

ANNUAL 2011 NEWSLETTER

Appointments

Please telephone our offices to make an appointment. There will be limited early evening appointments for those who find it difficult to make an appointment during normal office hours. We regret that we no longer offer Saturday morning appointments. You may send in your data by mail or email if you wish.

Clients with managed fund investments are requested to wait until all annual tax statements have been received. As many of you are aware we can access the data that the financial institutions and other bodies give the ATO. This data is not always accurate, but the ATO relies on it. It is important that we cross reference your records with the ATO records and be able to explain discrepancies.

Foreign Income

This is a focus of ATO activity this year.

As a resident of Australia you are taxed on your worldwide income, whether or not you have been taxed in the country of source. You may get a full or partial credit for the foreign tax paid against your Australian tax. Foreign revenue authorities and the ATO share a great deal of information. Further AUSTRAC (Australian Transaction Reports and Analysis Centre), monitors flows of money in and out of Australia. Please make sure you discuss any foreign income (including employment) and investments with us.

Education Tax Refund

In order to be eligible for the Education Tax Refund – 50% of certain expenditure on your children's education expenses** – you must be entitled to receive Family Tax Benefit Part A.

** These expenses include the cost of hiring or buying (and includes repairs on) items such as laptops, computers, home internet connection, printers, education software, trade tools for use at school, school text books and stationery.

All the literature, all the ATO forms, and indeed the government announcements only used the word 'entitled', rather than in 'receipt of'. In a Kafka-esque twist (not uncommon in tax law), the ATO has decided that you must have applied for and be receiving Family Tax Benefit Part A in order to prove you are entitled to it.

Many people will not know if they are able to apply for Family Tax Benefit Part A until they have lodged their tax returns, but if they have not been receiving Family Tax Benefit Part A then they can't claim the Education Tax Refund in their tax return

We don't see how Centrelink can determine that you are eligible for Family Tax Benefit if you and your spouse haven't lodged your tax returns, particularly if you have a small business, uncertain income, or investments.

We recommend that clients read or re-read Joseph Heller's classic 1961 novel CATCH -22

- *There was only one catch and that was Catch-22, which specified that a concern for one's own safety in the face of dangers that were real and immediate was the process of a rational mind. Orr was crazy and could be grounded. All he had to do was ask; and as soon as he did, he would no longer be crazy and would have to fly more missions. Orr would be crazy to fly more missions and sane if he didn't, but if he was sane, he had to fly them. If he flew them, he was crazy and didn't have to; but if he didn't want to, he was sane and had to. Yossarian was moved very deeply by the absolute simplicity of this clause of Catch-22 and let out a respectful whistle.*

"That's some catch, that Catch-22," he observed. "It's the best there is," Doc Daneeka agreed

Investment Loans, Lines of Credit & Redraw Facilities

If you borrow money for an income producing purpose, then the interest paid will be tax deductible.

It is the purpose that dictates deductibility, not the security. If you use your home as security for an investment loan, the interest on that loan will be deductible, but if you use your investment property as security for a loan to fund your home, the interest will not be deductible.

It is important to take care where there are private and investment related loans so that the tax deductibility of the investment loan interest is not compromised, and not to have the whole arrangement knocked back by the ATO (with penalties).

In a recent draft determination (TD2011/D8) the ATO has looked at “*investment loan interest payment arrangements*”. These have been touted by mortgage brokers as very tax effective, however the ATO has taken the view that the arrangements may be tax avoidance.

Typically an *investment loan interest payment arrangement* will have the following characteristics

- Two properties – a residence and an investment property
- Three loans – a loan for the home, a loan for the investment property, and a line of credit
- The line of credit is drawn down to pay the interest on the investment loan
- No payments are made to reduce the line of credit borrowings, instead all repayments are made to reduce the home loan or into an offset account to reduce the interest on the home loan.
- The interest on the line of credit is claimed as a tax deduction

In less contrived situations the deductibility of interest on a line of credit or redraw facility can easily be compromised.

Example : Fred has a fully drawn \$100,000 line of credit (at 10% interest) used for investment purposes. He has a windfall, say an inheritance, of \$60,000. He goes to the bank to put the \$60,000 in a term deposit. The bank offers to pay 5% interest on the term deposit. Fred decides to park the \$60,000 into his line of credit account. After all, saving 10% interest is better than earning 5%. After six months, he withdraws the \$60,000 from the line of credit to buy himself a yacht. This is not seen as a repayment of the parked amount, it is seen as new borrowing. The same result would occur if this all took place on one day, or indeed just a few hours. The interest on the line of credit is now only 40% deductible, as \$60,000 was borrowed to buy a yacht. Subsequent repayments of the line of credit have to be apportioned between the deductible and the non deductible borrowings. This calculation can be quite complex where there have been multiple redraws and repayments

Austudy, Youth Allowance, Newstart etc – Expenses

Last year the High Court of Australia ruled that the ATO had been incorrectly denying claims for expenses incurred in earning Austudy and Newstart. The government is proposing to amend the law to match the old ATO view, so for the 2010 – 2011 tax year only – i.e. this tax return, claims can be made for expenses you have incurred.

