

# BEANCOUNTER'S BULLETIN

## Baumgartner Partners Quarterly Newsletter

1st Quarter  
2011/12



### Introduction

Welcome to this quarter's edition of Beancounter's Bulletin. We hope that you find the contents informative and useful and as usual we welcome any suggestions for future editions.

Please refer to our website for regular updates on new and relevant information that may affect you.

## New Strategy To Target Australian Taxation Office Audit Activity

David Baumgartner (Partner)

Every year the Australian Taxation Office (ATO) releases warnings to industries it is targeting, together with the focus of its audit program for the next 12 months. This year is no exception, however there is one major difference. The government is appropriately funding the ATO, and subsequently we expect all taxpayers will notice increased audit, questionnaire and cross checking activity.

### SPIDER DIAGRAM

The ATO has developed an information gathering Spider Diagram strategy, having apparently overcome privacy legislation concerns with various government and public institutions. The Spider Diagram is a computer interconnection of all registrations in the name of a taxpayer and associated people and entities.

The interconnection is not restricted to more conservative assets, like bank accounts, shareholdings, superannuation balances, cars and properties, but extends to planes, boats, trailers, business ownerships and more exotic asset ownerships. If there is a registration requirement, the Spider Diagram will pick it up and match it.

Consider the more exotic investments and registers the ATO can easily access, including registrations under the new Personal Property Securities Act, racehorses, insurance of exotic art and jewellery, records of drivers and cars/motor bikes raced at Philip Island (let's hope none were SMSF assets), passport records of families travelling overseas to exotic locations - the list goes on.

The Spider Diagram also connects people, even though the ATO may have no understanding of their relationship. The interconnection could be established for example through births, deaths and marriage records, international travel records, distribution patterns from privately held trusts, common ownership of registered assets, ownership of corporate trustee companies and family trust elections.

We have seen one of these Spider Diagrams, and were amazed how the facade of tangled relationships and asset ownerships, unravelled to disclose the true family net asset value and relationships. When matched against taxable income levels, questions would inevitably arise.

### INTEREST AND PENALTIES

Over the last 6 months, the ATO has adopted a stronger stance on the imposition of interest and/or administrative penalties on outstanding tax debts and tax shortfall amounts, arising from investigation or audit.

#### Interest

The shortfall interest charge (SIC) on tax shortfall amounts arising mainly as a result of an amendment to an assessment, is equal to the prevailing Reserve Bank 90 day bank bill rate plus an additional 3% (currently 8%).

#### Administrative penalties

In addition, administrative penalties can be imposed, ranging from 25% to 75% of the tax shortfall. These can be increased or decreased by 20%, depending on the level of co-operation or voluntary disclosure.

#### Remissions

The Commissioner of Taxation is able to remit SIC and remit or reduce penalties, if considered fair and reasonable to do so. Such leniency may arise where there have been ATO delays, factors outside the taxpayer's control, voluntary disclosure, a honest mistake, timing adjustments only, reliance on ATO publications, and after consideration of the taxpayer's compliance history.

### TAX AUDIT INSURANCE

We remind you that the ATO continues to announce significant increases in their audit activities. More than ever, individuals, businesses and, particularly, self-managed superannuation funds are at risk of being selected for a random audit.

You should shortly receive a letter from us regarding our offer for the provision of audit protection insurance. Please give careful consideration to this matter as this (generally) tax-deductible expense may save you thousands of dollars in accounting and administrative costs, if you are subject to an ATO or any other government agency audit.

If you do not receive our offer within the next two weeks, but wish to avail yourself of this service, please contact our office.

# Collectables and Personal Use Assets in SMSF's

Ivy Chong and David Burrows

From the 1st July 2011, new rules apply to SMSF's acquiring collectables and personal use assets. These rules mean SMSF's face more stringent requirements, which aim to ensure such investments are made for genuine retirement purposes as opposed to the derivation of current day benefits.

## WHAT ARE 'COLLECTABLES AND PERSONAL USE ASSETS'?

Collectables and personal use assets are defined under 62A of the *Superannuation Industry (Supervision Act) 1993* to include artwork (within the meaning of the Income Tax Assessment Act 1997); jewellery; antiques; artefacts; coins or medallions; postage stamps or first day covers; rare folios; manuscripts or books; memorabilia; wine; cars; recreational boats and memberships of sporting or social clubs.

## WHAT ARE THE CONDITIONS FOR COMPLIANCE?

The new rules are applicable to collectables and personal use assets acquired by the fund on or after the 1st July 2011. Any existing assets held before this date will have until the 1st July 2016 to comply with the new rules (i.e. there is a 5 year transitional period).

The new rules are as follows:

1. Assets must not be leased to a related party of the fund;
2. Assets must not be stored in the private residence of a related party of the fund;
3. Decisions on storage of the assets must be documented and retained for at least 10 years after the decision has been made;
4. Assets (other than memberships of sporting or social clubs) must be insured in the superannuation fund's name within seven days of acquiring the asset;
5. A related party of the fund is prohibited from using an item of jewellery, motor vehicle, recreational boat or a membership of a sporting or social club;
6. A transfer of an asset to a related party must be made at market price and determined by an independent valuer.

In addition to these rules, the SMSF's trust deed and investment strategy must include collectables and personal use assets as allowable investments of the fund. Already, several problems with the new legislation have been identified so we expect to see some further clarification provided over the coming months.

Those people considering an investment of this nature in their SMSF, should closely consider whether they will be able to comply with the new rules in addition to the normal consideration of the investment's potential income return and/or capital growth and the ease of disposal. Those people with these investments in their SMSF as at the 30th June 2011, will need to consider whether they are prepared to comply with the rules from the 1st July 2016 and if not, consider how and when the SMSF will dispose of the investments by that time.

## ACCOUNTANT JOKE OF THE QUARTER

A lady goes to see her doctor with some very worrisome symptoms. After examining her, he says, "I'm terribly sorry to tell you this, but you only have six months to live." The lady is very distraught, "Oh doctor, what should I do?", she asks. The doctor says, "I advise you to marry a CPA." "Will that make me live longer?", she asks, hopefully. "No" says the doctor. "But it will seem longer."

## AROUND THE TRAPS

We recently held our end of financial year party for our valued staff. We had planned an exciting day trip to Sydney, but unfortunately our flight was cancelled upon arrival at the airport and we were unable to go, but on the upside we quickly rescheduled the day at Domaine Chandon in the Yarra Valley. A fantastic time was had by all.

We would like to welcome Geoff Dwyer to our firm who has joined the compliance division as a consultant. Geoff has 37 years of experience in public practice, including as a partner at Ernst & Young. Subsequently Geoff was managing partner at Hayes Knight Melbourne and for the last 16 years has consulted to WHK Melbourne.

We would also like to welcome Nick who has joined the superannuation and compliance teams as a graduate accountant, and Ben Taylor who has joined our compliance team as a senior accountant.

We would also like to announce that Kerri and Anthony are expecting their first child in December of this year. Congratulations to you both.

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