

THE REPORT

September 2005

Tax News, Views & Clues

DIRECTORS

Paul Fiumara CA

Paul Haupt CA

Robert Schoenmaker CA

Gavin Johns CA

MONTHLY REPORT

- ☉ **PRIORITY PRIVATE BINDING RULINGS**
- ☉ **TAX OFFICE TARGETS LOW-DOC LOANS**
- ☉ **TAXPAYER'S BURDEN OF PROOF**
- ☉ **GST: SECURITY DEPOSITS**
- ☉ **SIMPLIFIED RULES FOR 'AT CALL' LOANS**
- ☉ **CGT: RIGHT TO USE PROPERTY BEFORE TITLE PASSES**

Priority Private Binding Rulings

Earlier this year, the Tax Office released a Practice Statement (PS) regarding priority private binding rulings (PBRs). The PS outlines that where a private ruling application is for a significant transaction and it is an urgent matter, the Tax Office may consider granting priority status for the application.

A PBR outlines how the law applies to a set of facts and may be applied for any past, present or future arrangement. Where a ruling results in less tax payable, it remains binding on the Tax Office. However, the taxpayer is under no obligation to apply the ruling. As a result of recent changes to the law, there are no longer penalties for failure to comply with a private ruling.

In recent times, due to the fact that most rulings take in excess of six weeks to process, some taxpayers have chosen not to seek PBR when the relevant tax situation required urgent resolution.

The PS recognises that by granting priority to appropriate ruling applications and processing them in a much shorter time frame, more taxpayers are likely to seek private rulings.

Tax Office Targets Low-doc Loans

The Tax Office has recently announced plans to review the affairs of taxpayers with low-documentation loans after initial audits had uncovered widespread tax avoidance, particularly by taxpayers operating cash businesses in the building and construction industry.

The \$30 billion ‘low-doc’ loan market provides credit to tax-payers unable to obtain finance from traditional sources. A higher interest rate is charged and borrowers provide limited information concerning their income and assets.

The Tax Office believes that low-doc loans are used in some cases by taxpayers trying to hide their true income, either for tax or other reasons. An initial pilot program undertaken by the ATO found that around 50 per cent of low-doc borrowers were behind in their tax return lodgements by an average of three years.

The Tax Office utilises data-matching services to check the tax lodgement records of taxpayers with other information such as credit, banking and investment data.

The aim of the increased scrutiny is to ensure that taxpayers with low-doc loans are correctly declaring all income including dividends and capital gains and claiming appropriate rental property deductions. The program will also enable the Tax Office to claw back unpaid GST.

- **CAUTION:** Taxpayers with low-doc loans should be aware of the highlighted risk of Tax Office review and check to ensure income records are in order and tax return lodgements are up-to-date.

Taxpayer’s Burden of Proof

In a recent federal court decision, a taxpayer’s appeal was dismissed on the grounds that the taxpayer didn’t provide credible evidence to satisfy their burden of proof.

The Tax Office issued amended assessments to the taxpayer for the 1996, 1997 and 1998 income years following a tax audit.

The amended assessments included additional assessable amounts totalling approximately \$600,000, which the taxpayer had not previously disclosed.

The taxpayer and her husband were heavily involved in buying and maintaining horses, but the taxpayer argued that she was not carrying on a business. The taxpayer appealed against the assessment, arguing that the disputed amount was not income and represented gambling gains and gifts.

A taxpayer appealing an assessment has the burden of proving that the assessment was excessive. The federal court held that the taxpayer’s evidence regarding betting records had many anomalies and lacked credibility. The federal court dismissed the appeal on the grounds that the taxpayer was unable to credibly discharge her burden of proof and establish the actual source of the relevant amounts.

- **TIP:** It is very important that taxpayers keep organised records of all receipts to withstand any Tax Office investigation.

GST: Security Deposits

The Tax Office has released a draft GST Ruling concerning the application of GST to deposits.

The draft Ruling provides that GST will only apply to deposits when either the deposit is forfeited or the deposit forms part of the consideration for the broader transaction (as is the case under current GST law).

The draft Ruling also outlines the Tax Office’s views of what is a reasonable amount of deposit before a GST event is triggered as a part-sale.

The Tax Office considers (under normal circumstances) that 10% is a reasonable amount and that amounts greater could otherwise be regarded as a part-payment, in which case GST would apply on the transaction.

Simplified Rules for ‘At Call’ Loans

The federal government has recently announced changes to simplify the rules in relation to ‘at call’ loans for small businesses. This will make it easier for small businesses to comply with complex debt/equity rules, reduce compliance costs and provide greater certainty.

Broadly, ‘at call’ loans are loans made out to companies typically by shareholders and other related parties. The loans are typically not documented, are interest free and repayment obligations are unclear.

Previously, ‘at call’ loans were automatically treated as debt for companies with net assets of \$5 million or less and annual deductions in relation to the loan of \$100,000 or less.

The original test was quite lengthy and complex. To simplify matters as of 1 July 2005, all ‘at call’ loans will automatically be treated as debt for companies with an annual turnover of \$20 million or less.

For affected companies, this can eliminate risks of loans being classified as ‘equity’, which would mean, for example, that interest would be non-deductible.

CGT: Right to Use Property before Title Passes

The Tax Office recently released an Interpretative Decision (ID) that considers the CGT consequences of an arrangement where a taxpayer purchases a home for the use of their children and eventually passes title to the home to the children.

In the case under review, the children of the taxpayer wanted to purchase a home, but were unable to obtain finance. The taxpayer agreed to obtain a loan so that the children could purchase a home. However, the conditions of the loan required that the title of the property be in the taxpayer’s name.

It was agreed that the children would meet all outgoings of the property, including loan repayments. The taxpayer would pass title to the children after five years, as it was anticipated that the children would then be in a position to obtain their own finance.

Generally, a property will be disposed of for CGT purposes when title passes from the taxpayer. Any gain or loss will be calculated on the proceeds received at the time of title transfer.

However an exception may occur where:

- an agreement is reached in which the taxpayer provides use and enjoyment of the property to another; and
- the taxpayer agrees to pass title to the property at or before a later specified date.

Where such an agreement is reached, the CGT will be calculated at the time that use and enjoyment is first provided, in this case when the children first began use of the property. As the taxpayer did not receive any proceeds at that time, the capital gain or loss will be calculated on the market value of the property when the agreement was reached.

[RETURN TO CONTENTS](#)

Important: This is not advice. Clients should not act solely on the basis of the material contained in this Bulletin. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Bulletin is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.