

the report

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DFK HIRN NEWWEY

Chartered Accountants

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MONTHLY REPORT

Division 7A Applies To 'Payments by Direction'

The Federal Court has confirmed that the deemed dividend provisions can apply where a payment is made by a debtor of a company to a shareholder at the direction of the company.

The taxpayer and her former de-facto spouse were the shareholders and directors in a private company. In the 2001 income year, the company directed US clients to pay over \$160,000 in debts owed to the company into the account of the taxpayer (of which she was sole signatory). The funds in the account were used for the private expenditure of the taxpayer and her former de-facto spouse.

The Court held that the deemed dividend provisions can apply if a company makes a payment to a shareholder by way of directing its debtors to make the payment. In the Court's view, there was no reason to construe the notion of 'pay' as requiring a direct flow of money from the payer to the payee, or that it precludes payment by direction.

Broadly, a payment or loan by a private company to a shareholder (or their associate) will be considered a deemed unfranked dividend unless steps have been taken to avoid this.

Judgment of \$81.4 million Stands Against Trustee

A taxpayer has lost an appeal before the Qld Court of Appeal in which the taxpayer sought to exonerate itself from a liability to pay tax imposed.

The taxpayer was the trustee of four trusts. The Commissioner commenced proceedings against the taxpayer to recover outstanding income tax, interest and penalties which related to the trusts. In an earlier judgment, the Qld Supreme Court granted the

Commissioner summary judgment against the taxpayer for \$81.4 million.

The taxpayer argued that it was not personally liable for the tax because it had not received any of the monies which were the subject of the Commissioner's assessment.

However, in the Court's view, the relevant provisions of the tax legislation that the taxpayer relied on did not have potential application to limit its liability as it was assessed under a provision relating to the tax treatment of trusts. Therefore, the Court affirmed that the taxpayer was liable for the \$81.4 million.

Personal Superannuation Contributions Deduction Denied

The AAT has refused a taxpayer's claim for a deduction for personal superannuation contributions after ruling that he did not satisfy the 'maximum earnings as employee condition'.

Following a work accident in 2004, the taxpayer was unable to work and received workers' compensation payments until he retired on grounds of invalidity on 12 July 2007. The taxpayer received a lump sum payment upon his retirement. During the 2007/08 income year, the taxpayer made personal contributions to two superannuation funds.

The Tribunal found that the taxpayer was engaged in the relevant activity of holding an office for the 12 days in July 2007. While the taxpayer said he was not engaged in any activity because he was unable to work, the Tribunal stated that a person could hold office that does not require any activity.

As a result, the Tribunal agreed that the 10% test for the maximum earnings as employee was not satisfied, as the taxpayer's lump sum payment (which was attributable to those activities) clearly exceeded 10% of his assessable income for the 2007/08 income year.

SMSF Trustees with Enduring Power of Attorney

The Tax Office has released a Ruling explaining the Commissioner's views on how a person who holds an enduring power of attorney in respect of a member of a self-managed superannuation fund (SMSF) can be a trustee in place of the member (or a director of the corporate trustee) for the purposes of the superannuation legislation.

The Tax Office considers that a legal personal representative (LPR) does not become a trustee of the fund (or a director of the corporate trustee) merely by virtue of holding an enduring power of attorney. Rather, the LPR must be appointed as a trustee of the SMSF in accordance with the trust deed, the superannuation legislation and any other relevant legislation.

Furthermore, the Tax Office says a member must cease to be a trustee of the SMSF or a director of the corporate trustee, except where the LPR is appointed as an alternate director. Provided that the alternate director can only exercise the powers of

a director where the main director does not, the Ruling says it is not necessary that the member resign as a director of the SMSF in these circumstances to satisfy the superannuation legislation.

SMSF Trauma Insurance Policies

The Tax Office has also released a Determination in which it sets out the circumstances where a trustee of an SMSF can purchase a trauma insurance policy in respect of a member and still satisfy the superannuation legislation, in particular the sole purpose test.

To briefly explain, the sole purpose test requires an SMSF to be maintained solely for at least one core purpose (eg the provision of benefits for a member on or after the member's retirement) and, also possibly, at least one ancillary purpose (eg the provision of benefits for a member on or after the member's death).

The Commissioner says any benefits payable under a trauma insurance policy must be payable to a trustee of the SMSF and become part of the assets of the SMSF, at least until the relevant member can satisfy a condition of release. If an SMSF trustee purchases a trauma insurance policy that provides for benefits payable under the policy to be paid directly to someone other than a trustee of the SMSF (eg the insured member or member's relative), the Tax Office says this would contravene the sole purpose test.

Super System Review: Preliminary Report on SMSFs

The Super System Review has released its preliminary report, Self-Managed Super Solutions, which contains a host of recommendations. While the Government has not responded to the recommendations, if implemented, they will impact on the SMSF landscape.

