

CLIENT ALERT

September 2008

Tax News, Views and Clues

SMSF and Financial Assistance

The Tax Office has released an SMSF Ruling in which it explains the prohibition on trustees of SMSFs giving financial assistance to a member of a fund (or a relative of the member) using the resources of the fund.

The Ruling reinforces that providing financial assistance to a member (or a relative of the member) will contravene the superannuation legislation, regardless of whether such assistance was requested by the member or given through a third party

According to the Ruling, financial assistance includes any arrangement or transaction whereby the assets of the SMSF are converted into other assets, diverted, diminished or put at risk, or there is prejudice to the financial position of the SMSF.

SMSF and Sole Purpose Test

The Tax Office has also released an SMSF Ruling, which outlines the Commissioner's approach to the application of the sole purpose test in the superannuation legislation.

The objective of the sole purpose test is to limit the provision of superannuation benefits to a range of prescribed retirement or retirement-related circumstances, such as on or after a member retiring or attaining 65 years of age. Where an SMSF is maintained for other purposes, it will contravene the sole purpose test.

The Tax Office says that in determining the purpose for which an SMSF is being maintained requires a survey of all of the events and circumstances relating to its maintenance.

The Ruling notes that investments such as works of art, antiques, classic cars and wine will, generally, pose particular issues in relation to the application of the sole purpose test.

- **TIP:** While investments in collectables are not prohibited per se, an SMSF wanting to invest in such investments will need to ensure that the fund's deed permits it and the trustee must show how acquiring these assets will satisfy the sole purpose test.

Self-education Expenses

In a recent case, the AAT has affirmed the Commissioner's decision to deny a taxpayer a

deduction for self-education expenses.

The Tribunal held that the taxpayer had not shown that the expenses were incidental and relevant to the gaining of assessable income.

Generally, self-education expenses incurred before employment commences or to obtain new employment are not deductible.

- **TIP:** The Tax Office has indicated that one of the areas it is focusing on is anomalous or "out-of-pattern" self-education claims.

Business Establishment Costs

In two separate but related Interpretative Decisions, the Tax Office states the deductibility of business establishment costs for a proposed business to be carried on.

Generally, a taxpayer is entitled to a deduction for capital expenditure incurred for a business proposed to be carried on.

The deductibility of the expenditure depends on the facts of each case and requires the taxpayer to reasonably conclude that the proposed business would commence within a reasonable time.

TPD premiums deductions

The Tax Office has stated its preliminary view on the deductibility of total and permanent disability (TPD) insurance premiums where the policy is held through a superannuation fund.

The definition of "disability superannuation benefit" may not be aligned between the tax law and the wording of a TPD insurance policy. Therefore, the Tax Office has said that a fund may not be entitled to a deduction for premiums paid.

Decision Impact Statement on "Shed Case"

Readers will remember the bizarre decision by the AAT where it held that a shed used by a taxpayer qualified as a main residence from our April 2008 issue.

The Tax Office has since released a Decision Impact Statement outlining its view of the application of the CGT main residence exemption following the decision.

The Tax Office has stated that the decision reinforces its view that the determination of whether a dwelling is a taxpayer's main residence depends upon the circumstances of each case.

Compliance Matters

Marine vessels and data matching

The Tax Office has announced that it will request and collect details of taxpayers who have registered a marine vessel from the relevant State marine vessel registering bodies.

The data collected will be electronically matched with its data holdings to identify non-compliance with tax obligations.

Cash economy and businesses

In July and August, the Tax Office sent out letters to businesses in the retail, construction and consumer services industries, which have high volumes of cash transactions.

The Tax Office will send follow-up letters in September and October to selected businesses that it has identified as likely to present risks in connection with cash economy participation.

The Tax Office says it is likely that some of the taxpayers identified under the program will be subject to further review

- **TIP:** Taxpayers should contact us to discuss any potential compliance issues that the Tax Office has identified in the letters.

Outstanding lodgments

The Tax Office has sent letters to tax agents that include a list of clients who have outstanding income tax returns and/or activity statements.

Clients with outstanding returns and/or activity statements should contact us to ensure any outstanding tax obligations are completed and lodged as soon as possible to avoid any compliance actions by the Tax Office.

Excess Superannuation Contributions

According to the Tax Office, it has identified "potential" cases of individuals exceeding the \$1 million cap on non-concessional superannuation contributions made during the transitional period from 12 May 2006 to 30 May 2007.

Individuals who exceed the superannuation contributions cap in a financial year are liable for the excess contributions tax.

To identify the actual excess contributions tax assessments to be issued, the Tax Office said that it will conduct a pilot investigation of 200 representative cases.

Minors and tax-free threshold

The maximum "unearned income" that a resident minor can earn for the 2008-09 income year is \$2,667.

Effectively, a resident minor can receive up to \$2,667 in trust distributions for 2008-09 before incurring a tax liability, unless the minor has other sources of income.

Generally, income derived by a minor is taxed under a separate rate. However, exceptions apply, such as income from full-time employment.

Overpaid income tax instalments

The Tax Office has announced that it has completed a review of credit balances on activity statement accounts of taxpayers.

A taxpayer whose account has a credit balance that arose from overpayments of income tax instalments will have the balance transfer to their income tax account. The credit will then be issued in a taxpayer's next income tax assessment.

Taxpayers who do not want the credit to be issued in their next assessment should contact us to request for a refund from the Tax Office.

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.