the Spry Roughley report

explanatory memorandum

June 2011

CURRENCY: This issue of **Client Alert** takes into account all developments up to and including 4 May 2011.

Trust Law Changes On The Way

A number of notable developments have occurred since the release in March 2011 of Treasury's discussion paper entitled "Improving the taxation of trust income". At that time, the Assistant Treasurer announced the proposed changes would apply for the 2010–11 and later years of income. Mr Shorten also announced the Government expected to introduce legislation into the 2011 Winter sittings of Parliament, which runs from 10 May (Budget) to 7 July 2011. The Government provided a short consultation period of around two weeks.

Note that the information below is correct at the time of writing (4 May 2011). New developments are likely to occur quickly (particularly around Budget time), so readers are advised to check the current state-of-play for any changes.

Key developments since the release of the paper are as follows:

1. **Government defers changes regarding the definition of income of a trust estate:** In early April 2011, the Assistant Treasurer announced that following "overwhelming feedback" from accountants the Government will defer considering the proposal to align trust distributable income with taxable income. That proposal will be rolled into the Government's broader trust tax law review and rewrite. But the Government will still deal with the proposal to enable the streaming of capital gains and franked distributions – see point 2.
2. **Streaming measures draft legislation released:** In mid-April 2011, the Assistant Treasurer released exposure draft legislation on changes to enable the streaming of capital gains and franked distributions as well as changes to ensure that low tax entities, especially exempt entities, cannot be used inappropriately to reduce the tax payable on the taxable income of a trust. The draft legislation also includes specific anti-avoidance rules. Note the draft legislation and explanatory memorandum (released on 29 April 2011) are substantial but not fully complete. Public consultation closed on 29 April 2011 – see point 4.
3. **Trust beneficiaries using averaging and FMDs draft legislation released:** In mid-April 2011, the Assistant Treasurer also released exposure draft legislation and explanatory materials on changes that are designed to allow trust beneficiaries to continue to use the primary production averaging and farm management deposits (FMD) provisions in a loss year. This was announced on 16 December 2010, as part of wider reforms to the taxation of trusts. Public consultation closed on 29 April 2011 – see point 4.
4. **ATO warning to trustees about resolutions:** The Australian Tax Office (ATO) has released details of its administrative treatment following the Government's release of draft legislation (see points 2 and 3). Among other things, it warns that trustees should be aware that, regardless of whether the proposed changes are enacted as currently set out, they will not allow for trustee resolutions made on or before 30 June 2011 to be amended. Therefore, "in framing a resolution, a trustee may need to also consider its tax effect should the law not be enacted as proposed", the ATO said.

Source:

Treasury Discussion Paper, 4 March 2011

Assistant Treasurer's address to ICAA National Tax Conference, Melbourne, 6 April 2011

Treasury Exposure Draft legislation and explanatory memorandum for streaming measures, 13 April 2011

Treasury Exposure Draft legislation and explanatory memorandum for primary production averaging and FMD measures, 13 April 2011

Tax Office administrative treatment, 28 April 2011

Personal Services Entities: ATO Takes a Closer Look

The ATO has gazetted a notice advising of its PSI data-matching project. Under the project, the ATO will request and collect information on amounts paid to personal services entities by 39 labour hire firms, placement agencies and computer consultancies, including:

- 3W Consulting Contracting and Recruitment Pty Ltd;
- Accenture Australia Holdings Pty Ltd;
- Adecco Holdings Pty Ltd;
- Drake Australia Pty Ltd;
- Hays Specialist Recruitment; and
- Michael Page International (Australia) Pty Ltd.

The data requested will include name and address details of the individual who is the main service provider to the entity. The ATO anticipates that records relating to approximately 100,000 individuals and entities who have received contract payments from the 39 entities will be matched.

A document describing the program has been prepared in consultation with Office of the Federal Privacy Commissioner. A copy of this document is available from: MEI MAC Personal Services Income, Attention: Grant Leef, Australian Taxation Office, Locked Bag 96, Southport QLD 4215, or by telephoning 07 5605 8302.

Source: Notified in Commonwealth of Australia Gazette No GN 12, 30 March 2011 [pp 798-99]

Flood Levy for 2011–12 Income Year

The Tax Laws Amendment (Temporary Flood and Cyclone Reconstruction Levy) Bill 2011 and the Income Tax Rates Amendment (Temporary Flood and Cyclone Reconstruction Levy) Bill 2011 both received Royal Assent on 12 April 2011 as Act Nos 16 and 15, respectively, of 2011. The Bills had been passed with a number of amendments (to simply ensure the levy covers reconstruction caused by both the floods and by Cyclone Yasi) and impose a one-year levy (tax) on taxpayers to assist reconstruction work from the floods and Cyclone Yasi.

