



Welcome to the new financial year! We start the new financial with great hopes and aspirations. In order to realize your goals, it is important to put the wheels in motion from the outset. Please make an appointment to see us to discuss your business/personal financial direction. We look forward to seeing you soon!

July 2010 Case Update:

Vacant Land not Input Taxed as 'Residential Premises'

Vidler v Commissioner of Taxation [2010] FCAFC 59

The Full Federal Court has held that vacant land, without any living facilities, cannot be 'residential premises'. The fact that the vacant land has residential zoning and access to services (or is actually connected to services such as the electricity supply) will not be sufficient. Vacant land is not capable of being occupied as a residence within the GST definition of 'residential premises'.

Wrong address for director's penalty notice

Robertson v Deputy Commissioner of Taxation [2010] NSWCA 58

The New South Wales Court of Appeal has unanimously rejected a taxpayer's claim that she was not given 14 days notice for the purpose of S.222AOE of the ITAA 1936 because the director's penalty notice was sent to the wrong address and she did not receive it. The taxpayer was the director of a company that had failed to remit PAYG amounts to the ATO. The ATO relied on her address as listed with ASIC, although she had moved from there.

According to the court, that address 'was the address of the place of residence of Ms Robertson last known to the Commissioner within the meaning of S.28A(1)(a)(ii) of the *Acts Interpretation Act* and the Commissioner gave Ms Robertson proper notice under S.222AOE of the ITAA 1936.

Worker's compensation payments to be included for 10% test for superannuation deduction

Van Prooyen and Commissioner of Taxation [2010] AATA 281

The AAT has held that a taxpayer was 'engaged' as an employee where he was receiving workers' compensation payments in that income year (until he retired on grounds of invalidity on 12 July of the relevant year) and therefore amounts paid to him during that year needed to be included in the calculations to work out if he satisfied the 10% test in S.290-160 of the ITAA 1997 (the maximum earnings as an employee condition). Consequently, he did not pass the test and could not claim a deduction for superannuation contributions of \$85,710 in that year.

OTHER DEVELOPMENTS:

SMSFs and Instalment Warrants: Rules to be Tightened

The Government proposes to amend the superannuation law to reduce the prudential risks for superannuation funds investing in limited recourse borrowing arrangements (eg instalment warrant arrangements).

The Government hopes to achieve this by repealing the provision in the superannuation legislation which allows a trustee of a regulated superannuation fund to borrow money using limited instalment warrants, and replacing it with two new provisions.

These new provisions seek to ensure that:

- the recourse of the lender (or any other person) against a superannuation fund trustee for default on the borrowing is limited to rights relating to the acquirable asset;
- the asset within the arrangement can only be replaced in prescribed circumstances that arise from owning the original asset; and
- the borrowing is referable and identifiable only over a single asset (excluding money) or a collection of assets which are identical and are treated as a single asset.

Super System Review: Preliminary Report on SMSFs

The Super System Review has released its preliminary report, *Self-Managed Super Solutions*, which contains a host of recommendations. While the Government has not responded to the recommendations, if implemented, they will impact on the SMSF landscape.

The report makes the following key recommendations:

- **Exotic assets prohibited**

Investments in collectables and personal use assets should be prohibited, such as paintings, jewellery, antiques, wine, exotic cars and yachts.

- **In-house assets prohibited**

SMSFs should be prohibited from any in-house assets (ie the current 5% limit be cut to 0%). A transitional period, up to 30 June 2020, would apply to enable SMSFs to dispose of existing in-house assets.

- **Leverage and instalment warrants**

A review of the borrowing exception (i.e. instalment warrants) should be carried out in two years to ensure that borrowing has not become a significant focus of SMSFs.

- **Annual member disclosure**

The corporations legislation should be amended to ensure SMSFs' members are provided with key information annually.

- **Illegal early release**

Existing tax laws should be amended so that amounts illegally early released are taxed at the superannuation non-complying tax rate (currently 46.5%) rather than an individual's marginal tax rate.

- **Binding SMSF rulings**

The Tax Office should be given the power to issue binding rulings in relation to SMSFs.

GIC and SIC Rates Released

The Tax Office has advised that the general interest charge (GIC) and shortfall interest charge (SIC) rates for the first quarter of the 2010/11 financial year (ie 1 July 2010 – 30 September 2010) are as follows:

Rate	Annual (%)	Daily (%)
GIC	11.80	0.03232877
SIC	7.80	0.02136986

The Tax Office has also released the interest rate for overpayments, early payments and delays in refund for the first quarter of the 2010/11 income year. The applicable interest rate is 4.80%.

HOT TOPIC: Bamford's Case

The High Court has finally heard and handed down its decision in the Bamford case: *Bamford v Commissioner of Taxation [2010] HCA 10*.

The High Court unanimously dismissed both appeals from the Full Federal Court decision (*Bamford v FCT [2009] FCAFC 66*), basically meaning that the Full Federal Court's decision, and reasoning, stands. The decision from the highest court in the land provides certainty to trustees and their tax agents when it comes to working out how the income of the trust can be distributed to beneficiaries and taxed in their hands.

There were two main issues the court needed to decide on, each of which dealt with different years of income. Both involved the interpretation of S.97(1) of the ITAA 1936, which provides that, where a beneficiary is presently entitled to 'a share of the income of the trust estate', their assessable income must include 'that share of net income of the trust estate.'

1. Proportionate vs quantum approach: First, the High Court has confirmed that the proportionate approach rather than the quantum approach applies to the taxation of trustees and beneficiaries. Under the proportionate approach, beneficiaries are taxed on the trust's Section 95 net income in the same proportion that they have been distributed the trust's income.

2. How is a trust's income determined? The second issue decided by the High Court is that a trust's income is to be determined by reference to the trust deed. So, the trust deed can define income or empower the trustee to determine what is income and/or capital. In the absence of a definition of income in the trust deed (or a trustee's discretion), the trust's income will be determined under ordinary concepts, which does not include statutory income items such as capital gains.

The Tax Office has released a Decision Impact Statement outlining the Commissioner's view on the High Court's decision on a case which dealt with key elements of the tax law by which the liability of trustees and beneficiaries to tax is determined.

This Decision Impact Statement sets out a number of general propositions, as understood by the Tax Office, which have emerged from the High Court's decision. It covers the Tax Office's administrative treatment of tax returns for the 2009/10 and earlier income years. It also identifies a number of issues in relation to tax laws dealing with trust income which the Tax Office considers to remain unresolved.

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.