Geoffrey Cliff & Associates

Public Accountants and Registered Tax Agent

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Act now to secure these business deductions

Small businesses may want to act now and bring forward their capital purchases if they still wish to utilise the instant asset write-off of $6,500 or the $5,000 motor vehicle write-off in 2013-14.

The details of the government's repeal of the Minerals Resource Rent Tax (MRRT) make it clear that some small business tax concessions put in place by the former government are to be wound back if the MRRT repeal is passed (and at an even earlier date than the MRRT itself, if the legislation passes as the government intends).

If successfully legislated, repeal of the small business capital allowance concessions will apply from January 1, 2014 – six months earlier than the proposed repeal of the MRRT, which is scheduled for July 1, 2014. Businesses thinking of acquiring a depreciating asset costing less than $6,500 or a motor vehicle may want to do so before the proposed January 1 date to take advantage of these concessions while they still exist.

Until December 31, 2013, the capital allowance concessions available to small businesses are as follows:

- an immediate tax deduction available for business plant and equipment purchased with a cost of less than $6,500, and
- a small business that purchases a motor vehicle for business use is entitled to an immediate deduction of the first $5,000 value of the motor vehicle plus 15% of any additional value.

The remaining value is allocated to the small business general pool with a rate of 30% to be claimed in subsequent income years. These concessions are only available to businesses that have a small business pool.

After January 1, legislation amendments may:

- reduce the $6,500 threshold to the previous amount of $1,000 so that assets exceeding the $1,000 threshold will instead be allocated to a special small business general pool for depreciation claims, and
- repeal the special rule for motor vehicles so they will be depreciated by small businesses in the same manner as other depreciable assets.

It is expected that the proposed amendments will have retrospective application if the bill to repeal the MRRT and related measures is passed in the new year. Without guidance to the contrary, eligible businesses should consider bringing forward capital purchases before the new year if they wish to maximise their deductions for the 2013-14 income year.

Keep in mind that the mere execution of a contract to acquire an item would not be deemed sufficient under taxation law as a start date. They must be "first used" or "installed ready for use" before January 1, 2014, to be subject to the concessional treatment. ■

About this newsletter

Welcome to Geoffrey Cliff & Associates' client information newsletter, your monthly tax and super update keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics covered, please contact us via the details below.

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Also in this issue:

The tax implications of natural disasters

Bushfires, floods, storms – natural disasters come in many forms. Even strong winds and heavy rain are very capable of wreaking a lot of damage, and with these destructive events can come loss of income, either from damage to your workplace or business vehicle, let alone your tools of trade and essentials such as computers. And imagine the devastation that losing your house would cause.

With the recent major bushfires in New South Wales, the Tax Office implemented a freeze on the requirement for affected taxpayers to meet their tax obligations. Support measures included a blanket deferral of lodgement deadlines for tax returns and activity statements. In past natural disaster responses, the Tax Office also stopped the general interest charge on delayed tax obligations.

Other possible measures the Tax Office has been able to offer after recent natural disasters, where emergency assistance is supplied by workplaces for their staff (such as support with accommodation or transport), is help in accessing certain fringe benefits tax (FBT) concessions that enable employers to provide short-term assistance to their employees without FBT implications.

Also, after the Victorian "Black Saturday" bushfires in 2009, for example, a blanket deferral was placed on tax debt recovery action for taxpayers in areas that were affected. The measures were subsequently lifted, but the Tax Office says that such actions will be considered again if and when such needs arise.

Are emergency payments taxed?

Generally, one-off assistance and emergency payments from charities are not taxed. Usual Centrelink payments are taxable, but there are some emergency payments from Centrelink that may not be, however it will pay to check if you're not sure, or ask this office for assistance.

If an employer offers one-off emergency assistance payments, these may not necessarily be counted as taxable income, and help by way of cash gifts from family and friends in most cases escape tax. Having said this, salary or wages paid in advance will likely be taxed, as these are considered part of ordinary income.

If you know you will experience difficulty meeting a tax bill due to the effects of a natural disaster, you can ask the Tax Office for more time by calling 13 11 42 (or have us call on your behalf). This includes amounts owing as a result of your business activity statement (BAS).

Lost paperwork

If through natural disaster you lose necessary tax records, the Tax Office can help. After establishing proof of identity, it can re-issue documents such as income tax returns, activity statements and notices of assessment. Employers should keep copies of PAYG statements, but if you're your own boss, the Tax Office should be able to help here too.

If the documents that you would normally keep to back up tax claims have gone up in smoke, the Tax Office says it can accept that you have made a claim "without substantiation" if it is within reason. Also a tax officer can help reconstruct your records and fill in a "reasonable estimate for documents destroyed by disaster" form that will help put your tax affairs back on track (ask this office if you need a copy of this form).

