



March 2009 MTUN

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1 INCOME TAX

1.1 Politicians, Boards & Statutory Authorities

(1) *** Small Business and General Business Tax Break - Draft Legislation [Swan]

[Source: Small Business and General Business Tax Break - Draft Legislation \[Press Release No 018 Swan 25 February 2009\]](#)

The government released for public comment on 25 February 2009, the draft legislation and explanatory materials for the Small Business and General Business Tax Break announced as part of the Government's \$42 billion *Nation Building and Jobs Plan*.

The tax break will provide a temporary 30 per cent investment allowance:

- ◆ to small businesses for eligible capital investments of \$1000 or over; and
- ◆ for other businesses for capital investments of \$10,000 or more.

Once public consultation has been completed the Government will look to finalise the legislation for introduction in the Parliament.

(2) *** Exposure Draft Legislation to Facilitate Transition into the New Tax Agent Services Regime [Media release No.7 - Bowen]

[Source: Exposure Draft Legislation to Facilitate Transition into the New Tax Agent Services Regime \[Media release No.7 - 12/02/2009 - Bowen\]](#)

The Assistant Treasurer, Chris Bowen MP, released for public comment the transitional and consequential provisions and associated explanatory material to complement the Tax Agent Services Bill 2008, which was introduced into Parliament on 13 November 2008. Together, these Bills give effect to the new regulatory regime for the provision of tax agent services.

The draft Tax Agent Services (Transitional Provisions and Consequential Amendments) Bill 2009 provides the transitional provisions and consequential amendments to facilitate the transition into the new regulatory regime by providing:

- ◆ transitional arrangements to allow tax agents and nominees registered under the current law to transition smoothly into the new regulatory regime, and similarly allow certain entities to be taken as registered BAS agents under the new regime;
- ◆ amendments to the *Taxation Administration Act 1953* to introduce two 'safe harbour' provisions, exempting taxpayers who engage an agent from liability for administrative penalties for certain mistakes and omissions where the error is solely due to the agent's carelessness; and
- ◆ consequential amendments to existing legislation that will be necessary upon the enactment of the Tax Agent Services Bill 2008, for example the repeal of Part VIIA of the *Income Tax Assessment Act 1936* (the existing law relating to the registration of tax agents).

The Government values the input provided by interested parties through consultation. Comments received during previous public consultations on the new regulatory regime, including on the key transitional and consequential provisions exposed in mid-2008, have led to significant improvements being made.

The Government now seeks submissions from interested parties on the exposure draft transitional Bill and explanatory material. Copies of the consultation materials are available from the Treasury website www.treasury.gov.au.

(3) ** \$42 Billion Nation Building and Jobs [Swan]

[Source: \\$42 Billion Nation Building and Jobs \[Media release No.8- 3 February 2009 Swan\]](#)

Key measures in the \$42 billion Nation Building and Jobs Plan include:

- ◆ Free ceiling insulation for around 2.7 million Australian homes
- ◆ Build or upgrade a building in every one of Australia's 9,540 schools
- ◆ Build more than 20,000 new social and defence homes
- ◆ \$950 one off cash payments to eligible families, single workers, students, drought effected farmers and others
- ◆ A temporary business investment tax break for small and general businesses buying eligible assets
- ◆ Significantly increase funding for local community infrastructure and local road projects

The initiatives in the Nation Building and Jobs Plan will provide a boost to economic growth of around ½ per cent of GDP in 2008-09 and around ¾ per cent to 1 per cent of GDP in 2009-10.

For every \$1 spent providing immediate stimulus to the economy the Government has invested more than \$2 on long term investments that will generate future economic growth.

The IMF has forecast advanced economies to contract by 2 per cent collectively in 2009. Growth has also slowed dramatically in key emerging economies, China in particular. All these factors have caused a rapid unwinding of the mining boom in Australia, with major consequences for Australian revenues, growth and jobs.

The global recession had already pushed the Budget into deficit, even before policy action is taken.

(4) Household Stimulus Package – Reductions in stimulus payments first announced

Source: [Fact Sheet - 2009 Updated Economic and Fiscal Outlook - Household Stimulus Package](#)

The Government will provide \$12.2 billion to assist households and support economic growth in 2008-09 through immediate tax relief and transfer payments.

The package:

- ◆ is designed to provide widespread support to low and middle income earners and households that are most affected by the slowdown;
- ◆ is a significant economic measure to deal with extraordinary times and is in addition to the Economic Security Strategy delivered in December 2008 to support as many households as possible.

Following negotiations with independent Senators the Government made some amendments to the Nation Building and Jobs Plan that was first announced to ensure the passage of the plan through the Senate.

(5) The shrinking \$950 tax bonus for working Australians

Source: [Fact Sheet 2009 - Updated Economic and Fiscal Outlook \\$900 Tax Bonus for Working Australians](#)

The bonus, to be paid from April 2009 to those who have lodged their 2007-08 tax return, will be available to Australian resident taxpayers who paid net tax in the 2007-08 financial year after considering their:

- ◆ tax payable;
- ◆ Medicare levy and Medicare levy surcharge;
- ◆ less any offsets or imputation credits they received for the year.

The Tax Office will pay the bonus automatically to taxpayers in the same manner in which it pays tax refunds:

- ◆ \$900 - for taxpayers with taxable income up to and including \$80,000.
- ◆ \$600 - for taxpayers with income exceeding \$80,000 to \$90,000.
- ◆ \$250 - for taxpayers with income exceeding \$90,000 to and including \$100,000.

Taxpayers must lodge their tax returns for the 2007-08 financial year by 30 June 2009 to be eligible.

Editor

The bonus has been reduced to \$900 following negotiations to get the legislation through Parliament and would be more accurately entitled the bonus for earning Australians. There is neither indication nor evidence of a work test.

(6) Single-Income Family Bonus

Source: Fact Sheet - 2009 Updated Economic and Fiscal Outlook - Single-Income Family Bonus

The Government is providing a one-off payment of \$900 per family to about 1.5 million families entitled to Family Tax Benefit Part B ("FTB-B payment") to families, irrespective of the number of children, who rely on one main income earner, including:

- ◆ sole parent families: and
- ◆ two-parent families where one parent chooses to stay at home or balance some paid work with caring for children.

Some families will also benefit from the Tax Bonus for Working Australians.

The one-off payment:

- ◆ in families where the parents are separated:
 - ~ if a parent is the primary carer of the child –will be paid to the parent who is the primary carer of a child;
 - ~ if there is shared care, and a parent has at least 35 per cent of care - will be shared according to the percentage of care;
- ◆ will be automatically paid by Centrelink:
 - ~ for families who receive their family assistance as fortnightly instalments - in the fortnight commencing 11 March 2009, or as soon as practicable thereafter;
 - ~ for families who receive their family payments as a lump sum at the end of the financial year - with the rest of their FTB-B payment.
- ◆ will not be taxable;
- ◆ will not be included for social security income-testing purposes.

The legislation enabling the one-off payment will also ensure that where a person's government payments are income managed, the one-off payment will be managed.

The original Bonus of \$950 was lowered to ensure the passage of the legislation through the Senate.

Payments under Family Tax Benefit - B

FTB-B is limited to families (single parent or two parent) where the primary earner has an adjusted taxable income of \$150,000 per year or less.

For two parent families where the higher income earner has an income of \$150,000 per year or less, it is the income of the lower earner that affects how much FTB-B the family will receive.

Eligible two-parent families can still receive some FTB-B if:

- ◆ their youngest child is aged under five years and the lower earner has income less than \$22,995 per annum; or
- ◆ their youngest child is aged between five and 18 years and the lower earner has income less than \$17,904 per annum.

(7) Farmer's Hardship Bonus

Source: Fact Sheet - 2009 Updated Economic and Fiscal Outlook - Farmer's Hardship Bonus

The Government will make a one-off payment of \$950 for each recipient, at an estimated cost \$20.4 million in 2008-09, to assist farmers:

- ◆ around 21,500 recipients experiencing hardship due to drought conditions; and
- ◆ receiving Exceptional Circumstances related income support.

The Bonus:

- ◆ will be paid automatically by Centrelink in the fortnight commencing 24 March 2009;
- ◆ will provide immediate financial support to farmers who may not have sufficient taxable income to benefit from the Tax Bonus;
- ◆ not be taxable or counted as income for income support purposes.

Eligible recipients will be those who on 3 February 2009 are in receipt of:

- ◆ Exceptional Circumstances Relief Payment for Farmers;
- ◆ Interim Income Support for Farmers;
- ◆ Exceptional Circumstances Relief Payment for Small Business;
- ◆ Interim Income Support for Small Business;
- ◆ Transitional Income Support; and
- ◆ Farm Help Income Support.

A single bonus of \$950 will be paid to eligible households, irrespective of whether the eligible payment they receive is paid at a single or couple rate.

(8) Assistance with Education - Back to School Bonus

Source: [Fact Sheet - 2009 Updated Economic and Fiscal Outlook - Assistance With Education - Back To School Bonus](#)

The Government will invest \$2.6 billion to help families with the costs of education in the 2009 academic year by paying a Back to School Bonus.

The Back to School Bonus:

- ◆ is a one-off lump sum payment of \$950 per eligible child;
- ◆ is in addition to assistance for education expenses that is available through the Education Tax Refund (ETR);
- ◆ will be paid:
 - ~ for each eligible school aged child (aged 4 to 18 on 3 February 2009) whose family is in receipt of Youth Allowance (students and apprentices), Austudy or ABSTUDY;
 - ~ for those eligible beneficiaries receiving FTB-A - fortnightly by Centrelink from the fortnight commencing 11 March 2009;
 - ~ for those families who receive FTB-A, which, under existing rules can be claimed for two years, as a lump sum - to coincide with the processing of their 2008-09 tax returns in the 2009-10 financial year;
 - ~ is expected to assist over 1.2 million families across Australia eligible for FTB-A on 3 February 2009 (or who are subsequently determined to be entitled to receive FTB-A on 3 February 2009);

Families with a dependent full-time student:

- ◆ aged 19 or 20 will not receive the Back to School Bonus or the Training and Learning Bonus, but the student (apparently) will be eligible to receive a \$950 payment through an administrative scheme;
- ◆ aged 21 to 24 years that are eligible to receive FTB-A on the date of announcement (or who were subsequently determined to be entitled to receive FTB-A on the date of announcement) will be eligible for the Training and Learning Bonus.

Under the ETR eligible families will be able to claim:

- ◆ a 50 per cent refundable tax offset every year for up to \$750 of eligible expenses for each child undertaking primary school, (that is, a refund of up to \$375 per child, per year); and
- ◆ a 50 per cent refundable tax offset every year for up to \$1,500 of eligible expenses for each child undertaking secondary school (that is, a refund of up to \$750 per child, per year).

(9) Training and Learning Bonus

Source: [Fact Sheet - 2009 Updated Economic and Fiscal Outlook - Training and Learning Bonus](#)

The Government's will provide a \$511.2 million Training and Learning Bonus as a one-off bonus consisting of two categories:

- ◆ to eligible student social security recipients to assist with the costs for the 2009 academic year;
- ◆ to cover students undertaking approved courses that generally include secondary education courses, undergraduate courses, associate diplomas and some other diplomas, TAFE courses and some postgraduate courses:

The Category 1 Bonus:

- ◆ is a one-off \$950 bonus (for 2009 only) for eligible recipients at 3 February 2009 of:
- ◆ will be paid by Centrelink in the fortnight beginning 24 March 2009 to eligible recipients of.
 - ~ Youth Allowance (student and apprentices);
 - ~ Austudy;
 - ~ ABSTUDY and other student and related payments (Sickness Allowance and Special Benefit (under age pension age));
 - ~ payments under the Veterans' Children Education Scheme (VCES);
 - ~ payments under the Military Rehabilitation and Compensation Act Education and Training Scheme (MRCAETS); or
 - ~ Family Tax Benefit Part A (FTB-A) for each eligible dependent full-time student aged 21 to 24 years, (on the date of announcement) or who were subsequently determined to be entitled to receive FTB-A on the date of announcement.
- ◆ will be available to recipients of Sickness Allowance and Special Benefit (under Age Pension age);
- ◆ is non-taxable and will not be treated as income for social security purposes.

If a student attracts the Government's Back to School Bonus they are not eligible for the one-off \$950 Learning and Training Bonus.

