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AUSTRALIA

Client Information Bulletin

Landlords beware Risks in owning investment property`

For more than a hundred years, tenants have had no recourse in negligence against landlords for injuries suffered due to the defective state of leased premises. It was not negligent to lease a house in disrepair. If the tenant had a remedy, it was confined to breach of contract (i.e. breach of the lease terms).

However, in 1997 the High Court departed from this traditional view and held that a landlord was liable for injuries to a tenant as a result of faulty electrical work. In that case, the landlord engaged a contractor to undertake electrical repairs, which were carried out in a negligent manner. The tenant suffered serious injuries as a result of that negligence.

In two recent decisions, the High Court has confirmed that landlords owe their tenants a duty to take reasonable care to ensure that they do not expose them to obvious danger.

Given the recognition by the courts that landlords owe a duty of care to tenants and other entrants onto leased premises, it is critical that landlords take reasonable steps to avoid injury to tenants and invitees to their land and have both adequate and appropriate insurance cover.

Disclose everything – or lose your rent

Landlords of retail premises should be very wary as a result of two recent decisions handed down by the Victorian

Civil and Administrative Tribunal. The effect of one decision is that Landlords may not be entitled to keep any of the rental paid under a lease if a disclosure statement is not provided to the tenant. In addition, according to another decision if the content of the statement is materially deficient, the Landlord may be ordered to refund the rental.



Exemptions from unfair dismissal rules

Did you know specified classes of employees are excluded from applying for a remedy for unfair dismissal under the Workplace Relations Act.

Categories of excluded employees are:

- Employees engaged for a specified period of time (fixed term contracts).
- Employees engaged for a specified task.
- Probationary employees.
- Casual employees engaged for a short period.
- Trainees under traineeship agreements.

Non-award employees earning more than the specified amount (currently \$71,200 p.a.).

New privacy laws for the private sector

Strict new requirements for the handling of personal information by private sector organisations have been introduced by the Privacy Amendment (Private Sector) Act.

Although the Act received Royal Assent on 21 December, 2000, it will not come into force until 21 December, 2001.

The 12-month grace period before commencement is intended to allow private sector organisations time to review existing practices and develop appropriate policies and procedures to ensure compliance.

The object of the Act is to establish a national scheme to regulate the collection, holding, use, correction, disclosure and transfer of personal information by private sector organisations.

There are some important exemptions, which exclude certain organisations and

activities from regulation under the Legislation:

1. **Small businesses** with an annual turnover for the previous financial year of \$3m or less are exempt. Where a business is not exempt, special provision has been made for delayed application of the regime. The new provisions will commence on 22 December, 2002 for small businesses that do not attract exemption.
1. **Registered Political Parties.**
1. **Commonwealth agencies,** state and territory authorities and prescribed instrumentalities are exempt.
1. The handling of personal information by an individual for the purposes of **non-business personal, family and household affairs** is excluded from the operation of the legislation.
1. Acts by a **media organisation in the course of journalism** are exempt.
1. The Law also provides exemption for acts by an organisation that is or was an employer of an individual if the act is related to the **employment relationship and an employee record** held by the organisation.

Therefore, any handling of information about (for example) an individual's terms and conditions of employment, resignation, wages or salary, termination, or health information, will not be regulated by the legislation.

Should your organisation be within the ambit of this legislation, some action

may be necessary now to ensure compliance by the 20th December, 2001.

FBT – GST interaction

The tax office has issued a ruling concerning the interaction of FBT and GST, and when the higher 2.192 gross-up factor must be used.

Broadly, the gross-up must be used when the employer is entitled to claim an input tax credit in relation to the supply of the fringe benefit.

Input tax credits will not be available where, for example, the supply to the employer is input taxed or GST-free. Examples include education and international travel. In such cases, the higher gross-up factor would not apply.

The ruling also confirms that the GST inclusive value is to be used when determining the taxable value of benefits, the value of employee contributions and the effect of the otherwise deductible rule.

Alienation of personal service income

Agents:

By Press release dated 29 June, 2001, the Treasurer announced that amendments will be made to the alienation of personal services measures as they apply to individuals (including those working through an entity, who operate under a principal / agent relationship).

Under the proposed amendments, an agent who derives income predominantly from commission-based payments will be treated as having received that income directly from the principal's customers. These amendments will apply to agents who:

- receive personal services income from providing services (on behalf of the principal) to customers, where less than 80% of that income is from services provided to each customer;
- receive at least 75% of that income as commission-based or results-based payments, as opposed to retainers or salary-like payments;
- actively seek customers for their principal; and
- do not provide services from the premises of the principal (or the principal's associate).

