

# Making the tax law easier for small business – Taxation Amendments

Leanne Sheehan – Partner, Lowe Lippmann

The Tax Laws Amendment (Small Business) Bill 2007 has recently been passed, which will standardise the eligibility criteria for small business tax concessions from 1 July 2007.

Under the new legislation, small businesses will only have to apply one eligibility test relating to the size of the business, to access a range of small business concessions.

Any business with aggregated annual turnover of less than \$2 million will be able to access any of these concessions, subject to satisfying any existing eligibility criteria not related to business size.

The previous law had separate eligibility tests for goods and services tax (GST), simplified tax system, capital gains tax (CGT), fringe benefits tax (FBT) and pay as you go (PAYG) instalments small business concessions.

Small businesses meeting the new \$2 million annual turnover test will be able to choose those concessions that meet their business needs — businesses will not be obliged to adopt any concessions not suited to their requirements.

The small business tax concessions include:

- CGT 15 year asset exemption
- CGT 50% active asset exemption
- CGT retirement exemption
- CGT roll-over provisions
- Simpler depreciation rules
- Simplified trading stock rules
- Immediate deductions for certain prepaid business expenses
- Choice to pay GST by instalments
- FBT car parking exemption

The table below provides a summary of the key eligibility requirements for accessing the conditions under the previous rules and under the new changes (i.e. from the 2008 and subsequent income years).

Area of tax concessions	Key eligibility requirements (subject to any additional conditions)		
	Before 1 July 2007	From 1 July 2007	
		Aggregated turnover < \$2 million	Aggregated turnover >= \$2 million
CGT	Net value of CGT assets Threshold <= \$5 million	Taxpayers can access the full range of small business tax concessions, subject to satisfying any additional conditions that apply for each concession	Net value of CGT assets Threshold <= \$6 million
STS	STS average turnover of < \$1 million & value of depreciable assets < \$3 million		Concessions not available
GST	GST annual turnover threshold < \$1 million for cash accounting or < \$2 million for use of simplified GST accounting methods		Concessions not available
FBT	Car parking exemption: Total ordinary and statutory income < \$10 million		Car parking exemption: Total ordinary and statutory income < \$10 million
PAYG	Access to ATO instalment option Threshold <= \$1 million		Not applicable – instalment x rate method must be used

# CGT Concessions for Small Business

Richard Horvath – Manager, Lowe Lippmann

In conjunction with the overall changes made to the concessions for Small Business, there have been a number of significant changes made to the Small Business CGT Concessions. The changes will enable more taxpayers to access the concessions.

The following are the CGT concessions available to qualifying taxpayers:

- small business 15 year exemption
- small business 50% active asset reduction
- small business retirement exemption
- small business rollover

The concessions are only available in respect of active assets, which are assets used or held ready for use in the course of carrying on a business. Gains made on the disposal of non-active assets, such as listed securities and

passive investment properties, are specifically denied from accessing the concessions.

There are several eligibility criteria that must be satisfied. Where the criteria are satisfied, the capital gain made on the disposal of a qualifying CGT may be reduced, and in some cases completely disregarded such as under the small business 15 year exemption.

The eligibility criteria are complex and onerous. The way in which a sale (and purchase) of an active asset is structured can affect whether the CGT concessions may be applied. Once the transaction has transpired and, indeed, once the information is presented to the accountant, it is often too late. We suggest to all our clients that if they are contemplating the disposal, acquisition or replacement of an active asset they contact a Partner at Lowe Lippmann well before in order to structure the transaction in a way to best maximise their access to the relevant CGT concessions.

## Making the tax law easier for small business – Taxation Amendments

(Continued from page 1)

Other changes which have also been introduced:

- Increase in the maximum net asset value test threshold that applies for CGT small business relief from \$5 million to \$6 million.
- Increase in the simplified tax system (STS) turnover threshold from \$1 million to \$2 million.
- Increase in the GST cash accounting turnover threshold from \$1 million to \$2 million.

Small business entities will also have the benefit of a limited two year amendment period.

The new rules also mean that the simplified tax system (STS) as

a separate 'system' ceases from the 2007-08 income year. The concessions are still available to businesses with less than \$2 million turnover.