If you were receiving Newstart you can claim

- Travel to interviews
- Training courses
- Telephone calls
- Resume preparation

You can't claim

- Grooming
- Clothes
- Meals

If you have received Austudy, ABSTUDY or Youth Allowance to study full time you can claim

- Tuition & course fees
- Text books, stationery. student union fees, computer expenses, internet

Receipts and other proof are required.

Victorian Land Tax

Land tax is payable on land in Victoria where the total value of landholdings exceeds \$250,000. This is value of the land, not the land and improvements. The rates are as follows:

2009 - 2011 General Rates	
Total taxable value of landholdings	Land tax payable
< \$250,000	Nil
\$250,000 to < \$600,000	\$275 plus 0.2% of amount > \$250,000
\$600,000 to < \$1,000,000	\$975 plus 0.5% of amount > \$600,000
\$1,000,000 to < \$1,800,000	\$2,975 plus 0.8% of amount > \$1,000,000
\$1,800,000 to < \$3,000,000	\$9,375 plus 1.3% of amount > \$1,800,000
\$3,000,000 and over	\$24,975 plus 2.25% of amount > \$3,000,000

Your home or principal place of residence (PPR) is exempt from land tax. But that exemption can be lost if circumstances change,

The exemption will continue for up to six years in cases where the owner is temporarily absent but intends to resume occupancy (properties rented for a period of six consecutive months or more in a particular assessment year are **not eligible** for the exemption). So if you let out your home you may be subject to land tax.

We have noted that the State Revenue Office is continually monitoring its database, following up owners where they believe the exemption may not apply.

It is the responsibility of the owner to ensure that the State Revenue Office is advised if an exemption does not apply, and indeed if there is any error on their Land Tax Assessment (e.g. a missing property). Back taxes and penalties may be applied.

If you are in any doubt about your land tax position we recommend that you contact your solicitor or the State Revenue Office.

Are your children non residents?

If so, and you have included them in your will, unpleasant and perhaps inequitable tax consequences may follow your death. This is best explained by example.

Your estate comprises your home, \$250,000 of listed shares acquired after 19 September 1985 (cost \$50,000), and \$200,000 in cash. Your will leaves half of your estate to your two children – one is a resident of Australia, the other is not.

Upon death, you are deemed to have disposed of the shares you have left to the non resident beneficiary, triggering a capital gain of \$100,000. This gain must be included in the final return to the date of death, with the liability met by the estate.

This reduces the cash available for distribution to both beneficiaries, and, the resident beneficiary will still have to pay capital gains tax when they dispose of their half of the listed shares. As non residents do not pay Australian capital gains tax on listed shares, no further tax will be payable by the non resident beneficiary.

We recommend that you discuss the tax residence status of your potential beneficiaries with your solicitor when preparing your will.

Superannuation contribution limits

We are seeing far too many superannuation excess contributions tax notices. There are limited concessions now available for the 2012 financial year. From 1 July 2011, individuals who breach the concessional contributions cap by up to \$10,000 can request that these excess contributions be refunded to them. This new refund option will only apply for first time breaches of the concessional caps. Currently the contribution caps are:

Deductible contributions

For 2009-2010, 2010-2011 and 2011-2012 the maximum concessional (deductible) contribution for those under 50 is \$25,000 and \$50,000 for those 50 and over up to age 74.

After 30 June 2012 the limit will be \$25,000 unless you are over 50 with a superannuation balance of less than \$500,000, in which case the limit will remain at \$50,000.

Superannuation funds are required to report contributions to the ATO. This data is checked and matched to the individual's details.

Example of the Trap: *What happens if you change jobs during the year? You are 40. One employer contributes \$15,000 to super for you and the other contributes \$20,000. Your employers have done nothing wrong, but in aggregate you have received \$35,000 into your super fund(s). In due course you (and not your super fund) will receive a tax bill for \$3,150 (31.5% of the excess contributions [\$35,000 - \$25,000] \$10,000). The super fund will have already paid 15% on the excess contributions, so in total 46.5% in tax will have been paid on the \$10,000.*

Undeducted contributions

For 2009-2010, 2010-2011 and 2011-2012 the maximum non-concessional (non-deductible) contribution for those under 65 is a \$150,000 annual cap with a 3 year rolling average of \$450,000 and \$150,000 for those 65 and over up to age 74 who pass the work test.

Action to be taken: Review any salary sacrifice arrangements you may have now. Monitor your employer(s) contributions throughout the year and take care with personal concessional contributions (if eligible).

