

CLIENT ALERT

October 2006

Tax News, Views and Clues

ATO Compliance Program 2006/07

The Commissioner has announced the Tax Office's compliance program for 2006/07 income year, identifying the following key risk areas:

- **Tax scheme promoters:** The focus will be on more than 100 people who may be operating illegally as tax agents, and those who design, market, sell or implement aggressive tax planning arrangements.
- **Serious fraud and evasion:** The Tax Office aims to detect and deter evasion before it occurs. The focus will be on promoters of arrangements involving tax havens, countries with bank secrecy, and organised attempts to defraud the system.
- **International tax:** Review will involve Australian resident individuals who fail to disclose gains made overseas or income from employment, pensions, dividends, interest or rent.
- **Aggressive tax planning:** The focus will be on capital protected products and prepaid service warrants.

- **High income individuals:** The Tax Office will review the affairs of some senior company executives where total remuneration is in excess of \$1 million.

To access the full report, go to the ATO's website at:
<www.ato.gov.au/taxprofessionals/content.asp?doc=/content/77362.htm>.

Service Trusts

As part of its compliance program, the Tax Office has announced that, where small to medium enterprises use service trust arrangements, there will be less risk of an audit, provided taxpayers adhere to the guidelines in Taxation Ruling 2006/2.

TR 2006/2 considers the operation of service arrangements and their direct relationship to allowable deductions and the anti-avoidance regime.

Broadly, where the benefits conferred by a service trust arrangement provide an objective commercial explanation of the whole of the expenditure made under the arrangement, this alone will suffice to ensure deductibility.

- **TIP:** If you are currently operating a service trust arrangement, ensure the transaction is kept at arm's length.

Payment to Public Servant not a Bona Fide Redundancy

In a recent decision, the Administrative Appeals Tribunal (AAT) has concluded that a payment of \$353,000 for a termination of employment was not considered a bona fide redundancy payment.

The taxpayer held the position of Chief Executive Officer of the NSW Rail Access Corporation (RAC). The taxpayer argued that his position became redundant due to the RAC's restructure plans.

On his termination, his role was immediately filled by another employee of the organisation, albeit temporarily, until the restructure was completed at which stage the role was made redundant.

The AAT concluded that the payment was not in the form of a bona fide redundancy as the role was not made redundant at the time of his termination.

As a result, the AAT held that the payment made to the taxpayer on his termination was an eligible termination payment and not eligible for concessional treatment.

Distribution of Shares Assessable as Dividend

In a recent test case, the Federal Court held that a distribution of shares paid to the taxpayer was out of company profits, and therefore, was assessable as a dividend.

The taxpayer received shares in the company's subsidiary as a result of a corporate restructure. This distribution of shares resulted in a reduction of the company's retained earnings, which was disclosed in the company's financial statements. It was found that the 'stock dividend' was funded by profits out of retained earnings and that there was no evidence to suggest otherwise.

- **TIP:** A dividend can include a distribution of both income and property.

Deduction to Employee Benefit Trust Disallowed

In a recent decision, the Federal Court held that a payment of \$500,000 to an employee benefit trust was not deductible. However, the Court overturned the FBT assessment, which was raised in the following year.

The taxpayer reasoned that the amount was deductible as it represented a contribution to a superannuation fund. However, the Court held that the amount was only deductible where the

contribution was made for the sole purpose of providing superannuation to employees.

In this instance, the employees were not employees who would benefit from the contributions, they were only discretionary beneficiaries and ultimately not entitled to benefit under the trust until the trustee exercised a discretion in favour of the employees.

It was the Court's belief that the real purpose of making the contribution to the employee benefit trust was to enable the controller of the trust to take funds out as superannuation benefits. It then follows that the contribution was not made for the sole purpose of providing superannuation benefits for eligible employees.

As a consequence, the Court overturned the Commissioner's decision to raise an FBT assessment as no benefit had been provided to the employees under the scheme.

Claiming Input Tax Credit on Corporate Credit Card Statements

A very useful Tax Office ruling that many GST registered entities may not be familiar with is the ruling on corporate credit card statements and the entitlement to claim an input tax credit without holding a tax invoice.

In GSTR 2000/26, the Tax Office sets out the circumstances where a GST registered entity that holds a corporate credit card statement issued by certain credit providers can claim an input tax credit for a creditable acquisition without holding a tax invoice for that acquisition.

GST registered entities can claim back the GST incurred in making a creditable acquisition.

Superannuation Simplification Plan

In a recent announcement, the Treasurer and Assistant Treasurer confirmed that the Government will proceed with its superannuation simplification proposal addressed in the 2006 Budget.

The original proposal announced in the Budget included the removal of end benefits tax for individuals over age 60 from 1 July 2007 and the abolition of RBLs and age-based contribution limits.

In addition to these proposals, the Government has indicated transitional concessions will apply to ensure the changeover to the new system will be easier and includes the following:

- Individuals will be allowed up to \$1 million of post-tax undeducted contributions between 10 May 2006 and 30 June 2007.
- The \$150,000 annual limit on post-tax contributions will commence on 1 July 2007.
- Individuals under the age of 65 will be entitled to bring forward two years of contributions, enabling individuals to contribute \$450,000 in one year.
- In addition to the annual \$150,000 cap, individuals will be able to contribute a lifetime limit of \$1 million from the sale of small business assets held for 15 years and settlements for injuries resulting from permanent disablement.

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.