

Client Information Bulletin



Chartered Accountants and Business Advisers

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Contents

- 1 > Superannuation – Don't exceed new limits
> Super Guarantee OTE definition changes
- 2 > Business travel rates 2009-10
> Data matching projects
> Same sex relationships and taxation implications
> Dealing with the ATO in difficult times
- 3 > Government funding for SME through Enterprise Connect
> When is a company in trouble – The risk of insolvent trading
- 5 > Appendix: Business Travel Rates 2009-10



Chartered Accountants

Superannuation – Don't exceed new limits

From 1 July 2009 the concessional contribution cap was halved to \$25,000 per person per annum (or \$50,000 per person if the member is over 50 years of age).

The concessional contributions cap of \$25,000 is not separate from the superannuation guarantee requirements, so you need to ensure that you include the nine per cent Superannuation Guarantee Contributions (SCG) in your calculations.

Employers that pay their employee's April to June 2009 superannuation contributions in July 2009 need to include these contributions in the \$25,000 cap limit for the 09/10 financial year. That means, while you may have reduced your contributions you could still exceed the cap.

For example: If in the 08/09 financial year you earned \$75,000, your SCG at nine per cent would have been \$6,750. The remaining \$43,250 could have been salary sacrificed to make up the \$50,000 limit.

From 1 July 2009 you would need to reduce your salary sacrifice amount to ensure you remain under the new \$25,000 cap.

However if your employer makes contributions quarterly the actual contributions the superfund receives in the 09/10 financial year would be as follows:

April – Jun 09 contribution
(paid in July) \$12,500

July 09 – March 10 contributions
(at reduced rate) \$18,750

Total contributions received
09/10 financial year \$31,250

This exceeds the new concessional contribution cap by \$6,250. The additional tax payable for exceeding the contribution cap is \$1,968.75.

So beware and ensure you don't inadvertently exceed the cap in 2010.

Talk to your Chartered Accountant if you have concerns.

Super Guarantee OTE definition changes

Changes have been made to the *Superannuation Guarantee (Administration) Act 1992* (Cwlth) (SGR 2009/2). Those changes took effect from 1 July 2009 and provide a slightly modified version of the ordinary time earnings (OTE).

OTE is defined as earnings in respect of ordinary hours of work other than earnings consisting of a lump sum payment of any of the following kinds made to the employee on the termination of his or her employment.

With the changes the following aspects are affected:

- Bonuses are now considered OTE and are included when calculating the Superannuation Guarantee payable
- Overtime, even if regular, outside ordinary work hours is generally not included in OTE.

For more information about the Superannuation Guarantee OTE and how it will affect your employees talk to your Chartered Accountant.

Business travel rates 2009-10

The Tax Office has released the 2009-10 travel, accommodation and meal allowance rates.

When claiming travel allowance expenses and overtime meal allowance expenses the following key points must be remembered:

- The claim must be allowable. A deduction claim cannot exceed the amount actually incurred for work-related purposes. The payment of an allowance does not of itself allow a deduction to be claimed.
- An allowance must be paid. The substantiation exception only applies if the employee is paid an overtime meal allowance or a travel allowance. The allowance must have an identifiable connection with the nature of the expense covered.
- For travel allowance expenses the employee must sleep away from home.
- Where the amount claimed is no more than the applicable reasonable amount, substantiation of the claim with written evidence is not required. This is known as the substantiation exception.
- For claims in excess of reasonable amounts, the whole claim must be substantiated with written evidence, not just the excess.
- Verification of reasonable claims may be necessary where the substantiation exception is applied. The employee may be required to show:
 - How they worked out their claim
 - An entitlement to a deduction (for example that work-related travel was undertaken)

- A bona fide travel allowance was paid
- If accommodation is claimed, that commercial accommodation was used.

The nature and degree of evidence will depend on the circumstances. They may include the circumstances under which the employer pays allowances, the occupation of the employee, and the total amount of allowances received and claimed during the year by the employee.

For a detailed listing of the 'reasonable amounts' as outlined by the Tax Commissioner refer to the Appendix included at the end of this Bulletin.

Data matching projects

The ATO has released details of some specific data matching projects it will carry out.

