

Small business audits on the way

The ATO advised that it is upping the ante in relation to its field audits of small to medium enterprises (i.e., businesses) – usually referred to as 'SMEs'.

For the first 12 months, only limited offices and teams would be involved, and after that SME field audits would become part of "business as usual".

The audits are scheduled to start in the first/second quarter of the 2012/13 financial year with the initial focus being in Melbourne and Brisbane.

Audit process

Phone contact would be made with a business and then a letter would be issued providing two weeks notice.

The audits themselves would then be conducted at the business premises and would take from one to two weeks to complete.

The Tax Office said that they will start with deductions and then move to other areas of interest. However, every audit will start with a specific purpose.

Update on the small business benchmarks

In a recent speech, the Tax Commissioner remarked that the ATO has found that approximately 90% of businesses in benchmarked industries fall within a benchmark ratio.

On the other hand, 76,000 businesses nationally reported income that is significantly below the benchmarks.

In addressing this in 2010/11, the ATO wrote to around 30,000 businesses and, of these businesses, 17% have since started reporting income commensurate with the benchmarks.

The ATO says that this means over 5,000 businesses have now lowered their risk profile and may be less likely to be subject to audit.

The plastering and café industries have been selected for review as part of the ATO's 2012/13 Compliance Program in response to benchmark

performance, referrals and expectations of the public, and from historical trends.

Changes that can trigger the new 20% FBT statutory formula rate

Editor: An easy way of calculating the FBT on the provision of a car fringe benefit is by applying the statutory formula method.

Over the next few years, this will be simplified further by applying a flat 20% rate, but in some cases that rate may be 'brought forward'...

Where cars are being leased by employers for their employees, they must be sure not to trigger "an alteration to a pre-existing commitment".

For example, terminating a lease and entering into a new one would be such a trigger and the new 20% flat rate (or applicable transitional rate) would begin to apply from the start of the FBT year following the change.

Other examples of such alterations include:

- refinancing the car;
- alterations to existing lease contracts, such as changing the duration of an existing lease contract, and changes to a lease to reflect a revised residual value; and
- where accessories (such as window tinting, DVD players, luggage racks or bull bars) are fitted to a leased car after the lease started, and the lease payments are increased to reflect this change.

If such changes are made and the employer remains the same, the employer will only begin to apply the flat 20% rate (or applicable transitional rate) from the beginning of the next FBT year.

New changes affecting SMSFs

The Government has recently amended the SIS Regulations to impose further requirements on self-managed superannuation funds (SMSFs) from the 2012/13 income year.



The new regulations require that:

- trustees of SMSFs must consider insurance for their members as part of the fund's investment strategy;
- money and other assets of an SMSF is to be kept separate from those held by a trustee personally (and by some employers); and
- SMSF assets are to be valued at market value for reporting purposes.

ATO tackles 'employee or contractor' question

The Tax Commissioner has announced the release of the ATO's new 'Employee or Contractor' homepage, which has been developed to help address areas of confusion and "highlight common reasons businesses get the employee or contractor decision wrong".

The Commissioner stated that the "Employee or Contractor" homepage has all the information businesses need in one place to help them determine if their workers are employees or contractors, including:

- the basics – things every business needs to know;
- common reasons businesses get the decision wrong;
- industry specific information;
- an Employee/Contractor decision tool which will guide businesses in making their decisions; and a summary of the obligations businesses need to meet for their employee or contractor.

Editor: Clients may wish to visit the ATO's website and if you have any queries please contact our office.

Beneficiaries of trusts have 4-year amendment periods?

In a recent case, the AAT has held that a taxpayer who was a potential beneficiary of a discretionary trust, but who did not receive any distributions in a particular year, was nonetheless subject to a 4-year amendment period, rather than the regular 2-year amendment period that otherwise applies to

individuals.

The upshot of that decision was that the taxpayer's returns were able to be amended by the Tax Office within the 4 year period.

Editor: This case obviously has huge ramifications for anyone (which could be everyone) who is a potential beneficiary of a discretionary trust, even if they do not receive any income from the trust (or even if they are unaware that they are beneficiaries of a trust).

We hope that this decision will be appealed, and reversed, or else a legislative solution may be necessary. We will keep clients updated on any changes.

New ATO income tax guide for non-profit organisations

The ATO has released a new version of its *Income tax guide for non-profit organisations*. The guide includes detailed information on:

- types of entities which can self-assess their income tax status;
- steps on working out whether an organisation is exempt from income tax; and
- entitlements and responsibilities of being an income tax exempt organisation.

The ATO said the guide is only available online and cannot be ordered.

In addition, the ATO also released a new worksheet to assist organisations in self-reviewing their income tax status.

Wills - Who can access a Will after your gone?

Under the *Succession Act 2006 (NSW)* a person who has possession or control of a deceased person's Will is required to allow certain persons to inspect and make copies of the final unrevoked Will, any copy of the Will or any previous Will.

Section 54 states that the following are entitled to inspect a deceased person's Will:

- Any person named or referred to in the Will, whether as a beneficiary or not;

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- Any person named or referred to in an earlier Will as a beneficiary of the deceased person;
- A surviving spouse, de facto partner (including same sex) or child of the deceased person;
- A parent or guardian of the deceased;
- Any person who would be entitled to a share of the estate of the deceased if the deceased person had died intestate (without a Will);
- Any parent or guardian of a minor referred to in the Will or who would be entitled to a share of the estate of the deceased person if the deceased had died intestate;
- A creditor or other person who has a claim at law or in equity against the estate of the deceased person;
- Any person committed with the management of the deceased person's estate under the New South Wales Trustee & Guardian Act 2009 immediately before the death of the deceased person; and
- Any attorney under an enduring power of attorney made by the deceased person.

These provisions are intended to make it administratively easier to inspect or obtain copies of the Will and to do this prior to any legal proceedings being issued.

For example, a person eligible to make a family provision claim can now promptly find out whether the deceased made adequate provision for them and whether their entitlement has changed from any previous Wills made by the deceased. Alternatively, persons seeking to challenge the will on testamentary capacity or undue influence may want to access previous wills to see the extent of consistency between them. Creditors may also seek to identify to whom certain assets are to be distributed.

So anyone holding a Will on behalf of a deceased person must promptly and properly comply with a request by someone on the permitted list. This includes giving them any copies or originals of any earlier Wills if required to do so under the law.

In the light of this legislation, the Will maker

should consider destroying all copies and originals of any earlier Wills if they do not wish to have these seen after they're gone.

For reference, similar legislation to that of NSW exists in VIC, QLD and NT. The relevant legislation in SA, WA, ACT and TAS does not appear to contain any such specific provisions regarding access to Wills by third parties.

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