

Australian Master Tax Guide



CCH

a Wolters Kluwer business

42nd Edition

2008

Australian Master Tax Guide



CCH

a Wolters Kluwer business

42nd Edition

2008

CCH AUSTRALIA LIMITED

GPO Box 4072, Sydney, NSW 2001

Head Office North Ryde

Phone: (02) 9857 1300 Fax: (02) 9857 1600

Customer Support

Phone: 1 300 300 224 Fax: 1 300 306 224

www.cch.com.au

Book Code: 34185A

About CCH Australia Limited

CCH Australia is a leading provider of accurate, authoritative and timely information services for professionals. Our position as the “professional’s first choice” is built on the delivery of expert information that is relevant, comprehensive and easy to use.

We are a member of the Wolters Kluwer group, a leading global information services provider with a presence in more than 25 countries in Europe, North America and Asia Pacific.

CCH — The Professional’s First Choice.

Enquiries are welcome on **1300 300 224**.

Disclaimer

No person should rely on the contents of this publication without first obtaining advice from a qualified professional person. This publication is sold on the terms and understanding that: (1) the authors, consultants and editors are not responsible for the results of any actions taken on the basis of information in this publication, nor for any error in or omission from this publication; and (2) the publisher is not engaged in rendering legal, accounting, professional or other advice or services. The publisher, and the authors, consultants and editors, expressly disclaim all and any liability and responsibility to any person, whether a purchaser or reader of this publication or not, in respect of anything, and of the consequences of anything, done or omitted to be done by any such person in reliance, whether wholly or partially, upon the whole or any part of the contents of this publication. Without limiting the generality of the above, no author, consultant or editor shall have any responsibility for any act or omission of any other author, consultant or editor.

© 2008 CCH Australia Limited

All rights reserved. No part of this work covered by copyright may be reproduced or copied in any form or by any means (graphic, electronic or mechanical, including photocopying, recording, recording taping or information retrieval systems) without the written permission of the publisher.

Printed in Australia by McPherson’s Printing Group

ISBN 978 1 921322 198

ISSN 0810-5596

Australian Master Tax Guide

Australian Master C

This Guide contains a dear, to
hundreds of examples of how
of checklists.

CCH Code: 34185A

International Master

This comprehensive guide provides
countries including Canada, U.S.

CCH Code: 34117A

Australian Master Su

This indispensable guide provides
relating to superannuation.

CCH Code: 34103A

Australian Master Fir

Covers all the fundamental
explanation of the law under

CCH Code: 34106A

Australian Master Hu

Need a quick and easy reference
updates all content to ensure
providing best practice guide.

CCH Code: 34129A

Foreword

The *Australian Master Tax Guide* is Australia's best selling tax handbook and the flagship of the CCH "Master" series of annual reference guides for accountants, lawyers and tax professionals. This edition is designed to help tax practitioners and taxpayers prepare their income tax returns for the 2007/08 income year. It also provides information on the tax implications of decisions and transactions that taxpayers may face in 2007/08 and 2008/09.

This edition of the *Australian Master Tax Guide* incorporates the continuing flow of changes of practical significance that are a product of our complex tax system. Legislation that is pending, including all the latest amendments, is monitored in Chapter 41. For details of the tax changes in this edition, see the highlights at ¶1.

The Guide states the law as at 1 January 2008 and discusses proposed measures wherever relevant. It explains the rules affecting everyday business and explores personal income tax questions using clear language and practical examples. Cross-references at the end of most numbered paragraphs provide links to additional information in other CCH services. Other special features include an individual tax return preparation guide, a depreciation (effective life) table, tax calendar, personal tax calculator, finding lists and a comprehensive index.

Electronic and updating versions

This Guide is also available on CD-ROM. For Guide users who need to keep up to date with changes throughout the year, the *Premium Master Tax Guide* is the logical choice. That version, available both on CD-ROM and online, is fully updated at least four times a year, with all changes integrated into the relevant chapters. The electronic updating version of the Guide, in addition to having a better searching capability, provides useful links to the rulings, cases and legislation discussed in the commentary. It also includes a number of practical enhancements such as income tax, CGT and FBT calculators.

