



Mitchell & Partners
CHARTERED ACCOUNTANTS

CLIENT ALERT

TAX NEWS | VIEWS | CLUES
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ALERTS

Year End Tax planning

Put simply, tax planning is the arrangement of a taxpayer's affairs so as to comply with the tax law at the lowest possible cost. A common mistake is to believe that tax planning is optimised when every opportunity to reduce tax is taken. This is because some opportunities to reduce tax rely on strained interpretations of the law. Therefore, tax planning involves much more than taking the option that at first appears to result in lower tax costs. It involves objectively assessing and actively managing tax risk.

Common tax planning techniques that can be deployed are deferring the derivation of assessable income and applying techniques to bring forward deductions. These techniques are discussed below.

It is important to realise that consideration may also need to be given to the general and any relevant specific anti-avoidance measures contained in the tax law.

Deferring assessable income

- The timing of when business income is derived depends on the method which a taxpayer uses. Depending on the nature of the business, income can be reported using either the cash or accrual basis. If the taxpayer is reporting income on an accrual basis, the income is assessable when a recoverable debt is created. If the taxpayer is reporting income on a cash basis, the income is assessable when it is physically received or applied on the taxpayer's behalf. However, an exception exists for income received in advance of services provided.
- If income is received in advance of services provided, it will not be assessable until the services are provided. However, the accounting records of the business

must classify the unearned income separately from income already earned.

- Taxpayers who provide professional services may consider, in consultation with their clients, rendering accounts after 30 June to defer the income.
- Interest, rental income, dividends and royalties are not assessable until received (or otherwise paid or credited on the taxpayer's behalf).
- Generally, trust distributions are assessable in the year they are declared, notwithstanding the Commissioner's practice which allows a trustee up to two months after the end of the financial year to distribute the trust's income.

Maximising deductions

- An entity's debtors may be reviewed prior to year-end to identify and write off any debts which have gone "bad". A bad debt can qualify for a deduction subject to certain conditions being met.
- Certain business-related capital expenditure may be deductible. These expenditures include: establishment of business premises, research into likely markets or profitability of a business, due diligence reports, and liquidation and deregistration costs for a business.
- Consider writing off any depreciating assets which are no longer being held for use because a deduction may be available.
- Review the asset register to identify any low-cost and/or low-value assets that may be pooled together to access an accelerated rate of depreciation.
- Non-business taxpayers are entitled to an outright deduction for assets costing \$300 or less, provided certain conditions are satisfied.

- Business taxpayers are entitled to an outright deduction for assets costing \$100 (GST inclusive) or less.

- It is the GST-exclusive value of a depreciating asset that is used in calculating the depreciation, regardless of whether entitlement to input tax credits has been claimed.
- If an entity has carried forward losses, identify whether any net exempt income has been derived for the income year. Carried forward losses will need to be firstly offset against the net exempt income before being available to reduce any assessable income derived during the income year.
- Try to avoid making a donation in a year of losses. This is because a deduction for a donation cannot add to or create a tax loss.
- An entity that has been classified as a small business entity may consider choosing to apply the simpler depreciation concessions, which will provides an immediate deduction for assets costing \$1,000 or less (GST exclusive), and accelerated rates of depreciation.
- Trading stock can be valued at replacement value, market value or cost. The method does not need to be the same for each category of trading stock, therefore maximising deductions.
- Taxpayers may review their closing stock to consider whether any obsolete stock exists to obtain a deduction.
- If an entity has previously elected to use the trading stock concessions available to former Simplified Tax System (STS) taxpayers, consideration may be given to conducting a proper stock take.
- Employers should ensure that superannuation contributions are paid to their employees' superannuation fund prior to 30 June 2008 to obtain a tax deduction and avoid any superannuation guarantee charge.
- A personal superannuation contribution is available to taxpayers if less than 10% of their total assessable income and

reportable fringe benefits is derived from their employment.

Deemed dividends and private companies

- Certain loans, payments and forgiveness of debts by private companies to their shareholders and associates can give rise to unfranked dividends, which are assessable to the shareholders and associates. Try to repay any loans or payments by the earlier of the actual lodgement date or due date for lodgement of the company's return for that year. Alternatively, appropriate loan agreements should be in place.
- Review whether a trust has an unpaid present entitlement to a corporate beneficiary. Potentially, an unfranked dividend (from the company to its shareholders) can arise. Try to repay any unpaid entitlement to the corporate beneficiary by the earlier of the actual lodgement date or due date for lodgement of the trust's return for that year to avoid an unfranked dividend from arising.

