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Standard Deduction for Work Related Expenses and the Cost of Managing Tax Affairs – Exposure Draft

Exposure Draft legislation has been released regarding the proposed standard deduction for work-related expenses and cost of managing tax affairs, as announced in the 2010-11 Federal Budget.

Currently taxpayers can claim up to \$300 worth of work-related deductions without substantiation. From 1 July 2012 the exposure draft proposes an automatic deduction of \$500. This amount will increase to \$1,000 in 2013-14 and the following tax years. It will replace deductions for work-related expenses (excluding motor vehicle expenses) and the cost of managing tax affairs for those taxpayers who claim less than the standard. Taxpayers who incur expenses exceeding the standard deduction will be able to claim the actual cost of their expenses.

These amendments are subject to the Mining Resource Rent Tax legislation being passed and will therefore commence on the latter of 1 July 2012 or the commencement of the MRRT.

Part IVA not Applicable and Invalid Tax Assessments – Macquarie Bank Limited v Commissioner of Taxation, Federal Court

This case explores the Commissioner's application of Part IVA on the sale of shares made by a subsidiary of the Macquarie consolidated group. Macquarie was engaged by a third party to assist with the sale of an unwanted subsidiary company. Macquarie acquired the shares in the holding company of the unwanted subsidiary before selling the unwanted subsidiary off to a third party for a substantial gain. However, the taxable gain was considerably lower due to uplift in the cost base of the shares under the tax consolidation provisions.

The Commissioner's argument was that if the scheme had not been entered into, the shares in the unwanted subsidiary would have been sold otherwise than under tax consolidation as a subsidiary member of the Macquarie group. As such, a gain would have arisen.

The problem for the Court was that none of the various parties involved had participated in all the steps of the scheme. The Court considered each of the parties separately in determining whether they had a dominant purpose of obtaining a tax benefit in relation to the relevant steps each undertook.

The Court concluded that each of the parties involved in the transaction did not enter into their part of the scheme purely for obtaining a tax benefit. Effectively the parties' intentions were not considered as a whole. Thus, Part IVA did not apply.

MBP Advisory Pty Limited
ABN 39 124 764 683

Level 2, 7 Macquarie Place
Sydney NSW 2000
PO Box R1851 Royal Exchange
NSW 1225 Australia

Directors

Lawrence Myers
Gideon Metzger
Brian Turtledove

Associates

Renu Ben
Adam Frare

T 9250 6566
F 9250 6588
info@mbpadvisory.com.au
mbpadvisory.com.au

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The Commissioner had assessed both the head entity of the Macquarie group and the now subsidiary company which held the shares in the unwanted subsidiary. The Court held that both assessments were invalid given that if the taxpayers had sold the shares in accordance with the Commissioner's alternative approach then Macquarie wouldn't have been the entity that would have otherwise made the capital gain. Secondly the Court stated that an assessment could not be made for a subsidiary member of a consolidated group as it is only the head entity which can be assessed on behalf of a consolidated group.

Victorian Landholder Stamp Duty – Consultation Paper

In Victoria stamp duty is currently imposed on certain acquisitions of interests in private companies, private unit trusts and wholesale unit trusts that are 'land rich'. An entity is land rich if it holds Victorian land valued at \$1mil or more and the value of all its land holdings (regardless of location) represents at least 60% of its total assets.

As announced during the 2011-12 State Budget, Victoria will switch to a 'land holder' model from 1 July 2012. An entity will fall within the duty base under the land holder model if the entity holds Victorian land valued above \$1 million, i.e. the additional 60% test no longer applies.

After Victoria transitions to a land holder model, Tasmania will be the only state/territory left with a land rich model.

Victorian Treasury has now released a consultation paper on the proposed design of the landholder model. Key aspects include:

- » Listed companies and listed unit trust will become taxable landholding entities however stamp duty will only apply when there is an acquisition of 90% or more in the listed entity and the duty will be at a lower rate;
- » The threshold over which an acquisition of an interest in a private company or private unit trust will trigger stamp duty will remain at 50% and 20% respectively.

