

Dear Client,

We are pleased to supply you with the February 2011 edition of **Client Alert**, which contains information on a number of important taxation developments up to and including 14 January 2011:

- **Whether a Property Constitutes Residential Premises for GST Purposes** – The Full Federal Court has handed down a ruling in relation to the phrase “residential premises to be used predominately for residential accommodation”.
- **Tribunal Can’t Review Private Ruling Decision as Ruling Given for Wrong Years** – The Administrative Appeals Tribunal has made a decision regarding a taxpayer’s objection against a private ruling.
- **Retirement Village Scheme Deductions Wrong, but Taxpayers Took “Reasonable Care”** – The Administrative Appeals Tribunal has remitted penalties imposed on taxpayers who had claimed deductions relating to their retirement village scheme investment.
- **Refunds for Overpayments of GST** – The Tax Office has released a ruling which sets out the Commissioner’s views on the tax provisions which restrict refunds that can arise from the overpayment of GST.
- **Automated Tax Deduction for Youth Allowance Recipients** – The Tax Office has responded to a recent High Court decision dealing with education expenses incurred by a Youth Allowance recipient.
- **“Loan” from Private Company an “Honest Mistake”?** – The Tax Office has issued a ruling regarding the Commissioner’s discretion in situations where an honest mistake or inadvertent omission has occurred to cause the operation of a dividend deeming rule.
- **“Stronger Super” Reforms on the Horizon** – The Government has announced its support for most of the wide-ranging Cooper Super System Review recommendations.

Please contact us if you wish to discuss how the points raised in **Client Alert** specifically affect you.

Yours sincerely

**GUESTS ACCOUNTING**

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## Whether a Property Constitutes Residential Premises for GST Purposes

Under the GST Act, a sale of real property is “input taxed” (i.e. no GST is payable on the sale), if the property is “residential premises to be used predominately for residential accommodation”, and other requirements are met. Although the phrase from the GST Act appears straightforward, it has been subject to lengthy arguments before the courts.

In the most recent case, the Full Federal Court held that whether a property was residential premises to be used predominately for residential accommodation, and therefore input taxed, was to be determined objectively by reference to the physical characteristics of the property as at the date of acquisition.

**TIP:** Are you planning on selling a residential property? GST should be part of any tax planning considerations. Please contact our office for further advice.

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## Tribunal Can't Review Private Ruling Decision as Ruling given for Wrong Years

A taxpayer has been unsuccessful before the Administrative Appeals Tribunal in seeking a review of the Commissioner's decision to disallow its objection against a private ruling. Broadly, the Commissioner had made an adverse private ruling regarding the deductibility of certain capital appreciation payments covering the 2003 to 2009 income years. However, the taxpayer had originally only sought a ruling covering the 2004 to 2008 income years.

In making its decision, the Tribunal held it lacked the jurisdiction to review the Commissioner's decision because the ruling was made in respect of the wrong years of income which invalidated the ruling. As a result, the Tribunal concluded there was no decision capable of being reviewed.

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## Retirement Village Scheme Deductions Wrong, but Taxpayers took “Reasonable Care”

In a recent case, the Administrative Appeals Tribunal remitted penalties imposed on a retired couple by the Commissioner for failing to take reasonable care in preparing their tax returns. Broadly, the Commissioner

disallowed some deductions claimed by the taxpayers in relation to their retirement village scheme investment. Consequently, the Commissioner issued amended assessments and imposed the penalties.

The Tribunal noted the taxpayers spoke limited English. It also noted there was evidence that the taxpayers' solicitor had also invested in the retirement village scheme. After having regard to the circumstances, the Tribunal formed the view that the position adopted by taxpayers in their returns could be argued on rational grounds to be right (i.e. a reasonable arguable position). Therefore, it concluded the taxpayers had exercised reasonable care in preparing their returns.

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## Refunds for Overpayments of GST

The Tax Office has released a ruling which sets out the Commissioner's views on the tax provisions which restrict refunds that can arise from the overpayment of GST. The ruling also sets out the guiding principles the Commissioner will follow in exercising his discretion to pay a refund in appropriate circumstances. A circumstance where the Commissioner may consider exercising his discretion is where the overpayment of GST occurred as a result of an arithmetic error made by a supplier.

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## Automated Tax Deduction for Youth Allowance Recipients

The Tax Office has released its long-anticipated response to a recent High Court decision which held that a student taxpayer was entitled to a deduction for education expenses incurred in receiving Youth Allowance income.

The Tax Office said it recognises that the High Court found that the expenses in this case were incurred in gaining or producing the Youth Allowance income received, and were not of a private nature. The Tax Office said it accepts that similar expenses would also be deductible to other full-time students receiving Youth Allowance income.

As a result, affected full-time students who received Youth Allowance and paid tax in the 2007, 2008, 2009 or 2010 income years will receive a notice from the Tax Office advising that their assessments will be amended to include a \$550 tax deduction for study expenses for each year they are eligible.

**TIP:** If you believe you are eligible to claim a higher amount than the automatic \$550 deduction, please

contact our office. However, you must have the documentation to support your claim.

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## **“Loan” from Private Company an “Honest Mistake”?**

Under the tax law, certain payments and loans made by a private company to its shareholders or associates, and debts owed by its shareholders or associates that are forgiven by the private company, are taken to be unfranked dividends paid by the private company. However, there are specific exceptions to this rule.

The Government also supports the Cooper Review’s “Super Stream” proposals. One of the proposals involves extending the use of an individual’s tax file number (TFN) as the primary identifier of member accounts from 1 July 2011. The proposal is said to assist individuals and trustees to locate and consolidate lost accounts. However, a member’s right to not quote a TFN will be maintained.

The Government also agreed with most of the recommendations dealing with self-managed super funds (SMSFs). One proposal is to provide the Tax Office with new powers to issue administrative penalties against SMSF trustees on a sliding scale according to the seriousness of the breach.

In addition, the Commissioner has the general discretion to disregard the rule if the operation of the rule has arisen as a result of an “honest mistake” or “inadvertent omission” caused by the recipient of the dividend or the private company.

To assist taxpayers, the Tax Office has released a ruling which sets out the Commissioner’s views on the terms. The ruling notes that the onus is on the taxpayer to demonstrate that an honest mistake or inadvertent omission has occurred. The ruling states that the actual state of mind or belief of the person making the mistake or omission is in issue.

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## **“Stronger Super” Reforms on the Horizon**

The Government has announced its support for most of the wide-ranging Cooper Super System Review recommendations by releasing a package of reforms known as “Stronger Super”. The proposed reforms feature a new low-cost and simple default superannuation product called “MySuper” which is marked to commence from 1 July 2013.

**Important:** This is not advice. Clients should not act solely on the basis of the material contained in this Bulletin. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Bulletin is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.