

# R J C — & C o — E V A N S

Accountants • Tax Agents • Auditors

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## NEWSLETTER • MARCH 2011

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### *Editorial*

This year has begun in a way that no Australian could have predicted. The month of January has seen the following events occur:

- Floods in Queensland, Victoria and New South Wales causing massive devastation to life, personal property, community amenities and infrastructure.
- Bush fires in Western Australia.
- Cyclone Yasi in North and Far Northern Queensland of a size never seen before in Australia.

These disastrous events have left us in awe at the power of mother nature. Here in South Australia we seem powerless to assist our fellow Australians in need.

It goes almost without saying that life would be less fulfilling without our mates. Events following the floods in Queensland clearly demonstrated that the Australian concept of mateship is still alive. The television vision of people travelling to help complete strangers was inspiring. One could not help but be moved by the generosity of spirit.

One word which has resinated for me during this period has been **perspective. Perspective is everything.** These crises force us to think about our own relative situations. Perhaps the washing machine flooding is not as dire as first thought.

The word insurance has also commanded significant attention during these times. Some people have been found to have inadequate insurance. Others were found to have none and were trying to obtain insurance as the disaster was beginning to unfold. These people have either adopted a no, or an insufficient, risk management strategy. Once disaster has struck it is too late to get insurance.

Having sufficient savings for the future is similar to having sufficient insurance. You can acquire insurance against future uncertainty through reducing spending and lifting / increasing savings. Increasing savings when economic conditions are good and ensuring you have adequate insurance well in advance of natural disasters are similar risk management strategies. Once disaster has struck it is too late to get insurance and too late to build up your savings.

In 2011 review your commitment to savings, repayment of debt and superannuation. Remember, if you keep doing the same thing... you will get the same result.

And, when that moment comes... “*Who are you going to call?*”

*Andrew Evans*

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## *Temporary Flood Levy Proposed*

The Prime Minister, Julia Gillard, has proposed a temporary Flood Levy for individual taxpayers to help raise revenue to fund the reconstruction cost for areas of Queensland and elsewhere which were affected by severe flood damage earlier this year. The Flood Levy is proposed to apply for one financial year from 1 July 2011.

Under the proposal, individuals with a taxable income of \$50,000 or less will be exempt. However, a levy of 0.5% will be applied for individuals on taxable incomes between \$50,001.00 and \$100,000. A levy of 1% will be applied on taxable incomes above \$100,000. For example, under the levy, someone who has a taxable income of \$80,000 will pay \$2.88 extra tax per week.

Additionally those who receive the Australian Government Disaster Recovery Payment for a flood event in the 2010-2011 financial year will be exempt from paying the levy.

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## *Tax Help for Flood Victims*

The recent severe flooding in Queensland and elsewhere has brought about a number of announcements from authorities offering tax help to assist those in need.

The Government has announced that clean-up and recovery grants of up to \$25,000 (paid to primary producers and small businesses directly affected by the flooding that has occurred since 29th of November 2010) will be exempt from tax.

The Government has also confirmed that the Disaster Income Recovery Subsidy to assist small business persons, farmers and employees who have lost their income as a direct consequence of the flooding, will be tax-exempt.

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## *Rabbit Control Assistance*

Recent Newspaper reports have indicated that a rabbit plague is developing on the Eyre Peninsula.

The Eyre Peninsula Natural Resources Management Board (EPNRM) has advised that bait is available free to land-holders to help them control rabbits.

If you are a land-holder affected by rabbits in this manner make contact with the EPNRM to take advantage of this free offer.

## *Farm Management Deposits Scheme-Revisited*

With the Rural Sector enjoying one of the best seasons for many years it timely for rural clients to revisit the operation of the Farm Management Deposits (FMD) scheme.

1. Under the Farm Management Deposit (FMD) scheme, primary producers can manage years of uneven income by depositing and withdrawing farm deposits.
2. Primary producers who deposit into the scheme will be able to claim a deduction in the year the deposit is made. When a withdrawal is made, the amount of the deduction previously claimed is included in the assessable income in the year of the repayment.
3. To qualify for the FMD scheme, a deposit must be made with an eligible financial institution and must satisfy certain conditions including:
  - The owner must be an individual carrying on a primary production business;
  - The deposit cannot be made jointly;
  - The deposit must be for at least \$1,000 and cannot exceed \$400,000 at any one time;
  - Deposits must be made with only one financial institution;
  - The primary producer's rights as a depositor cannot be transferred; and
  - The deposit cannot be charged or encumbered.
4. A deposit satisfying these conditions will be tax deductible in the year made, provided the following conditions are satisfied:
  - The deposit is held within the account for at least 12 months from the date of deposit;
  - Your taxable non-primary production income for the year does not exceed \$65,000;
  - You do not become bankrupt; and
  - You do not cease to carry on a primary production business for more than 120 days before the end of the year.
5. The FMD claimed as a deduction cannot exceed the amount deposited or the owner's primary production income for the year.

