

DATA MATCHING PROJECTS

Queensland Builders

The Tax Office has announced that it will collect licence registration information concerning about 50,000 individuals from the Queensland Building Services Authority.

These will be electronically matched with Tax Office data to identify:

- Those who have not lodged income tax returns;
- Those with any outstanding BAS;
- Those who have incorrectly declared income on their tax returns;
- Those who have incorrectly declared total supplies on BAS;
- Those not meeting other tax obligations such as GST registration.

Horse Racing

The Tax Office has set up a project to look for omitted GST and income tax on income received through horse racing. In respect of GST registered entities the Tax Office will be checking income and prize money received and, for entities not registered for GST, will be aiming to identify any possible GST and income tax liabilities.

It will also be aiming to detect non compliance with FBT and superannuation obligations.

Data will be collected from the following bodies:

- Queensland Racing;
- Racing Victoria Limited;
- Tasmania Thoroughbred Racing Council;
- Darwin Turf Club;
- Thoroughbred Racing SA Limited; and
- Racing and Wagering Western Australia

The Tax Office says that it intends to undertake 2,000 field reviews, 3,000 telephone reviews and 10,000 leveraged mail out reviews. The following taxpayers will be involved:

- 10,500 owners and/or lessors;
- 3,620 trainers;
- 930 jockeys;
- 304 farriers.

The data to be collected will be matched with the Tax Office internal data. Additionally, information will be collected pertaining to particulars of income received. This will include:

- Date income received;
- The account to which the income was paid;
- Name of associated horse; and
- For trainers, names and numbers of horses held in stables.

Property Sales

The Tax Office will collect names and addresses of entities within the real property market from RP Data Pty Ltd. These will be matched with Tax Office data to identify failure to report property sales required under CGT or GST legislation.

FBT – POLICE BENEFITS

The FBT regulations have been amended in relation to the following benefits provided to serving police. These benefits are excluded from the FBT reporting requirements and therefore do not have to be reported on payment summaries.

- Private travel – use of an operational car for private home to work travel to enable the officer to respond to an event involving a possible crime or threat;
- Housing benefit – provided to officers in housing attached to or on an adjacent block to a working police station in non remote areas;
- Rental subsidies – provided to an officer in a regional area (at least 100 kms from a town with a population of 130,000 or more);
- Relocation – reimbursement of costs incidental to the purchase of a new dwelling required to perform work duties if within four years after commencing duties at the new locality.

These amendments apply to the 2004/05 FBT year which commenced on 1 April 2004.

FBT – LIVING AWAY FROM HOME ALLOWANCE

If an employee has to live away from home to carry out work duties an allowance or benefit provided to compensate the employee for additional costs of food and accommodation may be exempt from fringe benefits tax.

The Tax Office has indicated that normal home food costs are to be taken into account at \$42 per week for each adult and \$21 per week for each child under 12. Food costs above those figures paid by an employer because the employee is required to live away from home are FBT exempt.

In addition, any accommodation costs paid by the employer will be FBT exempt.

Alternatively, it is possible for a reasonable allowance to be paid to the employee to cover these additional expenses.

OUR VIEW

More data matching projects are reported this month. The Tax Office is continuing its programme of electronic surveillance over all types of income. This issue reports programmes newly set up to catch Queensland builders, participants in the horse racing industry and sellers of property.

More projects are in the pipeline. The Tax Office is becoming quite experienced with these. If you think you might have a problem, get in quickly and notify the Tax Office of any required adjustments so that any penalties are reduced to a minimum.

Fringe Benefits Tax – a tax quite probably unique to Australia which taxes the giver, not the receiver – has been around for quite a few years now. This issue reports updates on living away from home allowance rates, motor vehicles (other than cars), loan interest rates and record keeping.

Property developers make good use of the margin scheme when calculating GST on property sales. Under this method, they only pay GST on the difference (or margin) between the sale price and purchase price of the land.

Amendments will reduce the benefits somewhat for property purchased after 30 June 2000. Some loopholes in the legislation relating to GST Groups and Joint Ventures are closed.

This month we publish the second edition of effective lives and depreciation rates for the retail and hospitality industry and the start of the process for commercial office buildings.

Also, a breakthrough on work related expenses! Taxation Commissioner Carmody has announced that you do not have to hold a detailed receipt or paid invoice showing all the required particulars. This month's article gives alternatives.

Ever thought about voicing your frustrations about tax? Now you can. We publish full details of contact points for making a complaint.

The end of the financial year is fast approaching. Are your tax affairs in order? Our June issue will provide many tax planning ideas. Check out our sister publication – *Tax IQ Tax Savings Special*.

Till next time.

