



The Square Orange

April 2005

Tax Office to investigate Cash Economy industries

The Tax Office has announced plans to conduct a strong compliance drive in industries that are susceptible to cash payments, non-lodgement, failure to register for GST, poor record keeping and over-claimed input tax credits. The compliance drive will focus on micro-businesses (annual turnover of less than \$2 million) in the following industries:

- tourism and hospitality;
- horse racing and export;
- restaurants, cafes and takeaway shops;
- licensed hotels and registered clubs;
- adult entertainment; and
- motor vehicle trad-



Potential problems for Cash Economy industries

ing and wholesaling.

In addition, the Tax Office plans unannounced registration checks of businesses, desk audits and expanded data-matching procedures to check for lodgement compliance and accurate reporting of income.

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Special points of interest:

- ♦ *Cents per kilometre rates for travel deductions for 2004/2005 released (page 3)*
- ♦ *Watch out for fake "regulators" in overseas investments swindle (page 2)*
- ♦ *The Juice - tip of the month on selecting the right candidate (page 4)*

Performance Management Systems

The Tip of the Month in The Juice (page 4) is about selecting the right candidate for the job.

Once they are working for you, how do you monitor their progress, keep them motivated and ensure that they are objectively reviewed?

OTS Management provides an off-the-shelf and hence cost-effective product to create a Performance Management System within your business. It is specifically designed for Small-Medium Enterprises (SME's) and suits organisations with a workforce between 3 and 50.

The OTS Management Performance Management System is based around a Job Description Form (JDF) system that is clear about the requirements and roles of the job.

With our help, you complete each position's JDF by detailing who they report to, whom they service (internal and external customers), the qualifications required, the experience required, and the behaviours required. The JDF also details all the job's responsibilities and provides examples of "successful" completion

of those responsibilities as well as the method by which they will be measured. The JDF is based around accountability and individual responsibility in a team atmosphere.

The Performance Management System uses the JDF during regular reviews where the individual is gauged using pre-defined measures thereby avoiding bias and personal opinion. These reviews can be Manager-Employee or follow a 360° basis where a panel of managers, peers, and subordinates is used.

Streaming of Franking Credits

The Tax Office recently released an Interpretative Decision (ID), which considers whether to penalise a company for streaming franking credits to only one class of shareholders.

Broadly, the Commissioner may penalise a company for making a distribution of franking credits to a class of members that receives a greater benefit from the franking credits than



Danger in streaming Franking Credits

the members excluded from the distribution would have. This is known as streaming.

A typical situation is where franked dividends are distributed to Australian resident members in preference to non-resident members, as the Australian shareholders potentially gain the greatest benefit from franking credits.

The Commissioner,

when determining whether a distribution is streamed, will generally consider the members':

- tax residence status;
- entitlements to franking credits; and
- ability to pass on franking credits (companies only).

Broadly, if all members would benefit from franking credits evenly, then the company would not be considered to be streaming.

Joint Venture pay-out taxed as ordinary income

In a recent case, the AAT has upheld the Commissioner's assessment and confirmed that payments received by a taxpayer were from a profit-making scheme and were assessable as income.

In 1985, the taxpayer was a party to an unincorporated joint venture created to develop infrastructure projects. Following a falling out, the taxpayer left the joint venture in 1987 and ultimately received a settlement of \$1,228,500.

The taxpayer declared the aggregate receipt as capital in his 1988 income tax return. In 1994, following a tax audit, the Commissioner issued an amended 1988 assessment

including the full \$1,228,500 as assessable income, as being the proceeds from a profit-making scheme.

"There was a profit-making scheme throughout the negotiation of the joint venture"

The taxpayer argued that the amounts received were for intellectual property rights and were a non-assessable capital gain as they were acquired before the commencement of capital gains tax.

The AAT considered that the payment may in part be representative of the intellectual property transferred by the taxpayer, but formed the view that there was insufficient evidence to establish its value.

Consequently, the AAT agreed with the Commissioner and held that the taxpayer's actions had shown that there was a profit-making scheme throughout the negotiation of the joint venture. The AAT held that the full amount of \$1,228,500 was assessable income.

CAUTION: Cases such as this show the importance of thoroughly and properly documenting the basis of transactions undertaken.

Fake international "regulators" part of fraud

The Australian Securities and Investment Commission (ASIC) warned Australian investors to be wary of messages, websites, phone numbers and addresses from fake international "regulators".

Fake regulator websites are set up by fraudsters and are part of the elaborate window-dressing designed to trick Australian investors from buying worthless shares from unli-

censed, overseas based stockbrokers.

