

# Post-Election Tax Snapshot

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Parliament resumed on Tuesday 12 February 2008. As this was the first sitting day for the new Government elected in last year's November federal election, we thought it might be useful to give you with a snapshot of some potential tax changes on the horizon.

The new Government didn't go into last year's election with tax as one of its overall high profile campaign strategies. However, there were a number of key election tax proposals.

### A word of caution

What follows are proposals at this stage only – we have yet to see what steps the Government will take to realise them, if at all.

### Proposals for individuals

- **Resident individual income tax rates** should be 15%, 30% and 40% by 2013-14 (this is an aspirational goal). In the meantime, it was indicated that from 1 July 2008 the taxable income threshold at which the current 30% rate cuts in will increase from \$30,001 to \$34,001, going up to \$35,001 from 1 July 2009 and \$37,001 from 1 July 2010.
- A **50% education tax refund** for families, with a maximum of \$375 each year per child attending primary school and a maximum of \$750 each year per child in secondary school (you will have to receive Family Tax Benefit (Part A) to access this proposed tax refund).



- **Access to Family Tax Benefit (Part B)** will be limited to families with an adjusted taxable income of less than \$250,000.

- **Increase the Child Care Rebate** from 30% to 50% (covering up to \$7,500 of out of pocket expenses per child) and pay the rebate quarterly rather than yearly.
- Persons over 18, who satisfy the First Home Owners Grant eligibility criteria, will be able to open a **First Home Saver Account**. There will be a minimum savings period of 4 years until withdrawal and a number of rules around how much you need to contribute. Account earnings will be taxed at 15% and withdrawals from the account will be tax free if used for an eligible first home purchase.
- Reverse changes made by the previous Government late last year to the **family trust election provisions**. This proposal is controversial because the changes tidied up a number of problem areas in these rules, e.g., by allowing the revocation of family trust elections and amending the definition of 'family' to ensure the rules operate more equitably.



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**Business related proposals**

- **Reduce withholding tax** to 15% on certain distributions from Australian managed funds to non-resident investors.
- Examine the opportunity for a **managed investment tax regime** (including a specific tax regime for Real Estate Investment Trusts).

**Superannuation proposals**

- Establish a **superannuation clearing house**. Whilst the choice of fund regime will be retained, it is proposed to allow businesses the option to make payments into one central private sector clearing house at which point their legal responsibility to make employee super contributions will be discharged.
- **Inactive lost superannuation accounts** will be automatically consolidated.
- Whilst the new Government has indicated at this stage that employers will not be required to contribute beyond the existing compulsory 9% **Superannuation Guarantee**, they have indicated that a total savings target of 15% is more appropriate. It is proposed to achieve this by looking at ways to provide additional incentives to low and middle income earners to add to the 9% Super Guarantee through personal contributions and Government incentives (such as an enhanced co-contribution schemes).

- Consider expanding the **super co-contribution scheme** through lifting the \$1,500 cap or relaxing the means test to help those on middle incomes.
- Labor indicated that they supported the previous Government's welcomed proposal to remove the double penalty on employer **late Super Guarantee payments**.

## *Keeping FBT Fit*

The fringe benefits tax (FBT) year end is just around the corner on **31 March 2008**.

Ongoing investigations by the ATO show that FBT compliance is not as good as it could be – so FBT is on the ATO's audit hit list.

Now is the time to check whether you have provided any fringe benefits to your employees in respect of their employment that are taxable and make sure you are ready to lodge your FBT return and pay any FBT liability on time.

We are here to help you make sure that you are making the most of planning opportunities and that your business is up to scratch when it comes to its FBT compliance.

**Checklist of some FBT basics**

- The current FBT year runs from 1 April 2007 to 31 March 2008.
- As an employer, you have to calculate and pay any FBT liability.
- If you have an FBT liability, you must lodge your FBT return and pay your FBT liability by 21 May 2008.
- FBT is separate from income tax and is levied at the top personal marginal rate of income tax, including the Medicare levy (i.e., currently 46.5%);
- You can generally claim an income tax deduction for the cost of providing fringe benefits and for the FBT you pay.
- Where the total taxable value of reportable fringe benefits for an employee is more than \$2,000 for the current FBT year, you will have to disclose this value (grossed-up) on the employee's payment summary.



## Checklist of common fringe benefits

The following list of benefits is not an exhaustive catalogue of all possible fringe benefits, but highlights some of the more common situations in which fringe benefits tend to arise.

If you are providing any of the following benefits to your employees, you are probably providing a fringe benefit and will need to determine whether or not you have a fringe benefits tax liability:

- making **cars or other vehicles** owned or leased by your business available to your employees for their private use;
- providing your employees with **loans** at reduced interest rates;
- releasing an employee from a **debt**
- paying for or **reimbursing a non-business debt** incurred by an employee;
- providing a **house** or some other type of accommodation to your employees;
- providing an employee with a **living away from home allowance**;
- providing your employees with **goods** at a lower price than they are normally sold to the public;
- providing **entertainment** for your employees by way of food, drink and/or recreation; and

- you have **salary packaging** arrangements in place with your employees.

### Tip on super contributions

Superannuation contributions you make under a salary sacrifice arrangement to a complying superannuation fund for the benefit of an employee are not fringe benefits.

However, if you pay super contributions for the benefit of your employee's spouse (or other associate), they are considered to be a fringe benefit.

## Spotlight on business-owned cars

The ATO is turning the spotlight on business-owned cars to make sure employers are meeting their FBT obligations in respect of employee car benefits:

- if you currently attribute a high level of business use to a **luxury car**, the ATO may want to know how you have worked out the tax treatment; and
- we also understand that the ATO is targeting some taxpayers with a general questionnaire about **business-owned cars over the past 2 years** to make sure there are no undisclosed FBT liabilities.