A loose-leaf service — the *Australian Master Tax Guide Updater* — is also available. The Updater supplements the Guide by providing quarterly updates of new developments.

Master Tax Examples

The perfect companion to the *Australian Master Tax Guide* is the *2008 Master Tax Examples*, with over 250 additional case examples.

For details of any of these products, contact CCH Customer Support on 1 300 300 224.

CCH Australia Limited

January 2008

Acknowledgments

Peter Robertson BA (Hons), LLB, Grad Dip Communications is the coordinating editor of the *Master Tax Guide*. He also writes for various other CCH publications, including the *Tax Navigator for Business Activities*.

Michael Chow BA, LLB is a CCH Senior Tax Editor who writes for a number of tax publications, particularly *CCH Tax Week*. Before joining CCH, Michael worked in various technical areas of the ATO.

Nicholas Crombie B Bus (Acctg), MTax is an editor for CCH. He writes for a number of CCH's tax, superannuation and financial planning services.

Enrico Enriquez BA, LLB is a CCH Senior Tax Editor who writes for a number of tax publications, including the *Australian Income Tax Guide* and the *Australian Payroll Tax Manual*.

Wayne Glazier BA (Hons), MBA, MTax (Dist), FCPA writes for CCH on taxation and financial planning issues. Wayne has many years' experience in financial management and taxation, including previous positions as manager of CCH tax and superannuation publications and tax planning manager of a large corporate group.

Kevin Johnson BEc, LLB, CA, FTIA is a software engineer for APS developing programs for taxation and accounting professionals. Previously, he was a tax manager at a major international accounting firm. He is a registered tax agent.

James Leow LLB (Hons), MTax, is a superannuation and taxation consultant. He is co-author of CCH's *Australian Master Superannuation Guide* and writes for a number of other CCH publications.

Philip McCouat BA, LLB (Hons), LLM (Hons), M Env L has many years' experience in law and business. He works as a consultant in the diverse areas of taxation, publishing and the environment. Philip is the author of CCH's *Australian Master GST Guide* and Consultant Editor for various other major publications.

Bill Page BA, LLM is a CCH Senior Tax Editor. Previously, he was a solicitor with a large law firm, specialising in GST and state taxes.

Ella Rosso LLB, FTIA is a CCH Senior Tax Editor writing for the *Australian Federal Tax Reporter* and *Australian Federal Income Tax Reporter*. Previously, Ella worked for the ATO.

Editor-in-Chief, Tax

Jonathan Mendel

Marketing

Joseph Gavljak

Editorial

Adrian Ooi Lye Beng

Charles Gedijs

Sherliza Mohd Zulkifli

Indexer

Marjorie Flood

Abbreviations

AAT	Administrative Appeals Tribunal
ABN	Australian Business Number
ADF	Approved deposit fund
AMGST	<i>Australian Master GST Guide (CCH)</i>
AMSG	<i>Australian Master Superannuation Guide (CCH)</i>
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ATC	<i>Australian Tax Cases (CCH)</i>
ATO	Australian Taxation Office
AWOTE	Average weekly ordinary time earnings
BAS	Business Activity Statement
CFC	Controlled foreign company
CGT	Capital gains tax
DTA	Double taxation agreement
EST	(Australian) Eastern Standard Time
ETP	Eligible termination payment
FBT	Fringe benefits tax
FBTAA	<i>Fringe Benefits Tax Assessment Act 1986</i>
FC of T	Federal Commissioner of Taxation
FIF	Foreign investment fund
FITR	<i>Australian Federal Income Tax Reporter (CCH)</i>
FTR	<i>Australian Federal Tax Reporter (CCH)</i>
GIC	General interest charge
GST	Goods and services tax
GSTG	<i>Australian GST Guide (CCH)</i>
IAS	Instalment Activity Statement
ID	ATO Interpretative Decision
ITA	<i>Australian International Tax Agreements (CCH)</i>
ITAA36	<i>Income Tax Assessment Act 1936</i>
ITAA97	<i>Income Tax Assessment Act 1997</i>
ITR36	Income Tax Regulations 1936
ITR97	Income Tax Assessment Regulations 1997
ITTPA	<i>Income Tax (Transitional Provisions) Act 1997</i>
OBU	Offshore banking unit
PAYG	Pay As You Go
PDF	Pooled development fund
PST	Pooled superannuation trust
R&D	Research and development
RBA	Running balance account
RBL	Reasonable benefit limit
RSA	Retirement savings account

