

ACCOUNTANTS
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In this issue ...

• SMSF Enduring Powers of Attorney	2	• Lump Sum Compensation Held to be Income	4
• Reportable Employers Super Contributions	2	• Senior Australians Tax Offset (SATO)	4
• Fringe Benefits Tax	2	• Preservation Age	5
• SMSF and Disposal of Shares	2	• Travel Expenses	5
• GST and Reimbursement of Business Expenses	3	• Low Income Tax Payer's Offset	5
• Foreign Employment Income	3	• Superannuation Benefits Summarised	5
• Tax consequences of Collapsed Managed Investment Schemes	3	• Tax Rates for 2009-2010	5
• I'm 66 and have been told I must satisfy a Work Test	3	• Rental Property Income Expenses - Areas to watch	6
• Employee Share Schemes	3	• Purchasing a Luxury Car	6
• Victory for Sham Victim	3	• GST Thresholds	6
• SGC Calculations have changed	4	• CGT Property & Share Call Campaign	6
• What Land is exempt from Land Tax	4	• Congratulations	6

Editorial

Welcome to 2010

Basically 2009 was a difficult period for most and the ticking over of the clock could not come quick enough.

The drought has had, and will continue to have a significant impact on the farming sector. The pastoral areas have been fortunate to have received a good start to the New Year with recent rains.

We face a New Year with the spectre of significant Government Reform and possible changes to the rules about Superannuation and/or to the taxation system. We continue to watch this space for any announcements from the Taxation Review chaired by Ken Henry. To date there have been no significant announcements about potential changes to the Income Tax System. "Will they, won't they"... there has been much speculation. No doubt by the time of our next Newsletter these recommendations will be announced and perhaps acted upon through the Federal Budget in May.

New Years Eve is always a big date on the annual calendar. People generally celebrate the heralding of a New Year and wave off the old one. New Year resolutions and promises are made. Goals are set.

Once February has arrived there is the potential to barely remember December 31st and the promises we made to ourselves. Each year we consider losing weight, exercising more and avoiding chocolate.

Have you:

- Ever thought about making a resolution that helps your financial health?
- This year consider organising your finances and managing your money better.
- Once you have your priorities straight and break the cycle of consumerism, savings become easier to manage.
- Plan for the future. It might not take care of itself. Create a sense of urgency.
- Set aside time to think about your finances.
- Review your business plans and personal goals. Are they measurable and realistic?
- Be focussed.

"If you want to do something great you need a strong will and attention to detail." Lance Armstrong

Perhaps we could add a measure of persistence to this as well.

There is no doubt in my mind there will be some big issues to tackle in 2010. It is after all the year of the Tiger.

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SMSF Enduring Powers of Attorney

The ATO have issued Draft Ruling SMSFR 2009/D1 to explain their views about Enduring Powers of Attorney for SMSF members.

The following article about this issue is from the Australian Taxation Office's September 2009 publication entitled The Tax Agent.

“A person who holds an enduring power of attorney for a member must be appointed as a trustee or a director of the corporate trustee in place of the member. The member must resign as a trustee or as a director of the corporate trustee.

In this situation, the fund does not have to stop being an SMSF.

The enduring power of attorney must be current and meet the relevant state and territory laws relating to enduring powers of attorney.

A person who holds an enduring power of attorney for a member qualifies as a legal personal representative.

The legal personal representative performs their duties as a trustee of the SMSF, or a director of the corporate trustee of the SMSF, according to their appointment to the position rather than as an attorney for the member. That is, super laws affecting trustee duties are not restricted by state laws outlining:

- Trustee duties
- Powers via a power of attorney

Representative, not agent

Once appointed as a trustee or a director of a corporate trustee, the legal personal representative assumes the duties, responsibilities and obligations of a trustee or director of the corporate trustee. They cannot act as an agent.”

