12 June 2009

End of 2009 financial year newsletter contents:

- *SIGNIFICANT TAX CHANGES AND ISSUES*
- *Tax Rates – 2008/09*
- *Tax Rates - 2009/10*
- *Low Income Threshold*
- *Annual PAYG Withholding Reconciliation*
- *Reportable Fringe Benefits*
- *Self Managed Superannuation Funds*
- *Choice of Superannuation Fund*
- *Concessions for Small Businesses - "Small Business Entities"*
- *Tax Offset and Government Benefit Eligibility Changes*
- *Key Budget Changes*
- *TAX PLANNING - SUGGESTIONS TO CONSIDER BEFORE 30 JUNE 2009*
- *Depreciable Assets Superannuation*
- *Contributions by Employers*
- *Personal Superannuation Contributions*
- *Undeducted Superannuation Contributions*
- *Superannuation - Spouse Rebate*
- *Motor Vehicles*
- *Work in Progress/Billings*
- *Interest Expense*
- *Bad Debts*
- *Trading Stock*
- *Timing of Payments and Receipts*
- *Wages to Children*
- *Landlords Beware*
- *Donations*
- *Net Medical Expenditure Rebate*
- *Unrealised Exchange Gains/Losses*
- *Capital Gains Tax (CGT)*
- *Gifts and Retiring Allowances*
- *Super Co-Contributions up to 30 June 2009*
- *Shareholder/Beneficiary Loans*
- *Deferring Termination Payment*
- *"Averaging" of Income*
- *Transition to Retirement & Salary Sacrifice*

SIGNIFICANT TAX CHANGES AND ISSUES

Tax Rates – 2008/09

Taxable income $	Tax payable $
$0 - $6,000	Nil
$6,001 - $34,000	Nil + 15% of excess over $6,000
$34,001 - $80,000	$4,200 + 30% of excess over $34,000
$80,001 - $180,000	$18,000 + 40% of excess over $80,000
$180,001 +	$58,000 + 45% of excess over $180,000

Tax Rates - 2009/10

Taxable income $	Tax payable $
$0 - $6,000	Nil
$6,001 - $35,000	Nil + 15% of excess over $6,000
$35,001 - $80,000	$4,350 + 30% of excess over $35,000
$80,001 - $180,000	$17,850 + 38% of excess over $80,000
$180,001 +	$55,850 + 45% of excess over $180,000

This therefore means that, depending on your individual situation, it may be beneficial to defer income (e.g. bonuses, superannuation withdrawals where taxable, redundancy packages, etc) until the 2009 financial year so that they are possibly taxed at a lower rate and to bring forward payments prior to 30 June 2009.

If you use a payroll software package to calculate the amount to withhold from salary and wages, please ensure your tax rates are updated to reflect the changes.

Low Income Threshold

The low income tax offset will be raised to $1,350 for the 2010 year, with this offset able to be claimed in full where taxable income is $30,000 or less. This means that the effective tax-free threshold will be $15,000. The offset is reduced by four cents for every dollar by which taxable income exceeds $30,000.

Annual PAYG Withholding Reconciliation

Employers need to lodge their annual PAYG Payment Summary Statement for the 2009 financial year with the Taxation Office by 14 August 2009.

PAYG Payment Summaries (formerly called “group certificates”) should be provided to all employees by 14 July 2009. This includes any staff that left during the 2008/09 year. Please note that summaries should also be prepared and issued to employees who left before 1 July 2008 but received reportable fringe benefits after 31 March 2008.

Reportable Fringe Benefits

If the value of certain fringe benefits provided to an employee exceeds $2,000 (including GST) in an FBT year, the employer must record the grossed-up taxable value of those benefits on the employee’s PAYG Payment Summary.

This reportable fringe benefits amount needs to be reported on the employee’s income tax return. Where we have assisted with preparing the FBT return for 2009, a schedule of the reportable benefits has been provided to you.

