

## BUDGET HIGHLIGHTS

In a surprise move for a post election Budget, Federal Treasurer, Peter Costello, handed out massive tax cuts in his tenth Budget which was brought down on Tuesday, 10 May.

Additional benefits were provided in a budget which, in past years, has always been regarded as the toughest of the political cycle.

The tax cuts totalling \$21.7 billion dollars to be delivered over four years will result in eventual annual tax savings of between \$3,000-\$4,500 to those on the highest marginal tax rate. These cuts dwarf last year's pre-election cuts of \$14.7 billion.

Removal of the Tariff Concessions Scheme, allowance of deductions for "black hole" expenditure and abolition of the super surcharge were other features of this Budget which has been generally favourably received.

### Income Tax Cuts

Threshold movements announced in the 2004 budget involve an increase in the threshold for the 42% tax rate from \$58,001- \$63,001. The threshold for the 47% rate was to be increased from \$70,001- \$80,001. These changes were to take place from 1 July 2005

Here are the current thresholds:

Tax Thresholds 2003/04 Income Range (\$)	Tax Thresholds 2004/05 Income Range (\$)	Tax Thresholds 2005/06 Income Range (\$)	Tax Rate %
0-6000	0.-6000	0-6000	0
6001-21,600	6001-21,600	6001-21,600	17
21,601-52,000	21,601-58,000	21,601-63,000	30
52,001-62,500	58,001-70,000	70,001-80,000	42
62,501 +	70,001 +	80,001 +	47

Proposed new tax rates are as follows:

2005/06	
Taxable Income (\$)	Tax Payable (\$)
0-6,000	Nil
6,001-21,600	0 plus 15% of excess over 6,000
21,601-63,000	2,340 plus 30% of excess over 21,600
63,001-95,000	14,760 plus 42% of excess over 63,000
95,001 +	28,200 plus 47% of excess over 95,000

However, the 2005 Budget announced further adjustments to the thresholds and a reduction of the 17% tax rate to 15%. Further adjustments are to take place from 1 July 2006.

The Opposition has vowed to defeat these tax cuts in the Senate. It argues that tax cuts provided to those less well off in the community are not sufficiently generous. This may delay the tax cuts until the Government gains control of the Senate after 1 July this year.

As a result of this the Tax Office plans to issue two sets of PAYG Instalment Schedules with a decision as to which schedule to be used depending on whether or not legislation authorising the tax cuts passes the Senate.

During 2005/06 taxpayers who are eligible for the full low income tax offset will be free of tax on incomes up to \$7,567.00.

Taxpayers receiving the Senior Australians Tax Offset (SATO) will not pay tax on incomes up to \$21,968.00 for singles and \$36,494.00 for couples.

2006/07	
Taxable Income (\$)	Tax Payable (\$)
0-6,000	Nil
6,001-21,600	0 plus 15% of excess over 6,000
21,601-70,000	2,340 plus 30% of excess over 21,600
70,001-125,000	16,860 plus 42% of excess over 70,000
125,001 +	39,960 plus 47% of excess over 125,000

## OUR VIEW

Welcome to our end of financial year bumper issue. In this issue, we cover Peter Costello's tenth Budget and the new tax rates for 2005/06 (which look like going ahead despite the Opposition's objections). This is great news for those of us who find Australia's high tax rates a significant burden and disincentive to work and produce.

Great news also in the decision to end Super Surcharge. This has been an oppressive, unfair tax on those attempting to put money away for their retirement. By the time they paid super contributions tax, super surcharge and ETP tax on retirement, people had little incentive to build their super. On top of that, the administration of this tax has been badly mismanaged by the Tax Office.

Many will applaud efforts by the Government to encourage people on welfare to join the work force. This should, in future years, diminish the demand on the public purse and promote self respect and self reliance.

Read through our section on Year End Tax Planning. You are sure to find some ideas which you can put to use. At this time of the year, an investment of time in looking at and planning your tax affairs is sure to reap handsome dividends (and allow you to sleep soundly!).

Are you planning for the new burden being placed on employers next month? The Choice of Super Fund legislation commences on 1 July. This issue provides information enabling you to determine whether you must comply, forms you must complete and records you must keep.

More data matching projects are announced. If your business is within any of the groups being data matched, check to ensure that all your tax obligations are up to date.

Do you have a business on the side or an activity which may turn a profit later on? We have an interesting article on how to decide whether the activity is a business (expenses tax deductible) or a hobby (no tax benefits).

Cheers and best wishes for a happy and prosperous new (financial) year.

Tony Lovett

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## Superannuation Surcharge

A superannuation surcharge is payable by a superannuation fund in respect of each member if his/her adjusted taxable income exceeds \$99,710. This surcharge, which can be as much as 13.5% of super contributions, is debited to the member's account. A similar surcharge is payable when an employee receives a termination payment direct from the employer (eg. a golden handshake).

These taxes have been severely criticised as being unfair, a substantial bar to national saving and placing an unfair burden on trustees of superannuation funds. Compliance and administrative costs are very high.

The Treasurer announced that the surcharge will be abolished and will not apply in respect of contributions made or termination payments received from 1 July 2005 and in respect of superannuation benefits accruing after that date.

## Medicare Levy

The Medicare levy low income threshold will be increased to \$15,902 for individuals and to \$26,834 for families. The threshold for families will be increased by \$2,464 for each dependent child or student.

The threshold for pensioners below age pension age will increase to \$19,252.

These changes will be effective from 1 July 2004.

As a result of the announced tax cuts the Medicare levy threshold for persons entitled to the Senior Australian Tax Offset will increase to \$21,968 from 1 July 2005.

## "Black Hole" Expenses

Some expenses paid by businesses which are capital in nature but cannot currently be treated as part of the cost base of an asset for capital gains tax purposes miss out completely on gaining tax deductions.

From 1 July 2005 there will be new treatment of these expenses as follows:

- A deduction will be available for capital expenditure incurred by a business for a taxable purpose;
- Deductions will be available for certain pre-business expenditure incurred by an existing business; and
- These provisions will apply only where the expense cannot be claimed as a tax deduction under other provisions.

Some black hole expenditure will be recognised by increasing the range of expenditure which forms the cost base of an asset for CGT purposes.

Expenditure incurred on or after 1 July 2005 can be written off on a straight line basis over five years.

## Import Duty

Effective from 11 May 2005 the Government will abolish the 3% tariff on business inputs with no domestic substitutes which are imported under the tariff concession scheme. In future such items can be imported duty free.

## Super Splitting

The Government had previously announced that super contributions could be split between spouses and proposed to commence this arrangement from 1 July 2004.

The latest decision is that super contribution splitting will not apply until 1 July 2006.

Members of superannuation funds will be able to ask the fund to split up to a maximum of 60% of employer contributions and up to 100% of undeducted personal contributions.

Married and de facto couples will be eligible. Existing super contributions and defined benefit interests will not be eligible for splitting.

