

Client Alert February 2010

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Proposed Amendments to Tax Laws

The Government has introduced a Bill into Parliament which seeks, among other things, to:

- remove the CGT trust cloning exception and providing a limited CGT relief when transferring assets between two fixed trusts;

update the list of deductible gift recipients to include two new organisations and change the name of one organisation; and

- exempt the Income Recovery Subsidy payments to North Western Queensland flood victims from income tax

Proposed CGT-related amendments

The Bill seeks to repeal the 'trust cloning' exception to two CGT events. Currently, the exception ensures that a CGT event does not happen if a trust is created over a CGT asset or if the asset is transferred to an existing trust where the beneficiaries and terms of the transferring trust and receiving trust are the same.

The Bill also seeks to clarify that a mere change of trustee does not trigger a CGT event even if there is a change in the person who holds the office of trustee.

Further, the Bill seeks to provide an optional CGT rollover for the transfer of assets between 'fixed' trusts. The effect of the rollover will be to defer the making of any capital gains or losses in respect of the transfer. Broadly, the rollover will be available if:

- the trustees of the transferring trust and receiving trust both choose the rollover; and
- the same beneficiaries have the same interests in both trusts.

Income Recovery Subsidy

The Bill proposes to exempt the Income Recovery Subsidy for the North Western Queensland floods from income tax. The Bill also proposes to ensure the subsidy is not taken into account when calculating a taxpayer's entitlement to certain tax offsets (eg dependant tax offset).

Improvements to GST Administration

The Government has also introduced a Bill seeking to improve the administration of GST. The proposed amendments contained in the Bill include:

- providing a four-year period for claiming input tax credits and fuel tax credits;
- introducing a scheme whereby residents of Australia's external territories will be able to claim refunds of GST;

- allowing entities who facilitate supplies or acquisitions for another entity to utilise the simplified accounting procedures;
- treating an overpaid GST refund to a taxpayer as a tax liability; and
- clarifying the GST treatment of a supply without consideration to an associate.

A discussion of the key amendments follows.

Four-year limitation period

Under the proposed amendments, all entitlements to input tax credits must be claimed within four years from the day on which a taxpayer is required to give the Commissioner a BAS to which a credit would be attributable, subject to three exceptions. The three exceptions are where:

- the Commissioner provides a notice within the four-year period to a taxpayer requiring payment of an amount;
- the credits are linked to liabilities avoided as a result of fraud or evasion; and
- the taxpayer notifies the Commissioner of their entitlement.

