



**BRM  
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Chartered  
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## April 2010 Newsletter

### **Fringe Benefits Tax: Year Ended 31 March 2010**

The 2010 year for fringe benefits tax purposes ended on 31 March 2010, with the 2010 Fringe Benefits Tax Return due for lodgement and payment on 21 May 2010.

In preparing your return remember the following developments during the year that may be relevant:

- Effective 1 July 2009 changes were made to the exempt status of foreign employment income for many employees. Fringe benefits provided to employees who derive foreign employment income that is exempt are not subject to FBT. However, such income may no longer be exempt and so fringe benefits provided to these employees may now be subject to FBT.
- Amendments were made to ensure that donations made to deductible gift recipients via a salary sacrifice arrangement will not be subject to FBT. This means that the effective tax outcome of such donations is the same irrespective of whether the donation is made by the employee personally or under a salary sacrifice arrangement.

- The benchmark interest rate for the 2010 FBT year was 5.85%.
- The car parking threshold for the 2010 FBT year was \$7.25.
- The record keeping exemption threshold for the 2010 FBT year was \$7,063.

Also, remember that there are various concessions that exempt benefits from FBT or reduce the taxable value of the benefit, including:

- Eligible work related items.
- Car parking benefits.
- Motor vehicle benefits.
- Meal Entertainment.
- Employee contributions.

### **Tax Office Processing of Assessments**

As many clients would be directly or indirectly aware, the tax office's new software implementation process has met with a number of delays and other issues related to the raising of assessments and the receipt of refunds by taxpayers.

The processing back-log appears to be clearing, a significant number of refunds were processed and received via our office last week, and the tax office has advised that the balance are in the process of being distributed.

### **Clarifying the Taxation of Overseas Based Employees**

The Assistant Treasurer has confirmed that there is no double taxation of Australians working overseas and that such workers will not be required to lodge a foreign tax return to demonstrate and claim amounts of foreign tax paid.

Further, the Assistant Treasurer confirmed that the operation of the current FBT exemption for fly-in fly-out arrangements that applies for domestic arrangements will be maintained and apply to Australian workers in similar situations involving international work.

### **Investors of Failed Forestry Schemes — Deductions Protected**

The Government has introduced legislative changes to protect deductions claimed by investors in forestry managed investment schemes where the four-year holding period requirement to claim the deduction is failed for reasons genuinely outside the investor's control.

The change will assist investor's in schemes which are wound-up or insolvent.

## The Active Asset Test and Rental Properties

The small business CGT concessions operate to reduce the capital gains tax payable on the disposal of active assets by eligible taxpayers. Key issues are therefore the definitions of active assets and eligible taxpayers.

Eligible taxpayers are generally those that are Small Business Entities or taxpayers that satisfy the maximum net asset value test. Small business entities are taxpayers that carry on a business with aggregated turnover of less than \$2 million. The maximum net asset value test is passed if the net CGT assets of the taxpayer and connected and affiliated entities do not exceed \$6 million.

An asset is an active asset where it is used, or held ready for use, in a business.

These definitions can be problematic when considering the eligibility to the concessions of capital gains arising from the sale of rental properties.

Generally, the leasing of properties, residential or commercial, is not considered to be the operation of a business. Such activities are considered to generate passive income. Therefore, the concessions would not be available to the taxpayer.

It may be possible in certain circumstances to demonstrate that such activities are

performed in conducting a business. However, even if this can be demonstrated, the asset would need to be considered an active asset.

The tax office has advised that certain assets cannot be active assets even if they are used, or held ready for use, in the course of carrying on a business. In particular, assets used mainly to derive rent from third parties (that are not affiliates of or connected with the taxpayer) are specifically excluded from being active assets.

## Superannuation Clearing House — Coming Soon

The Bill to establish an optional free superannuation clearing house for employer superannuation contributions has been introduced into Parliament.

The clearing house, to be administered via Medicare Australia, will allow businesses with fewer than 20 employees to meet their employer superannuation guarantee obligations once payment is received by the clearing house.

The clearing house is expected to be available from July 2010, with businesses to be able to register with Medicare Australia from May 2010.

## Amounts Announced for the 2011 Fringe Benefits Tax Year

The tax office has released various amounts in relation to

fringe benefits tax effective 1 April 2010.

- The benchmark interest rate is 6.65%.
- The record keeping exemption threshold is \$7,190.
- The indexation factors for the purpose of valuing non-remote housing.
- The amounts that represent a reasonable food component of a living-away-from-home allowance.

## Self-Managed Super Funds and Acquiring Assets from Related Parties

There are strict rules which prohibit a self-managed superannuation fund from acquiring an asset from a related party.

The Commissioner states that under the rules an 'asset' means any 'form of property' and includes every type of right and intangible personal property that can be enforced by legal or equitable action such as a debt or an interest in a trust fund.

The phrase 'acquire an asset' encompasses not only the purchase of an asset but also the acquisition of an asset where the SMSF does not provide any consideration (for example, in specie contributions).

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.