Explanatory Memorandum

May 2011

CURRENCY:

This issue of Client Alert takes into account all developments up to and including 13 April 2011.

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 are deferring the derivation of assessable income and bringing forward deductions. It is equally important that consideration be given to any pending changes to the tax legislation, especially when a proposed amendment will be backdated.

Deferring Assessable Income

The timing of when income is included in the assessable income of a taxpayer will depend on whether it is statutory income or ordinary income. Statutory income is included in assessable income at the time specified in the relevant provisions dealing with that income. Ordinary income is included in assessable income when it is derived unless a specific provision includes the amount in assessable income at some other time.

Consideration must be given to the nature of an income – is it revenue or capital? – because the difference in their tax treatment will ultimately have an impact on a taxpayer's tax position.

Business income

When ordinary income of a business is derived and to be included in assessable income will depend on whether the business returns income on a cash basis or on an accruals basis.

If a business uses the cash basis, ordinary income is, generally, derived in the year in which it receives the income. Conversely, if the business is reporting income on an accrual basis, ordinary income is derived when a recoverable debt is created such that the taxpayer is not obliged to take any further steps before becoming entitled to payment.

Payment received in advance

Income received in advance of services being provided, generally, is not assessable until the services are provided (the *Arthur Murray* principle). This principle applies regardless of whether a taxpayer is reporting its income on an accrual basis or on a cash basis.

Work in progress

In relation to manufacturers, partly manufactured goods that are not 'finished' goods are treated as trading stock and it is necessary to determine the difference between the opening and closing value of the trading stock for the income year. (*See* **Trading Stock** on page 9.)

TIP: Taxpayers who provide professional services may consider, in consultation with their clients, rendering accounts after 30 June to defer the income.

Income from property

Income from property is essentially all income that is not personal exertion income and includes interest, rent, dividends, royalties and trust distributions. The time of when such income is derived for non-business taxpayers is as follows:

Category	When income is derived
Interest	In the year of receipt
Rental income	In the year of receipt
Dividends	In the year of receipt
Royalties	In the year of receipt
Trust distributions	In the year the distribution is declared

- **STOP:** If the income has been applied or dealt with on behalf of a taxpayer, the taxpayer is taken to have received the income as soon as it is so applied or dealt with (principle of constructive receipt, albeit the taxpayer has not physically received the income): see s 6-5(4) of ITAA 1997.

Sale of depreciating assets

A taxpayer is required to calculate the balancing adjustment amount resulting from the disposal of a depreciating asset. The balancing adjustment amount is calculated by comparing the termination value against the adjustable value. If the termination value is greater than the adjustable value, the difference is included as assessable income of the taxpayer. If the termination value is less than the adjustable value, the difference is a deduction available to the taxpayer.

TIP: If the disposal of an asset will result in assessable income, a taxpayer may want to consider postponing the disposal to the following income year. However, if it is not possible to delay the disposal, consideration may be given to whether a balancing adjusting rollover relief is available. If the disposal of an asset will result in a deduction, it may be beneficial to bring the disposal forward to the current year.

Balancing adjustment rollover relief

Balancing adjustment rollover relief effectively defers a balancing adjustment until the next balancing adjustment event occurs. Broadly, the rollover relief will apply automatically if the conditions listed in s 40-340(1) of ITAA 1997 are satisfied. If the automatic rollover relief applies, the transferor must give a notice containing sufficient information about the transferor's holding of the asset for the transferee to work out how Div 40 applies to the transferee's holding of the depreciating asset.

An optional rollover relief is available in a partnership scenario if the composition of the partnership changes or when assets are brought into or taken out of the partnership. To defer any balancing adjustments, the existing partners and the new partner can jointly elect for the rollover relief to apply.

TIP: A small business entity can access the optional rollover relief.

- **STOP:** The optional rollover relief is not available unless the original holder retains an interest in the asset after the change.

Maximising Deductions

Deductions are divided into general deductions and specific deductions. General deductions are allowable under s 8-1 of ITAA 1997, whereas specific deductions are those provided for by sections of ITAA 1936 and ITAA 1997. If an item of expenditure would be a deduction under more than one section, it is deductible under the provision that is most appropriate.

Meaning of 'incurred'

In Taxation Ruling TR 97/7, the Commissioner states his view on the meaning of 'incurred' for the purposes of s 8-1 of ITAA 1997. The following general rules assist in most cases in defining whether and when an outgoing has been incurred:

(a) a taxpayer need not actually have paid any money to have incurred an outgoing, provided the taxpayer is definitively committed in the year of income. There must be a presently existing liability to pay a pecuniary sum;

(b) a taxpayer may have a presently existing liability notwithstanding that the liability may be defeasible by others;

(c) a taxpayer may have a presently existing liability although the amount of the liability cannot be precisely ascertained, provided it is capable of reasonable estimation;

(d) whether there is a presently existing liability is a legal question in each case, having regard to the circumstances under which the liability is claimed to arise; and

(e) if a presently existing liability is absent, an outgoing is incurred when the money is paid.

The phrase 'presently existing liability' means that a taxpayer is definitively committed (or completely subjected) to the outgoing, ie the liability is more than impending, threatened or expected.

An outgoing is still incurred even if the amount cannot be quantified precisely, provided it is capable of approximate calculation based on probabilities.

If a taxpayer could have claimed a deduction for an outgoing that was incurred but not paid in the particular income year but failed to do so, the taxpayer cannot claim a deduction in the year in which the liability is discharged, as the outgoing has not occurred in that year. The taxpayer is required to seek an amendment of the assessment for the previous year, within the statutory limits.

TIP: An outgoing may be incurred in one income year even if the liability is not discharged until a later year. Therefore, a taxpayer can claim a deduction for the outgoing.

➢ **STOP:** Small business entities which were Simplified Tax System (STS) taxpayers who are still using the mandatory cash accounting rules under the former STS can only deduct an outgoing under ss 8-1 (general deductions), 25-5 (tax-related expenses) and 25-10 (repairs) of ITAA 1997 when the outgoing is paid.

Bad debts

A debt that is written off as 'bad' in an income year is an allowable deduction under s 25-35 of ITAA 1997, provided:

- the amount owned was either previously brought to account as assessable income in the current or a former income year or lent in the ordinary course of a money-lending business of the taxpayer;
- there must be a bad debt in existence at the time of writing off;
- the debt must be bad; and
- the debt must be written off as bad during the income year in which the deduction is claimed.

TIP: Taxpayers should review their debtors prior to year-end and assess which debts may be written off as 'bad'.

In Taxation Ruling TR 92/18, the Tax Office sets out the list of circumstances in which a debt may be considered to have become bad. These circumstances may include the death or the disappearance of a debtor leaving little or no assets out of which the debt may be satisfied, or a corporate debtor going into liquidation or receivership with insufficient funds to pay the debt.

Before a debt can be written off as 'bad', a taxpayer must have taken appropriate steps in an attempt to recover the debt. The Tax Office, in TR 92/18, lists the steps to be taken to establish that a debt is bad. These include attempting to contact a debtor, issuing reminder notices and taking more formal measures.

It is important to note that while the factors listed in TR 92/18 are indicative of the circumstances in which a debt is considered bad, ultimately the question of whether the debt is bad is one of fact and will depend on all the facts and circumstances surrounding the debt.

TIP: If a bad debt is not deductible under s 25-35, it may be deductible under s 8-1.

TIP: A bad debt does not need to be written off in the account books of a taxpayer. In the case of a company, the requirements of s 25-35 will still be satisfied in the following circumstances:

- a Board meeting authorises the writing off of a debt and there is a physical record of the written particulars of the debt and Board's decision before year-end, but the writing off of the debt in the taxpayer's books of account occurs subsequent to year-end; and
- a written recommendation by the financial controller to write off a debt, which is agreed to in writing by the managing director prior to year-end followed by a physical writing-off in the books of accounts subsequent to year-end.

TIP: A bad debt deduction is also available for a partial write-off of a debt, provided the requirements of s 25-35 are satisfied. One debt may, over a period, be subject to several partial write-offs.

Additional requirements for companies

A company must pass either the 'continuity of ownership test' (the primary test to be applied) or the 'same business test' in addition to satisfying the requirements of s 25-35.

Companies that have undergone a change in underlying ownership due to a sale of the business during the year will need to pass the 'same business test' to claim a deduction for bad debts.

- **STOP:** A company cannot claim a deduction for a debt incurred and written off as bad on the last day of an income year.
- **STOP:** Consideration must be given to the specific anti-avoidance provisions contained in Subdiv 175-C.
- **STOP:** Where, as part of the purchase of a business, the purchaser takes over the vendor's debts and those debts subsequently become bad, the purchaser is not allowed a bad debt deduction. This is because the debts have not been included in the assessable income of the purchaser, but rather (assuming the vendor is an accruals taxpayer) in the assessable income of the vendor: see *Easons Ltd v C of T (NSW)* (1932) 2 ATD 211.

Additional requirements for trusts

Special rules apply to deny trusts a deduction for bad debts unless certain strict tests are passed. The applicable tests will depend on the nature of the trust.

Managed investment schemes

Expenses incurred in a managed investment scheme (MIS) are generally deductible. In *Hance v FCT* (2008) 74 ATR 644; [2008] FCAFC 196, the Full Federal Court allowed two taxpayers deductions relating to their investment in an almond MIS. In that test case, the Full Court concluded that the relevant outgoings of the taxpayers would be incurred as operating expenses in carrying on each taxpayers' business and that they were deductible pursuant to s 8-1 of ITAA 1997.

