

Tax IQ MONTHLY

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WHERE YOUR MONEY GOES

Andrew Bolt, writing in the Brisbane *Sunday Mail* has some rather trenchant things to say about the antics of the Australian Research Council in handing out almost \$500 million each year in academic grants.

Apparently some \$710,000 was provided for a study of "Attitudes Towards Sexuality in Judaism and Christianity in the Hellenistic Greco-Roman Era".

Andrew Bolt enquires how taxpayers will be better off for the spending of \$255,000 on a research project called "Feminist Theory Meets Indigenous Art", or \$118,000 on a film expert's musings on "The *Misfits* and the Iconography of Post War American Acting"?

He notes that these grants are decided by panels of experts who provide grants to each other. During 2004, five of the 12 members of the Humanities and Creative Arts panel received grants themselves, including the chairman. Another member shared in his fifth grant whilst the second member received his second grant in two years. Last year one member received \$880,000 to study the "Cultural History of the Body in Modern Japan". This study focused on "The Classed, Racialised and Ethnicised Dimensions of the Bodily Experience."

Writing in the *Australian Financial Review*, Peter Ruehl states in his laconic style "The tax system's simple: You're screwed. If you live in Australia and have a decent job, you pay too much in taxes."

Perhaps the reason for this is founded in organisations such as the Australian Research Council.

TAXPAYERS' CHARTER

The Taxpayers' Charter is a list of taxpayer rights and Tax Office requirements including a requirement to treat taxpayers fairly and reasonably and to treat them as being honest unless they act otherwise.

The Taxpayers' Charter was introduced in July 1997 and its operation was examined by the Commonwealth Ombudsman during 2003. In July 2003 the Ombudsman reported that the Tax Office was still unable to meet its commitments under the Charter because its system for tracking taxpayers' complaints about delays and assessments was inefficient.

The Charter has recently been subject to a review by the Australian National Audit Office (ANAO). It reported many shortcomings and in an interesting commentary on attitudes this report was published by the *Australian Financial Review* under the banner heading *ATO Fails Its Own Charter of Rights*.

This same report was subject to a media release by

the Tax Office itself under the banner heading *Taxpayers' Charter Stands up to ANAO Scrutiny*.

Whilst the ANAO found that the Tax Office was managing its overall responsibilities well, it found that the Tax Office was yet to effectively monitor and report on its performance against Charter standards.

The latter shortcomings were dismissed by the Tax Office in its media release by the statement "We have agreed to all the recommendations made in the report and have already started work on most of them."

It is indeed concerning that after some seven years of operation the Tax Office is still unable to comply with its obligations and refuses to admit to such failures.

GST – BOOK ENTRY CONSIDERATION

The Tax Office has issued a Determination (GSTD 2004/4) which sets out its views in relation to book entry transactions between related entities.

This was explained in *Tax IQ Monthly* August 2004 at page 4, following the issue of a draft Determination.

The final Determination confirms the conclusions reached in the draft Determination and notes that the Tax Office will accept the making of book entries as amounting to the provision and receipt of consideration for GST purposes where certain conditions are met. The entities must be associates of each other and one must have an obligation to provide consideration to the other for a taxable supply.

The entities must have a binding agreement to pay and accept the consideration by way of book entries and the book entries must be duly made and appropriately effected in the books of account of both entities.

SUPER CO-CONTRIBUTION PAYMENTS

Out of an initial run of 1,250,000 income tax returns the Tax Office has found 215,000 cases where a super co-contribution payment needs to be made to each individual's superannuation fund.

The Tax Office has estimated that the value of these payments is approximately \$110 million with an average payment of around \$510 for each taxpayer.

As this programme is to benefit individual taxpayers and is entirely initiated by the Tax Office we anticipate that many anomalies will occur. If you believe that you are entitled to a co-contribution

OUR VIEW

In the last issue, we were somewhat critical of the Government's snail-like progress in reviewing the self-assessment system. This system requires taxpayers and their advisors to "self-assess". It is your responsibility to get it right – heavy penalties and interest will apply if a subsequent tax audit reveals mistakes.

It seems the tide has turned! The Treasurer has released the Treasury's report on its review of the self-assessment system and, surprisingly, has stated that the Government will adopt all 54 recommendations and that they would generally apply from this current year.

This report contains some really good news – like a reduction of the audit risk period from 4 years to 2 years for STS taxpayers and from 6 years to 4 years for Part IVA cases. All the details are included in this issue.

But this isn't all! Other articles in this issue explain how at last the Tax Office is paying some attention to its obligations under the Taxpayers Charter and how there has been a considerable easing of draconian requirements for family trust elections.

