



# Explanatory Memorandum

March 2010

**Currency:**

This issue of Client Alert takes into account all developments up to and including 4 February 2010.

## R&D Tax Offset Abuse

The Tax Office has issued Taxpayer Alert TA 2009/21 warning taxpayers to be cautious of investment schemes that abuse the research and development (R&D) tax offset. The Tax Office says these schemes involve a company structuring contracts with a registered research agency (RRA) to take advantage of the prepayment concessions but the expenditure may not meet the requirements to be tax deductible.

### Features of arrangements

The Tax Office states in Taxpayer Alert TA 2009/21 that the alert applies to arrangements with features substantially similar to the following:

- A company is incorporated with a minimal amount of paid-up capital. The company accounts for GST and income tax on an accruals basis but generates negligible income.
- The company enters into an R&D services agreement with an RRA for a period of up to 13 months, often within the last month of an income year. The agreement provides that the RRA will manage an R&D project and will engage sub-contractors to perform the work required under the agreement. The sub-contractors may be associated with the company.
- The RRA issues a tax invoice to the company for an amount up to \$1,100,000 for the provision of future R&D services.
- The RRA does not commence services or provide only insignificant services in the income year that the agreement is signed and the tax invoice is issued. The company makes no payments in respect of the agreement in that income year and the entire amount is said to have accrued.
- The company lodges a Business Activity Statement for the period in which it received the tax invoice from the RRA and claims an input tax credit relating to the invoice.
- The company lodges its income tax return for the year in which it entered into the agreement with the RRA and reports that it has contracted expenditure to an RRA. The company elects to receive the R&D tax offset of up to \$375,000 rather than a tax deduction ( $\$1,000,000 \times 125\% \times 30\%$ ).
- The company applies funds from the GST refund and R&D tax offset to the balance owing under the R&D services agreement with the RRA.
- In some instances funding arrangements to the company are provided by the RRA or parties associated with the RRA. This creates round robin cash-flows among the company, RRA and the associated parties or the company.
- the expenditure for the purposes of s 73B(13) of ITAA 1936:
  - may have been 'incurred';
  - may have the character of 'contracted expenditure'; and

- if not 'contracted expenditure', is otherwise 'R&D expenditure', deductible under the section;
  - the prepayment rules in Subdiv H in Div 3 of Pt III of ITAA 1936 will apply;
  - the company and the RRA are dealing at arm's length in relation to purported R&D expenditure;
  - the Commissioner should form an opinion under s 73B(31) of the 'reasonable' amount of expenditure to be allowed, if the parties are dealing at arm's length;
  - the RRA is including fees, payments or commissions received under the arrangement as assessable income under s 6-5 of ITAA 1997; and
  - any entity involved in the arrangement may be a promoter of a tax exploitation scheme for the purposes of Div 290 of Sch 1 to the Taxation Administration Act 1953 (TAA).
- **ALERT:** The Commissioner has said the Tax Office is currently contacting around 70 entities involved in these arrangements — asking them to review their circumstances and inviting them to make a voluntary disclosure where necessary.

## Deductions and Refinancing Home Loans

The Tax Office has also issued Taxpayer Alert TA 2009/20 alerting taxpayers about sham arrangements that are promoted as 'mortgage management plans'. These arrangements promise to help home owners repay their home loan sooner and claim tax deductions to which they are not entitled. Broadly, these arrangements involve taxpayers refinancing their home loan and establishing investment loans to fund the purchase of shares in bogus companies.

### Features of arrangements

The Tax Office states in Taxpayer Alert TA 2009/20 that the alert applies to arrangements with features substantially similar to the following:

- A promoter approaches a taxpayer offering an investment plan involving investments in foreign companies, partly funded by re-financing of the taxpayer's existing home loan. Generally, the taxpayer involved does not understand the operation of the arrangement and is guided by advice from the promoter or their associate.
- The promoter arranges for the taxpayer to refinance their existing home loan through a third party financial institution. Under the new loan, the taxpayer obtains two loan facilities: a home loan (Loan A) for the outstanding balance on their previous home loan; and an interest only investment loan (Loan B). The Loan B amount is the maximum offered by the third party financial institution having regard to the equity in the taxpayer's home. Both loans are secured over the taxpayer's home.
- The taxpayer makes principal and interest repayments on Loan A. The promoter undertakes to pay the interest on Loan B on behalf of the taxpayer.
- The promoter arranges a purported unsecured investment loan (Loan C) for the taxpayer. The loan is provided on non-commercial terms by an entity controlled by the promoter, including either no recourse or recourse is limited to the shares in the company. The loan amount is in excess of the taxpayer's borrowing capacity under normal arm's length lending criteria.
- Funds from Loan B and Loan C are purportedly used to purchase shares in various companies controlled by the promoter. None of these companies appear to be carrying on a business or producing assessable income. Generally, the taxpayer does not derive any dividend income from the purported share investments and in all cases appears unlikely to do so in the future.
- The taxpayer claims the interest incurred on Loan B and Loan C as deductions. In addition, the taxpayer may obtain a PAYG withholding variation to reduce the amount of tax to be deducted from their salary or wages during the course of the income year.