Following the failure of various schemes during the global financial crisis, the Tax Office issued three Taxation Determinations which deal with various scenarios and whether participants are still entitled to relevant deductions:

- TD 2010/7: Does a change of Responsible Entity of a registered agricultural MIS affect the tax outcomes for participants if the arrangement continues to be implemented in accordance with the relevant product ruling?
- TD 2010/8: Does the disposal or termination of an interest in a non-forestry MIS which arises as a result of circumstances outside the control of the taxpayer result in the denial of deductions previously allowed under s 8-1(1)(b) of ITAA 1997 in respect of contributions to the scheme?
- TD 2010/9: Is a payment received by an investor in a non-forestry MIS upon the winding-up of the scheme, that does not involve the disposal of the interest in the scheme to another person, necessarily ordinary or statutory income under ITAA 1997?

TIP: Each of the above Taxation Determinations contains an example illustrating the Commissioner's view on the operation of the tax law. Taxpayers seeking to claim a deduction should ensure that the facts surrounding their circumstances are similar to the facts in the examples.

Students on Youth Allowance and self-education expenses

In *FCT v Anstis* (2010) 76 ATR 735; [2010] HCA 40, a full-time student in receipt of the Youth Allowance was allowed a deduction for various self-education expenses (eg a student administration fee, books and depreciation on a computer) as they were considered to be incurred in deriving the Youth Allowance, which was assessable income. The High Court said the purpose of the expenditure (to obtain a degree so that the taxpayer could become a teacher rather than to obtain the Youth Allowance) was not determinative of the question of whether it was incurred in gaining or producing income.

As a consequence of *Anstis*, the Tax Office announced it will grant an automatic deduction of $550 for the 2007 to 2010 income years only to students who received the Youth Allowance for full time study and declared it in their tax return (ie there is no requirement to lodge an amended tax return).

> **TIP:** The Tax Office has published information on study expense changes following the *Anstis* decision on its website: http://www.ato.gov.au/individuals/content.asp?doc=/content/00263565.htm.

The Commissioner's views on the deductibility of self-education expenses are set out in Taxation Ruling TR 98/9. However, the Tax Office has conceded that the ruling will need to be amended in light of *Anstis* (see ATO Decision Impact Statement on *Anstis*).

Carried forward losses

The deductibility of tax losses carried forward from previous income years will depend on the entity claiming the losses.

Corporate tax entities

The entitlement of corporate tax entities to deductions in respect of prior year losses is subject to certain restrictions. An entity needs to satisfy the continuity of ownership test before deducting the prior year losses. If the continuity of ownership test is failed, the entity may still deduct the loss if it satisfies the same business test.

> **TIP**: A corporate tax entity can choose the amount of prior years losses it wishes to deduct in an income year. That is, the entity can choose to 'ignore' the carried forward tax losses and pay tax for the income year to generate franking credits for its distributions.

Other taxpayers

The method for deducting earlier tax losses incurred by other taxpayers is governed by s 36-15 of ITAA 1997. If a taxpayer derives net exempt income for an income year, the carried forward loss will need to be firstly offset against net exempt income before being available for deduction against assessable income.

> **TIP**: It is net exempt income that is offset against any carried forward tax losses and not exempt income. Net exempt income is defined in s 36-20 of ITAA 1997 and exempt income is defined in s 6-20 of ITAA 1997.
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> **TIP**: Try to avoid deriving exempt income in an income year if there are carried forward losses.

Depreciation (Capital allowances)

A deduction may be available on the disposal of a depreciating asset if a taxpayer stops using it and expects never to use it again. Therefore, asset registers may need to be reviewed for any assets that fit this category.

The effective life of an asset can be recalculated at any time after the end of the first income year for which depreciation is claimed by a taxpayer, if it is no longer accurate because of changed circumstances relating to the nature of use of the asset. Therefore, consideration may be given to the use of an asset to determine whether its effective life can be recalculated, which may result in an increased or decreased rate of depreciation

Immediate deduction

Non-business taxpayers

Non-business taxpayers are entitled to an immediate deduction for assets costing $300 or less, provided:

- the asset is used predominantly to produce assessable income that is not income from carrying on a business;
- the asset is not part of a set of assets that the taxpayer started to hold in the income year if the total cost of the set of assets exceeds $300; and
- the total cost of the asset and any other identical, or substantially identical, asset that the taxpayer starts to hold in that income year does not exceed $300.

> **TIP:** If two or more taxpayers jointly own a depreciating asset, a taxpayer is still eligible to claim an outright deduction, provided his or her interest does not exceed $300 (even if the asset costs more than $300).

Small business entities

A small business entity (*see* **Small Business Entities** on page 18) that chooses to apply the capital allowance rules contained in Div 328 of ITAA 1997 is eligible for an outright deduction for the taxable purpose proportion of the adjustable value of a depreciating asset in the income year it first starts to use the asset or installs it for a taxable purpose if:

- it starts to hold the asset when it is a small business entity, and
- the asset is a 'low cost asset', ie its cost is less than $1,000.

The entity is also entitled to an immediate deduction for any addition to a low cost asset, provided the cost of the addition is less than $1,000. If an asset costs more than $1,000, the entity is required to pool the asset into either a general pool or a long-life pool depending on the effective life of the asset. (See **Pooling**.)

Business taxpayers

For business taxpayers that are not small business entities, all capital items must be written off over their effective life under Div 40 of ITAA 1997, regardless of the cost (including low-value items). However, the Tax Office has adopted an administrative practice allowing an outright deduction for low-cost capital assets in certain cases (see ATO Practice Statement Law Administration PS LA 2003/8).

Broadly, an expenditure of $100 or less (inclusive of GST) incurred by a taxpayer to acquire a capital asset in the ordinary course of carrying on a business will be assumed to be revenue in nature and therefore deductible in the year of the expenditure. It is important to note that because the threshold includes GST, for a business registered for GST, the threshold is effectively $90.91.

This administrative practice does not apply to expenditure incurred by a taxpayer on:

- establishing a business or business venture;
- building up a significant store or stockpile of assets;
- assets held under a lease, hire purchase or similar arrangement;
- assets acquired for lease or hired to, or that will otherwise be used by, another entity;
- assets included in an asset register maintained in a manner consistent with reporting requirements under generally accepted Australian accounting standards;
- any asset that forms part of a collection of assets that is dealt with commercially as a collection;
- trading stock or spare parts; and
- items that are part of another composite asset, ie items that are not functional on their own.

Pooling

Certain depreciating assets can be pooled, with the result that the decline in value is calculated for the pool instead of the individual assets.

For a small business entity, two pools are available:

- a general pool for assets with an effective life of less than 25 years; and
- a long-life pool for assets with an effective life of 25 years or more.

If the cost of the asset is less than $1,000, the small business entity is entitled to an outright deduction.

For other taxpayers, there is the option of pooling 'low-cost' and 'low-value' assets to a low-value pool. A 'low-cost' asset is a depreciating asset that costs less than $1,000. A 'low-value' asset is a depreciating asset that has been depreciated using the diminishing value method, has an opening adjusted value of less than $1,000 in an income year, and is not a 'low-cost' asset. If a taxpayer sets up a low-value pool, all low-cost assets have to be allocated to the pool. However, low-value assets do not need to be allocated to the pool.

Category of taxpayer	Assets allocated to pool during year are depreciated at:	Assets allocated to pool in a previous income year are depreciated at:
Small business entity – General pool	15%	30%
Small business entity – Long-life pool	2.5%	5%
Other taxpayers – Low-value pool	18.75%	37.5%

TIP: If two or more taxpayers jointly own a depreciating asset, a taxpayer can set up a low-value pool to take advantage of the accelerated rate of depreciating, provided his or her interest is less than $1,000, even though the asset costs more than $1,000.

Small business and general business tax break

Division 41 of ITAA 1997 provides a one-off deduction for new investment in tangible depreciating assets made after 12 December 2008 and before 1 January 2010. The total new investment must be at least $1,000 for small business entities and $10,000 for other business taxpayers. The one-off deduction, which is also known as the 'Business Tax Break' (or the temporary investment allowance), is in addition to the decline in value (depreciation) deductions under Div 40.

The one-off deduction is available in the 2008/09, 2009/10, 2010/11 or 2011/12 income year. It is claimed in the income year for which the depreciation deduction under Div 40 is first available in respect of the expenditure (ie the year in which the depreciating asset is first used or installed ready for use).

The one-off deduction is limited to new tangible, depreciating assets for which a deduction is available under Subdiv 40-B of ITAA 1997 and new investment in existing tangible depreciating assets: s 41-10. An asset is new if it has never been used or installed ready for use by anyone, anywhere. The asset must also be used principally in Australia for the principal purpose of carrying on a business: s 41-30.

The deduction is worked out using a rate of either 50%, 30% or 10%, which depends on the entity type, when the taxpayer committed to investing in the asset, and when the asset is first used or installed ready for use.

The following table summarises the different rates relating to key dates for different entities:

Business entity	Investment commitment time (inclusive)	Date of first use or installed ready for use (inclusive)	Rate
Small business	13 December 2008 to 31 December 2009	By 31 December 2010	50%
Other business	13 December 2008 to 30 June 2009	By 30 June 2010	30%
	1 July 2009 to 31 December 2009	By 31 December 2010	10%
	13 December 2008 to 30 June 2009	1 July 2010 to 31 December 2010	10%

TIP: The one-off deduction is a bonus deduction. Accordingly, to the extent that the taxpayer is in a tax loss situation for the income year for which the deduction is claimed, the one-off deduction will form part of that loss.