The levy will operate as follows:

- individuals with a taxable income between $50,001 and $100,000 will pay a 0.5% levy on that part of taxable income above $50,000;
- individuals with a taxable income of $100,001 or more will pay a 0.5% levy on that part of their taxable income between $50,001 and $100,000 and a 1% levy on that part of their taxable income above $100,000; and
- no levy is payable where the taxpayer has a taxable income of $50,000 or less, or where they fall into an exemption category as specified in a legislative instrument that is made by the Minister.

New withholding schedules will be issued by the Commissioner to take account of the levy throughout the year.

TIP: Employers will need to identify their employees who earn more than $50,000, and withhold the levy from their salary or wages. Employees who are exempt from the levy may lodge a flood levy exemption declaration form (NAT 73797) with their employer. (Note that the form will be available on the ATO website at the end of June.) The ATO has released flood levy information tailored for employers at www.ato.gov.au/businesses/content.aspx?doc=/content/00276940.htm and individuals at www.ato.gov.au/individuals/content.aspx?doc=/content/00216565.htm.

GST and Goods Sold With Discounted Components

The ATO has released a Decision Impact Statement giving its view on the Full Federal Court's decision in FCT v Luxottica Retail Australia Pty Ltd [2011] FCAFC 20. The case concerned the basis for the calculation of GST on a supply that is partly taxable and partly GST-free.

The case involved a taxpayer that offered spectacle frames at a discount on the condition that customers acquired undiscounted lenses for those frames. The Commissioner contended that the discount on the frames should be deducted from the combined purchase price of the frames and lenses when calculating the value under s 9-80 of the GST Act. However, the taxpayer argued that the discount should only be applied to the price of the frames.

In the case, the Full Federal Court agreed with the taxpayer and the AAT at the first instance. The Full Court stated that the value of a supply was generally a matter of fact, not law and that the Tribunal made a considered decision based on fact. Accordingly, the Full Court found the taxpayer's method of calculation applying the discount to the frames only was reasonable and fair. The Full Federal Court held that the sale of spectacles was a single supply.

ATO view of decision

The ATO said the Commissioner accepts that it was open to the Full Court to conclude that the apportionment adopted by the taxpayer was "a reasonable basis of apportionment in the circumstances as found by the Tribunal". The Tax Office said it will not seek special leave to appeal to the High Court.

On the issues of supply and s 9-80 raised in the case, the ATO said the conclusions reached by the Court in the decision were consistent with the Commissioner's submissions.

ATO administrative treatment

Some optical suppliers may be able to seek refunds for overpaid GST. However, the ATO said the Commissioner must be satisfied that the amount corresponding to the GST refund has been passed onto the customer and a claim must be made within the four-year time limit. Subject to Commissioner's discretion, the ATO said optical suppliers may be able to seek a refund even when the reimbursement requirement to the customer has not been met. The ATO refers to Miscellaneous Taxation Ruling MT 2010/1 which deals with restrictions on GST refunds.

The ATO said suppliers cannot self-assess the exercise of the Commissioner's discretion and requests need to be made in writing and lodged with the ATO in the approved form.

The ATO said it also intends to amend GST Ruling GSTR 2001/8 to clarify that discounts do not need to be necessarily apportioned "in proportion to the relative amounts of the undiscounted prices for components of a supply comprised of taxable and GST-free or input tax components".

The ATO further emphasised that "apportionment must be undertaken as a matter of practical, commonsense having regard to the circumstances of the particular case. In doing so, a conclusion must be reached as to value of each component and the relationship it has to the price of the supply".

Source: ATO Decision Impact Statement, FCT v Luxottica Retail Australia Pty Ltd, 19 April 2011

Land Sale Case Sheds Light On "Going Concern" GST-free Concession

In a test case, the Federal Court has found that the taxpayer did not supply all things necessary for the continued operation of an enterprise and did not carry on the enterprise until the day of supply. Therefore, the Court held that a supply of land by the taxpayer was not a supply of going concern under s 38-325 of the GST Act.

