

Tax News for September 2011

Proposal to remove some tax impediments associated with special disability trusts

The Federal Government has released exposure draft legislation on its proposal to introduce the following changes with respect to special disability trusts (SDT):

We explain some of those changes below:

1. CGT exemption for assets transferred into an SDT for no consideration

Under the proposed amendments, the seller (transferor) will be entitled to disregard any capital gains or losses on the CGT asset when the asset is transferred into an SDT for no consideration.

If the asset is transferred into a trust that is not yet an SDT, an exemption is still available provided the trust becomes an SDT as soon as practicable after the asset is transferred into the SDT, which allows time for the relevant taxpayer to make the necessary changes.

2. Extension of the main residence CGT exemption to SDT

Under the proposed changes, a trustee of the SDT that holds a dwelling for use by the principal beneficiary will be entitled to the CGT main residence exemption to the extent that the principal beneficiary would have qualified, had they owned the interest in the dwelling (main residence) directly.

The absence rules that apply to other taxpayers will also be extended to SDTs.

3. A CGT exemption for a beneficiary who inherits the main residence after the death of the principal beneficiary of a SDT provided the beneficiary disposes of the dwelling within two years of the principal beneficiary's death

Provided the following three main conditions are satisfied, a CGT exemption will be available for a beneficiary, those main conditions are as follows:

- the CGT (generally a disposal) event must happen at or after the principal beneficiary's death;
- the dwelling must have been owned by a trust that was a eligible SDT at some point in the dwelling's ownership period (before the principal beneficiary's death); and
- At the time the CGT event (generally a disposal) happens, the dwelling must be owned by a trustee of the SDT or a trustee of an implied trust arising because of the deceased's death.

Trusts established under the Veterans Entitlements Act will also be entitled to equivalent SDT treatment.

It is proposed that these measures have effect from 1 July 2006.



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Taxpayer treated as a share trader for income tax purposes

In a recent hearing at the AAT, a relatively common situation was considered.

The case relates to whether a taxpayer was a share trader or an investor. By way of background, where a taxpayer is considered a share trader, gains and losses are treated as ordinary income and / or losses.

Where a taxpayer is an investor, the gains and losses are on capital account, with capital losses carried forward and 'recoupable' against capital gains.

In short, the taxpayer was considered to be a share trader after taking into account the following arguments and factors:

- The taxpayer became involved with a stock-picking and research service from which the taxpayer purchased a licence and became entitled to regular research and advice on share market opportunities;
- consulted research on a daily basis and checked the progress of his shares and made strategic decisions constantly;
- researched companies by examining data on the ASX, the Fin. Review and Commsec (and other sources),
- Sought advice from brokers;
- Developed his investment strategy which involved purchasing shares with falling prices where there was an expectation the price would subsequently increase, and to sell the shares as soon as the price increased;
- Did not seek dividends;
- Did not wish to build up a portfolio of shares;
- Used a margin lending facility to fund his activities;
- Recorded the transactions using software;
- Operated from the offices of his services business where he oversaw his other business activities;
- Always had an intention to make a profit out of his activities during the year of income;
- The taxpayer behaved as if he were following a systematic strategy, although it was not detailed, scientific or formal; and
- The financing arrangements favoured short term trading rather than long term positions.

These criteria are useful for anyone contemplating either moving in to share trading or the positioning themselves the other way and being treated as a share investor.

Further details of this case can be found at <http://www.austlii.edu.au/au/cases/cth/aat/2011/545.html>

Should you have any questions, please do not hesitate to contact our office.





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Workcover – contractor changes from 1 July 2011

Some important changes regarding the contractor provisions for Workcover purposes have come into effect from 1 July 2011.

Although these matters are quite detailed, here is a snapshot of the new regulations:

There are three key factors:

- 1) the provision of materials or equipment is not the principal object of the arrangement (this is basically a 50% test and can be generally checked on the invoice rendered)
- 2) at least 80% of the work is performed by the same individual
- 3) at least 80% of the contractor's overall services income is earned from the hirer: under the arrangement,

These are pretty straight forward and mathematical calculations, which does simplify matters for taxpayers, however – the next step is the 'contractor reductions' – and this basically reduces the remuneration figure by the amount of the non-labour component.

However – it is not all straight forward, where these tests do not produce a desired result – the usual employer – employee tests are then applied, and some factors include the following:

- the use of a business name by the contractor
- the extent and nature of advertising undertaken by the contractor
- the range of clients serviced by the contractor
- the extent and nature of plant and equipment provided by the contractor in execution of the services
- the engagement of staff or sub-contractors by the contractor
- the use of business premises by the contractor
- whether the contractor quotes competitively for jobs on an all inclusive basis (all labour and materials), and
- whether the contractor merely charges for services on an hourly rate and adds on the cost of materials.

There are other factors / guidelines that are relevant, and if more information is required, please do not hesitate to contact us.



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GST changes as relating to financial supplies and hire purchase arrangements

An exposure draft has recently been released which provides taxpayers with two main changes as relating to GST.

These proposals are intended to apply from 1 July 2012.

The first main change relates to the financial acquisitions threshold test.

In short, the old \$50,000 GST input tax credit limit has been increased to \$150,000, the old 10% threshold remains unchanged.

This change basically allows taxpayers that have limited financial supplies and costs relating to those financial supplies to continue to claim GST input tax credits provided they meet (i.e. are below) the thresholds stipulated above.

This is a welcome change to GST registered taxpayers that have some financial supplies in their business.

The second main change relates to hire purchase arrangements.

Under the proposed measures, GST registered taxpayers that account for GST on a cash basis will be allowed to claim the full GST input tax credit upfront when they enter into a hire purchase arrangement.

Up to this point in time, GST registered businesses that entered into a HP arrangement could only claim GST over the life of the HP.

This is another welcome change for taxpayers.

As mentioned, these proposals are intended to come into effect from 1 July 2012.

Should you have any questions, please do not hesitate to contact our office.