

Practice Update

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

MARCH 2006

The taxpayers fought the law...and the law won

Editor: The following two tax cases highlight a common misconception, which is that the Tax Office is required to prove how it came to an assessment. The unfortunate fact is that, once it makes an assessment, it's the other way around...

Tax Office (ATO) estimates unpaid GST

In the first case, the Administrative Appeals Tribunal (AAT) upheld the ATO's assessments of unpaid GST, because the taxpayer had not proven that the assessments were excessive.

The assessments were issued after the taxpayer was raided by the Victorian police. The information they uncovered allowed the ATO to estimate the number, and the average price, of taxable supplies the taxpayer had made in the relevant periods.

The AAT held that the taxpayer needed to do more than merely show that the amount assessed was an estimate; the taxpayer had to show that the assessments were excessive and provide proof of what the correct amount should be.

Since the ATO had adopted a "plausible methodology", and the taxpayer did not have any documentary evidence which could prove that the ATO's calculations had produced a distorted result, the AAT found that the taxpayer had not discharged this onus.

ATO estimate based on receipts/invoices

In the second case, the Federal Court dismissed a taxpayer's claim that an amended assessment had been issued to him in "bad faith".

He claimed that there was insufficient evidence

on which to base the assessment, and that proper regard had not been given to his explanations.

However, the Court held that the ATO had based the assessment on documentary evidence that was available (i.e., receipts and invoices), and that it had not simply "plucked a figure out of the air".

Therefore, it could not be said that the notice had been issued in bad faith.

ATO to use telemarketing tactics to clear small business debt

The new Commissioner of Taxation, Michael D'Ascenzo, has issued an update about the ATO's progress with small business debt, which outlines some new strategies they are testing to bring these debt levels down.

He said: "While we want to see viable businesses continue to trade, we can't stand by while people who repeatedly fail to meet their obligations gain an unfair business advantage over those who do."

The small business debt initiative

Over 96,000 small businesses have chosen to enter into payment arrangements with the ATO reducing debt by \$846 million.

However, as at 31 December 2005, there were still over 800,000 debt cases in the micro business market with a value of approximately \$6.5 billion.

New approaches

The ATO is trialling new ways of contacting and engaging with people who have a debt with them, such as contacting people directly by phone after business hours.

It also plans to test 'dialler technology' from around April this year (which goes through a list of phone numbers, automatically dials and then puts all answered calls straight through to one of their staff for action).

They will also trial referring debt to an external collection agency for those people with a debt of less than \$7,500, and who haven't responded to letters or phone calls from them (although no debt will be 'on sold', and any uncollected debt will remain the responsibility of the ATO).

The ATO wants anyone who is concerned about their outstanding debt to call them on 13 11 42 as soon as possible.

Editor: If this includes you, you might want to call us first. . .

Super fund ordered to refund superannuation contributions

The Supreme Court of NSW has held that a taxpayer who mistakenly paid superannuation contributions could reclaim those payments, provided the fund had not used the moneys, or the members of the fund had not otherwise changed their positions as a result of the payments.

The taxpayer had made contributions of over \$133,475 to a superannuation fund for the benefit of delivery drivers working in the taxpayer's business, in the belief that it was required to do so under the superannuation guarantee regime.

However, it later discovered that the drivers were sub-contractors, and not employees, and it sought a refund of the majority of those moneys from the super fund.

Where someone makes a payment by mistake, they can generally recover that payment under the principle of "unjust enrichment".

In this case, the fund and the beneficiaries had been "enriched", and the employer was entitled to recover the payments (except, for example, where moneys had been on-paid, such as where amounts had been paid out to beneficiaries, or where administration fees had been paid).

December quarter CPI

The CPI for the December 2005 quarter was 150.6 (up from 149.8 for the September 2005 quarter).

No deduction for 'abnormal' clothing expenses

The AAT has held that a taxpayer was not entitled to deductions for work-related clothing and other expenses, as the clothing and other items were of a conventional nature.

The taxpayer had claimed a deduction of \$38,797 for "abnormal work-related clothing expenses" required to perform the requirements of her position as the CEO and director of a company, because she was "the image of the company".

Unsurprisingly, the AAT held that the clothing was private in nature and not deductible.

For expenses on conventional clothing to be deductible, there must be a clear connection between the expenses and the income earning activities.

Warning on Scams – Delete it! Hang up! Destroy it!

Eighteen agencies across Australia and New Zealand (including the ACCC and ASIC) have joined forces to combat consumer fraud, warning consumers about the scams that affect thousands of Australians every year.

The Parliamentary Secretary to the Treasurer states: "The best protection against scammers is to hit the delete key, hang up, or throw it in the bin."

Scammers are becoming increasingly sophisticated in the way they target people. Consumers who respond to these scams nearly always lose their money, and most never see it again.

"So resist the temptation. Bewary. Do not respond to these scams. Do not send money up front to collect supposed winnings from lotteries that you didn't enter. Don't reply to letters promising you rich returns. Do not click on links in emails and provide personal information, and do not believe people who call you up to offer a great investment deal".

The key characteristics of a scam include:

- ◆ It comes out of the blue.
- ◆ It sounds like a quick and easy way to make money.
- ◆ It tells you there is almost no effort or risk.
- ◆ It sounds just too good to be true.

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.