Reportable Employers Super Contributions

How your employees are affected

Although you must include all reportable employer super contributions you make for an employee on their payment summary, you do not include these contributions in your employee's gross income.

Reportable employer super contributions are not included in your employee's assessable income. However, these contributions are included in the income tests for the following benefits and obligations the ATO administers:

- Medicare levy surcharge threshold calculation
- Medicare levy surcharge (lump sum payment in arrears) tax offset
- All dependant tax offsets
- Senior Australians tax offset
- Pensioner tax offset
- Mature age worker tax offset
- Spouse super contributions tax offset
- Super co-contributions
- Deduction for personal super contributions
- Higher Education Loan Programme (HELP) and Student Financial Supplement Scheme (SFSS) repayments.

The new law also affects a range of Centrelink and Child Support benefits and obligations.

SMSF and Disposal of Shares

The Tax Office has released an interpretive decision in which it states that where a trustee of a complying superannuation fund realises losses on the disposal of shares, the losses are to be calculated under the CGT provisions.

Superannuation funds are required to calculate any gains or losses on the disposal of CGT assets (e.g. shares and units in trusts) using the CGT provisions.

An exception may apply where a CGT asset is a “security”. However, the Commissioner notes the definition of a security excludes a share. Therefore, the exception does not apply.

Fringe Benefits Tax (FBT)

A Fringe Benefit is any benefit provided to an employee that is not salary or wages. A benefit provided by an employer includes, but is not limited to;

- Allowing an employee to use a work car for private purposes
- Paying for an employee's private memberships such as gym membership
- Purchasing employee's tickets to concerts or sporting events
- Reimbursing an employee for private expenses, such as private health insurance
- Providing employees with benefits under a salary sacrifice agreement, such as personal loan repayments.

If a fringe benefit is provided to employees, a Fringe Benefits Return is required to be lodged with the ATO. The FBT year is not the same period as the Financial Year, instead, it is the period of 1st April to 31st March. The Fringe Benefits Tax Return is due to be lodged with the ATO by the 21st May each year.

Fringe Benefits Tax liabilities are due when the return is lodged with the ATO. If the amount of tax is \$3,000 or more, FBT instalments for the next year are required to be paid quarterly along with the Business Activity Statement. On the other hand, if the FBT tax was less than \$3,000, no instalments for the next year are required, and the tax will be payable annually.

The ATO requires written evidence of any Fringe Benefits provided to employees that includes the following information;

- The taxable value of the benefit provided such as receipts, invoices, logbooks, odometer records and employee declarations.
- The method used to allocate the taxable value of the benefit if the benefit was provided to two or more employees. This can include an agreement between the employer and the employees.

These records must be kept for 5 years and in a format that ATO personnel can access and understand.

Employee Share Schemes

There have been two recent changes to the tax treatment for employee share schemes.

Under the old rules, how you were taxed under in an employee share scheme arrangement depended on whether you chose to make a Section 139E election to be taxed up front on the discount or alternately you decided not to make a Section 139E election and therefore defer the tax on the whole discount until the shares were sold (otherwise known as the deferral option). The discount is the difference between what you paid for the shares as compared to their market value when you acquired them.

Under the amendments, all discounts on shares and options issued under an employee share scheme must now be taxed in the year that those shares or options are acquired. In other words, employees now no longer have the luxury of deferring taxation on their discount to a later time.

Removing the option of delaying a payment of tax and thereby requiring the tax in the discount be paid upfront renders employee share schemes a much less attractive remuneration option for employees.

Furthermore, the \$1,000 tax exemption that employees formerly enjoyed when they elected to be taxed upfront on the discount, is now only available to employees with a taxable income of less than \$180,000 after adjustments are made for Fringe Benefits, Salary Sacrificed amounts and negative gearing losses.

This measure is applied to shares and options acquired after 1 July 2009. Shares and options acquired before this date are therefore not affected by this reform.