SLP	<i>Australian Superannuation Law and Practice (CCH)</i>
SME	Small or medium enterprise
SMSF	Self managed superannuation fund
STCT	Small Taxation Claims Tribunal
STS	Simplified Tax System
TAA	<i>Taxation Administration Act 1953</i>
TFN	Tax file number

Highlights of 2007 Tax Changes

¶1 HIGHLIGHTS

What's new

This edition has been fully updated to reflect developments that occurred (or remain proposed) up to **1 January 2008**.

New tax rules included a major overhaul of the CGT small business concessions following a Board of Taxation review (¶7-110 et seq). New laws were also enacted to align the eligibility tests for accessing the various small business concessions.

All the rules applying to small business have been consolidated in Chapter 7. As a result, the rules applying to clubs and associations are now discussed in Chapter 3 and exemptions are covered in Chapter 10. In addition, to incorporate the new simplified superannuation reforms, Chapters 8 and 11 were fully rewritten.

Details of the main changes included in this edition are set out below.

CHAPTER 1 — INTRODUCTION

Cases

- The Commissioner may now make disclosures of taxpayer information to Project Wickenby taskforce officers and other taskforce officers ¶1-220, ¶25-220

CHAPTER 3 — COMPANIES

New laws

- The \$100m income ceiling for the same business test (SBT) has been removed effective 1 July 2005 ¶3-120
- The PDF program is closed to new registrations and is being replaced by a new venture capital vehicle ¶3-555, ¶5-040, ¶12-900

Proposed measures

- The continuity of business test (COT) will be fine-tuned ¶3-105
- The Board of Taxation will review the tax treatment of off-market share buy-backs ¶3-170
- Separate measures dealing with demutualisation of health insurers and non-resident mutual organisations have been proposed ¶3-432

Rulings and guidelines

- *Taxation Determination* TD 2007/2 explains how long to retain records that support a tax loss ¶3-060, ¶9-045

Cases

- A group whose ownership changed during an income year was not permitted to transfer a loss that was referable to only part of an income year (*Keycorp*, Fed Ct) ¶3-090
- A taxpayer was entitled to an extension of time to transfer losses six years after the relevant income year (*BHP Billiton*, Fed Ct) ¶3-090
- The same business test was not satisfied during winding up of a business after selling a joint venture interest (*Coal Developments (German Creek)*, Fed Ct) ¶3-120

CHAPTER 4 — DIVIDENDS • IMPUTATION SYSTEM

New laws

- Changes to the deemed dividend provisions of ITAA36 Div 7A have reduced their severity ¶4-200
- The old deemed dividend rules (ITAA36 s 108) have been repealed ¶4-210

