

# client alert

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July 2011

### Trust Streaming – Certainty Almost Here

The Government has introduced legislation to provide certainty to trusts in relation to the streaming of capital gains and franked distributions (including any attached franking credits) to specific beneficiaries as an interim measure following a High Court decision last year – known as the *Bamford* decision – which had cast doubt in this area.

**TIP:** The changes are technical and are proposed to apply to the current year (ie the year from 1 July 2010 to 30 June 2011). This does not give a lot of time for trusts affected to respond. If this legislation affects you, McLean Delmo will be in contact shortly.

### Car Fringe Benefit Taxation about to Change

A Bill has been introduced into Parliament to simplify the method for determining the taxable value of car fringe benefits. Broadly, the change will introduce a flat 20% rate to replace the current method which, according to the Government, encourages people to drive their vehicles further than they need to in order to obtain a larger tax concession.

**TIP:** The changes affect salary-sacrificed or employer-provided vehicles. If you think the changes affect you, please call our office.

### Dependent Spouse Offset on the Chopping Board

The Government will soon put in place changes so that taxpayers will not be entitled to the dependent spouse tax offset in respect of a dependent spouse born on or after 1 July 1971. The change is proposed to take effect from 1 July 2011. This means taxpayers with a dependent spouse aged less than 40 years will no longer be eligible for the offset from 1 July 2011.

However, some exceptions will be available – for example, dependent spouses who are carers, invalid or permanently unable to work.

**TIP:** Note that the maximum offset is \$2,355 for 2011-2012.

### SMSF Non-complying Status Affirmed, Despite Tragic Circumstances

In a recent case, the Administrative Appeals Tribunal affirmed the decision of the Commissioner of Taxation that a self-managed superannuation fund (SMSF) be treated as a non-complying fund, despite acknowledging the tragic circumstances surrounding the case. The fund was created in April 2002 and its members included a husband, wife and their adult son. The Tribunal noted the son had a "drug addiction and took almost all of the money from the fund and spent it or gave it away". Although noting the circumstances of the family, the Tribunal was unable to exercise a discretion to treat the fund as a complying fund under the superannuation law.

### Goods Taken from Stock for Private Use

The Tax Office has updated the amounts the Commissioner will accept for 2010-2011 as estimates of the value of goods taken from trading stock for private use by taxpayers in certain specified industries. For example, for a takeaway food shop, the Commissioner will accept \$2,970 (excluding GST) for each adult (or child over 16 years of age). Note that the Tax Office intends to adjust the values annually.

## Travel and Study Scams on Tax Office Radar

The Tax Office has issued a warning to taxpayers to steer clear of dodgy arrangements which involve claiming holiday travel expenses as work-related or self-education expenses. The Commissioner said he was concerned that some people are getting involved in arrangements to deliberately claim inflated deductions which they are not entitled to, particularly in relation to overseas travel. If the claim is legitimate, the Tax Office says taxpayers need to correctly apportion their expenses to the extent they are connected to their income-earning activities and are not private or domestic in nature.

## Low-income Taxpayer Offset to End for Most Minors

A Bill has been introduced which contains changes to implement the Government's 2011-2012 Budget announcement to restrict access by minors (children under 18 years of age) to the low income tax offset. Under the changes, the ability of minors to access the offset to reduce tax payable on their unearned income (dividends, interest and rent) will be removed from 1 July 2011. The Government said the changes are designed to discourage income splitting between adults and children.

**TIP:** Income earned by minors from work will still be eligible for the full benefit of the offset. Unearned income of minors who are orphans or disabled, as well as compensation payments and inheritances received by minors, will not be affected by this measure.

## Commissioner's Claim to Recover GST Refunded Not Out of Time

A taxpayer has been unsuccessful before the Administrative Appeals Tribunal in arguing that the Commissioner's claim to recover an amount of GST refunded was ineffective. The taxpayer had argued that the claim was made outside of the four-year time limit under the tax law. However, the Tribunal found the time limit did not apply in the circumstances of the case.

## GST and Tax Invoice Requirements

The Tax Office has issued a draft GST ruling which replaces an earlier ruling in relation to the minimum information requirements for a tax invoice and the circumstances of when a document can be deemed a tax invoice even when it does not meet all of the requirements. The draft ruling also sets out the application of the low value threshold for transactions for which a tax invoice is not required. Note the draft ruling maintains the same outcomes as the earlier ruling.

## Deductibility for Private Pilot's Licence Cost Denied for a Solicitor

A solicitor has been unsuccessful before the Administrative Appeals Tribunal in claiming a deduction for expenses he incurred in converting his New Zealand private pilot's licence to an Australian one. The solicitor had hoped to take on aviation matters for local clients. However, the Tribunal was of the view that there was not a sufficient connection between the expenses claimed and the income earned as a solicitor.

**TIP:** Tax time 2011 is just around the corner. As usual, the Tax Office will be paying close attention to large deductions claimed by individuals in their 2011 tax returns.