

tax news

Issue 2008/1
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1. CHANGES TO THE ATO SYSTEMS SHUTDOWN PLANNED FOR MARCH 2008**What has changed?**

The ATO had advised that they would shutdown their systems during the Easter break to make some significant improvements to their processing systems. Due to the risks that the ATO have judged in this change they have decided to stage the system upgrade, they have decided not to roll out the Income Tax systems and to continue testing.

What does this mean for you?

The ATO will still shutdown at 2.00pm AEDT Thursday 20 March through to 24 March (Easter Monday). The Tax Agent Portal will be unavailable over these five days. There will be no impact on processing tax return and BAS's, as previously advised and lodgements and assessment issuing will continue as normal. You will not see the new Notice of Assessments until the income tax changes are implemented.

When will the income tax system changes be rolled out?

With tax time just around the corner there is concern that updating the income tax system could seriously impact agents and their clients at the busiest time of year. For this reason, the ATO plan to hold off until a lower volume period and a less inconvenient time for agents and their clients – most likely in the last quarter of 2008. While this is another nine months down the track it is the next practical window of opportunity.

2. DID YOU KNOW?**Salary Sacrifice and claiming administration fees**

You cannot claim a deduction for the cost of any administration fees paid to your employer to enter into and maintain a salary sacrifice arrangement.

3. ATO RULINGS/ATOIDS/CASES/ ATO NOTICES**ATOIDS****ATO ID 2007/197 Deductions and expenses: cost of shares not yet acquired in a short selling process****Issue**

Can a taxpayer who short sells shares, deduct from assessable income under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997), an amount equivalent to the market value as at 30 June, of shares it is required to acquire to close out its short position?

Decision

No. A taxpayer who short sells shares cannot deduct from assessable income under section 8-1 of the ITAA 1997, the market value as at 30 June of shares it is required to acquire to close out its short position.

ATO ID 2007/220 Assessability of income derived by an Australian resident working in Australia as the holder of an office in an international organisation

Issue

Is the income derived by an Australian resident as the holder of an office in an international organisation, for services performed during a secondment with an Australian organisation in Australia, assessable under subsection 6-5(2) of the *Income Tax Assessment Act 1997* (ITAA1997)?

Decision

No. The income derived by an Australian resident as the holder of an office in an international organisation, for services performed during a secondment with an Australian organisation in Australia, is not assessable under subsection 6-5(2) of the ITAA 1997, as the income is exempt from tax under the International Organisations (Privileges & Immunities) Act 1963 (the IO(P&I)A) and the Specialised Agencies (Privileges & Immunities) Regulations 1986 (the SA(P&I) Regs) which were made under the IO(P&I)A.

TAX RULINGS

TD 2007/D7

Are amounts mistakenly paid as salary or wages to employees (or as income support payments or worker's compensation amounts to persons), to which they are not beneficially entitled, but are obliged to repay, 'ordinary income' under section 6-5 of the Income Tax Assessment Act 1997?

Ruling

No. Amounts mistakenly paid as salary or wages to employees, (or as income support payments or worker's compensation amounts to persons), to which they are not beneficially entitled, but are obliged to repay, are not derived by these persons as income according to ordinary concepts. Accordingly, such mistakenly paid amounts are not assessable income of these persons under section 6-5 of the Income Tax Assessment Act 1997 (ITAA 1997).

NOTE: this applies equally to DSS Income

DATE OF EFFECT: It will apply to date before and after this determination

CASES

1. Dixon Consulting Pty Ltd 2007AATA1786; 20076 ATC 2550

The cases concerned whether the applicant taxpayer passed the business premises test in respect of an area of a garage and as a result the taxpayer was entitled to a personal services business determination from the Commissioner. The AAT held that as the taxpayer did not have exclusive use of the garage area, as detailed by the Federal Court, and therefore failed the business premises test

CLASS RULINGS

CR 2007/114 Script for Script acquisition of Coles Group by Wesfarmers

Disposal of Coles shares

CGT event A1 happened when a Coles shareholder disposed of their Coles share to Wesfarmers on the Implementation Date. A Coles shareholder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of their Coles share exceeds its cost base. A Coles shareholder will make a capital loss if those capital proceeds are less than the Coles share's reduced cost base (subsection 104-10(4)).

The capital proceeds for the disposal of each Coles share is any cash consideration plus the market value of the Wesfarmers share and WPP share worked out on the Implementation Date. The capital proceeds will not include the final Coles dividend paid on the Implementation Date (subsection 116-20(1)).