TIP: Where an eligible asset is used for private and business purposes, a taxpayer does not need to apportion the cost of the asset between the different usages, provided the asset was required principally for a business use. Further, the bonus depreciation will not be clawed back in future years even if its usage changes.

- **STOP:** The one-off deduction cannot be claimed for more than one income year (or at different rates) in respect of the same investment amount.

Donations

A taxpayer may make a written election to spread a deduction for a donation over a period of up to five years if:

- the donation was a gift of money of $2 or more;
- the donation was property valued by the Tax Office at more than $5,000;
- the donation was made under the Cultural Gifts Program; or
- the donation was a heritage gift.

TIP: A taxpayer must specify in the written election the percentage (if any) to be deducted each year. If a taxpayer anticipates an increase in assessable income in a future year, a taxpayer may consider allocating a greater percentage to that year.

TIP: As a general proposition, try to avoid making donations in a year of losses. This is because a deduction for a donation cannot add to or create a tax loss for a taxpayer.

TIP: The Commissioner has announced the Tax Office will allow deductions without a receipt for donations to $10 'bucket appeals' for flood disasters (Victoria, Queensland and New South Wales in early 2011). To be deductible, such donations must be made to a deductible gift recipient (DGR). For donations over $10, written evidence must be kept in order to claim a tax deduction.

FBT and salary sacrificing donations

From the 2008-09 FBT year, donations to a deductible gift recipient (DGR) made under salary sacrificing arrangements, which are prima facie expense payment fringe benefits, are exempt benefits: s 148(2A). In contrast, donations collected through an employer's Workplace Giving arrangements are made from an employee's after-tax income and are not fringe benefits.

Legal expenses

It is impossible to formulate an all-encompassing 'rule' as to the deductibility of legal expenses because each expense must be considered on its own merits.

Non-commercial losses

An individual taxpayer should consider whether a loss from his or her business activity (whether carried on alone or in partnership) will be deferred under the non-commercial loss rules, which are contained in Div 35 of ITAA 1997. This is because the individual's overall tax position will be impacted when the loss is deferred.

In essence, an individual may only offset a loss arising from a business activity against other income derived in the same income year if the business activity satisfies at least one of the four commerciality tests – the assessable income, profits, real property, and other assets tests. If the individual does not satisfy at least one of the tests, the loss is carried forward and applied in a future income year against assessable income from the particular activity.

The Commissioner has the discretion to override the provisions of Div 35. Further, an exemption is available for individuals who carry on a primary production or professional arts business and whose assessable income for the year from other sources (eg salary and wages) does not exceed $40,000.

TIP: The $40,000 threshold excludes net capital gains derived by a taxpayer.

High-income earners

From 1 July 2009, losses incurred by individuals with an adjusted taxable income of $250,000 or more from non-commercial business activities will be quarantined even if they satisfy the four commerciality tests. The effect of this is that they will not be able to offset excess deductions from non-commercial business activities against their salary, wage or other income.

The 'adjusted taxable income' is the sum of an individual's:

- taxable income;
- reportable fringe benefits;
- reportable superannuation contributions; and
- total net investment losses.

Any excess deductions from a non-commercial business activity that are subject to Div 35 are to be disregarded in working out the adjusted taxable income of the individual.

While an individual with an adjusted taxable income of $250,000 or more is precluded from accessing the four commerciality tests, they will be able to apply to the Commissioner to exercise his discretion to not apply the non-commercial loss rules where they can satisfy the Commissioner, based on an objective expectation, that the business activity will produce assessable income greater than available deductions within a commercially viable period for the industry concerned.

Prepayments

One of the simplest methods to accelerate deductions is the prepayment of deductible expenses.

Excluded expenditure

The prepayment rules do not apply to 'excluded expenditure', ie a taxpayer is able to claim an outright deduction. Excluded expenditure is defined as:

- expenditure that is less than $1,000;
- expenditure that is required to be made under a court order or by law (eg car registration fees and audit fees); and
- expenditure that is for salary or wages.

> **TIP:** If a taxpayer is entitled to an input tax credit in respect of an expenditure, the $1,000 is the *GST-exclusive amount*. If the taxpayer is not entitled to an input tax credit, the $1,000 is the *GST-inclusive amount*.

Small business entities and non-business individuals

Small business entities and non-business individuals are able to access the 12-month prepayment rule. If the prepaid expenditure is not excluded expenditure, it is deductible outright in the income year it is incurred, subject to two provisos: the eligible service period does not exceed 12 months, and ends in the expenditure year or the income year immediately following. If the prepayment has an eligible service period of greater than 12 months, the expenditure will be apportioned over the relevant period (on a daily basis) up to a maximum of ten years. The eligible service period is the period over which the relevant services are to be provided.

Other taxpayers

If the eligible service period covers only one income year, the expenditure will be deductible in that particular year. If the eligible service period covers more than one income year, the expenditure is apportioned (on a daily basis) over those years up to a maximum of 10 years in accordance with the formula:

$$\text{Expenditure} \times \frac{\text{No of days of eligible service period in the year of income}}{\text{Total number of days of eligible service period}}$$

Speculators and losses from shares

Generally, speculators are denied a revenue deduction for any losses arising for the disposal of shares unless a speculator is carrying on a business in relation to the shares. By way of example, in *AATA Case 6297* (1990) 21 ATR 3747, the Tribunal concluded that a taxpayer's share activities did not amount to carrying on a business and that, as a result, the taxpayer was not entitled to a deduction for losses arising from the disposal of his shares.

Furthermore, in ATO ID 2002/951 the Commissioner ruled that a speculator was not entitled to a revenue deduction for losses under s 25-40 of ITAA 1997 on the sale of post-CGT shares. Interestingly, the Commissioner did not discuss the deductibility of the losses under s 8-1 of ITAA 1997, nor whether the losses were capital in nature.

Trading stock

The tax treatment of trading stock, which is contained in Div 70 of ITAA 1997, impacts on year-end tax planning. This is because a taxpayer is required to either include in or deduct from its assessable income for an income year the difference between the opening and closing value of the trading stock.

Valuation of trading stock

A taxpayer can elect to use the cost, market selling value or replacement value to value each item of trading stock-on-hand. However, this does not apply to obsolete stock or certain taxpayers.

There is no requirement to adopt permanently any one of the three methods of value.

> **TIP:** There is no compulsion to use the same method to value all closing stock. A taxpayer can use different methods for different items of trading stock to maximise its deductions or minimise its assessable income.

Small business entities

If a small business entity elects to apply the trading stock concession under Div 328, it is permitted to ignore the difference between the opening and closing value of trading stock if the difference between the opening value of stock on hand and a reasonable estimate of stock on hand at the end of that year does not exceed $5,000. The effect of electing this concession is that the value of the entity's stock on hand at the beginning of the income year is the same as the value taken into account at the end of the previous income year.

However, a taxpayer could choose to account for changes in the value of trading stock even if the reasonably estimated difference between opening and closing values was less than $5,000.

> **TIP:** Accounting for the difference between the opening and closing stock is a good tax planning method to avoid a large adjustment in the calculation of taxable income in a future year when the benefit of Div 328 is not available or to claim a deduction in the current year for a reduction in the value of trading stock.

Other business taxpayers

It is a requirement to value each item of trading stock at the end of an income year at its cost, market value or replacement value. There is no requirement to permanently adopt any one of the three methods of valuation. Further, there is no compulsion for a taxpayer to use the same method across all items of trading stock.

Obsolete stock

A deduction may be available for obsolete stock. Therefore, a taxpayer should review its closing stock to identify whether any obsolete stock exists. In Taxation Ruling TR 93/23, the Tax Office states that obsolete stock is either:

- going out of use, going out of date, becoming unfashionable or becoming outmoded (ie becoming obsolete); or
- out of use, out of date, unfashionable or outmoded (obsolete stock).

When valuing obsolete stock, a taxpayer does not need to use any of the prescribed methods (ie cost, market value or replacement value). Rather, provided adequate documentation is maintained, the Tax Office will accept any fair and reasonable value which is calculated taking into account the appropriate factors: see s 70-50 of ITAA 1997.

Repairs and maintenance

A deduction is available for repairs to premises, part of premises or a depreciating asset (including plant) held or used by a taxpayer solely for the purpose of producing assessable income: see s 25-10(1) of ITAA 1997. If the relevant premises or assets are held or used only partly for income-producing purposes, expenditure on repairs is only deductible to the extent that it is reasonable in the circumstances: see s 25-10(2).

A common issue that arises is the distinction between restoration of an item to its former condition (deductible) and improvement of the item (capital and thus not deductible). It is important to realise the mere fact that different materials from those replaced are used will not of itself cause the work to be classified as an improvement, particularly in circumstances where the previous materials are no longer in current use. If the change is merely incidental to the operation of the repair, the deduction, generally, will be allowed.

Initial repairs, the replacement of the entire item, and improvements are not deductible, but may qualify for a periodic write-off under the capital allowance provisions. In addition, the expenditure may form part of the cost base of an asset for capital gains tax purposes.

TIP: The Tax Office has stated that if a taxpayer replaces something identifiable as a separate item of capital equipment, the taxpayer has not carried out a repair. Therefore, the taxpayer is required to depreciate the item over its effective life.

TIP: Taxpayers should seek an itemised invoice to separate the costs of work if the work includes both repairs and improvements.