## Taxation issues

The Tax Office expressed concern in Taxpayer Alert TA 2009/20 that the arrangements may give rise to taxation issues including whether:

- a taxpayer's purported purchase of shares in the companies and Loan C are shams at general law;
  - a deduction for any interest incurred on Loan B and Loan C is available to the taxpayer are under s 8-1 of ITAA 1997;
  - the arrangement is a scheme to which Pt IVA of ITAA 1936 will apply;
  - any fee, commission or other amount received by the promoter of this arrangement is assessable income; and
  - any entity involved in the arrangement may be a promoter of a tax exploitation scheme for the purposes of Div 290 of Sch 1 to the TAA.
- **ALERT:** The Commissioner has said the Tax Office is currently contacting over 140 taxpayers involved in these arrangements asking them to review their circumstances and inviting them to make a voluntary disclosure where necessary.

## Uncommercial Offshore Superannuation Trusts

The Tax Office has also issued Taxpayer Alert TA 2009/19, which describes arrangements that use offshore trust structures masquerading as superannuation funds. Generally, taxpayers use the offshore trusts to invest funds received from a related non-resident employer or service entity to earn income overseas.

The Tax Office says these structures may be used to shift funds into Australia in a concessionally taxed manner or substantially defer the time at which such amounts are subject to tax in Australia. According to the Commissioner, the accumulated monies in the trusts may be moved to Australia under the guise of retirement benefits or contributions to a complying superannuation after a period of time, often many years.

### Features of arrangements

The Tax Office states in Taxpayer Alert TA 2009/19 that the alert applies to arrangements with features substantially similar to the following:

#### *Use of a non-resident employer*

1. An individual living overseas establishes an offshore trust fund. This offshore trust fund purports to be a superannuation fund and its trustee is usually resident in a tax haven.
2. The individual establishes a purported employer entity which is located in a tax haven. The employer entity does not perform any business functions, does not usually have any arm's length employees and, in some circumstances, does not establish a bank account. The individual becomes a director and primary shareholder of the entity.
3. The offshore trust fund receives contributions from the employer entity and/or an associate of the individual just prior to and/or in anticipation of the individual becoming a resident of Australia. Such an associate may be a related individual, a partner, a trustee, a company or a non-common law ownership structure, such as a *stichting*, *stiftung*, *anstalt*, foundation, etc.
4. The offshore trust fund may invest contributions that it receives in an unrelated entity or an entity owned or controlled by the individual. The offshore trust fund ordinarily derives earnings from this investment which are accumulated in that fund.
5. After a period of time, both the capital amounts and the earnings may be moved to Australia in the form of purported retirement benefits or contributions to a complying superannuation fund.
6. Prior to this point, the individual will not pay tax in Australia on the amounts of accrued income held in the offshore trust fund under Australia's foreign source income attribution regimes.

### *Use of a service entity*

1. An individual, who is a resident of Australia for taxation purposes, establishes an offshore trust fund. This offshore trust fund purports to be a superannuation fund and its trustee is usually a resident in a tax haven.
2. The individual performs arm's length work or services offshore for a non-resident service entity. Contributions are paid to the offshore trust fund purportedly as superannuation contributions by the non-resident service entity in respect of work performed by the individual while overseas.
3. The offshore trust fund invests contributions it receives by making loans on less than commercial terms to related resident entities of the individual or by making direct investment by way of acquisition of shares or units in resident entities owned and controlled by the individual. Some of the units or shares in the related resident entity receiving the loans might be owned by a complying superannuation fund which may be a self managed superannuation fund (SMSF).
4. After a period of time, both the capital amounts and the earnings may be moved to Australia in the form of purported retirement payments.
5. Prior to this point, the individual will not pay tax in Australia on the amounts of accrued income held in the offshore trust fund under Australia's foreign source income attribution regimes.