## Temporary Residents

A foreign income exemption will be available for temporary residents for a period of four years.

The amendments will:

- Exempt foreign source income of temporary residents for four years;
- Exempt capital gains and losses on disposal of foreign assets by temporary residents for four years;
- Remove interest withholding tax obligations of temporary residents for four years; and
- Extend the existing four year exemption from the foreign investment fund rules for temporary residents.

These changes will remove tax disincentives for foreign expatriates.

## CGT – Non Residents

Non residents will be exempted from CGT on sale of Australian assets except:

- Australian real property;
- Business assets of Australian branches; and
- Non portfolio interests in interposed entities where the value of such an interest is wholly or principally attributable to Australian real property.

The definition of real property will extend to other assets with a physical connection with Australia, such as mining rights and other interests related to Australian real property.

The changes will apply to relevant CGT events occurring from the date of Royal Assent to the amending legislation which will be introduced before 30 June 2006.

## Foreign Losses/ Foreign Tax Credits

Currently, foreign losses are quarantined. They cannot be claimed against Australian income but are quarantined and can only be claimed against foreign profits of the same type. Additionally, foreign tax credits which are in excess of the Australian tax payable on that foreign income are also quarantined and can only be claimed against future foreign income of the same class.

These restrictions will be abolished as will the need for taxpayers to quarantine their foreign losses and foreign tax credits into separate classes. The changes will apply to foreign losses and foreign tax credits arising in income years first commencing after the date of Royal Assent to the new legislation.

This means there will be some delay before the changes take place and hence some delay before taxpayers can enjoy the following benefits claimed by the Treasurer:

- Removal of impediments to Australian firms investing abroad;
- Reduction of tax complexity and compliance costs for:
  - Australian multi nationals;
  - Regional headquarters;
  - Managed funds, and
  - Small businesses expanding offshore
- Smaller firms and individuals will not suffer tax on their domestic income when they suffer an overall (worldwide) loss.

### From Welfare to Work

In his 10th Budget the Treasurer announced changes aiming to move people currently on welfare back into the workforce. He said that those receiving disability payments and single parents receiving parenting payments had grown to unacceptably high levels.

The measures are aimed at the long term unemployed and at pensioners who are currently not required to look for work but who the Government now deems to be capable of doing so.

"If you are able bodied and of working age, you will be expected to look for work if you are capable of it", Mr Costello said.

Existing disability pensioners will not lose their benefits as the measures are aimed at new applicants.

**Disability Support Pension** – People receiving the disability support pension prior to 1 July 2006 will continue to receive their payments and will not be required to work part time.

People applying after 1 July 2006 will only receive pensions if they are assessed as being incapable of 15 hours work per week at award wages.

If they can undertake part time work they will receive Newstart and be required to seek part time work of at least 15 hours per week. Those who apply from 11 May 2005 will be assessed under existing rules but their ongoing eligibility will be re-assessed periodically against the new requirements.

**Parenting Payments** – Those parents receiving parenting payments prior to 1 July 2006 can continue under the current rules until their youngest child turns 16. From 1 July 2006 these parents will be given one year to seek work voluntarily when their youngest child turns six. After that they will be obliged to seek part time work of at least 15 hours per week.

From 1 July 2006 new applicants will receive parenting payment while their youngest child is less than six. After that time, they will receive Newstart and be required to seek part time work of at least 15 hours per week.

**Mobility Allowance** – From 1 July 2006 the mobility allowance for people with disabilities who work part time or are required to look for work will be increased from \$69.70 to \$100 per fortnight.

**Newstart** – To encourage Newstart recipients to obtain part time work the allowance will be reduced only when other income exceeds \$250 per fortnight (increase from \$142 per fortnight). After this point the withdrawal rate is reduced from 70 cents to 60 cents in the dollar.

These changes also affect the youth allowance (mature age allowance, widow allowance, sickness allowance and partner allowance).

Recipients of the youth allowance (student), Austudy and Abstudy will also enjoy the withdrawal rate reduction.

**Carer Payments** – A bonus payment of \$1,000 will be paid to all eligible recipients of the Carer payment. A bonus of \$600 will be paid to Carer Allowance recipients for each eligible carer receiver. These payments are expected to be made before the end of June 2005.

**Accommodation Bonds** – From 1 July 2005 refundable lump sum accommodation bonds paid for residential aged care will be exempt from the assets means test for Social Security purposes.

**Family Tax Benefit** – From 1 July 2006 the threshold for family tax benefit Part A will be increased to \$37,500. Once this threshold is reached the benefit reduces from the maximum rate by 20 cents for every dollar of income until the base payment rate is reached.

The threshold for 2003/04 is \$32,485 per annum, increasing to \$33,361 for 2005/06.

### Forestry Pre-payments

During the closing days of each financial year many people invest in agricultural and forestry projects with a view to reducing taxable incomes and hopefully benefiting from involvement in these projects.

When investments are made late in the financial year it is difficult for the organisation involved to actually spend that money on the projects before the end of June. The Government tightened the requirements by requiring these funds to be actually spent before the investor could get his tax deduction. This devastated the forestry industry and the Government relented by allowing forestry groups a further 12 months to spend the money by actually buying and planting the trees.

This relaxation was due to finish on 30 June 2006.

The relaxation will be extended for a further two years until 30 June 2008. The Government will conduct an extensive review into all aspects of support for the plantation timber industry.

### Non Commercial Loans

The rules concerning loans from private companies to shareholders (or associates) are to be relaxed in respect of loans made for the 2004/05 and later income years. These may now be repaid or put on a commercial footing before the earlier of the due date or lodgement date of the company's tax return for the year in which the loan is made in order to avoid the loan being treated as a deemed dividend.

This confirms our report in *Tax IQ Monthly* March 2005 at page 4.

### YEAR END TAX PLANNING

The end of yet another financial year is fast approaching. It is time to have a serious look at your tax position and decide whether or not you need to do anything to eliminate risks of unnecessary tax and to ensure that your tax affairs are in order.

In today's complex tax world each one of us needs to be vigilant in taking action to meet these goals. Try not to leave it to the last minute.

Your accounting records should be up to date. Prepare interim financial statements for your business, review these and estimate your profit for the full year.

Discuss these with your accountant or financial advisor. Decide on action you need to take to obtain all the deductions to which you are entitled.

Are you expecting to receive income which can be deferred to the following year? Are windfall profits expected in the following year which could be brought forward? Can a capital gains tax obligation or other substantial tax impost be avoided, minimised or deferred by taking action prior to 30 June? Should you defer the sale of a capital asset or bring forward the sale of a capital asset which may produce a capital loss?

Here are a number of strategies, some of which may be appropriate for your business. These strategies, repeated from last year, have been updated, improved and expanded and have taken account of changes in the law and recent court decisions.

**Super Surcharge**

Are you anticipating retirement before 30 June? With the recent changes announced in the Budget it would be wise to defer receipt of superannuation benefits until after 30 June if you are a member of an unfunded defined benefit super scheme.

