

# Practice Update

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AUGUST 2009

## **The Cash Economy and the new Personal living expense guide**

The ATO has developed a new guide to explain the importance they place on examining taxpayers' household expenditure when identifying omitted cash income in the course of reviews or audits.

*Editor: Basically, what the ATO will do is work out the taxpayer's family's living expenses, and compare this to their declared income – if the income is less than the expenses, something may be wrong . . .*

### **Personal living expense worksheets**

During an audit, the ATO often asks taxpayers to complete a questionnaire detailing the living expenses for their household.

The worksheets detail the type of information they look at when examining taxpayers' personal living expenses, including such items as tobacco and alcohol, heating, power, water and sewerage, phone, gardening and security, eating out, takeaways, lunches and coffees, lottery tickets, clothing and footwear, and "grooming" expenses.

Of course, many of these can be checked with third parties (banks, utilities, etc.), although other expenses have to be estimated. This new guide is integral to those estimations.

If, in the course of an audit, the ATO re-assesses the taxpayer's income to a higher figure, the taxpayer would then have to take the ATO to court to prove that the ATO's assessment is excessive.

The taxpayer may also have to pay penalties and interest.

## **ATO's 2009/10 Compliance Targets**

The Tax Office has signalled that it will soon be issuing its 2009/10 Compliance Program setting out where it intends to concentrate its audit activity.

Some of the things the Compliance Program will concentrate on include:

- ◆ Early identification of businesses that need help (particularly small businesses) and may fall behind in payments. Early indicators are late lodgments, or payment hiccups;
- ◆ Continuing development of industry benchmarks, which will be used in audits;
- ◆ Ensuring employers comply with their PAYG and superannuation obligations;
- ◆ Serial bankruptcies; and
- ◆ Highly paid individuals.

### **Superannuation and SMSFs**

The ATO is also about to increase its pressure on trustees of SMSFs and their approved auditors.

In the last 12 months they made 60 – 70 funds non-complying, and more cases are coming through. One fund, whose trustees extracted funds for their own use, had to pay penalty tax of 45% on the value of the assets of the SMSF – a costly decision.

## **Tax Bonus = Child support bonus**

The Child Support Agency (CSA) has been able to recoup \$32.4 million in outstanding child support payments following an increase in the lodgment of tax returns.

According to the ATO, 263,000 'new' taxpayers came forward to claim their tax bonus.

Although most of them received refunds on lodging their outstanding tax returns, many of them had outstanding child support obligations.

The CSA has the appropriate power to intercept tax returns when there is overdue child support, as well as the ability to recover outstanding payments from bank accounts.

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## Employee Share Schemes

*Editor: The Government has confirmed the final changes to the taxation of employee share schemes, which will apply to all shares and rights acquired on or after 1 July 2009, not 13 May 2009.*

Modifications to their Budget proposal include:

- increasing the income tax threshold for eligibility for the upfront tax concessions to \$180,000 (this was initially \$60,000);
  - providing further clarity on the meaning of "real risk of forfeiture" (if there is a "real risk", employees will not be able to pay tax upfront); and
  - allowing the deferral of tax in relation to up to \$5,000 worth of shares under certain salary sacrifice based schemes.
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## Related party transactions of SMSFs under review

The ATO is warning SMSF trustees to be careful about people offering to set up an agreement between their SMSF and a related party to purchase assets, particularly properties.

These arrangements may breach the in-house asset rules that the SMSF must follow to be considered a complying super fund.

*Editor: The in-house asset rules are one of the many investment restrictions that apply to SMSFs.*

*Basically, only 5% of an SMSF's assets can be "in-house assets", which are investments in related parties or lease arrangements with related parties (subject to some exceptions).*

The arrangements the ATO is concerned about use a paid third party to set up an agreement (sometimes referred to as 'a joint venture agreement') between the fund and a related trust to purchase an asset that provides income for the trust and the fund.

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The ATO believes that these arrangements are an attempt to circumvent the in-house asset rules, as the related party transaction is really an investment in the related trust by the SMSF.

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## Claiming the Tax Break on laptops

*Editor: The following advice from the ATO about laptops will be relevant to any small business (basically being a business with a turnover of less than \$2 million) looking to acquire a laptop before 31 December 2009, or any business which did in fact acquire a laptop between 13 December 2008 and 30 June 2009.*

*Small businesses can still take advantage of the Tax Break (the bonus 50% deduction) in relation to most depreciating assets acquired by 31 December 2009 which cost at least \$1,000.*

To claim the Tax Break, the relevant asset must basically have been acquired for the principal purpose of carrying on a business.

The ATO will accept that a laptop computer will be used for the principal purpose of carrying on a business if, when the taxpayer first acquires and then uses the laptop computer, it is reasonable to conclude that they will use it for more than 50% of the time for the purpose of carrying on a business.

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## Recognising same-sex relationships

From 1 July 2009, people living in a same-sex de facto or registered relationship will be recognised as being partners for taxation, Centrelink and Family Assistance Office (FAO) purposes.

This means that same-sex couples and their families are recognised and have the same entitlements and obligations as other couples.

Their entitlements and payment rates will be worked out in the same way as for all couples, which may affect people who receive social security and family assistance payments and services.

Children from same-sex relationships will also be recognised by law.

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## Car depreciation limit for 2009/10

The Tax Office has advised that the car depreciation limit for the 2009/10 financial year is \$57,180 (unchanged from the 2008/09 year).

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Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.