### **Superannuation regulatory issues**

The Tax Office expressed concern in Taxpayer Alert TA 2009/19 that the arrangements may breach:

- the in-house asset provisions under Pt 8 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act); and/or
- the sole purpose test under s 62 of the SIS Act.

### **Taxation issues**

The Tax Office also expressed concern in Taxpayer Alert TA 2009/19 that the arrangements may give rise to issues of whether:

- amounts received by any entity associated with an arrangement may be assessable income under s 6-5 of ITAA 1997;
- offshore trust funds are superannuation funds as defined in s 995-1 of ITAA 1997 and/or s 6(1) of ITAA 1936;
- contributions have been made an employer entity to an offshore trust fund contributions to offshore trust funds are excluded from being fringe benefits as defined in s 136(1) of the *Fringe Benefits Tax Assessment Act 1986*;
- contributions to complying superannuation funds exceed the concessional/non-concessional caps and attract excess contributions tax under Div 292 of ITAA 1997;
- amounts applied by offshore trust funds for the benefit of employees are subject to s 99B of ITAA 1936;
- a liability to withholding tax applies to interest amounts under s 128B of ITAA 1936;
- the trustee of an offshore trust fund or complying superannuation fund may be liable to pay tax under s 295-5(2) of ITAA 1997;
- lump sum payments are non-assessable and non-exempt under ss 305-60 and 305-65 of ITAA 1997;
- payments received may be 'applicable fund earnings' and assessable under s 305-70 of ITAA 1997;
- the income of an offshore entity structure may be attributable to the employee under:
  - Pt X of ITAA 1936 (controlled foreign companies regime);
  - Pt XI of ITAA 1936 (foreign investment funds rules); or
  - Div 6AAA of Pt III of ITAA 1936 (transferor trusts provisions);
- an arrangement constitutes a scheme to which Pt IVA of ITAA 1936 apply;

- any amounts received by any entity marketing or encouraging the arrangement are assessable income in Australia under s 6-5 of ITAA 1997; and
- any entity involved in the arrangement may be a promoter of a tax exploitation scheme for the purposes of Div 290 of Sch 1 to the TAA.

## Superannuation Funds and Illegal Early Release

The Tax Office has implemented steps to prevent the rollover of funds to self-managed superannuation funds (SMSFs) created for the purposes of illegal early release of benefits. The Tax Office says the steps are being implemented in two stages.

The first stage commenced from January 2010 and introduced improvements to the SMSF registration process to help prevent non-legitimate SMSFs from being displayed on the Super Fund Lookup (SFLU) web page.

The second stage will take place during 2010 and 2011 and will involve:

- strengthening pre-registration checks; and
- further updates to the information displayed on the SFLU.

### The first stage

Recent improvements to the SMSF registration process means that it will take approximately seven days before an SMSF is shown on the SFLU. The Tax Office says that once a new fund is displayed on the SFLU, it will be given a new status of 'registered'. According to the Tax Office, this status is allocated to all SMSFs upon registration and will be updated only when an SMSF lodges its first annual return and is assessed as being 'complying' or 'non-complying'. The Tax Office says that SMSFs with this new status will qualify for concessional tax rates and can have superannuation transferred into their bank accounts.

The Tax Office is also working with the Australian Prudential Regulatory Authority (APRA) to provide large funds with guidance on the rollover process to SMSFs. The guidance provides APRA-regulated funds:

- a list of checks they should undertake to gain assurance that an SMSF to which they are rolling over investments is legitimate; and
- details on what they should do when rolling over investments to a 'registered' fund.

### Implications for SMSFs

As a result of the improvements to the SMSF registration process, the Tax Office states that SMSFs and their professional advisors need to know the following issues:

- an Australian Business Number (ABN) for an SMSF will be issued prior to the fund's application being finalised;
- a new SMSF application will take seven days to be assessed by the Tax Office and appear on the SFLU with a status of 'registered';
- a large fund will not process a rollover request by an SMSF unless it is listed on the SFLU; and
- a large fund may seek additional information from a requesting member to confirm the identity of the member and the legitimacy of an SMSF when processing a rollover request to the fund. Additional information requested may include:
  - trust deeds;
  - investment strategies; and
  - bank account establishment documentation.

## Excess Contributions Tax — Commissioner's Discretion

The Tax Office has provided guidance on whether or not the Commissioner will exercise his discretion to disregard excess non-concessional contributions in two specific circumstances: see the NTLG Superannuation Technical Sub-group minutes for 24 November 2009.