These funds have no surchargeable contributions and the super surcharge liability is therefore actually determined and deducted from pension benefits a member may receive upon retirement. You will therefore greatly benefit if you defer payment of any benefits until after 30 June.

Similarly, if you expect to receive a substantial eligible termination payment direct from your employer you will avoid termination payments surcharge if you defer receipt until after 30 June.

**Super Contributions**

Are you planning to make substantial superannuation contributions to your super fund this year? Keep in mind that any contributions made this year could be subject to super surcharge of up to a maximum of 13.5%. The surcharge will be abolished from 1 July 2005 but you will miss out on a deduction for this year.

**Super – Co-Contribution**

If you are a low income earner the Government will make a co-contribution to your superannuation fund of up to \$1,500 to match a \$1,000 personal contribution.

The maximum co-contribution is available to all employees making personal contributions provided their taxable incomes are below \$28,000.

Above this amount the maximum co-contribution reduces by 5 cents for each dollar of income, phasing out at \$58,000.

Be sure to get your \$1,000 contributions paid before the end of June.

**Tax Related Expenses**

Do you have a company or corporate trustee and find that your personal tax rate is higher than the company's? If you are a public officer of your company you can claim the cost of managing tax affairs of that company. As public officer you are bound to ensure that the company's tax obligations are complied with and the relevant provision in the Tax Act concerning claims for tax related expenses permit you to personally claim for these expenses.

Deductibility of these costs has been confirmed by the Full Federal Court in two cases (*Falchetta v. FCT*; *FCT v. Bartlett*).

**Payments to Partners**

The Tax Office has issued a draft Ruling (TR 2004/D4) indicating that salaries paid to partners are not true salaries and are therefore not deductible expenses of the partnership.

A similar situation applies if interest is paid to partners.

These are treated as additional distributions of profit.

Hence, if a partner's salary or interest happens to be more than the available profits, the excess is not assessable income to the working partner nor deductible to the partnership.

Wages and interest payable to associates of partners are not affected by this ruling.

**Statute Barred Loans**

Prior to 4 December 1997 you could borrow money from your company without having to comply with the strict Division 7A rules.

If these loans have remained unacknowledged and unchanged since that date they will be considered to be "statute barred".

In this event the Tax Office will deem the loan to have been forgiven and subject you to full tax on the amount which you may have borrowed from your company many, many years ago.

A loan which has been outstanding for more than six years becomes statute barred if it has not been:

- Repaid in part or in full;
- Acknowledged in writing; or
- Subject to interest payments.

The Tax Office has offered a way out for any loans which have become statute barred. It will forego the deemed dividend treatment for these loans if the loans are fully repaid or put on a commercial footing by 30 June 2005.

To put these loans on a commercial footing you must follow the requirements of Division 7A and enter into a written loan agreement with your own company. Make the loan subject to the benchmark interest and make principle and interest repayments so that the loan and all interest is fully repaid within seven years.

**Wash Sales**

Taxpayers who are looking down the barrel at a substantial capital gain may have another asset which has gone down in value. If this second asset is sold on normal commercial terms before the end of June the resulting capital loss is available to offset the earlier capital gain.

A case went before the Administrative Appeals Tribunal during the year where a taxpayer had set up a second trust to acquire the loss making asset. The Tribunal disallowed the loss claim under Part IVA because it considered that the dominant purpose in establishing the second trust and transferring the asset to that trust was to gain a tax benefit.

Matters which went against the taxpayer were the lack of legal formalities in relation to the transfer of the asset and failure to obtain financier approval to pay for the acquisition.

If you are contemplating the sale of a loss making asset which may offset an earlier capital gain it is essential to ensure that the sale is effected for proper commercial reasons so that the Tax Office cannot argue that your dominant purpose was to gain a tax benefit.

**Child Care Rebate**

Prior to the election the Government announced a rebate of 30% of out of pocket child care costs incurred by parents.

Costs incurred during 2004/05 can be claimed as a rebate in your 2005/06 tax return.

The rebate will be 30% of your child care expenses paid for approved care, less any child care benefit received.

If your rebate exceeds tax payable you will not receive a refund but will have the option of transferring any unused rebate to your spouse. The rebate is to be capped at \$4,000 per child. An information package about claiming the rebate is currently being developed.

At this time you should make sure you retain all receipts for payments for child care during 2004/05 so that you can claim your rebate in your 2005/06 tax return.

### Loans to Shareholders

If your private company has a revenue or capital surplus and has made loans to shareholders or associates after 4 December 1997 there are stringent requirements concerning written documentation, security, length of term, interest repayment arrangements.

If these have not been followed the loan will be treated as a deemed dividend and taxed. The deemed dividend will also be debited against the franking account.

If an old (pre 4/12/97) loan has been "freshened up" by adding to it or changing its terms, the whole of the old loan will also be treated as a deemed dividend.

These rules also catch payments or property transfers provided by the company to its shareholders or their associates.

Check all payments and loans to shareholders and any associated entities or persons, if any loans or payments have been made, make sure that Division 7A requirements have been attended to.

For 2003/04 and prior loans you must make the required repayment by 30 June 2005. If you do not have the funds to pay any required loan repayment you can arrange for a dividend to be declared in favour of the shareholder. If there is a credit in the franking account, this dividend can be franked. If unfranked, it will not result in a debit to the franking account.

Do you have a company which is a beneficiary of a trust? If this trust has made loans to shareholders or associates during 2004/05 these must be repaid or put on a commercial footing by the lodgement date or due date of the trust tax return for that year.

### Non Commercial Business Losses

Are you operating a business as a sole trader or partner? If the business has incurred losses you must meet some tests before you can deduct that loss from other income. You need to pass only one of these tests:

- *Assessable Income Test* – The business must have a gross income of at least \$20,000;
- *Profits Test* – The business must have earned a profit in three out of the past five years;
- *Real Property Test* – The business must have used real property valued at \$500,000 or more (excluding your dwelling);
- *Other Assets Test* – The business must have used other assets valued at \$100,000 or more (not including vehicles and land).

Will you fail all four tests? Can you bring forward income which would normally be received next year in order to pass the assessable income test?

Can you delay expenses in order to pass the profits test? It may be worthwhile to refrain from claiming deductions in order to pass this test.

### Simplified Tax System (STS)

If your business (including any associated or related businesses):

- Carries on business in the year;
- Has an STS average turnover of less than \$1 million; and
- Has depreciating assets (other than land or buildings) with a written down value of less than \$3 million.

It will be eligible.

Read more about the STS in *Australian Taxation Manual* Chapter 10.

STS taxpayers can claim an immediate write off for assets costing less than \$1,000 and can claim much higher depreciation on other assets.

There is no need to count trading stock if the difference between opening and closing values is \$5,000 or less.

