

TAXWISE INDIVIDUAL NEWS – DECEMBER 2010



Wishing you a Merry Christmas and a Happy New Year.

Our office will be closing from close of business Thursday 23 December 2010 and will be re-opening on Monday 10 January 2011.

OUR SERVICES

Did you know we can assist you in the following ways:

Income Tax

- Income Tax Preparation
- Tax Planning Advice
- GST
- Business Activity Statements
- Superannuation
- Land Tax
- Fringe Benefits
- Tax Audit Support

Accounting

- Preparation of financial and management accounts
- Company Secretarial services
- Accounting systems and technology
- Better management and procedures for your business

Business and Advisory

- Business plans and cash forecasts
- Start up feasibility studies
- Introduction to financiers and assistance with financial applications
- Preparation for sale of business

Audit

- Statutory Audits
- Not for profit organisations
- Half Yearly Reviews
- Superannuation Funds
- Systems and Control Reviews

Other

- Business valuations and appraisals
- Remuneration planning
- Mediation and dispute resolution

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ATO Compliance Program

The ATO's compliance program for the 2010-11 income year will focus on:

Remuneration of Executives and Directors

The ATO will focus on shares and options received by foreign directors/executives of Australian companies or Australian directors/executives of foreign companies to ensure that such remuneration is reported correctly.

The focus will be on public and private companies, and resident and foreign directors and executives.

High income taxpayers

The ATO will focus on taxpayers with income exceeding \$1 million, with increased focus on alienation of personal services income and large deductions or credits.

Unregistered tax return preparers

There will be a focus on tax returns prepared by unregistered

preparers claiming to be tax agents.

Third party information

The use of third party information to identify taxpayers that have under-reported income or over reported entitlements will be expanded.

Investment income

The focus will be on investors to ensure that rent and dividends are correctly reported as income, rental deductions are not over-claimed and capital gains are appropriately recorded.

Work-related expenses

The appropriate claiming of work related expenses, including motor vehicle and travel expenses, home office, mobile phone and internet expenses will be a focus for the ATO.

Deductions claimed by specific industry sectors

Specific fact sheets to assist engineers, mechanics and teachers in correctly claiming their expenses have been released.

Superannuation contributions

The ATO will check all requirements in relation to the lodgment of a valid notice of intent to claim or vary a deduction for personal super contributions.

The ATO will also undertake data matching exercises to ensure that deductions for personal super contributions are appropriately claimed.

Superannuation withdrawal

There will be a focus on individuals that may have illegally accessed their super benefits ahead of time.

Internet trading

The ATO is focusing on trades conducted via the internet (including on trading sites such as ebay) to identify taxpayers that may have understated their business income.

TIP

Although the ATO is targeting the specific areas mentioned above, this does not mean that they won't be looking at other areas too.

Plan Ahead!

This is also the time of year when you should be considering some forward planning in readiness for the next tax year.

Changes to the employee share scheme rules (including shares acquired by salary sacrificing), mean it's a good time to review your current salary packaging arrangements with your employer in readiness for the new financial year.

TIP

Taxpayers that lodge their income tax return through an income tax agent should consult with their agent early in relation to actions required to lodge on time.

Employee Share Schemes

The employee share scheme rules announced during the budget in May 2009 have now come into effect and apply to all employee share scheme interests acquired on or after 1 July 2009.

Under the new rules, the market value of any employee share scheme interests you acquired during the income year, less any consideration paid, will be included in your assessable income for the income year unless your interests

are subject to a real risk of forfeiture (i.e. if there is a real chance that you will forfeit your entitlement to these interests at a later time; for example if you cease employment with your employer, or fail to meet certain performance criteria).

As a result, you will generally have to pay tax on the value of the interests provided to you in the year in which you are provided with the shares or options. Unless you dispose of the shares or options in the same income year, this means you will have to pay tax before you realise any cash from your interests.

Where there is a real risk of forfeiture, the market value of the interest (less any consideration paid) will generally be included in your assessable income at the time that this risk falls away. This may not be the same year in which you realise the value of your interests in the form of cash.

The new rules also alter the taxation of employee share scheme interests in a number of other ways, such as:

- The first \$1,000 of the market value of your interests (less money you paid to acquire the interests) will be exempt in certain circumstances, where the full amount is taxable to you in the year in which you were provided with the interests and your adjusted taxable income is less than \$180,000 for the income year.
- Any loss you suffer on your employee share scheme interests (other than by genuinely forfeiting the interests) will generally result in a capital loss which will be quarantined so that it can only be offset against capital gains.

Under the previous rules, taxpayers could in some circumstances amend prior year returns to get a refund of tax paid on interests that were subsequently "out of the money".

- Your employer will be required to withhold from payments to you if you have

not provided your TFN to your employer.