Personal services income

- If an individual applies personal efforts and skills in performing services for third parties through an interposed entity (company, trust or partnership), the personal services income rules may instead deem the individual to be assessable on the income generated, unless one of the required personal services business tests is satisfied or a determination is obtained from the Tax Office.
- Identify any unusual circumstances that will prevent the tests from being satisfied. A determination will be granted only if there are any unusual circumstances.

Non-commercial losses

A loss from an individual's business activity (whether carried on alone or in a partnership) may only be offset against other income derived in the same income year if the business activity satisfies at least one of the four commerciality tests or a determination has been obtained from the Commissioner.

Consideration should be given to the relevant tests, as the individual's overtax position will be impacted when the loss is deferred.

Companies

- Ensure that all distributions to shareholders during the franking period are franked to the same extent to avoid a franking deficit tax.
- A private company has four months after the end of the income year to provide its shareholders with a distribution statement for dividends paid. In effect, the company can retrospectively correct any over franking or under franking of distributions.

Trust distributions

- If a trust has derived capital gains and the income and capital beneficiaries are different, consider whether an election needs to be made to avoid the anomaly if the former will be taxed on the capital gains rather than the latter.
- The trustee distributes the accounting profit, and not the taxable profit, of the trust.
- It is the Commissioner's practice that a trustee has up to two months after the end of an income year to distribute the previous year's net income. (The distribution is still assessable in the previous income year.)
- If a trustee is distributing income to a minor the minor can receive up to \$1,667 in non-taxable distribution.
- If possible, consider distributing all the income of the trust to its beneficiaries. Income that is retained in the trust will be taxed at the 46.5%.
- If a company is owned by a discretionary trust, consider the necessity for the trustee to make a family trust election to ensure any losses or bad debts incurred by the company will be deductible.
- If shares are owned by a discretionary trust, consider the necessity for the trustee to make a family trust election to ensure any franking credits attached to the dividends will not be "wasted".

- If a family trust election has been previously made, avoid distributing outside the family group to avoid potential liability to the family trust distributions tax.

Capital gains tax

- Consider crystallising any unrealised capital losses in the income year if you are anticipating a significant capital gain.
- Consider deferring the disposal of shortly-held assets. If an asset is held for at least 12 months, a 50% CGT discount may be available to reduce any capital gains.
- Consider whether a rollover relief is available to defer any capital gains.
- Consider the availability of the small business CGT concessions which can disregard, reduce or defer a capital gain arising from the disposal of an asset which has been used by an entity in the course of carrying on its business.
- Review any expenditure incurred on an asset to ensure maximising the cost base of the asset.
- If a significant capital gain has been made, an eligible taxpayer may consider contributing some or all of the gain to his or her super fund to reduce the tax payable. This is because a deduction is available for personal superannuation contributions.

Salary sacrifice arrangement

- Consider entering into a salary sacrifice arrangement with your employee for the coming income year, particularly since the repeal of the superannuation surcharge. Salary sacrificing part of your cash salary for non-cash benefits can potentially reduce your income tax liability and result in a better net cash flow.
- If you are expecting to derive bonus and/or commissions prior to the close of the income year, consider salary sacrificing these amounts to reduce your tax liability.

Superannuation strategies

- Consider splitting concessional superannuation contributions with your spouse to receive your combined super balances in a more tax-effective manner.
- Consider entering into a salary sacrifice arrangement with your employer to forego part of your cash salary into superannuation. This potentially can reduce your income tax liability and increase the level of savings in your superannuation account.
- Eligible taxpayers who make a personal contribution will receive the Government's superannuation co-contribution.
- If permissible, consider moving assets into a superannuation fund because of the lower tax rate.
- For people aged 55 or over consider the possibility of commencing a transition to Retirement pension.

Tax Law Changes

In March 2008, the Government introduced into Parliament an amending Bill to:

- allow taxpayers to claim a deduction in relation to an amount misappropriated by an employee or agent following the disposal of an asset;
- extend the period within which employers can make a superannuation contribution – after the quarterly due date, and still be eligible to use the late payment offset to reduce their superannuation guarantee charge liability;
- exempt from income tax the entire amount received from either a research fellowship under the Endeavour Awards Program or an Endeavour Executive Award, regardless of whether the recipient is a full- or part-time student; and
- exempt the first \$1,000 of an early completion bonus paid to an apprentice by a State or Territory.