Superannuation contributions

Deductions for employer contributions

Employers are entitled to a tax deduction for contributions made to a complying superannuation fund or a retirement savings account (RSA) for the purpose of providing superannuation benefits for their employees. The contributions are only deductible for the year in which they are made: see s 290-60(3) of ITAA 1997. To maximise the deductions available, employers should ensure that the contributions are paid to their employees' superannuation funds or RSAs before 30 June.

TIP: A mere accrual of a superannuation liability or a book entry is not sufficient to qualify for a deduction.

TIP: For employees turning 75, the contribution must be made by an employer within 28 days after the end of the month in which an employee turns 75 to obtain a deduction.

TIP: Taxation Ruling TR 2010/1 sets out the Commissioner's view regarding specific rules about deducting superannuation contributions.

Superannuation guarantee charge

The superannuation guarantee charge (SGC) is imposed if an employer does not make sufficient quarterly superannuation contributions for each employee by the relevant quarter due date. The SGC is also imposed where the employer pays the contributions after the due date, albeit there is no shortfall for the quarter.

Employers who have made a contribution for an employee after the due date for the quarter and have an outstanding SGC for the employee for that quarter may elect (using the approved form) to use the late payment offset to reduce their SGC liability (the election is irrevocable).

However, the late contribution can only be offset against an SGC that relates to the same quarter and to the same employee. The offset cannot be used to reduce the administration component. Where an employer has been assessed on its SGC for a quarter, the employer can seek an amendment of the assessment to elect to use the offset. However, the amendment must be made within 4 years after the employer's SGC for the quarter became payable.

> **TIP:** The SGC and late payment offset are not deductible to an employer. Therefore, the employer still has a strong incentive to continue making its superannuation guarantee quarterly payments on time.
>
> **TIP:** The SGC is the only tax that the Commissioner wants employers to avoid paying.

Personal superannuation deductions

The self-employed and other eligible persons are entitled to a deduction for personal superannuation contributions if less than 10% of a taxpayer's total assessable income, reportable fringe benefits, and reportable employer superannuation contributions, for an income year is attributable to activities that result in the taxpayer being treated as an 'employee' for superannuation guarantee purposes.

The contribution is only deductible for the year in which it is made. The contribution is deductible in full, subject to the restriction that the maximum amount that is deductible is the amount stated in the notice of intention to claim a deduction, which is given to the trustee of a superannuation fund. However, excess contributions tax may apply for contributions above the contributions cap. (*See* **Excess contributions tax** on page 23.)

> **TIP:** A deduction for personal superannuation contributions should only be made towards the end of the income year when it is certain a taxpayer will satisfy the 10% rule (and other eligibility conditions) and not breach the taxpayer's concessional contributions limit of $25,000 (or $50,000 for those aged between 50 and 74).
>
> **TIP:** A taxpayer who realised a significant capital gain during the year should evaluate his or her eligibility to claim a deduction for personal superannuation contributions. If the taxpayer is eligible, he or she should consider contributing an amount of the capital gain to superannuation which may reduce the tax payable on the capital gain derived.

Valid notice to claim deduction

To be eligible for a deduction for a personal superannuation contribution, the individual must give a notice to the fund trustee or RSA provider of her or his intention to claim a deduction and must receive an acknowledgment of receipt of the notice: s 290-170 of ITAA 1997. The notice must be given by the time the person lodges her or his income tax return for the year in which the contribution is made or, if no return has been lodged by the end of the following income year, by the end of that following year.

A notice will not be valid where:

- the person is no longer a member of the fund (eg because the person's benefits have been paid to them or they have rolled over their benefits in full to another fund);
- the trustee no longer holds the contribution;
- the trustee has commenced an income stream based in whole or part on the contribution; or
- the taxpayer has made a spouse contributions-splitting application which has not been rejected.

If the member has chosen to roll-over a part of the superannuation interest held by a fund, a valid deduction notice is limited to a proportion of the tax-free component of the superannuation interest that remains after the roll-over.

> **TIP:** The Tax Office notes that a person may choose how much of their contributions to deduct and this notice is used to give effect to that choice. For example, a person may choose not to deduct a portion of their personal contributions to ensure they are entitled to the superannuation co-contribution.

➢ **STOP:** Note that a deduction is not available in respect of any financing costs on a loan connected with a personal superannuation contribution.

Capital Gains Tax

A taxpayer may consider crystallising any unrealised capital gains and losses in order to improve his or her overall tax position for an income year. For example, if the taxpayer is anticipating a significant capital gain in an income year, consideration may be given to reducing the gain by crystallising a capital loss in the same income year. However, consideration must be given to the Commissioner's view on 'wash sales' contained in Taxation Ruling TR 2008/1, particularly if a taxpayer reacquires the assets being disposed or identical assets, or somehow retains dominion or control over the original assets.

Small business CGT concessions

Broadly, the small business CGT provisions contained in Div 152 of ITAA 1997 provide a range of concessions for a capital gain made on a CGT asset that has been used in a business if certain conditions are met.

There are 2 basic conditions that must be met for a capital gain made by a taxpayer to qualify for the small business concessions.

Firstly, the taxpayer must satisfy the 'maximum net asset value' test or be a small business entity, or be a partner in a partnership that is a 'small business entity' where the CGT asset is an interest in an asset of the partnership.

Secondly, the CGT asset that gives rise to the gain must be an 'active asset'. This can include shares or trust interests, subject to satisfying certain conditions.

The concessions are:

1. **the 15-year asset exemption:** a capital gain may be disregarded if the relevant CGT asset has been continuously owned by the taxpayer for at least 15 years. If the taxpayer is an individual, he or she must be at least 55 years of age and the CGT event must happen in connection with the taxpayer's retirement, or he or she is permanently incapacitated at that time. If the taxpayer is a company or trust, a person who was a significant individual just before the CGT event must satisfy the requirements;
2. **the 50% reduction:** a capital gain resulting from a CGT event happening to an 'active asset' of a small business may be reduced by 50%;
3. **the retirement exemption:** a taxpayer can choose to disregard all or part of a capital gain up to a lifetime maximum of $500,000; and
4. **the asset rollover concession:** a taxpayer can disregard all or part of a capital gain if a replacement asset, which is an active asset, is acquired.

TIP: The 15-year exemption has priority over the other concessions because it provides a full exemption for the capital gain. In addition, the exemption is applied without first having to use prior year losses or the CGT discount.

TIP: The concessions do not apply to deny capital losses that a taxpayer has for an income year. That is, the taxpayer is still able to utilise any capital losses against any other capital gains for the income year.

TIP: The capital gain remaining after the 50% reduction may be further reduced by the retirement exemption and/or the asset roll-over concession, if the gain qualifies for those concessions. Note that if the gain qualifies for both the retirement and roll-over concessions, the taxpayer can choose the order in which to apply them.

TIP: There is no age limit on using the retirement exemption, nor any requirement to retire. However, where an individual is under 55 at the time of choosing to apply the exemption, the amount chosen to be disregarded by the individual must be rolled over to a complying superannuation fund or an RSA. Also, any prior year losses and the CGT discount must be applied to a gain before the retirement exemption.

TIP: The concessions are available to the legal personal representative (LPR) or beneficiary of a deceased estate, a surviving joint tenant and the trustee of a testamentary trust provided: (a) the deceased would have qualified for the concessions just before his or her death; and (b) the CGT event that gives rise to the gain in the hands of the LPR or beneficiary occurs within two years of the deceased's death (or such further time as the Commissioner allows).

- **STOP:** Under the maximum net asset value test, the net value of all the CGT assets of the taxpayer, the taxpayer's 'affiliates' and entities 'connected with' the taxpayer (subject to certain exceptions) must not exceed $6m. However, note that some CGT assets are specifically excluded from the test eg shares in an affiliate: see s 152-20(2) of ITAA 1997.

- **STOP:** Consideration should be given to the integrity measures contained in the CGT regime: see ss 115-40 and 115-45, Div 149 and CGT event K6.

Rollover relief

Rollover relief is available to provide taxpayers with the option to defer the consequences of a CGT event. Apart from disregarding any capital gains or capital losses that would otherwise arise from a CGT event, a rollover usually places the transferee under the rearrangement in the same CGT position as the transferor was before the event occurred. Some of the rollover reliefs will apply automatically while some will require taxpayers to elect the use of the reliefs, which is indicated by the way their tax returns are prepared.

Two types of rollovers are available: the replacement asset rollover and the same asset rollover. A replacement asset rollover allows the deferral of a capital gain or loss until a later CGT event happens to the replacement asset. A same asset rollover allows the deferral of a capital gain or loss arising from the disposal of the asset until the later disposal of the asset by the successor entity.

The table below sets out the common rollover reliefs that may be considered for tax planning purposes:

Type of rollover	Brief description	Election required
Rollover from individual to company	Individual disposes assets to a resident company	Yes
Rollover from trust to company	Trustee of a trust disposes assets to a resident company	Yes
Rollover from partnership to company	Partnership disposes assets to a wholly owned resident company	Yes
Assets compulsorily acquired, lost or destroyed	Disposal of an asset from being compulsorily acquired, lost or destroyed	Yes
Fixed trust to company	Fixed trust disposes all of its assets to a resident company	Yes
Marriage breakdown	Taxpayer disposes assets to his or her spouse pursuant to an order of a court under the *Family Law Act 1975*	No
Small business replacement asset rollover	Taxpayer who is eligible for the small business CGT concessions acquires a replacement asset or improves an existing asset	Yes

Companies

The tax treatment of companies will depend on their classification, that is, a private company or a public company. For example, only a private company is subject to the operation of Div 7A of ITAA 1936. Companies are subject to a flat rate of tax (currently 30%) on the entirety of their taxable income. This rate applies whether the company is public, private, resident or non-resident.