If you have a self managed super fund, and know of a breach of these caps, please discuss it with us immediately.

Political donations

Not deductible for businesses but an individual can claim up to \$1,500 for donations to political parties and independent candidates

CGT Discount

The 12 month holding rule does not include the day of acquisition or the day of sale so to obtain the 50% discount you must hold the asset for 12 months and 2 days

Computer Help

We provide professional IT services at highly competitive rates to small and medium sized businesses all across Melbourne including:

- Computer Trouble-Shooting
- Virus/Spyware Elimination
- Security/Backup Solutions
- Software Training
- Server / Network / Domain Name Setup
- Paperless Office Setup

INDIVIDUAL TAX RETURN CHECKLIST – 2011

INCOME	DEDUCTIONS	REBATES
<p>PAYG Payment Summaries (formerly Group Certificates)</p> <p>Centrelink & Veteran's Affairs Payment Summaries including:</p> <ul style="list-style-type: none"> - Newstart - Youth Allowance - Austudy <p>Other Pensions & Annuities</p> <ul style="list-style-type: none"> - Payment Summaries - If over 60 your pension or annuity may not be taxable <p>Employment Termination Payment & Superannuation Lump Sum Payment Summaries</p> <p>Employee Shares & Options ESS employee share scheme statement</p> <p>Interest Received</p> <p>Dividends</p> <ul style="list-style-type: none"> - Please bring dividend statements <p>Trusts/Managed Funds</p> <ul style="list-style-type: none"> - Please bring 2011 Annual Tax Statements & 2011 Capital Gains Tax Statements <p>Capital Gains</p> <ul style="list-style-type: none"> - Please bring all sale & purchase documents - Ask for our record keeping suggestions print out <p>Business Income & Expenses</p> <ul style="list-style-type: none"> - All income and expenditure - All BAS covering 2010/2011 <p>Rents Received & Expenses</p> <ul style="list-style-type: none"> - Please bring all agents statements or Agent's Annual Summary. If rents commenced during the year please ring first to discuss depreciation claims - Loan documentation <p>Foreign Income</p> <ul style="list-style-type: none"> - A resident of Australia must declare all foreign income – but they may get a credit for overseas tax paid. If you worked overseas please bring your payslips. 	<p>Car Expenses</p> <ul style="list-style-type: none"> - log book, expense details or kilometres travelled - HP/Lease finance contract if applicable <p>Travel</p> <ul style="list-style-type: none"> - Diary required if away more than 5 nights <p>Self Education Expenses</p> <ul style="list-style-type: none"> - Must explain nexus with work <p>Unions, subscriptions, stationery, tools equipment, etc</p> <p>Home Office) a diary or other Telephone) log is necessary Computer) to establish Internet) your tax claim.</p> <p>Items of Equipment</p> <ul style="list-style-type: none"> - We will need to know the date of purchase - We also need to know if you use the item for private purposes. <p>Donations</p> <p>Income Replacement or Protection Insurance</p> <p>Superannuation Contributions</p> <ul style="list-style-type: none"> - Details if eligible for a deduction - Most employees can't claim a tax deduction - NB Co-contributions cannot be claimed through your tax return <p>Expenses</p> <ul style="list-style-type: none"> - Austudy - Newstart etc <p>Investment Deductions</p> <ul style="list-style-type: none"> - Full statements for interest claimed – great care needed if borrowings part private. - Cost of initial financial plans are not deductible but ongoing reviews are deductible provided you have investment income <p>Private Health Insurance Statement</p>	<p>Spouse details In these cases</p> <ul style="list-style-type: none"> - Senior Australians - No private hospital cover - Education tax refund - Low income spouse (no children) offset - Entrepreneur's discount <p>we will need detailed information about your spouse, including de facto spouse, and same sex spouse, including</p> <ul style="list-style-type: none"> - Taxable income - Reportable fringe benefits - Reportable Superannuation - Investment losses <p>Education Tax Refund If receiving Family Tax Benefit Part A – your school children's</p> <ul style="list-style-type: none"> - Computer & Internet costs - School books and materials <p>Spouse Superannuation Contributions Your contributions to a superannuation fund on behalf of your spouse if your spouse's assessable income, reportable superannuation and reportable fringe benefits do not exceed \$13,800.</p> <p>Medical Expenses Covers net medical expenses (i.e. after refunds) > \$2,000 including:</p> <ul style="list-style-type: none"> - Medical - Dental - Hospital - Optical - Pharmacy <ul style="list-style-type: none"> ❖ You can request annual statements from your health fund & Medicare ❖ You can request annual statements from your pharmacist ❖ If you bring your Medicare card we may be able to access relevant medical expenditure & refunds – but we can't do this with your private fund.