Victory for Sham Victim

In a recent case, the AAT held that a taxpayer who was a victim of a sham was entitled to deduct interest and bank charges incurred on loans.

The taxpayer was a guarantor for a loan extended to a company. The company defaulted on the loan. The taxpayer then realised then he was the victim of a scam. To fulfil his obligations under the guarantee, the taxpayer took out two loans secured against his property.

The Tribunal said the guarantee was a liability the taxpayer accepted for the purpose of deriving assessable income. Therefore, it allowed the taxpayer's claim for deductions.

SGC Calculations have changed

From 1st July 2009, the way Superannuation Guarantee Contributions are calculated has changed. In a decision by the Australian Taxation Office (ATO), overtime payments are excluded from ordinary time earnings but most bonus payments are to be included.

Ordinary time earnings, based on an employee's ordinary hours of work, are used to calculate superannuation guarantee payments. This means salary and wages paid for a person's ordinary hours. It specifically excludes all overtime.

The new ruling also states that where an industrial award or employment agreement makes a distinction between ordinary time and overtime, then overtime will still not be included in the Superannuation calculation, even if someone regularly works the overtime as part of their job.

GST and reimbursement of business expenses

Employers will often reimburse employees for a business expense they have incurred. Can an employer claim a GST credit for this expense even though the tax invoice is not made out in the businesses name? In most circumstances, GST-registered employers can claim GST credits for reimbursements to employees. The following conditions need to be satisfied:

- Your employees' expense is directly related to their activities as your employee, or the reimbursement is an expense payment benefit.
- The sale of the item purchased by your employee was taxable; and
- Your employee is not entitled to a GST credit for the expense.

Foreign Employment Income

Changes made in the May 2009 Federal Budget mean that most employment income earned by Australian Residents working overseas for a continuous period of more than 90 days will no longer be exempt from income tax here in Australia. From 1 July 2009, an exemption will now only apply with foreign service which is directly attributable to any of the following:

- The delivery of Australia's overseas aid program by the individual's employer.
- Operating a developing country relief fund or a public disaster relief fund.
- A prescribed institution that is exempt from Australian income tax; or
- Deployment outside Australia by an Australian Government as a member of a disciplined force (e.g. Defence or police personnel deployed overseas).

Consequently, most foreign employment earnings will now generally be assessable in Australia and subject to PAYG withholding.

Tax Consequences of Collapsed Managed Investment Schemes

According to Draft Taxation Determination TD 2009/2010, the disposable determination of an interest in a non-forest MIS that arises as a result of circumstances outside the control of participants does not result in the denial of deductions previously allowed under Section 8-1 of ITAA 1977. For example, where a scheme is wound up on the basis that its purpose cannot be accomplished.

Should you be affected please contact our office.

I'm 66 and have been told I must satisfy a work test to make super contributions. How does it work?

Once you turn 65 you cannot contribute to superannuation unless you satisfy a work test of being gainfully employed for at least 40 hours within 30 consecutive days during the financial year contributions are made. Gainful employment means you worked for a financial reward.

What land is exempt from Land Tax?

Land that is owned by a natural person and is used as their principal place of residence as at 30 June is exempt. A Land Tax exemption is available to natural person's for the land on which their principal family home is situated (caravans or tents are not regarded as a principal place of residence).

This exemption may not apply if at 30 June, your family home/principal place of residence was used:

- To conduct a business, trade or boarding house from the property.
- Part of the property or building was let to any person other than a parent, grandparent, child or grandchild. Note that the owner must reside on the land with the family member.

The principal place of residence exemption is not available for companies or other corporate structures, even if the land is occupied by any of its shareholders or members.

