

Tax News, Views and Clues

Transfer of Property by Body Corporate Back to Developer

The Tax Office has recently released an interpretative decision regarding the timing of CGT event A1 in relation to the transfer of property from a body corporate.

A developer built a block of three units and each unit was sold to an individual. A specific clause was included in the sale contract that required the body corporate to resolve to form a new lot, which was then sold back to the developer. The purchase price reflected that the sale back to the developer would occur.

The question arose as to the timing of when the disposal of the new lot occurred. The Tax Office considered that the new lot was disposed of when the original sale contract was entered into, on the basis that the original sale contract provided all the terms and conditions for the transfer of the new lot.

Separate Business Premises and the PSI Test

In a recent decision, the Administrative Appeals Tribunal

(AAT) considered the meaning of 'business premises' for the purposes of applying the personal services income (PSI) rules.

The rules require that the business premises be separate from any premises used for private purposes.

In that case, the taxpayer successfully argued that the business premises were separate from the controller's residence.

The controller of the business was employed by the taxpayer to provide business consulting services to the taxpayer's clients. The business operated out of a two-storey building located on land which the controller used for private purposes.

It was found that the taxpayer satisfied the criteria set out under the business premises test despite the fact that the business premises and the personal residence were located on the same land. The business premises and the residence also shared common facilities such as a garage and driveway.

The AAT determined that to satisfy the test, it was not necessary for the business premises to be used solely for the business provided they were used 'mainly' by the business.

The issue has been referred back to the Commissioner for further consideration.

Main Residence Exemption — Testamentary Trusts

The Tax Office has recently released ATO Interpretative Decision ID 2006/34, which considers the CGT consequences arising from the transfer of a residential property from a testamentary trust to a beneficiary under the terms of a will.

A capital gain made on the transfer of a residential property from a deceased estate to a beneficiary may be disregarded under certain circumstances.

In this case, a property was left to five individuals. The trustee of the estate sold the other individuals' interests in the property to one of the individuals.

It was the view of the Tax Office that the exemption did not apply to the capital gain made on the sale of the four-fifths interest in the residential property.

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THE REPORT (Cont.)

GST — Improvements on the Land

The Tax Office recently released GST Ruling GSTR 2006/6 in relation to the meaning of the term 'improvements on the land', which is mainly relevant to supplies of real property under the margin scheme.

In this ruling, the Tax Office explains its view that in order for there to be 'improvements on the land', there must have been some human intervention, physically located on the land, which enhances the value of the land at the relevant date.

As a result of this ruling, taxpayers will be able to more accurately determine whether improvements have been made to the real property they propose to sell under the margin scheme.

This ruling also provides examples of human intervention that enhance the value of the land, as well as human intervention that is not considered to enhance the value of the land.

Non-commercial Losses

In a recent decision, the Administrative Appeals Tribunal (AAT) considered whether to uphold a decision made by the Tax Office in relation to the application of the non-commercial loss rules. The Tax Office deferred certain deductions to later income years for business activities undertaken by individual taxpayers.

Losses made by individuals in relation to business activities that fail to satisfy one of the relevant tests will be deferred to a later income year to be offset

against assessable income generated from those business activities in the future.

However, the Tax Office may exempt a taxpayer from the loss deferral provisions provided that special circumstances existed, such as drought or bushfire, which prevented the taxpayer from satisfying one of the required tests. An exemption may also be granted if it can be objectively proven that there is a specific period of lead time between the commencement of business and the production of assessable income.

In the case under review, the taxpayer undertook an olive growing business, which made losses in each year of operation and failed to satisfy one of the required tests.

However, the taxpayer argued that the business activities would have satisfied the required tests but for the occurrence of a drought.

In addition, the taxpayer provided independent advice detailing that a plantation olive crop would yield income within five years of establishment.

The Tax Office did not exempt the taxpayer on the grounds that, in the absence of the drought, the business would still have had failed the required tests.

In addition, the number of olive trees planted, which would yield income in five years time, would not provide enough income to satisfy the required tests.

The AAT upheld the decision made by the Tax Office not to exempt the taxpayer from the loss deferral provisions under the non-commercial loss rules.

Disaster Relief Payments

The Tax Office has released Tax Determination TD 2006/22, which provides that where a taxpayer who is suffering financial hardship as a result of a natural disaster has received a payment from a charity for the basic necessities of life, that payment will be exempt from income tax.

This applies to payments received for natural disasters such as a flood, drought or bushfire.

Trading Stock — Foreign Currency Exchange Gain

The Tax Office has released Taxation Determination TD 2006/29 which covers the situation where a taxpayer makes a foreign currency gain in relation to the payment for trading stock.

While special rules govern the calculation of the gain, the gain itself is ordinary income of a taxpayer.

This means that when a taxpayer is calculating their PAYG 'instalment income' for the purposes of preparing their BAS, they are required to include any foreign exchange gain in the instalment income.

➤ **TIP:** Some taxpayers may account for any foreign exchange gains and losses on a net basis; that is, they do not have separate accounts for both foreign exchange gains and foreign exchange losses.

The Tax Office has released a practice statement that allows for taxpayers to account for gains and losses on a net basis when calculating their PAYG instalment income.

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