

NEWSLETTER – TAX ISSUES CHRISTMAS 2010

Preamble And Web Site

This report is my annual Christmas edition which highlights some of the changes in the latter part of the year.. This report also appears on my web site at www.wdb.com.au which you should regularly check for changes that may affect you.

CHRISTMAS TAX DEDUCTIONS

I published a comprehensive Newsletter for Christmas 2007 which covers all of the do's and don'ts tax-wise, for the coming Christmas season. This Newsletter and others, can be seen on my web site.

VACANT LAND NOT INPUT TAXED AS 'RESIDENTIAL PREMISES'

In a recent case, the Full Federal Court unanimously dismissed a taxpayer's appeal against an assessment of GST in respect of the sale of two separate blocks of vacant land in 2004 and 2005. The Full Court held that vacant land is not land capable of being occupied as a residence or for residential accommodation within the GST definition of 'residential premises'.

- workers with incomes up to \$37,000 from 1 July 2012.

VARIOUS RATES AND THRESHOLDS FOR 2010/11

The Tax Office has released the following rates and thresholds for the 2010/11 income year:

- car depreciation limit and luxury car tax threshold - \$57,466;
- fuel efficient car limit - \$75,375;
- CGT improvement threshold - \$126,619.

GIC AND SIC RATES RELEASED

The Tax Office has advised that the general interest charge and shortfall interest charge rates for the first quarter of the 2010/11 financial year (ie 1 July 2010 – 30 September 2010) are as follows:

	Rate Annual (%)	Daily (%)
GIC	11.80	0.03232877
SIC	7.80	0.02136986

The Tax Office has also released the interest rate for overpayments, early payments and delays in refund for the first quarter of the 2010/11 income year. The applicable interest rate is 4.80%.

Tax Office Scans Car and Real Property Purchases

The Tax Office has advised that it will collect records relating to motor vehicle purchases and real property transfers from relevant government authorities building on data previously collected as part of its ongoing data-matching projects. The data will be used as part of the Tax Office's compliance activities to identify cash economy participants, that is, those who are

deliberately not declaring income to the Tax Office. The Tax Office will also focus on ensuring taxpayers involved in property transfers are meeting their GST obligations.

Specifically, the Tax Office said it will request data from motor vehicle registries where a motor vehicle was sold, transferred or newly registered between 1 July 2009 and 30 June 2010 and the value of the vehicle was \$10,000 or greater. In relation to real property transfers, the Tax Office said it will collect identity and transaction details from state revenue authorities relating to property title transfers between 1 July 1999 and 30 June 2010.

TIP: The Tax Office uses its data-matching abilities to identify potential cases for investigation. Not declaring income and not meeting GST obligations are just a couple of areas of non-compliance behaviours the Tax Office is focusing on. Other focus areas include taxpayers not declaring capital gains, and not meeting superannuation guarantee and fringe benefits tax obligations, when required.

TIP: State revenue authorities can share information with the Tax Office where it is permitted under the law. For instance, in relation to property transfers, a state revenue authority may compare information with the Tax Office to identify non-compliance with stamp duty obligations.

Compromised TFNs Still a Problem, Says Ombudsman

The Commonwealth Ombudsman, Allan Asher, has released a report which expressed his concerns about how the Tax Office had handled complaints about compromised tax file numbers (TFNs). The report examined eight cases where taxpayers' TFNs had been compromised or incorrectly linked by the Tax Office to another person's TFN.

TIP: If you believe your TFN has been compromised or incorrectly linked to another person's TFN, please contact our office.

HELP Debt Deferred for Special Circumstances

A taxpayer has been successful before the Administrative Appeals Tribunal in seeking a deferment in repaying his accumulated Higher Education Loan Program (HELP) and financial supplement debts for the 2007 and 2008 years. The Tribunal took into account the taxpayer's medical and psychological conditions and low family income and held that special circumstances existed in the case to allow the deferment.

GST and Dodgy Property Arrangements

Entities sometimes enter into dodgy arrangements that use their associates in an attempt to secure input tax credits on the construction of residential premises for lease and then defer the corresponding GST liability, in



NEWSLETTER – TAX ISSUES CHRISTMAS 2010 (CONTINUED)

some cases indefinitely. The Tax Office has issued a ruling which sets out the Commissioner of Taxation's views on how the general anti-avoidance rules in the GST law would apply to these arrangements.

PAYMENT SUMMARIES AND REPORTING OF INCORRECT SUPER AMOUNTS

The Tax Office says some employers have been incorrectly including compulsory superannuation amounts as reportable employer super contributions on their employees' payment summaries for the 2009-10 income year. Reportable employer super contributions should only include additional super contributions made by an employer, for example, super contributions made on behalf of an employee under a salary sacrifice arrangement. The payments being incorrectly included cover things such as super guarantee contributions and industrial agreement (award) super contributions.

TIP: Employees should review their payment summaries and ask for amended payment summaries from their employers if they incorrectly contain compulsory super amounts as reportable employer super contributions. This is important because incorrect amounts included may affect eligibility for certain tax concessions and Centrelink benefits, and may cause a liability for the Medicare levy surcharge.

