the Spry Roughley report

explanatory memorandum

September 2011

CURRENCY: This issue of takes into account all developments up to and including 12 August 2011.

Carbon Tax to Commence on 1 July 2012

On 10 July 2011, the Prime Minister released details of the Government's plans to put a price on carbon. From 1 July 2012, the scheme proposes to set a price of $23 for each tonne of carbon pollution released into the atmosphere by what the Government says are "Australia's biggest polluters". The price will rise by 2.5% a year in real terms during a three-year fixed price period until 1 July 2015. The PM said around 500 businesses will be required to pay for their pollution under the carbon pricing mechanism. The carbon price scheme will transition to an emissions trading scheme (ETS), or cap-and-trade scheme, on 1 July 2015.

A carbon price will be applied to domestic aviation, domestic shipping, rail transport, and non-transport use of fuels. However, a carbon price will not apply to household transport fuels, light vehicle business transport and off-road fuel use by the agriculture, forestry and fishing industries.

The Government said it will allocate around 40% of carbon price revenue to help businesses and support jobs. A Jobs and Competitiveness Program would provide $9.2bn of assistance over the first three years of the carbon pricing mechanism to safeguard jobs in industries which face international competition and produce a lot of pollution. Other main pointers from the Government's plan are set out below.

Household Assistance – tax cuts but marginal tax rate increases

To assist households with price impacts, there will be tax cuts and increases in pensions, allowances and benefits. The following are some highlights.

1. ***Changes to tax-free threshold***

   The Government is proposing a two-step increase to the tax-free threshold as part of its carbon tax measures, with associated changes to the low-income tax offset (LITO).

   From 1 July 2012, the Government proposes to increase the statutory tax-free threshold from $6,000 to $18,200 in 2012–2013. As a result of this change, the Government states that:

   - a person earning $20,000 a year will receive a tax cut of around $600, meaning they will pay no net income tax;
   - a worker with annual income of around $25,000 will receive a tax cut of around $500;
   - most middle income earners will receive tax cuts of at least $300; and
   - no person will pay more income tax.

   The Government states that the increase in the threshold to $18,200 will replace all but $445 of the existing LITO (i.e. down from the current $1,500). The Government proposes that the LITO will phase out at the rate of 1.5% from $37,000 (currently 4% from $30,000).

   The combined effect of the LITO plus the $18,200 tax-free threshold means that people would be able to earn annual income of up to $20,542 before they pay any net tax.

   From 1 July 2015, the Government proposes to further increase the tax-free threshold from $18,200 to $19,400 in 2015–2016. The Government states that this will provide taxpayers earning up to $80,000 with a further tax cut, with most receiving at least $80 per year.

LITO will be reduced to $300 and will phase out at the rate of 1% from $37,000. Together with a reduced LITO of $300, people with annual incomes of up to $20,979 will pay no net tax.

The Government states that after the two rounds of tax cuts, over one million people will not need to lodge a tax return.

2. ***Marginal tax rates to change as part of carbon tax measures***

In conjunction with the increase in the tax-free threshold that would accompany the introduction of a carbon tax, the Government is also planning a two-step change to the marginal rates of tax for resident individuals. [Note: the non-resident rates will presumably not change as they are not entitled to the tax-free threshold or LITO in any event. The Government papers did not make any reference to non-resident tax rates.]

The change would be made by increasing the 15% rate to 19% from 1 July 2012 and by progressively increasing the 30% rate to 32.5% from 1 July 2012 and to 33% from 1 July 2015. The effect of the change is meant to be that individuals earning more than $80,000 would not receive the benefit of the increase in the tax-free threshold. The Government papers, however, point out that such individuals will not be paying more tax as a result of the carbon tax changes.