And there's more. The rules relating to non commercial loans (known as Division 7 loans) by trusts have been eased and similar loans by companies will also be eased when legislation currently before Parliament receives Royal Assent.

Entry conditions for the Simplified Tax System (STS) are to be made more attractive. To join, you will not be required to adopt the cash system. If it suits you can continue operating on the accruals basis.

Very small businesses (turnover \$50,000 or less) are given a tax rebate of 25% commencing from this current year.

Although hedged about with many qualifications, we now have a draft determination for depreciation rates for cafes, restaurants, take-away food establishments, pubs, clubs and retail shops. This should prove helpful when it comes time to start preparing your 2005/06 tax returns.

It's not often that a tax publication contains good news. Let's enjoy this issue and look on it as portending more good things to come.

Tony Lovett

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payment we suggest you contact your superannuation fund to ensure that it has been received.

CGT – WASH SALES

A recent decision handed down by the Administrative Appeals Tribunal (AAT Case (2004) AATA 1041) highlights the need to beware of Part IVA. This denies a tax benefit where the transaction occurred for the dominant purpose of gaining that benefit.

In this case, the taxpayer trust made a substantial capital gain from the sale of assets in early June 1998. It held shares which had substantially reduced in value and thereby held open the prospect of a capital loss to offset the capital gain.

A second trust was established on terms almost identical with the first trust and the shares were transferred to the second trust at market value.

This type of transaction is known as a "Wash Sale" where a loss making asset is sold in order to wash away the capital gain from the sale of a profitable asset.

In this case the decision went against the taxpayer under Part IVA because it was considered that the dominant purpose of establishing the second trust and transferring the shares to that trust was to gain a tax benefit.

Circumstances which went against the taxpayer included the fact that the beneficiaries of the two trusts were almost identical and that the second trust was established one day after the sale of the profitable asset by the first trust and just before the end of the financial year. In addition, legal formalities in relation to the acquisition of the shares were at a minimum and no financier approval was obtained to pay for the shares.

Perhaps the taxpayer may have had a better chance of success had the shares been sold on market by the first trust and then a separate parcel of shares purchased on market by the second trust.

SELF ASSESSMENT REVIEW

It seems the pendulum is slowly being turned in favour of taxpayers. A report issued by the Treasury was released in December. The Treasurer stated that the recommendations will "move the balance of fairness markedly in favour of taxpayers who act in good faith".

The report made 30 legislative and 24 administrative recommendations. The Treasurer said that the Government would adopt all legislative recommendations and they would generally apply from the 2004/05 year. The Taxation Commissioner will implement the administrative recommendations as soon as practicable. Substantial progress has already been made on some of them.

Those changes include:

Tax Office Advice

- Legally binding advice – taxpayers will be protected from amendments raising additional primary tax, penalties and interest;
- Other written advice (unless non-binding) and formal oral advice – taxpayers protected from penalty and interest charges;
- Long standing Tax Office practice – taxpayers protected from penalties and interest.

These changes will take effect from 1 July 2005 or later Royal Assent.

Tax Office public interpretation or long standing practice

Any changes should take place from a future date allowing taxpayers reasonable time to become aware of and act upon the new interpretation.

Draft Rulings

Taxpayers are protected from interest and penalties if a final ruling issues in different terms.

Rulings

Both public Rulings and Private Binding Rulings (PBR) should be expanded to cover matters of administration, procedure, collection, and ultimate conclusions of fact involved in the application of a tax law.

Private Binding Rulings

- The Inspector General of Taxation to evaluate whether the pattern of PBRs indicate a pro-revenue bias;
- After 60 days taxpayers can request determination of PBR applications within 30 days otherwise appeal process triggered;
- PBR application process to be simplified;
- PBRs to be written in plain language with provision of more detailed or technical statements included only when necessary.

Oral Rulings

All non-business individual taxpayers who are self-preparers should be eligible except where the question is complex.

Amendment Period

The period during which the Tax Office can amend assessments to be reduced from four to two years for small businesses which are STS taxpayers and individuals except:

- Partners, beneficiaries or trustees of entities which are not STS taxpayers;
- Taxpayers involved in Part IVA tax benefit schemes;
- Other high risk cases prescribed by regulation.

Amending Loss and Nil Returns

The current unlimited period for amendment to become equivalent to the two or four year periods for amending debit assessments.

Part IVA Amendments

The present six year period for Part IVA amendments to be reduced to the normal four year amendment period.

Substantiation

The current unlimited amendment period for substantiation and car expense provisions to be abolished so that normal amendment limits apply.

