

CLIENT ALERT

February 2008

Tax News, Views and Clues

Labor's Tax Reforms

24 November 2007 ushered in a new era for the Australian political landscape with the Labor party winning the Federal election. As part of its election campaign, Labor promised various tax reforms which included changes to personal income tax, and measures to assist families with the increasing cost of raising children. A brief discussion of the various reforms follows.

Personal income tax

Labor has stated that it will support the tax cuts outlined in the 2007/08 Budget. However, tax cuts for individuals earning more than \$180,000 will be deferred until the 2013/14 income year. Labor's proposed reforms will see the personal income tax system having three tax rates by the 2013/14 income year (from the current four), and the reduction of the highest marginal tax rate to 40%.

The Low Income Tax Offset (LITO) will be gradually increased. The Senior Australians Tax Offset (SATO) will be adjusted in line with the increase in the LITO. These changes have yet not been legislated.

Abolishing tax deductions for political donations

Labor is proposing to abolish tax deductions for donations or contributions to political parties, including membership fees, from 1 July 2008.

Assisting families

A range of 'family friendly' measures will be introduced, and scheduled to go into effect on 1 July 2008, including:

- increasing the child care tax rebate to 50%, payable quarterly;
- providing a limited 50% Education Tax Refund for families receiving Family Tax Benefit Part A (FTB-A) or who have school-attending children receiving Youth Allowance; and
- limiting eligibility for Family Tax Benefit Part B (FTB-B) to families with a combined adjusted taxable income of less than \$250,000.

Reverse changes to family trusts

Labor is proposing to reverse the changes made to family trusts that were introduced in September 2007.

The changes saw the broadening of the definition of 'family' and 'family group', changing the test individual for a family trust in limited circumstances, and allowing the revoking of family trust elections and interposed entity elections in limited circumstances. The proposed date of effect is 1 July 2008.

- **TIP:** Labor's proposed reversal means taxpayers will only be able to access the changes introduced in September 2007 in the current income year.

Personal Services Income (PSI) Case

The Tax Office has released a Decision Impact Statement (DIS) regarding an Administrative Appeals Tribunal (AAT) case concerning whether a taxpayer generating PSI satisfied the business premises test and, as a result, was entitled to a personal services business (PSB) determination from the Commissioner.

In this case, the AAT decided the private use of a garage which was part of a building used in the generating of PSI was not so slight that it should be ignored. The garage was used to store personal items and a motor vehicle which

was not exclusively used for business. Consequently, the AAT was satisfied that the taxpayer did not use the premises exclusively for a business purpose, and did not meet the requirements of the business premises test.

PSI is ordinary or statutory income which is mainly derived, directly or indirectly through an interposed entity (company, trust or partnership) from an individual's personal exertion. However, the PSI regime does not apply when an individual is carrying on a PSB.

If a taxpayer passes the business premises test, they will be considered as carrying on a PSB and be excluded from the PSI regime. A taxpayer may seek a PSB determination from the Commissioner to be excluded from the PSI regime.

➤ **TIP:** Taxpayers who are deriving PSI and working from home should ensure that the business part be physically separate from their residence to satisfy the business premises test.

PSI and the Results Test

In a recent Federal Court case, two taxpayers generating PSI lost their appeals against the Commissioner. The case concerned the Commissioner's refusal to grant the taxpayers PSB determinations on the basis that they did not satisfy the results test.

The Court found that the relationship between the taxpayers and the company engaging their services was that of an employer-employee because:

- the taxpayers were not liable to rectify any defects in the work performed;

- payment for the services rendered was not pegged to the completion of any specific tasks; and
- no further equipment was required to be provided by the taxpayers for the efficient performance of the tasks.

If a taxpayer meets the requirements of the result test, they will be regarded as carrying on a PSB and be excluded from the PSI regime. The results test requires a taxpayer to meet three conditions:

- the income is paid to achieve a specific result or outcome;
 - the taxpayer provides any necessary tools or equipment to do the work; and
 - the taxpayer is liable to rectify any defects in the work.
- **TIP:** In determining whether a taxpayer meets the conditions of the results test, it is the economic substance and not the legal substance that is important.

Trust Cloning

Trust cloning refers to the practice of transferring an asset between two trusts that have the same beneficiaries and terms. Generally, when an asset is transferred between two trusts, CGT implications will be triggered. However, where the beneficiaries and terms of the two trusts are similar, a CGT exception applies.

The Tax Office previously released a Taxation Ruling which provides its view on when the CGT exception applies. Since the release of the ruling, the Tax Office has become aware of examples where trusts, particularly discretionary trusts, may not be the same and therefore

assets transferred between the trusts will trigger a CGT event.

The Tax Office is encouraging taxpayers or their advisers who have relied on the exception, but who are now concerned that the exception test was not satisfied, to contact it or lodge a private ruling.

Wesfarmers' Acquisition of Coles

The Tax Office has released a Class Ruling providing its view on the tax implications for a Coles shareholder following the acquisition of Coles by Wesfarmers.

The ruling provides that Coles shareholders are able to disregard any capital gains arising from the acquisition by accessing the script for script rollover relief. However, the capital gains are not disregarded to the extent that the capital proceeds include the cash consideration received.

GIC and SIC Rates Released

The Tax Office has released the general interest charge and shortfall interest charge rates for the third quarter of the 2007/08 income year. The rates are as follows:

Rate	Annual (%)	Daily (%)
GIC	14.15	0.03866120
SIC	10.15	0.02773224

The Tax Office has also released the interest rate for overpayments (IOP), early payments (IEP) and delays in refund (DRI) for the third quarter of the 2007/08 income year. The applicable interest rate is 7.15%.

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