- The dividend tainting rules have been repealed effective 1 July 2004 ¶4-945
- Proposed measures*
- Income beneficiaries of testamentary trusts (such as life tenants) will generally be excluded from the franking credit holding period rules ¶4-940
- Rulings and guidelines*
- Taxpayers are being given a one-off opportunity to correct past mistakes caught by Div 7A (*Practice Statement PS LA 2007/20*) ¶4-200
- The benchmark interest rate for Div 7A purposes is 8.05% from 1 July 2007 (*Taxation Determination TD 2007/23*) ¶4-200
- *Draft Determination TD 2007/D19* explains what elements of a loan agreement need to be in writing for the purposes of Div 7A ¶4-200
- A shareholder's failure to repay a normal trade debt within the agreed term will not necessarily result in a deemed dividend under Div 7A (*Draft Determination TD 2007/D17*) ¶4-200
- The question of what is a present legal obligation of a private company for the purposes of ITAA36 s 109Y(2) is considered in *Taxation Determination TD 2007/28* and *Draft Determination TD 2007/D9* ¶4-200
- The Commissioner has issued *Taxpayer Alert TA 2007/5* about attempts to circumvent ITAA36 Div 7A through the use of corporate limited partnerships .. ¶4-200
- The Commissioner released draft guidelines on the application of s 45B to a share capital reduction (*Draft Practice Statement PS LA 1552*) ¶4-682
- An entity must be a "qualified person" within the meaning of ITAA36 former Pt IIIAA to qualify for franking benefits (*Taxation Determination TD 2007/11*) ¶4-940
- Cases*
- A distribution of shares in a foreign demerged entity was an assessable dividend (*Condell, Full Fed Ct*) ¶4-140
- Loans by a private company to a 75%-owned unit trust were deemed dividends (*Di Lorenzo Ceramics, Fed Ct*) ¶4-200
- Fictitious scaffold hire payments were non-deductible to the taxpayer company and were assessable to its shareholder as deemed dividends under Div 7A (*3-D Scaffolding, AAT*) ¶4-200
- CHAPTER 5 — PARTNERS AND PARTNERSHIPS**
- New laws*
- The venture capital regime was extended ¶5-040, ¶12-900
- Proposed measures*
- Further changes to the venture capital regime were announced in the 2007/08 Federal Budget ¶5-040, ¶12-900
- Rulings and guidelines*
- The ATO's policy of allowing partnerships to adopt a substituted accounting period was updated (*Practice Statement PS LA 2007/21*) ¶5-030
- CHAPTER 6 — TRUSTEES • BENEFICIARIES • DECEASED ESTATES**
- New laws*
- Resident trustees can be taxed on distributions to non-resident trustee beneficiaries from 1 July 2006 ¶6-220
- The trust loss rules were amended to provide more flexibility for family trusts ¶6-266, ¶6-268
- From the 2008/09 income year, trustees of closely held trusts will be required to report details of the trust's trustee beneficiaries rather than its ultimate beneficiaries ¶6-275

■ Restructures of stapled groups will not result in an interposed head trust being taxed as a company ¶6-320

Cases

■ The High Court refused to grant special leave to appeal against the decision in *Cajkusic* and the Commissioner released an ATO Decision Impact Statement ... ¶6-200

■ The trust stripping provisions applied to a scheme to transfer income to a loss trust (*Raftland*, Full Fed Ct — special leave application granted) ¶6-270

CHAPTER 7 — SMALL BUSINESS CONCESSIONS

New laws

■ A standard eligibility criterion known as the small business entity test applies across the range of small business concessions from 2007/08 ¶7-001, ¶7-050

■ The simplified tax system (STS) has been discontinued from 2007/08 ¶7-060

■ Various changes were made to increase the availability of the CGT small business concessions ¶7-110 – ¶7-195

■ The maximum net asset value threshold for access to the CGT small business concessions has increased to \$6m commencing 2007/08 ¶7-110, ¶7-130

■ Small business entities are eligible for various GST concessions ¶7-350 – ¶7-370

■ The entrepreneurs' tax offset is available to small business entities with aggregated turnover of less than \$75,000 ¶7-510

■ Small business entities may be eligible for FBT car parking exemptions, simplified depreciation, simplified trading stock rules, PAYG instalments based on adjusted notional tax and a two-year period for amending assessments ¶7-530 – ¶7-570

Proposed measures

■ Proposed changes will allow a taxpayer who owns a CGT asset that is used in a business by an affiliate or a connected entity of the taxpayer to access the small business CGT concessions through the \$2m aggregate turnover test ¶7-120

Rulings and guidelines

■ In calculating the net asset value of a small business, the term “liabilities” does not extend to contingent liabilities, future obligations or expectancies (*Taxation Determination* TD 2007/14) ¶7-130

CHAPTER 8 — SUPERANNUATION FUNDS • CONTRIBUTIONS

New laws

■ From 1 July 2007, the provisions governing the tax treatment of superannuation entities and the tax concessions for superannuation contributions are contained in ITAA97, replacing the provisions in ITAA36 ¶8-010, ¶8-700

■ The assessable income of a superannuation fund includes no-TFN contributions income ¶8-180

■ The value of assets supporting allocated pensions, market linked pensions or account-based pensions do not qualify as segregated current pension assets to the extent that it exceeds the account balance supporting the income stream benefit ¶8-140

■ An individual's TFN is taken to be quoted (for superannuation purposes) if the Commissioner gives notice of the individual's TFN to the individual's superannuation fund, ADF or RSA provider ¶8-180

