

## **Answer-to-Question- \_1\_**

### 1) Informant payment:

The payment received by the informant is non-assessable, non-exempt income ("NANE") under ITAA 1997.

### 2) Lottery winnings:

The lottery winnings are a windfall gain and not considered to be income under ordinary concepts, ITAA 1997. As such, the lottery winnings are not assessable.

### 3) Honorarium:

Honoraria are generally not considered taxable under ITAA 1997 and are considered to be a form of exempt income. The exception is that if the honorarium is received in connection with services provided by the individual on a voluntary basis, where those services are of a type that the individual also provides on a professional basis, then the honorarium must be included in the individual's assessable professional income for taxation purposes.

There is nothing in the information provided which suggests that the President has provided professional services, of the type mentioned above, to the public authority. The amount is therefore likely to be an exempt honorarium, but it would be prudent to investigate further.

### 4) Age Pension:

Age Pension receipts of the basic amount of Age Pension are assessable in the hands of

the individual, under the provisions of ITAA 1997. However, any supplementary amounts are generally classified as exempt income and therefore not assessable.

5) Disability Support Pension:

Disability Support Pension payments to a 37 year old individual are exempt under ITAA 1997. This includes any supplementary payments. (Over pension age, the basic amount becomes assessable, with any supplementary payments continuing to be exempt).

6) Car use:

The provision of a car to any employee gives rise to a NANE benefit in the hands of the employee under ITAA 1936. This benefit instead is specifically provided for as a fringe benefit under the Fringe Benefits Tax Assessment Act.

It is therefore subject to fringe benefits tax ("FBT"), which is assessable on the employer at the equivalent of the highest income tax bracket for the individual. The FBT benefit is assessed in relation to the private use by the employee (i.e. weekends only) as the car was not available to the employee for personal use during the working week.

The FBT charge will also be based on the base cost of the car (not the saving to the employee).

7) Capital Gain on Land Sale:

The asset is not a pre-CGT asset and would ordinarily be assessable to income tax under ITAA 1997. However, trade unions are specifically exempted from income tax in relation to the capital gain.

The nature of the gain in the hands of the union is therefore exempt income.

8) Maintenance Payments:

Maintenance payments (for the benefit of the individual or child of the former marriage) from a former spouse are generally exempt from income tax under ITAA 1997. However, if the payments are in consideration for an asset, right or similar which the individual has relinquished to the former spouse in exchange for the payments, then the maintenance payments will likely be assessable.

Additionally, ATO ID 2011/55 provides the example of a father setting up a discretionary trust which made payments to a child for their maintenance after the father's death and these payments were not held to be exempt.

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**Answer-to-Question- 2**

1) Club Subscription:

A club subscription used for the purposes of entertaining business acquaintances is not deductible. Section 26-5 of ITAA 1997 denies a deduction for such fees (except where provided to an employee as a fringe benefit).

2) Parking Fines:

Parking fines are not deductible. Section 26-5 of ITAA 1997 denies deductions for penalties imposed under any law (Australian or foreign).

3) Discount on Book Debts:

The debts are not necessarily bad debts for a going concern, so prima facie cannot be allowed as such under s23-35 of ITAA 1997. However, given the circumstances, there is no likelihood of recovery by the merchant, so it is arguable that the debts are all bad.

It is reasonable to allow a deduction on the winding up of the business, otherwise all debts would be bad and have to be written off, so a discount provided on the sale of book debts to a finance company should be allowable as a deduction.

4) Employee bonus:

An employee bonus is generally deductible as an expense incurred in the course of conducting its business. The direction of the payment to a third party should not alter the nature of the payment. The employee is beneficially entitled to the payment in consideration of their service and the nature of the payment is therefore still one of a reward for service and should be deductible in the hands of the employer.

5) Bank interest secured on home:

Under s8-1, the bank interest paid in respect of a loan acquired for legitimate business use should be deductible for tax purposes, as long as the purpose of the loan is for producing assessable income. The fact that the loan is secured on the individual's home does not alter the fact that the loan itself has been acquired (and put to use) wholly and exclusively for business purposes.