Objection Periods

Where objections are lodged out of time the Tax Office should accept requests for extension from individuals and STS taxpayers if within four years of the original assessment and there is an arguable case.

Reasonable Care

Penalties are reduced or eliminated where there is

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reasonable care or there is a reasonably arguable position. The Tax Office should revise Rulings to provide clearer guidance.

The definition of "reasonably arguable" to become less strict.

Penalties

- Penalty assessed for failure to follow a Private Ruling to be abolished;
- Tax Office discretion to remit penalties should be more fully explained;
- Tax Office should explain when it decides not to remit penalties in full.

General Interest Charge

- General Interest Charge (GIC) to be retained for post assessment interest;
- A lower interest rate reflecting the benchmark cost of business finance, to be introduced to cover income tax shortfalls (the period between issue of the original assessment and a subsequent amended assessment);
- Tax Office to have discretion to remit the new shortfall interest;
- Taxpayer to become entitled to object to a decision not to remit where shortfall interest exceeds 20% of the shortfall.

Test Case Litigation Programme

The Inspector General of Taxation to review the Tax Office's test case litigation programme to ensure fairness and transparency in relation to the suitability of selection and reasons for funding rejections.

DEPRECIATION AND EFFECTIVE LIVES

The Tax Office has made new effective life determinations in respect of plant items acquired from 1 January 2005 for the following:

- Buses;
- Fabricated Wood Manufacturing assets;
- Irrigator Water Supply assets
- Light Commercial Vehicles
- Plywood and Veneer Manufacturing assets
- Sewerage and Drainage assets
- Telecommunication Satellite assets
- Trailers
- Trucks
- Water Supply assets

Weekly Tax Bulletin in its issue of 17 December 2004 reported that effective lives for trucks, buses and light commercial vehicles are 7.5 years (see table below).

Vehicle	Effective Life	Diminishing Value Rate	Prime Cost Rate
General & heavy haulage trucks	7.5 years	20%	13.33%
General inter-city & long distance buses	7.5 years	20%	13.33%
Light commercial vehicles (incl mini buses)	7.5 years	20%	13.33%

These vary from the rates reported in *Tax IQ Monthly* De-

ember 2004 issue. We are looking into this and will report again next issue.

GENERAL INTEREST CHARGE (GIC)

The Tax Office has announced that the GIC rate for the quarter to 31 March 2005 is 12.43%. The rate for the quarter ended 31 December 2004 was 12.44%.

FAMILY TRUST ELECTIONS

Serious problems arising through the inflexible rules concerning family trust and interposed entity elections were discussed in *Tax IQ Monthly* May issue. In the May Budget the Government announced an intention to allow family trust elections to be made at any time in relation to an earlier income year. This announcement is being effected by amendments to the relevant legislation. Section 272-80(2) of schedule 2F of the 1997 Tax Act will be repealed.

This means that the only conditions for making a family trust election or an interposed entity election is that it must be in writing and in the approved form. It will only be available to entities which have acted as if they were family entities.

At all times from the beginning of the specified income year until the end of the year preceding the year in which the election is made:

- The entity must pass the family control test; and
- All distributions, income or capital, must have been made only to the specified individual or to members of his or her family group.

These amendments will apply from the date the amending Bill receives Royal Assent.

NON COMMERCIAL LOANS

Loans from Trustees

Where a trust has made distributions to a corporate beneficiary which remain unpaid it cannot make a loan to a shareholder or associate of that corporate beneficiary.

The law is being amended to relax this requirement. Where such a loan is made the deemed dividend rules will not apply if the loan is put on a commercial footing before the due date or lodgement date of the trust's tax return (whichever is the earlier) for the year in which the loan is made. A similar exemption applies if the loan is repaid within the same time period. The amendments will apply to all loans made by trusts from 12 December 2002.

Loans from Private Companies

The present Division 7A rules relating to loans made direct by a private company to a shareholder or associate are being relaxed. The loan can be put on a commercial footing prior to the due date or lodgement date of the company's tax return (whichever is the earlier) for the year in which the loan is made. If this is done the loan will not be treated as a deemed dividend.

Amendments relating to loans from private companies will apply to loans made in the years of income commencing after the amending Bill receives Royal Assent.

SIMPLIFIED TAX SYSTEM

One of the requirements to access the Simplified Tax System (STS) is that the cash basis of accounting must be used.

This means that all income earned but not yet received is not assessable until received whilst expenses incurred but not paid cannot be claimed until the year of payment.

This can create difficulties if you are using an accruals based accounting system. If you are operating a cash type business with few debtors you could be seriously disadvantaged by not

being able to claim deductions for unpaid creditors.

