

TAXATION NEWS

Education Tax Refund See Centrelink First!

Last year, the ATO identified a number of taxpayers who claimed the Education Tax Refund (ETR) but were in fact ineligible to do so. Taxpayers must have received or be eligible to receive Part A of the Family Tax Benefit (FTB) in order to claim the refund. To reduce the incidence of error, the ATO has issued a warning that taxpayers must have lodged a claim for FTB and had the claim approved by the Family Assistance Office in order to be eligible.

Remember that the ATO will apply penalties to taxpayers who lodge incorrect returns, so we urge all clients to check their FTB and ETR eligibility carefully. **Breaking News:** For 2011/12 the cost of school uniforms can be included in an ETR claim, so taxpayers should remember to keep receipts for any uniform expenses incurred from 1st July.



Focus on Trust Streaming Rules What does it all mean?

In our last issue, we briefly informed you of the Federal Government's changes to the taxation of trusts, in particular in relation to distributing certain classes of income to specific beneficiaries- otherwise known as **streaming**.

The changes are very detailed and complex, so we've decided to provide you with some background information and a short summary explaining its impact on distributing trust income for 2011.

Background – Bamford and the meaning of income

Beneficiaries of a trust are ordinarily liable for tax on the trust's taxable income rather than the trustee. Specifically, a beneficiary that is presently entitled to a share of the trust's income will be subject to tax on that same share (i.e. proportion) of the trust's taxable income. In *Commissioner of Taxation v Bamford* ("Bamford") the High Court held that a trust's 'income' was its income according to trust law. This will be its income calculated under general accounting concepts, as modified by any definitions in the trust deed.

In response to the Bamford decision the Australian Taxation Office (ATO) took the view that the proportionate approach adopted by the High Court would not allow for the streaming of certain classes of income. Consequently, new provisions have been introduced to ensure that taxpayers can continue to stream capital gains and franked distributions. Note that the new rules do not deal with streaming of other classes of income (e.g. foreign income).

Trust deed requirements

It is important to remember that streaming will only be possible where it is permitted by the trust deed. The new rules are simply designed to ensure that any streaming of franked distributions and capital gains is effective for tax purposes. Consequently, taxpayers who wish to stream should review their deeds to ensure it is permitted.



Overview to the new rules

The new rules will broadly work as follows:

- to effectively stream a capital gain or franked distributions the trustee must make a beneficiary 'specifically entitled' to a share of the net financial benefit referable to that capital gain or franked distribution
- if the trustee does not make a beneficiary specifically entitled, the beneficiaries will be taxed on a proportionate basis, i.e. all beneficiaries receive a portion of the franked distribution and capital gain (where relevant) based on the beneficiaries respective share of the trust income
- if the trustee makes a beneficiary specifically entitled to a capital gain or franked distribution that amount will be excluded from the **income** of the trust estate and the trust's **net (taxable) income** in working out the remaining beneficiaries' share of the net income.
- the franked distribution and/or the capital gain will then be assessable to that specific beneficiary based on the amount actually received.
- if there are remaining amounts of franked distributions and/or capital gains to which no beneficiary is specifically entitled, the remaining amounts will be assessed to the beneficiaries on a proportionate basis.

What should you do?

Taxpayers wishing to stream capital gains and franked distributions should first review their trust deed to ensure it permits streaming. If streaming is permitted, they must make a beneficiary specifically entitled to the capital gain/franked distribution within the required period (i.e. by year end for franked distributions and within two months of year end for capital gains). Trustees should pass resolutions

evidencing that the beneficiary is specifically entitled. These resolutions should reference the trust deed powers which allow streaming, and also specifically refer to the particular capital gain/franked distribution.

The Government intends to re-write the tax provisions regarding trust income so these changes are to be seen only as a first step. We believe that the practical application of these new rules can often be difficult, therefore if you are intending to stream income from your trust or want to find out more about the changes, please contact our office to discuss the new rules in more detail.

More on Personal Services Income

The AAT has confirmed that the PSI rules applied to a taxpayer who provided his services as a draftsman through his private company to include over \$67,000 as personal income in the years in question. In doing so, the AAT found that the neither the "unrelated clients" test nor the "business premises" test applied to relieve him of personal liability.

In relation to the "unrelated clients" test, the AAT found that the taxpayer's contact of various clients by way of phone or email messages through his personal contacts or relationships in the industry (or to whom he was recommended by other clients) did not amount to "making offers or invitations to the public at large or a section of the public" as required in order to meet the test. Even "word of mouth" advertising and "direct offers" did not meet this requirement.

