

The SOTHERTONS REPORT



OCTOBER 2011

Welcome to the October issue of The Report

As the end of the calendar year looms the statutory authorities continue rolling out changes to taxation laws unabated. It is certainly not getting any easier to ensure compliance with all laws being adhered to and we certainly try to use the Report as one of many avenues to keep clients aware of these ongoing changes.

This issue covers many areas including the following:

- Changes affecting Self Managed Superannuation funds (especially those funds which borrow).
- The ATO's position on the cash economy and the plethora of tools and mechanisms they have available to search and find those who do not meet compliance or correctly remit the GST.
- The introduction of the new National Personal Property Security Register, a part of a reform that will affect the way businesses and consumers deal with secured finance in Australia and its long term implications.
- The Centro and similar cases continue to send shockwaves through the business community and we report on its impact on potential consequences for Company Directors around the country.
- Employers' obligations (which are often not met by clients) are covered as are the National WHS laws and implications for property managers.
- The Fair Work Ombudsman's regulatory role in sham contractor arrangements.
- For those travelling overseas these holidays we include a rundown of tips for stress-free travel.

We hope you enjoy this issue and should you have any topics you would like our editorial committee to cover please drop us a line and where possible we will be happy to oblige.

Until next time. ■

Cash Economy still on the ATO's Radar



The ATO has maintained a focus on its compliance activities in relation to small business performance benchmarking and the cash economy.

In a recent speech, the Commissioner of Taxation said businesses outside the relevant benchmarks are subject to ATO review and/or audit. Where businesses do not have adequate records to substantiate their performance, the Commissioner said the ATO will make a default assessment using the relevant small business benchmark. The ATO uses a variety of tools to help it identify potential cash economy activities which include:

- collecting and comparing significant amounts of information from a number of sources, including banks, other government agencies such as Centrelink, and industry suppliers. The ATO can even collect information about purchases of major items such as cars and property; and
- comparing the performances of businesses against other similar businesses in the industry. The ATO currently has over 100 small business benchmarks for this purpose. The benchmarks are used to identify businesses that may be avoiding their tax obligations.



Undertaking a review of business records may help to identify whether you are at risk of review by the ATO.

According to the ATO, taxpayers may be given concessional treatment in relation to penalties and interest, should they make a voluntary disclosure of a mistake. ■

Don't Take the Bait on Tax Avoidance Schemes



The ATO has recently identified a number of tax avoidance schemes which it says are a risk to small businesses.

These include:

- complex arrangements involving trusts to provide loans to individuals;
- abusive labour hire schemes;
- claims by companies for a deduction for unpaid directors fees; and
- avoidance of fringe benefits tax.



Not all tax avoidance schemes are obvious and many can look legitimate. Only on close examination do higher risk features start to appear. Please contact your Sothertons Director / Partner for further information. ■

SMSFs Warned on Improper Lending of Money

The ATO says it is concerned that some self-managed superannuation fund (SMSF) trustees are lending money on favourable terms from their SMSFs to people who provide advice or assist in the running in the fund. It warns that this arrangement may lead to the loss of the complying status of the fund and concessional tax rates. The ATO says trustees should ensure that loan terms comply with the law and fit their investment strategy.



Decisions to lend money from an SMSF should be backed by the appropriate documentation such as an appropriate loan agreement. Please contact your Sothertons Director / Partner for further information. ■

Capital Gains Tax Bills for Failing Test

The Administrative Appeals Tribunal has recently handed down two separate decisions concerning capital gains tax (CGT) concessions for small businesses.

The tax law offers a range of tax concessions for small businesses that have made a capital gain on a "CGT asset" that has been used in the business. The concessions can reduce, eliminate or roll-over a capital gain. However, the concessions are only available if certain tests are met. The main issue before the Tribunal was whether the taxpayers satisfied the "maximum net asset value" test. The test would be satisfied if, just before the "CGT event", the value of the assets of the taxpayers and their connected entities did not exceed \$5 million.

Broadly, the Tribunal held the taxpayers did not meet the then "maximum net asset value" test in order to qualify for the concessions. The taxpayers did not satisfy the onus of proving that the "maximum net asset value" of the assets of the taxpayers and their connected entities were less than \$5 million. In the first case, the Tribunal denied the taxpayer the concessions with respect to the sale of a marina for \$8.9 million. In the second case, the Tribunal also refused the taxpayer the concessions in respect of a gain he made on selling two \$1 shares in a company for \$4.9 million.



There have been changes to the relevant rules. For example, the amount for the "maximum net asset value" test has subsequently been increased to \$6 million. Please contact your Sothertons Director / Partner for further information. ■

Share Trading Business Existed, says Tribunal

In an unusual decision, the Administrative Appeals Tribunal held a taxpayer was not a passive investor in relation to share trading activities and was carrying on a business of share trading for the year ended 30 June 2008.