Amendments will be made to the STS legislation to allow small businesses to enter STS and yet remain on the accruals system. If you are already in the STS system there are transitional provisions allowing you to cease using the cash accounting method if you so desire.

If you make the change the transitional provisions will ensure that business income and expenses not recognised under the cash accounting method will be recognised in the first year after the change.

Normally STS taxpayers who exit the system have to wait for five years before re-entry. If you have exited the system at any time up to 1 July 2005 because the cash accounting method was no longer appropriate for you, you can re-enter without having to wait five years.

Amendments will also ensure that rollover relief is available in respect of STS partnership changes for depreciating assets allocated to STS pools. Depreciation deductions in the year of change will be split equally between the taxpayers who jointly choose rollover relief.

These amendments will apply to the income year following Royal Assent.

SMALL BUSINESS TAX OFFSETS

Are you operating a small business with annual turnover of \$50,000 or less? If you elect to become an STS taxpayer you may be entitled to an income tax offset (rebate) of 25% of the tax liability relating to your business income.

This offset is available to individuals or companies operating small businesses, to partners of partnerships or to the trustee or beneficiaries of a trust operating such a business. This new measure, providing substantial tax benefits to very small businesses, was contained in a pre-election announcement and is due to commence from 1 July 2005. This means that the first eligible tax year will be the 2005/06 year.

The tax offset will phase out when annual turnover is between \$50,000 and \$75,000.

FBT – LONG SERVICE AWARDS

The FBT Assessment Act is to be amended so that, commencing from the 2005/06 FBT year the exemption thresholds for long service awards will be doubled. This means that an award valued at up to \$1,000 for 15 years' service with an additional \$100 for each additional year of service will be exempt from FBT.

TSUNAMI TAX RELIEF

The Tax Office has announced that anyone directly affected by the Asian Tsunami (including relatives of people injured or deceased) or those involved in relief operations (including military, medical and other aid personnel) do not have to worry about tax matters for the time being.

When ready they should call the Tax Office on 13 28 66 to sort out any tax obligations. The Tax Office will take a sympathetic approach in relation to any outstanding lodgement or payment obligations.

Donations made to the appeal through organisations with Deductible Gift Recipient (DGR) status will be tax deductible if the organisation has obtained AusAID approval.

COMPUTER VIRUS WARNING

Beware of a fraudulent email claiming to come from the Tax Office. This email uses the Tax Office logo and has the words "BAS Payment Update" in the subject line. If you re-

ceive this email, do not open it as it can install malicious software code on your computer.

This email definitely does not emanate from the Tax Office.

SUPERANNUATION – CHOICE OF FUND

Legislation is being drafted to entitle employees to choose which superannuation fund should receive their super contributions. Choice of fund legislation is due to commence from 1 July 2005.

Employers will be required to provide each employee with a standard choice form by 29 July 2005 or within 28 days of commencement of employment. Employers must action employees' choices within two months.

Employees can:

- Choose a new complying fund;
- Stay in the existing employer fund; or
- Not make a choice, in which case contributions will go to a default fund identified on the choice form.

The default fund must be a complying super fund that offers life insurance complying with requirements.

Employees can change their fund once every 12 months (or more frequently if the employer allows it) and do not have to use the standard choice form.

As usual there are heavy penalties on employers who fail to comply. Such employers will be subject to the superannuation guarantee charge which may be increased by 25%.

CHILD CARE REBATE

More news on the Government's pre-election announcement of a 30% child care rebate. Parents may claim a rebate of 30% of out of pocket child care costs incurred. This was intended to commence from 1 January 2005 but has been backdated to 1 July 2004.

If you are currently paying child care expenses keep all receipts for payments during the current year so that you can claim your rebate in your 2005/06 tax return.

The rebate will be 30% of your child care expenses paid for approved care, less any child care benefit received.

If your rebate exceeds tax payable you will not receive a refund but will have the option of transferring any unused rebate to your spouse. The rebate is to be capped at \$4,000 per child. The Tax Office, Centrelink and Department of Family & Community Services will work with child care providers to develop an information package about claiming the rebate.

DEPRECIATION & EFFECTIVE LIVES – RETAIL

The Tax Office has issued a list of proposed effective life determinations for plant in cafés, restaurants, take-away food establishments, retail shops and in pubs and clubs. This proposal is heavily qualified in that the Tax Office recognises that there is a wide range of effective lives because:

- Some businesses work their assets harder than others because they have more customers;
- Some businesses buy cheaper assets, do little maintenance and replace them often;
- Some businesses buy top quality assets, maintain them well and keep them for longer periods;
- Some assets might be replaced before they are worn out in order to maintain a modern look or offer customers a particular ambience.

