



Orr, Martin & Waters

CHARTERED ACCOUNTANTS
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Trust Entitlements and Loans: Tax Office Issues Guidance

The Tax Office has released its keenly awaited guidance on the tax treatment of trust entitlements and loans. The guidance is in the form of a practice statement. It explains how the Tax Office will apply its ruling when a private company with an unpaid present entitlement (UPE) makes a loan to the trust estate which generated the entitlement. The ATO approach will differ depending on how the loan was created.

1. Where the trust pays the entitlement to the company, but then receives the funds back as a loan, this will be considered to be a loan caught under Division 7A. This means a loan agreement must be in existence that meets the ATO requirements, otherwise significant tax consequences will arise!
2. Where the trust has not paid out the company's entitlement, the ATO will expect that this will be re-classified as a UPE in the books of the trust. The ATO will not apply Division 7A to loans that were in existence before 16th December 2009.

The Commissioner said the practice statement provides practical ways for businesses to work towards a compliant structure with minimal impact on their cash flows or how they operate. He said that where businesses had made mistakes in the past, the practice statement provides several options for private companies to self-correct. In general, taxpayers have until 30th June next year to decide what to do.

We will be speaking with clients who have UPE arrangements about the tax implications. Clients who have created or increased their UPE since 16th December 2009 should contact us immediately to discuss their options.

Education Tax Refund — You Claim It, They Check It

The Tax Office will be requesting names and addresses of Family Tax Benefit Part A recipients from Centrelink in an effort to identify recipients who may be incorrectly claiming the Government's 50% education tax refund for primary and secondary school student expenses. The Tax Office expects to match records of around 1.5m individuals registered with Centrelink.

It again shows how important it is to obtain accurate information from government agencies before you visit the accountant. Whilst we have seen an improvement in the information we can access from Centrelink, this was not the case a few years ago, and therefore we expect that some clients may receive repayment requests for over-claimed benefits.

Tax Office Scans Car and Real Property Purchases

The ATO has advised that it will collect records relating to motor vehicle purchases and real property transfers from relevant government authorities building on data previously collected as part of its ongoing data-matching projects. The data will be used as part of the Tax Office's compliance activities to identify cash economy participants, that is, those who are deliberately not declaring income to the Tax Office. The Tax Office will also focus on ensuring taxpayers involved in property transfers are meeting their GST obligations.



The ATO will request data from motor vehicle registries where a motor vehicle was sold, transferred or newly registered between 1 July 2009 and 30 June 2010 and the value of the vehicle was \$10,000 or greater. In relation to real property transfers, the ATO will collect identity and transaction details from state revenue authorities relating to property title transfers between 1 July 1999 and 30 June 2010.

This highlights yet another reason why clients should contact us to discuss intended vehicle purchases. In order to secure the best tax advantage, it is important





to determine whether the vehicle should be bought in the name of the business or personally. If the vehicle is purchased by the business, but the vehicle costs are deducted in an individual's tax return, the ATO will now be in a position to challenge tax claims because it will know the legal ownership of the vehicle. So don't forget to call us first!



SMS

Fs and Private Companies Investing in Trusts: Tax Office Warning

The Tax Office has warned self-managed super funds (SMSFs) not to invest in trusts with the intention of making funds available for lending to members. The warning comes in a taxpayer alert which describes an arrangement where an SMSF invests money in an unrelated trust that then on-lends the funds to an SMSF member or relative. The Tax Office says such arrangements attempt to circumvent strict rules prohibiting SMSF trustees from lending money or providing financial assistance to a member or a relative using the resources of the fund.

In another similar taxpayer alert, the Tax Office warned private companies against investing in trusts with the intention of making funds available for lending to shareholders. The taxpayer alert describes an arrangement where a private company invests funds in an unrelated trust that then on-lends the funds to a shareholder or an associate of a shareholder. The Tax Office warns the arrangement may be an attempt to circumvent tax rules which are aimed at preventing private companies from making tax-free distributions of profits to shareholders or their associates.

Employing your Spouse? Is there an "Employment Relationship"?

Two recent cases before the Administrative Appeals Tribunal dealt with the scenario of a husband employing his wife to assist with looking after rental properties. The question before the Tribunals was whether there was a "genuine employment relationship". In both cases, it was found that there was no employment relationship in the circumstances, therefore the taxpayer would not be entitled to deductions for salary or wages, fringe benefits, and superannuation contributions paid in relation to "employing" the spouse. Rather, the outgoings would be considered to be private or domestic in nature.

It is not against the law to employ your spouse. However, the arrangement must be genuine and this requires examining the totality of the relationship when characterising it. As demonstrated by the cases, one cannot transform an existing domestic relationship simply by calling it a different name, or by adopting some aspects of an employment relationship. If you are considering employing your wife or other family members, please give us a call to discuss how to establish the arrangement so it passes the ATO tests.

