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Practice Update

Please read this update and contact this office if you have any queries

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ATO's compliance focus: Work related expenses

The Australian Taxation Office (ATO) has again signalled that work related expenses (WREs) are at the top of its audit list.

During the 2005/06 tax year they contacted more than 226,000 individuals that they considered at risk of not complying.

They have found a number of common mistakes as well as false claims or claims which cannot be substantiated.

WRE claims on 2006 returns
For 2006 tax returns, they will review a range of claims including expenses for:

- motor vehicles;
- self-education;
- home-office; and
- travel.

Specific occupations to be targeted
Each year a number of occupations are selected for specific focus because they have above average WRE claims, a high number of WRE claimants or because the ratio of WRE claims are high compared with the salary and wages received.

For the 2006 tax return their focus will be on:

- employee business professionals;
- hospitality industry service workers;
- factory hands, store workers and process workers;
- mechanical, automotive and electrical tradespersons;
- information technology professionals; and
- mining site employees.

Honest director not liable for company's unpaid tax

A New South Wales Court has recently held that a director of a company was entitled to rely on an "honesty" defence in the Corporations Law, so he was not required to personally pay the company's unpaid taxes.

The ATO had issued the director with a 'director's penalty notice', which made him liable for over $300,000 in taxes that were withheld from payments by the company (which ran a soccer club) but never paid to the ATO.

The court did not accept the director's argument that he should not be liable for the unpaid taxes because he was more involved with the operational side of the company (the soccer activities) than with the finances.

However, he was entitled to rely on the "honesty" defence in the Corporations Act 2001.

This allows a court to grant relief where a director is or may be liable in respect of 'negligence, default or breach' but that person has acted honestly.

The court thought relief was appropriate in this case and, therefore, the director was excused from default and relieved of liability to personally pay the taxes under the director's penalty notice.

Interest on borrowings to pay income tax deductible

The ATO has confirmed that an individual taxpayer can claim a deduction for interest on a loan where:

- the taxpayer carries on a business as a sole trader;
- the business is the taxpayer's only source of income; and
- the taxpayer incurs interest on money borrowed to pay their income tax in respect of that business income.

This means that sole traders and companies are treated the same when they borrow to pay their tax.

Note: The Tax Office has not changed its view that where partners in a partnership borrow to pay their personal income tax, the interest remains non-deductible.

Compulsory cashing of super benefits no longer required

A super fund is no longer required to cash the benefits of a member (e.g., pay them out as a lump sum or pension) simply because the member has reached a certain age.

From 10 May 2006 to 30 June 2007, trustees of super funds no longer have to compulsorily cash a member's benefits where:

- the member is aged between 65 and 74 and does not meet the current 'work test'; or
- the member is aged 75 or over.

This means that members in these circumstances (subject to the rules of the fund) can delay cashing their benefits until the government's changes to the superannuation system are fully implemented.

Note: Funds are still required to cash a member's benefits upon their death.

$204 million in unclaimed bank accounts

ASIC has urged Australians to check if they have any unclaimed money in forgotten bank accounts, as it now holds a record $204 million in money from almost 161,000 forgotten bank accounts.

Money may have been transferred from a bank, building society or credit union to the Commonwealth Government (i.e., ASIC and consolidated revenue) if the account:

- had not been used for over 7 years; and
- contained a balance of $500 or more.

Searching for unclaimed bank money is easy and free: simply perform an instant search for unclaimed money in the relevant name on ASIC's consumer website FIDO at http://www.fido.asic.gov.au.

If a person finds an amount belonging to them, all they need to do is apply at the local branch of their bank for its release.

CGT implications of carrying on a home-based business

Most people think that they will never have to pay capital gains tax (CGT) when they sell their home.

However, the ATO has reminded taxpayers carrying on a home-based business that they may have to pay CGT when they sell their home, even if:

- they do not claim deductions for occupancy or running expenses;
- they have never claimed a deduction for any interest on money borrowed to buy their home;
- they owned their home outright before they started using any part of it to produce income; or
- they have started a business from home but have not yet made a profit.

How to work out how much of a capital gain is taxable

In most cases, the proportion of any capital gain which is liable to CGT would reflect:

- the proportion of the floor area of the home which has been set aside for business; *and*
- the period of time it has been used for this purpose.

However, the calculation of the capital gain may use a 'market value substitution rule' if the taxpayer started using their home for business purposes for the **first** time after 20 August 1996.

Editor: If you operate a home business and would like CGT advice regarding your home, please contact us.