There is no element of private purpose for the loan in question and as such, the whole amount is deductible. It is common for banks or creditors to require small company owner/directors and sole traders to provide security over personal assets in connection with business loans. Any private element of the loan would require apportionment to the extent that loan proceeds were used for private purposes.

6) Employee relocation to Australia:

The expenses incurred by the business may be deductible. If the expenses are paid directly by the business in connection with the relocation of the employee (and their family) then those relocation costs are deductible for the employer as normal employee remuneration costs under s 8-1 ITAA 1997.

The same situation applies if the employer reimburses the individual (i.e. the reimbursements will be similarly deductible).

If the employee is paid an allowance instead, then the expenditure is still allowable to the employer. However, the such payments (unlike reimbursement) will then become assessable on the individual employee as income and no deductions allowed to the individual, as the payments then assume a private nature.

7) Legal costs on mortgage discharge:

Under s 25-30 of ITAA 1997, legal costs incurred in relation to the discharge of a mortgage should be deductible, where the mortgage has been secured for the sole purpose of producing assessable income.

As noted above in (5), it is the purpose of the mortgage that is relevant, not the nature of the asset over which the mortgage has been secured.

The above assumes that the wholesale merchant's activities are sufficiently able to be described as producing assessable income. To the extent that the wholesaler's "business activities" include passive investments or other activities which are not engaged in producing assessable income, then the deductability would be reduced accordingly and an appropriate apportionment of the legal expenses would need to be made.

8) Donation to Cancer Charity:

Donations made to qualifying deductible gift recipients ("DGRs") are deductible under Div 30 ITAA 1997. A DGR must meet certain conditions, for example, it must be established in and operate in Australia.

The taxpayer must have written evidence of the gift if it exceeds \$10 (and the individual's total gifts for the year do not exceed \$200). The individual must have a beneficial interest in the property transferred and make the donation voluntarily, with no material benefit being received in exchange.

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**Answer-to-Question- \_4\_**

1)

The rate of GST in Australia applied to a taxable supply is 10%, unless the supply is not a

taxable supply or is otherwise specifically exempted from GST.

*Sale of fruit:*

The sale of fruit by a grocer is GST free. Food is generally GST free unless specifically excluded. Excluded foods include restaurant food, hot takeaway food and other food listed in Schedule 1 to the GST Act. The grocer can claim input tax on expenses where GST has been paid, but is not required to account for GST on sales of fruit to customers.

*Sale of books:*

The supply of books by a newsagent will be subject to GST. There is no specific exemption for books. Some educational supplies may be exempt, though materials (including books) would generally be taxable and therefore it is unlikely that any books sold by a newsagent would be GST free.

*Loan advice by a bank*

Financial supplies, such as the provision of banking services, are generally input-taxed. Banks and similar entities are not liable to GST on such supplies, but they cannot claim input tax either.

however, depending upon the nature of the advice provided, GST may be applicable. If the advice is incidental to the provision of the loan facility, then it would not be a distinct supply.

If however, the bank charges a fee for specific financial advice around acquiring a loan facility, then this advice may be considered the provision of a taxable supply which would attract GST (unless it could be proven to be an export of a service - e.g. to a foreign client regarding a foreign loan facility with no connection to Australia).

### Export of raw minerals

The export of raw minerals should be GST free on general principles, on the basis that exports of goods to customers outside Australia are GST free.

However, if goods are subsequently reimported by the supplier, then the original supply would then generally be deemed taxable. An export must be physically made within 60 days of the earlier of receipt of consideration, or provision of an invoice to the customer.

### Sale of new residential home

The first supply of a newly constructed residential home is a taxable supply and subject to GST in Australia. Subsequent sales of the home should not attract GST.

However, there are some circumstances where GST may also apply subsequently - e.g. if a plot is subdivided and a new home built and sold.