Income and expenses are accounted for on a cash basis. You don't have to include as income any monies not yet received. You cannot claim as expenses any monies not yet paid.

(Note: Amendments to this requirement enable you to elect to account on an accruals basis if you wish. Under an accruals basis you will have to include as income all money earned but not yet received. You can claim deductions for expenses incurred but not yet paid.)

If you do elect to enter the STS you can claim full deductions for pre-payments provided the period covered does not exceed 12 months and concludes before the end of the following financial year.

Take care, before deciding to enter the STS, as there are occasions when it may not be beneficial.

Have a look at your 2004 income tax return. Should you have elected to enter the STS? You can lodge an objection or an amendment application and at the same time notify the Tax Office of a choice to become an STS taxpayer.

### Personal Services Income (PSI)

Is your entity likely to be caught by the PSI rules? Check these out at page 52 of the *Australian Taxation Manual*. If you are caught you will need to pay PAYG Withholding on the entity's income which will be included in your personal return.

### Bringing Forward Income

Are you expecting a low profit this year but a high one next year? It may help to bring forward income that would normally be taxed next year. You can do this by valuing trading stock on hand at selling price rather than cost. This can be done on an item by item basis. You can defer payments with a view to claiming them in the following year and possibly arrange for customers to bring forward income payments to you.

### Consumable Stores

These include printing, stationery, office supplies, oils, greases, fuels, factory supplies, restaurant, hotel and motel supplies, tools, uniforms, protective clothing and safety gear intended to be supplied to staff.

Consumable stores for farmers include fuel, fertilizer, fencing materials, shearing supplies, dips, drenches, chemicals, sprays, etc.

The cost of these items is deductible in the year of purchase. Unlike trading stock, they do not have to be counted and valued at year end. You can stock up on consumables before the end of June and obtain a deduction this year instead of next.

### Prepayments

If you are an STS taxpayer you can pay expenses up to 12 months in advance.

For instance, if you pay 12 months' rent in advance before the end of June you can claim the full amount. You can also pay leases, insurance, rates and services to be provided in the future.

If you have a lease agreement requiring monthly payments during 2004/05 you could elect to pay up to 12 instalments in advance before 30 June.

Check your contracts and lease agreements to see that you have an option to make advance payments. Make your prepayments for commercial reasons rather than just to gain a tax advantage.

You can also claim prepayments if you are an individual not operating a business. Interest paid in advance on borrowings for purchase of investments or investment properties can be claimed. The advance period must not exceed 12 months. Other prepayments could include lease expenses, insurance, payments for seminars booked in advance.

If you are an STS taxpayer you must have actually paid the expense before you can claim a deduction. If a non-business individual you must have incurred the expense.

Non-STs businesses can fully claim prepayments up to \$1,000 and also any amounts required to be paid by law (e.g. vehicle registration). Other prepayments must be apportioned.

**Plant and Equipment**

If you are an STS taxpayer you can claim immediate deductions for plant items costing up to \$1,000. Pooling arrangements are available for other plant.

This means you can claim a full 15% depreciation on plant purchased even on the last day of June.

Non-STs taxpayers can pool plant items costing up to \$1,000 and claim depreciation at 37.5% for plant items acquired in the previous year or 18.75% for plant items acquired any time during the current year.

Items costing \$100 or less can be claimed in full.

**Bad Debts**

You can claim a deduction for bad debts if the amounts have previously been included as income.

The debts must be bad and you should write them off before 30 June. Make sure that the debtor's account in your accounting records has actually been written off.

An STS taxpayer does not have to account for debtors (unpaid invoices) until they are actually paid (unless you have elected to adopt the accruals method). If you delay sending out your invoices you can delay receipt of the money until next year.

Do not acquire debt from a vendor of a business as you cannot claim a deduction for any of those which subsequently turn bad.

**Work in Progress**

If you are operating a trading or manufacturing business you should bring any work in progress to account at cost. The Tax Office says that your cost calculation should be on the absorption principle – costs includes a share of direct or overhead costs.

Are you operating a professional or service business? You do not need to bring to account work in progress unless a recoverable debt has been crystallised (it is at the point that it can be invoiced).

Are you engaged in construction and have a construction job extending past 30 June? You need to account for progress payments received or certified. You do not need to account for uncertified works or for retention monies which have not yet been approved for payment.

**Trading Stock**

If you are not an STS taxpayer you need to count stock on hand at 30 June. This will not be necessary if your accounting system produces perpetual inventory figures and you physically check your stock regularly.

You must have written evidence available to prove the accuracy of your trading stock values.

You can choose whether to value each item of your trading stock at:

- Its cost price;
- Its market value; or
- Its replacement price.

You have the right to change your method of valuation in respect of each item of trading stock each year.

Usually it would be best to value your stock at the lowest of the three alternatives. However, if you are expecting a high income in the following year you may wish to bring forward some of the income by valuing your stock at a higher figure. Perhaps market value.

You can elect to value items of trading stock at even lower figures if it is warranted because of obsolescence or other special circumstances and the value you elect is reasonable.

To determine whether your stock is obsolete you must consider:

- The age of the stock;
- Quantities expected to be sold during the year;
- Length of time since the last sale;
- Industry experience; and
- Price of the last sale and price for which you are prepared to sell.

If you intend to sell the items as scrap, you can value them at scrap value. If the items remain on hand but cannot be scrapped and have no other use, you can value them at nil.

**Accelerating Deductions**

Are you expecting a high taxable income this year? You may be able to reduce this by bringing forward expenses likely to be incurred in the following year.

For instance, do you have plant or property in need of repair? Get this done before the end of June and you can claim a deduction this year.

**Motor Vehicle Expenses**

Review your motor vehicle expenses and decide which method of apportioning the expenses between business and private use which produces the greatest tax benefit.

If operating as an individual or partnership you have four methods from which to choose:

- Log book method;
- One-third of total expenses method;
- 12% of cost method;
- Cents per kilometre method.

If you are operating as a company or trust you claim all motor vehicle expenses in full. If motor cars have been provided to employees you need to take a further step.

Either pay FBT or have your employees pay your entity the amount applicable to private use. This is known as cashing out the fringe benefit.

The amount can be calculated on:

- The log book method; or
- The statutory method.

Consider which method is most beneficial and apply it. It is usually better to have the employee pay your entity for the private use rather than pay FBT. You can increase the employee's wage to compensate them.

### Director's Fees and Bonuses

Companies can claim director's fees and bonuses even if not actually paid during the year. The shareholders of the company must pass a resolution prior to 30 June to authorise payment of the director's fees and bonuses. These amounts are deductible to the company this year. The directors and employees are taxed next year when the director's fees and bonuses are received.

PAYG Withholding should be deducted at the time of payment.

### Interest

You can purchase negatively geared property and pay interest in advance prior to 30 June. The interest will be fully deductible if it covers a period not greater than 12 months provided you are an STS taxpayer or an individual not carrying on a business (you qualify as an individual not carrying on a business if you have a separate trust or company operating your business).

