012-13		2015-16	
	Threshold ($)	Marginal Rate	Threshold ($)	Marginal Rate	Threshold ($)	Marginal Rate
1st Rate	6,001	15%	18,201	19%	19,401	19%
2nd Rate	37,001	30%	37,001	32.5%	37,001	33%
3rd Rate	80,001	37%	80,001	37%	80,001	37%
4th Rate	180,001	45%	180,001	45%	180,001	45%
Low Income Tax Offset (LITO)	Up to $1,500	4% withdrawal rate on income over $30,000	Up to $445	1.5% withdrawal rate on income over $37,000	Up to $300	1% withdrawal rate on income over $37,000
Effective tax free threshold*	16,000		20,542		20,979	

*Includes the effect of the tax free threshold and the Low Income Tax Offset.

Back to school? Hold on to those receipts

The beginning of February marks a significant yet costly time for families with children as parents busy themselves with the purchasing of school textbooks, stationery and uniforms amongst numerous other items. Having recognised the importance of education to children's personal development and the nation's progress as well as the sheer cost of school for parents, the government has put in place certain measures to make schooling more affordable.

Below we share with you some refunds and allowances available to ease the financial strain of your children getting an education.

Federal Government

Education Tax Refund

The Education Tax Refund offers eligible families the ability to claim 50% off education expenses, including computers (the iPad is considered to be a computer), as well as the cost of buying, establishing, repairing and maintaining any of the following items:

- laptop computers and home computers
- computer-related equipment such as printers, USB flash drives, as well as disability aids for using computer equipment
- computer repairs
- home internet connections
- computer software for educational use
- school textbooks and associated learning materials, study guides and stationery
- trade tools – for example, tools required to complete a school-based apprenticeship.

School-approved uniforms bought from July 1, 2011 (including hats, footwear and sports clothes) approved by the school as its uniform can be claimed in the 2011-12 tax year (ie. reflecting expenses incurred during 2011-12).

There is a limit of course – $794 for each child in primary school, and $1,588 for each child in secondary school (that is, a refund of 50%, so $397 and $794 respectively).

Note also that if you have more eligible education expenses than you can claim in a year, you can carry them over to the following year only. If you do not claim eligible expenses either in the income year they are incurred or in the next income year, they are lost and you cannot claim them in later years.

Many families with school-aged children are already eligible where they receive the Family Tax Benefit part A. While there are some payments that prevent you from receiving the family tax benefit - like the youth allowance or a disability pension - you can still get the education refund.

The refund is to be claimed in your income tax return. However, if you are not required to lodge an income tax return, a claim for the refund can be made by completing the *Education Tax Refund for Individuals* claim form, which is available, with instructions, on the Tax Office website.

You can claim the education refund every year while your children are still at school, or if you are an independent student aged under 25 and in primary or secondary school. There are some expenses that are ruled out – like school fees, musical instruments, transport, sports equipment, tuck shop costs, excursions and school photos.

Assistance for Isolated Children

The *Assistance for Isolated Children* scheme helps families to cover the extra costs associated with educating their children if isolation is an added issue – for example if you have a primary or secondary school student who cannot attend an appropriate state school because of geographical distance, disability or special health needs.

The scheme also helps families isolated from an appropriate state school where the school-aged student is undertaking a tertiary course instead.

For more information on what isolated families can receive, see the *Assistance For Isolated Children* page on the Australian Government's Department of Human Services website.

State Governments

There are also several state-based education assistance schemes available. Check with your state government's Department of Education to find out more.

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 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.

Many of the problems highlighted by the Tax Office are attributed to a misinterpretation of the legislation due to 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.

- 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.
- 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 not creditable.
- 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.
- Not reporting GST on some government grants and incentive schemes 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%).

BAS preparation can be tripped up by things such as transposing figures, 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. ■

Novated leases & FBT – What you need to know

The topic of novated leases often arises when a car is wrapped into a salary package as part of a salary sacrifice arrangement. What exactly is a novated lease and how does it work?

Explained simply, a novated lease is a way for an employee to buy a new or used car and have their employer assist in the organised repayment for that car to an agreed financial supplier. This is done by the employer agreeing to make the repayments out of the employee's pre-tax salary in a salary sacrifice arrangement which, like any such arrangement, reduces the employee's taxable income. The terms of the lease repayments are calculated according to the employee's earnings and the amount of salary sacrificed.

A novated lease is therefore a three-way transaction – between an employee, a financier, and the employer. The employee acquires the car, and the employer agrees to make the lease repayments to the financier for that car as a condition of employment.

One obvious such condition is to remain an employee. In the event that employment ceases, the obligations and rights under the lease revert to the (former) employee. This can suit the person involved, as they keep the car (and there are no tax consequences), but can also suit the employer as they are not saddled with an extra vehicle or a financial commitment for it.

During the period of the novated lease, the employer is entitled to a deduction for lease expenses where the car is provided as part of a salary sacrifice arrangement. But it does give rise to a car benefit under fringe benefits tax (FBT) rules.