SMSFs and Limited Recourse Borrowing – SMSFR 2011/D1

This draft Ruling explains a number key concepts under the limited recourse borrowing arrangement (LRBA) provisions which apply to Self Managed Superannuation Funds (SMSFs).

An LRBA is an exception to the usual borrowing restrictions placed on SMSFs which allows the SMSF to borrow under a limited recourse arrangement with a holding trust where the borrowed funds are used to acquire a single acquirable asset or to cover expenses incurred in connection with the borrowing or acquisition, or in repairing the asset. Note that the borrowings cannot be used to improve the asset.

The ruling explains what is an 'acquirable asset' and a 'single acquirable asset' and distinguishes between repairs and improvements. The Ruling contains a number of useful examples.

Penalties: Voluntary Disclosures - MT 2011/D3

This draft Miscellaneous Tax Ruling describes the application of the tax provisions which allow a taxpayer a reduction in penalties when they make a voluntary disclosure to the Commissioner.

Under the provisions, a taxpayer's penalty is reduced by 80% where the taxpayer makes a voluntary disclosure prior to the taxpayer being notified of a proposed examination of their tax affairs. The reduction is 20% if the voluntary disclosure is made after the Commissioner first contacts the taxpayer.

The Ruling outlines factors the Commissioner will consider in exercising a discretion to treat a voluntary disclosure made after the taxpayer is notified of a tax review, as if it had been received beforehand (thus eligible for the higher 80% penalty reduction).

Small Business Amendments – Draft Legislation

Draft legislation has been released on a number of provisions applicable to Small Business Entities which are intended to be effective from the 2012-13 year. The amendments include:

- » the instant asset write-off threshold will be increased from \$1,000 to \$6,500 allowing assets acquired for less than \$6,500 to be fully expensed in the year that they are acquired;
- » the consolidation of the general small business depreciation pool and the long life small business depreciation pool into a single group which to be written off at a single rate;
- » Small business entities can write-off up to \$5,000 for a motor vehicle costing at least \$6,500. The remainder of the purchase cost is depreciated as part of the general small business pool;
- » removal of the entrepreneurs' tax offset.

Note that the amendments for the instant asset write-off and consolidation of small business pooling arrangements are subject to the enactment of the Minerals Resource Rent Tax legislation.

Superannuation Guarantee Charge – Roy Morgan Research Ltd v Commissioner of Taxation, High Court

In this case the High Court of Australia held that individuals who were employed by Roy Morgan, as market research interviewers, were in fact employees and not independent contractors. As employees they were entitled to a prescribed minimum level of superannuation which the taxpayer failed to provide. As such the taxpayer was required to pay the SGC.

The taxpayer challenged the validity of the Superannuation Guarantee (Administrations) Act 1992 and the Superannuation Guarantee Charge Act 1992 and argued that the SGC was not a tax because it was not implemented for 'public purposes'. The High Court identified 'public purposes' to mean for the purposes of the government.

The High Court disagreed with the taxpayer's view and concluded once the SGC is paid into the Consolidated Revenue Account, "its identity is lost". The funds are then available to be spent by the Commonwealth for purposes which it sees lawfully fit

Remission of Additional Super Guarantee Charge Penalty – PSLA 2011/28

When an employer fails to meet their Superannuation Guarantee (SG) obligations by the quarterly cut off dates, they must notify the Tax Office by lodging a Superannuation Guarantee Charge (SGC) statement.

Under the legislation a penalty is imposed when the employer fails to meet their SGC lodgement obligations. The penalty can be up to 200% of their SGC liability but the Commissioner has discretion to remit the penalty in whole or in part.

This Practice Statement guides Tax Officers in exercising the discretion to remit this penalty. Tax Officers will consider the employers attempt to comply with their SGC obligations and their prior tax compliance history, amongst other factors.