CLIENT ALERT

September 2012

Default assessments for non-lodgers

The ATO has advised they will be sending 'default assessment warning letters' to taxpayers who have overdue income tax returns, where the ATO also has evidence that they received taxable income in the relevant financial years.

If the overdue returns are not lodged by the date specified in the letter, the ATO will issue default assessments for these taxpayers based on the estimated taxable income included in the letter.

The ATO warns that taxpayers who are issued a default assessment may incur the following:

- failure to lodge on time penalties; and
- administrative penalties of 75% of the tax related liability from the default assessment (though the penalty may be reduced by taking into account any PAYG credit and other tax credits available).

In addition, administrative penalties may increase by 20% if the taxpayer has had a penalty previously applied for a default assessment.

Editor: Note that these letters may in some cases be sent directly to us, in which case we will liaise with the relevant clients to lodge outstanding returns and minimise any penalties.

ASX securities data-matching project

The ATO will request and collect identity and transaction details pertaining to securities held in all ASX listed entities from:

- Link Market Services Limited;
- Computershare Limited;
- Australian Securities Exchange Ltd;
- Boardroom Pty Ltd;
- Advanced Share Registry Services Pty Ltd; and
- Security Transfer Registrars Pty Ltd.

Details relating to approximately 1.2 million individuals will be electronically matched with certain ATO data holdings to identify non-compliance with CGT, income tax and GST obligations under taxation law (although it is anticipated that administrative action will be taken on a very small percentage (less than 1%)).

Reporting TFNs quoted to trusts for the first time in 2012

Where the trustee of a ‘closely held trust’ (which includes a discretionary trust or family trust) makes a beneficiary 'presently entitled' to a share of trust income as at 30 June, unless an exclusion applies, the trustee is required to withhold an amount equal to 46.5% of their share of the trust’s net (taxable) income, ***unless*** the beneficiary has provided their tax file number (TFN) to the trustee of the trust before year-end.

Note: Exclusions are available for such entities as non-residents, deductible gift recipients, and beneficiaries who are under a legal disability for the purposes of the Tax Act, such as minors and bankrupts (as the trustee pays tax on their behalf).

However, if the beneficiary has provided their TFN for the first time in the 2012 financial year, the trustee is required to **report** the TFN to the ATO by the **last day of the month following the end of the quarter** in which the TFN was quoted. For example, if a TFN was quoted to a trustee in June 2012, it must be reported to the ATO in a TFN report by **31 July 2012**.

The TFN reporting requirement can only be satisfied by reporting the TFN to the ATO within the appropriate timeframe, and on the approved form (either electronically or paper form).

Editor: If any distributions were made to new beneficiaries for the first time in the 2012 financial year, please let us know so we can assist you with lodging the TFN report.

ATO Compliance Program 2012/13

The ATO has released its 'Compliance Program 2012/13' outlining key focus areas attracting its attention for the coming year, stating that it is important for the community to be given the opportunity to understand the ATO's compliance activities and practices.

Focus areas identified by the ATO as significant risks to tax and superannuation compliance this year include:

- occupations that have shown a pattern of relatively high levels of work-related claims, including IT managers, plumbers and defence force non-commissioned officers;
- high income earners involved in tax avoidance schemes, with a particular focus on widely-marketed financial products that promise substantial tax benefits, as well as investments by medical practitioners;
- unreported cash transactions within the plastering and café industries;
- contractor arrangements, in particular in the construction industry, and the SMSF sector; and
- employer obligations for superannuation in high risk industries.

Car depreciation limit for 2012/13

The ATO has advised that the car depreciation limit for the 2012/13 financial year is $57,466 (unchanged from the 2011/12 year).

Example

On 9 July 2012 a taxpayer purchases a motor vehicle for $65,000 wholly for use in carrying on their business.

In working out the vehicle's depreciation for the 2012/13 income year, the cost of the vehicle for depreciation purposes is basically reduced to $57,466.

Editor: Note, however, that the luxury car tax threshold for 2012/13 (which is used to determine if luxury car tax is payable), has increased to $59,133.

Small business audits on the way

The ATO advised that it is upping the ante in relation to its field audits of small to medium enterprises (i.e., businesses) – usually referred to as 'SMEs'.

For the first 12 months, only limited offices and teams would be involved, and after that SME field audits would become part of "business as usual".

The audits are scheduled to start in the first/second quarter of the 2012/13 financial year with the initial focus being in Melbourne and Brisbane.

Audit process

Phone contact would be made with a business and then a letter would be issued providing two weeks notice.

The audits themselves would then be conducted at the business premises and would take from one to two weeks to complete.

The Tax Office said that they will start with deductions and then move to other areas of interest. However, every audit will start with a specific purpose.

New changes affecting SMSFs

The Government has recently amended the SIS Regulations to impose further requirements on self managed superannuation funds (SMSFs) from the 2012/13 income year.

The new regulations require that:

- ❑ trustees of SMSFs must consider insurance for their members as part of the fund's investment strategy;
- ❑ money and other assets of an SMSF is to be kept separate from those held by a trustee personally (and by some employers); and
- ❑ SMSF assets are to be valued at market value for reporting purposes.