## Tips for reducing your FBT exposure

Everybody is a winner if you can make use of FBT **exempt benefits**.

Provided you comply with any requirements that make a particular benefit FBT exempt, you don't have to pay any FBT on this benefit.

Also these types of benefits are generally not subject to income tax in the hands of your employees.

### Some common FBT-exempt work related items include:

- mobile phones (must be used primarily for employment);
- a notebook, laptop or similar computer (only 1 per employee per year);
- computer software (e.g., electronic diary software);
- an electronic diary or similar item;
- personal digital assistants and portable printers designed for use with work-related portable computers;
- briefcases and calculators;
- protective clothing required for a job; and
- tools of trade (e.g., you are in the building industry and provide your employees with loose tools like hammers, wrenches, chisels and hand operated power tools).

**What's new in FBT that you should know about**

Starting in the current fringe benefits tax (FBT) year (1 April 2007 – 31 March 2008) there is:

- an increase in the **minor fringe benefits** threshold from \$100 to \$300 per employee;
- an increase in the taxable value that applies to eligible fringe benefits (e.g., '**in house**' **benefits** like goods or services you provide to your employees that are identical or similar to those you supply to the public) from \$500 to \$1,000;
- an **extended definition** of '**remote**' for the purposes of the FBT concessions;
- an exclusion of **pooled or shared vehicles** from the FBT reporting requirements; and
- an **increase in the reportable fringe benefits tax threshold** from more than \$1,000 to more than \$2,000.

**Where's the potential benefit?**

These changes may help you to provide more fringe benefits to your employees in a way that is tax effective for your business, whilst at the same time keeping your employees happy..

# *Self Employed Super Options*

If you are self employed, it is important for you to understand your superannuation options.

There are some changes in the simpler super reforms in 2007 that may result in tax savings for the self employed

As a general rule if you are self-employed, you are not required by law to contribute to a super fund. If, like some people, your income is a combination of self-employment income and employment income, there is still a compulsory Superannuation Guarantee obligation in respect of your employment income.

**A note of caution**

If you are paid as a sole trader under a contract that is wholly or principally for your labour, your client will still have to make compulsory super contributions on your behalf as part of the Superannuation Guarantee regime.

If you are self-employed you need to decide whether and to what extent you want to use super as part of your retirement savings' strategy.

Here is a checklist of the some of the super issues you need to consider if you are self-employed:

**Self managed superannuation funds**

Self managed superannuation funds (SMSFs) continue to be a popular retirement savings' vehicle.

However, having an SMSF is not just about the attractive tax concessions.

**Is an SMSF a viable option for me?**

You must decide whether a SMSF is right for you. This will involve getting advice about tax and accounting issues, legal matters and financial planning. It pays to bear in mind that:

- your super fund must have sufficient funds invested to meet your retirements needs;
- there is no legally required amount of money that has to be invested in your fund; and
- it's also common sense that your fund should be able to meet your retirement needs so that the set-up and running costs are worthwhile.

**Who is responsible for the fund?**

You are – if you choose to set up a DIY super fund you (and all other members of the fund) will be a trustee of the fund.

**The buck stops here**

Even though you can get advice about setting up a fund and assistance with running it from appropriately qualified professionals, you as a trustee are legally responsible for making sure the fund is correctly structured and meets all regulatory and reporting requirements – the buck stops with you!

**Who do I talk to about SMSFs?**

It's important to get the right advice from the right person.

At Brealey Quill Kenny we:

- can advise you on and help you with all tax matters in relation to your SMSF;
- can help with all aspects of setting up the fund;
- can help you run it (e.g., prepare accounting records, produce financial statements and prepare and lodge returns)

can help you in relation to setting up and running a fund, such as establishing the required trust.

*If required we can also arrange for a licensed financial adviser to:*

- give you advice about investment products to ensure that your investments and level of contributions meet your retirement needs
- help you prepare and implement an investment strategy for your fund
- advise you whether an SMSF or a particular investment product is the right financial decision for you

**Super co-contributions**

From 1 July 2007, as a self employed person who personally earns business income from running a business as a sole trader, or in partnership, you may now be eligible for some super co-contribution if:

- you make personal super contributions up to \$1,000 during the 2007-08 year;
- your total income for the 2007-08 year is less than \$58,980; and
- 10% or more of your total income is from eligible employment, running a business or combination of both.

For 2007-08, the super co-contribution:

- is payable up to a maximum amount of \$1500 when your assessable income and reportable fringe benefits is \$28,980 or less; and
- cuts out altogether when your assessable income and reportable fringe benefits \$58,980 or more.



**Deductions for your contributions**

Before 1 July 2007 a self-employed person who contributed to their super could only claim the first \$5,000 and 75% of any amount over \$5,000 as a tax deduction – and this was also subject to age-based limits.

The good news is that self employed persons may now be able to claim a full tax deduction for superannuation contributions made from 1 July 2007.

You can now do this for any superannuation contributions you make until you turn 75 as long as you meet certain eligibility criteria.

**Tip**

Make sure you get advice about whether you can claim a deduction for your superannuation contributions before you make them!

If you do make tax-deductible contributions, it's very important to keep an accurate record of just how much you have contributed.

Don't forget that concessional contributions over the limit of \$50,000 per annum (or \$100,000 per annum up to 30 June 2012 for people over 50) will effectively be taxed at the top marginal rate plus Medicare levy – that's 46.5% - ouch!!