### Example 1: unforeseen inability to claim a tax deduction

The first circumstance relates to a situation where a concessional contribution is made to a superannuation fund and due to an unforeseen inability to claim a tax deduction, the contribution is treated as a non-concessional contribution.

The Tax Office provides an example where an individual makes a concessional contribution to their superannuation fund with the intention of claiming the full amount as a tax deduction under s 290-170 of ITAA 1997. At the same time, the individual makes a non-concessional contribution up to the non-concessional contributions cap.

Following the end of the income year, it is determined the individual does not have adequate taxable income to claim the full amount of the superannuation contribution as a tax deduction. Consequently, the s 290-170 notice is varied and the excess that was unable to be claimed is treated as a non-concessional contribution. The fund cannot refund the excess contribution. As the non-concessional cap has already been reached, the individual is issued an assessment for the excess non-concessional contributions.

### Example 2: banking error by non-trustee

The second circumstance relates to a situation where the excess non-concessional contributions arose due to a banking error made by a party other than the trustee of a superannuation fund.

The Tax Office provides an example where a taxpayer gave their financial planner a number of cheques for superannuation contributions in June 2007. Some of the cheques were to be banked immediately (ie in June 2007) and one was to be banked in the following financial year. All the cheques were ultimately paid to the same superannuation fund and none were post-dated. The taxpayer assumed the financial planner would hold the cheque until July 2007 and therefore the contributions would be reflected in the 2007/08 income year.

### Tax Office's view

In the Tax Office's view, the examples relate to particular circumstances. The Tax Office reiterates that the guidelines for the exercise of the Commissioner's discretion are set out in PS LA 2008/1. The Tax Office says a decision to exercise the discretion is based on all the facts and circumstances of each case. Therefore, the Tax Office states it does not propose to provide any further general guidance than that already contained in PS LA 2008/1. However, it notes that if the Commissioner does not exercise the discretion as requested in any particular case, a taxpayer may request a review of the Commissioner's decision or object to the contributions tax assessment under s 292-245 of ITAA 1997.

In relation to the second circumstance, the Tax Office notes that it is a 'mistake scenario'. However, the Tax Office states that it has no firm view on mistake and restitution in the context of superannuation contributions. It also states that it is currently considering the effect of clauses in trust deeds that purport to allow trustees to return contributions. The Tax Office says the issues that are under consideration include:

- the point in time that a trustee has to accept a contribution;
- whether a return of a contribution may breach the preservation rules under Reg 7.04 of the SIS Regulations;
- whether there are any trust law issues to be explored, such as the consequence of trustees failing to act in accordance with the trust deed; and
- the practical issues arising from the drafting of some of the clauses.

## The Commissioner's discretion

Under s 292-465 of ITAA 1997, the Commissioner has the discretion to disregard a concessional or non-concessional contribution made by a taxpayer in an income year. Prior to the Commissioner exercising his discretion, he is required by s 292-465(3) to consider two preconditions. The preconditions are:

- the existence of 'special circumstances'; and
- the making of a determination will be consistent with the object of Div 292.

In PS LA 2008/1, the Tax Office discusses the meaning of the expression 'special circumstances'. It notes that the expression has been considered in case law in a variety of legislative contexts and the Tax Office is required to apply the principles established by the cases. The Practice Statement states that special circumstances are factors which are unusual or out of the ordinary and which justify the making of an exception to the general application of the legislation because that operation would be unjust, unreasonable or inappropriate.

The Practice Statement also states that the following factors, in isolation, would not generally amount to the existence of special circumstances that make the imposition of an excess contributions tax unjust, unreasonable or inappropriate:

- financial hardship;
- ignorance of the law;
- incorrect professional advice; or
- retrospectivity of law or adverse effect of legislative changes.

## Payment from Transition-to-retirement Pensions

The Tax Office has also stated its view on whether a member of an SMSF with a transition-to-retirement account-based pension, where the entire balance of the pension is preserved money, can make an election under Reg 995-1.03 of *Income Tax Assessment Regulations 1997* such that a payment from the pension is taxed as a superannuation lump sum rather than a superannuation income stream benefit: See the NTLG Superannuation Technical Sub-group minutes for 24 November 2009.

The Tax Office says an election can be made to tax a payment as a superannuation lump sum if the pension is commuted. However, the Tax Office notes that where a pension does not contain unrestricted non-preserved monies, the pension is precluded from being commuted because of Reg 6.01(2) of the *Superannuation Industry (Supervision) Regulations 1994*.

