Practice Update

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

OCTOBER 2009

TAX PLANNING OPPORTUNITY!

Claiming the Tax Break through a sale and leaseback

Editor: One of the problems for taxpayers wanting to acquire business assets and claim the 50% tax break deduction has been that leases aren't eligible. A recent (interpretative) decision by the Tax Office provides a way around this.*

(*) The tax break is 10% for larger businesses.

The Tax Office has stated that, where a business taxpayer acquires an asset and then enters into a sale and leaseback arrangement a month later, they will be eligible to claim the tax break provided they satisfy all the other eligibility requirements.

In the factual situation described, the asset concerned was to be purchased by the taxpayer – presumably by way of loan – and owned for one month and used for the sole purpose of carrying on its business.

At the end of this period the taxpayer proposed to sell the asset to a financier and then lease the asset back.

While the taxpayer is the lessee, the asset will continue to be used for the sole purpose of carrying on its business although it will no longer hold the asset for depreciation purposes.

In these circumstances, the taxpayer can claim the tax break of 50% of the cost of the asset.

Editor: Clients wishing to take advantage of this huge opportunity before the tax break expires should contact our office immediately.

Super fund taxed at 45%! Dividends were 'special income'

In a recent AAT case, the dividends received by a superannuation fund from a private company were held to be "special income", on the basis that the shares in the private company were acquired at a cost significantly less than market value.

Editor: Special income, or non-arm's length income, is taxed at 45% in the hands of the fund.

The Facts

In 1995, a superannuation fund acquired four shares in a related private company for $51,218.

The private company had a large majority share-holding in a listed company and the four shares that the fund acquired were more realistically valued at nearly $600,000.

For tax purposes, a private company dividend that is paid to a super fund is treated as 'special income' unless the fund can persuade the Tax Office that it is reasonable *not* to treat the private company dividends as special income.

The Tax Office amended the superannuation fund's assessments for the 2000 to 2003 income years and taxed its income (being the dividends paid from the private company) at 45%.

This was a significant amount of tax as the dividends paid to the fund were as follows:

2000.................... $143,720
2001...................... $86,320
2002...................... $86,320
2003...................... $76,640

A Tax Office ruling states that "Dividends are only derived on an arm's length basis when the shares are acquired, the investment is maintained, and the dividends are paid on an arm's length basis."

The Decision

The AAT agreed with the Tax Office that, as the acquisition of shares at less than market value gave rise to the relevant dividends, the income should be treated as special income.

Word of Warning

One of the problems for the fund is that, as the initial acquisition of the shares was not at market value, this would seem to be an ongoing problem for the fund unless it can, in some way, reverse the original transaction.

Editor: This case demonstrates the difficulties that can occur where trustees of super funds enter into transactions with related parties.

Any clients considering major transactions with superannuation funds may wish to call and discuss the income tax and other ramifications with us.

Draft legislation to abolish the CGT 'Trust Cloning' exception

The Assistant Treasurer has released draft legislation leading to the abolition of what is known as the capital gains tax (CGT) "trust cloning exception".

Background

Normally, CGT is triggered when an asset is transferred into a trust.

However, under the current law, CGT is not triggered if an asset is transferred between trusts and the beneficiaries and terms of both trusts are the same.

This arrangement is known as the "trust cloning exception" and, according to the Government, was used primarily by high wealth individuals as a succession-planning tool, allowing effective control of assets to be passed between trusts, frequently within a family group, without triggering CGT.

The Government announced in late 2008 that it would remove this exception with effect from 1 November 2008.

Although the legislation contains the removal of the trust cloning exception, it also contains an important new provision that will allow for a limited CGT roll-over for the transfer of assets between **fixed** trusts.

The legislation will still allow these types of eligible trusts to restructure businesses or investment funds when they need to without immediate CGT consequences.

Non-commercial loan rules watered down for farmers/business

Editor: In the last Budget, the Government basically announced that, when shareholders of private companies use company assets, that usage may be deemed to be a payment from the company and taxed as a dividend under what is known as the 'non-commercial loan rules'.

That had the unfortunate problem of inadvertently taxing the use of assets owned by private companies such as farmland on which a business is run, hotel furniture used by hotel operators and residences on farms and in hotels.

The Assistant Treasurer has now advised that the 'non-commercial loan rules' will be amended so that the above situations will not be taxed.

Tax Office warns about identity theft

The Commissioner of Taxation has advised that identity theft is a particular problem that can take years to put right.

For this reason, tax file numbers (or TFNs) must be kept safe.

Only certain people can ask for a taxpayer's TFN, including the Tax Office, Centrelink, their super fund, bank or financial institution, and their employer (once they have started working for them).

The warning from the Tax Office is that if anyone asked for their TFN through an email, phone call or suspicious door knocker, they should not offer any information and should call the Tax Office on 13 28 61.

While the Tax Office does send emails or SMSs promoting new services or alerting to due dates, it will ***never*** send an email requesting a taxpayer confirm, update or disclose confidential details such as their name, date of birth, address, passwords or credit card and bank account details.

If the Tax Office needs to know this information, it will mail a letter to the taxpayer's postal address.

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.