

Dear Client,

We are pleased to supply you with the April 2008 edition of **The Report**.

This edition provides you with the latest important developments in taxation that may affect you or your business, including the following:

- **Income tax reforms** — A new Bill gives effect to income tax rate cuts that the Labor Government promised as part of its election campaign.
- **Tax law changes** — Proposed amendments to tax laws including removing tax deductibility for contributions to political parties and, changes to the taxation of a superannuation lump sum payment paid to a person with a terminal medical condition.
- **FHS Accounts scheme** — An overview of the government's First Home Savers Accounts scheme.
- **CGT on holiday unit** — The AAT affirms that a holiday unit used by a taxpayer does not qualify for the small business CGT concessions.
- **Shed qualifies as main residence** — The AAT held that a shed used by a taxpayer qualified as a main residence for the purpose of a CGT exemption.
- **Simplified tax system** — The Tax Office releases a fact sheet highlighting changes to the simplified tax system.
- **In-house assets & SMSFs**— The Tax Office releases a fact sheet explaining the in-house assets rule and its importance to trustees of SMSFs.
- **Multiple birth allowance** — Changes to the eligibility for the allowance.
- **IRA & assessable income** — The Tax Office has stated that a lump sum distribution received by an Australian resident from a traditional IRA held in the US is assessable income in Australia.

In addition, you'll find a **Due Diligence Checklist** to help with income tax, GST, WorkCover and superannuation considerations when acquiring a business.

### **Please Note**

The Final due date for tax returns for 2006/2007 is 15<sup>th</sup> May 2008. Please ensure all your records are made available to the accountant as soon as possible.

### **Holidays**

The office will be closed on the following days:

**21 to 24 April 2008 – Passover**

**25 April 2008 – Anzac Day**

Please contact us if you wish to discuss how the points raised in **The Report** specifically affect you.

Yours sincerely

**GUESTS ACCOUNTING**

# the report

## tax news | views | clues

### Income Tax Reform

Readers will recall that in the February 2008 newsletter, we highlighted some of the proposed reforms to the income tax system, which the Labor Government promised as part of its election campaign. The Government has since introduced into Parliament a Bill proposing income tax rates cuts.

For the 2008/09 income year, the proposed personal tax rates and tax payable for resident taxpayers are set out in the table below:

Taxable income (\$)	Tax payable (\$)
0 – 6,000	Nil
6,001 – 34,000	15% of excess over 6,000
34,001 – 80,000	4,200 + 30% of excess over 34,000
80,001 – 180,000	18,000 + 40% of excess over 80,000
180,001 +	58,000 + 45% of excess over 180,000

The low income tax offset (LITO) for the 2008/09 income year will increase from \$750 to \$1,200.

Therefore, taxpayers will be entitled to the LITO if their taxable income is less than \$60,000.

As a consequence of the increase in the LITO, senior Australians who are eligible for the senior Australian tax offset (SATO) will have no tax liability until their income reaches \$28,867 for singles and \$24,680 for each member of a couple for the 2008/09 income year.

The Medicare levy threshold amount for senior Australians who are eligible for the SATO will also increase in line with the LITO for the 2008/09 income year. The threshold amount will increase from \$25,867 to \$28,867. The Medicare levy phase-in limit for senior Australians who are eligible for the SATO will increase from \$30,431 to \$33,961. The Medicare levy phase-in limit that applies to couples eligible for the SATO will increase from \$44,647 to \$49,412.

### Tax Law Changes

In February 2008, the Government introduced into Parliament a Bill seeking to:

- remove tax deductibility for contributions and gifts to political parties, members and candidates, including membership fees;

- remove an inconsistency in the tax law relating to farm managed deposits, thereby ensuring eligible primary producers will be able to access the concessions;
- ensure that a superannuation lump sum payment paid to a person who has a terminal medical condition is tax-free; and
- ensure the Equine Workers Hardship Wage Supplement Payment received by individuals is tax-free.

### First Home Savers Accounts

The Government has formally approved the establishment of the First Home Savers (FHS) Accounts scheme. It is anticipated that eligible first home buyers will benefit from the scheme. The scheme will be offered through banks, building societies, credit unions and life insurers.