In simple form, the changes proposed can be shown as follows (the rates in the following table exclude Medicare levy, but include impact of the flood levy for 2011–2012):

TAX RATES - CURRENT AND PROPOSED

Current rates (2011–2012)		From 1 July 2012 to 30 June 2015		From 1 July 2015	
Threshold	Tax rate	Threshold	Tax rate	Threshold	Tax rate
$0 – $6,000	Nil	$0 – $18,200	Nil	$0 – $19,400	Nil
$6,001	15%	$18,201	19%	$19,401	19%
$37,001	30%	$37,001	32.5%	$37,001	33%
$50,001	30.5%				
$80,001	37.5%	$80,001	37%	$80,001	37%
$100,001	38%				
$180,001	46%	$180,001	45%	$180,001	45%

Social Security and FTB Changes

The Government is proposing increases to pensions and Family Tax Benefits (FTB) as part of the compensation measures associated with the introduction of the carbon tax.

1. ***Increases to FTB***

Assistance will be provided to people receiving FTB in two stages.

First, families will receive an up-front lump sum advance in May–June 2012, while their regular FTB payments remain unchanged. This advance is intended to provide assistance for the period from the introduction of the carbon price on 1 July 2012 until 30 June 2013.

The lump sum advance is to be equivalent to a 1.7% increase in the relevant maximum annual rate of FTB. For example, a family with a child aged 13–15 will receive a tax exempt "Clean Energy Advance" of $109.50 in June 2012.

Then, from 1 July 2013, families will receive assistance through a new fortnightly, tax exempt supplement (the "Clean Energy Supplement"). The supplement will be equivalent to a 1.7% increase in the relevant maximum annual rate of FTB, indexed to CPI.

Assistance for families will also include the introduction of a new "Single Income Family Supplement" from 1 July 2012 which will provide up to $300 to assist eligible single income families who would receive little or no assistance through tax changes compared with dual income families with similar income.

2. ***Changes to pensions and allowances***

   Pensioners and allowees will receive an up-front, tax-exempt lump sum in May–June 2012. The "Clean Energy Advance" will deliver a lump sum equivalent to a 1.7% increase in the annual maximum rate of their pension. For example, the "Clean Energy Advance" for pensioners will be $250 for singles and $190 for each member of a couple, to be paid in May–June 2012.

   Then from 20 March 2013, pensioners and current allowees will receive assistance with their regular payment. This assistance will be delivered through a new fortnightly, tax-exempt supplement, i.e. the "Clean Energy Supplement". The supplement will be equivalent to a 1.7% increase in the maximum rate of their pension and indexed to CPI.

   There will be consequential amendments to the manner in which indexation is worked out in March 2013 for pensions and most allowances, as well as the FTB and Youth Allowance.

3. ***Self-funded retirees***

   Commonwealth Seniors Health Card holders will receive an up-front lump sum advance in May–June 2012, while their regular payments remain unchanged. This advance will be tax exempt. The advance will deliver assistance of $250 for singles and $190 for each member of a couple.

   From 20 March 2013, Commonwealth Seniors Health Card holders will be eligible for assistance delivered through a quarterly, tax-exempt supplement, i.e. the "Clean Energy Supplement". The supplement will be equivalent to a 1.7% increase in the maximum rate of the pension and indexed to CPI. The new supplement will be paid with the existing Seniors Supplement.

4. ***Low income supplement***

   Low-income households that can show they might not receive enough assistance through tax cuts or Government payments to offset their average expected cost impact under a carbon price will be able to apply for an annual, tax-exempt "Low Income Supplement" of $300.

Small Business Tax and Other Assistance

The Government says small businesses will not be required to pay a carbon price. It says small businesses will not have to count or monitor their carbon pollution or electricity use.

To assist small businesses adjust to a carbon price, the Government proposes that for businesses with an aggregated turnover of less than $2m per year, the small business instant asset write-off threshold will be increased from $5,000 to $6,500 for depreciable assets from the 2012–2013 income year.