## ***Life Insurance Through Superannuation, Who Will Receive Your Insurance Benefits?***

Superannuation laws that govern insurance policies held through superannuation can be complex and it is easy to miss some important facts that determine who your insurance benefits are paid to in the event of your death. A common misconception is that death benefits automatically form part of a deceased member's estate. This is not true because death benefit payments depend upon a number of circumstances.

Under superannuation law the Trustee may, in some circumstances, decide who receives your death benefit. Having an up-to-date nomination of beneficiary means the Trustee is aware of your intentions.

Benefits (under the SIS Act) can be paid to dependants, such as:

- Your spouse
- Your children
- Your financial dependants
- Anyone with whom you have an interdependent relationship
- And/or your legal personal representative

It is a good idea to review your benefit nominations regularly, especially if your personal circumstances change. The following outlines some of the ways in which you can direct a Trustee in the payment of your insurance benefits.

### **Non-Binding Nominations**

Non-binding nominations allow you to indicate which of your dependants you would prefer the Trustee to pay your superannuation death benefit including your insurance benefit. The Trustee will review your personal circumstances at the time of death and take your wishes, as expressed in your non-binding nomination, into account before deciding which of your dependants will receive your death benefit.

### **Binding Nominations**

Binding nominations allow you to nominate which of your dependants will receive your superannuation death benefit. The Trustee is legally bound by your wishes and must pay you death benefit in accordance with your nomination if it is valid at the time of death. Should your personal circumstances change in a way which means your nominated beneficiaries cease to be dependants, your binding nomination of the beneficiary/ies automatically becomes invalid and it is no longer binding. It should be noted that binding nominations through life companies or in superannuation funds where life insurance is provided must be updated every three years or when personal circumstances change.

### **No Nomination**

No nomination – you can choose not to make a death benefit nomination. The Trustee will then consider your personal circumstances at the time of death, and they also consider bequests you make in your Will, before deciding who will receive your death benefit.

## ***Same Sex Law Reform and Income Tax***

From 1 July 2009, all couples and families are to be treated the same way for tax purposes, regardless of gender this means that:

- Same sex couples will be treated the same way as married and opposite sex couples for tax purposes, including the ability to access the same tax concessions and offsets.
- The amount of income tax people are liable to pay may depend on whether they are in a relationship (registered or de-facto, including same sex couples) and whether they have dependent children or relatives.

### **Key points**

Definitions of the following are impacted by the change:

- Spouse
- Child
- De-facto relationship
- Relationship breakdowns
- The amount of income tax people are liable to pay maybe affected. This includes:
  - Medicare Levy and Medicare Levy Surcharge
- Impacted offsets include:
  - Dependant spouse tax offset
  - Dependant child and child-housekeeper tax offsets
  - Dependent parent tax offset
  - Education tax refund
  - Zone or overseas forces tax offset
  - Senior Australians tax offset
  - Pensioner tax offset
  - Medical expenses tax offset

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## ***Self-Education Expenses for Youth Allowance Recipient Deductible***

The High Court unanimously dismissed the Commissioner of Taxation's appeal and held that a taxpayer was entitled to a tax deduction for expenses incurred in deriving income from receiving Youth Allowance. The Full Federal Court have previously dismissed the Commissioner's appeal and held that self-education expenses incurred by the taxpayer in deriving Youth Allowance were allowable deductions.

This is a landmark case. The Tax Office has recently announced that it will accept the result from this decision and allow students to claim these deductions in the future.

In relation to past claims, the Tax Office will be writing eligible taxpayers and will automatically amend their Income Tax Returns to include a deduction of \$550 for each year that they are eligible from 2007 to 2010.

In preparing for your 2011 Income Tax Return it should be remembered that self-education expenses can now be claimed against Youth Allowance.

## ***Education Tax Refund – You Claim It, They Check It***

The Tax Office will be requesting names and addresses of Family Tax Benefit Part A recipients from Centrelink in efforts to identify recipients who may be incorrectly claiming the Government's 50% Education Tax Refund for primary and secondary school student expenses. The Tax Office expects to match records of around 1.5m individuals registered with Centrelink.

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### ***Aged Pension***

Asset test exemption for eligible rural customers. If you are a rural homeowner, Centrelink may exempt part of your property from the assets test if you:

- Are aged pension age and eligible for Aged Pension, Carer Payment or Service Pension.
- Have a long-term (20 year) continuous attachment to the principal home and land and they are on the same title, **and**
- Are effectively using productive land to generate an income, within your capacity.

