



2010
Tax IQ

NEWSLETTER

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BONUS ISSUE

TAX EFFECTIVE SHARES AND PROPERTY INVESTMENT

Many Australians now have share and property investments. Subscribers will receive invaluable tips on wealth accumulation and investment management.....

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CASES

Company Supporting Community Bank Exempt from Tax - Wentworth District Capital Ltd v FCT (2010) FCA 862 (Federal Court, Perram J, 13 August 2010)

Here it was held that a company limited by guarantee that provided the premises, staff and equipment to an entity owned by Bendigo Bank for the conduct of its banking business in the New South Wales town of Wentworth was entitled to an exemption from tax under item 2.1 in the table in s50-10 ITAA 1997, as a society, association or club established for community service purposes.

Wentworth District Capital Ltd (WDCL) entered into an arrangement with Bendigo Bank after Westpac closed the only bank branch in Wentworth resulting in the town entering into economic decline. The Bendigo Bank was regarded as a success with the economic fortunes of the town and the lives of its citizens improved significantly. The surpluses earned by WDCL were regarded by the ATO as taxable income.

The ATO contended that the provision of banking services to customers of Bendigo Bank could not be the provision of a community service. The Court agreed but considered this irrelevant, "for the provision of banking services was not the service provided by WDCL. The service it provided was the creation of the circumstances which would make it possible for a bank to operate in the town."

Key extracts include:

- *"Was it a service to the Wentworth community to bring about circumstances apt to lead to the re-introduction of banking in the town? It is not to be thought that the facilitation of the commercial supply of services which would otherwise not be provided is always a community service. Had WDCL been incorporated to facilitate the provision of a toy shop in Wentworth it might be doubted that the community was much thereby served? The question in each case is whether the facilitation of the service in question provides a real or tangible benefit to the community. If it does, then a community service is established. Naturally, questions of degree are involved. There may be a difference between facilitating the bringing of a doctor to an outlying district and the bringing of a florist. Other examples may lie closer to the line. Further, where the service already exists in the location in question the tangible benefit may be more difficult to discern.*
- *In this case, those issues are susceptible to a straightforward answer. It was a town with no face-to-face banking services the facilitation of such services provided a substantial benefit to the community. That benefit was both real and tangible. It consisted of the fact that local banking then became available, increasing in a concrete way the amenity of the town. It follows that in 2006 and 2007 WDCL was established for community services purposes. The income of WDCL was, therefore exempt under s50-1 of the 1997 Act."*

TRACKING CHANGE ACROSS THE LANDSCAPE OF TAX

The ATO's New Strategic Directions

A comment made by the Second Commissioner of Taxation at a recent Taxation Institute conference certainly makes for some interesting reading.

Mr Quigley gives us some insight into where international taxation administrative is moving among the various jurisdictions.

The International Picture

According to Mr Quigley:

- The US Commissioner of the IRS recently reiterated the long-held view that "modern tax administration requires global engagement."
- The truth of this observation, acknowledged by tax administrators since the advent of globalisation, has been underscored by the global financial crisis, and post-GFC, we are seeing signs of better and stronger cross-border mechanisms.
- In 2009, the year following the greatest financial collapse since 1929, more progress was made toward full and effective exchange of information, based on a universally endorsed standard, than in the preceding decade.
- At the London summit last year, the OECD Secretary General called this progress "nothing short of a revolution."
- In large part this revolution is technology-driven. The same technological advances that created the conditions for a global economy allow the ATO to work globally to tackle harmful tax practices. Advances in communication and information sharing enable authorities and agencies to collaborate with unprecedented speed and accuracy.
- This cooperation is most visible in the area of tax havens. There are an increasing number of bilateral and multilateral arrangements to tackle tax havens and induce conformity from those jurisdictions that have allowed abusive practices to flourish. The impetus for this change is the economic reality that tax havens continue to have a devastating impact on developing countries, having a potentially negative impact on them of up to \$160 billion every year.
- In London, the G20 leaders stated that "the era of banking secrecy is over. The era of greater transparency is on its way.
- Australia is at the vanguard of this evolution, and is seen as one of the leaders in progressing the negotiations of Tax Information Exchange Agreements, or TIEAs. Australia has had negotiations with 38 foreign jurisdictions that

sit outside the OECD, and now has 25 TIEAs, with many more in the pipeline. Some of the most encouraging have been negotiated in surprising quarters.