The Category 2 bonus (applies from 1 January 2009 to 30 June 2010):

- ◆ is a temporary supplement to the Education Entry Payment, a payment available to some social security recipients to assist them with the costs of returning to study (EdEP), of \$950;
- ◆ is in addition to the existing EdEP payment of \$208 which is currently paid to a range of social security recipients who are commencing study, including Newstart Allowance and Parenting Payment Partnered recipients;
- ◆ those eligible for the EdEP bonus will receive it when they receive their EdEP payment or, if the EdEP payment has already been paid, from 24 March 2009.
- ◆ from 1 January 2009 until 30 June 2010:
 - ~ recipients of the EdEP will receive an additional \$950 payment on top of the \$208 they would have received;
 - ~ eligibility to EdEP will be extended to Youth Allowance (other) recipients and the qualifying period for all eligible recipients will be reduced from 12 to 1 month.
- ◆ is non-taxable and will not be treated as income for social security purposes.

The base EdEP payment of \$208 will remain taxable and be treated as income for social security purposes.

Recipients of the following payments may qualify for an EdEP and thus the \$950 temporary supplement:

- ◆ Newstart Allowance;
- ◆ Parenting Payment Partnered;
- ◆ Youth Allowance (other) recipients (from 1 January 2009 to 30 June 2010);
- ◆ Partner Allowance; Widow Allowance;
- ◆ Carer Payment (adult);
- ◆ Carer Payment (child);
- ◆ Disability Support Pension;
- ◆ Parenting Payment Single;
- ◆ Special Benefit (in certain circumstances);
- ◆ Widow B Pension; or
- ◆ Wife Pension.

If an individual received the EdEP \$208 payment before 1 January 2009 they will not receive the supplement this calendar year, however, if they are eligible to claim the EdEP before 30 June 2010 they will receive the supplement when they next claim.

A person, who is an eligible social security recipient, may qualify for EdEP, if they have commenced or intend to commence a course of education that is approved including:

- ◆ secondary education courses,
- ◆ undergraduate courses,
- ◆ associate diplomas and some other diplomas;
- ◆ TAFE courses and some postgraduate courses;
- ◆ an individual has been on Newstart or Youth Allowance (other) continuously for 1 month.

The Government:

- ◆ has temporarily (from 1 January 2009 to 30 June 2010) relaxed the requirement that an individual must have been receiving an eligible social security payment from 12 months to 1 month;
- ◆ will ensure that full time postgraduate students receiving Australian Postgraduate Awards (stipends) this semester receive a Training and Learning Bonus payment through an administrative scheme.

To assist students, who have not qualified for a Bonus under the legislative provisions, the scheme is to be implemented with the assistance of a Ministerial discretion to ensure that those who enrol in and commence full time study this semester, and those who are granted one of the qualifying student income support payments (that is, Youth Allowance, Austudy or ABSTUDY Living Allowance) after 3 February 2009, receive a bonus.

If an individual has received the Government's Back to School Bonus they are not eligible for the one-off \$950 Training and Learning Bonus but they are not precluded from receiving the EdEP temporary supplement of \$950 if they received either of the one-off payments.

Editor

Practitioners will need to take care to identify the component of the EdPep payment (\$208) that is assessable income when completing tax returns.

Hopefully this taxable component will be shown clearly on the portal.

(10) Pensioners –what wasn't said

Source: [Fact Sheet - 2009 Updated Economic and Fiscal Outlook - Pensioners](#)

Last May, the Government announced an investigation into measures to strengthen the financial security of seniors, carers and people with disability as part of its broader inquiry into Australia's Future Tax System.

The Pension Review will include an examination of the appropriate levels of income support and the structure and payment of concessions, allowances and other entitlements. The review will hand down its findings to the Government by the end of February 2009.

The final shape of pension reform will be detailed in the upcoming budget.

In the \$42b announcement the Government restated the assistance it has provided to Australia's pensioners, seniors and carers since coming to office.

Excluding indexation, the Government has provided an additional \$2,337 of assistance to single pensioners and \$3,537 to pensioner couples since coming to office:

- ◆ on 14 October 2008, the Government announced as part of its \$10.4 billion Economic Security Strategy, a \$4.9 billion down payment in the lead up to comprehensive reform of the pension system to provide lump-sum payments of:
 - ~ \$1,400 to single pensioners; and
 - ~ \$2,100 to pensioner couples.
- ◆ in the 2008-09 Budget the Government:
 - ~ paid a lump-sum Seniors Bonus of \$500,
 - ~ increased the Utilities Allowance from \$107.20 to \$500 per annum; and
 - ~ increased the Telephone Allowance from \$88 to \$132 per annum for those with an internet connection.

Editor

It is not clear whether pensioners with assessable income in the 2007-08 year qualify for the \$900 bonus.

(11) Building the Education Revolution

Source: [Fact Sheet - 2009 Updated Economic and Fiscal Outlook - Building the Education Revolution](#)

The Government will spend \$14.7 billion boost on the Education Revolution over the next three financial years in the Building the Education Revolution (BER) to provide new facilities and refurbishments in both government and non-government schools.

All of Australia's 9,540 schools will benefit from the immediate funding for major and minor infrastructure projects.

The three key elements of BER are:

- ◆ Primary Schools — \$12.4 billion to build or refurbish large scale infrastructure in primary schools, K-12s and special schools, including libraries and multipurpose halls and major upgrades of existing facilities;
- ◆ Science and Language Centres — \$1 billion to build up to 500 science laboratories or language learning centres in secondary schools;
- ◆ National School Pride Program (Renewing Australia's Schools) — \$1.3 billion to refurbish and renew existing infrastructure and build minor infrastructure in all schools.

There will be a competitive process for proposals with funding to be allocated to schools that demonstrate need, readiness and capacity to complete construction by 30 June 2010.

Under the proposal:

- ◆ first funding is expected to be paid at the latest by June 2009.
- ◆ the projects will commence by the end of June 2009 at the latest.

- ◆ minor infrastructure builds will be completed within 6-8 months, if not sooner;
- ◆ major infrastructure builds such as libraries or multipurpose halls must be completed by 30 June 2011;
- ◆ new science and language centres will be completed by 30 June 2010.
- ◆ all funding agreements will require each project to meet its designated milestones;
- ◆ schools will be required to report on progress on projects through an on-line reporting portal.

If a primary school has a library or multipurpose hall they may be approved to either build another multipurpose facility, refurbish existing facilities, or build another facility that will be approved by the Commonwealth.

Applications for funding:

- ◆ by Government schools - can be made through the State and Territory Governments and non-government schools from Block Grant Authorities (BGAs) as of February 2009;
- ◆ by non Government schools – details are not provided.

States and Territories and BGAs will be required to prioritise projects and ensure those projects will meet milestones, including completion.

Editor:

The weakness in the competitive process is that there is a close correlation between needy schools and socio economic status of the region the school serves, there is also close correlation between the collective skill and ability of school councils who need to demonstrate the need, readiness and capacity to complete construction by 30 June 2010 and the socio economic group the school serves.

Unfortunately it some of the most needy schools may miss out on deserved assistance because they lack the skills or resources to acquire the services of those with the skills to manipulate the system to their own advantage.

It is a condition of funding for major infrastructure projects in primary schools (such as halls and libraries) that schools make these facilities available for community use at no or low cost.

The success of the program might depend on some funding being set aside to assist the known needy schools prepare their proposals.

(12) Small Business and General Business Tax Break – Investment allowance

Source: [Fact Sheet - 2009 Updated Economic and Fiscal Outlook - Small Business and General Business Tax Break](#)

[The draft legislation introducing this tax bonus refers to the bonus as a Investment Allowance].

The Government will provide an additional \$2.7 billion temporary tax break to small and other businesses to boost business investment so that:

- ◆ a small business will be able to access the tax break for assets costing \$1,000 or more;
- ◆ a business, other than a small business, the asset threshold is \$10,000;
- ◆ for assets acquired from 13 December 2008 to 30 June 2009, where the asset is installed before 30 June 2010 - the additional deduction will be equal to 30 per cent of the asset's cost;
- ◆ for assets acquired between 1 July 2009 and 31 December 2009, where they are installed before 31 December 2010 - the additional deduction is 10 per cent of the asset's cost.

In order to reduce complexity and compliance costs for businesses the core provisions of the Uniform Capital Allowance will provide the framework for determining:

- ◆ which assets are eligible; and
- ◆ who is entitled to claim the bonus deduction.

The allowance will take the form of a tax deduction in addition to the usual capital allowance deduction able to be claimed for the asset as part of the taxpayer's income tax return.

(13) Small Business and General Business Tax Break - Draft Legislation[Small Business and General Business Tax Break – Investment allowance \[25 February 2009 Swan\]](#)

On 25 February 2009 the Treasurer released, for public comment, draft legislation and explanatory materials for the Small Business and General Business Tax Break announced as part of the Government's \$42 billion Nation Building and Jobs Plan.

Once public consultation has been completed the Government will look to finalise the legislation for introduction in the Parliament.

Treasury produced a series of FAQs to assist businesses in understanding how they can benefit from the Tax Break.

The Treasury is seeking submissions from interested parties on the exposure draft legislation and explanatory material by close of business on Tuesday, 10 March 2009.

(14) FAQs in relation to Investment Allowance – prepared by Treasury*INTRODUCTION*

1. The Small Business and General Business Tax Break was announced on 3 February 2009 as part of the Government's Nation Building and Jobs Plan. Further information was provided in the Treasurer's Press Release No 12 of 3 February 2009 (available from www.treasurer.gov.au).
2. This set of frequently asked questions is being released with draft legislation and explanatory memorandum for the Tax Break. The answer to each question includes references to the relevant sections of the draft legislation and parts of the explanatory memorandum. If, after reading these materials, you still have questions, please send an email to: investmentallowance@treasury.gov.au.

OVERVIEW

3. The Tax Break provides additional support – in the form of a bonus tax deduction – for Australian businesses undertaking capital investment in 2009.
 - 3.1. The Tax Break is available for new, tangible depreciating assets for which a deduction is available under the core provisions of Division 40 of the Income Tax Assessment Act 1997 (ITAA97) or new expenditure on existing, eligible assets.
 - 3.2. A bonus tax deduction is available where a business acquires an eligible asset after 12 December 2008 but before the end of December 2009 and has it installed ready for use before the end of December 2010.
 - 3.2.1. Where a business acquires the eligible asset before the end of June 2009 and has it installed ready for use before the end of June 2010 the bonus deduction will be 30 per cent of the cost of the asset (exclusive of GST). Otherwise the deduction will be 10 per cent of the cost of the asset.
 - 3.3. A business acquires an asset when they enter into a contract to hold an asset, start to construct an asset or start to hold the asset in some other way.
 - 3.4. Small business entities will only need to spend a minimum of \$1,000 per asset in order to qualify for the Tax Break. All other businesses will need to meet a minimum expenditure threshold of \$10,000 per asset.
 - 3.4.1. These expenditure thresholds apply to both 30 per cent and 10 per cent bonus deductions.
 - 3.5. The Tax Break subsumes the temporary investment allowance announced in the Treasurer's Press Release No. 141 of 12 December 2008. Legislation to implement the investment allowance was not introduced to Parliament.
 - 3.6. The Tax Break draws, where possible, on concepts from Division 40 of the ITAA97, but the Tax Break has a different objective to the uniform capital allowances regime.
 4. All references to legislation in this paper are references to the Income Tax Assessment Act 1997, unless otherwise stated.

FREQUENTLY ASKED QUESTIONS**QUESTION 1 — WHAT IS THE STATUS OF THE TAX BREAK?**

5. Legislation to implement the Tax Break has not been introduced into Parliament. Treasury has released draft legislation for public consultation. The draft legislation and draft explanatory memorandum are available from the Treasury website (www.treasury.gov.au).

QUESTION 2 — DO SECOND HAND ASSETS QUALIFY?

6. The Tax Break will not apply to second hand assets.
7. The draft legislation and explanatory memorandum, available from the Treasury website (www.treasury.gov.au) provide additional guidance on what counts as a 'new' asset for the purposes of the Tax Break.

Draft legislation: Schedule 1, part 2, paragraph 41-120(1)(e) and section 41-130

Draft explanatory memorandum: Paragraph 1.40

QUESTION 3 — WHAT DOES 'NEW' MEAN?

8. The Tax Break will be available for new, tangible depreciating assets or new expenditure on existing assets. 'New' refers to assets that have not been used before by anyone, anywhere.

Draft legislation: Schedule 1, part 2, paragraph 41-120(1)(e) and section 41-130

Draft explanatory memorandum: Paragraphs 1.38 to 1.41

QUESTION 4 — DO CARS QUALIFY?

9. The Tax Break is available for new, tangible depreciating assets which a deduction is available under the core provisions of Division 40 or new expenditure on existing assets.
10. New motor vehicles used for business purposes are an example of the kind of assets that could qualify for the Tax Break (provided all the criteria are met). Further detail around how the Tax Break will apply to cars can be found under question 15 of this document.

Draft explanatory memorandum: Paragraphs 1.29 to 1.34 Page 2

QUESTION 5 — ARE DEMONSTRATOR VEHICLES NEW OR SECOND HAND ASSETS?