Background

The taxpayer acquired the land with an intention to develop it into residential housing. Subsequently, the taxpayer abandoned that project in favour of an "en globo sale" of the land. The taxpayer entered into a contract with a purchaser for the sale of the land.

The contract contained a special condition that stated the supply of land constituted a supply of a going concern and therefore was GST-free. The contract also defined the relevant enterprise as "the enterprise of the development of the Land and the assets of that enterprise, including the Land, the Development Material and all other items, books, plans, approvals and all ancillary materials". The contract also specified various obligations (ie earthworks) that the taxpayer had to fulfil prior to the settlement of the contract.

The taxpayer's contentions

The taxpayer contended that the relevant enterprise was property development of the land with a view to realising profit on sale. It said the Commissioner's conception of its enterprise was misconceived. Broadly, the taxpayer claimed this was because the Commissioner's approach was "artificial and inconsistent" with the enterprise as stated in the contract, and was an "unnecessarily narrow approach to the concept of enterprise [as] it confines the scope of the enterprise to the specific and detailed characteristics of 'residential development'".

The taxpayer also contended that the day of supply was the date of the contract. Alternatively, the taxpayer submitted that if the day of supply was the settlement date, it carried on the relevant enterprise until that date. This was, it said, because it continued to discharge the obligations under the contract up to the date of settlement, which was consistent with it carrying on the relevant enterprise until that date.

The taxpayer further contended that s 38-325(a) operates upon the differential language of "an" enterprise and "the" enterprise. It submitted that provided a supplier supplied all things necessary to continue the operation of an enterprise, the supplier need not demonstrate that it supplied all things necessary for the continued operation of their enterprise at the date of the arrangement.

The Commissioner's contentions

The Commissioner contended that two threshold matters arose out of s 38-325(2).

First, the section contemplates the making of an arrangement which is necessarily made at a particular time, with a supplier carrying on the enterprise until the day of the supply. Whilst the recipient of the supply might change the enterprise or discontinue the enterprise as supplied, the Commissioner submitted that the recipient's post-supply choices were not determinative of whether the supplier made a supply of a going concern.

Second, the section requires the identification of the relevant enterprise and all things necessary for the continued operation of the enterprise (s 38-325(2)(a)), and requires the supplier to carry on the identified enterprise until the day of the supply to the recipient (s 38-325(2)(b)).

Therefore, the Commissioner submitted that the day of the supply was the settlement date of the contract. Additionally, the Commissioner submitted that based on the terms of the contract, the taxpayer did not carry on the relevant enterprise at the day of supply.

The Commissioner also contended that the taxpayer carried on a business of land development, which involved buying up land, developing it and subsequently selling it. So, the Commissioner said the sale of the land was in furtherance of the taxpayer's business of land development and not the taxpayer's broader enterprise of property development.

Decision

While the Federal Court acknowledged that the taxpayer was in the business of property development, it said that enterprise came to an end when the taxpayer decided to sell the land. The Court also acknowledged the purchaser wanted to retain some of the features that would have characterised the taxpayer's development. However, it observed that the purchaser proposed to develop a residential development according to its own plans. In the Court's view, a proper construction of the sale contract meant that it did not effect a sale of the taxpayer's enterprise. Rather, the Court said the contract provided for the sale of the land with an obligation by the taxpayer to undertake the earthworks to facilitate the completion of the contract. The Court found that the earthworks undertaken by the taxpayer were not a continuation of its enterprise, but represented works the purchaser required to be done to enable it to undertake its own proposed development.

The Court said the content of an enterprise could not be "reduced or abstracted to doing whatever achieves the objective or satisfies the incentive" but rather the enterprise "has content not just an objective". It said that once the content of the enterprise was isolated, a supply of going concern arose if the requirements of s 38-325 were satisfied. The Court stated that whether all things necessary for the continued operation of the enterprise required the content of the enterprise to be isolated. The interaction between s 38-325(2)(a) and s 38-325(2)(b) meant that it was not sufficient that the purchaser selected or had been supplied with only the things they regarded as necessary to undertake their enterprise.

The Court noted that the settlement day for the contract was to occur 60 days from the date the taxpayer gave notice to the purchaser of the satisfaction of the conditions, or alternatively, at a date earlier than 60 days upon the nomination of the purchaser after receipt of the taxpayer's notice. In the Court's view, this meant that settlement was treated by the taxpayer and the purchaser as the day of supply by which time the taxpayer's works would have been completed. It said the treatment of a contract date and a later supply date was entirely consistent with s 38-325(2). The Court said it is the supply day that a supply to the purchaser occurred.