Dividends - benchmarking rule

Companies should ensure that all dividends paid to shareholders during the relevant franking period (generally the income year) are franked to the same extent to avoid breaching the benchmark rule.

If an entity to which the benchmark rule applies franks a distribution in breach of the benchmark rule (by either over-franking or under-franking the distribution), the recipient of the distribution will still be able to get the benefit of the franking credits attached to the distribution, but a penalty (in the form of over-franking tax or a debit) will be imposed on the entity.

Loans and payments by private companies

Loans, payments and debts forgiven by private companies to their shareholders and associates may give rise to unfranked dividends which are assessable to the shareholders and associates. To minimise any adverse Div 7A consequences, taxpayers must consider the following:

- repay private company loans by the earlier of the actual lodgment date or the due date for lodgment of the company's return for that year;
- ensure a loan agreement is in place by the earlier of the actual lodgment date or the due date for lodgment of the company's return for that year;
- ensure minimum repayments are made on loans from prior years;

- a deemed dividend can only arise to the extent of a company's distributable surplus, so this issue needs to be considered along with planning opportunities;
- payments under a guarantee can trigger a deemed dividend and must be considered carefully;
- the payment of an actual franked dividend by a company to offset a loan which has been deemed to be a dividend can have adverse implications and should be carefully considered;
- the exemptions available should be considered and used if possible; and
- a deemed dividend can also apply if property is provided, so companies should consider requiring shareholders to pay market value.

Section 109RB gives the Commissioner the discretion to disregard a dividend that would otherwise be deemed to arise under Div 7A, or to allow the company to frank a deemed dividend, where the failure to satisfy Div 7A is the result of an honest mistake or inadvertent omission. The meaning of these terms is considered in Taxation Ruling TR 2010/8. A request for the discretion must be lodged in writing.

- **STOP:** Just before the time of going to press, the Tax Office issued Draft Practice Statement Law Administration PS LA 2843 which discusses the Commissioner's discretion under s 109RB - notably, the Draft Statement sets out the matters that the Commissioner must have regard to in making a decision under s 109RB(2) (or refusing to make such a decision).

Div 7A and 'present legal obligations'

The Tax Office has issued a Decision Impact Statement on the Full Federal Court's decision in *FCT v H* [2010] FCAFC 128. The case concerned when income tax and GIC assessed by an amended assessment are 'present legal obligations' for the purposes of calculating a company's net assets and distributable surplus.

The case involved a taxpayer who was a director and shareholder of a company. In 2004, the taxpayer made a voluntary disclosure of an arrangement whereby the company had understated its income. In addition, under the arrangement, payments were made by the company to the taxpayer's bank account. The years in question were the income years ended 30 June 1999 to 30 June 2003. In 2007, the Commissioner issued amended assessments to the company for tax on the undeclared income plus penalties and interest. At the same time, the Tax Office issued assessments to the taxpayer for deemed dividends pursuant to s 109C(1) of ITAA 1936 in respect of the payments made to him or on his behalf.

In calculating the company's distributable surplus for Div 7A purposes, the Commissioner did not subtract any amount of tax payable by the company under the amended assessments made in 2007 from its net assets, as the tax payable under the amended assessments were not considered to be a present legal obligation of the company as at the end of the relevant income years. Similarly, the Commissioner did not subtract any amount of GIC in calculating the company's net assets.

The Full Federal Court dismissed the Commissioner's appeal from the decision of the AAT and held that the obligation to pay tax at the amount subsequently properly ascertained, assessed and determined was a 'present legal obligation' as at the end of the financial year in respect of which the income is derived. It also held that GIC becomes a 'present legal obligation' on each day on which tax that should have been paid remains unpaid.

The Tax Office said it is reviewing Taxation Determinations TD 2007/28 and TD 2008/28, and will administer s 109Y in accordance with the decision of the Full Federal Court.

Recent changes relating to Div 7A

The non-commercial loan rules in Div 7A were recently amended: see *Tax Laws Amendment (2010 Measures No 2) Act 2010.* The amended rules prevent a shareholder of a private company (or an associate of the shareholder) accessing tax-free dividends from the provision of company assets, for less than their market value.

The amended rules treat arrangements where a private company has provided an asset to a shareholder (or their associate) for their use (other than a transfer of property, which is already covered by s 109C(3)(c) of ITAA 1936) as a payment for the purposes of Div 7A. These changes ensure that Div 7A cannot be circumvented by the provision of an asset for use. The amendments in s 109CA(1) do not impact upon the operation of any of the existing payments in s 109C(3).

Note there are other technical amendments to strengthen the non-commercial loan rules to ensure that they operate in accordance with their original policy intent and cannot be circumvented by the use of a corporate limited partnership, which is a partnership taxed like a company.

Under the amended rules, where a corporate beneficiary has a present entitlement to an amount from the net income of a trust estate and the whole of that amount has not been paid, and an entity is interposed between that trust and a target entity (the shareholder of the private company or their associate), the trust

will be treated as having directly paid or loaned an amount to the target entity for the purposes of Div 7A. Subdivision EA will then operate as if the trustee makes a payment or loan to the target entity.

The amended rules apply from 1 July 2009.

Tax consolidation

Companies may want to consider consolidating for tax purposes prior to year end to reduce compliance costs and take advantage of tax opportunities available as a result of the consolidated group being treated as a single entity for tax purposes. However, a careful analysis of an entity's circumstances should be undertaken prior to making such a decision.

- **STOP:** It should be noted that the Government has commissioned the Board of Taxation to review the consolidation rights to future income and residual tax cost setting rules. The Board had raised concerns with the Assistant Treasurer that, due to uncertainty in the scope of the rules following recent amendments, tax deductibility may be argued for types of assets that were not contemplated when the rules were introduced. The Government said there is some evidence that the rights to future income and residual tax cost setting rules 'may have a substantially greater revenue impact than anticipated', so it has asked for the review. The Board is expected to report to the Government by 31 May 2011.

Losses

Companies should carefully consider whether any deductions are available for any carry forward tax losses, including analysing the continuity of ownership and same business tests.

It should be noted that the Tax Office has increased its compliance focus on losses following a large number of businesses in the SME sector reporting revenue losses in the aftermath of the global financial crisis. The Tax Office has identified the following as common mistakes:

- losses used where the company does not satisfy either the continuity of ownership or same business tests;
- losses incorrectly transferred to the head company of a consolidated group;
- losses incorrectly used due to incorrectly calculating the available fraction in a consolidated group;
- losses incorrectly used due to not making the required adjustments to the available fraction;
- records not accurately kept to support or reconcile the loss;
- losses that do not satisfy the same business test and result in further losses carried forward;
- carried forward losses not checked to ensure they are correctly calculated, including amendments to prior-year tax returns and losses cancelled by the taxpayer.

Trusts

The provisions governing trusts, which include in whose hands trust income is assessed and the amount assessed, is complex. A good starting point is always the trust deed. This is because the deed governs the operation of the trust.

Trust deeds

Taxpayers should review trust deeds to determine how trust income is defined, for example, whether capital gains are included or whether trust income is equated with taxable income. This may have an impact on the trustee's tax planning. This tax planning should bear in mind that tax distributions made by the trust should follow the proportionate approach.

Income of a trust estate

The existence or absence of a beneficiary's present entitlement to 'income of the trust estate' is used in Div 6 to determine the liability of the beneficiary or the trustee, in a particular income year, to tax on the 'net income of the trust estate'. Although the term 'net income of the trust estate' is defined in s 95, the term 'income of the trust estate' is not defined in ITAA 1936 and there remains some uncertainty as to its meaning.

In *FCT v Bamford* (2010) 75 ATR 1; [2010] HCA 10, the trust deed permitted the trustee to determine that a capital gain should be treated as income of the trust estate. For the 2001/02 income year, the trustee made such a determination and distributed equal shares of a capital gain to Mr and Mrs Bamford. The

Commissioner argued that the capital gain, by its nature, was not 'income of the trust estate'. The High Court held that the term 'income of the trust estate' took its meaning from 'the general law of trusts, but adapted to the operation of the 1936 Act upon distinct years of income'. The High Court noted that 'income', under the general law of trusts, can include a capital gain. Therefore, in *Bamford*, the 'income of the trust estate' included a capital gain treated by the trustee as distributable income in accordance with the terms of the trust deed.

Practice Statement Law Administration PS LA 2009/7 instructed Tax Office staff to continue to administer the law on the basis of the Commissioner's view that 'income' of a trust estate means 'ordinary income in the hands of the trustee', pending the High Court's decision in *Bamford*. On 2 June 2010, the Tax Office replaced PS LA 2009/7 with PS LA 2010/1 which instructs Tax Office staff to administer the law in accordance with its Decision Impact Statement on *Bamford* published on the same date. In its Decision Impact Statement, the Tax Office accepts that a provision of a trust instrument, or a trustee acting in accordance with a trust instrument, may treat the whole or part of a receipt as income of a period and it will thereby constitute 'income of a trust estate' for the purposes of s 97.

For the 2009/10 income year and previous income years, tax returns prepared relying on a view of the law that was reasonably open prior to the *Bamford* litigation will not be disturbed unless there has been a deliberate attempt to exploit Div 6 or there is a dispute for some other reason.