- **TIP:** The tax treatment of a superannuation lump sum and a superannuation income stream benefit is different. Generally, less tax is paid on lump sums than income payments.

## Deductions for Misappropriation of Money

The Full Federal Court has dismissed a taxpayer's appeal against the denial of his claimed deduction of \$2.3 million under s 25-45 of ITAA 1997 for money misappropriated by his investment manager: *Lean v FCT* [2010] FCAFC 1.

### Background

The taxpayer engaged in various share investment activities, including a share trading business in partnership with his wife. After attending a share investment seminar, he was advised to contact a securities trader and investment funds manager who operated out of Hong Kong and who offered the prospect of returns of 20% to 30% on invested funds. The taxpayer later sold shares he owned in the US and transferred the proceeds of \$4.63 million to the funds manager ('custodial agent') in the 2002 income year. However, apart from the repayment of \$150,000, the funds were misappropriated under a Ponzi scheme.

In his 2002 tax return, the taxpayer included a net capital gain of \$2.3 million from the sale of the shares. However, he also claimed a deduction for his share trading loss and for the capital gain returned. The Commissioner disallowed all his claimed deductions.

## Decision

In a unanimous decision, the Full Federal Court dismissed the taxpayer's appeal after ruling that the act of the taxpayer in applying money towards expenses or investment was sufficient to break the necessary connection between money included in taxpayer's assessable income and a subsequent misappropriation. Where the money that was included in the assessable income of a taxpayer has left the taxpayer's hands, the Full Court said that there can be no relevant misappropriation of, or in respect of, that money: *EHL Burgess Pty Ltd v FCT* (1988) 19 ATR 1407. As the money that was misappropriated was not the money that had been included in the assessable income of the taxpayer, the Full Court ruled that s 25-45 does not apply.

The Court said the proceeds of sale of the shares, which were received by the taxpayer through his US stockbroker, constituted money that was included in the assessable income of the taxpayer as a capital gain by the operation of s 102-5 of ITAA 1997.

While the precise details of the money transfer were not clear, the Court said the US stockbroker transferred the proceeds to a bank account in Hong Kong in accordance with the taxpayer's instructions. The Court considered that the taxpayer had received the benefit of the proceeds of sale that constituted assessable income but that money had left the taxpayer's hands by making it available for investment at the direction of the funds manager. The Court also noted that the investment manager clearly had a very wide discretion as to the investments he could make with the taxpayer's money.

Accordingly, the Full Court said the money that was misappropriated from the bank account in the name of the taxpayer was not the money that had been included in assessable income of the taxpayer. Therefore, the primary judge did not err in concluding that the taxpayer was not entitled to a deduction under s 25-45 for the money that was misappropriated.

## Deductions for losses by theft

Under s 25-45 of ITAA 1997, a loss incurred by a taxpayer is deductible in the income year in which the loss is discovered if:

- the loss was through theft, embezzlement, larceny, defalcation or misappropriation of money by an employee or agent (other than a person employed solely for private purposes); and
- the money was included in the taxpayer's assessable income for the income year, or for an earlier income year.

The decision in the *Lean* case affirms the Federal Court's decision in *EHL Burgess*. In that case, the Federal Court said:

*income which has been or is to be included in the assessable income of a taxpayer, but has been dealt with in such a way that it has become mingled generally in the finances of the taxpayer and can no longer be traced or identified as income of that description cannot be the subject of a s 71 deduction [the predecessor to s 25-45].*

The Federal Court also stated that where a loss occurs after the derivation of the income, the lost money's identity as assessable income must not have been 'obliterated'.

In ATO ID 2003/1029, the Tax Office stated that a taxpayer is not entitled to a deduction under s 25-45 in respect of money that had been misappropriated by their investment broker. The taxpayer engaged a broker to purchase a parcel of shares. The money for the shares was drawn from the taxpayer's private line of credit. It was the taxpayer's practice to deposit their employment income into the line of credit facility and to use the facility in a manner similar to a normal bank account. The shares were never purchased because the broker misappropriated the money. The Tax Office said irrespective whether or not the taxpayer had returned as assessable income the employment income they deposited into their line of credit facility, it is considered that the character of that money was permanently altered because of its assimilation into the taxpayer's general finances. In the Tax Office's view, the money's identity was no longer that of assessable

income but part of the current balance of funds available to the taxpayer under their line of credit. Therefore, the Tax Office said the money paid to the broker for the shares cannot be identified as an amount which had been returned by the taxpayer as assessable income.

