



BDJ MERGER WITH P J HENNESSY & CO

In February this year PJ Hennessy & Co, Chartered Accountants, merged with our firm. The principal, Paul Hennessy, initiated this step because he formed the opinion that such a move would provide a depth and breadth of service that was impossible for him to provide to his clients as a sole practitioner. Of particular relevance to Paul were the tax, superannuation and financial planning capabilities of our firm.

The merger was also enhanced by Greg Eyears joining BDJ as a manager. Greg has assisted Paul over the last several years in the servicing of a number of his key clients.

Paul is a Fellow of The Institute of Chartered Accountants in Australia ("the Institute") and specialises in a number of areas, including forensic accounting. He has been a senior partner in a major international accounting firm and a member of Institute committees dealing with technical accounting and auditing matters.

Paul works extensively with members of the legal profession in his forensic accounting practice.

MAIN RESIDENCE EXEMPTION - BURDEN OF PROOF

In a recent decision, the Administrative Appeals Tribunal (AAT) held that a taxpayer failed to prove that a property they had constructed and used was their main residence and therefore eligible to concessional tax treatment on sale.

Broadly, any capital gain or loss from a dwelling is ignored for capital gains tax (CGT) purposes where it can be proven that the dwelling was the taxpayer's main residence throughout the ownership period, and was not used for an income producing purpose. If the property was used for an income producing purpose during part of that period, only part of the capital gain or loss is ignored.

The taxpayer purchased a vacant block of land intending to build a house. After the house was built, the taxpayer sold the land. Three months prior to the settlement, the taxpayer moved into the house, claiming it as their residence. Upon selling the property, the taxpayer did not disclose the capital gain, relying on the main residence exemption. The Commissioner subsequently assessed the taxpayer on the net capital gain contending that the taxpayer failed to prove that the property constructed was actually their main residence.

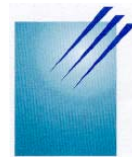
The Commissioner indicated that while there is no set definition of 'main residence' some factors lend themselves to provide guidance with respect to the definition including:

- the length of time the taxpayer has lived at the residence;
- the connection of utility services to the residence;
- the address to which mail is directed; and
- the taxpayer's address on the electoral role.

The AAT agreed with the Commissioner indicating that the taxpayer's failed to prove that the property was their main residence.

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BONA FIDE REDUNDANCY

The Tax Office has released a decision impact statement, in relation to a recent AAT decision regarding whether or not a payment was made in consequence of bona fide redundancy where the terminated employee was both an employee and a director of the company.

In that case, the Commissioner amended the taxpayer's assessment to include the amount of the redundancy payment as assessable income, contending that because the taxpayer was a director of the company, the payment was not in consequence of termination of employment. The AAT disagreed with the Commissioner in this instance, finding that the payment was made as a result of the genuine closure of the business.

Following on from this decision, the Commissioner, in his decision impact statement, has indicated that the decision is limited to the facts of the particular case. In circumstances where the factual scenario is essentially the same, the Commissioner will seek to apply the decision.

The decision impact statement also indicates that where an employee consents to terminating their own employment, it can still potentially be a situation of bona fide redundancy in appropriate circumstances.

BENCHMARK INTEREST RATES

The Tax Office recently released the benchmark interest rate for the 2007/08 income year for the purposes of the shareholder loan rules. The new rate is 8.05%, which is up from 7.55% for the prior year.

TAX COMPLIANCE TOOLS

The Tax Office recently released three web-based decision tools to assist employers in understanding how to meet their tax and superannuation obligations. These tools include:

- an employee/contractor decision tool;
- a superannuation guarantee eligibility decision tool; and
- a superannuation guarantee contributions calculator.

WORK DEDUCTIONS DISALLOWED

In a recent decision, the AAT disallowed part of a taxpayer's work expense deductions incurred during the taxpayer's time working as a fitness instructor.

Broadly, a deduction for workplace expenses is allowed where the expenditure is incurred in carrying out the duties of the taxpayer's employment. In most instances, some degree of substantiation is required for certain expenses such as meals, accommodation, subscriptions and the like.

The taxpayer contended that as a fitness instructor it was part of her role to have a constant change of clothes due to the rigorous nature of the activity and to maintain her personal presentation. The taxpayer contended that as an employee of a prestigious resort, it was her responsibility to always be well groomed and presentable as part of building client loyalty and goodwill.

The claims were originally accepted, however, the taxpayer became the subject of an audit and as a result, the Commissioner

amended the taxpayer's assessments disallowing all of the taxpayer's work expense deductions.

The AAT found that in many instances the taxpayer had over-exaggerated her work-related expenses and agreed with the Commissioner in disallowing the majority of the deductions. The issue was remitted to the Commissioner to make the appropriate amended assessments.

Tip: The Tax Office recently announced that it will once again be on the lookout for over-claiming of work deductions in the 2007 income tax year, and will be focussing on several occupations including:

- tourism and travel consultants;
- fitness and sporting industry employees;
- construction and trades people;
- guards and security employees; and
- a continuing focus on mining employees.



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FAILURE TO LODGE BAS ON TIME - PENALTIES UPHELD

In a recent decision, the AAT held that prolonged and knowing non-compliance with the obligation to lodge Business Activity Statements (BASs) on time justifies the application of administrative penalties, unless the taxpayer can prove otherwise.

The taxpayer had registered for GST from 1 July 2000 and was due to account for GST on a quarterly basis, with his first BAS, for the September 2000 quarter due for lodgment by 28 October 2000. However, the taxpayer did not lodge any BASs until December 2004.

In this case, it was held that the reasons for non-compliance provided by the taxpayer were insufficient and, accordingly, the AAT upheld the Commissioner's decision to impose penalties of \$10,450 for prolonged late lodgment of BASs.

The result of this case serves to provide taxpayers with guidance concerning the application of late lodgement penalties.

RESTRUCTURING JOINTLY HELD SHARES

In a recent decision, the Administrative Appeals Tribunal (AAT) confirmed that where assets held in joint names are divided between the owners, CGT will apply.

In this case, two brothers owned a parcel of shares jointly and undertook a transfer so that each could own half of the shares in their own right. The taxpayers submitted that CGT would not apply to the restructure of the jointly held shares as it was always intended that the shares were held equally.

The Commissioner argued that CGT did apply on the basis that the share register showed that each share was held jointly, and therefore a part disposal of each share was required to divide the shares between the brothers.

The AAT agreed with the Commissioner that CGT applied to the restructure, concluding that there was not sufficient evidence to suggest that the shares were not jointly held or not intended to be jointly held. Furthermore, the AAT found that no CGT rollover relief was available in relation to the restructure.

SUPERANNUATION RATES AND THRESHOLDS

The Tax Office recently released an updated guide providing the key rates and thresholds in relation to superannuation contributions and benefits that apply from 1 July 2007.

Some of the thresholds rates are included below:

- The concessional superannuation contributions cap for the 2007/08 year will be \$50,000 (these include contributions made under a salary sacrifice arrangement).
- Between 1 July 2007 and 30 June 2012 a transitional concessions cap will apply to persons aged 50 and over. For persons aged 50 or over, the annual cap will be \$100,000.
- The employment termination payment (ETP) cap for concessional tax treatment for the 2007/08 income year will be \$140,000. Any amount paid in excess of this ETP cap amount will be taxed at the top marginal rate.

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