- Not long ago it would have been hard to imagine Australia having a Tax Information Exchange Agreement with Vanuatu or the Marshall Islands but these have been signed recently, as part of our Pacific Strategy, suggesting that our global - and regional - landscape is indeed changing.
- Project Wickenby has played an important role in this change. Wickenby is now five years old and tracking very well. By June we had completed nearly 1200 audits, raising liabilities of nearly \$730 million. 57 people have been charged and 11 people have been convicted of serious offences; there are 26 criminal convictions underway. The ATO has also seen the impact in what they term the 'compliance dividend' - that is, the revenue raised from taxpayers who become more compliant following a Wickenby investigation.
- Wickenby is also having a notable deterrent effect. AUSTRAC has shown a 30% reduction in the flow of funds from Australia to Vanuatu, Switzerland and Liechtenstein, where the project has had a focus. This is compared to a 5% reduction in other major haven jurisdictions.

Making It Easier For Businesses to Comply: SBR, AUSkey and ABR

SBR involves 12 government agencies at federal, state and territory levels. It is designed to reduce the business-to-government reporting burden and deliver cost savings estimated at \$800 million per year once fully implemented. It will also allow Australian businesses to be more competitive in international markets.

The ATO is modifying their systems, forms and electronic messages to support SBR. From 1 July, their web services accept activity statements, payment summaries, tax file number declarations, and fringe benefits tax returns from the SBR channel. The taxonomy for company income tax return and schedules is now available and the system to enable software developers to test and self certify will be available later in the year.

A central component of SBR is the new digital signature AUSKey, which many small businesses are already familiar with. This creates an authentication solution that strikes a balance between ease of use and security - a single credential for Australian businesses to access government online services. Australian businesses register for their AUSKey online, and use it to access ATO portals and other tax online services. By 16 July there were approximately 80,000 AUSkeys in circulation, with businesses registering at the rate of around 2000 per day.

Businesses can use their AUSKey to sign on to SBR-enabled financial, accounting or payroll software, to provide their reports to relevant government agencies securely online, and to access the Australian Business Register (ABR) which administers AUSKey.

As the central collection, storage and verification system for businesses, the ABR provides a set of services to government agencies that assist them to streamline their dealings with business and reduce the overall number of transactions businesses must make with government, which is in line with the streamlining service delivery.

The significant growth in the number of agencies accessing ABR services (now more than 190) means that the ATO needs to be very careful to ensure the data held within the ABR, and the services through which it is made available, are of the highest standard. The ATO is currently undertaking a technology refresh of the ABR that will make it more flexible and capable of meeting the evolving needs of the Government, the business community and agency users, including ensuring integrity of the information.

The ATO is working with the Department of Innovation, Industry, Science and Research, and with the Australian Securities and Investments Commission, to integrate the process of registering business names and ABNs, and also to change public perceptions of the ABR and ABNs as specifically 'tax products'. The whole point is that they are used by multiple agencies, including the ATO to build a better picture of business, and to make it easier for business to interact with government. As well as providing better data, it is a move toward the 'one touch' or 'one click' approach that people are now looking for in all their transactions.

On the compliance front, there are wider implications for agencies and the private sector where employers are not meeting their tax and super obligations for their employees. The ATO is using the latest Australian Government online secure collaboration technology called "GovDex" to share audit and community intelligence of common interest with the ATO in State and Territory Revenue Offices. While there is room for improvement in the interface, it allows the ATO to learn from each other's experience in "real-time" and work to optimise the effectiveness and sustainability of compliance activities across federal and state levels of government.

ATO'S DATA MATCHING PROGRAM FOCUSING ON ONLINE SELLING SITES

The ATO is launching a data matching program focusing on individuals and businesses who have sold more than \$20,000 in goods and services on the online selling sites, eBay and The Trading Post in any of the last three financial years.

If you are running a business through online selling sites, or you have an existing business and are making additional sales through these sites, then you need to include this income in your activity statement and/or tax return.

The data match will detect businesses that are under reporting or not reporting income generated from these sources.

According to Tax Commissioner Michael D'Ascenzo:

- Anyone who may have understated their taxable income in the last three years should make a voluntary disclosure.

- If you do so you will be treated fairly and benefit where applicable from significantly lower penalties.
- You can make a voluntary disclosure on this or any other matter by writing to the ATO and more details are available on the ATO website.
- The data matching program helps to ensure that there is a level playing field so that businesses doing the right thing are not disadvantaged.
- The online data matching program is part of the ATO's focus on encouraging high levels of voluntary compliance and addressing the issues raised by non-compliant behaviour.
- Data matching allows information from a variety of sources to be brought together and compiled, identifying individuals and businesses that are avoiding their tax obligations.
- Records will be matched against different identifiers such as tax file numbers; ABN's, addresses and date of births which will improve the integrity of the ATO data matching program.
- When information obtained from data matching is used in an audit or review, people will be given the opportunity to confirm or contradict the information found from the data matching.
- All the data collected is in accordance with the Federal Privacy Commissioner's guidelines on data matching in Commonwealth administration, with taxpayers confidentiality protected at all times.
- The ATO matches information in tax returns with over 500 million items of third party data. Voluntary disclosure entitles taxpayers to an 80 per cent reduction in penalties that would otherwise apply.