Land Tax relief may be provided in the following three scenarios:

- Where a person as at 30 June owns a property subject to Land Tax and occupies this property during the new financial year as their principal place of residence e.g. construction of a residence on vacant land.
- Where a person is in the process of selling a home and as a result owns two properties as at 30 June, one of which is the current principal place of residence (and eligible for exemption) and the other is intended but not yet occupied principal place of residence (and liable for Land Tax).
- Where a person purchases a property, which was taxable in the ownership of the vendor (seller) and is to be occupied as a principal place of residence, the purchaser may be refunded any proportionate Land Tax paid as part of settlement.

It should be noted that:

- No rental income can be received from properties during the period that homes are owned concurrently and the former residence must be sold before the end of the financial year.
- The Land Tax assessed will still be payable if the property was not your principal place of residence on or before your due date of your Notice for Payment.

Other Exemptions

Exemptions are also available where land is used for the following purposes:

- Land which is used wholly or mainly for primary production purposes and primary production is the owner's main business.
- Land which is used wholly or mainly for religious or educational purposes.
- Land which is used for non-profit organisations for the purpose of recreation for the local community, the preservation of buildings, the holding of agriculture shows or other specified purposes (charitable or sporting purposes).

Lump Sum Compensation Held to be Income

In the recent case *Life Interest Beneficiary v. Commissioner of Taxation* [2007] AATA 1791 (21 September 2007), the AAT held that a lump sum payment received by a taxpayer, for breach of a life trust, was income.

The taxpayer was granted a life interest in four trusts, with her son as the sole remainderman. This meant that the taxpayer was entitled to the income of the trusts for her life, and upon her death all of the assets in the trust would go to her son.

During the 1994 year, the taxpayer entered into a deed of release in relation to the trusts. Under the deed, the taxpayer was paid a substantial lump sum in addition to her entitlement to the income of the trust.

The taxpayer claimed that the lump sum amount was compensation for the failure of the trustee to balance her entitlement to the income of the trust as opposed to the interest of the remainderman in the capital of the trust. She argued that as the bulk of the assets of the trust were shares, the trustee was biased towards capital gains income to which she would not be entitled.

The Commissioner assessed the lump sum as a receipt of income. This was upheld by the AAT.

In order to determine whether the payment is income or capital, it is its character in the hands of the taxpayer recipient that is determinative. If the payment is made under an agreement, the agreement and all the surrounding circumstances must be determined. The AAT referred to the decision in *Tindal v. Federal Commissioner of Taxation* (1946) 72 CLR 608 (23 August 1946) and noted that if the payment received is on revenue account, its nature is not changed merely because the source of the payment was capital.

The AAT held that as the taxpayer's entitlement was to the income of the trust, any entitlement arising out of the trustee's failure to properly administer the trust was compensation for lost income. On that basis, the receipt was assessable as income.

Seeking tax planning advice before entering into this transaction would have been a prudent course of action.

Senior Australians Tax Offset (SATO) 2008-09

	Maximum Offset	Shade-out threshold (taxable income)*	Cut-out threshold (taxable income)
Single	\$2,230	\$28,867	\$46,707
Couple (each)	\$1,602	\$24,680+	\$37,496+
Illness separated couple (each)	\$2,040	\$27,600+	\$43,920+

*Maximum offset reduced by 12.5 cents for each dollar of taxable income in excess of shade-out threshold.

+A taxpayer's taxable income is taken to be half the couple's combined taxable income.

Preservation Age

A person's preservation age is determined by their date of birth. Once a preservation age has been reached access to superannuation funds can be made.

Date of Birth	Age
Before July 1, 1960	55
July 1, 1960 - June 30, 1961	56
July 1, 1961 - June 30, 1962	57
July 1, 1962 - June 30, 1963	58
July 1, 1963 - June 30, 1964	59
After June 30, 1964	60

Source: Australian Tax Office

Travel Expenses

Generally, travel expenses incurred for work-related purposes can be claimed as a tax deduction. However, if the expense has private and work portions, only the work portion can be claimed.

Travel expenses that are claimable include travel;

- To/from business seminars
- To/from accountant/tax agent
- To/from rental properties for inspections
- When transporting bulky tools and equipment from home to work, and
- Between two different workplaces/locations.