It is possible to claim a tax deduction without using capital or savings to physically pre-pay the interest. You can arrange a loan that includes establishment costs, the purchase price of the company and the first year's interest. The loan is drawn down and the surplus funds are used to pre-pay interest.

Instalment warrants are another risk free way of acquiring a substantial portfolio and obtaining a deduction for the interest content to be paid in advance. A risk free way of doing this is to obtain protected equity loans which ensures that you do not have to meet any losses if the shares go down in value. Interest on protected equity loans can be paid in advance and a substantial part of the interest is tax deductible.

The deductibility of interest is determined by the use to which the borrowed funds are put.

Interest on funds borrowed for the following purposes is tax deductible:

- Repayment of partners' capital contributions;
- Payment of undrawn partnership profits;
- Repayment of partners, beneficiaries or shareholders' loan accounts (provided they have not arisen from distribution of unrealised capital gains);
- Payment of declared dividends;
- Re-financing of other borrowings currently used to produce assessable income;
- Acquisition of income producing assets or property;
- Repayment of business borrowings.

### Bill Finance

The decision in *FCT v. Energy Resources of Australia* contradicts Taxation Ruling TR 93/21.

Are you using bill finance to discharge existing liabilities or for working capital? If so you may have a reasonably arguable case to claim bill discounts up front (provided you meet the pre-payment requirements referred to earlier).

You should be able to claim the line fee.

Do not use commercial bill finance to acquire a capital asset as there is a strong risk the discount may not be deductible at all.

### Redundancy

Should a senior family member currently employed or any other employee in the business be made redundant?

A bona fide redundancy payment is deductible to the employer and exempt to the employee as long as the amount does not exceed \$5,882 plus \$2,941 for each completed year of service.

The Tax Office considers that directors of a family company do not qualify when they make a decision to end the company or cease trading.

### Leasing of Plant

Are you contemplating the purchase of plant, equipment or vehicles? If you finance the purchase by bank loans or hire purchase, your depreciation claims will be on a pro rata basis – or limited to 15% if you are an STS taxpayer. An STS taxpayer can lease the items and negotiate an advance lease payment for the first 12 months to obtain a substantial tax deduction this year.

It could be that your trade in will provide the finance necessary to make your first lease payment.

Ensure that you do not allow the trade in value to be deducted from the price of the new vehicle. This will prevent the transaction from being treated as a lease for tax purposes.

You should receive a cheque from the dealer for your trade in and lease the new equipment at its full value.

Check that your trade does not produce such a high balancing charge that it negates the benefit of your lease prepayment. Sometimes trades are overvalued and discounts on new vehicles otherwise available are foregone. Make sure the dealer quotes a fair price for your trade and allows normal discounts on your new vehicle. The changeover price does not change but any taxable balancing charge is reduced or eliminated.

### Luxury Car Leases

Luxury cars leased (other than short term hire arrangements) are treated as loan transactions. If you are planning to lease a car, ensure that the cash value of the car does not exceed the depreciation cost limit of \$57,009.

### Sale and Lease Back Arrangements

You can negotiate with a finance company for a sale and lease back of plant and equipment.

If you are an STS taxpayer and your lease provides a 12 months advance lease payment the transaction will be cash positive. You will be able to claim a substantial tax deduction this year.

You can undertake these transactions in respect of plant and equipment which constitute fixtures. Recent decisions in the *Metal Manufacturers* and *Eastern Nitrogen* cases found that Part IVA does not apply and the companies were entitled to their claims for rentals and associated costs.

### Discretionary Trust Distributions

Does your trust deed allow attribution of income? If so, you may distribute different types of trust income (e.g. primary production income, capital gains, franked dividends, business profits) to different beneficiaries in the most tax efficient method (refer Taxation Ruling TR 92/13).

### Corporate Beneficiaries

Does your discretionary trust have a corporate beneficiary? You can make distributions to a company to be taxed at the company tax rate of 30% instead of the highest individual rate of 48.5%.

You can establish corporate beneficiaries to receive such distributions prior to 30 June. An alternative is to consider paying administration fees or trustee remuneration to your corporate trustee.

*Caution!* Do not allow the trust to subsequently make a loan to a shareholder or associate. If you do you will have to take action to put the loan on a commercial footing or repay it in order to prevent it being treated as a deemed dividend (Division 7A).

### Superannuation

Have you complied with your superannuation guarantee obligations? Make all payments by 30 June to obtain tax deductions.

Superannuation Guarantee Rate is 9% of wages. You do not have to pay superannuation guarantee contributions to employees aged over 70, part time employees aged under 18 and employees receiving wages of less than \$450 a month.

Additional superannuation contributions may be made for key staff so that the total does not exceed the following limits:

Age of Member	Deduction Limit
Under 35 years	\$13,233
35-49 years	\$36,754
50 years and over	\$91,149

If a super fund benefit to an employee exceeds the Reasonable Benefit Limit (RBL), the excess may be subject to tax at maximum rate when it is received by the employee. RBL's for 2004/05 are:

- If paid as a lump sum - \$588,056
- If paid as a pension - \$1,176,106

Are you working for two employers (who are not associated)? Perhaps as a company director on two different boards? You can salary sacrifice and effectively double the age based contribution limits as each employer can contribute up to the age based limit.

### Tax Effective Investments

You can borrow money to invest in rural, agriculture or forestry projects. Substantial tax deductions are generated in the early years. These are offset by taxable income later on.

This means that you can obtain a benefit by deferral of tax. This can generate significant tax flow advantages in the early years of the project.

Tax effective investment opportunities include primary production enterprises, grape growing, forestry, macadamia nuts and olive trees. Many of these have reached a mature stage and are soundly managed. Some are offering a secure source of income for future years.

Other investment opportunities include property investments, share investments, films and research and development projects.

You should obtain independent professional advice before investing in these projects. Always ensure that the promoters have obtained a product ruling from the Tax Office.

Peruse the prospectus carefully and obtain advice from your financial advisers and accountants before proceeding. Make sure the investment stacks up commercially.

A Tax Office product ruling does not guarantee the success of the investment. Product rulings can be later withdrawn by the Tax Office if the project does not comply with its requirements.

### Travel Allowances

Are you employed by your own family company or trust? Do you travel extensively? If your entity pays you reasonably based travel allowances you can claim deductions at the public service rate as outlined in Taxation Determination TD 2004/19.

Daily rates covering accommodation, food, drink and incidentals range from \$245.55 for trips to Sydney to \$151.75 for country centres (for employees on salary of \$78,750 per annum or below). If your claim is limited to the public service rates the amounts do not have to be substantiated. The amounts will be tax deductible to the entity but not taxable to the employee.

Employee truck drivers may receive daily travel allowances for meals when they are required to sleep away from home. For truck drivers on salaries of \$78,750 or below, allowances up to \$67.55 per day need not be substantiated.

