

CLIENT ALERT

June 2010

Crackdown on 'Phoenix' activity

Editor: Phoenix activity involves the deliberate, and often systematic, liquidation of a company to avoid the payment of liabilities, including employee wages and superannuation, business creditors and outstanding taxes. The business then 'rises' and continues through another company free of those debts.

The Government has announced a crackdown on these 'phoenix' activities by expanding and reforming the use of 'security deposits' and increasing penalties for failing to comply with the requirement to provide a security deposit.

Security deposits are similar to a bond and must be paid by a taxpayer to the ATO in relation to an existing or future tax liability. Refusal to provide a security deposit is a criminal offence.

Such a deposit is most likely to be required where the ATO believes that a foreign taxpayer is establishing or carrying on a business in Australia for a limited period of time only, or where some other risk makes a deposit appropriate, such as a risk of phoenix activity.

The penalty for non-compliance to provide security has also been significantly increased for individuals from 20 penalty units (\$2,200) to 100 penalty units (\$11,000), and for companies from 100 penalty units (\$11,000) to 500 penalty units (\$55,000).

Tax donations to volunteer bushfire brigades deductible

The Assistant Treasurer has announced changes to the tax law to extend tax deductible donation support to all volunteer bushfire brigades.

Political donations no longer deductible for businesses

Legislation has now passed abolishing tax deductions for donations to political parties and independent candidates and members.

Businesses will no longer be able to deduct political donations, either under the existing

\$1,500 capped specific deduction in the tax law, or as a general business deduction.

The measure applies retrospectively from 1 July 2008, meaning businesses will not be able to deduct their political donations from that day.

Individual taxpayers will still be able to claim deductions for donations to political parties and independent candidates and members up to the \$1,500 cap.

GIC AND SIC rates

The Tax Office has released the GIC (general interest charge) and SIC (shortfall interest charge) rates for the June 2010 quarter.

GIC rate	11.16%
GIC daily compounding rate	0.03057534%
SIC rate	7.16%
SIC daily compounding rate	0.01961644%

Data matching vs the cash economy

Editor: The Tax Office is ramping up its efforts to catch out the cash economy and individuals who are using overseas jurisdictions to hide their money.

Background: How the ATO is catching up with the Cash Economy

Cash economy businesses, which are being targeted by the Tax Office, often 'skim' some or all of their cash takings, run part of their business off the books or don't report all their income.

The ATO uses its data matching programs to gather information from a variety of sources and cross match it with taxpayer information and the Tax Office's small business benchmarks (see the next page) to identify businesses which have not reported all their income.

Recently, the Tax Office has commenced four new data matching programs:

- **Merchant Payment Cards Project** – data matching merchant card sales through the CBA; Westpac; ANZ; and NAB. 300,000 individuals within cash economy industries will be matched.
- **Plasterers Project** – collecting details of taxpayers that have purchased plasterboard, etc., in NSW from Boral Ltd, CSR Limited and La Farge Plasterboard Pty Ltd. 10,000 individuals will be matched.
- **Motor Vehicle Data Matching Project** – collecting details of taxpayers that have purchased or acquired a motor vehicle valued at \$10,000 or higher from the relevant road traffic authority in every State and Territory, e.g., Vic Roads, Transport SA, etc. Approximately 2.5 million individuals will be matched.
- **Banking Transparency Strategy** – collecting data and intelligence on Australian taxpayers that have offshore accounts in jurisdictions that are of interest to the ATO.

Transactions through (basically) every major financial institution in Australia, including the big four banks, International Financial Institutions and Credit Card providers such as American Express, Diners Card, MasterCard and Visa will be reviewed. In excess of 100,000 taxpayers will be targeted.

Cents per km car rates for 2009/10

Taxpayers whose income producing use of a car does not exceed 5,000 kms per year can deduct car expenses on a per km basis. The rates for 2009/10 are as follows:

Kind of car	Engine capacity		Rate per km (cents)
	Not rotary	Rotary	
Small	Up to 1,600cc	Up to 800	63
Medium	1,601cc to 2,600cc	801cc to 1,300cc	74
Large	>2,600	>1,300	75

Industry benchmarks vs the cash economy

Editor: The second string to the Tax Office's assault on the cash economy is using industry benchmarks.

These benchmarks provide a snapshot of what, on average, the Tax Office believes is happening in businesses operating in a particular industry by comparing various costs to turnover.

However, those of us who thought that the benchmarks would apply only to the traditional cash economy targets, i.e., building and construction and restaurants/cafés, cleaners, etc., will be sorely disappointed with the new list of industries to be targeted.

Benchmarks to be published

The following is a list of soon to be published benchmarks issued by the Tax Office.

- Architectural Services
- Automotive Electrical Services
- Cabinet makers
- Child Care Services
- Chiropractic and Osteopathic Services
- Confectionary retailing
- Craft Shop
- Discount and variety stores
- Electrical, Electronic and Gas Appliance Retailing
- Entertainment Media Retailing
- General Dental Services
- Gift shops
- Health and Fitness Centres and Gymnasia Operation
- Health Food Retailing
- Lawn Mowing Services
- Machinery Equipment Repair & Maintenance
- Musical instruments retailing
- Physiotherapy Services
- Picture framing
- Printing
- Printing Support Services
- Specialist Dental Services
- Sport and Camping Equipment Retailing
- Sports and Physical Recreation Instruction
- Veterinary Services

Editor: Clients concerned that their industry is being targeted may wish to contact our office.

