

Welcome to the August edition of our newsletter, which contains information on a number of important taxation developments. Please make an appointment should you wish to discuss further any of the issues raised in the newsletter.

CASES UPDATE

Hogan v Australian Crime Commission & Ors [2010] HCA 21

The High Court has unanimously dismissed Paul Hogan's appeal against the publication of a number of investigative documents in relation to his taxation affairs. The court confirmed that there were no grounds for prohibiting the publication of certain evidence and legal documents relating to the Wickenby investigation.

Virgin Blue Airlines Pty Ltd v Commissioner of Taxation [2010] FCA 631

Virgin Blue provided employees with subsidized car parking approximately 1.9km to 2km from its office with a connecting shuttle bus service.

The Federal Court has held that this could amount to the provision of car parking fringe benefits as the car park in question could be considered to be 'in the vicinity of' the primary place of employment. This would satisfy the definition of a car parking fringe benefit in S.39A(1)(f) of the *Fringe Benefits Tax Assessment Act 1986*.

Care Provider and Commissioner of Taxation [2010] AATA 475

The Tribunal considered whether or not workers in this case fell under an exclusion in S.12(11) of the Superannuation Guarantee (Administration) Act 1992 by asking if they were 'paid to do work wholly or principally of a domestic or private nature'.

The taxpayer owned a business where their employees assisted clients of the taxpayer by cooking, cleaning, shopping, showering, dressing and assisting with general household duties. No super guarantee contributions were made on behalf of the relevant employees.

The Tribunal found that the employees potentially fell under the super guarantee exclusion as the employees were paid to do work wholly or principally of a domestic or private nature, even though they did not provide these services to the employer directly.

OTHER DEVELOPMENTS

ATO is Contacting Participants in Collapsed Agribusiness Managed Investment Schemes

The ATO has advised that it will be contacting approximately 60,000 identified participants of recently collapsed Agribusiness managed investment schemes (MIS) during August 2010 to help them understand the tax consequences of their investments. The ATO has advised that affected taxpayers will need to factor in any changed tax implications in these schemes when they prepare their income tax returns.

Minimum Pension Drawdown Amounts — 50% Reduction to Continue

The Prime Minister recently announced that the Government will extend for another year the 50% reduction in the required minimum payment amounts that must be made from account-based, allocated and market-linked pensions.

The minimum amounts had been reduced by 50% for the 2008/09 and 2009/10 financial years — that will now be extended for the 2010/11 financial year. This means, for example, that the minimum annual drawdown for 2010/11 for someone aged 64 years or less will remain at 2% and for those aged 65 – 74 will be 2.5%.

Division 7A Benchmark Interest Rate

The Tax Office has advised that, for the income year that commenced 1 July 2010, the benchmark interest rate to be used in calculating the interest component on the repayment of a private

company loan received by a shareholder (or an associate of the shareholder) is 7.4%.

Superannuation and Instalment Warrant Rule Changes

The superannuation law has recently been amended to reduce the risks for superannuation funds investing in limited recourse borrowing arrangements (eg instalment warrants). The legislative changes seek to ensure that the recourse of the lender (or any other person) against the superannuation fund trustee for default on the borrowing is limited to rights relating to the acquirable asset.

Cooper Super Review makes 177 Recommendations

The Government has released the long anticipated final report of the Super System Review. The Review Panel, chaired by Jeremy Cooper, made 177 specific recommendations aimed at improving the governance, efficiency, structure and operation of the country's superannuation system. A key proposal includes a simple low-cost superannuation product known as MySuper for investors who do not want to engage in superannuation decision-making.

In relation to self-managed superannuation funds (SMSFs), the Review Panel was not of the view that significant changes were required as it found that the sector was largely successful and well-functioning. Nevertheless, it made 29 recommendations relating to SMSF service providers, auditors and the regulatory framework. Notably, the Review Panel maintained its proposed ban on SMSFs investing in collectables and personal use assets. Examples include artwork, antiques and exotic cars.

The Government is expected to formally respond to the review within the next two months.

HOT TOPIC: EDUCATION TAX REFUND FOR SCHOOL UNIFORMS

On 13th July 2010, Prime Minister Julia Gillard announced the Government will expand the Education Tax Refund scheme so that school uniforms can be included in claims, giving families up to \$779 per child each year to help with the costs of sending children to school.

According to Ms Gillard:

- Despite the strength of the national economy, many Australians are doing it tough with high living costs. Not everyone is seeing the benefits of a strong economy.
- Uniforms can be an expensive part of sending children to school but this change, along with the existing refund for textbooks and computers, will help families with that cost.
- Around 2.1 million children across Australia are eligible for the refund. To date, almost one million families have claimed the existing refund to support more than 1.7 million children.
- Parents will be able to claim up to 50 per cent of the cost of uniforms in addition to the existing education expense included in the scheme, currently up to \$390 per child each year for primary school kids or \$779 per child each year for those in secondary school.
- The Government will provide this relief to family budgets while ensuring the Federal Budget returns to surplus by 2013.

The existing items parents can claim under the Education Tax Refund include the cost of computers and computer equipment, textbooks and trade tools for secondary trade courses.

To be eligible, school uniforms would need to be approved by the school but not necessarily mandatory for the child to wear.

The new eligible items would be available for expenses incurred during the 2011-12 financial year and the tax refund would be paid in the 2012-13 financial year.

The Government expects to pay an additional \$220 million by including school uniforms in the refund.

Parents or guardians entitled to Family Tax Benefit Part A for one or more children in school are eligible for the refund. Parents are also eligible if their child receives another payment, such as Youth Allowance, Disability Support Pension or ABSTUDY Living Allowance, but would otherwise be eligible for Family Tax Benefit Part A.

DISCLAIMER: IMPORTANT NOTE: The Veale Partners' newsletter is a private communication to clients and contains general information only. As the particular circumstances and needs of our clients may vary greatly, the information herein should not be used as a substitute for personalised professional advice. Whilst every effort has been made to ensure the information is correct, its accuracy and completeness cannot be guaranteed, thus Veale Partners cannot be held responsible for any loss suffered by any party due to their reliance on the information or arising from any error or omission.