PINN DEAVIN

BUSINESS & INVESTMENT ADVISORS

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IN THIS ISSUE

INTEREST RATES UP

In a repeat of its October decision, the Reserve Bank moved to raise interest rates again by 0.25% at its meeting this morning. Many people were of the view that it jumped too early when it lifted rates last month but that decision seems to have been vindicated by the since-released September inflation figures, which revealed an unexpectedly high underlying rate of 3.5%. That number, combined with continued falls in unemployment predictions, now expected to peak at "just" 6.75% instead of 8.5%, and ongoing improvement in domestic growth forecasts and recovery of the Chinese economy have led the RBA to the inevitable conclusion that inflationary pressures are mounting and must be countered.

Today's increase is another small step in the gradual increase in rates which many expect to return to around 5.0% by the end of calendar 2010. Such predictions, however, are not made with a great deal of confidence since a year can be, and usually is, a long time in economics. In only May this year for example, domestic growth for 2009/10 had been expected to be 0.5%, current predictions put that figure at 1.5%.

SMSF's AND ENDURING POWERS OF ATTORNEY

The ATO has recently released a draft ruling (SMSFR 2009/D1) which has important implications for SMSF trustees who are not SMSF members but who hold enduring powers of attorney (POA). One of the key elements of being an SMSF is that the relevant superannuation fund is truly self managed. This is achieved by requiring that all members be involved in the fund's management. Accordingly, all members are required to be trustees or directors of a corporate trustee.

However, there are a number of exceptions to this rule. One being that a member need not be a trustee provided his or her legal representative, for example someone who holds an enduring power of attorney, is a trustee or director of a corporate trustee. An enduring POA is most commonly appointed when SMSF members travel overseas for prolonged periods. It is important to note though that merely executing a normal POA does not automatically appoint an attorney to be trustee or director of a fund, he or she must be appointed pursuant to the governing rules of the SMSF. Further, the POA must be enduring - it cannot cease if, for example, the donor loses legal capacity.

The ATO draft also expressly states that in order for the exception to apply, only one attorney can be appointed in respect of each member. This is currently subject to discussion in the legal community and it may be that the final ruling is altered in this respect however it is prudent at this time to proceed on the basis that that is the case.

If you have any questions in this regard please contact your Pinn Deavin advisor because getting it wrong can potentially create serious problems for the legitimacy of an SMSF.

NSW LAND TAX THRESHOLD

The NSW land tax threshold for the 2010 land tax year has been determined to be $376,000.

TRADING STOCK TAKEN FOR PRIVATE USE BY PARTNERS

The ATO has issued a determination (GSTD 2009/2) which states that when a partner in a partnership takes goods held as trading stock for private or domestic use, there is a supply by the partnership to the partner in the course or furtherance of the partnership's enterprise. If the other elements of the GST Act are satisfied and the partnership is registered for GST, there will be a taxable supply by the partnership to the partner. To the extent that the supply is not GST-free or input taxed, GST will be payable. The GST Act also applies where the partner provides no consideration or reduced consideration for the goods.

TRANSITIONAL RELIEF FOR DISABILITY BENEFIT PREMIUMS

The government has announced that it will amend the tax law to provide transitional relief to complying superannuation funds for the deduction of insurance premiums for disability superannuation benefits (TPD benefits). The amendments will defer to 1 July 2011, the application of the new provisions in the tax law governing deductibility of premiums for what are commonly referred to "own occupation" insurance policies. This will ensure that the current industry practice for deducting any type of TPD premium will apply from 1 July 2004 until 30 June 2011.

From 1 July 2011, the law will revert to insurance premiums only being deductible to the extent that policies have the necessary connection to a liability of a fund to provide "disability superannuation benefits" to its members. Broadly, this definition requires two medical practitioners to have certified that, because of the ill-health it is unlikely that the member can be gainfully employed in a capacity for which he or she is reasonably qualified because of education, experience or training. This new definition effectively causes partial loss of deductibility of premiums paid by super funds for the generally more expensive, "own occupation" policies, since they do not meet that definition.

We will be writing to all our superannuation fund clients shortly outlining the various options that are available.