

No Deduction for Payments by a Husband to Wife

A case before the Tribunal considered the deductibility of salary and employee costs paid by a husband to his wife.

The husband owned a rental property and employed his wife to assist with paperwork and other issues associated with the property.

The wife visited the property on a number of occasions during the year for maintenance and cleaning. She also did some gardening and supervised the work of tradesmen. The wife kept property records including, signing cheques and paying bills.

The husband claimed a deduction for various amounts paid to his wife, including \$25,000 in wages, fringe benefits and allowances, and \$35,000 paid into her super fund as an employer contribution. The Commissioner disallowed the deduction. On appeal, the Tribunal also denied him a deduction for these payments.

In reaching this decision, the Tribunal said it was not persuaded by the taxpayer's attempt to enter into a genuine employment relationship with his wife, nor that the money was paid to meet a business expense (as opposed to a domestic or private expense).

The Tribunal said it was not clear the taxpayer did anything other than shuffle money between accounts, commission some paperwork and talk about employing his wife in order to achieve a tax advantage that was not available to him. The Tribunal was not persuaded that the taxpayer and his wife were engaged in a contract of any kind, much less a contract of employment.

The Tribunal did note husbands, wives and other family members may contract with each other to create an employment relationship. However, the proximity of the family relationship always raises a question over the nature of the employment relationship.

The decision does not deny genuine employment relationships, such as a tradesman employing his wife to run the office, prepare accounts and attend to admin and compliance tasks. In this situation, there would be a genuine intention for the husband to employ his wife.

However, doubt would be cast over situations where the wife was employed in more passive pursuits such as property investment or managing investments in general (unless a genuine enterprise was involved in the investment and the wife was well qualified to fulfil the role she was undertaking).

Ref: Brown and Commissioner of Taxation [2010] AATA 829

Temporary Flood Reconstruction Levy

The Government has released Bills to implement the Temporary Flood Reconstruction Levy. They amend a number of Acts by introducing a one-year progressive flood reconstruction levy.

The levy is in the form of an additional income tax on Australian resident and foreign resident individuals for 12 months commencing 1 July 2011.

The affected income bands are:

- ▶ Individuals with a taxable income below \$50,000 will not pay the levy.
- ▶ Individuals with a taxable income between \$50,000 and \$100,000 will pay a 0.5% levy on the excess over \$50,000.
- ▶ Individuals with a taxable income in excess of \$100,000 will pay \$250 (being the 0.5% levy payable on the \$50,000 to \$100,000 income), and a 1.0% levy on the excess over \$100,000.

The levy will also be payable, at the same rates, where a trustee is liable to tax, where an individual is presently entitled to income of a trust and the trustee pays the tax in substitute for the individual. For example, where a non-resident individual presently entitled to income of the trust and the trustee is liable for the tax under Section 98.

There are exemptions from the levy for individuals who were affected by natural disasters during the year ending 30 June 2011, although which individuals and which disasters are to be confirmed by Ministerial directive. There is scope for individuals affected by natural disasters during the year ended 30 June 2012 to similarly be exempted from the levy, again by a directive of the Minister.

Adjustments will be made to an individual's liability where the individual is entitled to tax offsets.

Where the individual has non-refundable tax offsets, such as the medical expenses offset, the levy cannot be reduced by excess offsets. However any excess refundable tax offsets and excess PAYG withholding or instalment amounts may be applied against the liability to the levy.

Employees and other individuals subject to PAYG withholding deductions during the year will have an additional amount withheld to account for their liability to the levy. The Tax Office will issue new withholding schedules to take account of the levy.

Individuals who are subject to the PAYG instalment system may also be liable to the levy under PAYG instalment payments made during the year ending 30 June 2012.

Ref: Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011; Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Bill 2011

Standard Deductions for Work Related Expenses

The Government has released a discussion paper which considers the proposal to introduce a standard deduction for individuals for work related expenses and for the cost of managing the individual's tax affairs.

Currently, individuals who claim deductions for work related expenses or for the costs of managing their tax affairs must determine whether their expenditure is deductible (based on legislation, court decisions and Tax Office releases) and be subject to applicable substantiation rules.

It is proposed the scheme for standard deductions will operate parallel, as an alternative to the current law. The aim is to relieve taxpayers of the burden of having to determine whether amounts are deductible and whether they comply with the substantiation rules for minor deductions.

All individuals, irrespective of whether they actually incurred any work related or tax expenses, will be entitled to claim the standard deduction. It will be open to all individual taxpayers, including non-residents and minors, taxed under the special income provisions.

