

**Welcome to the Christmas edition of our Newsletter. We take this opportunity to wish all of our clients a happy and safe festive season and look forward to being of service to you in the New Year. Our newsletter this month focuses on a number of important developments in taxation. We hope you find it particularly useful.**

### **Sale of a Going Concern**

*Case 12/2009, YXFP v FCT [2009] ATC AATA 805*

The Administrative Appeals Tribunal (AAT) upheld the Commissioner's GST assessment when it found that a supply of land by a property developer was not a GST-free supply of a going concern as the parties had not agreed this in writing as required by s.38-325(1)(c) of the GST Act.

### **Self Education Expenses**

*FCT v Anstis [2009] FCAFC 154*

The Full Federal Court has upheld the Federal Court decision in *Anstis v FCT [2009] FCA 286* to allow a deduction under s.8-1 for self education expenses incurred by a taxpayer whilst undertaking a university degree as an outgoing incurred in gaining an assessable Youth Allowance. In so doing, the Full Federal Court dismissed the Commissioner's appeal against the Federal Court decision.

### **Other Developments**

#### **Henry Review**

Treasury Secretary Ken Henry recently hinted his taxation review will recommend that many taxpayers be spared from filling in annual tax returns receiving instead a standard deduction for necessary work expenses as part of a radical plan to simplify Australia's tax system.

The Henry Tax Review panel is due to hand over its final report to the government early next year.

#### **Tax Bonus Pushes Tax Return Lodgments to Record 96%**

Recently, the Assistant Treasurer, Senator Nick Sherry, released the Inspector-General of Taxation's (IGT) *Review into the non-lodgment of individual income tax returns*, while announcing that the Rudd Government's tax bonus stimulus payment has reaped an important side-benefit by boosting the number of taxpayers who've lodged tax returns to an all-time high of around 96 per cent.

Based on pre-tax bonus data, the IGT found a non-lodgment rate of tax returns of 9.35 per cent; however, using the latest data, the Tax Office now estimates only 4 per cent of Australians have outstanding non-lodged tax returns.

The latest Tax Office analysis has found that as at 30<sup>th</sup> June 2009, 12.5 million 07/08 returns had been lodged. This compared to 11.7 million lodgments expected by the Tax Office for that year, before the announcement of the tax bonus.

The tax bonus has almost single-handedly cut the number of outstanding tax returns by more than half.

The Tax Office estimates an extra 800,000 taxpayers lodged returns before the June 2009 deadline to be eligible for the tax bonus.

## **HOT TOPIC: Tax Issues with Financial Collapses**

Timbercorp and Great Southern – examples of forestry and horticulture giants which have got into recent financial difficulty.

- Timbercorp was originally placed into voluntary administration and is now in liquidation; and
- Great Southern was also placed into voluntary administration with several of its subsidiaries also having ‘receivers and managers’ appointed.

### **Ongoing interest deduction**

- Ongoing interest expenses on loans used to acquire an interest in these failed managed investment schemes will generally still continue to be deductible.
- It is now well established in case law that the interest will generally continue to be deductible if projects are wound up and business ceases to be carried on.

### **Withdrawal of ATO Product Rulings**

- If the scheme is wound up or it was implemented in a materially different way to that described in the product ruling, then the product ruling will be withdrawn. However, you will generally still be covered by the relevant product ruling up until the time of its withdrawal.

- The ATO are working with the administrators to gain an understanding of any changes in the scheme that may occur and will issue guidance on the tax effects on these changes. If the ruling is withdrawn, investors will determine tax outcomes under the ordinary provisions of the tax law.

### **Any continued payments are still tax deductible**

- To the extent the payments already made are deductible in accordance of the arrangement set out in the product ruling, any future expenses incurred should continue to be deductible. The appointment of an administrator will not represent material changes to the scheme described in the product ruling.
- However, if the scheme is wound up or the implementation of the scheme otherwise changes in a material way, the product ruling no longer applies and deductibility is determined under the ordinary tax laws.

### **Is the collapse of Timbercorp and Great Southern a basis for the ATO to deny deductions claimed in prior years?**

- No, the collapse is not in itself reason to disallow deductions properly claimed by investors. Investors continue to be protected by any product ruling under which they claim the deductions.

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***Law to be amended – Failed forestry MIS and protecting tax deductions***

- The collapse of Timbercorp and Great Southern is expected to lead to a number of forestry managed investment schemes (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 will 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.
- Under current law, investors in forestry MIS managed by Timbercorp and Great Southern may have previous years' deductions clawed back because they haven't held their interests for four years.
- As the holding period rules apply only to investments in forestry MIS, investors in other agribusiness MIS are not affected.

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