

## Tax Office Compliance Program 2009/10

The Tax Office has released its compliance activities for 2009/10. The key activities for the different taxpayer segments are discussed below.

### Individuals

The key compliance activities the Tax Office will focus on include:

- capital gains from the sale of shares and properties;
- deductions for investment products; and
- work-related expense claims. In particular, claims made by truck drivers, sales and marketing managers, sales representatives and electricians.

### Micro enterprises

Micro enterprises are businesses with an annual turnover of less than \$2 million and self-managed superannuation funds (SMSFs). Key compliance issues include:

- GST and CGT compliance risks associated with property transactions;
- losses on the disposal of shares;
- claims for GST refunds and the research and development tax offset, which will be subject to credibility checks;
- correct disclosure of distributions from trusts and partnerships in beneficiaries' tax returns; and
- early warning to participants of the potential tax issues involved in tax exploitation schemes.

### Small-to-medium enterprises

Small-to-medium enterprises are businesses with an annual turnover of between \$2 million and \$250 million. This segment includes highly wealthy people who, with their associates, control \$30 million or more in net wealth.

Key focus areas include:

- private company loans and payments to shareholders (or

- associates) to ensure compliance with the taxation laws;
- correct FBT treatment of motor vehicles;
- superannuation guarantee issues such as late payments and incorrect calculations;
- CGT, in particular to ensure capital losses are not offset against income;
- claims for GST refunds, which will be subject to credibility checks;
- GST and property transactions; and
- remuneration of highly paid company directors and executives.

### Self-managed superannuation funds

Key compliance activities include:

- adherence to superannuation regulations;
- satisfaction of the definition of an 'Australian superannuation fund'; and
- illegal early access to superannuation.

## Did You Know??

**Google's name is a play on the word googol, which refers to the number 1 followed by one hundred zeroes.**

**Google's play on the term reflects the company's mission to organize the immense amount of information available on the web.**

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## International dealings

International dealings of taxpayers will be a focus of the Tax Office. Data matching programs will be carried out to identify unreported foreign income such as bank interest and dividends.

## **New Advice Program for SMSFs**

The Tax Office has introduced a new non-binding advisory program for SMSFs.

## SMSF specific advice

Trustees of SMSFs can apply for self-managed superannuation fund specific advice (SMSFSA).

Broadly, an SMSFSA is a written expression of the Commissioner's opinion, in his role as the Regulator of SMSFs, of how the superannuation law applies to a particular transaction or arrangement that has been, or might be, entered into by the trustees of an SMSF.

An application for an SMSFSA must be submitted in writing. Generally, an SMSFSA will only be provided if there is a precedential view of the law or if the particular transaction or arrangement raised in an application involves a straightforward application of the law.

The advice contained in an SMSFSA only applies to the SMSF named in the application. In addition, if the operation of the particular transaction or arrangement entered into by the trustees of the SMSF departs from that stated in the SMSFSA, the advice will not apply.

## SMSF guidance

If the trustees of an SMSF are seeking general guidance on the operation of the superannuation law, they can approach the Tax Office for SMSF guidance.

SMSF guidance does not cover all possibilities or individual circumstances of an SMSF. If the trustees of an SMSF require specific advice, they should consider applying for either an SMSFSA or self-managed superannuation funds product ruling (SMSFPR): see below.

The guidance may be given in writing or orally. Written guidance is available in different forms, including current Tax Office publications and material available on the Tax Office website.

## SMSF product ruling

An SMSFPR sets out the Commissioner's opinion as to the application of the superannuation law to

particular products where an SMSF is a potential investor. An SMSFPR will have no application to superannuation funds other than SMSFs (and former SMSFs where they remain regulated by the Commissioner).

An application for an SMSFPR must be submitted in writing. In addition, an SMSF must also sign and give the Commissioner an assurance regarding the operation of the product.

## Legal status of SMSF advice

SMSF advice provided by the Tax Office in the form of an SMSFSA, SMSFPR or SMSF guidance is not legally or administratively binding on the Commissioner.

