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Practice Update

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APRIL 2010

Tax Office's start to the year maybe not as good as they hoped for

Editor: The Tax Office has started off this year on the receiving end of a lot of 'flak'.

First, they implemented their new "Change Program" which was an \$800m upgrade to their computer system and literally hundreds of thousands of refunds in the pipeline ground to a halt, angering taxpayers and tax agents alike.

In mid-March about 150,000 refunds were issued and dated 13 March, got held up for some undisclosed reason and were then sent to Australia Post about 10 days later. Taxpayers are understandably confused as to why it seems to have taken more than two weeks for their refund to get to them.

New Notices of Assessment

Then, without telling anyone, they produced new notices of assessment which taxpayers/clients have little hope of understanding.

The old notices of assessment used to be a reasonably simple one page document that spelt out the amount owing or being refunded.

The new notices of assessment are four pages long, with lots of information taxpayers don't need or want, are different for different types of taxes and often just tell taxpayers that there is a debit (DR) or credit (CR).

As tax agents, we have reacted to the new notices of assessment on behalf of clients and the Tax Office has promised to try and make them more simple – and shorter. That's the good news.

The bad news is, like trying to turn the Titanic, it's going to take the Tax Office until June or July to make the necessary changes.

Unfortunately, until then we are going to have to put up with the assessments as they are. If you receive one of them from us, or from the Tax Office, and need a hand, give us a call.

In-house advisers not caught up in Tax Agent services regime

Clients may be aware that, from the start of March, as a result of pressure from the tax industry, the Government introduced a new regime to regulate and enhance the tax profession.

However, the law was drafted so widely that it seemed to encompass in-house tax advisers and tax advisers within company groups, etc.

In a recent speech, the Assistant Treasurer declared that he had decided that in-house tax advisers within a corporate group would be excluded.

Crackdown on 'Phoenix' activity

Editor: Phoenix activity involves the deliberate, and often systematic, liquidation of a company to avoid the payment of liabilities, including employee wages and superannuation, business creditors and outstanding taxes. The business then 'rises' and continues through another company free of those debts.

The Government has announced a crackdown on these 'phoenix' activities by expanding and

reforming the use of 'security deposits' and increasing penalties for failing to comply with the requirement to provide a security deposit.

Security deposits are similar to a bond and must be paid by a taxpayer to the ATO in relation to an existing or future tax liability. Refusal to provide a security deposit is a criminal offence.

Such a deposit is most likely to be required where the ATO believes that a foreign taxpayer is establishing or carrying on a business in Australia for a limited period of time only, or where some other risk makes a deposit appropriate, such as a risk of phoenix activity.

The penalty for non-compliance to provide security has also been significantly increased for individuals from 20 penalty units (\$2,200) to 100 penalty units (\$11,000), and for companies from 100 penalty units (\$11,000) to 500 penalty units (\$55,000).

Tax donations to volunteer bushfire brigades deductible

The Assistant Treasurer has announced changes to the tax law to extend tax deductible donation support to all volunteer bushfire brigades.

"There are more than 6,000 volunteer brigades in Australia – but less than a third can access tax deductible donations and that eligibility has recently come under question".

Under changes to the law, deductibility will be extended to all volunteer bushfire brigades.

Political donations no longer deductible for businesses

Legislation has now passed abolishing tax deductions for donations to political parties and independent candidates and members.

Businesses will no longer be able to deduct political donations, either under the existing \$1,500 capped specific deduction in the tax law, or as a general business deduction.

The measure applies retrospectively from 1 July 2008, meaning businesses will not be able to deduct their political donations from that day.

Individual taxpayers will still be able to claim deductions for donations to political parties and independent candidates and members up to the \$1,500 cap.

Interest deduction allowed on loan for units in a hybrid trust

The Full Federal Court has held that a taxpayer was entitled to a deduction for interest incurred on a loan taken out to acquire units in a hybrid trust.

It's an interesting case because the taxpayer's units entitled him to ordinary income of the trust, but capital gains could be distributed to other beneficiaries on a discretionary basis.

The technical details related to certain standard clauses in the deed (and in most hybrid trust deeds) granting the trustee the power to decide whether amounts received should be considered to be derived on income or capital account.

The Tax Office alleged that power made the deed a discretionary trust, meaning that the taxpayer would not be able to claim interest on the loan he took out to buy the units.

The Court rejected the ATO's assertions and allowed the taxpayer to claim the interest as the power in the deed merely allowed the trustee to *allocate* amounts between income and capital.

Bali Peace Park – donations deductible

Tax deductions will be allowed for gifts to the Bali Peace Park Association Inc. The Association is seeking to raise funds to acquire the Sari Club site in Bali and create a garden in memory of the victims of the terrorist bomb attacks on 12 October 2002.

Deductions for gifts to the Association will apply for two years from 17 December 2009.

GIC AND SIC rates

The Tax Office has released the GIC (general interest charge) and SIC (shortfall interest charge) rates for the June 2010 quarter.

GIC rate	11.16%
GIC daily compounding rate	0.03057534%
SIC rate	7.16%
SIC daily compounding rate	0.01961644%

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.