

## Client Alert March 2011

Tax news | Views | Clues

### Temporary Flood Levy Proposed

The Prime Minister, Julia Gillard, has proposed a temporary flood levy for individual taxpayers to help raise revenue to fund the reconstruction cost for areas of Queensland and elsewhere which were affected by severe flood damage earlier this year. The flood levy is proposed to apply for one financial year from 1 July 2011.

Under the proposal, individuals with a taxable income of \$50,000 or less will be exempt. However, a levy of 0.5% will be applied for individuals on taxable incomes between \$50,001 and \$100,000. A levy of 1% will be applied on taxable incomes above \$100,000. For example, under the levy, someone who has a taxable income of \$80,000 will pay \$2.88 extra per week.

Ms Gillard said those who receive the Australian Government Disaster Recovery Payment for a flood event in the 2010-2011 financial year will be exempt from paying the levy.

### Café Owners' Tax Bill Reduced after Cash Wages Taken into Account

In a recent case, the Administrative Appeals Tribunal found that amended tax assessments issued to husband and wife shareholders of a company that operated two cafés were excessive as they had failed to take into account deductions for cash wages paid to staff in determining the deemed dividend from the company, on which the assessments issued to the husband and wife were based. The Tribunal also found that the deemed dividend was to be further reduced to take into account the company's liability for general interests charge imposed on its unpaid tax liability and a loan the husband had made to the company. As a result of these adjustments, the amount of the deemed dividend of the company on which the husband and wife's assessments were based was reduced from around \$2.1 million to some \$630,000.

### Tax Help for Flood Victims

The wake of the recent severe flooding in Queensland and elsewhere has brought about a bevy of announcements from authorities offering tax help to assist those in need.

The Government has announced that clean-up and recovery grants of up to \$25,000 (paid to primary producers and small businesses directly affected by the flooding that has occurred since 29 November 2010) will be exempt from tax.

**TIP:** Has your business been severely affected by the flooding? You may be eligible for tax help offered by the authorities. Please call our office for further information.

In response to the floods, the Commissioner has also announced that the Tax Office will allow deductions for "bucket donations" of up to \$10 in individuals' 2010-11 tax returns without needing to keep a receipt.

### Same Trust, so Capital Gain Can Be Offset by Earlier Losses

The Commissioner has been unsuccessful before the Full Federal Court in seeking orders to overturn an earlier decision, which had held that a trust could apply earlier capital losses to offset the capital gain made from a property sale.

The Commissioner had argued that there was a lack of continuity of the trust following a series of events and that, essentially, the trust estate which made the losses was not the same trust which made the capital gains, which meant the trust could not apply the losses to offset the gains. However, the majority of the Full Federal Court did not accept the Commissioner's arguments.

## Superannuation Excess Contributions Tax Bill for Breach of Cap

The Administrative Appeals Tribunal has confirmed a superannuation excess non-concessional contributions tax assessment of \$86,867 against a taxpayer for breaching the \$1 million non-concessional contributions cap during the transitional period to 30 June 2007 (which existed at the time). The taxpayer had argued that a \$355,000 payment from her personal superannuation fund in June 2007 was received by her in a capacity as trustee before being on-paid to her new superannuation fund and, therefore, should be treated as a roll-over superannuation benefit. However, the Tribunal found the amount was received by the taxpayer and treated by her as an eligible termination payment before being on-paid to the new fund as a non-concessional contribution.

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

## Penalty for Late Superannuation Deduction Notice "Harsh"

In a recent case, the Administrative Appeals Tribunal determined that a 25% administrative penalty was properly imposed by the Commissioner on a taxpayer who failed to provide a notice of intent on time to claim a deduction for a personal superannuation contribution.

However, the Tribunal decided to remit in full the administrative penalty as it found it would be "harsh" for the taxpayer to pay a penalty of \$10,000 on top of the \$40,000 increase in his tax bill due to a shortcoming in paperwork.

**TIP:** To be eligible for a deduction for a personal superannuation contribution, the individual must:

- (a) give a notice to the fund trustee stating his or her intention to claim a deduction; and
- (b) Receive an acknowledgment of receipt of the notice.

The notice must be given by the time the person lodges his or her income tax return for the year in which the contribution is made or, if no return has been lodged by the end of the following income year, by the end of that following year.

## Superannuation Benefit and Payment by Cheque

The Tax Office has issued a determination which states that a superannuation benefit payable with a cheque or promissory note is "cashed" at the time the cheque or note is "received" by the member or beneficiary, provided the trustee's objective intention is to immediately transfer funds from the SMSF to the member or beneficiary. The Tax Office said this will only be the case where the money is payable immediately and available for payment when the instrument is received.

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