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# client alert

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## Offshore income tax "amnesty" nearing its end

The deadline to take advantage of the ATO's initiative to allow eligible taxpayers to come forward and voluntarily disclose unreported foreign income and assets with reduced penalties is nearing. The ATO has urged taxpayers with offshore assets to declare their interests ahead of a global crackdown on people using international tax havens.

The Tax Commissioner Chris Jordan earlier this year announced the initiative to allow eligible taxpayers to come forward and voluntarily disclose unreported foreign income and assets. In announcing the initiative, known as "Project DO IT: disclose offshore income today", the Commissioner warned that it provides a last chance opportunity for those who haven't declared their overseas assets and income, to come back into the tax system before 19 December 2014, to avoid steep penalties and the risk of criminal prosecution for tax avoidance.

**TIP:** It should be emphasised that Project DO IT covers both "inadvertent" and "intentional" actions to hide offshore income and/or gains. The ATO has advised that where taxpayers may be unsure as to their eligibility for the initiative, they can contact the ATO's Project DO IT team to discuss the issue and this can be done anonymously. Please contact our office for further information.

## Subsidy to encourage employers to hire mature workers

The mature age worker tax offset will be abolished by the Government from the 2014–2015 income year and later income years. However, a new expenditure program being delivered by the Department of Employment, Restart, will provide alternative support by way of subsidy of up to $10,000 to employers who hire mature age job seekers.

The Restart program offers a wage subsidy of up to $10,000 (including GST) to eligible employers of mature age job seekers. The job seekers must be 50 years of age or older, and have been unemployed and receiving income support for six months or more. To receive the full payment, a business must employ the same employee for at least 30 hours per week for an ongoing period of two years. The Restart wage subsidy can also be claimed on a pro-rata basis if you hire a mature age worker part time, for at least 15 hours a week.

## Doctor obtains tax relief for olive-growing activities

A medical practitioner has been, in the main, successful before the Administrative Appeals Tribunal (AAT) in seeking to have losses from his olive growing activities deducted from his other assessable income. The taxpayer had carried on an olive growing and olive oil production business for 15 years.

The taxpayer had applied to the Tax Commissioner to be relieved from the "non-commercial loss provisions" under the tax law for the 2010 to 2014 income years, inclusive. Under those rules, unless he is granted relief, he has to wait until the olive oil business starts to generate profits before he can claim his losses. The Commissioner refused the taxpayer's application.

The AAT held the Commissioner's decision not to allow the taxpayer immediate access to his losses was not the correct or preferable decision. The AAT decided the taxpayer should be allowed the relief from the "non-commercial loss provisions" under the tax law for the 2010 to 2013 income years, but not the 2014 income year.

The AAT also made several recommendations to the Commissioner as a result of issues raised during the proceedings. These were that the Commissioner:

- considers the use of an alternative approved form for applications of this nature;
- ensures, as far as possible, that any alternative approved form:
  - asks applicants to provide all the information the Commissioner considers necessary for a proper consideration of the application; and
  - takes into account the legislative amendments enacted in 2009 (ie the income requirement which means that taxpayers with taxable

income over $250,000 have to rely on the Commissioner's discretion).

- provides additional guidance to the Commissioner's officers.

## Tax claims for R&D costs mostly allowed

The AAT has mostly allowed a company's deduction claims for research and development (R&D) expenditure at the 125% premium rate, but disallowed other claims in respect of overlapping expenditure.

Over an extended period, the taxpayer conducted various plant trials to test possible ways to improve its copper and lead concentrators and its copper smelter. The taxpayer sought to deduct a considerable part of its expenditure incurred during those plant trials at the premium rate of 125% as "research and development expenditure".

The Commissioner refused most of the taxpayer's claims arguing they were not deductible at the premium rate because they were "feedstock expenditure", which is expressly excluded from the statutory definition of "research and development expenditure" under the tax law. The Commissioner also argued that, due to an overlap of the taxpayer's R&D activities at its Mt Isa copper concentrator and Mt Isa smelter, certain expenditure became "feedstock expenditure" and was not deductible at the 125% rate.

The AAT allowed most of the taxpayer's claims, but accepted the Commissioner's arguments on the overlap issue.

The Commissioner has appealed to the Federal Court against the decision.

## Compensation for providing domestic help taxable

The AATl has affirmed a decision of the Commissioner that a payment made to an individual for compensation for domestic assistance was assessable as ordinary income under the tax law.

In 1997, the taxpayer's husband suffered a serious injury while white-water rafting during a team-building exercise organised by his employer. The husband was unable to work and the taxpayer gave up full time work to become a carer.

In 2012, the husband lodged a claim for compensation for domestic assistance under the *Workers Compensation Act 1987* (NSW) in respect of the domestic assistance provided by the taxpayer. The Workers Compensation Commission awarded the taxpayer a lump sum of around $179,000.

The AAT said there was no basis that the compensation payment could be described as a loss of income earning capacity as argued by the taxpayer – rather, it was of the view that the payment was to ensure that the taxpayer was provided with a sufficient payment to cover her loss of income.

## Perfecting a security interest over corporate property

A security interest in corporate property must be registered on the Personal Property Securities Register (PPSR) as soon as possible.

A recent Federal Court decision involving a loan from a self-managed super fund (SMSF) to a company which was later placed into voluntary administration has highlighted the importance of understanding the new Personal Property Securities regime. The Federal Court held the SMSF trustee was merely an unsecured creditor in relation to the commercial loan to the company after finding that its security interest had not been registered on the PPSR in time to avoid the interest vesting in the company (in liquidation).

**TIP:** The take-home message from the case is that a failure to register a security interest on the PPSR within 20 business days of the creation of a security agreement over corporate property leaves the lender/mortgagor in the hands of the gods in terms of later perfecting the security. For corporate property, a failure to register within 20 business days means that the security interest must have been registered at least six months before the administration or winding up of the grantor company.

**Important**: Clients should not act solely on the basis of the material contained in Client Alert. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. Client Alert is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.