- **Motor Vehicles**
The tax office will collect details of individuals and entities that have motor vehicle valued at \$10,000 or more from the state and territory departments. The aim is to capture lower valued vehicles that are increasingly provided as fringe benefits.
- **Share market transactions data matching**
Matching data from the ASX Ltd, Computershare Ltd, Link Market Services Ltd and Registries Ltd. The intention of the project is to confirm that entities are complying with their tax obligations relating to share market transactions.

Same sex relationships and taxation implications

As from 1 July 2009, people living in same sex de facto, or registered relationships will be treated the same way for tax purposes regardless of gender.

This includes having the same access to tax concessions, regardless of their partner's gender.

Centrelink will also recognise same sex de facto or registered relationships.

Tax legislation now relevant to same sex relationships include the:

- Medicare levy reduction/exemption
- Medicare levy surcharge
- Dependent tax offset
- Invalid relative tax offsets
- Pensioner tax offset
- Education tax refund
- Spouse Super contributions tax offset
- Main residence exemption for Capital Gains Tax.

Contact your Chartered Accountant for further information.

Dealing with the ATO in difficult times

In the current economic environment, businesses struggling with their cash flow may find meeting their tax obligations increasingly difficult.

One option is to negotiate deferred payment arrangements with the ATO. The ATO will only agree to such arrangements if they are made in accordance with strict risk management guidelines. These guidelines are available on the ATO website.

In order to have the greatest chance of success in negotiating a deferred payment arrangement, business owners should prepare:

- An explanation of the factors that have led to the company being unable to meet its outstanding taxation obligations
- Details of the company's current financial position, including the latest set of financial statements and debtors and creditors aged balances
- Details of how the company proposes meeting its outstanding taxation obligations, such as an injection of equity or loan funds
- Supporting documentation to show that the ATO is being treated in the same way as the company's other creditors and will not be disadvantaged by entering into the arrangement. This is normally provided by cash flow and budget statements
- A realistic payment proposal which is achievable by the company and clears the outstanding taxation debt in the shortest possible time
- An undertaking from the company that it will keep its lodgements up to date, and pay its future tax obligations on time.

It is unlikely that the ATO will entertain entering into an arrangement unless all past taxation lodgements for the business are up to date.

In addition, there is a far greater chance of success if the ATO is advised of the difficulties early, rather than after the taxation debt has escalated to a significant level.

Government funding for SMEs through Enterprise Connect

The Federal Government has introduced a number of initiatives to help businesses in today's tough economic climate. One such initiative, tailored to small to medium size enterprises (SME), is the Enterprise Connect program.

The Enterprise Connect program is a \$251m initiative aimed at providing SMEs with access to new ideas, knowledge and technologies to enable them to become more productive, innovative and competitive. Services offered by Enterprise Connect include:

- Business Reviews which are delivered by skilled and experienced Business Advisers and
- Tailored Advisory Services - matching funding to implement changes identified through the Business Review.

The Business Review is a comprehensive analysis of your organisation. This includes looking at its strengths and weaknesses, the strategic issues confronting your business, the potential areas for improvements and areas for growth. The analysis is carried out on site by an experienced business advisor over a three to four day period. Best of all, the review is free.

The Tailored Advisory Service enables businesses to engage one or more specialist consultants to implement changes identified in the Business Review. The business will be reimbursed half the cost of engaging the consultant(s) up to a maximum value of \$20,000.

To be eligible for the above programs, the business must:

- Possess an Australian Company Number ("A.C.N.")

- If located in Melbourne, Sydney, Adelaide, Perth or Brisbane – have a turnover of between \$2m and \$100m in the current or two preceding financial years
- If in a regional centre outside the above cities - have a turnover between \$1.5m and \$100m in the current or two preceding financial years
- Be solvent
- Have filed Business Activity Statements for the last three consecutive years.
- Be a manufacturing and / or a manufacturing related service firm.
- Not have been provided with a similar government funded service over the previous three years.

Further details regarding the Enterprise Connect program can be found at www.enterpriseconnect.gov.au or contact the Enterprise Connect Hotline on 131 791.

When is a company in trouble? The risk of insolvent trading

Directors of companies facing financial stress constantly find themselves in the difficult position of deciding whether to cease or continue operating. The decision to continue to operate may prove detrimental to the directors should the company subsequently fail. Accordingly, it is important for directors to recognise when a company's business can no longer be saved.