In relation to the "business premises" test, the AAT found that the drafting services provided by the taxpayer in the year in question were performed usually at the client's premises – and that any drafting work performed at his own premises was ancillary in nature and could be compared to an employee taking work home in the evening or on weekends. The AAT also dismissed the taxpayer's claim that the premises were used predominantly for his drafting service business in terms of the area of floor space used. In doing so, the AAT found there was no basis for this approach and that, in terms of turnover, the premises were predominantly used for another business operated by the taxpayer and his wife.

In addition, the AAT levied a 25% shortfall penalty for an incorrect claim for travel expenses on the basis that the taxpayer failed to take reasonable care and that there was no evidence he was required to travel in the course of providing his services at the various fixed locations where he worked.



helping business grow

ATO Reminder to Employers on Super Obligations



The ATO is reminding employers that super contributions need to be made for contractors employed under a contract that is wholly or principally for the contractor's labour even if the contractor has an ABN.

Employers must also provide the TFN of their employees to the nominated super fund within 14 days of receiving the information.

The ATO will also beef up its auditing this year of super guarantee compliance in specific industries. If you are an employer and are unsure of your super obligations, please call us for more information.

ATO gets tough on non-complying funds

The ATO and the courts are taking a hard line on trustees that illegally withdraw money from their super fund - even in extenuating circumstances.

Recently, the AAT presided over a case involving a self-managed fund whose members were a married couple and son. The couple withdrew all the cash from the fund and gave it to their son who had a serious drug addiction. The trustees concealed the true nature of the loss for five years, but it was eventually uncovered during an ATO audit.

Although the Tribunal acknowledged the tragic circumstances leading to the loss of all their retirement savings, they decided that the breaches were too serious to warrant discretion and held that the fund would continue to be considered non-complying and the ATO notices and penalties would apply.

It is therefore extremely important for trustees to be familiar with the rules and obligations in running a self managed fund. We would be happy to answer any questions from trustees regarding self managed fund administration and management.

Personal Properties Securities Register is coming soon!

The Federal Government is pushing ahead with establishing a national properties securities register (PPSR). The register will encompass most property (except real estate) that has been secured by finance arrangements such as a mortgage, a charge, a finance lease, or retention of title. Assets such as motor vehicles, plant and equipment, crops, and intellectual property are included.

Some state registers are to be migrated to the national system. This includes the Victorian *Vehicles Securities Register*.

Potential lenders and credit institutions will be able to search the register to ensure that certain assets are unencumbered when processing credit applications. In addition, business clients may expect to see additional paperwork when undertaking loan transactions involving secured property.

The register is scheduled to commence at the end of October, however an announcement to confirm the actual date is due this month. We will keep you informed of any further developments.

Goods Taken from Stock for Private Use

The ATO has provided an update of the amounts that it will accept for 2010-2011 as estimates of the value of goods taken from trading stock for private use by taxpayers in certain specified industries.

The amounts (which exclude GST) are:

<i>Type of business</i>	<i>Adult/Child over 16 years (\$)</i>	<i>Child 4-16 years (\$)</i>
Bakery	1,140	570
Butcher	770	385
Restaurant/cafe (licensed)	3,950	1,565
Restaurant/cafe (unlicensed)	3,130	1,565
Caterer	3,390	1,695
Delicatessen	3,130	1,565
Fruiterer/greengrocer	820	410
Takeaway food shop	2,970	1,485
Mixed business (includes milk bar, general store and convenience store)	3,750	1,875

Calendar

September 2011

Mon	Tue	Wed	Thu	Fri	Sat	Sun
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

August BAS - Monthly payers

October 2011

September
BAS Monthly
Payers

Mon	Tue	Wed	Thu	Fri	Sat	Sun
31					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Last day to lodge a 2011 income tax return if not lodged by a registered tax agent.

September Quarter BAS (Nov 25 if lodged electronically by OMW)

First Quarterly PAYG or Annual PAYG Instalment Due

November 2011

Mon	Tue	Wed	Thu	Fri	Sat	Sun
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

Melbourne Cup Day

October BAS Monthly Payers

Want to help the planet and reduce our carbon footprint? Well you can by electing to receive your copy of the OMW Newsletter by email. Just send us your preferred email address to: newsletter@omw.com.au along with your full name for correct client identification.