The taxpayer was a chief executive of a services company and traded shares in his own name on the share market. The Commissioner argued the taxpayer was not conducting a share trading business as he did not have a formal business plan and did not sell many shares during the relevant period.

The taxpayer argued that the only reason he did not sell much of his portfolio during the period was due to the global financial crisis. ■

A Public Company Director's Lot Is Not a Happy One

Why would you want to be a Public Company Director?

One could be forgiven for thinking that a directorship with an Australian public company has become a poisoned chalice rather than a cushy sinecure for those who have done the 'hard yards' in the earlier years of their business careers.

Following the recent decision in the *Centro Properties* case, there have been newspaper reports of its effect on directors of Chicken Little proportions: "...the boardrooms of Australia will empty", they cry; "the standards expected of directors have been set way too high", they argue. You get the picture.

So what is the fuss all about? A trio of cases will explain.

CENTRO PROPERTIES –

Directors Fail to Detect Errors in the Annual Report.

In *Centro Properties*, ASIC alleged that the directors had breached their duties as directors and certain financial reporting obligations imposed on them by the Corporations Act 2001 by failing to properly classify in the 2007 Annual Report, certain short-term liabilities and guarantees of those liabilities as current instead of non-current. The error stemmed from changes being made to the accounting standards that were underway at the time.

In their defence, the directors argued they relied on sound internal processes, on experienced and competent management and on top tier auditing advice to ensure the Annual Report was accurate. Unfortunately, none of these safeguards revealed the errors.

ASIC's star witness was '*Blind Freddy*' whom, it argued, would have picked up the errors. In this case, ASIC argued that the directors were just plain negligent in carrying out their duties.

The Trial Court agreed and found for ASIC. The Trial Court found that while directors were entitled to rely on information provided to them by others and were not expected to personally check all information used to compile the financial statements, they were obliged to bring an enquiring and questioning mind to the task of verifying the accuracy of the financial statements and that ultimately the buck stopped with them. The directors could not be heard to complain about the volume of information and documents they had to consider as it was within their power to control that flow.

JAMES HARDIE – The Continuous Disclosure Obligation.

In *James Hardie*, ASIC took the Board to task over information released to the market about the funding for the foundation established to handle claims by asbestos victims.

While the Trial Court found against all of the directors, the Court of Appeal overturned that decision and found that only two of the directors had a case to answer; one for failing to alert the CEO and the Board to a continuous disclosure obligation and the other for failing to alert the Board about the basis upon which a key cash flow model for the foundation had been reviewed.

FORTESCUE METALS GROUP – Andrew Forrest Runs into Trouble Over Chinese Contracts.

Making up the trio is *Fortescue*. This case also concerned the application of the law concerning continuous disclosure and directors' duties. The relevant announcements to the market reported that Fortescue Metals Group had entered into important contracts with Chinese companies. At issue was whether the 'contracts' were contracts enforceable at law and as a flow on, how had the market been effected by the announcements.

Investors in Fortescue Metals Group have done very well and regardless of whether the Chinese contracts were enforceable at law, the market was not adversely affected.

The Trial Court found for Fortescue Metals Group and Andrew Forrest but this decision, too, was overturned by the Court of Appeal.

What Do These Cases Mean for Public Company Directors?

The terrain for directors following these cases remains uncertain.

In *Centro Properties*, the Court is still to rule on penalties and may be appealed while in *James Hardie* and *Fortescue*, appeals to the High Court are pending.

Directors need to appreciate that they cannot escape being sanctioned by a court for a breach of duty or statutory obligation simply by pleading that they acted 'honestly'. 'Honest' conduct will however provide a platform for a director to seek relief from liability once found 'guilty' of a breach of duty, but the cases show that the Courts make relief orders very sparingly.

There is no doubt that public company directors have never faced greater scrutiny from ASIC, shareholders and class action activists. The challenges for public company directors are obvious but since they hold these positions as stewards of 'other peoples' money' and livelihoods – namely, the shareholders, employees and in some instances, creditors – it is not too much to expect that they live up to the highest standards of care and responsibility.

What Should Public Company Directors Do Now?

It is vitally important that public company directors carefully review their internal processes for receiving information, professional advice and risk management in light of the issues revealed by *Centro Properties*, *James Hardie* and *Fortescue*. Efforts must also be redoubled to ensure that advice from management and external professionals are not simply relied upon but are questioned and tested. ■



Stephen Newman is Executive Counsel in the Corporate and Commercial division of Kliger Partners, Lawyers.

Employers Obligations – Be aware of the Traps!



Employers are continuing to be caught out over and over again by employees wanting to be paid as contractors, or in some cases employers wishing to pay employees as contractors.

The risks of classifying a 'bona fide' employee as a contractor are great. These include:

- ATO claims for PAYG tax, penalties and interest.
- When it comes to a parting of ways contractors often see the benefits of claiming to be an employee.
- Payroll tax and Workers Compensation Insurance premiums having been not remitted resulting in payments as well as penalty.

