

Tax News, Views and Clues

Loss Not Deductible on Sale of Land

In a recent decision, the Federal Court upheld a previous ruling by the Administrative Appeals Tribunal (AAT), finding that a loss arising on the sale of land purchased as a capital asset was not deductible.

The taxpayer, a shelf company, purchased a block of land from a non-resident businessman who had previously obtained the necessary approvals to build a dormitory for rental to overseas students. Shortly after acquiring the land, the taxpayer entered into a lease of the dormitory with a third party. Land development opportunities were only later considered as a possible option.

The businessman then became the beneficial owner of the taxpayer company, with the shares held on trust by his Australian solicitor.

The taxpayer eventually sold the land at a significant loss and claimed a capital loss in its tax return. The taxpayer, upon receiving further advice, obtained an amendment to the tax return, treating the sale of the land as a sale of a revenue asset, for the purpose of claiming an ordinary tax loss.

Both Courts found that the loss on the sale of the land was not deductible as a revenue loss, because the sale was clearly of a capital asset. In coming to its conclusion, the Federal Court indicated that a profit making intention or scheme cannot just be a subsequent consideration, but must be a 'not insignificant aspect' of the taxpayer's activities.

The Federal Court also upheld the AAT's penalty decision. The taxpayer has appealed this decision to the Full Federal Court.

Timing of Asset Depreciation

In a recent Taxation Determination, the Tax Office provided guidance in relation to when a depreciating asset is considered to begin its decline in value.

The determination indicates that a depreciable asset does not begin to decline in value until it is installed and ready for use. Merely holding a depreciating asset in anticipation of using it in carrying on a business is not sufficient to constitute use of the asset and hence the business cannot commence to depreciate the asset.

Change in Extent of Creditable Purpose

In a recent GST Ruling GSTR 2006/4, the Commissioner outlined his position on the meaning of 'creditable purpose' and 'extent of creditable purpose' in the context of claiming the correct amount of input tax credits. The ruling also provides further guidance regarding adjustments where there is a later change in extent of creditable purpose.

Broadly, if a taxpayer is registered or required to be registered for GST, it is liable for GST on taxable supplies it makes. The taxpayer is also entitled to input tax credits for creditable acquisitions made in carrying on its business.

Input tax credits can only be claimed for acquisitions or importations which are creditable. An acquisition or importation is undertaken for a creditable purpose to the extent that it is required in carrying on an enterprise and is not of a private nature.

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Principal: James Murchison B.Comm, FCA

Associate Director: Philippa Sheaffe B.Ec. CA

MURCHISONS SERVICES PTY LIMITED ABN 82 003 302 449

LEVEL 2, 53 BERRY STREET, NORTH SYDNEY NSW 2060. PO BOX 1506, NORTH SYDNEY NSW 2059. TEL: 9959 5599 FAX: 9959 5577

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The ruling provides examples where acquisitions and importations are only partly creditable. Under these circumstances, the taxpayer is only entitled to an input tax credit to the extent of the creditable purpose.

Small Business CGT Changes

Readers will remember from our 2006 Federal Budget edition, that the Government was aiming to pass a raft of changes to the small business capital gains tax concessions making it easier for taxpayers to gain access to them.

These amendments received Royal Assent on 12 April 2007, and were largely unchanged from when they were first reported.

Approximately 32 amendments to the legislation have been made, which are all designed to improve accessibility to the concessions and reduce the compliance burden for small business taxpayers.

The concessions allow small business taxpayers crystallising a gain on or after 21 September 1999 to discount that capital gain by 50%, provided they satisfy the relevant conditions and the asset has been held for longer than 12 months.

The amendments, which will apply retrospectively from 1 July 2006, affect the entry criteria to access to the concessions.

The 'controlling individual' (50% ownership) test has been replaced with a 'significant individual' (20% ownership) test. This test includes an interest in the voting power, and dividends and capital distributions of the entity.

Subsequently this test provides more stakeholders in the business the ability to access the concessions.

The maximum net asset value test totalling \$5 million now includes the negative asset values of the taxpayer (and a connected entity). This means that where a taxpayer has a company whose liabilities are greater than its assets, this negative value can be included as part of the taxpayer's net asset value calculation.

A subsequent amendment to the legislation, announced in a recent treasurer's press release, should also see the maximum net asset value test threshold increase to \$6 million from 1 July 2007.

Loan Repayments Held to be Fringe Benefits

In a recent decision the Federal Court held that loan repayments made by a company to its employees were in respect of their employment and were subject to fringe benefits tax (FBT).

The taxpayer company was in the business of purchasing race horses and forming syndicated partnerships. It was owned and managed by, and employed, a husband and wife. As a small business, working capital injections were required from time to time, so the two owners made loans to the company.

Personal expenses of the two owners were subsequently reimbursed by the company and this was treated as a repayment of the loans.

The Commissioner assessed those loan repayments as liable to fringe benefits tax.

Broadly, a fringe benefit is a right, privilege, service or facility which is conferred to an employee, or an associate of an employee which is in respect of the employee's employment.

The Federal Court agreed with the Commissioner's finding that the loan repayments were in respect of their employment, as the company had no other employees and would not be able to operate without their work as employees. In addition, the release of the debts owed to the owners was regarded as a release of their own personal obligations including a mortgage and school fees.

The taxpayer has appealed this decision to the Full Federal Court.

2007 Motor Vehicle Claims

The following table provides the updated rates for motor vehicle expense claims on a per kilometre basis for the 2006/07 income year.

Type of car	Engine capacity	2005/06 rate per km (cents)	2006/07 rate per km (cents)
Small car	0 – 1,600cc	55	58
Medium car	1,601 – 2,600cc	66	69
Large car	2,601+cc	67	70

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.