TAX TIME 2010 - FAIRER TREATMENT OF SAME - SEX COUPLES

In July the Government issued a media release reminding same sex couples of changes to the tax law that will make tax time fairer.

The changes announced by the Government in 2008, ensure that same-sex couples and families are treated the same way as other couples and families for income tax and superannuation purposes.

The income tax changes applied from 1 July, 2009 onwards, so couples will need to take note when completing their tax returns this year.

Changes in the superannuation law have already had more than a full year of effect, having applied from 1 July 2008.

- When preparing their tax returns for the 2009-2010 financial year, same-sex couples need to be aware that the differential treatment of same-sex couples and their children has been removed.
- While the amount of tax that people have to pay depends on their personal circumstances, including whether they have children, it's a big win that same-sex couples can, when doing their taxes this year, access a range of tax concessions previously not available to them.

Examples of the changed treatment include rollover relief for some capital gains arising due to a relationship breakdown, access to the dependent spouse tax offset, transferring unused senior Australians tax offset to a partner and claiming the net medical cost of dependants through the net medical expenses tax offset.

The removal of the differential treatment of same-sex couples in the tax law is in addition to similar changes in the law covering social security, veterans' entitlements, workplace relations, workers' compensation, health and immigration.

GST AND THE INTEGRITY OF YOUR BUSINESS SYSTEMS

Recently the ATO published an excellent fact sheet "GST and the integrity of your business systems". Although GST focused it has a much wider application to SMEs.

The ATO checklist provided is also very good.

The ATO identified \$21 million in unreported GST liabilities after contacting 503 small and medium enterprise (SME) taxpayers who were at risk of incorrectly reporting GST.

In the same year, the SME industries that had the highest number of GST reporting adjustments because of business system risks were:

- Retail trade - accounting for 25.3% of adjustments
- Wholesale trade - accounting for 19.2% of adjustments
- Financial and insurance services - accounting for 13.25% of adjustments
- Manufacturing - accounting for 13.25% of adjustments

Checklist - What Can You Do

There are a few key things you can do to lower your risk profile for the IBS risk and ensure your systems are best placed to support your business and report correctly.

Written, documented procedures are important for:

- Identifying the correct GST treatment of each supply and acquisition
- Identifying processes to be followed for unusual, large or one-off transactions
- Tracking and processing adjustment events such as

- cancellations and payment changes
- Preparing your activity statements correctly

Strong internal controls over your systems and processes will help you:

- To introduce GST governance and risk management processes
- Have levels of delegated authority and clear escalation procedures
- Have an established process for seeking external advice
- Use your accounting software effectively to generate exception reports
- Perform monthly reconciliations
- Have a clear separation of duties

When your **staff receive training specific** to your systems and business needs, this will help you manage risk. You can:

- Have help cards and other material to assist staff
- Create succession plan - having several people within your business capable of undertaking the same role
- Have a process for mentoring and guiding new staff
- Provide training for existing staff to keep their knowledge and skills regularly updated

Regular internal reviews can ensure your systems and business processes are on track, allow you to update and include any relevant changes of GST law and help you manage risk. You can:

- Engage the services of a tax practitioner or auditor to perform an external review
- Perform an independent internal review of your tax processes
- Ask your systems software provider to review your systems
- Review and update your written procedures and software regularly
- Monitor reporting trends

System security is important for managing the IBS risk. You should ensure that:

- Access to your financial and accounting systems is restricted and has an audit trail
- You have a 'lockdown' process for month and year end
- There are clear authorisation levels for processing unusual or one-off transactions

Relationships

Knowing where to go and who to ask when you need resolution to a tax or system issue can help you manage business system risk. It is important that you:

- Have a good working relationship with your tax agent, accountant, bookkeeper or software developer
- Are aware of where you can go to obtain advice

FUEL TAX CREDIT RATE CHANGE FOR HEAVY VEHICLES

From 1 July, 2010 the fuel tax credit rate for heavy vehicles that use fuel such as diesel or petrol and travel on public roads is 15.543 cents per litre. This rate change is due to an increase in the road user charge.

A heavy vehicle is either of the following:

- A vehicle with a gross vehicle mass (GVM) of greater than 4.5 tonne
- A diesel vehicle acquired before 1 July, 2006 with a GVM equal to 4.5 tonnes or more.

To substantiate your claim, you will need to keep records that show you acquired the fuel and how you used it. Examples of acceptable records include:

- Fuel docketts
- Invoices
- Log books

You will need to keep these records for five years from when you made your claim.

