

March 2010

CLIENT ALERT

R&D Tax Offset Abuse

The Tax Office has issued a Taxpayer Alert warning taxpayers to be cautious of investment schemes that abuse the research and development (R&D) tax offset.

The Tax Office says the schemes involve a company structuring contracts with a registered research agency (RRA) to take advantage of the prepayment concessions in the tax laws.

The Tax Office is concerned the schemes may give rise to various taxation issues, including whether:

- the prepayments rules will apply;
- the expenditure has been incurred; and
- the company and the RRA are dealing with each other at arm's length.

Deductions and Refinancing Home Loans

The Tax Office has also issued a Taxpayer Alert in which it alerts taxpayers about sham arrangements being promoted as 'mortgage management plans'.

The arrangements involve homeowners refinancing their home loans and establishing investment loans to fund the purchase of shares in bogus companies. Homeowners then claim tax deductions for interest incurred on the loans.

The Tax Office says the arrangements may give rise to various taxation issues, including whether:

- the general anti-avoidance provisions may apply to the arrangements; and
- any interest incurred on the investment loans is deductible.

Uncommercial Offshore Superannuation Trusts

The Tax Office has also issued a Taxpayer Alert warning taxpayers that it is closely scrutinising offshore trust structures that masquerade as superannuation funds used by taxpayers in an attempt to avoid tax on money that is shifted into Australia.

According to the Tax Office, taxpayers use the trusts to invest funds received from a related non-resident employer or service entity to earn overseas income. The accumulated monies in the trusts are moved to Australia under the guise of retirement benefits or contributions to a complying superannuation fund after a period of time.

The Tax Office is concerned the structures may breach the provisions of the superannuation laws. The Tax Office is also concerned the structures may give rise to various taxation issues, such as the application of the provisions governing foreign income and the general anti-avoidance provisions.

Superannuation Funds and Illegal Early Release

New steps to prevent the rollover of funds to self-managed superannuation funds (SMSFs) created for the purpose of illegal early release of benefits have been implemented by the Tax Office.

The steps are being implemented in two stages.

The first stage commenced in January 2010 and introduced improvements to the SMSF registration process to help prevent non-legitimate SMSFs from being displayed on the Super Fund Lookup (SFLU) web page.

As a result of improvements to the registration process, trustees of SMSFs should be aware that:

- a new SMSF application will take seven days to be assessed by the Tax Office and to appear on the SFLU; and
- a superannuation fund will not process a rollover request by an SMSF unless the SMSF is listed on the SFLU.

Excess Contributions Tax: Commissioner's Discretion

The Tax Office has provided guidance on whether or not the Commissioner will exercise his discretion to disregard excess non-concessional contributions where:

- the contributions were initially made as concessional contributions but due to unforeseen inability to claim a tax deduction were treated as non-concessional contributions; or
- the excess contributions arose due to a banking error made by a party other than the trustee of a superannuation fund.

The Tax Office reiterates that the Commissioner will only exercise his discretion if there is:

- the existence of 'special circumstances'; and
- the object of the tax laws governing superannuation contributions are met.

Payment from Transition-to-retirement Pensions

The Tax Office has also stated its view on whether a member of an SMSF with a transition-to-retirement account-based pension, where the entire balance of the pension is preserved money, can make an election such that a payment from the pension is taxed as a superannuation lump sum rather than a superannuation income stream benefit.

The Tax Office says an election can be made to tax a payment as a superannuation lump sum if the pension is commuted, where the necessary conditions are satisfied.

Ø **TIP:** The tax treatment of a superannuation lump sum and a superannuation income stream benefit is different. Generally, less tax is paid on lump sums than income payments.

No Deduction for Misappropriated Money

In a recent case, the Full Federal Court dismissed a taxpayer's appeal against the denial of his claimed deduction of \$2.3 million for money misappropriated by his investment manager.

The taxpayer sold a parcel of shares and transferred the proceeds to the manager. However, the funds were misappropriated by the manager.

In his 2002 tax return, the taxpayer included a net capital gain of \$2.3 million from the sale of the shares. However, he also claimed a deduction for the misappropriation, which was disallowed.

FBT Audit and Compliance Activities

With the 2009/10 FBT year drawing to a close, it is important to note the FBT audit and compliance activities currently being undertaken by the Tax Office.

The activities include:

- car fringe benefits and data matching;
- incorrectly claimed FBT rebates;
- lodgment of FBT returns; and
- reduction of FBT liabilities and employee contributions.

GST: Decreasing Adjustment Note Threshold Increased

The Government will increase the decreasing adjustment note threshold for the purposes of GST.

With effect from 1 July 2010, the threshold is \$75 or less.

Goods Taken for Private Use

The Tax Office has released the amounts which it will accept as estimates of the value of goods taken from trading stock for private use for the 2009/10 income year by taxpayers in certain specified industries.

These industries include:

- bakery;
- butcher;
- caterer;
- deli;
- fruiterer/greengrocer;
- mixed business (eg general store);
- restaurant/café; and
- takeaway food shop.

Ø **TIP:** Taxpayers should ensure the value attributed to goods taken from stock for private use is fair and reasonable, and have regard to their own circumstances.

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