Practice Update

Please read this update and contact this office if you have any queries

APRIL 2003

ATO targets income splitting – through partnerships, companies and trusts

Tax Commissioner Michael Carmody has announced that the ATO will fund a number of test cases on arrangements under which personal services businesses split personal services income.

The cases selected will test arrangements that involve income splitting by partnerships, companies or trusts and the retention of profits in companies.

The personal services businesses targeted are those whose income is mainly a reward for the personal efforts or skills of an individual taxpayer.

They are not businesses that derive their income principally from their assets such as a farm or a transport business operating a semi-trailer.

Nor do they derive their income from their business structure such as a large accounting practice or a radiologist with a number of technical staff and an array of technical equipment.

"I will select cases to get clarification from the courts on how general anti-avoidance rules apply to these arrangements."

The ATO has indicated that appropriate cases will be selected to test the following areas:

- 'Husband and wife' partnerships that derive personal services income and split the income 50:50 but only one of the partners performs the main bulk of the work.
- Retention of personal services income by a company.
- Remuneration paid by an entity to a principal which is not commensurate with the value of the services provided.
- Excessive remuneration to an associate such as a spouse for non principal work.
- Whether different considerations apply to professionals and tradespeople.
- Whether profits can be retained by a personal services business to acquire business assets.
- Whether profits can be used by a personal services business to retire debt incurred in acquiring the business.
- Whether different considerations apply to personal services businesses that are trusts if they are established before personal services are commenced.
- The distinction between personal services income and business structures.

Editor: Any clients that are concerned about their personal circumstances should contact our office and arrange a time discuss the matter.

ASIC Warnings

ASIC (the Australian Securities & Investments Commission), our investment watchdog, has issued the following warnings about possibly "dodgy" companies that are offering investments that are too good to be true – and therefore *are* too good to be true.

Equity-1
Equity-1, and related organisations ITB Ltd and Our World Exchange, have been promising investors returns of 30% through international share trading.

Equity-1 is not licensed to operate in Australia, so anyone who sends money to them is not protected under Australian law.

LifeWealth8
ASIC warns clients against sending money to this company as:

- it appears to be located offshore;
- it claims that people can earn money by recruiting their friends; and
- it seems to be offering financial products to Australians without a licence.

ASIC is concerned that this could be a pyramid selling scheme which is illegal in Australia. It is reportedly promoting the scheme through membership meetings in clubs and other venues throughout Australia.

If you send your money to them and something goes wrong you could lose the lot.

If in doubt . . .
Clients who are approached by any organisation to invest their hard earned money should contact us first and discuss the matter and visit ASIC's investor Website FIDO at **www.fido.asic.gov.au.**

Unclaimed share monies
ASIC also raises the question of unclaimed shares money. It says you can search the information on their database (above) for unclaimed shares money, where for example companies have been taken over and been unable to contact you.

Roll-over relief for small business partnerships

Minister for Revenue and Assistant Treasurer, Senator Helen Coonan, has announced that, from 1 July 2001, roll-over relief will be available under the Simplified Tax System (STS) where a change occurs in the partners of a small business partnership.

Senator Coonan said this often happens when new family members are introduced into a family business or when an existing partner retires from the business.

"Changing the partners causes a change in the ownership of partnership assets."

"This change can trigger taxable gains in relation to depreciable assets."

"Roll-over relief will remove this taxing point so that a taxable gain will only arise when the business ultimately disposes of its depreciable assets."

"Many farming partnerships keep the farming business in the family and it is common for partners to be added to the partnership as children grow up and parents leave on retirement or death."

"These businesses can now join the STS knowing that a partial change in partnership will not trigger tax consequences in respect of depreciable assets."

No tax on payments from Red Cross Farmhand Appeal

The Tax Commissioner has reassured farmers that any payments received from the Red Cross Farmhand Appeal would not be taxed.

"Primary producers do not have to pay tax on payments from the Red Cross Farmhand appeal."

"These payments do not have to be recorded as income on either their Business Activity Statements or in their income tax returns."

A gift of property to a charity

A taxpayer has approached the Tax Office and asked whether a gift of a mattress (or other item of property) to a charity can be tax deductible.

Facts

The taxpayer placed an order after 1 July 2000 with a company for the manufacture of a cotton mattress for his spouse who suffered from certain allergies. Subsequent specialist medical advice was given against the use of all cotton mattresses.

The taxpayer decided to donate the unused mattress to a charity within 12 months of its purchase.

A taxpayer can claim a deduction for a gift of property made during the year to nominated (Australian) funds provided:

- the property was purchased in the 12 months before the gift is made; or
- it is valued by the Commissioner at more than $5,000.

The deductible amount is the lesser of its market value and the amount paid for it.