

February – March 2010

Deductions and Refinancing Home Loans

The Tax Office has issued a Taxpayer Alert in which it alerts taxpayers about sham arrangements being promoted as 'mortgage management plans'.

The arrangements involve homeowners refinancing their home loans and establishing investment loans to fund the purchase of shares in bogus companies. Homeowners then claim tax deductions for interest incurred on the loans.

The Tax Office says the arrangements may give rise to various taxation issues, including whether:

- the general anti-avoidance provisions may apply to the arrangements; and
- any interest incurred on the investment loans is deductible.

Excess Contributions Tax: Commissioner's Discretion

The Tax Office has provided guidance on whether or not the Commissioner will exercise his discretion to disregard excess non-concessional contributions where:

- the contributions were initially made as concessional contributions but due to unforeseen inability to claim a tax deduction were treated as non-concessional contributions; or
- the excess contributions arose due to a banking error made by a party other than the trustee of a superannuation fund.
- The Tax Office reiterates that the Commissioner will only exercise his discretion if there is:
- the existence of 'special circumstances'; and

- the object of the tax laws governing superannuation contributions are met.

Payment from Transition-to-Retirement Pensions

The Tax Office has also stated its view on whether a member of an SMSF with a transition-to-retirement account-based pension, where the entire balance of the pension is preserved money, can make an election such that a payment from the pension is taxed as a superannuation lump sum rather than a superannuation income stream benefit.

The Tax Office says an election can be made to tax a payment as a superannuation lump sum if the pension is commuted, where the necessary conditions are satisfied.

- The tax treatment of a superannuation lump sum and a superannuation income stream benefit is different. Generally, less tax is paid on lump sums than income payments.

No Deduction for Misappropriated Money

In a recent case, the Full Federal Court dismissed a taxpayer's appeal against the denial of his claimed deduction of \$2.3 million for money misappropriated by his investment manager.

The taxpayer sold a parcel of shares and transferred the proceeds to the manager. However, the funds were misappropriated by the manager.

In his 2002 tax return, the taxpayer included a net capital gain of \$2.3 million from the sale of the shares. However, he also claimed a deduction for the misappropriation, which was disallowed.

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FBT Audit and Compliance Activities

With the 2009/10 FBT year drawing to a close, it is important to note the FBT audit and compliance activities currently being undertaken by the Tax Office.

The activities include:

- car fringe benefits and data matching;
- incorrectly claimed FBT rebates;
- lodgement of FBT returns; and
- reduction of FBT liabilities and employee contributions.

Goods Taken for Private Use

The Tax Office has released the amounts which it will accept as estimates of the value of goods taken from trading stock for private use for the 2009/10 income year by taxpayers in certain specified industries.

These industries include:

- bakery;
 - butcher;
 - caterer;
 - deli;
 - fruiterer/greengrocer;
 - mixed business (eg general store);
 - restaurant/café; and
 - takeaway food shop.
- Taxpayers should ensure the value attributed to goods taken from stock for private use is fair and reasonable, and have regard to their own circumstances.

Investment Property

In the current economic climate, it is important that you obtain the greatest return from your investment property. By maximising your depreciation deductions you can potentially obtain thousands of dollars per year from the Australian Taxation Office (ATO).

As a building gets older, items wear out – they depreciate. The ATO allows property owners to claim both a deduction related to the construction cost of the building and the plant and equipment items contained within it. Tax depreciation is of benefit to every property owner who is eligible to obtain an income from their property.

When can you benefit from depreciation?

The purchase of an existing building

A capital depreciation report will satisfy all ATO requirements necessary to value the plant and equipment items and establish the construction cost of the building.

The completion of a new building

A comprehensive report on the depreciable items contained within a property will result in maximum deductions.

Marketing of a new development

A tax depreciation estimate shows potential investors the expected minimum and maximum ranges of depreciation available on that particular property.

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Important Dates Reminder

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- 21 Activity Statements** February 2010 monthly activity statements: Final date for lodgement and payment
- 31 Income tax** Income tax return and payment from superannuation funds with total income in excess of \$2 million in latest year lodged (excluding large/medium business taxpayers).

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- 21 Activity Statements** March 2010 monthly activity statements: final date for lodgement and payment.
- 21 Activity Statements** Quarter 3 (January – March 2010) containing a monthly GST obligation: final date for lodgement and payment.
- 21 Activity Statements** Quarter 3 (January – March 2010) consolidated instalment activity statements: final date for lodgement and payment by a head company of a consolidated group.
- 28 Activity Statements** Quarter 3 (January - March 2010) activity statements: final date for lodgement and payment.
- 28 PAYG Instalments** Quarter 3 (January – March 2010) instalment notices – forms R and T. Final date for payment and, if varying the instalment amount, lodgement (two-instalment payers are required to pay 75% of instalment liability by this date).

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- 28 GST Instalments** Quarter 3 (January – March 2010) instalment notices – forms S and T. Final date for payment and, if varying the instalment amount, lodgement (two-instalment payers are required to pay 75% of instalment liability by this date. Four-instalment payers to pay a further 25% of their instalment liability).
- 28 Superannuation** Last day for superannuation guarantee contributions to be made to a superannuation provider for quarter 2 2009-10 (1 January – 31 March). If an employer does not make the minimum superannuation guarantee contributions for quarter 3 by this date, they must pay the SGC and lodge a Superannuation guarantee charge statement – quarterly with the Tax Office by 28 May 2010. The SGC is not tax deductible.
- 30 Superannuation** Lost member report for the period 1 July 2009 to 31 December 2009.

We are sometimes asked if we are able to help additional clients. We are a growing firm and do appreciate your referrals. We consider it a compliment when you recommend us to your friends and business contacts.

Important Note: 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 advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of these areas. This 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.

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