

Client Alert April 2011

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Cash Economy Letters Encouraging Compliance, Says Tax Office

According to the Tax Office, its cash economy letter program is encouraging positive compliance behaviour among small business taxpayers. This financial year, the Tax Office aims to send over 100,000 letters to taxpayers who it believes may be participating in the cash economy. The Tax Office said it will mostly send letters to business operators reporting outside the small business benchmarks for their industry, or to those who, in the Tax Office's view, have reported insufficient business income to meet their expected living expenses.

TIP: The Tax Office has developed small business benchmarks which it uses to compare the performance of a business against other similar businesses that are operating in the same industry. The benchmarks are published on the Tax Office website. The benchmarks can be used by businesses to help assess if they are likely to be selected for an audit or review. If your business is operating outside the relevant benchmark, it may be prudent to review record-keeping practices or to review how your business operates. Please contact our office for any assistance.

Director's Penalty Notice Given When Delivered, Not Posted

In a recent case, the NSW Court of Appeal held that a previous decision of the Court was "clearly wrong" when it held that the 14-day period within which a director is required to take specific action in response to a director's penalty notice ran from the date of its posting. Rather, the Court of Appeal said the period ran from the date of the delivery of the notice.

Calculating Distributable Surplus when Tax Bill Amended

The Tax Office has indicated that it will administer the law in accordance with the findings of a recent Full Federal Court decision. The case concerned whether income tax and general interest charge (GIC) assessed by an amended assessment are taken into account when calculating a company's net assets and distributable surplus. This calculation is important because the amount of deemed dividend for a loan, payment or debt forgiveness by a company to its shareholder (or associate of the shareholder) is restricted to the company's distributable surplus for an income year.

The crux of the Court's decision is: if a company receives an amended assessment with tax and GIC payable for a previous year, the company's distributable surplus for that income year needs to be recalculated by reducing the surplus by the amount of the tax and GIC payable on the amended assessment - this may result in lower individual tax bills for individuals who receive the deemed dividend.

Tax Office's Approach to Self-Managed Super Funds Affected by Floods

The Commissioner has given an indication of how the Tax Office will deal with self-managed superannuation funds (SMSFs) that own flood or cyclone-damaged buildings purchased under the strict borrowing rules contained in the superannuation law. Mr D'Ascenzo noted that SMSFs in these situations may be prevented from making improvements without breaching the rules. However, while the Commissioner does not have the discretion to treat an improvement as a repair, he said the Tax Office will not be seeking to make fine distinctions when having regard to what is available to repair what has been damaged.

Labour Hire Firms and Splitting Income Warning

The Tax Office has recently highlighted its concerns regarding an arrangement where a labour hire firm utilises a discretionary trust for the purpose of splitting the incomes of workers with their spouses (or other related people). Workers may be entering into these arrangements in an attempt to reduce their tax bills; however, they may not be aware that the arrangement, or parts of it, may be ineffective under the tax law. Tax Commissioner Michael D'Ascenzo said he was concerned that firms involved in such arrangements may not be withholding the required amount of tax or providing the correct amount of superannuation to their workers.

TIP: The Commissioner has given anyone who has participated in such arrangements until 30 April 2011 to contact the Tax Office for guidance. Mr D'Ascenzo said taxpayers will be entitled to a reduction in any penalties that might apply if an arrangement is proved to be ineffective.

GIC and SIC Rates

The Tax Office has advised the general interest charge (GIC) and shortfall interest charge (SIC) rates for the fourth quarter of the 2010-11 income year (ie 1 April 2011 to 30 June 2011):

RATE	ANNUAL (%)	DAILY (%)
GIC	11.92	0.03265753
SIC	7.92	0.02169863

Eye Glasses Discount Deal Throws New Light on GST Calculation

A retailer of spectacles has won a court case regarding the correct calculation of GST in relation to spectacles it sold to customers under a special promotion. Broadly, the taxpayer offered its customers spectacle frames at a discount provided they purchase the lenses at full price. The lenses are GST-free, whereas the frames are a taxable supply - together the spectacles are referred to as a "mixed supply". The Full Federal Court agreed with the taxpayer that the discount should only be applied to the frames, and not apportioned between the lenses and the frames as contended by the Commissioner.

TIP: The Court's method may result in a lower amount of GST payable than the method contended by the Commissioner in the case.

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