Chartered Accountants

December 2010 / January 2011 Newsletter

SMSFs and Private Companies Investing in Trusts: Tax Office Warning

The Tax Office has warned self-managed super funds (SMSFs) not to invest in trusts with the intention of making funds available for lending to members. The warning comes in a taxpayer alert which describes an arrangement where an SMSF invests money in an unrelated trust that then on-lends the funds to an SMSF member or relative. The Tax Office says such arrangements attempt to circumvent strict rules prohibiting SMSF trustees from lending money or providing financial assistance to a member or a relative using the resources of the fund.

In another similar taxpayer alert, the Tax Office warned private companies against investing in trusts with the intention of making funds available for lending to shareholders. The taxpayer alert describes an arrangement where a private company invests funds in an unrelated trust that then on-lends the funds to a shareholder or an associate of a shareholder. The Tax Office warns the arrangement may be an attempt to circumvent tax rules which are aimed at preventing private companies from making tax-free distributions of profits to shareholders or their associates.

Common PAYG Instalment Errors

The tax office has noted common errors made by taxpayers in completing their PAYG instalment activity statements. The three main errors identified are:

- Instalment income amounts being adjusted rather than the instalment rate being varied;
- No PAYG instalments being reported and paid for the first two quarters of the financial year, with these amounts then being added to the PAYG instalments for the final two quarters;
- Only one month's instalment income being included in the calculation rather than the instalment income for the quarter.

In particular, the tax office will review instances where the PAYG instalment made for a quarter is significantly different to the PAYG instalment made in a previous quarter.

Business Tax Break Deadline is Approaching

Businesses may be eligible for the once off deduction (tax break) for investment in new tangible depreciable assets or new investment in existing assets made from 13 December 2008 until 31 December 2009.

The tax break is based on a rate of 50%, 30% or 10% depending on the type of business entity, when the investment commitment was made and when the asset is first installed ready for use. The tax break is available in the year the depreciable asset is first installed ready for use. Businesses should ensure that depreciable assets that are eligible for the tax break are installed ready for use by 31 December 2010, should this deadline not be met then the investment's eligibility to the tax break will be lost.

This deadline applies to both small businesses seeking eligibility to the 50% tax break and non-small businesses seeking eligibility to the 10% tax break. The non-small business 30% tax break deadline has previously passed, this required the asset to be installed ready for use by 30 June 2010.

2010 – 11 Mid-Year Economic and Fiscal Outlook

The Federal Government has released the 2010 – 11 Mid-Year Economic and Fiscal Outlook. Of most interest to business taxpayers is the measure to allow businesses to claim a one-off bonus tax deduction for retrofit of certain commercial buildings between 1 July 2011 and 30 June 2015 where such works significantly improve the building's energy efficiency, subject to satisfying various eligibility requirements.

Individual taxpayers should note that the Outlook included revision of the proposed 50% tax discount on interest income which was announced in the 2010 – 11 Federal Budget. The commencement of this measure is to be deferred by 12 months to 1 July 2012 and a lower cap will apply to the interest income that is eligible for the discount in the first 12 months, being $500, then returning to the originally proposed $1,000 from 1 July 2013.

Employing your Spouse? Ensure There's an "Employment Relationship"

Two recent cases before the Administrative Appeals Tribunal dealt with the scenario of a husband employing his wife to assist with looking after rental properties. The question before the Tribunals was whether there was a "genuine employment relationship".

The two cases show that if it is found that there is no employment relationship the taxpayer would not be entitled to deductions for salary or wages, fringe benefits and superannuation contributions paid in relation to "employing" the spouse. Rather, the outgoings would be considered to be private or domestic in nature. An existing domestic relationship cannot be transformed by simply calling it a different name or by adopting some aspects of an employment relationship.

From all of us at BRM Holdich!

Merry Christmas and Best Wishes for the New Year.

Please note that our office will be closed from 5pm on Wednesday 22nd December 2010 re-opening on Tuesday 4th January 2011.

During this period please contact Aaron on 0411 549 782 or aread@brmholdich.com.au should you have any urgent matters that require our assistance.

Thank you for your support in 2010 and we look forward to seeing you in the New Year.

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.