■ Entitlement to government co-contributions has been extended to self-employed persons from 1 July 2007 ¶8-760

■ New rules govern the acceptance of contributions by superannuation funds from 1 July 2007 ¶8-790

Rulings and guidelines

■ A deduction is allowable to a complying superannuation fund for premiums on insurance policies where income payments under the policy are made to fund members during periods of temporary disability which last longer than two years in certain circumstances (*Taxation Determination* TD 2007/3) ¶8-150

■ The ATO has issued a series of fact sheets on the simplified superannuation changes, including the “Request for a transitional release authority” form for non-concessional contributions, on its website ¶8-780

CHAPTER 9 — TAX ACCOUNTING • TRADING STOCK

New laws

■ Simplified trading stock rules formerly available to STS taxpayers are now available to small business entities ¶9-175

Rulings and guidelines

■ The Commissioner has issued new guidelines for approval of substituted accounting periods (SAPs) (*Practice Statement* PS LA 2007/21) ¶9-010

■ Bees kept for the purposes of honey production are trading stock (*Draft Determination* TD 2007/D7) ¶9-150

■ The 2007/08 values for goods taken from stock have been determined (*Taxation Determination* TD 2007/30) ¶9-245

CHAPTER 10 — ASSESSABLE INCOME • EXEMPTIONS

New laws

■ The employee share scheme provisions have been extended to apply to stapled securities acquired on or after 1 July 2006 that include an ordinary share and are listed on the Australian Stock Exchange ¶10-085, ¶10-087

■ The definition of “exempt entity” has been expanded ¶10-604

■ From 1 July 2007, the defence force income support allowance will be exempt only if the whole of the underlying social security payment is exempt ¶10-810

Proposed laws

■ Amendments have been announced which will restore the taxation treatment of rights issues that existed before the High Court’s decision in *McNeil* ¶10-110

■ A review will be made of the income tax exemption for structured settlement payments to assess the effectiveness of the exemption ¶10-185

Rulings and guidelines

■ Guidelines on when amounts paid as consideration for the assignment of copyright are royalties are set out in *Draft Ruling* TR 2007/D5 ¶10-510

■ *Taxpayer Alert* TA 2007/6 warns about scholarship trusts established to provide purportedly tax-free funds to relatives ¶10-740

Cases

■ A lump sum payment made to a life tenant under a trust, as compensation for breaches of trust, was assessable as income (*Murdoch*, AAT — appeal pending) ¶10-020

■ A company which undertook commercial activities to raise funds exclusively to support a charity was entitled to endorsement as a charity (*Word Investments*, Full Fed Ct — special leave application pending) ¶10-605

■ Income earned by foreign aid worker in Vietnam was exempt under ITAA36 s 23AG(1) (*Grant*, AAT) ¶10-860

CHAPTER 11 — SUPERANNUATION BENEFITS • TERMINATION PAYMENTS*New Laws*

- From 1 July 2007, the provisions governing the tax treatment of superannuation benefits and employment termination payments are contained in ITAA97, replacing the provisions in ITAA36 ¶11-000
- The RBL system has been abolished from 1 July 2007, and superannuation benefits and employment termination payments are subject to the simplified superannuation taxation regime from that date ¶11-000, ¶11-550
- Employment termination payments must be made within 12 months of termination and cannot be rolled over to a superannuation fund from 1 July 2007 ¶11-610
- Members of the Military Superannuation and Benefits Scheme under preservation age receiving a benefit comprising an amount that accrued before 1 July 1999 may choose the taxable and tax free components for that amount (subject to certain limits) ¶11-130
- Transitional employment termination payments may be rolled over to a superannuation fund or used to purchase a superannuation annuity before 1 July 2012 ¶11-660

Proposed measures

- Amendments have been proposed to exempt from tax superannuation lump sum benefits paid to persons who are under 60 years of age and are terminally ill ... ¶11-200