The implications of fringe benefits tax (FBT)

Fringe benefits that fall under the FBT regime include anything that can be provided directly by the employer, by an 'associate' of the employer, or by a third party who has an arrangement with the employer (in this case, the finance supplier). A car provided through a novated lease is considered a fringe benefit to an employee, and gives rise to an FBT liability for the employer.

A basic principle of salary sacrifice arrangements is that the employer is no better or worse off from having offered an employee a form of remuneration other than a straight salary.

However, as the leased car gives rise to an FBT liability, and as FBT is an employer's obligation, it is generally the case that any FBT amount arising as a result of the novated lease is charged to the employee's salary package. The employer then remits the FBT to the Tax Office as required under the fringe benefits rules.

The value of the car benefit (on which the amount of FBT is based) is taken on the actual purchase price of the car. Working out its taxable value for FBT can be done using two methods – the 'statutory percentage' method (the most commonly used), or the 'operating costs' method.

Statutory percentage method – the amount of FBT levied is taken as a percentage rate of the total number of kilometres travelled during the year (both business and private), which the Tax Office has divided into different 'bands' of kilometres (see tables on following page).

The **operating costs method** requires working out the total operating costs of the car (fuel, oil, servicing, etc) and reducing that total amount by the portion of private kilometres travelled (which attracts FBT) as compared to the total kilometres. It is most often used where business kilometres travelled are high, but is more complicated and requires more records (log books) to be kept and calculations to be made.

Post-May 11, 2011 contracts

A change brought in with the Federal Budget in May 2011 introduced a flat 20% rate to be applied across each of these bands (before this, each band was assigned a progressively lower rate). The new flat rate applies to new lease contracts entered into after 7.30pm, May 11, 2011, but the rate will be phased in (for larger distances) over four years, as follows.

Distance travelled during FBT year	From May 10, 2011	From April 1, 2012	From April 1, 2013	From April 1, 2014
0 - 14,999km	20%	20%	20%	20%
15,000 - 24,999km	20%	20%	20%	20%
25,000 - 39,999km	14%	17%	20%	20%
More than 40,000km	10%	13%	17%	20%

The reform will be a welcome tax boost for employees with salary packaged cars who normally drive less than 15,000km during the FBT year (April to March).

Pre-May 11, 2011 contracts

Leases existing before 7.30pm, May 11, 2011 still operate under the rates that applied before the Budget changes, as per the following table.

Total kilometres travelled during the FBT year	Statutory percentage
Less than 14,999km	26%
15,000 to 24,999km	20%
25,000 to 39,999km	11%
Over 40,000km	7%

As you can see from the above, the more kilometres travelled, the less tax applies. This produces an unfortunate incentive to clock up enough distance to move into the next band of kilometres and gain a reduced FBT liability. For example, an employee using a car valued at $34,000 would have a taxable value of $6,800 (ie, $34,000 x 20%) if they drove 24,000km, but that would drop to only $3,740 if they drove more than 25,000km.

Post-tax contributions to reduce FBT for employees

The tax liability that arises from the fringe benefit of salary packaging a car through a novated lease can be reduced by the employee making contributions towards, say, the running costs of the car from after-tax dollars.

It is important that these contributions come from after-tax salary, as every dollar so contributed reduces the FBT liability dollar-for-dollar up to the total amount of FBT payable. The maximum amount able to be contributed each year is equal to the statutory percentage of the vehicle's taxable value.

By an employee doing this, rather than paying the FBT tax rate, which is 46.5%, they will be paying their own marginal rate which for many would be much less than that. The difference between the taxable value and the total cost of the benefit will not be subject to FBT or income tax.

Conditions and outcomes for employers in a novated car lease

An employer will need to agree to the salary sacrifice arrangement that allows a staff member to obtain a vehicle through a novated lease:

- The employer makes lease repayments to the finance supplier on behalf of the employee from their pre-tax salary
- Being a fringe benefit, the arrangement gives rise to an FBT liability, which the employer pays
- The amount of the FBT liability is added to the sacrificed salary amount (that is, making a nil dollar consequence for the employer)
- Expenses incurred in arranging and maintaining the lease (not the lease repayments) are tax deductible for the employer for the period the lease is active
- The end of the employment relationship also ends the repayment commitment, as lease obligations revert to the (former) employee
- Employers making lease payments may be able to claim input tax credits for GST purposes.

Conditions and outcomes for employees in a novated car lease

Salary sacrificing reduces one's taxable income, as the amount is assigned from pre-tax salary:

- The vehicle is of the employee's choice, and exclusive use and ownership
- As the car is a fringe benefit, FBT must be paid. The employer is liable for this payment, however the amount due is added to the salary sacrificed amount
- FBT is based on the purchase price of the vehicle, and is calculated using a rate determined by the kilometres travelled over a year (under the statutory formula method).
- Making post-tax contributions to the costs of owning the vehicle can reduce the FBT liability by the same amount contributed, up to the statutory percentage of the vehicle's taxable value. This can reduce total tax paid if the employee's marginal tax rate is less than the FBT rate of 46.5%. ■

SMSFs and family members

A self managed superannuation fund can have no more than four members to remain 'compliant' and it is not altogether uncommon for an SMSF to comprise a mum, a dad and two adult children. Superannuation legislation however requires that each member be a trustee of the fund.