For couples, only one member needs to satisfy all conditions. Single titled properties, larger than two hectares, may be wholly exempt.

### **Effective Land Use Test (ELUT)**

This is determined by:

- Location
- Family situation
- Health
- Other family members having dwellings on the property
- Land used for livelihood
- Current and potential commercial land use
- Caring responsibilities
- Environmental issues relating to the land, and
- Whether the land is an amalgamation of two or more blocks

Property in Exceptional Circumstances (EC) drought affected areas automatically meets the ELUT while the EC declaration is in force.

If the ELUT does not apply to you, the Private Land Use Test (PLUT) will continue to apply and the house and the first two hectares on a single title will be exempt from the assets test.

## ***Claiming Deductions for Donations to Flood Relief***

The ATO has approved "bucket donations" for the recent floods in Victoria, New South Wales and Queensland. This means that people who give to "bucket appeals" can claim a tax deduction equal to their contribution up to \$10 in their 2010-11 tax return without the usual need to keep a receipt. Donors are reminded that in order to claim a tax deduction for a donation of more than \$10, the donation must be made to a Deductible Gift Recipient (DGR) and a receipt must be kept for tax purposes.

You can check if an organisation is a DGR by visiting [www.abn.business.gov.au](http://www.abn.business.gov.au) – enter either the organisation's Australian Business Number (ABN) or name in the search box.

DGRs may also authorise third parties to collect tax deductible donations on their behalf. Where a donation is made through a third party, such as a bank or retail outlet, you should ask for a receipt and keep it with your other tax records.

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### ***Employing Your Spouse? Ensure that there is an "Employment Relationship"***

Two recent cases before the Administrative Appeals Tribunal dealt with the scenario of a husband employing his wife to assist with looking after rental properties. The question before the Tribunal was whether there was a "genuine employment relationship". In these two cases it was found that there was no employment relationship in the circumstances. Therefore the taxpayer was not entitled to deductions for salary or wages, fringe benefits and superannuation contributions paid in relation to "employing" the spouse. Rather, the outgoings would be considered private or domestic in nature.

It is not against the law to employ your spouse. However, the arrangement must be genuine and this requires examining the totality of the relationship when characterising it. As demonstrated by these cases, one cannot transform an existing domestic relationship simply by calling it a different name, or by adopting some aspects of an employment relationship.

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### ***Increase in Medical Expenses Tax Offset Claim Threshold***

The 20% net medical expenses tax offset threshold has been increased from \$1,500 to \$2,000 for the 2011 financial year.

## *Small Business Benchmarks*

The ATO has implemented a system of small business benchmarks to help businesses meet their tax obligations by enabling them to compare their performance against similar businesses.

These benchmarks show key business ratios for more than a hundred industries reporting with high, medium and low turnover ranges. This data does allow you to compare your business to the benchmarks for your industry and assess your business performance.

However, the ATO have made it clear that these benchmarks will be used to identify businesses that may be avoiding their tax obligations by not reporting some or all of their income.

By developing benchmarks for small businesses the ATO are making it clear what is expected from businesses in an industry. Businesses reporting outside the benchmarks may attract the attention of the ATO.

The following types of benchmarks have been developed for the small business sector:

- **Performance Benchmarks**, provide key business ratios for different industries
- **Cash Sales Benchmarks**, show the ratio of cash sales to total sales for different industries
- **Input Benchmarks**, show an expected range of income for trades people based on the labour and materials they use.

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## *Penalty for Late Superannuation Deduction Notice “Harsh”*

In a recent case, the Administrative Appeals Tribunal In a recent case, the Administrative Appeals Tribunal determined that a 25% administrative penalty was properly imposed by the Commissioner on a taxpayer who failed to provide a notice of intent on time to claim a deduction for a personal superannuation contribution.

However, the Tribunal decided to remit in full the administrative penalty as it found it would be “harsh” for the taxpayer to pay a penalty of \$10,000 on top of the \$40,000 increase in his tax bill due to a short coming in paperwork.

**Tip:** To be eligible for a deduction for a personal superannuation contribution, the individual must:

- a. Give a notice to the fund trustee stating his or her intention to claim a deduction; and
- b. Receive an acknowledgement of receipt of the notice.

The notice must be given by the time the person lodges his or her income tax return for the year in which the contribution is made or, if no return had been lodged by the end of the following income year, by the end of that following year.

## *Investing in Youth Undergraduate Studentship Program*

The Investing in Youth Undergraduate Studentship Program provides financial and mentoring support for Australians who are committed to contributing to Australia’s Rural Sector.

