

## **Tax News, Views and Clues**

### **Tax Office to Investigate Cash Economy Industries**

The Tax Office has announced plans to conduct a strong compliance drive in industries that are susceptible to cash payments, non-lodgment, failure to register for GST, poor record keeping and over-claimed input tax credits. The compliance drive will focus on micro-businesses (annual turnover of less than \$2 million) in the following industries:

- tourism and hospitality;
- horse racing and export;
- restaurants, cafes and takeaway shops;
- licensed hotels and registered clubs;
- adult entertainment; and
- motor vehicle trading and wholesaling.

In addition, the Tax Office plans unannounced registration checks of businesses, desk audits and expanded data-matching procedures to check for lodgment compliance and accurate reporting of income.

### **Streaming of Franking Credits**

The Tax Office recently released an Interpretative Decision (ID), which considers whether to penalise a company for streaming franking credits to only one class of shareholders.

Broadly, the Commissioner may penalise a company for making a distribution of franking credits to a class of members that receives a greater benefit from the franking credits than the members excluded from the distribution would have. This is known as streaming.

A typical situation is where franked dividends are distributed to Australian resident members in preference to non-resident members, as the Australian shareholders potentially gain the greatest benefit from franking credits.

The Commissioner, when determining whether a distribution is streamed, will generally consider the members':

- tax residence status;
- entitlements to franking credits; and

- ability to pass on franking credits (companies only).

Broadly, if all members would benefit from franking credits evenly, then the company would not be considered to be streaming.

### **Joint Venture Receipt Taxable as Ordinary Income**

In a recent case, the AAT has upheld the Commissioner's assessment and confirmed that payments received by a taxpayer were from a profit-making scheme and were assessable as income.

In 1985, the taxpayer was a party to an unincorporated joint venture created to develop infrastructure projects. Following a falling out, the taxpayer left the joint venture in 1987 and ultimately received a settlement of \$1,228,500.

The taxpayer declared the aggregate receipt as capital in his 1988 income tax return. In 1994, following a tax audit, the Commissioner issued an amended 1988 assessment including the full \$1,228,500 as assessable income, as being the proceeds from a profit-making scheme.

The taxpayer argued that the amounts received were for intellectual property rights and were a non-assessable capital gain as they were acquired before the commencement of capital gains tax.

The AAT considered that the payment may in part be representative of the intellectual property transferred by the taxpayer, but formed the view that there was insufficient evidence to establish its value.

Consequently, the AAT agreed with the Commissioner and held that the taxpayer's actions had shown that there was a profit-making scheme throughout the negotiation of the joint venture. The AAT held that the full amount of \$1,228,500 was assessable income.

➤ **CAUTION:** Cases such as this show the importance of thoroughly and properly documenting the basis of transactions undertaken.

## **GST and Long-term Contracts**

The GST laws provide that supplies made under contracts that were entered into prior to the introduction of GST will be GST-free until 1 July 2005.

Recent amendments to the GST laws now allow suppliers and recipients to revise the prices associated with certain long-term non-reviewable contracts to incorporate GST. This provides the supplier of goods or services under such a contract with an opportunity to recover from the recipient the GST payable after 1 July 2005.

There are three options the supplier and recipient can choose in regard to the GST position of long-term non-reviewable contracts:

1. The price remains the same and the supplier accounts for GST on 1/11<sup>th</sup> of this price.
2. The contract price is revised and the supplier accounts for 1/11<sup>th</sup> of the revised price.
3. The contract price is not revised and the recipient of the supply pays 10% GST on top of the price under the contract.

If both parties cannot agree, an arbitration process with an independent assessor will commence.

The new laws represent an opportunity for suppliers to clarify GST recovery issues with recipients of existing long-term contracts. However, varying a contract by increasing the price of supply may result in the imposition of stamp duty.

➤ **TIP:** Suppliers and recipients should analyse the effect of altering prices in long-term contracts and the impact of GST on the transactions made under the contract.

## **Exempt Benefits: Loan Arrangements**

In a recent Interpretative Decision (ID), the Tax Office has declared that a loan used by an employee to purchase a laptop computer does not qualify as an exempt benefit under the Fringe Benefits Tax (FBT) provisions.

Under the FBT provisions, certain expense payments in respect of eligible work related items are exempt from FBT. A laptop computer is defined as an eligible work related item.

In the case under review, an employee obtained a personal loan and used the funds to purchase a laptop computer. The employee then repaid the loan via a salary sacrifice arrangement (SSA), whereby the employer made the loan repayments on the employee's behalf.

Under the SSA, the employer is making loan repayments for the benefit of the employee and this represents an expense payment fringe benefit.

To be exempt from FBT, the expense payment must be in respect of the work related item, in this case the laptop computer.

The Tax Office formed the view that the employer was not making the expense payments towards the purchase of the laptop computer, but rather, was making payments towards the employee's personal loan obligations.

Accordingly, the expense payment was not in respect of the laptop computer. As such, the expense payment was not an exempt benefit but was held to be a taxable fringe benefit.

➤ **TIP:** Taxpayers should seek professional FBT advice when structuring a SSA to ensure that the most beneficial outcome is achieved.

## **Travel Deductions: Cents per Kilometre**

The Tax Office has released the 2004/05 cents per kilometre rates.

Taxpayers who use their car for business purposes, and choose the cents per kilometre method for claiming travel expenses, can use these rates to determine the amount of their deduction for the 2004/05 income year.

The 2004/05 rates for non-rotary engine cars are:

- 0–1,600 cc — 52 cents per kilometre;
- 1,601–2,600 cc — 62 cents per kilometre; and
- 2,601+ cc — 63 cents per kilometre.

➤ **CAUTION:** Taxpayers electing the cents per kilometre method can claim up to a maximum of 5,000 business kilometres.

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.