### Lease of city office premises

Commercial properties are generally subject to GST and therefore the provision of city office premises under a lease will be a taxable supply.

Tenants will be required to pay GST on the lease payments.

### Medical consultation

A medical consultation by a doctor should be GST free. If the consultation is a service eligible for a Medicare benefit or a required medical consultation for the treatment of a patient, then it is GST free.

### Education course

Educational courses provided by a school should be GST free. However, as noted above, course materials and supplies would likely be taxable supplies.

The course must be accredited by a State or Territory to be GST free.

2)

The sale of a business as a going concern will determine the GST treatment on the acquisition. If the business continues to trade in a similar manner, in the same line of business after acquisition, then the acquisition of the business will not attract GST.

If, however, the nature of the business is substantially altered after the acquisition, then the acquisition of the business will attract GST.

If the business which is acquired had also ceased trading, or effectively ceased trading on the basis that only minimal activities were taking place prior to the sale (to maintain a facade of business activity) then the business does not qualify as a going concern and the acquisition of the business will be a taxable supply.

If the new owners are not effectively "stepping into the shoes" of the prior owners and progressing with the business, then they are not purchasing a going concern, rather, they are acquiring assets with which to pursue a new business and those acquired assets will attract GST.

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**Answer-to-Question- \_7\_**

1) Dividend Imputation

Dividend imputation is a concept of transferring the tax paid by a company to its owners. It is effectively a transfer of a tax credit to the owners of the business, following the notion that the income attributable to the business belongs to the owners of the business.

As such, if the income belongs to the owners, then the owners should receive credit for the tax paid by the business in relation to that income.

An imputation system requires the company income tax to be attributed to the profits distributed to the shareholders of the company. When a dividend is paid, the imputation credit is apportioned and allocated to the shareholder payment accordingly.

When the shareholder completes their tax return, the dividend income received from the company will be assessable. The shareholder can claim credit for the imputed tax which was effectively paid by the company on their behalf.

The Australian version of this uses the term "franking" to describe the imputation of tax credits to shareholders by way of the dividend payments.

Franking credits are allocated to each shareholder's dividend payments and these franking credits are claimed against the dividend income (grossed up to include the imputation credit) in the shareholder's individual tax return.

The franking credits are a tax offset. This means that they reduce an individual's tax liability (rather than reducing the amount of assessable income before tax is calculated).

Excess franking credits are refundable.

## 2) Denial of refunds of excess imputation credits.

If the government denied refunds of excess imputation credits, then this would effectively result in double taxation on the portion of the company's profits to which the denied

refunds relate.

The profits of the company, which are attributable to the owners of the business, have already been taxed at a corporate level. Upon distribution, if these credits are denied then tax will effectively be applied at the individual level as well.

This would result in a tax saving to the government. However, it could adversely effect low-earning pensioners who may rely upon dividends for income.

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### **Answer-to-Question- \_8\_**

#### **Taxation of non-residents' Australian sourced income and gains**

##### *General*

In general, a non-resident is only liable to Australian tax on Australian-sourced income and gains. For a given tax year, a non-resident is broadly an individual who is not domiciled in Australia and spends fewer than 183 days in Australia, or someone whose usual place of abode is outside Australia (although this can be more difficult to prove and depends upon the circumstances of each case).

A foreign resident is taxable on unfranked dividends, interest and royalties paid by Australian residents, as well as other Australian sources, such as employment income from an Australian source.

### Withholding Tax ("WHT")

WHT is generally payable on all three types of income listed above. Subject to double taxation agreements, the usual rates are:

- 15% for dividends
- 10% for interest
- 30% for royalties

### Capital Gains

Under Div 855 ITAA 1997, foreign residents are subject to Australian tax on capital gains if the relevant asset is taxable Australian property.

Taxable Australian property includes real property situated in Australia (including a leasehold interest) and assets used for carrying on a business in Australia in connection with a Permanent Establishment in Australia.