

TAX NOTES

July 2010

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Car Parking Fringe Benefit - Virgin Blue Airlines Pty Limited v Commissioner of Taxation, Federal Court

In this case the Federal Court found in favour of the Commissioner, holding that Virgin Blue provided car parking fringe benefits to its employees at Melbourne Airport.

Virgin Blue had in place an arrangement with Melrose Car Park to provide parking for Virgin Blue employees, for which the employees incurred no cost. Melrose Car Park is located on the Melbourne Airport grounds approximately 2kms from the Virgin Blue terminal and a public shuttle bus operates between the car park and the terminal.

A car parking fringe benefit arises (subject to conditions) if an employee's car is parked at or in the vicinity of their primary place of employment and there is a commercial car parking station located within 1 km of the premises on which the car is parked.

The issue in the present case was the meaning of 'vicinity' which is not defined in the legislation. Virgin Blue argued that the Melrose Car Park was not in the vicinity of the terminal as the 2 km distance from the terminal was not a reasonable walking distance (evidenced by the shuttle service) and that the '1 km rule of thumb' applying to the alternative commercial car park location could be used to interpret the term 'vicinity'.

The Court rejected this argument, holding that 'vicinity' means 'nearness in space' or 'proximity'. If Parliament had intended to specify a distance, it would have done so. The two locations were within the same functional space of the airport and the land between the two was generally flat and physically accessible by vehicle or on foot. Accordingly Virgin Blue had provided car parking fringe benefits to its employees.

Denial of PAYG Withholding Credits – Cassaniti v Federal Commissioner of Taxation, Federal Court

In two related cases, the Federal Court has denied PAYG withholding credits claimed to be withheld from the salary and wages paid to two taxpayers employed by the same employer.

The first taxpayer relied on MYOB records which showed a subtraction of tax from his gross wages. This was not sufficient for the Court which interpreted the term 'withhold' to require holding back of something due to the employee, not merely a mathematical subtraction. There was no other evidence (such as an annual PAYG withholding summary or the remittance of any withholding amounts in the employer's BAS) to suggest that withholding had actually occurred.

In relation to the second taxpayer, she was not paid money on a regular basis. Rather she drew money as needed and had her credit card expenses paid for by the employer. The Court concluded that such advances were not salary and wages and therefore there was no amount from which PAYG withholding could have been withheld. Even if the amounts were wages, the evidence was again insufficient to support a claim for PAYG withholding credits, as the supposed withholding, was not recorded at the time the payments were made.

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Update on Division 7A

Tax Laws Amendment (2010 Measures No 2) Bill 2010 which contains amendments to the Division 7A legislation, received Royal Assent. The Bill passed unchanged apart from a Senate amendment to ensure that the use of certain company title flats or home units is not considered a payment under Division 7A. The effective date remains 1 July 2009.

The Tax Office has released the benchmark interest rate used in calculating minimum loan repayments under Division 7A. For the year ended 30 June 2011, the interest rate is 7.40% p.a. (up from 5.75% p.a.).

2010-11 Reasonable Travel and Meal Allowances - TD 2010/19

The Tax Office has released Taxation Determination TD 2010/19 which sets out the amounts that the Commissioner considers are reasonable for travel and overtime meal allowances in 2010/11. Where a deduction is claimed in respect of an allowance and the deduction is equal to or less than the reasonable amount then the claim does not have to be substantiated by written evidence. If the amount claimed is more than the reasonable amount, then the whole claim must be substantiated, not just the excess.

The Determination lists the reasonable amounts for both domestic and international travel allowances, including those specific for truck drivers. The reasonable amounts depend on the salary of the employee and their travel destination.

When preparing the income tax return for employee travel or overtime meal allowances:

- » If the allowance does not exceed the reasonable amount and is not shown on the PAYG summary and the allowance has been fully expended on deductible expenses, then both the allowance and deduction claim do not need to be entered into the tax return
- » If an amount less than the allowance has been spent, the income tax return must include the allowance and the expense deduction claimed.

Minimum Pension Drawdown Amounts- Concession to be Extended

The Government has announced that it will continue to allow a 50% reduction in the minimum payment amounts required from pensions for the 2010-11 year.

It is a requirement that minimum payments be made from a superannuation account-based pension at least annually.

The concession, originally allowed in the 2008-09 year, was made in response to the downturn in financial markets which had resulted in a negative effect on the superannuation balances of retirees. Without a reduction in the minimum payment requirements, pensioners may be forced to sell assets and realise losses in order to meet the minimum payment requirement.

The reduction in minimum payments applies to account based, allocated and market-linked (term allocated) annuities and pensions.

Liabilities Incurred After Sale Contract Counted in the Maximum Net Asset Value Test - AAT Case 455, Administrative Appeals Tribunal

The Administrative Appeals Tribunal (AAT) has found in favour of the taxpayer, holding that they satisfied the Maximum Net Asset Value Test (MNAV) under the Small Business CGT Provisions.

The MNAV test requires the sum of the net assets of the taxpayer, its affiliates and connected entities, to total less than \$5mil (note the threshold is now \$6mil). The test is measured 'just before the CGT event'. According to the tax legislation the time at which the CGT event occurs is at the time of signing the contract for sale.

The main issue in this case was whether accounting and legal fees invoiced after the sale contract was signed, could be included in the MNAV test. The AAT noted that 'just before the CGT event' is used to ensure the CGT asset which was disposed of, is still included in the MNAV calculation. On this basis the AAT held that it would "make no sense to exclude liabilities that are inextricably connected to the sale... that creates the CGT event".

A further issue discussed in this case, was whether one of the directors of the taxpayer was an affiliate of the taxpayer. An affiliate is one who acts in accordance with the taxpayer's wishes or in concert with them. The AAT concluded that the director was not an affiliate as the director merely acted in accordance with the taxpayer's wishes because of his role as an employee. In reality "a company acts at the direction of its directors".

The inclusion of the legal and accounting fees and the exclusion of the director's assets from the MNAV test was enough to bring the taxpayer within the \$5mil threshold. Whilst not required to consider the value of inter-entity loans, the AAT noted that it would consider their value not based merely on the solvency of the borrowing entity but in relation to the financial position of all related entities.

Changes to GST Financial Supply Provisions - Consultation Paper

Treasury has released a Consultation Paper on the proposed reforms to the financial supply provisions of the GST legislation (first announced in the 2010-11 Federal Budget).

Financial supplies are input taxed such that the supplier does not charge GST on the supply and the supplier can not claim an input tax credit for expenses incurred in making the supply.

The changes include making hire purchases fully taxable supplies, an expansion to the range of expenses which qualify for a reduced input tax credit claim and an increase the financial acquisitions threshold (FAT) to \$150,000 (the FAT allows businesses which primarily make taxable or GST-free supplies to claim all of their input tax credits if they make an insignificant amount of financial supplies).

Car Limit for 2010-11

The car limit for the 2010-11 year has been indexed to \$57,466. The car limit is used in calculating the amount of depreciation deduction available for certain cars.