Although the detailed features of the scheme have not been finalised, key features will include:

- co-contribution from the Government of a minimum of 15% on after-tax contributions of up to \$5,000;

- individuals aged between 18 to 65 will be able to open an account with an initial contribution of at least \$1,000, so long as they comply with the eligibility criteria for the First Home Owners Grant;
- the minimum savings period for the scheme is four years;
- interest earned will be taxed at a rate of 15%; and
- withdrawals will only be permitted for the purchase of an eligible first home and will be tax-free. Alternatively, individuals can roll over the full amount of the account to their superannuation fund at any time.

## **Simplified Tax System**

The Tax Office has released a fact sheet outlining the eligibility criteria for the small business entity concessions and how the changes affect former simplified tax system (STS) taxpayers.

The STS was replaced by the small business entity regime from the 2007/08 income year. The concessions available under the former STS are still available. In addition, where a taxpayer has been classified as a small business entity, they can choose to access other various concessions, including accounting for GST on a cash basis and the FBT car parking exemption.

The requirements to be classified as a small business entity differ from the STS.

## **CGT on Holiday Unit**

In a recent decision, the Administrative Appeals Tribunal (AAT) has affirmed that a holiday unit that was used for short-term holiday accommodation was not an active asset for the purposes of

the CGT small business concessions.

Two basic conditions must be satisfied before a taxpayer can access the concessions — the taxpayer must be a small business entity or satisfy the ‘maximum net asset value’ test, and the CGT asset must be an active asset. Depending on the concession being accessed, further conditions must also be satisfied.

Where the conditions are satisfied, the capital gain arising from the disposal of a CGT asset can either be disregarded or reduced.

A CGT asset is an ‘active asset’ if it is used, or held ready for use, in carrying on a business by a taxpayer, an affiliate or a connected entity.

## **Shed Qualifies as Main Residence**

In a bizarre decision by the AAT, it was held that a shed used by a taxpayer qualified as a main residence despite the fact that the taxpayer only moved her bed into the premises.

If a dwelling, which a taxpayer owns or acquires, qualifies as their main residence, any capital gains arising from the disposal of the dwelling will be disregarded or reduced.

## **In-house Assets and SMSFs**

The Tax Office has recently issued a fact sheet explaining what an in-house asset is, the transitional rules that apply to certain assets owned by a SMSF before 11 August 1999 and the changes that will apply after 30 June 2009.

The in-house assets rule states that a trustee of a superannuation fund must not acquire in-house assets if to do so would increase the ratio

of such assets to over 5% of total assets, or if the ratio already exceeds 5%.

The Tax Office has stated that a trustee of a SMSF, which has assets affected by the transitional rules, needs to review their fund investment structure to ensure compliance with the in-house asset rules after 30 June 2009.

## **Multiple Birth Allowance**

The eligibility for the multiple birth allowance has been extended from 1 January 2008.

The changes will allow families with at least three children born in the same multiple birth to be eligible for the allowance until:

- the children are 16 years of age; or
- if at least three of the children are in full-time study, until the end of the calendar year in which the first born of the three children turns 18 years of age.

## **IRAs and Assessable Income**



In a recent Interpretative Decision, the Tax Office states that a lump sum distribution paid to a resident individual taxpayer upon closing a traditional Individual Retirement Account (IRA) held in the United States is included in the taxpayer’s assessable income. However, the reportable amount in the taxpayer’s income tax return is reduced by any amounts previously reported as notional income under the Foreign Investment Funds measures and where certain exceptions are met.



The assessable income of a resident individual taxpayer includes any ordinary and statutory income derived in or out of Australia.

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.

# due diligence | action checklist

Buying a business is a major decision. The purchase of a business can be done either through an asset sale, or the purchasing of shares in a company or interests in a trust. Regardless of the choice, it is important to ensure that a due diligence report into the business to be purchased has been conducted. The checklist below highlights common areas that must be considered when buying a business. The information gathered should be discussed with your professional adviser.

