

SPRING 2003

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SUPERANNUATION UPDATE

Given some recent changes we thought it timely to provide some updated information in relation to Superannuation.

Maximum Deductible Contributions (MDC)

| Age Of Members #1 | MDC #2 | | Gross Personal Contributions #3 (Unsupported persons) | |
|-------------------|----------|----------|--|-----------|
| | 03/04 | 02/03 | 03/04 | 02/03 |
| Under 35 | \$13,233 | \$12,651 | \$15,977 | \$15,201 |
| 35-49 | \$36,754 | \$35,138 | \$47,339 | \$45,184 |
| 50 & over | \$91,149 | \$87,141 | \$119,865 | \$114,521 |

#1 Age determined at date of last contribution in income year.

#2 Assuming all conditions satisfied. Note new age condition: aside from employer contributions made pursuant to SG or an industrial award or determination, a deduction is not available if a contribution is made more than 28 days after the end of the month in which the member attains age 70.

#3 Assuming all conditions are satisfied, this is the amount of personal contributions required to make the MDC, given that a deduction is available on the first \$5,000, and 75% of the balance, of those contributions.

Reasonable Benefit Limits

| Standard RBLs | 2003/2004 | 2002/2003 |
|-----------------|-------------|-------------|
| <u>Lump Sum</u> | \$588,056 | \$562,195 |
| <u>Pension</u> | \$1,176,106 | \$1,124,384 |

If benefits are paid before age 55, the lump sum RBL is reduced by 2.5% for each whole year the person is under that age, beginning at the birthday immediately before the benefits are paid.

NEW SUPER GUARANTEE REQUIREMENTS

From 1 July 2003, super guarantee contributions will have to be paid quarterly. Employers will no longer be able to make superannuation contributions in one lump sum by 28 July of each year.

There is no change to the rate of super contributions; the amount of any super contributions will remain at 9% of the employee's notional earnings base for the quarter.

Some of the ways in which businesses can report to employees include:

- Including the information on pay slips;
- A letter to each employee;
- Giving each employee a copy of the receipt received from the superannuation fund after a contribution is made.

Under the legislation, the notice must be given to employees within 30 days of each contribution.

So, employees should make the necessary changes to their payroll procedures and systems to ensure they can make quarterly super payments by the due dates and report to their employees.

SUPERANNUATION EXPENSES PAID BY EMPLOYER

Trustees of small self managed Superannuation funds, particularly, should be aware that expenses paid by the employer on behalf of the fund cannot be considered contributions to the fund.

The Australian Taxation Office has the view that this widespread practice contravenes the law and is not allowable as a deduction for the employer.

The Superannuation Industry (Supervision) Act requires trustees to keep the funds money and assets separate from the monies and assets of the trustee itself and the sponsoring employer.

Whilst this may appear rather technical it is important for trustees to ensure that expenses incurred on behalf of the superannuation fund are actually paid by the fund from a fund account.

INCOME TAX DEDUCTIONS

Generally a deduction is allowed for losses and outgoings incurred as part of income-producing activities, provided they are intended to give rise to assessable income. In addition, there are specific provisions of the legislation, which allow deduction, e.g. depreciation, donations to charitable institutions, borrowing expenses, etc.

Most Common Employee Deductions

Some of the most common employee deductions include:

- Briefcases;
- Calculators & electronic diaries;
- Cars; (see below)
- Clothing/uniforms/footwear – occupation specific, compulsory and non compulsory uniform;
- Conferences and seminars;
- Depreciation on computers and software;
- Diaries;
- Donations (of \$2 or more to an approved body or fund or political funds up to \$100);
- Dry Cleaning (if clothing is deductible);
- Income protection insurance;
- Laundry & maintenance;
- Protective clothing;
- Professional library;
- Self-education expenses;
- Stationery (e.g. logbooks, record keeping);
- Subscriptions to professional associations;
- Telephone and other communications;

- Tools of trade; and
- Union dues and professional association fees.

Expense Substantiation

Claims for employment-related expenses by employees (excluding car expenses, expenses covered by travel and meal allowances), of more than \$300 aggregate, must be supported with documentary evidence. Whilst expenses totaling \$300 or less do not need to be supported by documentary evidence, they must still be deductible expenses that have actually been incurred.

Up to \$150 may be claimed for laundry expenses for eligible work clothes without the need for substantiation, provided that such an expense has actually been incurred and total work expenses do not exceed \$300.

Where expenditure is incurred on items costing \$10 or less, and the total of these expenses is not more than \$200, taxpayers can maintain their own records of expenditure in a diary or similar and not necessarily provide written evidence from a supplier.

Most Common Rental Property Deductions

The deductions available to landlords deriving rental income include:

- Council rates, water rates, land tax;
- Building, fire, burglary, public liability and loss of profits insurance premiums;
- Interest on money borrowed to acquire the income producing property;
- Borrowing expenses, including guarantee fees, search fees, valuation fees, survey and registration fees, etc. (prorated over prescribed periods);
- Management fees paid to real estate agents for managing tenanted properties and commission paid for the collection of assessable rental income;
- The cost of advertising for tenants;
- Non-capital repairs, regular maintenance costs;
- Furniture and furnishings owned by the landlord where

the property is let furnished, e.g. carpets, blinds, hot water service, light fittings are depreciable (an outright deduction may be available depending on the cost). Costs of a quantity surveyor's depreciation report would be deductible;

- Legal costs (capital costs up to maximum of \$50), expenses of discharging a mortgage, lease preparation costs, etc., provided they are not reimbursed by the tenant;
- Travel costs to inspect the property;
- Bank charges and debits tax on accounts specifically maintained to receive rental income or provide for maintenance, commission or other deductible outgoings;
- Specific telephone call charges in dealing with estate agents, tenants, plumbers;
- Building write-off deductions – but subject to restrictions; and
- Head rental payable by the landlord where they are a lessee rather than the owner and are sub-leasing the property to another rent-paying tenant.