The new legislation does contain aggregation rules to prevent large businesses from splitting their activities so that they can access the small business concessions.

The amendments generally take effect from 1 July 2007.

# Australian Taxation Office & Data Matching

Bernadette McKenzie – Accountant, Lowe Lippmann

Over recent years the Taxation Office has continually increased the volume of information being data matched with Government agencies and private corporations. These include agencies such as Centrelink, State Revenue offices, financial institutions, investment bodies and the Australian Stock Exchange.

In the 2007-08 compliance program recently released, the Tax Commissioner Michael D'Ascenzo highlighted that the Tax Office will use information sharing systems to assist them in developing higher risk profiles of individuals, companies and institutions. He also noted that the Taxation Office would be focusing on small to medium enterprises as well as individual tax paying entities.

In the area of small to medium business alone, the tax office plans to conduct 390 audits and 460 reviews focusing on:

- losses
- capital gains
- wealth extraction
- international transactions
- service trusts
- prescribed private funds
- fringe benefits tax, and
- phoenix arrangements.

Individuals who took advantage of the \$1 Million undeducted contributions prior to 30 June 2007 by transferring property and shares into their superannuation fund need to ensure that they maintain the correct documentation for the acquisition and disposal of such assets to allow the correct capital gains and/or losses to be included in their relevant returns.

Taxpayers should also be aware that the data matching process extends further than purely income tax and will also be used to ensure correct treatment of GST and other taxes.

Please contact our office if you wish to discuss data matching and record keeping further.

# CGT Transactions and the Anti-Avoidance Provisions

Bernadette McKenzie – Accountant, Lowe Lippmann

On 11 July 2007 the Taxation Office released a draft ruling TR 2007/D7 outlining circumstances in which the Commissioner may apply anti avoidance provisions (“Part IVA”) to “wash sale arrangements”.

So what are wash sale arrangements and what impact will this ruling have on you?

A “wash sale” is used to describe the sale and purchase of the same, or substantially the same, asset within a short period of time of each other resulting in no effective change in the beneficial owner of the asset.

The Taxation Office is particularly interested in these transactions that result in the taxpayer receiving a capital loss or deduction that is offset against recently realised capital gains or profits. Historically this has been a common planning technique with listed shares to reduce exposure to capital gains tax.

Where Part IVA is deemed to apply the Commissioner may make a determination to cancel tax benefits connected with the disposal that results in the capital loss or deduction.

Examples of a wash sale that may attract part IVA would include:

a. A taxpayer disposes of an asset and at the same time, or within a short period of time, acquires the same asset

b. The taxpayer disposes of an asset to an entity in circumstances where there is a significant overlap in the individuals who had direct and indirect control over the asset both before and after the disposal, such as a transfer from your personal name to a trust controlled by you.

The draft ruling details several examples as to various “schemes” which would fall within the scope of the ruling. A summary of one example follows:

- Catherine owns a large share portfolio and land.
- Catherine sells the land and makes a capital gain of \$50,000 in the year ended 30 June 2007.
- Before the end of the 2006/07 financial year Catherine sells 100,000 shares in a listed company crystallising a capital loss of \$50,000.
- On the same day Catherine buys 100,000 shares in the same listed company, essentially meaning she has the same economic ownership interest in the company after the series of transactions.
- Catherine offsets the capital loss against the \$50,000 capital gain when preparing her income tax return for the year ended 30 June 2007.

The Commissioner will take into account several specific factors when determining whether the series of transactions were conducted for the dominant purpose of obtaining a tax advantage including:

- The manner in which the scheme was entered into or carried out
- The timing of the scheme
- The tax results achieved
- Whether there has been a change in the financial position of any parties associated

Whilst this ruling is only in draft form the Taxation Office has indicated when finalised it will take effect for transactions entered into both before and after its introduction. The Commissioner has highlighted this as an area of focus for the 2007-08 year.

Taxpayers should be aware of this Tax Office view when disposing of assets or transferring assets to associated entities or individuals and should consult their tax professional before undertaking significant asset disposals.