11. Demonstrator vehicles can qualify as 'new' assets, provided they have only been used for reasonable testing and trialling.

Draft legislation: Schedule 1, part 2, subsection 41-120(2)

Draft explanatory memorandum: Paragraph 1.41

QUESTION 6 — WILL ASSETS HELD UNDER LEASES QUALIFY?

12. Provided the asset being leased is a new, tangible depreciating asset for which a deduction is available under the core provisions of Division 40, then the asset will be eligible for the Tax Break (subject to the other criteria being met).

Draft explanatory memorandum: Paragraph 1.43

13. Division 40 provides a framework for determining who in a leasing arrangement is able to claim depreciation deductions in respect of the asset and hence who would be entitled to claim the bonus deduction in a leasing situation. As is currently the case with capital allowance deductions, how the Tax Break is factored into lease prices will be a matter for commercial negotiations.

Draft explanatory memorandum: Paragraph 1.44

QUESTION 7 — DO BUILDINGS QUALIFY?

14. The Tax Break will be available for new tangible depreciating assets for which a deduction is available under the core provisions of Division 40 and new expenditure on existing assets. Capital works covered by Division 43 will not qualify for the Tax Break.

Draft explanatory memorandum: Paragraph 1.27

QUESTION 8 — ARE PRIMARY PRODUCTION ASSETS, DEPRECIATED UNDER SUBDIVISION 40-F, ELIGIBLE FOR THE TAX BREAK?

15. The core provisions of the uniform capital allowance in Subdivision 40-B will provide the framework for determining which assets are eligible and who is entitled to claim the bonus deduction.
16. This means that assets that already receive concessional capital allowance deductions under other subdivisions — such as assets used for primary production depreciated under Subdivision 40-F — will not qualify for the Tax Break.

Draft explanatory memorandum: Paragraphs 1.25 to 1.26 Page 3

QUESTION 9 — IS THE TAX BREAK ONLY AVAILABLE TO SMALL BUSINESS ENTITIES?

17. No — both the 30 per cent and 10 per cent bonus deductions are available to all businesses. However, small business entities will only need to spend a minimum of \$1,000 per asset in order to qualify for the Tax Break. All other businesses will need to meet a minimum expenditure threshold of \$10,000 per asset. These expenditure thresholds apply to both 30 per cent and 10 per cent bonus deductions.

Draft legislation: Schedule 1, part 2, section 41-135

Draft explanatory memorandum: Paragraphs 1.45 to 1.47

QUESTION 10 — DO SMALL BUSINESSES USING DIVISION 328 QUALIFY?

18. A small business taxpayer who chooses to deduct amounts for depreciating assets under Subdivision 328-D will not be ineligible for the Tax Break merely because they make such a choice.

Draft legislation: Schedule 1, part 2, paragraph 41-105(2)(b)

Draft explanatory memorandum: Paragraphs 1.35 to 1.36m

QUESTION 11 — IS THE MAXIMUM BONUS DEDUCTION 30 PER CENT OR 40 PER CENT?

19. The Tax Break, at a rate of 30 per cent or 10 per cent, subsumes the previously announced Temporary Investment Allowance. The maximum rate of bonus deduction is 30 per cent for an asset acquired after 12 December 2008 until 30 June 2009 and installed ready for use by 30 June 2010. Otherwise the rate is 10 per cent.

Draft legislation: Schedule 1, part 2, subsection 41-115

Draft explanatory memorandum: Paragraphs 1.75 to 1.78

QUESTION 12 — WHAT IF I DON'T MEET THE JUNE 2010 INSTALLATION DEADLINE?

20. If you acquire or start to hold an eligible asset between 13 December 2008 and the end of June 2009 and miss the end of June 2010 installation deadline you will miss out on the 30 per cent bonus deduction. However, provided the asset is installed by the end of December 2010 you will still qualify for the 10 per cent bonus deduction.

Draft legislation: Schedule 1, part 2, subsection 41 115(3)

Draft explanatory memorandum: Paragraphs 1.75 to 1.78

QUESTION 13 — WILL THE TAX BREAK BE REDUCED FOR NON-BUSINESS USE?

21. Unlike deductions under Subdivision 40-B, the Tax Break will not be apportioned for any non-business use of the asset. Page 4

22. However, a taxpayer must be able to demonstrate that at the time they started to use the asset or had it installed ready for use, the asset was to be used in Australia and for the principal purpose of carrying on a business.

Draft legislation: Schedule 1, part 2, paragraph 41-120(1)(d)

Draft explanatory memorandum: Paragraphs 1.64 to 1.66

QUESTION 14 — WILL THE TAX BREAK BRING FORWARD THE DEDUCTIONS I WOULD NORMALLY CLAIM OVER THE ASSET'S EFFECTIVE LIFE OR IS IT ON TOP OF THESE DEDUCTIONS?

23. The Tax Break will provide a bonus deduction rather than bringing forward normal deductions for an asset's decline in value. This means that, over time a taxpayer could effectively claim deductions of up to 130 per cent of the asset's value.
24. The Tax Break will not impact on balancing adjustment events. For example, the Tax Break will not affect the tax treatment of an asset upon disposal.

Draft explanatory memorandum: Paragraph 1.79

QUESTION 15 — WILL THE CAR LIMIT APPLY TO THE TAX BREAK?

25. Under the core provisions of Division 40, luxury cars (those that cost more than the car limit) have their cost reduced to the car limit for the purpose of calculating capital allowance deductions. As the Tax Break relies on the core provisions of Division 40, the car limit will apply to eligible luxury cars.
26. This means that a taxpayer who is eligible to claim the Tax Break for a luxury car will have to use the car limit when working out the amount of their deduction.
27. The car limit for 2008-09 is \$57,180 and is indexed annually in line with the index number for the motor vehicle purchase sub-group of the CPI. This means that, at the 30 per cent rate, the maximum bonus deduction available for a car in 2008-09 is \$17,154.

Draft explanatory memorandum: Paragraphs 1.59 and 1.60

QUESTION 16 — I HAVE STILL HAVE MORE QUESTIONS. HOW CAN I GET MORE INFORMATION ON THE TAX BREAK?

28. This paper has been released alongside draft legislation and a draft explanatory memorandum. These documents provide further guidance on how the Tax Break will operate and are available on the Treasury website (www.treasury.gov.au).
29. If you are unable to find an answer to your question, please send an email to investmentallowance@treasury.gov.au.

The Energy Efficient Homes Program

Source: [Fact Sheet - 2009 Updated Economic and Fiscal Outlook - The Energy Efficient Homes Program](#)

Homeowners, apparently simply by making a phone call, will be able to access either the insulation program or the Solar Hot Water Rebate which incorporates a rebate for Heat Pump hot water systems.

This time-limited program of initiatives will have three key components:

- ◆ First, all Australian owner-occupiers who do not currently have ceiling insulation will be able to access free installation and supply of ceiling insulation up to \$1,600 through this program from 1 July 2009 until 31 December 2011;
- ◆ Second, landlords will be able to access an increased rebate of up to \$1,000 to install insulation in their rental properties;
- ◆ Third, Australian households, that have not already claimed the insulation assistance, will be able to install, from the date of this program's announcement until 30 June 2012, climate friendly hot water technologies and claim non means-tested rebates of \$1,600 to install solar and heat pump hot water systems to replace electric storage hot water systems.

Owner-occupiers who do not currently have ceiling insulation and who self-organise its installation between the date of this program's announcement and 30 June 2009 will be able to seek reimbursement of their costs up to the \$1,600 cap upon commencement of the centralised insulation program — i.e. from 1 July 2009.

The program will contribute to meeting Australia's 2020 target for emissions reductions under the Carbon Pollution Reduction Scheme.

(15) \$6.4 Billion Public and Community Housing

Source: Fact Sheet - 2009 Updated Economic and Fiscal Outlook - \$6.4 Billion Public and Community Housing

The initiative will provide funding of \$6 billion, for at least 20,000 low-income households, over three and a half years from 2008-09 to 2011-12 for the construction of new social housing and a further \$400 million over two years for repairs and maintenance to existing public housing dwellings.

The initiative:

- ◆ will begin immediately and provide:
 - ~ \$200 million this financial year for repairs and maintenance; and
 - ~ \$60 million for new construction;
- ◆ will provide about 20,000 new social housing dwellings depending on a range of factors, such as their size, type and location and the capacity of States and Territories and the not-for-profit sector to leverage additional funds from other sources.

The funding will be allocated to State and Territory Governments on a per capita basis through a new Economic Stimulus National Partnership Agreement containing a schedule on social housing subject to the jurisdiction submitting suitable proposals that meet the requirements of the initiative.

(16) Additional Defence Housing Construction Program

Source: Fact Sheet - 2009 Updated Economic and Fiscal Outlook Additional Defence Housing Construction Program

The Government will provide an additional \$252 million to Defence Housing Australia (DHA) to enable an extra 802 residential houses to be constructed for Australian Defence Force personnel in addition to DHA's existing construction program.

The construction program will commence in April 2009 and run through to March 2011 the construction of:

- ◆ 315 additional houses scheduled to commence by June 2009;
- ◆ 725 of the total of 802 houses scheduled to commence this calendar year.

DHA:

- ◆ will let tenders for for an additional \$100 million worth of residential construction during 2008-09 and a further \$152 million in the 2009-10 financial year;
- ◆ has serviced land on which new construction can commence;
- ◆ will construct houses in 17 regional and metropolitan centres across Australia.

The regions to benefit from the construction package are: Adelaide, Brisbane, Canberra, Darwin, Melbourne, Hobart, Townsville, Cairns, Hunter, Ipswich, Sale, Singleton, Sydney, Wagga Wagga, Wodonga, Nowra and Toowoomba.

(17) Additional Investment in Black Spot Program

Source: Fact Sheet - 2009 Updated Economic and Fiscal Outlook - Additional Investment in Black Spot Program

In December 2008, the Government announced it would more than double Black Spot funding for 2008-09 from \$50 to \$110 million.

The Government will now invest an additional \$30 million in 2008-09 and \$60 million in 2009-10, among projects which are identified in the current and future rounds of applications, to further extend the coverage of this program to deliver around 350 additional safety-improving projects.

A capped amount of this funding will be used to address identified black spots on Australia's national highways, which are currently specifically excluded from the program.

Under the Black Spot program, funding is made available to address Black Spot sites that either have a history of serious accidents or exhibit characteristics associated with a high risk of future accidents.

Anyone can nominate a 'black spot' for funding consideration. Nominations are forwarded to States and Territories and are considered by a Consultative Panel made up of community and road user groups, industry, Australian and local government and state road and transport agencies.

(18) Boom Gates for Rail Crossings

Source: [2009 UEFO Fact Sheet - Boom Gates For Rail Crossings \[03/02/2009\] Fact Sheet - 2009 Updated Economic and Fiscal Outlook - Boom Gates For Rail Crossings](#)

The Government will invest \$50 million in 2008-09 and \$100 million in 2009-10 to accelerate the installation of around 200 boom gates and other active control mechanisms at high risk rail crossings throughout Australia to help avoid around 100 accidents at level crossings around Australia every year.

The program:

- ◆ will address currently identified priorities; and
- ◆ work with prioritization tools such as the Australian Level Crossing Assessment Model (ALCAM)
- ◆ will not not require State co-funding contributions;
- ◆ will have checks to ensure the current State based programs are not scaled back.

(19) Repairing Regional Roads and Funding for Community Infrastructure

Source: [Fact Sheet - 2009 Updated Economic and Fiscal Outlook - Repairing Regional Roads and Funding for Community Infrastructure](#)

The Government will invest:

- ◆ \$150 million in 2008-09 to help the States and Territories fund additional regional road maintenance projects across Australia, conditional upon States and Territories signing up to the \$22.3 billion Nation Building Program for 2009-10 to 2013-14.
- ◆ an additional \$500 million over two years commencing immediately to help local councils fund critical community infrastructure projects across Australia to funds local government community infrastructure projects such as town halls, libraries, community centres and sport centres.

In the selection of projects for funding, preference will be given to projects which:

- ◆ are able to be commenced with 6 months of signing a Funding Agreement with the Commonwealth;
- ◆ can be substantially progressed by the end of 2010.

(20) ** Forward Work Program for Tax Measures [Bowen]

Source: [Forward Work Program for Tax Measures \[Media release No.8 - Bowen\]](#)

The Assistant Treasurer, Chris Bowen, released the Government's forward work program setting out the consultation it plans for announced tax measures and indicating the legislation it plans to introduce in the 2009 Autumn sittings.

The Government will publish a forward work program for announced tax measures at the start of each sitting of Parliament.

Measures announced by the previous government but which were not enacted will be included on the forward work program as the Government decides how or whether they should proceed.