Key indicators that a business may be in trouble include the following:

- Earning expectations are not met
- Cash flow is tight and operating losses persist
- Credit lines are fully extended, the company is

unable to make principal and interest payments and the company is not complying with debt covenants

- There is significant turnover of senior staff
- Accounting irregularities have occurred
- Customer relationships are deteriorating
- Market share is declining
- The company is reliant on a small number of customers
- The company is behind on lodgement of its Business Activity Statements
- Business Activity Statements are lodged, however, payments are not made
- Creditor calls demanding payments have increased or creditors have stopped supply
- Statutory Demands for payment have been received.

While the above list is not exhaustive, should directors find themselves facing a number of these issues, they must consider whether continuing to operate may result in their receipt of an insolvent trading claim from a liquidator subsequently appointed to the company.

Such a claim may be made because directors who allow a company to incur debts while it is insolvent, risk being held personally liable for those debts.

Specifically, directors have a duty to prevent a company from incurring further debts where:

- The company is insolvent or becomes insolvent at the time it incurs a debt or debts including that debt; and
- There are reasonable grounds for suspecting that the company is insolvent or would become insolvent as a result of incurring that debt or debts.

This duty applies to individuals who may not be formally appointed as directors, such as

shadow directors or de facto directors. The lack of a formal appointment does not excuse an individual from liability. Further, a director who resigns while a company is insolvent, but prior to the company being placed into liquidation, may still be held liable for all debts incurred from the date the company was considered to be insolvent to their resignation date.

Where directors have concerns as to the solvency of a company, there are a number of matters which they should consider to minimise the risk that they will breach the insolvent trading provisions. These matters include the following:

- Consider whether the company's business is viable. If it is viable, directors should prepare a business review and a realistic program to return the company to profitable trading
- Surplus staff should be dismissed and directors should consider the sale or closing of unprofitable or marginal segments of the business
- The company should conduct frequent meetings of the board of directors and keep minutes of those meetings at which the financial position of the company is discussed
- Directors should ensure that responsibilities are properly delegated while ensuring that important decisions are not delegated
- Financial accounts must be up to date and properly kept. If accounts are found not to be up to date, immediate steps are required to ensure that this occurs
- Directors should receive an updated budget and a complete and accurate report of the company's trading and financial position on a regular basis

- All directors should be kept informed and agree on future actions. Dissenting directors should resign as a last resort knowing that they will only be spared from personal liability in relation to debts incurred after they resign
- External professional advice in relation to solvency issues should be sought as soon as practicable
- Major creditors should be kept apprised of developments
- A contingency plan should be developed detailing the steps to be taken should the company's solvency not improve within a defined period. This may involve appointing a Voluntary Administrator or approaching a secured creditor and requesting that a Receiver and Manager be appointed to the company.

While directors would like a company to trade out of its difficulties, they are obliged to act in the best interests of creditors while complying with their other duties. Taking the above steps will promote appropriate action in a timely manner by directors and thereby mitigate the potential for personal liability.

DISCLAIMER: The contents of this publication are general in nature and we accept no responsibility for persons acting on information contained herein.

Appendix: Business Travel Rates 2009-10

Travel Claims Within Australia 2009-10

The reasonable amounts for daily travel allowance expenses, according to salary levels and destinations, for the 2009-10 income year are shown in Tables 1 to 6 as follows.

Table 1: Employee's annual salary - \$93,600 or below				
Place	Accomm. \$	Food and drink \$ B'fast 22.30 Lunch 25.00 Dinner 43.00	Incidentals \$	Total \$
Adelaide	157	90.30	16.50	263.80
Brisbane	201	90.30	16.50	307.80
Canberra	145	90.30	16.50	251.80
Darwin	159	90.30	16.50	265.80
Hobart	117	90.30	16.50	223.80
Melbourne	173	90.30	16.50	279.80
Perth	164	90.30	16.50	270.80
Sydney	183	90.30	16.50	289.80
High cost country centres	See Table 4	90.30	16.50	Variable - see Table 4
Tier 2 country centres (see Table 5)	107	B'fast 19.95 Lunch 22.80 Dinner 39.30	16.50	205.55
Other country centres	92	B'fast 19.95 Lunch 22.80 Dinner 39.30	16.50	190.55