However, despite the release of the Tax Office guidance, difficulties remain regarding the meaning of 'income of the trust estate'.

> **TIP:** Taxpayers should avoid retaining income in a trust because it may be taxed in the hands of the trustee at the top marginal tax rate of 46.5%.

Pending changes relating to trust income

Following the High Court's decision in *Bamford*, the Government announced it will update and rewrite Australia's trust taxation laws.

As a first step, the Government sought comments on a proposal to enable the streaming of capital gains and franked distributions – that is, ensure that capital gains and franked distributions (including the attached franking credits) can be streamed to particular beneficiaries. The change is proposed to apply for the 2010/11 and later income years. However, the Government noted this proposal will not resolve *all* of the issues with the current operation of the trust income tax provisions as highlighted in *Bamford*.

At the time of going to press, the Government has yet to release further details (ie exposure draft legislation) on the proposed 'streaming' change, although the Government is expecting to introduce the legislation in Parliament in its 2011 Winter sitting. As the changes would have retrospective effect, the timing of the passage of the legislation assumes some importance.

The Government also proposed changes to better align the concept of 'income of the trust estate' (which has been interpreted to mean distributable income) with 'net income of the trust estate' (taxable income). However, after receiving initial feedback from accountants, the Government said it will consider this proposal as part of its broader trust taxation law update and rewrite.

Trusts and Div 7A

If a trust has an unpaid present entitlement (UPE) to a corporate beneficiary, consideration should be given to paying out the entitlement by the earlier of the due date for the lodgment of the trust's income tax return for the year or the actual lodgment date to avoid possible Div 7A implications. Similarly, trustees should carefully review any loans that may be deemed dividends under Div 7A to ensure appropriate corrective action is taken.

Taxation Ruling TR 2010/3 attempts to identify situations where a UPE from a trust to an associated private company constitutes a loan for Div 7A purposes. It will not apply to UPEs in existence before 16 December 2009. Given the breadth of the definition of the term 'loan', in particular the provision of financial accommodation limb, there are many examples given by the Commissioner where a UPE gives rise to a Div 7A loan. This includes the case where the funds representing the UPE are intermingled with other trust funds and used for trust purposes rather than for the absolute benefit of the corporate beneficiary.

Guidance on the administration of the ruling is contained in Practice Statement Law Administration PS LA 2010/4 – notably, the Practice Statement sets out various 'self corrective' actions that a taxpayer may take. However, it should be noted that these actions are available for a limited time only (eg taxpayers have until 31 December 2011 to correct accounts where a UPE has been misclassified as a loan).

- **STOP:** The Tax Office has increased its compliance focus on Div 7A and has released the following Taxpayer Alerts:
  - **TA 2011/1** warns taxpayers of an arrangement where a company limited by guarantee is established to receive trust distributions and the distributions are loaned to the company's members and directors or their associates, who are also beneficiaries of the trust, for minimal or no interest. The loan amounts are not returned as income by the members and directors or their associates. The stated purpose of the company is to protect its assets, however the only assets held are these loans.
  - **TA 2010/6** warns private companies against investing in trusts with the intention of making funds available for lending to shareholders. The Alert describes an arrangement where a private company invests funds in an unrelated trust that then on-lends the funds to a shareholder, or an associate of a shareholder, of the private company. The Tax Office warns the arrangement may be an attempt to circumvent Div 7A.

TFN withholding rules for closely held trusts

The TFN withholding arrangements have been extended to closely held trusts (except were specifically excluded). The new arrangements apply from the first income year commencing on or after 1 July 2010 – ie from the 2010/11 income year for entities balancing at 30 June. However, withholding does not apply if the beneficiaries of closely held trusts quote their tax file number (TFN) to the trustees of such trusts: s 202DO of ITAA 1936.

The amount to be withheld is equal to the top marginal rate plus Medicare levy (ie 46.5%). There are also reporting and payment requirements for trustees of trusts subject to the new provisions. The purpose of the measure is to encourage beneficiaries to quote their TFN to the trustees of such trusts, which will in turn enable the Tax Office to use the TFN information to match amounts reported by trustees and amounts reported in beneficiaries' tax returns.

Family trust election

Trustees should consider whether a family trust election (FTE) is required to ensure any losses or bad debts incurred by the company will be deductible and to ensure that franking credits will be available to beneficiaries. Similar considerations can apply for companies owned by trusts.

If a FTE has been made, trusts should avoid distributing outside the family group to avoid the family trust distribution tax.

Small Business Entities

Under the small business entity regime, a taxpayer does not need to elect to enter into the regime. Instead, it will be apparent from a small business entity's tax return whether it has used the tax concessions.

Concessions available

The concessions available under the small business entity regime are:

- the simpler depreciation rules;
- the simpler trading stock rules;
- the entrepreneurs' tax offset;
- the prepaid expenses rules; and
- the two-year period of review.

In addition, a small business entity will be able to access other various concessions (subject to any additional criteria set out in the particular concessions themselves). These are:

- the CGT 15-year exemption, CGT 50% active asset reduction, CGT retirement exemption and CGT roll-over;
- the use of the GDP-adjusted notional tax method to work out PAYG instalments;
- the FBT car parking exemption; and
- the choice to account for GST on a cash basis, apportion GST input tax credits annually and pay GST by instalments.

Definition of a small business entity

An entity will be classified as a small business entity for an income year if:

- it is carrying on a business in the current year; and
- it had an aggregated turnover for the previous year of less than $2 million or an aggregated turnover for the current year that is likely to be less than $2 million.

The aggregated turnover is the annual turnover of the entity's business plus the annual turnover of any businesses that the entity is connected to or affiliated with. The aggregated rules are similar to the former STS grouping rules.

An entity satisfies the aggregated turnover test if:

- its aggregated turnover for the previous income year was less than $2 million;
- its aggregated turnover for the current income year, worked out as at the first day of the income tax year, is likely to be less than $2 million; or
- its aggregated turnover for the current income year, worked out as at the end of the current income year, is actually less than $2 million.

➢ **STOP:** A person who is a partner in a partnership in an income year is not, in his or her capacity as a partner, a small business entity for the income year: s 328-110.

Personal Services Income

Broadly, the personal services income (PSI) rules attribute income derived by an interposed entity to the individual providing services to the entity. This is achieved by 'forcing' individuals to include the income generated by their personal skill or efforts in their personal tax returns. The deductions of a taxpayer who receives PSI are, generally, limited to the amount that he or she would be entitled to deduct if they had received the income as an employee.

However, the PSI rules do not apply to individuals or interposed entities if one of the required personal services business (PSB) tests (results test, unrelated clients test, employment test and business premises test) is satisfied. The primary test to be applied is the results test. If this test is met, there is no further requirement to self-assess against the other tests and the PSI rules do not apply. Taxation Ruling TR 2001/8 provides the Tax Office's interpretation of the results test. The ruling states that the results test is based on the traditional criteria for distinguishing independent contractors from employees.

In addition, the Commissioner has the power to grant a Determination, which has the effect of exempting a PSB from the PSI regime. Generally, a Determination will be granted if unusual circumstances existed that prevented the business from satisfying the tests or the business would have had, but for the unusual circumstances, two or more unrelated clients in the current income year.

➢ **STOP:** If a taxpayer fails the results test **and** the 80% rule in an income year, the taxpayer is not permitted to self-assess itself against the remaining tests. The PSI rules will apply unless a PSB determination is obtained from the Tax Office.

General anti-avoidance and PSB

It is a common misconception that income earned by a PSB is income from a business structure. The income derived by a PSB is still categorised as PSI for income tax purposes if it is income that is mainly a reward for an individual's personal efforts or skills. Therefore, the income (as distinct from income from a business structure) that is derived by the PSB may be subject to the application of Pt IVA, if:

- the income is split with an associate; or
- the income is split with another entity associated with the individual; or
- the income is retained in a company and taxed at the lower company tax rate.

However, remuneration paid to an associate (or service trust) for bona fide services related to the earning of PSI will not attract the application of Pt IVA if the amount is reasonable.

The Tax Office has stated that Pt IVA will not apply in the following situations:

The PSB is conducted through:	Situation
a company	There is no income splitting and no retention of profits in the company.
	If there is a bona fide attempt to break even, a relatively small amount of taxable income may be returned by the company provided that income is distributed to the individual by way of a franked dividend in the following year.
a trust	If the trustee is a corporate trustee, the situations are the same as for a company.
a partnership	If a partnership income results from the services of employees or the use of income-producing assets.

TIP: A partnership with a spouse will not attract the operation of Pt IVA if it is a genuine partnership.

- **STOP:** The Tax Office has issued Taxpayer Alert TA 2011/2 warning taxpayers against an arrangement where a labour hire firm utilises a discretionary trust for the purpose of alienating income from personal services and splitting it between the individual taxpayers who perform the services and their associates (eg a spouse or partner). The Tax Office claims there is limited economic rationale for the use of the arrangement, aside from attempts to circumvent the PSI regime.

Superannuation

Superannuation should not necessarily be viewed as a year-end planning matter but rather as a long-term retirement savings approach. However, it is worth reflecting on the various concessions and deductions available under the superannuation system which may impact on the tax position of a taxpayer.

Benefit withdrawal and re-contribution strategy

A re-contribution strategy may still produce tax benefits for those seeking to access superannuation benefits before age 60 or for estate planning purposes. In particular, the taxable component of a superannuation interest remaining after the death of a member is still subject to 16.5% tax when ultimately paid in a lump sum to a beneficiary who is not a 'death benefits dependant'.