If a client is in doubt as to whether their contractor arrangements are legitimate we strongly recommend having these arrangements reviewed by a solicitor specialising in employment law. Your Sothertons Director/Partner will be happy to recommend a specialist in this area. ■

Personal Property Securities Register

The new national Personal Property Security (PPS) Register is now due to commence in early 2012, following deferral of the original implementation date of October 31, 2011.

The Personal Properties Securities Act 2009 provides for a latest implementation date of 1 February, 2012.

After implementation, the registration of security interests against company assets will be lodged on the PPS Register. The ASIC Register of Company Charges will be closed and from this date all company charges or security interests (as they will be known) must be lodged on the PPS register. The commencement date will be determined by the Attorney-General later this year. The PPS Register will be an online service and accessible to search and register security interests 24 hours a day, seven days a week. The PPS register will be administered by the Insolvency and Trustee Service Australia (ITSA).

The PPS Register is the cornerstone of the above Commonwealth Act and will replace numerous existing asset registers of security interests, including state and territory registers of encumbered vehicles and vehicle securities and Australian Government registers including the Australian Register of Company Charges, the Australian Register of Ships (mortgages only) and the Fisheries Register. The Registrar of Personal Property Securities is a statutory position created by the PPS Act. David Bergman has been appointed by the Attorney-General as the first PPS Registrar.

The PPS Registrar will be responsible for the ongoing maintenance of the new PPS Register after the commencement date and his office will be established within ITSA.



Security interests in personal property to be listed on the PPS Register will include assets that may be used to secure a loan. Personal property is any property other than land or buildings. It includes physical goods such as **works of art, furniture, jewellery, cars, boats, farm machinery, business equipment, crops and livestock**. It also includes intangible property such as **rights under a contract and intellectual property**.

The new PPS Register is part of a reform that will affect the way businesses and consumers deal with secured finance in Australia. Business owners and consumers may be affected by changes to personal property security laws as: buyers of properties that may be subject to a security interest, business or consumer borrowers, providers of credit, or investors who are contemplating buying into a business. The PPS Register will also help business owners manage credit risk, check whether property planned for purchase is encumbered and search and register assets used to secure a loan.



The ASIC company register will retain information on charges that are no longer current, i.e., charges that have already been satisfied before the commencement date of the PPS Register in October 2011. To obtain complete details of a company, a user will need to check ASIC's Register of Company Charges for charges satisfied before the commencement date of the PPS register in October 2011, and the new PPS Register for current and provisional charges. ■

Colin Parker FCA, Head of the GAAP Consulting Network (www.gaap.com.au)

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Superannuation – Employers' Common Mistakes

ATO field officers continually find employers failing to properly meet their superannuation guarantee charge obligations.

Generally superannuation is payable on all ordinary time earnings, which basically includes allowances, commissions, loadings and bonuses. Payments outside ordinary hours of work are not ordinary earnings.

The ATO field officers have produced a list of the most common problems they encounter. These include:

- Paying insufficient superannuation contributions for eligible employees.
- Missing the quarterly cut-off dates (28 October, 28 January, 28 April and 28 July).
- Not understanding that, in some circumstances, superannuation should be paid for contractors even if the contractor quotes an Australian Business Number.
- Not keeping accurate records.
- Not passing on an employee's tax file number to their super fund.
- Not lodging a Superannuation Guarantee Charge Statement if they have not paid their employees' superannuation to the fund by the due date, or do not pay the correct amount.

Do not leave yourself or your business at risk of unnecessary penalties and levies. Should any client require further information we ask that you contact your local accounting services Director / Partner who will be only too happy to assist. ■



National WHS Laws & Implications for the Property / Facility Manager

What do you need to know?

As from the 1st January 2012, the new harmonised National Workplace Health and Safety (WHS) legislation (Model Workplace Health and Safety Act and Model Work Health and Safety Regulations) will come into force. The period for public comment has now closed and with less than 3 months until the legislation is introduced now is the time to understand how the changes affect you and develop a plan to manage the transition.

How will the new legislation affect you?

THE MODEL ACT

Definitions:

- **Officer:** someone who makes or participates in making decisions that affect the whole or a substantial part of, a business or undertaking.
- **Person Conducting a Business or Undertaking (PCBU):** has replaced the definition of employer and includes any person conducting a business or undertaking. Controllers of Premises (i.e. Facility Managers, Property Managers, etc.) are included under this broader definition.
- **Worker:** has replaced the definition of employee and has been expanded to include a number of persons including employees, contractor / subcontractors, labour hire employees, apprentice / trainees, work experience students and volunteers.

Section 17 of the Model Work Health and Safety Act requires PCBUs to eliminate risks as far as reasonably practicable.