In conclusion, the Court found the supply of the land was not a supply of going concern. However, the Commissioner accepted that the taxpayer could apply the margin scheme to the supply. Therefore, the Court remitted the matter back to the Commissioner for determination.

Aurora Developments Pty Ltd v FCT [2011] FCA 232, Federal Court, Greenwood J, 18 March 2011

Employees Not Contractors, Says Court

The Federal Court has held that interpreters engaged by a business to provide interpreting and translating services were "employees" for superannuation guarantee purposes and not independent contractors.

Background

The taxpayer operates a business providing interpreting and translating services to its clients (mainly large institutions).

For the period 1 July 2002 to 30 June 2007, the taxpayer did not make superannuation guarantee contributions for the 2,500 interpreters it engaged. The taxpayer regarded the interpreters as self-employed independent contractors primarily by reference to a perceived absence of control because there was no obligation on the interpreters to work. The Commissioner determined that the interpreters were casual or part-time employees for superannuation guarantee purposes and issued the taxpayer with superannuation guarantee charge (SGC) assessments for the relevant period.

The interpreters were free to accept or reject an assignment offered by the taxpayer and most worked for more than one agency. The taxpayer required interpreters to follow its Code of Ethics and to wear an identification badge provided by the taxpayer when on an assignment. Interpreters were able to swap assignments but were not permitted to sub-contract work without permission. The interpreters did not invoice the taxpayer for services provided.

Decision

In upholding the superannuation guarantee assessments, the Court applied a "multi-factorial totality test" of the relationship to find that the interpreters were common law employees under s 12(1) of the Superannuation Guarantee (Administration) Act 1992 (SGAA).

Employee or independent contractor?

Despite the earlier preoccupation of the law with the "control test" to determine whether an employment relationship exists, the Court said the modern approach is "multi-factorial" and considers the "totality of the relationship": Hollis v Vabu Pty Ltd (2001) 207 CLR 21; 47 ATR 559. Whether a person is an employee or an independent contractor is to be answered not simply from the contractual terms, but by the systems and work practices which establish the totality of the relationship, the Court said. While a range of factors may be examined, the Court noted that some factors will be more useful than others due to the diversity of modern work arrangements and the ingenuity of those fostering "disguised employment relationships".

Simply expressed, the Court said the question of whether a person is an independent contractor may be answered as follows:

- Is there a business? Is the person performing the work an entrepreneur who owns and operates a business?
- Whose business? In performing the work, is that person working in and for that person's business as a representative of that business and not of the business receiving the work?

Is there a business?

After a detailed consideration of the relevant factors, the Court said the taxpayer had not established that the interpreters owned and operated a business (except in relation to two of the seven called as witnesses who operated a translating business). The Court said the totality of the evidence strongly suggested that the market for interpreting services involves agencies providing services to large institutional clients. The Court considered that there was little scope for one-person businesses in that market.

While most of the interpreters had multiple purchasers of their services, the Court noted that the bulk of the purchasers were agencies. In this respect, the Court considered that the pattern of work for the interpreters was not much different to that of casual or part-time employees working for a small number of employers. The Court also noted that the interpreters performed their work personally and did not delegate or engage in sub-contracting (as opposed to swapping assignments). They also generally accepted the rates set by the taxpayer without negotiation.

However, the Court found that translating, rather than interpreting, work is more likely to provide an interpreter with the opportunity to establish a business. The Court determined that two of the seven interpreters called as witnesses owned and operated their own businesses. In contrast to the other interpreters, these two witnesses had a substantial direct client base and engaged other workers to perform work. Nevertheless, the Court said the finding in relation to the two translators was of no assistance to the taxpayer in terms of proving that the assessments were excessive in respect of the interpreters not called as witnesses.

Whose business?

