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Payment Summaries and Reporting of Incorrect Super Amounts

The Tax Office says some employers have been incorrectly including compulsory superannuation amounts as reportable employer super contributions on their employees' payment summaries for the 2009-10 income year. Reportable employer super contributions should only include additional super contributions made by an employer, for example, super contributions made on behalf of an employee under a salary sacrifice arrangement. The payments being incorrectly included cover things such as super guarantee contributions and industrial agreement (award) super contributions.

TIP: Employees should review their payment summaries and ask for amended payment summaries from their employers if they incorrectly contain compulsory super amounts as reportable employer super contributions. This is important because incorrect amounts included may affect eligibility for certain tax concessions and Centrelink benefits, and may cause a liability for the Medicare levy surcharge.

TIP: If employers have issued payment summaries to their employees that incorrectly include compulsory super amounts, they can notify affected employees and issue them with amended payment summaries. If employers have also already lodged their payment summary annual reports with the Tax Office, they will need to lodge an amended annual report.

New SMSF Member Verification Process in the Pipeline

The Tax Office has announced that it expects to implement, later this year, a new self-managed super fund (SMSF) member verification process, which is designed to enable authorised APRA-regulated super funds and other authorised entities to confirm whether or not the member requesting a rollover is actually a member of the SMSF.

The new process adds another plank to efforts by the Tax Office to deter schemes which seek to obtain illegal early access to or release of superannuation. The first plank, which has been in operation since January this year, involved upgrading the SMSF registration process so that new SMSFs may not be displayed on the Super Fund Lookup (SFLU) Website for up to seven days while the Tax Office carries out a risk assessment of the SMSF.

TIP: The new process is expected to make processing member rollovers from superannuation funds to SMSFs more efficient and secure. However, it would be important for the Tax Office to be notified quickly of any SMSF membership changes. For example, it would be prudent to ensure name changes are appropriately dealt with before a rollover is attempted by a member.

ATO Keeps a Close Eye on the Cash Economy

The Tax Office has reminded taxpayers that increased data-matching and benchmarking will be used to identify businesses participating in the cash economy.

The Tax Office says, this year, it will write to 110,000 small business taxpayers which it believes may be participating in the cash economy. It said the majority of the letters sent were to businesses reporting outside the small business performance benchmarks.

However, the Tax Office noted that businesses that fall within the benchmarks should not assume that they are safe from an ATO audit or review.

The Tax Office said the benchmarks complement its recently expanded data-matching program, which now includes data from online auction sites eBay and Trading Post.

TIP: The Tax Office Compliance Program for 2010-11 noted that the cash economy continues to be a major focus. Specific behaviours that the Tax Office is concerned about include: paying cash-in-hand wages; skimming some or all of the cash takings; barter and running part of normal business activities off the books.

Share Investor, Not a Share Trader

In a recent case, the Administrative Appeals Tribunal found a taxpayer was not carrying on a share trading business but rather he was a share investor.

During the 2007 and 2008 income years, the taxpayer was engaged in the buying and selling of shares. The taxpayer had lodged his tax returns on the basis that he was a share trader for the relevant income years.

However, after examining the indicators for such a business, the Tribunal was satisfied that the taxpayer was not carrying on a share trading business.

TIP: Shareholders should be aware that the Tax Office has its sights set on share disposals as part of its Compliance Program for 2010-11. It had also issued an alert mid last year warning taxpayers against claiming losses on revenue account when they had previously claimed gains on capital account (Taxpayer Alert TA 2009/12).

Excess Super Contributions Assessments Upheld

The Administrative Appeals Tribunal has found it did not have the jurisdiction to review a decision of the Commissioner, who had refused to make a determination to disregard (or to reallocate) excess non-concessional superannuation contributions made by two taxpayers. This was because the Tribunal was of the view that the making of the Commissioner's discretion is independent of the issuing of the assessments.

TIP: Super investors can apply to the Commissioner to disregard or reallocate excess contributions for a financial year. However, the Commissioner's discretion is limited to special circumstances outside the control of the investor.

Soldier's Motor Vehicle Travel Expense Claim Denied

The Administrative Appeals Tribunal has denied a claimed deduction for motor vehicle travel expenses incurred by a soldier in the Australian Defence Forces in transporting his 'deployment priority 1' kit from home to barracks as the Tribunal found they did not have the essential character of a business expense, nor were they incurred in gaining or producing assessable income. Instead, the Tribunal considered the expenses were of a private or domestic nature in the circumstances.

TIP: Taxpayers can claim motor vehicle expenses on the basis they are carrying bulky equipment, but only if they can qualify that it is a necessary part of their job.

Superannuation Benefits — Timing of Payment by Cheque

The Tax Office has issued a draft self-managed super fund determination which states that a superannuation benefit can be considered to be 'cashed' at the time a cheque or promissory note is issued to the member or beneficiary, provided the money is payable immediately (ie not post-dated) and the trustee takes all reasonable steps to ensure that the money is paid promptly (ie generally within a few business days).

Important: This is not advice. Clients should not act solely on the basis of the material contained in this Bulletin. 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. The Bulletin 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.