Section 27 of the Model Workplace Health and Safety Act states the positive due diligence requirements of Officers within a PCBU. It is important to determine who in your organisation (or who in the management of the building) has duties under this Section. Is it the Building Owner? How does this affect you as a Facility Manager?

These due diligence duties include, but are not limited to, having an up-to-date knowledge of workplace health and safety matters and ensuring that resources and processes are available to eliminate, or mitigate risks.

THE MODEL REGULATIONS

The Model Work Health and Safety Regulations are currently in draft. The period for public comment closed in April and as such a revised version is expected in the coming weeks.

With regard to the Model Work Health and Safety Regulations it is vital that you understand how the changes affect you. From the Draft Regulations, some of the key changes that will affect Property / Facility Managers include:

ASBESTOS

Under the Model regulations it will be mandatory for commercial buildings built prior to 2003 to have an Asbestos Register, including management procedures.

There is also a requirement for all asbestos professionals providing services such as clearance inspections and air monitoring to be 'Licensed Assessors', similar to the existing system in the ACT (where Noel Arnold & Associates assessors are licensed).



ELECTRICAL

Under the Model regulations PCBUs must ensure that in relation to each socket in the workplace, the circuit is protected by a residual current device (RCD).

This is to be incorporated before the socket and is to be subject to regular testing. There are many buildings which do not have RCDs on their premises so compliance with this may involve significant planning and resources.



CONFINED SPACES

Under the Model regulations in addition to the requirements for a Confined Space Register, Risk Assessments and Permit to Work, PCBUs are required to ensure additional specific risk controls are in place such as controlling the introduction of substances from plant/services connected to the space and controlling ignition sources if there is a risk of fire/explosion.

There is also a requirement for emergency procedures to be developed and practised. If you have confined space entries occurring in your building you will need evidence that the contractor has robust emergency procedures in place and obtain evidence that these have been practised.



WORKING AT HEIGHTS

PCBUs are required to identify, assess and control fall hazards using the Hierarchy of Control. A more specific risk management approach in the Regulations provides a requirement to document the reasoning if only administrative controls are used. These changes may require Property/Facility Managers to review their existing risk assessments to ensure that control methods comply and whether existing documentation will satisfy the new requirements.



PLANT

The Model regulations stipulate specific requirements for controllers of plant in terms of guarding, operational controls and emergency stops. There are also specific requirements for PCBUs to provide workers (i.e. including contractors under the new definition) with information, training, instruction and supervision in relation to the hazards associated with the plant and systems of work involving the plant.

Training is also required for the identification, assessment and control of risks related to plant as well as PPE requirements. This may involve review and updating of site specific inductions to ensure that all of these requirements have been captured and documented.



HAZARDOUS CHEMICALS

Under the model Regulations PCBUs are required to ensure that 'Safety Data Sheets' are readily available to workers who handle chemicals and emergency workers. There is still a requirement for a register of hazardous chemicals to be developed for each site, as well as manifest / placarding requirements. The 'Major Hazard Facility' definition and requirements have also been included and adapted from the Queensland Workplace Health & Safety Regulation 2008. ■



Ombudsman's Regulatory Role in Sham Contractor Arrangements

We have been conditioned to utilise the contractor model over the employment model because of various assumptions. These include the assumption of reduced overhead costs associated with their use, increased flexibility and ease of termination. Slowly however we are realising that accepted wisdom is flawed.

The perceived benefits of ABN contractors (that is, contractors who are not incorporated but are natural persons operating under an ABN) have gradually been eroded by legislation and the courts. Over time we have seen the introduction of legislation which deems ABN contractors to be employees for certain purposes, including superannuation, payroll tax, occupational health and safety and WorkCover. Contractors even enjoy protection under the Fair Work Act's general protections scheme. The perceived advantages attaching to ABN contractors have diminished, and the advantages enjoyed 10 years ago appear to have all but disappeared.

Businesses that tactically use contractors and labour hire arrangements to fill absenteeism, avoid head count issues and generally to otherwise fix the failure to strategically manage their businesses risk are inadvertently exposing themselves to court and legislative sanction. The excessive use of contractors has seen an increase in the regulator's involvement to protect contractors.

Ten months ago the Fair Work Ombudsman publicly stated that it would actively police sham contracts. Sham contracting arrangements are circumstances where businesses seek to categorise employees as contractors to remove the benefits they would otherwise receive in legislation and under awards. The Ombudsman made it clear that it will no longer be content with seeking compliance with employment terms and conditions and obtaining backpay of entitlements, it will begin looking to prosecute and make examples of companies engaging in sham contracting arrangements. Since that comment was made the Ombudsman has prosecuted 4 companies, and many more will follow over the coming months.

The underlying lesson is clear. Contractors are now becoming less and less cost-effective to engage. Businesses who seek to mis-characterise their employees as contractors to obtain a business benefit, run the real risk of prosecution. In other words, engaging contractors who are for all intents and purposes employees, will raise your business' risk profile. The question must therefore be asked – are the risks worth the return?

