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MONTHLY REPORT

FCT v. CityLink Melbourne Ltd — Commissioner's Appeal Dismissed

On 20 July 2006, the High Court dismissed the Tax Office's appeal against the judgment made by the Full Federal Court.

The issue before the High Court was whether annual concession fees in the 1996, 1997 and 1998 years of income were allowable deductions to CityLink Melbourne Ltd (CityLink).

By way of agreement, annual concession fees were payable by CityLink to the State of Victoria (the State), in return for the right to design, construct and maintain the 'city link' which was to be operated using tolls. In granting these rights to CityLink, the State was required to provide the relevant land and obtain approvals from the various state authorities required to undertake the project. Under the agreement CityLink were able to defer payment of the concession fees up until the year 2034.

The concession fees were initially held to be non-deductible by the Federal Court, as they were deemed to be capital in nature.

However on appeal, the Full Federal Court held that the concession fees were an allowable deduction for the relevant years in question. The decision was held on the following grounds:

- The concession fees were incurred and properly referable to the years of income in which the deductions were made.
- The fees incurred were revenue and not capital or capital in nature, and therefore deductible.

The High Court affirmed the decision and judgments made by the Full Federal Court, allowing the concession fees as a deduction in respect of the income years in question.

Barter Exchange Arrangements

In a recent GST Determination GSTD 2006/5, the Commissioner provides the Tax Office position on a recent Taxpayer Alert TA 2005/4, which looks at the creation of GST input tax credits arising from certain barter exchange arrangements.

The Taxpayer Alert draws particular attention to barter exchange arrangements that involve a barter exchange buying and selling in its own right, effectively acting as its own member with its own trading account.

The barter exchange has unlimited trade dollars to spend on acquisition of goods and services, which are often at commercially unrealistic prices. As a result, large GST refunds often arise from these arrangements.

The GST Determination indicates that a barter exchange arrangement does not have an entitlement to claim input tax credits for acquisitions made where:

- the barter exchange is not carrying on an enterprise;
- no consideration is provided by the barter exchange in relation to the supply received;
- there is no creditable purpose; and
- the general anti-avoidance provisions may apply to the arrangement.

FBT Rates and Thresholds

The Tax Office has released a fact sheet that updates the FBT rates and thresholds for the 2007 FBT year. Included in this fact sheet are the new gross-up rates for Type 1 and Type 2 FBT rates:

Gross-up rate	FBT year ending 31.3.07	FBT year ending 31.3.06
Type 1	2.0647	2.1292
Type 2	1.8692	1.9417

- **TIP:** The Type 1 gross-up rate applies where the benefit provider is entitled to claim a GST credit. The Type 2 gross-up rate applies where the benefit provider is not entitled to claim a GST credit in respect of the provision of the benefit.

Remission of SIC and GIC

The Tax Office has recently released Law Administration Practice Statement PS LA 2006/8 providing guidelines on the remission of shortfall interest charge (SIC) and general interest charge (GIC) accrued during a shortfall period.

The statement applies from 1 July 2005 and the Commissioner provides examples in the statement of circumstances in which the interest charge may be remitted. These include:

- where there is a delay by the Tax Office;
- where the Tax Office or taxpayer experiences unavoidable delays receiving information from a third party; and
- where the taxpayer has relied on Tax Office advice, rulings and interpretative decisions in good faith.

The Tax Office has also provided that in some circumstances the remission amount may be below the base rate or include a full remission.

Longer Period for Commissioner to Amend Tax Returns

Amendments have been made to the Income Tax Regulations 1936 to exclude high-risk categories of taxpayers (individuals and small businesses who have elected and are eligible for the simplified tax system) from the standard two-year tax return amendment period. These excluded taxpayers will have a four-year amendment period.

It will apply to the following:

- taxpayers involved in non-arm's length transactions between associates;
- taxpayers involved in transactions to which an unpaid present entitlement applies;
- taxpayers involved in transactions involving Division 7A of the *Income Tax Assessment Act 1936* (ITAA 1936);
- employee share schemes; and
- income from foreign transactions.

These amendments commenced on 27 June 2006 and will apply from the 2004/05 income year onward.

Other Key Issues

- The Tax Office has recently released details of the SIC (8.87%) and GIC (12.87%). The rates are applicable for the September 2006 quarter.
- For the purposes of Division 7A of ITAA 1936 the benchmark interest rate for the 2006/07 income year is 7.55%, up from 7.3% for the 2005/06 income year.
- The Tax Office has announced that it will examine claims for work-related expenses targeting business professionals, hospitality industry service workers, factory hands, automotive tradespersons, IT professionals and mining site employees for the 2005/06 income year. Expenses to be included in the review will include motor vehicles, self-education and travel.
- The Tax Office has indicated that where tax agents are having issues lodging tax returns by their due dates as a result of software problems, a deferral request should be sought prior to the due date. The deferral request should include the nature of the problem, details of the software used and how this has impacted lodgement.
- The Tax Office has recently released practice statement PS LA 2006/7, which deals with alternative assessments. Where a primary and alternative assessment is made, the practice statement indicates that the Commissioner's ultimate intention is to collect tax payable on either the primary or alternative assessment, but not both.

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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.