Tony Lovett

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The Tax Office has provided rates for reasonable food component for expatriate employees working in Australia for the 2005/06 FBT year (the year ending 31 March 2006). The rates for 2004/05 and 2005/06 are:

Number of Persons	Rate per Week	
	2004/05	2005/06
1 adult	\$176	\$180
2 adults	\$282	\$289
3 adults	\$318	\$326
2 adults and 1 or 2 children	\$318	\$326
2 adults and 3 children	\$370	\$379
3 adults and 1 child	\$370	\$379
3 adults and 2 children	\$423	\$433
4 adults	\$423	\$433

For larger family groupings, each additional adult will increase the amount by \$107 (2004/05) or \$110 (2005/06) whilst each additional child will increase the amount by \$53 (2004/05) or \$54 (2005/06).

The FBT exempt amounts are the above figures reduced by the amounts to cover normal home food costs. The employer must hold a Living Away From Home Declaration completed and signed by the employee.

Taxation Determination TD 2005/12

FBT – MOTOR VEHICLES

Special FBT rates are provided for the provision of motor cars to employees. Where an employee has private use of a vehicle other than a car the benefit is known as a residual fringe benefit and is calculated according to engine capacity of the vehicle.

The per kilometre rates for 2004/05 and 2005/06 are as follows:

Engine Capacity	2004/05	2005/06
0-2500 cc	38 cents	39 cents
over 2500 cc	46 cents	47 cents
Motor cycles	11 cents	12 cents

Taxation Determination TD 2005/9.

FBT – LOAN FRINGE BENEFITS

If an employer provides a loan to an employee, interest must be charged at a rate known as the benchmark interest rate in order to avoid FBT.

The rate for 2005/06 FBT year is 7.05%. This rate remains unchanged from the 2004/05 FBT year.

Taxation Determination TD 2005/8.

FBT – RECORD KEEPING

An employer who provides fringe benefits to employees which total less than a threshold figure is not obliged to keep and maintain FBT records unless they are in relation to:

- Benefits provided to an associate;
- Benefits provided by a Government body;
- Benefits provided by an exempt taxpayer; or
- The Tax Office has provided a written notice requiring written records to be kept.

The threshold figure for the 2004/05 FBT year is \$6,084. This increases to \$6,223 for the 2005/06 year.

Taxation Determination TD 2005/11.

GST – PROPERTY DEVELOPERS

Margin Scheme

Developers acquiring land for residential development try to acquire this land by using the margin scheme or by otherwise aiming to obtain the land on a GST exempt basis. This could occur if the vendor is a private individual not registered for GST.

By acquiring the land without paying GST and claiming an input tax credit, the developer can use the margin scheme when the residential lots or houses are sold. This limits the GST payable on sale to the margin. That is the sale price, less the acquisition cost.

An amending Bill subsequently before Parliament will change this arrangement in respect of land purchased under the going concern exemption or GST free farm land. The changes are effective from 17 March 2005. From that date the margin will no longer be the sale price less acquisition costs. Instead, it will be the sale price less the value of the land as at 1 July 2000.

The developer will have to obtain an *approved valuation* of the land as at 1 July 2000.

Additionally, as from the date the amending Bill receives Royal Assent the utilisation of the margin scheme will require that the vendor and purchaser agree in writing to apply the margin scheme on or before the date of sale.

GST Groups and Joint Ventures

The amending Bill will also prevent the setting up of GST groups and joint ventures and transferring residential premises from one member of a group to another thereby enabling the subsequent supply to a third party to be free of GST because they are not *new residential premises*. The amendment will ensure that supplies between members of a GST group will be disregarded in determining whether premises are new residential premises. Supplies of land between joint venturers will henceforth be treated as taxable supplies.

The amendments will also prevent the acquisition of land by one member of a GST group on a fully taxable basis with input tax credits being claimed, then the transfer of that land to another member of the group on a non taxable basis thereby enabling the second member to use the margin scheme on sale to a third party.

Consideration

The amendments will also make it clear that to calculate the margin the consideration paid for acquiring land will be limited to the price paid for it. Consideration will not include stamp duty, legal costs or any construction work.

FBT – EMPLOYEE PROTECTION

Under the headline "If the bullets don't get you, the Tax Office will" the *Australian Financial Review* has reported that protection provided to an employee outside the actual workplace is a fringe benefit and subject to FBT at the top marginal rate (after grossing up).

These so called fringe benefits could include anything from the cost of installing security cameras and alarms at an employee's home up to the provision of body guards and the cost of protecting Australian employees sent on short term assignments to war or natural disaster zones. The Government is exhorting business to provide protection to employees. Attorney General, Phillip Ruddock, said that directors have a duty of care to ensure the safety of their employees. Yet, when employers do provide this protection they are taxed under the FBT legislation after grossing up of the expense. The actual tax involved ends up being more than the cost of the protection.