The Court concluded that the activities of the interpreters (including the two operating translating businesses) were performed in and for the business of the taxpayer. In reaching that decision, the Court took into account each of the following indicators (largely taken from the decided cases but expressed to reflect the totality approach):

- control test: the Court did not regard the extent to which the taxpayer could and did exercise control of the interpreters as a determinative factor in this case. The taxpayer asserted a lack of control in that it couldn't require interpreters to take assignments. However, the Court noted that a lack of obligation to work is a feature of both an independent contractor and a casual employee;
- representation of user's business: the economic activities of interpreters were represented and portrayed as the activities of the taxpayer and not the activity of the businesses of the interpreters. The requirement for panel interpreters to wear identification badges, and the content of those badges, portrayed panel interpreters as representing the taxpayer and as being an emanation of the taxpayer, the Court said;
- goodwill: the goodwill created by the work performed by the interpreters overwhelmingly enured to the taxpayer;
- result test: the Court was not satisfied that interpreting or translating was remunerated for an agreed result. However, the fact that the work had a connection to time and dislocation was neutral in this case and did not mean the interpreters were employees. The Court said great care needs to be taken with the results indicator in the modern age as remuneration of work by reference to time and dislocation is also a common practice for independent contractors;
- delegation: a key element in an employment relationship is the personal performance of work. The Court said the absence of delegation tends significantly against the conclusion that the work provided by panel interpreters was performed in and for their own businesses;
- integration test: the Court considered that economic dependency, integration and exclusivity was not an indicator of any utility in this case. While the lack of exclusivity and the fact that interpreters also worked for competitors suggested a lack of integration, the Court said this is also a feature of casual and part-time work;
- profit and risk: the interpreters took little or no risk but had some capacity to manage their affairs so as to maximise their remuneration. Although poor performance may have led to no further assignments, there was no penalty or denial of payment. The risk was borne by the taxpayer who took out insurance;
- characterisation of work: the Court did not attach much weight to this factor as the label of independent contractor adopted by the taxpayer and the interpreters did not appreciate the substance of the relationship;
- tax, leave and equipment: these factors were of little assistance in this case.

Extended meaning of employee: s 12(3)

The Court also held that the interpreters were "employees" of the taxpayer within the expanded meaning of s 12(3) of the SGAA as they were engaged under contracts that were wholly or principally for the labour of the person. The Court observed that s 12(3) seeks to facilitate occupational superannuation for workers who sell their labour in employment and employment-like settings. In this respect, the Court said the taxpayer had failed to establish that its relationship with the interpreters was not employment-like.

Constitutional challenge

The Court also rejected the taxpayer's constitutional challenge to the SGAA noting that it was bound by Roy Morgan Research Pty Ltd v FCT (2010) 76 ATR 264 (Note: The High Court has heard the taxpayer's appeal in Roy Morgan and reserved its decision).

On Call Interpreters and Translators Agency Pty Ltd v FCT (No 3) [2011] FCA 366, Federal Court, Bromberg J, 13 April 2011 www.austlii.edu.au/au/cases/cth/FCA/2011/366.html

Self-managed Super Funds and Collectables

The Tax Laws Amendment (2011 Measures No 2) Bill 2011 has been introduced into the House of Representatives. The Bill proposes to amend the SIS Act to enable new legislative standards to be set in the regulations for self-managed superannuation fund (SMSF) trustees that make, hold or realise investments involving collectables or personal use assets. (See below for other amendments contained in the Bill.)

Currently, there are no specific restrictions on SMSF investments in lifestyle assets. However, such investments are subject to the general superannuation investment rules, eg the sole purposes test: see Ruling SMSFR 2008/2.

The Bill will insert a new s 62A of the SIS Act which will enable the SIS Regulations to prescribe rules for SMSFs "making, holding and realising investments" involving:

- artwork (within the meaning of the ITAA 1997); jewellery; antiques; artefacts; coins or medallions; postage stamps or first day covers; rare folios, manuscripts or books; memorabilia; wine; cars; recreational boats; memberships of sporting or social clubs; or
- assets of a particular kind, if assets of that kind are ordinarily used or kept mainly for personal use or enjoyment (not including land).

Note that "artwork" is defined in s 995-1 of the ITAA 1997 to mean a painting, sculpture, drawing, engraving or photograph (or a reproduction of such a thing) or property of a similar description or use.

The EM states that the provisions are intended to apply not only where the asset is the primary investment but also where the asset is attached to an investment or is a related benefit of an investment. Note that the rules prescribed in the regulations may be in relation to how the asset is acquired, stored and used while in the SMSF, and disposed of. The EM also notes that s 62A does not override s 62 (sole purpose test) so that investments to which this measure applies must comply with both ss 62 and 62A.

The regulations may prescribe penalties of not more than $1,100 for offences against the regulations. Matters relating to offences against the rules will be set out in the regulations.

Date of effect

The amendments are proposed to commence on 1 July 2011, applicable to investments made before, on or after 1 July 2011.

