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small talk

your monthly small business accounting news

Proposed Amendments to the Tax Laws

The Government has introduced a Bill into Parliament which seeks, among other things, to:

- remove the CGT trust cloning exception and providing a limited CGT relief when transferring assets between two fixed trusts;
- update the list of deductible gift recipients to include two new organisations and change the name of one organisation; and
- exempt the Income Recovery Subsidy payments to North Western Queensland flood victims from income tax.

Proposed CGT–related amendments

The Bill seeks to repeal the 'trust cloning' exception to two CGT events. Currently, the exception ensures that a CGT event does not happen if a trust is created over a CGT asset or if the asset is transferred to an existing trust where the beneficiaries and terms of the transferring trust and receiving trust are the same.

The Bill also seeks to clarify that a mere change of trustee does not trigger a CGT event even if there is a change in the person who holds the office of trustee. Further, the Bill seeks to provide an optional CGT rollover for the transfer of assets between 'fixed' trusts. The effect of the rollover will be to defer the making of any capital gains or losses in respect of the transfer. Broadly, the rollover will be available if:

- the trustees of the transferring trust and receiving trust both choose the rollover; and
- the same beneficiaries have the same interests in both trusts.

Income Recovery Subsidy

The Bill proposes to exempt the Income Recovery Subsidy for the North Western Queensland floods from income tax. The Bill also proposes to ensure the subsidy is not taken into account when calculating a taxpayer's entitlement to certain tax offsets (eg dependant tax offset).

Originally, winter Olympic events occurred during a 'week' of the Summer Olympics from 1908 in London.

Then in 1925, the IOC decided to create a separate Olympic Winter Games and the 1924 Games in Chamonix, France, were retroactively designated as the first Winter Olympics.

Improvements to GST Administration

The Government has also introduced a Bill seeking to improve the administration of GST. The proposed amendments contained in the Bill include:

- providing a four-year period for claiming input tax credits and fuel tax credits;
- introducing a scheme whereby residents of Australia's external territories will be able to claim refunds of GST;
- allowing entities who facilitate supplies or acquisitions for another entity to utilise the simplified accounting procedures;
- treating an overpaid GST refund to a taxpayer as a tax liability; and
- clarifying the GST treatment of a supply without consideration to an associate.

A discussion of the key amendments follows.

Four-year limitation period

Under the proposed amendments, all entitlements to input tax credits must be claimed within four years from the day on which a taxpayer is required to give the Commissioner a BAS to which a credit would be attributable, subject to three exceptions. The three exceptions are where:

- the Commissioner provides a notice within the four-year period to a taxpayer requiring payment of an amount;
- the credits are linked to liabilities avoided as a result of fraud or evasion; and
- the taxpayer notifies the Commissioner of their entitlement.

Agency provisions

The Bill seeks to allow entities that facilitate supplies or acquisitions for an entity through acting as an intermediary (eg billing and paying agents) to use the simplified accounting procedures (SAP).

Overpaid GST refunds

The Bill also seeks to ensure an overpaid GST refund to a taxpayer will be treated as a tax liability from the date of overpayment.

In addition, a taxpayer who receives an overpaid GST refund will be liable for interest charge from the date they receive the overpayment.

Supplies to associates

The Bill will ensure that a supply to (or from an associate) may constitute an input-taxed supply, a GST-free supply or a financial supply even where the supply is without consideration.

- *The term 'associate' is defined broadly and depends on whether the taxpayer is a natural person, company, trust or partnership.*

GST and Sale of Vacant Land

The Federal Court has affirmed that the sale of vacant land is a taxable supply despite a taxpayer receiving zoning permission from a council classifying the land for residential use. This was because the land lacked the "element of shelter and basic living facilities such as provided by a bedroom and bathroom" to be considered residential premises.

- *The Commissioner's established view is that vacant land cannot constitute residential premises.*

- *Generally, the sale of residential premises is input taxed to the extent the premises are used predominately for residential accom.*

Capital Losses and Continuity of Trust

Husband and wife taxpayers have been successful before the Federal Court in arguing that the net capital gain arising out of a disposal of properties by the trust could be reduced by previously unapplied net capital losses.

The Court rejected that a discontinuity had occurred because of the change in the interests of the unit holders in the trust. It said when comparing the trust estate in the income year of the capital loss with the trust estate in the income year of the capital gain, the interests of the holders of the issued units were the same even though the ownership of the units had changed.

Deductibility of Disability Superannuation Benefit Premiums

The Government has announced that it will introduce a transitional arrangement allowing complying superannuation funds to deduct insurance premiums for total and permanent disability superannuation benefits (TPD premiums).

The proposed transitional arrangement will allow funds to claim a deduction for TPD premiums from 1 July 2004 until 30 June 2011.

Trauma Insurance Policies and SMSFs

The Commissioner has provided his preliminary views on whether a trustee of a self-managed superannuation fund (SMSF) can purchase a trauma insurance policy for a member without contravening the superannuation legislation.

The Commissioner says a trustee will not contravene the superannuation legislation provided:

- any benefits payable under a policy:
  - are required to be paid to the trustee;
  - will become part of the assets of the SMSF until the relevant member satisfies a condition of release; and
- the acquisition of the policy is not made to secure some other benefit for another person.

GIC and SIC Rates Released

The Tax Office has released the general interest charge and shortfall interest charge rates for the third quarter of the 2009/10 income year (ie 1 January 2010 to 31 March 2009):

Rate	Annual (%)	Daily (%)
GIC	10.95	0.03
SIC	6.95	0.01904110

The Tax Office has also released the interest rate for overpayments, early payments and delays in refund for the third quarter of the 2009/10 income year. The applicable interest rate is 3.95%.

To be or not to be.... Audited

Lately, with the flow of information on the world wide web and the ever changing technological environment, audits seem to be on the increase. Not having worked in other practices, I guess that an audit rate of less than 1% of our client base is not too bad. However, with the use of computers the tax office's information management systems (IMS), which updates your tax return details before you lodge your returns, and the use of internet and email facilities, it is clear that the Australian Taxation Office can devote more time to targeting problem areas for audits.

What does this mean to you, the taxpayer? To sum it up, every small business should expect to be audited at some point in its life.

Hi and welcome back. I assumed that you just picked yourself up form the floor as the last comment probably made you pass out from fear. The fact is, most of you have little to worry about. After all, an audit can prove beneficial if the facts are in favor of the taxpayer. Audits are not a one sided event.

Most audits of the recent past have been GST related and all have proven successful for our clients. However, there have been some difficult audits as well, of late, and even though additional taxes were payable in these circumstances, there were some reductions allowed by the ATO because of mistakes in calculations or applications of the law.

YES! The ATO do make mistakes. There.... I've said it, and no one has put a "hit" on me....yet!

Seriously though, the staff at the ATO is as human as all of us. And yes, they do make mistakes, and when pointed out to them, they correct them as well. However, they start with the mistake and base the amended tax payable on those mistakes. Without a tax agent to point them out, the taxpayer pays more tax than they should, and not just what they should.

Look... Audits are simple. You need to be mindful that you pay no more than the law requires. However, quiet often the trick is proving how much to pay. Good record keeping is a big key to getting it right. Ensure that the information is processed on a tax basis and when you record the information, give all the details. It is best to pay the right tax first time, than to get caught out with deliberate mistakes, or even honest ones. The only way to get it right is to give and keep all information pertaining to your tax return, for the tax time preparation. Don't make claims for which you have no records. Do not use estimates, unless the tax law permits them to be used and always remember..... "it's not always the other bloke that gets audited, it could be you".

m.a.s accountants 2009 Christmas party