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Businesses looking to reduce their overheads now have to think of different strategies. They should look for workforce optimisation and not the easy way out by using labour hire or contracting arrangements. The returns from contractors are appearing increasingly illusory. Prudent businesses should reduce the number of casuals and contractors within their workforce.

The contractor benefits of flexibility and cost are too often outweighed by legislative and court driven law that destroys the historical benefits, and imposes fines and other orders that are damaging to business. The real benefit for employers is to strategically manage their workforce and optimise labour to improve work productivity. The traditional forms of employment do not undermine such a strategy.

For those who wish to ignore these obvious warnings the case of Fair Work Ombudsman v Centennial Financial Services [2010] should serve as a final warning.

Centennial was in the business of providing financial services. In April 2010 the company made a decision to dismiss their employees and re-engage them as contractors on a commission only basis. They were stripped of their employment entitlements but, aside from a more flexible office attendance requirement, their roles and responsibilities remained exactly the same. The sole director and shareholder designed the new structure and co-wrote the contracting agreements. The HR manager co-wrote the contracting agreements and helped implement the new arrangement.

The Fair Work Ombudsman conducted an investigation after receiving complaints from two of the contractors and prosecuted Centennial, its sole director and the HR manager in the Federal Court for breaches of the sham contracting provisions of the Workplace Relations Act which was in force at the time.

The court found that in dismissing the employees and re-engaging them as contractors Centennial had breached the sham contracting provisions of the Act. The sole director was found to be personally liable for procuring the breach by designing the new structure and was fined \$13,200. More alarmingly, the HR manager was also found to be personally liable because his position meant that he should have known about Centennial's obligations under the Act. The HR manager was fined \$3,750 in civil penalties. Both the director and the HR manager's defence was that they were unaware of the sham contracting laws but the Court held that this was not an excuse.

The Federal Court decision in Centennial demands that employers and their HR managers act in accordance with the law. An employee cannot be characterised as a contractor to erode employment entitlements. Businesses and their managers have been put on notice. ■ *Thomas Tran, Lawyer, Macpherson+Kelley Lawyers*

Self Managed Superannuation Funds – Tightened Legislative Standards

Clients should be aware that as from 1 July 2011, all collectables and personal use assets purchased by Self Managed Superannuation Funds (SMSFs) will have to comply with tightened legislative standards.

These standards ensure the investments do not give rise to a current day benefit and are instead made for genuine retirement purposes.

Assets affected are:

- **artwork** ■ **antiques** ■ **artefacts** ■ **motor vehicles**
- **jewellery** ■ **memorabilia** ■ **wine or spirits** ■ **coins**
- **medallions or banknotes** ■ **postage stamps or first day covers**
- **rare folios, manuscripts or books** ■ **recreational boats and**
- **memberships of sporting or social clubs.**

The new legislative standards cover the acquisition, disposal, storage and maintenance of these items.

The tightened rules state:

- the item must not be leased to, or part of a lease arrangement with, a related party (a related party includes a member of the fund)
- the item must not be stored in the private residence of a related party
- the item must not be used by a related party
- the decision on the storage of the item must be recorded and kept for at least 10 years after the decision has been made
- the item must be insured in the fund's name
- if the item is transferred to a related party, it must be independently valued.

The measure applies to the acquisition of all new investments of collectables and personal use assets from 1 July 2011.

In the case of assets acquired before 1 July 2011, trustees must comply with the new regulations by 1 July 2016 or, alternatively, dispose of the assets.

Should any client have any questions in relation to the above please contact your Accounting Services Director / Partner. ■

Peter Pryn, Director, Sothertons Melbourne



Superannuation Funds & Borrowing

The Australian Taxation Office has recently released a draft ruling which highlights the key concepts in relation to Self Managed Superannuation Funds borrowing money under a Limited Recourse Borrowing Arrangement.

The ruling uses property as an example and defines the meaning of a 'single acquirable asset' that a fund may acquire under a borrowing arrangement and confirms borrowings can be applied to undertake repairs while borrowings cannot be applied to improve the asset. In this scenario, it is important to distinguish between the concept of repairs in comparison to improvements.

A repair generally refers to making good defects, damage or deterioration on an occasional basis without changing the character of the asset and may include restoring an asset to its former appearance.

Improvements are more substantial than repairs and have the effect of improving the functional efficiency of the asset through the addition of new and substantial features which may also have the effect of dramatically increasing the asset's value.

When undertaking repairs, the trustee of a fund must be careful not to fundamentally change the asset held under the borrowing arrangement as this will be a contravention of the legislation. Examples of breaching the legislation include subdividing a block of land, building a residence on a vacant block and replacing a demolished house with strata titled units.

These concepts are important to consider as the fund will not be entitled to borrow money to improve an asset and will have to rely on existing cash reserves and ongoing cash flows to finance any improvements.