[Note: The Government, as part of its 2010 election promises, intends to introduce a tax write-off for any new business asset that costs up to $5,000 for small business companies, sole traders and partnerships. Legislation for that has not yet been introduced. Also, it is noted that the Government says the passage of the Minerals Resource Rent Tax is a prerequisite for the increase in the existing small business write-off threshold from $1,000 to $5,000.]

The Government will also establish a $40m Energy Efficiency Information Grants program to provide information to small to medium businesses and community organisations on practical measures they can take to reduce their energy costs.

Fuel Tax Credits To Be Reduced

Some businesses effectively pay no excise on the fuel they use off-road, as their excise is offset under the fuel tax credits scheme. The Government says an effective carbon price will be imposed on some businesses through reduced fuel tax credit entitlements and reductions to the automatic remission of excise on gaseous fuel used for non-transport purposes.

The PM said that, from 2012–2013, fuel tax credits will be reduced for businesses (with some exceptions) so that they face an effective carbon price "like other heavy polluters". Businesses in the agriculture, fisheries and forestry industries will be exempt from the reduction in fuel tax credits. Heavy on-road vehicles like semi-trailers will also initially be exempt from the fuel tax credit reductions. However, the Government says it intends to apply these arrangements to the heavy on-road vehicle industry from 1 July 2014. Gaseous fuels such as LPG, LNG and CNG used for on-road transport will not be subject to an effective carbon price as their eligibility for a fuel tax credit is reduced to zero due to the Road User Charge.

Fuel tax credits for businesses will be reduced for fuels acquired after 1 July 2012 by the amount of the fixed carbon price as set at the beginning of each of the fixed price years from 2012–2013 to 2014–2015. On the move to an emissions trading scheme in 2015–2016, the fuel tax credit changes would be determined on a six-monthly basis, based on the average carbon price over the previous six months.

1. ***Non-transport use of gaseous fuels***

   Non-transport LPG and LNG receive a remission, and non-transport CNG receives an exemption from the excise and excise equivalent customs duty imposed on gaseous fuels so that effective tax only falls on gaseous fuels for transport use.

   To ensure consistent coverage of non-transport use of gaseous fuels, such as emissions from bottled LPG and reticulated gas, the Government proposes that an effective carbon price will apply through a reduction in the automatic remission or exemption of excise.

   Under the Government's plan for a clean energy future, the fuel tax remission or exemption for the non-transport LPG, LNG and CNG will be adjusted on a "cent-for-cent" basis equivalent to the carbon content price on the fuels, had the gaseous fuels been subject to carbon pricing.

2. ***Aviation and marine fuel***

   From 1 July 2015, aviation excise will be increased on a six-monthly basis, based on the average carbon price over the previous six months. International aviation fuel use is not subject to fuel tax and will therefore not be subject to an effective carbon price.

   Marine and rail transport effectively pay no excise on the fuel they use, as their excise is offset under the fuel tax credits scheme. The Carbon Pricing Mechanism will impose an effective carbon price on those activities through reduced fuel tax credit entitlements in the same way that it applies to off-road business use.

Draft Legislation

The Government has released key exposure draft legislation to underpin the carbon pricing mechanism. The Government said it intends to introduce legislation in Parliament in the second half of 2011 (i.e. 16 August to 24 November 2011). Note that the legislation to implement household assistance measures will not be exposed in draft. Public consultation closed on 22 August 2011. The Draft Bills are on the Department of Climate Change and Energy Efficiency website at: www.climatechange.gov.au/government/submissions/clean-energy-legislative-package.aspx.

Detailed documents

Details of the proposed scheme are on the Government's Clean Energy Future website at: www.cleanenergyfuture.gov.au.

Treasury modelling documents are on its website at: www.treasury.gov.au/carbonpricemodelling/content/default.asp.

Although the carbon tax scheme will not commence until next year, businesses should consider how they may be affected both directly and indirectly by the scheme and whether they are able to access some of the compensation and support measures announced as part of the scheme.

