

# BDJ NEWS

Barnes Dowell James  
Chartered Accountants and Business Advisers

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## TAX NEWS, VIEWS & CLUES

### 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.

### 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.

### 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 state 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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## 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 under-taken 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.

## 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.



We would like to remind clients that we are able to provide competitive residential mortgages via our alliance with Mortgageport.

Our firm works with Mortgageport in providing fully featured mortgage products, that are structured to reduce the after tax cost of debt. We are in many cases able to process your application from our office ensuring quick responses to all inquiries.

This service has been a great benefit to many of our clients already and we encourage all clients to call for more information.

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# FEDERAL BUDGET 2006

## PERSONAL TAX CUTS

The 2006/07 Federal Budget will provide personal tax cuts worth \$36.7 billion over the next four years. Significantly, the top marginal tax rate will drop from 47% to 45% and will apply to taxable income over \$150,001.

The 42% marginal rate will also be cut to 40% and will apply from \$75,001 and the 30% band will again be widened. The resident tax rates for the 2005/06 and 2006/07 years are summarised below:

2005/06	
Income \$	Tax Rate %
6,001 – 21,600	15
21,601 – 63,000	30
63,001 – 95,000	42
95,001+	47

2006/07 as per 2005/06 Budget	
Income \$	Tax Rate %
6,001 – 21,600	15
21,601 – 70,000	30
70,001 – 125,000	42
125,001+	47

2006/07 as per 2006/07 Budget	
Income \$	Tax Rate %
6,001 – 25,000	15
25,001 – 75,000	30
75,001 – 150,000	40
150,001+	45

## SUPERANNUATION

The Government proposes dramatic changes to superannuation from 1 July 2007.

### Contributions

- Abolition of age-based limits for deductible superannuation contributions.
- Concessional deductible contributions subject to an effective annual ceiling of \$50,000 per person p.a. to age 75 (transitional rules for employees aged over 50).
- Deductible contributions exceeding \$50,000 taxed at the highest marginal rate.
- Undeducted contributions subject to an annual limit of \$150,000.
- Self-employed persons able to claim full deduction for their superannuation contributions.
- Employer ETPs unable to be rolled over.

### Benefits

- Abolition of Reasonable Benefit Limits.
- Benefits paid from a taxed fund to retirees from age 60 or above (either as a lump sum or pension) are tax-free.
- Benefits paid to persons aged 55–60 generally taxed under existing arrangements.
- Members who have reached preservation age may establish pension income streams or

leave money within superannuation indefinitely and draw on it at their discretion (abolition of compulsory withdrawal).

- Pensions subject to simplified rules.
- Lump sum death benefit payments to dependants are tax-free.

### Untaxed

#### Superannuation Schemes

For members aged over 60, lump sum benefits of up to \$700,000 taxed at 15%, any excess taxed at top marginal rate.

Pensions taxed at recipient's marginal rate less 10% offset.

### RESEARCH & DEVELOPMENT

R&D offset claim period will be extended.

The 175% premium deduction can now be allocated to individual companies in a group that has increased R&D expenditure over the last three years.

R&D expenditure by a registered research agency (RRA) is now eligible for the tax offset and may be claimed by all the companies in the R&D group.

### SMALL BUSINESS TAX

The Government has announced a greater alignment of the various small business tax concessions, including those

under the STS, CGT, GST, FBT and PAYG instalment regimes, including:

- Align the STS and GST definitions of 'turnover'.
- Align the period over which STS and GST turnover is calculated.
- Increase the STS annual turnover threshold from \$1 million to \$2 million.
- Increase the GST cash accounting turnover threshold from \$1 million to \$2 million.
- Removal of the requirement that related businesses must have total depreciating assets of less than \$3 million.
- STS taxpayers will be able to pay quarterly PAYG instalments on the basis of GDP-adjusted notional tax.
- The depreciating asset rollover relief has been extended in certain circumstances.

These reforms are effective 1 July 2007.

### DEPRECIATION

The diminishing value rate applied for calculating depreciation deductions will increase from 150% to 200% over the prime cost rate.