GST ON TABLE AT TAX SUMMIT

The Treasurer, Wayne Swan is under pressure to broaden the scope of next year's tax summit to include discussion of the GST.

The deal with the independents that handed Labor government includes a commitment to convene a "public forum to experts" to discuss the Henry tax review by June 2011.

On 9th September, 2010 Mr Swan stated that all 135 recommendations of the Henry review would be up for discussion including those his government had specifically ruled out, among them taxing capital gains more highly and rationalising taxation of alcohol.

As we indicated in our tax reform chapter in the annual publication, GST needs to be examined in some detail. The Henry review was specifically prevented from reporting on GST.

It should be noted that some OECD nations are increasing their rates of GST. New Zealand lifted its rate from 10 to 12.5 per cent in 1989 and again to 15 per cent from 1st October, 2010. Britain lifted its rate to 20 per cent in January 2010.

A boost in Australia's rate from 10 per cent to 12.5 per cent would raise an extra \$12 billion, climbing to \$15 billion.

Such an increase to the "user pays", GST could be used to fund a cut in the rate of income tax, company tax, payroll tax and other inefficient state taxes.

In the election campaign, both the major partners gave an undertaking not to increase the rate of GST. To do otherwise would have given the other side a free kick.

This really is the problem with politics and tax reform. It seems they are a lot more sophisticated in New Zealand where the electorate is kept well informed and consulted at each stage of the process of tax reform.

MEASURE TO ASSIST SMALL BUSINESSES

On 8th July, 2010 the ATO extended the measures to help small businesses that are struggling to manage their tax payment obligations in the current economic climate.

Twelve-Month General Interest Charge (GIC) Free Payment Arrangements

This measure is available to businesses with an annual turnover of less than \$2 million with an activity statement debt. Under this arrangement, the ATO expect businesses to enter into a direct debit payment arrangement.

Payment arrangements businesses enter into with us from 1st July 2010 to 30th June 2011 will be GIC-free for the period they are maintained, up to a maximum of 12 months. This may also apply to payment arrangements businesses enter into with us before 1st July 2010 that were later renegotiated.

Deferred Activity Statement Payment Due Dates

Businesses with an annual turnover of less than \$2 million can request a deferral of payment only on their next due activity statement.

The ATO can grant a deferral of up to:

- Two months for quarterly and annual payers
- One month for monthly payers.

This deferral does not apply to activity statements or remittance advices that do not need to be lodged.

THE LATEST ON PROCESSING

In August 2010 the ATO experienced their busiest month ever.

During August the ATO issued more than 3.5 million assessments which is almost one million more than our previous highest month. This demonstrates the new system can cope with large volumes.

Since 1st July, 2010 the ATO have received 6.35 million income tax returns and issued refunds worth \$12.89 billion.

Demand for electronic services continues to be strong, with 1.6 million e-tax lodgements already received, up to 4.1% on

last year. Use of the pre-filing service in e-tax is up by 13.7%.

Tax agents have continued to use the pre-filing service through the Tax Agent Portal to assist their clients, downloading over 2.9 million records, an increase of 20.2% on last year.

ATO statistics to 10th September, 2010:

- Returns received since 1st July, 2010 - 6.35 million
- Returns finalised since 1st July, 2010 - 5.86 million
- Number of refunds issued since 1st July, 2010 - 4.92 million
- Value of refunds issued since 1st July, 2010 - \$12.89 billion

CASH ECONOMY LETTER PROGRAM

As part of their approach to managing risks in the cash economy, this financial year, the ATO will send around 110,000 letters to taxpayers who may be participating in the cash economy. The majority of letters will be sent to businesses reporting outside the small business benchmarks for their industry.

The ATO compliance activities promote a level playing field by supporting honest businesses, and detecting and dealing with those seeking an unfair advantage by not recording and paying tax on all their transactions, especially cash transactions.

The ATO use a broad range of indicators to identify taxpayers who may be seeking an unfair business advantage.

One indicator is comparing businesses against the small business benchmarks for their industry.

The ATO also:

- Use data matching to identify discrepancies in reported income
- Identify businesses that report net income that appears to be lower than that required to support the business operator's personal living expenses
- Follow up on allegations of tax evasion received from the community, and
- Monitor the behaviour of previously audited taxpayers to encourage their continued compliance

The letters inform taxpayers that they have been identified as a result of one of the cash economy indicators. Taxpayers will be encouraged to review their records to ensure they have correctly reported all income, especially cash transactions.

Letters sent to taxpayers identified as reporting outside the small business benchmarks for their industry provide important information about:

- The tax performance of their business
- How benchmarks are used to calculate default assessments, and
- Details of how to correct their mistakes or make voluntary