Broadly, the aim of a re-contribution strategy is to convert part of a superannuation interest from a taxable component to a tax-free component. This strategy is relevant where benefits are paid to a person under age 60 (eg a transition to retirement pension) as the pension is deemed to comprise a portion of the total value of the superannuation interest reflecting the tax-free and taxable components. The underlying components also become relevant again upon the death of a member if the remaining benefits are paid to a non-dependant.

Re-contribution personal superannuation contributions are classified as non-concessional contributions and are therefore restricted by the annual non-concessional contributions cap. A person aged 65 to 74 must also satisfy the work test in order for a fund to accept the personal contributions. As a result, any re-contribution strategy needs to be carefully considered in the light of the taxpayer's particular situation.

Superannuation splitting

A member of an accumulation fund (or a member whose benefits include an accumulation interest in a defined benefit fund) is able to split with her or his spouse superannuation contributions made from 1 January 2006. The spouse contributions-splitting regime has also been extended to cover employer contributions to untaxed superannuation schemes and exempt public sector superannuation schemes.

While the relevance of spouse contribution-splitting has been reduced following the abolition of reasonable benefit limits and end benefits tax for those aged 60 and over, splitting contributions between spouses can still be a useful strategy to effectively transfer concessional contributions to the older spouse who will reach age 60 (and tax-free benefit status) first. In addition, contribution splitting may be relevant to access two low rate cap thresholds for superannuation benefits taken before age 60. However, it is not possible to split 'untaxed splittable contributions' (eg non-concessional contributions made after 5 April 2007).

A superannuation fund does not need to offer a contributions-splitting service for its members. However, a trustee that accepts a valid application must roll-over, transfer or allot the amount of benefits in favour of the receiving spouse within 90 days after receiving the application.

Tax treatment

A member's contribution that is split and paid to another fund is considered a 'contributions-splitting superannuation benefit' and treated as a roll-over superannuation benefit for the receiving spouse. Therefore, the contributions-splitting amount rolled over or transferred for the benefit of the member's spouse is not subject to the 15% contributions tax in the hands of the fund.

Where a contributions-splitting superannuation benefit is transferred to an account within the same fund and paid to a taxpayer because her or his spouse is a member of the superannuation fund, the receiving spouse is deemed by s 307-5(6) to be the member of the fund for tax treatment of the superannuation benefit.

At the benefit payment stage, a contributions-splitting superannuation benefit is deemed to consist entirely of a taxable component of a superannuation benefit.

A person entitled to a tax deduction for a personal superannuation contribution who wants to split personal contributions and claim a deduction must provide a notice under s 290-170 of ITAA 1997 to her or his superannuation fund before requesting the fund to split the contributions. Once a contribution has been split, a self-employed person is not able to make a new s 290-170 election to claim a deduction or amend an existing election in respect of the split amount. (*See* **Valid notice to claim deduction** on page 11.)

Spouse contributions tax offset

A tax offset is available up to $540 under s 290-230 of ITAA 1997 for a resident taxpayer in respect of eligible contributions made by the taxpayer to a complying superannuation fund or a retirement savings account for the purpose of providing superannuation benefits for the taxpayer's low-income or non-working resident spouse (including a de facto spouse).

A taxpayer is entitled to the spouse contributions tax offset only if:

- the contribution is made on behalf of a person who was the taxpayer's spouse when the contribution was made;
- both the taxpayer and the spouse were Australian residents and were not living separately and apart on a permanent basis when the contribution was made;
- the total of the spouse's assessable income, reportable fringe benefits and reportable employer superannuation contributions is less than $13,800;
- the taxpayer cannot and has not deducted an amount for the spouse contribution as an employer contribution under s 290-60 of ITAA 1997; and
- if the contribution is made to a superannuation fund, it must be a complying superannuation fund for the income year in which the contribution is made.

If the spouse in respect of whom the contribution is made is age 65 or over, the contribution cannot be accepted by the fund unless the spouse satisfies the requisite work test. Likewise, a regulated superannuation funds is not able to accept contributions on behalf of a spouse aged 70 to 74.

Spouse's income test and limit on amount of tax offset

The assessable income, reportable fringe benefits and reportable employer superannuation contributions of the spouse must be less than $10,801 in total to obtain the maximum tax offset of $540, and less than $13,800 to obtain a partial tax offset.

The taxpayer's own assessable or taxable income, and whether he or she qualifies for a deduction or tax offset for any superannuation contributions made on behalf of herself or himself, is irrelevant to entitlement to the rebate. Similarly, whether the spouse has any other superannuation is also irrelevant.

There is no limit on the amount of the actual contributions that can be made on behalf of the spouse, merely a $3,000 limit on the contributions for which a tax offset can be obtained. Where less than $3,000 is contributed, the tax offset is 18% of the actual amount of the contributions. Where the sum of assessable income, reportable fringe benefits and reportable employer superannuation contributions (if any) of the spouse is greater than $10,800, the $3,000 maximum contributions subject to the tax offset is reduced by $1 for each dollar of assessable income, reportable fringe benefits and reportable employer superannuation contributions in excess of $10,800 and an 18% tax offset applies on actual contributions up to this maximum.

Transition to retirement pensions

Broadly, a transition to retirement pension (TRP) allows a taxpayer who has reached preservation age to access his or her superannuation benefits by commencing a non-commutable pension or annuity without having to retire permanently from the workforce. At the same time an individual can salary sacrifice

employment income back into retirement savings. However, the pension cannot be cashed or commuted to a lump sum while the taxpayer is still working, unless a condition of release with a 'nil' cashing restriction has been satisfied (eg attaining age 65). All superannuation funds including self-managed superannuation funds are able to offer such a product to their members, provided the fund's deed allows it.

A TRP can take the form of a non-commutable allocated pension but has a maximum annual payment limit of 10%. Both the minimum and maximum annual payment amounts are calculated according to the 'account balance' under Sch 7 of the Superannuation Industry (Supervision) Regulations 1994. Further, the minimum annual payment amount is determined by the age of the taxpayer at the start of each financial year.

Therefore, it is necessary to decide how much superannuation capital needs to be set aside to guarantee a TRP within the minimum/maximum annual payment limits. Due consideration must also be given to the make-up of the capital, which consists of taxable components and/or non-taxable components, because the composition will impact upon the tax treatment of a pension received by a taxpayer under age 60.

Tax treatment

A TRP paid from a taxed source to an individual aged 60 or over is totally tax-free, ie NANE income. As such, it is not counted in working out the tax payable on any other assessable income of the individual.

Conversely, if an individual is under age 60, the 'taxable component' of a TRP paid from a taxable source is included in the individual's assessable income. Where the individual is above his or her preservation age (but below age 60) a 15% tax offset in respect of the tax component of the pension is available.

The tax-free component of a TRP paid from a taxed source is tax free, regardless of an individual's age.

Salary sacrifice and TRP

An advantage of a TRP is that instead of employment income being taxed at an individual's marginal rate, the salary sacrifice superannuation contributions are only taxed at the rate of 15% on entry into the superannuation fund. This, generally, result in less overall tax being paid on the pension income (as compared to employment income). However, it is important to note that the amount available for salary sacrificing is effectively restricted by the annual concessional contributions cap, which is determined by reference to an individual's age.

Another advantage is the income tax exemption available to superannuation funds in respect of income derived from assets that are segregated to support a fund's current pension liabilities.

Government co-contribution

Eligible low-income earners (including self-employed persons) may qualify for a government superannuation co-contribution payment. The amount of co-contribution is equal to 100% of the sum of eligible personal superannuation contributions up to a maximum of $1,000 per annum for a $1,000 personal contribution.

Note that indexation of the co-contribution income thresholds have been frozen so that the lower and higher income thresholds will remain at $31,920 and $61,920, respectively, for the 2010/11 and 2011/12 income years. Indexation of the thresholds will recommence for the 2012/13 and later income years.

For the 2010/11 income year, the maximum government co-contribution ($1,000) is available to qualifying individuals whose total income for the year does not exceed the lower income threshold of $31,920. The maximum government co-contribution is reduced by 3.333 cents for each dollar an individual's total income exceeds $31,920 for 2010/11. The co-contribution ceases to be available once the individual's total income reaches the upper income threshold of $61,920 for 2010/11. There is a minimum co-contribution of $20, ie if the co-contribution payable to a person would be less than $20, the amount is increased to $20.

For the purposes of determining the amount of co-contribution payable, a person's total income for an income year is reduced by amounts for which the person is entitled to a deduction as a result of carrying on a business. These deductions do not include work-related employee deductions or deductions that are available to eligible individuals (including the self-employed) for their personal superannuation contributions. However, for the purposes of determining eligibility for the co-contribution and whether an individual satisfies the 10% test, total income is not reduced by the deductions that result from carrying on a business.

To qualify for a government co-contribution, a person must:

- have made one or more eligible personal superannuation contributions during the income year for which no deduction has been allowed to a complying superannuation fund or retirement savings account. The contribution must be made to obtain superannuation benefits for the person making the contribution or, in the event of the person's death, her or his dependants;

- have at least 10% of their total income for the income year from carrying on a business (ie self-employed) or attributable to activities that result in the person being treated as an 'employee' for superannuation guarantee purposes, or a combination of both;
- have a total income for the year that does not exceed $61,920 for 2010/11. Total income is the sum of assessable income, reportable fringe benefits, and reportable employer superannuation contributions;
- be aged under 71 on 30 June of the year in which the contributions are made. For persons aged 65-70, the additional work test rules (ie gainful employment for at least 40 hours in a period of not more than 30 consecutive days in the financial year in which the contribution is made) must also be satisfied for a complying superannuation fund or retirement savings account to accept contributions from a person;
- lodge an income tax return for the year; and
- not have held an eligible temporary resident visa during the income year.

