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Practice Update

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MAY 2009

SMSFs and borrowing money

Trustees of self managed superannuation funds (SMSFs) are generally prohibited from borrowing money except in specific circumstances (*Editor: such as under the new rules for certain limited recourse loans, where the lender only has a claim against a certain asset of the SMSF*).

Because there has been some confusion about this, the Tax Office (ATO) has explained what a 'borrowing' is, and how to determine whether an SMSF contravenes this general prohibition.

Borrowing money

A borrowing is an arrangement that exhibits two necessary characteristics:

- ❑ a temporary transfer of an amount of money from one entity (the lender) to another (the borrower); and
- ❑ an obligation or an intention on the part of the borrower to repay that amount to the lender (which may be satisfied by the provision of an asset).

When does an arrangement contravene the prohibition?

Examples of transactions or circumstances that are a 'borrowing' based on common terms and conditions include:

- a loan of money, whether secured or unsecured (and whether or not it is a 'limited recourse loan', although such loans may be exempt if they satisfy the new rules);

- a margin lending account once drawn upon; and
- a bank overdraft once drawn upon.

Examples of transactions or circumstances that are not a 'borrowing' based on common terms and conditions include:

- ◆ bona fide contributions to SMSFs that are accepted and dealt with in accordance with the superannuation rules;
- ◆ the liability of an SMSF to pay benefits to members as they fall due;
- ◆ arrangements under which expenses are paid on behalf of the SMSF trustee by an agent or any other person where reimbursement is immediately sought from, and made by, the SMSF; and
- ◆ normal commercial delays in the payment of expenses incurred by an SMSF trustee.

Note: Even if an arrangement is not a borrowing, or falls within one of the specific exceptions, trustees must also make sure they don't fall foul of other superannuation rules, including the sole purpose test and the prohibition against granting a charge against an asset of the SMSF.

ATO data matching programs

The ATO has announced that it will be undertaking a number of data matching programs to identify taxpayers who may not be meeting their taxation obligations.

The ATO will request and collect:

- details of approximately 2.5 million individuals or entities that have purchased or acquired a motor vehicle valued at \$10,000 or higher, from the Roads and/or Traffic Authorities of each State and Territory;
 - information on amounts paid to personal services entities by labour hire firms, placement agencies and computer consultancies; and
 - information on amounts paid by mining companies to contractors and sub contractors.
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Super fund members may be entitled to more age pension

The Government is now encouraging Australians on a part-pension to tell Centrelink if they want to take advantage of recent Government changes to the amount they are required to withdraw from their superannuation.

Editor: Persons receiving a pension from their super fund may not need to withdraw the full amount they would otherwise be required to withdraw for the 2009 income year – contact us for more details.

Some part-pensioners may be entitled to an increase in their Centrelink payments because of changes to their drawdown level – therefore, they should inform Centrelink within 14 days, if they decide to choose to reduce the amount they draw down from their allocated or market linked income streams.

They will need to provide Centrelink with an Income Stream Schedule as proof of the change, which will help Centrelink reassess pensioners' entitlements to ensure they are getting the rate of payment they're entitled to.

Income tax: 2008/09 cents per km rates

The 2008/09 cents per kilometre rates for claiming deductions for car expenses have been released.

Engine capacity (non-rotary)	Engine capacity (rotary engine)	Rate (cents)
0 – 1,600cc	0 – 800cc	63
1,601 – 2,600cc	801 – 1,300cc	74
2,601cc+	1,301cc+	75

FBT: Record keeping exemption threshold

The record keeping exemption threshold for the FBT year commencing 1 April 2009 is \$7,063 (replacing the amount of \$6,766 from the previous year).

FBT: Benchmark interest rate

The benchmark interest rate for the FBT year commencing 1 April 2009 is 5.85% p.a (replacing the rate of 9.00% that applied for the previous FBT year).

Editor: The ATO has also released the following for the 2009/10 FBT year:

- the amounts that are considered to be a reasonable food component of a living-away-from-home allowance (LAFHA);
- the cents per km rates for motor vehicles other than cars (for FBT purposes); and
- the indexation factors for the purpose of valuing non-remote housing.

Please contact our office if you would like to know more about these.

Student entitled to deductions against Youth Allowance

Editor: The following case was a surprising success for the taxpayer, and the decision runs completely contrary to the ATO's published position in TR98/9 and Tax Pack.

The ATO's response remains to be seen, but we will keep all of our clients with self-education expenses updated.

The Federal Court has held that a student taxpayer who received Youth Allowance was entitled to a deduction for the expenses she incurred in pursuing a teaching degree, as she incurred them in the gaining or producing of her assessable income (being the Youth Allowance).

The Court basically held that, in order for the taxpayer to receive the Youth Allowance, she had to satisfy the requirements set out in the *Social Security Act 1991* (i.e., generally to undertake full-time study throughout the relevant period), which required her to spend money (on such things as student administration fees and text books), so those outgoings were incurred in gaining or producing her assessable income.

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.