Government Set on Countering Phoenix Activities

On 5 July 2011, the Government released for public consultation exposure draft legislation on the 2011–2012 Budget proposal to counter fraudulent phoenix activities by company directors. Fraudulent phoenix activity involves the deliberate liquidation of a company to avoid paying liabilities, including employee entitlements, such as superannuation and taxes. The business then “rises” and continues operations through another corporate entity, controlled by the same person or group of individuals, often with a very similar name and free of the debts.

The Assistant Treasurer said the amendments would be designed to help to secure workers’ superannuation and are not limited to directors of phoenix companies, but apply broadly to directors’ obligations to cause their company to pay certain tax liabilities and superannuation guarantee amounts for employees. The Government will address these issues through three amendments to the Taxation Administration Act 1953:

- extending the director penalty regime to make directors personally liable for their company’s failure to pay employees’ superannuation guarantee amounts (this will be in addition to their liability for PAYG withholding amounts);
- allowing the ATO to immediately pursue directors under the director penalty regime where the company’s unpaid PAYG withholding and superannuation guarantee liability remains unpaid and unreported three months after the due day, regardless of the character of the company’s underlying liability. A director’s personal liability can only be extinguished by payment of the debt or penalty. The current law will continue to apply where a company’s debt to which the director penalty applies is less than three months old or where the debt has been correctly reported before three months from the due day;
- providing the Commissioner with the discretion to prevent directors and, in some instances their associates, from obtaining PAYG withholding credits where the company has an outstanding PAYG liability.

The Commissioner will have discretion in applying the law. Directors will have the ability to raise objections and legal defences where they have been made personally liable for their company’s non-compliance. Public consultation closed on 1 August 2011. The Government plans to introduce the legislative changes in Parliament in the 2011 Spring sittings.

The changes would place additional pressure on directors to ensure that their company’s tax risk management policies and systems are up-to-date. It should also be noted that the ATO, as part of its Compliance Program for this year, intends to detect potential phoenix activities sooner through a targeted program of reviews and audits of directors.

Source: www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=2073; www.ato.gov.au/download.asp?file=/content/downloads/cr00284023compliance.pdf

New Restrictions on SMSF Investment in Artworks

The Superannuation Industry (Supervision) Amendment Regulations 2011 (No 2) sets out the rules for self-managed superannuation fund (SMSF) investment in collectables and personal use assets from 1 July 2011. The Regulations complement the measures in Tax Laws Amendment (2011 Measures No 2) Act 2011.

The Regulations specify rules that prevent SMSF trustees from gaining current day benefit from an investment in collectables and personal use assets and ensure that such investments are made for genuine retirement income purposes.

Lifestyle Assets Subject to Rule

New reg 13.18AA of the SIS Regulations applies to the following “section 62A items”:

- artwork (defined within the ITAA 1997 as: a painting, sculpture, drawing, engraving or photograph; a reproduction of such a thing; or property of a similar description or use);
- jewellery;
- antiques;
- artefacts;
- coins;
- medallions or bank notes;
- postage stamps or first day covers;
- rare folios, manuscripts or books;
- memorabilia;
- wine or spirits;
- motor vehicles;
- recreational boats; and
- memberships of sporting or social clubs.

Investment Restrictions – offences

Regulation 13.18AA provides that each trustee of a regulated SMSF will commit an offence in relation to an investment involving a 62A item in the following circumstances:

- **leasing to related parties** – the fund enters into a lease or “lease arrangement” with a “related party” (defined in s 10 of the SIS Act) in relation to an investment involving a s 62A item;
- **storage of asset at private residence** – the fund stores an 62A item in the private residence of a related party. This will allow SMSF trustees to store a s 62A item in premises owned by a related party provided that the premises are not the home of a related party;
- **documentation of storage decision** – the fund does not keep a record of the reasons for the decision on where to store an s 62A item. This will require SMSF trustees to give consideration to what is appropriate storage for maintaining their s 62A item as an investment that produces retirement income rather than one that provides current day enjoyment;
- **insured in fund’s name** – the fund does not insure an s 62A item in the name of the fund within seven days of acquisition of the item. However, this requirement will not apply to memberships of a sporting or social club because these items generally cannot be insured;
- **market price valuation** – the fund disposes of a s 62A item to a related party at a price other than a market price determined by a qualified independent valuer.