Self-education Expenses

In a recent decision, the AAT affirmed that a taxpayer was not entitled to a deduction for

self-education expenses. The Tribunal found that the expenditure was not incidental or relevant to the taxpayer's income-producing activities and did not have the essential character of an income-producing expense.

Generally, self-education expenses are deductible if they are incurred in maintaining or improving a taxpayer's skills and knowledge in his or her present occupation.

However, self-education expenses incurred before employment commences (as in this case) or to obtain new employment are not deductible.

Acquisition of Assets by SMSF

The Tax Office has released a Draft Self Managed Superannuation Fund Ruling stating its position on when a contribution of assets to an SMSF by a related party of the fund will not contravene the SIS Act.

Generally, a trustee of an SMSF is prohibited from intentionally acquiring assets from a related party of the SMSF. However, certain exceptions can apply.

The Draft states that a trustee intentionally acquires an asset if the trustee means to acquire the asset. Further, the legal owner of the asset is not a decisive factor.

Situations that will not result in a contravention of the superannuation law are:

- the trustee accepting a contribution of money; and
- a related-party making a monetary payment to a third party to extinguish a liability of the SMSF.

The Draft states that for any of the exceptions to apply, the acquisition of an asset must be at market value and consideration be given to the in-house asset rules.

Car Expenses Rates

The Tax Office has released the cents per kilometre rates to be used for calculating deductions for the 2007/08 income year:

Engine capacity (cc)	Rotary engine	Rate per km (\$)
0 – 1,600	0 – 800	0.58
1,601 – 2,600	801 – 1,300	0.69
2,601 +	1,301 +	0.70

GIC and SIC Rates Released

The Tax Office has released the general interest charge and shortfall interest charge rates for the fourth quarter of the 2007/08 income year:

Rate	Annual (%)	Daily (%)
GIC	14.69	0.04013661
SIC	10.69	0.02920765

The Tax Office has also released the interest rate for overpayments, early payments and delays in refunds for the fourth quarter of the 2007/08 income year. The applicable interest rate is 7.69%.

Private Loans

In August 2007 the ATO announced that it will provide companies with a one-off opportunity to correct past mistakes in relation to payments and loans from companies to shareholders and their associates.

Division 7A deems that any loans or payments by private companies to shareholders or their associates are treated as assemble income unless they are repaid or placed on commercial terms set out by Division 7A.

FEDERAL BUDGET 2008

Personal Taxation

Income tax rates

The Government has reaffirmed its commitment to cutting personal income tax rates. The tax rates and thresholds for the 2008/09 and 2009/10 income years are as follows:

2007/08 Current	
Income (\$)	Rate (%)
6,001–30,000	15
30,001–75,000	30
75,001–150,000	40
150,001+	45

2008/09 From 1 July 2008	
Income (\$)	Rate (%)
6,001–34,000	15
34,001–80,000	30
80,001–180,000	40
180,001+	45

2009/10 From 1 July 2009	
Income (\$)	Rate (%)
6,001–35,000	15
35,001–80,000	30
80,001–180,000	38
180,001+	45

Medicare levy surcharge

The Government has announced that the 1% Medicare levy surcharge for singles will increase from \$50,000 to \$100,000, and for families, from \$100,000 to \$150,000, with effect from 1 July 2008.

Medicare levy low income threshold

From the 2007/08 income year, the Medicare levy low income thresholds have increased, as follows:

	2006/07 income year (\$)	2007/08 income year (\$)
Singles	16,740	17,309
Families	28,247	29,207
Threshold increment for each dependent child or student	2,594	2,682
Pensioners below Age Pension age	21,637	22,922

Employee share schemes

Election required

The Government has announced that a taxpayer will be required to make an election to access the tax concessions available when receiving qualifying shares or rights under an employee share scheme. No further details were provided.

Removal of double taxation

The Government has announced that it will remove double taxation that arises in relation to certain employee share schemes (ESS) that use employee share trusts.

Entrepreneurs' tax offset

The Government will introduce a family income test for the entrepreneurs' tax offset. The test will limit access to the offset by restricting eligibility when the adjusted taxable income (ATI) per year exceeds the amounts given below:

Taxpayer	Maximum ATI (\$)	Date of effect
Singles	75,000	1 July 2008
Families	120,000	1 July 2008

Income test for benefits

The Government has announced that it will introduce an income test for the following benefits:

Offset	Maximum income threshold (\$)	Date of effect
Dependent spouse	150,000	1 July 2008
Housekeeper	150,000	1 July 2008
Child-housekeeper	150,000	1 July 2008
Invalid relative	150,000	1 July 2008
Parent/parent-in-law offset	150,000	1 July 2008

Family Tax Benefit Part B

From 1 July 2008, FTB Part B will only be available to families where the annual adjusted taxable income of the principal earner does not exceed \$150,000.