It is proposed a standard claim of \$500 will be available in the 2013 year and \$1,000 for later years. Where the individual incurs actual expenditure in excess of the standard amount, they can claim the actual amount incurred, but they will then be subject to the usual deductibility and substantiation rules.

Taxpayers will not have to elect to claim the standard deduction. The standard deduction will automatically be provided to all taxpayers. Where the individual does not complete work related and tax related expense labels on their tax return, or their actual claims do not exceed the standard deduction, they will receive the standard deduction.

The actual deductions will prevail where they claim a higher amount through the work related and tax related labels on their return.

The expenses that will be covered by the standard deduction are currently listed as:

- › Work related car expenses.
- › Work related travel expenses.
- › Work related clothing, laundry and dry cleaning expenses on uniforms and protective clothing.
- › Work related self education expenses.
- › Other work related costs such as union fees, professional associations, seminars and courses, reference books and subscriptions, overtime meals and home office expenses.
- › Tax related costs, which cover tax agent fees and Tax Office interest charges.

Ref: Treasury Discussion Paper - February 2011

\$50,000 Superannuation Cap for 50's and Over

Treasury has released a consultation paper allowing individuals aged 50 and over with total superannuation balances below \$500,000, to continue making super contributions of up to \$50,000 per year beyond 30 June 2012. This \$500,000 threshold will not be indexed.

Currently, individuals aged 50 and over can make concessional superannuation contributions of up to \$50,000 per year without incurring an excess concessional contributions tax. The \$50,000 cap is due to expire from 1 July 2012 when the contributions cap for persons aged 50 and over reduces to \$25,000 per year.

Proposed Eligibility for Increased Cap

The paper presents a number of options for determining eligibility for the \$50,000 cap from 1 July 2012 and for determining total superannuation account balances.

One option being considered would see those who have commenced drawing down their superannuation excluded from eligibility for the \$50,000 cap.

In relation to self managed super funds (SMFSs), it is proposed that only members of funds that report assets at net market value will be eligible for the higher cap. For SMSFs with unallocated reserves, a member's share of any reserves will be included in the member's total account balance.

To determine eligibility for the higher cap, Treasury is considering applying a self-assessment model or an online superannuation account balance facility.

Under self-assessment, individuals would determine their own eligibility for the \$50,000 concessional contributions cap. Those who do not meet the eligibility criteria but make concessional contributions in excess of \$25,000 would be issued with an excess contributions tax assessment.

As this is only a consultation paper, we await the legislation for further clarification of the rules.

SMSF Investments in Collectibles and Personal Use Assets

The Government has released a new Bill which introduces proposed new rules on how SMSF trustees make, hold and realise investments involving collectables or personal use assets.

Tightening of Investment Rules

The Bill will allow regulations to be made that may prescribe rules for SMSF's making, holding and realising investments involving:

- › Artwork;
- › Jewellery;
- › Antiques;
- › Artefacts;
- › Coins or medallions;
- › Postage stamps or first day covers;
- › Rare folios, manuscripts or books;
- › Memorabilia;
- › Wine;
- › Cars;
- › Recreational boats;
- › Membership of sporting or social clubs; or
- › Assets of a particular kind that is ordinarily used for personal use or enjoyment (not including land)

These regulations have not yet been released by the Government.

The EM states the new rules are intended to apply not only where the asset is the primary investment but also where the asset is attached to an investment or is a related benefit of an investment.

For example, the trustee of a SMSF makes an investment in a golf club and consequentially receives a complimentary membership to the club. Although the membership is not the primary investment the trustee must comply with the proposed new regulations in relation to the membership.

Penalties

The regulations may prescribe maximum penalties of \$1,100 for offences against the regulations.

Application Date

These amendments will apply from 1 July 2011 in relation to investments in collectables and personal use assets made by a SMSF before, on or after 1 July 2011.

However, the EM states the regulations may also specify that the amendments apply to only some of these investments. This will allow for the five year transitional period for assets held as at 30 June 2011, as announced by the Government as an election commitment on 30 July 2010.

This may mean the new rules would apply immediately to investments acquired on or after 1 July 2011 but for assets acquired before that date, a 5 year transitional rule may allow the pre 1 July 2011 collectables and personal use assets to be held until 1 July 2016.

Draft regulations are expected to be released for public comment following consultation with stakeholders.

Should you require assistance or additional information, **contact your PKF tax adviser** or:

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