The report makes the following key recommendations:

- **Exotic assets prohibited** — Investments in collectables and personal use assets should be prohibited, such as paintings, jewellery, antiques, wine, exotic cars and yachts.
- **In-house assets prohibited** — SMSFs should be prohibited from any in-house assets. (In brief, an in-house asset is an investment in a related party of the fund.)
- **Leverage and instalment warrants** — A review of the borrowing exception (ie instalment warrants) should be carried out in two years to ensure that borrowing has not become a significant focus of SMSFs.
- **Annual member disclosure** — The corporations legislation should be amended to ensure SMSFs' members are provided with key information annually.
- **Illegal early release** — Existing tax laws should be amended so that amounts illegally early released are taxed at the superannuation non-complying tax rate (currently 46.5%) rather than an individual's marginal tax rate.
- **Binding SMSF rulings** — The Tax Office should be given the power to issue binding rulings in relation to SMSFs.

Cents per Kilometre Rates

The Government has released the cents per kilometre rates for calculating motor vehicle expenses for the 2009/10 income year:

Car	Non-rotary engine	Rotary engine	Rate per km
Small car	1,600cc or less	800cc or less	\$0.63
Medium car	1,601-2,600cc	801-1,300cc	\$0.74
Large car	2,601cc or more	1,301cc or more	\$0.75

FEDERAL BUDGET | JUNE 2010

PERSONAL TAXATION

50% Savings Discount for Interest Income

From 1 July 2011, the Government will provide individuals with a 50% tax discount on up to \$1,000 earned on interest.

This includes interest earned on deposits held with any bank, building society or credit union as well as on bonds, debentures or annuity products.

The discount will be available for interest income earned directly as well as indirectly, such as via a trust or a managed investment scheme (MIS).

Adjusted taxable income

The Government states that taxpayers claiming the discount for interest income will have a reduced adjusted taxable income for the purpose of determining eligibility for transfer payments and other concessions.

This may result in some individuals and families becoming eligible for transfer payments or for a larger transfer payment.

The Government notes that the consequential expense primarily affects Family Tax Benefit, but will also affect other payments such as:

- the Baby Bonus;
- Child Care Benefit;
- the Education Tax Refund;
- the Commonwealth Seniors Health Card (CSHC); and
- the Pensioner Supplement (which is linked to eligibility for the CSHC).

The measure will apply from 1 July 2011.

Standard Deduction for Work-related Expenses

The Government will provide individual taxpayers with a standard deduction of \$500 for work-related expenses and for the cost of managing tax affairs from 1 July 2012.

The standard deduction will increase to \$1,000 from 1 July 2013.

Those taxpayers with deductible expenses greater than the standard deduction amount will still be able to claim their higher expenses, in lieu of claiming the standard deduction amount.

The standard deduction will reduce individuals' and families' adjusted taxable income for the purpose of determining their eligibility for transfer payments and other concessions (eg the Family Tax Benefit, the Baby Bonus, Child Care Benefit, the Commonwealth Seniors Health Card (CSHC) and the Seniors Supplement).

This will make some individuals and families eligible for transfer payments or for a larger transfer payment.

FO Medical Expenses Rebate Threshold Raised

From 1 July 2010, the medical expenses rebate threshold will increase from \$1,500 to \$2,000.

Taxpayers presently receive a rebate equal to 20% of net un-reimbursed eligible medical expenses above \$1,500. This \$1,500 threshold will increase to \$2,000. In addition, from 1 July 2011, the threshold will be indexed annually to the Consumer Price Index (CPI).

Medicare Levy Thresholds Increased for 2009/10

From the 2009/10 income year, the Medicare levy low-income thresholds will be increased to \$18,488 for singles (up from \$17,794 for 2008/09) and to \$31,196 for those who are members of a family (up from \$30,025 for 2008/09).

The additional amount of threshold for each dependent child or student will also be increased to \$2,865 (from \$2,757). From 1 July 2009, the Medicare levy low-income threshold for pensioners below Age Pension age will be increased to \$27,697 (from \$25,299).

This increase will ensure that pensioners below Age Pension age do not pay the Medicare levy while they do not have an income tax liability.

SUPERANNUATION

Co-contribution Matching Rate Permanently Reduced to 100%

The Government has announced that it will seek to permanently set the matching rate for the superannuation co-contribution at 100% and the maximum co-contribution that is payable on an individual's eligible personal non-concessional superannuation contributions at \$1,000.

As a result, the previously-legislated increase in the matching rate to 125% for the 2012/13 and 2013/14 years (and to 150% for 2014/15 and later years) will not proceed.

Eligible income thresholds frozen

In addition, the Government says that for 2010/11 and 2011/12 it will freeze the indexation applied on the income threshold above which the maximum superannuation co-contribution begins to phase down.

Under the superannuation co-contribution scheme, the Government currently provides a matching contribution for contributions made into superannuation out of after-tax income. The matching contribution is up to \$1,000 for individuals with incomes of up to \$31,920 in 2009/10 (with the amount available phasing down for incomes up to \$61,920). The new measure will freeze these thresholds at \$31,920 and \$61,920 for two years.

The Government says this measure follows its earlier announcement in response to the Henry Tax Report, proposing a \$500 annual superannuation contribution for individuals with an adjusted taxable income up to \$37,000.

