

# CLIENT ALERT

February 2009

## Tax News, Views and Clues

### Tax Laws Amendment

The Federal Government has introduced a Bill into Parliament to amend certain provisions of the tax laws, including the:

- CGT provisions relating to roll-overs for corporate restructures;
- collection of foreign tax debts by the Tax Office;
- election to use the late payment offset for superannuation guarantee contributions by employers; and
- taxation laws for technical corrections and other minor amendments, including the fringe benefits tax, and CGT and employee share trusts.

### Luxury Car Tax

#### Amending Bill

A Bill amending the Luxury Car Tax (LCT) regime has received enactment. The Bill ensures that:

- vehicle financing arrangements do not affect refunds being claimed by eligible primary producers and tourism operators; and

- refunds will be paid directly to claimants.

The amendments also clarify that the transitional provision for contracts entered into before 7.30pm (AEST) on 13 May 2008 will still apply, notwithstanding that a luxury car was the subject of a financing arrangement entered into after that date.

- TIP: Eligible primary producers and tourism operators may be entitled to a partial refund for LCT paid.

#### Amending Regulations

The Government has also enacted amending Regulations which define the terms 'tourist activity' and 'refundable-eligible car' for the purposes of determining whether a primary producer or a tourism operator is eligible for a partial refund for LCT paid.

### Investment Allowance

A 10% temporary investment allowance may be available to businesses that purchase qualifying depreciating assets after 12.01am (AEDT) on 13 December 2008 and before 1 July 2009.

It is also a requirement that the asset:

- cost \$10,000 or more and be used in Australia; and
- be installed and ready for use by the end of 30 June 2010.

Qualifying assets include most plants and equipment such as tractors and forklifts.

### PAYG Instalment Reduction

A 20% reduction for the December 2008 quarter PAYG instalment payable applies to small business entities that have their instalment amounts determined by the Commissioner. Generally, a 'small business entity' is an entity that has an aggregated annual turnover of less than \$2 million.

### Managed Investment Schemes and Deductions

In a test case decision, the Full Federal Court has held that two taxpayers were entitled to deductions relating to their investment in an almond managed investment scheme (MIS).

The Court found the taxpayers' investment in the MIS was a business. It held that any relevant outgoings would be incurred as operating expenses of the business and therefore the outgoings were deductible pursuant to the tax laws.

## One-off Sale of Land and GST

In a recent case, the AAT held that a sale of land was a taxable supply, even though the acquisition and sale of land was distinguishable from the vendors' primary production business and a one-off transaction.

- TIP: Each activity of an entity needs to be considered separately to determine whether that activity is an enterprise for GST purposes. Generally, if a profit-making intention exists, an enterprise exists. Therefore, a liability for GST potentially arises.

## FBT and Exempt Benefits

An Interpretative Decision released by the Tax Office has stated that any cost of upgrades involving built-in internal components that are made at the time of the purchase of a portable electronic device will form part of the cost-base of the device. That is, the cost of the upgrades may also qualify for an exemption from FBT.

However, the cost of peripheral items (e.g. extended warranty) will not be included in the cost of a device.

## Deductibility of Compound Interest

The Tax Office has released a Tax Determination in which it states that the principles governing the deductibility of compound interest

are the same as those governing the deductibility of ordinary interest.

Broadly, a nexus must exist between the interest and the deriving of assessable income for the interest to be deductible.

Compound interest is interest that accrues on interest that is unpaid.

## Loans to Settle Trust

The Tax Office has released a Draft Taxation Determination in which it states its preliminary view that interest incurred on a loan used to settle a trust can only be deductible to the extent to which a taxpayer has used the borrowings to gain or produce their assessable income.

## Trust Cloning Exception

Readers will recall that in the December 2008/January 2009 issue of this publication, it was reported that the Government will abolish the 'trust cloning' exception.

The Tax Office has since said that it will continue to apply the existing law until the changes are enacted.

## Racehorses and Data Matching

The Tax Office has announced that it will electronically match data relating to the sale and ownership of thoroughbred racehorses.

According to the Tax Office, the data will be obtained from the sales records from auctioneers and from the Registrar of Racehorses.

The data collected will be used to identify taxpayers whose tax affairs should be reviewed and

ensure taxpayers have reported their obligations in accordance with the tax laws.

## 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 2008/09 income year by taxpayers in certain specified industries

These industries include:

- Bakery
- Butcher
- Restaurant/ cafe
- Caterer
- Delicatessen
- Takeaway food shop
- Fruiterer/ greengrocer
- Mixed business (e.g. general store)

## GIC and SIC Rates Released

The Tax Office has released the GIC and SIC rates for the third quarter of the 2008/09 income year (i.e. 1 January 2009 to 31 March 2009):

Rate	Annual (%)	Daily (%)
GIC	11.76	0.03221918
SIC	7.76	0.02126027

The Tax Office has also released the interest rate for overpayments, early payments and delays in refunds for the third quarter of the 2008/09 income year. The applicable interest rate is 4.76%.

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.