the report

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Chartered Accountants

MONTHLY REPORT

Collapsed Managed Investment Schemes Tax Consequences

The Tax Office has released three draft determinations, which set out the Commissioner's preliminary views on the tax consequences for investors with interests in collapsed managed investment schemes (MISs).

The tax consequences are:

- a change of responsible entity of a registered agricultural MIS does not affect the tax outcomes for a participant if the scheme continues to be implemented in accordance with the relevant product ruling;
- a disposal of an interest in a non-forestry MIS that arises as a result of circumstances beyond the control of a participant will not result in the denial of deductions previously allowed; and
- a payment received by a participant in a non-forestry MIS upon the winding-up of the scheme, which does not involve a disposal of the participant's interests to another person, may constitute assessable income depending on the nature of the payment.

Advance to Partnership not a Loan

The AAT has affirmed that an advance to a partnership was a capital contribution to the partnership and not a loan as submitted by the taxpayers. Therefore, the Tribunal held that deductions claimed by the taxpayers for interest and loan service costs were not deductible.

In reaching its decision, the Tribunal noted that there was no formal agreement relating to the loan. It also noted the taxpayers' accountant recorded the advance in the books of the partnership as being of a capital nature.

- A written agreement should be entered into to formalise a loan. In addition, the terms of the loan must be at arm's length.

Trading Stock and Trade Incentives

The Tax Office has released a ruling that clarifies the tax treatment for buyers and sellers of trading stock where a seller provides trade incentives to a buyer. Examples of trade incentives include upfront volume rebates, promotional incentives and bundled incentives.

If a trade incentive relates directly to the purchase of trading stock:

- a buyer will reduce the cost of acquiring the trading stock; and
- a seller will reduce the proceeds from the sale of the trading stock.

Conversely, where a trade incentive does not relate directly to the trading stock or depends on satisfying a condition, a buyer and seller do not need to reduce the cost of acquisition and the sale proceeds.

SMSF Non-compliance Notice Upheld

The AAT has affirmed the Commissioner's decision to issue a non-compliance notice to a self-managed superannuation fund (SMSF) because the fund did not satisfy the definition of a 'complying superannuation fund'.

Following an audit, the Commissioner determined that the SMSF was not a complying superannuation fund and issued the notice. This was because all decisions in relation to the management and control of the SMSF were made overseas.

The Tribunal found that the central management and control (CM&C) of the fund was outside of Australia for more than two years. Accordingly, the Tribunal held that the SMSF was not a complying superannuation fund.

A fund must be an 'Australian superannuation fund' in order to be considered a complying superannuation fund and, hence, receive concessional tax treatment.

Three conditions must be satisfied before a fund can be considered an Australian superannuation fund. One of the conditions is that the CM&C of the fund is ordinarily in Australia. If the CM&C of the fund is temporarily outside of Australia for a period of not more than two years, it will be deemed to be in Australia.

- In the Tax Office's Compliance Program for 2009/10, it has highlighted that ensuring SMSFs satisfy the definition of an 'Australian superannuation fund' will be one of its focus areas

Proposed Tax Law Amendments

The Government has introduced a Bill into Parliament seeking to:

- ensure a representative of an incapacitated entity will be responsible for the GST consequences that arise during their appointment;
- address a number of PAYG issues arising from the introduction of the taxation of financial arrangements;
- ensure payments made under the Helping Children with Autism package are exempt from income tax;
- exempt payments made under the Continence Aids Payment Scheme from income tax;
- exempt debts issued in Australia by the Commonwealth from interest withholding tax; and
- provide the Victorian Bushfire Appeal Fund Independent Advisory Panel with greater scope to support communities and individuals affected by the 2009 Victorian bushfires.

Contributions Caps and Reserves

In a recent superannuation meeting, the Tax Office set out the Commissioner's preliminary views on the implications regarding the use of contribution reserves within an SMSF and the excess contributions tax.

The Tax Office states that where a non-concessional contribution is credited to a fund's contribution reserve before being credited to a member's account in the following financial year (but within 28 days of the end of the month that the contribution was received by the trustee), the contribution will count towards the member's non-concessional cap for the financial year that it is allocated to their account.

- Where an individual exceeds the contributions caps for an income year, the individual can potentially trigger a tax penalty with an effective rate of up to 93%.

Mail-out to Super Funds Members

The Tax Office has commenced sending letters directly to individuals who are most at risk of exceeding the superannuation concessional contributions cap. According to the Tax Office, the aim of the letters is to prompt the individuals to review the amount of their concessional contributions for the 2009/10 income year.

Clients who have received the letter should contact us to discuss their proposed contributions to avoid triggering any adverse tax consequences.

GIC and SIC Rates Released

The Tax Office has released the general interest charge and shortfall interest charge rates for the second quarter of the 2009/10 income year (ie 1 October 2009 to 31 December 2009):

Rate	Annual (%)	Daily (%)
GIC	10.30	0.02821918
SIC	6.30	0.01726027

The Tax Office has also released the interest rate for overpayments, early payments and delays in refund for the second quarter of the 2009/10 income year. The applicable interest rate is 3.30%.

Donations to Typhoon in Taiwan

The Government has announced that Typhoon Morakot, which hit Taiwan on 7 August 2009, has been recognised as a natural disaster. Therefore, taxpayers may be able to claim a deduction for donations made to organisations for providing relief to Taiwanese who are affected by the typhoon.

- An organisation must be endorsed as a deductible gift recipient before a donation is deductible.

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