[Forward Work Program for Tax Measures as it stood at 1 March 2009 has been annexed at the rear of the MTUN this month]. It is also available on www.taxmatrix.com.au/taxmap

(21) * Improving the Integrity of Prescribed Private Funds - Consultation Paper Released [Mr Bowen]

[Source Improving the Integrity of Prescribed Private Funds - Consultation Paper Released \[Mr Bowen Press Release 101 26 November 2008\]](#)

The Assistant Treasurer, Chris Bowen MP, released a discussion paper to provide a point of reference for public submissions on the Government's 2008 Budget commitment to improve the integrity of PPFs, a form of ancillary trust fund designed to encourage private philanthropy by providing private groups, such as businesses, families and individuals, with greater flexibility to start their own trust funds for philanthropic purposes.

The discussion paper outlines the Government's views on the essential characteristics of a PPF and outlines a proposal for several changes to the current guidelines and regulatory system.

Donors receive a tax deduction for donations to their PPF, and most PPFs are also income tax exempt.

The Treasurer announced in the Budget that the Government will legislate guidelines (with effect from 1 July 2009):

- ◆ to improve the integrity of PPFs; and
- ◆ to provide the trustees of PPFs with greater certainty as to their philanthropic obligations.

PPFs are limited to distributing their wealth to a group of organisations known as deductible gift recipients. Most deductible gift recipients are charities, some of which work directly with the community to address issues of social inclusion.

Since their inception PPFs have received donations of over \$1.3 billion, and made distributions of over \$300 million.

(22) ** Government Introduces Major Reform of TOFA [Bowen]

[Source: Government Introduces Major Reform of Taxation of Financial Arrangements No.103 \[No.103 – 4 December 2008 Bowen\]](#)

On 4 December 2008 the Assistant Treasurer Chris Bowen MP announced the introduction of the Taxation of Financial Arrangements (TOFA) Stages 3 and 4 measures to bring to a conclusion a process that was first announced in the 1992 Budget and which was confirmed as important by the Ralph Review of Taxation in 1999.

The TOFA Stages 3 and 4 measures will apply for income years commencing on or after 1 July 2010. However, taxpayers may elect to have the measures apply for income years commencing on or after 1 July 2009.

The TOFA Stages 3 and 4 measures:

- ◆ provide a comprehensive framework for taxing financial arrangements;
- ◆ contain rules that cover tax timing treatments for financial arrangements, including elective tax timing and character hedging rules that are designed to minimise tax timing and character mismatches;
- ◆ permit eligible taxpayers to elect to have financial arrangements taxed on a fair value or retranslation basis, or to rely on their financial reports for taxation purposes;
- ◆ provide elections to create compliance cost savings by more closely aligning tax treatment with accounting standards.

The TOFA rules:

- ◆ will not be applied on a mandatory basis to individual and small business taxpayers, except where significant deferral of tax is involved;
- ◆ will apply, if aggregated annual turnover is \$20 million or more, to:

- ~ approved deposit-taking institutions;
- ~ securitisation vehicles; and
- ~ entities that are required to register under the Financial Services (Collection of Data) Act 2001.
- ◆ will apply to superannuation funds and managed investment schemes if the value of their assets is \$100 million or more;
- ◆ will apply to other taxpayers if:
 - ~ their turnover is \$100 million or more;
 - ~ the value of their assets is \$300 million or more; or
 - ~ the value of their financial assets is \$100 million or more.
- ◆ will apply to taxpayers who elect to apply the rules.

1.2 Courts & Tribunals

(a) Courts

(1) ** Should the public be able to access documents on the court file (Deputy C of T v Nicholls)

Source: Deputy C of T v Nicholls (Mansfield J)

What is the issue?

Should the public be entitled to access documents on the court file?

Section 50 of the FCA Act empowers the Court to prohibit the publication of evidence as appears to the Court to be necessary to prevent prejudice to the administration of justice or the security of the Commonwealth.

What were the contentions?

The taxpayer submitted that “the proceedings” should be confidential, and that alternatively, the documents on the file should be ordered to be confidential and not available for inspection because they “relate specifically to the confidential tax affairs of my wife and me”.

What was the outcome?

The Court found that:

- ◆ the taxpayer did not identify any content of any of those documents which might attract a confidentiality order, either under any taxation legislation or under s 50 of the FCA Act;
- ◆ the name of the parties has now become public information by the proceedings, and the conduct of the proceedings to date, in open Court;
- ◆ it may have been disposed to make such an order were the taxpayer able to identify some possible argument in support of the confidentiality which he seeks with respect to those documents.

(b) Tribunals**(1) ** Taxpayer fails after relying on Costello's doorstep explanation of law (Taneja v C of T)**

Source: Taneja v C of T (Professor G D Walker, Deputy President and Mr S E Frost, Member)

What is the issue?

Was the company conducting a personal services business?

Does the company earn income for producing a result?

What were the facts?

The taxpayer, Raj Taneja:

- ◆ is a computer systems analyst;
- ◆ one of the directors of RS Consulting Group Pty Ltd ("the Company").

During each of the 2002, 2003, 2004 and 2005 income years, the Company earned income by providing taxpayer's personal efforts or skills to four clients, EDS, Icon, Hudson and Ambit.

Under the agreement with EDS:

- ◆ the Company was obliged to perform services "as agreed ;
- ◆ the fee payable was a set rate per hour, including GST.

Under the agreement with Icon:

- ◆ the Company was obliged to provide non specified services for a period of three months;
- ◆ the taxpayer was required to report to a nominated person on the contract commencement date, and thereafter to "provide consulting services in consultation with the Client";
- ◆ the hours worked by the Company's representative were to be recorded on a Client-approved time sheet, and signed by an appropriate Client official;
- ◆ the fee payable was a set rate per hour, plus GST.

The agreement with Hudson, constituted by a letter addressed to "Raj Taneja, RS Consulting Group Pty Ltd":

- ◆ there was a requirement to "have your time sheet authorised" every Friday, by the person "responsible for the management of this assignment";
- ◆ the fee payable was a set rate per hour, plus GST.

The agreement with Ambit, in the form of a letter:

- ◆ identified the Company as the "Contractor";
- ◆ confirmed "the appointment of the Contractor as an incorporated independent contractor of Ambit Group Pty Limited"; and
- ◆ specified that:
 - ~ the Contractor was to provide the "Key Person", the taxpayer, to perform the "Role" for the Client;
 - ~ the Key Person was required to record all time spent performing the Role "on a timesheet in a form approved by the Client", and to have that timesheet authorised by a Client representative;
 - ~ the fee payable was a set rate per hour, plus GST.

What are the relevant legislative provisions?

There are four personal services business tests in Part 2-42 of the Act.

The taxpayer's case relied only on the results test in s 87-18.

- (3) *A *personal services entity meets the results test in an income year if, in relation to at least 75% of the *personal services income of one or more individuals that is included in the personal services entity's *ordinary income or *statutory income during the income year:*
- (a) *the income is for producing a result; and*
 - (b) *the personal services entity is required to supply the *plant and equipment, or tools of trade, needed to perform the work from which the personal services entity produces the result; and*
 - (c) *the personal services entity is, or would be, liable for the cost of rectifying any defect in the work performed.*
- (4) *For the purposes of paragraph ... (3)(a), (b) or (c), regard is to be had to whether it is the custom or practice, when work of the kind in question is performed by an entity other than an employee:*
- (a) *for the *personal services income from the work to be for producing a result; and*
 - (b) *for the entity to be required to supply the *plant and equipment, or tools of trade, needed to perform the work; and*
 - (c) *for the entity to be liable for the cost of rectifying any defect in the work performed;*
- as the case requires.*

What were the contentions?

The taxpayer contended that “s 87-18(3)(a) is subject to s 87-18(4) and that consequently it mandates ‘custom and practice’ of the industry to be taken into account.

The Commissioner contend that:

- ◆ for taxation purposes that income of the Company is the “personal services income” of the taxpayer;
 - ~ as a result, unless the Company conducted a “personal services business” during the relevant income years;
 - ~ income tax will be payable by the taxpayer, rather than by the Company; and
 - ~ certain deductions will not be allowable.

What was the outcome?

The Tribunal found that:

- ◆ there is no merit in the argument that at general law the company was a contractor;
- ◆ the criteria in paragraphs 87-18 (3)(a), (b) and (c) are cumulative;
- ◆ the Company did not conduct a “personal services business” during the relevant years;
- ◆ the main purpose of s 87-18(4) is to act as a safety net for those individuals or entities who cannot point to a written agreement to establish that they have been paid “for producing a result”: if the industry custom or practice is that people are engaged to produce a result, then that fact may support a conclusion that the particular individual or entity was paid for producing a result;
- ◆ the income cannot be reduced by amounts paid by the company relating to:
 - ~ wages paid to the taxpayer's wife; or
 - ~ superannuation contributions made on behalf of the taxpayer's wife;
- ◆ rejected the taxpayer's contentions saying that:

- ~ it is unwise to place too much reliance on what a Minister says in a doorstep interview, particularly one undertaken shortly after a decision to amend the law, but some seven and a half weeks before the amending legislation is introduced into the House of Representatives (Hansard, 30 August 2001, p. 30634 -30635);
- ~ it is unrealistic to expect absolute clarity and precision of language, even from a senior Minister, in such circumstances;
- ◆ remitted some further issues to Commissioner for determination.

What is the impact of the decision on your firm's practices?

In 2004 the Commissioner failed in his attack on a similar fact arrangement: See Ryan and Commissioner of Taxation [2004] AATA 753 (19 July 2004) which related to the tax years ending 30 June 1995, 1996 and 1997 when the personal services income regime did not exist.

Many practitioners have relied on the decision in Ryan to advise clients that contributions for superannuation for spouses not involved in the principal activity of a company deductible.

In Ryan the Tribunal:

- ◆ was constituted by the deputy President, Justice Downe of the Federal Court;
- ◆ found that the deduction was sought in respect of payment made for the purpose of providing superannuation for the spouse.

Advice based on the decision in Ryan needs to be reconsidered following this decision.

In TD 2005/29 the Tax Office considered the following question:

Will Part IVA ...always apply if a taxpayer who carries on a business (including a personal services business) pays superannuation contributions that do not exceed the age-based limits but are considerably in excess of the value of the services provided by the employee? [Emphasis Added]

The Tax Office Determined:

- ◆ the application of Part IVA to a particular scheme depends on the particular facts and circumstances of the case;
- ◆ in light of decision in (Ryan's case), the Tax Office accepts that, absent unusual features (and subject to the qualification in paragraph 2 of this Determination), Part IVA will not apply to a case where a company, trust, partnership or individual conducting a **personal services business** pays superannuation contributions up to the age-based limits (as prescribed in subsection 82AAC(2A) of the ITAA 1936 to a complying superannuation fund in respect of the associate of the main service provider even if contributions up to the maximum age-based limits are also provided for the main service provider;
- ◆ the qualifications referred to is that the provision of personal services through the entity or as a sole trader must be commercially justified (for example, because the relevant service acquirers will not contract with individuals but with entities only, or an employment relationship is not otherwise open to the sole trader);
- ◆ an example of unusual features might include a situation where objectively it is clear that the associate is engaged by the entity or sole trader solely to allow the diversion of superannuation contributions from the main service provider;
- ◆ cases which have unusual features which remove them from the general guidance provided by this Determination will need to be considered in light of their own particular facts and circumstances.

Practitioners also rely on a client self assessing a personal services business should consider carefully the impact of this decision.

(2) ** Who pays costs of the appeal (Narbey v C of T)

Source: [Narbey v C of T \(McKerracher J\)](#)

What is the issue?

Was the Commissioner entitled to costs after the taxpayers failed in their appeal on the question of whether or not the Tribunal had failed to adequately explain why it affirmed the decisions of the Commissioner?

What was the outcome?

The Court found that:

the Commissioner had the predominant success in the proceedings in that the question of the deductibility of the outgoings has been determined in favour of the Commissioner;
although the question of penalty would have fallen away had the applicants succeeded on the main ground of appeal, their failure on the main ground of appeal meant that the question of penalty still had to be resolved;
that penalty aspect of the 'appeals' consumed a much smaller portion of the oral and written argument and reasons and was successful;

The Court ordered the taxpayers to pay one third of the costs of the Commissioner.

(c) Decisions which are listed only – No extracts provided**(1) [LISTED ONLY] (Hurricane Formwork and C of T)**

Source: [Hurricane Formwork and C of T \(Greenwood J\)](#)

What is the issue?

Had the Commissioner received preferential payments from the liquidation company?

Was the liquidator entitled to a declaration that six payments made by the Company during a six month period prior to the filing on 8 September 2005 by the Deputy Commissioner of Taxation of an application for the winding up of the company on the ground of insolvency, are voidable transactions pursuant to [s 588FE](#) of the [Corporations Act 2001](#) (Cth) ("the Act").