Each of the above rules is a strict liability offence subject to a penalty of 10 penalty units ($1,100).

Date of effect

The Regulations commenced on 1 July 2011. However, an existing investment in an s 62A item that is held by an SMSF on 30 June 2011 will not be subject to the regulations until 1 July 2016.

The new rules for SMSF investment in collectables and personal use assets are still subject to the general superannuation investment rules, eg the sole purposes test: see Ruling SMSFR 2008/2. The provisions are also intended to apply not only where the asset is the primary investment but also where the asset is attached to an investment or is a related benefit of an investment.

Source: Superannuation Industry (Supervision) Amendment Regulations 2011 (No 2), registered on 30 June 2011

Income Test for Private Health Insurance Rebate

A package of three Bills was recently introduced in Federal Parliament to income test the 30% private health insurance rebate with effect from 1 January 2012. The Bills are the Fairer Private Health Insurance Incentives Bill 2011, Fairer Private Health Insurance Incentives (Medicare Levy Surcharge) Bill 2011 and the Fairer Private Health Insurance Incentives (Medicare Levy Surcharge – Fringe Benefits) Bill 2011. They are expected to be debated in the Spring 2011 sittings of Parliament.

This will be Government's third attempt to introduce these amendments. The Bills were originally introduced in May 2009, but were defeated in the Senate. They were re-introduced in November 2009 but were again defeated in the Senate in March 2010.

The income thresholds which would trigger application of the proposed changes need to be carefully noted. The thresholds include taxable income, reportable fringe benefits and superannuation contributions (see below).

To achieve the means testing, the legislation proposes to introduce three new "Private health incentive tiers" with effect from 1 January 2012. If the legislation is passed, then from that date, individuals and families may not be eligible for the full 30% rebate for their private health insurance premiums. In conjunction with this, also from 1 January 2012, the rate of Medicare levy surcharge for individuals and families without private patient hospital cover may increase depending on their level of income.

The three new "Private health insurance incentive tiers" have income thresholds as follows:

- **Tier 1:** singles whose income for surcharge purposes is from $80,001pa to $93,000pa inclusive and couples/families whose income for surcharge purposes is from $160,001pa to $186,000pa inclusive in the 2011–2012 financial year.
- **Tier 2:** singles whose income for surcharge purposes is from $93,001pa to $124,000pa inclusive and couples/families whose income for surcharge purposes is from $186,001pa to $248,000pa inclusive in the 2011–2012 financial year.
- **Tier 3:** singles whose income for surcharge purposes is from $124,001pa and over and couples/families whose income for surcharge purposes of $248,001pa and over in the 2011–2012 financial year.

The following table illustrates how the proposed changes would operate:

Tier	Income ($)		Private health insurance rebate			Medicare levy surcharge
	Singles	Families	Under 65 years old	65 – 69 years old	70 years or over	
	0 – 80,000	0 – 160,000	30%	35%	40%	Nil
1	80,001 – 93,000	160,001 – 186,000	20%	25%	30%	1%
2	93,001 – 124,000	186,001 – 248,000	10%	15%	20%	1.25%
3	124,001+	248,001+	0%	0%	0%	1.5%

For families with more than one dependent child, the relevant threshold is increased by $1,500 for each child after the first.

In future years, the singles thresholds will be indexed to average weekly ordinary time earnings and increased in $1,000 increments (rounding down). The couples/family thresholds will be double the relevant singles thresholds.

