

Client Alert February 2012

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GST treatment of new residential premises

The Government has recently introduced legislative amendments into Parliament which aim to clarify the GST treatment of new residential premises. Broadly, the proposed amendments to the GST law aim to ensure that sales or long-term leases of new residential premises by a registered entity are "taxable supplies", and that sales or long-term leases of other residential premises are "input taxed supplies". The amendments follow a court decision which had held that a developer's sales of newly constructed residential premises (constructed under a "development lease" arrangement) were input taxed supplies under the GST law. The Government said the outcome of the case was contrary to the policy intent of the GST legislation.

NOTE: The ATO has identified common GST errors concerning property transactions. Mistakes can often be made in working out when new residential premises are actually "new" and therefore taxable.

Court denies Franking Credits linked to "debt-like" securities

The majority of the Full Federal Court has confirmed that an anti-avoidance rule under the tax law applied to cancel franking credits that arose to an individual taxpayer from distributions paid on "debt-like" securities he had subscribed for in an Australian bank. The securities were Perpetual Exchangeable Resaleable Listed Securities V (PERLS V securities) issued by the Commonwealth Bank. The individual involved in the case is a representative taxpayer of some 33,000 investors. The taxpayer has sought an appeal against the decision in the High Court.

Pleasurecraft and the "wealthy"

In another example of the increasing use of data-matching, the ATO has advised that it will collect information from marine insurance companies relating to the ownership of pleasurecraft. The collection of data aims to identify individuals who have insured a pleasurecraft worth \$25,000 or more. The ATO said the information, in addition to other indicators of wealth, will assist it to identify high net worth taxpayers who should be reviewed under its "highly wealthy individuals" or "wealthy Australians" programs. The ATO considers someone to be highly wealthy if he or she, together with associates, effectively controls \$30 million or more in net wealth.

Director penalty notice regime under review

The Government intends to introduce tax law changes this year to expand the current director penalty notice regime. The changes aim to tackle fraudulent phoenix activity that caused a loss of revenue and a loss of employee superannuation entitlements. Phoenix activity is the practice of individuals incorporating a company, incurring debts in the entity and then liquidating it in order to avoid repaying those debts. Following the liquidation of one company, the directors of the company simply incorporate a new company and repeat the process all over again. The Government had attempted to introduce legislation last year but agreed to a parliamentary committee's recommendation to consult further on the proposed amendments. A concern raised during the committee's consultation was that honest company directors could potentially be caught by the proposed changes.

ATO valuation blocks CGT small business concessions

A taxpayer has been unsuccessful before the Administrative Appeals Tribunal in a case concerning a property sold in 2005 and a claim for the small business capital gains tax (CGT) concessions. The Tribunal held the taxpayer was not eligible for the concessions as it failed the (then) \$5 million "maximum net asset value" test. The matter turned on the valuations relied upon by the taxpayer and the Commissioner in valuing the property. The Tribunal preferred the Commissioner's valuations despite having concerns with various aspects, including assumptions made.

NOTE: Small businesses can access a range of tax concessions to reduce CGT on the sale of certain assets if certain conditions are met. One of the conditions is that the taxpayer must satisfy the "maximum net asset value" test. To pass the test, the net value of all the CGT assets of taxpayer (including affiliates and connected entities) must not exceed \$6 million (previously \$5 million).

Super contributions caps – more tinkering of rules

Due to deteriorating global economic and financial conditions, the Government late last year announced its decision to "pause" the indexation of the general superannuation concessional contributions cap for one year in 2013–14, so that it will remain at \$25,000. Indexation of the cap will be deferred until 2014–15, when it is expected to rise to \$30,000. The Government said this will also result in a pause in the indexation of the concessional contributions cap for individuals aged 50 and over and the non-concessional contributions cap.

NOTE: Contributions above the annual contributions caps are subject to excess contributions tax levied on the individual. Different annual contributions caps apply depending on your age and whether your contributions are classified as "concessional" or "non-concessional".

Tax discount for interest income deferred

The Government has announced its decision to defer the start date of the 50% tax discount for interest income for individuals for 12 months. The proposal is now expected to commence on 1 July 2013. Under the proposal, the discount would apply on up to \$500 (increasing to \$1,000 the following year) of interest earned on deposits held with any bank, building society or credit union, as well as bonds, debentures or annuity products.

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