WORK RELATED EXPENSES

The Tax Office has issued a Practice Statement and media release indicating that people may be able to claim deductions for work related expenses even though they do not have the required receipt.

Taxation Commissioner, Michael Carmody, said "The law says that people can only claim a work related expense if they have a document that contains particular information from the supplier of the goods or services, but the law also allows the Tax Office to use its discretion."

"We know that sometimes there is a good reason why people don't have a valid receipt or one that contains the right information. In these cases we will take a practical approach to administering the law."

Under the new arrangement the Tax Office will accept documents containing similar information to what appears on a traditional paper receipt. These documents may include:

- Online banking and credit card statements;
- Online, email, electronically stored and photocopied receipts; and
- BPAY reference numbers combined with bank statements or tax invoices.

MAKING A COMPLAINT

The Tax Office has issued a Fact Sheet explaining how to make a complaint if you are dissatisfied with a particular decision, service or action of the Tax Office. To make a complaint you can:

- Telephone 13 28 70;
- Send an email to ato-taxpayercomplaints@ato.gov.au;
- Send a fax to 1800 060 063; or
- Write to Complaints, Australian Taxation Office, Locked Bag 3120, Melbourne Vic 3001

The Tax Office says that it deals positively with complaints, views them as opportunities to improve its service or operations. It carefully analyses complaints to identify and rectify weaknesses in its policies, systems, work practices, skills and quality controls.

Taxation Ombudsman

You also have the right to make a complaint to the Taxation Ombudsman, however if you do so, the Taxation Ombudsman may request that you first approach the Tax Office's complaints section.

To make a complaint to the Taxation Ombudsman you can:

- Visit their website at www.comb.gov.au and make a complaint online;
- Phone 1300 362 072;
- Send a fax to 02 6249 7829;
- Contact one of the Ombudsman's offices listed at www.comb.gov.au; or
- Write to the Taxation Ombudsman, GPO Box 442, Canberra ACT 2601.

Privacy Commissioner

The Privacy Commissioner has broad powers to investigate complaints about breaches of privacy at no cost to you. These powers include obtaining information and documents and examining witnesses.

To make a complaint to the Privacy Commissioner you can:

- Telephone 1300 363 992;
- Send a fax to 02 9284 9666;
- Email privacy@privacy.gov.au; or
- Write to Director, Compliance, Office of the Federal Privacy Commissioner, GPO Box 5218, Sydney NSW 2001.

More information about how to make a complaint is available at www.privacy.gov.au.

WATER FACILITIES

A tax concession is available to primary producers in relation to the provision of water facilities. This concession has been extended to irrigation water providers from 1 July 2004.

An irrigation water provider is an organisation whose business is primarily the supply of water to primary producers (other than trucking it in).

A water facility is plant or a structural improvement, or an alteration, addition or extension to plant or a structural improvement, that is primarily for the purpose of conserving or conveying water. From 1 July 2004 it includes:

- Capital repairs to plant or structural improvements that are primarily for the purpose of conserving or conveying water; and
- A structural improvement, or an alteration, addition, extension or capital repair to a structural improvement, that is reasonably incidental to conserving or conveying water.

Examples of water facilities are dams, earth tanks, underground tanks, concrete or metal tanks, tankstands, bores, wells, irrigation channels or similar improvements, pipes, pumps, water towers, windmills and extensions or improvements to any of these items.

Things that are reasonably incidental to conserving or conveying water include culverts, fences to prevent livestock entering an irrigation channel and a bridge over an irrigation channel.

One-third of the capital expenditure incurred can be claimed in the income year in which the expenditure was incurred and one-third can be claimed in each of the following two years:

Where a partnership has incurred the expenditure the costs are allocated to each partner who can then claim the relevant deduction in respect of their share of the expenditure.

LANDCARE OPERATIONS

Tax concessions are available for landcare operations carried out by a primary producer or a business using rural land. For expenditure incurred from 1 July 2004 similar concessions are available for rural land irrigation water providers. A rural land irrigation water provider is defined as an entity whose business is primarily the supply of water (other than trucking it in) to primary producers or to businesses using rural land (except mining or quarrying businesses). The concession available is that deductions for capital expenditure on landcare operations can be claimed in full in the year it is incurred.