Taxpayer Win on Youth Allowance

The High Court unanimously dismissed the Commissioner's appeal and held that a taxpayer was entitled to a deduction for expenses incurred in deriving income from receiving Youth Allowance. The Full Federal Court had previously dismissed the Commissioner's appeal and held that self-education expenses incurred by the taxpayer in deriving Youth Allowance were allowable deductions.

The government has announced that a Decision Impact Statement will be issued as soon as possible and in the meantime, the ATO will continue to apply its view that education expenses are not deductible against various Commonwealth educational assistance schemes.

We expect that the government will eventually legislate to deny these deductions for future tax years.

Government Changes Tax Relief on Interest

The Federal Government's 50% tax discount on interest income has been modified. The commencement date has been pushed out to 1st July 2012 and the amount of interest income eligible for discount has been capped at \$500 in its first year of operation. The cap will be increased to \$1,000 from 1st July, 2013 onwards. The move has stemmed from the government's strategy for returning the Budget back to surplus in 2012-13.

Deduction for Super Contributions — Ensure Paperwork Valid

The Tax Office has reminded self-managed super fund (SMSF) members that if they intend to claim a tax deduction for their personal superannuation contributions, they must complete the correct form entitled: "Notice of intent to claim or vary a deduction for personal super contributions". In addition, SMSF members must also receive an





'acknowledgment' from the fund of the valid notice they have completed.

Clients can obtain forms from our office or from the ATO website.

Excess Superannuation Contributions: Superannuation Law Changes on the Way

Recently, the ATO sent letters to some of our clients to advise them that they had made superannuation contributions that exceeded the maximum amounts permitted in one year. This can occur where clients are contributing to more than one fund, and/or where employers do not remit contributions to funds on a regular basis. For example, an employer might switch from sending monthly contributions one month in arrears, but then decide in the next year, to pay all contributions, including June by year-end. This would result in 13 months being received in one year and could mean that the individual exceeds the current age-based cap of \$25,000 or \$50,000 respectively.

At present, the taxpayer is unable to ask the ATO to use its discretion to re-allocate contributions between different years until they have been served with an assessment for excess contributions tax.

A Bill is currently before Parliament which proposes to amend the tax law to allow the Commissioner to exercise a discretion to disregard or allocate to another financial year all or part of a person's contributions for the purposes of excess contributions tax before an assessment is issued. This is good news given the difficulties the current system is creating for tax agents and clients in resolving these problems with the Tax Office.

We remind clients to be mindful of the contribution caps when making salary sacrifice arrangements or year-end additional contributions. We have seen some examples of employees who have not remitted amounts to funds on a timely basis, so it may be helpful to check your pay slips or make enquires at your pay office about the level and frequency of super payments being made on your behalf. If you want more information on the

contribution caps and employer obligations, please contact today.

CHRISTMAS NEWS

Message to Employers: Give generously, but watch out for FBT!

We wish to pass on our annual reminder to employers contemplating some big staff functions this Christmas to consider the impact that Fringe Benefits Tax may have on the total cost to your business.

Generally, parties held on employer premises and involve only employees will be fully exempt from FBT.

FBT will not apply to a function where the cost per employee is less than \$300. This threshold applies also to family members.

In addition, gifts are exempt up to \$300 in value.

For all other functions and activities, it is likely that FBT will apply. If you have any questions regarding how FBT applies to your circumstances, please give us a call!

Late lodgers Beware: Your time is up!

The ATO recently sent letters to some of our clients advising them that any outstanding prior year income tax returns must be lodged by 13th January 2011; otherwise they will issue a **default assessment**. Although the deadline has now been pushed out to 17th February, we remind any client in this situation to contact us **immediately** to arrange for those returns to be processed in January. The ATO will not provide any more extensions, and they do intend to send an assessment. So call us today!

FBT NEWS

Exemption for fly-in/fly-out workers to be extended

The Government has announced that it will legislate to extend the current FBT exemption for travel between work and home for certain Australian workers to those working overseas.

Specifically, the new exemption will now cover Australian residents working in remote overseas areas who are employed under "fly-in/fly-out" arrangements. At present, the exemption only applies to employees working in remote parts of



Australia.

The amendment removes the likelihood of double taxation and ensures that employees are taxed in the same way whether they are working in Australia or overseas. The legislation will be backdated to 1st July, 2009.

A discussion paper will be released in the new year prior to the legislative change.

21 st December	<i>Monthly Business Activity Statement – November 2010</i>
21 st January	<i>Monthly Business Activity Statement – December 2010</i>
21 st February	<i>Monthly Business Activity Statement - January 2011</i>
28 th February	<i>Quarterly Business Activity Statement – December 2010</i>

Calendar

Office Closure – Our office will be closed from for the Christmas break from Friday, 24th December and re-open on Wednesday, 5th January 2011. We wish all our clients a merry Christmas and a prosperous new year.



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