Self Managed Superannuation Funds

For ease of accounting and audit purposes, we suggest that the expenses of a Self Managed Superannuation Fund be paid directly by the super fund. However, the rules prohibiting the payment of those expenses by an employer entity have been relaxed.

Once again we remind you that money belonging to the fund should not be used for personal or business purposes.

Choice of Superannuation Fund

From 1 July 2005, many employees have the right to choose which superannuation fund will receive their employer superannuation guarantee contributions.

Employers must give new eligible employees the Standard Choice Form. If the employee does not choose a fund, the default employer fund should be used.

Eligible employees are employees whose superannuation contributions are not made under an Australian workplace agreement (AWA) or a certified agreement under the Workplace Relations Act 1996 or the Industrial Relations Act 1988, or a state industrial award or state industrial agreement.

Under the new superannuation system, employers now have to pass the employee’s tax file number (TFN) on to the employee’s nominated superannuation fund within 14 days of the employee quoting it or before the next contribution is made.

Concessions for Small Businesses - "Small Business Entities"

From 1 July 2007 changes were introduced that streamline how many of the tax concessions apply to businesses with an aggregate turnover below $2 million. These changes standardise the eligibility criteria for accessing the small business concessions for GST, the Simplified Tax System (STS), Capital Gains Tax, Fringe Benefits Tax and PAYG instalments. This means that more small businesses will be able to access the concessions as the threshold has increased and some of the hurdles complicating access have been removed.

For example, more small businesses will now be able to access the CGT small business concessions which provide the opportunity to significantly reduce the CGT payable on the sale of your business or business assets.

Tax Offset and Government Benefit Eligibility Changes

From 1 July 2009, there will be changes made to eligibility tests for the following. (e.g. inclusion under definition of “income” of superannuation contributions, salary sacrifices and net investment losses):

• Spouse rebate

• Mature age worker tax offset

• Senior Australians tax offset

• Pensioner tax offset

• Medicare levy surcharge (including lump sum payment in arrears) offset

• Deductions for personal super contributions

• Spouse super contributions tax offset

• Government super co-contribution scheme

• Repayment income for HELP and SFSS

A new income line called ‘reportable employer super contributions’ will also be added to the PAYG payment summary, which will impact on employer reporting obligations.

Key Budget Changes

Immediate effect –

• An investment allowance of 50 per cent will be available to small businesses that acquire an eligible asset between 13 December 2008 and 31 December 2009 and install it ready for use by 31 December 2010. The previously announced 30 per cent and 10 per cent bonuses will continue to apply to all other businesses. Small businesses only need to invest a minimum of $1,000 per asset in order to qualify for the Tax Break. The special tax deduction is available on capital items such as motor vehicles, computer hardware, machinery and equipment as well as for making capital improvements to existing machinery and equipment, but doesn’t apply to intangibles such as software and rights. Land and trading stock are also excluded from the definition of depreciating assets and will not qualify for the tax break. Cars can qualify for the tax break, except where the taxpayer uses the cents per km method to determine their car expense deductions. Under enhancements to the Tax Break announced in March 2009, businesses can also amalgamate their expenditure on batches and sets of assets in order to meet this threshold. Please note that to get the allowance, the asset needs to be depreciated in the entity it is purchased. This means that laptops purchased must be depreciated rather than expensed in full as a fringe benefit reimbursement to an employee, where applicable, if you wish to get access to the investment allowance.

• The First Home Owner’s Boost will be extended for an extra six months

• The employee share scheme deferral election will not apply to shares and options acquired after 7.30pm on 12 May 2009. However, in response to a substantial backlash from the business sector, the government has commenced a consultative process in relation to this matter.

From 1 July 2009 –

• Income tax rate reduction as detailed above

• The superannuation contribution deduction limits will reduce from $100,000 to $50,000 for people 50 and over and from $50,000 to $25,000 for people under 50. After the 30 June 2012, the $25,000 limit will apply to everyone. Accordingly, consideration should be given to maximising contributions on or before 30 June 2009.

