THE BUZZ

Taxation Update
December 2007 /January 2008

Investment Property Deductions Disallowed

In a recent decision, the Administrative Appeals Tribunal (AAT) partially disallowed rental deductions on the grounds that the property was purchased for use as a residence and not as a rental property.

The applicant owned a rental property in Sydney for which he claimed rental deductions totalling over $400,000 between 2001–2003. All of these deductions were offset against total gross rent of $14,700.

The deductions were claimed on the basis that the property was available for rent during the entire period, however the property was only rented for 30 days each year in the 2001 and 2002 years, and for 8 out of 91 days in 2003.

The Commissioner argued that as the property was only rented for 8.2% of the 2001 and 2002 years, and 8.8% of 2003, the taxpayer was only entitled a deduction based on the proportion. The AAT agreed with the Commissioner's assessment, and held that the expenses incurred by the applicant should be apportioned because:

- the applicant admitted that he purchased the property to make a capital gain;
- based on the evidence, the property was only partially used by the applicant for the purpose of gaining assessable income by way of rental; and
- there was no evidence that the apartment was used or available for use at any relevant time by anyone other than the applicant.

TIP: *where a taxpayer has a rental property as an investment, they must be able to demonstrate that the property has been available for rent for the whole of the income year. If the taxpayer cannot demonstrate this, it is likely that the rental deductions will be apportioned on a use basis.*

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Investment Deductions Denied

In a recent decision, the AAT considered whether the anti-avoidance provisions applied to a joint venture investment in a quarrying operation where a taxpayer claimed deductions of over $100,000 in his 1998 income tax return.

The taxpayer claimed that he entered into the investment because he wanted to diversify his investment portfolio, and was attracted to riskier investments. After consulting with his accountant and reading the prospectus, he decided to invest in the project.

Towards the end of June 1998, the taxpayer signed several documents, including an application form for the purchase of five units in the project, a loan indemnity agreement and a loan agreement. He then claimed deductions in relation to the investment.

The AAT held that the joint venture itself was not entitled to claim a deduction for expenses incurred, and the deduction was denied as the activities carried out were too preliminary to the gaining or producing of assessable income. As the joint venture was not entitled to the deduction, the taxpayer was not entitled to a deduction for his share of the loss.

The AAT also considered the application of the anti-avoidance provisions. It held that as the taxpayer was not entitled to a deduction, the taxpayer did not obtain a tax benefit to which the rules could apply.

However, the AAT then went on to consider if the rules could apply assuming a benefit arose. It held that based on the preliminary nature of the activities undertaken, it could be concluded that the scheme was entered into in order to obtain a tax benefit.

Apportionment of Home Office Expenses Affirmed

In a recent decision, the AAT upheld the Commissioner's decision that a deduction for home office expenses should be apportioned on a floor area basis.

A taxpayer operated its business activities in an office in one of the front rooms of its directors' main residence, and used this room exclusively for business purposes. For the years ended 30 June 2003, 2004 and 2005, the taxpayer had claimed 50% of the property related expenses in its income tax return.

The taxpayer held a 50% interest in the property and the remaining 50% was held by both directors as tenants in common. The directors, along with their children, used the property as their main residence.

The taxpayer argued that since it had a 50% ownership interest in the property, it was entitled to 50% of the deductions. It argued that its use of the property did not fall within the category of a 'home office', which would limit the availability of deductions to a use basis.

The AAT rejected the taxpayer's arguments and affirmed the Commissioner's decision, which provided the expense should be apportioned on a floor area basis entitling the taxpayer to claim 10% of the occupancy expenses.

TIP: *where a taxpayer is working from home or operating a business at a private residence, careful consideration should be paid as to whether the home is a place of business or a home office.*

Refund of Overpaid Income Tax Instalments

The Tax Office recently completed a review of credit balances on activity statement accounts.

The Tax Office stated that its review identified that some credit balances were the result of overpaid income tax instalments, which were often for small amounts. The Tax Office stated:

'Any credit identified as an overpayment of income tax instalments will be included on your client's next income tax assessment as 'other amounts refundable' from the income tax account.'

Property Advice to Non-residents not GST-free

The Tax Office has recently released a Draft Goods and Services Tax (GST) Determination, which is mainly relevant for Australian accountants providing services to non-residents.

Specifically, in this draft determination, the Tax Office details what is the correct GST treatment of the supply of advice and tax return preparation services that an Australian accountant makes to a non-resident individual in respect of a residential rental property that the individual owns in Australia.

In the Tax Office's view, that supply, if made on or after 1 April 2005, is not wholly or partly GST-free.

A broad range of accountants are likely to be affected by the change in the legislation that the Tax Office is seeking to explain in this draft determination, given that it affects all accountants who prepare tax returns for residential landlords who are non-residents.

Tax Office Warns of Email Scam

The Tax Office has released an announcement warning taxpayers that a fraudulent email is being circulated that claims to offer a refund from the Tax Office.

Taxpayers are warned that the email fraudulently uses the Tax Office logo, and contains subject lines of: 'Australian Taxation Office — Notification' or 'Australian Taxation Office — Please Read This'.

The email asks people to click on a link which sends them to a bogus website. This website will ask taxpayers for credit card and personal details in order to receive a refund.

Greg Farr, acting Tax Commissioner, explained that anyone who receives the email should delete it immediately.

The Tax Office has asked all taxpayers to type internet addresses directly into their internet browser rather than clicking on hyperlinks attached to emails.

This matter has been notified to relevant authorities who are investigating.

Buzz Line:

Success can be matter of being in the right place at the right time.

Notice Board News

We hope you had an enjoyable Christmas and New Year.

We look forward to working with you this year.

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