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## Proposed CGT-related Amendments

The Government has introduced a Bill into Parliament which seeks, among other things, to remove the CGT trust cloning exception.

Currently, the trust cloning exception ensures that a CGT event does not happen if a trust is created over a CGT asset, or if the asset is transferred to an existing trust where the beneficiaries and terms of the transferring trust and receiving trust are the same.

The Bill also seeks to clarify that a mere change of trustee does not trigger a CGT event even if there is a change in the person who holds the office of trustee.

Further, the Bill seeks to provide an optional CGT rollover for the transfer of assets between 'fixed' trusts (ie the beneficiaries' interests in the trusts must be fixed).

The effect of the rollover will be the deferral of any capital gains or losses in respect of the transfer, and the making of adjustments to the cost base of interests held by the beneficiaries accordingly.

Broadly, the rollover will be available if:

- the receiving trust has no CGT assets, other than a small amount of cash or debt;
- the trustees of the transferring trust and receiving trust both choose the rollover and make the same 'tax choices' (eg family trust elections); and
- the same beneficiaries have the same direct interests in both trusts.

## Improvements to GST Administration

The Government has introduced a Bill seeking to improve the administration of GST. The proposed amendments contained in the Bill include:

### Four-year limitation period

Under the proposed amendments all entitlements to input tax credits must be claimed within four years from the day on which a taxpayer is required to give the Commissioner a BAS to which a credit would be attributable, subject to three exceptions.

The three exceptions are where:

- the Commissioner provides a notice within the four-year period to a taxpayer requiring payment of an amount;
- the credits are linked to liabilities avoided as a result of fraud or evasion;
- the taxpayer notifies the Commissioner of their entitlement within the four year period.

### Gross-up clauses

The Bill introduces an additional adjustment rule allowing taxpayers to claim the input tax credit related to a payment they are contractually required to make as a result of the supplier being liable to pay GST even if the four year period will have passed.

A common example is the activation of the gross-up clause in a commercial contract which ensures that the supplier does not bear the burden of GST should the supply later be considered to be taxable.

### Overpaid GST refunds

The Bill also seeks to ensure an overpaid GST refund to a taxpayer will be treated as a tax liability from the date of overpayment.

In addition, a taxpayer who receives an overpaid GST refund will be liable for interest charge from the date they receive the overpayment.

## Supplies to associates

The Bill will ensure that a supply to or from an associate may constitute an input-taxed supply, a GST-free supply or a financial supply even where the supply is without consideration.

This is to ensure appropriate and consistent GST treatment for any expenses related to such supplies.

## GST and Sale of Vacant Land

The Federal Court has affirmed that the sale of vacant land is a taxable supply even though the taxpayer had received zoning permission from a council classifying the land for residential use.

This was because the land lacked the “element of shelter and basic living facilities such as provided by a bedroom and bathroom” required for it to be considered residential premises.

Further, the definition of residential premises was found to disregard the intended occupation or potential use of the premises.

- The Commissioner’s established view is that vacant land cannot constitute residential premises.
- Generally, the sale of residential premises is input taxed to the extent the premises are used predominately for residential accommodation.

## Deductibility of Disability Superannuation Benefit Premiums

The Government has announced that it will introduce a transitional arrangement allowing complying superannuation funds to deduct insurance premiums for total and permanent disability superannuation benefits (TPD premiums).

The proposed transitional arrangement will allow funds to claim a deduction for TPD premiums from 1 July 2004 until 30 June 2011.

From 1 July 2011 such insurance premiums will only be deductible to the extent that the policies have the necessary connection to a liability of the fund to provide disability superannuation benefits to their members. Other types of insurance where premiums are collected from the members will not be deductible.

## Trauma Insurance Policies and SMSFs

The Commissioner has provided his preliminary views on whether a trustee of a self-managed superannuation fund (SMSF) can purchase a trauma insurance policy for a member without contravening the superannuation legislation.

The Commissioner says a trustee will not contravene the sole purpose test provided:

- any benefits payable under a policy:
  - are required to be paid to the trustee;
  - will become part of the assets of the SMSF at least until the relevant member satisfies a condition of release; and
- the acquisition of the policy is not made to secure some other benefit for another person.

## GIC and SIC Rates Released

The Tax Office has released the general interest charge and shortfall interest charge rates applicable from 1 January to 31 March 2010:

| Rate | Annual (%) | Daily (%) |
|---|---|---|
| GIC | 10.95 | 0.03 |
| SIC | 6.95 | 0.01904110 |

The Tax Office has also released the interest rate for overpayments, early payments and delays in refund applicable from 1 January to 31 March 2010. The applicable interest rate is 3.95%.