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## Practice Update

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

NOVEMBER 2007

### No doubling up on super and super guarantee charge

*Editor: While pending legislation has been put on hold for the election, we imagine the following will go ahead with either Party.*

The Government has announced changes to superannuation which will mean that employers who make a late Superannuation Guarantee (SG) payment do not pay the same amount twice.

Under the current law, when an employer does not make their SG contribution on time, they become liable for both the SG charge in addition to their liability for the SG contribution.

However, the announcement stated that employees will still be entitled to interest to compensate them for the late payment.

### Tax Office warns of scam email

The Tax Office is warning people about a fraudulent email being circulated that claims to offer a refund from the Tax Office.

The email fraudulently uses the Tax Office logo and the words 'Australian Taxation Office – Notification' or 'Australian Taxation Office – Please Read This' in the subject line (there may also be variations to these titles).

It asks people to click on a link which redirects them to a phony website that looks similar to the Tax Office website and asks for credit card and personal details in order to receive a refund.

The email and website are not affiliated with the Tax Office in any way.

### ATO ramps up debt collection

A panel of external collection agencies has been appointed by the ATO to assist with the collection of debt, including tax debts over two years old and employer superannuation guarantee charge debt.

Four agencies have been selected:

- ◆ Dun & Bradstreet;
- ◆ Baycorp Collection Services Pty Ltd;
- ◆ National Credit Management Limited; and
- ◆ Recoveries Corporation Group Limited.

Acting Tax Commissioner Jennie Granger said the appointments follow a successful 3 month trial conducted in 2006, which resulted in \$21 million in outstanding debt being collected.

The Tax Office was allocated an additional \$42 million over four years in this year's Federal budget to establish and pay for the services of the panel, and expects to start to refer parcels of debt to the collection agencies towards the end of 2007.

The panel is required to adhere to strict privacy and professionalism guidelines and will have to report back to the Tax Office monthly on their progress and adherence to these guidelines.

They will also need to meet all Commonwealth secrecy and privacy requirements.

### **Data matching program – personal service entities**

A new data matching program on 100,000 personal services entities called the PSI Data Matching Project is about to be undertaken by the Tax Office.

It will request and collect information on amounts paid to personal services entities by:

- labour hire firms;
- placement agencies; and
- computer consultancies.

The data requested will also include name and address details of the individual who is the main service provider to the entity.

The information collected will be electronically matched to identify non compliance with lodgment and payment obligations and will match individuals and entities who have received contract payments from the listed labour hire firms, placement agencies and computer consultancies.

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### **Problems with car fringe benefit records**

The Tax Office has warned that some employers are using inaccurate methods in dealing with the FBT obligations resulting from providing car benefits to their employees.

Three of the areas that employers are getting wrong are:

- logbooks do not provide enough information about the car's use;
- where a car is garaged at an employee's residence and the employer is claiming substantial business use for the car using the operating cost method, but there is no record in the logbooks of business travel being made; and
- employee contributions are incorrectly treated for income tax and GST purposes.

#### **Log book method**

An employer using the operating-cost method to calculate the taxable value of a car fringe benefit needs to include the following details for each business journey:

- the date on which the journey began and on which it ended;

- the odometer readings at the start and end of each journey; and
- the kilometres travelled and the purpose of the journey.

Entries made under the category of 'purpose of the journey' must be in English and detailed enough to show why a journey was for business – simply describing a journey as 'business' or 'miscellaneous business' is not enough.

Car users should also be aware of FBT obligations that may arise under the 'home garaging rule'.

In particular, a car garaged at an employee's home is, in most instances, considered to be available for private use.

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### **Super funds are not allowed to provide 'financial assistance'**

A new draft ruling from the Tax Office explains how the law controlling superannuation funds prohibits trustees from using fund resources to provide any other 'financial assistance' to a member of the fund (or their relative).

Financial assistance can take the form of the giving of a security, charge or guarantee, or any other arrangement that, in substance a financial accommodation.

Financial assistance can also include using the resources of a super fund where the assets of the fund are converted into other assets, diverted, diminished or put at risk.

To demonstrate a situation caught as 'giving financial assistance', the draft ruling gives an example of a taxpayer who needs finance to fund the expansion of her printing business and sells a block of land to her super fund for its market value.

Later on, she buys the land back from the super fund.

The superannuation fund receives back the amount it paid for the land plus an additional amount that compensates it for the use of the money.

The example concludes that the arrangement is similar in effect to the fund loaning the money to the taxpayer and her granting a charge over the block of land. As such, the arrangement means that the fund has 'provided financial assistance'.

*Editor: It seems that the Tax Office may be moving to tighten up its stance in this area.*

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.