CHAPTERS 12 & 13 — CAPITAL GAINS TAX*New laws*

- The trustee of a resident testamentary trust will be able to choose to be assessed on capital gains of the trust ¶12-038
- The venture capital regime was extended ¶5-040, ¶12-900
- Where a statutory licence ends, a CGT roll-over is now available in a broader range of cases ¶13-310
- A CGT roll-over is available from 1 July 2007 where a financial group containing an ADI restructures for prudential reasons ¶13-370
- A CGT roll-over is available from 14 February 2007 for membership interests in medical defence organisations ¶13-435
- A CGT roll-over is available from 1 July 2006 to allow for the reorganisation of stapled groups ¶13-440
- The CGT small superannuation fund roll-over on marriage breakdown was extended with effect from 1 July 2007 ¶13-480
- The CGT rules relating to employee share schemes apply to certain stapled securities from 1 July 2006 ¶13-630

Proposed measures

- The market value substitution rule will no longer apply when CGT event C2 occurs in relation to interests in widely held entities ¶12-510
- A CGT exemption was proposed in a Bill (now lapsed) for certain grants received by tobacco growers ¶12-660, ¶41-150
- Further extensions to the venture capital concessions were announced in the 2007/08 Federal Budget ¶5-040, ¶12-900
- CGT relief will be available for policy holders of health insurers who receive shares as part of their insurer's demutualisation from 1 July 2007 ¶13-650

Rulings and guidelines

- *Draft Ruling* TR 2007/D7 discusses the application of Pt IVA to "wash sale" arrangements ¶12-250

- *Draft Ruling* TR 2007/D10 deals with the CGT consequences of earnout arrangements (where the capital proceeds from the sale of an asset include a right to a post-sale payment) ¶12-500, ¶12-550
- The CGT life insurance policy exemption extends to policies that provide for a payment to be made if an event happens that results in the death of an individual (*Taxation Determination* TD 2007/4) ¶12-880
- *Taxation Determination* TD 2007/2 explains the record keeping requirements where a taxpayer has made a net capital loss ¶12-920
- The active assets of a partnership in which a foreign company is a partner are excluded from the definition of active foreign business assets for the purposes of the CGT participation exemption (*Draft Determination* TD 2007/D6) ¶13-745
- Cases**
- The transfer of a 50% interest in jointly-owned shares by two brothers to each other was subject to CGT (*Johnson*, AAT) ¶12-380
- A couple failed to prove that a property they built was used as their main residence (*Erdelyi*, AAT) ¶12-740
- A capital gain on the sale of shares under a forward purchase agreement was assessed only by reference to the capital proceeds from the sale at the time of the contract (*Lend Lease*, Fed Ct) ¶12-500

CHAPTER 14 — CONSOLIDATED GROUPS

New laws

- To facilitate financial group restructures, subsidiaries that are ADIs will be able to issue certain preference shares to third parties without losing their membership in the consolidated group ¶14-600

Proposed measures

- A large number of enhancements to the consolidation regime are still pending from two major announcements ¶14-600
- For depreciation rate purposes, the head company will be taken to acquire a joining entity's assets at the time the joining entity acquired them ¶14-620
- Certain forgiven debts will be able to be applied against losses transferred from an entity that has losses with a nil available fraction ¶14-636
- The tax cost setting amount is to be used for all purposes of the income tax law ¶14-640
- The tax cost setting rules will not apply to uplift the tax costs of the joining entity's assets when it joins a consolidated group following a CGT roll-over affecting its membership interests ¶14-640
- CGT event L7 will be repealed effective 8 May 2007 ¶14-640
- Where an element of ACA is worked out using accounting standards and concepts, they must be consistent with those used for the financial statements ¶14-640
- Rights to future income and certain units in cash management trusts will be retained cost base assets ¶14-640
- The capital gain under CGT event L3 will be reduced by the difference between the market value and face value of doubtful debts ¶14-640
- The over-depreciation adjustment will be phased out ¶14-640
- The capital gain under CGT event L5 will be reduced in certain circumstances ¶14-660
- The pre-CGT percentage of shares in companies will be maintained when they enter or leave consolidation ¶14-660
- Beneficiaries of a trust that joins or leaves a group part way through the trust's income year will be taxed on an appropriate share of the trust's income ¶14-668

- Treatment of intra-group blackhole expenditure by consolidated groups will be extended to MEC groups ¶14-668
- The government will allow ongoing consolidated or MEC groups to restructure with minimal tax consequences ¶14-684
- If a subsidiary member contracts to sell a CGT asset outside the group and leaves the group before settlement, the capital gain or loss will occur at the time of settlement ¶14-690