Superannuation Fund Deductions for Terminal Medical Condition Benefits

The Government has announced that it will seek to extend the range of benefits that are deductible by complying superannuation funds and retirement savings account providers to include terminal medical condition (TMC) benefits.

The Government says that this proposal addresses an anomaly in the taxation law regarding deductibility by superannuation funds and retirement saving account providers of the costs of providing certain benefits to members or holders.

Currently, the Government says deductions are allowable for the costs of providing benefits relating to the death, permanent incapacity and temporary incapacity conditions of release, but not those relating to the TMC condition of release.

This measure is proposed to have effect from 16 February 2008, the date the TMC condition of release was introduced into the superannuation legislation.

BUSINESS TAXATION

Look-through Treatment for Earnout Arrangements

All payments under a qualifying 'earnout' arrangement will be treated as relating to the underlying business asset.

Earnout arrangements are used to structure the sale of a business (or business assets) to manage uncertainty regarding the value of the business.

Under the earnout arrangement, an earnout right may entitle the buyer or seller to additional payments, depending on the subsequent performance of the business.

The proposed amendment will have effect from the date of the Royal Assent of the enabling legislation, with transitional provisions available for certain cases from 17 October 2007.

Increased Funding to Counter Cash Economy

The Government will provide \$107.9 million over four years to the Tax Office, to address small business operators who use cash transactions to avoid tax. The Government states that this is expected to increase the "visibility of the Tax Office in the community".

This measure is expected to result in:

- an additional \$491.8 million in revenue in fiscal balance terms over four years; and
- an increase of \$39.9 million in Tax Office-administered expenses over the same period.

In underlying cash terms, the expected increase in revenue is \$366.5 million over four years, including \$146.7 million in GST collections that will be paid to the states and territories.

GST Compliance Program — funding for the Tax Office

The Government states that it will provide \$337.5 million over four years (from the 2010/11 to the 2013/14 income years) to the Tax Office to fund additional activities that will promote voluntary GST compliance and provide a level playing field for Australian businesses.

The Government also states that the funding will address issues relating to:

- fraudulent GST refunds;
- systematic under-reporting of GST liabilities;
- non-lodgment of GST returns; and
- non-payment of GST debts.

CLOUD COMPUTING

A feature from Hirn Newey Computers

You may have heard about the term “CLOUD” computing, but what is it really and why are so many people so interested in it?

Today, 70% of IT investment is focused on maintenance, leaving little time to support strategic business projects. With users demanding faster response times and management demanding lower costs, IT needs a better strategy. Cloud computing is central to that better strategy. It is a new approach that reduces IT complexity by utilising the efficient pooling of on-demand, self-managed virtual infrastructure, consumed as a service.

Put simply, cloud computing service providers set up and maintain IT hardware, storage and software in a data centre and then provide remote access to the software and services their customers require for a monthly fee. All you need in your office (or elsewhere) to access these services is a data connection and a basic PC, Laptop or Thin Client Terminal. Programs are then accessed over the internet, simply by using an internet browser.

Your business can utilise cloud computing on a range of different levels, from just subscribing to a single service like email, to completely hosting your entire infrastructure in a data centre.

With cloud computing you can have all the features you're used to with an onsite network, but also the added security and redundancy of a data centre and the accessibility of being able to access your business's network at any time, from anywhere.

The innovative new technologies of cloud computing can help your business be more competitive in today's dynamic economic environment. For business users, it's a great opportunity to not only save money, but also to allow you to concentrate on **YOUR BUSINESS** without worrying about the constant challenges that arise from having to maintain your internal computing infrastructure.

Features of cloud computing include:

- Completely unified IT, Voice, Data Communication and Infrastructure needs all delivered as a single service
- The next generation of Software as a Service (SaaS) - access the software you need via your provider, rather than purchasing your own individual software licences
- Remote access from anywhere at any time
- All you need is a data connection and a basic PC, Laptop or Thin Client Terminal
- Host your office telephone system as part of your package - all you need is an IP Phone
- Geographically dispersed Data Centres operating over a highly and fully redundant private network
- Business grade data network that utilises multiple Tier 1 telecommunications providers (eg Optus, Telstra) and delivers unequalled reliability of service
- Charged per user per month

Benefits:

- **Focus on your Core** – Increase revenue and margins by focusing on your core business and customers.
- **Reduce Capital Expenditure** – Improve cash flow by eliminating IT & Communications related capital expenditure.
- **Predictable Operating Cost** – Convert current sunk cost, overheads and unpredictable expenditure into predictable and controllable fixed costs.
- **Agility & Scale** – Create operating efficiencies by rapidly scaling your business up or down in response to a dynamic economy. As your staffing, storage and functionally needs change, simply adjust your access plan.

Hirn Newey Computers already offers a great range of products and services and we are happy to announce that we have recently extended our portfolio of solutions to even better serve our customers, by offering you access to the benefits of cloud computing. This enables us to provide you with everything you need in order to run your business more efficiently and cost effectively.

If you are interested in learning more about this great opportunity and how you can save your business money by utilizing the Cloud and its features, please contact Alexander Simon for a free consultation on 07 3266 1488 or asimon@hncomputers.com.au.

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