Furthermore, FTB will only be delivered through Centrelink and Medicare, thereby removing claims through the tax system.

Child Care Tax Rebate

The Government has confirmed that the Child Care Tax Rebate will increase from 30% to 50%.

The cap on the amount that can be paid will be lifted from \$4,354 to \$7,500 per child. In addition, the rebate will be paid quarterly.

Education Tax Refund

The Government has confirmed it will provide eligible parents with an Education Tax Refund from 1 July 2008.

Baby Bonus

From 1 July 2008, the Baby Bonus will be increased to \$5,000. In addition, from 1 January 2009, the Baby Bonus will be paid in fortnightly instalments and will only be available where family income does not exceed \$150,000 a year.

Measures for carers

The following measures to support carers were announced in the 2008/09 Federal Budget:

- Carer Allowance recipients will receive a \$600 tax-free bonus for each eligible care receiver;
- Recipients of Carer Payments and Department of Veterans' Affairs Carer Service Pensions will each receive \$1,000 tax-free. Carer Allowance recipients who receive a Wife Pension or the Department of Veterans' Affairs Partner Service Pensions will also receive \$1,000;
- Eligible carers looking after children with a profound disability will have fairer and simpler access to financial support of up to \$546.80 per fortnight; and
- Disabled children whose ageing parents can no longer care for them at home will be provided with additional supported accommodation.

Bonus payments are expected to be automatically made before the end of June 2008. Those receiving both payments on 13 May 2008 will receive both lump sum payments.

Expanded definition of income

Income eligibility for Government support programs, including the Age Pension and superannuation co-contributions, will include certain “salary sacrificed” contributions to superannuation, effective from 1 July 2009. Net financial investment losses and net rental property losses will be included in determining the eligibility for certain government support programs, including senior Australians tax offset, Medicare levy surcharge and dependency tax offsets, effective from 1 July 2009.

From 1 July 2009, reportable fringe benefits will be included when determining the eligibility for certain tax offsets, including dependency tax offsets, senior Australians tax offsets and pensioner tax offsets.

Business Taxation

Luxury car tax

The Government has announced that the Luxury Car Tax (LCT) will increase from 25% to 33% with effect from 1 July 2008. However, the Government has stated that the luxury car limit will remain at \$57,123.

FBT

Jointly held investment assets

The Government has announced that the FBT law will be amended to ensure it applies appropriately where an employer provides an employee and their associate with a fringe benefit in relation to a jointly held investment asset

The measure will take effect from 7.30 pm (AEST) on 13 May 2008 with respect to new arrangements.

Work-related items

The government has announced that the FBT exemption for work-related items will only apply if the items are used primarily for work purposes and be limited to one item of each type per employee per FBT year, unless they are replacement items.

The list of FBT-exempt work-related items will be extended to all work-related portable electronic devices, including those with multiple functions. The government has also announced that the tax law will be amended to disallow employees from claiming depreciation for the work-related percentage of FBT-exempt items.

The changes to the FBT exemption for work-related items will apply to items purchased after 7.30 pm (AEST) on 13 May 2008.

The changes that disallow depreciation for FBT-exempt items will take effect as follows:

- for items purchased after 7.30 pm (AEST) on 13 May 2008, this measure will take effect from that time;
- for items purchased before 7.30 pm (AEST) on 13 May 2008, employees will be denied depreciation for the 2008-09 and later income years.

Superannuation

The 2008/09 Federal Budget did not announce any substantive changes concerning superannuation. There are no changes to the current superannuation regime.

Other Budget Measures

Family trusts

The Government has confirmed that the following changes to family trusts, which were introduced by the previous Government, will be rolled back to revert to the following situations:

- the definition of “family” in the family trust election rules will be changed to limit lineal descendants to children or grandchildren of the test individual or of the test individual’s spouse. This will take effect from 1 July 2008; and
- family trusts will be precluded from making a once-off variation to the test individual specified in a family trust election. This will take effect from the 2007/08 income year.

Important: This is not advice. Clients should not act solely on the basis of the material contained in this Bulletin. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Bulletin is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.