TIP: If employers have issued payment summaries to their employees that incorrectly include compulsory super amounts, they can notify affected employees and issue them with amended payment summaries. If employers have also already lodged their payment summary annual reports with the Tax Office, they will need to lodge an amended annual report.

ATO KEEPS A CLOSE EYE ON THE CASH ECONOMY

The Tax Office has reminded taxpayers that increased data-matching and benchmarking will be used to identify businesses participating in the cash economy.

The Tax Office says, this year, it will write to 110,000 small business taxpayers which it believes may be participating in the cash economy. It said the majority of the letters sent were to businesses reporting outside the small business performance benchmarks.

However, the Tax Office noted that businesses that fall within the benchmarks should not assume that they are safe from an ATO audit or review.

The Tax Office said the benchmarks complement its recently expanded data-matching program, which now includes data from online auction sites eBay and Trading Post.

TIP: The Tax Office Compliance Program for 2010-11 noted that the cash economy continues to be a major focus. Specific behaviours that the Tax Office is concerned about include: paying cash-in-hand wages; skimming some or all of the cash takings; barter and running part of normal business activities off the books.

SHARE INVESTOR, NOT A SHARE TRADER

In a recent case, the Administrative Appeals Tribunal found a taxpayer was not carrying on a share trading business but rather he was a share investor.

During the 2007 and 2008 income years, the taxpayer was engaged in the buying and selling of shares. The taxpayer had lodged his tax returns on the basis that he was a share trader for the relevant income years.

However, after examining the indicators for such a business, the Tribunal was satisfied that the taxpayer was not carrying on a share trading business.

TIP: Shareholders should be aware that the Tax Office has its sights set on share disposals as part of its Compliance Program for 2010-11. It had also issued an alert mid last year warning taxpayers against claiming losses on revenue account when they had previously claimed gains on capital account (Taxpayer Alert TA 2009/12).

MOTOR VEHICLE TRAVEL EXPENSE CLAIM DENIED

The Administrative Appeals Tribunal has denied a claimed deduction for motor vehicle travel expenses incurred by a soldier in the Australian Defence Forces in transporting his 'deployment priority 1' kit from home to barracks as the Tribunal found they did not have the essential character of a business expense, nor were they incurred in gaining or producing assessable income. Instead, the Tribunal considered the expenses were of a private or domestic nature in the circumstances.

TIP: Taxpayers can claim motor vehicle expenses on the basis they are carrying bulky equipment, but only if they can qualify that it is a necessary part of their job.

Tax Office Sets Compliance Focus Areas for 2010/11

The ATO has released its compliance program for 2010/11. The program sets out risk areas facing the tax and superannuation systems identified by the ATO and the compliance activities that it plans to undertake to address them. Despite acknowledging that most taxpayers demonstrate high levels of voluntary compliance, the ATO's latest compliance program flags needed attention on numerous target areas including individual taxpayers claiming incorrect or fraudulent refunds and small businesses omitting or incorrectly reporting property sales in business activity statements.

The program also reiterated the ATO's continuing and increasing use of data-matching projects to verify information provided by individual taxpayers in their tax returns and by other parties. In particular, the ATO flagged interest in cross-referencing information relating to income received from employment, welfare, interest and dividends. This year, the ATO expects to data-match over 500 million transaction records reported to it by third parties.

NEWS

ATO is Contacting Participants in Collapsed Agribusiness MIS

The ATO has advised that it will be contacting approximately 60,000 identified participants of recently collapsed Agribusiness managed investment schemes (MIS) during August 2010 to help them understand the tax consequences of their investments. The ATO has advised that affected taxpayers will need to factor in any changed tax implications in these schemes when they prepare their tax returns.

GST and Requirements for Tax Invoices

The GST regulations which previously specified the requirements for documents to be tax invoices or recipient created tax invoices (RCTIs) have been removed. This follows recent changes to the GST law which simplified the requirements for documents to be considered tax invoices or RCTIs by replacing those requirements with equivalent but more flexible principles. The regulations commenced on 1 July 2010 and apply in relation to net amounts for tax periods starting on or after 1 July 2010.

Trust's Unrealised Gains can Be Treated as Income

In a recent case, the NSW Court of Appeal has confirmed that it was permissible for a trust, in terms of its trust deed and accepted accounting principles, to treat unrealised gains made on share investments as income of the trust.

Reasonable Travel and Meal Allowance Amounts

The Tax Office has released a Taxation Determination which sets out the amounts the Commissioner considers are reasonable for the 2010/11 income year in relation to claims made for: overtime meal allowance expenses; domestic travel allowance expenses; travel allowance expenses for employee truck drivers; and overseas travel allowance expenses.

DIV 7A LOANS AND TRUST ENTITLEMENTS

The Tax Office has released a Taxation Ruling, which sets out the Commissioner's views on when a private company with an unpaid present entitlement (UPE) from an associated trust is considered to have made a loan to the trust for the purposes of the deemed dividend provisions.

Broadly, the ruling provides that the company will be considered to have made a loan under the provisions to the trust if the UPE has been satisfied and the company agrees to loan the amount to the trust, or if the company does not call for payment of a subsisting UPE and thereby agrees that it can be used for trust purposes.

