

Practice Update

Please read this update
and contact this office
if you have any queries

OCTOBER 2012

Tax Office "ups the ante" on tax file number (TFN) reporting

The ATO has recently stated that it will review the 2011 Trust Tax Return 'distribution statements' to identify where a beneficiary has received a distribution and not quoted a TFN.

Editor: It would seem that the ATO is set to embark on a robust audit campaign targeting trusts and strictly applying the TFN withholding rules.

By way of background, a trustee of a trust is generally required to withhold 46.5% in tax from distributions where beneficiaries fail to provide their TFN. If the trustee does not withhold tax, it can face fines or penalties.

The simple message is that all trustees should ensure they have beneficiaries' TFNs before making distributions.

Compliance action

Trustees will be selected by the ATO based on considerations such as:

- size of distribution; and
- whether the beneficiary appears to have returned the distribution as income.

The letter forwarded to trustees will:

- explain the measures;
- provide the ATO's understanding of the facts;
- ask the trustee to confirm whether the ATO's understanding is correct; and
- explain to the trustee how they can rectify the situation going forward, noting there may be penalties/remission.

Excess contributions case – special circumstances win for taxpayer

Editor: The case below involves a taxpayer attempting to argue that an excess contribution tax assessment should be set aside for 'special circumstances'. Somewhat against the flow, the taxpayer was unexpectedly successful.

Facts of the case

During the 2010 financial year, the taxpayer's employer made total superannuation contributions of \$71,551 – \$21,551 over the limit of \$50,000.

The employer's super contributions were made to two different superannuation funds – \$25,367 to AMP and \$46,184 to Tasplan.

During the 2009 income year, the taxpayer had asked their employer to stop making any super contributions to AMP from 1 July 2009, because they were unhappy with the 4.5% commission levied by AMP, and they asked that all contributions from 1 July 2009 be forwarded to Tasplan.

Unbeknown to the taxpayer, their employer had made super contributions of \$25,367 that related to the 2009 income year in July 2009 (i.e., the 2010 income year) and these contributions were made to AMP.

The taxpayer was then assessed as having excess contributions of \$21,551, resulting in excess contribution tax ('ECT') of \$6,788.70.

The taxpayer then sought relief from the ECT, on the basis that 'special circumstances' existed and that the contributions should be disregarded or reallocated.