- **TIP:** A loss need not occur in the same income as that in which the income is derived.
- **TIP:** Where a loss was a result of theft by a person other than an employee or agent, a deduction for the loss may be available under s 8-1 of ITAA 1997: see ATO ID 2001/318.

## FBT Audit and Compliance Activities

In the NTLG FBT Sub-committee minutes for 12 November 2009, the Tax Office provided an update on FBT audit and compliance activities.

### Car fringe benefits and data matching

The Tax Office says that it is continuing to look at car fringe benefits. According to the Tax Office, a recent project focusing on luxury cars demonstrated significant levels of FBT non-compliance. Therefore, it has expanded its data matching activities to include data for vehicles with a value of \$10,000 or greater and have commenced action on a number of organisations where a mismatch has been identified.

### Incorrectly claimed FBT rebates

The Tax Office says it has completed a project where it contacted organisations that have claimed the FBT rebate in their FBT return. The purpose of the contact was to verify whether an organisation was entitled to claim the rebate. The Tax Office advises that the organisations were selected on a risk basis where its records indicated that an organisation may not be entitled to the rebate. The Tax Office also advises that the project will be conducted yearly.

According to the Tax Office, the main reasons for incorrectly claiming the FBT rebate were:

- misunderstanding who was entitled to the rebate; or
- entities related to a rebateable employer, but not rebateable themselves, claiming the rebate on behalf of the related entity.

### Focus on lodgment

The Tax Office states that a review of lapsed FBT lodgment has begun. It also states that it is currently identifying organisations which had previously lodged FBT returns but have ceased doing so. The Tax Office advises that it will contact a sample of these organisations or their representatives to verify their FBT status and, where appropriate, obtain lodgment. According to the Tax Office, this is a pilot study which will validate its data matching and case selection processes. The Tax Office says the study is scheduled to commence in 2010 and, depending on the findings of the pilot, a more extensive project may be initiated.

### Employee contributions and FBT liabilities

The Tax Office is currently reviewing the use of employee contributions to reduce any FBT liabilities. The focus of the Tax Office is on whether the employee contributions are being correctly returned in employer income tax returns at the appropriate label. The Tax Office has indicated that it will conduct a pilot study in which contact will be made with employers who have claimed employee contributions in the FBT return but appear to have not declared those contributions in their income tax return. The pilot study is scheduled to commence in 2010 and, depending on the findings of the pilot, a more extensive pilot may be initiated, says the Tax Office.

## GST: Decreasing Adjustment Note Threshold Increased

The *A New Tax System (Goods and Services Tax) Amendment Regulations 2009 (No 2)* were registered on the Federal Register of Legislative Instruments on 16 December 2009. They specify \$75 as the amount referred to in s 29-80(2) of the GST Act. The amending Regulations will remove the need to issue or hold an adjustment note for decreasing GST adjustments of \$75 or less. Currently, the amount is \$50.

The amending Regulations will commence from 1 July 2010.

## Value of Goods Taken From Stock for Private Use

In Taxation Determination TD 2009/22, the Tax Office states the amounts that the Commissioner will accept for the 2009/10 income year as estimates of the value of goods taken from trading for private use by taxpayers in certain specified industries.

The determination should be read in conjunction with Taxation Ruling IT 2659. In IT 2659, the Tax Office notes that a greater or lesser value may be appropriate in certain cases. It says where the actual amount is lower than prescribed for an income year the lower amount should be used. Conversely, where the actual amount is greater, the actual amount should be used.

It is important to note that taxpayers should be able to demonstrate that the value attributed to goods taken from stock for private use is fair and reasonable. Therefore, taxpayers should always have regard to their own circumstances when determining the appropriate value.

The amounts (which exclude GST) for the 2009/10 income year are:

<b>Type of business</b>	<b>Adult/Child over 16 years<sup>1</sup></b> <b>(\$)</b>	<b>Child 4–16 years<sup>1</sup></b> <b>(\$)</b>
Bakery	1,130	565
Butcher	760	380
Restaurant/café (licensed)	3,860	1,540
Restaurant/café (unlicensed)	3,080	1,540
Caterer	3,330	1,665
Delicatessen	3,080	1,540
Fruiterer/greengrocer	810	405
Takeaway food shop	2,920	1,460
Mixed business (includes milk bar, general store and convenience store)	3,680	1,840

1. The amounts are per adult or per child.