The standard consideration paid to Coles shareholders under the scheme was:

- a. \$4.00 cash (cash consideration);
 - b. 0.14215 of a Wesfarmers ordinary share (Wesfarmers share); and
 - c. 0.14215 of a Wesfarmers Partially Protected Share (WPP share)
- for each Coles share owned on the record date.

However, Coles shareholders were entitled to elect to receive:

- a. an increased cash consideration component under the scheme (maximum cash alternative); or
- b. an increased Wesfarmers share consideration component under the scheme (maximum scrip alternative).

The consideration paid to Coles shareholders who elected for the maximum scrip alternative was:

- a. \$2.9583 cash consideration;
 - b. 0.16854 of a Wesfarmers share; and
 - c. 0.14215 of a WPP share
- for each Coles share owned on the record date.

The consideration paid to Coles shareholders who elected for the maximum cash alternative was:

- a. \$9.6118 cash consideration; and
 - b. 0.14215 of a WPP share
- for each Coles share owned on the record date.

WPP shares (as detailed in the Scheme Booklet):

The acquisition date of Wesfarmers shares and WPP shares received in exchange for Coles shares is the date that the shares are issued to Coles shareholders, on the implementation date.

The first element of the cost base (and reduced cost base) of the Wesfarmers shares and the WPP shares will be a reasonable portion of the market value of the Coles shares exchanged under the scheme (subsection 110-25(2) and subsection 110-55(2)), determined at the time of acquisition (the Implementation Date). However, the market value of the Coles shares must first be reduced by that part of the market value that is reasonably attributable to any cash consideration (paragraph 110-25(2)(b)).

A Coles shareholder who makes a capital gain will be eligible to treat the gain as a discount capital gain providing they acquired the Coles share at least 12 months before the disposal and the other requirements of Subdivision 115-A are satisfied (section 115-25).

Date of effect

This Ruling will apply from **7 November 2007 to 30 June 2008.**
Implementation date is **5 September 2007**

Availability of scrip for scrip roll-over

A Coles shareholder will be eligible to choose scrip for scrip roll-over under section 124-780 if:

- they acquired their Coles shares on or after 20 September 1985 apart from the roll-over under Subdivision 124-M, they would make a capital gain when CGT event A1 happens to their Coles shares
- they cannot disregard (except because of a roll-over) any capital gain they might make from a replacement Wesfarmers or WPP share
- all other relevant requirements are satisfied.

The requirements for the roll-over are explained in paragraphs 69 to 101 of this Ruling CR 2007/114.

Consequences of scrip for scrip roll-over

If a Coles shareholder chooses scrip for scrip roll-over, a capital gain from the disposal of their Coles share is disregarded to the extent that the shareholder receives Wesfarmers shares and WPP shares (subsection 124-785(1)). The capital gain is not disregarded to the extent that the capital proceeds include ineligible proceeds (cash consideration) (section 124-790).

If a Coles shareholder chooses scrip for scrip roll-over, the first element of the cost base of a replacement Wesfarmers share and WPP share will be a reasonable portion of the cost base of the Coles share exchanged for those shares under the scheme (subsection 124-785(2)). However, the cost base of the Coles shares must first be reduced by that part of the cost base that is reasonably attributable to any cash consideration (subsections 124-785(2) and (3)).

Pre-CGT Coles shares

Any capital gain or loss on the disposal of Coles shares acquired before 20 September 1985 (pre-CGT Coles shares) will be disregarded (paragraph 104-10(5)(a)).

There is no roll-over for Coles shares that were acquired before 20 September 1985

The first element of the cost base (and reduced cost base) for Wesfarmers shares and WPP shares acquired in exchange for pre CGT Coles shares will be the respective market values of the replacement Wesfarmers shares and WPP shares just after they were acquired (subsection 124-800(1)).

Foreign resident Coles shareholders

A foreign resident Coles shareholder will only have CGT consequences for the disposal of their Coles shares if they used their shares in connection with the carrying on of a business through a permanent establishment in Australia (item 3 in the table in section 855-15).

CR 2007/34 off market share buy-back: Foster's Group Limited

Ruling

The Dividend Component

Participating shareholders will be taken to have been paid a dividend of \$4.09 (the Dividend Component) for each share bought back, under section 159GZZZP.