A landcare operation is one of the following:

- Eradicating or exterminating animal pests from the land;
- Eradicating, exterminating or destroying plant growth detrimental to the land;
- Preventing or combating land degradation other than by the use of fences;
- Erecting fences to keep out animals from areas affected by land degradation to prevent or limit further damage and assisting in reclaiming the areas;
- Erecting fences to separate different land classes in accordance with an approved land management plan;
- Constructing a levee or similar improvement;
- Constructing drainage works – other than the draining of swamps or low lying areas – to control salinity or assist in drainage control; or
- For expenditure incurred from 1 July 2004, a structural improvement or an alteration, addition, extension or repair to a structural improvement that is reasonably incidental to the last two operations (construction of a levee or drainage works).

If the expenditure is incurred by a partnership it is the partners and not the partnership who make the claim. Costs incurred are allocated to each partner who can then claim the relevant deduction for their share of the costs.

An approved land management plan is a plan that:

- Shows the different classes within the land and the location of any fencing needed to separate any of the land classes to prevent land degradation;
- Describes the kind of fencing and how it will prevent land degradation; and
- Has been prepared by or approved in writing as a suitable plan for the land by an authorised land conservation officer or an approved farm consultant.

A register of authorised consultants is available on the Department of Agriculture, Fisheries and Forestry website.

DEPRECIATION AND EFFECTIVE LIVES (PRIMARY PRODUCTION)

The Tax Office has announced that it will review the effective lives of assets used in primary production in the following sectors:

- Beef;
- Dairy;
- Sheep;
- Grains;
- Horticulture and crops; and
- Nurseries, cut flowers and seed growing

These reviews are expected to take 12-18 months and new Determinations should apply from 1 July 2006 or 1 January 2007.

Drafts will be issued for public comment before final decisions are made.

The reviews are intended to:

- Identify the depreciating assets that are widely used;
- Establish the period of time that each asset can reasonably be expected to be used for a taxable purpose; and
- Recommend new Effective Life Determinations for each asset.

The Tax Office advises that it will be liaising with peak industry bodies, talking to primary producers about their experience with assets and their expectations for the future, visiting trade shows and talking to manufacturers and suppliers of assets.

DEPRECIATION AND EFFECTIVE LIVES (RETAIL AND HOSPITALITY)

In December 2004 the Tax Office issued a list of proposed Effective Life Determinations for plant in cafés, restaurants, take-away food establishments, retail shops and in pubs and clubs. The proposals were reviewed following industry comment and have been re-released for further comment.

The original proposals were reported in *Tax IQ Monthly* January/February 2005 issue.

In its earlier release the Tax Office recognised 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 noted that the list would 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.

Some assets are listed in current determinations. These are proposed to be withdrawn from 1 July 2005. Determinations to be withdrawn are:

Asset	Effective Life	Diminishing Value Rate	Prime Cost Rate
Aluminium roller grilles	13½	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	6⅔	22.5	15
Cash Registers	6⅔	22.5	15
Carpets	5	30	20
Coffee making machines	13½	11.25	7.5
Floor coverings (lino and vinyl)	10	15	10
Furniture and fittings	13½	11.25	7.5
Imprinters (charge card)	6⅔	22.5	15
Scissor lift	3	50	33.33
Neon sign	20	7.5	5
Ovens (hotels)	20	7.5	5
Microwave ovens	6⅔	22.5	15
Music while you work system	10	15	10
Paging and public address systems	10	15	10
Cold rooms	13½	11.25	7.5
Condenser pipes	13½	11.25	7.5
Cork board for cold storage	20	7.5	5
Expansion pipes for cold storage	40	3.75	2.5
General machinery (refrigeration)	13½	11.25	7.5
Refrigeration units	13½	11.25	7.5
Refrigerators	20	7.5	5
Electronic tags	6⅔	22.5	15
Signs	20	7.5	5

Proposed new Determinations which are to be effective from 1 July 2005 are as follows:

