

Tax News, Views and Clues

CGT on Land Sold Pursuant to a Court Order

In a recent Administrative Appeals Tribunal (AAT) case, a taxpayer failed in her claim that capital gains tax (CGT) was not payable on the sale of land.

The taxpayer and her former husband were joint owners of a block of land. They sold the land to a third party pursuant to an order of the Family Court.

The taxpayer attempted to rely on a provision in the law that disregards a capital gain that arises where assets are transferred between spouses or former spouses pursuant to a court order under the *Family Law Act 1975*.

The AAT held that the provision related exclusively to a transfer of assets between spouses and former spouses that arises because of a Family Court order. In this case, although the land was sold pursuant to an order of the Family Court, the land was not sold to a spouse or former spouse. Therefore, the provision did not apply.

The AAT found that the taxpayer's share of the capital gain from the sale was subject to CGT.

Consumer Loyalty Points

The Tax Office has held that an employee who used their personal loyalty program points to acquire an airline ticket for work related purposes is not entitled to a tax deduction for the value of the airfare.

Although the law allows a deduction for consideration paid otherwise than in cash, the consideration paid must have a money value.

The Tax Office formed the view that the money value of the loyalty points used by the employee was nil because the loyalty points cannot be transferred or assigned and are not convertible into cash.

CGT: Main Residence Exemption

The Tax Office recently released an Interpretative Decision (ID), which considers the application of the capital gains tax (CGT) main residence exemption where a taxpayer has used their main residence to produce assessable income.

A capital gain or loss arising on the disposal of an individual's main residence is typically ignored for income tax purposes. However, a gain or loss may arise where an individual has been absent from their main residence and uses it to produce assessable income during that period.

In such cases, the law allows the individual to gain access to the main residence exemption, but only where certain conditions are satisfied.

Please contact us for further information.

Partnership Non-cash Benefits

The Tax Office has recently released an Interpretative Decision (ID) that considers whether the use of plant and equipment by a partnership, at no charge, constitutes a non-cash business benefit that should be included in partnership income.

Broadly, the law operates to include the market value of non-cash benefits, such as property or services received by a business, in its assessable income. This is based on the proviso that the benefit has the character of income.

In the case at hand, the partnership was made up of two entities, each owning plant and equipment. Both entities (partners) granted the partnership exclusive use of the plant and equipment at no charge.

The Tax Office formed the view that the exclusive use by the partnership of the plant and equipment at no cost did not constitute an assessable benefit, as it did not have the character of income according to ordinary concepts.

Instead, the Tax Office held that the use of plant and equipment was more in line with a capital contribution by the partners. Therefore the benefit should not be included in the net income of the partnership.

Grant Held to Be Assessable Income

In a recent case, the Administrative Appeals Tribunal (AAT) has rejected a taxpayer's objection and affirmed that a grant received by the taxpayer was assessable income.

The taxpayer, engaged in a fabrication workshop business, applied for and received a Commonwealth Dairy Regional Assistance Program (DRAP) grant as a contribution to the construction cost of a larger workshop. The aim of a DRAP grant was to assist businesses in rural areas provide work for unemployed dairy workers.

The taxpayer argued that the grant was capital in nature as it was provided for the purpose of building and fitting out a new workshop. The taxpayer sought a private ruling from the Tax Office. The Tax Office ruled that the grant was assessable income as it constituted a bounty or a subsidy and was received in relation to carrying on a business.

The taxpayer subsequently objected and the case was brought before the AAT.

In the judgment, the AAT upheld the Tax Office's assessment and ruled that the grant constituted a subsidy received in relation to carrying on a business. Accordingly, the grant formed part of the taxpayer's assessable income.

➤ **CAUTION:** Taxpayers should seek professional tax advice to be fully aware of the tax consequences when making an application for Government grants.

GST: Compulsory Acquisition

In a recent GST case, the issue was whether land acquired through a compulsory acquisition by a Shire Council was subject to GST.

The taxpayer had obtained a private ruling from the Tax Office in which it was held that the acquisition was not subject to GST. Despite the ruling, the Council insisted that the taxpayer issue it with a tax invoice. The taxpayer refused to issue a tax invoice and as a result, the Council withheld 1/11th of the proceeds payable to the taxpayer. The taxpayer subsequently brought the case before the courts.

The Court held that the acquisition was not a taxable supply. On that basis, there was no requirement for the taxpayer to issue a tax invoice to the Council. Accordingly, the Council was required to pay the taxpayer the proceeds withheld in addition to an amount of compensation.

➤ **TIP:** Taxpayers should seek professional GST advice where a compulsory acquisition takes place because, in some cases, a compulsory acquisition will attract GST.

Deducting Tax Losses

In a recently released Interpretative Decision (ID), the Tax Office has ruled that a company is able to utilise part of a tax loss generated in a year in which the company failed both the continuity of ownership test, and the same business test.

Broadly, the law prohibits a company from deducting a tax loss unless:

- it has the same owners throughout the period from the start of the loss year to the end of the year in which the loss is deducted. This is commonly referred to as the continuity of ownership test (COT); or
- it carries on the same business for the period starting just before the COT was failed through to the end of the year in which the loss is deducted.

Specifically, where a loss company fails both tests in the year in which an overall loss is made, the law requires the loss company to divide the income year into periods. The dividing point between periods is the time(s) where the ownership test was failed. The company is required to treat each period as if it were a separate income year and work out the notional loss or notional taxable income for each period.

A notional loss calculated in a period after the change of ownership can then be carried forward and offset against future years' taxable income subject to satisfying the COT or same business test through to the end of the year in which the loss is deducted.

Please contact us for further information.

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.