

# Client Information Bulletin

## ATO's compliance program for 2010-11 released

On 8 July 2010, the ATO Commissioner, Michael D'Ascenzo, issued a media release announcing the release of the Compliance Program 2010-11. The program outlined refund fraud, the cash economy, employer obligations, wealthy Australians and tax secrecy havens as some top priorities for the ATO in the coming year.

The Commissioner stated his belief that Australia has a strong culture of voluntary tax compliance. Part of supporting honest taxpayers was, however, taking firm action against those who do the wrong thing.

The ATO has also said it will focus on trusts to ensure the 'basic requirements' for compliance are being satisfied. That includes the lodgement of returns and the distribution of income of the trust.



The Commissioner also announced they would extend the ATO's Small Business Assistance Package for a further year.

## Collectables and in-house assets

The Cooper Review was delivered to the Government on 30 June 2010. It contained a number of recommendations, some of which the Government has already announced they will take up.

One such recommendation was MySuper a low cost default fund for employees who do not actively choose a superfund.

Another recommendation of the Cooper Review was to ban self managed super funds (SMSFs) from holding investments in collectibles such as art, wine and antiques. SMSFs have been provided with five years to sell existing collectibles.

If you have an SMSF that holds artworks or similar, or you are considering purchasing collectibles we suggest that you kindly contact our office prior to taking any further action.

## Collapsed Agribusiness MIS

The ATO has advised that it will be contacting approximately 60,000 identified participants of recently collapsed Agribusiness managed investment schemes (MIS) during August 2010 to help them understand the tax consequences of their investments.



The ATO has advised that affected taxpayers will need

to factor in any changed tax implications in these schemes when they prepare their tax returns.

If you or your business has been affected by the collapsed Agribusiness MIS kindly contact our office.

## GST and requirements for tax invoices

Recent changes to GST law have simplified the requirements for documents to be considered tax invoices or recipient created tax invoices (RCTIs). They have been replaced by requirements with equivalent but more flexible principles.

Where you receive a document from a supplier that is missing key information, you may still treat the document as a tax invoice under certain circumstances. It must be clear that the document is intended to be a tax invoice and you must be able to clearly ascertain the missing information from other documents issued by that supplier. This concession does not apply to adjustment notes or recipient created adjustment notes.

The regulations commenced on 1 July 2010 and apply in relation to net amounts for tax periods starting on or after 1 July 2010.

## Non-commercial loans tightening the rules

The expanded application of the Income Tax Assessment Act 1936 - Division 7A (Cwlth) announced in the 2009/2010 Federal Budget has been made law. Central to the changes is the ability for the ATO to tax the use of private company assets by shareholders or their associates.



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Most would be aware of the implications of loans made by a private company to its shareholders and/or their associates. The use of other assets held by private companies such as property, vehicles and boats, either for free or for a non arm's length value by the shareholders and/or their associates has remained largely unchecked.

Changes to Division 7A allow for a deemed 'payment' to be included in the shareholder's income and taxed accordingly. It would represent the amount they would have had to pay to use the asset.

Where a shareholder and/or associate has exclusive use of such an asset, the deemed payment amount would be equivalent to what would be required to be paid to secure that exclusive use. For example, consider a holiday home held by a private company for the exclusive use of a shareholder and their family. The home may only be used for three months of the year but as it is not available for any other party to use, the deemed payment amount would be equivalent to commercial rent for the entire year.

As originally announced in the 2009/2010 Budget, these changes apply from 1 July 2009. It is crucial you talk to our office about reviewing your situation if you hold such assets in a private company.

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## Payments by direction

A recent case, *FCT v Rozman* [2010] FCA 324, has been decided in the Commissioner's favour. The case involved a private company owed money by offshore



debtors. The shareholders directed those debtors to pay the outstanding amounts into the shareholder's private accounts.

The court held that the payment direction by the shareholders constituted a payment from the private company to the shareholders in accordance with Income Tax Assessment Act 1936 - Division 7A (Cwlth). Accordingly, the shareholders were taxed on the amount deemed a dividend.

Interpretations and new legislation are extending the reach of integrity measures such as Division 7A all the time. If you are concerned about the impact of these rules or would simply like to know more you should contact our office.

## Change in law on dividends

Recently royal assent was given to the Corporations Amendment (Corporate Reporting Reform) Act 2010 (Cwlth). This legislation amends a number of provisions particularly provisions dealing with the payment of dividends.