Should clients have any further questions in relation to these or other superannuation matters please contact your dedicated accounting services superannuation Director / Partner. ■

Craig De Vries, Sothertons Melbourne

Taxpayer Loses Excess Super Contributions Tax Appeal

A taxpayer has been unsuccessful before the Federal Court in appealing against a decision of the Administrative Appeals Tribunal.

The Tribunal had affirmed a superannuation excess non-concessional contributions tax assessment of \$86,867 against her for breaching the \$1 million non-concessional contributions cap during the transitional period to 30 June 2007 (which existed at the time).

The taxpayer had argued that a \$355,000 payment from her personal superannuation fund in June 2007 was received by her in a capacity as trustee before being on-paid to her new superannuation fund and therefore should be treated as a roll-over superannuation benefit. However, the Court broadly agreed with the findings made by the Tribunal.



As part of the 2011–2012 Budget, the Government proposed that eligible individuals be given a once-only option to have excess concessional contributions up to \$10,000 refunded and assessed at their marginal tax rate for the financial year in which the contribution was made. The refund option is proposed to only apply for the first year in which the concessional contributions cap is breached, commencing from 2011–2012. Please contact your Sothertons Director / Partner for further information. ■

ATO Targets GST Fraud and Cash Income

The Commissioner has again recently warned taxpayers against not declaring cash income and making fraudulent GST claims. He said in the last financial year, as a result of the ATO's compliance focus on taxpayers in the GST system:

- 28 people were prosecuted for over \$17m worth of GST-related fraud offences;
- Over 30,000 Business Activity Statements were adjusted;
- 44,000 'contacts' from the community were received via the ATO Tax Evasion Referral Centre; and
- Over 1.4m small businesses were evaluated against ATO risk detection systems.

In relation to the current financial year, the Commissioner cited an example of a taxpayer (the sole director of 2 companies) who was recently sentenced to 3 years jail with a non-parole period of 20 months for understating cash business sales by over \$5.6m and underpaid GST obligations of \$514,000 (Source: ATO, 19 July 2011). ■

Flying High (& in comfort)



Well, with summer literally only weeks away many Sothertons' clients will no doubt be heading to distant destinations for the summer break. For those who are planning to travel overseas and requiring air travel, feelings are mixed. Other than for the jaded frequent flyer, most people still retain a smidgen of excitement at the glamour of flying but the truth these days is that flying often includes a lot of time waiting in line, hanging around airports and worrying about delayed or even cancelled flights. But fly we will, so what can we do to make "getting there" (and home) easier?

As plane travel has changed drastically in the last few years we outline below a few tips to help your flight be as hassle-free and smooth as possible but as a note of caution – ALWAYS check with the relevant airline's website as the content within the categories listed below are subject to change.

CHECK-IN PROCEDURES



To prevent surprises at the check-in counter, double check (and triple check) that you purchase tickets with the exact same name as appears on your passport, with middle names spelled out rather than initials, and spelled exactly the same way. If you booked through a travel agent, have their name and phone number handy in case you run into any last minute problems.

LUGGAGE TIPS

Check beforehand with your airline (or their website) about how many bags are included with your fare and the cost of additional ones or of overweight bags. So many people are trying to avoid the extra fees, and the extra time it takes to pick up luggage after the flight, that space for carry-on luggage is at a premium. If there's not enough room, flight attendants will check luggage at the boarding gate.



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Soft-sided suitcases are lighter and allow you to fit more in, but hard-sided cases are better protection for your belongings and less likely to be damaged in transit. This is particularly important if you are putting expensive cameras or laptops in your checked luggage. Make sure your wheels are in good working order to make it easier to get around airports.

It can be very hard to identify your luggage at the carousel unless it has a distinctive colour. Ideas include bright reflective tape, distinctive luggage tags, or the classic ribbon or wool pompom tied to the handle (kitsch yes, but practical and timesaving).

If you would like to lock your luggage, you should be aware that the customs and security officials have the right to open any luggage and break a lock if necessary. However, there are certain approved "locks" if you are traveling in the USA, i.e. special locks for which security officers have universal "master" keys to open the lock without having to break them. The packaging on the locks will indicate whether they can be opened by the Transportation Security Administration (TSA). Also, remember not to wrap gifts you're putting in your luggage. Security officers may unwrap gifts if they need to take a closer look. You can ship wrapped gifts ahead of time or wait until you reach your destination to wrap them.

GOING THROUGH SECURITY

Once you've checked in your luggage and received your boarding pass, you have to go through security, a process that is taken very seriously by airlines and airport security. Part of their mandate is to x-ray all carry-on baggage. They have also instituted rules limiting the amount of liquids you can carry on, and other restrictions on carry-on luggage. This is where you have to remove your shoes, empty your pockets, and take off jackets, all of which go through a conveyor belt and get x-rayed. Individuals also walk through the body scanner (or in some instances can opt for a pat-down), and then you can be reunited with your belongings.

