

Client Alert September 2011

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Carbon tax to commence on 1 July 2012

The Prime Minister has announced details of the Government's plans to put a price on carbon. The plan, to commence on 1 July 2012, proposes to set a price of \$23 for each tonne of carbon pollution released into the atmosphere by Australia's biggest polluters. It is proposed that around 500 businesses will be required to pay for their pollution under the carbon pricing mechanism. The Prime Minister also announced tax cuts to assist households and support measures for businesses to assist them in adapting to the new carbon tax.

TIP: Although the carbon tax scheme will not commence until next year, businesses should consider how they may be affected both directly and indirectly by the scheme and whether they are able to access some of the compensation and support measures announced as part of the scheme.

No GST on damages paid for lost scaffolding

A taxpayer has been successful before the Federal Court in obtaining orders that there is no GST payable on damages it recovered when it lost its scaffolding to other parties. The taxpayer was in the business of hiring out its scaffolding in the building and construction industry. However, after various events, the scaffolding became intermingled with scaffolding belonging to another company. The taxpayer sued and won damages for the loss of its scaffolding. However, the Commissioner claimed GST was payable as a result of the ownership of the scaffolding vesting in the defendant. The Federal Court though disagreed and held the taxpayer in the circumstances did not make a "taxable supply" under the GST law. The Commissioner has appealed against the decision to the Full Federal Court.

Government set on countering phoenix activities

The Government has proposed tax law changes to counter fraudulent phoenix activities by company directors. Such activities involve the deliberate liquidation of a company to avoid paying tax liabilities and employee superannuation. The business then "rises" again and continues operations controlled by the same person, but under another corporate entity and free of debts. The proposed tax law changes include making directors personally liable for unpaid employee superannuation, and allowing the Australian Taxation Office (ATO) to pursue directors where certain tax debts remain unpaid and unreported three months after the due day.

TIP: The changes would place additional pressure on directors to ensure that their company's tax risk management policies and systems are up-to-date. It should also be noted that the ATO, as part of its Compliance Program for this year, intends to detect potential phoenix activities sooner through a targeted program of reviews and audits of directors.

New restrictions on SMSF investment in artworks

New regulations have been made to prevent self-managed superannuation fund (SMSF) trustees from gaining current day benefit from an investment in collectables and other personal use assets, for example artwork, jewellery, antiques, coins and stamps, wine or spirits and motor vehicles. The regulations are designed to ensure such investments are made for genuine retirement income purposes only.

TIP: The new regulations commenced on 1 July 2011, however, there is a five-year transitional period for assets that were held by an SMSF as at 30 June 2011.

Tax discount on interest income

The Government has released details on how it will implement its 2010-2011 Federal Budget proposal to provide individuals with a 50% tax discount on interest income from 1 July 2012. Under the proposal, the discount will apply on up to \$500 of interest earned on deposits held with any bank, building society or credit union, as well as bonds, debentures or annuity products. The Government proposes to increase the \$500 amount to \$1,000 from 1 July 2013 onwards.

Diviation 7A benchmark interest rate

The ATO has advised that, for the income year that commenced on 1 July 2011, 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 the associate of the shareholder) is 7.8%.

Income test for private health insurance rebate

The Government is again attempting to pass legislation to give effect to the 2009-2010 Federal Budget announcement to income test the 30% private health insurance rebate by introducing three new "Private Health Insurance Incentive Tiers". The changes propose to reduce the amount of private health insurance rebate an eligible person with a complying private health insurance policy is entitled to when that person has income for surcharge purposes above the relevant Medicare levy surcharge threshold. If enacted, the changes are proposed to apply from 1 January 2012.

Reasonable travel and meal allowance amounts

The ATO has announced the amounts the Commissioner considers are reasonable for the 2011-2012 income year in relation to claims made for: overtime meal allowance expenses; domestic travel allowance expenses; travel allowance expenses for employee truck drivers; and overseas travel allowance expenses.

Car depreciation limit and luxury car tax threshold

The ATO has released the following limits and thresholds for the 2011-2012 income year:

- car depreciation limit and luxury car tax threshold - \$57,466;
- fuel efficient car limit - \$75,375.

ATO targets FBT avoidance using employee share trusts

The ATO has warned taxpayers of an arrangement whereby effective after-tax benefits are provided to employees without a corresponding fringe benefits tax (FBT) liability to the employer. Under the arrangement, employees acquire share units in an employee share trust, which is funded by a loan from the trustee, which is in turn repaid by the employer from amounts salary sacrificed by the employee; however, the employer does not include the taxable value of the benefits provided as part of its FBT liability. The ATO says failure to include the benefit may trigger specific "anti-avoidance" rules under the FBT law.

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