• From the 2009/10 income year, taxpayers with an adjusted taxable income of over $250,000 will have excess deductions quarantined to the business activity under the non-commercial losses rules. The existing rules will continue to apply to taxpayers with an adjusted taxable income of $250,000 or less

• The foreign employment income exemption will only be available for income earned by aid or charitable workers, government aid workers, and specified government employees. Currently, certain foreign employment income earned by Australians working overseas for a continuous period of 91 days or more is exempt from income tax.

• The non-commercial loan rules will be extended to payments by way of a licence or right to use real property and chattels. This will reduce the scope for private companies to allow their shareholders or associates to use company assets such as real estate, cars and boats for free or at less than arm's length value. If you are looking at selling assets out of the entities, you may want to contact us about this

• The minimum drawdown amount for account-based pensions will be halved for the 2009/10 income year

• The superannuation co-contribution scheme will be reduced to a rate of 100% for contributed amounts for the 2009/10, 2010/11 and 2011/12 years, increasing to 125% for the 2012/13 and 2013/14 years and returning to 150% for the 2014/15 year. The maximum co-contributions payable will also be reduced accordingly to $1,000 for contributions made in the 2009?10, 2010?11 and 2011-12 income years, and to $1,250 for contributions made in the 2012?13 and 2013?14 income years.

From 1 July 2010 –

• The government will introduce three new “Private Health Insurance Tiers” in respect to the Medicare levy surcharge thresholds and rebate:

Tier 1: for singles earning more than $75,001 (couples $150,001), the Private Health Insurance Rebate will be 20% for those up to 65 years (25% for those over 65, and 30% for those over 70 years). The Surcharge for avoiding private health insurance will remain at 1%.

Tier 2: for singles earning more than $90,001 (couples $180,001), the Private Health Insurance Rebate will be 10%, for those up to 65 years (15% for those over 65, and 20% for those over 70 years). The Surcharge for avoiding private health insurance will be increased to 1.25%.

Tier 3: for singles earning more than $120,001 (couples $240,001), no Private Health Insurance Rebate will be provided. The Surcharge for avoiding private health insurance will be increased to 1.5%.

• Salary sacrificed contributions to super will be included in income testing for government benefits such as support programs for family assistance, child support, superannuation co-contributions and financial and retirement savings assistance

• From 2010-2011, the current R&D concession will be replaced by the new R&D tax credit. The new R&D tax credit will provide a 45% refundable credit for firms with an annual turnover of less than $20m (i.e. equivalent to a 150% deduction). The credit will be available to small companies in a loss position, with no limit on the level of R&D expenditure undertaken. As a transitional measure for 2009/10, the R&D expenditure cap for the existing R&D Tax Offset will be lifted from $1mill to $2mill.

• The age pension age will be gradually increased to 67 years of age. The new pension changes will apply to new pension entrants from 1 July 2017, which will mean that it applies to people who are 57 years of age or younger on July 2009

• A Paid Parental Leave scheme will be available to parents for births and adoptions that occur on or after 1 January 2011. The scheme will provide 18 weeks postnatal leave paid at the federal minimum wage (currently $543.78 per week)

TAX PLANNING - SUGGESTIONS TO CONSIDER BEFORE 30 JUNE 2009

While taxation is a major factor affecting many decisions, it should be remembered that it is normally only one of several factors to consider. In addition, keep in mind that you may need to consider other taxes such as stamp duty, payroll tax, land tax and GST, and seek advice from licensed financial planners where appropriate.

Depreciable Assets

For those businesses that aren't small business entities, a review of depreciable assets should be undertaken to ensure that a deduction is claimed for items lost, stolen, destroyed or scrapped during the year.

A deduction can also be claimed for depreciable assets no longer actually used in the business. It is not necessary to physically scrap the assets.