The program aims to attract young Australians into the field of primary industries study by providing them with financial assistance throughout their degrees, as well as giving them tailored support in the form of professional and experienced mentors.

The program provides students with financial support of up to \$5,000 per annum and access to a professional mentor and support network to help them with career advice and direction. It also offers relevant industry placements so that graduates can gain experience in their chosen field of study.

Successful recipients will be selected on the basis of their commitment to primary industries and to a career in primary industries. The studentships will provide support to undergraduate students for a period for up to four years.

The initiative, which follows on from a successful pilot in 2010, is a collaborative effort across industry and Government.

### **Eligibility**

- Students must be Australian Citizens or Permanent Residents of Australia
- Students must have completed Year 12 (or equivalent) within the previous two years and be entering University for the first time.
- Students must be enrolling in a Bachelor of Agriculture of Science, Bachelor of Agricultural Economics, Bachelor of Natural Resource Management, Bachelor of Veterinary Science (or equivalent) at an Australian University.
- Students must be able to demonstrate a commitment to primary industries and to a career in primary industries.
- Students must be able to demonstrate strong leadership qualities.

Applications for this year have closed. However for those clients with students completing Year 12 during 2011 an application may be made later this year for the 2012 year.

## Deductions for Personal Superannuation Contributions

There have recently been numerous reports of the ATO advising taxpayers that they incorrectly claimed a deduction for super contributions made. The consequences of incorrectly claiming the deduction is that your taxable income for the given tax year is increased by the amount of the deduction.

The maximum eligible deduction available is \$50,000. Therefore at your highest marginal rate the tax payable could be \$23,250 (\$50,000 x 46.5%). This amount is less any penalties and interest that may also be charged.

To avoid incurring such a large tax bill you need to ensure that you are eligible to claim a deduction. To claim a deduction you need to have done the following:

- Made a personal contribution to a complying superannuation fund (not the super guarantee charge or salary sacrifice amounts).
- Pass the maximum earnings test.
  - Less than 10% of your total income is from employment (includes Reportable Fringe Benefits and Reportable Employer Super Contributions RESC).
- Be less than 75 years of age.
- Written to your superannuation fund and advised them of the amount you intend to claim as a deduction.
- Received an acknowledgment of your intent to claim a deduction and agree to your intentions from your superannuation fund.

If you do not pass the above five rules then you are not entitled to claim a tax deduction in your personal Income Tax Return. The problems that are attracting publicity are that individuals have claimed a tax deduction without completing rules four and five listed above.

The ATO's data matching the differences between the super funds and the individuals has uncovered the said problems individuals have been facing. If you intend claiming a tax deduction you need to ensure that you have completed a Notice of Intent to claim or vary a deduction for personal super contributions form.

The forms are often sent to individuals by the super funds when personal contributions have been made (this excludes SMSF's). The forms detail the amounts which you will be claiming as a tax deduction and includes your fund details (eg. Member Number). If you have made a personal

contribution and intend claiming a deduction then you need to obtain a form from either the ATO (standard form for use with all super funds) or directly from your Superfund. The form needs to be completed and then returned to the super fund so that they can adhere to your intentions. The form needs to be lodged with your super fund by whichever occurs first:

- The day you lodge your personal Income Tax Return or
- Before end of the income year following the year in which the contributions were made.

Below is the website for the ATO standard form for Notice of Intent to claim or vary a deduction for personal super contributions:

<http://ato.gov.au/content/downloads/spr86434n71121.pdf>

## Superannuation on Payment Summaries

The 2009/2010 financial years marked the first year that employers were required to record Reportable Employer Superannuation Contributions (RESC) on the payment summaries of employees.

- The employee influenced the rate or amount of superannuation that the employer contributed for them.
- The contributions are additional to the compulsory contributions an employer is required to make.

Type of Superannuation Contribution	RESC on payment Summaries?	
	Yes	No
9% SG		√
Salary Sacrifice	√	
Industrial Agreement		√
Required by law		√
Extra amounts paid by employer and freely agreed between employee/employer	√	

As these were new employer obligations in the 2010 financial year we have noticed a number of mistakes. Feedback from the Australian Taxation Office is that a significant number of employers have wrongly reported RESC amounts on payment summaries. Payment summaries should not contain SG amounts reported as RESC.

### What if I have made a mistake?

Any employers who have issued incorrect payment summaries to their employees (for example, by including the SG amounts in the RESC label) will need to issue those employees with amended payment summaries.

For employers who have made an error and who have lodged their annual payment summary reports with the Tax Office, there is a need to lodge an amended annual group employers reconciliation statement.

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### 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.

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