

# JUST TAX UPDATE

## **DIRECTORS LIABILITY FOR PAYG – CARE IS REQUIRED!**

In a recent case, a director who resigned and moved residences was still held personally liable for PAYG debts in existence at the date he resigned. He did not get the notice from the ATO as he had moved houses and became personally liable without realising it!

Directors of companies should be aware that they can be held personally liable for PAYG deduction debts of a company where the company is in default.

For this personal liability to arise, the ATO must serve a notice on the director. If the director does not do one of the following four things within 14 days of receipt of the

notice, he can be held to be personally liable:-

- Pay the debt personally
- Arrange for the company to pay the debt.
- Enter into a payment arrangement with the ATO
- Put the company into liquidation or administration

When sending these notices, the ATO will send it to the address of the director as listed with the ASIC. If this address is incorrect, the notice is deemed to be received by the director even if they do not actually receive it.

In order to guard against being held personally liable under one of these notices, we recommend the following:-

- Contact us immediately you receive such a notice.

- Ensure the ASIC records are always up to date in relation to your personal address.
- Make sure if you resign as a director that you have checked that all PAYG withholding debts of the company have been paid up to date first.
- Check the status of these debts before accepting an appointment as a director as you may immediately become liable for existing debts.
- Ensure the company pays these debts promptly at all times. This means knowing what your bookkeeper, accountant or administration department are actually doing.
- Always be aware of liquidity problems of the company.

Where a notice is received, usually the only course of action is to have the debt paid as soon as possible. It is usually impossible to organise a payment arrangement with the ATO within 14 days. It will not matter if the company is put into liquidation or administration after 14 days have expired from the notice, personal liability will be virtually automatic once 14 days have expired irrespective.

There have been numerous cases where the ATO has applied this personal liability and they will show no mercy. So it is imperative to keep these debts and ASIC records up to date.

### **ATO TO ATTACK FREQUENT FLYER ARRANGEMENTS**

The ATO has re-focused its attention on consumer loyalty programs and will be looking to apply FBT to the following situations:-

- Where employees connected with the employer receive benefits as a result of the payment of business expenses through credit cards
- Where employers reward employees for services rendered by providing them with frequent flyer points

arising from business expenses.

The ATO has set an automatic threshold of 250,000 points and will look at arrangements which give rise to points over this level.

Some people deliberately pay business expenses through their private credit cards in order to generate frequent flyer points. This change in policy by the ATO should be noted as the Commissioner can deem these rewards as assessable if the arrangement is so contrived that no commercial basis is found other than for the recipient to receive points, or is used as a substitute for income.

Provided the rewards arising from the use of this practice are used also for business purposes, there is no real problem. Where they are used for private purposes, FBT will probably be payable.

The ATO is likely to contact the major credit card providers and look at those accounts where more than 250,000 points arise in a single year. Recipients of those points may then be asked to explain how the points arose and how they were used.

We strongly recommend that any client using this practice contacts our office to discuss this matter further.

### **ISSUES WITH RENTAL PROPERTY DEDUCTIONS**

The ATO has recently highlighted some common mistakes made by persons making tax deduction claims in relation to rental properties. These common mistakes include:-

- Claiming travel expenses for property inspection trips which do not physically occur.
- Claiming more than 5,000 business kilometres on a cents per kilometre basis. The maximum of 5,000 km per vehicle is set no matter what the purpose for deductible travel.
- Claiming travel when the trip relates to initial repairs or improvements to the property.
- Not identifying initial repairs or improvements and claiming them as tax deductions. Initial repairs can arise in the period up to 18 months after the acquisition of the rental property and effectively are repairs to damage present on the property at the time it was purchased. Improvements arise where the property is actually improved rather than

repaired by use of better materials etc.

- Not keeping adequate documentation of expenses incurred. In relation to cents per kilometre travel claims, these should be supported by diary entries or reasonably based calculations.
- Claims can only be made on a cents per kilometre basis where the taxpayer actually owns or leases the vehicle.
- Claiming deductions for holiday homes not really available for rent.

### **DEPRECIABLE ASSETS IN NEGATIVELY GEARED RESIDENTIAL PROPERTIES**

The ATO is looking to clamp down on depreciation claims in relation to residential rental properties. Some of the assets under attack include:-

- Air conditioning ducting that is attached and forms part of the building
- Bookcases, wardrobes, closets, benches and similar

items which are affixed to the property and therefore form part of the building.

The ATO takes the view in these situations that depreciation claims are no longer available and only a 2.5% prime cost claim on these as building improvements is available.

Please provide details of these assets to us when you submit your tax return information so we can assess fully the validity of your claims in this area.

### **MORATORIUM ON TAX DEBTS**

Over the next few months the ATO will be inviting certain taxpayers to take up a special offer regarding the repayment of their outstanding tax debts.

The offer of reduced or interest free terms is conditional. To qualify, the taxpayer must have a debt of less than \$25,000, turnover less than \$10 million and not be already involved in a tax settlement.

Should they enter into an arrangement to pay the debt off over 6 months, no additional interest will accrue. If the debt is paid off over 18 months, the interest will be reduced.

However there are some strings to this offer. These are:-

- Debts must be paid off via direct debit
- Taxpayers must bring all other lodgements up to date within 28 days
- All future lodgements must be made on time

If you receive such an invitation from the ATO and have any further queries, please contact our office.

### **LUXURY CAR LIMIT REMAINS UNCHANGED**

The luxury car limit for the 2004/05 tax year remains at \$57,009 after recovery of GST where applicable.

This means that full depreciation claims will potentially be available where the car costs up to this amount after recovery of GST.

The contents of this newsletter are general information only. They are not intended as professional advice and you should consult a qualified accountant or other suitably qualified professional for further assistance before relying on any of the contents.