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client alert

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Tasmanian bushfires – lodgment and payment deferral

For victims affected by the Tasmanian bushfires of January 2013, the ATO announced that it will make arrangements to defer lodgment and payment of certain monthly and quarterly activity statements. The arrangements are automatic, which means taxpayers who reside in certain identified postcodes will not have to apply for a deferral.

Taxpayers who are located outside of the identified postcodes and who have been affected by a natural disaster are encouraged to contact the ATO for further assistance.

The Tasmanian State Revenue Office has also announced an extension of the time to pay land tax bills for persons affected by the bushfires.

SMSF investment in property requires care

The ATO has warned trustees of self managed superannuation funds (SMSFs) to exercise care in ensuring that arrangements entered into to invest in property are properly implemented, particularly those involving limited recourse loans.

The ATO is concerned about arrangements that do not comply with the superannuation law. It warned that such arrangements may not be simple to rectify. Further, it added that unwinding an arrangement may involve a force sale of the asset, which could cause a substantial loss to the fund.

TIP: Given the complexity involved, a trustee should obtain detailed advice in relation to a borrowing arrangement. It is vital to plan ahead to mitigate any adverse tax or stamp duty consequences. Please contact our office for further information.

ATO data-matching programs

The ATO has announced data-matching programs to identify instances where taxpayers may not be meeting their tax obligations. The ATO says it will collect data from various banks and credit card companies relating to credit and debit cards sales of entities for the period 1 July 2011 to 30 June 2012. This will assist in identifying circumstances requiring ATO administrative action.

Records relating to approximately 900,000 merchants will be matched. The ATO says it will also collect from state revenue offices and other government agencies the names and addresses of individuals and entities transacting with real property in order to identify non-compliance with the tax law. Records relating to over 10 million individuals will be matched.

Deductions for rental properties allowed

In a recent decision, the Administrative Appeals Tribunal (AAT) allowed a taxpayer's claim for rental deductions in respect of two properties for the 2008 income year.

The taxpayer owned the properties with her two sons as joint tenants and for part of the year, the properties were rented to her ex-husband and one of her sons. The taxpayer, in her 2008 tax return, declared a 50 per cent share of the rental income. She also claimed a 50 per cent share of the rental deductions.

The Tax Commissioner argued the tenancies were not commercial and therefore the deductions claimed were not allowable. However, the AAT found that there was no evidence that the taxpayer was assisting her ex-husband or her son. Further, the AAT noted the rent charged by the taxpayer did not differ greatly from the figures presented by the Commissioner. In conclusion,

the AAT held the rental income was assessable and the expenses incurred were deductible.

Foreign income assessable

The AAT has found that a taxpayer was a resident of Australia and therefore affirmed the Tax Commissioner's decision to assess the taxpayer's foreign income earned for the 2006 to 2008 income years.

The taxpayer migrated to Australia in 2005 with his family on a business migration permanent visa. He worked as a pilot, which required him to be away from Australia for extended periods of time.

The taxpayer argued that he was a foreign resident and should not be taxed on the income. However, the AAT said this was a case where the taxpayer was "clearly an Australian resident for tax purposes". Among other things, the AAT took into account the taxpayer's desire to live in Australia as stated in his permanent resident visa application, that his family lived in Australia and that he stayed in hotels when working overseas.

The AAT also noted that the taxpayer held an Australian driver's licence, retained private health insurance in Australia, had Australian bank accounts and owned an investment property in Australia.

Mistaken belief does not revoke excess super tax bill

A taxpayer has been unsuccessful before the AAT in arguing that her "mistaken belief" as to the timing of a superannuation contribution was a "special circumstance" that warranted reallocating excess superannuation contributions to an earlier financial year.

The taxpayer had started salary sacrificing in 2005 to build up her superannuation balance, which was relatively low due to her work patterns being affected by child care responsibilities over her working life. The taxpayer exceeded her \$25,000 concessional contributions cap for 2009–2010 by \$3,398 and was issued with an excess contributions tax assessment of \$1,070. The issue in dispute centred around an employer contribution that was made on 3 July 2009, but which was attributed to the 2009–2010 financial year.

The taxpayer was under the mistaken belief that an employer contribution made before 28 July would be treated as a concessional contribution for June 2009 and therefore allocated to the 2008–2009 year. The taxpayer argued that the timing of the contribution was beyond her control. She also claimed that the superannuation law could not have been intended to adversely affect women in her situation who have had child caring responsibilities.

Although the AAT was sympathetic, it nevertheless upheld the Tax Commissioner's decision not to reallocate the contribution because it found that the taxpayer's "mistaken belief" as to the timing of concessional contributions did not, in its view, constitute the "special circumstances" that are required under the superannuation law in order to reallocate a contribution.

TIP: This case highlights the need for individuals to know when their super contributions are being paid into their super fund by their employer. Individuals should also consider checking their salary sacrifice arrangements to see if there is an agreement as to when salary sacrifice amounts will be transferred by their employer to their super fund. Please contact our office if you have any questions.

Taxman's new power to address super law contraventions

The Government has proposed to establish what it calls a fairer administrative penalty regime for trustees of SMSFs for certain contraventions of the superannuation law. Administrative penalties would range from \$850 to \$10,200. Broadly, the new regime will give the Tax Commissioner another way to encourage recalcitrant SMSF trustees to remedy defects quickly, rather than rely purely on existing heavy-handed enforcement powers.

The changes also propose to give the Tax Commissioner a new power to issue SMSF trustees with "rectification directions" and "education directions" for superannuation law contraventions. A rectification direction may require the person to take a specified action to "rectify" the contravention and to provide the ATO with evidence of the person's compliance with the direction. An education direction may require a person to undertake a specified approved course of education within a specified time frame and to provide the ATO with evidence of completion of the course.

If implemented, the new regime will apply from 1 July 2013.

Important: Clients should not act solely on the basis of the material contained in Client Alert. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. Client Alert is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.