Was the Commissioner entitled to an order under section 588FGA(2).

What was the outcome?

The Court found that:

- ◆ neither director has sought to demonstrate any facts which might enliven a defence under s 588FGB(6);
- ◆ the Commissioner should pay the Company the sum of \$116,830.00;
- ◆ the directors should pay the Commissioner by way of indemnity under to [section 588FGA\(2\)](#) of the [Corporations Act 2001](#) (Cth) the sum of \$67,731.18. that being the amount falling within the scope of 588FGA(1).

(2) [LISTED ONLY] Winding up application over \$24,132.01 ICA balance (Neo Rock Pty Ltd and C of T)

Source: [Neo Rock Pty Ltd and C of T \(Logan J\)](#)

What is the issue?

Could the taxpayer have leave to oppose a winding up when it hadn't applied to set aside a statutory demand?

What was the outcome?

The Court found that:

- ◆ the evidence led on behalf of Neo Rock on the application was noteworthy for its absence of reference to the overall financial position of that company;
- ◆ that there was no evidence which touches upon the assets and liabilities of the company generally, its profit and loss, its balance sheet, or its solvency, either having regard to the debt as it presently stands (which has its origins in that which supported the statutory demand) or otherwise howsoever;
- ◆ it was not a satisfactory state of affairs for a company, faced with an application for its winding up in respect of a debt which it has not contested, to seek an indefinite adjournment of a winding up application on the strength of what is, in substance, an assertion unfocussed on the subject of proof of the solvency of the company;
- ◆ ordered that the company be wound up.

1.3 Featured ATO interpretations

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(b) TD Series - including TD Series in draft form

(1) ** TD 2008/29 ~ Do core consolidation rules modify the effect of CGT rules?

[Source TD 2008/29 previously released as draft TD 2008/D9](#)

What issue does the determination consider?

If an entity enters into a contract to buy or sell a CGT asset and the contract settles after the entity becomes, or ceases to be, a member of a consolidated group do the core consolidation rules in Division 701 modify the effect of the CGT rules?

What was the determination?

The Tax Office view is that the core consolidation modify the CGT rules in only two cases:

- ◆ if an entity enters into a contract a contract to buy a CGT asset before the entity becomes a subsidiary member of a consolidated group and the contract settles after that time - the head company of the consolidated group (not the subsidiary) is taken to have acquired the asset at the contract time (entry-buy case); and
- ◆ if an entity enters into a contract a contract to sell a CGT asset while the entity is a subsidiary member of a consolidated group and the contract settles after the subsidiary has left the group - CGT event A1 is taken to have happened to the head company (not the subsidiary) of the consolidated group at the contract time (exit-sell case).

Editor

If a head company makes a capital gain on the disposal of a CGT asset in an exit-sell case, the gain may be duplicated on the disposal of interests in the subsidiary.

The Tax Office determination states that it will not disturb a taxpayer's approach of calculating its net capital gain or net capital loss by disregarding a capital gain made on the disposal of the membership interests to the extent it represents a duplication of the gain made by the head company on the disposal of the asset. See [TR 2008/29EC/](#)

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2 GST

2.1 Politicians, Boards & Statutory Authorities

(1) GST and Incapacitated Entities [Bowen]

Source: GST and Incapacitated Entities [Media release No.5 – 06/02/2009 - Bowen]

The Assistant Treasurer Chris Bowen MP announced that the Government will amend the GST law, with effect from 1 July 2000, to ensure that representatives of incapacitated entities are liable for GST on post-appointment transactions.

The Government will shortly release and consult on draft legislation to implement this tax measure.

The Federal Court found in *Deputy Commissioner of Taxation v PM Developments Pty Ltd* [2008] FCA 1886 that the GST liability for a transaction occurring during the period of the representative's appointment is the liability of the company in liquidation rather than the liability of the representative.

The Government takes the view that the Court's finding is contrary to the underlying policy intention and the way the law has been administered since the introduction of GST.

The amendments will be introduced into Parliament at the earliest possible opportunity after consultation on the draft legislation has taken place.

The change will impact on GST registered legal personal representatives of deceased persons.

2.2 Courts & Tribunals [NIL]

(a) Courts

(1) ** Where there any taxable supplies? (South Steyne Hotel Pty Ltd v C of T)

Source: South Steyne Hotel Pty Ltd v C of T (Stone J)

What is the issue?

Were any of four categories of supplies made taxable supplies?

Those supplies were made in relation to the operation of accommodation:

- ◆ Supply 1 - South Steyne supplied each Hotel room to MML by way of a lease;
- ◆ Supply 2 - the sale of Hotel rooms to investors, including the sale of rooms 111, 304 and 604 by South Steyne to MBI;
- ◆ Supply 3 - the continuation of the leases of Hotel rooms 111, 304 and 604 by MBI which, as purchaser of those rooms, took title subject to the ongoing lease of those rooms to MML; and
- ◆ Supply 4 - the supply of accommodation in Hotel room 403 to Emily Young as a guest.

What were the facts?

South Steyne:

- ◆ on 8 December 2000, purchased the Sebel Complex which comprised 83 Apartments and service areas;
- ◆ on 10 August 2006, individually strata-titled each Apartment in the Sebel Complex;
- ◆ on 29 September 2006:

- ~ sold the 'Management Lot' - which included the reception area, offices and car parking spaces - in the Sebel Complex to Mirvac Hotels Pty Ltd ("MHL"); and
- ~ leased each of the 83 Apartments in the Sebel Complex to Mirvac Management Pty Ltd ("MML") under individual lease agreement which obliged MML to operate a scheme whereby the Apartment was, together with the other Apartments, operated as part of a serviced apartment business;
- ◆ between 29 September 2006 and 31 October 2007, sold, to various investors including Morgan & Banks Investments ("MBI"), 15 Apartments subject to the applicable lease to MML, with each purchaser permitted to participate in a 'Management Rights Scheme,.

MHL had exclusive control of the operation of the serviced apartment business under an agreement ("Serviced Apartment Management Agreement") with MML.

On 17-18 October 2007, Ms Emily Young, an employee of MBI stayed at Apartment 403 and made use of various services available to guests of the Sebel Complex.

The rooms and apartments were of various sizes:

- ◆ Room 111, is the smallest of the rooms, and has a combined bed/sitting area, a bathroom (toilet, hand basin and shower) and small terrace and contained a king size bed, bedside and coffee tables, a sofa bed, armchair, desk, drawers and a television and entertainment unit, an alcove containing a mini-bar refrigerator and kettle but no kitchen.
- ◆ Room 604 is the largest of the three rooms and has two bedrooms, a combined living and dining area with a table, four chairs, a sofa, armchairs, coffee tables, desk, lamp and entertainment unit, a large outdoor area, a bathroom and kitchen with a refrigerator, hotplates, microwave, kettle and various cooking appliances and implements.
- ◆ Room 304 is similar to room 604 except it has only one bedroom and the kitchen facilities are more limited and it has a washing machine, clothes dryer and laundry tub in a laundry cupboard in the bathroom.

What is the impact of the decision on your firm's practices?

The decision does contradict the Commissioner's position in the ruling GSTR 2000/20. We eagerly await the Decision Impact Statement, and we not the taxpayer has appealed.

It is our view that it is no longer safe to rely on the ruling, to the extent that the Court has come to different conclusions. We understand the ruling will be withdrawn.

The case highlights another issue for practitioners – the poor quality attempt at clarifying the supplies being made and also the GST consequences of those supplies.

In this case the tick box selections operating in relation to GST were countermanded by the special conditions – that outcome smells like professional negligence along the way. Tick box contracts are problematic once special conditions are included in the contract.

What were the contentions?

The Commissioner's contention in relation to the four supplies was as follows:

Characterisation Supply		Reason
Lease by SS of hotel rooms to MML	Input taxed (40-35)	residential premises to be used predominantly for residential accommodation and not commercial residential premises
Sale of hotel rooms to investors	Neither GST free under 38-325 nor input taxed under 40-65.	
The continuation of the leases of rooms 111, 304 and 604 after the investors took over the rooms	Input taxed (40-35)	residential premises to be used predominantly for residential accommodation and not commercial residential premises

Supply of accommodation and room service facilities	Taxable supply	
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The Commissioner also contended that the apparent agreement that supply 2 is the supply of a going concern is negated by clause 47.6 of the special conditions of the contract.

The taxpayer contention in relation to the four supplies was as follows::

Characterisation Supply	First position	Alternative 1	Alternative 2
Lease by SS of hotel rooms to MML	Not Input taxed		If supply 1 is input taxed and supply 3 is input taxed then supply 4 is input taxed
Sale of hotel rooms to investors	Not Input taxed GST free – as the supply of a going concern	If supply 3 input taxed this supply is input taxed	
The continuation of the leases of rooms 111, 304 and 604 after the investors took over the rooms	Not Input taxed	If input taxed then supply 2 is also input taxed	If supply 3 is input taxed and supply 1 is input taxed then supply 4 is input taxed
Supply of accommodation and room service facilities	Not Input taxed		Supply 4 is input taxed If supply 1 is input taxed and supply 3 is input taxed then

What was the outcome?

The Court found as follows:

Characterisation Supply		Reason
Lease by SS of hotel rooms to MML	Input taxed	The property that was the subject of each supply ... was an individual apartment. ...learly not a hotel. ...was a supply of residential premises to be used predominantly for residential accommodation within the meaning of s 40-35 and therefore that each such supply is input taxed.
Sale of hotel rooms to investors	Not GST Free Not input taxed	Not GST free so need to consider alternative position of taxpayer that supply is input taxed. Exception in 40-65(2)(b) applies and not input taxed
The continuation of the leases of rooms 111, 304 and 604 after the investors took over the rooms	Input taxed	Supply by way of a lease. Same reasons as for first supply ...the second part of the exception in parentheses in s 40-35(1)(a) does not apply because the supply to MML was not to an individual.
Supply of accommodation and room service facilities	Taxable supply	MHL has sufficient practical control of the Hotel ... accommodation provided ...by “the entity that ... controls the commercial residential premises”. ...the fourth supply is not input taxed, but rather, is a taxable supply.

What was the decision?

The Marana Amendments

[22] These amendments made two important changes to the definition of “residential premises” by inserting:

- ◆ the expression “*regardless of the term of the occupation or intended occupation*” into the definition; and
- ◆ the expression “*or for residential accommodation*” into paragraph (a); see [14] above. In the light of the reasoning in *Marana*, these additions to the definition invite the conclusion that the effect of the amendments is to embrace the wider meaning rejected by the Full Court.

[31] ... the definition of “residential premises” in the *GST Act* now requires the term of the occupation or intended occupation to be disregarded. In my view, that leaves as necessary only the element of shelter and basic living facilities such as are provided by a bedroom and bathroom. The [Taxpayer]s submitted

that it leaves much more, and that for occupation to be “residential” it must be “established” or “settled” occupation: ...

- [32] A major difficulty with this approach would be distinguishing between established or settled occupation and transient and temporary occupation without taking into account the duration. ...
- [34] ... Premises may be “residential premises” within the meaning of the *GST Act* without being used for permanent accommodation or as a residential flat building as those terms are used in the conditions to the development consent. That being so the accommodation described in [7]-[8] above meets the, now special, meaning of “residential premises” in the *GST Act* even without regard to the inclusion of “residential accommodation”.
- [35] The fact that the definition now expressly includes “residential accommodation” puts the matter beyond doubt. ...
- [39] The [Taxpayer]s submit that to characterise the premises supplied to MML as residential premises is to adopt a meaning of “residential” which is at odds with the very essence of that term as ordinarily understood. They submit that the meaning advocated by the [Commissioner] is “an unnatural use of language”, arguing that the legislature should not be taken to have intended such a result “unless the conclusion is clear and unescapable, and no sound alternative construction is available”. In principle, I agree with this proposition, however, as explained above, the words of the *GST Act* as varied by the Marana Amendments, direct this meaning. ... Moreover the [Taxpayer]s fail to take account of the fact that the expanded definition of residential premises in s 195-1 includes the notion of “residential accommodation” which, to my mind, conclusively indicates that Parliament intended the term to have the meaning explained above.

