

FLOWERS EDDY CPA

PO Box 220

WILLETTON WA 6955

Tel: 08 9354 6000

Fax: 08 9354 6020

Email: admin@fecpa.com.au

Practice Update

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

NOVEMBER 2011

ATO clamps down on GST fraud and cash income

A key part of the ATO's Compliance Program is increasing their focus on non-complying taxpayers in the GST system, as well as those who fail to report some or all cash transactions.

To this end, the ATO has increased its scrutiny of businesses deliberately not reporting cash income, with over 1.4 million small businesses evaluated against the ATO's "sophisticated risk detection systems". The ATO also states: "While it is not illegal to trade in cash, it is illegal to not report it".

As an example of their compliance activity, a director in WA has been sentenced to 3 years jail, with a non-parole period of 20 months, for understating cash business sales by over \$5.6 million and for the intent to underpay GST obligations by around \$514,000.

The ATO also reported that they received over 44,000 'contacts' last year, including calls, letters, faxes and emails from the community relating to those who may be doing the wrong thing in relation to their obligations (via the ATO's Tax Evasion Referral Centre).

Another successful prosecution resulted in a NSW solicitor being sentenced to 6 years jail for claiming \$1.6 million in fraudulent rental deductions for a property over a period of 12 years.

The property had been declared as an investment property during this time, but evidence proved that the defendant and his family were actually living in the property, and that the property was not being used to produce assessable income.

ATO & GST compliance

The Tax Office says that GST cheats are more likely than ever to be caught out this year, as it plans to increase its audits on GST refund claims by small businesses and investigate cases of serious evasion.

It will complete an extra 11,500 cases in 2011/12 investigating the systematic or deliberate under-reporting of GST and fraudulent GST refund claims.

Last financial year 28 people were prosecuted for more than \$17 million worth of GST-related fraud offences.

Cash economy and the ATO's benchmarks

Recently, the Tax Office discussed its small business benchmarks* that were introduced in October 2009.

Editor(*): The benchmarks cover a range of industries that are likely to receive cash such as most building trades, and many small retailers such as pizza shops, takeaways or hairdressers. If you would like to know if your business has been benchmarked, please call our office.

The ATO advised that 121 benchmarks have been published covering 101 industries. The benchmarks are intended to cover the higher risk elements of the cash economy.

As part of the ATO's audit strategy, businesses that are outside the benchmarks for more than a year can expect to be reviewed/audited.

The following "stats" are of interest:

- last year 118,000 taxpayers were reviewed;
- omitted income is found in about 25% of all cases audited; and
- this year, record-keeping will be targeted.

Editor: Clients who are in industries that have been benchmarked need to understand that accurate and detailed record-keeping has become the name of the game. If a taxpayer doesn't have the records to prove they are innocent, the Tax Office will in all likelihood find them guilty.

ATO warning about illegally accessing super early

The ATO is concerned about the number of illegal schemes being promoted that offer people access to their super savings early.

In addition to paying excessive fees or commissions (sometimes in excess of 40% of their super balance) a fund member could be taxed at rates as high as 46.5% even if the amounts are repaid to the fund.

The ATO also warns people to be wary of Identity theft and fraud, as these thefts can go unnoticed for some time and cause long term problems for the individual in obtaining finance in the future.

Fund members may access their super early if they are experiencing financial hardship or have strong compassionate reasons.

Editor: Please speak to us if you wish to access your super.

SMSF's and money lending

Editor: The Tax Office has issued an information sheet on their website warning Trustees about the perils of lending SMSF's funds to the wrong person.

This includes the practice adopted by some taxpayers of withdrawing funds from an SMSF to temporarily help prop up their business when cashflow is tight.

This practice has apparently become quite prevalent since the global financial crisis.

Is your loan (or withdrawal of funds) in your SMSF's best interest?

The Tax Office asks - has your SMSF loaned money? If so, make sure the loan terms comply with the law and are in the best interests of your retirement.

When a loan agreement is not in the best interest of your SMSF - for example, when you have given discount loan rates or favourable terms - this could have serious consequences.

In addition to putting your member's benefits at risk, your SMSF could be found to be non complying and would, therefore, not qualify for concessional tax rates.

Christmas Gifts

Briefly, the general FBT and income tax consequences for gifts are as follows:

- gifts to employees and family members - FBT is payable (except where the less than \$300 minor benefit exemption applies) and a tax deduction is allowed; and
- gifts to clients, suppliers, etc. - no FBT, and a tax deduction is allowed.

Gifts which ARE NOT considered to be entertainment

These generally include, for example:

- a Christmas hamper, a bottle of whiskey, wine, etc.; and
- gift vouchers, a bottle of perfume, flowers, a pen set etc.

Gifts which ARE considered to be entertainment

These generally include, for example:

- tickets to a theatre, live play, sporting event, movie or the like; and
- a holiday airline ticket or admission ticket to an amusement centre.

The general FBT and income tax consequences for these gifts are as follows:

- gifts to employees and family members - a tax deduction is allowed and FBT is payable (except where the minor benefit exemption of \$300 applies); and
- gifts to clients, suppliers, etc. - no FBT and no tax deduction.

Non-entertainment gifts at functions

What if a Christmas party is held at a restaurant at a cost of less than \$300 for each person attending, and employees with spouses are given a gift or a gift voucher (for their spouse) to the value of \$150?

Under the actual method, for employees attending with their spouses - no FBT is payable because the cost of each separate benefit (including the gift) is less than \$300 (i.e. the benefits are not aggregated).

No deduction is allowed for the food and drink, but the gift is deductible.

Editor: This is all pretty complicated so if you would like a little help, just contact our office.

Using the 50/50 method

There is another method of calculating the allocation of costs between employees and non-employees. It is referred to as the 50/50 method. Please note there is no benefit exemption with this option and we find it is rarely preferable to the actual method.