The Dividend Component is a franked Dividend

The difference between the Buy-Back price and the Dividend Component is not a dividend for income tax purposes.

Non-resident shareholders

As the Dividend Component is fully franked, participating non-resident shareholders are not liable for Australian withholding tax under paragraph 128B(3)(ga).

Consideration date: 10 April 2007

Sale consideration

Participating shareholders are taken to have received \$2.92 as consideration in respect of the sale of each of their shares bought back under the Buy-Back

The treatment of the Sale Consideration amount for tax purposes will depend on whether the sale is on capital account (where the shares are held for investment) or on revenue account.

Shares held on capital account

The Sale Consideration of \$2.92 represents the capital proceeds for capital gains tax purposes pursuant to section 116-20 of the ITAA 1997. A shareholder will make a capital gain on a share if the Sale Consideration per share exceeds the cost base of that share. The capital gain is the amount of the excess. Similarly, a shareholder will make a capital loss if the Sale Consideration per share is less than the reduced cost base of a share. The shares are taken to have been disposed of for capital gains tax purposes on 10 April 2007 pursuant to section 104-10 of the ITAA 1997.

Shares held on revenue account

Where the shares are held as trading stock, the Sale Consideration of \$2.92 is included in assessable income under section 6-5 of the ITAA 1997. Where the shares are held as revenue assets, the amount by which the Sale Consideration of \$2.92 per share exceeds the cost of each share is included in the shareholder's assessable income. Correspondingly, if the cost exceeds the Sale Consideration of \$2.92 per share the difference is an allowable deduction.

4. COMMON ERRORS

Rental Properties

Sundry Expenses

It appears some returns are being lodged with all expenses being listed under sundry expenses. All expenses must be shown at the correct labels, with only the following items being listed under sundry expenses

- Gas/Electricity Charges.
- Mortgage Discharge Expenses
- Sundry Expenses Key Cutting
- Secretarial or bookkeeping costs
- Bank charges on the bank account used to operate the rental property

Multiple Properties

If the taxpayers owns more than one property they should be listed separately not entered in bulk

PSI Common Errors

1. Results test

Self assessing that the first condition of the results test has been passed when paid on an hourly basis or daily rate

To pass the first condition of the results test, the income you receive under a contract or arrangement must be paid to you as a result of achieving a specified result or outcome. This means that you must be:

- engaged to complete a specified job, and
- paid on completion of that job.

If you are paid on an hourly basis or daily rate for the services you provide, it is unlikely you'll pass the first condition of the results test.

2. The 80% rule

Not obtaining a determination (or applying the measures) when you don't meet the results test and 80% or more of the income is from one client

When using the four tests to work out if the personal services income measures apply to your income, the results test is used first.

If 80% or more of your personal services income in the income year is from one client (80% rule), you cannot self assess whether you meet the other personal services business tests.

3. Unrelated clients test

Self assessing that the unrelated clients test has been met when the services provided are not a direct result of making offers to the public

A condition of the unrelated clients test is that the services must be provided as a direct result of making offers to the public.

To make an offer to the public, there needs to be a definite connection between the offer of services and the engagement for the work. Making offers to the public includes:

- advertising in a newspaper, magazine, or business directory
- maintaining an internet web site, or
- word-of-mouth referrals.

Offering services through a labour hire firm or registering with an agency is not considered offering services to the public under the unrelated clients test.

4. Claiming deductions for personal services income where there is no entitlement

When you claim deductions for your personal services income, you need to be aware of your tax obligations and entitlements to ensure you are claiming the correct amount.

Generally, you can claim a deduction for an amount you have paid or incurred only if it relates to gaining or producing your assessable income.

However if you are affected by the personal services income measures, there are certain deductions you cannot claim. These include:

- rent, mortgage interest, rates or land tax for your home (or your associate's home) that is a place of business, or
- payments to your spouse (or other associate) for support work such as secretarial duties.

5. LODGEMENT DATES FEBRUARY/MARCH 2008

Thursday 21 February 2008 - Monthly Bas lodgement and payment

Thursday 28 February 2008 - 2nd Qtr 2007 BAS lodgement and payment
- Income tax return Non Taxable Large/Medium Business as per latest year Lodged and New Entrants

Tuesday 22 March 2008 - Monthly BAS's due lodgement and payment

Monday 31 March 2008 - Income tax returns, all entities where one tax return was outstanding as at the 30 June 2006
- Individuals and trusts Level 6 lodgement due