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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.

It's 2010-11 Tax Return Time

With the lodgment date for individuals who lodge through a tax agent fast approaching, it's time to get serious about the shape of your tax affairs.

Our four step guide to tax return preparation will help ensure you've got everything covered.

Four step guide to return preparation

Step 1: Get your records straight

To confidently ensure your tax return accurately reflects your optimum tax position, start by assembling all your tax records.

Relevant records will include things like evidence of:

- your income (e.g. Payment Summaries for your salary and wages, dividend and interest income statements, rental property income, and any information on the sale of any of your assets during the year like the sale of an investment property or shares); and
- your allowable deductions (e.g. invoices, receipts of expenditure).

You may also be required to provide sufficient details to your employer to allow your employer to accurately calculate their fringe benefits tax liability and your reportable fringe benefits amount in respect of the year ended 31 March.

Your employer may request details such as kilometers traveled in a car that is the subject of a car fringe benefit, details of business travel such as in the form of a log-book and details of entertainment expenses.

While your reportable fringe benefits amount is not "income", this amount may be taken into account when calculating your income for other purposes (such as eligibility for tax offsets, superannuation co-contribution, exemption from the Medicare levy surcharge and eligibility for the \$1,000 exemption in relation to employee share schemes).

WORK RELATED DEDUCTIONS

If you are going to claim more than \$300 worth of work-related deductions, you will need to be able to substantiate how you calculated the full amount.

If the total amount of your work related expenses is \$300 or less, you don't need written evidence to prove your claim – but the ATO can still ask you how you worked it out!

Step 2: Identify your assessable income

Keep in mind that your total assessable income could well be more than just your salary.

Some of the more common types of assessable income include:

- salary and wages
- tips, bonuses and gratuities
- interest income
- dividends
- allowances provided by your employer
- pensions or annuities
- lump sum payments
- capital gains on any asset sales during the year.

If you're not sure whether some income you have received is taxable, it's best to tell us about it so we can work out the correct tax treatment for you.

Step 3: Maximise your tax deductions

As an employee, you may be able to claim a range of work related expenses, as well as some non-work related items like donations of more than \$2 to an approved charity.

Some of the more common work-related deductions include:

- Self education expenses incurred in developing the skills required for you to do your current job. Such costs should be fully deductible in the year in which they are incurred. Generally, self education expenses that qualify you to get a new job will not be deductible.
- Working from home deductions (such as telephone and internet costs).
- Uniforms or specialised clothing (such as a nurse's uniform) and associated dry cleaning/laundry costs.
- Work related travel expenses such as the cost of travel between jobs.
- Subscriptions and union dues.

In addition, individuals will be entitled to deduct donations to approved charities of more than \$2.

Many individuals will also be entitled to claim certain upfront deductions in respect of their rental property, such as:

- Interest on a loan to:
 - Acquire a rental property or land on which to build a rental property
 - Acquire a depreciating asset
 - Finance renovations to the property
 - Make repairs to the property and associated assets such as electrical appliances.
- Costs of repairs to the property (but not generally costs of improvement)
- Cost of preparing a lease agreement

In addition, the following costs can be deducted over time in respect of rental properties:

- Improvements to the property
- Cost of replacing assets
- Decline in value of depreciating assets
- Borrowing costs (such as loan establishment fees).

Taxpayers cannot deduct the following amounts in respect of their rental property but can add such expenses to the cost base of the property:

- Stamp duty
- Legal expenses

You are not entitled to claim deductions for any part of the property or loan that is used for private purposes.

Step 4: Make the most of tax offsets

As with previous years, the ATO is still finding that taxpayers are not taking advantage of a number of rebates (now called “tax offsets”) and other concessions.

Tax offsets can reduce any tax you may have to pay on your taxable income and can in some instances even result in a refund.

Make sure you get advice to ensure you are not overlooking an offset that may be of benefit to you (such as the *medical expenses offset*).

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 – 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.

The ATO's ruling broadly states that a private company will be taken to have made a loan to a trust where the private company has a present entitlement to a distribution made by the trust, and this entitlement remains unpaid for a period of time, or the UPE is specifically converted into a loan.

As a result, if the trust is an associate of a shareholder of the private company, such a deemed loan will be subject to Division 7A.

Generally, a trust will be an associate of an individual shareholder if the shareholder stands to benefit under the trust.

However, consequences under Division 7A may be avoided if the "loan" is either put on a commercial footing, or the UPE is set aside in a sub-trust for the exclusive benefit of the private company.

The practice statement sets out:

- When a UPE that came into existence in previous years will have been subsequently converted into a loan.
- Self corrective mechanisms to reclassify such loans as UPEs where amounts have been misclassified or treated incorrectly.
- When a subsisting UPE may be converted into a loan.
- How to set such a UPE aside on a sub-trust for the exclusive benefit of the private company so that it does not convert into a loan.

Taxpayers that have tax affairs involving a family trust and related company should seek advice from their tax advisor to ensure that an UPE under the trust in favour of the company has not resulted in a deemed dividend that is required to be included in the taxpayer's assessable income.

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.

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