

## Proposed Amendments to Tax Laws

The Government has introduced a Bill into Parliament seeking to:

- make changes to the taxation of employee share schemes;
- tighten the application of the non-commercial losses rules; and
- require superannuation providers to transfer the balance of a lost member's account to the Commissioner.

A brief discussion of the important changes follows.

### Employee share schemes

Under the proposed amendments, any discount to the market value of an employee share scheme (ESS) interest will be taxed upfront. A \$1,000 tax exemption will be available if an employee and the scheme satisfy the

following conditions:

- the employee has an adjusted taxable income of \$180,000 or less;
- the employee is employed by the company (or its subsidiary);
- the scheme is offered to at least 75% of Australian resident permanent employees with three or more years service;
- the ESS interests provided must not be at real risk of forfeiture;
- the ESS interests offered under the scheme must relate to ordinary shares;
- the shares or rights must be held by the employee for three years; and
- the employee must not receive more than 5% ownership or control more than 5% voting rights in the company.

An employee can only defer the tax payable on the discount if:

- the ESS interests relate to ordinary shares and are subject to a real risk of forfeiture; or
- the ESS interests are acquired under a salary sacrifice arrangement, and the employee receives no more than \$5,000 worth of shares in an income year.

The Bill proposes that employers will be able to deduct an amount for shares or rights they provide to employees under an ESS if the scheme meets the conditions for employees to receive the upfront concession. However, the income test of \$180,000 is disregarded.

The amendments will apply to ESS interests acquired on and after 1 July 2009.

### Non-commercial losses

Currently, an individual who is carrying on a business either as a sole trader or a partner in a partnership can only apply losses arising from the business activity against their other income in an income year if the activity satisfies one of four objective tests. (Note special rules apply to taxpayers conducting a primary production or a professional arts business.)

The Bill will amend the non-commercial losses rules to prevent individuals with an adjusted taxable income of \$250,000 or more in an income year from offsetting losses from non-commercial activities against their salary, wages or other income. That is, individuals with an adjusted taxable income above the threshold can not access the tests.

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# small talk

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However, an individual can apply to the Commissioner to exercise the discretion not to apply the non-commercial losses rules.

The proposed amendments will apply to the 2009/10 and later income years.

## Collapsed MIS's and Tax Consequences for Investors

The Tax Office has released four draft taxation determinations which set out the Commissioner's preliminary views on the tax consequences for investors with interests in collapsed managed investment schemes (MIS's).

Broadly, the tax consequences are:

- a failure to plant trees intended to be established under a forestry MIS does not affect the timing of deductions for expenditure on seasonally dependent agronomic activities (eg tending seedlings prior to planting) where the requirements of the general deduction provisions and the prepayment rules relating to expenditure have previously been satisfied;
- a failure to plant all trees intended to be established under a forestry MIS means that

an amount cannot be deducted under the forestry MIS provisions; a deduction is not allowed under the forestry MIS provisions where a CGT event happens in relation to a participant's interest in a forestry scheme within four years after the end of the income year in which the participant first pays an amount under the scheme; and a deduction will not remain allowable under the general deduction provisions where a CGT event happens in relation to a participant's interest in a forestry scheme within four years after the end of the income year in which the taxpayer first incurred expenditure under the agreement.

- *The Government has announced that the tax laws will be amended to ensure the four-year holding period rule for forestry MIS's cannot be failed for reasons genuinely outside investors' control.*

## GST Consequences and Partner Taking Goods for Private Use

The Tax Office has also released a GST determination in which it states that when a partner takes goods held by

the partnership as trading stock for private or domestic use, there is a supply by the partnership to the partner that is related to the partnership's enterprise. The determination says a taxable supply by the partnership to the partner will arise if all the requirements for a taxable supply are satisfied. That is, the partnership will be required to remit GST on the supply to the Commissioner.

## Small Business Benchmarks

The Tax Office has released a range of benchmarks, known as the small business benchmarks, to assist business owners in assessing their business performance.

Two types of benchmarks for small businesses have been developed by the Tax Office:

- performance benchmarks, which are based on information small businesses report on income tax returns and business activity statements; and
- input benchmarks, which are based on information industry participants and trade associations provide to the Tax Office.

The benchmarks are grouped into categories based on the

business industry codes. These categories include:

- manufacturing;
- construction;
- retail trade;
- accommodation and food services;
- transport, postal and warehousing;
- rental, hiring and real estate services;
- administrative and support services; and
- personal services.

The Tax Office says that where businesses do not report within the ranges of the benchmarks, it may be an indication a business is not recording and paying tax on all of their transactions.

### Superannuation Clearing House Service

The Government has announced a superannuation clearing house service will be available to small businesses from July 2010, at no cost.

Small businesses can forward their employees' superannuation contributions to the clearing house for processing. In addition, employers will fulfil their superannuation guarantee obligations when payments of the correct amounts are made to the clearing house.

Registration for the service will commence from May 2010.

### The Art of Delegation

Wow! Christmas decorations in October! What's next, Easter Eggs in January! How many of us feel that time is flying by and we are struggling to get everything done in our schedules, but to no avail.

We don't panic you're not the only ones. It certainly does not help, when everything is marketed at you months in advance by retailers, making you feel that you are running out of time. "Don't bother trying to buy swimming costumes now, because all the winter lines are just coming out.

Perhaps I have exaggerated a little, but that is how I feel sometimes. "Never enough time in the day syndrome" is what I call it.

I get caught up in every little matter that crosses my desk, or my mind for that matter, instead of dealing with the matters that I can accomplish. What I mean is, I try to control every part of my life, which in turn requires a degree of my daily attention, and which in turn takes up small chunks of my day, until....well, you know what I mean.

When I was younger, and full of energy, I could keep up with the constant demands of staying in full control, but as I age, I am finding it difficult to keep up. To be fair though, as I have aged, my "life" has grown as well, and when you have a wife, children, business and friends, house hold chores and the payment of bills, it really is a great deal of things to deal with. Now, being in control is a wonderful thing, but the feeling of losing control, in my opinion, is not. This invariably creates stress...and I mean the bad kind....which can affect your health, mental outlook and your overall performance in your business ventures.

So what can we do about this?

Try this, and see if it helps. Try to delegate some of these responsibilities to the capable people around you. Have trust in others to achieve the job, if not entirely to your satisfaction, at least to the best that you can expect. Keep the work that you know you can achieve in a reasonable amount of time, and use others to the best of their abilities, to achieve the other tasks and report back to you. In our office, we have receptionists, personal assistants, accountants and principals. All of our staff has various roles to fulfill, but all are more capable than their titles may indicate. The accountants often delegate information gathering to me, so that they can continue to process work, instead of waiting on the phone. As a team, the work is free flowing, but as an individual the constant pressures of deadlines, various interruptions causing loss of clarity, focus, and stop-start work days, invariably reduces the output.

As individuals, we try to delegate work, but even many large companies have created a word for the pressures a company feels and how it delegates. They call it "outsourcing". In order to fulfill a good deal more work, they "delegate" or "outsource", some of what they do worse, so that they can focus on what they do best. By doing so, they achieve more and quite often, make better margins, because they know what the outsourcing will cost and they factor this into the earnings calculations.

So the next time you are suffering from the "Not enough time in the day" syndrome, think about your list of jobs and get some help with the ones that you do not enjoy and are not best at, and deal with the ones you can achieve without stress.





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## 50% tax break

available to eligible small businesses acquiring new vehicles before 31st December 2009\*

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\*Contact your tax adviser for full details and to determine if your business may be eligible.