

# Practice Update

Please read this update  
and contact this office  
if you have any queries

**NOVEMBER 2009**

## More Tax Office audits with New Small Business Benchmarks

The Tax Office has released a whole host of "Small business benchmarks" in October . 38 in all. The ATO says they provide a snapshot of what, on average, is happening in businesses operating in a particular industry by comparing various business costs to sales.

For example, depending on the size of the business, they compare costs, such as labour, cost of goods sold and rent, to sales.

Where a business's costs as a percentage of sales fall outside the benchmarks, it may find itself looking down the barrel a tax audit.

### Selected Industries

There were 38 benchmarks issued for businesses operating in the following industries:

- ◆ Manufacturing;
- ◆ Construction;
- ◆ Retail trade;
- ◆ Accommodation and food services;
- ◆ Transport, postal and warehousing;
- ◆ Rental, hiring and real estate services;
- ◆ Administrative and support services (such as pest control); and
- ◆ Other services (such as barbers, hairdressers and nail salons).

*Editor: Any client wishing to know if benchmarks have been issued for their type of business should contact our office.*

### Case study

The Tax Office has provided an example of how the benchmarks have been applied where a

Melbourne-based concreter received a tax bill for \$115,953 after an audit showed he had omitted \$142,000 from his tax return.

The taxpayer came to the ATO's attention because he had been reporting very low levels of income for a number of years. The concreting benchmark helped the Tax Office to understand the taxpayer's business relative to the rest of the industry.

During the audit, the taxpayer said his business was based on smaller suburban work, for which he received very little cash. He said he always issued tax invoices to his customers.

He had declared a taxable income of \$18,000 for the year. He recorded only four concrete purchases during one of the quarters.

Third party data acquired from his supplier for that quarter showed eighteen concrete purchases, some of which were paid for in cash. Further examination showed:

- many of his jobs were for cash;
- they were not recorded in his records; and
- his customers did not receive tax invoices.

As the taxpayer's record keeping was inadequate, the auditors calculated his income by applying his normal sale price per square metre to his actual purchases of concrete.

The audit resulted in tax liabilities of \$67,000 and additional penalties of nearly \$50,000.

## Christmas/year end parties and gifts

The year end is on the way and many employers will be planning to celebrate Christmas with their annual year end "bash". In addition, many businesses will be considering what gifts, if any, they will provide to clients and employees.

However, an important issue to consider is the possible FBT and income tax implications of providing "entertainment" to staff and clients.

*Editor: If you would like some assistance in this complicated area please contact us.*

One major consideration is the "less than \$300" minor benefit exemption and the fact that the Tax Office now accepts that different benefits provided at (or about) the same time are not added together when applying this threshold.

This means that a Christmas party and gift may be exempt from FBT, even if provided at the same time, as long as each costs less than \$300!

**Gifts which ARE NOT entertainment –**  
generally include:

- ❑ a Christmas hamper, a bottle of whisky, wine, etc.; and
- ❑ gift vouchers, a bottle of perfume, flowers, a pen set, etc.

**Gifts which ARE entertainment –**  
generally include:

- tickets to attend a theatre, live play, sporting event, movie or the like; and
- a holiday airline ticket or admission ticket to an amusement centre.

#### **Example of a party and gifts**

An employer holds an external Christmas party for employees and their spouses.

The cost of food and drink per person is \$250, and no other benefits are provided.

Assuming the actual method is adopted:

- ◆ for employees attending with their spouse . no FBT is payable (i.e., the per head cost is less than \$300); and
- ◆ for employees attending alone . no FBT is payable (i.e., the per head cost is less than \$300).

In either case, no tax deductions will be allowed.

Assuming the 50/50 method is adopted:

- ◆ 50% of the total expenditure is subject to FBT and is tax deductible.

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### **Forestry MISs to receive concession on 4 year holding rule**

*Editor: The collapse of Timbercorp and Great Southern is expected to lead to a number of forestry managed investment schemes (MISs)*

*being wound up or restructured, which could cause investors to fail the requirement to hold their interest in the MIS for four years to claim an up-front tax deduction.*

The Government will amend this four-year holding period rule for forestry MISs to ensure that it cannot be failed for reasons genuinely outside an investor's control.

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### **FBT – Donations made under salary sacrifice arrangements**

The FBT law has been amended to ensure that, from the 2008/09 FBT year, FBT will not apply where a salary sacrifice arrangement involves a donation to an organisation that is a deductible gift recipient (DGR).

Employees who make donations under such a salary sacrifice arrangement are not entitled to claim an income tax deduction for the donation in their own tax return.

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### **Warning: Another tax refund email scam**

The Tax Office is warning people about another bogus email circulating that claims to offer a tax refund. The email claims to be from the ATO, and shows a Tax Office email address as the sender.

The email uses the Tax Office logo and includes the words 'You are eligible to receive a tax refund of \$250.50' in the subject heading and the following text (though there may be variations):

*Dear Australian Taxation Office customer,*

*After the last annual calculation of your fiscal activity we have determined that you are eligible to receive a tax refund of \$250.50 AUD.*

*Please submit the tax refund and allow us 3-5 business days in order to process it.*

The email asks people to complete a refund form by clicking on a link in the email which directs them to a bogus Tax Office Website and asks for personal and credit card details.

The ATO advises that anyone who entered their credit card information into the bogus site should immediately report it to their credit card provider.

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.
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