According to the Treasurer, where an agent satisfies these conditions, the proposed amendments will enable individuals to satisfy the 80% threshold rule and to self assess against the personal services business tests (in particular, the unrelated clients test). This will avoid the need to obtain a personal services business determination from the Australian Taxation Office.

The proposed amendments are to take effect from 1 July, 2000.

Self assessment for Contractors:

The Treasurer announced in July, that the Government has decided to 'significantly ease the compliance burden for independent contractors' under the alienation of personal service income measures.

Under the Government's changes, independent contractors who derive 80% or more of their income from the same entity will be allowed to self assess their status as a personal services business. While it will still be open to such people to seek a determination from the Australian Taxation Office that they are a personal services business, they will not be required to do so. They will be able to self assess, regardless of the amount of income that comes from one source.

The Treasurer explained:

'Even when 80 per cent or more of their income comes from the same entity, they can self assess as a personal services business where they derive income from producing a result, where they supply their plant and equipment or tools of trade (if required), and where they are liable for rectification. These are traditional tests for independent contractors.'

The Treasurer added that the alienation of personal service income measures do not apply at all to:

Persons who have a number of clients (i.e. do not derive 80% or more of their income from the same entity); and Owner-operator truck drivers or couriers who derive income mainly from their truck or vehicle, rather than from their labour or skills.

These changes are to apply from the 2000 / 2001 income year.

Australian Taxation Office response:

The Commissioner of Taxation stated that the Australian Taxation Office will consult with industry to develop further guidelines to help contractors decide if they come within the alienation of personal services income measures. In particular, the Australian Taxation Office will develop guidelines to clarify how particular industries are affected, if at all.

The Australian Taxation Office will also, as a matter of priority, finalise the tax rulings on 'what is a personal services business' and 'what personal services income is' stated that these Rulings would be 'significantly' reworked.

The Australian Taxation Office then stated that:

- under the standard industry contract, courier owner-drivers are considered independent contractors;
- retailers, wholesalers and manufacturers do not come within the measures;
- it is only people who derive their income mainly from their labour or skill who might come under these measures; and
- independent contractors are those who derive income from producing a result, where they supply their plant and equipment or tools of trade (if required) and are liable to rectify defective work.

The Commissioner also said that the Australian Taxation Office will 'recognise unusual circumstances, as provided in the law'. For example, someone who usually has several clients but is currently working for one client may also fall outside the measures.

Benchmark interest rate for private company loans – 2002 rate

For the 2001 – 2002 income year, the benchmark interest rate for the purposes of calculating interest on shareholder loans is 6.8% per annum. (The rate was 7.8% for the 2000 – 2001 income year).

Refund of excess franking credits

The tax office has announced the mechanism to be used for claiming a refund of excess franking credits.

Resident individuals, superannuation funds, charities and certain other taxpayers may claim a refund from 1 July, 2001 for excess credits on franked dividends paid on or after 1 July, 2000. Where such entities lodge a tax return, refunds may be claimed via an attached schedule.

Other entities may claim the refund via an application form, which may be obtained from the Tax Office.

Depreciation

Car limit

In a media release dated 6 June, 2001, the Australian Taxation Office announced that the car depreciation limit would not change in 2001-2002, remaining at \$55,134.

Superannuation, retirement, termination & pension payments

Thresholds and limits for superannuation amounts

A determination has been issued by the Commissioner of Taxation on 20 June, 2001. The Determination sets out the thresholds and limits that apply from 1 July, 2001 in relation to various superannuation amounts under the Income Tax Assessment Act.

Description	2000 – 2001 threshold	2001 – 2002 threshold
Tax free amount of <i>bona fide</i> redundancy payment or AERS	\$5,062 (\$2,531 per annum component)	\$5,295 (\$2,648 per annum component)
Age based deduction limits for superannuation contributions by employers and eligible persons for persons aged:		
▪ Under 35 years	\$11,388	\$11,912
▪ 35 to 49 years	\$31,631	\$33,087
▪ 50 years and over	\$78,445	\$82,054
Lump Sum RBL Limit	\$506,092	\$529,373
Pension RBL Limit	\$1,012,181	\$1,058,742
Upper limit for determining residual amount (i.e. threshold on post-June 1983 component of ETP).	\$101,188 (as corrected)	\$105,843

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