McCarthy Salkeld
Chartered Accountants

Directors Jane Perry FCA
Phillip N. McCarthy FCA
Associates Brad Druitt CA
Thomas P. McCarthy CA

March 2013

client alert

tax news | views | clues

No splitting of rental income for couple

The Administrative Appeals Tribunal (AAT) has refused a husband's argument that he could split his rental income with his (now estranged) wife even though the commercial property was registered under his name only.

The taxpayer had lodged tax returns on the basis that the property was shared equally between him and his wife. However, the Commissioner formed the view that as the property was in the husband's name only, the rental income from that property belonged to him alone.

The husband claimed that the property was an asset of a "tax law partnership" between him and his wife. He also argued that the property was a "joint marital asset" held by them on a 50/50 basis, that the property was purchased from joint marital funds, and that both he and his wife each applied the income from the property for their own use.

However, the AAT was not satisfied with the evidence presented before it. It noted the absence of the wife from giving evidence, as well as a lack of written documentation, to prove there was a partnership. The AAT found that there was no evidence to show that the property was "jointly owned" or that the couple was in receipt of income jointly.

Winery losses cannot offset other income

A taxpayer has been unsuccessful before the AAT in seeking a discretion under the tax law to allow her to offset losses from a winery business against her other income.

The taxpayer had sought for the discretion to cover the income years ending 30 June 2010 to 30 June 2018.

She argued, among other things, that it was acceptable commercial practice in the winery business to stagger the plantation of vines over such a period.

However, the AAT sided with the Commissioner and held that the vines could be planted and become productive within five years. It therefore held that the taxpayer was unable to satisfy the relevant test for the discretion.

TIP: Under the tax law, an individual conducting a business (either alone or in a partnership) may offset losses from the business against income from other sources, such as wages, but only if certain tests are met.

If the individual does not meet any of the tests, the individual may seek the Tax Commissioner's discretion to allow him or her to claim the loss. Note that there are exceptions for primary producers and artists under the rules. Please contact our office if you have any questions.

Property developers denied GST margin scheme

The AAT has affirmed GST assessments levied at two property developers associated with the sale of real property between 2008 and 2009. The taxpayers had purchased property, which was eventually subdivided and on-sold. The taxpayers said they "never had an intention of not including GST in returns or defrauding the Commissioner" and that "they wanted their returns to be correct".

However, the AAT affirmed the Commissioner's assessments. It also decided that the margin scheme could not apply in the circumstances as there was no agreement in writing between the vendor and purchaser that the margin scheme was to apply to the property transaction.

TIP: The use of the margin scheme can provide a lower GST cost to the supplier than would normally be the case under the general GST rules. However, in addition to meeting various eligibility requirements, there must be an agreement in writing between the supplier and recipient that the margin scheme is to apply. Please contact our office for further information.

Superannuation top-up brings on 93% tax

The AAT has affirmed an individual's excess superannuation contributions tax liability. On 27 June 2008, the individual's employer made a "top-up" superannuation contribution to a clearing account. However, the funds were not allocated to the individual's superannuation account until 23 July 2008.

The AAT considered that the payment could not be said to have been "made" in the 2008 income year. This resulted in a $69,665 excess superannuation contributions tax liability for the individual, representing an effective tax rate of 93%!

The AAT also decided that there were no "special circumstances" in this case to warrant the Commissioner's discretion under the tax law to reallocate the amount to the 2008 year. The AAT said that the imposition of a tax under the tax laws – even a large tax such as the effective 93% tax rate in this case – is not in itself "special circumstances". There must be some "special circumstances" that exist beyond that in order to warrant the Commissioner's discretion.

TIP: This case highlights the importance of managing the timing of all concessional contributions against an individual's contribution caps for each financial year.

As if this was not challenging enough, the concessional contributions cap has been frozen at $25,000 for 2012–2013 and 2013–2014, regardless of age. This unfortunately sets a trap for the unwary that could generate unexpected tax liabilities if contributions intended for June in a particular financial year are not "received" by the fund until July in the following financial year.

GST and residential premises

The ATO has issued a suite of rulings on:

- how GST applies to supplies of residential premises;
- how GST applies to supplies of commercial residential premises and supplies of accommodation in commercial residential premises; and
- how GST applies to supplies of long-term accommodation in commercial residential premises.

In-house fringe benefits – rule changes on the way

The Government has recently said that the existing fringe benefits tax (FBT) concessions in the law were not intended to allow employees to purchase goods and services (usually sold by the employer to the public) from their pre-tax income through salary packaging arrangements. According to the Government, these employees are receiving tax-free, non-cash remuneration benefits for goods and services, while other employees who do not have access to such salary packaging arrangements must pay for the goods and services from their after-tax income.

The Government has introduced a Bill into Parliament in order to deal with this issue. It proposes to remove the concessional treatment for such "in-house fringe benefits" accessed by way of a salary packaging arrangement.

If implemented, the changes will apply to all salary-sacrifice arrangements entered into on or after 22 October 2012. For pre-existing arrangements, the new measures will not apply until 1 April 2014 – but the renewal of, or changes to, an arrangement will trigger the new provisions.

TIP: This proposed change means that employees will lose their ability to pay for in-house benefits with pre-tax salary without their employer incurring FBT.

However, it is essential to note that the concessional treatment of in-house benefits will be retained where the benefits are not provided via salary sacrifice. If you have any questions, please contact our office.

Goods taken from private stock

The ATO has updated the amounts the Commissioner will accept for 2012–2013 as estimates of the value of goods taken from trading stock for private use by taxpayers in certain specified industries.

For example, for a restaurant/cafe (licensed), the Commissioner will accept $4,350 (excluding GST) for each adult or child over 16 years of age. Note that the ATO intends to adjust the values annually.