Asset	Effective Life	Diminish-ing Value Rate	Prime Cost Rate
Accommodation – Hotel and Motel Assets			
Audio visual equipment	5	30	20
Carpets	7	21.43	14.29
Door control systems	10	15	10
Free standing furniture	7	21.43	14.29
Outdoor furniture	5	30	20
Garage door controls and motors	5	30	20
Electric gate controls and motors	5	30	20
Bathroom accessories (shower caddies, soap holders, etc)	1	100	100
Hairdryers	3	50	33.33
Heated towel rails (electric)	5	30	20
Scales	5	30	20
Spa bath pumps	7	21.43	14.29
Towels	1	100	100
Bedding (pillows, mattress protectors, sheets)	2	75	50
Bed mattresses	7	21.43	14.29
Beds (including ensembles)	7	21.43	14.29
Fold out and roll away beds	5	30	20
Bedspreads, blankets and quilts	5	30	20
Clocks and clock radios	5	30	20
Bar refrigerators	10	15	10
Cooking utensils	2	75	50
Crockery and cutlery	4	37.5	25
Glassware	2	75	50
Microwave ovens	5	30	20
Clothes dryers	7	21.43	14.29
Irons and ironing boards	3	50	33.33
Washing machines	7	21.43	14.29
Window blinds and curtains	6	25	16.67
Hot water systems (excluding boilers and piping)	10	15	10
Housekeeping assets (bins, buckets, brushes, etc)	1	100	100
Laundry assets (motels & hotels):			
• Dryers	10	15	10
• Linen bins	15	10	6.67
• Presses	15	10	6.67
• Roller irons	20	7.5	5
• Washing machines	10	15	10
Public address and paging system	10	15	10
Sauna heating assets	10	15	10
Swimming pools and spas:			
• Chlorinators	8	18.75	12.5
• Concrete structures	50	3	2
• Filtration assets (including pumps)	8	18.75	12.5
• Heaters	10	15	10
Trolleys	10	15	10
Vacuum cleaners	3	50	33.33
Water pumps (tap water)	10	15	10
Pubs, Taverns, Bars, Cafés, Restaurants, Clubs			
Audio visual equipment	5	30	20
Dry bars, tables or benches	8	18.75	12.5
Wet bars	15	10	6.67
Beer dispensing equipment	15	10	6.67
Fixed chairs and tables	20	7.5	5
Free standing chairs	5	30	20
Coffee making machines	5	30	20
Free standing counters	15	10	6.67
Dance floor assets	5	30	20
Dishwasher machines	8	18.75	12.5
Drinks blenders	3	50	33.33
Drink dispensing machines	10	15	10
Electronic spirits dispensers	5	30	20
Floor coverings (removable without damage):			
• Carpet	5	30	20
• Linoleum	10	15	10
• Rubber safety mat	5	30	20
• Vinyl	10	15	10

Asset	Effective Life	Diminish-ing Value Rate	Prime Cost Rate
Food preparation and service:			
• Benchtop appliances	3	50	33.33
• Cooking machines (cooktops, deep fryers, grills, etc)	10	15	10
• Cookware handheld (frypans, pans, pots, etc)	2	75	50
• Crockery, cutlery and glassware	1	100	100
• Hot food display assets	10	15	10
• Microwave ovens	5	30	20
• Preparation benches free standing	20	7.5	5
• Wok burners (large commercial type)	8	18.75	12.5
Furniture free standing (including chairs and tables in cafes and tables in pubs)	8	18.75	12.5
Glass washer machines	5	30	20
Kitchen exhaust fans	5	30	20
Menu boards	5	30	20
Stools used in pubs and bars	3	50	33.33
Retail Trade			
Counters free standing	15	10	6.67
Electronic article surveillance system	5	30	20
Floor coverings (removable without damage):			
• Carpet	8	18.75	12.5
• Floating timber	10	15	10
• Linoleum	10	15	10
• Vinyl	10	15	10
Furniture free standing (chairs, cupboards, racks, showcases and tables)	10	15	10
Hot food display assets (incl bain marie)	10	15	10
Overhead track scales	10	15	10
Rollershutter electric motors	20	7.5	5
Shelving (whether free standing or not)	10	15	10
Trolleys (customers)	7	21.43	14.29
Trolleys (stock type)	10	15	10
Visual display assets (body forms, head displays, mannequins and seasonal decoration)	7	21.43	14.29
Take-Away Foods			
As for pubs, taverns, bars, cafés, restaurants, clubs			
Other Assets (not associated with specific industries)			
Boilers	20	7.5	5
Boiler pumps	5	30	20
Door control and motor drive systems	15	10	6.67
Drink dispensing machines	10	15	10
Loading bag assets:			
• Dock levellers	20	7.5	5
• Pallet jacks and pallet trucks	10	15	10
• Scissor lifts	15	10	6.67
Point of sale assets:			
• Cash registers (stand alone)	10	15	10
• Cash transfer system assets (pneumatic)	10	15	10
• Barcode scanners, cash drawer, computers, EFTPOS machines, etc	6	25	16.67
• Weighing machines and scales	10	15	10
Power supply assets (generators):			
• Acoustic hood and canopies	20	7.5	5
• Generators	25	6	4
• Power management units	15	10	6.67
Power supply assets (UPS systems):			
• Line interactive type	5	30	20
• On line double conversion type	10	15	10
• Public address and paging system	12	12.5	8.43
Refrigeration assets:			
• Condenser, evaporator, cabinet, freezer and refrigerator	10	15	10
• Ice making machines	8	18.75	12.5
• Insulation panels (cool room)	40	3.75	2.5
Signage (promotional)	10	15	10