When introducing this requirement, the government stated: 'The requirement that all members be trustees will ensure that each member is fully involved and has the opportunity to participate equally in the decision-making processes of the fund (that is, that the fund is truly self-managed).'

Uneven balance of power

Equal participation by trustees however is not a given for every SMSF. It may be anecdotally evidenced, but is often quoted as a widely accepted fact that a four-member SMSF will more than likely have one trustee who tends to dominate decision making.

It is also possible for some SMSFs to use a construct of the trust deed to control the participation of trustees. This can be in the form of a clause inserted into the deed that allocates trustee votes based on member balances. That way a trustee who has, say, a balance of $350,000 can easily outvote another trustee with a balance of $100,000, or even a combination of the other three members/trustees if they have $100,000 each.

The trouble with this set-up however is that it works against the SMSF legislation's intention, and theoretically renders a section of the superannuation law toothless (that every member must also be a trustee) because a simple clause can remove its application – negating a trustee's powers and yet leaving them still liable for the duties and responsibilities of being a trustee.

The Tax Office has noted that these types of voting arrangements are in fact used, and that therefore, were it to state that it did not accept them, this would cause considerable problems in respect of existing deeds.

Experts working in the DIY super industry have expressed doubts that such clauses would survive a court challenge. Not only is it accepted that the laws were drafted with an intention to ensure unanimous decision making, but it is also written into sections of the governing legislation, the *Superannuation Industry (Supervision) Act 1993* (SIS Act). One section – 52(2)(e) – requires that all trustees 'not enter into any contract, or do anything else, that would prevent the trustee from, or hinder the trustee in, properly performing or exercising the trustee's functions and powers'.

Therefore a trust deed that gives weight to votes according to member balances would prevent or hinder some trustees from exercising their powers and being able to properly perform their duties and functions.

If therefore the correct position is that each trustee has equal voting rights, and an equal say in all investment decisions, then mum and dad could find themselves needing the approval and consent of their children concerning decisions about their own retirement savings. Making investments, taking a transition to retirement pension, and taking benefits would be subject to approval by their adult children.

Competing priorities of parents and children

The conventional wisdom that surrounds the topic of investment decisions dictates that these should be contingent on risk profile and proximity to retirement. A person aged 18 would typically be more willing to take on high-risk investments as they have a long time to recoup potential losses. A person in their later years of working life however would be more conservative and defensive about their investment choices.

Even a generous view of the SMSF's fulfilment of the 'sole purpose test' (to take the best actions necessary to save for members' retirement) will find it difficult to reconcile the two approaches to risk dictated by the make-up of trustees.

Other problems with SMSFs may include:

- trustees must act in the best interests of all members and therefore the parents will need a

degree of consensus from the children about the investment and distribution of their retirement savings

- an adult child could feel aggrieved that their own superannuation has not performed as well as it could have were they able to have more control over its investment
- an adult child gets divorced and their former spouse seeks access to some of the super balance (to which they are entitled) which could mean liquidating assets.

Further problems can arise should the parents get a divorce. It could conceivably be the case that, say, mum and two kids vote together to control the fund. Or dad may only need one child to side with his view to have control. Either way, it creates uncertainty for the children.

In other situations, younger members in family SMSFs could complicate matters if they leave the fund to set up their own SMSF to include their spouse and children or if they come to face financial problems. In a case that was brought to the Administrative Appeals Tribunal last year, a couple's entire retirement savings vanished and their modest SMSF was declared non-complying by the Tax Office when one of its trustees – a drug-addicted son – withdrew more than $40,000 illegally from the fund.

While the case may be an exception to the rule, it is evident that parent SMSF trustees need to be fully aware of the risks as well as the benefits when it comes to child-member trustees. ■

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.

Date	Lodgement
21 February 2012	■ Monthly activity statement for January 2012.
28 February 2012	■ Quarterly activity statement, quarter 2, 2011-12 - all lodgement methods. ■ Quarterly instalment notice - form R, S or T - for quarter 2, 2011-12 - lodgement only required if varying the instalment amount. ■ Income tax return for non-taxable large/medium business taxpayers as per latest year lodged - all entities other than individuals. ■ Income tax return for new registrant large/medium business taxpayers. ■ Income tax return for new registrant (taxable and non-taxable) SMSFs. ■ Income tax return for new registrant (taxable and non-taxable) head company of a consolidated group. ■ Annual GST return or information report if taxpayer does not have an income tax return lodgement obligation (if taxpayer has an income tax return obligation, this return/report must be lodged by the lodgement due date of the income tax return). ■ *Superannuation guarantee charge (SGC) statement - quarterly* for quarter 2, 2011-12 (if required contributions were not made by the due date).

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