Commercial residential premises

- [40] It is a separate question whether the residential premises leased by South Steyne to MML are “commercial residential premises” and therefore fall within the exception in s 40-35(1)(a). ... There is no doubt that the Sebel Complex, as a whole, operates as a hotel.
- [41] ... The issue is the nature of the supply made. Each room/apartment, having some or all of the characteristics described above at [7]-[8], was the subject of a separate supply made under an individual lease agreement. ...
- [44] I am satisfied that the supply made under the lease is not the supply of a “hotel, motel, inn, hostel or boarding house”. This still leaves for consideration whether it is a supply of “anything similar” to a hotel, motel, inn, hostel or boarding house and therefore commercial residential premises under paragraph (f) of the statutory definition. ...
- [45] ... No section of the Act, and no underlying policy of the Act, or any division of it, provides or suggests that the characterization of an individual supply can be approached by treating it as if it were, contrary to the events that actually occurred, the aggregate of the supply and other supplies, particularly where some of the other supplies were made to a different party.

The property that was the subject of each supply by South Steyne to MML was an individual apartment. An individual Apartment is clearly not a hotel.

- [46] Nor, I would add, is it *like* a hotel, motel, inn, hostel or boarding house. The fact that the Sebel Complex, taken as a whole, is a hotel or is “similar” to a hotel does not make an individual room/apartment similar to a hotel. In my view neither para (a) nor para (f) of the definition of “commercial residential premises” applies to the supply.

Conclusion as to characterisation of the first supply

- [50] For the reasons given above I have concluded that the supply by way of lease of each strata-titled room/apartment to MML was a supply of residential premises to be used predominantly for residential accommodation within the meaning of s 40-35 and therefore that each such supply is input taxed.

The second supply

- [51] The second category of supply is the sale of Hotel rooms to investors, including the sale of rooms 111, 304 and 604 by South Steyne to the second [Taxpayer], MBI. The [Taxpayer]s seek a declaration that each such supply was a GST-free supply of a going concern under s 38-325 of the *GST Act*; see [14] above. In the alternative the [Taxpayer]s submit that if (contrary to their submission) the third supply is input taxed, then this second supply is also input taxed. ... The point of dispute between the parties is

whether there has been compliance with s 38-325(1)(c), that is whether South Steyne, as the supplier, and MBI, as the recipient, have agreed in writing that the supply is of a going concern. Compliance with the other requirements of the section is not in dispute.

Is the second supply GST-free?

- [52] The parties agree that all the relevant contracts for the sale of the apartments are in the same terms save for the identification of the land which is the subject of the sale. ... The cover sheet of the contract provides for the parties to select among a number of reasons why the sale is not a taxable supply. There is a cross in the box next to the statement that the sale is “GST-free because the sale is the supply of a going concern under s 38-325”. The [Commissioner] submits that this apparent agreement that the supply is of a going concern is negated by clause 47.6 of the special conditions of the contract.
- [60] There is a difficulty in construing the supply made by MBI to MML in taking the reversion subject to the lease as a “supply of the Property under the Apartment Lease”. If, however, I assume that the supply by MBI meets that description then, as the “Property” is Apartment 111 (see [54] above), my conclusion in relation to the first supply means that the contingency in special condition 47.6.6 is met. It follows that the agreement of the parties is not that the sale of the Property is a supply of a going concern but rather that it is a taxable supply and “that the margin scheme applies ...”. If, on the other hand, the supply made by MBI to MML in taking the reversion subject to the lease cannot be described as a “supply of the Property under the Apartment Lease” because it is not a supply of residential premises, then the contingency is illusory because it could never be met. Either way, the agreement that “the sale of the Property comprises a supply of a going concern” is supplanted by the agreement that “the sale of the Property is a taxable supply”.
- [61] Putting aside the assumption made in the previous paragraph, I am not able to interpret the reference to a “supply of the Property under the Apartment Lease” as a reference to the supply by MBI. The [Taxpayer]s may be correct that the purpose of the provision was to protect MBI from liability for an increasing adjustment however, that purpose did not find its way into the words of the special condition.
- [63] In this case I have no evidence as to the purpose of the clause but only submissions to that effect made from the bar table. ...
- [64] It follows from my conclusion that the supply referred to is a reference to the first supply; that the contingency in special condition 47.6.6 has been met; and that the supplies to MBI made under the contracts of sale are not GST-free.

Is the second supply input taxed?

- [65] As I have concluded that the third supply is input taxed it is necessary for me to consider the [Taxpayer]s’ alternative submission that if (contrary to their primary submission) the third supply is input taxed, then the second supply is also input taxed. In making this submission the [Taxpayer]s rely on s 40-65 of the *GST Act*; see [14] above.
- [67] The [Taxpayer]s accept that rooms 111, 304 and 604 sold by South Steyne to MBI are “new residential premises”. However they submit that, because these rooms had been “used for residential accommodation ... before 2 December 1998”, the exception does not apply. The [Commissioner] submits that the prior use referred to in s 40-65(2)(b) must be read as referring to residential accommodation that is **not** “commercial residential accommodation”; and that the use of the rooms in the relevant period **was** as commercial residential accommodation. Accordingly the exception in s 40-65(2)(b) applies.
- [68] In view of the distinction between commercial residential premises in s 40-65(2)(a) and residential premises in ss (2)(b), I prefer the interpretation advocated by the [Commissioner]. ...

Conclusion as to characterisation of the second supply

- [70] For the above reasons I have concluded that the exception in s 40-65(2)(b) applies and that the supplies made by South Steyne in the sale of rooms 111, 304 and 604 to MML are neither GST-free nor input taxed.

The third supply

- [71] The third supply is made by MBI as a consequence of it taking title subject to the ongoing lease to MML. The [Taxpayer]s seek a declaration that each such supply by MBI to MML was not input taxed under division 40 of the GST Act or under a provision of another Act.
- [72] There is no dispute between the parties that the purchase of the reversionary interest in the apartments by MBI effected a “supply” by MBI in favour of MML. The parties disagree, however, as to the nature of the supply made by MBI. Relying on s 9-10(1) of the *GST Act* which provides that “[a] **supply** is any form of supply whatsoever” (original emphasis), the [Commissioner] submits that the supply is properly characterised as a supply “by way of lease”. The [Taxpayer]s submit that the supply falls within s 9-10(2)(g)(iii) because it is “an entry into, or release from, an obligation... to tolerate an act or situation”.
- [73] The nature of the supply made by the assignee of a reversionary interest who takes subject to an existing lease was considered by the Full Federal Court in *Westley Nominees Pty Ltd v Coles Supermarkets Australia Pty Ltd* [2006] FCAFC 115; (2006) 152 FCR 461. ...
- [74] It must be remembered that the issue in *Westley* was whether the assignee of the reversion had made any supply at all, rather than the nature of that supply. For this reason it was not necessary for the Full Court to consider the nature of the supply more specifically. In this case the distinction is critical to the outcome. If the supply made by MBI is a supply “by way of lease” then it falls within s 40-35 and it is input taxed. If, however, it is a supply made “by entry into, or release from, an obligation ... to tolerate an act or situation” then it is not input taxed under Division 40, or indeed, under a provision of any other Act.
- [77] ... In the lease in question, for instance, clause 8.1 obliges the landlord to pay land tax and other taxes (including any car park levies) as well as some impositions by the Owners Corporation. Where there are positive covenants the Full Court’s reservations as to the concept of supply in its ordinary meaning in s 9-10(1) are not pertinent. In any event, in my view, the obligation to supply (by way of lease) exclusive possession and other rights falls within the ordinary and natural meaning of “supply”. In *Westley* at 4506, Kenny J analysed the issue in the following way:

Let it be assumed that the word “supply” in s 9-10 (1) bears its ordinary and natural meaning; ... The Macquarie Dictionary defines the noun “supply” in various ways, including “the act of supplying, furnishing, providing, satisfying, etc; ... that which is supplied ...”. The same dictionary defines the verb to “supply” as “to furnish or provide (something wanting or requisite)” or to “satisfy (a need, demand, etc)”. The word “supply” is therefore apt to cover the [Commissioner]s’ “supply” by way of lease of the exclusive possession of the demised property in accordance with the lease.

- [78] With great respect to the reservations expressed by the Full Court in *Westley* I agree with her Honour's analysis. It recognises that a supply by way of lease may be made even though the supply did not involve a grant, assignment or surrender of property. ...

As the Full Court expressly did not decide that her Honour was wrong in finding that there had been a supply under s 9-10(1) I am not bound to decide otherwise.

Conclusion as to characterisation of the third supply

- [80] For the reasons given above I have concluded that the supply made by MBI to MML was a supply by way of lease. I have concluded in relation to the first supply that the apartments/rooms leased to MML by South Steyne are residential premises and are not commercial residential premises. My reasons for reaching that conclusion also apply in relation to the third supply. Moreover the second part of the exception in parentheses in s 40-35(1)(a) does not apply because the supply to MML was not to an individual. ...

The fourth supply

- [81] In September 2007 Ms Emily Young booked accommodation at the Hotel at the direction of her employer who is the third [Taxpayer], Morgan & Banks Investments Pty Ltd. On 17 October 2007 Ms Young checked into the Hotel and spent the night in room 403. A tax invoice issued by MHL in respect of Ms Young's accommodation shows that she made use of many of the Hotel's facilities such as room service for dinner and breakfast, car parking, mini bar snacks, and in-house movies. She checked out on 18 October and paid, by Visa card, the amount of \$452.95 in accordance with the invoice provided by MHL.

- [82] At issue between the parties is the characterisation of this supply by MML to Ms Young for the purposes of the *GST Act*. Although the [Taxpayer]s' primary position is that the supply is not input taxed, they sought, in the alternative, a declaration that the fourth supply is input taxed, if I should determine that the first and third supplies are input taxed.
- [83] The [Commissioner] submits that the fourth supply is not input taxed because it falls within the second part of the exception in parentheses in s 40-35(1)(a), namely that it was "a supply of accommodation in commercial residential premises provided to an individual by the entity that owns or controls the commercial residential premises". Accordingly, the [Commissioner] submits that the supply to Ms Young is a taxable supply.
- [84] The [Taxpayer]s submit that while there was "a supply of accommodation in commercial residential premises provided to an individual", that accommodation was not provided "by the entity that owns or controls the commercial residential premises". ...
- [88] In addition to its rights under the two agreements described above, MHL also exercises control over the Hotel by virtue of its ownership of the basement car park in the Hotel and its ownership of the Management Lot. As the [Commissioner] submitted, "[t]he tax invoice supplied by MHL to Ms Young, considered together with the terms of the Serviced Apartment Management Agreement, supports the inference that the accommodation was provided to Ms Young by MHL in its own name...". It is immaterial that MHL is not the lessee of room 403. There is no legal barrier to the provision of accommodation pursuant to a licence given by a licensor who has no proprietary interest in the property.

Conclusion as to characterisation of the fourth supply

- [89] In view of the above, I find that MHL has sufficient practical control of the Hotel for it to be said that the accommodation provided to Ms Young was provided by "the entity that ... controls the commercial residential premises". For that reason I am satisfied that the fourth supply is not input taxed, but rather, is a taxable supply.

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(1) ** Was 25% of cost of a house a fringe benefit? (Investa and C of T)

Source: Investa and C of T (Ms Robin Hunt, Senior Member)

What is the issue?

Could the Tribunal review the Commissioner's objection decision on an objection to a private ruling?

What were the facts?

Investa applied for a private ruling about an arrangement that would involve payment by it, as the employer, to an associated construction company, of 25% of the cost of construction of a house on an employee's land, and reimbursement by the employee to Investa through a salary sacrifice arrangement.

The taxpayer suggested that the arrangement gave rise to a particular type of fringe benefit which would have a nil taxable value.

The Commissioner:

- ◆ stated the scheme to be the following:

IPL is proposing to enter into arrangements with its employees which involve Clarendon Homes contracting with an IPL employee to build a new home, to the employee's specifications, on land which the employee owns. Clarendon Homes will invoice the employee for 75% of the purchase price of the house to be built. Clarendon Homes will invoice IPL for 25% of the purchase price of the house to be built. This will be paid by an internal journal entry. As part of the salary packaging arrangement associated with the building of the home by Clarendon Homes, the employer, IPL, will recoup from its employees the twenty five per cent discount off the value of their house from their pre-tax salary. Should the relevant employee leave their employment with IPL prior to the 25% discount being recouped through the salary package arrangement for that employee, the employee will have a liability to pay the outstanding amount to IPL.

- ◆ did not rule on the type of benefit involved but simply ruled that a taxable fringe benefit resulted from the arrangement, which he described as the provision of 25% discount on the cost of construction of a house on the employee's land.

Before and after the private ruling issued but before the making of the objection decision, Investa continued to supply information to the Commissioner at his request.

What is the impact of the decision on your firm's practices?

Making a private ruling request might create more problems that it solves. Think carefully before packaging a client's request off to the Tax Office, both as to precise question and whether the answer from the Tax Office will be more correct than an answer that your office could generate.

There is no advantage, and possibly many disadvantages, in outsourcing technical issues to the Tax Office.

What was the decision?