Small business entities are entitled to "6 months of depreciation" in the year of purchase regardless of when the item was purchased, while assets costing less than $1000 are deductible in full.

Superannuation Guarantee Charge (SGC)

The superannuation guarantee requires employers to contribute 9% of each eligible employee's earnings base to a complying superannuation fund, and to make the superannuation contributions at least every quarter.

If employers do not:

• make their superannuation guarantee contributions by the quarterly cut-off dates (28 days after the end of the quarter),

• offer "Choice of Fund" to eligible employees within 28 days, or

• action an employee's choice of fund within two months,

then they will need to lodge a superannuation guarantee statement and pay the superannuation guarantee charge. The superannuation guarantee charge is made up of the employee's superannuation guarantee shortfall, nominal interest of 10% per annum and an administration fee of $20 for each employee with a shortfall. Unlike superannuation contributions, there is no tax deduction available for the superannuation guarantee charge (which will include the superannuation contribution which is being paid late). Other penalties may also apply.

To avoid the charge, we suggest that employers ensure that all superannuation contributions are paid by each quarterly cut-off date. In addition, we suggest that all contributions for the 2009 year be made by 30 June 2009, in order to claim a tax deduction in the 2009 year. We note that the date payment is made is the date the payment is received by the superannuation fund. If payment is made by cheque, it is the date of receipt of the cheque, not the date the cheque clears the bank, nor the date it is posted. If a cheque is dishonoured, it is deemed not to have been received.

It is also important that employers comply with their new "Choice of Fund" obligations. Please refer to page 4 of this document, or contact us for further information regarding Choice of Fund.

Superannuation Contributions by Employers

The total deductions allowable for contributions in respect of an employee, without the employee incurring excess contributions tax, are limited to the age-based limit applicable to the employee. For 2008/9, these limits are:

Employee aged under 50: $50,000 per year

Employee aged 50 or more: $100,000 per year

If contributions are made above the limit, the excess amount of the contribution is taxed at a further 31.5% in the employee's hands, on top of the 15% tax paid on entry to the fund. In addition, the excess counts towards their undeducted contribution limit.

Employees wishing to “top-up” their superannuation may wish to approach their employer about “salary sacrificing”. Under an effective salary sacrifice arrangement, an employee sacrifices future salary or wages in return for the employer making superannuation contributions of an equivalent value for the employee. Salary or wages to which an employee is already entitled cannot be sacrificed, and there should be a pre-existing agreement between the employer and employee.

Now is a good time to review current salary package arrangements and it is important to ensure that they don’t breach the limits stated above and that the impact of the new measures mentioned earlier in this document are considered as part of the process.

Personal Superannuation Contributions

Self-employed persons may be entitled to deductions for personal superannuation contributions, where the contributions are made to a complying superannuation fund and the person has given the fund notice of their intention to claim a deduction. The deduction may also be claimed by employees who do not receive any employer superannuation support, and persons whose employment income is less than 10% of their total assessable income and reportable fringe benefits for the year. No deduction is allowed if the person is entitled to a Government co-contribution in respect of the contribution.

For 2007/08 year onwards, self employed people are eligible to claim a full deduction for the contributions they make to superannuation until age 75 (prior to the 2008 year a full tax deduction applied to the first $5,000 contributed and 75% thereafter).

If you are a contractor you should be aware that you may not be able to access a tax deduction for your superannuation contributions. Under the superannuation guarantee laws, if you are paid for your personal labour or skills, perform the work personally (not delegated) and you are not paid to achieve a result (for example, the contract is based on your time), you are considered to be an employee and not a business. As a result, any contributions you make are not tax deductible as the hirer should be making a superannuation guarantee contribution on your behalf (unless you meet the definition of an ‘eligible person’) under SIS.

