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Practice Update

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Dear Client

We are pleased to supply you with the August 2010 edition of Practice Update which contains information on a number of important developments in taxation.

Tax Office Sets Compliance Focus Areas for 2010/11

The ATO has released its compliance program for 2010/11. The program sets out risk areas facing the tax and superannuation systems identified by the ATO and the compliance activities that it plans to undertake to address them. Despite acknowledging that most taxpayers demonstrate high levels of voluntary compliance, the ATO's latest compliance program flags needed attention on numerous target areas including individual taxpayers claiming incorrect or fraudulent refunds and small businesses omitting or incorrectly reporting property sales in business activity statements.

The program also reiterated the ATO's continuing and increasing use of data-matching projects to verify information provided by individual taxpayers in their tax returns and by other parties. In particular, the ATO flagged interest in cross-referencing information relating to income received from employment, welfare, interest and dividends. This year, the ATO expects to data-match over 500 million transaction records reported to it by third parties.

ATO is Contacting Participants in Collapsed Agribusiness MIS

The ATO has advised that it will be contacting approximately 60,000 identified participants of recently collapsed Agribusiness managed investment schemes (MIS) during August 2010 to help them understand the tax consequences of their investments. The ATO has advised that affected taxpayers will need to factor in any changed tax implications in these schemes when they prepare their tax returns.

GST and Requirements for Tax Invoices

The GST regulations which previously specified the requirements for documents to be tax invoices or recipient created tax invoices (RCTIs) have been removed. This follows recent changes to the GST law which simplified the requirements for documents to be considered tax invoices or RCTIs by replacing those requirements with equivalent but more flexible principles. The regulations commenced on 1 July 2010 and apply in relation to net amounts for tax periods starting on or after 1 July 2010.

Reportable Employer Superannuation Contributions Definition: Changes Proposed

The Government has recently proposed that it will amend the law to clarify the scope of the reportable employer superannuation contributions (RESC) definition. RESCs are generally superannuation contributions made under formal salary sacrifice agreements. Amounts reported as RESCs are used in determining eligibility for a range of government financial assistance programs.

The Minister for Superannuation, Chris Bowen, said the Government has become aware that some contributions made on behalf of an individual, which the individual or their employer has no real capacity to influence, are being captured by the RESC definition. The Minister said it wasn't the Government's intention for this to occur. The changes are proposed to apply from 1 July 2009 to ensure that the contributions are not captured by the RESC definition.

Minimum Pension Drawdown Amounts — 50% Reduction to Continue

The Prime Minister has recently announced that the Government will extend for another year the 50% reduction in the required minimum payment amounts that must be made from account-based, allocated and market-linked pensions. The relevant regulations will need to be amended and the Government says this will be done in the new financial year.

The minimum amounts had been reduced by 50% for the 2008/09 and 2009/10 financial years — that will now be extended for the 2010/11 financial year. This means, for example, that the minimum annual drawdown for 2010/11 for someone aged 64 years or less will remain at 2%; and for those aged 65 – 74, will be 2.5%.

Division 7A Benchmark Interest Rate

The Tax Office has advised that, for the income year that commenced 1 July 2010, the benchmark interest rate to be used in calculating the interest component on the repayment of a private company loan received by a shareholder (or the associate of the shareholder) is 7.4%.

Trust's Unrealised Gains can Be Treated as Income

In a recent case, the NSW Court of Appeal has confirmed that it was permissible for a trust, in terms of its trust deed and accepted accounting principles, to treat unrealised gains made on share investments as income of the trust.

ATO Sends Warning to SMSFs Regarding Employee Share Schemes

The ATO has warned taxpayers of an arrangement where an individual nominates his or her SMSF as the acquirer of shares or share options under an employee share scheme and the trustee of the SMSF pays no consideration or less than market value consideration for the shares or options. The warning provided in Taxpayer Alert TA 2010/3 states that the arrangement could have superannuation and income tax law implications for both the SMSF and the individual.

Reasonable Travel and Meal Allowance Amounts

The Tax Office has released a Taxation Determination which sets out the amounts the Commissioner considers are reasonable for the 2010/11 income year in relation to claims made for: overtime meal allowance expenses; domestic travel allowance expenses; travel allowance expenses for employee truck drivers; and overseas travel allowance expenses.

Superannuation and Instalment Warrant Rule Changes

The superannuation law has recently been amended to reduce the risks for superannuation funds investing in limited recourse borrowing arrangements (eg instalment warrants). The legislative changes seek to ensure that the recourse of the lender (or any other person) against the superannuation fund trustee for default on the borrowing is limited to rights relating to the acquirable asset.

Cooper Super Review Makes 177 Recommendations

The Government has released the long-anticipated final report of the Super System Review. The Review Panel, chaired by Jeremy Cooper, made 177 specific recommendations aimed at improving the governance, efficiency, structure and operation of the country's superannuation system. A key proposal includes a simple low-cost superannuation product known as MySuper for investors who do not want to engage in superannuation decision-making.

In relation to self-managed superannuation funds (SMSFs), the Review Panel was not of the view that significant changes were required as it found that the sector was largely successful and well-functioning. Nevertheless, it made 29 recommendations relating to SMSF service providers, auditors and the regulatory framework. Notably, the Review Panel maintained its proposed ban on SMSFs investing in collectables and personal use assets. Examples include artwork, antiques and exotic cars.

The Government is expected to formally respond to the review within the next two months.