DEPRECIATION AND EFFECTIVE LIVES (COMMERCIAL OFFICE BUILDINGS)

Effective from 1 July 2005 the Tax Office proposes to withdraw the following determinations:

Asset	Effective Life	Diminishing Value Rate	Prime Cost Rate
Carpets (picture theatres, hotels, etc)	5	30	20
Carpets (professional chambers)	10	15	10
Hot water installations	20	7.5	5

New Effective Life Determinations proposed by the Tax Office will be added to Table B as follows:

Asset	Effective Life	Diminishing Value Rate	Prime Cost Rate
Carpet in commercial office buildings	15	15	10
Free standing furniture in commercial office buildings:			
• Timber bookcases	10	10	6.7
• Metal bookcases	7.5	7.5	5
• Cabinets and cupboards (timber/laminated)	10	10	6.67
• Cabinets and cupboards (metal)	7.5	7.5	5
• Chairs	15	15	10
• Desks	7.5	7.5	5
• Mobile storage units (compactus)	6	6	4
• Reception furniture	15	15	10
• Screens	7.5	7.5	5
• Tables (board room)	7.5	7.5	5
• Tables (general)	15	15	10
• Workstations (including partitions)	7.5	7.5	5
• Hot water installations (excl boilers & piping)	10	10	6.67
• Shredders	10	10	6.67
• Trolleys	10	10	6.67
• Whiteboards	15	15	10
• Partitions (demountable)	7.5	7.5	5
• Telephone handsets	15	15	10
• Window blinds	7.5	7.5	5

READER QUESTIONS:

CGT COST BASE FOR SHARES SOLD

Question:

If there are three lots of shares (say Telstra) bought at different times, eg 500, 1,000, 1,500. If 2000 shares are sold today, how do I calculate the cost base of the shares sold? Can I use an average cost or do I have to identify the shares sold in relation to each parcel bought?

Answer:

Section 116-40 of the Tax Act provides that the capital proceeds of sale of an asset comprising two or more separate assets must be apportioned on a reasonable basis and you will need to do this in relation to each separate parcel purchased. You will choose which of the purchased parcels were sold. It may, for example, have been:

First parcel:	500
Second parcel:	1,000
Third parcel (Part):	500
Total:	2,000

Alternatively, it may have been:

Third parcel:	1,500
Second parcel (Part):	500
Total:	2,000

The apportionment of the proceeds among each parcel will be simple. Divide the total proceeds by 2,000 to get a per share sale price and multiply this figure by the respective parcels sold. Deduct the cost price of that parcel to arrive at your capital gain.

DEPRECIATION – PRIMARY PRODUCERS

Question:

We are STS primary producers. We purchased a farm property with machinery sheds with big concrete floors, tanks for stock water, fences and a portable office, all constructed prior to 30 June 2000.

The previous owners cannot supply receipts for the purchase of the assets and in some cases can't remember what they paid for the improvements.

Can assets such as these be depreciated by us making a reasonable estimate of what they would have cost at the time of construction or what they would be worth at the time we purchased the property in July 2003?

If we use figures for what they would have been worth at the time of construction do we use STS tax depreciation rates or the rates applicable when the asset was constructed?

Can we use the old depreciation rates until we purchased the property then from that time use STS rates to calculate depreciation?

Answer:

Depreciation is based on the cost of the asset – that is the cost to you. If the contract for purchase of the property did not identify values for the plant you will need to have these items valued by a qualified valuer.

Tanks for stock water constitute water facilities which can be claimed over three years. Section 40-555 of the Tax Act prohibits you from claiming any deduction for water facilities if your predecessor has already claimed this expenditure.

COMPANY VEHICLE

Question:

I am the sole director of my company and my wife and myself are the shareholders. I am employed by my company and have a company vehicle. My wife and I also have our own personal family vehicle. My accountant has told me I need to keep a log book for around three months. The company vehicle is registered, chattel mortgaged and insured in the company name.

Is there any way around this? In my previous employment I had a company vehicle supplied to me for nine years and was never required to keep a log book. I purchased the business in December 2003 and am wondering why I need to keep a log book now when this was not required during the past nine years.

Answer:

If you do a lot of business mileage it is better to keep a log book, however there is another way. It is known as the *statutory method*.

The company claims all expenses in relation to the operation of the car whilst the value of the fringe benefit to be taken into account because the car is garaged at your home, is based on a percentage of the cost price of the car.

This depends on the annual mileage. The percentages are:

Kilometres Travelled	Statutory Percentage
Under 15,000	26%
15,000-24,999	20%
25,000-40,000	11%
Over 40,000	7%

So if, for example in a 12 month period the car is driven for 20,000 kms the value of private use is taken to be 20% of the cost price of the car.

