douglas & harrison

client alert

tax news | views | clues

Tax Office announces compliance focus areas

The Commissioner of Taxation has released the Australian Taxation Office's compliance program for the 2011–12 financial year. Under the program, the Australian Taxation Office (ATO) plans to enhance its tax fraud detection and management strategies, concentrate on sham contracting arrangements and continue its extensive data matching and risk profiling activities. The ATO said it also aims to reduce phoenix arrangements through audits of directors, focus on those who fail to report some or all cash transactions and check employers' super guarantee payments.

TIP: The ATO's compliance program is wide-reaching covering individuals to large businesses. Please contact our office for further information.

Trust streaming: extension to record beneficiaries' entitlements

Following a High Court decision last year – known as the *Bamford* decision – legislation has been formally enacted to provide certainty to trusts in relation to the streaming of capital gains and franked distributions (including any attached franking credits) to specific beneficiaries as an interim measure. However, as the legislation was finalised so close to the end of the income year, the ATO has decided to extend the time allowed for trustees to record a beneficiary's entitlement to a franked distribution for the purpose of the new legislation for the 2010–11 income year only. The extension ends on 31 August 2011.

TIP: The trust streaming changes are technical. Please contact our office for any assistance.

Car fringe benefit taxation changes

Legislative changes to simplify the method for determining the taxable value of car fringe benefits has been formally implemented. Broadly, the changes introduce a flat 20% rate to replace the previous method which, according to the Government, encouraged people to drive their vehicles further than they needed to in order to obtain a larger tax concession.

Dependent spouse offset finishes for under 40s

From 1 July 2011, taxpayers will no longer be entitled to the dependent spouse tax offset in respect of a dependent spouse born on or after 1 July 1971, following the enactment of tax law changes. However, the changes include some exceptions – for example, dependent spouses who are carers, invalid or permanently unable to work.

Low income taxpayer offset ends for most minors

From 1 July 2011, the ability of minors (children under 18 years of age) to access the low income tax offset to reduce tax payable on their unearned income (dividends, interest and rent) has been removed. The Government said the tax law amendments are designed to discourage income splitting between adults and children.

Building contractors face reporting proposal

The Government is seeking to introduce a reporting regime for payments made to contractors in the building and construction industry. The proposal will require businesses in the building and construction industry to report annually to the ATO payments they have made to contractors in the industry. The regime is proposed to commence on 1 July 2012. According to the Government, the proposal will support greater compliance in areas such as GST, record-keeping requirements, and the personal services income rules.

TIP: The proposal indicates a closer scrutiny of the industry by the authorities. The Government also indicated that its proposal could later be applied to other industries.

Unpaid directors' fee schemes and private companies on ATO radar

The ATO has warned taxpayers of an arrangement where a private company claims a deduction for unpaid directors' fees. Under the arrangement, a private company makes a resolution before 30 June in relation to amounts payable to directors that reflect that the company is irrevocably committed to the payment. The company claims a deduction for the payment, but the actual payment is never made. The Commissioner of Taxation said he was concerned that some companies may be using the arrangement to claim amounts that were never intended to be fully paid out.

ATO reminds employers of superannuation obligations

The ATO has recently revealed some common superannuation mistakes made by employers. They include paying insufficient superannuation contributions for employees, missing the quarterly payment cut-off dates (ie 28 October, 28 January, 28 April, 28 July), and not understanding that in some circumstances superannuation should be paid for contractors, even if the contractor provides an Australian Business Number.

TIP: The ATO has been selecting various industries on which to focus its compliance activities. This year, in its compliance program, the ATO intends to target the following industries in relation to superannuation guarantee obligations: cafes and restaurants; real estate services; carpentry services; computer system design and related services; and accommodation.

Tribunal denies deduction for interest on loans made to trust

In a recent case, the Administrative Appeals Tribunal confirmed that husband and wife taxpayers were not entitled to a deduction for interest on loans made to a discretionary trust which ran their building business, or a deduction for interest on their investment properties which they made available to the trust to provide accommodation for building contractors. The taxpayers argued they had certain agreements in place with the trust which made them entitled to distributions of trust income, so accordingly, the deductions were permissible. However, the Tribunal disagreed and found there was an insufficient connection between the interest expenditure and claimed trust income.

Personal services income rules applies to taxpayer

The Administrative Appeals Tribunal has confirmed that the personal services income (PSI) rules under the taxation law applied to a taxpayer who provided his services as a draftsperson through his private company. Accordingly, over $67,000 was included as personal income in the years in question. The Tribunal also held the taxpayer did not meet either the "unrelated clients" test or the "business premises" test to relieve him of his personal liability.

TIP: Many consultants and contractors operate as a sole trader or through a company, partnership or trust. In many cases, the income received for the work they do may be classified as PSI if certain tests are not passed. It should be noted that the PSI rules limit the deductions that an individual may claim against PSI. Please contact our office for any assistance.

Important: This is not advice. Clients should not act solely on the basis of the material contained in this Bulletin. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Bulletin is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.