

## Tax News, Views and Clues

### No Depreciation for Rental Property Items

The Administrative Appeals Tribunal (AAT) recently disallowed a taxpayer deductions for depreciation claimed on various items of property connected with the taxpayer's rental property because the items did not qualify as 'plant'.

In particular, depreciation was denied on electrical cables, gas and telephone lines, kitchen fittings, the bathroom mirror and glass shower screen, built-in wardrobe shelving, the security system, the common swimming pool and spa, and vehicle control equipment.

In reaching its decision, the AAT considered whether the premises would be incomplete and unable to be rented if the relevant item of property was not there.

The AAT held that each item of property, except for the common pool and spa, formed part of the structure or setting of the premises and without it, the property would be incomplete and unable to be rented.

With respect to the common pool and spa, the AAT held that it served a passive role in the process of earning income from the premises and accordingly, was held not to be 'plant'.

- **TIP:** Whether or not an item of property is plant is a question of fact. It is necessary to consider each item on a case-by-case basis as different circumstances can result in different outcomes.

Contact us for further information.

### CGT Discount — 12-month Rule

In a recent AAT case, a taxpayer was disallowed the 50% discount on his capital gain arising from the sale of shares on the basis that the shares sold had not been held for more than 12 months.

The shares in question had been acquired by exercising an option. In its decision, the AAT confirmed that the acquisition of such shares occurs at the time the option is exercised, being the time that the contract to acquire the shares was entered into, and not at the time the options were acquired.

As the taxpayer had sold the shares within 12 months of exercising the options, no CGT discount was available for the capital gain made on their disposal.

- **TIP:** The 12-month holding rule should always be carefully considered before an asset is sold.

### ABN Information Available Online

The Tax Office has announced that as of 28 January 2003, the Australian Business Register will provide businesses with online access to their ABN details with the ability to make changes and ensure the accuracy of the information. Tax agents will also be able to access their clients' ABN information to make the following changes:

- change 'secure' ABN information such as postal address and public officer and immediately see the change confirmed online; and
- add a PAYG or GST registration to an ABN record online and receive it by mail.

## Derivation of Disputed Income

The Full Federal Court overturned an earlier decision of the Federal Court and held that a gas supplier, involved in a price dispute with its buyers, was entitled to return the disputed amount as income in the year the dispute was settled, rather than in the year in which the gas was sold.

The gas supplier produced and supplied gas to various buyers.

The contract under which the gas was supplied allowed the supplier to alter the price of gas to take into account any changes in royalties, rates, duties or levies attributable to the production or supply of gas.

Accordingly, following the replacement of the royalties and excise regime with the introduction of resource rent tax, the supplier altered the price of the gas to effectively pass on the impact of the resource rent tax. The buyers refused to pay the so called 'pass-on amounts' and the matter was referred to arbitration. The dispute was eventually settled in favour of the supplier.

The Commissioner sought to assess the taxpayers on the 'pass-on' amounts in the year in which the gas was sold. However, the Court rejected the Commissioner's arguments, stating that the taxpayers derived the income only when the dispute between the buyers and supplier was settled.

## Reliance on GST Rulings

Where the Tax Office issues a GST ruling outlining its view on the application of a particular provision, that ruling can usually be relied upon from the date of its issue.

In some instances, however, a ruling may apply from July 2000 despite being issued at a later date.

A couple of further points worth noting are:

- where a public ruling which conflicts with an earlier private ruling is issued, taxpayers may rely on the private ruling up to the date the public ruling was issued (provided that a material misstatement of facts was not given in obtaining the private ruling); and
  - where a private ruling which conflicts with an earlier public ruling is issued, the private ruling will prevail.
- **TIP:** Taxpayers should consider all GST public rulings, even if a private ruling has been obtained.

## CGT Reduction Arrangements

The Tax Office has released a draft taxation determination addressing the application of the Part IVA anti-avoidance provisions to certain capital gains tax (CGT) reduction arrangements.

Broadly, CGT reduction arrangements typically arise where a company group sells an asset to an unrelated third party by selling the shares in the subsidiary holding the asset. However, prior to the sale, the following occurs:

- There is an internal restructure or an asset revaluation that gives rise to accounting profits. (However, no tax is payable on the capital gain arising from the disposal of the asset if CGT rollover relief is obtained).
- The subsidiary then declares a dividend in favour of its holding company.
- As a result of a liability to pay the dividend, the sale price of the subsidiary's shares may be reduced (resulting in a reduced capital gain).
- Alternatively, the dividend may be used to purchase additional shares in the subsidiary, thereby increasing

the cost base of the shares. Again, this has the effect of reducing any capital gain (or increasing a capital loss).

The draft determination provides that such arrangements are likely to attract the Part IVA anti-avoidance provisions.

## General Interest Charge

The Tax Office has indicated that the general interest charge (GIC) rate for the March 2003 quarter is 11.84%, down from 11.96% for the previous quarter.

## Family Trust Elections

There are many important reasons why the trustee of a discretionary trust should consider making a family trust election in relation to the trust.

Broadly, a family trust election nominates a test individual and defines the family group to which trust distributions can be made. If distributions are made outside that family group, family trust distribution tax applies at the top marginal tax rate.

Although the family trust election limits distribution flexibility, it has many potential benefits that are broadly summarised as follows:

- tax losses will be easier to utilise under trust loss rules;
  - beneficiaries may not otherwise be able to access franking credit benefits;
  - tax losses in companies which are owned by discretionary trusts will be much easier to use; and
  - claims for bad debt deductions may otherwise be lost.
- **TIP:** Trustees and their advisors should always consider the merits of making a family trust election. Often, the restrictions on the trust are quite manageable and the tax benefits can be quite significant.

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.