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Practice Update

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AUGUST 2007

FBT & Entertainment

Editor: The Tax Office has issued a draft ruling which, when it becomes final, will change conventional thinking on how the FBT minor benefits exemption works.

Of course, the good news for many employers that provide benefits to their employees is that the minor benefit exemption has been raised from, basically, \$99 to \$299 from 1 April 2007.

This draft ruling sets out a number of examples explaining how, in the Tax Office's opinion, that benefit may be treated.

Examples

Editor: Apart from the monetary limit, the minor benefits exemption only applies where the benefits provided are infrequent and irregular.

The draft ruling contains 14 examples which set out how the Tax Office believes the exemption should apply.

Examples of benefits (each worth less than \$300) and the FBT consequences:

- gift provided at Christmas – exempt;
- Christmas party provided to employee and spouse and two children where the per head cost is less than \$300 – exempt;
- Christmas party plus gift to each employee – party and gift are valued at less than \$300 each – both exempt;
- flowers for special occasion – exempt;

- occasional use of company car for a special purpose – exempt;
- road tolls when car provided on an ad hoc basis – exempt;
- store vouchers as sales incentive – taxable;
- three month membership to gym to all employees – exempt;
- baby sitting expenses when employee asked to work back unexpectedly – exempt.

Editor: Clients who need assistance with any facet of FBT should contact our office.

Car depreciation limit for 2007/08

The Tax Office has advised that the car depreciation limit for the 2007/08 financial year is \$57,123 (up from \$57,009 in 2006/07).

Example

On 9 July 2007 a taxpayer purchases a motor vehicle for \$65,000 wholly for use in carrying on their business.

In working out the vehicle's depreciation for the 2007/08 income year, its cost will effectively be reduced to \$57,123.

Increase in early access to super schemes prods warning

The Australian Securities and Investments Commission (ASIC) and the ATO have fired off another warning shot about illegal schemes offering

people early access to their superannuation funds.

Several schemes currently under investigation have affected people working in the aged care industry including nurses, carers and kitchen staff, as well as the Pacific Islander and Filipino communities.

People are often charged very high amounts to access their super in this way, in some cases up to 30% of their balance.

The Tax Office says that people who receive an offer to access their super early through an illegal scheme should contact ASIC on 1300 300 630 or the ATO on 13 10 20 immediately to report their concerns.

Tax Office's compliance program for Super funds

2007/08 compliance approach

With the ATO's superannuation compliance staff to double to around 250, the Tax Office is expecting to increase its compliance activity to around 10,000 cases for 2007/08.

Around one-third of cases will look at:

- self managed fund regulatory cases, such as in-house assets, loans, borrowings, sole purpose test, etc.;
- auditor contravention reports; and
- new registrants.

New registrant's project

The ATO will be focusing on new registrants next year. New registrants means funds that have only been set up within the last 12 months where the trustees are new to the industry.

The ATO says that this work is being done for two reasons. First, to increase community confidence in their role as the regulator of self managed superannuation funds and secondly, it believes that early intervention and education can lower compliance risks.

"Free" doesn't necessarily mean free from GST

A taxpayer has lost their argument before the Administrative Appeals Tribunal (AAT) that a "free" promotional gimmick, provided with food products it sold, should be free from GST.

The Facts

The taxpayer is a food supplier which supplies food products such as instant coffee.

From time to time, for promotional purposes, it supplies its products with non-food items such as alarm clocks, radios and cricket balls, or even a cup or container for the food.

The items are packaged with the food, branded with the taxpayer's name and marked as free.

As the combined packages are sold for the same price as the food alone, the Tribunal accepted that the taxpayer should be assessed to GST based on the cost of the promotional items as a percentage of the price received for the whole package.

No GST on forfeited deposit

The Full Federal Court has held that where a prospective purchaser paid a deposit in respect of a property but the sale did not go ahead, the vendor did not need to pay the Tax Office any GST on the forfeited deposit because there was no supply.

The Facts

At the end of 2001, a taxpayer entered into an agreement in relation to the sale of a property, and the purchaser paid the sum of \$300,679.90 to the taxpayer's solicitors on 5 February 2002, being the deposit plus interest and legal costs.

The purchaser failed to pay the balance of the purchase price on the settlement date of 10 July 2003 and, on the 11th of July, the taxpayer served a rescission notice on the purchaser.

No action was taken by the purchaser to remedy its default and on 26 July 2003 the contract was rescinded and the deposit was forfeited to the taxpayer.

The taxpayer argued that as the contract was terminated, there was no supply by the taxpayer for which the forfeited deposit could be consideration.

The Decision

The Court agreed with the taxpayer. It stated that "When the taxpayer entered into the contract for sale with the purchaser it entered into a contract for the supply of real property; nothing more and nothing less.

"We accept the applicant's primary contention . . . that supply did not take place because the contract was rescinded."

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.