Wear shoes that are easy to slip on and off. Knowing you will have to empty your pockets, plan ahead and put loose change, keys, phones, etc. into your carry-on. (You can use Ziploc bags to keep the items separate.) The security services recommend that you pack your carry-on as neatly as possible – this makes it easier for them to view



the contents being x-rayed and less likely that a more thorough search will be needed.

Keep your boarding pass and ID easily accessible throughout the entire process.

TRAVELING WITH CHILDREN, DISABLED, OR ELDERLY PASSENGERS

Most airlines are happy to accommodate passengers with special needs, but do arrange ahead of time if you need a wheelchair at the airport or are traveling with a wheelchair. Traveling with children requires special planning. Getting to the airport early enough allows for a leisurely check-in and a chance to move around and explore the airport before being confined on the plane. Bring (healthy) snacks, lots of things to do, and more changes of clothing than you expect you'll need.

A COMFORTABLE RIDE

For long trips, be sure to frequently stretch your arms, back, and legs (refer to In-Flight Health & Exercise below) The air in aircraft



cabins is very dry with only about 12% humidity, drier even than most deserts. At high altitudes, the air is dry and aircraft use a mixture of fresh and re-circulated air, usually a 50/50 combination. Total air changeover takes place every two to three minutes. You may ask why don't they humidify the air more? For one thing, water is heavy, and weight adds to fuel costs; for another, there is concern about dampness and condensation damaging critical parts. Airlines are working on improving this situation, but in the meantime, be sure to drink a lot (not alcohol) before and during the flight. Water is always made available (which is important, especially since you can't bring water bottles past security).

IN-FLIGHT HEALTH & EXERCISE

When you're sitting upright and inactive for a long period of time, several things can happen:

- The central blood vessels in your legs can be compressed, making it harder for the blood to get back to your heart. Muscles can become tense, resulting in backaches and a feeling of excessive fatigue during, and even after your flight.
- The normal body mechanism for returning fluid to the heart can be inhibited and gravity can cause the fluid to collect in your feet, resulting in swollen feet after a long flight.
- Some studies have concluded that prolonged immobility may be a risk factor in the formation of blood clots in the legs, deep vein thrombosis (DVT).

Particular medications and medical conditions may increase the risk of formation of blood clots if associated with prolonged immobility. These include:

- Personal or family history of DVT, recent surgery or injury, especially to lower limbs or abdomen.
- Blood disorders leading to increased clotting tendency, immobilisation for a day or more.
- If you are aged above 40 years.
- Oestrogen hormone therapy, including oral contraceptives, pregnancy and tobacco smoking.
- Former or current malignant disease, obesity, dehydration, heart failure and varicose veins.

Recommendations:

If any of these categories apply to you or you have any concerns about your health and flying, we recommend you seek medical advice before travelling.

- Compression stockings can assist in preventing swelling of the ankles and feet and they may improve the blood return to the body from the lower legs. You may like to talk to your doctor about this. The stockings may be purchased from medical and surgical supply companies and will need to be individually fitted to your leg measurements.
- While inflight, move your legs and feet for three to four minutes per hour while seated and move about the cabin occasionally.
- Do the light exercises recommended in the airline's Inflight Workout section in your seat pocket.

MAKING CONNECTIONS

If you can afford it, and where practical, it pays to fly direct even if the flights cost more, because connecting flights double your risk of baggage delays and possibility of bad weather in the connecting city.

If you must use a connecting flight, try to stick with one airline. You should also keep in mind that when a "minimum connecting time" is given, it is based on a fast-paced adult who doesn't stop for snacks, phone calls and is not traveling with children or seniors.

LUGGAGE ALLOWANCES

As fuel costs have risen, all airlines have become much stricter about weight and size restrictions on luggage. Since they make a great deal of their money from commercial cargo, there is less room available for personal luggage. Check with your airline's website to clarify luggage allowance as it can vary from carrier and also sector. Penalties for overweight and oversize luggage can vary greatly depending on the airline. Since good-quality luggage can often weigh over four and a half kilos empty, you really have to pack carefully.

Carry-Ons

For carry-on pieces, most airlines allow one personal bag (i.e. pocketbook or briefcase) and one carry-on such as a



small wheelie or suit bag. On domestic flights, some airlines charge for luggage though many include luggage fees in the fare.

On international flights, most airlines allow one free bag and charge for a second and additional bags. Sometimes it is cheaper to pay overweight charges than to pay for a third suitcase.

Every airline is different, so be sure to check.

Carry-On Rules

As much as possible, put liquids, gels, and aerosols into your checked luggage. If you need to have liquid toiletries with you, each passenger is allowed one single transparent 1 litre bag containing items that are in 100 ml sizes **or less**. Remove these bags from your carry-on bag – they are then checked through security separately.



