March 2010 issue

mas accountants

the original accounting office for small business

small talk

your monthly small business accounting news

R&D Tax Offset Abuse

The Tax Office has issued a Taxpayer Alert warning taxpayers to be cautious of investment schemes that abuse the research and development (R&D) tax offset.

The Tax Office says the schemes involve a company structuring contracts with a registered research agency (RRA) to take advantage of the prepayment concessions in the tax laws.

The Tax Office is concerned the schemes may give rise to various taxation issues, including whether:

- the prepayments rules will apply;
- the expenditure has been incurred; and
- the company and the RRA are dealing with each other at arm's length.

On the ancient calendar, March was the first month of the year until 46 B.C. In England it was the first month until 1752.

To the Romans, March was also named Martius, named for Mars, the God of war.

Deductions and Refinancing Home Loans

The Tax Office has also issued a Taxpayer Alert in which it alerts taxpayers about sham arrangements being promoted as 'mortgage management plans'.

The arrangements involve homeowners refinancing their home loans and establishing investment loans to fund the purchase of shares in bogus companies. Homeowners then claim tax deductions for interest incurred on the loans.

The Tax Office says the arrangements may give rise to various taxation issues, including whether:

- the general anti-avoidance provisions may apply to the arrangements; and
- any interest incurred on the investment loans is deductible.

Uncommercial Offshore Superannuation Trusts

The Tax Office has also issued a Taxpayer Alert warning taxpayers that it is closely scrutinising offshore trust structures that masquerade as superannuation funds used by taxpayers in an attempt to avoid tax on money that is shifted into Australia.

According to the Tax Office, taxpayers use the trusts to invest funds received from a related non-resident employer or service entity to earn overseas income. The accumulated monies in the trusts are moved to Australia under the guise of retirement benefits or contributions to a complying superannuation fund after a period of time.

The Tax Office is concerned the structures may breach the provisions of the superannuation laws. The Tax Office is also concerned the structures may give rise to various taxation issues, such as the application of the provisions governing foreign income and the general anti-avoidance provisions.

Superannuation Funds and Illegal Early Release

New steps to prevent the rollover of funds to self-managed superannuation funds (SMSFs) created for the purpose of illegal early release of benefits have been implemented by the Tax Office.

The steps are being implemented in two stages. The first stage commenced in January 2010 and introduced improvements to the SMSF registration process to help prevent non-legitimate SMSFs from being displayed on the Super Fund Lookup (SFLU) web page.

As a result of improvements to the registration process, trustees of SMSFs should be aware that:

- a new SMSF application will take seven days to be assessed by the Tax Office and to appear on the SFLU; and
- a superannuation fund will not process a rollover request by an SMSF unless the SMSF is listed on the SFLU.

Excess Contributions Tax: Commissioner's Discretion

The Tax Office has provided guidance on whether or not the Commissioner will exercise his discretion to disregard excess non-concessional contributions where:

- the contributions were initially made as concessional contributions but due to unforeseen inability to claim a tax deduction were treated as non-concessional contributions; or
- the excess contributions arose due to a banking error made by a party other than the trustee of a superannuation fund.

The Tax Office reiterates that the Commissioner will only exercise his discretion if there is:

- the existence of 'special circumstances'; and
- the object of the tax laws governing superannuation contributions are met.

Payment from Transition-to-retirement Pensions

The Tax Office has also stated its view on whether a member of an SMSF with a transition-to-retirement account-based pension, where the entire balance of the pension is preserved money, can make an election such that a payment from the pension is taxed as a superannuation lump sum rather than a superannuation income stream benefit.

The Tax Office says an election can be made to tax a payment as a superannuation lump sum if the pension is commuted, where the necessary conditions are satisfied.

- *The tax treatment of a superannuation lump sum and a superannuation income stream benefit is different. Generally, less tax is paid on lump sums than income payments.*

No Deduction for Misappropriated Money

In a recent case, the Full Federal Court dismissed a taxpayer's appeal against the denial of his claimed deduction of $2.3 million for money misappropriated by his investment manager.

The taxpayer sold a parcel of shares and transferred the proceeds to the manager. However, the funds were misappropriated by the manager.

In his 2002 tax return, the taxpayer included a net capital gain of $2.3 million from the sale of the shares. However, he also claimed a deduction for the misappropriation, which was disallowed.

FBT Audit and Compliance Activities

With the 2009/10 FBT year drawing to a close, it is important to note the FBT audit and compliance activities currently being undertaken by the Tax Office.

The activities include:

- car fringe benefits and data matching;
- incorrectly claimed FBT rebates;
- lodgment of FBT returns; and

- reduction of FBT liabilities and employee contributions.