And if you have lost all records of your tax file number, it is still possible to get whatever information you will need. The Tax Office will allow people affected by natural disaster to use other information such as date of birth, address or bank account details to verify tax information.

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These various costs can be divided into:

1) Establishment costs

If an individual wants to operate an SMSF, the fund needs to be formally established. The costs associated with this include:

- the legal and related costs of establishing and registering the superannuation trust:
  - trust deed
  - Tax Office application forms
  - cash management account application
  - provision of binding death nomination forms
  - sample investment strategy
  - notice of election to become a regulated fund
  - general trust advice.
- the legal and related costs of establishing and registering the corporate trustee for those SMSFs that choose this route in preference to having individual trustees:
  - searches and reservations of company names
  - preparation of company constitutions, memoranda and articles of association
  - incorporation and registration of the entity, and
  - general corporations law advice.

It is recommended that a corporate trustee is utilised because it provides for simpler succession of trustees, inclusion of new members and the ownership of assets. Small business owners are urged to establish a separate trustee company separate from their business.

2) Annual compliance costs

There is a range of fees that are necessary to operate an SMSF as they are either government charges or require professional support. Known as annual compliance administration costs, they include costs for:

- statutory charges
- financial statements and tax return, and
- the audit.

The table below summarises the range of annual compliance administration costs for both funds that are accumulation only and for those that pay pensions:

3) Non-standard asset charges

Most service providers levy extra charges if an SMSF holds non-standard assets or borrows to finance an asset purchase. The table on the following page provides a representative example of the application and size of these fees:

4) Investment management fees

SMSFs make use of managed funds for a small proportion of their investments and as a result incur fees for investment management based on the size of their holding. There is a wide range of investment management fees charged in the market, ranging from simple index funds to actively managed funds for specialty assets:

Fee level	*Fee*
Low	0.35% per annum
Mid	0.78% per annum
High	1.20% per annum

5) Full administration costs

Should the trustee not wish to be involved at all in the administration of the fund, they will incur higher fees for full administration services including investment accounting, access to online investment platforms, and investment analysis and reporting. These fees range from $2,225 for less complex funds to $7,200.

Annual compliance administration costs

Fee	**Low**	**Mid**	**High**
Annual ASIC fee	$43	$43	$43
ATO supervisory levy	$200	$200	$200
Audit fee	$300	$440	$500
Financial statements and tax return	$620	$855	$1,624
Total accumulation	$1,163	$1,538	$2,367
Fee if the fund pays pension	$250	$264	$330
Actuarial certificate	$180	$210	$260
Total pension (no certificate)	$1,413	$1,802	$2,697
Total pension (with certificate)	$1,593	$2,012	$2,957

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6) Winding up an SMSF

The process for winding up the fund – be it due to a marital breakdown, migration out of Australia, or the desire to transfer the benefits – includes:

- preparing final financial statements for the fund
- having the fund audited
- lodging tax returns
- paying all levies
- paying or transferring benefits
- closing accounts
- notifying the Tax Office of the wind up, and
- deregistering any corporate trustees.

The levies are equivalent to those required for the annual operation of the fund. The final year costs for the SMSF will therefore be within the ranges specified for the operation of the funds.

SMSF costs vs APRA-regulated funds

The pros and cons of each minimum cost-effective balance in relation to APRA-regulated funds are:

- **SMSFs with less than $100,000:** Not competitive and are typically more expensive than all APRA-regulated funds, unless they can grow into a competitive size within a reasonable time
- **SMSFs with $100,000 to $150,000:** Competitive with more expensive and large superannuation funds (such as retail personal superannuation funds) but only slightly more competitive than retail funds, provided they carry out the broader investment administrative functions themselves
- **SMSFs with $200,000 or more:** Competitive with both cheaper and more expensive industry and retail funds provided the trustees undertake some of the administration
- **SMSFs with $250,000 or more:** SMSFs become the cheapest alternative compared with all types of superannuation funds, provided trustees undertake some of the administration
- **SMSFs with more than $500,000:** SMSFs is the cheapest alternative regardless of whether a trustee does or does not require full administrative assistance. Even if an SMSF of this size is paying higher fees than the typical APRA-regulated fund, it is because they may have more complex investment arrangements that are not possible within an APRA-regulated fund.

In conclusion, SMSFs are an expensive alternative to members with small balances. If you plan to outsource your SMSF administrative matters, you will need $500,000 in superannuation for your SMSF to remain a cost-effective option. If you are willing to perform at least some of the fund's administration, you will need between $200,000 and $250,000 in superannuation, and it is necessary a fledgling SMSF grows to over $200,000 within two to three years of establishment to remain viable.