# Company Taxation – Loans to Shareholders Changes to Division 7A

Leanne Sheehan – Partner, Lowe Lippmann

Division 7A is an integrity measure aimed at preventing private companies from making tax-free distributions of profits to shareholders (or their associates). In particular, advances, loans and other payments or credits to shareholders (or their associates) are, unless they come within specified exclusions, treated as assessable unfranked dividends to the extent that the private company has a distributable surplus. Distributable surplus is basically defined as net assets less specific adjustments, which are set out in the legislation.

The dividend is taken to be paid out of the private company's profits to the recipient, as though the recipient is a shareholder in the company.

In June 2007, a number of significant amendments were made to Division 7A. The new amendments apply from 1 July 2006. The changes include the following:

- Franking debits – under the old law a loan or payment could be deemed to be an unfranked dividend and the franking account was debited, even though the dividend could not be franked. The amendments remove the requirement for the franking account to be debited. The deemed dividend will still be unfranked.
- Minimum loan repayments – Division 7A allows loans or payments to be converted to an 'excluded loan'. This means that the loan comes under a written loan agreement, with minimum yearly repayments and interest and a maximum term of 7 years for unsecured loans.
- Commissioner's discretion – under the old law Division 7A applied automatically, even if no tax benefit was desired or occurred. The new law allows the Commissioner a discretion to disregard a deemed dividend or allow it to be franked, if that dividend arises because of an honest mistake or inadvertent omission by the taxpayer.
- Marriage breakdown – One of the major problems with Division 7A has been in relation to payments made by a company as part of a marriage breakdown. While there are various capital gains tax rollovers for this situation, no relief was provided by Division 7A. As a result of the changes, a company may now frank a deemed dividend that arises because of a family law obligation.
- Fringe benefits tax – another problem with Division 7A has been the interaction with the fringe benefits tax legislation where the loan is made to a person who is both an employee and a shareholder. Clarity has now been provided due to the new amendments. Where a loan meets the requirements of an excluded loan, it will be exempt from FBT. Where a deemed dividend arises because of a loan made by a private company, the loan will not be subject to FBT.

Under the old law, if the minimum repayment was not made, the amount of the deemed dividend was the outstanding loan balance. The new law provides that where the minimum yearly repayments under a loan fall short of the required amount, the amount of the deemed dividend that arises is the amount of the shortfall in that year.

# Michael Schmulian

B.Com, BA, CA, M(Tax)

## Partner



After completing a Bachelor of Commerce and Bachelor of Arts degree at Monash University, Michael has gained wide experience in public practice for in excess of ten (10) years. Michael joined Lowe Lippmann in 2002 as a Taxation and Business Services Manager and was appointed Partner on 1 July 2007.

Michael has had extensive experience with family businesses, high wealth professionals and retail businesses and has extensive knowledge in all facets of accounting and taxation.

Michael has developed sound accounting software skills and assists clients establishing systems and processes. He has particular strengths in entity and business structuring, estate planning, tax planning and re-organising complex business structures and affairs. Clients are Michael's main focus to ensure their goals and objectives are fulfilled in a timely manner.

Michael is very involved in communal affairs where his roles include Honorary Treasurer of Maccabi Victoria.

Building strong and nurturing relationships is a high priority of Michael's, utilising his interpersonal skills and technical expertise.

Michael completed a Masters in Taxation at Melbourne University in 2005 and is a member of the Institute of Chartered Accountants.

Expertise:

- Taxation Consultancy & Compliance
- Business Advisory
- Superannuation
- Estate Planning
- Centrelink
- Tax Planning

### Disclaimer

The information contained in this publication is intended as general commentary and should not be regarded as advice. Should you require specific advice on any of the topics or areas discussed, please contact your Accountant.



<b>Partners:</b>	Joseph Franck	Brian Rudy	Philip Behr	Danny Lustig
	Mark Saltzman	Gideon Rathner	Joseph Kalb	Tony Tassone
	Daniel Franck	Leanne Sheehan	David Coyne	Michael Schmulian
<b>Consultants:</b>	Hillel Bick	Emile Rochman	Peter Rado	