The Tax Office notes that the list will not be useful to taxpayers who scrap their assets relatively quickly. It expects some taxpayers to continue to self-assess effective lives of their assets.

For those businesses not within the above exceptions, the following lists of effective lives and depreciation rates may be of some benefit. Bear in mind that this list is in draft form only and is therefore subject to change.

Asset	Effective Life	Diminishing Value Rate	Prime Cost Rate
Application Date 1 January 2005			
Aluminium roller grilles	13 $\frac{1}{2}$	11.25	7.5
Fittings	20	7.5	5
Mannequin display figures	10	15	10
Refrigerated fruit juice dispensers	10	15	10
Tea and coffee dispensers	6 $\frac{1}{2}$	22.5	15
Cash Registers	6 $\frac{1}{2}$	22.5	15
Carpets	5	30	20
Coffee making machines	13 $\frac{1}{2}$	11.25	7.5
Floor coverings	10	15	10
Furniture and fittings	13 $\frac{1}{2}$	11.25	7.5
Imprinters (charge card)	6 $\frac{1}{2}$	22.5	15
Scissor lift	3	50	33.33
Neon sign	20	7.5	5
Ovens (hotels)	20	7.5	5
Microwave ovens	6 $\frac{1}{2}$	22.5	15
Music while you work system	10	15	10
Paging and public address system	10	15	10
Cold rooms	13 $\frac{1}{2}$	11.25	7.5
Condenser pipes	13 $\frac{1}{2}$	11.25	7.5
Corkboard for cold storage	20	7.5	5
Expansion pipes for cold storage	40	3.75	2.5
General machinery (refrigeration)	13 $\frac{1}{2}$	11.25	7.5
Refrigeration units	13 $\frac{1}{2}$	11.25	7.5
Refrigerators	20	7.5	5
Electronic tags	6 $\frac{1}{2}$	22.5	15
Signs	20	7.5	5
Application Date 1 July 2005 Pubs, Taverns, Bars and Clubs			
Wet bars	15	10	6 $\frac{1}{2}$
Dry bars	8	18.75	12.5
Beer dispensing system	15	10	6 $\frac{1}{2}$
Dance floor assets	5	30	20
Drinks, blenders	3	50	33 $\frac{1}{2}$
Electronic spirits dispenser	5	30	20
Carpets	5	30	20
Rubber safety mats	5	30	20
Vinyl and linoleum	5	30	20
Chairs	3	50	33 $\frac{1}{2}$
Stools	8	18.75	12.5
Tables	8	18.75	12.5
Glassware	1/2	100	100
Glass washers	8	18.75	12.5
Menu boards	5	30	20
Music system assets	3	50	33 $\frac{1}{2}$
Television and projection equipment	5	30	20
Cafés and Restaurants			
Cookware	2	75	50
Electric benchtop cooking assets (blenders, grills, toasters, etc)	3	50	33 $\frac{1}{2}$
Inbuilt cooktops, deep fryers, grills, kababs, ovens, etc	10	15	10
Commercial microwaves	5	30	20
Domestic microwaves	1	100	100
Wok burners	8	18.75	12.5
Crockery, cutlery and glassware	1	100	100
Espresso machines	5	30	20
Carpets	5	30	20
Furniture including chairs and tables	8	18.75	12.5
Service counters	15	10	6 $\frac{1}{2}$
Hot foot display units	10	15	10
Kitchen exhaust fans	5	30	20
Menu boards	5	30	20
Stainless steel preparation benches	20	7.5	5
Dishwashers	8	18.75	12.5
Glass washers	5	30	20

Asset	Effective Life	Diminishing Value Rate	Prime Cost Rate
Retail Trade			
Automatic sliding door equipment (excluding doors)	15	10	7.5
Electronic surveillance systems	5	30	20
Carpets	8	18.75	12.5
Floating timber floors	10	15	10
Vinyl and linoleum floor coverings	10	15	10
Furniture	10	15	10
Service and checkout counters	15	10	6.66
Hot food display units	10	15	10
Loading bay dock levellers	20	7.5	5
Pallet jacks and trucks	10	15	10
Scissor lifts	15	10	6.66
Electric roller shutter motors	20	7.5	5
Overhead track scales	10	15	10
Public address and paging systems	12	12.5	8.33
Customer trolleys	7	21.43	14.29
Stock trolleys	10	15	10
Visual display merchandise (mannequins, body forms, displayers, seasonal decorations)	7	15	10
Other Assets (not associated with specific industries)			
Automatic sliding door equipment (excluding doors)	15	10	6.66
Point of sale system equipment	6	25	16.66
Cash registers	10	15	10
Weighing machines and scales	10	15	10
Generator hooks and canopies	20	7.5	5
Generators	25	6	4
Power management units	15	10	6.66
UPS systems exceeding 6 kVA	5	30	20
UPS systems not exceeding 5 kVA	10	15	10
Public address and paging systems	12	12.5	8.33
Blast chillers (refrigeration)	10	15	10
Cool room condensing units	10	15	10
Cool room evaporators	10	15	10
Cool room insulation panels	40	3.75	2.5
Ice makers	8	18.75	12.5
Refrigerated drink dispensers (not beer)	10	15	10
Remote refrigeration assets	10	15	10
Self contained refrigeration units	10	15	10
Promotional signage	10	15	10

