

Tax News, Views and Clues

Company Losses

Taxpayers often do not realise that there are special tests to be satisfied where a company has incurred tax losses, if the company is owned by discretionary trusts.

Broadly, in order to utilise the losses, a number of conditions must be satisfied. Most notably, the discretionary trusts which own shares in the company may need to satisfy onerous tests under the trust loss rules, as if the trusts, rather than the company, had incurred the losses. These tests include a pattern of distribution test, a 50% stake test and a control test.

Where a family trust election is made in relation to the discretionary trusts, these tests do not apply and the company losses are potentially much easier to access and utilise.

Taxpayers should therefore consider a family trust election in these circumstances.

Readers will recall that the Tax Office has recently announced an opportunity for retrospective elections where required.

➤ **TIP:** Taxpayers should seriously consider family trust elections where a discretionary trust owns a company incurring tax losses.

Motor Vehicle Expenses: Interest Deductions

Taxpayers may use one of four different methods to calculate the allowable deduction for car expenses. The methods are:

- log book;
- one-third of actual expenses;
- cents per kilometre; or
- 12% of cost.

A car expense includes a car-related loss or outgoing, such as fuel receipts or maintenance, and interest paid on money borrowed to purchase a car.

In a recently issued Interpretative Decision, the Tax Office considered the issue of whether a taxpayer who uses the one-third of actual expenses method can claim interest incurred on a loan to purchase a car, the cost of which exceeds the car limit.

The car limit applies to limit the depreciation deduction available to taxpayers. For the 2004/05 financial year, the car limit is \$57,009. Provided that the taxpayer incurs interest on an amount borrowed to purchase a car that is used to produce assessable income, the interest deduction is not reduced by application of the car limit.

Property Tax Deductions Targeted

The Tax Office has recently announced plans to review depreciation and capital allowances applying to the \$300 billion commercial property sector. The review is expected to involve the reclassification of many items currently deemed to be plant for tax purposes.

After the Tax Office's recent targeting of residential investment property depreciation and capital allowance claims, the Tax Office aims to simplify the laws and streamline the tax treatment of depreciating assets.

The review will involve reclassifying assets such as fire extinguishers and air conditioning ducts that have been previously defined as plant.

The reclassification of such items is likely to reduce the after-tax cash flows of investors as deductions related to buildings are spread over a longer period of time.

Under the present definitions, the plant content of a commercial building can be substantial, ranging from 25–80% depending on the type of building.

CGT Small Business Concessions: Active Asset Test Period

To assist small business, capital gains can be reduced by various concessions where certain tests are satisfied, referred to as Small Business CGT Concessions. One of these concessions is the active asset test.

Broadly, an asset will pass the active asset test if the asset was an active asset for at least half of the time the asset was owned by the taxpayer. A CGT asset is classed as an active asset where it is used, or held ready for use, in the course of carrying on a business.

The Tax Office has released an Interpretative Decision regarding the active asset test and how it applies to assets received by a taxpayer from a deceased estate.

The taxpayer, an operator of a farming business, was the beneficiary of their deceased spouse's estate and received an interest in a farming property. The property was used in the taxpayer's business. Two months after the transfer of property, the taxpayer sold their interest for a capital gain.

Under the law, where a CGT asset passes to a beneficiary in the estate, the beneficiary is deemed to have acquired the asset on the day the person died.

In contrast, the Tax Office has stated that the relevant period should start from the time of actual ownership (i.e. the date of transfer).

Therefore, even though the taxpayer disposed of their interest in the farming property only two months after the transfer, the asset qualifies as an active asset as it was used in the course of carrying on a business for the whole of the actual ownership period.

Please contact us for advice on applying Small Business CGT Concessions.

GST: Recent Cases

Contributions to Body Corporate Subject to GST

The Administrative Appeals Tribunal (AAT) has held that contributions made to a body corporate are subject to GST.

In a recent case, the taxpayer was a body corporate whose members (owners of lots in an apartment complex), made contributions into the sinking and administrative funds administered by the GST-registered body corporate.

The AAT held that such contributions are subject to GST as the body corporate was obliged to perform tasks in administering the common property and assets of the lot members and these were made in the course or furtherance of the body corporate's enterprise.

- **TIP:** Body corporates that are not registered for GST should consider if they are required to register for GST, based on the above decision.

Sale of Land Contract Not Subject to GST

It has been recently held that a contract for the sale of land allowed for the recovery of GST from the buyer in the absence of the sale being subject to GST.

The sellers were unsure if the sale of land would be subject to GST and included the clause 'unless otherwise agreed the purchase price includes any GST liability of the vendor' within the contract of sale.

A private ruling obtained from the Tax Office by the sellers after the execution of the contract provided that the sale was not subject to GST.

The court held that the appellant would not be able to recover the GST portion purported to be paid by them and that the sellers were not required to issue a 'tax invoice' to the buyer.

- **CAUTION:** Buyers and sellers of property should ensure that there are appropriate GST recovery clauses and warranties in the contracts of sale.

Sale of 'Residential Units' Subject to GST

A court has held that a sale of a motel is subject to GST on the grounds that a motel is not a residential premises.

The taxpayer entered into a contract for the purchase of a motel in September 2002. The motel premises were then converted into residential units. A room of the motel became a unit and was sold for use as residential premises in October 2003.

The taxpayer was registered for GST purposes and claimed that the sale was input taxed as the sale of the unit was a sale of 'residential premises' to be used predominantly for residential accommodation.

The court held that the sale was fully subject to GST on the basis that the original sale of the motel was not the sale of residential premises, as a motel does not have such a characteristic. 'Residential premises' requires a significant degree of permanence of occupation.

The taxpayer also lost the alternative argument that the sale of the premises was not subject to GST as the premises were used for residential accommodation prior to 2 December 1998 (GST-free transition period). The court did not agree that a motel could be occupied as a residence.

Important: This is not advice. Clients should not act solely on the basis of the material contained in this Bulletin. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Bulletin is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.