

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

### **Property and GST Compliance Audits**

Given the complexity surrounding GST compliance for property related businesses, property owners may increasingly find themselves under Tax Office scrutiny.

Property owners should take care when applying GST rules to their business transactions for the following reasons:

- The application of GST rules to property transactions such as subdivisions and developments are very complex.
- Property transactions are generally significant in value and are rarely identical, calling for the application of complex GST rules in a broad range of circumstances.
- The property sector was greatly affected by the transitional rules for GST. Many long-term arrangements spanned the GST start date and disputes are arising as to when the tax becomes payable and by whom.

Please contact us for further details or planning opportunities.

### **Non-resident for Tax Purposes**

In a recent Administrative Appeals Tribunal (AAT) decision, a teacher who took three years leave from her Australian employment to accompany her husband to Fiji, was held to be a non-resident of Australia for tax purposes.

Whilst overseas, the taxpayer received accrued long service leave payments, maintained an Australian bank account and returned to Australia on several occasions for holidays. The taxpayer's home was sold and the family's furniture and effects were put into storage.

The Tribunal found that the taxpayer had made a home overseas and was not an Australian resident despite her intention to return to Australia in due course.

- **CAUTION:** When departing Australia for an extended period of time, you may be treated as a non-resident for tax purposes. This may result in your foreign income being non-taxable in Australia, but any Australian income you derive during that period would be taxed at higher (non-resident) rates. Various capital gains tax issues may also arise.

### **82.5% Tax on Subsequent Dividends**

A private company loan to a shareholder can be deemed to be a dividend in certain circumstances.

Where a deemed dividend arises, and the loan is ultimately repaid by the declaration of an actual franked dividend, tax can apply at an overall rate of up to 82.5%. This occurs because tax is paid on the company profit, then on the deemed dividend, and then on the actual franked dividend.

- **TIP:** Take great care when making loans to shareholders. Also, avoid subsequent franked dividends to offset loans without very careful consideration.

### **Non-commercial Losses and Activities Carried on in Partnership**

The Tax Office has issued a draft ruling dealing with the application of the non-commercial loss rules to businesses conducted through a partnership.

The non-commercial loss rules prevent individuals from offsetting losses from business activities against other assessable income, unless one of four business tests is satisfied. The loss is deferred and may be offset in a later year against profits from the same activity or, in certain circumstances, against other income.

The draft ruling provides that where an individual taxpayer carries on multiple business activities in partnership, they are required to identify their share of the assessable income and allowable deductions from each separate business activity.

Resulting losses on each separate business activity will be subject to the non-commercial loss rules, unless one of the business tests is satisfied for that activity.

- **CAUTION:** Further complexity arises where an individual who conducts multiple partnership business activities also carries on a primary production or professional arts business.

Please contact us for details.

## Share Ownership at Tax Time

The Tax Office has raised concerns about shareholders correctly treating their share transactions in tax returns. In particular, shareholders should be careful to declare dividends and claim imputation credits and recognise capital gains or losses on the sale of shares.

- **TIPS:** Taxpayers should keep records for at least five years for deductions claimed (such as FID, fees for investment advice and account keeping fees). Records must also be kept for CGT purposes.

Taxpayers may be entitled to claim the 50% CGT discount for shares held for at least 12 months.

Please contact us for further information.

## Partners' Salaries Not Deductible

The AAT recently held that salaries paid to partners in a partnership were not deductible.

In this case, the partnership's total expenses (including salary payments to some partners) exceeded the revenue of the partnership. As a result, the partnership generated losses that would otherwise be available for utilisation by all of the partners.

The AAT held that a partnership is not a legal entity in its own right, but rather, represents a mutual agency relationship in which each partner is both a principal and an agent for the other partners. As such, as a matter of law, a partner cannot be a party to a contract of employment with the partnership, since that would mean they would be entering into a contract with themselves.

## Stolen Drug Money Deductible

The Commissioner of Taxation failed in a Federal Court appeal against an AAT decision that a convicted drug dealer was entitled to a tax deduction for \$222,000 for drug money stolen from him.

The Tribunal found that the stolen money represented a loss or outgoing directly connected with the carrying on of a drug dealing business.

The Commissioner argued that the deduction should be denied on 'public policy' grounds. However, the Court held that there was no authority to support the imposition of a public policy limitation.

It is now understood that the Government will seek to amend the law to ensure that losses and outgoings incurred through the conduct of illegal activities are not deductible.

We will keep you informed of further developments.

- **TIP:** This case highlights the current importance of considering fundamental income and deduction rules in all circumstances.

## Want to Claim a Loss Made by a Trust?

The Tax Office recently released an Interpretative Decision (ID) that denied a beneficiary any entitlement to a loss made by a trust.

The relevant trust made a capital loss some years ago when it ceased trading. The taxpayer sought to offset the capital loss against a capital gain made by the taxpayer personally on the disposal of some property, although the basis of the taxpayer's claim was not clear from the ID.

The Tax Office ruled that the capital loss was not available for use as the law does not allow a capital loss made by a trust to be transferred to a beneficiary of the trust.

- **CAUTION:** Taxpayers must remember that losses made by a trust, whether capital or revenue, cannot be distributed and utilised by trust beneficiaries.

## Review of International Tax

The Treasury has released a consultation paper concerning possible international tax reforms. The review considers a number of key areas including:

- various options for tax relief concerning foreign dividends;
- the application of a range of specialist international tax rules and the appropriateness of further concessions;
- tax treaty policy and processes; and
- taxation of foreign expatriates.

We will keep you informed of further developments.

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. This firm respects your privacy. You have received this communication because your details are currently included on our mailing list. If you wish to be removed from our mailing list and receive no further communications of this nature in the future, please contact our office.