

# CARDELL NEWSLETTER

## ATO'S COMPLIANCE PROGRAM 2010-11

On 8 July 2010, the ATO Commissioner, Michael D'Ascenzo, issued a media release announcing the release of the Compliance Program 2010-11.

The program outlined refund fraud, the cash economy, employer obligations, wealthy Australians and tax secrecy havens as some top priorities for the ATO in the coming year.

The Commissioner stated his belief that Australia has a strong culture of voluntary tax compliance. Part of supporting honest taxpayers was, however, taking firm action against those who do the wrong thing.

The ATO has also said it will focus on trusts to ensure the 'basic requirements' for compliance are being satisfied, including lodging returns and

distributing the income of the trust.

The Commissioner also announced the ATO would extend its Small Business Assistance Package for a further year—extended payment terms and interest free arrangements.



**Chartered  
Accountants**

### Accountants

- Barry Hughes, CA
- Marcus Bond, CA
- Lyndal McKenzie, CA
- Rebecca Bond, CA
- Lynne Nicholas, MNIA
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### Staff

- Connie Butterfield, Practice Manager
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## OPPORTUNITY TO PLAN

**A review of your business performance in the 1st half of the financial year, could help you plan for 2011.**

With the new financial year underway and your BAS returns for 31 December 2010 almost completed, businesses have an opportunity to do some planning for the forthcoming year. For example, you now have some materially reliable figures to put

together an operating budget for your business for the remainder of the year.

You should also be in a position to start assessing your revenue estimates and review your expenditure.

Working through this process will allow you to focus on your income so that it comes into line, and hopefully exceeds, your expected levels.



Have you got a plan?

Contact us to review your forecasts and to assess any tax planning opportunities.

## OH & S OBLIGATIONS FOR EMPLOYERS

**As an employer you must provide a safe and healthy workplace for your workers and contractors.**

This includes:

- Providing safe premises
- Maintaining machinery and materials
- Having safe systems at work (such as controlling entry to high risk areas)
- Providing information, instruction, training and

supervision of employees to ensure they work in a safe and healthy manner

- Having a suitable working environment (ensuring fire exits are not blocked, worksite is tidy, etc)
- Providing adequate facilities (clean toilets, clean drinking water and hygienic eating areas).

If you do not comply with these legal requirements you can be prosecuted and fined.

To find out your specific obligations go to the occupational health and safety area at [www.business.gov.au](http://www.business.gov.au) by clicking on "View all topics" and then "Occupational Health & Safety". Under the Getting started with OH&S you will find a step-by-step: Workplace Safety guide.

Failure to comply may result in injury, and at the worst may involve you in the "dead expense" of responding to a Worksafe audit.

## IS THE TAX OFFICE MINING YOUR DATA RESOURCES?

**Implementation of a new computer system has meant new and improved investigative tools for the Australian Taxation Office (ATO).**

The ATO has been stressing to Tax Agents at the quarterly briefings which we participate in, that the ATO has improved its systems substantially.

You may recall that at the beginning of the year there were some publicity surrounding delays in income tax refund processing. This occurred because the ATO was undertaking a major upgrade to its systems so that previously separated systems were now integrated.

What does this mean for you?

The ATO can now track and identify common individuals through disparate entities. If a person with the same tax file number (TFN) is common to a number of entities, any or all of a company, trust, partnership and superannuation fund, the ATO, or rather its computers, can now look at data in its possession to see if it "hangs together".

Equally, if one entity is entitled to a refund while another (with joint individual TFN's attached), has an unpaid tax obligation, then the refund may be withheld until the other obligation is met. In

some instances, especially with partnerships, an individual's income tax refund may be applied against a GST obligation of the partnership.

The ATO is also pursuing information through ABN's. In one instance surveys of hardware suppliers have been made about the quantity of plasterboard sold and to which ABN's entity the sales were made.

Then through checking the results of the BAS's and income tax returns of the individuals associated with the ABN's the ATO was able to see if the sales reported reflected industry margin norms.



The power of computer systems.

The ATO has substantial powers inherent in the legislation to demand that organisations provide information. The enquiry may not be targeted at that entity, but rather another which supplies to it, or to which it supplies. The ABN is a powerful tool in the computers of the ATO.

## BEWARE THE BENCHMARKS

**The ATO is currently comparing individual taxpayers' taxable income against industry benchmarks.**

Another investigative tool being used by the ATO are industry benchmarks. The ATO has again looked at all of the data it has in its possession for particular industries and occupations. Again comparisons are made between the results of entities and

individuals income tax returns and the particular benchmarks.

We and some clients have received letters from the ATO. In some cases errors have been found, and if corrections are lodged with the ATO then revised assessments are issued without penalties or interest.

What does this mean for you?

When you are meeting with us to provide information for the preparation of your income tax return, please ensure that we have correctly recorded your occupation or industry code. Obviously if the wrong code is recorded and the ATO runs its benchmark test your result may be compared against the wrong criteria. Then the ATO issues its query, we prepare a response in conjunction with



ATO is looking at Industry Benchmarks.

you and the matter is handled—but time and money may be wasted.

## DO YOU MAKE ENOUGH TO SUPPORT YOUR PERSONAL LIVING EXPENSES?

**In their pursuit to combat tax fraud, the ATO is also looking at personal living expenses.**

In this case the ATO indicates that it will be reviewing future returns and may undertake audits. The ATO's queries are based on its assessment of the cost of living and access to details about pur-

chases that the taxpayer may have made. We know that the ATO is using information about luxury cars and yachts. It may be tracking other high value purchases too.

We are less convinced by this approach because it flags individuals who are largely in partnerships and does not

appear to take into account the depreciation expense in the partnership nor the recent affects of small business accessing the tax break. It may not access information about Centrelink benefits or changes in bank account balances which may indicate how the living expenses are being met.