Consult this office for advice on whether you should make the transition, or if is the best option for your retirement savings if you are already in an SMSF. ■

Cost of non-standard assets

Asset type	Annual fee per type
Real property	$220 per annum per property
Borrowing arrangement	$220 p.a. per borrowing arrangement
Unlisted shares	$220 p.a. per unlisted shares
Private trusts	$220 p.a. per private trust
In-house assets	$220 p.a. per in-house asset
Loans	$220 p.a. per loan
Collectables	$110 p.a. per collection type
Derivatives trading account	$220 p.a. per trading unit
Plant, equipment and capital improvements (e.g. renovations, appliances etc)	$220 p.a.
Additional audit fee	$66 per special asset type

Can interest and borrowing costs on investments be claimed as deductions?

Investors are frequently faced with questions and issues regarding the correct tax treatment of certain aspects of financial products, and sometimes the various features of these products. An important question that crops up on a regular basis is whether investors can claim tax deductions for interest and borrowing costs that they have incurred in the process of funding their investment.

Generally, it is not safe to simply assume that you will be entitled to claim such expenses, even if the issuer of the product suggests that these costs are tax deductible for some or for all investors – and this is especially the case where the arrangement is highly complex. Ideally, investment products that are covered by a product ruling from the Tax Office will provide certainty about the most pertinent tax treatment.

Depending on the investment, possible tax outcomes, which depend upon the relevant product and its features, include:

- The investment is subject to capital gains tax (CGT) – interest *may* be included in the cost base of the investment and, as a result, the interest incurred cannot be deducted. In this case, the interest will reduce any capital gain that arises when the investment matures.
- The investment is subject to both CGT and income tax under the ordinary rules. Dividends, distributions, coupons or any other income received during the life of the investment are subject to income tax under the ordinary rules, and any gain at maturity is subject to CGT. Deductions for interest or borrowing expenses may be limited to the amount of income received each year, especially where it can be shown that an investor could not reasonably expect to receive income (over the life of their investment) that exceeds the expenses incurred.
- An investment in a longer-term financial product that involves a profit-making scheme should be accounted for at maturity, on a net basis, as a profit-making scheme or undertaking. Investors in such products do not account for amounts that are received or paid during the life of their investment – instead, these amounts are netted off against one another when the investment ends. If amounts received are greater than amounts paid, then this amount will be reported as assessable income and increase an investor's taxable income. If amounts received are less than amounts paid, then this amount can be deducted on the investor's tax return.
- An investment that generates income in excess of outgoings, or is reasonably expected to do so, means that interest and borrowing costs are fully deductible on revenue account in the relevant income year.

Rental property — some costs are against income, some against capital

Some typical examples can be found with costs incurred for rental properties. If you take out a loan to buy a rental property, interest charged on that loan is generally available as a deduction where the property is rented to an unrelated third party. Also, interest charged on borrowings made to buy depreciating assets, or for many repairs, are generally able to be claimed.

Note that the Tax Office specifies that these deductions are only available for a property that is rented — however the wording of the tax law also allows an investor to make such claims where the property is "available for rental". In other words, as long as the property is listed or advertised as being vacant and available for occupation, the interest charges on any loans taken out for that property can be claimed. Be mindful that where a property is "available for rental" for large periods of time a risk that the Tax Office will view it as not actually "available" may raise the danger of having the deduction invalidated.

Regular management fees or commissions paid to a property agent or real estate agent for managing,

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inspecting or collecting rent on your behalf are also generally claimable. However a rental property owner is not eligible to claim commissions paid to someone they engage to find a suitable rental property to buy, nor for the sale of a property they already own. These costs usually form part of the cost base of your property for CGT purposes, but you will need to confirm with our office as this may depend upon circumstances.

Certain expenditure for repairs made to the property may be deductible, but they must relate directly to wear and tear or other damage that occurred as a result of your renting it out. However, the following expenses are capital in nature and are not deductible:

- replacement of an entire structure or intrinsic item of the property (such as a fence or bungalow, a stove, kitchen cupboards or fridge)
- renovations that are actual improvements, extensions or works that are alterations to the existing building, and
- repairs that remedy defects, damage or deterioration that existed at the time you bought the property.

There may also be scope to make capital works deductions for some of the above repair or replacement works.

Most legal expenses are deemed to be of a capital nature, and are therefore not deductible (such as the legal costs involved with buying or selling a property). However one legal expense that can be claimed is the cost of evicting a non-paying tenant. For more on deductions for investments, check with this office. ■

Super contributions and problems of excess

The treatment of excess superannuation contributions has been a contentious issue for some years, with many people falling victim to the punishing excess contributions tax through inadvertently going over the limits. The reasons this can happen include an employer making contributions that may fall within a different financial year, expense reimbursement or debt forgiveness which is directed to super, or perhaps a pay increase giving rise to more salary sacrificed super than expected.