- ◆ [6] The Tribunal review must be decided upon the facts comprising the arrangement on which the ruling was made:

- ◆ [9] Before identifying the above as the scheme the subject of the ruling, the delegate has set out “Issue 1:” followed by “What this ruling is about:” and there poses the following question:

Does the provision of a twenty five percent discount by the employer to its employees, in respect of the construction costs of a house, by way of a salary package arrangement, give rise to a taxable fringe benefit?{

What was the outcome?

The Tribunal found that:

- ◆ the Commissioner did not deal with the scheme which the taxpayer raised in the request for a ruling;
- ◆ the answer to the question posed by the Commissioner is useless to the taxpayer as it does not consider the question on which the taxpayer sought a ruling;
- ◆ the taxpayer met its obligation to state clearly what the arrangement’ in question was;
- ◆ the ‘facts’ the Commissioner considered in making the decision on the objection differ from the ‘facts’ described in the ruling;
- ◆ despite being able to obtain and consider more information when reconsidering the ruling, it is only the ruling which the Commissioner may review when making an objection decision on that ruling;
- ◆ the real issues raised by the taxpayer in seeking a private ruling are those discussed in the ‘explanation’ attached to the Commissioner’s ruling which states it is not part of the ruling;
- ◆ the Commissioner:
 - ~ ruled on only one aspect of the arrangement whereby the employee obtains a 25% discount on the construction of a house;
 - ~ did not consider additional aspects of the scheme which require the employee to repay the amount of the discount;
 - ~ persisted with reconsideration of the private ruling without altering or expanding the only question he has answered for the purposes of the private ruling;
 - ~ has not issued a ruling on the scheme he identified as he asked himself only one question or the wrong question;
- ◆ the Tribunal would exceed the tribunal’s jurisdiction in making findings upon the matters;
- ◆ if the Commissioner identifies different facts or a different scheme that alters the identification of the scheme or arrangement on which the ruling was based, this requires a new ruling which takes into account the further facts;
- ◆ if the result is that the scheme is different, the taxpayer may lodge another application for a ruling;
- ◆ while the Commissioner identified new facts in the objection decision, he has not found that the scheme is different and has ruled upon the same question;
- ◆ in persisting with the wrong question as the only issue for the ruling, the Commissioner has stymied the taxpayer’s efforts to obtain a private binding ruling of any relevance to the scheme identified;
- ◆ by confining the issue for the ruling to only one step in the arrangement, that is, “whether the provision of a twenty five percent discount by the employer to its employees, in respect of the construction costs of a house, by way of a salary package arrangement, gives rise to a taxable fringe benefit”, the ruling prevents the Tribunal from considering other facts.
- ◆ the Tribunal has no power to restate the scheme for review of the objection decision on the ruling,
- ◆ although the Commissioner has identified an arrangement in the private ruling, the ruling then poses a question which restates the arrangement identified in the ruling and ignores most of the arrangement, which comprises several steps.
- ◆ the decision on the objection contains additional facts in describing the scheme upon which the ruling issued but does not relate these facts to the only question upon which the ruling and decision on the objection issued.

- ◆ the Tribunal cannot proceed to consider the matters argued before it in relation to the reviewable decision, so it must dismiss the application in the hope that the Commissioner will reconsider the actual scheme identified and issue a new ruling on the subject matter of the scheme about which the taxpayer sought a private ruling.

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5 SUPERANNUATION, ETP'S & PENSIONS

5.1 Politicians, Boards & Statutory Authorities

(1) ** Tax Review to Provide Early Advice on Retirement Income System [Swan]

Source: No.135 05/12/2008 Tax Review to Provide Early Advice on Retirement Income System (Swan)

The Government has asked the Australia's Future Tax System Review panel to bring forward its consideration of the retirement income system and report by the end of March 2009.

Australia's Future Tax System Review panel:

- ◆ will make recommendations on the adequacy of retirement income arrangements and the appropriateness of the current taxation arrangements;
- ◆ will look at all three pillars of the retirement income system – the age pension, the compulsory superannuation guarantee system, and voluntary savings.

The Government will examine the findings of Dr Harmer's review of pensions (believed to have been delivered to the Government on 2 February 2009) in conjunction with the panel's review of the other aspects of the retirement income system thereby enabling the Government to consider a broader and more complementary response to the issues facing the retirement income system than just those issues being considered by Dr Harmer.

Australia's Future Tax System Review panel:

- ◆ has advised that they will release a retirement income consultation paper at the same time as they release their broader tax-transfer system consultation paper;
- ◆ will also call for submissions on the specific issues facing the retirement income system.

(2) ** Treasury Discussion Paper on Tax Relief for Merging Super Funds [Sherry]

Source: Minister Releases Discussion Paper on Tax Relief for Merging Super Funds No.3-16/01/2009 - Sherry

Senator Nick Sherry, Minister for Superannuation and Corporate Law, has released the Treasury discussion paper on the Government's measure to provide an optional CGT roll-over for superannuation funds that merge with other complying funds.

Under the measure, the Government will provide optional CGT roll-over for capital losses arising from CGT events happening under a complying superannuation fund's merger with an APRA-regulated superannuation fund with at least five members before 1 July 2010.

Typically, the transfer of assets from one super fund to another, as part of a merger of the funds, triggers the realisation of capital gains or losses for the transferring fund. If the transferring super fund is in a net capital loss position, its winding up following these transfers will lead to these losses being extinguished. Such losses, which reduce member balances, have acted as a barrier to fund mergers.

Accordingly, the roll over will preserve the value of these capital losses in the receiving super fund – allowing them to be offset against future capital gains.

Limited CGT roll over will assist super funds in a net capital loss position seeking to merge with other funds by preserving the CGT offsetting value of any net capital loss.

The Treasury discussion paper forms the basis for consultation on the design of the roll over measure. Industry and other stakeholders are invited to comment. The discussion paper is available at www.treasury.gov.au.

(3) ** Find Your Lost Super in 2009 [Sherry]

Source: Find Your Lost Super in 2009 [No.1 – 2009-01-05 - Sherry]

The total number of lost member superannuation accounts listed on the Lost Members Register rose by 315,325 or 5.2 per cent, from 6.1 million accounts on 30 June 2007 to 6.4 million accounts at 30 June 2008.

The amount of lost super increased from \$11.9 billion in superannuation assets on 30 June 2007 to \$12.9 billion on 30 June 2008, an increase of 8.4 per cent.

(4) ** Pension Drawdown Relief for Retirees [Sherry]

Source: Pension Drawdown Relief for Retirees [Media release No.13 – Sherry 18 February 2009]

The Government will suspend the minimum drawdown requirement for account-based pensions for the second half of 2008-09 through a 50 per cent reduction in the minimum payment amount for 2008-09 in response to concerns that meeting the minimum draw down amount in 2008-09 would mean that superannuation funds would need to sell investments in a depressed market.

For those people who have already taken half of the current minimum payment for 2008-09, the annual nature of the minimum drawdown rules means that a further payment will not be required until the end of the 2009-10 year.

The temporary suspension of the minimum payment requirement will apply to:

- ◆ account-based annuities and pensions (payable since 1 July, 2007);
- ◆ allocated annuities and pensions (pre-dating the Better Super changes);
- ◆ account-based and allocated pensions payable from Retirement Savings Accounts, and
- ◆ market-linked (term allocated) annuities and pensions.

Minimum drawdown payments are determined by age and the value of the account balance as at 1 July each year.

The minimum drawdown rule is designed so that retirees draw down on their superannuation capital over their retirement.

(5) ** Ways to Boost Your Super in the New Year [Sherry]

Source: Ways to Boost Your Super in the New Year [No.2 - 05/01/2009 - Sherry]

Senator Nick Sherry, Minister for Superannuation and Corporate Law, urged Australians to make a new year's resolution to tidy up their superannuation by tidying up their superannuation by the following means:

- ◆ Consolidate super accounts;
- ◆ Provide superannuation funds with the member's Tax File Number;
- ◆ Check fees and assess whether the superannuation fund is competitive:
 - ~ the average ongoing fee across the superannuation system is currently 1.25 per cent;
 - ~ the range can be less than 1 per cent through to 2 per cent or more;
- ◆ Check returns over 5-7 years and see how a fund compares with peer funds;
- ◆ Check the level of life insurance and assess whether it is adequate;
- ◆ Check the level of contributions.

(b) Tribunals

(1) ** SMSF Auditor with 15 years experience embarrassed at AAT (Coreta v C of T)

Source: Coreta v C of T (Mr Egon Fice, Member)

What is the issue?

The issues were:

- (a) whether the charge percentage calculated in respect of the three employees in question for the years in which there was an alleged shortfall was correctly calculated;
- (b) if the answer to (a) is no, what is the correct minimum contribution required to have been paid to the employees by Coreta;
- (c) whether payment was made by the required date;
- (d) if the answer to (c) is no, what are the consequences of late payment;
- (e) was the payment made to a complying superannuation fund;
- (f) if the answer to (e) is no, what are the consequences;
- (g) if the answer to (e) is yes, and payment was made out of time, what are the consequences; and
- (h) should a superannuation guarantee charge be levied against Coreta.

Were default notices issued in the name of the Trust valid?

What were the facts?

The Commissioner:

- ◆ conducted a superannuation guarantee audit of the employer, Coreta Pty Ltd, as the Maplestone Family Trust; and
- ◆ determined that the employer:
 - ~ had a superannuation guarantee charge of \$5,489.82 for the 1999 year and \$6,338.13 for the 2000 year;
 - ~ was liable for nominal interest of \$3,239.13 for the 1999 year and \$3,105.85 for the 2000 year;
 - ~ was liable for administration costs, being \$110 for 1999 and \$140 for 2000.
- ◆ subsequently assessed the Maplestone Family Trust to pay an additional charge of \$883.89 for the 1999 and \$958.39 for the 2000 year for failing to lodge a superannuation guarantee statement within the required time and/or failing to provide superannuation guarantee shortfall information requested by the Commissioner within the required time.

Coreta Pty Ltd was also the trustee of the Maplestone Family Trust and Mr Kata was the accountant and auditor for the Maplestone Superannuation Fund.

The employer, through its accountant, maintained that it had made the contributions for the employees as required to ANZ Superannuation or Zurich superannuation.

The accountant:

- ◆ produced two cheque butts as proof of raising the cheques but without any proof of the date on which the cheques were drawn;
- ◆ produced a single cheque butt, drawn in the relevant amount, but dated two years later.

In essence the documents the accountant put into evidence to prove that the payments of superannuation for the three employees had been made by cheque to ANZ or Zurich by the required dates did not support the position he was stating to be the case.

Subsequently, the employer drew a single cheque in the amount of the aggregate that ought to have been paid to the ANZ and Zurich and paid that amount into the Maplestone Superannuation Fund despite the three employees being neither members of the fund nor directors of the trustee of the fund.

Mr Kata in evidence said that as a chartered accountant:

- ◆ he was employed to do accounting work for the Maplestone Family Trust and Maplestone Superannuation Fund;
- ◆ he had been their accountant for some ten years;
- ◆ his work included preparing accounts, completing tax returns and work on superannuation funds;
- ◆ he did audit work, although he was not a qualified auditor;
- ◆ he had some 15 years experience in auditing superannuation funds.
- ◆ the funds paid to the Maplestone Superannuation Fund were parked in the Maplestone Superannuation Fund.

What is the impact of the decision on your firm's practices?

Auditing of superannuation funds may be left to those who do it full time.

What were the contentions?

Mr Kata argued that although the cheques were drawn and sent to ANZ and Zurich as requested, they were returned by ANZ and Zurich because they told the employer that the employee superannuation accounts were closed.

Mr H Kata, said payments constituting payment of the superannuation guarantee shortfall for the years in question were paid as follows:

- ◆ \$11,763.20 was deposited into the account of the Maplestone Superannuation Fund on 20 March 2001 for two employees; and
- ◆ a further \$7,210.70 was deposited into the account of the Maplestone Superannuation Fund on 30 April 2001 for three employees.

The Commissioner contended that, even if those payments were made for the benefit of Coreta's employees, the Maplestone Superannuation Fund was not a complying superannuation fund for the purposes of the SGA Act so that Coreta had not met its obligations under the SGA Act.

What was the outcome?

