

# **2010 Summer Newsletter**

## **Find Your Lost Super the Easy Way**



The Tax Office maintains a database of lost or unclaimed super called SuperSeeker, and taxpayers who believe they may have lost superannuation are urged to contact them.

Taxpayers who have changed jobs, or done casual or part-time work, are those most likely to have lost superannuation.

The Tax Office's online SuperSeeker tool is simple to use, free and available to taxpayers 24 hours a day, 7 days a week.

The SuperSeeker tool can be completed online, by phone or by paper. If the tool is used online, taxpayers need to enter their Tax File Number, date of birth and their full names. Results will immediately be displayed on screen along with options on claiming their entitlements.

Using the tool over the phone only requires the taxpayers Tax File Number and date of birth and taxpayers will be transferred to service representatives if a result is achieved.

Requesting information using the SuperSeeker tool by paper requires a form with the taxpayers' details to be lodged and results including options on claiming super entitlements will be mailed to the taxpayer.

## **Tax Compliance - Big Brother is Watching**



The Tax Office has observed that an increasing number of taxpayers have been engaging in aggressive tax practices as a result of the global economic downturn.

In a recent speech, the Commissioner of Taxation noted that the economic downturn created a risky environment in which a greater number of taxpayers needed assistance in meeting day-to-day tax obligations, as well as creating a climate in which more aggressive tax practices are sought.

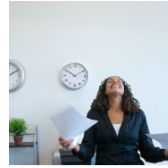
The Commissioner also noted that the tax compliance of about 60 percent of taxpayers is influenced by the behaviours of others.

The Commissioner has reminded taxpayers that the

Tax Office is closely monitoring individuals and businesses that engage in tax avoidance and evasion practices.

The Tax Office has warned that taxpayers who engage in such practices increase their chances of being identified for an audit.

## **Taxpayers to have New Safe Harbour!**



In the past taxpayers were liable for any penalties in relation to false information provided to the Tax Office, even if they engaged a Tax Agent to prepare their returns.

With the introduction of the Tax Agent Services Act, taxpayers who engage a registered tax agent to prepare their returns and provide them with all relevant information will have access to an exemption from any penalties incurred as a result of false information lodged with the Tax Office.

The new safe harbour applies for any returns lodged with the Tax Office from March 1, 2010.

## **Employee Share Schemes – An Update!**



In the May 2009 budget, the Federal Government announced changes to the way in which employee shares are treated for tax purposes

Following consultation with various employer groups and union bodies, the Government proposed new measures in relation to employee share schemes which included:

- Making the \$1,000 discount which is currently only available to taxpayers earning less than \$60,000, available to taxpayers with taxable incomes under \$180,000 thereby benefiting a wider range of taxpayers; and
- Allowing deferral of the taxing point of shares and rights acquired under these schemes in certain circumstances where there is a risk that these shares or rights may never actually be taken up.

In a recent ruling, the Tax Office has announced that taxpayers may be able to defer tax, for up to seven years, on shares and options granted under an employee share scheme, provided there is a risk they could lose the shares or options for at least one year, such as if the employee leaves the

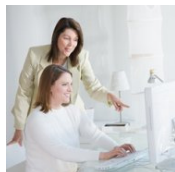
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companies employment.

The ruling provides the first guidance for companies to structure their schemes to meet new requirements announced in last year's federal budget.

## Tax Office Processing System Up & Running!



The Tax Office has recently undertaken an upgrade of its processing system to improve its performance and efficiency.

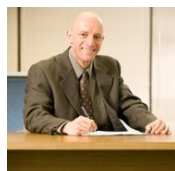
The upgrade has taken longer than originally planned and the ATO apologises for any delays taxpayers may have suffered in receiving their refunds.

The Tax Office have processed around 1.2 million income tax returns using the new system and have made substantial progress in processing the backlog of returns caused by the system upgrade.

The Tax Office have experienced a number of small problems in bringing the system on line but these have all been rectified therefore refunds should be processed within normal turnaround times.

The Tax Office is committed to processing assessments quickly and has announced that it will pay interest to taxpayers on any refunds which take longer than 30 days to process.

## How does the Tax Office Deal with Retrospective Law Changes?



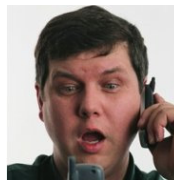
Retrospective law changes affect taxpayers' affairs before the actual changes have even been made in the relevant legislation.

Proposed retrospective law changes pose a problem for affected taxpayers, especially if the proposed change will result in a greater tax liability for the taxpayer.

There are three main effects of retrospective law changes.

The Tax Office has announced that where a retrospective law change increases the tax liability of a taxpayer who lodged their return on time in accordance with the existing law and later amends the return to comply with the retrospective law change, no penalties will apply and any interest on the shortfall will be waived.

## Landmark Decision In Relation to the Taxation of Trusts!



Following great debate, a large and very controversial legal battle to determine the correct definition and taxation treatment of "Trust Income" has recently been concluded.

According to the High Court, the "income of the trust estate" under tax legislation follows trust law concepts and includes income from ordinary concepts. Statutory income such as capital gains will only be included if the trust deed permits it to.

The High Court has dismissed an appeal by the Tax Office which argued that "income of trust estate" does not include statutory income and hence a trust's statutory income should be assessed to the trustee at the top marginal rate.

The High Court has also ruled in favour of the proportionate approach towards determining how the net income of a trust estate should be taxed in the hands of the beneficiary.

Under the proportionate method, the net (taxable) income assessed to each beneficiary is in proportion to their share of the distributable income of the trust estate to which the beneficiary is entitled.

In reaching this decision the High Court has upheld the decision of the Full Federal Court and the taxation planning methodology employed by many tax practitioners and tax payers.

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