Car Expenses

Taxpayers have the choice of four methods for claiming car expenses (fuel, repairs, tyres, registration and insurance, lease charges, interest on a car loan, depreciation, etc.).

The conditions for each of these methods are summarized below. It should be noted that the 12% of cost and one-third of actual expenses' methods could only be used if more than 5,000 business kilometres are travelled during the income year.

Cents per Kilometre Method

| Car Size | Rotary Engine Size | Conventional Engines(Non-rotary) | Rates per kilometre 02/03 | Rates per kilometre 01/02 |
|----------|--------------------|-----------------------------------|---------------------------|---------------------------|
| Small | 0-800cc | Up to 1,600cc | 50.0c | 49.3c |
| Medium | 801-1,300cc | 1,601-2,600cc | 60.0c | 59.0c |
| Large | 1,301cc+ | 2,601cc+ | 61.0c | 60.0c |

The set rate per kilometre method can be adopted any time. A claim of up to 5,000 business kilometres will be allowed where the vehicle travels more than 5,000 business kilometres during the financial year. Substantiation is not required but claims must be based on a reasonable estimate.

12% of Cost

A deduction will be allowed based on a 12% of the cost of the vehicle subject to the depreciation cost limit. For the 2003/2004 year, the limit is \$57,009 (the same as 2002/2003). The deduction will be reduced in proportion with the number of days in the year the vehicle was not owned or leased by the taxpayer. The deduction is based on the cost of the car when acquired or if under lease, the market value when the lease was taken out.

One-third of Actual Expenses

Taxpayers can deduct one-third of the total running costs of the car that would qualify as a deduction. Substantiation is required under this method for all expenses, although claims for petrol and oil may be reasonably estimated based on odometer records and average fuel costs and fuel consumption statistics.

Log Book Method

A logbook is kept for a minimum continuous 12-week period. Business and total kilometres during the period are determined. The taxpayer is then required to make a reasonable estimate of the number of business kilometres travelled by the car during the year.

When making this estimate, taxpayers will need to take into account any log books, odometer records and changes in the pattern of business use of the car.

The business kilometre estimate is then divided by the total kilometres travelled by the car during the income year to arrive at the relevant business use percentage.

Allowable car expenses are multiplied by the business use percentage to calculate the deduction. Other than petrol and oil, which can be supported by odometer records, all expenses must be substantiated.

EMPLOYEE OR CONTRACTOR?

It is important for a principal /employer to be sure of the legal relationship with a worker, as the tax consequences, and some other issues, are entirely different.

In an employment relationship the employer is liable for the following:

- Remitting income tax to the Tax Office on the employee's wages;
- Making superannuation contributions on the employee's behalf;
- Paying payroll tax
- Paying Work Cover premiums

Determining whether a worker is an employee or an independent contractor is effectively a balancing test.

The main factor in determining whether an employment relationship exists is the extent of control the principal has over how, when and where the work is performed. The greater the control, the more likely it is that the worker will be an employee. However, in addition to control, there are a number of other factors to be considered.

A worker is likely to be an employee if most of the following are applicable;

- The Principal has the right to exercise control over the manner in which the worker performs the task;
- There is documentation indicating the worker is an employee;

- The worker's hours of work are prescribed by the Principal;
- The Principal has engaged the worker on an ongoing basis rather than for a specific and finite task;
- The Principal provides the necessary materials, plant and equipment for the job;
- The worker is paid periodically rather than on a per job basis;
- The worker receives employee entitlements e.g. sick or holiday pay;
- The worker is not permitted to delegate a task to another person, i.e. sub-contract the task;
- The task being completed by the worker is integral to the business being conducted by the principal;
- The worker does not bear the commercial risks for their defective work. That is, the worker would not be expected to rectify any error at their own cost prior to completion of the task;
- The worker does not have scope to bargain for their rate of remuneration for each task undertaken, nor do they have the ability to take holidays without firstly seeking the permission of the principal.

INTEREST RATE FOR PRIVATE COMPANY LOANS 2003-04

For the 2004 income year, the interest rate on loans is 6.55% per annum. (The rate was 6.3% for the 2003 income year) This rate is based on the Reserve Bank's Indicator Lending Rate for variable housing loans.

The benchmark interest rate of 6.55% is relevant to loans made between 4 December 1997 and 30 June 2003.

It is used to:

- Determine if a loan made in the 2003 income year is taken to be a dividend; and
- Calculate the amount of the minimum yearly repayment for the 2004 income year on an amalgamated loan which is taken to have been made prior to 1 July 2003

UNFAIR DISMISSAL CAN APPLY TO CASUAL EMPLOYEES

With more and more casual employees in the workplace, some recent decisions that employers should take care when terminating long-term casual employees.

Casual employees who are engaged by an employer for more than 12 months are not excluded from the unfair dismissal rules.

Given this, employers should take the same steps when terminating the employment of a long-term casual employee, as would apply to permanent employees, otherwise they will expose themselves to the risk of a claim that the termination was "harsh, unjust or unreasonable".

Disclaimer: The contents of this publication are general in nature and we accept no responsibility for persons acting on information contained herein without first consulting us.