

Client Alert

Tax News | Views | Clues



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Tax Office Compliance Program 2009/10

The Tax Office has released its compliance activities for 2009/10. The key activities for the different taxpayer segments are discussed below.

Individuals

The key compliance activities the Tax Office will focus on include:

- capital gains from the sale of shares and properties;
- deductions for investment products; and
- work-related expense claims. In particular, claims made by truck drivers, sales and marketing managers, sales representatives and electricians.



Micro enterprises

Micro enterprises are businesses with an annual turnover of less than \$2 million and self-managed superannuation funds (SMSFs).

Key compliance issues include:

- GST and CGT compliance risks associated with property transactions;
- losses on the disposal of shares;

- claims for GST refunds and the research and development tax offset, which will be subject to credibility checks;
- correct disclosure of distributions from trusts and partnerships in beneficiaries' tax returns; and
- early warning to participants of the potential tax issues involved in tax exploitation schemes.

Small-to-medium enterprises

Small-to-medium enterprises are businesses with an annual turnover of between \$2 million and \$250 million. This segment includes highly wealthy people who, with their associates, control \$30 million or more in net wealth.

Key focus areas include:

- private company loans and payments to shareholders (or associates) to ensure compliance with the taxation laws;
- correct FBT treatment of motor vehicles;
- superannuation guarantee issues such as late payments and incorrect calculations;
- CGT, in particular to ensure capital losses are not offset against income;

- claims for GST refunds, which will be subject to credibility checks;
- GST and property transactions; and
- remuneration of highly paid company directors and executives.

Self-managed superannuation funds

Key compliance activities include:

- adherence to superannuation regulations;
- satisfaction of the definition of an 'Australian superannuation fund'; and
- illegal early access to superannuation.



Superannuation Guarantee Ruling

The Tax Office has issued a ruling in which the Commissioner states his view regarding the treatment of payments made to employees for the purposes of the superannuation guarantee (SG).

The ruling has been modified from the draft ruling previously released to include several important changes. These changes include:

- Christmas bonuses are now considered to be ordinary time earnings (OTE) and to be included when determining the minimum SG payable for an employee; and
- regular overtime payments made outside an employee's ordinary hours of work will generally not be included in OTE and, therefore, not included in calculating the required level of SG for the employee.

The ruling does not discuss whether parental leave and ancillary leave (eg jury duty leave) are taken into account when calculating the minimum SG for an employee.

Superannuation Guarantee Charge

The AAT has upheld superannuation guarantee charge default assessments against a partnership for failing to make minimum superannuation contributions for an independent contractor operating within its business.

After considering the factors that indicate the existence of an employee/employer relationship, the Tribunal held that the contractor was an employee.

Indicators that suggest an employee/employer relationship exists include:

- the level of control between an individual and the other party;
- the mode of remuneration;
- the provision for annual leave; and
- the right to suspend or dismiss an individual by the other party.

◆ The classification of an individual as an employee or as an independent contractor is not based on the legal terms used in a contract. All of the facts and circumstances of the particular situation must be considered.

◆ An individual engaged for their labour can be deemed to be an employee for superannuation guarantee purposes even where the individual is a contractor.

Loans and In-house Asset Rules

In a recent decision, the AAT upheld a non-compliance notice issued to a self-managed superannuation fund (SMSF) for breaching the in-house asset rules.

The SMSF made loans to a company, which was a related party of the fund. The total of the loans exceeded the in-house asset rules limit of 5%.

The Tribunal noted that the loans remained outstanding for more four years after the breach. In addition, it considered the trustees' offer of enforceable undertakings came too late in the day.

A regulated superannuation fund is, generally, restricted from having more than 5% of the total market value of its assets at the end of an income year invested in in-house assets. An in-house asset includes a loan to a related party of the fund.

- ◆ A non-complying SMSF is subject to a tax rate of 45% rather than the 15% concessional tax rate available to a complying fund.
- ◆ An SMSF cannot extend a loan to a member (or a member's relative), even where the in-house asset rules are not breached.

Assistance for Small Businesses

The Tax Office has recently introduced two measures to assist businesses that have an annual turnover of less than \$2 million to manage their tax payment obligations.

- twelve-month general interest charge (GIC)-free payment arrangements; and

- deferral of activity statement payment due dates.

GIC-free payment arrangements

A business with an activity statement debt, such as GST and FBT, can apply for a twelve-month GIC-free payment arrangement.

An application for an arrangement must be entered into between 1 June 2009 and 30 June 2010.

- ◆ A business can renegotiate an existing payment arrangement entered into before 1 June 2009 to take advantage of the GIC-free payment arrangement.

Deferral of payment due dates

A business can also request a deferral of payment on its next activity statement. During the period of the deferral, no GIC will apply.

