

## Client Information Bulletin

### Autumn 2008

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## Tax planning tips – Before 30 June 2008

To minimise the tax payable on taxable income, implementation of the following is recommended prior to 30 June 2008:

- if possible defer income from being earned in June 2008 by completing the job in early July, and invoicing in July 2008
- undertake expenditure on repairs and maintenance for any business asset if in need of such attention within the next few months, prior to 30 June 2008
- maximise contributions to superannuation:
  - \$100000 for > 50 years of age
  - \$50000 for < 50 years of age
  - self employed persons can claim 100 per cent of contributions into superannuation for the first time
- Loans relating to funds borrowed by directors and shareholders from companies have significant tax implications under Div 7A and S108 of the *Income Tax Assessment Act 1936* (Cwlth). It is recommended advice be obtained from our office prior to 30 June 2008 with regard to these loans
- realise capital losses made in the recent share market downturn to offset actual capital gains made during the year
- maximise tax deductions by accelerating expenditure prior to 30 June 2008
  - For example - maximise prepayments, such as lease payments, rent, interest, insurance and subscriptions
- accrue expenditure incurred but not yet paid by 30 June 2008
- check with our office on the implications of expenditure by STS and non-STS taxpayers.

## Instalment warrants – Borrowing in a SMSF

An Instalment Warrant has been an effective way to purchase shares without having to pay the full capital amount upfront, whilst still enjoying the benefits of full ownership.

It was previously viewed that this type of investment was a breach of the borrowing rules in the *Superannuation Industry (Supervision) Act 1993* (Cwlth). However, the government saw this as a flaw, and amended the SIS Act on the 24 September 2007 to allow this form of borrowing.

The change in legislation meant the term 'Instalment Warrant' needed defining. Rather than defining this term, the government defined the allowable borrowing structure, meaning the term 'Instalment Warrant' was much broader than initially anticipated, giving a self managed super fund (SMSF) the ability to borrow in order to purchase other asset types such as real property.

A SMSF has always been an effective investment vehicle due to its asset protection and tax advantages, but the new 'Instalment Warrant' regulations shall mean that a SMSF shall become an even more formidable investment vehicle, creating more investment options for the trustees.

With the introduction of the 'Instalment Warrant' arrangements, structuring is a vital component that must be considered. To ensure the complying status of the SMSF, it is imperative that appropriate advice is sought in this area.

We have conducted due diligence on a number of specialised law firms, to assist you in this area.

## Part IV A and 'wash sales'

The Australian Taxation Office (ATO) has issued a taxation ruling in relation to 'wash sales' which is used to describe the sale and purchase of the same or substantially the same asset within a short period of time. The sale and purchase cancel each other out with the result that there is effectively no change in the economic exposure for the owner of the asset.

Often these 'wash sales' are effected in order to apply a resulting capital loss or allowable deduction against the capital

gain or assessable income already derived or expected to be derived.

The ATO advises in such arrangements that Part IVA may apply – the impact being the Tax Commissioner will make a determination to cancel tax benefits obtained in connection with the 'wash sale'.

Before considering your capital gains or losses it is important that you discuss your strategy with our office to ensure that there is a clear understanding between the commercial risk or advantage versus the tax purpose.

## Loan fringe benefits

Loan Fringe Benefits arise where an employer recognises they have mistakenly paid their employee an amount to which the employee was not legally entitled. The employee is then obliged to repay the amount afterwards, but is given time to repay the amount.

By allowing time for the repayment of the mistakenly paid amount the employer is effectively making a loan to the employee. This loan gives rise to a loan benefit for the fringe benefits tax year. The benchmark interest rate for the 2007/08 FBT year is 8.05 per cent for the period that the loan is outstanding.

## Personal services income

The Australian Taxation Office (ATO) has recently identified the common mistakes businesses make with relation to Personal Services Income rules. In summary they are as follows:-

1. Self assessing that the first condition of a results test

has been passed when paid on an hourly or daily rate, not when tax payers must be paid as a result of achieving a specific result.