Such amounts withheld will be credited back to you but will generally represent a prepayment of your tax obligations.

As a result, you should ensure that you have quoted your TFN to your employer if you will or have already received employee share scheme interests.

Most employees are required to quote their TFN on commencement of employment.

- In relation to the 2010 income year and later periods, you will receive a statement from your employer setting out the number and value of employee share scheme interests that were either provided to you during the income year or ceased to be at real risk of forfeiture during the income year.

This information will be of assistance to you in filling out your income tax return.

Notably, your employer is also required to provide such information to the ATO, so the ATO will be able to tally the information in your income tax return against information provided by your employer in relation to the interests provided to you.

TIP

If you received employee share scheme interests during the 2010 income year, you will likely be required to include any discount on issue/provision of those interests in your assessable income for the 2010 income year.

Your employer will provide you with information setting out details of the interests provided that will assist you in calculating the amount of assessable income to include.

Paid Parental Leave – Eligibility

The Government's new paid parental leave (PPL) scheme received Royal Assent on 14 July 2010.

The scheme will apply from 1 January 2011 and will provide eligible working parents with 18 weeks of 'Parental Leave Pay' at the National Minimum Wage (currently \$570 per week before tax).

The scheme is open to parents of children born or adopted after 1 January 2011.

Either parent or carer of the child (though not both parents) will be eligible for the PPL. The eligible parent is referred to as the 'primary claimant'.

In order to be eligible, the primary claimant must have:

- worked at least 10 months out of the 13 months preceding the actual or expected date of birth or placement of his/her child
- worked at least 330 hours during this period (on a casual, part time or permanent basis).
- had an adjusted taxable income of \$150,000 or less in the income year preceding the child's date of birth or placement, or the date of claim (whichever occurs earlier)

If a primary claimant is eligible for both the baby bonus and the PPL, they can elect to take the baby bonus instead. However, parents will only be eligible for either the PPL or the baby bonus in respect of the same child.

TIP

If you are the primary carer in relation to a child that is born or adopted after 1 January 2011, and had an adjusted taxable income of less than \$150,000 or less in the income year prior to the birth or placement of your child, you will likely be eligible to receive paid parental leave.

Unpaid Present Entitlements (UPE) – tax obligations of shareholders

The ATO has recently released its final practice statement in respect of the treatment of unpaid present entitlements (UPEs) under a trust in favour of a private company.

The ATO released TR 2010/3 earlier this year, which set out the circumstances in which a present entitlement in favour of a private company which remains unpaid will constitute a "loan" for Division 7A purposes.

Broadly, Division 7A is designed to ensure that private companies distribute profits to shareholders (or associates of shareholders) as taxable dividends, rather than by way of non-arm's length payments or loans.

Where Division 7A applies, such payments and loans are treated as unfranked dividends in the hands of the shareholders or their associates, provided the private company in question has sufficient distributable surplus at the time at which the payment or loan is made.

TIP

If you are a beneficiary under a trust which has an unpaid present entitlement in favour of a private company of which you are a shareholder, you should consult with your tax advisor to ensure you don't have to include any deemed dividends in your assessable income.

Government's SMSF endorsement welcomed

The government response to the Cooper Review recommendations confirms that the SMSF sector is well administered and managed and forms a vital function in the creation of retirement benefits for Australians. The need for additional regulation of the sector is therefore seen to be minimal. The government indicated that the existing 5% limit on in-house asset ownership will remain and has reconfirmed that personal-use assets and collectables may be held subject to more stringent rules previously announced. The limited recourse borrowing arrangements currently available

to SMSFs will remain with a review in two years.

The government has accepted recommendations directed at increasing the knowledge and competency of SMSF service providers. These include development of a mandatory specialist knowledge component of Regulatory Guide 146 and the requirement that auditors be registered by ASIC (although auditor supervision would rest with the Tax Office).

Cooper Review recommendations rejected by the government included the recommendation that the Tax Office be empowered to issue binding rulings in respect of SMSFs. This outcome is particularly disappointing as the binding ruling process, would have provided certainty for trustees who are required to interpret legislation and regulations which can often prove difficult even for professional advisers.

Smile for the quarter

Q. What does Father Christmas suffer from if he gets stuck in a chimney?

A. Santa Claustrophobia!

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On the Sunday before Christmas, Reverend Billy Graham was walking down the street on his way to see a parishioner. However, he wanted to post a parcel urgently so he asked a young boy where he could find the post office. When the boy had directed him, Reverend Graham thanked him and said, 'If you'll come to the Church this evening, you can hear me telling everyone how to get to heaven.'

The boy replied, 'I think I'll give your sermon a miss. If you don't even know your way to the post office, how will you lead me to heaven?'

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