The Tribunal found that:

- ◆ the default notices issued to the Maplestone Family Trust should be dealt with in the same way as the High Court did in *Prestige Motors*;
- ◆ the provisions in the SGA Act dealing with the particulars of the assessment and notice to the person liable to make payment are identical to those which the High Court was required to determine under the [ITAA 1936](#);
- ◆ there is no room for doubt that the notices in this matter were intended to alert the trustee to its liability to pay the superannuation guarantee charge out of trust funds;
- ◆ the notices issued are therefore valid;
- ◆ the Commissioner's calculations of shortfall and interest were correct;
- ◆ the payments said to have been made in satisfaction of the required employer contributions, on 20 March 2001 and on 30 April 2001:
 - ~ were not made in respect of satisfying the contributions required to be made for the two years in question;
 - ~ bear no resemblance to the payments which were in fact made into the Maplestone Superannuation Fund subsequently;

- ◆ the evidence is insufficient to conclude, on the balance of probability, that the two payments were in respect of the contributions Coreta was required to make in the 1999 and 2000 tax years so as to reduce its percentage charge to zero;
- ◆ the returns furnished by the Maplestone Superannuation Fund to the ATO for the 1999 and 2000 tax years are inconsistent with the sum of \$11,763.20 being the employer's contribution for the years in question;
- ◆ even if the conclusions about the making of the payments is incorrect Coreta needed to establish the payments made to the Maplestone Superannuation Fund were payments made to a complying superannuation fund;
- ◆ at the time Coreta made the payments to the Maplestone Superannuation Fund, it was not a complying superannuation fund;
- ◆ that the payments made to the Maplestone Superannuation Fund in respect of the employees in question were not payments made to a complying superannuation fund;
- ◆ even if the payments made on 20 March 2001 and 30 April 2001 into the Maplestone Superannuation Fund bank account were intended to be for the benefit of the employees in question, those payments could not satisfy the requirements under s 23 of the SGA Act to reduce the charge percentage;
- ◆ Coreta did not make its election, to take advantage of the offsetting provisions in s 23A, within four years after Coreta's superannuation guarantee charge became payable;
- ◆ Coreta, as the employer of Mr Nowoweiski, Mr Hillebrand and Mr Mullins, had individual superannuation guarantee shortfalls in respect of those employees in the 1999 and 2000 years.

6 OTHER IMPOSTS, OFFSETS & REBATES

6.3 Featured ATO interpretations

Click here for [Listed ATO Publications for the MONTH](#)

(a) TR Series - including TR series in draft form

(1) ** TR 2009/1 ~ Transfer of expenditure a Petroleum Project

[Source TR 2009/1 previously issued as draft TR 2008/D7 – No comments were received by the Tax Office about the Draft Ruling.](#)

What is the issue?

Can expenditure incurred by a person in relation to a project that did not have a production licence, be transferred to other taxable projects under sections 45A and 45B of the Petroleum Resource Rent Tax Assessment Act 1987 (PRRTAA) if the expenditure is taken to be incurred by the person under sections 48 and 48A of the PRRTAA.

What was the background to the ruling?

Section 48 applies if a transaction has the effect of transferring to the purchaser the whole of the entitlement of the vendor to derive assessable receipts of a petroleum project.

Section 48A applies if the transaction has the effect of transferring part only of the vendor's entitlement to assessable receipts.

Under subsections 48(1) and 48A(5), a purchaser takes over expenditure incurred by a vendor in a petroleum project up to immediately before the transaction in proportion to the share of the vendor's assessable receipts in relation to a petroleum project transferred in effect to the purchaser.

What is the relevant legislative provision?

Division 3A of Part V provides for the possible transfer of exploration expenditure incurred on or after 1 July 1990 to another project.

Section 45A provides for transfers generally, by which exploration expenditure of a petroleum project of a taxpayer must be taken to be incurred in relation to other PRRT projects of that taxpayer to the extent that it can be utilised in a financial year and so far as the rules in the Schedule to the PRRTAA (the Schedule) allow its transfer.

Section 45B provides for the transfer of expenditure in relation to group companies, by which exploration expenditure of a petroleum project must be taken to be incurred in relation to other PRRT projects of other companies in a group of which the taxpayer is a member to the extent that it can be utilised in a financial year and so far as the rules in the Schedule allow its transfer.

Section 45C provides for transfer of expenditure by the Commissioner where transfers required by sections 45A or 45B have not been made.

Section 45D provides for the effect of transfers of expenditure, and section 45E provides for the interaction between transfers in relation to the calculation of instalments of PRRT and transfers in relation to a financial year.

What is the Tax Office ruling?

The Tax Office view is that:

- ◆ if a person acquires an interest or increases its interest in a project and the project has not yet obtained a production licence, a person cannot transfer any of the exploration expenditure they inherit under sections 48 or 48A to other projects of theirs or to projects of another group company pursuant to sections 45A or 45B;

- ◆ clause 15 of Part 4 of the Schedule is a current year rule to work out how much of a person's exploration expenditure on a project that has not obtained a production licence is available for consideration for, or excluded from, possible transfer;
- ◆ subclause 15(2) of the Schedule identifies the part of the exploration expenditure that will be available for transfer as limited to the excess of total deductible expenditure actually incurred by the person over assessable receipts - excluding any inherited expenditure, as this was not actually incurred by the person.

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7 LISTED ATO PUBLICATIONS FOR THE MONTH

Source: <http://law.ato.gov.au/atolaw/index.htm>

7.1 ATO Publications that you can rely upon

(1) Class Rulings

CR 2009/1	Income tax: early retirement scheme - Arnott's Biscuits Limited
CR 2009/2	Income tax: early retirement scheme - Geofabrics Australasia Pty Limited
CR 2009/3	Fringe benefits tax: employers who are clients of Sydney Airport Corporation Limited and who enter into the Sydney Airport Commercial Car Parking Agreement

(2) Decision Impact Statements

DIS 148/2007	Deputy Commissioner of Taxation v Smith
DIS 148/2007	Deputy Commissioner of Taxation v Smith
DIS 2093/2005	Deputy Commissioner of Taxation v De Angelis
DIS 2093/2005	Deputy Commissioner of Taxation v De Angelis
DIS A47/2007	Commissioner of Taxation v Futuris Corporation Ltd
DIS A47/2007	Commissioner of Taxation v Futuris Corporation Ltd
DIS NSD 2510-9/2007	Peter Kafataris and Helen Kafataris
DIS NSD 2510-9/2007	Peter Kafataris and Helen Kafataris
DIS NT 2005/7 & 56-65	Roche Products Pty Ltd v Commissioner of Taxation

7.2 Publications that you are not entitled to rely upon

The publishes documents other than public rulings in which it sets out its view of the law.

The has stated unequivocally that these documents are not intended to be relied upon.

The documents listed in this section of the MTUN are documents recently published by the which are not intended to be relied upon in forming a Reasonably Arguable Position.

(1) ID's

ID 2009/1	Capital Gains Tax: first element of cost base of shares - company formation expenses
ID 2009/2	The term 'unrelated' for the purposes of Article 11(3)(b) of the US Convention: where a company as the holder of redeemable preference shares has majority voting rights in relation to specified events
ID 2009/3	Capital Allowances: business related costs - business transfer arrangement establishing rights to intellectual

	property
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(2) Speeches & Press Releases ~ Commissioner & Assistant Commissioners

TA 2009/2	Certain cross-border Prepaid Forward Purchase Agreements
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(b) Other publications**(1) Superannuation Guarantee Ruling**

SGR 2009/1	Superannuation guarantee: payments made to sportspersons
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(2) Self Managed Superannuation Fund Ruling

SMSFR 2009/1	Self Managed Superannuation Funds: business real property for the purposes of the Superannuation Industry (Supervision) Act 1993
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7.3 Addenda & Errata & Withdrawals to documents not intended to be relied upon**(a) Addenda****(1) Fuel Tax Determination- Addenda**

FTD 2006/1A - Addendum	Fuel tax: for the purposes of calculating your entitlement to a fuel tax credit what methods can be used to calculate the quantity of taxable fuel that you acquire, manufacture in, or import into, Australia for use in carrying on your enterprise or for use in generating electricity for domestic use?
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(2) Fuel Tax Rulings - Addenda

FTR 2008/1A - Addendum	Fuel tax: vehicle's travel on a public road that is incidental to the vehicle's main use and the road user charge
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(3) GSTR Rulings - Addenda

GSTR 2000/10A3 - Addendum	Goods and services tax: recipient created tax invoices
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(b) Withdrawals**(1) Tax Rulings - Withdrawn**

ID 2002/563 (Withdrawn)	Part IX taxation of superannuation entities - Failure to elect to become a regulated fund.
ID 2003/1008 (Withdrawn)	Deductibility of unused Personal Allowance from UK by an Australian resident
ID 2003/1023 (Withdrawn)	Foreign tax credits : tax paid to the European Union by a

	resident taxpayer in receipt of assessable foreign pension
ID 2003/1134 (Withdrawn)	Foreign tax credits: Average rate of Australian tax for a life insurance company
ID 2003/1135 (Withdrawn)	Life insurance company: foreign tax credits - discretion to amend determination
ID 2003/31 (Withdrawn)	Excise - Collections - Petroleum - Liability to pay excise duty on refinery residue
ID 2003/918 (Withdrawn)	Foreign Tax Credit: Employee share options - UK tax paid on part of a gain accrued after the taxpayer became a resident of Australia
ID 2004/292 (Withdrawn)	Energy Grants Credits Scheme: sale of fuel - use of equipment on a farm by a contractor
ID 2006/290 (Withdrawn)	Part IX taxation of superannuation entities: deduction for superannuation funds for additional lump sum death benefits paid after the death of a fund member.

8 LEGISLATION - UPDATE MATERIAL IS ACCESSED ON LINE THROUGH TAXMAP™

We now publish legislation updates on-line at [taxmap™](#) in a comprehensive tabular format showing summary & commencement dates. This development allows us to track developments on “as occurs basis” rather than monthly in arrears basis.

9 APPEALS TO THE FULL COURT OF THE FEDERAL COURT - UPDATE MATERIAL IS ACCESSED ON LINE THROUGH TAXMAP™

We now publish the Full Court Appeals Update on-line at taxmap™. This development allows us to track developments on “as occurs basis” rather than monthly in arrears basis

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Interpretation

In these Tax Update Notes a reference to the:

- AAT is a reference to the Administrative Appeals Tribunal
- Administration Act is a reference to the Taxation Administration Act 1953
- ADJR is a reference to the Administrative Decisions Judicial Review Act
- ITAA 1936 or the 1936 Act is a reference to the Income Tax Assessment Act 1936
- ITAA 1997 or the 1997 Act is a reference to the Income Tax Assessment Act 1997
- ITR is a reference to the Income Tax Regulations
- FBTAA is a reference to the Fringe Benefits Tax Assessment Act (1986)
- GST Act means is a reference to the A New Tax System (Goods and Services Tax) Act 1999
- GST Regulations is a reference to the A New Tax System (Goods and Services Tax) Regulations 1999
- SGAA means Superannuation Guarantee (Administration) Act 1992
- The SIS Act is a reference to the Superannuation Industry (Supervision) Act
- Tribunal is a reference to the Administrative Appeals Tribunal
- The Regulations is a reference to the Income Tax Regulations

Status of ATO Documents

TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.

Status of a draft Taxation Ruling:

Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the ATO. DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings that represent authoritative statements by the ATO of its stance on the particular matters covered in the Ruling.

Status of a Class Ruling:

Certain parts of a Class Ruling constitute a 'public ruling' in terms of Part IVA of the Taxation Administration Act 1953. CR 2001/1 explains Class Rulings.

Status of a Product Ruling:

The number, subject heading, and the What this Product Ruling is about (including Tax laws, Class of persons and Qualifications sections), Date of effect, Withdrawal, Previous Ruling, Arrangement and Ruling parts of products rulings will generally constitute a 'public ruling' in terms of Part IVA of the Taxation Administration Act 1953.

Product Ruling PR 1999/95 explains Product Rulings

Status of an ID and Private Binding Ruling:

ATO IDs are published on ATO law as precedential ATO views

for ATO officers. ATO officers must search for, identify and apply relevant ATO IDs in resolving technical interpretative issues (see Law Administration Practice Statement PS LA 2003/3).

Accordingly, an ATO ID must be followed where:

- ◆ there is no material difference between the facts of the arrangement upon which a decision is required and a current ATO ID; and
- ◆ the decision maker considers that the outcome of the issue would be correct if the ATO ID were applied.

The database of ATO IDs serves a different purpose to the Register of Private Binding Rulings. Entries to the Register are made for purposes of integrity and transparency only and do not constitute precedential ATO views. Accordingly, entries on the Register cannot be relied upon as indicative of the ATO view.

Status of a GST Ruling

Generally a GST Ruling is expressed to be a ruling for the purposes of section 37 of the Administration Act.

DISCLAIMER

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As a guide to readers the following rating system has been applied at the front of the title of an article (the context being the section within which the article appears):

- *** indicates the item is in the "must read category - will impact on your current practices" (legislation will not receive ***rating unless it has received Royal Assent.)
- ** indicates the item is in the "should read category".
- * indicates the item is in the "read if you have plenty of time" category.

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The electronic version contains fully functional links to all primary sources. The electronic version can be stored on your server.

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