

## CLIENT ALERT

September 2007

### Tax News, Views and Clues

#### Wash Sales

The Tax Office recently released a draft taxation ruling regarding the application of the anti-avoidance rules to arrangements known as 'wash sales'.

Broadly, a wash sale is an arrangement in which the sale of an asset occurs where there is no long term intention on the part of the seller to cease holding the asset (i.e. the taxpayer continues to be exposed to the economic risks of ownership of the asset).

This situation may occur where a taxpayer disposes of or deals with a CGT asset in such a way as to give rise to a capital loss or allowable deduction, and then shortly after this event, re-acquires the asset. Alternatively, an asset with an unrealised loss may be sold to a related entity to crystallise the loss.

The ruling indicates that if the Commissioner believes that a wash sale has occurred, he may cancel all the tax benefits attached to the sale. The Commissioner will look at all the facts and circumstances surrounding each sale to determine whether they demonstrate that the taxpayer entered into the sale with the purpose of gaining those benefits.

#### Car Fringe Benefits

The Tax Office recently released an interpretative decision

regarding whether journeys that result in minor benefits, which are exempt under the operating cost method, will be treated as business journeys when calculating the business use of a car.

Under the operating cost method, the taxable value of the benefit is based on the operating cost of the car during the period in which the benefit arises. This method requires that employers keep substantial records to show the operating costs of the car over a period, and the proportionate business and non-business use of the car. The proportion of business use is based on the number of business-related kilometres travelled during the year.

The Tax Office has indicated that non-business travel that results in a minor benefit for FBT will still be treated as business use for the purposes of calculating the taxable value of the fringe benefit.

By including this minor exempt benefit as business travel, the ratio of business kilometres to total kilometres of the car is increased, and hence the business use percentage also increases.

- **TIP:** when calculating car fringe benefits it is important to keep a logbook for 12 continuous weeks throughout the year, which represents the average use of the car. The logbook should also detail what the business travel was, including travel dates and times.

#### Superannuation Contributions

The Tax Office recently released an interpretative decision regarding the deductibility of superannuation contributions made by a private company for the benefit of its directors, where the private company was in the business of passive investment.

The interpretative decision indicates that a deduction can be claimed in relation to the superannuation contributions, provided that the directors are entitled to be paid for their services.

Broadly a deduction is allowed for superannuation contributions where the following apply:

- the contribution was made to a fund for the purpose of making a provision of superannuation benefits payable for another person;

- the fund is a complying superannuation fund; and
- the members are eligible employees.

The Tax Office considered whether the directors were employees of the company. A director is an employee where they are entitled to payment for the performance of their duties as a member of the executive body of the company.

The Tax Office concluded that if the company makes a determination to pay the directors for their duties, then they can be considered employees of the company. The company can then make superannuation contributions on behalf of the directors. The fact that the company was in the business of passive investment does not change the outcome.

## **GST on Packaged Supplies**

In a recent decision, the Administrative Appeals Tribunal (AAT) decided in favour of the Commissioner of Taxation concerning the supply of promotional items given away with the sale of GST-free food products.

In this case, the entity was a food supplier that supplied products including items such as instant coffee.

Occasionally, these food products were supplied with non-food products such as alarm clocks, radios and cricket balls. Both the items were branded with the entity's name, packaged together and sold as one item for the same price as that for which the food would normally sell at.

The AAT took the view that the promotional items were not

integral, ancillary or incidental to the main food item, and therefore the supply as a whole was a mixed supply (supply of separate items together).

As a consequence, this mixed supply gave rise to the question of whether the promotional item was a supply for consideration, in which case GST would apply.

Based on the facts, the AAT held that the promotional item was supplied for consideration even though the item was included in the package and marketed as being 'free'. The AAT adopted the view that the food product included in the package was actually sold at a discount. In reaching this view, the AAT noted that 'the promotional items could only be acquired in packages with the food products. The taxpayer would not supply them free of charge alone.'

Although the AAT decided that consideration was provided for the supply of the packaged products as a whole, it did not decide conclusively the basis on which GST should be calculated. It concluded that the GST relating to the promotional item should be apportioned as food products represent a GST-free supply.

## **Commissioner's Discretion**

The Tax Office recently released a practice statement that outlines how the Commissioner will exercise his discretion in providing relief to taxpayers where they have made an inadvertent omission or honest mistake in dealing with their shareholder loans.

The amnesty will apply for the 2001 to 2006 income years, provided that the taxpayer takes corrective action by 30 June 2008.

Under the shareholder loan rules, loans or payments by private companies to shareholders or their associates may be deemed to be dividends paid by the company. The shareholder loan rules also provide the Commissioner with the discretion to disregard a deemed dividend.

The statement outlines the circumstances in which the Commissioner may exercise his discretion, including where:

- it is clear in the Commissioner's view that the taxpayer has made a genuine mistake or inadvertent omission;
- the taxpayer has sought to take corrective action prior to 30 June 2008;
- the deemed dividend from the shareholder loan occurred between 30 June 2001 and 30 June 2006; and
- the taxpayer's income tax return lodgements are up-to-date.

If the above conditions are satisfied, the taxpayer need not apply in writing seeking the Commissioner's discretion in relation to their shareholder loan. The discretion can automatically apply on a self-assessment basis.

## **STS Taxpayers**

The Tax Office has released two publications relating to accessing the simplified tax system, specifically relating to calculating STS group turnover and the 25% entrepreneur's tax offset.

The publications indicate that this will be the last year in which the STS will operate in its current format. New changes have been introduced making further amendments for small business taxpayers.

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.