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TAX matters

Special Budget Edition

“New Non Commercial Loan Rules in the Budget – Time to Get Assets Out before 1 July?”

In the 12 May Federal Budget, the Government announced that it would introduce legislation to ensure that benefits provided by private companies to their shareholders or associates would be taxed by tightening the rules that prevent shareholders and their associates avoiding tax on distributions and benefits they receive from private companies. It is intended that the measure will extend the Division 7A deemed dividend rules to cover payments constituted by benefits made by way of a licence or a right to use real property and chattels provided at less than market value.

Presently, where a private company allows its shareholders or their associates access to property by way of a licence arrangement whether formal or informal the present deemed dividend rules would not apply to deem such use to be a payment.

The ATO takes the view that a lease of the property would be so caught although we think that

technically that argument is frail given that a lease of property is not necessarily a transfer of property.

Perhaps to put the position beyond doubt the Government decided to introduce the new measures in the Budget.

The only reference to an entity given in the Budget announcement relates to private companies.

However it may be the case, and we stress the word “may,” that these new measures could well also apply to benefits provided by trusts where those trusts have made distributions to private companies for tax purposes which remain unpaid. Such an extension to trusts would seem logical as to leave the Budget measures to apply to companies only would appear to miss a major part of the picture.

Therefore if the new rules were to apply to such trusts, it could be the case that clients may wish that certain assets held in such trusts be transferred or vested out as there could be deemed dividend implications for benefits provided post 1 July 2009.

Apart from any CGT and GST implications in extracting property

from a trust, WA transfer duty levied under the Duties Act 2008 (WA), applicable to transactions occurring from 1 July 2008 may also apply. However there are exemptions that apply to transfers of dutiable property from trusts to certain persons provided conditions are met.

Watch this space!

We can advise on all of these issues.

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Norton & Smailes

We advise on:

- income tax, GST, capital gains tax, FBT
- superannuation and superannuation deeds
- stamp duties, payroll tax and other State taxes
- wills, estate planning and business succession planning
- trusts and trust deeds
- objections and appeals
- tax and commercial litigation
- commercial law

IMPORTANT: The articles in this newsletter are in summary form and should not be relied on as a substitute for detailed advice.

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