PROFESSIONAL ARTISTS

After some eight years of lobbying, recommendations by the 2002 Myer Report of Contemporary Visual Arts and Craft and negotiations between the Tax Office and the National Association for the Visual Arts a final Taxation Ruling (TR 2005/1) has issued to provide guidance in respect of principles to be applied to determine whether an artist is carrying on a business as a professional artist.

The Ruling applies to professional artists who conduct business as "an author of a literary, dramatic, musical or artistic work; a performing artist; or production associate." If determined to be carrying on a business as a professional artist the Ruling provides certainty in relation to:

- Determining whether income earned is subject to tax;
- Deciding whether expenses or outgoings have been incurred in carrying on a business;
- Determining whether the non-commercial loss rules apply to defer losses so they cannot be claimed against other income; and
- Deciding whether you are exempt from the non-commercial loss rules because you are carrying on a professional arts business with income from other sources less than \$40,000.

The following indicators will be applied in deciding whether artistic activities amount to the carrying on of a business:

- Existence of a significant commercial purpose or character;
- Purpose or intention of the taxpayer in engaging in the activity;

- Intention of the taxpayer to make a profit from the activity;
- Whether the activity is or will be profitable;
- Repetition and regularity of the activity;
- Activity carried on in a similar manner to the relevant arts industry sector;
- Activity carried on and organised systematically and in a business like manner;
- Sufficient size and scale of the activity;
- The activity is not a hobby, recreation or sporting activity;
- The existence of a business plan;
- Sizeable commercial sales of the product; and
- The relevant knowledge, experience and skill of the taxpayer.

The Ruling applies to years of income both before and after its issue.

DATA MATCHING PROJECT – CENTRELINK

Centrelink has announced that it will commence automating income stream reviews in August 2005.

Initially Centrelink will require superannuation funds and similar organisations who provide it with data files containing information about all those in receipt of allocated pensions and market linked income streams.

Centrelink will use this data to identify Centrelink payment recipients. It will destroy all information collected about non Centrelink customers.

Centrelink will then return the data file to the superannuation funds and similar organisations and require them to provide income stream information relating to Centrelink customers.

This information will then be automatically reviewed and matched with information provided by Centrelink payment recipients.

If you are receiving a superannuation pension as well as a Centrelink pension do make sure you have provided correct details to Centrelink.

SUPERANNUATION CONTRIBUTIONS

The Tax Office has issued a draft Determination (TD 2004 D82) advising that it will not necessarily apply Part IVA where a business (including a personal services business) pays superannuation contributions which substantially exceed the value of the services provided by the employee.

They must be genuine superannuation contributions up to the age based limits paid to a complying superannuation fund in respect of the main service provider or an associate.

The Ruling adds a qualification that the provision of personal services through the entity must be commercially justified (for example, because the relevant service acquirers will not contract with individuals but with entities only).

In Ryan's case the company provided the taxpayer's personal services as a computer consultant. The company paid the taxpayer's wife a small salary for her secretarial assistance but made large superannuation contributions on her behalf. Those contributions exceeded the value of her work but were within the age based limits.

The Administrative Appeals Tribunal held that Part IVA did not apply because, had the company not paid the superannuation contributions for the wife, it would have paid them for the husband and so no tax benefit was obtained.

Age based limits for superannuation contributions are:

Under 35 years	\$13,934
35-49 years	\$38,702
50 and over	\$95,980

READER QUESTIONS:

FBT – SALES INCENTIVES

Question:

We would like to offer sales representatives of companies with whom we do business, an incentive for promoting our products. We intend offering gift certificates (eg \$50 Coles Myer voucher) for each sale. Are these tax deductible for us? If so what records need to be kept?

