

tax alert

The Grant Thornton Tax Alert
for businesses and individuals

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The Federal Government has introduced **amendments to the law** in Tax Laws Amendment (2006 Measures No. 1) Act 2006. This Act contains numerous measures of significant importance.

The Act introduced the following measures:

- Foreign source income exemptions for temporary residents (Temporary Residents Regime)
- Deductibility of business related costs (Blackhole Expenditure Regime)
- Promotion and implementation of schemes (Provider Penalty Regime)
- The treatment of vouchers for GST purposes

Outlined below is an overview of each of these new regimes.

Temporary Residents Regime

The temporary residents regime seeks to exempt temporary residents, who have never been permanent residents, working in Australia from Australian tax on their foreign income. The purpose of this measure is to attract skilled staff to Australia and make Australia more competitive in a global environment where employees and executives have become more mobile.

For the purposes of these provisions, a temporary resident is a person holding a valid temporary resident visa under the Migration Act 1958 unless that individual and his/her spouse is an Australian resident within the meaning of the Social Security Act 1991 (i.e. the individual or his/her spouse is entitled to Australian social security benefits).

Where an individual is a temporary resident, that individual's ordinary and statutory income (except for a net capital gain) from a foreign source is treated as non-assessable, non-exempt income of the individual for Australian tax purposes. A capital gain or loss is disregarded where the individual would not have made a capital gain or loss if the individual was in fact a foreign resident at the time of the CGT event.

In addition, it should be noted that ordinary or statutory income (other than a net capital gain) from foreign sources is not non-assessable, non-exempt income of a temporary resident to the extent to which it is remuneration for employment or other services whilst a temporary resident. Amounts attributed to the individual under the personal services income regime are also not non-assessable, non-exempt income of a temporary resident.

The Explanatory Memorandum to the Bill states that:

"...these exceptions to the general rule for the temporary residents are to prevent the exemptions from making the employment remuneration for temporary residents less costly than the other Australian residents. Another objective is not to allow the foreign employment income to be totally tax free since foreign tax will usually not be payable on that income. Where the person is a resident and is employed overseas for a minimum of 91 days, the exemptions available under sections 23AF and 23AG of the ITAA 1936 may be available. These new provisions will not have any effect on the operation of those sections."

It should be noted that there are also special rules for temporary residents with regard to shares and options issued under employee share schemes. Please contact your Grant Thornton adviser should this issue affect you or your staff.

The above provisions relate to all persons holding temporary resident visas including Australian residents and non-residents for taxation purposes. If an individual is a non-resident of Australia for tax purposes, he/she will not be liable to tax on foreign source income in any event, so the new rules will have little input for them, but for the employee share scheme rules.

The Promoter Penalty Regime

This regime has been introduced to deter the mass marketing of tax schemes. Under these new rules, persons who promote, or assist with the implementation of tax schemes face injunction on the scheme as well as penalties of over \$2.5 million.

Although tax agents and advisors are not exempt, those persons who merely advise a taxpayer of the tax consequences of entering into such a scheme are not impacted by the new rules as presently drafted.

Blackhole Expenditure Regime

The current blackhole expenditure regime applies to costs incurred after 1 July 2001. The provisions were introduced after business identified genuine business costs that were not deductible for taxation purposes. The current provisions provide deductions for blackhole expenditure over a five year period. However, the expenditure to which the provisions related were limited to specific circumstances, for example costs incurred to establish or convert your business structure or to defend a takeover.

Since that time it has been identified that numerous costs remain inappropriately treated for income tax purposes. Accordingly, following an announcement in last year's Federal Budget, confidential consultation was engaged to examine particular legislative options.

As a consequence, the new legislation is all inclusive. The Act provides that capital business costs incurred are deductible over a period of five years where the expenditure is not otherwise taken into account or where the deductions are not otherwise denied by some other provision. The provisions only apply to a business which is, was or is proposed to be carried on for a taxable purpose.

Due to the broad application of this new measure, the Act introduces a number of other amendments:

- Firstly, more costs will be included in relation to the holding of a depreciating asset;
- Secondly, the list of costs forming a part of the cost base of a CGT asset has been expanded. Accordingly, more costs are likely to be capitalised rather than deducted
- Thirdly, for individuals in business, the non-commercial loss rules have been expanded so as to deny deductions under these new releases where the commercial business tests are not met.

Accordingly, where a capital cost is not addressed elsewhere within the tax laws, a deduction is likely to be available over a five year period. This applies to costs incurred on or after 1 July 2005.

Amendment to GST vouchers

The Act also amends the way vouchers are to be treated for GST purposes. It had been noted that a number of vouchers for

telephones and telephone top up cards may not be eligible to be treated as vouchers for GST purposes. The amendments now make it clear that such vouchers are to be treated as vouchers for GST purposes. Included in the definition of vouchers are pre-paid phone cards or facilities that enable the holder to use telephones or similar services. Similar services include SMS, MMS, e-mail, text, graphics and access to the internet.

The vouchers rule only applies to face value vouchers. These are vouchers that have a value, either on the face of the voucher or on accompanying documentation, that give a value. Other vouchers are not covered by these rules. Face value vouchers are not subject to GST when they are supplied, as it is not always known what the GST liability of the supply will be (for instance, a 'phone voucher' may be used in Australia, which is taxable, or overseas, which is GST-free).

When the voucher is redeemed the value is the value of the voucher (plus any additional amount paid, less any change given to the customer). It should be noted that where 'bonus' amounts are given to the user that these bonus elements are not subject to GST. Thus, a user may buy a top up 'phone card' for \$50 that entitles him or her to have not only the \$50 call allowance, but also a further bonus of up to \$250 worth of extra minutes (or text messages, MMS etc.). GST is only due on the \$50 value and not the bonus element. Clearly, it is important to ensure that the documentation refers to these amounts as bonus elements otherwise GST will be due on these amounts.

The 'voucher' may be a paper voucher, electronic or in other forms. In addition the voucher may be supplied with other goods. For instance, a mobile phone provided with a SIM card with \$20 of value on the SIM card is a mixed supply of a 'phone and a \$20 voucher'.

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