

June Tax Update

- Recent cases and rulings
- New legislation
- Developments in tax

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This month the following tax cases, rulings and legislation have been passed.

As part of our taxation and business community, Butlers wishes you a very happy and prosperous 09/10 financial year.

Cases

Futuris Corporation Ltd v FCT [2009] FCA 600

In this case concerning a Part IVA *ITAA 1936* assessment, the court declined to order the FCT to provide the taxpayer with further and better particulars regarding the “tax benefit” obtained. Instead, the onus was held to be on the tax payer to establish what it would have or might reasonably have done in lieu of the relevant scheme, and that that activity would or might reasonably be expected to have resulted in a similar tax benefit to the one obtained in consequence of the scheme.

Jetto Industrial Pty Ltd v FCT [2009] AATA 374

The AAT upheld the Commissioner’s assessment that the supply and use of a motor vehicle used for business purposes was subject to fringe benefits tax. Log book evidence



covering only a short period subsequent to the fringe benefit years in question was not enough to establish a pattern of usage for exclusively business purposes during those years.

Bonaccordo v FCT [2009] AATA 385

The AAT disallowed deductions for rental property expenses where the rental property was purchased as a rental investment but, for a variety of reasons, no income was ever derived from renting the premises. The court reasoned that the premises were never listed with a real estate agent, or advertised, although a sign was placed in front of the property. The property was also vacant for the majority of the review period, except for the continued residence of the aged vendor for several months after the sale.

Yalos Engineering Pty Ltd v FCT [2009] AATA 390

The AAT ordered the FCT to make a personal services business determination relating to the taxpayer’s personal services income. The taxpayer did not or could not reasonably have been expected to meet the results test in s 87-18 in

either of the relevant years of income. However, the AAT was satisfied that but for unusual circumstances and delay in the years in question, the taxpayer could have been expected to meet the unrelated clients test in s 87-20 and/or met the test in one or more preceding years and could reasonably have been expected to meet the test in subsequent years. For this reason, the FCT was directed to make a personal services business determination in favour of the taxpayer for the two income years in issue.

Vidler v FCT [2009] AATA 395

The AAT has held that sales of two properties, each zoned residential but undeveloped and vacant at the time of sale, were not supplies of "residential premises" within the definition of that term in s 195-1 GST Act and were therefore not input taxed. The AAT reasoned that a vacant block of land is neither legally nor practically capable of being occupied as a residence or for residential accommodation.

In relation to the sale of a third property, the AAT held that an amount paid by the purchaser to the vendor as "compensation" for failure to complete a previous contract, being a fundamental condition of the sale contract, formed part of the consideration for the supply of the property. The compensation amount was therefore to be factored into the calculation of the "margin" for the purposes of s 75-10(2) GST Act.

Bamford v FCT [2009] FCAFC 66

A majority of the Federal Court held

that "income of the trust estate" is to be interpreted as meaning income of the trust as understood in trust law. This followed from the decision in *Cajkusic v FCT* [2006] FCAFC 164. The terms of the trust deed may therefore have the effect of altering the income of the trust for s 97 purposes.

The court also ruled on the meaning of "that share of the net income of the trust estate" in s 97(1)(a)(i) *ITAA 1936*. They held unanimously that it is erroneous to treat "that share" as referring to a fixed amount. Instead, it refers to a beneficiary's proportionate or fractional entitlement to the income of the trust estate. This is in accordance with ordinary principles of trusts and trust accounting.

Be aware that these principles of trust and tax law may yet be overturned, and any changes will impact on steps that should be taken in practice. The ATO is currently undertaking a wide ranging review of the taxation of trusts and its practices in this area.

Symone Anstis v. FCT

The Commissioner has lodged an appeal against the decision by the Federal Court on 1 April 2009 that Ms Anstis, who received youth allowance as a university student, was entitled to a tax deduction for her education expenses. Until this matter is resolved, the ATO will continue to apply the view set out in TR 98/9. That is, education expenses are not deductible against various Commonwealth educational assistance schemes.

For more information see the [ATO website](#).

[Spriggs v FCT; Riddell v FCT \[2009\] HCA 22](#)

The High Court has held that two professional footballers who paid fees to managers to negotiate player contracts, sponsorships and other income-earning activities on their behalf were entitled to claim those fees as deductions under s 8-1(1) of *ITAA 1997*. The payments were deemed not to be capital expenses denied deductibility under s 8-1(2).