The situation has not been made easier by successive governments changing the contribution cap limits on a relatively frequent basis, which has made keeping within these limits an, at times, elusive task.

But whatever the reason, breaches of the concessional and non-concessional super contribution caps has been an all too familiar apprehension for many pre-retirees, faced with having to pay an extra tax on the excess.

In 2013-14 the annual concessional contributions cap is set at $25,000. A higher cap of $35,000 applies for those aged 60 and over. These contributions are generally made from before-tax employment income, and are tax deductible to the employer making the contribution. Some scope also exists for concessional contributions to be made by an individual on their own behalf where they are not an employee. The deductibility for these personal superannuation contributions are subject to additional rules (ask this office if you'd like to know more).

Non-concessional contributions are predominantly made up from after tax income, and can include personal contributions that have not been claimed as a deduction, and spouse contributions. Excess concessional contributions are counted towards the non-concessional cap. The non-concessional cap is set at six-times the concessional cap, and is therefore $150,000 (even for the age-based variation mentioned above).

For members aged under 65, the non-concessional cap for the following two years can be brought forward, allowing for a $450,000 cap for the three year period. But there is no member election actually involved — if the non-concessional cap is exceeded (even by one dollar), the "bring forward" applies automatically. The hidden danger is that where a non-concessional contribution is brought forward unexpectedly from a future income year, this may affect any planned use of the full bring forward amount in a future year, potentially resulting in excess contributions.

Excess concessional contribution relief

A recent change has relieved some of the burden of the previous excess concessional contributions regime. From July 1, 2013, excess concessional contributions no longer incur excess contributions tax, but instead will be included in the taxpayer's assessable income

for the corresponding year and taxed at their marginal tax rates. For the 2011-12 and 2012-13 income years, if you are eligible, there is a once-only offer to have the excess concessional contributions refunded to you (up to an annual $10,000 limit) and you pay tax on this at your marginal rate.

With the latest reform however, you will also be liable for an "excess concessional contributions charge". This is designed to neutralise any benefit that a super fund member may receive from the excess contribution being held in a concessionally taxed environment for the period up to the time the consequent tax return is processed. The rate of the charge is 3% over the monthly average yield of 90-day bank accepted bills.

A super fund member may elect to have excess concessional contributions released from the fund. An amount net of 15% tax is released by the fund to the member. A refundable tax credit equal to the amount withheld by the fund is available to the member for use against their overall tax liability.

As excess concessional contributions are now, in effect, taxed at the marginal tax rate of a member, a breach of the concessional cap is unlikely to be of major concern. However, breaching the non-concessional cap is a different story, and can result in a large excess contributions tax liability for a member.

Non-concessional cap breaches — what can be done

If the non-concessional cap is breached the member is liable for excess contributions tax at the rate of 46.5%, which must be withdrawn from the super fund.

It is possible for excess contributions to be "moved" from one tax year to the next, however the trustee of the superannuation fund must not only retain the contributions in an unallocated reserve until the next income year, but must allocate that money to the member's fund by July 28.

The Tax Office does have some discretion to disregard or reallocate excess contributions to another year; however there must be special circumstances that it determines will "lead to an outcome that is unjust, unreasonable or otherwise inappropriate".

To apply to have excess contributions disregarded or reallocated, taxpayers must either complete a form from the Tax Office (ask us for a copy) or at least apply in writing including all of the information that is set out in that form. Ask for our assistance if this is your preferred option. The other thing to keep in mind is that this will mean the cap that applies to a member in the following year will be reduced by this reallocated amount. ■

Did you know... AUSTRALIA'S LONGEVITY OUTLOOK

Talk of Australians' rising life expectancies has been making headlines as of late. The latest data from the Australian Bureau of Statistics projects a "life expectancy at birth" age of 79.9 for men and 84.3 for women. But representative body the Actuaries Institute said those who have already reached the age of 65 can expect to live longer than the population average, and said it is more likely that the life expectancy of those aged 65 now will be 86 for men and 89 for women. To further compound matters, independent government advisory body the Productivity Commission recently published these following statistics:

- the life expectancy for a baby born in 2012 is 94 years for a girl and 92 years for a boy
- the population aged 75 years or more is projected to rise by four million from 2012 to 2060, increasing from 6.4% to 14.4% of the population, and
- by 2060, there will be roughly 25 people aged 100 years or more to every 100 newborns (compared to just one centenarian now).

The crux of the issue is that Australians need to be financially prepared for at least a few more years, if not decades, in retirement. ■