Answer:

Yes, the expenditure will be tax deductible to you as it is a marketing expense deductible under Section 8-1 of the Tax Act. We take it that the sales representatives are not your employees but employees of various companies to whom you supply goods for sale. Take great care not to enter into any arrangements with those companies otherwise the employer will be caught for FBT. Under Section 148 of the FBT Act a benefit provided by a third party (you) under an arrangement with the employer (the companies) or with an associate of the employer will be caught for FBT. The incentives should be direct between you and the sales representatives, not via the employers.

If the sales representatives are your employees you will still get a tax deduction but will have to pay FBT on the benefits.

CGT – INVESTMENT PROPERTIES

Question:

After selling their own home a Victorian couple in their early fifties went on holiday to the New South Wales coast in 2002 and purchased two houses. These were both rented and later sold during the property boom.

They then purchased a larger property in the same town in early 2004, rented it for a time but are now living in it.

Please advise your opinion on CGT applicable and what action can be taken to minimise CGT. Can any benefits arise from the small business concession such as re-investment in more property?

Answer:

The two investment properties purchased in 2002 which were rented and subsequently sold will be subject to CGT, however, the 50% CGT discount will be available if the properties were owned for at least 12 months. Hence you will need to calculate the cost base which will include any incidental acquisition costs such as stamp duty and legal costs and anything spent on improving the properties, together with selling costs. The total of the cost base should then be deducted from the selling price to arrive at the capital gain. CGT discount of 50% should be deducted and the balance will be taxable at marginal rates.

Unfortunately, there are no CGT concessions applicable because these are restricted to active assets which are used in a business. Rental properties are excluded.

The new property in which they are now living will enjoy main residence exemption from the time they moved in.

FBT – CAR PARKING BENEFITS

Question:

This is my last try at seeing if the car parking we are providing is FBT exempt (see questions published in *Tax IQ Monthly* July and November issues). Paragraph 81 of Tax Ruling TR 96/26 states:

"We do not regard the following parking arrangements as constituting commercial parking stations:

- * Car parking facilities, with a primary purpose other than providing all-day parking, that usually charge penalty rates significantly higher than the rates chargeable for all-day parking at commercial all-day parking facilities (such as parking provided for short term shoppers or hotel guests)"

I believe this defines an airport carpark – which, similarly to parking for short term shoppers, does not have a primary purpose of providing all-day parking and hence charges inflated rates for all-day parking. This being the case, then we do not provide parking within a 1km radius of a commercial parking station and are therefore exempt from car parking fringe benefits. Hopefully this is third time lucky!

Answer:

Hearty congratulations on your persistence! Yes, on the basis of the paragraph you have quoted and the facts stated we believe you have a reasonably arguable case to claim exemption from FBT. You would argue that the airport carpark is not a commercial parking station because it charges "penalty rates significantly higher than the rates chargeable for all-day parking".

This exemption is subject to certain conditions which are:

- The car is not parked at a commercial parking station;
- The employer is not a public company or a subsidiary of a public company;
- The employer is not a government body;
- The employer's gross income for the last preceding year is less than \$10 million

TRAVEL ALLOWANCES

Question:

Our employee went to Melbourne for work purposes for two days. He wants to claim the reasonable daily travel allowances as per the relevant tax ruling. Does he need receipts or can we just pay the amounts as per the ruling.

Answer:

Yes. Provided the allowance paid does not exceed the rates set out in the relevant Ruling or Determination, substantiation is not required.

The Ruling you have referred to is TR 2003/7 which sets out the rates applicable to 2003/04. If the travel took place after 30 June 2004 you should refer to Taxation Determination TD 2004/19 which provides reasonable allowances for 2004/05. The daily rate for travel to Melbourne for employees on salaries less than \$78,750 per annum is \$238.55.

CGT – MAIN RESIDENCE SUBDIVISION

Question:

In 1994 we purchased a 2 acre block of land and built the family home on this land. We now propose to subdivide off 1 acre and sell this as three separate building allotments.

The original purchase price of the 2 acre block was \$16,000. Subdivision costs will be approximately \$40,000 and we anticipate that the sale price of the three subdivided lots will be \$79,000 each. Is there a way to minimise the CGT?

Answer:

You will be entitled to claim a 50% CGT discount on each lot as you have held this property for more than 12 months. There is no other way to minimise CGT and you will need to apportion the original cost between the acre retained and the acre to be subdivided add subdivision costs and pro rata the total cost base to the three lots to be sold. You can deduct the 50% CGT discount from the capital gain.

When subdividing a main residence property some sell their existing home and build a new main residence on the subdivided vacant lot. When it is handled this way the sale of the family home becomes CGT exempt as it is the main residence. When a new home is constructed on the vacant lot this becomes your next main residence and a subsequent sale of this property would also be exempt.