Rulings and guidelines

- The application of the same business test (SBT) to losses and bad debts of consolidated groups is discussed in *Taxation Ruling* TR 2007/2 ¶14-620, ¶14-632
- The treatment of unintentional errors affecting the tax costs of reset cost base assets is explained in *Taxation Ruling* TR 2007/7 ¶14-640
- The meaning of “revenue asset” is discussed in *Taxation Determination* TD 2007/18 ¶14-640
- *Taxation Determination* TD 2007/1 provides guidance on working out the market value of goodwill of a joining entity with related party transactions ¶14-640
- Issues related to deregistration of a subsidiary member are discussed in *Taxation Determinations* TD 2007/12, TD 2007/13 and TD 2007/15 ¶14-660
- The applicable functional currency is determined by looking at the accounts of all the members of the group (*Taxation Determination* TD 2007/24) ¶14-670

CHAPTER 15 — PERSONAL TAX OFFSETS • GIFTS

New laws

- The child care tax offset was replaced by the child care rebate, applicable to child care expenses incurred from 1 July 2006 ¶15-370
- A deduction will be allowed for gifts of publicly listed shares that have been held for at least 12 months and are valued at \$5,000 or less ¶15-510
- From 1 January 2007, the minimum contribution threshold for tax deductible contributions to fund raising events is \$150, and the value of the minor benefit allowed is 20% of the contribution (but not exceeding \$150) ¶15-600

CHAPTER 16 — BUSINESS AND EMPLOYMENT DEDUCTIONS

New laws

- The STS system was replaced with rules for “small business entities” and eligibility criteria for a number of tax concessions were standardised from 1 July 2007 ¶16-045
- Foreign bribery laws were strengthened as part of the government’s response to recommendations of the Cole Inquiry ¶16-152
- From the 2007/08 income year, taxpayers who cannot demonstrate that they are carrying on a business using a boat are able to claim a limited range of boating deductions ¶16-420
- From the 2007/08 income year, no deduction is allowable for the investment losses of early stage venture capital limited partnerships ¶16-665
- The provisions dealing with the deductibility of interest and other financing costs connected with superannuation contributions and life insurance premiums were rewritten ¶16-740
- New provisions apply to the deductibility of interest payable under capital protected loans ¶16-742
- The foreign loss and foreign tax credit quarantining rules were abolished and replaced with new simplified foreign income tax offset rules ¶16-895

Rulings and guidelines

- *Taxation Ruling* TR 2007/6 deals with the exercise of the Commissioner's discretion under the non-commercial losses provisions. The Commissioner also issued an addendum to *Taxation Ruling* TR 2001/14 to provide further guidance on the concept of "business activities of a similar kind".¶16-020
- The Commissioner issued guidelines on the treatment of non-resident captive insurance arrangements (*Practice Statement* PS LA 2007/8)¶16-040
- Certain arrangements involving deductions for contributions made to Employee Entitlement Funds are being reviewed (*Taxpayer Alert* TA 2007/2)¶16-040
- The Commissioner issued guidelines to assist businesses manage their tax obligations in relation to bribes and facilitation payments¶16-152

