

April 2010

## CLIENT ALERT

### Offsetting Business Losses against Other Income

Taxpayers who make a net loss in a business activity may, under certain circumstances, claim that loss by offsetting it against their income from other sources. This is restricted by what's known as the 'non-commercial losses rule'. Key changes were introduced late last year to further tighten the rules to restrict access by individuals with an adjusted taxable income of \$250,000 or more. The changes apply from the 2009/10 income year. Despite this, taxpayers who exceed the income threshold can, in limited circumstances, still access the benefit by requesting that the Commissioner exercise his discretion to do so. The Tax Office has released an application form and an evidentiary checklist to assist in this process.

### Phoenix Activities — Government Flags Possible Action

The Government has flagged possible action to combat fraudulent phoenix activities which the Tax Office says are costing the country around \$600 million a year in lost revenue.

The Assistant Treasurer, Senator Nick Sherry, said the activity has been prevalent in the building construction industry, hospitality, cleaning services, and is spreading into other sectors.

Senator Sherry said possible action may include changing the law so that directors engaged in phoenix activities cannot avoid being personally liable for paying tax that is owed and superannuation guarantee for employees.

### Dodgy GST Arrangements and Artificial Credits on Tax Office Radar

The Tax Office has issued a Taxpayer Alert warning taxpayers about uncommercial arrangements designed to create or increase an entitlement to a reduced input tax credit during a company's float, merger or acquisition. Under the arrangement, a company involved in a takeover would use a related associate entity to obtain all services required for the takeover. The associate would then invoice the company for the services and the company would then claim the credit that it would not normally be entitled to if the services had been acquired from another service provider.

### Entrepreneurs' Tax Offset — Income Test Introduced

The Government has presented a Bill in Parliament which proposes to introduce an income test to restrict eligibility to the entrepreneurs' tax offset. The offset presently provides a 25% tax offset on the income tax liability of small businesses that have an annual turnover of \$75,000 or less, phasing out from a turnover of \$50,000. The proposed test will restrict access to the offset for single individuals with income of over \$70,000 and for families with income of over \$120,000.

### Investors of Failed Forestry Schemes — Deductions Protected

The Government has introduced legislative changes to protect deductions claimed by investors in forestry managed investment schemes where the four-year holding period requirement to claim the deduction is failed for reasons genuinely outside the investor's control. The change will assist investor's in schemes which are wound-up or insolvent.

### Superannuation Clearing House — Coming Soon

The Bill to establish an optional free superannuation clearing house for employer superannuation contributions has been introduced into Parliament. The clearing house, to be Medicare Australia, will allow businesses with fewer than 20 employees to meet their employer superannuation guarantee obligations once payment is received by the clearing house. The clearing house is expected to be available from July 2010. Businesses are expected to be able to register with Medicare Australia from May 2010.

## CGT Small Business Retirement Exemption — Anomaly Corrected

The Government has introduced legislative changes to correct an unintended effect on the operation of the small business CGT retirement exemption made by the *Superannuation Legislation Amendment (Simplification) Act 2007* which inadvertently exposed payments a trust makes to a CGT concession stakeholder under the retirement exemption to CGT event E4.

## Replacement Dwelling — CGT Main Residence Exemption Clarified

The Government has introduced legislative amendments to ensure that a replacement dwelling that is eligible for the compulsory acquisition rollover is also treated as a continuation of the original dwelling for CGT main residence exemption purposes.

## 'Accrued' Farm Management Fees Assessable

In an Administrative Appeals Tribunal decision, a company which had operated a tax effective investment scheme has been unsuccessful in arguing that it should have only been assessable on those fees received from investors for which the Commissioner had allowed a deduction for actual cash outlays. Rather, the Tribunal found the company, as an accruals taxpayer, had derived all the fees that it was contractually entitled to receive under the scheme, which included those non-cash payments arising from the round-robin loan arrangements entered into with the investors.

## Tax Liabilities for Duty-free Goods Seller

In a recent case relating to whether the taxpayer had sold cigarettes duty-free in circumstances where it knew or should have known the goods were intended for domestic consumption, the Administrative Appeals Tribunal concluded that the taxpayer had failed to discharge the relevant onus of proof. It therefore found that the taxpayer was liable for various relevant income tax, GST and excise duty liabilities.

## GST Assessment for Net Amounts

In a dispute regarding claimed input tax credits, the Administrative Appeals Tribunal held a taxpayer was unable to substantiate his claims for the credits and accordingly affirmed a notice of assessment for net amounts issued by the Commissioner. The Tax Office had formed an opinion that the taxpayer had over-claimed credits following an audit. The taxpayer conducted a lawn mowing business and the acquisitions related to goods and services from a mower centre and fuel.

## Superannuation — What is Meant By 'Contribution'?

The Tax Office has released Taxation Ruling TR 2010/1 which explains the Commissioner's views on the ordinary meaning of 'contribution', how a contribution can be made to a superannuation fund, and the timing of when a contribution is made. The Ruling also explains key aspects of the income tax rules for deducting employer superannuation contributions and personal contributions.

## Self-Managed Super Funds and Acquiring Assets from Related Parties

There are strict rules which prohibit a self-managed superannuation fund (SMSF) from acquiring an asset from a related party. The Tax Office has released Self Managed Superannuation Funds Ruling SMSFR 2010/1 which explains the rules. The Commissioner states that under the rules an 'asset' means any 'form of property' and includes every type of right and intangible personal property that can be enforced by legal or equitable action such as a debt or an interest in a trust fund. The phrase 'acquire an asset' encompasses not only the purchase of an asset but also the acquisition of an asset where the SMSF does not provide any consideration (for example, in specie contributions).

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