GST – INTER ENTITY TRANSACTIONS

Question:

Our client has two companies. Company A provides services and sells goods under two different trading names. This company pays all expenses except payroll costs and receives all income.

Company B pays wages, superannuation, PAYG Withholding and WorkCover and receives a service fee from Company A to cover those costs.

Currently GST is paid on the income earned in Company A and also by Company B on the service fee transferred from Company A. Effectively, they are paying GST twice on the money used for payroll.

Is this correct and why?

Answer:

Whilst Company B has to pay GST on the service fee received from Company A, Company A can claim an input tax credit on that amount. This cancels out the GST paid by Company B.

An alternative way of dealing with GST and inter entity transactions is to apply to have the two companies recognised as a group for GST purposes. When you do this you can ignore inter entity transactions for GST purposes.

SALARY SACRIFICE

Question:

I need to set up pay codes in my payroll system for the salary sacrifice amounts deducted from employees' salaries.

When I set these codes up the system wants me to nominate where these deductions should be shown on the payment summary or whether the deductions should be shown on the payment summary. The deductions are for superannuation, novated lease payments and fuel costs.

Answer:

Salary sacrifice deductions must not be shown on the payment summary at all. When an employee requests a salary sacrifice he or she is asking you to reduce the salary and provide alternative benefits. So you are simply paying that employee a reduced salary and then paying other benefits as listed.

It is the reduced salary amount which is recorded on the employee's payment summary. Benefit payments to employees may come within the classification of reportable fringe benefits. In this event, the total of all reportable fringe benefits must be shown in the appropriate section on the payment summary if the total exceeds \$1,000.

Superannuation payments (if within the age based limits) are exempt fringe benefits and do not need to be shown. However, novated lease payments and fuel costs (unless

offset by employee contributions) must be grossed up by the factor 1.9417 and the grossed up amount shown on the payment summary as reportable fringe benefits.

REPAIRS v. IMPROVEMENTS

Question:

I receive your monthly update with appreciation. I have a query that I would like your opinion on if possible.

I purchased an investment property this financial year. The property is about 10 years old and needs some mortar between some of the bricks replaced urgently. If I render the property, is this then a claimable item for repairs and maintenance?

I could get someone to re-point the mortar but this would be more expensive than the option of rendering the wall.

Answer:

Unfortunately, neither way will help. Repairs such as this, occurring so soon after purchase, are considered to be improvements, not repairs and your tax claim would be limited to the capital works allowance at 2.5% per annum.

To be claimable as repairs the deterioration should technically have occurred during your ownership period.

Perhaps it could be explained this way. If you purchase a run down property you will pay much less than you would for a well maintained property. Hence the repair costs that you incur shortly after purchase is considered to be a capital cost bringing your total cost up to what it would have been had the property been fully maintained at time of purchase.

EMPLOYEE SHARE ACQUISITION SCHEME

Question:

I have a query about income tax/CGT on options issued to employees after two years of service.

Employees receive share options in the foreign parent company of their Australian employer. These options are not listed but can be converted after two years for the same number of shares which are listed on both the foreign stock exchange and the local Australian stock exchange. A minimum price has been set for the options.

What are the tax and CGT implications for the employees?

Answer:

Any financial benefit received by an employee as a result of his or her participation in an employee share acquisition scheme represents taxable income to the employee.

As the options are not listed it will be necessary to determine their market value. If the market value of the option exceeds the option price the difference becomes taxable income to the employee.

When the options are converted into shares the amount paid becomes the cost base for the shares and if the shares are later sold any gains will be subject to CGT and there will be an entitlement to the 50% CGT discount if the shares have been held for at least 12 months.

Some concessions are available for qualifying shares or rights. Conditions are:

- The options must be acquired under an employee share scheme;
- The company issuing the shares must be the employer or the employer's holding company;
- The options must be in respect of ordinary shares;
- An employee's holding of shares must not exceed 5%; and
- The employee's voting power must not exceed 5%.

If the rights are qualifying rights the employee can defer including amounts in their taxable income until the earliest of the following times:

- When the option is sold (other than by exercising it);
- When employment ceases;
- When the option is exercised and the resulting shares can be sold without restriction; and
- When 10 years have elapsed since the options were granted.

If employees decide not to take advantage of the deferral benefits they can discount the amount of taxable income to include in their tax returns by \$1,000.

Inclusion of the taxable income in the year the option is granted is recommended because the subsequent gain becomes a capital gain eligible for the 50% CGT discount.

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