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ATO priority on settling cases – but not at any cost

The ATO has advised that it places a high priority on resolving tax disputes early, including through reaching settlements where appropriate, but that it will not settle disputes at any cost. It says "the sensible use of settlements" is part of its commitment to earlier and more effective dispute resolution. In this regard, the ATO has advised that in 2015–2016, it settled 1,362 cases (31% more than in the previous year) and that the increased number of settlements can be attributed entirely to settlements finalised as part of Project DO IT (Disclose Offshore Income Today).

TIP: The ATO's stated policy of "placing a high priority on resolving disputes early, including through settlements where appropriate" is something that should be kept in mind in any dispute with the Commissioner, whether large or small. A settlement may provide a great opportunity to finalise a difficult or long-running dispute.

ATO develops work-related expenses risk profiles

The ATO has developed work-related expenses risk profiles to help it identify how work-related expense deduction amounts compare for similar taxpayers. The ATO said improvements in data analytics and modelling have allowed it to create a risk profile for tax agents' practices based on comparing their clients' work-related expenses claims with those made by similar taxpayers.

The ATO has said it will share these risk profiles with some tax professionals where their clients' claims appear higher than expected.

TIP: The ATO's increasing capacity to monitor the often difficult issue of work-related expenses claims means taxpayers and tax professionals need to take care when preparing returns. Contact us if you would like to discuss which of your work-related expenses may be tax deductible.

Onus on taxpayers to show no fraud or evasion: Full Federal Court

Several taxpayers have been unsuccessful in their appeals to the Full Federal Court in which they challenged tax assessments that dramatically increased their assessable income for certain income years. In each case, the Court confirmed that where the Commissioner of Taxation has issued an amended or default assessment out of time on the grounds of taxpayer "fraud or evasion", the taxpayer bears the responsibility of proving that such fraud or evasion does not exist.

No disclaimer of trust interest: unsuccessful appeal

A beneficiary of two trusts whose assessable income was increased from some $70,000 to some $13 million in light of her entitlement to distributions from the trusts has been unsuccessful in claiming on appeal that she had "disclaimed her interests" in the trusts. Instead, the AAT found that she could not argue she had disclaimed her interests in the distributions. This finding was on the basis that she did not bring up having made "disclaimers" when she originally objected to amended assessments that the Commissioner of Taxation issued in 2013. Additionally, in any event, the AAT found that the disclaimers were legally ineffective because of the significant period of time between the distributions being made (in 2006 and 2007) and the disclaimers being made (in 2015).

TIP: Any attempt to disclaim an interest in a trust for tax purposes must be legally valid first – and the key consideration is that there must not have been behaviour that indicates implied acceptance of the interest. In this case, the taxpayer's behaviour was problematic because she did not act until well after she received the distributions and they were assessed as part of her income.

Admin penalties of 75% for failing to lodge FBT returns

The AAT has confirmed that 75% administrative penalties were rightfully imposed on several companies for their failure to lodge FBT returns over a four-year period. The AAT found that the Commissioner of Taxation was obliged to impose a 75% administrative penalty because the FBT returns were not lodged, and that the "safe harbour" provisions did not apply to such an administrative penalty.

The AAT also found that it was not appropriate to exercise its discretion to remit the penalties in part or whole under the circumstances. The AAT relied on the criteria in Practice Statement Law Administration PS LA 2014/4 in arriving at its decision.

New ATO data-matching program: ride-sourcing

The ATO has announced a new data-matching program involving ride-sourcing providers. Under the program, the ATO will acquire data to identify individuals who may be engaged in providing ride-sourcing services during the 2016–2017 and 2017–2018 financial years. Details of all payments made to ride-sourcing providers from accounts held by a ride-sourcing facilitator will be requested from the facilitator's financial institution for the 2016–2017 and 2017–2018 financial years. The ATO estimates that up to 74,000 individuals (ride-sourcing drivers) offer, or have offered, the services.

TIP: If you work as a driver for Uber or a similar ride-sourcing facilitator, the money you make is assessable income that needs to be included in your tax return. Contact us for more information about how the ATO's data-matching program may apply to your circumstances.

Taxation ruling on commercial website deductibility

A new taxation ruling from the ATO sets out the tax deductibility of expenditure incurred in acquiring, developing, maintaining or modifying a commercial website for use in carrying on a business.

Broadly, the ruling explains that acquiring or developing a commercial website for a new or existing business is considered to be a capital expense, and is therefore not deductible. On the other hand, maintaining a website, including remedying software faults, is generally a revenue expense, so may be deductible.

Taxation determination on deductions for bad debts: trust beneficiaries and UPEs

In a new tax determination, the ATO states that a beneficiary is not entitled to a bad debt deduction for an amount of unpaid present entitlement (UPE) that the beneficiary purports to write off as a bad debt.

It says this is because the amount of UPE is not included in the beneficiary's assessable income. Instead, the entitlement is used to determine how much net income of the trust is included in the beneficiary's assessable income. This means that the the debt amount cannot be included in the taxpayer's income in that year or in an earlier income year, which is a requirement for writing off a bad debt.

Taxpayer failed to prove that payments were "loans"

In a recent case, the Full Federal Court has found that several taxpayer companies had not discharged the onus of proving that assessments the Commissioner of Taxation issued to them were excessive. The amended assessments took into account income of some $4 million that the Australian companies received from overseas sources. The taxpayers had claimed that the payments were loans.

In allowing the Commissioner's appeal, the Court majority held that it would not be appropriate to find that the taxpayers had provided the required proof that the payments were genuine loans; in fact, they had made inconsistent or "alternative" arguments about the nature of the payments.