Table 2: Employee's annual salary - \$93,601 - \$166,500				
Place	Accomm \$	Food and drink \$ B'fast 24.25 Lunch 34.35 Dinner 48.10	Incidentals \$	Total \$
Adelaide	183	106.70	23.55	313.25
Brisbane	233	106.70	23.55	363.25
Canberra	183	106.70	23.55	313.25
Darwin	170	106.70	23.55	294.25
Hobart	150	106.70	23.55	280.25
Melbourne	197	106.70	23.55	327.25
Perth	211	106.70	23.55	341.25
Sydney	225	106.70	23.55	355.25
High cost country centres	See Table 4	106.70	23.55	Variable - see Table 4
Tier 2 country centres (see Table 5)	128	B'fast 22.30 Lunch 22.80 Dinner 44.40	23.55	241.05
Other country centres	110	B'fast 22.30 Lunch 22.80 Dinner 44.40	23.55	223.05

Table 3: Employee's annual salary - \$166,501 and above				
Place	Accomm . \$	Food and drink \$ B'fast 26.00 Lunch 37.00 Dinner 63.00	Incidentals \$	Total \$
Adelaide	209	126.00	23.55	358.55
Brisbane	236	126.00	23.55	380.55
Canberra	230	126.00	23.55	379.35
Darwin	265	126.00	23.55	414.15
Hobart	195	126.00	23.55	344.55
Melbourne	265	126.00	23.55	414.55
Perth	275	126.00	23.55	424.55
Sydney	265	126.00	23.55	414.55
Country centres	\$190, or the relevant amount in Table 4 if higher	126.00	23.55	Variable - see Table 4 if applicable

Table 4: High cost country centres - accommodation expenses			
Country centre	\$	Country centre	\$
Ballarat (VIC)	118.50	Horsham (VIC)	113.00
Bendigo (VIC)	122.00	Jabiru (NT)	198.00
Bright (VIC)	110.50	Kalgoorlie (WA)	130.50
Broome (WA)	207.00	Karratha (WA)	285.00
Bunbury (WA)	120.00	Kununurra (WA)	157.50
Burnie (TAS)	125.00	Launceston (TAS)	115.50
Cairns (QLD)	123.00	Mackay (QLD)	132.50
Carnarvon (WA)	146.30	Maitland (NSW)	108.00
Christmas Island (WA)	122.50	Mount Isa (QLD)	158.50
Cocos (Keeling) Islands	110.00	Newcastle (NSW)	127.50
Dampier (WA)	174.40	Newman (WA)	170.00
Derby (WA)	181.50	Norfolk Island	119.50
Devonport (TAS)	128.50	Port Hedland (WA)	270.00
Emerald (QLD)	113.00	Port Macquarie (NSW)	115.00
Esperance (WA)	115.00	Thursday Island (QLD)	180.00
Exmouth (WA)	190.00	Townsville (QLD)	124.00
Geelong (VIC)	121.00	Wagga Wagga (NSW)	117.50
Geraldton (WA)	129.50	Warrnambool (VIC)	113.00
Gladstone (QLD)	118.50	Weipa (QLD)	138.00
Gold Coast (QLD)	135.00	Wilpena-Pound (SA)	135.00
Halls Creek (WA)	147.50	Wonthaggi (VIC)	122.00
Hervey Bay (QLD)	119.00	Yulara (NT)	331.00
Horn Island (QLD)	159.00		
Table 5: Tier 2 country centres			

Table 5: Tier 2 country centres	
Country centre	Country centre
Albany (WA)	Mount Gambier (SA)
Alice Springs (NT)	Naracoorte (SA)
Bairnsdale (VIC)	Port Augusta (SA)
Bathurst (NSW)	Port Lincoln (SA)
Bordertown (SA)	Portland (VIC)
Broken Hill (NSW)	Renmark (SA)
Castlemaine (VIC)	Roma (QLD)
Ceduna (SA)	Orange (NSW)
Dalby (QLD)	Seymour (VIC)
Dubbo (NSW)	Swan Hill (VIC)
Echuca (VIC)	Whyalla (SA)
Kadina (SA)	Wollongong (NSW)
Innisfail (QLD)	

Reasonable travel allowance expense claims for employee truck drivers

Amounts claimed up to the food and drink component only of the reasonable domestic daily travel allowance amounts for 'other country centres' are considered to be reasonable for meal expenses of employee truck drivers who have received a travel allowance and who are required to sleep away from home. For the 2009-10 income year, the relevant amounts are:

Table 6: Employee truck drivers			
Salary range	Food and drink		
\$93,600 and below	B'fast	Lunch	Dinner
	\$19.95	\$22.80	\$39.30
	\$82.05 per day		
\$93,601 and above	B'fast	Lunch	Dinner
	\$22.30	\$22.80	\$44.40
	\$89.50 per day		

Travel Claims Overseas 2009-10

If a country is not listed in Table 1 below, use the reasonable amount in Table 2 for Cost Group 1. For an explanation of Cost Groups see the table below.

