

PINNACLES DEAVIN

BUSINESS & INVESTMENT ADVISORS

1 September 2009

IN THIS ISSUE

- **Interest Rates Steady**
- **Landholder Duty**
- **Excess Superannuation Contributions**
- **Land Tax Exemption Denied**

INTEREST RATES STEADY

The Reserve Bank met this morning and resolved to maintain interest rates at their current level of 3.0%. The last reduction in rates was back in April 2009 and it is looking increasingly likely that the next move will be up. Anecdotal evidence is beginning to circulate that confidence is returning to the market and this is being mirrored by the equity markets with the All Ordinaries Index currently up 45% from its low in March 2009. What price another rate increase just before Christmas so households don't get too carried away with spending over the festive season?

LANDHOLDER DUTY

For more than 20 years NSW has had a tax system which imposes duty on the acquisition of interests in private companies and unit trusts that hold land in NSW. Prior to 1 July, the rules applied where an acquisition was made of a "land-rich" landholder. A private company or trust was considered land-rich if 60 per cent or more of its total assets comprised land or interests in land in all places, and \$2 million worth of it or more, needed to be in NSW.

Under the new system it is generally irrelevant what proportion of its value is in land. This expands the tax base to acquisitions of many non land-focused entities. Duty at a top rate of 5.5 per cent must now be calculated not only on the unencumbered value of NSW land, but also on "goods" in NSW held by the entity as well.

This new system can potentially add a significant amount to the acquisition cost of entities which meet the criteria. Its impact is exacerbated where the target entity is geared since its liabilities are ignored in calculating the tax.

Any client who may be contemplating the acquisition of a private company or unit trust which holds

land in NSW now has all the more reason to first seek advice from their Pinn Deavin advisor.

EXCESS SUPERANNUATION CONTRIBUTIONS

The most important issue for superannuation contributions is THE excess contributions tax. This is because excess contributions can be taxed at a rate of up to 93%!

There are two different contributions caps. First is the concessional contributions cap which, if exceeded, results in excess tax of 31.5% being imposed. Second is the non-concessional contributions cap which, if exceeded, results in additional tax of 46.5% being imposed. There is one provision of the tax law that is easily overlooked but which can have a very important impact. A member's non-concessional contributions for a financial year **include** the amount of their excess concessional contributions. This means that if a member exceeds their concessional contributions cap, not only does the excess attract excess concessional contributions tax, it also counts towards their non concessional contributions cap! If the non-concessional contributions cap is exceeded, the amount of tax payable can be extremely large.

As an example, consider David who is 67 years old. Assume that in 2009:

- (A) his employer contributed \$250,000 to his super fund,
- (B) he made a personal undeducted contribution (i.e. non-concessional) to his fund of \$50,000, and
- (C) he made a personal deductible (concessional) contribution of \$100,000.

David's tax position will be such that the tax on contribution A will be \$84,750, on contribution B \$69,750 and on contribution C \$93,000 (i.e. **93%**).

Although a 93% tax rate might sound like a harsh interpretation and application of the law, the legislation is clear on this point and this is how the ATO interprets and applies it.

The position gets worse though when you remember that the concessional contributions cap was halved in the 2009 budget. Depending on your age, this cap is now just \$25,000 or \$50,000. This can now potentially cause problems for those working for multiple employers each of whom contributes the 9% SG contribution.

Remedies

Several options exist to deal with these situations. Firstly, awareness is essential. Prevention is better than cure so if you think you may have a problem or be in a position where a problem could develop, please contact your Pinn Deavin advisor as soon as possible. Secondly, the Commissioner has the discretion to disregard or re-allocate contributions if certain criteria are met. Thirdly, the legislation provides certain circumstances where excess contributions must be returned such that the excess tax issue disappears. Fourthly, where a contribution is made by mistake the law of restitution can apply to require the contribution to be returned to the contributor and the contribution taken to have never happened. Be warned though that this option is unlikely to apply where the only mistake was that the contributor was mistaken as to the subsequent legal implications of the contribution (i.e. mistaken as

to the negative tax implications of making the contribution).

LAND TAX EXEMPTION DENIED

In a recent case a taxpayer who purchased land adjoining his residence has been denied the principal place of residence land tax exemption as there was no unity of title because his residence was owned as tenants in common with his wife whilst the adjoining land was purchased in his own name.

Mr Kleyn gave evidence that he was unaware that the property was in his name only and described the fact that his wife was not also on the title as an oversight. The question before the Tribunal was whether the two properties formed a "parcel of residential land" such that it was exempt from land tax under the principal place of residence exemption. The Tribunal found that there was no unity of title as title to the two properties were not held by precisely the same persons.

The Tribunal rejected Mr Kleyn's argument that unity of title could be established because the adjoining property could be redistributed to his wife under the Family Law Act.

www.pinndeavin.com.au

This email complies to Australian privacy laws. You are receiving this email if you have affiliations with Pinn Deavin. If you wish to unsubscribe from further Pinn Deavin newsletters or information via email, please email news@pinndeavin.com.au with the subject REMOVE. Please add the address you wish to remove in the body of the email. The comments of this publication are of a general nature only. They are not intended to be specific advice and mustn't be relied upon. Professional advice should be obtained before entering into any transaction or agreement. If you have any questions or problems viewing the content or images contained in this email, please view the online version available at www.pinndeavin.com.au. If you have any other questions or problems concerning this publication, please do not reply to this newsletter. For questions, contact info@pinndeavin.com.au, or visit the website listed above for more contact information.

© 2009 Pinn Deavin. All Rights Reserved. Contents may not be reproduced without permission.