Reportable employer superannuation contributions

It should be noted that since from 1 July 2009, reportable employer superannuation contributions have been counted towards the maximum employee earnings limit for deducting personal contributions, the co-contribution income test and other income tests for various tax concessions and government assistance programs.

A reportable employer superannuation contribution is an amount contributed to a superannuation fund by an employer (or an associate of an employer) for the benefit of an employee (eg under a remuneration package), but only to the extent that the individual has or had, or might reasonably be expected to have or have had, the capacity to influence the size of the amount and/or the way the contribution is made (so that the employee's assessable income is reduced.

However, a contribution made by an employer that meets the employer's requirements under the superannuation guarantee scheme is not a reportable employer superannuation contribution, nor is a contribution made under an arm's length industrial agreement that the employee had no capacity to influence. In addition, a contribution is not a reportable employer superannuation contribution if the amount is included in the employee's assessable income, ie contributions made from 'post-tax' income).

Reportable superannuation contributions

A person's reportable superannuation contributions are the sum of his or her 'reportable employer superannuation contributions' and any deductible personal contributions for a financial year. Reportable superannuation contributions form part of a person's adjusted taxable income for various purposes including:

- the Medicare levy surcharge (but not the Medicare levy);
- the pensioner tax offset and senior Australians tax offset;
- the spouse superannuation tax offset; and
- the dependant tax offsets.

Pensions – minimum annual payment amounts

Account-based pensions and annuities must meet the minimum payment rules set down in Sch 7 of the SIS Regs. The payment rules specify minimum annual limits only. For the 2008/09, 2009/10, 2010/11 financial years, the minimum limits have been halved by 50%.

Minimum annual drawdown factors (50% reduction for 2008/09, 2009/10 and 2010/11)		
Age of beneficiary (years)	**Minimum annual drawdown for 2008/09, 2009/10 and 2010/11 (%)**	**Minimum annual drawdown for 2011/12 onwards (%)**
0–64	2	4
65–74	2.5	5
75–79	3	6
80–84	3.5	7
85–89	4.5	9
90–94	5.5	11
95+	7	14

TIP: The halving of the limits ends on 30 June 2011 and the original limits will return (unless extended again by the Government). Pensioners who are concerned whether they have adequate monies to fund their long-term retirement should consider taking advantage of this concession.

Excess contributions tax

The Tax Office has reminded taxpayers to consider the superannuation contributions caps when planning tax affairs to avoid excess contributions tax. Some of the factors taxpayers should consider include:

- triggering of the bring-forward provisions of the non-concessional contributions cap;
- changes in personal circumstances, including pay rises which may alter the amount of concessional contributions made to the superannuation fund;
- the amount of employer-paid costs such as administration fees, insurance premiums, etc which may count towards the concessional contributions cap; and
- the age of the taxpayer.

The Tax Office has further emphasised that the timing of when the fund actually receives the contributions is crucial in determining which year the contributions fall into for cap purposes.

Commissioner's discretion

A taxpayer who has contributed above his or her concessional or non-concessional contributions caps can apply to the Commissioner to disregard or reallocate excess contributions for a financial year under s 292-465 of ITAA 1997. An application must be made on the approved form within 60 days of receiving an excess contributions tax assessment (or a longer period allowed by the Commissioner).

For applications made on or after 17 November 2010, the Commissioner can make a determination under s 292-465 without first issuing an excess contributions tax assessment. However, the Commissioner can only make a determination after all of the contributions to be disregarded or reallocated have been made. If a taxpayer receives an excess contributions tax assessment, the application period of 60 days following the receipt of the assessment still applies.

It should be noted the discretion is not easy to obtain. The Commissioner will only exercise his discretion where 'special circumstances' apply, ie where the resulting breach of a contributions cap is inadvertent and has arisen through no fault of the taxpayer. Guidance on when the Commissioner may exercise the discretion is contained in Practice Statement Law Administration PS LA 2008/1.

A determination under s 292-465 is not reviewable under the *Administrative Decisions (Judicial Review) Act 1977*, but instead a taxpayer who is dissatisfied with a determination may object against the relevant assessment: s 292-465(9).

TIP: The reduction in the concessional contributions cap to $25,000 ($50,000 for those aged 50-74) since 1 July 2009 means that more individuals are now at risk of inadvertently breaching their annual contribution cap. Therefore, it is important to review salary sacrificing arrangements, transition to retirement pensions and deductible personal superannuation contributions, which are only tax-effective where an individual is within his or her concessional contributions cap.

Pending developments

The Government has issued a consultation paper seeking comments on its proposal to allow individuals aged 50 and over with total superannuation balances below $500,000 to continue making up to $50,000 per year in concessional contributions. The paper presents a number of options for determining eligibility for the $50,000 cap from 1 July 2012 and the methodology for determining total superannuation account balances. Public consultation closed on 25 March 2011.

Natural disasters – some important tax considerations

Natural disasters such as the Queensland floods in early 2011 resulted in the tragic loss of lives and wreaked havoc and devastation. Many businesses and livelihoods suffered severe damage or loss. However, amongst the chaos, it is still important that business owners be aware of the tax implications that may arise from the destruction of their business assets and trading stock (including livestock).

Destruction of CGT asset

The loss or destruction of a CGT asset will ordinarily give rise to CGT event C1, any gain from which will prima facie be eligible for the roll-over in Subdiv 124-B. Furthermore, the time of the loss or destruction will be the same as for CGT event C1 – namely, when the compensation for the loss or destruction is first received (as relevant).

'Loss or destruction' includes the partial destruction of a CGT asset. However, in practice, in may be difficult to determine the difference between the 'partial destruction' of a CGT asset (for which the rollover is available) and 'permanent damage' to a CGT asset (to which the principles in Taxation Ruling TR 95/35 will instead apply to reduce the cost base of the damaged asset by the compensation received without any immediate CGT consequences).

Destruction of homes

In the case where a home has been destroyed, there are no CGT consequences associated with its destruction or the receipt of compensation to rebuild or repair the home given the CGT exemption for main residences. (The same would apply in respect of any pre-CGT property or assets that are also exempt from CGT.)

However, to the extent that a post-CGT home would have been subject to a partial CGT exemption because of income use of the home or its failure to qualify as a main residence throughout the whole period that it has been owned, then the roll-over rules in Subdiv 124-B will apply to the extent that a capital gain would have been realised on the home under these partial exemption rules.

Primary producers

A primary producer can access two special concessions under Subdiv 385-E of ITAA 1997 if the primary producer made a 'tax profit' on the forced disposal (ie sale) or death of their livestock. The first concession allows the primary producers to elect to spread the tax profit over five years. The second concession permits the primary producers to defer including the tax profit in their assessable income if the profit is mainly used for replacement stock. The concessions do not automatically apply. The primary producer must make an election under Subdiv 385-H.

Trading stock

If the taxpayer receives an amount of insurance compensation for loss of the trading stock, that amount is assessable income: s 70-115. As discussed above, where the trading stock was livestock, the taxpayer may be able to access the concessions available to primary producers.

Paid Parental Leave scheme

The Federal Government's Paid Parental Leave scheme commenced on 1 January 2011. Under the scheme, eligible employees with a child born or adopted on or after 1 January 2011 can take 18 weeks of paid parental leave at the national minimum wage (currently $570 per week). Paid parental leave is funded by the Federal Government.

From 1 January 2011, an employee and his or her employer can agree (ie it is voluntary) for the employer to provide paid parental leave pay. If they do so, the Family Assistance office will fund the employer to make the payment. From 1 July 2011, the scheme becomes compulsory and an employer must provide paid parental leave pay if the eligible employee has worked with the employer for at least 12 months prior to the expected date of birth or adoption of the child and the employee will be receiving at least eight weeks of parental leave pay.

In general terms, to be eligible for the Paid Parental Leave scheme, a parent in paid work:

- must have worked continuously with one or more employers for at least 10 of the 13 months before the expected date of birth or adoption;
- must have worked at least 330 hours in those 10 months (equivalent to around one full day of work each week); and
- must have an adjusted taxable income of $150,000 or less in the financial year prior to the date of birth or adoption of the child.

Tax implications

The new scheme has a number of tax implications, some of which include the following:

- Paid Parental Leave payments received by employees are assessable income;
- employers will need to declare Paid Parental Leave funding amounts received from the Family Assistance Office as assessable income (it is considered to be ordinary income) and they can then claim a tax deduction for the amount of Parental Leave pay provided to an employee;
- employers can claim tax deductions for 'reasonable costs' of complying with the scheme;
- employers are required to withhold PAYG amounts from parental leave payments;
- Paid Parental Leave is not subject to superannuation guarantee payments;
- Paid Parental Leave payments are not subject to payroll tax or workers' compensation premiums;
- Parental Leave pay will count as taxable income for family tax benefit (FTB) and child support purposes in the financial year it is received;
- a taxpayer will generally not be entitled to a dependent spouse, child-housekeeper or housekeeper rebate for that part of the income year for which parental leave pay was payable to the taxpayer or their spouse;
- employees can salary sacrifice their parental leave pay for non-cash remuneration where that arrangement is offered by the employer;
- family payments such as the baby bonus and FTB will remain available for families not eligible for the scheme, and for those who choose not to participate in the scheme.