

## Tax News, Views and Clues

### ATO Compliance Targets

The ATO has released its draft compliance program for 2002/03 indicating various areas of focus across a range of market segments including the following:

- Large business — a review of transitional benefits arising under consolidation and demerger reforms, treatment of low cost assets, utilisation of offshore banking unit concessions and an ongoing review of transfer pricing between international related parties.
- Small to medium enterprises — PAYG withholding, utilisation of capital gains tax (CGT) concessions, FBT, tax losses and R&D. The ATO will also focus particular attention on the building and construction industry.
- Micro business — ABN integrity including invoicing and registration checks, PAYG withholding and reconciliation of income tax returns to BASs.
- Individuals — income tax deductions including work

related and interest and dividend deductions, CGT, prior year losses, rental properties, foreign source income, partnership loss distributions, data matching, share trading and linked bonds.

- International — transfer pricing, foreign losses, compliance with controlled foreign corporation (CFC) rules, thin capitalisation and consolidations.
- GST — input tax credit claims.

In addition to the above, the ATO has identified aggressive tax planning as a high priority area.

### Registration for GST

An entity must be registered for GST if it is carrying on an enterprise and its current or projected annual turnover exceeds \$50,000 (or \$100,000 for non-profit entities). An entity that does not meet the turnover threshold may still register if it is carrying on an enterprise or intends to at a future date.

A penalty may be imposed by the ATO where an entity is required

to be registered and does not do so, or where an entity remains registered for GST despite not carrying on an enterprise.

- **TIP:** GST registrations are a current area of focus for the Tax Office as part of its compliance program. The Tax Office has issued a number of recent interpretative decisions in the area and care should be taken to ensure that GST registration requirements are properly addressed.

### Rental Losses and Bankruptcy

The AAT has recently confirmed that carried forward rental losses incurred by a taxpayer before bankruptcy are not deductible.

The taxpayer incurred interest in servicing debts on several rental properties and other outgoings which resulted in tax losses prior to his bankruptcy. He subsequently claimed deductions for the carried forward losses in later returns. The Commissioner disallowed the deductions based on the relevant loss provisions which disallow deductions for losses incurred before bankruptcy.

The taxpayer unsuccessfully argued that Parliament only intended to prevent bankrupts from claiming deductions for debts they were not obliged to repay as result of the bankruptcy. In this case, the taxpayer was seeking a deduction for payments he had actually made before becoming bankrupt which were unrelated to his bankruptcy.

The AAT dismissed the taxpayer's arguments and confirmed the Commissioner's approach.

## **GST Exemption — Going Concern**

The sale of a business may be a supply of a going concern which is GST-free. A going concern is, broadly, an operating enterprise which the vendor carries on until the date of sale when the purchaser is provided with all things necessary for its continued operation.

To obtain the going concern exemption, the buyer must be registered for GST and must provide consideration for the acquisition. In addition, there must be written agreement confirming that the sale is one of a going concern. This is an area of some focus for the Tax Office and it has recently issued a number of interpretative decisions.

- **TIP:** The purpose of the going concern exemption is to provide cashflow relief because the purchaser does not need to pay the GST and subsequently claim an input tax credit.

Parties to the transaction should take care in planning, as the technical application can be quite complex. If you are planning on buying or selling a business, please contact us for further advice.

## **Main Residence Exemption**

The ATO has withdrawn an interpretative decision (ID) concerning the main residence exemption for CGT just three days after its release.

The ID indicated that a taxpayer cannot claim the main residence exemption for a gain made on the disposal of a dwelling occupied by the taxpayer's children, not the taxpayer. The ID has been withdrawn 'as it does not accurately reflect the ATO view'.

## **Tax Losses and Liquidation**

In a recent case, the Federal Court has allowed a taxpayer to claim prior year losses because the *continuity of ownership* test was satisfied, despite the fact that the company and its parent had been placed in liquidation.

The taxpayer was a wholly-owned subsidiary of its parent company, and both entered liquidation in the early 1990s. The taxpayer was later assessed on a capital gain it derived in the 1992 year after it was placed in liquidation. It accordingly sought to offset the gain using prior year tax losses.

The Commissioner disallowed the prior year tax loss deduction, arguing that there had been a change in the beneficial ownership of the shares as a result of the commencement of liquidation of the parent company, and therefore the *continuity of ownership* test could not be satisfied.

The Court held that the liquidation of the parent did not result in a change in the beneficial ownership of the taxpayer's shares because the associated risks and benefits of ownership had not changed and there had been no transfer of the shares to another entity.

Accordingly, the taxpayer was not prevented from utilising the prior year losses.

## **A Further Look at Demergers**

Demerger relief rules became legislation on 24 October 2002, with effect from 1 July 2002. The new legislation provides demerger tax relief for all entities other than discretionary trusts and superannuation funds. The rules can apply to a group restructure involving the transfer of at least 80% of the shares in a subsidiary (which is at least 20% owned) to all original shareholders of the head entity.

The legislation provides various CGT rollover relief including relief to shareholders who might otherwise have a capital gain from the disposal of their interest in the head entity to acquire new shares in the demerged entity.

Where ownership interests have pre-CGT status, this will be maintained to ensure that owners are not disadvantaged when there is no change in underlying ownership.

- **TIP:** The demerger rules provide concessions which will be useful in a broad range of restructures, for both large and smaller taxpayers. The concessions apply now.

## **Good News for R&D**

The Labor Government has recently released a discussion paper, *Thriving Industries in an Innovative Australia*, which includes new Labor policy options to promote Australia as a 'high-skill, high-wage community'. The tax-related options include enhancement of the R&D tax concession and fiscal incentives to encourage development of new industries in regional Australia.

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.