Other expenses associated with business travel that can be claimed as a travel deduction include;

- Air, bus, tram, train and taxi fares
- Parking fees, and
- Meals, accommodation and incidental expenses incurred during overnight stays for work.

A deduction cannot be claimed for 'normal' travel between home and the place of work. This is the case even if duties such as collecting the mail or going to the bank are performed or if the individual is working outside normal employment hours.

In order for the above expenses to be deductible, the ATO requires written evidence when spending more than one night away from home. Information that needs to be documented includes the nature of the trip, how long the trip lasted and where the trip took place. It is worth noting that if documentation is not kept the expense is then a non-deductible expense and may be subject to Fringe Benefits Tax; if the motor vehicle is not owned by an individual.

Low Income Tax Payer's Tax Offset

2009 - 2010	
Taxable Income	Rebate
\$0 - \$30,000	\$1,350
\$30,001 - up to \$63,749	\$1,350 less 4 cents for every \$1 of the amount (if any) by which the taxpayer's taxable income of the year of income exceeds \$30,000
\$63,750 and above	Nil

Superannuation Benefits Summarised

The Global Financial Crisis has resulted in many clients questioning whether superannuation is still relevant to them. Reduction in capital balances, diminishing returns and constant changes to superannuation has brought superannuation to the forefront for clients of all ages.

For those who watched the superannuation "space" for a number of years you would have experienced numerous changes to the superannuation laws. The most recent and far reaching have been the reduction in concessional contribution caps.

The new limits on tax advantage contributions were announced in the May 2009 Federal Budget, and have now been legislated into the rules under which contributions can be made

These changes resulted in the concessional contribution cap being reduced from \$50,000 to \$25,000 per annum for those under aged 50. The higher transitional limit of \$100,000 for those aged 50 or over has been halved to \$50,000. Remember, this limit is available to any person who turns 50 at any time during the financial year. This transitional period will conclude on the 30 June 2012. From this date all contribution limits will be same no matter what your age i.e. \$25,000 per annum for all taxpayers.

The superannuation system has been designed as a means of encouraging long-term savings and in doing so provide for post-retirement benefits/income streams for superannuants. Even after the significant changes superannuation remains, for the majority, a very tax-effective mechanism to build wealth. The key benefits associated with superannuation include:

- A maximum of 15% tax on earnings (including capital gains).
- Concessional contributions are taxed at 15% (as apposed to amounts taken as income and taxed at the individual's marginal tax rate).

Taxed superannuation funds:

- In most cases, pension income and lump sum withdrawals are tax free for those aged 60 or over.
- There is a tax rebate of 15% for those aged over 55 and below 60 who use this superannuation to draw an income stream.

For those clients for which retirement is a long way off the reduction in concessional contribution caps may require a major rethink in your retirement planning strategy. It may mean that greater consideration of the options available to building wealth outside superannuation may need to be revisited.

Tax Rates for 2009-2010

If you are a resident for the full year, the following rates apply:

Taxable Income	Tax on this income
\$0 - \$6,000	Nil
\$6,001 - \$35,000	15c for each \$1 over \$6,000
\$35,001 - \$80,000	\$4,350 plus 30c for each \$1 over \$35,000
\$80,001 - \$180,000	\$17,850 plus 38c for each \$1 over \$80,000
\$180,001 - and over	\$55,850 plus 45c for each \$1 over \$180,000

The above rates do not include the Medicare levy of 1.5%

Rental Property Income and Expenses - Areas to Watch

- The property is not generally or is only partly available for rent

Rental property deductions can only be claimed for the period the property is rented or is genuinely available for rent.

