



Harrington M'Namara

June Client Alert

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Chartered Accountants, Business Advisers and Financial

Trust Law Changes On The Way

The Government has announced that it intends to review and rewrite the highly complex area of trust tax law to deal with ongoing uncertainties regarding its proper application. Two proposed measures have been flagged by the Government for implementation sooner rather than later including:

- changes to enable the streaming of capital gains and franked distributions; and
- changes to allow trust beneficiaries to continue to use the primary production averaging and farm management deposit provisions in a loss year.

These changes are proposed to apply for the 2010–11 and later income years.

TIP: The proposed changes are highly complex and new developments are likely to occur quickly. Please contact our office if you have any questions.

Personal Services Entities: ATO Takes a Closer Look

The Australian Tax Office (ATO) has announced that it will request and collect information on amounts paid to personal services entities by 39 labour hire firms, placement agencies and computer consultancies. Under the project – known as the Personal Services Income (PSI) data-matching project – data requested will include name and address details of the individual who is the main service provider to the entity. The ATO said it anticipates that records relating to approximately 100,000 individuals and entities who have received contract payments from the 39 entities will be matched.

TIP: If you are concerned this data-matching program will affect you, please contact our office.

Flood Levy Now Law

The legislation to implement the Government's proposed temporary flood levy has been enacted. The legislation imposes a one-year levy on taxpayers to help raise the revenue needed to assist the reconstruction work following the destruction by the floods and Cyclone Yasi in Queensland earlier this year. The 0.5% to 1% levy will apply to individuals with taxable incomes above \$50,000, and will apply for the 2011–12 income year only. However, there are specific classes of taxpayers who are exempt from the levy.

TIP: Employers will need to identify their employees who earn more than \$50,000, and withhold the levy from their salary or wages. Employees who are exempt from the levy may lodge a flood levy exemption declaration form with their employer.

GST and Goods Sold With Discounted Components

The ATO has released its official view of the Full Federal Court's decision in a case which concerned the correct calculation of GST on goods sold that are partly taxable and partly GST-free. The case involved a taxpayer that offered its customers spectacle frames at a discount provided they purchase the lenses at full price. The lenses are GST-free, whereas the frames are a taxable supply – together the spectacles are referred to as a "mixed supply".

The Full Federal Court agreed with the taxpayer that the discount should only be applied to the frames, and not apportioned between the lenses and the frames. The ATO said the Commissioner accepts that it was open to the Court to make its conclusions regarding the correction apportionment and it will not appeal to the High Court. As a result, the ATO said some optical suppliers may be able to seek a refund for overpaid GST (if certain requirements are met).

Land Sale Case Sheds Light On "Going Concern" GST-free Concession

In a recent decision, the Federal Court held that a supply (sale) of land by a taxpayer was not a supply of a going concern, and therefore was not GST-free. Although the Court acknowledged the taxpayer was in the business of property development, it found that business ended when the taxpayer decided to sell the land. Ultimately, the Court found the sale of the land was not a "supply of a going concern" as the sale did not supply "all of the things necessary for the continued operation of an enterprise".

TIP: For a supply to be considered a supply of a going concern (and therefore GST-free), various conditions must be satisfied. These conditions include the supplier supplying to the recipient all the things necessary for the continued operation of the enterprise, and the supplier carries on the enterprise until the day of supply.

Employees Not Contractors, Says Court

In a recent decision, the Federal Court held interpreters engaged by a business to provide interpreting and translating services were "employees" for superannuation guarantee purposes and were not independent contractors.

TIP: The correct classification of an individual as an employee or as an independent contract is critical. This is because employers are liable to provide the minimum level of superannuation guarantee for their employees. A failure to do so will result in employers being liable to a non-deductible superannuation guarantee charge.

Self-managed Super Funds and Collectables

The Government has introduced legislation into Parliament to change the superannuation law to implement strict rules on trustees of self-managed superannuation funds (SMSFs) who make, hold or realise investments that are considered to be "collectables or personal use assets" – for example, artwork, jewellery, antiques, wines, cars and recreational boats. Once enacted, the new rules will apply to investment made before, on or after 1 July 2011. The Government had earlier indicated that it would implement a 5-year transitional period to allow trustees to dispose of existing assets that do not satisfy the new rules.

FBT Rates and Thresholds for 2011–12

The ATO has announced important FBT rates and thresholds for the 2011–12 FBT year that commenced on 1 April 2011. Some of the key rates and thresholds include:

- the benchmark interest rate is 7.80% pa (was 6.65% pa for the 2010–11 FBT year).
- the record-keeping exemption threshold is \$7,391 (was \$7,190 for the 2010–11 FBT year).

Car Expenses – Rates per Kilometre for 2010–11

The Government has announced the "cents per kilometre" rates for calculating tax deductions for car expenses for the 2010–11 income year – note they are unchanged from 2009–10 and are:

- small car (non-rotary engine up to 1600cc, or rotary engine up to 800cc): 63c/km.
- medium car (non-rotary engine 1601–2600cc, or rotary engine 801–1300cc): 74c/km.
- large car (non-rotary engine 2601cc and above, or rotary engine 1300cc and above): 75c/km.

Important: This is not advice. Clients should not act solely on the basis of the material contained in this Bulletin. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Bulletin is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.