Section 254T of the Corporations Act (and earlier equivalents) has long provided that a dividend may only be paid out of the company's profits. The section has been replaced with a new provision which essentially prohibits a company from paying a dividend unless:

- The company's assets exceed its liabilities immediately before the dividend is declared and the excess is sufficient for the payment of the dividend
- The payment of the dividend is fair and reasonable to the company's shareholders as a whole, and

- The payment of the dividend does not materially prejudice the company's ability to pay its creditors.

- For directors, there are a number of practical implications including:

- The need for directors to calculate the assets and liabilities of their company
- The effect of paying a dividend on the rights of shareholders (as a whole) and the company's creditors.

- If a company constitution provides (as did the old Section 254T of the Corporations Act) that a dividend may only be paid out of profits, the directors should consider an amendment to the constitution to ensure that the company has the ability to pay dividends as contemplated under the new Corporations Act provision.

If you have any questions regarding these legal changes kindly contact our office.

## Historic hung Parliament delivers a 'stimulus package for democracy'

Australian voters have delivered a historic hung parliament for the first time since September 1940 at the federal elections.

It is unclear at this stage which of the two major parties will be able to negotiate commitments from the Independents around baseline issues such as the passage of 'supply' bills funding the annual federal budget, as well as parliamentary confidence motions supporting the leadership of the minority government. On top of those issues, it also appears that the Independents will seek a commitment to make major changes to existing parliamentary processes around things such as question time and the role of committees of parliament.

All of this makes for a unique hiatus period for the country while negotiations take place between all stakeholders to try to resolve the impasse. Even if a deal is struck around the formation of a minority government, the stability and certainty of policy reforms, including the tax policy reforms announced by both parties during their campaigns, will be very difficult to predict for the duration of the next parliament.

For the time being, the ALP continues to govern the country under the same 'caretaker' conventions that existed during the official campaign period.

## OH&S obligations for employers

As an employer you must provide a safe and healthy workplace for your workers and contractors. This includes:

Providing safe premises



Maintaining machinery and materials

Having safe systems at work (such as controlling entry to high risk areas)

Providing information, instruction, training and supervision of employees to ensure they work in a safe and healthy manner

Having a suitable working environment (ensuring fire exits are not blocked, worksite is tidy, etc)

Providing adequate facilities (clean toilets, clean drinking water and hygienic eating areas).

If you do not comply with these legal requirements you can be prosecuted and fined.

To find out your specific obligations go to the occupational health and safety area at [www.business.gov.au](http://www.business.gov.au). There you will find a step-by-step: Workplace Safety guide.

## Risk management for unthinkable events

Recent events worldwide have again highlighted the importance of risk management; how your business would survive the 'unthinkable'.

BP and the Gulf of Mexico oil spill brought attention to a lack of foresight and planning for the unthinkable.



This disaster will cost BP billions of dollars and has put the business as a whole in a perilous position. BP has already had to sell major assets to cover the cost of the clean up.

The Iceland volcano was another unthinkable event to occur without any warning. The volcano left thousands of people stranded and the repercussions were felt globally. Qantas alone lost \$10m during just five days of disruption.

These events prove that management, even in small business must undertake disaster planning and recovery as a serious matter.

Factors beyond your control can impact your business and will affect productivity, output and profits.

Management has a responsibility and duty to undertake planning so that when the 'unthinkable' happens contingency plans and procedures are in place to allow the organisation to continue to operate, or at least minimise the disruption.

Throughout the last decade there have been a host of newer, faster and friendlier information technology (IT) options. They have been developed to assist organisations to remain competitively positioned.

The twenty most important technology issues likely to play an important role shaping business IT over the next decade are listed below. They are broken into five core topic areas and help businesses answer questions such as:

- Are we getting value from our IT?
- What opportunities do new technologies provide in our business and are we taking advantage of them?
- Are we recognising and managing the associated risks?
- How should we decide where to invest our IT dollars?

### Top 20 technology issues for business

#### Strategic alignment

1. Business-IT alignment
2. IT governance
3. IT investment and IT value

#### Information management

4. Management reporting and analytics

#### IT effectiveness

5. Customer responsiveness
6. Collaboration technologies
7. Social media

8. Wireless and mobile computing
9. Data security, confidentiality and privacy
10. Business reporting (XBRL)

#### Agility and innovation

11. IT agility
12. Cloud computing
13. Software as a Service
14. Business rules management
15. Service oriented architecture

#### Operational efficiency

16. Green IT
17. IT sourcing
18. Virtualisation
19. Systems security
20. Disaster recovery

Innovative technology can deliver cost efficiencies, enable organisations to differentiate themselves, and improve your competitive position, but without clarity of purpose the true potential can be missed or the wrong outcome delivered.

