

Business Update May 2011

Flood levy passed

The Flood levy has been passed and will impose a 0.5% levy on incomes from \$50,001 to \$100,000 and 1% above \$100,000.

For ease, the levy has been included in the following table setting out the tax rates for the 2011/12 income year, even though it will be assessed separately in the same way as the Medicare levy.

Taxable Income¹ \$	Tax Payable² \$
0 – 6,000	Nil
6,001 – 37,000	15% of excess over \$6,000
37,001 – 50,000	\$4,650 + 30% of excess over \$37,000
50,001 – 80,000	\$8,550 + 30.5% of excess over \$50,000
80,001 – 100,000	\$17,700 + 37.5% of excess over \$80,000
100,001 – 180,000	\$25,200 + 38% of excess over \$100,000
180,001+	\$55,600 + 46% of excess over \$180,000

- 1 The tax-free threshold may effectively be higher for taxpayers eligible for the low-income tax offset, the Senior Australians Tax Offset and/or certain other tax offsets.
- 2 The above rates do not include the Medicare Levy of 1.5%.

Editor: Note that the above tax rates are for resident individuals.

Personal Services - Data Matching Program

The ATO will collect information on amounts paid to personal services entities by labour hire firms, placement agencies and computer consultancies - it is called the PSI Data Matching project.

The data requested will also include name and address details of the individual who is the main service provider to the entity.

The information collected will be electronically matched with ATO data holdings to identify non-compliance with lodgment and payment obligations.

Records relating to approximately 100,000 individuals and entities who have received contract payments from the listed entities (there are 39 in total, such as Accenture Australia Holdings Pty Ltd, Hays Specialist Recruitment and Drake Australia) will be matched.

ATO withdraws 2009 cash sales benchmarks

The ATO's cash sales benchmarks for the following 15 industries, released in November 2010 for the 2009 year, have been withdrawn from use:

- Beauty services;
- Fuel retailing;
- Meat retailing and butchers;
- Clothing retailing;
- Garden supplies retailing;
- Newsagents;
- Coffee shops;
- Grocery retailing and general stores;
- Pubs, taverns and bars;
- Florists;
- Hairdressers;
- Restaurants;
- Fruit and vegetable retailing;
- Hardware and building supplies retailing; and
- Takeaway food services.

A review of the data used to calculate the cash sales benchmarks has identified inconsistencies in the way in which cash-outs* paid by businesses to their customers were recorded.

Note(*): An example of a cash-out is when a customer requests additional cash when purchasing goods or services.

The ATO is refreshing the data used to calculate these benchmarks and will release updated cash sales benchmarks for 2010 later this year.

Supply of land development not a "going concern"

Editor: The following case involved the sale of a piece of land for which the taxpayer was trying to claim the going concern exemption from GST, despite having ceased development on it.

A sale of an "enterprise" (including a land development) can be GST-free if the requirements for the going concern exemption are met.

One of these requirements is that the taxpayer selling (or otherwise "supplying") the enterprise must carry it on right up until the date it is sold.

Facts

The taxpayer purchased land at Hope Island, Queensland, to develop as a retirement community. However, a number of years later it was decided that the taxpayer would withdraw from the project, and it ceased all construction works, removed existing construction works and all services to the apartment and house sites.

Another purchaser was found which proposed to develop a residential development according to its own designs, plans and subdivisional approvals.

It had no need of or use for the taxpayer's architectural plans and drawings, but still wanted to retain some of the features of the taxpayer's original development, being the lakes, the marina and the canal.

Bulk earthworks were required to enable those features to be developed or completed and, in that sense, the taxpayer continued those works.

Decision

The court held that the seller was not, at the date of the contract, carrying on an enterprise, but had abandoned the project in favour of simply selling the land upon particular terms.

Other obligations to finish off bulk earthworks were simply an incident of that sale, so it was not a supply of a going concern, but was a taxable supply.

However, it would have been more likely to be a supply of a going concern if the taxpayer had assigned to the purchaser the drawings and plans together with the benefit of all contracts with end buyers off-the-plan, and had otherwise supplied all things necessary to continue the project enterprise and carried it on until settlement or the day of supply.

FBT: Benchmark interest rate

The benchmark interest rate for the FBT year commencing 1 April 2011 is 7.80% p.a. This rate replaces the rate of 6.65% that applied for the previous FBT year.

The rate of 7.80% is used to calculate the taxable value of:

- a fringe benefit provided by way of a loan; and
- a car fringe benefit where an employer chooses to value the benefit using the operating cost method.

FBT: Cents per kilometre basis

The rates to be applied where the cents per kilometre basis is used for the FBT year commencing 1 April 2011 are:

Engine capacity	Rate per kilometre
0 – 2,500cc	46 cents
Over 2,500cc	55 cents
Motorcycles	14 cents