

# DICKFOS DUNN

CHARTERED ACCOUNTANTS

## Client Alert – April 2009

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### Proposed Amendments to Tax Laws

The Government has introduced the Tax Laws Amendment (2009 Measures No 1) Bill into Parliament. The amendments include:

- providing reductions in PAYG instalment amounts;
- changing the reporting requirement for employees' PAYG summaries; and
- changing the income tests for tax and social security programs.

### PAYG instalment reduction

In addition to the 20% PAYG instalment reduction for small businesses for the December 2008 quarter, the Bill proposes to allow the tax regulations to reduce PAYG instalment amounts in certain circumstances.

### PAYG summary reporting requirement

The Bill will ensure that reportable employer superannuation contributions (RESC) are reported on employees' PAYG summaries.

### Amendment of income tests

The Bill will amend the income tests used to determine an individual's eligibility for tax programs and/or social security programs.

Reportable superannuation contributions, RESC, adjusted fringe benefits total and total net investment losses will be included in income tests, where appropriate.

The tax programs and social security programs that will be affected include:

- Medicare levy surcharge;
- senior Australians tax offset;
- Government superannuation co-contribution scheme;
- mature age worker tax offset;
- deductions for personal superannuation contributions;
- Commonwealth Seniors Health Card; and
- Family Tax Benefit Part A and Part B.

In broad terms, RESC include salary sacrifice amounts and superannuation contributions above the minimum prescribed support (currently 9%).

Broadly, reportable superannuation contributions consist of two components: personal superannuation contributions for which a tax deduction is available and RESC.

- TIP: Total net investment losses will capture losses which arise from investment losses, margin loan arrangements and rental properties.
- TIP: Individuals who currently sacrifice an amount of their salary into superannuation should re-evaluate their eligibility for the government co-contribution payment.

### GST and Uncommercial Property Arrangements

The Tax Office has released two Alerts warning taxpayers that it is currently scrutinising GST and uncommercial property arrangements.

The two arrangements are:

- arrangements allowing a land owner to delay GST registration to minimise the GST payable under the margin scheme, but still claim a full input tax credit (ITC) on the acquisition of construction services from an associate; and

- arrangements in which an entity uses an associate to secure ITCs on the construction of residential premises for lease and defer the corresponding GST liability.

The Tax Office says that these arrangements could give rise to taxation issues, including an entity's entitlement to ITCs and whether the anti-avoidance GST provisions would apply.

## Personal Services Income Case

The Administrative Appeals Tribunal has found that a company was not conducting a personal services business (PSB) as it did not satisfy the results test. Accordingly, the Tribunal held that the income of the company should be attributed to a taxpayer as personal services income (PSI).

If a taxpayer satisfies the results test, the taxpayer will be deemed a PSB and therefore excluded from the PSI regime. The results test requires the taxpayer to satisfy three conditions:

- the income derived is paid to achieve a specific result or outcome;
  - the taxpayer provides any necessary tools or equipment to do the work; and
  - the taxpayer is liable to rectify any defects in the work.
- **TIP:** In determining whether a taxpayer meets the conditions of the results test, it is the economic substance and not the legal substance that is important.

## Directors Beware

A recent decision handed down by the Federal Court ordered the Commissioner to refund payments

made by a company when it was insolvent.

The Court also held that the directors of the company at the time of the payments were required to indemnify the Commissioner a percentage of the refund in respect of any loss resulting from the order.

Company directors should be aware of their obligations under the *Corporations Act 2001*. Where a company is insolvent and makes payments to the Commissioner, the company's liquidator can apply to a court to have the payments refunded.

However, if the payments are prescribed tax payments contained in the Corporations Act (eg, PAYG withholding amounts), the directors of a company may be required to indemnify the Commissioner against any losses.

## 'Blackhole' Expenses

In an Interpretative Decision, the Tax Office states that an entity cannot deduct the balance of any 'blackhole' expenses in the income years after the entity stops carrying on a business to which the expenditure relates.

The Tax Office says that this is because the entity will not exist for those income years.

Broadly, 'blackhole' expenses are expenditures incurred by a taxpayer when establishing, expanding or ceasing its business. For an expense to qualify as a 'blackhole' expense, it must not form part of the cost base of an asset, deductible under another provision of the tax laws and expressly made non-deductible.

The deductions for the expenses are spread over five years in equal proportions.

## Pension Drawdown Relief

The Government has announced that it will temporarily suspend the minimum drawdown requirements for account-based annuities and pensions for the second half of the 2008/09 income year (ie 1 January 2009 to 30 June 2009). That is, pensioners are only required to drawdown half of the minimum pension payment for this income year.

Pensioners who already have taken half of their minimum payment for 2008/09 means that a further drawdown will not be required until the 2009/10 income year.

Broadly, the minimum annual pension drawdown percentage is determined with reference to a pensioner's age and the asset values supporting the pension as at 1 July of an income year.

## FBT and Victorian Bushfires Appeal

The Government has announced that it will amend the FBT legislation from the beginning of the 2008/09 FBT year (ie from 1 April 2008) to ensure that donations to the Victorian bushfires appeal made under salary sacrifice arrangements do not result in an employer incurring an FBT liability.

Potentially, an FBT liability arises because of the definition of an associate contained in the FBT legislation, which can deem unrelated third parties as an associate of an employee.

- Donations collected through an employer's Workplace Giving arrangements do not give rise to FBT liabilities because the donations are from employees' post tax dollars.

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.