Practice Update

Please read this update and contact this office if you have any queries

JANUARY/FEBRUARY 2009

Reduction of the December Quarter PAYG Instalment

The Government has announced it will cut the December 2008 quarter's PAYG instalment payable by small business entities (i.e., generally those with aggregated turnover of $2 million per annum or less) by 20%.

How will it apply?

The 20% reduction applies to the instalment amount shown on the BAS dispatched by the ATO in December 2008 for the quarter ending on 31 December 2008.

This instalment amount is due on or before 28 February 2009 (which will be extended to 2 March 2009, as 28 February 2009 falls on a weekend) for most small business taxpayers, although for some (e.g., those which elect to report and pay GST on a monthly basis), this due date was 21 January 2009.

As such, for the quarter ending 31 December 2008, small business entities are only required to pay 80% of the instalment amount shown on the BAS on 21 January 2009 or 2 March 2009.

Editor: Note that this will not reduce the actual tax eventually payable for the 2009 income year (which will be established after the business lodges its 2009 tax return).

Note that this reduction does not apply to taxpayers who calculate their instalments based on the instalment rate notified by the ATO, as their payments will automatically adjust when they apply that rate to their actual income for the quarter.

New 'Investment Allowance' introduced

The Government has announced that it will introduce a 10% temporary investment allowance to encourage capital investment by Australian businesses.

The allowance will be in the form of an additional tax deduction equal to 10% of the cost of an eligible asset.

It will apply to most new tangible depreciating assets – which includes most items of plant and equipment – over $10,000 which are acquired or ordered by the end of the 2008/09 financial year.

The allowance will be available for businesses which start to hold or start to construct the asset after 12.01am AEDT 13 December 2008 and before the end of June 2009.

Assets must be ready for use by the end of June 2010.

Editor: Please contact us if you are contemplating new expenditure, to see if you are eligible for this new allowance.

Time to review SMSF investment strategies

Editor: In these troubled financial times, the ATO has issued a timely reminder to trustees of SMSFs that they should regularly review their fund's investment strategy, so that they can make the best possible investment choices.

Trustees need to prepare and implement an investment strategy for their fund, and the investment strategy should be unique to the requirements of that SMSF and its members.

It should be reviewed regularly and updated as required, and allow the trustees to be able to measure investment performance against their retirement income goals.

An investment strategy must reflect the purpose and circumstances of the fund and consider:

- investing in such a way as to maximise member returns, taking into account the risk associated with the investment;
- appropriate diversification and the benefits of investing across a number of asset classes (for example, shares, property, fixed deposit) in a long-term investment strategy;
- the ability of the SMSF to pay benefits as members retire and pay other costs incurred by the fund; and
- the needs of members (for example, age, income level, employment pattern and retirement needs).

All investment decisions must be made in accordance with the investment strategy.

Editor: If you would like more information about this, please contact our office.

SMSFs paying death benefits

Under superannuation legislation, trustees of super funds are generally prohibited from following directions or instructions from anyone else.

One exception to this rule allows members of a fund to direct their trustee about who should receive a payout of a death benefit. This is called a ***binding*** death benefit nomination (or BDBN).

An example of such a BDBN might be where, on their death, a member wanted to make specific provision for payments to be made to certain dependants, or even direct to the legal personal representative (or "LPR") of their estate.

The ATO has now confirmed that an SMSF's trust deed may permit members to make (lawful) death benefit nominations that are binding on the trustee, and can set out how they should be made.

However, trustees of super funds are still bound to generally only distribute to dependants or the deceased person's estate.

FBT exemption for laptop with upgrades

The ATO has confirmed that, where an employee is reimbursed by their employer for the purchase of a laptop computer, the cost of including additional memory in the computer (and similar upgrades) at the time of purchase will form part of the cost of the laptop for fringe benefits tax (FBT) purposes.

Reasons for Decision

The provision of certain 'eligible work related items', including 'a portable electronic device' (such as a laptop computer), by an employer to an employee can be exempt from FBT.

This exemption also applies to any computer upgrades made at the time of purchase involving built-in internal components which are not peripheral items and which are ordered and itemised on the one invoice (even at a separate cost), including:

- additional memory;
- bigger hard drive;
- internal modem; or
- wireless LAN module.

However, where the employee requests peripheral items such as cables, modems or cradles or an extension to the warranty that is offered, and these come at an additional cost, the exemption will not extend to these items.

Assets in family trust not safe from ex-spouse

The High Court has held that the assets of a family trust were "property" of the parties to the marriage for the purposes of the *Family Law Act 1975*, and should therefore be taken into account in dividing the assets between the husband and wife.

In particular, it held that the husband made variations to the trust deed, and then basically distributed all of the property of the trust to the children, knowing the marriage was in trouble, and that he was "looking to defeat an anticipated order for property settlement" dealing with the property of the parties, including the assets of the Trust.

Therefore, the Court was able to ignore that variation and distribution ("setting them aside") and then held that the assets of the trust should be included in the marriage's asset pool, and also upheld the order that the husband find some way of paying the wife an additional $2.2 million.