



**Chartered
Accountants**

September 2010 Newsletter

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 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 will be 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.

Personal Services Income

The Administrative Appeals Tribunal recently considered the Federal Commissioner of Taxation's denial of a Personal Services Business Determination in the context of unusual circumstances and the unrelated clients test.

The taxpayer entered into a contract with an unrelated company for an employee to oversee the design and installation of an offshore pipeline. The income resulting from this contract was personal services income. The project encountered significant unexpected delays which were outside of the control of the taxpayer, resulting in the contract being extended. This contract was of a work volume that it meant that the taxpayer could not take on any other work

whilst the services under this contract were being performed.

The taxpayer therefore applied for a Personal Services Business Determination from the Federal Commissioner of Taxation on the basis that if it were not for these usual circumstances the taxpayer would have otherwise passed the unrelated clients test.

The Federal Commissioner of Taxation denied the application.

The main issue for consideration was not the existence of the unusual circumstances, but rather the passing of the unrelated clients test, this test includes a requirement that the services be provided as a direct result of the taxpayer making offers or invitations to the public at large, or to a section of the public, to provide the services, and the services are provided as a result of this marketing.

The taxpayer's expertise was only relevant to a small number of companies engaged in offshore petroleum exploration and mining. The taxpayer therefore made regular personal contact with these companies to assess their needs, further opportunities came from word of mouth and personal recommendations from others in the industry.

The Tribunal decided that for the purposes of the unrelated clients test:

- The companies constituted a section of the public;
- The taxpayers marketing activities, word of mouth and personal recommendations constituted making offers or invitations to provide services; and
- The taxpayer's services were provided as a result of this marketing.

The Tribunal therefore concluded that, but for the unusual circumstances of the extension of the contract, the unrelated clients test would have been satisfied.

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).

Soldier's 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.

The Tribunal found that the expenses 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.

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.

Superannuation Benefits — Timing of Payment by Cheque

The Tax Office has issued a draft self-managed super fund determination which states that a superannuation benefit can be considered to be 'cashed' at the time a cheque or promissory note is issued to the member or beneficiary.

This is the case provided the money is payable immediately (ie not post-dated) and the trustee takes all reasonable steps to ensure that the money is paid promptly (ie generally within a few business days).

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.

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.

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.