### Family Wages

Does your business employ family members? If so, ensure that their wage entitlements are paid up to date before 30 June. The Tax Office does not look kindly on journal entries for unpaid wage entitlements.

You must have clear and compelling evidence of your obligation to pay wages which are unpaid at 30 June.

### Accruing Wages

If your pay week ends some days before 30 June, you can accrue the wages relating to the days prior to the end of June which are paid at next pay day. You cannot accrue or claim a deduction for unclaimed holiday pay, sick leave or long service leave.

### Salary Sacrifice

Following the changes in personal income tax thresholds and the introduction and subsequent extension of the superannuation co-contribution scheme you should review salary sacrifice arrangements to ensure they provide maximum tax benefits. Can salaries payable to family members or others be reduced to below the co-contribution threshold?

Any salary sacrifice arrangement must be in place before the relevant salary has been actually earned.

If anyone in your family earns a salary within the co-contribution threshold ensure that the personal superannuation contribution is made before 30 June so that there is an entitlement to the Government co-contribution.

### Capital Gains

Are you looking at a taxable capital gain? Can you sell other assets before 30 June which will result in capital losses thereby offsetting the gain? Provided you adopt market value you can dispose of the asset to another entity within your family group. Your dominant purpose must be commercially based and not just to obtain a tax benefit. Alternatively, you may be able to offset the gain by making a personal superannuation contribution or an employer contribution on behalf of employees.

You can use proceeds from sale of assets for your contribution or make an in specie super contribution of listed company shares or business real property.

If the asset sold is an active asset (used in a business) you may be able to make use of the small business CGT concessions. The CGT retirement exemption amount can be rolled over into a superannuation fund.

### Spouse Super Contributions

You can obtain a tax offset of up to \$540 for spouse superannuation contributions of up to \$3,000 if your spouse is aged under 70 and has assessable income plus reportable fringe benefits of no more than \$10,800. The offset reduces with higher income and cuts out at \$13,800.

### Retirement and Redundancy

Are you planning to retire or take bona fide redundancy? Consider deferring your retirement date to 1 July or later.

If you do this you will have the advantage of higher limits and thresholds for:

- The post 1983 tax free threshold;
- The higher reasonable benefit limit;
- Higher tax free amounts for bona fide redundancy or approved early retirement.

Additionally, your marginal tax rate may be lower due to absence of salary income.

### Pension Bonus Scheme

Are you working past retirement age? The present age pension age is 65 for men and 62.5 for women.

Under the pension bonus scheme eligible persons may be entitled to a tax free bonus payment.

To qualify you must be eligible for the age pension and delay retirement and continue working for at least 12 months. You should register for the scheme as soon as you reach pension age.

### SUPERANNUATION – CHOICE OF FUND

Commencing 1 July 2005 is the new requirement for employers to offer many employees the ability to choose which superannuation fund to which employers must pay their superannuation contributions. Eligible employees are all those who are currently receiving superannuation benefits except:

- Those receiving superannuation benefits under a State award or State agreement;
- Those receiving superannuation benefits under an Australian Workplace Agreement (AWA), or certified agreement;
- Those who are members of defined benefit funds and
  - Have reached their maximum benefit in the scheme, or
  - Would be entitled to the same amount of benefit from the defined benefit scheme whether or not they choose a new fund, or
  - The defined benefit scheme is in surplus as certified by an actuary.

Information booklets and standard choice forms have been forwarded by the Government to all registered employers. If you have not received the information booklet you can download this from the internet by visiting [www.ato.gov.au/super/](http://www.ato.gov.au/super/) then click Superannuation Topics then click Choice of Superannuation Funds.

Not later than 28 July you must provide each eligible employee with a standard choice form with the employer section of the form fully completed. This form must also be supplied to new employees within 28 days of their start date.

The employer section of the form includes the employer name, name and details of the superannuation fund to which contributions will be made if the employee does not make a choice and the name of the fund to which contributions are currently being paid.

You must also indicate whether you are paying contributions of more than 9% of wages and if so whether this will continue if the employee makes a choice.

If the employee does not wish to make a choice he or she need not do anything. If making a choice the employee must complete Part B and enter full details of the chosen fund. The employee must also provide a letter from the chosen fund indicating that it is a complying fund, that it will accept contributions from the employer and provide information about how contributions should be made.

It is essential for you to ensure that the contributions are being made to a complying fund. You can check this by visiting [www.ato.gov.au/super/](http://www.ato.gov.au/super/) then click Register of Complying Superannuation Funds, then insert the relevant details (either the correct name of the fund or the SFN). If the correct details are recorded on the Register you can be satisfied that the fund is complying. You should download the information and keep it on file.

If your employee makes a choice in Part B and returns the standard choice form to you, you can record the date you accepted the employee's choice and the date you actioned their choice in Part C.

### Record Keeping Obligations

You must maintain the following records:

- Details of ineligible employees together with reasons why they are ineligible;
- Records confirming that the employer fund meets insurance requirements (these could be a copy of a product disclosure statement or a record of a telephone conversation with an authorised representative of the fund);
- Records showing that the standard choice form has been provided to all eligible employees (e.g. copies of emails or copies of the forms noted as to when they were delivered);
- Written details of employee nominations of chosen fund, receipts or other documents issued by the fund evidencing payment of contributions. Electronic records are satisfactory if they are readily accessible and can be downloaded. Such records must be maintained for five years.

### Penalties

If you do not meet these obligations you may be liable for a *choice shortfall*. This applies where you have paid the contributions to a complying fund but not to the fund chosen. The shortfall is approximately 25% of the contributions. This may also apply if you have not given your employees a standard choice form in the required time frame.

The shortfall is limited to \$500 for a notice period per employee.

During the first year of operation (2005/06) the Tax Office will not apply the choice shortfall where employers have demonstrated that they have made a genuine attempt to comply.

### Due Dates

Due dates for payment of superannuation guarantee contributions remain unchanged as follows:

Quarter Dates	Due Date for Payment
1 July – 30 September	28 October
1 October – 31 December	28 January
1 January – 31 March	28 April
1 April – 30 June	28 July

If an employee has chosen a fund, you have two months to make arrangements for contributions to be paid to that fund. After this, all contributions for that employer must be paid to his or her chosen fund.

Where employees have not made a choice you must make contributions to the employer fund.

### HOME OFFICE EXPENSES

You can claim expenses such as electricity, gas and depreciation of office furniture when you need to work at home.

You can claim this expenditure by calculating the actual expenses incurred during the time you are working at home or alternatively you can claim deductions calculated at a standard rate per hour.

This standard rate was originally set at 20 cents per hour. It has been increased to 26 cents per hour effective from 1 July 2004.

Keep in mind that if you are conducting the work activity in a room also being used by other family members, there may be no additional cost occasioned by that work activity and hence no claim.

## DATA MATCHING PROJECTS

### Motor Vehicle Retailers and Wholesalers

The Tax Office has announced that it will collect information contained in applications for motor vehicle retailer and wholesaler licences numbering about 8,000 from all State and Territory licensing bodies.

