

Tax Update May 2003



Trust Audits due 15 May

Tax lodgements due 15 May

Employers and Super payments

From 1 July 2003 employers must make their superannuation contributions (SGC) on a quarterly basis. The due date to make these contributions is the 28th day following the end of the relevant quarter. Payment of the SGC and lodgment of the statement is due on the 14th day of the second month following the end of the relevant quarter.

Employers do not have to make superannuation contributions for some categories of employees. These categories include employees who are:

- paid less than \$450 in a month
- aged 70 or over
- under 18 years of age and working 30 hours a week or less
- paid to do private or domestic work for 30 hours a week or less for a non-business employer
- have vested benefits in excess of their pension reasonable benefit limit (RBL) and elect not to receive any more employer contributions, or

- covered by a Bilateral superannuation agreement

No Capital Loss or Gain on Super withdrawal

A taxpayer cannot offset a loss incurred on the withdrawal of their investment in a superannuation fund against capital gains. A taxpayer purchased a right to receive an allocated pension from a superannuation fund and then withdraws from this fund. The amount paid out is less than the amount the taxpayer originally invested. This is because a capital gain or capital loss is disregarded if it is made from a CGT event happening in relation to a right to an allowance, annuity or capital amount payable out of a superannuation fund or approved deposit fund. So only the eligible termination payment provisions apply. Source: ATO ID 2003/193 & 194

Interest rate guess

Bank bill futures are mostly interest rate sensitive and this December's contract yield of 4.55% suggests that interest rates will reduce by year-end.

Source: AFR 7th April 2003

Big wind brings CGT

A person acquired land and a building after 19 September 1985 and used it as a rental property

throughout the time that it was owned. The building was destroyed in a cyclone and the vacant land was then sold.

While you can usually choose to apply the main residence exemption to a sale of vacant land, it requires that a dwelling that is your main residence be accidentally destroyed. But at the time the dwelling was accidentally destroyed, it was not the main residence. So any capital gain or loss arising from the sale of the vacant land applied.

Source: ATO ID 2003/212

Care with cupboard repairs

A taxpayer cannot deduct the expenditure on the replacement of kitchen cupboards installed in a rental property as repairs because it is capital in nature even though the replacement of the cupboards did not result in a significant improvement in the efficiency or function of the kitchen.

The taxpayer has owned and rented a residential property for many years. While the property was tenanted, the taxpayer replaced the old kitchen fittings, including the cupboards. The old cupboards had deteriorated through water damage and wear and tear. The new fittings were of a similar size, design and quality as the originals. The new cupboards were of the same type and standard of material (or the modern equivalent of that material) as the old ones. The layout and design of the kitchen

did not alter substantially from that of the original. The differences were that:

- ◆ the old sink was replaced with a smaller sink and, as a consequence, provided more bench top space; and
- ◆ a removable cupboard replaced the space previously available for a dishwasher.

Because the cupboards are a separately identifiable thing representing an entirety and maintaining its own function in themselves, the expenditure on replacing the kitchen cupboards results in an improvement or a renewal or reconstruction of an 'entirety', so the expenditure is not a repair but is capital in nature
Source: ATO ID 2003/222

The Cupboards revisited

The taxpayer can write off the expenditure under the capital works provision. The cupboards are fixtures and, therefore, a part of the building because they satisfy the 'degree of annexation' and the 'object of annexation' tests that are generally applied to determine whether there is a fixture at common law. The cupboards are not in place simply by their own weight but are screwed to the walls of the building and they are fixed with the intention that they shall remain there indefinitely.

The deduction is based on the amount of construction expenditure incurred in respect of the construction of the capital works but excludes expenditure on plant from construction expenditure. Source: ATO ID 2003/223

Marry for maximum benefit

For income test purposes, Centrelink does not assess the amount representing a notional return of part of the purchase price of the income stream each year

where the term is more than 5 years.

This non-assessable amount is known as the "deductible amount" (DA). Where a woman has an older male partner, this exacerbates the reduction of the DA. Because the life expectancy of females is approximately 4 years greater than for males, optimum tax planning dictates that to maximise the DA for social security and tax purposes, women should choose a partner about 4 years younger than themselves (and men should choose a partner 4 years older)!
Source: "Tax and social Security 2003" by Barbara Smith and Ed Koken

Report tax evasion in confidence

Information from the community regarding tax evasion is collected by the ATO's Tax Evasion Referral Centre using the types of information that check a taxpayer's compliance. Information about tax evasion can be reported confidentially by phone on: 1800 060 062 : 8am - 6pm Monday to Friday (except public holidays) or fax on 1800 804 544 or by post to Tax Evasion Referral Centre, Locked Bag 6050, DANDENONG VIC 3175. The Tax Office is also developing a system for online reporting of tax evasion.
Source: ATO

Company can't claim CGT on main residence

The main residence exemption is not available to a company that owns a dwelling. It happened that a company made a capital gain from the disposal of a dwelling that it acquired after 19 September 1985. The directors of the company had lived in the property throughout the company's ownership period of the dwelling.

However, a capital gain or capital loss made by a taxpayer from a CGT event happening to a CGT asset that is a dwelling or to an 'ownership interest' in a dwelling is disregarded, if certain conditions are met. One of the conditions is that the taxpayer must be an individual, which is to mean, a natural person. A company is not an individual. Source: ATO ID 2003/163

Skase investigation dies

A recommendation by bankruptcy trustee Mr Max Donnelly to discontinue investigations into the late Christopher Skase was made after his assessment that Mr Skase consumed substantial funds on failed development projects and living expenses. Mr Donnelly believes it would not be cost-effective to pursue what few assets may possibly remain unless new information emerged that might lead to a recovery of assets.
Source: Attorney-General's media release No 36/03, 3 April 2003

ATO Taxpayer alert

"Investment into foreign life insurance policies" is an arrangement that has as one of its features as the purchase of a life insurance policy from a tax haven based life insurance company. An investor borrows money to indirectly invest in the life insurance policy via a trust and a company. The investor seeks to earn tax-free income outside Australia on the investment and income tax deductions for interest payments on the borrowings. The ATO views the only economic benefit achievable is through the claimed tax savings and is concerned whether the interest expenses on funds borrowed to acquire units in the trust are deductible. Source: ATO Taxpayer Alert TA 2003/2

