R&G TAX REPORT

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Tax News, Views and Clues

Commercial Debt Forgiveness

The Tax Office has released an Interpretative Decision (ID) reconfirming the application of the commercial debt forgiveness provisions.

Specifically, the ID states that where an arm's-length 'commercial debt' is forgiven during an income year, the total net forgiven amount must be applied to successively reduce the debtor's prior year revenue losses, prior year net capital losses, certain current year expenditure, and the cost base of certain CGT assets held by the debtor at the beginning of the forgiveness year.

Special rules apply to companies that are members of the same wholly-owned group.

Superannuation Obligations Accelerated

New rules will apply from 1 July 2003, concerning employer superannuation guarantee contribution (SGC) obligations.

Specifically, from 1 July 2003, employers will be required to:

- make at least quarterly contributions on behalf of all eligible employees (equal to 9% of the employees' earnings);
- provide written details of the contributions to each quarter; and
- keep records of when, what and how they reported to employees.

The written report provided to employees must be made within 30 days of making the final contribution for the quarter and must also detail:

- the amount of contributions made;
- the name of the superannuation provider; and
- the employee's membership or account number (if known).

The SGC due dates are:

SGC quarter	Payment date for contributions
1 July–30 September	28 October
1 October–31 December	28 January
1 January–31 March	28 April
1 April–30 June	28 July

Where SGC payments are not made on time, a superannuation guarantee charge will apply and must be paid by the 14th day of the month following the SGC contribution payment date.

Also, where an employer currently makes more frequent SGCs due to the conditions of a superannuation fund, an award obligation or a workplace agreement, they should continue to do so.

➢ **TIP:** Generally, eligible employees are those who are paid at least $450 per month.

'At Call' Loans

In Victoria, if a loan remains outstanding for a period of six years from the time the loan was created, the lender may cease to have rights of recovery from the borrower unless one of the following happens:

- a written acknowledgment is provided to the lender by the borrower confirming the debt outstanding; or
- a repayment of principal or interest occurs.

This has important implications from an income tax perspective as the loan may be taken to be forgiven if there are no further recovery rights.

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Where a debt is forgiven by a private company for the benefit of a shareholder or associate, the company may be deemed to have paid a taxable dividend.

Alternatively, the forgiveness may trigger the commercial debt forgiveness rules that will effectively reduce the tax attributes of the debtor (refer to this month's article on 'Commercial Debt Forgiveness').

- **TIP:** To avoid unintended, adverse tax implications, the debtor should make periodic repayments or acknowledge the debt in writing from time to time.

Tax Office Loses Part IVA Case

The Tax Office has failed in its case where a taxpayer used his family trust to divert his income from a stockbroking business thereby obtaining a tax benefit by splitting income among various beneficiaries.

The Court found that the operations of the family trust were more than a one person business and therefore the income was not wholly due to the personal exertion of any one individual.

In addition, it was satisfied that the trust was put in place by the taxpayer to enable him to protect his assets — a lesson he learnt from earlier business failures and not for the purposes of splitting income.

GST Margin Scheme

The Tax Office has announced that it will relax the valuation requirements for businesses that sell property and utilise the GST margin scheme.

For properties held prior to 1 July 2000, the margin scheme provides taxpayers with the option of accounting for GST only on the increase in the value of the property between 1 July 2000 and the time of its sale. This means businesses do not pay GST on increases in property values before GST was introduced.

In choosing this approach, the taxpayer is required to undertake a professional valuation of the property as at 1 July 2000.

The Tax Office discovered taxpayers were not complying with this requirement due to a general lack of understanding.

Accordingly, where a valuation has not been obtained, the Tax Office will allow taxpayers to use a current ratings value for the property or the original purchase price.

CGT: No Principle Residence Exemption

The Administrative Appeals Tribunal has held that husband and wife taxpayers were not entitled to the CGT principle residence exemption for a home they disposed of for a significant sum.

The taxpayers resided in the home for approximately four years before its demolition. A new home was built on the same land, during which time the taxpayers leased another property. Shortly before final completion of the new home, they entered into an agreement with a sales agent to sell the property.

The AAT found that the taxpayers were not entitled to the CGT principle residence for the sale. Despite the taxpayers' claims, as far as the AAT was concerned, the taxpayers never resided in their new home following its completion. Hence, there was no 'relevant period' to which the principle residence exemption could apply in respect of the new home.

- **TIP:** If the taxpayers had re-occupied the property for a period of three months after the new home was built and made the required election for the concession to apply, the principle residence exemption would have been available.

Farmer's Claim for Age Pension Denied

The AAT has ruled that a farmer did not qualify for the age pension under the Retirement Assistance for Farmers scheme because he failed to fulfil all legal requirements of the application within the specified time limit.

It is understood that the scheme was initially introduced to provide a three-year window for persons who were at or approaching retirement age, to hand the farm on to the younger generation without affecting their access to age pension.

A preliminary assessment of the farmer's application indicated that he was eligible for the pension subject to him legally transferring ownership of all the farm assets within three months of the date of the preliminary assessment. However, he failed to meet this time limit and registration of the transfer of assets to his son occurred at a later date.

The AAT held that there is no discretion under the relevant legislation to vary the cut-off date for the transfer. Accordingly, the farmer's claim for the pension was denied.

- **TIP:** This case highlights the need to plan ahead and exercise due care when applying for any government assistance.

General Interest Charge

The Tax Office has announced that the general interest charge (GIC) rate for the June 2003 quarter is 11.75%, down from 11.84% for the previous quarter.