



### Important Lodgement Dates

**21/ 10/ 2002** September 2002 monthly Activity Statement: final date for lodgement and payment.

**28/ 10/ 2002** Quarter 1 (July to September 2002) quarterly Activity Statements: final date for lodgement and payment for deferred BAS payers.

### Living Away from Home Allowance - Interposed Company

The ATO have issued a Taxpayer alert as they are concerned with anti-avoidance potential where employment arrangements involve a labour hire firm, a special purpose company and a foreign national employed in Australia. The arrangements attempt to re-characterise a substantial amount of the foreign national's Australian sourced salary as a tax free living away from home allowance. Source: ATO Alert 2002/7

### Investment Finance Ruling

The Federal Court hearing found that the Harts were entitled to compound interest deductions arising from a split loan facility. This OKs the way to use a home in a tax effective manner for an investment loan. A split loan allows a home loan account for the taxpayer's residence and an investment loan for a property rented out by the taxpayer. The loan repayments can then be

exclusively streamed to one loan, say the home loan which accelerates the repayment while capitalising the interest that is accruing on the other investment loan and is deductible.

### Care with defined benefit superannuation entitlements

A university Dean has been denied a deduction for a reimbursement of an employer superannuation contribution on the basis that it did not satisfy the relevant nexus test of any kind between the payment of the employer contribution and the income the taxpayer derived from his employment. The tribunal considered that the character of the payment was to secure the superannuation benefit and was thus made on capital account. Source: AAT Case [2002] AATA 785

### Conditions for Offer Doc to become Tax Invoice

From 25<sup>th</sup> September, the ATO will only treat an offer document as a tax invoice where the offer is "made to multiple parties" and all the following are met:

- ◆ The offer is accepted and payment made;
- ◆ The prospective customer completes the offer document, which once completed indicates the supplies accepted, the total

amount payable and the GST included in that price;

- ◆ The offer document includes the words "This document will be a tax invoice for GST when fully completed and you make a payment" or a similar statement;

- ◆ The offer document meets the total supplies being offered. For example, if the offer contemplates a prospective customer acquiring taxable supplies with an aggregate GST-inclusive price of \$1000 or more, then the offer document must comply with the additional tax invoice requirements.

Source: ATO

### Pension Increase

From 20 September, the maximum single rate of pension will rise by \$7.60 to \$429.40 a fortnight while the maximum partnered pension will increase by \$6.30 to \$358.40 a fortnight for each member of a couple.

As a result of these indexation increases, income and assets cut-off amounts will also be increased. The pension disqualifying income limit for single pensioners will rise to \$1204 per fortnight and for partnered couples (combined) to \$2010.50 per fortnight. The pension disqualifying assets limit for single homeowners will also rise to \$290,500 and for partnered homeowners will rise to \$447,500.

Other payments to rise include the adult allowance rates of Parenting Payment, Mature Age Allowance, Newstart Allowance, Partner Allowance, Widow Allowance, Special Benefit and Sickness Allowance. Other rates to increase include Maximum Rent Assistance, Telephone Allowance, Maternity Allowance and Health Care Card income limits.

Source: Minister for Family and Community Services media release, 13/9/02

### **Safe bet ATO will close betting loophole**

There appears to be a loophole in tax law that allows 'spread betting' to be tax-free.

Spread betting is similar to buying a futures contract, except the investor never actually owns the shares. The investor operates as a financial bookmaker, and makes a bet on which direction a particular security will go. If the investor thinks the share price will rise, he or she makes a bet higher than the highest quoted offer. If the investor thinks the share will go down, a bet is made lower than the lowest quoted price for the stock. Similar to a futures contract, losses and gains are unlimited, leaving investors significantly exposed in the event of a loss.

Because the transaction is off-market, technically the investor doesn't have to declare winnings - as long as the investor is not a professional investor, in which case income and capital gains tax is applicable.

Investors are required to pay a 10 percent deposit when making a spread bet. Commission is not usually charged.

The ATO has released a statement that confirms it is assessing the tax treatment of spread betting transactions, often called "deal for free."

Since stock-broking firms are required to pay tax on any spread

betting contracts, it is likely the ATO will also make spread betting taxable.

### **GST free sale of a going concern**

A sale of an enterprise as a going concern is GST-free when:

- ◆ The supply is for consideration,
- ◆ The purchaser is registered or required to be registered for GST, and
- ◆ Both parties agree in writing that the supply is of a going concern.

If all these requirements are met, GST is not payable on the sale. A supply of a going concern is a supply where all of the things necessary for the continued operation of the enterprise are supplied to the buyer, and the supplier carries on the enterprise until the day it is sold.

For example the sale of a taxi business, which is made up of a taxi licence, motor vehicle and meter. The sale includes all things necessary to continue operating the business, that is, both the licence and the motor vehicle (including the meter). The vendor continues to operate the business until the buyer takes over. This is a supply of a going concern. If either the licence or the motor vehicle is sold on its own, it is *not* a supply of a going concern as all things necessary to continue operating the business have *not* been supplied.

### **International Super agreements**

Australia has entered some international agreements with the United States, Portugal and the Netherlands (effective early 2003) to address the problem of 'double superannuation coverage'. Double coverage arises where an employee is sent to work temporarily in another country

and the employer or employee is required to make superannuation (or equivalent) contributions under the legislation of both countries for the same work.

Under the agreements the employer/employee will be exempted from the need to make superannuation (or equivalent) contributions in the country to which the employee has been temporarily sent, provided the employer/employee is required to make compulsory contributions under the law of their home country for that work.

In the context of Australian employees being sent to work in another country, this means an exemption from the other country's compulsory contributions will only be available if the employee remains covered by Australia's superannuation guarantee legislation while working overseas.

Generally, where an Australian employee is working for an Australian employer overseas they will remain subject to the superannuation guarantee legislation and required to make ongoing Superannuation Guarantee contributions.

**Authorities from other countries may require you to provide evidence such as a *Certificate of Coverage*. that you are covered by an agreement and thus exempt from making superannuation (or equivalent) contributions in that country. The employer of the employee who is being sent to the other country must apply to the Tax Office for the issue of such a certificate, and should do so before the employee is sent to the other country.**

### **P.S.**

PwC agrees sale to IBM.