CLIENT ALERT

March 2012

New reforms announced

The Government has released its 2011/12 Mid-Year Economic and Fiscal Outlook, which forecasts substantial downgrades to revenue due to "a significant deterioration in global conditions."

As a result, the Government "has had to find further savings in the budget", including the following measures that will apply from 1 July 2012:

- The Government will introduce reforms to stop individuals from being able to exploit the tax exemption for living-away-from-home allowances and benefits;
- The Government will further restrict the Dependent Spouse Tax Offset (DSTO) to those with spouses born before 1 July 1952 (this extends the 2011/12 Budget measure, to phase out the DSTO for most taxpayers with a dependent spouse born on or after 1 July 1971);
- The Government will reduce the matching rate and maximum payment of the voluntary superannuation co-contribution from 1 July 2012, when the new low income superannuation contribution commences; and
- The drawdown relief for account-based, allocated and market linked pensions (i.e., a 25% reduction in the minimum payment amounts for these products), will be extended to the 2012/13 year (the Government had indicated previously the minimum payment amounts would return to normal in 2012/13).

Deferral of measures and/or indexation

The Government will also defer certain previously announced tax reforms by one year, including:

- The start date of the standard deduction for work related expenses will be deferred until 1 July 2013;
- The start date of the 50% tax discount for interest income will be deferred until 1 July 2013;
- The Government will pause the indexation of the superannuation concessional contributions caps for one year in 2013/14.

SMSF compliance focus for trustees

The ATO has advised that it has three major focus areas for its SMSF compliance program:

- non or late lodgments (not lodging can result in the fund being made non-complying or the trustees being prosecuted);
- compliance breaches without an auditor contravention report (ACR); and
- unrectified ACRs (i.e., where the auditor reports a breach of the superannuation law that the trustees fail to rectify), and SMSF trustees making the same breaches the ATO has previously addressed with them.

In addition, the ATO is focusing on:

- related-party investments including lending to members;
- breaches of the 5% in-house asset limit;
- exempt current pension income and non-arm's length income;
- ACRs lodged for SMSFs that are under 15 months old; and
- funds breaching the borrowing restrictions.

Small Business benchmarks for 2012

Editor: The ATO collects a vast amount of information, and in the last few years they have started using that information to work out what 'normal' small business taxpayers should be including in income and claiming as deductible expenses, depending on their industry.

If a taxpayer falls outside the 'normal' benchmark for their industry, meaning that normally their income does not appear high enough for the expenses they have incurred, they may find themselves on the receiving end of some unwanted ATO attention...

The problem for most taxpayers in this position is that they don't have the records to be able to prove that the Tax Office is incorrect, so the Tax Office is able to lift their income to the benchmark. That can be many thousands of dollars.

The ATO has advised that it has upgraded its existing benchmarks with recent data.

It has also added two new activity statement ratios (i.e., where they compare information on BASs etc):

- 'GST-free sales' to 'total sales' for six industries. The ratio shows the percentage of GST-free sales to the total sales reported by businesses on their activity statement; and
- 'Non-capital purchases' to 'total sales' for 86 industries. This ratio shows the percentage of non-capital purchases, to the amount of total sales reported on their activity statement.

There are currently 103 types of small businesses that have been benchmarked. The following is a list of the business industry categories:

- Accommodation and food services (note that this used to be just "Food Services", so many little B&Bs and motels could soon expect to be under the gun);
- Building and construction trade services;
- Education, training, recreation and support services;
- Health care and personal services;
- Manufacturing;
- Professional, scientific and technical services;
- Retail trade;
- Transport, postal and warehousing;
- Other services (such as automotive services and repairers, panel beating and video and other electronic media rental and hiring).

Editor: If you would like to discuss whether your business has been benchmarked and what that means for you, please contact our office.

Building deductions

Editor: Broadly, the Tax Act allows taxpayers to claim deductions for certain construction expenditure on income-producing capital works – this is often referred to as the 'building write-off', and is typically 2.5% of the relevant expenditure every year.

Interestingly, it is not just the taxpayer that incurred the original construction expenditure that can claim a deduction, and it can also apply to tenants that incur construction expenditure.

If a taxpayer leases all or part of the 'construction expenditure area', and the expenditure was incurred by an earlier lessee, the construction expenditure area must have been continuously leased since the construction was completed by the **lessee** who incurred the expenditure **or an assignee** of that lessee's lease.

Note that if the previous lease is terminated, rather than 'assigned', and a new lease is entered into, the new lessee will not be able to claim the deductions.

Tax Tip: *If you're taking over a lease from a former tenant, remember to question them about any improvements they may have made to the building so you can claim the building write-off.*

Related parties and SMSFs

Editor: The ATO recently provided guidance for related parties of self-managed superannuation funds (SMSFs) providing building services to, ***and*** *acquiring materials on behalf of, the SMSF.*

Trustees of SMSFs are generally prohibited, with some exceptions, from 'acquiring assets' from a related party of the SMSF.

Consequently, if a related party builder acquires materials in their own right which are then supplied to the SMSF, this would result in the trustees breaching the superannuation legislation.

Alternatively, where a related party only acts as an **agent**, arranging for the acquisition of building materials on behalf of the SMSF from an unrelated vendor, and the related party at no times holds legal title to the building materials, the SMSF trustees have acquired the materials from that vendor, not the related party, and no breach should apply for such acquisitions.

Editor: Very strict rules apply to the trustees of SMSFs, regarding what they can and can't do, particularly when it comes to dealings with related parties. If you are at all unsure about these issues, please contact our office for assistance.