Source: Fairer Private Health Insurance Incentives Bill 2011; Fairer Private Health Insurance Incentives (Medicare Levy Surcharge) Bill 2011; Fairer Private Health Insurance Incentives (Medicare Levy Surcharge - Fringe Benefits) Bill 2011

Income for Surcharge Purposes

Income for surcharge purposes is the sum of a person's:

- taxable income (including the net amount on which family trust distribution tax has been paid, lump sum in arrears payments that form part of taxable income, and payments for unused annual and long service leave); plus
- reportable fringe benefits (as reported on the person's payment summary); plus
- total net investment losses (includes both net financial investment losses (eg re shares) and net rental property losses); plus
- reportable super contributions (includes reportable employer super contributions (eg under salary sacrifice arrangements) and deductible personal super contributions);

Less:

- where the person is aged 55–59 years old, any taxed element of a lump sum superannuation benefit, other than a death benefit, which they received that does not exceed their low rate cap.

Tax Discount on Interest Income

In the 2010–2011 Budget, the Government announced that from 1 July 2011 it would provide individuals with a 50% tax discount on up to $1,000 of interest earned by individuals, including interest earned on deposits held with any bank, building society or credit union, as well as bonds, debentures or annuity products. In September 2010, the Government then announced a deferral of the start date to 1 July 2012 and that the discount will apply on up to $500 of interest in the first year (2012–2013), and $1,000 in subsequent years (1 July 2013 onwards). On 12 July 2011, the Government released a discussion paper on its approach to implementing the proposed tax discount.

Policy Design

The paper discusses the proposal to introduce a tax discount that is assessed and applied on net interest income received by individuals (a "net interest income discount"). This involves reducing the amount of eligible interest income received by the amount of expenses incurred related to that income, before exempting from tax 50% of this net amount, up to the amount of the cap ($500 in 2012–2013 and $1,000 from 1 July 2013).

The paper provides the following example:

> *Renee has a total of $2,500 of gross interest income from a number of sources in 2013–2014 (i.e. cap of $1,000 applies), and has a total of $500 of expenses that were incurred in deriving this interest income.*
>
> *Net interest income is $2,000 ($2,500 minus $500). As this exceeds the cap, the maximum discount of $500 will apply. Instead of taxable interest income of $2,000, Renee now has taxable interest income of $1,500.*

According to the paper, the net interest discount approach will minimise the burden placed on trusts and partnerships. Both trusts and partnerships currently report income to beneficiaries and partners on a net income basis. While trusts and partnerships will likely have to alter existing reporting or distribution statements to separately identify any interest income component, the paper says a gross interest income discount would likely result in additional complexity and compliance costs as any net interest income component would need to be further separated between gross interest income and their related expenses.

Scope of Policy

Interest income would only be eligible for the discount if it is derived by an individual who is an Australian resident for tax purposes. The paper says the discount would cover interest received by and assessable in the hands of an individual (including as a result of his or her business activities).

However, it notes that companies, incorporated and unincorporated associations, superannuation funds and First Home Saver Account (FHSA) trusts would not be entitled to the discount and would not be able to pass the discount to an individual.

The paper provides details about interest income that is eligible for the discount. Broadly, interest income that is be eligible for the discount includes interest that is ordinary income or statutory income of an Australian resident taxpayer from an Australian or foreign source. Examples of interest income that would attract the discount are interest received from: banks, credit unions and building societies; bonds, debentures, convertible notes and any similar financial products; and the ATO for early payments or overpayments of tax.

The paper also specifies various types of interest income that are considered outside the scope of the policy. For example, any interest notionally "earned" from mortgage offset accounts is not assessable and generally would not receive the discount. It should also be noted that the discount would not apply to any interest income that is already taxed concessionally under a separate regime. For example, interest earned from FHSA or superannuation accounts that receive concessional tax treatment would not be eligible.

