

CLIENT ALERT

December 2009

More Tax Office audits with New Small Business Benchmarks

The Tax Office has released a whole host of "Small business benchmarks" in October – 38 in all. The ATO says they provide a snapshot of what, on average, is happening in businesses operating in a particular industry by comparing various business costs to sales.

For example, depending on the size of the business, they compare costs, such as labour, cost of goods sold and rent, to sales.

Where a business's costs as a percentage of sales fall outside the benchmarks, it may find itself looking down the barrel a tax audit.

Selected Industries

There were 38 benchmarks issued for businesses operating in the following industries:

- ◆ Manufacturing;
- ◆ Construction;
- ◆ Retail trade;
- ◆ Accommodation and food services;
- ◆ Transport, postal and warehousing;
- ◆ Rental, hiring and real estate services;
- ◆ Administrative and support services (such as pest control); and
- ◆ Other services (such as barbers, hairdressers and nail salons).

Editor: Any client wishing to know if benchmarks have been issued for their type of business should contact our office.

Christmas/year end parties and gifts

The year end is on the way and many employers will be planning to celebrate Christmas with their annual year end "bash". In addition, many businesses will be considering what gifts, if any, they will provide to clients and employees.

However, an important issue to consider is the possible FBT and income tax implications of providing "entertainment" to staff and clients.

Editor: If you would like some assistance in this complicated area please contact us.

One major consideration is the "less than \$300" minor benefit exemption and the fact that the Tax Office now accepts that different benefits provided at (or about) the same time are not added together when applying this threshold.

This means that a Christmas party and gift may be exempt from FBT, even if provided at the same time, as long as each costs less than \$300!

Gifts which ARE NOT entertainment – generally include:

- a Christmas hamper, a bottle of whisky, wine, etc.; and
- gift vouchers, a bottle of perfume, flowers, a pen set, etc.

Gifts which ARE entertainment – generally include:

- tickets to attend a theatre, live play, sporting event, movie or the like; and
- a holiday airline ticket or admission ticket to an amusement centre.

Example of a party and gifts

An employer holds an external Christmas party for employees and their spouses.

The cost of food and drink per person is \$250, and no other benefits are provided.

Assuming the actual method is adopted:

- ◆ for employees attending with their spouse – no FBT is payable (i.e., the per head cost is less than \$300); and
- ◆ for employees attending alone – no FBT is payable (i.e., the per head cost is less than \$300).

In either case, no tax deductions will be allowed.

Assuming the 50/50 method is adopted:

- ◆ 50% of the total expenditure is subject to FBT and is tax deductible.

Forestry MISs to receive concession on 4 year holding rule

Editor: The collapse of Timbercorp and Great Southern is expected to lead to a number of forestry managed investment schemes (MISs)

being wound up or restructured, which could cause investors to fail the requirement to hold their interest in the MIS for four years to claim an up-front tax deduction.

The Government will amend this four-year holding period rule for forestry MISs to ensure that it cannot be failed for reasons genuinely outside an investor's control.

FBT – Donations made under salary sacrifice arrangements

The FBT law has been amended to ensure that, from the 2008/09 FBT year, FBT will not apply where a salary sacrifice arrangement involves a donation to an organisation that is a deductible gift recipient (DGR).

Employees who make donations under such a salary sacrifice arrangement are not entitled to claim an income tax deduction for the donation in their own tax return.

Cash economy in the firing line

Editor: The Tax Office has been promising to 'up the ante' on the cash economy for some time now. With thousands of letters about to hit possible future audit 'targets' and the new benchmarks the ATO has just released on different cash industries, they are definitely starting to play for keeps.

If any client receives a letter from the Tax Office as described below, please contact our office straight away.

The Tax Office has released copies of letters which will be sent out to thousands of taxpayers who are in the cash economy.

The ATO stated that it was sending letters to businesses that have:

- ◆ made substantial bank deposits that do not appear to be consistent with reported income; or
- ◆ made multiple international bank transfers out of their bank accounts that don't appear to be consistent with their reported income; or
- ◆ reported income that doesn't appear to support the owner's personal living expenses.

One of the letters sent out advises the taxpayer that their business has reported a net income that appears to be lower than required to support a reasonable level of personal living expenses.

It states that the Tax Office uses a range of indicators to identify businesses for reviews and audits including:

- ❑ identifying businesses with the opportunity for cash economy activity;
- ❑ comparing tax return information to other similar businesses in their industry;
- ❑ using information from organisations such as Centrelink, business suppliers and banks; and
- ❑ reviewing information provided by the community.

The letter finishes up by saying that the ATO will be monitoring the taxpayer's activity statements and/or income tax returns during the next six months. This may result in the business being selected for an audit.

Superannuation 'clearing house' service

The Government has announced a new measure to cut red tape for many businesses which have to make superannuation contributions to numerous super funds for their employees.

From July 2010, small businesses will be able to pay one superannuation contribution to a 'clearing house', which will then forward payments on to super funds nominated by the employer.

Medicare is the nominated clearing house and small businesses will be able to begin registering with it online in May 2010 (for a July start).

How will the service work?

- ◆ Small businesses with less than 20 employees will register for the service online and pay their superannuation contributions to Medicare, which will split them up and forward them on to the nominated super funds.
- ◆ Employers will pass on choice-of-fund nominations to Medicare.
- ◆ Medicare will develop an online system for registration and on-going payments, with payments initially being made via electronic funds transfer (EFT).

ATO looks closely at employers employing 'contractors'

In a recent speech, a senior tax officer indicated that the ATO was now taking a good hard look at employers arrangements with 'contractors', to ensure that they are, in fact, genuine contractors and not just employees being treated as contractors to cut costs.

He said that "Evidence suggests that the current tighter economic conditions have increased the prevalence of such arrangements as more businesses feel the need to cut costs, and labour market conditions can make employees more vulnerable to these practices.

"Increasingly it seems that many employers prefer to treat workers as contractors as it can enable them to cut costs in terms of workers compensation, payroll taxes and superannuation guarantee. They can also negotiate pay rates outside of normal wages and conditions and do not withhold tax."

The Tax Office has commenced an audit campaign that will tackle non-compliance in this area by focusing on businesses that do not withhold from payments to workers as required and fail to make superannuation guarantee contributions.
