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Proposed Amendments to the 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.

Agency provisions

The Bill seeks to allow entities that facilitate supplies or acquisitions for an entity through acting as an intermediary (eg billing and paying agents) to use the simplified accounting procedures (SAP).

Overpaid GST refunds

The Bill also seeks to ensure an overpaid GST refund to a taxpayer will be treated as a tax liability from the date of overpayment.

In addition, a taxpayer who receives an overpaid GST refund will be liable for interest charge from the date they receive the overpayment.

Supplies to associates

The Bill will ensure that a supply to (or from an associate) may constitute an input-taxed supply, a GST-free supply or a financial supply even where the supply is without consideration.

- The term 'associate' is defined broadly and depends on whether the taxpayer is a natural person, company, trust or partnership.

GST and Sale of Vacant Land

The Federal Court has affirmed that the sale of vacant land is a taxable supply despite a taxpayer receiving zoning permission from a council classifying the land for residential use. This was because the land lacked the "element of shelter and basic living facilities such as provided by a bedroom and bathroom" to be considered residential premises.

- The Commissioner's established view is that vacant land cannot constitute residential premises.
- Generally, the sale of residential premises is input taxed to the extent the premises are used predominately for residential accommodation.

Capital Losses and Continuity of Trust

Husband and wife taxpayers have been successful before the Federal Court in arguing that the net capital gain arising out of a disposal of properties by the trust could be reduced by previously unapplied net capital losses.

The Court rejected that a discontinuity had occurred because of the change in the interests of the unit holders in the trust. It said when comparing the trust estate in the income year of the capital loss with the trust estate in the income year of the capital gain, the interests of the holders of the issued units were the same even though the ownership of the units had changed.

Deductibility of Disability Superannuation Benefit Premiums

The Government has announced that it will introduce a transitional arrangement allowing complying superannuation funds to deduct insurance premiums for total and permanent disability superannuation benefits (TPD premiums).

The proposed transitional arrangement will allow funds to claim a deduction for TPD premiums from 1 July 2004 until 30 June 2011.

Trauma Insurance Policies and SMSFs

The Commissioner has provided his preliminary views on whether a trustee of a self-managed superannuation fund (SMSF) can purchase a trauma insurance policy for a member without contravening the superannuation legislation.

The Commissioner says a trustee will not contravene the superannuation legislation provided:

- any benefits payable under a policy:
 - are required to be paid to the trustee;
 - will become part of the assets of the SMSF until the relevant member satisfies a condition of release; and
- the acquisition of the policy is not made to secure some other benefit for another person.

GIC and SIC Rates Released

The Tax Office has released the general interest charge and shortfall interest charge rates for the third quarter of the 2009/10 income year (ie 1 January 2010 to 31 March 2009):

| Rate | Annual (%) | Daily (%) |
|------|------------|------------|
| GIC | 10.95 | 0.03 |
| SIC | 6.95 | 0.01904110 |

The Tax Office has also released the interest rate for overpayments, early payments and delays in refund for the third quarter of the 2009/10 income year. The applicable interest rate is 3.95%.

Important: This is not advice. Clients should not act solely on the basis of the material contained in this Bulletin. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Bulletin is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.