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THE REPORT

June 2004

Tax News, Views and Clues

Lodgment Opportunity for Trust Elections

The Australian Taxation Office (ATO) has issued a practice statement that sets out a once-off opportunity for trusts to lodge family trust elections (FTEs) and/or interposed entity elections (IEEs) for prior income years.

This opportunity is only available to entities that have acted as if they were a 'family entity' up until 30 June 2004. In order to satisfy this requirement, the entity must pass the family control test and not have made a distribution of income or capital to any individual outside a defined family group.

An entity may be choose to lodge a FTE in order to receive concessional treatment in relation to trust losses, company losses and franking credits. Concessions include:

- tests required to be satisfied under trust loss rules in order to access tax losses either do not apply, or apply in a modified way;
- under company loss rules, where a loss is incurred by a company owned by a trust, the trustee of the family trust will be taken to beneficially own the shares in the company. This makes continuity of ownership easier to satisfy, so losses are easier to recoup in the company; and
- in relation to franking credits, a FTE enables a trustee to satisfy a simpler 45-day shareholding rule to access franking credits. Otherwise more complex and difficult tests apply.

Once a trust makes a FTE, any distributions of income or capital outside the family group will be taxed at the top marginal rate plus the Medicare levy.

Where a trust has already lodged an election for a specified year, it will be able to ask the ATO to treat the election as if it applied to an earlier income year.

An entity will be unable to revoke a previously lodged election unless the entity ceases to exist.

- **TIP:** If a FTE has not been made in recent years an entitlement to tax losses or franking credits may have been missed. Taxpayers should carefully consider this one time opportunity to bring elections up to date where required.

  Naturally, the restriction of future distributions to within the family group should be carefully considered.

Subdivided Farm Land

The ATO has released two interpretative decisions regarding the tax consequences of the sale of land that was originally used for farming purposes.

Once a taxpayer is well established in the business of development, subdivision and sale of land, the ATO indicates that the land will be regarded as trading stock. The asset's current use, as opposed to its use on acquisition, determines whether or not it is trading stock.

In the case in question, a company involved in farming and investing bought land with the initial intention of using it for primary production. A change in purpose followed and the land was subdivided to be sold for residential housing. As the land's use had genuinely changed, the land was declared to be trading stock from the time of change. The taxpayer would then have the ability to value the stock at its cost or market value at that time.

The ultimate profit on the sale of the trading stock (land) will be then taxable.

ATO 'Field Visit' Activity

The ATO plans to increase the number of its GST 'field visits' in order to ensure correct compliance across all industries. Except for walk-ins (usually only to check ABN and/or GST registration), an ATO officer will contact a company's nominated representative to arrange a meeting time. The ATO says its field officers will identify themselves, explain the purpose of the call and what information is required to be available at the time of the field visit.

In recent times, the ATO has requested financial data to be available electronically for computer analysis. The ATO says this process is used when the taxpayer has kept electronic records and the audit objectives 'require the field officer to look at multiple transactions'. The ATO might want the electronic data to be provided to the ATO on a disk or CD-ROM in order to 'enable the field officer to identify discrepancies and verify transactions in a timely and cost-effective way'.

At the time of the field visit you might consider doing any or all of the following:

- obtaining the name and contact details of the ATO field officer and the officer's immediate manager or supervisor;
- having all the requested information available (but be fully aware of what you are providing);
- keeping copies of all information provided to the ATO (including electronic information); and
- seeking clarification if you are unsure about any aspect of the field visit, or why a particular question is being asked.

The ATO has wide-ranging powers to conduct its investigations and can require many types and forms of information to be provided.

- **TIP:** We consider a professional adviser should be present at any ATO field visit. Prior to the visit, you and your adviser might wish to examine the relevant BAS and accompanying documents to ensure correct preparation and compliance.

CGT: Lease Surrender Payment by Lessee

The ATO has recently released an interpretative decision regarding the CGT consequences of a lease surrender payment made by a lessee.

Under the law, a lease is considered to be a CGT asset of a lessee. The lessee's cost base of a lease includes the costs incurred in acquiring the lease plus any incidental costs of acquisition or disposal.

Where a lessee pays consideration to the lessor to surrender a lease, this payment cannot be included in the cost base of the lease, as it does not qualify under the law as an incidental cost of acquisition or disposal.

As a result, there should be no capital loss arising to the lessee as a result of making a payment to surrender the lease.

Non-resident Capital Gains

The ATO has released an interpretative decision in relation to the assessability of capital gains made by a non-resident for tax purposes.

The non-resident purchased property in Australia and upon subsequent sale, had made a net capital gain.

Under the law, assessable income of a non-resident includes net capital gains where the relevant asset had the necessary connection with Australia.

Where the non-resident is a resident of a country with which Australia does not have a double tax agreement (DTA), domestic Australian law solely determines the assessability of Australian income and capital gains.

Therefore, an Australian capital gain made by a non-resident is statutory income and is to be included in their assessable income.

- **Tip**: The ATO does not comment on the position where the non-resident is a resident of a country that does have a DTA with Australia. In such cases, the relevant DTA should be considered in relation to the taxpayer's circumstances, as well as in relation to the Australian law.

FBT: 2004 Private Use of Motor Vehicle Other than a Car Rates

The rates to be applied where the cents per kilometre basis is used for the FBT year commencing 1 April 2004 in relation to the private use of a motor vehicle, other than a car, are outlined below.

Engine capacity	Rate per kilometre
0 – 2500 cc	38 cents
Over 2500 cc	46 cents
Motor cycles	11 cents

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