GST: Decreasing Adjustment Note Threshold Increased

The Government will increase the decreasing adjustment note threshold for the purposes of GST.

With effect from 1 July 2010, the threshold is $75 or less.

Goods Taken for Private Use

The Tax Office has released the amounts which it will accept as estimates of the value of goods taken from trading stock for private use for the 2009/10 income year by taxpayers in certain specified industries.

These industries include:

- bakery;
- butcher;
- caterer;
- deli;
- fruiterer/greengrocer;
- mixed business (eg general store);
- restaurant/café; and
- takeaway food shop.

- *Taxpayers should ensure the value attributed to goods taken from stock for private use is fair and reasonable, and have regard to their own circumstances.*

Tree Blindness

Do you ever wonder why people do the things they do. I think I may have a clue. I call it "Tree Blindness" syndrome. "Wow....where is John going with this one?" I hear you say. Let me see if I can clarify this a little more.

In my case, I recently had a long term client raise a small issue about a fee we had quoted. In this case there was a comparison we could draw from, so we knew we weren't the cheapest in this market, but then we discovered that the client was shopping the price to see if she could get it cheaper. We understand that, however, the item was only slightly more expensive, and what the client failed to realise, was the value added to the services being rendered. One stop service, where paperwork was often delivered or collected from her home free of charge, where savings had been generated from current and future tax obligations and investment opportunities taken up, and where totally unrelated advice and assistance was rendered absolutely free, which generated a substantial saving to the client.

Now I am not going to try to explain the concept of "value add", because I know that all our clients have experienced it one way or another over time. This is where we happily give more than we charge for, as a free service to our clients. Sadly though, over time, many think and feel that this is the "norm" in the industry, whereas the truth is that other practices often charge more for such services. Still, this is not the issue here...remember ..."Tree Blindness" Syndrome. I raise this as only one example, because I pondered over this case for some time, asking myself what had we done wrong and why such a big deal was made over this by the client, and here it comes....she was blinded by the one little tree called "fees", where she lost sight of the long term value she was achieving in her entire forest of services. In the end she accepted the quote. What went wrong?

I believe complacency sets in, because over time, we all become creatures of habit. I cannot fault this client at all, as we did nothing to alert her to the fact of what was given over freely and what was being charged for. The client could only assume that we had charged for everything that we did for them. When the small tree blends into the background of services, then and only then do we start to see the great forest. Now that sounds like bulldust, I hear you all shout ! Well, you might be right, perhaps I went a little heavy on the metaphors. But how else do I get this message across.

I can rattle off hundreds of instances of chargeable time, where we did the work for free. I recently finished an audit for a client, who was not charged for any time, and this matter started in February of last year. We only just received the ATO final reply this week. I would have to send letters to every single client at least once a year telling them what extra value was given, just so that they could recognise the value in the service and the associated fee. Believe me when I say that the questioning of our fee is few and far between, so I don't rate this as a major problem in our practice. So why do I take the time to write about it? It's about you and your business. Getting stuck in a rut and following down a path that may save you say $300 over the life of the work being undertaken, is time consuming for very little benefit, and where you can replace your accountant for a cheaper one, you might find it harder to replace your client that moves on, because you were micro managing your business. Assess the tree by all means. Check it for fit and value within your forest, but then go back and look after the entire forest.

If you micro manage your business, you may as well retire from business, because all you will achieve is reducing the costs associated with your ever dwindling sales. All you achieve is small cost savings, and yet miss the large sales opportunities, because you are too busy doing the little things. I have several clients who have recently taken on this program of withdrawing from micro management in order to do what they do best....sell their products. They are interested in daily management, as they know it is part of running a successful business, but they know that the more they sell, the more they can bring in to add to the bottom line.

That's it folks.... It took a long time to get there, but we have arrived "Tree Blindness" syndrome is where you spend so much time on the one tree, that your forest dies from lack of water. That is my pearl of wisdom for this month and I hope I didn't bore you with too many metaphors, making you wonder whether you were reading this month's small talk.. or last month's National Geographic.

FIDELITY FINANCE GROUP FFG

your business finance specialist

We'll take the headache out of sourcing the right finance solution.

What's the right solution for your situation? Which financiers offer the best terms and flexibility? Fidelity Finance Group can take the leg work out of sourcing finance, to help you fund your next major acquisition and take your business further ahead. **Contact us now on 02 9212 0799 or visit www.fidelityfinancegroup.com.au.**

P: +61 2 9212 0799 **F:** +61 2 8920 8500 **ABN:** 41 139 700 655 **PO:** po box k42 haymarket nsw 1240
A: level 3, 21 mary street, surry hills, nsw 2010 **E:** info@fidelityfinancegroup.com.au
www.fidelityfinancegroup.com.au