Again however, if there are queries from the ATO the facts will need to be provided and the query satisfied. In the 2010 tax year the ATO accessed in excess of 500 million transactions as a part of its enforcement processes.



## LOANS FROM COMPANIES TO ASSOCIATES—TIGHTENING THE RULES

**The expanded application of the Income Tax Assessment Act 1936 - Division 7A (Cwith) announced in the 2009/2010 Federal Budget has been made law.**

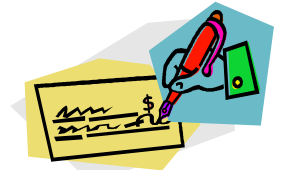
Central to the changes is the ability for the ATO to tax the use of private company assets by shareholders or their associates.

Most would be aware of the implications of loans made by a private company to its shareholders and/or their associates. The use of other assets held by private companies such as property, vehicles and boats, either for free or for a non arm's length value by the shareholders

and/or their associates has remained largely unchecked.

Changes to Division 7A allow for a deemed 'payment' to be included in the shareholder's income and taxed accordingly. It would represent the amount they would have had to pay to use the asset.

Where a shareholder and/or associate has exclusive use of such an asset, the deemed payment amount would be equivalent to what would be required to be paid to secure that exclusive use. For example, consider a holiday home held by a private company for the exclusive use of a shareholder and their family. The home may only be used for



three months of the year but as it is not available for any other party to use, the deemed payment amount would be equivalent to commercial rent for the entire year.

As originally announced in the 2009/2010 Budget, these changes apply from 1 July 2009. It is crucial that you talk to us about reviewing your situation if you hold such assets in a private company.

## HOW MUCH CAN YOU CONTRIBUTE TO SUPERANNUATION?

**You may recall that the ATO changed the amounts that we are permitted to contribute to our superannuation funds. Here is a refresher.**

Aged 50-74 you may contribute up to \$50,000 of concessional contributions in a year. These are contributions for which you have received a concession, although mostly

you will not see the concession. Such amounts are the total of those paid by your employer and any that you make through salary sacrifice as an employee or for which you claim a deduction as a small business. If aged under 50, the maximum amount is \$25,000.

You may contribute up to

\$150,000 of non-concessional contributions. These are where no deduction is sought or the contribution is from "after tax" income. If younger than 65, then up to \$450,000 may be contributed using a 3-year "pull forward" option. Please contact us if you want to know more about this option.



The rules change again on 1 July 2012.

## CHANGE IN LAW ON DIVIDENDS

**The Corporations Act has recently been amended, particularly about how companies deal with the payment of dividends.**

Section 254T of the Corporations Act (and earlier equivalents) has long provided that a dividend may only be paid out of the company's profits. The section has been replaced with a new provision which essentially prohibits a company from paying a dividend unless:

- The company's assets exceed its liabilities imme-

diately before the dividend is declared and the excess is sufficient for the payment of the dividend, and

- The payment of the dividend is fair and reasonable to the company's shareholders as a whole, and
- The payment of the dividend does not materially prejudice the company's ability to pay its creditors.

For directors, there are a number of practical implications including:

- The need for directors to calculate the assets and liabilities of their company
- The effect of paying a dividend on the rights of shareholders (as a whole) and the company's creditors.
- If a company constitution provides (as did the old Section 254T of the Corporations Act) that a dividend may only be paid out of profits, the directors should consider an amendment to the constitution to ensure that the



company has the ability to pay dividends as contemplated under the new Corporations Act provision.

We will be reviewing the constitutions of those companies declaring dividends for the year ended 2010 and will advise you if we feel that a change to your company's constitution would be prudent.

## COLLECTABLES AND IN-HOUSE ASSETS

The Cooper Review means changes to Super. It was undertaken to review the entire industry. It included Self Managed Superannuation Funds

The Cooper Review was delivered to the Government on 30 June 2010. It contained a number of recommendations, some of which the Govern-

ment has already announced they will take up.

One such recommendation was MySuper – a low cost default fund for employees who do not actively choose a superfund.

Another recommendation of the Cooper Review was to ban self managed super

funds (SMSFs) from holding investments in collectibles such as art, wine and antiques. SMSFs have been provided with five years to sell existing collectables.

If you have a SMSF and are thinking about purchasing or selling collectibles talk to us about the issues associated with holding such assets.



Does your SMSF hold collectibles ?

## GST AND REQUIREMENTS FOR TAX INVOICES

Since 1 July 2010 new rules apply to tax invoices.

Recent changes to GST law have simplified the requirements for documents to be considered tax invoices or recipient created tax invoices (RCTIs). They have been replaced by requirements with equivalent but more flexible principles.

Where you receive a document from a supplier that is missing key information, you may still treat the document as a tax invoice under certain circumstances. It must be clear that the document is intended to be a tax invoice and you must be able to clearly ascertain the missing information from other documents issued by that sup-

plier. This concession does not apply to adjustment notes or recipient created adjustment notes.

The regulations commenced on 1 July 2010 and apply in relation to net amounts for tax periods starting on or after that date.

Contact us if you have questions.



New rules for tax invoices.

## WELCOME

The latest addition to our staff is Trudi Fouche.

You have probably already met or spoken to our not so new receptionist.

Trudi joined the team in July, 2009 from South Africa. She has 20 years professional experience in a range of industries and administrative positions.

Trudi has very quickly become a pivotal part of our front office team and continues to set new standards for front office management while undertaking a myriad of

other tasks.

Cardell Accountants is proud of our client service. Please feel free to contact us with any questions.

Visit us at

[www.cardell.com.au](http://www.cardell.com.au)

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