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Practice Update

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

SEPTEMBER 2007

CPI for June quarter

The CPI for the June 2007 quarter is 157.5 (up from 155.6 for the March 2007 quarter).

Self managed super funds (SMSFs): Trustee Declaration

From 1 July 2007, all *new* trustees (and directors of corporate trustees) of an SMSF must sign a declaration, within 21 days of taking up their post, stating that they understand their duties as a trustee (or director of the corporate trustee).

The declaration, which is available from the Tax Office's (ATO's) website, must be retained by the fund's trustees for as long as the person is a trustee (or director of the corporate trustee). If this period is less than 10 years, it must be retained for at least 10 years.

Failure to sign and retain the declaration, or make it available when requested, may result in penalties being imposed.

Editor: Note that it does not need to be lodged with the ATO.

The fund's complying status may be removed if trustees fail to meet their obligations in relation to the declaration and there have been other serious breaches of the superannuation laws (which can result in the fund's assets being taxed at 45%).

The ATO recommends that their publication "Self managed super funds – Key messages for trustees" be read with the declaration.

Tax Office provides Div.7A relief until end of 2007/08

Editor: The Government doesn't like it when shareholders of private companies use the company's money as their own, and so there are provisions in the tax laws (called Div.7A) which can deem these amounts to be unfranked dividends.

These rules have typically been very harsh, and operated automatically.

The Government has recently amended Div.7A so that it is not so harsh, and the ATO has also taken steps to allow companies and shareholders to get their affairs in order without being penalised.

Background

Div.7A ensures that any loans or payments by private companies to shareholders or their associates are treated as assessable unless repaid or placed on arm's length terms. This includes debts owed by shareholders that are forgiven by the private company.

Where a taxpayer breaches Div.7A, the amount of the loan, payment or debt forgiven is deemed to be taxable as an unfranked dividend.

The offer

Under recent changes, the Commissioner of Taxation now has a discretion to ignore the operation of Div.7A where an honest mistake or inadvertent omission has been made.

The ATO has issued a practice statement to set out how taxpayers can take corrective action to fix such mistakes made between 2001/02 and 2006/07.

The Commissioner has said: "People who follow the practice statement and include any outstanding interest or previously undeclared payments in their 2007/08 return can take advantage of the new changes to the law, without being concerned about further enquiries."

From 1 July 2008, the ATO will resume audit work to ensure payments made by private companies are correctly accounted for and company loans are not used to distribute profits tax-free.

Builders' tax returns under the spotlight

The Child Support Agency (CSA) is focusing extra attention on the building industry to identify builders who haven't been paying the correct amount of child support.

The CSA will look at parents in the building trade where there is evidence a customer has reduced their income in order to reduce their child support liability. The CSA can adjust a parent's child support obligation based on their true financial situation.

The CSA and the ATO will take a joint approach to parents who don't lodge tax returns and are urging all builders with outstanding tax returns to contact the ATO on 13 11 42.

Offshore voluntary disclosure

Editor: The jailing of celebrity Glenn Wheatley has highlighted the ATO's offshore compliance activities. And it looks like this is only the beginning...

The ATO has announced that it will increase its focus on Australian taxpayers who have used offshore bank accounts, offshore financial products, offshore tax arrangements and/or offshore structures.

It has begun an offshore compliance program, including more audits, to ensure that taxpayers have fully complied with their Australian tax responsibilities.

However, taxpayers can make an 'offshore voluntary disclosure' and cap the shortfall penalty to 5%, or even receive no shortfall penalty, depending on the sums involved.

To qualify for this concessionary treatment, they need to submit a voluntary disclosure in writing on the 'Offshore voluntary disclosure statement form', which can be obtained from the ATO.

GST simplified accounting methods

The ATO has issued a new determination setting out simplified GST accounting methods (SAMs) available to eligible food retailers, being:

- the business norms method;
- the stock purchases method; and
- the snapshot method.

The determination covers these methods in detail, and commences on 1 October 2007.

It applies to most food retailers who meet the following eligibility requirements:

- the taxpayer is a retailer that sells taxable and GST-free food; and
- they have a SAM turnover of not more than \$2 million; and
- they do not have adequate point-of-sale equipment.

Eligible food retailers may include such businesses as cake shops, delis, convenience stores, fresh fish shops, health food shops, and pharmacies.

Rolling over ETPs from 1 July 2007

Most employer termination payments (ETPs) made from 1 July 2007 can **no longer** be rolled-over into superannuation funds, unlike pre-July 2007 employer ETPs.

Therefore, such an ETP contributed into a fund from 1 July 2007 will simply be counted towards one of the taxpayer's contributions caps.

Exception

However, as an exception, a 'transitional termination payment' can be rolled-over into a superannuation fund up until 30 June 2012.

Editor: Taxpayers in receipt of an ETP on or after 1 July 2007 should contact us to see if they can take advantage of the exception relating to transitional termination payments, as generally:

- ◆ *only the amount (if any) of the 'taxable component' in excess of \$1 million will be counted towards the \$50,000 concessional contributions cap; and*
- ◆ *any 'tax-free component' (e.g., pre-July 83 amount) will not be taxed in the fund, and will be excluded from the \$150,000 non-concessional contributions cap.*

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.