Always consider IT as part of your business strategy.

To go through the technology issues checklist kindly refer to the Appendix

## How MasterChef can cook up a treat for your business

The phenomenal success of the Channel Ten series MasterChef even has relevance for your business.

Firstly, some contestants who were accountants and lawyers by trade were prepared to change roles for their love of cooking.

Business can benefit by identifying employees with technical skills and abilities which, with the right training, will provide a better fit within the organisation. In doing so the business will retain the employee, and the employee will be more satisfied doing a role that uses their natural, creative or technical skills.

Secondly, unlike other competitive reality shows, the MasterChef judges tried to provide only constructive criticism; they acted more like mentors.

Management can learn from this approach. Having a mentoring program that identifies the employee's strengths and weaknesses and provides advice on how to improve, can be a positive experience for employees and boost the organisation's morale, culture and profits.

## How to boost a successful business

The success of Boost Juice can be directly linked to the business philosophy its founder Janine Allis established when she first set up her business.

Being frugal with her money, and making every dollar work for her, was the maxim she followed. All small businesses would be advised to follow Allis' lead.

Setting up a business is difficult and many do not succeed. By making sure you understand where receipts come from, and where dollars are spent, you can ensure your business' cash flow and profits are



developed in a controlled and managed way.

Source: BRW

You may consider utilising our services to assist you with managing and projecting cash flows, budgets, accounting systems, reviewing key profit drivers of your business, together with managing key overheads.

## Opportunity to plan

With the new financial year underway and your BAS returns for 30 June 2010 now completed, businesses have an opportunity to do some planning for the forthcoming year. For example, you now have some materially reliable figures to put together an operating budget for your business for the year ahead.



You should also be in a position to start assessing your revenue estimates and review your expenditure in the areas of marketing and other cost areas.

Working through this process will allow you to focus on increasing your income so that it comes into line, and hopefully exceeds, your expenditure levels.

You can then also produce a cash flow forecast.

Kindly contact our office if you would like any assistance with, or would like access to our many templates for your operating budget / cash flows.

**DISCLAIMER:** The contents of this publication are general in nature and we accept no responsibility for persons acting on information contained herein.



## Appendix: Technology issues checklist

Use the prompts below to identify the issues most relevant to you and your organisation.

### Strategic alignment

Can you describe your organisation's technology strategy simply and succinctly?	Yes	No
Have you considered ongoing IT training for your managers?	Yes	No
Are your IT supply and demand balanced for value?	Yes	No
What role does IT have in creating value in your organisation? _____		
What is the nature/form of your current IT capabilities? _____		
How do your current IT capabilities compare to your business needs, your competitors and the overall market? _____		
Where is IT creating or not creating value in your organisation? _____		
What are the risks and benefits associated with reducing IT spend? _____		

### Information management

Are you lacking high-quality financial and management information?	Yes	No
Do you struggle to obtain meaningful information across business domains?	Yes	No
Do you have problems with availability, consistency and accuracy of management information?	Yes	No
Are your sales operations held back because of lack of insight into customers?	Yes	No
Do you have accurate and current information about your supplier's performance?	Yes	No
Do you know how much you spend on what and with whom?	Yes	No
Do you know what you need to know about your customers?	Yes	No

### IT effectiveness

Are you 'doing the right thing' and 'doing things right' with your IT?	Yes	No
Do you have a strategy for how you manage social media?	Yes	No
Do you have a strategy to use social media and collaboration tools for competitive advantage?	Yes	No
Do you have a strategy for your mobile workforce?	Yes	No
Is there clarity about how you decide where to target your IT investment?	Yes	No

### Agility and innovation

Does the pace of change in your IT inhibit your ability to change the business?	Yes	No
Do IT projects take too long?	Yes	No
Does IT volunteer solutions that could take the organisation forward?	Yes	No
Do you have a large disparate collection of legacy applications?	Yes	No

### Operational efficiency

Is your IT spend appropriate to your IT strategy?	Yes	No
Does your IT strategy contribute to 'greening' your operations?	Yes	No
What is your strategy for sourcing IT services?	Yes	No
Do you have multiple pockets of IT capabilities that could be consolidated?	Yes	No