

# client alert

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October, 2010

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## Tax Office Eyes Overdue Tax Lodgments

The Tax Office is eyeing companies, trusts, partnerships and individual taxpayers which have overdue income tax returns for any period between 1 July 2005 and 30 June 2009, and overdue activity statements for any period between 1 July 2005 and 31 December 2009.

**TIP:** The Tax Office has recently written to tax agents regarding their clients who may have overdue lodgment obligations. You should ensure that all overdue documents are completed and lodged as soon as possible. If you do not need to lodge, please contact our office as soon as possible so that we can advise the Tax Office.

**TIP:** It should be noted that outstanding returns and activity statements will generally attract penalties. In addition, the Tax Office will charge interest where tax debts remain unpaid. However, there are circumstances where the Commissioner may remit the penalty and any interest charges.

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## Tax Scams on Tax Office Radar

The Tax Office has recently highlighted the emergence of new tax schemes, warning taxpayers to be vigilant and avoid becoming the victim of identity and tax return fraud. The Tax Office said it never sends emails asking for personal information such as banking and credit card details.

**TIP:** If you receive a suspicious email or telephone call, please contact our office before giving out any personal information.

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## Education Tax Refund — You Claim It, They Check It

The Tax Office will be requesting names and addresses of Family Tax Benefit Part A recipients from Centrelink in efforts to identify recipients who may be incorrectly claiming the Government's 50% education tax refund for primary and secondary school student expenses. The Tax Office expects to match records of around 1.5m individuals registered with Centrelink.

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## Deduction of Super Contributions — Ensure Paperwork Valid

The Tax Office has reminded self-managed super fund (SMSF) members that if they intend to claim a tax deduction for their personal superannuation contributions, they must complete the correct form — that is, the 'Notice of intent to claim or vary a deduction for personal super contributions' form. In addition, SMSF members must also receive an 'acknowledgment' from the fund of the valid notice they have completed.

**TIP:** The Tax Office in its compliance program for 2010-11 noted that it will look closely at individual income tax deduction claims for personal contributions to superannuation funds. In particular, the Tax Office said it will ensure that the requirements for lodging a valid notice of intent to claim or vary a deduction for personal superannuation contributions have been met.

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## Direct Debit for GIC-free Payment Deal

The Tax Office has extended the general interest charge (GIC) free payment arrangement for small business taxpayers (ie those with an annual turnover of less than \$2m) with activity statement debts for another year to 30 June 2011.

If you have an activity statement debt, you may be eligible to enter into such an arrangement with the Tax Office to pay the debt over a maximum of 12 monthly GIC-free instalments. However, there are conditions which accepted taxpayers must abide by. Specifically, the Tax Office now expects you to pay the instalments by direct debit.

**TIP:** This concessionary measure does not extend to activity statement lodgment due dates. In other words, you must still lodge your activity statements on time, or face potential penalties.

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## Donations to New Zealand Christchurch Earthquake

The Government has announced that all donations by Australians to the recent earthquake in Christchurch, New Zealand's second largest city, will be tax-deductible. The Assistant Treasurer said donations to funds endorsed as 'developed country relief funds' are tax-deductible for a period of two years from 4 September 2010.

**TIP:** Remember to keep evidence documenting your donations (eg receipts or bank statements).

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## No Indemnity for Wound-up Corporate Trustee, Says Court

In a recent case, the Federal Court held that the basic principle that a trustee is entitled to be indemnified out of trust property for liabilities incurred in administering the trust does not apply to a corporate trustee in relation to expenses incurred after it has been wound-up and at which time it merely becomes a bare trustee in relation to the assets comprising the trust fund. In this case, the corporate trustee had sought to be indemnified for expenses it had incurred in litigation it pursued against the Commissioner after it had been wound-up.

**TIP:** Trustees that act within their powers would generally be indemnified. This protection, however, is jeopardised should trustees start to act outside their remit. But nevertheless, if a trust is in financial trouble, and even though the trustee may be conducting its duties accordingly, it may find it difficult to be indemnified out of trust assets that are diminished.

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## Debts Result in CGT Small Business Concessions Being Denied

The Administrative Appeals Tribunal has confirmed that debts of \$3.8m that a taxpayer was owed by related business and investment entities were 'CGT assets' of the taxpayer that had to be taken into account under the maximum net asset value test. As a result, the taxpayer exceeded the then \$5m test threshold and therefore could not qualify for the small business CGT concessions in relation to the capital gain made on the sale of land and improvements from which he operated a car radio business.

**TIP:** If a taxpayer is a small business entity, the taxpayer does not need to satisfy the net asset value test (subject to other requirements being met).

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## Court Can't Review Tax Office Decision to Delay GST Refunds Payable

In a recent case, the Federal Court dismissed a taxpayer's application for a review of a Deputy Commissioner's decision to 'withhold' GST refunds that were payable under the GST Act. The Court held the taxpayer had no reasonable prospect of obtaining the relief sought.

**TIP:** This case demonstrates that in such situations a taxpayer is unable to 'force' the Tax Office to release a refund. If a taxpayer is the subject of a Tax Office audit, a GST refund may be withheld. Also, the Commissioner can apply the refund against any outstanding liabilities.

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**Important:** This is not advice. Clients should not act solely on the basis of the material contained in this Bulletin. 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. The Bulletin 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.