The new rate will apply to assets acquired on or after 10 May 2006.

### WINE EQUALISATION TAX

There will be an increase in the producer rebate from \$290,000 to \$500,000.

## SMALL BUSINESS: CGT

The Government has announced the following changes to the small business Capital Gains Tax (CGT) concessions:

- The net asset value test will increase from \$5 million to \$6 million.
- A 'significant individual' test based on 20% ownership will replace the controlling individual test (based on 50% direct ownership).
- Modifications to the operation of the 15-year exemption, the retirement exemption, the small business rollover and the application of the concessions to partnerships.

These changes will apply to CGT events that occur in 2006/07 and subsequent income years.

## VENTURE CAPITAL

The Government has announced a new investment vehicle called an early stage venture capital limited partnership (ESVCLP). The ESVCLP will allow income and capital gains to flow through to venture capital investors on a tax-exempt basis.

The rules will be limited to funds of up to \$100 million investing in companies with total assets of up to \$50 million. These rules will replace the existing PDF concessions.

## TRUSTS

The following new integrity measures concerning trusts have been announced:

- Resident trustees will be required to pay the tax on distributions to non-resident trustee beneficiaries from 1 July 2006.
- Trustees of closely held trusts to identify and report first-tier trustee beneficiary receipt of trust distributions only, (rather than the ultimate beneficiary(ies)).

## ELECTED FAMILY TRUSTS

Family trust elections and interposed entity elections will be able to be revoked or varied in certain limited circumstances. The definition of family group will be broadened to include lineal descendants. Trust distributions to certain former members (including ex-spouses) will be exempt from family trust distribution tax.

## GST

Additional funding of \$46.4 million directed towards increased audit activity to raise an additional \$190 million.

GST integrity changes to the Margin Scheme to ensure anti-avoidance measures apply to GST and property.

Import entry threshold for courier and post will be raised to \$1,000. This will mean that a person can privately import goods to the value of \$1,000 without paying GST or import duty.

Backdating of the GST measure to 1 July 2000 to ensure that GST does not apply to bonus supplies of credits and text messages for phone cards.

GST on vouchers will only need to be remitted on the face value of the vouchers.

## HIGH WEALTH INDIVIDUALS

The Government has provided the Tax Office with additional resources to fund its tax compliance program for high wealth individuals and associated entities.

The High Wealth Individual Taskforce will focus on the timely identification of tax compliance risks and undertake additional audit activity for high-risk cases, including closely held private company groups.

## ABOLITION OF STATE TAXES

The Government has announced that it has agreed a timetable with the states and territories for the elimination of a range of state taxes.

This agreement is in line with the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations.

It has been agreed that the states will abolish stamp duty on non-quotable marketable securities, leases, mortgages, bonds, debentures and other loan securities, credit arrangements, instalment purchase arrangements, rental arrangements, cheques, bills of exchange and promissory notes, and business conveyances other than real property.

While the timing will differ in each state, all of the above will be abolished by 1 July 2012.

## FBT CHANGES

- FBT rate reduced from 48.5% to 46.5% with effect from 1 April 2006.
- In-house fringe benefits tax-free threshold increased from \$500 to \$1,000, with effect from 1 April 2007.
- Minor benefits threshold increased from \$100 to \$300, with effect from 1 April 2007. Tax Office to review existing guidelines and provide further clarification in relation to what is 'irregular' and 'infrequent'.
- Reportable fringe benefits threshold increased from \$1,000 to \$2,000 (pre gross-up), with effect from 1 April 2007.

## FUEL TAX CREDIT REGIME

The Energy Grants (Credits) Scheme will be replaced by the Fuel Tax Credit regime (FTC).

The FTC will have dramatic impact on road users and users of fuel off-road.

The FTC will be claimed through the Business Activity Statement (BAS).

A draft of the BAS has been released. Due to the claiming of credits through the BAS, the Tax Office has indicated that a GST review will also focus on any fuel tax credits claimed.