Items that are not allowed in carry-on bags are included on the downloadable guide on the government website:

<http://travelsecure.infrastructure.gov.au/>

Medication, baby bottles, and baby food are allowed "in reasonable quantities." . Keep these items separate and show them at the security check in.

NOTE: These rules are now being enforced in most countries around the world.

WHAT ARE THE BEST SEATS ON THE PLANE?

Choosing a seat is no longer as simple as a preference for window or aisle. With specialisation being the name of the game in all arenas, so too airlines can customise the seat layout on different planes depending on their customers – varying the size of first class and



business sections, and even how many seats fit in a row. Along with the choices often come fees. Charges for early seat selection or surcharges on "better" seats are not uncommon.

SeatGuru.com is a website that has information on 720 different airplanes flown by 100 different airlines. They rate seats based on legroom, window availability, power plugs and general comfort. Legroom is often measured by "seat pitch," which is the distance from any point on one seat to the exact same point on the seat in front or behind it. Bottom line: the more seat pitch, the better.

Traditionally, bulkhead seats (the seat at the front of the cabin) had extra legroom, but that is not always the case anymore. Seats in emergency rows also usually have extra legroom, but these seats are sometimes narrower because the trays are stowed in the armrests, rather than on the seat in front.

If you would like a bassinet for traveling with an infant, check with the airline if one can be reserved.

And lastly, if you're concerned about turbulence, the smoothest ride is to sit over the wings, since this is closest to the plane's centre of lift and gravity. The roughest area is usually in the rear section.

BAGGAGE CLAIM

Do you get frustrated whenever you arrive at your destination after a long, tiresome flight and as you go to retrieve your checked baggage from the baggage claim, the entire area around your carousel is packed with hundreds of complete morons crowding around it as closely as they can, waiting for their bags, making it nearly impossible for you to push your way forward to retrieve your bag once you spot it coming down the conveyor?

There's a simple marking at nearly every baggage claim carousel that provides a solution to this, and it works quite well because it was designed to solve this problem.



Have you ever noticed that each carousel generally has a different colored flooring around it, expanding out to about one metre?

There's a reason that this contrast exists, and it's not just for aesthetics. If everyone waiting for their baggage stands outside of this area, not only does it provide for more standing space but it also provides better line-of-sight to the actual baggage so that you can see

[Continued]

when your bag is coming down the conveyor instead of a bunch of people's backs.

Once you actually see your suitcase / bag, you can step into this area which should be relatively empty except for other people who actually have a bag to retrieve, which allows you quite a bit of room to manoeuvre to extract yours from the conveyor.

Note: The above information has been compiled from a variety of sources including airlines and Government and security authorities but Sothertons readers are advised to check relevant websites for updates and changes as details are subject to change. ■



GST SERIOUS EVASION

The ATO will undertake approximately 300 audits and reviews in relation to taxpayers involved in serious and significant non-compliance with their GST obligations.

This audit activity will also look at compliance with their income tax and other tax obligations. Where appropriate, it will refer for prosecution businesses that:

- purposefully do not register to participate in the GST system,
- intentionally do not report, or under-report, their GST and other tax obligations,
- collude with others to evade or avoid GST and other tax obligations,
- intentionally do not pay their GST or other tax obligations, including through engaging in phoenix behaviour or offshore arrangements.

The ATO is also working closely with other agencies, including the Australian Customs and Border Protection Services and State revenue authorities to share information indicating serious non-compliance. ■

Max Warlow & Associates

Want to save money and reduce power consumption?

TIP 1: Purchase the right appliances:

Always check the energy and water efficiency star ratings of appliances prior to purchasing. Buying the most efficient products can save money in the long run.



TIP 2: Find a cheaper energy provider:

Living in Queensland we have the option of choosing our energy supplier and are able to switch companies at no cost.

TIP 3: Don't standby – switch off!

Turn off all appliances at the plug when they're not in use or when you go to bed.

TIP 4: Saving water saves money – especially when it's hot water: Ensure you are using a water saving showerhead and limit your shower to 4 minutes. When it comes to heating that water, you can't beat a solar hot water system.

TIP 5: Keep your summer cooling bills down:

Try and buy the most efficient air-conditioner that you can afford and only cool the rooms that need it.

TIP 6: Saving money in the laundry:

Washing your clothes in cold water means that you don't have to heat the water with expensive electricity or gas. Washing full loads reduces your electricity bill and where possible, dry your clothes on the line.

TIP 7: Keeping cool for less this summer:

Keep your curtains drawn or your blinds closed for as long as possible to keep the heat out.

TIP 8: Saving money on lighting:

In the daytime, use natural light wherever you can – it's free!

TIP 9: Insulate your home against rising costs:

Insulation can slash your annual energy bills by up to \$200 or more as it reduces your need for heating and air conditioning.

TIP 10: Saving money when getting around:

You don't need to take every trip in your car – especially with current petrol prices. When it comes to going out, take a walk, use a bike, take public transport or share a lift instead. ■



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