

OCTOBER 2012

Tax Office "ups the ante" on tax file number (TFN) reporting

The ATO has recently stated that it will review the 2011 Trust Tax Return 'distribution statements' to identify where a beneficiary has received a distribution and not quoted a TFN.

Editor: It would seem that the ATO is set to embark on a robust audit campaign targeting trusts and strictly applying the TFN withholding rules.

By way of background, a trustee of a trust is generally required to withhold 46.5% in tax from distributions where beneficiaries fail to provide their TFN. If the trustee does not withhold tax, it can face fines or penalties.

The simple message is that all trustees should ensure they have beneficiaries' TFNs before making distributions.

Compliance action

Trustees will be selected by the ATO based on considerations such as:

- size of distribution; and
- whether the beneficiary appears to have returned the distribution as income.

The letter forwarded to trustees will:

- explain the measures;
- provide the ATO's understanding of the facts;
- ask the trustee to confirm whether the ATO's understanding is correct; and
- explain to the trustee how they can rectify the situation going forward, noting there may be penalties/remission.

Excess contributions case – special circumstances win for taxpayer

Editor: The case below involves a taxpayer attempting to argue that an excess contribution tax assessment should be set aside for 'special

circumstances'. Somewhat against the flow, the taxpayer was unexpectedly successful.

Facts of the case

During the 2010 financial year, the taxpayer's employer made total superannuation contributions of \$71,551 – \$21,551 over the limit of \$50,000.

The employer's super contributions were made to two different superannuation funds – \$25,367 to AMP and \$46,184 to Tasplan.

During the 2009 income year, the taxpayer had asked their employer to stop making contributions to AMP from 1 July 2009, because they were unhappy with the 4.5% commission levied by AMP, and they asked that all contributions from 1 July 2009 be forwarded to Tasplan.

Unbeknown to the taxpayer, their employer had made super contributions of \$25,367 that related to the 2009 income year in July 2009 (i.e., the 2010 income year) and these contributions were made to AMP.

The taxpayer was then assessed as having excess contributions of \$21,551, resulting in excess contribution tax ('ECT') of \$6,788.70.

The taxpayer then sought relief from the ECT, on the basis that 'special circumstances' existed and that the contributions should be disregarded or reallocated.

AAT decision

The AAT said that the taxpayer was understandably not aware of the super contributions made to AMP in July 2009, because all super contributions from 1 July 2009 should have been paid to Tasplan.

According to the AAT, these facts amount to 'special circumstances'. As such, the AAT ordered that the \$25,367 contributions paid to AMP in July 2009 (being the 2010 income year) be reallocated to the 2009 income year, resulting in no ECT being payable.

When is a business a business?

Editor: We have recently seen a surge in the number

of AAT cases involving the issue of whether a taxpayer is carrying on a business.

In this case, the taxpayer was unable to demonstrate that he carried on a primary production business.

Facts of the case

The taxpayer owned a 500-acre property located in Queensland. Between 2004 and 2009, he claimed deductions in relation to improvements to the property and other expenses on the basis he was carrying on a primary production business.

He had undertaken 14 different primary production based activities over the years in question, including free-range pigs, timber growing, storing and breeding cattle, and growing an orchard.

Unfortunately, none of the activities actually generated any income and nor had they involved much more than planning for the commencement of the business.

It was not in dispute that the taxpayer had a genuine intent and belief that he was carrying on a business; evidenced by research associated with the various businesses and the preparation of various business plans.

In this case, the ATO argued that the activities of the taxpayer had not reached the point to be accurately characterised as a business and that the taxpayer was still in the process of preparing to carry on a business.

AAT decision

The AAT confirmed the ATO's conclusion that the activities of the taxpayer did not amount to carrying on a business and concluded that although the taxpayer had a genuine intent and desire to carry on a business, at best it could be said that he was in the gestation stages of carrying on a business.

Scams, scams and more scams

The ATO has again warned taxpayers about scams including fake job advertisements, emails and bogus phone calls.

This year there have been over 6,000 reports from the community about bogus emails using the ATO brand, and over 4,000 reports of attempted phone scams.

Only certain people and organisations can ask for a taxpayer's TFN, the most common being:

- the ATO;
- their employer, but only after they start work;
- their bank or other financial institutions;
- Centrelink; and
- their superannuation fund.

Editor: The key seems to be: Don't click on emails purporting to be from the ATO – contact them separately by phone or by logging into the Portal.

Claim the tax-free threshold with more than one employer!

The ATO has updated its document titled 'When you have income from two payers' reminding taxpayers who receive income from two employers that they are entitled to claim the tax-free threshold for more than one payer at the same time.

This update by the ATO reflects the increase in the tax-free threshold from \$6,000 to \$18,200 from 1 July 2012. However, the ATO has made it clear that taxpayers considering this strategy must be certain that their taxable income for the year in question will be no more than \$18,200.

GIC & SIC rates for December 2012 quarter

The GIC (General Interest Charge) and SIC (Shortfall Interest Charge) rates for the December 2012 quarter are:

GIC rate 10.62%

GIC daily compounding rate 0.02901639%

SIC rate 6.62%

SIC daily compounding rate 0.01808743%

In addition, the Interest on Overpayments, Interest on Early Payments and Delayed Refunds Interest rate is 3.62%.