Item	Yes	No
<b>Financial health</b>		
1	Have you obtained the last four years financial statements of the business?	
2	Have schedules of the following been obtained, where applicable: liabilities (including contingent liabilities), inventory, and accounts receivable and payable?	
3	Have you obtained an up-to-date copy of the business's credit report, if available?	
4	Has a comparison between the business's gross profits with the industry trends been done?	
<b>Taxation considerations</b>		
5	Have you obtained the last four years tax returns of the business?	
6	Have you obtained confirmation that all taxes such as income tax, GST, PAYG withholding and payroll tax are up to date?	
7	Have you familiarised yourself with the tax obligations of the entity to be purchased? <i>TIP: Where the business is conducted through a company, consideration must be given to the duties of a director under the tax law.</i>	
8	Have you considered the stamp duty implications on the purchase of the business?	
9	Have you considered whether the purchase of the business will be a supply of a going concern, ie GST free?	
	Where a business is sold through an asset sale, the purchaser does not inherit any tax liabilities of the business. However, where a business is sold through the sale of units or shares, the purchaser inherits the tax liabilities of the business.	
	Where a business is sold through the sale of units or shares, it will not qualify for as a supply of going concern, ie the purchase of the units or shares will be an input taxed financial supply.	
<b>If you are buying a business through an asset sale</b>		
10	Has an asset register been obtained detailing all the assets being sold? <i>TIP: The register should detail the following information about the assets: the original purchase price, the purchase date, the depreciation rate used, the effective life of the asset, and the written down value.</i>	
11	Have you checked the ownership and condition of the assets being sold?	
12	Where the assets are leased by the business, have you obtained copies of the leases? <i>TIP: If you are taking over the existing leases, consideration should be given to whether the leasing terms are reasonable.</i>	
13	Are the assets adequately insured until settlement of the purchase?	
14	Has the purchase price been apportioned across the assets being purchased?	
	If the purchase contract for an asset sale includes the purchase of the business's trade debtors, you will not be able to claim an income tax deduction for bad debts.	

Item	Yes	No
<b>If you are buying a business through a sale of units or shares</b>		
15	Have you obtained a listing of all current shareholders or unit holders?	
16	If you are purchasing the business through the sale of units, has the trust made a Family Trust Election (FTE)?	
17	If you are purchasing the business through the sale of shares, has the company made an Interposed Entity Election (IEE)?	
<p>The existence of a FTE and IEE restricts who may receive a distribution from the trust or company, and to whom the trust may distribute any income derived.</p> <p> Generally, a trust will be denied a tax deduction for carried forward losses or bad debts provided certain tests are passed. Similarly, where the substantial shareholder of a company changes, the company can be denied a tax deduction for carried forward losses or bad debts provided the same business test is satisfied.</p>		
<b>Employees obligations</b>		
18	Have you obtained a list of employees including their salary and entitlements?	
19	Have all outstanding employees' entitlements such as superannuation guarantee and annual leave been accounted for?	
20	Are the WorkCover premiums up to date?	
<p> Where a business is sold through an asset sale, the purchaser can choose not to take on the employees of the vendor. However, where a business is sold through the sale of units or shares, there will be a continuity of employment and the buyer is responsible for any employees liabilities accrued.</p>		
<b>Trading stock</b>		
21	Does the trading stock include any obsolete stock?	
22	Has the trading stock been valued at market value? <i>TIP: Where the purchase of the business includes trading stock, the trading stock must be valued at market value on the day of disposal, which is normally the date of the purchase contract.</i>	
<b>Business premises</b>		
22	Have you sighted copies of all real estate leases, deeds, mortgages, and any relevant documents to the premises?	
23	If there are improvements to the business premises, has a register been obtained detailing the improvements? <i>TIP: The register should detail the following information: the cost of the improvements and date of construction or acquisition.</i>	
<b>Where the business is conducted through a company</b>		
24	Has a company search been done to verify the vendor?	
25	Are all ASIC requirements up to date?	
<b>Other considerations</b>		
26	Are the business operations subject to any government regulations? If so, are all relevant government licenses, permits or consents up to date?	
27	Have you given thought to whether the structure (company, partnership or trust) that the business operates through is suitable for your needs? <i>TIP: The structure of the business will determine your legal obligations. Factors that should be taken into account when considering whether the structure of the business is suitable for your needs includes asset protection and succession planning.</i>	
28	Have you searched the local council and other government agencies records to ensure there are no plans or council orders that could disrupt the business or lead to a potential drop in sales?	
29	If a restrictive covenant, earn-out clause or claw-back clause is included in the purchase contract, have you ascertained the legal and tax implications?	

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