FBT: Benchmark interest rate

The benchmark interest rate for the FBT year commencing 1 April 2010 is 6.65% p.a. This rate replaces the rate of 5.85% that applied for the previous FBT year.

The rate of 6.65% is used to calculate the taxable value of:

- ◆ a fringe benefit provided by way of a loan; and
- ◆ a car fringe benefit where an employer chooses to value the benefit using the operating cost method.

FBT: Cents per kilometre basis

The rates to be applied where the cents per kilometre basis is used for the FBT year commencing 1 April 2010 are:

Engine capacity	Rate per kilometre
0 – 2,500cc	45 cents
Over 2,500cc	54 cents
Motorcycles	14 cents

Tax Office's new computer upgrade clogs refunds

Editor: The Tax Office has recently embarked on an ambitious, but much needed, upgrade to its outdated computer systems – some of which date back to the early seventies.

Back in January this year, we were informed that we might experience "temporary service delays".

In February, we were told that there was a backlog of 300,000 returns yet to be processed.

Since then 140,000 refund cheques were held up, then issued with the wrong date on them, and a whole plethora of problems emerged including penalty charges on refunds, incorrect notices of assessment and incorrect calculations made on notices of assessment.

The situation seems to be slowly coming back to normal although there are still problems coming to light.

For its part, the Tax Office has posted something of an explanation and as close as it can come to an apology on its Website. Clients who experience difficulties or who have concerns should contact our office.

Budget 2010

Following are the main tax measures announced in last month's Federal Budget, in addition to those already announced as part of the response to the Henry Review (see over the page).

50% discount on tax on interest income

From 1 July 2011, individual taxpayers will be provided with a 50% tax discount on up to \$1,000 of interest earned, including interest earned on deposits held in authorised deposit taking institutions, bonds, debentures and annuity products.

Increase in the net medical expenses tax offset claim threshold

From 1 July 2010, the Government will increase the threshold above which a taxpayer may claim the 20% net medical expenses tax offset from \$1,500 to \$2,000, and will commence annually indexing the threshold to the CPI from 1 July 2011.

Changes to the super co-contribution

The Government has announced the following two changes to the superannuation co-contribution:

- ◆ the matching rate for the co-contribution will be permanently retained at 100% or \$1 for each \$1 contributed (rather than 150% or \$1.50), which means that the maximum co-contribution that is payable on an individual's eligible personal non-concessional superannuation contributions will stay at \$1,000 (rather than \$1,500); and
- ◆ The income thresholds for the superannuation co-contribution will be frozen for 2010/11 and 2011/12, meaning the maximum co-contribution (of up to \$1,000) will continue to only be available to people with incomes of up to \$31,920 (the amount available then phases out for incomes up to \$61,920).

Editor: Super fund members who are eligible to receive the Government's super co-contribution need to ensure they make their contributions before 30 June 2010 if they want to receive their entitlement for the 2009/10 income year.

To be eligible to receive a co-contribution, a taxpayer's 'total income' (assessable income plus reportable fringe benefits and reportable employer super contributions) must be less than \$61,920, and at least 10% of that total income must be from employment (e.g., salary and wages) or business activities.

The Henry Review

The Government also released the report of the inquiry by the Treasury Secretary, Dr Ken Henry, into the entire tax system, and the Government's initial response to it.

Further initiatives announced include:

- From 1 July 2012, a Resource Super Profits Tax ('RSPT') will be introduced at a rate of 40% on profits made from the exploitation of Australia's non-renewable resources;
- The company tax rate will be reduced to 28% (from the 2012/13 income year for eligible small business companies, and from the 2014/15 income year for other companies);
- From 1 July 2012, small businesses will be able to immediately write-off assets costing less than \$5,000 and depreciate all other assets (except buildings) in a single depreciation pool at a rate of 30%;
- The superannuation guarantee (SG) contribution rate will be increased to 12% (from the current 9%) by 2019/20, with gradual increases commencing on 1 July 2013;
- From 1 July 2013, the SG age limit will be increased to 75 years (currently 70 years), which means that employees aged 70 to 74 will generally be eligible to have SG contributions made on their behalf;
- From 1 July 2012, the Government will match concessional contributions (i.e., basically deductible contributions) which are made by or for the benefit of individuals with adjusted taxable incomes of up to \$37,000 at the rate of 15% for each \$1 of concessional contributions, with an annual

maximum amount payable of \$500; and

- From 1 July 2012, individuals aged 50 or above with superannuation balances below \$500,000 will have a concessional contributions cap of \$50,000 (effectively extending the existing transitional concessional contributions cap for such individuals).

Editor: The Government said it would not accept some Henry recommendations, such as reducing the 50% CGT discount, discounting negative gearing deductions, or abolishing the luxury car tax.

However, it has left some on the table, including recommendations to tax fringe benefits and employer superannuation contributions in the hands of employees, making it more difficult to claim personal tax deductions, and removing important small business concessions (such as the 50% active asset reduction and the 15 year exemption) and a range of concessional tax offsets (such as the medical expenses tax offset).

Superannuation Clearing House: Registration details

Eligible small businesses (with fewer than 20 staff) are now able to register online to use the Government's free Small Business Superannuation Clearing House, by visiting www.medicareaustralia.gov.au/super.

The service, which commences from 1 July 2010, enables small businesses to pay their employees' superannuation to a single location in one electronic transaction.

The Clearing House will then send the contributions to the appropriate superannuation fund and employers will be able to access a record of their contribution history whenever it's needed.

FBT car parking threshold

The car parking threshold for the FBT year commencing on 1 April 2010 is \$7.46 (up from the amount of \$7.25 that applied in the previous FBT year).