Some examples of incorrect claims are:

- A property was acquired and used as a weekend retreat. The property was listed with a local real estate agent merely to give the impression that it was available for rent with the deductibility of expenses in mind. However, the conditions imposed on prospective tenants were so restrictive that the property was not generally available for rental. The property was not available for rent most weekends and the rental sort was approximately double the normal rate for the area.
- A holiday house was used mainly by the owners, but also occasionally for nominal amounts to friends and relatives. No advertising was undertaken and no property agents were engaged to manage the property. Rental expenses were claimed against the non commercial rental income received.

- **Interest**

The deductibility of interest is determined by the use of the borrowed funds.

In one ATO case a joint property owner borrowed the total purchase price of a property. The total amount of the interest was claimed as a rental property expense, not the 50% share that was in accordance with the legal interest in the property.

- **Repairs Involved**

Expenditure incurred on initial repairs to a recently acquired rental property, where the expenditure is incurred in repairing defects existing at the date of purchase, is capital expenditure and not deductible. Initial expenditure may be able to be included as part of a special building write-off deduction, or, in some cases, expenditure will form part of the cost base for capital gains tax purposes.

Purchasing a Luxury Car

For 2009-10:

- The Luxury Car Tax (LCT) threshold is \$57,180
- The fuel efficient luxury car limit is \$75,000

A 33% Luxury Car Tax (LCT) applies to most cars over these thresholds.

If you buy a car priced over \$57,180, the maximum GST credit you can claim is \$5,198 if you are claiming 100% business or up to your business use percentage.

GST Thresholds

Item	* Threshold
Requirement to issue a tax invoice	\$75
No requirement to withhold if supplier does not quote ABN	\$75
Turnover for compulsory registration for GST	\$75,000 (for any 12 months)
Turnover for compulsory registration for GST (non-profit entity)	\$150,000 (for any 12 months)
Annual turnover for compulsory use of non-cash accounting	\$2,000,000
Annual turnover for compulsory monthly electronic BAS lodgement	\$20,000,000

* All amounts are GST exclusive

CGT Property & Share Call Campaign

From December 2009 to February 2010 the ATO will trial a call campaign to verify small and medium enterprises' property and share transactions in relation to CGT. This new approach involves calling the Tax Agent in the first instance.

However, should you receive a call which purports to be from the Australian Taxation Office it is possible to either ask for the questions to be sent to you in a written form so that they can be addressed with consideration rather than off the cuff, alternatively all questions from these calls can be referred to our office.

Congratulations

Two staff milestones have recently been reached by Paul Anson and Sharon Lawrence.

On 19th January Paul celebrated 40 years of continuous service to clients at RJC Evans & Co. This is a tremendous achievement. Paul has experienced considerable change in both accounting and tax over these years. He notes that the single largest change has been in the area of technology. Paul is often threatening to write an article for the newsletter outlining the changes over the years. Perhaps we could read this in a future edition.

On 5th March Sharon Lawrence reached 20 years of service to clients. Sharon has been a Tax Manager in Andrew Evans' team for many of these years. Over this time she has trained numerous clients and staff in the use of technology and accounting / tax matters. Her technical knowledge and ability to explain difficult concepts has been greatly appreciated.

As an employer RJC Evans & Co has been fortunate to have had Sharon and Paul as part of the team.

We thank them for the contribution they have made to both clients and the firm and wish them many more years at RJC Evans & Co.



SPECIALISING IN:

Tax returns, Taxation advice, Capital Gains Tax Planning, Accounting, Budget and Cashflow preparation, Company secretarial services, Company and Trust audits, New Business assessments, Estate Planning, Computer and software selection, Financial management, GST Advising and BAS Preparation.

DISCLAIMER:

Important: We suggest that our clients do not act only on the basis of the material contained in this Report because the items herewith are general comments only, and may be liable to misinterpretation in a particular circumstance. Also, changes in legislation sometime occur quickly. We therefore recommend that our advice be sought before acting in any of these areas. This report is issued as a helpful guide to our clients and is for private information. Therefore, it should be regarded confidentially and not be made available to any person without prior approval.