You will need to either pay this amount (plus GST) to the company for the private use or alternatively the company will be required to lodge an FBT return and pay fringe benefits tax.

You can read more about this on page 76 of the *Australian Taxation Manual*.

INTEREST DEDUCTIONS

Question:

A few questions further to the *Interest Deductions* reader question in *Tax IQ Monthly* March 2005. How is this situation any different to re-drawing on an investment property loan to fund non-deductible purchases?

I understood that it was the use of the funds that determined what the loan related to, not the security used for the loan. Would the argument used in the answer provided stand up where the purchase was not for investment in shares, but for a deposit on a home residence?

Would the distinction be whether the funds were re-drawn versus re-financing the loan due to increased value of the mortgaged property?

Answer:

The question answered in the March issue related to a loan account. An offset account is used to hold temporary investable funds. Instead of paying interest on those funds the bank allows a reduction of the interest charged on the loan account. Hence, when funds in an offset account are taken out for any purpose (whether tax deductible or not) this has no bearing on the original loan which simply remains in place albeit now without the offset interest concession.

It is a different story entirely if a loan is reduced by actual repayments and there is a subsequent re-financing (from increased equity either because of earlier repayments or increased value of the mortgaged property). In this case there is a new loan and you need to look at the purpose for which the loan funds are put – if for deposit on a home residence the interest on the new loan would not be tax deductible.

CAPITAL WORKS

Question:

We have a client who has recently spent in excess of \$10,000 on leasehold improvements, mainly new office fitout, comprising fixed walls and doors for his new office.

He wants to write off the full amount in the first year, whereas we maintain that as a fixed (non removable) addition to the office it is a capital item, and must be depreciated at 2.5%.

Are we correct in this? If so, please provide references so we can advise our client.

Answer:

The relevant Division in the Income Tax Act is Division 43. Section 43-20 states that the Division applies to capital works being a building, or an extension, alteration or improvement to a building.

There is a great deal of confusion about what constitutes an improvement to a building (for which a 2.5% capital works allowance can be claimed) or an item of plant which can be depreciated at much higher rates.

The Tax Office is adopting a very strict attitude which is evidenced in its recent ruling about residential rental property assets. This lists a number of items normally contained in rental properties. Many of the items in the list are indicated as not being depreciable but subject to the 2.5% deduction under Division 43. You can check this out in the *Tax IQ 2004 Tax Returns Special*. The expenditure on the fitout is clearly capital expenditure for which a capital works allowance of 2.5% is available.

ADMINISTRATION SERVICE

Question:

I run my own environmental consulting company, directly employing myself and my wife (directors and employees of the company) and two other full time employees.

A situation has arisen whereby I am able to act as an "administration centre" to process invoices for three people who are contractors to a major oil company. Because my company is on the oil company's payments system, these people will process their monthly invoices through my company.

I plan to charge them a flat administration fee and have them sign a contract that will state that we provide administration services only – the fee used to submit their invoices to the oil company – they must provide their own workers compensation insurance and pay their own superannuation. They must also have an ABN.

The environmental manager of the oil company will direct their work and supply the necessary equipment. They supply their own vehicles for which they are paid on a cents per km basis.

What I want to know is: I will not be deemed an employer of these people, will I?

Answer:

You should consult a solicitor to ensure that the documentation adequately covers the situation. It is of concern that you are submitting an account (presumably in your company's name) for the services to be rendered by these contractors. Hence it is possible that your company could be responsible for their work. These are legal questions and you should obtain competent legal advice before proceeding.

CGT – HOME OFFICE

Question:

I have read the article in *Tax IQ Monthly* April issue on CGT for home offices.

Whilst I was aware that there is the possibility of CGT on home offices if expenses were claimed, I assumed that direct business running expenses (stationery, business phone, office equipment, etc) wouldn't raise an eyebrow and only capital oriented items such as partial rates, home loan interest, etc would create interest from the Tax Office. Unless I misunderstand your article, just operating a business office at home regardless of whether we claim any expenses at all is going to attract partial CGT when we sell?

If this is the case, aren't we better off claiming every expense we can?

We have a dedicated office area in our home operating as an office and interview area. It has its fair share of direct running costs which I think would be tax deductible. What's your advice as to how we can be treating this tax wise?

Answer:

You understood our article correctly. You should claim all expenses to which you are entitled and obtain a valuation of the house as at the date you set up the dedicated office area. Calculate your pro rata claim for interest, rates, etc on the basis of the floor area set aside for the office compared with the total floor area of the house.

