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Welcome to the April edition of our newsletter. As the end of financial year slowly comes to a close, NOW is the time to be thinking about the steps you can be putting in place to improve your tax situation. Please feel free to call our office should you wish to discuss further any of the points noted in our newsletter.

Luxury Car Tax Assessment

Dreamtech International Pty Ltd v FCT [2010] FCA 109

The Federal Court dismissed the taxpayer's appeal and upheld a finding by the Administrative Appeals Tribunal (AAT) that luxury car tax (LCT) was payable on a Hummer vehicle imported from the USA.

The taxpayer, a licensed motor vehicle dealer, imported a Hummer. The price was $156,222.81, which exceeded the LCT threshold. The taxpayer was assessed for LCT, and appealed to the AAT when the Commissioner disallowed his objection against the assessment.

The AAT found that the Hummer was a motor powered road vehicle which fitted the description of limousine which, in turn, satisfied the definition of 'car' in the LCT Act. As the Hummer's value exceeded the LCT threshold, the taxpayer was liable for LCT on the importation. The taxpayer appealed to the Federal Court. In particular, the taxpayer argued that the AAT wrongly disregarded the ordinary meaning of the word 'car' (i.e., that the Hummer could not be properly described as a car). The Federal Court upheld the decision of the AAT.

At the time of writing, the taxpayer has lodged an appeal to the Full Federal Court.

Onus on taxpayer to prove assessment incorrect

AAT Case [2010] AATA 138, Re Douglass and FCT

The AAT held that a taxpayer was unable to substantiate his claims for input tax credits (ITC's) and therefore, had not discharged the onus of proving that a notice of assessment issued by the Commissioner was incorrect. Accordingly, the Tribunal upheld the assessment issued.

The taxpayer ran a lawn mowing business. Following an audit, the ATO concluded the taxpayer had overclaimed ITC's. The acquisitions related to goods and services from a particular mower centre and fuel purchases. The AAT held that the taxpayer failed to discharge their onus to prove the assessment was incorrect and what the correct assessment should be.

RULINGS UPDATE

Self-Managed Super Funds and Acquiring Assets from Related Parties

SMSFR 2010/1 – The application of s.66(1) of the SIS Act 1993 to the acquisition of an asset by a self managed superannuation fund from a related party

There are strict rules which prohibit a self-managed superannuation fund (SMSF) from acquiring an asset from a related party. The Tax Office has released Self Managed Superannuation Funds Ruling SMSFR 2010/1 which explains the rules.

The Commissioner states that under the rules, an 'asset' means any 'form of property' and includes every type of right and intangible personal property that can be enforced by legal or equitable action such as a debt or an interest in a trust fund. The phrase 'acquire an asset' encompasses not only the purchase of an asset, but also the acquisition of an asset where the SMSF does not provide any consideration (for example, in specie contributions).

Superannuation — What is Meant By 'Contribution'?

The Tax Office has released Taxation Ruling TR 2010/1 which explains the Commissioner's views on the ordinary meaning of 'contribution', how a contribution can be made to a superannuation fund, and the timing of when a contribution is made. The Ruling also explains key aspects of the income tax rules for deducting employer superannuation contributions and personal contributions.

OTHER DEVELOPMENTS

The *Tax Laws Amendment (2010 Measures No 1) Bill 2010* was introduced into the House of Representatives on 10 February 2010. The Bill contains various amendments including the following:

1. Investors of Failed Forestry Schemes— Deductions Protected

Forestry MIS: four-year holding rule amended

The Bill amends ITAA 1997 and ITAA 1936 with the stated aim of protecting the deductions of investors in forestry MIS where the four-year holding period rules are failed for reasons genuinely outside the investor's control. The *Taxation Administration Act 1953* will also be amended to maintain the capacity of the Commissioner to apply for civil penalties against the promoters of affected schemes, notwithstanding the amendments to the four-year rules.

At the time of announcing the change last year, the Assistant Treasurer said the collapse of Timbercorp and Great Southern was expected to lead to a number of forestry MIS being wound-up or restructured, which could cause investors to fail the requirement of having held their interest in the MIS for four years as a condition of an up-front tax deduction. The Government therefore decided to amend this four-year holding period rule for forestry MIS to ensure that it cannot be failed for reasons genuinely outside an investor's control. These events include insolvency of the MIS manager, the death of the investor or where an MIS interest is cancelled, for example, because of trees being destroyed by fire, flood or drought.

Currently, under Div 394 of ITAA 1997, investors in forestry MIS can claim an immediate tax deduction for expenditure incurred in the scheme, subject to certain conditions. In order for an initial investor in a forestry MIS to claim and retain a deduction under Div 394, the law requires that a CGT event does not happen in relation to the investor's forestry interest within four years after the end of the income year in which an amount is first paid by the investor.

The Government said the Tax Office's interpretation of the current law is that the Commissioner has no discretion to allow a deduction claimed under Div 394 in these circumstances, even where the reason for the CGT event happening is outside the taxpayer's control.

Under the proposed amendments, failing the four-year holding rule will not lead to the denial of a deduction where this failure is for reasons outside the investor's control. Furthermore, such reasons must not have been able to be reasonably anticipated by the investor at the time they acquired their interest. This means that it could not have been anticipated by a reasonable person standing in the shoes of the investor.

Situations that could be 'genuinely outside the initial investor's control' include:

- the accidental death of the initial investor;
- the interest in the scheme being compulsorily transferred, because of marriage breakdown or compulsory acquisition by a government;
- the initial investor becoming insolvent;
- the interest in the scheme being cancelled, because of trees being destroyed by fire, flood or drought; and
- the insolvency of the manager of the scheme, leading to the winding up of the scheme.

Date of effect

The amendments are proposed to apply to CGT events happening on or after 1 July 2007.

2. Eligibility restrictions imposed on entrepreneurs' tax offset — income test

The Bill amends Subdiv 61-J of ITAA 1997 by introducing an income test into the eligibility criteria for the Entrepreneurs Tax Offset (ETO). The income test will restrict the eligibility of individuals whose income is over a threshold amount of adjusted taxable income for ETO purposes ($70,000 if they are single and $120,000 if they have a family).

The ETO provides eligible taxpayers with a maximum tax offset of 25% of their income tax liability that is attributable to their net small business income for the income year. The ETO begins to phase out at aggregated small business turnovers of $50,000 and eligibility ceases when aggregated turnover reaches $75,000.

Under the proposed amendments, the ETO calculated after applying the aggregated turnover test will phase out at 20 cents for every $1 of income for ETO purposes over the threshold amount. For singles, the threshold amount of income for ETO purposes is $70,000, and for families, the threshold amount is $120,000. This reduction will operate in addition to the current eligibility requirements applicable to the ETO (in particular, the aggregated turnover test phase-out where aggregated turnover of the small business exceeds $50,000).

The income for ETO purposes will include both the claimant's and their spouse's (if they had a spouse at the end of the income year) taxable income, reportable fringe benefits total, reportable superannuation contributions and total net investment loss for the year. However, the claimant's net small business income (or share of that income) that has already been considered in determining eligibility for the ETO under the existing law will not be taken into consideration for the purposes of the income test.

Date of effect

The amendment is proposed to apply in relation to assessments for income years that commence on or after 1 July 2009. Note that the amendment was previously announced to commence on 1 July 2008, but this was deferred by 12 months.