This data will be cross matched with Tax Office data to identify possible non-compliance with lodgement and payment obligations.

### Removalists

The Tax Office will also collect names and addresses of removalist industry members from the following:

- Desktop marketing system;
- Australia on Disc;
- Infot Inc Australia Business Database;
- Australian State and Territory Motor Vehicle (Truck) Registration Data.

Records relating to advertising placed by some 12,000 entities will be matched in order to identify non-compliance with taxation obligations.

## PRIVATE HEALTH INSURANCE

A private health insurance rebate of 30% which can be provided by a reduction of your health insurance premium or a tax rebate is available to all.

From 1 April 2005 this rebate is increased to 35% for people aged from 65 to 69 years and to 40% for people 70 years or older.

Where more than one person is covered the rate of the rebate will be based on the age of the oldest person.

## SUPER FUND EXPENSES

The Tax Office has now finalised its ruling concerning payment of super fund expenses by the employer.

In Miscellaneous Taxation Ruling MT 2005/1 the Tax Office has accepted that payments of super fund expenses such as accounting and audit fees and investment advice/management costs by the employer can be treated as additional super contributions.

They must be brought to account in the super fund accounts as contributions with the appropriate amounts claimed as expenses. These payments will be treated as superannuation contributions for all purposes including superannuation guarantee and superannuation surcharge.

## BUSINESS OR HOBBY?

Under Section 8-1 of the 1997 Income Tax Act you can claim a deduction for expenses incurred in gaining or producing assessable income or in carrying on a business for that purpose.

The Tax Office is keen to ensure that you do not claim deductions for expenses incurred in carrying on an activity which can best be described as a hobby (where you do not have any real expectation of making a profit). Taxation Rulings TR 97/11 (primary producers) and TR 2005/1 (professional artists) deal with this topic.

Indicators are provided to determine whether or not the activity constitutes a business. The Tax Office makes the point that where an overall profit motive is absent and the activity does not look like it will ever produce a profit, it is unlikely that the activity will amount to a business.

Indicators suggesting that a business is being carried on are:

- There is significant commercial activity;
- The taxpayer has a purpose and intention to operate a business;
- There is an intention to make a profit;
- The activity is or will be profitable;
- The activity involves repetition and regularity;
- The activity is carried on in a similar way to that of ordinary trade and not in an ad hoc manner;
- The activity is organised and carried on in a business like manner and systematically with records being kept;
- The activity is of substantial size and scale;
- The activity cannot be classified as a hobby, recreation or sporting activity.

There are three additional items which the Tax Office considers will support these indicators:

- A business plan for the activity has been prepared;
- There are commercial sales of product;
- The taxpayer has knowledge or skill relating to the activity.

After passing these tests you still have to run the gauntlet of the non-commercial business loss rules if the activity is incurring a loss. These rules are explained in the *Australian Taxation Manual* page 44. There are four tests and you have to pass one of them:

- **Assessable income test** – the business activity must have earned at least \$20,000 income (before expenses) for the year;
- **Profits test** – the activity must have produced a tax profit in three out of the past five years;
- **Real property test** – the activity must use real property which has a value of at least \$500,000 (excluding your dwelling);
- **Other assets test** – the activity utilises other assets on a continuing basis that have a total value of at least \$100,000.

If you do not pass any of the four tests, the loss is quarantined and can only be claimed against future profits of that business.

Taxpayers operating primary production or professional arts businesses are exempted from these tests if their assessable income from other sources is less than \$40,000.

In a recent case before the Administrative Appeals Tribunal (AAT) a taxpayer had a major win against the Tax Office when the AAT disagreed with the Tax Office and held that the taxpayer was carrying on a business as a professional graphic artist during the 1999/00 income year.

While working at fashion boutiques the taxpayer became involved in the art community, participating in painting, performance, fashion design, etc.

He later completed short courses in fashion design, life drawing and fashion illustration and began to create collages. He undertook a diploma of fashion course while working part time in fashion stores. Later he took a full time job with Telstra and continued working on his portfolio of collages.

In 1997 he purchased computer equipment and software so he could transfer his collages into graphic format. He scanned these collages and manipulated the product to enable it to be used for commercial application and made extensive approaches to a variety of commercial outlets.

He hired a gallery for a week to exhibit his works and entered into a joint venture with a fashion designer.

He then obtained accounting advice, registered for GST and lodged two BAS. He also employed a public relations consultant to promote his activities.

He claimed deductions in respect of his artistic activities as follows:

1997/98	\$4,707
1998/99	\$7,607
1999/00	\$13,853

The Tax Office disallowed these claims on the basis that he was not carrying on a business.

The AAT held that when the taxpayer's activities were compared with the indicators of a business (see above) they went beyond a mere hobby or recreational activity.

His attempts to bring his work to the market, the holding of an exhibition, projecting images onto T-shirts for sale and the use of a public relations consultant took his activities beyond that of a mere hobby.

The AAT held that in respect of the 1999/00 year the Tax Office's disallowance of the taxpayer's objection should be set aside.

*AAT Case (2005) AATA 226.*

### REFUNDABLE FILM TAX OFFSET

The Government provides a 12.5% refundable film tax offset for big budget films produced in Australia. As from 1 July 2004 this will be extended to big budget television series.

Eligibility criteria is as follows:

- A minimum of \$15 million must be spent on qualifying Australian production expenditure averaging at least \$1 million per commercial hour; and
- Complete principal photography for the series within 12 months, or if digital or otherwise does not involve principal photography, complete the entire series within 36 months.

Reality and documentary series will be eligible. Other eligibility criteria, processes for certification and administration requirements will be the same as for the current refundable film tax offset.

### SUPER SURCHARGE MISMANAGEMENT

The Australian National Audit Office (ANAO) has issued a report on the Tax Office's administration of the superannuation surcharge system. It reports that the mechanism chosen by the Tax Office to collect surcharge revenue was complex and it has not been managed well. The ANAO found a number of administrative deficiencies relating to past surcharge governing arrangements, surcharge systems, processes and controls, management of surcharge exceptions and compliance.

The ANAO recommended that the Tax Office should:

- Establish a robust and well documented planning, risk management and reporting framework and methodology;
- Develop and maintain high quality surcharge procedures and systems documentation;
- Develop and use a robust, consistent and secure methodology for changes;
- Develop a robust surcharge compliance framework, including methodology to analyse and report on holder and member compliance; and
- Enforce holder and member compliance through the development and implementation of a comprehensive surcharge compliance strategy.

The ANAO made a total of 17 recommendations and the Tax Office has agreed to all of them. The Tax Office has said that it has not performed to the high standard the community expects and will address shortcomings.