To be considered ‘substantially self employed’ and therefore eligible to claim a tax deduction for super contributions, less than 10% of your assessable income including reportable fringe benefits will be from employment. It’s important to note that this rule applies on a financial year basis. So, if you were employed for any part of the year, you might fail the test.

As with the employer superannuation contributions above, if the same age-based limits shown are exceeded by self-employed persons, excess contributions tax will be incurred at the rates stated.

Undeducted Superannuation Contributions

From 1 July 2009, a limit of $150,000 per financial year applies to undeducted contributions. For those under 65, this limit is averaged across 3 years allowing you to bring forward 3 years worth of contributions ($450,000) into one year if you choose.

Any contributions above this non-concessional threshold are taxed at the top marginal tax rate of 46.5% in your hands (the fund can pay this tax).

As superannuation is not taxed when you withdraw it under the new rules (assuming you are 60 or older, and the payment is from a taxed fund), superannuation is an attractive investment vehicle. By comparison, if you were to put the money into a different investment vehicle, any income you generate from the investment would be taxed as income at your marginal tax rate. In super, your investment can grow and any gain is potentially tax free. Note however that tax is only one consideration, and advice should be taken from a licensed financial planner.

The undeducted contribution limit is available to all taxpayers eligible to contribute to superannuation at the time of contributing.

Superannuation - Spouse Rebate

A spouse rebate of up to $540 applies where a taxpayer contributes to a superannuation fund for the benefit of a low income/non working spouse. The spouse must be earning less than $10,800 (including reportable fringe benefits) to get the full rebate and no rebate is available when the spouse earns more than $13,800.

Motor Vehicles

All individuals who claim motor vehicle expenses for income tax purposes should ensure that they record odometer readings as at 30 June. Readings are also required at the date of sale or purchase of a vehicle.

Work in Progress/Billings

Clients who are not required to pay tax on their work-in-progress at June 30 are generally those in professions where the services cannot be billed to the client and give rise to a recoverable debt because the services agreed to be provided have not been completed. (We note that construction industry businesses are not considered to be in this category.) We suggest that those clients carefully consider their Work In Progress before billings are done for 30 June.

Interest Expense

Interest is deductible to the extent it is incurred in gaining or producing assessable income or in carrying on a business for that purpose, and is not of a capital, private or domestic nature. Where a loan is taken out for two purposes, one business and one non-business, only a proportion of the interest will be deductible.

Some of the situations in which Interest may be deductible include:

• Where the money is borrowed by a partnership to repay money advanced by a partner for working capital. This rule does not extend to co-owners of income-producing assets such as rental properties.

• Where the money is borrowed to acquire shares, if it is reasonably expected that dividends will be derived from the investment. Interest will not be deductible where the shares are acquired solely for the purpose of making a capital profit on their resale.

• Where the money is borrowed by persons in business for the purpose of paying income tax, in certain circumstances.

• Where the money is borrowed to acquire units in a split property unit trust.

Note that if interest is prepaid, the prepayment rules may preclude a deduction in certain circumstances.

Interest is not deductible on borrowings to finance life premiums or personal superannuation contributions.

Bad Debts

To qualify for a deduction, the book entries to write off bad debts must actually be made by 30 June, rather than at a later time (such as when the accounts are finalised). To be a bad debt, you need to have brought the income to account as assessable income, and given up all attempts to recover the debt.

An additional advantage of writing off any bad debts if you are on the accruals method for GST is that you will be able to claim back the GST remitted on the invoice originally raised.

Trading Stock

A physical stock-take must be conducted as at the close of business on 30 June. (Small business entities do not need to take a physical stock-take if the value of stock on hand does not fluctuate by more than $5,000 from year to year.)

The method of valuing trading stock on hand can be changed each year, the three basic methods being cost price, market selling value or replacement price. It is normally appropriate to value the stock at cost price, however, the option of valuing certain items of stock at replacement prices to lower the overall value of stock should be considered. If this option is exercised, a specific election must be made in your income tax return in regard to those items.