The maximum deferral period will depend on whether a business lodges its activity statement monthly, quarterly or annually.

Activity statements eligible for a deferral include:

- monthly statements for the period May 2009 to June 2010 (inclusive);
- quarterly statements for the period June 2009 to June 2010 (inclusive); and
- annual statement for the 2008/09 income year.

A payment deferral request must be made on or before the original due date of an activity statement.



Self Managed Superannuation – What is an Investment Strategy?

Many self managed super funds (SMSFs) have been established without proper attention to the fund's investment strategy. So what is an investment strategy and why must the fund have it?

Under superannuation laws, as part of the prudent management of the fund SMSF trustees must document and put in place an investment strategy. According to the ATO, the investment strategy must consider:

- Risk
- Return
- Appropriate diversification
- The ability of the fund to pay member benefits and fund costs
- The individual needs of members

The investment strategy does not need to be onerous, but should be a document that addresses these issues, can be reviewed regularly and will stand up to the scrutiny of the ATO.

If your SMSF needs a review of it's investment strategy (or does not have one), please contact us to discuss your requirements.



Should I fix my home loan interest rate?



This question is often asked, but there is unfortunately no easy answer. Even in these times of record low interest rates, there is still no certainty that a fixed interest rate will make you better off over the fixed term.

Consider that if you do fix your interest rate you are betting against the bank, who would spend a lot of time and energy analysing the economy and their expected future cost of funding. They are likely to build in a bit of a buffer into their estimates too. If you think you are smarter than your bank, then maybe it is worthwhile.

Variable rates have now been falling since this time last year, and have remained steady since April this year. However, over the last few months the major banks have been increasing their fixed rates. With 3 – 5 year rates at around 2% more than variable rate loans, there has to be a pretty big increase in rates before a fixed rate would show any benefit at all.

However, it is never the wrong time to review your mortgage to make sure you are getting the best deal. If you would like to see if you can save money on your mortgage, please call Greg Meyers at our office for a chat.



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MY husband lost approximately \$30,000 from his super balance of almost \$100,000. I lost approximately \$9000 from my super balance of almost \$60,000. We changed the asset allocations to "cash only" and it's been gratifying to see the balance remain steady. My question is: what signs should we look out for so we can change the asset allocation again to perhaps gain some growth for the next five years?

Our expert is **Greg Meyers**, certified financial planner and principal of Royal Cornell Financial Services.

A: Yours is not an uncommon story: most people have seen their super being hammered by what has been dubbed the GFC (global financial crisis).

The basic theory behind a "strategic asset allocation" is that you should decide on an asset allocation and stick to it for the long term. The allocation will be based on your tolerance for risk and your investment timeframe.

"Tactical asset allocation", on the other hand, aims to outperform the market by moving to a higher allocation of assets that you expect will outperform and a lower allocation to poorly performing asset classes – these over and underweight positions need to be reviewed and adjusted periodically.

There is research that suggests there is little value to be gained by actively trying to beat the markets with a tactical approach, although there are some industry pundits that espouse this theory. Either way, both these theories of investing should be viewed as long-term strategies.

From what you described, you are practising tactical asset allocation at an extreme level. Rather than moving to an overweight cash position, you have gone all in.

In my experience, few of us mere mortals are able to outperform financial markets by trying to time our way in at the low point and out at the highs – if we could do this, we would all be very rich. In most cases that I have seen, the decision to move to cash is made in difficult times when markets are down (selling low) and the confidence to return to a fully invested position is only gained once markets have recovered, or at least are well and truly on their way up (buying high). These decisions are often driven by the emotional rollercoaster of fear and greed, which overrides the intuitive decision-making process. Intuitively, most rational investors (ie, those not driven by emotion) would do the opposite – buy low and sell high.

If you have been in cash over the last couple of months, you have already missed what could be the start of the recovery. The All Ordinaries index was up nearly 12% for the quarter ending June 30, 2009 – a terrific result that goes some way to recovering those big losses, and it doesn't include dividends. The chart on the right shows the movement in the All Ordinaries index over the last few months. It is apparently very volatile; however, the trend is definitely upwards.

If you have not already done so, my strong recommendation is that you seek professional advice on managing your investments over the longer term (five years and beyond). A suitably qualified and experienced financial planner can help you to understand the risks of your super investments and how to best manage those risks. Remember as well that you may be investing for longer than five years. Just because you reach age 65 does not mean you will be cashing in your super and spending it. You may want it to last throughout your retirement.

Where to find out more

At the very least, you can do some research of your own. Starting with the basics of investing, you can find some useful information about investing at ASIC www.understandingmoney.gov.au or IFSA www.ifsa.com.au.

To get in contact with Greg Meyers, contact Royal Cornell Financial Services at www.royalcornell.com.au.



Greg Meyers



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