



veale partners
accountants & advisers

269 Centre Road
Bentleigh Victoria 3204
PO Box 354
Bentleigh Victoria 3204
T: 03 9557 9200
F: 03 9557 9400
info@vealepartners.com.au
www.vealepartners.com.au
ABN 92 771 069 548

Welcome to our September 2009 newsletter. With Spring in the air, we feel the positive effect of light and change. Now, think of what happens when the weather changes and think of what could happen to you, if you allow change in!!!!

Absolutely no one can overestimate the power of the mind and its role in our success! It is imperative to keep our minds right and on the right track if we are to achieve balanced success in our career, finances, health, emotions, relationships and spiritual lives.

The analogy we could use here is one of a radio station. For example, there may be a "Success" station. But the only way you can hear a radio station is to be tuned into it. Even a little off and you can't get the full effect. The same is true with our mind and success. If our minds and our thoughts get sidetracked, our success will get sidetracked. As our minds stay tuned to "success" our bodies will then carry out our success and we will begin to experience abundance!

We hope you find our newsletter helpful in assisting you to keep your finances in focus!

September 2009 Legislative Update:

Release of Draft Legislation to make liquidators liable for GST

An Exposure Draft Bill has been released by the Assistant Treasurer for consultation as a result of a decision last year of the Federal Court concerning insolvency and the application of the GST.

The amendments contained in the Exposure Draft Bill became necessary after the Federal Court decision in Deputy Commissioner of Taxation v PM Developments Pty Ltd [2008]. The court found that the GST liability for transactions occurring during the period of a liquidator's appointment is the liability of the company in liquidation and not the liquidator.

If left to stand, the Federal Court decision would mean that the GST liability would instead fall to the insolvent company, greatly reducing the likelihood of payment.

The amendments will apply from the commencement of the GST law on 1 July 2000.

Action to Reform Tax Treatment of Special Disability Trusts

A consultation paper has been released by the Assistant Treasurer on proposed reforms to the tax treatment of special disability trusts to ease the financial burden on people with disabilities as well as their carers and families, as announced in the 2009/10 Budget, by:

- ensuring that unexpended income of a special disability trust is taxed at the beneficiary's personal income tax rate, rather than automatically at the top personal tax rate plus Medicare Levy; and
- extending the CGT main residence exemption to special disability trusts.

Special disability trusts were established in 2006 to help families and carers provide for the current and future care and accommodation needs of a family member with a severe disability.

September 2009 Case Update:

Super Funds: Loans & In-house asset rules **JNVQ and Commissioner of Taxation [2009]** **AATA 522**

In a recent decision, the Administrative Appeals Tribunal (AAT) upheld a non-compliance notice issued to a self-managed superannuation fund (SMSF) for breaching the in-house asset rules.

The SMSF made loans to a company, which was a related party of the fund. The total of the loans exceeded the in-house asset rules limit of 5%.

The Tribunal noted that the loans remained outstanding for more than four years after the breach. In addition, it considered the trustees' offer of enforceable undertakings came too late in the day.

A regulated superannuation fund is, generally, restricted from having more than 5% of the total market value of its assets at the end of an income year invested in in-house assets. An in-house asset includes a loan to a related party of the fund.

- A non-complying SMSF is subject to a tax rate of 45% rather than the 15% concessional tax rate available to a complying fund.
- An SMSF cannot extend a loan to a member (or a member's relative), even where the in-house asset rules are not breached.

Adjustment to GST Input Tax Credit Claim for Property Developers

GXCX and Commissioner of Taxation [2009] **AATA 569**

The AAT has held that a property developer that claimed input tax credits on constructing 91 apartments on the basis that it intended to sell them on completion, but which then rented 22 of

them out (eventually selling 10 of them), had 'applied' the remaining rented apartments entirely for a non-creditable purpose (i.e. to make input taxed supplies of residential rent), and so was required to make an increasing adjustment to return the input tax credits previously claimed under Division 129 of the GST Act. The taxpayer could not prove that it had applied the apartments for a 'dual purpose', and the ATO held that an intention to sell in future did not amount to an actual 'application'. However the AAT allowed the penalties to be remitted.

HOT TOPIC: ATO Assistance for Small Businesses

The Tax Office has recently introduced two measures to assist small businesses in managing their tax payment obligations in the current economic climate. These measures are:

- twelve-month general interest charge (GIC)-free payment arrangements; and
- deferral of activity statement payment due dates.

These measures are available to businesses with an annual turnover of less than \$2 million (ie small business entities), subject to satisfying any other eligibility requirements.

Twelve-month GIC-free payment arrangements

Under this measure, a business with an activity statement debt can apply for a GIC-free payment arrangement. The GIC will be remitted for a maximum period of 12 months, provided the payment arrangement is maintained. In addition, there is no limit on the amount of debt under arrangement.

Activity statement debts such as GST and PAYG are eligible for a GIC-free payment arrangement. However, superannuation guarantee charge (SGC) debts are excluded because the GIC component in a SGC debt forms part of employees' entitlements. The GIC-free period commences on the day on which the arrangement is entered into and finishes on the day the final instalment is due. If a business defaults on the arrangement, the GIC-free period ends on the date of default.

A business will be eligible for a payment arrangement if the following conditions are satisfied:

- the business has an annual turnover of less than \$2 million;
- the business has an activity statement debt; and
- the business has negotiated a mutually acceptable and sustainable payment arrangement with the Tax Office that is entered into between 1 June 2009 and 30 June 2010 (inclusive).

Where a business has entered into a payment arrangement prior to 1 June 2009 and renegotiates a new arrangement after that date, the new arrangement will be treated as a GIC-free payment arrangement, subject to the eligibility criteria (as listed above) being satisfied.

Deferral for activity statements payment due dates

A business can also request a deferral of payment on its next activity statement. During the period of the deferral, no GIC will apply.

The maximum deferral period that may be granted will depend on the frequency a business lodges its activity statements. The table below sets out the maximum deferral period:

Lodgement frequency	Maximum deferral period
Monthly	One month
Quarterly	Two months
Annually	Two months

The deferral period commences from the original due date of the relevant statement. A separate request must be submitted for each activity statement for which a deferral is being sought.

The lodgement due date for an activity statement is not affected by a payment deferral. That is, the statement must be lodged on time. However, a business can request a lodgement deferral. Note that activity statements that are lodged late may be subject to failure to lodge penalties.

To be eligible for a deferral of payment, a business must:

- have an annual turnover of less than \$2 million;
- have an activity statement that is required to be lodged but is not yet lodged; and
- makes the payment deferral request on or before the original due date of the statement.

Activity statements eligible for a deferral include:

- monthly statements for the period May 2009 to June 2010 (inclusive);
- quarterly statements for the period June 2009 to June 2010 (inclusive); and
- annual statement for the 2008/09 income year.

However, activity statements or remittance advices that do not need to be lodged are not eligible for a deferral. These statements or advices can be identified by the red form type in the top left hand corner of a statement or a notice. In addition, income tax returns do not qualify for a deferral.

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.