Obsolete trading stock could be disposed of prior to 30 June and the resulting loss would be claimed in the current year's accounts, or alternatively an application could be made to the Commissioner for a valuation based on the "fair and reasonable" value of the trading stock.

In a manufacturing context, "cost" includes a proportion of manufacturing overheads for finished and partly manufactured goods.

Note that trading stock does not include stationery and other consumable stores, if the supply is "reasonable" to ensure the "normal continuity of operations". Such expenditure will still be deductible.

A ruling from the Tax Office indicates that packaging items may be classed as trading stock in certain situations.

Year end stock take records are very important, as the Taxation Office expects that all businesses with trading stock will be able to produce stock sheets and other relevant documents which would indicate that an actual stock take was undertaken at the year end, and that the level of stock has been reported accurately.

Timing of Payments and Receipts

Clients whose returns are submitted on a “cash” basis should remember that income received up to 30 June will affect your current tax liability, while income received after to 30 June will affect next year's tax liability. You may wish to delay the receipt of further income until 1 July. Generally, interest income on term deposits can be deferred if the maturity date is after 1 July.

We are aware that when the Taxation Office audits a cash basis profession, the level of banking in June and July are carefully looked at, to ensure there has been no artificial reduction in May/June.

Clients can take steps to incur expenses in this year, which might otherwise have been deductible in the following year. In each case, the work would need to be complete and an invoice received dated 30 June or earlier (and must have been paid if using the Simplified Tax System cash accounting method).

Examples would include:

• repairs to plant and equipment, premises or motor vehicles

• printing and stationery expenses (and other consumables)

• advertising expenditure

• trade gifts or donations

Bonuses due to be paid to arms-length employees will be deductible this year if the decision to pay has been made and documented prior to 1 July, and the amounts to be paid are quantified. A company resolution constitutes suitable documentation.

Small business entity taxpayers with a 3-year average group turnover of less than $2 million are entitled to a deduction where the relevant services will be wholly provided within 12 months of the date of expenditure, such as office supplies, stationary, rent, advertising, interest, preventative maintenance contracts, etc.

A possibility also exists to enter into a one-year lease before 30 June, prepaying all the lease payments (40-50% of the cost of the goods) and then financing the residual value in 12 months' time.

Wages to Children

Salary, wages and payments for services rendered by unmarried persons who are under 18 years of age on the last day of the income year are taxed at the rates applying to adult taxpayers. You should therefore consider paying wages to children who have worked in the family business, as the income will not attract tax in their hands (provided their total income is less than $15,000) and will be a tax deduction to the business. Care should be taken to pay normal arms-length rates and to document periods worked. PAYG Payment Summaries are required to be prepared in these circumstances and the child may need to have a tax file number.

We note also that where the above income is accumulated by the child and invested, the income earned on the investment is also subject to tax at normal rates, rather than at the higher rates applying to "unearned income" of unmarried minors. Naturally, these funds legally belong to the child who then has complete control over them. Where the funds are invested back into a business undertaking, the Commissioner of Taxation has discretion enabling him to form an opinion on how much of the income should be taxed at normal rates. The main factors considered hinge around "real and effective conduct, and control" over the business.

Landlords Beware

Rental properties are high on the ATO's audit radar, especially with owners looking to accelerate deductions before the end of the year by way of expenditure on repairs and maintenance. Landlords need to be aware that repairs and replacements are likely to be deductible whereas new and improved items are more likely to be capital expenditure and depreciated over time. If it's new, bigger and brighter than what was already there, it's likely to be capital expenditure and depreciated.

The question is, are you improving or repairing and maintaining? Repairs relate directly to wear and tear as a result of renting out the property. They generally involve a replacement or renewal of a worn out or broken part. Replacement of an entire structure is capital. For example, replacing an entire fence is likely to be capital as opposed to repairing a few broken palings.Also, be wary of holiday homes that are rented out. If you or family members have used the holiday home throughout the year then you will need to apportion the expenditure on the property between private and investment.