Country	Cost Group	Country	Cost Group
Albania	2	Estonia	3
Algeria	4	Ethiopia	1
Angola	6	Fiji	2
Antigua and Barbuda	4	Finland	5
Argentina	2	France	6
Austria	5	Gabon	6
Azerbaijan	5	Gambia	3
Bahamas	6	Georgia	3
Bahrain	3	Germany	5
Bangladesh	2	Ghana	2
Barbados	5	Gibraltar	3
Belgium	4	Greece	4
Bermuda	5	Guatemala	2
Bolivia	1	Guyana	2
Bosnia	2	Hungary	3
Brazil	4	Iceland	5
Brunei	2	India	4
Bulgaria	3	Indonesia	3
Burkina Faso	3	Iran	1

Country	Cost Group	Country	Cost Group
Cambodia	2	Irish Republic	5
Cameroon	4	Israel	4
Canada	4	Italy	5
Chile	2	Jamaica	3
China (includes Macau & Hong Kong)	4	Japan	6
Colombia	3	Jordan	4
Congo Democratic Republic	3	Kazakhstan	3
Cook Islands	3	Kenya	3
Costa Rica	2	Korea Republic	4
Cote D'Ivoire	4	Kuwait	4
Croatia	3	Laos	2
Cuba	3	Latvia	3
Cyprus	4	Lebanon	3
Czech Republic	4	Libya	3
Denmark	6	Lithuania	3
Dominican Republic	3	Luxembourg	4
East Timor	2	Macedonia	2
Ecuador	2	Malawi	2
Egypt	3	Malaysia	2
El Salvador	2	Mali	3
Eritrea	2	Malta	4
Mauritius	2	Senegal	3
Mexico	2	Serbia	2
Monaco	6	Sierra Leone	4
Morocco	3	Singapore	4
Mozambique	2	Slovakia	4
Myanmar	4	Slovenia	3
Namibia	2	Solomon Islands	2
Nepal	2	South Africa	1
Netherlands	5	Spain	4
New Caledonia	5	Sri Lanka	2
New Zealand	3	Sudan	4
Nicaragua	2	Surinam	3
Nigeria	4	Sweden	4
Norway	6	Switzerland	5
Oman	4	Syria	3
Pakistan	2	Taiwan	3
Panama	3	Tanzania	2
Papua New Guinea	3	Thailand	3
Paraguay	1	Tonga	2
Peru	3	Trinidad and Tobago	4
Philippines	2	Tunisia	2
Poland	3	Turkey	4
Portugal	4	Uganda	2
Puerto Rico	4	Ukraine	3
Qatar	4	United Arab Emirates	5
Romania	3	United Kingdom	5
Russia	5	United States of America	4
Rwanda	3	Uruguay	2
Saint Lucia	3	Vanuatu	3
Saint Vincent	3	Venezuela	5
Samoa	3	Vietnam	2
Saudi Arabia	3	Zambia	2

Table 2: Reasonable amounts by cost groups

Cost Group	Salary \$93,600 and below			Salary \$93,601 to \$166,500			Salary \$166,501 and above		
	Meals	Incidentals	Total	Meals	Incidentals	Total	Meals	Incidentals	Total
1	\$65	\$25	\$90	\$90	\$25	\$115	\$115	\$30	\$145
2	\$85	\$30	\$115	\$120	\$35	\$155	\$150	\$40	\$190
3	\$120	\$35	\$155	\$150	\$40	\$190	\$180	\$45	\$225
4	\$155	\$35	\$190	\$185	\$45	\$230	\$215	\$50	\$265
5	\$185	\$40	\$225	\$225	\$50	\$275	\$265	\$60	\$325
6	\$215	\$45	\$260	\$270	\$50	\$320	\$310	\$60	\$370