2. Not obtaining a determination from the ATO when failing to meet the results test and 80 per cent or more of the income is from one client.
3. Self assessing that the unrelated clients test has been met when the services are provided are not a direct result of making offers to the public. This is common where services are through a labour hire firm or through an agency.
4. Applying the personal services business test to the whole entity and not to the individual where the test needs to be applied on an individual basis, by the individual.
5. Retaining profits from personal services income when any profit made must be paid as a salary and wage to the individual who performed the services.
6. Not complying with the additional PAYG obligations.
7. Failing to complete and attach a personal services income schedule with their tax return.
8. Claiming deductions for personal services income where there is no entitlement. They may include rent, mortgage interest, rates for their home or their associate's home that is the place of business, payments to a spouse and the like for support service work such as secretarial duties.

In order to get a clear understanding and to ensure compliance it is strongly recommended that you discuss

your personal services position with our office.

It is also important to note that these personal services income rules not only apply to companies but also to trust structures.

## Taxation measures applicable to drought affected farmers - Water facilities

In drought times water becomes a precious commodity. Deductions can be claimed by persons engaged in a business of primary production for expenditure on water facilities used primarily and principally for the purpose of conserving or conveying water.

Examples of a water facility include a dam, tank, tank stand, bore, well, irrigation channel, pipe, pump, water tower and windmill.

You can claim a deduction for the decline in value of a water facility in equal instalments over three income years.

In addition these standard relief measures are available, namely:

- more time to lodge activity statements or tax returns without incurring a penalty
- additional time to pay tax debts without any interest charges
- arranging for tax debts to be paid in instalments
- remitting penalties or interest that may have been imposed
- fast tracking refunds.

## Banks to get tough on finance

With the boom times seemingly over and the credit market generally tightening, it is prudent to prepare finance applications knowing the banks will be taking a tougher stance and lending only to the more blue chip borrower.

In the current economic climate successful finance applications should include:

- a detailed plan that will ensure the financier understands your business
- evidence of business success if the business is less than 5 years in operation
- the most up to date tax returns and tax assessments and tax returns from the previous 2 years as well as financial statements from the previous 3 years
- long term contracts with significant customers

Businesses should also enquire about alternative sources of finance such as debtor finance using receivables as security.

As local banks continue to increase interest rates and the overseas markets face a financial crisis, exacerbated by the sub-prime lending debacle, it may be difficult for some businesses to secure finance.

Kindly contact our office if you need assistance in this area. We have a strong relationship with a number of lenders, in which all interest and costs savings are passed on directly to you the client.

## How to deal with staff wanting a pay rise

In the current economic environment where there is both low unemployment and increasing inflation it is inevitable that valued staff will seek a pay rise.

Below are some ideas as to how you can best deal with this situation:

- ensure your employee's present salary is market competitive
- consider other ways to recognise and reward valuable employees such as:
  - flexible working conditions
  - provide an opportunity for extended leave
  - provide a promotion
  - provide a company award for performance
  - be thankful they asked, and not resigned.

## Business structures analysis

In considering the most appropriate business structure for a business it is important to identify the 'must have requirements' for that business and the 'important requirements'.

It is, however also vital to consider the 'business characteristics' of a business structure. Below are just two examples:

### Business Characteristics of a Private Company

- they involve risk

- the assets do not appreciate in value
- they have a high taxable income
- the ownership or appreciating asset can often be split from the business.

#### Business Characteristics of a Discretionary Trust

- losses are not likely
- appreciating assets are involved
- all stakeholders are related parties
- The allocation of profits changes from year to year.

When dealing with business structures our office would be able to assist you to identify:

- risk management issues with respect to the business
- related parties not to be involved/exposed to the risk of the business
- tax efficiency with respect to the profits and capital gains
- simple and inexpensive structures for the day to day operations.

It is always worthwhile reviewing your business' structure from time to time to ensure the most appropriate structure is in place.

Talk to our office if your business structure needs to be reviewed.

## Working offsite

Business can benefit from employees working remotely or from home however to ensure such arrangements are effective some safe guards should be put in place first.

They include:

- detailed and documented output expectations for all parties
- identification of which employees would be best suited to working remotely
  - Example: self managers or self motivated individuals
- ensuring all necessary technology is available and accessible to achieve the expected results
- following up any productivity issues immediately
- ensuring remote staff attend the office regularly
- ensuring there is a clear understanding between all parties as to the IT expenses incurred and who pays.



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