- *An SMSF relying on an advice will remain responsible for its actions under the superannuation law.*

## **SMSF and Disposal of Shares**

The Tax Office has released an interpretative decision in which it states that where a trustee of a complying superannuation fund realises losses on the disposal of shares, the losses are to be calculated under the CGT provisions.

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Superannuation funds are required to calculate any gains or losses on the disposal of CGT assets (eg shares and units in trusts) using the CGT provisions.

An exception may apply where a CGT asset is a 'security'. However, the Commissioner notes the definition of a security excludes a share. Therefore, the exception does not apply.

## **Victory for Sham Victim**

In a recent case, the AAT held that a taxpayer who was the victim of a sham was entitled to deduct interest and bank charges incurred on loans.

The taxpayer was a guarantor for a loan extended to a company. The company defaulted on the loan. The taxpayer then realised that he was the victim of a scam. To fulfil his obligations under the guarantee, the taxpayer took out two loans secured against his property.

The Tribunal said the guarantee was a liability the taxpayer accepted for the purpose of deriving assessable income. Therefore, it allowed the taxpayer's claim for deductions.

## **Director Liable to Indemnify Commissioner**

The NSW Supreme Court has held that payments made to the Tax Office by a company when it was insolvent were voidable transactions. Therefore, the Court ordered

the Commissioner to repay the company those amounts. In addition, the Court ordered a director of the company to indemnify the Commissioner for a portion of the repayment.

## **"RUDD-ONOMICS" 101**

Already three months into the new financial year and we have not had a chance to scratch ourselves. Who would have thought that with the world economic downturn, that we would have been so busy? I wish I could sit here and say it was because everything was going so well, but I know that everyone reading this understands that with "tongue in cheek", that RUDDONOMICS is the cause of the extra work.



What is RUDDONOMICS I hear everyone whisper? Well, let me tell you. Australia's economy is travelling better than most in the world, and frankly it was doing that even before Mr. Rudd, so I really can't say how much his policies have impacted on our economy, but be that as it may, we are still in an OK position.

Mr. Rudd has proposed some quick patches to our economic woes and I guess with most of that money being spent here in Australia, it has helped to keep the flow of money going in our economy. After all, that is the basis of a healthy economy. Money needs to be going around so that everyone uses that money to pay (or pass it on) to others. That way we all get a share and everyone feels good. Naturally, we hope that it is spent here, but if \$70 million spills out of the package to overseas nationals, no system is perfect, especially in light of the billions spent in these fix up measures.

However, when you spend everything you have, including savings, then you need to borrow to keep spending. And so the problem begins...

Why are mas accountants so busy? Well the fact is, whatever Mr. Rudd giveth, the ATO taketh away. Over the past few months, the number of ATO audits, in a variety of areas, has substantially increased, and it has dawned on me that publicity for giving money away in large chunks is free, but taking it back by very strict audit practices is hardly newsworthy. In this way, the government can balance the overspending with substantially reduced refunds from future tax years.

Perhaps I am being very cynical. All I know is that the ATO is hard at it, getting these audits underway. Somewhere, sometime, we all will have to pay the debt being created, but with good debt collection from its customer base (here read "audit") on the part of our largest revenue earner in Australia, the ATO, our future looks bright. We may all end up owing nothing (and owning nothing to boot), by the time this economic downturn (here read "greedy bank inspired disaster") finishes.

However, just take notice of this warning. In light of the very real increase in audits, we urge all our clients to take care in keeping their records and receipts and claims in good order, because the likelihood of undertaking an audit has substantially increased. The areas of motor vehicle expenses, personal work deductions, fringe benefits tax, GST audits and even omissions of dividend and interest income, especially in light of the information matching systems that the ATO has put in place with dividend and interest payers and the like, is more probable than possible.

Still it's not all doom and gloom in the tax arena. After all, if you're a non resident pensioner, living in a foreign prison, with no ties to Australia, they probably won't want their stimulus package back.

Until next time.



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