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Proposed Amendments to Tax Laws

The Government has introduced a Bill into Parliament seeking to:

- make changes to the taxation of employee share schemes;
- tighten the application of the non-commercial losses rules; and
- require superannuation providers to transfer the balance of a lost member's account to the Commissioner

A brief discussion of the important changes follows.

Employee share schemes

Under the proposed amendments, any discount to the market value of an employee share scheme (ESS) interest will be taxed upfront. A \$1,000 tax exemption will be available if an employee and the scheme satisfy the following conditions:

- the employee has an adjusted taxable income of \$180,000 or less;
- the employee is employed by the company (or its subsidiary);
- the scheme is offered to at least 75% of Australian resident permanent employees with three or more years service;

- the ESS interests provided must not be at real risk of forfeiture;
- the ESS interests offered under the scheme must relate to ordinary shares;
- the shares or rights must be held by the employee for three years; and
- the employee must not receive more than 5% ownership or control more than 5% voting rights in the company.

An employee can only defer the tax payable on the discount if:

- the ESS interests relate to ordinary shares and are subject to a real risk of forfeiture; or
- the ESS interests are acquired under a salary sacrifice arrangement, and the employee receives no more than \$5,000 worth of shares in an income year.

The Bill proposes that employers will be able to deduct an amount for shares or rights they provide to employees under an ESS if the scheme meets the conditions for employees to receive the upfront concession. However, the income test of \$180,000 is disregarded.

The amendments will apply to ESS interests acquired on and after 1 July 2009.

Non-commercial losses

Currently, an individual who is carrying on a business either as a sole trader or a partner in a partnership can only apply losses arising from the business activity against their other income in an income year if the activity satisfies one of four objective tests. (Note special rules apply to taxpayers conducting a primary production or a professional arts business.)

The Bill will amend the non-commercial losses rules to prevent individuals with an adjusted taxable income of \$250,000 or more in an income year from offsetting losses from non-commercial activities against their salary, wages or other income. That is, individuals with an adjusted taxable income above the threshold cannot access the tests. However, an individual can apply to the Commissioner to exercise the discretion not to apply the non-commercial losses rules.

The proposed amendments will apply to the 2009/10 and later income years.

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Collapsed MISs and Tax Consequences for Investors

The Tax Office has released four draft taxation determinations which set out the Commissioner's preliminary views on the tax consequences for investors with interests in collapsed managed investment schemes (MISs).

Broadly, the tax consequences are:

- a failure to plant trees intended to be established under a forestry MIS does not affect the timing of deductions for expenditure on seasonally dependent agronomic activities (eg tending seedlings prior to planting) where the requirements of the general deduction provisions and the prepayment rules relating to expenditure have previously been satisfied;
- a failure to plant all trees intended to be established under a forestry MIS means that an amount cannot be deducted under the forestry MIS provisions;
- a deduction is not allowed under the forestry MIS provisions where a CGT event happens in relation to a participant's interest in a forestry scheme within four years after the end of the income year in which the participant first pays an amount under the scheme; and
- a deduction will not remain allowable under the general deduction provisions where a CGT event happens in relation to a participant's interest in a forestry scheme within four years after the end of the income year in which the taxpayer first incurred expenditure under the agreement.

- The Government has announced that the tax laws will be amended to ensure the four-year holding period rule for forestry MISs cannot be failed for reasons genuinely outside investors' control.

GST Consequences and Partner Taking Goods for Private Use

The Tax Office has also released a GST determination in which it states that when a partner takes goods held by the partnership as trading stock for private or domestic use, there is a supply by the partnership to the partner that is related to the partnership's enterprise.

The determination says a taxable supply by the partnership to the partner will arise if all the requirements for a taxable supply are satisfied. That is, the partnership will be required to remit GST on the supply to the Commissioner.

Small Business Benchmarks

The Tax Office has released a range of benchmarks, known as the small business benchmarks, to assist business owners in assessing their business performance.

Two types of benchmarks for small businesses have been developed by the Tax Office:

- performance benchmarks, which are based on information small businesses report on income tax returns and business activity statements; and
- input benchmarks, which are based on information industry participants and trade associations provide to the Tax Office.

The benchmarks are grouped into categories based on the business industry codes. These categories include:

- manufacturing;
- construction;
- retail trade;
- accommodation and food services;
- transport, postal and warehousing;
- rental, hiring and real estate services;
- administrative and support services; and
- personal services.

The Tax Office says that where businesses do not report within the ranges of the benchmarks, it may be an indication a business is not recording and paying tax on all of their transactions.

Superannuation Clearing House Service

The Government has announced a superannuation clearing house service will be available to small businesses from July 2010, at no cost.

Small businesses can forward their employees' superannuation contributions to the clearing house for processing. In addition, employers will fulfil their superannuation guarantee obligations when payments of the correct amounts are made to the clearing house.

Registration for the service will commence from May 2010.

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.