Annuity Income, Trusts and Partnerships

In addition, the paper outlines arrangements concerning annuity income, trusts and partnerships. Points from the paper include:

- **Annuity:** The component of an annuity that is subject to taxation under s 27H of the ITAA 1936 would be treated in the same way as interest for the purposes of the tax discount for interest income. However, the paper says s 27H also taxes pensions paid from a foreign superannuation fund or scheme. These will not be eligible for the discount. Further, it adds an annuity that is a "superannuation income stream" for the purposes of Div 301 of the ITAA 1997 is given concessional tax treatment under that Division and will not be eligible for the interest discount.
- **Trusts:** A resident individual beneficiary would be able to apply the discount to their proportionate share of the net income of a trust that is attributable to interest income (trust net interest). To ensure beneficiaries can claim the discount against their share of the net income of a trust that is attributable to interest, trustees would need to distinguish net interest from other forms of assessable income of the trust and report this amount separately to beneficiaries.
- **Partnerships:** The discount would be available for interest received by individuals who are partners in a partnership whether they carry on a business in common with a view to profit, or receive income jointly (eg joint tenants, tenants in common or share farmers). Extending the discount to interest income received indirectly via a partnership may necessitate some changes in the way managing partners report this income to individual partners.

The Assistant Treasurer noted the proposal is contingent on the passage of the Minerals Resource Rent Tax legislation. The Government intends to release draft legislation for public consultation before its introduction into Parliament.

Public consultation on the paper closed on 5 August 2011.

Source: Treasury Discussion Paper "Improving Incentives for Saving: 50 per cent Tax Discount for Interest Income",

ATO Targets FBT Avoidance Using Employee Share Trusts

The ATO has issued Taxpayer Alert TA 2011/5 warning taxpayers of arrangements whereby effective after-tax benefits are provided to employees without a corresponding FBT liability to the employer.

The arrangement broadly involves the establishment of an employee share trust (EST) by an employer for employees to acquire share units in.

The acquisition of share units by the employees is funded by a loan from the trustee and that loan is repaid by the employer from amounts salary sacrificed by the employee. Under this arrangement, the ATO says the employer does not appear to include the taxable value of the benefits provided as a part of its FBT liability. The ATO says failure to include the benefit may trigger the anti-avoidance provision in s 67 of the FBTAA.

The ATO says it is currently reviewing these arrangements. The ATO also released ATO ID 2011/54 FBT: Expense payment fringe benefit: employee loan from a trust repaid by employer in respect of such arrangements.

Source: Taxpayer Alert TA 2011/5 http://law.ato.gov.au/pdf/tpa/tpa1105.pdf; ATO ID 2011/54 http://law.ato.gov.au/atolaw/view.htm?docid=%22aid%2Faid201154%2F00001%22; ATO media release No 2011/36, 27 June 2011 www.ato.gov.au/corporate/content.aspx?doc=/content/00284071.htm

No GST on damages paid for lost scaffolding

The Federal Court has held that a taxpayer did not make a taxable supply when ownership of its scaffolding vested in another entity as a result of that entity paying damages awarded to the taxpayer.

Background

On the completion of an audit in July 2010, the Commissioner issued the taxpayer with a GST assessment which included a debit adjustment of $134,375 for the quarter ended 31 March 2008. During that quarter, the taxpayer received $1,478,125 (plus interest) which represented damages awarded to the taxpayer in a NSW Supreme Court action for conversion against Citadel Finance.

Conversion is a common law tort relating to wrongful dealing with goods in a manner inconsistent with the owner's rights with the intention of denying those rights or asserting a right inconsistent with them. It is worth noting that the damages awarded represented the market value of the scaffolding at the time of conversion and that this was based on its GST-inclusive auction value as assessed by expert valuers.

