



Salary sacrifice

A new ruling applies to clarify "salary sacrifice arrangements" (SSA) for an employee who enters into an effective and subsequently takes leave that accrued prior to the commencement of the SSA. The exchange of an entitlement to take leave for another benefit will cause the entitlement to be paid as salary or wage and to be derived as ordinary income. Similarly, the taking of leave that accrued prior to the commencement of the SSA in the ordinary course of employment will not cause the SSA to be ineffective.

Example of effective SSA while taking leave

Michelle has had a successful career while employed by her current employer for many years. On promotion to the executive level, Michelle is invited to enter into a SSA. Michelle's SSA includes the provision of a motor vehicle. Seven months after her promotion, Michelle takes long service leave of six weeks. The long service leave had accrued prior to the commencement of the SSA. Michelle uses the motor vehicle to travel interstate whilst on long service leave. Notwithstanding that the long service leave accrued prior to the commencement of her SSA, the SSA remains effective while Michelle is on leave.

Source: TR 2001/10

No Deduction on Cray Pot

A taxpayer purchased an entitlement for a Cray fishing pot. Under a purchase agreement, the taxpayer transferred the pot entitlement to a person holding a Cray fishing licence. The taxpayer receives an annual lease payment for the transfer of the pot entitlement. He is not entitled to a deduction for the purchasing expenditure.

A deduction is allowed for all losses and outgoings to the extent to which they are incurred in gaining or producing assessable income except where the outgoings are of a capital, private or domestic nature, or relate to the earning of exempt income. The purchase of a Cray pot entitlement is regarded as capital expenditure. However only if an enduring benefit is gained is the expenditure regarded as capital. Purchasing the Cray pot entitlement is a 'once only' expense. The taxpayer has gained an enduring benefit in the form of lease income.

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ATO Rules on Prepaid School Fees

The ATO has released a Class Ruling concerning the prepayment of school fees and the discount from the usual amount of school fees the prepayment attracts. The ruling states that the amount of the prepayment is not an allowable gift, and that the amount of the discount is not assessable income of the responsible parents. Source: ATO Class Ruling CR 2002/49

excluded from assessable income where a depreciating asset is lost or destroyed. A taxpayer can make this choice to the extent that the amount is applied in reduction of the cost or opening adjustable value of one or more replacement assets.

It is considered that the theft of a depreciating asset falls within the meaning of the words lost or destroyed because the taxpayer is deprived of the use of the asset and no longer possesses the asset.

The taxpayer may therefore exclude some or all of the amount that would otherwise be included in assessable income to the extent that the amount is applied in reduction of the cost of one or more replacement assets.

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ATO Watch over Scholarship Trusts

A recent Taxpayer Alert describes arrangements where an Education or Scholarship Trust is established by relatives of a student ("a beneficiary of the trust") for the provision of their education. The income derived from the Trust assets is "paid" to the student as a scholarship, bursary, educational allowance or educational assistance, and is claimed to be exempt income. The Alert claims that these arrangements seek to convert an assessable income distribution

from a trust to a distribution that would be exempt income. In a variation to these arrangements, some Education or Scholarship Trusts are claiming education expenses as deductions.

The ATO is concerned about issues such as: (i) whether the distribution is exempt income of the student; (ii) whether a student who is a minor, is under a legal disability notwithstanding a provision to the contrary in the Trust Deed; and (iii) the application of Pt IVA. Source: ATO Taxpayer Alert 2002/6

Simplified dividend imputation update

Under the new "simplified" dividend imputation system that has applied from 1 July 2002, an entity that makes a frankable distribution must give the recipient a "distribution statement". For a public company, the distribution statement must be given on or before the day on which the distribution is made. Under s 202-80 ITAA 1997, that distribution statement must be in the "approved form" as an interim measure until the ATO issues a tax ruling. Source: ATO

Yachtie gets fuel rebate

The AAT has held that a company that chartered yachts and motor cruisers to customers to drive themselves around the Gippsland Lakes was entitled to diesel fuel rebate of \$9585.98 paid to it under the Diesel Fuel Rebate Scheme. The AAT found that Riviera Nautic purchases diesel fuel for use by it in marine transport in the course of carrying on an enterprise and was therefore entitled to the rebate.

Source: (AAT Case [2002] AAT 657, Re Riviera Nautic Pty Ltd and

FCT, AAT, Dwyer SM, Melbourne, Ref No: VT01/1102-03)

Super split with Marriage split

Family Law (Superannuation) Amendment Regulations have been amended. Minor technical and drafting changes were made to reflect the Government's family law and superannuation reforms relating to the valuation of superannuation interests, the entitlement of parties when interests are divided, and the provision of information to parties before and after division occurs. Some of the amendments include:

- provide for additional types of payments in respect of a superannuation interest of a party to a marriage that can not be split;
- prescribe the entitlement of a non-member spouse, under a base amount payment split (one of the 2 kinds of splits that can be made under Pt VIII B of the Family Law Legislation Amendment (Superannuation) Act 2001 of most superannuation interests), when the superannuation interest pays benefits in the form of an allocated pension;
- where the member spouse has re-married and split his or her superannuation interest 2 or more times, the regs prescribe the entitlement under a base amount payment split of any second or subsequent non-member spouse when a payment becomes payable in respect of such an interest;
- prescribe the category of persons who can provide independent financial advice to a non-member spouse

about the financial effect of any waiver of entitlements under a payment split, and certify that the advice has been provided.

Source: Commonwealth Gazette, 1 August 2002

Deemed Loan not lead to deemed Dividend

Where the recipient is another company, does a deemed dividend arise out of a particular set of circumstances in which a private company is deemed to have made a loan ?

The circumstances are: (i) a private company becomes presently entitled to an amount from the net income of a trust; (ii) the trustee has not paid that amount to the company; and (iii) the trustee subsequently makes a loan to a shareholder in the company (or an associate). In such circumstances, s 109UB(1) deems the company to have made a loan to the shareholder (or associate). The deeming effect of s 109UB(1) is the same regardless of the nature of the recipient of the deemed loan, ie it does not matter if it is another company.

The key issue then arises: can such a (deemed) loan give rise to a deemed dividend under s 109D where the recipient is another Company?

The answer is "no". Because s 109K excludes a loan made to another company from being treated as a deemed dividend under s 109D. This exclusion applies equally to actual loans and loans which come about through the deeming effect of another Div 7A provision (like s 109UB(1)). Source: ATO