

Snippets

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Trust Entitlements and Loans: Tax Office Issues Guidance

The Tax Office has released its keenly awaited guidance on the tax treatment of trust entitlements and loans. The guidance, known as a practice statement, explains how the Tax Office will apply its ruling on when a private company with an unpaid present entitlement makes a loan to the trust estate which generated the entitlement. The Commissioner of Taxation said he was aware of the importance of this issue to businesses, particularly small businesses, which use a trust structure.

The Commissioner said the practice statement provides practical ways for businesses to work towards a compliant structure with minimal impact on their cash flows or how they operate. He said that where businesses had made mistakes in the past, the practice statement provides several options for private companies to self-correct .

- **TIP:** The opportunity to self correct is available for a limited time only. Please contact us if you think you may be affected.

Tax Office Highlights Common PAYG Instalment Errors

The Tax Office has been calling selected business operators in the \$2 million to \$100 million annual turnover range to discuss instances where the pay-as-you-go (PAYG) instalment amount received for the quarter under review is significantly different to the PAYG instalment amount received in a previous quarter.

The Tax Office has noted common errors that preparers make when completing PAYG instalment details on business activity statements – for example, instalment income amounts being adjusted rather than instalment rates varied.

- **TIP:** If you are experiencing difficulty with correctly completing your instalment activity statements, please contact our office.

SMSFs and Private Companies Investing in Trusts: Tax Office Warning

The Tax Office has warned self-managed super funds (SMSFs) not to invest in trusts with the intention of making funds available for lending to members. The warning comes in a taxpayer alert which describes an arrangement where an SMSF invests money in an unrelated trust that then on-lends the funds to an SMSF member or relative. The Tax Office says such arrangements attempt to circumvent strict rules prohibiting SMSF trustees from lending money or providing financial assistance to a member or a relative using the resources of the fund.

In another similar taxpayer alert, the Tax Office warned private companies against investing in trusts with the intention of making funds available for lending to shareholders. The taxpayer alert describes an arrangement where a private company invests funds in an unrelated trust that then on-lends the funds to a shareholder or an associate of a shareholder. The Tax Office warns the arrangement may be an attempt to circumvent tax rules which are aimed at preventing private companies from making tax-free distributions of profits to shareholders or their associates.

Self Education Expenses for Youth Allowance Recipient Deductible

The High Court unanimously dismissed the Commissioner of Taxation's appeal and held that a taxpayer was entitled to a deduction for expenses incurred in deriving income from receiving Youth Allowance. The Full Federal Court had previously dismissed the Commissioner's appeal and held that self-education expenses incurred by the taxpayer in deriving Youth Allowance were allowable deductions.

Subsidy Paid for Loss-making Contracts Assessable as Income

In a recent case, the Administrative Appeals Tribunal ruled that a taxpayer in the waste disposal business was assessable on a "subsidy" paid to it by a competitor in connection with the taxpayer assuming unprofitable waste disposal contracts that it acquired from the competitor under an agreement. Even though the transaction was a one-off, the Tribunal found it was assessable as ordinary income as the agreement was entered into in the ordinary course of the taxpayer's business with a view to making a profit.

- **TIP:** it is not against the law to employ your spouse. However, the arrangement must be genuine and this requires examining the totality of the relationship when characterising it. As demonstrated by the cases, one cannot transform an existing domestic relationship simply by calling it a different name, or by adopting some aspects of an employment relationship.

Increasing Adjustments in BASs as Debts Remain Unpaid

In another case, the Administrative Appeals Tribunal held that three taxpayers were required to reverse earlier claims for input tax credits in their later Business Activity Statements. As the taxpayers accounted for GST on an accruals basis, the credits were attributed to the tax period in which the tax invoices were received. However, those invoices remained unpaid after 12 months. Under the GST legislation, if an invoice remains outstanding after 12 months, a recipient is required to reverse any input tax credits previously claimed. The Tribunal noted there was little evidence of the invoices being paid, and therefore affirmed that the taxpayers had an increasing adjustment.

Tax office Scans Car and Real Property Purchases

The Tax Office has advised that it will collect records relating to motor vehicle purchases and real property transfers from relevant government authorities building on data previously collected as part of its ongoing data-matching projects. The data will be used as part of the Tax Office's compliance activities to identify cash economy participants, that is, those who are deliberately not declaring income to the Tax Office. The Tax Office will also focus on ensuring taxpayers involved in property transfers are meeting their GST obligations.

Specifically, the Tax Office said it will request data from motor vehicle registries where a motor vehicle was sold, transferred or newly registered between 1 July 2009 and 30 June 2010 and the value of the vehicle was \$10,000 or greater. In relation to real property transfers, the Tax Office said it will collect identity and transaction details from state revenue authorities relating to property title transfers between 1 July 1999 and 30 June 2010.