### READER QUESTIONS:

#### CGT – SALE OF RENTAL PROPERTY

##### Question:

I have recently sold a rental property and now face capital gains tax. I thought that I read in the *Australian Taxation Manual* that if the property was sold to repay another debt, CGT can be reduced. I have misplaced my copy of *Australian Taxation Manual* (left on a plane) and was wondering if you can confirm this statement. My accountant seems to think that as the property was not an active asset of our business, paying an existing business debt will not attract any consideration. What do you think?

##### Answer:

Your accountant is correct. If you have held the rental property for at least 12 months you can claim the 50% CGT discount. There are no other concessions for rental property assets.

#### TRUST LOSSES

##### Question:

We want to claim prior year losses for a unit trust by relying on the same individuals having fixed entitlements to greater than 50% of income and also of capital from the trust. (I believe this is referred to as the *50% stake test*.)

If one individual transfers his only unit to another existing unit holder so that this unit holder now has three units and the fourth (and last) unit continues to be held by a third individual, can the test be satisfied? Clearly, more than 50% of the units continue to be held by the same unit holders but do all the existing unit holders need to continue to have an entitlement? Does it matter that the existing unit holders now hold different entitlements?

##### Answer:

As we understand your question the before and after unit holdings are:

Unit Holder	Before	After
A	1	Nil
B	2	3
C	1	1

Sections 269-50 to 269-55 provide that a unit trust satisfies the *50% stake test* if, at all relevant times during the test period:

- The same individuals have fixed entitlements to more than 50% of the income of the trust, and
- The same individuals have fixed entitlements, directly or indirectly, to more than 50% of the capital of the trust.

The individuals holding the income entitlements do not have to be the same as those holding the capital entitlements.

The unit holders in your question hold units which give rights to income and capital.

B and C held, between them, more than 50% of the entitlements. After the transfer from A to B, B and C continue to hold more than 50% of the entitlements.

Hence, the *50% stake test* is satisfied.

#### FBT – MOTOR VEHICLES

##### Question:

We are thinking of buying a four wheel drive for one of our employees on a novated lease. The car will be housed in the employee's garage every day of the year. Do the lease repayments and operating costs of the car attract FBT?

**Answer:**

Yes. If the car is garaged at the employee's home it is automatically taken to be available for employee use and you must determine your FBT obligations under the log book method or statutory method. You can read about this in Chapter 18 of the *Australian Taxation Manual*.

**RENTAL PROPERTY EXPENSES****Question:**

My husband and I separated last September and he took out a home loan to purchase a three bedroom villa to live in. Recently he moved back to live with me and he is going to rent out his villa. Does he need to inform the bank and change the home loan to an investment loan? Can he claim the home loan interest as rental expenses?

**Answer:**

He does not need to inform the bank unless he wants to make some change to his repayment arrangements. Interest, borrowing expenses and bank charges on the bank loan will be tax deductible from the time he advertises the property for rental or places it in the hands of an agent for rental purposes.

**CAPITAL LOSSES****Question:**

We have capital losses from share trading which took place 3-4 years ago. We have stopped buying and selling shares since then. Can we apply capital losses to other income such as our wages or do we need to write to the Tax Office for a special ruling?

**Answer:**

If you were genuine share traders your losses would have been on revenue account and should have been claimed against wages and any other revenue type income at that time. However, although you were share trading, you have regarded yourselves as investors and treated the losses as capital losses which are quarantined and can only be claimed against future capital gains. You cannot claim old capital losses against current wages. These are only deductible against future capital gains.

**TRUST CLONING****Question:**

We have a client who can benefit from cloning their discretionary trust and splitting off their growing trading business to a new trust. This will segregate other investments from the riskier trading business and provide increased asset protection.

Solicitors quotes to do this work range from \$1,000 to \$12,000.

Apart from the new (updated) trust deeds, contracts and transfer documents, is there anything else that requires specialised legal input to justify the huge range in quotes?

Is this a risky proposition to ensure exemption from CGT? Queensland Stamps Office are still to provide policy. Are there other issues to consider?

**Answer:**

If carried out carefully and correctly, trust cloning will enable you to transfer the business assets to a new trust without being caught for CGT and stamp duty. It is essential that the requirements of both the Tax Act and your State's Stamps Act be complied with. The risks are that through some error in preparation of the new trust deeds the requirements are not followed and stamp duty and/or CGT become applicable.

You should make sure that you appoint a solicitor who is experienced in this field. For the work to be done carefully and accurately we would have thought it would cost considerably more than \$1,000 although \$12,000 appears somewhat steep.

Our understanding is that it is possible to set up a mirror trust and transfer assets to it without being subject to Queensland stamp duty.

**SEMINAR EXPENSES****Question:**

Can you provide me with a ruling of what can be claimed and not claimed when a company is holding a seminar on its business progress and forecasts which is to be held at a location where some directors have to travel and incur accommodation and meal expenses?

**Answer:**

A deduction for the cost of food, drink, accommodation and travel reasonably incidental for attendance at a seminar of not less than 4 hours duration is available. A seminar includes a conference, convention, lecture, training session or question and answer session.

This deduction is not available if the seminar is a business meeting where the main purpose is to provide information about, or to discuss the taxpayer's business or prospective business. It is also not available where the main purpose of the seminar is to promote or advertise a business or prospective business and/or its goods or services or to provide entertainment.

But you can claim a deduction for a seminar organised for training employees, partners and/or directors in matters relevant to the company's business, and/or enabling employees, partners and/or directors to discuss general policy issues relevant to the eternal management of the employer's business. To get this deduction the seminar must be conducted in conference facilities operated by a person whose business includes organising seminars or making property available for conducting seminars.

You need to hold your seminar in (say) a hotel which has conference rooms available and you should have a seminar programme showing that the seminar will cover the points mentioned above.

**CGT – PROPERTY SALES****Question:**

We bought a block of land in September 2003 with the original intention of building our dream home. We sold our principal place of residence (in October 2003) and moved in with the in-laws to save some money and wait for plans/builders, etc. After a year we were restless and purchased a business. So in February 2005 we ended up selling the block of land to focus on the business and moved into an investment house (in April 2005) that we had purchased in April 2004. Quite obviously one CGT event occurred when we made the investment house our principal place of residence but is the sale of land (which was originally intended to be our principal place of residence) considered a CGT event?

- Do we include a CGT calculation in our 2005 tax return for the investment house?
- Is the sale of land a CGT event?
- Can we carry forward any CGT loss to subsequent tax years?

**Answer:**

1. The sale of the block of land is a CGT event. Because you did not build a home on it, it does not have the main residence exemption. You have to account for any capital gain but can deduct expenses you have incurred which have not been claimed as a tax deduction. If you held the block for more than 12 months you can also claim a 50% CGT discount.
2. A CGT event did not occur when you moved into the investment house. No sale took place. The property carries a main residence exemption from the date you moved in. If you later sell this property any capital gain must be pro rated on a time basis. Keep a record of any non deductible expenses you incur in respect of this house as these will reduce any capital gains you achieve on a later sale.