

THE BOTTOM LINE

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(1) PERSONAL TAX RATES

The following changes have been made to the individual tax rates (the changes are in bold):

For the Year Ended 30 June 2010	
Taxable income (\$)	Rate (%)
0 - 6000	0
6,001 - 35,000	15
35,001 - 80,000	30
80,001 - 180,000	38
180,001 +	45

From 1 July 2010	
Taxable income (\$)	Rate (%)
0 - 6000	0
6,001 - 37,000	15
37,001 - 80,000	30
80,001 - 180,000	37
180,001 +	45

More for low income earners

For the 2010 financial year, the low income tax offset (“LITO”) is \$1,350. If you’re eligible for the full LITO, you will not pay tax until your taxable income exceeds \$15,000.

For the 2011 financial year, LITO will increase to \$1,500, meaning that if the full LITO applies, no tax will be payable until taxable income exceeds \$16,000.

(2) NEW SUPER DEDUCTION RULES

Changes have been made to tax deduction rules for personal super contributions. Generally, in the past, you could notify your fund at any time that you intended to deduct contributions. Now you must use an approved form which must be lodged within a defined time period.

You must now lodge a *Notice of intent to claim a tax deduction for super contributions or vary a previous notice* with your super fund.

Once you have lodged the notice, it cannot be varied except to reduce the amount claimed in the notice.

Disclaimer

We believe the advice and information contained in this newsletter to be accurate and reliable but no warranty of accuracy or reliability arising in any other way for errors or omissions (including responsibility to any person by reason of negligence) is accepted by the company or its officers.

You must determine the amount you wish to claim as a deduction before you lodge your tax return or before the end of the next income year, whichever is earlier. You cannot change the amount claimed after this date, unless the deduction is not allowed.

A deduction can only be claimed if you have received written acknowledgement from your fund. The fund will then treat the amounts as taxable contributions.

(3) DISTRIBUTIONS BY TRUSTS TO CORPORATE BENEFICIARIES

Over the past year or so, there has been a lot of attention on the ATO intending to crackdown on tax planning using trusts.

The latest target has been discretionary trusts that make distributions of their income to private companies (“corporate beneficiaries”). In particular, the ATO has concerns with trusts declaring distributions to such corporate beneficiaries, but not actually paying the amount to that beneficiary – that is, leaving it in the financial records of the trust as an unpaid present entitlement. By doing this, the funds are left in the trust to be reinvested and a liability is recorded to show the amount that is payable to the corporate beneficiary.

The ATO has now released a new ruling (TR2010/3) and a draft practice statement (PSLA3362) outlining their current views on such arrangements. These documents are a significant shift in the ATO views of unpaid present entitlements to corporate beneficiaries from the views and practices they have permitted for many years.

Essentially, the ATO is now taking the view that in certain situations, such unpaid present entitlements may be treated as “loans” by the corporate beneficiary to the trust. This means that Division 7A of the Income Tax Assessment Act may apply to treat such “loans” as deemed dividends and taxable to the shareholders of the company.

The ruling was released in December 2009, but certain sections apply both before and after the date of its release.

The ruling broadly applies in the following situations:

- a private company has a present entitlement to an amount from a related trust (i.e. it can call for immediate payment of the amount by the trust);
- the amount remains in the trust rather than being distributed to the private company (i.e. there is an unpaid present entitlement); and
- the amount is used by the trust for its own purposes or intermingled with other trust funds (as opposed to being held by the trust on a sub-trust for the company).

The ruling concludes that a Division 7A loan will arise where:

- a private company beneficiary lends (by agreement, authorisation or ratification) money in satisfaction of an unpaid present entitlement;
- the trustee creates a loan for the benefit of the private company beneficiary pursuant to the trust deed instead of creating an unpaid present entitlement;
- there is a subsisting unpaid present entitlement and the private company has in substance effected a loan or provided financial accommodation in respect of that unpaid present entitlement; or

- an unpaid present entitlement has been allowed to remain outstanding for use by the trust generally (as opposed to being used or invested or lent for the absolute benefit of the corporate beneficiary).

The draft practice statement sets out practical guidance to assist in the application of the Commissioner’s position, including guidance in relation to:

- when a loan agreement may be considered ‘express’ or ‘implied’
- when a ‘loan’ may be taken to have been made
- the resulting tax consequences if a loan is taken to have been made
- the review period that will apply in relation to such loans (generally the ATO will not review the tax consequences of such loans outside the standard amendment period applicable)
- how to determine whether funds representing the unpaid present entitlement are being used for the company’s sole benefit (as opposed to trust purposes) and the evidence that may be used to substantiate the position taken
- how to determine if there is a sub-trust in place
- application of the Commissioner’s discretion under Division 7A to deemed loans as per the ruling

NOTE

As these issues are complex, taxpayers should consider the impact of the ruling and the practice statement on their affairs very carefully.

We will be working through these situations with each of our clients who are affected, with a view to minimising any adverse tax consequences that may arise.