- **TIP:** The Tax Office uses its data-matching abilities to identify potential cases for investigation. Not declaring income and not meeting GST obligations are just a couple of areas of non-compliance behaviours the Tax Office is focusing on. Other focus areas include taxpayers not declaring capital gains, and not meeting superannuation guarantee and fringe benefits tax obligations, when required.
- **TIP:** State revenue authorities can share information with the Tax Office where it is permitted under the law. For instance, in relation to property transfers, a state revenue authority may compare information with the Tax Office to identify non-compliance with stamp duty obligations.

Tax Office Highlights Errors in Claiming Deductions for Superannuation

The Tax Office has recently highlighted common errors made by individuals when claiming tax deductions for their personal superannuation contributions. These include not lodging the notice to claim the deduction with their superannuation fund on time and incorrectly claiming their contributions as business or partnership expenses. The Tax Office reminded individuals that personal superannuation contributions are not work-related expenses.

- **TIP:** The Tax Office said the errors came to light after it had matched superannuation contributions data it received from super funds with individual and partnership returns. As a result, the Tax office said it will take a closer look at these claims for the 2009/10 year.

Education Tax Refund—You Claim It, They Check It

The Tax Office will be requesting names and addresses of Family Tax Benefit Part A recipients from Centrelink in efforts to identify recipients who may be incorrectly claiming the Government's 50% education tax refund for primary and secondary school student expenses. The Tax Office expects to match records of around 1.5m individuals registered with Centrelink.

Deduction of Super Contributions—Ensure Paperwork Valid

The Tax Office has reminded self-managed super fund (SMSF) members that if they intend to claim a tax deduction for their personal superannuation contributions, they must complete the correct form — that is, the 'Notice of intent to claim or vary a deduction for personal super contributions' form. In addition, SMSF members must also receive an 'acknowledgment' from the fund of the valid notice they have completed.

- **TIP:** The Tax Office in its compliance program for 2010-11 noted that it will look closely at individual income tax deduction claims for personal contributions to superannuation funds. In particular, the Tax Office said it will ensure that the requirements for lodging a valid notice of intent to claim or vary a deduction for personal superannuation contributions have been met.

Client Update

Can you afford to be a centenarian?

Australian's are living longer than ever before and many of us are not factoring this in when planning for retirement.

With many of our own parents, or grandparents reaching 90 years of age or more, it makes you think – how long will you live? How long will your children live? Do you have a plan which includes your accommodation requirements, lifestyle needs, medical security and financial security?

No matter what age you are, at some time in your life you (or your family) will need to consider changes to your life, when they might occur and what impact they will have.

With this in mind, Bell Partners recognised the need for our clients, at any age, to plan their lives and their finances on a relatively long-term basis. For this reason, we recently held an information night to hear from an interesting group of speakers to learn ways to invest for a good quality life in retirement.

In conjunction with PSB Insurance Brokers and Bell Partners clients, a fabulous evening was held at The Willows in St Kilda Road where staff and clients enjoyed a magnificent dinner (for good health) whilst hearing from five informative speakers:

1. **Frank Avitabile of CRA Risk Insurance**—gave an enlightening talk on the statistics on why you may live beyond 90.
2. **David Wylie of Lonsec**—As head of their Stockbroking division, David's presentation demonstrated the positives and negatives of the Australian economic outlook, including the share market outlook and Lonsec's core model portfolio.
3. **Bill McHarg and Gil Williams of The Property Advisory**— property investment advisors who advise and educate individuals, families and Self Managed Superannuation Fund investors on property investment strategies for wealth creation and the advantages of syndication in direct commercial property investments.



Client Update

4. **Robert Viney of PSB Insurance Brokers**—"Grow It, Invest It and Protect It". Robert described what insurance requirements we may need, including both personal and commercial areas of insurance.
5. **Robert Warnock of Macpherson + Kelley, Lawyers**— presented an update on self managed superannuation funds, including trustee responsibilities and non recourse loans.

If you wish to discuss your own personal or business requirements, please contact our office.



Rob Warnock, Terry Kokkinos, Mark Krasny & Robert Viney

Christmas / New Year News

Introducing a new staff member

We are pleased to introduce Lee Richards who is our new front desk Receptionist. Lee is currently studying Bachelor of Business (Accounting) at RMIT and has excellent receptionist and administrative skills. We welcome Lee to the Bell Partners "professional support team" and we look forward to Lee's bright future with Bell Partners.

Christmas / New Year Office Hours



The office of Bell Partners will close at approximately midday on Thursday, 23 December 2010 and will re-open on Monday, 10 January 2011.

We have greatly appreciated your support over the past 12 months and look forward to continuing our association in 2011.



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Important: The information contained in the newsletter does not constitute advice. The material is merely general commentary and the comments and information do not represent a legal or professional service. The facts of each particular situation vary as does legislative and judicial interpretation of the law commented upon. Advice should be sought from Bell Partners before acting in any of these areas.