The taxpayer hired out all of its scaffolding to ACS Hire (ACS) under a 10-year agreement entered into in December 2004. ACS then hired out the scaffolding to users in the building and construction industry, one of which was Action Construction. The taxpayer's problems started when Action Construction intermingled its own scaffolding with the scaffolding it obtained from ACS and itself hired out the intermingled equipment. Matters got worse when Action Construction went into receivership in December 2005. Despite being informed by the taxpayer's solicitors that part of the scaffolding held by Action Construction was owned by the taxpayer, the receiver granted another entity (Action NSW) a license to use the intermingled scaffolding. When Action Construction went into liquidation in April 2006, Citadel Finance, as mortgagee, entered into possession of Action Construction's assets and granted a new licence to Action NSW on the same terms.

Decision

In terms of the definition of "taxable supplies" in s 9-5 of the GST Act, the two issues in dispute were whether the taxpayer had made a supply and, if so, whether it had been made in the course or furtherance of the enterprise carried on by the taxpayer.

In relation to the first issue, the Court observed that in an action for conversion, only damages can be recovered and that, if value for the converted goods is given as damages, satisfaction of the damages will in effect be satisfaction of the price by way of purchase and vest ownership of the goods in the payer.

It then concluded that the transfer of ownership to Citadel Finance, and the extinguishment of the taxpayer's ownership by operation of law, occurred without assent and was triggered by the payment of the damages: "That payment did not depend upon any action of the Taxpayer. I do not consider that, in those circumstances, the Taxpayer may be said to have made a supply."

On the second issue, the Court said it would have found – had it been necessary to do so – that the supply was made in the course or furtherance of the taxpayer's enterprise. In doing so, it would have rejected the taxpayer's argument that it ceased to carry on an enterprise when the conversion happened (in either January 2006 when Action Construction's receiver took possession of the intermingled scaffolding or May 2006 when Citadel Finance entered into possession as mortgagee).

The Commissioner has since appealed to the Full Federal Court against the decision.

Source: Reglon Pty Limited v FCT [2011] FCA 805, Federal Court, Emmett J, 5 July 2011 www.austlii.edu.au/au/cases/cth/FCA/2011/805.html

Division 7A Benchmark Interest Rate

Taxation Determination TD 2011/20 states that for the income year that commenced on 1 July 2011, the benchmark interest rate for the purposes of ss 109N and 109E of the ITAA 1936 is 7.80% (up from 7.40% per annum for 2010–2011).

Source: Taxation Determination TD 2011/20 http://law.ato.gov.au/pdf/pbr/td2011-020.pdf

Reasonable Travel and Meal Allowance Amounts

Taxation Determination TD 2011/17 sets out the amounts the Commissioner considers are reasonable for the 2011–2012 income year in relation to claims made for:

- **overtime meal allowance expenses** – the amount is $26.45;
- **domestic travel allowance expenses.** The reasonable amounts are given for: (i) accommodation at daily rates (for domestic travel only); (ii) meals (showing breakfast, lunch and dinner); and (iii) deductible expenses incidental to travel;
- **travel allowance expenses for employee truck drivers** eg for salaries of $100,840 and below, the reasonable amount for food and drink is $87.00 per day; and
- **overseas travel allowance expenses.**

Source: Taxation Determination TD 2011/17 http://law.ato.gov.au/pdf/pbr/td2011-017.pdf

Car Depreciation Limit and Luxury Car Tax Threshold

Taxation Determination TD 2011/18 states that the car limit for the 2011–2012 financial year is $57,466.

Luxury Car Tax Determination LCTD 2011/1 states that the luxury car tax threshold for the 2011–2012 financial year is $57,466. The Determination also states that the fuel efficient car limit for the 2011–2012 financial year is $75,375.

Source: Taxation Determination TD 2011/18 http://law.ato.gov.au/pdf/pbr/td2011-018.pdf; Luxury Car Tax Determination LCTD 2011/1 http://law.ato.gov.au/pdf/pbr/lcd2011-001.pdf