The High Court distinguished the taxpayers' situations from that of *FCT v Maddalena* wherein the Court concluded that Mr Maddalena was not conducting a business. In contrast, the High Court considered, looking at their activities as a whole, that Spriggs and Riddell were each conducting a business as a professional sportsperson.

[FCT v Bargwanna & anors \(ATF the Kalos Metron Charitable Trust\)\[2009\] FCA 620](#)

The Federal Court upheld the FCT's refusal to endorse a charitable fund as exempt from income tax because the fund failed to strictly adhere to the requirements for exemption.

The court reasoned that the privileged status of exemption from income tax demanded strict adherence to the requirements that must be met before that status was conferred. Section 50-60 required that "the fund is applied for the purposes for which it was established", not that it be

"substantially" or "principally" applied for those purposes.

The court found that the AAT erred in concluding that a fund was applied for the purposes for which it was established and allowed the Commissioner's appeal.

[Decision Impact Statements FCT v Shane Day \[2008\] HCA 53](#)

The ATO has released DIS S315/2008 (29 May 2009) which concerns a decision that legal expenses incurred by a customs official taxpayer in defending disciplinary charges are not deductible.

The ATO considers that the decision does not lay down any rule for the deduction of legal expenses by an employee beyond the requirement that the occasion for the expenses must be found in what is productive of the assessable income of the employee, which will turn on consideration of the scope of the taxpayer's employment.

For a copy of the Decision Impact Statement, go [here](#).

[New Tax Bills CPRS legislation passed by House](#)

On 4 June 2009, the House of Representatives passed a number of Bills as part of a package to give effect to the Government's proposed Carbon Pollution Reduction Scheme. They will now proceed to the Senate.

[Stamp Duty Bill \(NSW\)](#)

A Bill has been introduced into the NSW Legislative Assembly which

amends various Acts administered by the Office of State Revenue including replacing the land rich provisions of the Duties Act 1997 with a landholder model in which transfer duty will be payable when a 50% or more interest is acquired in an unlisted company or unit trust that owns land in New South Wales with a value of \$2m or more.

Tax Rulings

TR 2009/4

This final Taxation Ruling issued on 24 June 2009 concerns the effective life of depreciating assets. From 1 July 2009, it replaces Taxation Ruling TR 2008/4. Determinations of the effective life of certain depreciating assets made by the Commissioner are contained in two tables in the ruling. For a copy of TR 2009/4, see the [ATO website](#).

TD 2009/15

On 24 June 2009, the ATO issued Taxation Determination TD 2009/15, concerning the reasonable travel and overtime meal allowance expense amounts for 2009-10 income year. It was not previously released in draft form. This Determination should be read together with Taxation Ruling TR 2004/6 which explains the substantiation exception and the way in which these expenses may be claimed.

Superannuation

ATO outlining SMSF measures

In a recent speech, the Assistant Deputy Commissioner outlined the Tax Office's role in helping trustees of self managed super funds (SMSFs) comply with their legal obligations. Compliance activities are

being increased and focused on early intervention for targeted risks including examining transactions to see if they are arms length and commercial. See the [ATO website](#) for a transcript.

New Tax Measures

Tightening the non-commercial loan rules

On 5 June 2009, the Assistant Treasurer announced the release of a Treasury discussion paper on the Government's 2009-10 Budget decision to tighten the non-commercial loan rules in Division 7A of ITAA 1936. The Government's announced changes extend the Division 7A rules so that "payment" includes the use of company assets by a shareholder (or their associate) for free or at less than their market value. The changes include amendments to prevent corporate limited partnerships being used to circumvent the non-commercial loan rules and technical amendments will be made to strengthen the operation of the rules.

See the [treasury website](#) for a copy of the discussion paper.

Appointment of new Assistant Treasurer

Senator Nick Sherry has been sworn in as Assistant Treasurer of Australia. He replaces Chris Bowen, who has entered Cabinet as Minister for Financial Services, Superannuation and Corporate Law, and Minister for Human Services.

Australia-France tax treaty enters into force

Treasury has advised that the

Convention between the
Government of Australia and the
Government of the French Republic
for the Avoidance of Double Taxation

with Respect to Taxes on Income
and the Prevention of Fiscal Evasion
entered into force on 1 June 2009.

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