ATO'S DISCRETION TO DISREGARD DEEMED DIVIDENDS

The Tax Office has also released a Draft Taxation Ruling in which it outlines the requirements to be satisfied before the Commissioner can make a decision to disregard a deemed unfranked dividend from arising

when a private company lends, pays or forgives an amount to a shareholder or associate of the shareholder (unless adequate arrangements are in place). The draft ruling also sets out the requirements to be satisfied before the Commissioner may allow the dividend to be franked if the deemed dividend provisions operate.

The draft states that the Commissioner may exercise this discretion where:

- the provisions apply to deem a private company to have paid a dividend to a particular entity, or where an amount is included in the assessable income of a particular entity in relation to a private company; and
- that result arises because of an honest mistake or inadvertent omission by the recipient of the dividend, the private company or any other entity that contributed to the result.

Division 7A Applies To 'Payments by Direction'

The Federal Court has confirmed that the deemed dividend provisions can apply where a payment is made by a debtor of a company to a shareholder at the direction of the company.

The taxpayer and her former de-facto spouse were the shareholders and directors in a private company. In the 2001 income year, the company directed US clients to pay over \$160,000 in debts owed to the company into the account of the taxpayer (of which she was sole signatory). The funds in the account were used for the private expenditure of the taxpayer and her former de-facto spouse.

The Court held that the deemed dividend provisions can apply if a company makes a payment to a shareholder by way of directing its debtors to make the payment. In the Court's view, there was no reason to construe the notion of 'pay' as requiring a direct flow of money from the payer to the payee, or that it precludes payment by direction.

Broadly, a payment or loan by a private company to a shareholder (or their associate) will be considered a deemed unfranked dividend unless steps have been taken to avoid this.

Division 7A Benchmark Interest Rate

The Tax Office has advised that, for the income year that commenced 1 July 2010, the benchmark interest rate to be used in calculating the interest component on the repayment of a private company loan received by a shareholder (or the associate of the shareholder) is 7.4%.

NEWSLETTER – TAX ISSUES CHRISTMAS 2010 (CONTINUED)

Vacant Land not Input Taxed as 'Residential Premises'

In a recent case, the Full Federal Court unanimously dismissed a taxpayer's appeal against an assessment of GST in respect of the sale of two separate blocks of vacant land in 2004 and 2005. The Full Court held that vacant land is not land capable of being occupied as a residence or for residential accommodation within the GST definition of 'residential premises'.

SMSFs and Instalment Warrants: Rules Tightened

The Government will amend the super laws to reduce the prudential risks for superannuation funds investing in instalment warrant arrangements.

They will repeal the provision in the super legislation which allows a trustee of a regulated super fund to borrow money using limited instalment warrants, and replacing it with two new provision (see my separate Superannuation Newsletter on my web site @ www.wdb.com.au).

Super Co-contribution: Proposed Changes

The Government has also introduced a Bill seeking to modify the operation of the Government superannuation co-contribution scheme. In brief, the Bill will:

- freeze the indexation of the co-contribution income thresholds for the 2010/11 and 2011/12 income years. That is, the lower and higher income thresholds will remain at \$31,920 and \$61,920 (the current thresholds for the 2009/10 income year), respectively, for the two years; and
- permanently set the current matching rate at 100% and the maximum co-contribution that is payable on an individual's eligible superannuation contributions at \$1,000.

The amendments are proposed to apply to the 2009/10 and later income years.

Various Rates and Thresholds for 2010/11

The Tax Office has released the following rates and thresholds for the 2010/11 income year:

- car depreciation limit and luxury car tax threshold — \$57,466;
- fuel efficient car limit — \$75,375;
- CGT improvement threshold — \$126,619.

GIC and SIC Rates Released

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Cents per Kilometre Rates

The Government has released the cents per kilometre rates for calculating motor vehicle expenses for the 2009/10 income year:

Car	Non-rotary engine	Rotary engine	Rate per km
Small car	1,600cc or less	800cc or less	\$0.63
Medium car	1,601-2,600cc	801-1,300cc	\$0.74
Large car	2,601cc or more	1,301cc or more	\$0.75

Private Companies Directors' Duties

The Federal Government has recently released Regulatory Guide 217 Duty to prevent insolvent trading: Guide for Directors. This guide sets out key principles to help directors understanding and comply with their duties to prevent insolvent trading. Directors can face severe penalties for letting the company continue trading when it cannot effectively pay its bills.

CLOSURE OF OFFICE

We will be closing the office from mid-day on Thursday 23 December 2010 until 9am Monday 10 January 2011. This period covers the Christmas/New Year break, plus an extra week.

Therefore on behalf of us all here, I wish everyone a Happy and Holy Christmas and a prosperous New Year.

Please note - this newsletter is for the general information and exclusive benefit of clients and associates of Whitehead Dingley & Betar. It contains brief comments not intended to be the basis for decision making nor to be taken as a substitute for specific advice. Please contact this firm to discuss any matters that may be relevant to your individual situation.
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