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Practice Update

July 2011

Occupations in the spotlight for the 2011 income year

This year, the ATO will be paying close attention to deductions made by people employed as:

- earthmovers;
- flight attendants;
- carpenters and joiners (including apprentices and trainees); and
- real estate employees.

The ATO has found that people in these industries are at higher risk of getting their work-related expense claims wrong due to the types of deductions they are entitled to claim (such as motor vehicle and travel expenses), and will be writing to around 116,000 people employed in these industries to ensure they get their claims right this tax time.

Editor: This is the ATO's way of letting you know you have a target on your back. If you, or someone you know, is in one of these occupations, it will be even more crucial than usual to ensure every single claim for the 2011 year can be justified.

Tax laws amended to allow income 'streaming' by trusts

The Government has introduced legislation to ensure that capital gains and franked distributions can continue to be 'streamed' through trusts.

Editor: A recent High Court decision created significant uncertainty about whether trustees could stream different categories of income, such as capital gains (i.e., to flow them through a trust to some beneficiaries but not others).

However, for trusts that do not stream any capital gains or franked distributions to specific beneficiaries, the changes will broadly produce the same outcome as the current law.

Editor: In order to take advantage of these changes and effectively stream franked dividends or capital gains for tax purposes, the trust deed must generally give the trustee the power to stream these categories of income to different beneficiaries.

Please contact our office if you would like to have us organise to have your trust deeds reviewed to ensure that your trusts can take advantage of these legislative changes.

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Flood levy exemption declaration

Although the temporary flood and cyclone reconstruction levy (flood levy) will apply to taxable payments (e.g., wages) made from 1 July 2011 to 30 June 2012, employees affected by a natural disaster can be exempt from paying the flood levy.

Employees who earn more than $50,000 in salary and wages may complete the *Flood levy exemption declaration* form and provide this to their employer.

By completing this form, the flood levy will not be included in the amount of tax taken out of their pay.

Note: It is not compulsory that employees use this form as any flood levy amounts overpaid will be refunded in their 2012 income tax assessment.

Deductions for study and job seeking expenses

The ATO has confirmed that, as a result of a High Court decision last year, some taxpayers may be eligible to claim a deduction for study expenses if they received Austudy or ABSTUDY (as well as Youth allowance recipients).

The ATO will automatically amend tax assessments of Austudy and ABSTUDY recipients (i.e., they do not need to do anything) to include a tax deduction of $550 for study expenses for each year a recipient was eligible in the 2007, 2008, 2009 and 2010 income years (however, if the recipient has evidence to support a higher claim, they can choose to do so).

For the 2011 year, students who received Youth allowance, Austudy or ABSTUDY and incurred study expenses can claim a deduction for these expenses when they lodge their tax return, but will need to have evidence to support their claims.

Also, Newstart recipients and Youth allowance job seekers may be eligible to claim deductions for costs incurred in actively seeking paid work, but the ATO will not automatically amend the returns of these taxpayers.

Instead, such taxpayers can claim deductions for certain costs they incur in the 2011 income year in actively seeking paid work (such as costs of travelling to job interviews and resumé preparation), provided they have written evidence of the expenses (and they can also request an amendment to their 2007, 2008, 2009 or 2010 assessments if they have the evidence).

Note: The Government has announced that it will change the law to prevent deductions being claimed against all government assistance payments, including those above, from 1 July 2011.

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ATO warning: Unpaid directors' fees

The ATO has issued a warning to directors of private companies about claiming deductions for directors' fees where the fees remain unpaid by the end of the following income year (e.g., where the resolution to pay directors' fees states that payment will not be made until an unspecified time having regard to future cash flow).

Editor: In such a situation, the company would get a tax deduction in the year the resolution is made, but the fees won't be taxed in the director's hands until they are actually paid out.

The ATO is concerned that some companies may be using this arrangement to claim amounts that are never intended to be fully paid out.

However, the ATO is not concerned with normal business practice where a company passes a resolution that creates an unconditional commitment to pay directors' fees and the payment occurs within a reasonable time period (which could extend outside the immediate year of income).

ATO focus on unpaid present entitlements owed to companies

The ATO has advised that it may contact private companies about any unpaid present entitlements (UPEs) they were entitled to from related trusts between 16 December 2009 and 30 June 2010.

Editor: The ATO recently changed its position about the taxation treatment of these UPEs, claiming that, from 16 December 2009, UPEs that are not paid out to, or otherwise invested on behalf of, the company may be treated as loans by the company back to the trust (which may result in them being deemed to be dividends paid to the trust).

Certain actions can be taken, up until 31 December 2011, to minimise the problematic effects of the ATO's change of position.

Editor: If the ATO contacts you about this issue, make sure you then contact us before providing them with any further information.

Also, even if you are not contacted by the ATO, if you think this may affect you, please contact our office so that we can see what your options are.

Deductions for TPD insurance

Superannuation funds will be able to streamline the way they claim tax deductions for the cost of total and permanent disability (TPD) insurance provided to fund members from the 2011/12 income year.

Editor: As a general rule, super funds that paid insurance premiums for a policy covering a member who became TPD for their 'own occupation' (as opposed to 'any occupation') were supposed to obtain an actuary's certificate to determine the deductible portion of the premium, unless that portion was specified in

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the insurance policy.

These changes will give many superannuation funds the option of using a simpler method to determine the deductible portion of TPD insurance premiums without having to engage an actuary.