CLIENT ALERT

March 2013

Help for taxpayers – Bushfires and floods

The government and the ATO have announced help for taxpayers affected by the recent floods and bushfires that have been plaguing the country for the past weeks.

The government has announced that it will provide tax deductible status to relief funds established to help Australians affected by bushfires and floods.

In addition, the ATO will automatically make arrangements to defer the following taxation obligations for taxpayers in the affected areas:

- lodgment and payment of the monthly December, January and February activity statements to 29 April 2013; and
- lodgment and payment of December quarterly activity statements from the original due date of 28 February 2013 to 29 April 2013.

Taxpayers do not need to apply for a deferral.

There are some exclusions, particularly for large withholders and for super guarantee payments generally.

Company loss carry-back rules

Editor: Legislation has now been tabled to introduce the new company loss 'carry-back' rules. This may be of real benefit to corporate clients who are unfortunate enough to incur losses in the 2012/13 year onwards.

Structure of the Carry-back Rules

Basically, the provisions operate as follows:

- start day is 1 July 2012;
- a one year carry-back applies for 2012/13 tax losses;
- up to $1 million worth of tax losses are subject to ‘carry-back’ each year for a company to receive a refund of tax paid in a prior year, providing a cash benefit of up to $300,000 a year (i.e., 30% company tax rate x $1 million);
- the measure only applies to tax (i.e., revenue) losses of a company and not to capital losses;
- an integrity rule will deny companies access to the new rules where there is a change in the control of the company to take advantage of the new rules; and
- tax losses carried-back are limited to the franking account balance of the company.

The super fund pension exemption extended after death of recipient

Editor: Clients with a self managed super fund (SMSF) may be aware that, if the fund pays a pension, income from the assets supporting the pension can be exempt from tax (the 'pension exemption').

However, if the pension ceases, this generally means that the pension exemption also ceases.

The government has introduced changes to the law to ensure that a super fund's investment earnings that were supporting a pension will continue to be tax exempt, following the death of the pension recipient, until the benefits are paid out of the fund – as long as the benefits are paid out as soon as practicable.

The measure will apply to the 2012/13 and later income years.

Transferring assets to SMSFs

Editor: Other new legislation introduced is also set to change the way in which 'business real property' is acquired by an SMSF from 1 July 2013.

The new law now inserts a 'qualified independent valuer' into the picture.

Specifically, the new law requires that business real property acquired by an SMSF from a related party must be acquired at market value as determined by a 'qualified independent valuer'.

The valuer may be qualified either:

- through holding formal valuation qualifications; or
- by having specific knowledge, experience and judgment according to their particular professional community (e.g., by being a current member of a relevant professional

body or trade association).

The valuer must also be independent, so the valuer cannot be a member of the fund or a related party of the fund.

New rules for trustees of SMSFs

The ATO has issued a reminder that new regulations apply to self-managed superannuation funds (SMSFs) from the 2012/13 income year.

They require trustees of SMSFs to:

- value the fund's assets at their market value for the purpose of preparing financial accounts and statements of the fund;
- consider insurance for their members as part of the fund's investment strategy; and
- review the fund's investment strategy on a regular basis.

Trustees who fail to comply with these requirements may be subject to penalties.

ATO given more powers to deal with non-compliance

Trustees have always been required to keep the money and other assets of the SMSF separate from those held by the trustee personally (or by a standard employer-sponsor or an associate of a standard employer-sponsor).

A regulation has now made this requirement an 'operating standard', which means the ATO now has the power to enforce compliance.

Contraventions may result in a fine of up to 100 penalty units.

Editor: Penalty units were recently increased from $110 to $170 per penalty unit; therefore, e.g., 100 penalty units would equal $17,000 (up from $11,000)!

ATO Data Matching Programs

The ATO has announced that it will request and collect information for the purposes of the following data matching programs.

Banking Transparency Strategy Data Matching Program

The ATO will collect the offshore account details of approximately 50,000 bank customers to identify Australian resident taxpayers with offshore bank accounts, which may evidence undeclared income and/or gains in the 2008/09 to 2010/11 financial years, from the major banks (i.e., the 'Big Four'), as well as 14 other banks, including the Bank of Queensland, Macquarie Bank, Citigroup, HSBC, Rabobank, Arab Bank Australia, Bank of China, Credit Suisse and the Union Bank of Switzerland.

Credit and Debit Card Data Matching Program

The ATO will request and collect data relating to credit and debit card sales relating to approximately 900,000 merchants for the period 1 July 2011 to 30 June 2012 from the Big Four banks, as well as St George Bank, Bendigo and Adelaide Bank, Bank of Queensland, BWA Merchant Services, American Express Australia and Diners Club Australia.

Real Property Data Matching Program

The ATO will request and collect names and addresses of approximately 10.4 million individuals and other entities transacting with real property from the various State Revenue Offices and land title registration bodies around the country, as well as other entities such as the NSW Office of Fair Trading – Rental Bond Board, Consumer Affairs Victoria – Residential Tenancies Bond Authority, and the Queensland Residential Tenancies Authority.

How to (effectively) claim input tax credits on rental property expenses

For GST purposes, renting out a residential property is generally an 'input taxed supply', which means that landlords are generally not entitled to claim an input tax credit for the GST embedded in any rental property expenses.

However, for landlords who are also employees, there is a possible planning technique to overcome this problem.

Basically, by salary packaging certain rental property expenses, employees may effectively avoid paying the GST on those expenses.

In particular, if an employee is entitled to claim an immediate (i.e., a 100%) deduction for an expense they incurred in relation to a rental property, they should consider having their GST-registered employer reimburse the expense paid (or have the employer directly pay the expense on their behalf), and only salary package the **GST-exclusive cost** of the expense under a salary sacrifice arrangement.

The employer is in the same position financially, whether paying salary or an equivalent amount for the rental property expenses (provided the employer can claim an input tax credit on the expense, and a deduction for the remainder), but the employee can increase their after-tax income by only effectively paying (i.e., packaging) the GST-exclusive cost for the rental property

expenses.

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.