

Tax News, Views and Clues

Business Costs — 'Blackhole' Expenditure

The Government recently released draft legislation which expands the circumstances under which a deduction is available for 'blackhole' expenditure. This is expenditure which is incurred by a business where there is no deduction available under tax law.

Under the current rules, taxpayers could deduct specific expenditure on a straight-line basis over five years. This included expenditure incurred to establish a business structure, convert a business structure, raise equity, defend a business against a takeover, and costs related to ceasing a business.

Under the proposed rules, taxpayers will continue to be entitled to a deduction on a straight-line basis over five years for certain business expenditure. The available deductions are expanded to include expenditure which is incurred in relation to a past, present or prospective business, to the extent that the business is, was, or is proposed to be carried on for a taxable purpose.

This includes expenditure on a business plan, the establishment of business premises, research into likely markets or profitability of a business, and capital investment in assets of the business.

In addition, shareholders, beneficiaries of trusts and partners will be able to deduct liquidation and deregistration

costs where the company, trust or partnership carried on the business.

The deduction will only be available if the expenditure cannot be deducted under any other part of the tax law. It is noted also that if a taxpayer is not carrying on a business, the deduction will not be available.

If passed, the new rules will apply to expenditure incurred on or after 1 July 2005.

Common Mistakes in Claiming Rental Property Deductions

The Tax Office has recently released a guide to help taxpayers claim deductions on a property they lease. The guide outlines common mistakes made on income tax returns, some of the more common of which are outlined below:

- claiming the cost of improvements such as remodelling or adding sections to the property as repairs when these should be claimed as capital works deductions;
- over-claiming deductions of interest where a loan was taken for both private and income-producing purposes;
- claiming deductions for items that have been incorrectly identified as depreciating assets; and
- claiming deductions on a property that is only available for rent for a portion of the year (i.e. a holiday house).

- **TIP:** When preparing your personal income tax return, make sure to consult the Tax Office guide: Rental properties 2005–06, to ensure that depreciating assets have been identified correctly and their effective lives are reasonable.

GST and Contracts, Again!

As with GST regimes around the world, a majority of court and tribunal cases will rest upon whether one party has the contractual ability to recover GST from the other party. The Victorian Civil and Administrative Tribunal (the tribunal) recently presided over a case concerning GST and a retail tenancy agreement. The tenant sought a refund of GST paid to the landlord (amongst other things).

The tenant had argued that the landlord was not registered for GST and that the GST payment made was 'payment for which there was a total failure of consideration'. The landlord argued that the GST did not need to be refunded as the GST was remitted to the Tax Office and the tenant was entitled to input tax credits on the payment. The tribunal held that the rental agreement did not contain specific GST indemnity clauses for the tenant to indemnify the landlord for any GST outstanding and that the GST clauses contained in the rental agreement were very narrow in their application.

The landlord had also leased out the premises in his capacity as a non-GST registered individual rather than through a GST registered partnership of which the landlord was a partner.

In summary, the tribunal held that GST should be refunded to the tenant as it was incorrectly paid across to the landlord.

- **TIP:** The case highlights the importance of adequate GST recovery clauses and that when it comes to GST, a one-size-fits-all clause will not suffice. Although standard GST clauses may suit in some circumstances, different transactions will require different GST clauses.

Home Loan Interest Deduction Denied

In a recent decision, the Administrative Appeals Tribunal (AAT) concluded that interest deductions claimed by a taxpayer for borrowings to invest in a unit trust to construct a family home were not deductible.

In this case, the taxpayer purchased a parcel of land and transferred it to a personal unit trust. The unit trust entered into a contract to erect a house on the land. On transfer of title, the taxpayer issued units in the trust and drew down on the loan funds to make payments under the building contract.

The taxpayer claimed a deduction for the interest on the loan but the Commissioner disallowed the deduction. The AAT concluded that there was not the necessary connection between the interest payments and the unit trust producing assessable income.

The AAT also concluded that this arrangement will attract the anti-avoidance rules under Part IVA, as the sole or dominant purpose of the arrangement was to obtain a tax benefit.

Main Residence CGT Exemption

A person's main residence will generally be exempt from CGT upon disposal.

A Tax Office fact sheet indicates that, in certain circumstances, the full exemption may not apply and only a partial main residence exemption may be available. This will occur when the taxpayer's partner and/or dependants have separate homes, part of the property has been used to produce assessable income, or the land area is more than two hectares.

As a general rule, a person is only entitled to the exemption on one property for any particular period. However, where a person purchases a new home before disposing of an old one, both dwellings may be treated as the person's main residence for up to six months.

- **TIP:** Taxpayers should carefully consider the tax treatment of their residential premises.

2006/2007 Superannuation Thresholds

Redundancy payments — tax-free amount

	2006/07	2005/06
Fixed component	\$6,783	\$6,491
Years of service component	\$3,392	\$3,246

Age-based deduction limits

Age limits	2006/07	2005/06
Under 35	\$15,260	\$14,603
35 to 49	\$42,385	\$40,560
50 to 70	\$105,113	\$100,587

RBL limits

	2006/07	2005/06
Lump sum RBL	\$678,149	\$648,946
Pension RBL	\$1,356,291	\$1,297,886

Post-June 1983 ETP component threshold

	2006/07	2005/06
ETP low rate threshold	\$135,590	\$129,751

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