Donations

Any promised tax deductible donations should be made prior to 30 June.

Net Medical Expenditure Rebate

This rebate is allowable only when net medical expenditure exceeds a threshold of $1,500. The rebate is calculated on the excess of expenditure over $1,500.

• Consideration should be given to maximising the claim in one year, eg. by delaying payment of medical expenditure until July if it appears that the threshold of $1,500 will not be reached this financial year. Alternatively, if the threshold will be reached, outstanding medical expenditure could be paid prior to 30 June. Expenditure for medical rebate purposes includes doctors, dentists, hospital fees, chemist prescriptions etc.

• Medical expenditure incurred for cosmetic operations for which a Medicare benefit is not payable, and dental services and treatment which is solely cosmetic are no longer subject to the rebate.

Unrealised Exchange Gains/Losses

Where possible and appropriate, the realisation of exchange gains should be deferred until after June 30, and foreign exchange losses crystallised prior to June 30.

Capital Gains Tax (CGT)

If assets are likely to return a profit on sale, CGT can be deferred by delaying the sale until after June 30. In addition to this, the effective rate of tax payable on the gain can be reduced to 15% by salary sacrificing the taxable portion of the gain into super. Where the gain is realised after June 30, a salary sacrifice arrangement can be put in place where the amount is sacrificed over the full 2009 financial year.

Clients who have realised capital gains in the 2009 year should ensure that expected capital losses are incurred prior to June 30. The ATO has concerns regarding “wash sales”, where the item sold at a loss is reacquired soon after.

A reminder that the normal date for both acquisition and disposal is the date of contract and not the date money is paid or received.

The capital gains tax discounting provisions (individuals, trusts and super funds) will only be available where the assets are held for greater than 12 months.

We encourage you to contact us should you be considering a significant purchase or sale to ensure that the most tax advantaged position is obtained.

Gifts and Retiring Allowances

Gifts and certain retiring allowances paid to employees cannot be used to generate a loss to be carried forward into the following year. Clients who are likely to incur a trading loss this year should therefore delay making any such payments until after June 30.

Super Co-Contributions up to 30 June 2009

Employees who earn less than $60,342 a year and make personal (non-deductible) superannuation contributions may be eligible for Government Super Co-contributions.

Where the eligible employee’s assessable income is $30,342 or less, the government will put in $1.50 for every dollar the employee puts into super, up to a maximum of $1,500 a year. Where the employee’s assessable income is between $30,342 and $60,342, reduced co-contributions are available.

There are some other conditions attaching to this, so please contact us if you are considering making a payment.

Shareholder/Beneficiary Loans

Legislation effective from 4 December 1997 has the potential for loans and other payments to shareholders and beneficiaries, to be deemed as dividends/distributions to the shareholder/ beneficiary. This area is complex and advice should be sought if your company or trust has advanced loans to shareholders/beneficiaries or associates.

Deferring Termination Payment

Individuals who are nearing age 55 and who are about to receive a termination payment that is not to be rolled over into another approved fund can achieve a tax reduction by waiting until age 55.

There are substantial savings on tax rates and tax free amounts for 55 year olds compared to people aged under 55.

"Averaging" of Income

If taxable income this year is likely to be substantially higher or lower than next year, there may be some tax saving opportunities, such as:

• deferring retirement benefits until after 30 June

• splitting holiday pay received on a long holiday which straddles two tax years.

Transition to Retirement & Salary Sacrifice

An individual who is over age 55 can access superannuation as a non-commutable income stream. Assessable income can be salary sacrificed to a level where minimal tax is paid, while at the same time accessing a low tax (tax free if over 60) pension.

Where the assessable income is low enough and at least 10% of it is generated from employee type activities or carrying on a business, a taxpayer can also make an undeducted contribution into super and qualify for the government’s co-contribution.

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