To avoid doubt, the application provisions in the Bill provide that the regulations may be expressed to only apply to some of the listed investments. This will allow the five-year transitional period proposed by the Government to be included in the regulations. The Government has previously indicated that any existing SMSF holdings of collectables and personal use assets that cannot comply with the legislative standards will be required to be disposed of by 1 July 2016.

Previous announcement

The Bill was previously released in draft form on 1 February 2011. The measure was previously announced as part of the Government's "Stronger Super" reforms which rejected the recommendation by the Cooper Super System Review to ban SMSFs from investing in collectables and personal use assets. Instead, the Government proposed to introduce new legislative standards to ensure such investments do not give rise to current day benefits for members.

Other amendments contained in the Bill

The Bill also proposes other amendments including:

- amending the GST Act to: (i) replace the current mechanism for ensuring Australian taxes, and certain Australian fees and charges are not subject to GST with specific legislative exemptions; (ii) allow for the making of regulations to treat an Australian tax, or an Australian fee or charge in a particular way;
- amending the A New Tax System (Luxury Car Tax) Act 1999 to account for changes being made to the GST Act;
- amending the SIS Act and the Retirement Savings Accounts Act 1997 to allow superannuation fund trustees and retirement savings account providers to use TFNs: (i) as a method of locating member accounts; and (ii) to facilitate the consolidation of multiple member accounts;
- amending the ITAA 1997 to update the list of deductible gift recipients (DGRs) to make two entities DGRs, and change the name of another entity;

- making technical corrections and other "minor and miscellaneous" amendments to the taxation laws. Some of the more significant amendments include providing the Commissioner with a discretion to extend the main residence exemption from CGT, and allowing the nomination of controllers of discretionary trusts for the purposes of the CGT small business concessions.

FBT Rates and Thresholds for 2011–12

The ATO has released five determinations dealing with FBT rates, thresholds, etc for the 2011–12 FBT year (ie the FBT year that commenced on 1 April 2011).

- TD 2011/2: for the purposes of s 135C of the FBTAA, the record-keeping exemption threshold is $7,391 (was $7,190 for the 2010–11 FBT year).
- TD 2011/3: for the purposes of s 28 of the FBTAA, the indexation factors for valuing non-remote housing are:
    - NSW: 1.049; Vic: 1.042; Qld: 1.034; SA: 1.041; WA: 1.037; Tas: 1.036; ACT: 1.043; NT: 1.076.
- TD 2011/4: for the purposes of Div 7 of Pt III of the FBTAA, the following amounts represent a reasonable food component of a LAFHA for expatriate employees (for larger family groupings, add $140 for each additional adult and $68 for each additional child):
    - 1 adult: $233; 2 adults: $373; 3 adults: $419; 1 adult and 1 child: $301; 2 adults and 1 or 2 children: $419; 2 adults and 3 children: $488; 3 adults and 1 child: $488; 3 adults and 2 children: $558; and 4 adults: $558.
- TD 2011/5: the rates to be applied on a cents per kilometre basis for calculating the taxable value of a fringe benefit arising from the private use of a motor vehicle other than a car are:
    - 0–2500cc: 46 cents/km;
    - over 2500cc: 55 cents/km; and
    - motorcycles: 14 cents/km.
- TD 2011/6: the benchmark interest rate is 7.80% pa (was 6.65% pa for the 2010–11 FBT year). The benchmark rate is used to calculate the taxable value of: a fringe benefit provided by way of a loan; and a car fringe benefit where an employer chooses to value the benefit using the operating cost method.

Source: Tax Office Taxation Determinations, 30 March 2011:

Car Expenses – Rates per Kilometre for 2010–11

The Income Tax Assessment Amendment Regulations 2011 (No 3) were registered and set the "cents per kilometre" rates for calculating tax deductions for car expenses for the 2010–11 income year. Those rates are unchanged from 2009–10 and are:

Car expense rates per kilometre for 2010–11			
Type of car	**Engine capacity – non-rotary engine (cc)**	**Engine capacity – rotary engine (cc)**	**Kilometre rate (cents)**
Small car	0 – 1,600	0 – 800	63
Medium car	1,601 – 2,600	801 – 1,300	74
Large car	2,601 +	1,301 +	75

The cents per kilometre method can be used for the first 5,000 business kilometres only. If a taxpayer wishes to claim for more than 5,000 business kilometres, they must use one of the other methods outlined in Div 28 of the ITAA 1997.

Source: Income Tax Assessment Amendment Regulations 2011 (No 3), 21 April 2011