



COMMON MISTAKES IN CLAIMING RENTAL PROPERTY DEDUCTIONS

The Tax Office has recently released a guide to help taxpayers claim deductions on a property they lease. The guide outlines common mistakes made on income tax returns, some of the more common of which are outlined below:

- claiming the cost of improvements such as remodelling or adding sections to the property as repairs when these should be claimed as capital works deductions;
- over-claiming deductions of interest where a loan was taken for both private and income-producing purposes;
- claiming deductions for items that have been incorrectly identified as depreciating assets; and
- claiming deductions on a property that is only available for rent for a portion of the year (i.e. a holiday house).

HOME LOAN INTEREST DEDUCTION DENIED

In a recent decision, the Administrative Appeals Tribunal (AAT) concluded that interest deductions claimed by a taxpayer for borrowings to invest in a unit trust to construct a family home were not deductible.

In this case, the taxpayer purchased a parcel of land and transferred it to a personal unit trust. The unit trust entered into a contract to erect a house on the land. On transfer of title, the taxpayer issued units in the trust and drew down on the loan funds to make payments under the building contract.

The taxpayer claimed a deduction for the interest on the loan but the Commissioner disallowed the

deduction. The AAT concluded that there was not the necessary connection between the interest payments and the unit trust producing assessable income.

The AAT also concluded that this arrangement will attract the anti-avoidance rules under Part IVA, as the sole or dominant purpose of the arrangement was to obtain a tax benefit.

FALSE DETAILS ON TAX RETURN

In a recent decision, the AAT upheld the Commissioner's decision to impose penalties on a taxpayer who had lodged an income tax return with incorrect details through an agent.

The taxpayer had their income tax return prepared by a tax agent and failed to note that there were disclosure errors regarding certain employment and assessable income details.

The AAT concluded that the burden of proof rested with the taxpayer, and disallowed the taxpayer's penalty objections.

DISTRIBUTION OF SHARES ASSESSABLE AS DIVIDEND

In a recent test case, the Federal Court held that a distribution of shares paid to the taxpayer was out of company profits, and therefore, was assessable as a dividend.

The taxpayer received shares in the company's subsidiary as a result of a corporate restructure. This distribution of shares resulted in a reduction of the company's retained earnings, which was disclosed in the company's financial statements.

It was found that the 'stock dividend' was funded by profits out of retained earnings and that there was no evidence to suggest otherwise.

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LONGER PERIOD FOR COMMISSIONER TO AMEND TAX RETURNS

Amendments have been made to the Income Tax Regulations 1936 to exclude high-risk categories of taxpayers (individuals and small businesses who have elected and are eligible for the simplified tax system) from the standard two-year tax return amendment period. These excluded taxpayers will have a four-year amendment period.

It will apply to the following:

- taxpayers involved in non-arm's length transactions between associates;
- taxpayers involved in transactions to which an unpaid present entitlement applies;
- taxpayers involved in transactions involving Division 7A of the *Income Tax Assessment Act 1936* (ITAA 1936);
- employee share schemes; and
- income from foreign transactions.

These amendments commenced on 27 June 2006 and will apply from the 2004/05 income year onward.

MAIN RESIDENCE CGT EXEMPTION

A person's main residence will generally be exempt from CGT upon disposal.

A Tax Office fact sheet indicates that, in certain circumstances, the full exemption may not apply and only a partial main residence exemption may be available. This will occur when the taxpayer's partner and/or dependants have separate homes, part of the property has been used to produce assessable income, or the land area is more than two hectares.

As a general rule, a person is only entitled to the exemption on one property for any particular period. However, where a person purchases a new home before disposing of an old one, both dwellings may be treated as the person's main residence for up to six months.

OTHER KEY ISSUES

- The FBT car parking threshold has increased to \$6.62 from \$6.43, effective from 1 April 2006.
- A recent Tax Office ruling deemed that a government rebate, received by a rental property owner for an energy saving appliance, is assessable income.

- The CGT improvement threshold has been increased from \$109,447 to \$112,512 for the 2006/07 income year. This applies when a pre-CGT asset is a separate asset or where a rollover may be available.

- The Commissioner of Taxation has determined that there is no CGT liability where an asset is transferred from a jointly managed superannuation fund to another self-managed superannuation fund as a result of a marriage breakdown.



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