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February 2011 Newsletter

Introduction of a Flood Levy

On 27 January 2011 the Prime Minister announced the introduction of a Flood Levy as part of the Federal Government's response to the rebuilding of flood-affected areas in Australia.

It is estimated that this Levy will fund one third of the required investment, the balance will be delivered by reduced spending.

The announcement included the release of a fact sheet, this includes the following details:

- The Levy will apply to an individual's taxable income.
- The Levy will apply for one year only, being the financial year ending 30 June 2012.
- The Levy will apply at a rate of 0.50% on taxable income between \$50,001 and \$100,000.
- The Levy will then apply at a rate of 1.00% on taxable income above \$100,000.
- Where taxable income is \$50,000 or less, no Levy will be payable.
- Further, taxpayers who receive an Australian Government Disaster Recovery Payment in relation to a flood event in the year ending 30 June 2011 will be exempt from the Levy.
- The Levy will be calculated and paid as part of the income tax system, similar to the Medicare Levy.
- PAYG Withholding schedules for the year ending 30 June 2012 will incorporate the Levy. Employees who are exempt will be able to advise employers not to deduct the Levy.
- Similarly, PAYG Instalments will incorporate an estimate of the Levy payable, this may be varied should the taxpayer be exempt.

It should be noted that this Levy is not yet passed and has been the subject of much and continued debate as to its appropriateness.

Whether a Property Constitutes Residential Premises for GST Purposes

Under the GST Act, a sale of real property is "input taxed" (ie no GST is payable on the sale), if the property is "residential premises to be used predominately for residential accommodation", and other requirements are met. Although the phrase from the GST Act appears straightforward, it has been subject to lengthy arguments before the courts.

In the most recent case, the Full Federal Court held that whether a property was residential premises to be used predominately for residential accommodation, and therefore input taxed, was to be determined objectively by reference to the physical characteristics of the property as at the date of acquisition.

Whilst the 'actual use' of the property may not be irrelevant, it is these physical characteristics that are of primary importance. Further, the determination is not concerned with the 'intended use' of the property by the purchaser.

TIP: Are you planning on selling a property? GST should be part of any tax planning considerations. Please contact our office for further advice.

Eligibility to Carry Forward Losses

Unfortunately the economic downturn of recent times resulted in many businesses incurring losses, particularly during the year ended 30 June 2009. The tax office has advised that it will make contact with selected Tax Agents to review taxpayers carrying forward such losses.

A taxpayer's ability to carry forward and ultimately apply such losses against future income is subject to a number of factors, including the type of business entity, ownership of the entity and the business operations carried on.

Common mistakes that the tax office has previously identified include:

- Not satisfying the 'continuity of ownership' or the 'same business' tests.
- Incorrect transfer of losses to the head company of a consolidated group.
- Incorrect calculation of the available fraction.
- Lack of records to substantiate losses incurred.
- Incorrect calculation of losses.

Clients, with our assistance, should consider if they are eligible to carry forward their losses when preparing their 2010 income tax return.

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.