Keep a record of all non-deductible costs of maintaining the house including the non-deductible portion of rates, repairs, interest, etc as these represent non-capital costs of ownership. These constitute the third element of the cost base of the house and will reduce the capital gain on any eventual sale. This in turn will reduce the pro rata taxable gain.

SUPER FUNDS AND SHARE TRADING

Question:

One of our clients has a self managed super fund which engaged in share trading quite actively throughout 2003/04. On average there would have been 10-20 trades per week. The super fund has chosen a particular share broker to make the investment decisions so there is a good degree of expertise being employed and plans to continue share trading.

The fund has an investment strategy which states that share trading is an investment option that the fund can pursue. Whilst I personally don't see any problem with what the super fund is doing, an accountant friend of mine seems to think that a super fund is not supposed to engage in share trading. So our question is this: Is it OK for a super fund to share trade in this manner?

Answer:

Here is a checklist:

- Are the investments expressly permitted by the Trust Deed?
- If the Trust Deed is silent, are they permitted by the relevant State's trust law?
- Are the investments in accordance with the super fund's Investment Strategy?
- Are the investments being made to provide retirement benefits for members?
- Is it clear that the investments do not constitute financial assistance or loans to members or relatives?
- Is it clear that the investments are not in-house investments (loans to or investments in related entities)?
- Are the investments being undertaken on an arm's length basis?
- Are the investments being acquired from non-related parties? (Acquisitions from related parties are limited to business real estate and shares in listed companies)?

The Tax Office does not like self-managed super funds to operate businesses. It has this to say in a fact sheet issued in relation to the sole purpose test.

"Another indication of a possible contravention of the sole purpose test is where a fund is 'running a business' as part of its investment strategy. Our experience is that where a large proportion of fund assets are used to conduct a business within a self managed super fund, the fund will almost inevitably contravene the sole purpose test (and/or other SISA provisions). This is because generally the purpose for which the investment is made is not to generate retirement benefits, but rather to enable the trustees to operate the business."

The operation of a business by a super fund is not specifically prohibited by the legislation. If the operation of the business is within the skills of the trustees and/or their advisers and the assets are not subject to unacceptable risk, it would, we believe, be difficult for the Tax Office to mount a case of a breach of the sole purpose test provided the trustees paid careful attention to the above check list.

Subject to the above, we believe share trading activities can be a valid exercise of super fund trustees' obligations to provide retirement benefits for members.

BUSINESS RESTRUCTURING

Question:

I was looking at restructuring a client's business prior to the end of the financial year.

He is currently structured as a sole trader and I was considering changing his business structure to a company or a discretionary trust with a corporate trustee. I am aware of the pros and cons of each structure.

I need guidance as to the appropriate steps that should be made in restructuring the business. Also information on stamp duty and the tax consequences relating to goodwill, plant and equipment and stock with this restructure.

Does the small business rollover relief apply to goodwill in the restructuring of a business?

How does the Tax Office expect to value goodwill, plant and equipment and stock when a business is being restructured and not sold?

Answer:

You can get CGT rollover relief on a transfer of assets to a company but not to a discretionary trust.

However, the small business active asset exemption would apply. You can read about these on pages 72 and 73 of the *Australian Taxation Manual*.

You will need to place a value on the assets being transferred into the new structure and it would be best to have this done by an independent qualified valuer. Stamp duty will be payable on the transfer of the assets at the rate relevant to your particular state.

FBT – EMPLOYEE RELOCATION

Question:

I note from reading your March issue that legislation is pending which will expand the FBT exemption status for relocation expenses.

We are a private company and have sponsored an English engineer (and his family) for two years. He has recently been granted a permanent resident's visa. We have incurred relocation expenses from UK to Mackay. I believe the old legislation covered only "current" employees. Will we be able to claim these expenses as exempt fringe benefits?

Answer:

The FBT exemptions apply to both and new existing employees. To quote from the Fringe Benefits Tax Guide issued by the Tax Office:

"Where an employer meets the costs of removal and storage of household effects of employees (both new and existing) who are required to change their job locations, the benefit is exempt. The exemption includes the costs of removal, storage, packing, unpacking and insurance of household effects (including pets) kept primarily for the personal use of the employee or his or her family."

"In a case where the employee changes his or her usual place of residence in order to perform employment duties, the exemption will not apply if the removal takes place, or the storage commences, more than twelve months after the employee begins employment duties at the new location."

Exemptions are also available for employment interviews (Section 58A), for expenses relating to the sale and acquisition of dwellings (Section 58C) and costs of connecting or reconnecting gas, electricity and telephone services (Section 58D).

Exemptions are also available for living away from home expenses incurred by an employee having to live away from his usual home in order to carry out work duties (Section 58E).

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