

## Tax News, Views and Clues

### Simplified Dividend Imputation

The Government has introduced new franking rules applicable to companies, corporate unit trusts, public trading trusts and limited partnerships. The new rules apply from 1 July 2002. The key features of the legislation are as follows:

- An entity's franking account will operate on a 'tax paid' basis, i.e. \$1 of tax paid generates a \$1 franking credit. Franking account balances will be converted accordingly from 1 July 2002.
- Entities may frank dividends subject to a *benchmark rule* which provides that all dividends paid within a franking period must be franked to the same extent. Breaches may result in penalties.
- Certain payments made to 'non-share equity interest holders' will also be caught by the new rules.
- Similar to existing rules for individuals and trusts, entities will be required to gross up dividends received by the imputation credit and then claim the credit as a tax offset.

- The intercorporate dividend rebate has been abolished (although benefits may be preserved by electing to consolidate).
- New reporting requirements will apply.
- Anti-avoidance provisions exist to prevent the streaming of dividends to members.

Entities making frankable distributions must provide a distribution statement in the 'approved form'.

It is understood that the Tax Office will issue a Fact Sheet outlining the 'approved form'. The Tax Office intends this to be an interim measure until it issues a tax ruling. We will advise of any developments.

### Interest Deductible Under Split Loan Facility

The Full Federal Court has allowed taxpayers a deduction for compounding interest claimed under a split loan facility.

Under the split loan facility, borrowings were split into two accounts, one for private use, and one for investment purposes.

This allowed the taxpayers to stream all repayments to the private account. Compounding interest accrued on the investment account so the private component diminished over time and the investment component grew.

The Full Federal Court found that Part IVA general anti-avoidance rules did not apply, as the dominant purpose of the arrangement was to borrow money, and not to obtain a tax benefit. Accordingly, the interest was allowed as a deduction.

The Tax Office has sought special leave to appeal this decision.

- **CAUTION:** Taxpayers should take great care when entering into split loan arrangements, particularly pending the outcome of the Commissioner's application for special leave.

### Trust Loans

If a trust has declared distributions of income to a company which have not yet been paid, and the trust makes a loan to a shareholder in the company (or their associate), a deemed dividend can result from the company to the shareholder or associate. The dividend is unfrankable, but the company's franking account is debited regardless.

However, if the shareholder or associate is another company, an intercompany exemption applies. The Tax Office has now issued a Taxation Determination confirming that position.

- **TIP:** While the deemed dividend can be very difficult to avoid, there are some planning opportunities. Call our office for assistance.

## Lease Incentive Payment Assessable

In a recent case, the Federal Court held that a lease incentive payment made to a partner in an accounting firm should be included in his assessable income.

The Court found that the financial incentive offered played a very significant role in the decision-making process of the firm to lease the premises, and that the agreement was entered into with a view to profit or gain. In addition, the incentive payment was held to be an ordinary incident of the taxpayer's business. Accordingly, it was ordinary income of the business.

- **CAUTION:** Lease incentives often result in particularly complex tax issues. Lease arrangements should be carefully structured to ensure appropriate tax outcomes.

## Service Trust Review

The Tax Commissioner has warned professional service firms that service trust arrangements will be subject to review.

Service trusts are often used by professional services firms to provide administrative services, and effectively shift a profit element on those services to the trust. In particular, the Commissioner suggested that the review

will focus on whether service trust arrangements are explicable on commercial grounds.

## GST Year-end Reviews

As part of the year-end accounting and tax compliance function, taxpayers should consider reviewing GST liabilities and input tax credit claims to ensure that GST obligations have been accurately met. This is particularly relevant following a recent Tax Office announcement that it is focusing heavily on this area.

- **TIP:** Any errors identified whilst undertaking the review should be corrected in a timely fashion to mitigate any penalties that may be applied. Taxpayers should also look out for any overpaid GST which could be refundable.

## Penalties for Improper Early Release of Superannuation Benefits

From 3 July 2002, individuals who improperly access superannuation benefits prior to retirement may lose an entitlement to concessional tax treatment (for example, if a person improperly claims to have retired). This may result in the payment of those benefits being taxed at 48.5%.

Trustees of superannuation funds may face up to five years' imprisonment or fines of up to \$220,000 or both (\$1.1m for corporate trustees), where they have allowed improper access to superannuation benefits.

- **TIP:** Individuals may apply on compassionate grounds, or on grounds of severe financial hardship, to access their superannuation benefits prior to retirement without losing access to the concessional tax benefits.

## Amnesty Sought re Family Trust Elections

The professional bodies have asked for an amnesty for taxpayers affected by the family trust election provisions whilst the Tax Office clarifies the operation of these provisions, in particular, the consequences for taxpayers of making an election.

Presumably relief is being sought from various adverse tax outcomes including the operation of family trust distributions tax, and the denial of franking credits and company and trust losses.

We will advise of any developments.

## Supplies of Goods and Delivery Charges

Complex GST issues surround the treatment of delivery services provided by businesses that sell taxable and non-taxable goods. The Tax Office has released a Draft Determination to help clarify the issue.

According to the Draft Determination, where the delivery service is a 'separately identifiable supply' (e.g. customers have the choice of paying for delivery), the delivery service will be taxable regardless of whether the goods supplied are GST-free or taxable.

Otherwise, if the goods supplied are GST-free or input taxed, then the delivery fee will also be GST-free or input taxed. However, where the supply includes both taxable and GST-free goods, the delivery fee must be apportioned, and GST will be payable on the delivery fee relating to the taxable goods.

Please contact our office for further details.

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.