

May Tax Update

- 09/10 Federal Budget
- Recent tax cases and rulings
- New tax legislation

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This month the 09/10 Federal Budget was released (See [Butlers' Budget Report](#)). There have been several other developments including legislation, case judgments, tax determinations, and government initiatives as outlined below.

Budget 09/10 The Tax Laws Amendment (Small Business & General Business Tax Break) Bill 2009

The Investment Tax Allowance Bill, which offers tax incentives for businesses to invest, was passed by the Senate on 14 May 2009 and it now awaits royal assent. An additional 50% deduction is now available for small businesses on the cost of an eligible asset purchased between 13 December 2008 and 31 December 2009, and installed ready for use by 31 December 2010. See the [Butlers' April Update](#) and other articles on the [Butlers' website](#) for more.

Board of Taxation's recommendations on GST administration

The Board of Taxation has released its report on its review of the legal framework for the administration of GST. The Board has made 36



substantive recommendations and 10 recommendations for technical amendments. The government announced in the Budget that it would implement 41 of the 46 recommendations (excluding recommendations 1, 2, 3, 13 and 30). Treasury subsequently released for public comment a discussion paper which provides detailed information on the proposed approach to implementing some of the recommendations. A copy of the review is available on the [Board's website](#). See also the Assistant Treasurers' [Press release No.042](#).

First home saver accounts

To benefit from the 17% co-contribution and satisfy their first year of the 'four year rule' taxpayers need to make a deposit of at least \$1000 prior to 30 June. See the [ATO website](#) for more.

Superannuation contributions

The Government will reduce its matching of super contributions by workers earning less than \$60,342 from \$1.50 for every dollar invested to \$1 for the next three years. It will pay a \$1.25 co-contribution for a further two years before the full co-contribution returns in 2014.

This means workers earning less than \$30,342 who contribute \$1000 from their after-tax income will see their co-contribution cut from a maximum \$1500 this year to \$1000 for the next three years. The co-contribution is means tested, and the maximum payment is reduced for each dollar you earn above \$30,342. There is no entitlement to co-contribution if income exceeds \$60,342.

Cases

[Reid v FCT \[2009\] AATA 357](#)

The AAT held that debts owed to a company (of which the taxpayer was a director and shareholder) but paid into the taxpayer's account at the company's direction should be treated as deemed dividends for the purposes of ITAA 1936 Div 7A. The Tribunal held that a company and its shareholders cannot escape Division 7A of the Act "simply by misappropriating debts due to that company by its debtors and by causing those debts to be discharged otherwise than through payments to that company."

[FCT v Lean \[2009\] FCA 490](#)

The Federal Court allowed the Commissioner's appeal, finding that section 25-45 of the *Income Tax Assessment Act 1997* (ITAA97) concerning loss by theft, did not operate to allow a loss of around \$2.3m to be claimed for funds misappropriated by a Hong Kong stockbroker.

[Queensland Harvesters Pty Ltd v FCT \[2009\] AATA 351](#)

The AAT has held that a taxpayer company was not entitled to claim

input tax credits and was liable to a shortfall penalty, because it did not hold valid tax invoices. The Tribunal also affirmed the Commissioner's decision to impose a penalty for failing to withhold PAYG of 48.5 percent when no ABN was quoted by the payees. The AAT concluded that the taxpayer had not exercised reasonable care in claiming the input tax credits and was recklessly indifferent to the requirements of the legislation. Accordingly, it declined to exercise the discretion to treat the invoices as tax invoices.

[Dreamtech International Pty LTD v FCT \[2009\] AATA 365](#)

The AAT has confirmed that a Hummer satisfies the definition of 'car' in the *A New Tax System (Luxury Car Tax (LCT)) Act 1999*. Because the Hummer was a 'car' for the purposes of the definition in s 27-1 of the LCT Act, being a motor powered road vehicle and a 'limousine,' and as its value exceeded the LCT threshold, Dreamtech was liable to pay LCT on its importation.

Interpretive Decisions

[ATO ID 2009/37](#)

In relation to Income Tax and Capital Allowances, the taxpayer's capital expenditure on landscaping the leased land on which they carried on their business did not form part of the cost of land for the purpose of paragraph 40-880(5)(c) of the ITAA 1997 because the taxpayer did not hold the requisite interest in the land.

Decision Impact Statements

[Alcoa of Australia Ltd](#)

A Decision Impact Statement (DIS)

has been issued by the ATO on the Tribunal's decision in *Alcoa of Australia v FC of T* [2008] AATA 1128 where expenses incurred on works in relation to an anode bake furnace were held to be allowable deductions for repairs and not capital incurred on replacement of an entirety, as reported in [Edition 1/2009](#) of the *Tax Bulletin*.

Asciano Services Pty Ltd

The ATO has issued a DIS on the decision of the Full Federal Court in *Asciano Services Pty Ltd v Commissioner of Taxation* [2009] FCAFC 28 where energy grants claimed for the purchase of off-road diesel fuel used in connection with rail transport were disallowed. The DIS concludes that the decision confirms the Commissioner's view that off-rail activities do not qualify as eligible activities under s 38 of the *Energy Grants (Credits) Scheme Act 2003* and therefore there is no entitlement to an off-road credit.

New Tax Bills

Recipient Created Tax Invoice — Embedded Agreement Amending Legislative Instrument 2009

The Tax Office has made this legislative instrument to update existing instruments dealing with recipient created tax invoices (RCTI's). Recipients of supplies will now have the option either of maintaining separate written agreements specifying the supplies to which each agreement relates and containing specific terms or embedding these matters in tax

invoices they issue. An embedded agreement will be treated as an alternative to a written agreement for the purposes of RCTI instruments.

The Customs Tariff Validation Bill 2009 and the Excise Tariff Validation Bill 2009

The 'alcopops' tax Bills received assent on 13 May 2009. The Acts permit all excise collected between 27 April 2008 and 13 May 2009 inclusive under the *Excise Tariff Proposal (No 1) 2008* and the *Customs Tariff Proposal (No 1) 2008* to have been lawfully imposed and lawfully demanded and collected.

Tax Laws Amendment (2009 Measures No 4) Bill 2009 exposure draft

An exposure draft of the *Tax Laws Amendment (2009 Measures No 4) Bill* which makes minor amendments to the tax law has been released for comment. The Bill contains amendments to incorrect terminology, grammatical errors, inoperative material, ambiguities and provisions that are inconsistent with the original policy intent. There are also clarifications relating to the foreign income tax offset and foreign losses; capital gains tax small business concessions; deductible gift recipients under FBT; and making first home saver account trusts operated by superannuation funds a "full self-assessment taxpayer" for income tax purposes (for 09/10 and later income years). The draft can be viewed on the Treasury website.

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