The made-up entities of which ASIC is aware include:-

- The Foreign Shareholders Protection Department'
- US Securities Investigative Committee,
- International Compliance

Commission,

- International Equity Commission,
- International Exchange Regulatory Commission,
- The International Regulatory Commission, and
- Regulatory Compliance Commission.

Travel Deductions: cents per kilometre

The Tax Office has released the 2004/05 cents per kilometre rates.

Taxpayers who use their car for business purposes, and choose the cents per kilometre method for claiming travel expenses, can use these rates to determine the amount of their deduction for the 2004/05 income year.

The 2004/05 rates for non-rotary engine cars are:

- **0-1,600cc - 52 cents per kilometre;**
- **1,601-2,600cc - 62 cents per kilometre; and**
- **2,601 +cc - 63 cents per kilometre**

CAUTION: Taxpayers electing the cents per kilometre method can claim up to a maximum of 5,000 business kilometres.

GST and Long Term Contracts

The GST laws provide that supplies made under contracts that were entered into prior to the introduction of GST will be GST-free until 1 July 2005.

Recent amendments to the GST laws now allow suppliers and recipients to revise the prices associated with certain long-term non-reviewable contracts to incorporate GST. This provides the supplier of goods or services under such a contract with an opportunity to recover from the recipient the GST payable after 1 July 2005.

There are three options the supplier and recipient can choose in regard to the GST position of long-term non-reviewable contracts:

1. The price remains the same and the supplier accounts for GST on 1/11th of this price.

2. The contract price is revised and the supplier accounts for 1/11th of the revised price.
3. The contract price is not revised and the recipient of the supply pays 10% GST on top of the price under the contract.

If both parties cannot agree, an arbitration process with an independent assessor will commence.

The new laws represent an opportunity for suppliers to clarify GST recovery issues with recipients of existing long-term contracts. However, varying a contract by increasing the price of supply may result in the imposition of stamp duty.

TIP: Suppliers and recipients should analyse the effect of altering prices in long-term contracts and the impact of GST on the transactions made under the contract.

Tax Diary

12 May 2005

Lodgement and payment of quarterly activity statement (paper) for quarter 3, 2004/2005.

15 May 2005

All other income tax returns not required earlier, and not eligible for the 3 June lodgement date.



Get your information into your Tax Agent

Exempt Benefits: paying an employee's loan

In a recent Interpretative Decision (ID), the Tax Office has declared that a loan used by an employee to purchase a laptop computer does not qualify as an exempt benefit under the Fringe Benefits Tax (FBT) provisions.

Under the FBT provisions, certain expense payments in respect of eligible work related items are exempt from FBT. A laptop computer is defined as an eligible work related item.

In the case under review, an employee obtained a personal loan and used the funds to purchase a laptop computer. The employee then repaid the loan via a salary sacrifice arrangement (SSA), whereby the employer made the loan repayments on the employee's behalf.

Under the SSA, the employer is making loan repayments for the benefit of the employee and this represents an expense payment fringe benefit.

To be exempt from FBT, the expense payment must be in respect of the work related item, in this case the laptop computer.

The Tax Office formed the view that the employer was not making the expense payments towards the purchase of the laptop computer, but rather, was making payments towards the employee's personal loan obligations.

Accordingly, the expense payment was not in respect of the laptop computer. As such, the expense payment was not an exempt benefit but was held to be a taxable fringe benefit.

TIP: Taxpayers should seek professional FBT advice when structuring a SSA to ensure that the most beneficial outcome is achieved.



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We give our clients comfort in their decision-making by providing them with our experience and independent advice that saves them time and helps them grow. Unlike other accounting services companies, our clients have significant contact with our senior people.

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Our services include:

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- *Strategic & Business Planning*
- *SMART Marketing workshops*
- *Team Development workshops*
- *Performance Management Systems*
- *Zest Tests - Business Diagnostics on your organisation*

The Juice

Tip of the Month

How do you find the right person when you are recruiting? Go through a step by step process.

Hire slowly - be prepared to invest time, thought and energy in your hiring decisions. Review your Vision Statement or your corporate culture so that you are yourself clear. Prepare a detailed and accountable Job Description with Performance



Narrow the pool to a short list

Measures.

Can they do the job? Be clear in your own mind what the job requires and be prepared to measure candidates' qualifications against the requirements of the job.

Will they do the job? Consider what the candidates' aspirations are. To them this may only be a stepping stone to their dream career.

Will they do the job here? Con-

sider how well the candidates will fit into the corporate culture - are their values and behaviours in line with your Vision and Values?

Narrow the pool to serious candidates. Test them on various job-related tests, use drug tests if that is in your industry, consider psychological evaluation.

Do brief phone interviews to reduce the pool further.

Finally do longer face to face interviews with the short list. During the interviews satisfy yourself about the 3 questions again - Can they do the job? Will they do the job? Will they do it here?