Cases

- Contributions to offshore employee benefit trust were not deductible (*Cameron Brae*, Full Fed Ct)¶16-010
- Amounts paid to an employee welfare fund in discharge of employment contract obligations to two company directors were deductible and Pt IVA had no application in *Trail Bros* (AAT)¶16-010
- No deduction was available for expenses incurred by certain financial services franchisees because the arrangements lacked a business-like structure and the necessary profit-making purpose (*Leggett*, AAT)¶16-015
- Despite incurring losses of over \$720,000, a partnership's horse and sheep breeding activities amounted to the carrying on of a business and the partnership was, therefore, entitled to deduct the losses and other relevant deductions (*Block*, AAT)¶16-015
- Payments made by a company over three income years for the assignment of service agreements for security monitoring were on revenue account and, therefore, deductible (*Tyco Australia*, Fed Ct)¶16-060
- Outgoings incurred under franchise arrangements were capital in nature (*Taylor*, AAT) and the taxpayers were not carrying on a business (*Hyde*)¶16-060
- Investments in a Budplan grape growing project were of a capital nature and non-deductible (*Macpherson*, AAT)¶16-060, ¶18-020
- A lump sum rental prepayment of \$120m was not of a capital nature and was deductible under s 8-1 (*Star City*, Fed Ct)¶16-060
- Investments in certain Budplan projects were not deductible because the amounts were wholly related to the cost of R&D and these activities were conducted prior to carrying on a business (*Brody*, AAT)¶16-154
- Expenses incurred by an investor in a joint venture project were not deductible, being preliminary to any income producing activity (*Balestra*, AAT)¶16-154
- A fitness instructor's claims for work-related clothing expenses was disallowed (*Staker*, AAT)¶16-180
- Management fees paid by two professional footballers to management companies for services performed in negotiating playing contracts for the players were deductible (*Spriggs*; *Riddell*, Fed Ct — appeal pending)¶16-200
- A professional investor was allowed a deduction for the cost of travelling to attend meetings of companies in which he had investments (*Elder*, AAT) . ¶16-452, ¶16-660
- Home office occupancy expenses relating to a jointly owned building should be calculated on a floor area basis (*Case 7/2007*, AAT)¶16-480
- A member of the Queensland parliament has failed to obtain a deduction for legal expenses incurred in connection with a challenge to his pre-selection as his party's candidate for election (*Flegg*, AAT)¶16-500

- In *Fogarty* (AAT), the taxpayer failed to discharge the onus of proving that the Commissioner's method of apportioning deductions with respect to an apartment was not a fair and reasonable one ¶16-650
- Expenses incurred in relation to a managed investment project qualified for deduction but were disallowed under the general anti-avoidance provisions, with the exception of cash payments actually made (*Burrows*, AAT) ¶16-660
- No deduction was available in respect of the loss on the sale of land that was a capital asset (*Price Street Professional Centre*, Fed Ct) ¶16-665
- Interest deductions were allowable despite a seven-year break between the taxpayer's involvement in the project and the incurring of the interest (*Guest*, Fed Ct) ¶16-740
- The Full Federal Court has upheld a Customs officer's entitlement to deductions for legal expenses incurred in defending disciplinary charges (*Day*, Full Fed Ct) . ¶16-842

CHAPTER 17 — DEPRECIATING ASSETS

New laws

- Taxpayers who cannot demonstrate that they are carrying on a business using a boat are allowed to claim limited depreciation deductions ¶17-010
- The decline in value deduction for mining, quarrying and prospecting rights has been realigned with that for other depreciating assets ¶17-280
- The effective life of tractors and harvesters for depreciation purposes has been capped ¶17-280, ¶42-517
- The STS system was replaced with rules for "small business entities" and eligibility criteria for a number of tax concessions were standardised from 1 July 2007 ¶17-810

Rulings and guidelines

- A tangible depreciating asset, acquired for the sole purpose of using it in a business that has not commenced, does not start to decline in value until it is first used or installed ready for use (*Taxation Determination* TD 2007/5) ¶17-010
- *Taxation Ruling* TR 2007/9 sets out the Commissioner's views on the circumstances when an item used to create a particular atmosphere or ambience for premises used in a cafe, restaurant, licensed club, hotel, motel or retail shopping constitutes an item of plant ¶17-040
- The Commissioner's determination of the effective life of depreciating assets was amended with effect from 1 July 2007 (*Taxation Ruling* TR 2007/3) ¶17-270, ¶42-500

CHAPTER 18 — PRIMARY PRODUCTION CONCESSIONS

New laws

- New rules apply to deductions for investments in forestry managed investment schemes from 1 July 2007 ¶18-125
- The total deposit limit for farm management deposits has been raised from \$300,000 to \$400,000 and the non-primary production income threshold raised from \$50,000 to \$65,000 ¶18-293, ¶18-295

Proposed measures

- Grants made to tobacco growers who undertake to exit all agricultural enterprises for at least five years will be exempt (lapsed Bill) ¶18-030, ¶41-150
- A deduction will be provided for capital expenditure incurred on the establishment of trees in carbon sink forests (lapsed Bill) ¶18-070, ¶41-150
- The farm management deposits rules will be aligned with the guidelines for declaring either all primary producers in a geographical area, or specified classes of