

CLIENT ALERT

October 2008

Tax News, Views and Clues

Tax Compliance Program 2008/09

The Commissioner has released the Tax Office Compliance Program 2008/09, which sets out the Tax Office's compliance priorities for that year.

Individuals

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

- capital gains from the sale of property, shares and other assets;
- contributions to superannuation which exceed the annual contributions limit;
- remuneration packages of senior executives and directors;
- work-related expense claims. In particular, the Tax Office will focus on nurses, medical practitioners and chefs; and
- 'out of pattern' claims for self-education, car and travel expenses.

Micro enterprises

Micro enterprises refer to small businesses and self-managed superannuation funds (SMSFs). Key priorities that the Tax Office have identified include:

- assisting employers in managing their tax obligations (e.g. PAYG withholding

obligations, superannuation guarantee obligations and FBT obligations);

- assisting micro businesses in managing their tax debts;
- developing new tools for trustees of SMSFs to help them achieve a high level of compliance with superannuation and tax laws;
- ensuring capital gains on sales of assets and investments are correctly reported, including the correct application of small business CGT concessions;
- ensuring offshore income including dividends and interest, royalties and rental income are correctly reported; and
- expanding its compliance activities on the cash economy.

Small to medium enterprises

Small to medium enterprises refer to taxpayers with an annual turnover of between \$2 million and \$250 million and highly wealthy individuals. Key priorities include:

- monitoring private companies loans and payments to shareholders and their associates to ensure compliance with the tax laws;

- increasing its focus on highly wealthy individuals and following up where necessary with reviews and audits;
- examining business restructures where the primary objective is to receive a tax advantage rather than for preparing a business for sale; and
- seeking judicial clarification on a number of trust issues including the effectiveness of clauses in trust deeds that seek to equate trust income with trust taxable income.

Superannuation

The Tax Office has highlighted several compliance priorities including:

- ensuring members do not access their superannuation early except where permitted; and
- reviewing lost superannuation accounts and following up with the account owners by telephone

Bonuses and Superannuation Guarantee

In a recent case, the AAT has affirmed the Commissioner's decision that bonus payments paid by an employer to its employees should be taken into account when calculating the employees' superannuation guarantee.

The Tribunal said that while the employer had the discretion to make the payments, it did not convert those payments into "optional" payments.

Accordingly, the Tribunal found that the payments were paid in an employment context and by reference to the specific performance of its employees as a group.

- **TIP:** Generally, bonus payments that don't relate to the specific performance criteria of employees are not taken into account when calculating their superannuation guarantees.

Trustee of SMSF Charged in Court

In the first case to be laid against a trustee of a self-managed superannuation fund (SMSF), the trustee has pleaded guilty to a criminal charge under the superannuation laws.

According to a media release issued by ASIC, the trustee was charged with dishonestly failing to ensure that the SMSF was maintained in accordance with the sole purpose test as required by superannuation laws.

Off-the-shelf Accounting Software

The Tax Office has issued a guidance document to assist its tax officers in determining whether

taxpayers who use off-the-shelf accounting software are meeting the record keeping requirements as imposed by the tax laws.

According to the document, taxpayers using accounting software will satisfy the tax laws if:

- the software name and version is recorded;
- a record is made of the components of the software package that have been installed and the date of installation;
- a chronological record is kept of all system changes or upgrades;
- a record is made of the options that have been enabled or disabled; and
- any manuals or instructions provided with the software package are kept.

Compliance Matters

Date matching and security industry

The Tax Office has announced that it will request and collect names, addresses, business and licence details of entities within the security industry from the relevant state departments.

The data collected will be electronically matched with its data holdings to identify non-compliance with tax obligations.

According to the Tax Office, the data-matching program will focus on security firms and their sub-contractors.

Partnership and trust distributions

The Tax Office has advised that it will be reviewing distributions from partnerships and trusts to the respective partner and beneficiary

returns for the years ended 30 June 2004 to 30 June 2007.

The Tax Office will send letters to tax agents where there are discrepancies in the distributions. Further, the Tax Office says that if a voluntary disclosure is made, it will result in a reduction or waiving of any penalties provided an amendment is lodged within 28 days of the date of the letter.

Social security payments

Schooling conditions on welfare payments

The Government has introduced a Bill relating to parental responsibilities and the school enrolment and attendance of their school age children.

The Bill introduces conditions on the receipt of income support payments whereby parents are obliged to enrol their children in school and to take reasonable action to ensure their children attend school regularly. Failure to comply with the conditions may result in their payments being suspended.

Increase to Pension

From 20 September 2008, pensions and income support payments and allowances will increase, including the:

- age pension;
- wife pension;
- carer payment;
- disability support payment;
- parenting payment;
- rent assistance; and
- maternity immunisation allowance.

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.