(4) MORE ON TRUSTS – BAMFORD CASE

Earlier this year, the High Court of Australia ruled on a tax case involving a taxpayer (Bamford) and the manner in which the income of his discretionary family trust had been distributed.

The case was complex and involved specific determination of the use of words in the Income Tax Assessment Act, what they actually mean and how they should be interpreted and applied in practice.

The conclusion of the case was that:

- (a) the words “income of the trust estate” (as used in the tax legislation) is determined by reference to the general law of trusts rather than taxation law;
- (b) the general law of trusts defines income by reference to generally accepted accounting principles, but such principles may be displaced by express provisions in a trust deed;

- (c) as such, where the trust deed deems an amount to be “income” of the trust, the amount will constitute “income of the trust estate” for the purposes of applying Section 97 of the Income Tax Assessment Act; and
- (d) when distributing the “income of a trust estate”, each beneficiary is entitled to a proportionate share of the income available for distribution, rather than a fixed and nominated amount.

The practical consequence of this case is that it may be necessary to make some changes to the wording of distribution minutes. We will be working with all clients affected by this case and explaining any issues as required.

Meanwhile, lobbying is intensifying for changes to the legislation to modernise the wording and clarify the meaning of terms used in relation to the tax treatment of trust income.

(5) CONTINUING ATO SUPPORT FOR BUSINESSES IN FINANCIAL DISTRESS

For businesses that are experiencing continuing financial distress, the ATO is offering services including flexible payment arrangements, interest-free deferrals of activity statement liabilities, cash flow relief through reduced uplift factor for PAYG and GST instalments and PAYG instalment variations.

Businesses in hardship should contact the ATO as early as possible to explore available options, otherwise the ATO may seek to take firmer action with businesses that default on payment arrangements, or do not have the capacity to pay.

TIP

Businesses that are struggling in the current economic climate may want to approach the ATO to explore available assistance options.

(6) ATO COMPLIANCE PROGRAM 2010/11 – TARGET AREAS

The ATO recently released its compliance program for 2010/11.

In relation to tax compliance for small and medium enterprises the ATO will be focussing on a variety of issues, including the following:

Business activity statements – the ATO will be focussing on compliance issues related to BASs, specifically reported property sales and acquisitions and application of the margin scheme rules.

Capital gains and losses – the ATO will be focussing on the calculation of capital gains and losses including in relation to the application of small business CGT concessions, other CGT concessions or rollovers, calculation of cost base, capital gains

and losses on the disposal of shares and property (including non-residents).

Cash economy – the ATO will be focussing on businesses that conduct a high level of cash transactions (such as paying cash-in-hand wages) in order to identify taxpayers that may be using cash transactions to hide income and evade tax obligations. This includes the use of business benchmarks which allow comparisons between similar businesses to identify typical or expected turnover levels.

Company deregistration – the ATO will be examining the affairs of taxpayers who deregister companies.

Employer obligations – the ATO will be monitoring employers’ compliance with their PAYG withholding obligations and superannuation guarantee obligations. In relation to superannuation, the ATO will be focusing on road freight transport, automotive repair and electrical service industries. The ATO will also continue to work with promoters, industry representatives and sporting bodies to provide guidance on withholding obligations for visiting entrepreneurs and sportspersons.

Financial supplies – the ATO will be focussing on the GST consequences of transactions related to financial supplies, especially in relation to the appropriate identification and linking of acquisitions to the making of financial supplies. The ATO will focus specifically on capital raising activities, managed funds or superannuation funds, contributory mortgage schemes, small financial transactions (such as pawnbrokers etc) and mergers and acquisitions.

Fringe benefits tax – the ATO will be focussing on the treatment of motor vehicles, in particular appropriate recording of private use in relation to luxury car purchases and exempt vehicles.

GST – the ATO will be focussing on the GST impact of cross-border transactions, integrity of GST refunds, sales of property and issues concerning retirement villages.

International transactions – the ATO will be focussing on foreign source income, deductions relating to cross border transactions and the application of the thin capitalisation and transfer pricing provisions.

Losses – the ATO will be focussing on the utilisation of losses, especially the incorrect treatment of capital losses as revenue losses.

Personal services income – the ATO will be focussing on contractors to ensure that all PSI is appropriately disclosed, with a particular focus on engineers and computer technology specialists in the mining industry.

Self managed superannuation funds (SMSFs) – the ATO will be focussing on loans to related parties, deductions claimed for exempt current pension income, treatment of losses and re-reporting of member contributions.

Shareholder loans – the ATO will be focussing on amounts paid or distributions made by private companies to shareholders or connected entities to ensure any deemed dividends are appropriately reported.

Trusts – the ATO will be focussing on the TFN reporting obligations of trustees in respect of beneficiaries to whom distributions are made.

TIP

Although the ATO is targeting the areas mentioned above, businesses should not think that this means that the ATO will not be looking at other areas too. They will!

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