

### Seasons Greeting & Happy New Year

Well it is hard to believe that Christmas is upon us and that 2010 is drawing near – is it really 10 years since the turn of the Millennium! Wow!

2009 has been a big year and the BTA management would like to thank our staff and our clients for their ongoing support. We are looking toward 2010 and hope that it will be a prosperous year for all.

As the year draws to a close the staff and management of BTA wish you all a very Merry Christmas and all the best for the new year. Our office will be closed from Wednesday 23 December 2009 and will re-open on Monday 11 January 2010 with our team back on board refreshed from a summer break.

Please note the lodgement dates below for January and February 2010.

The bTa difference – providing your point of view.

Seasons Greetings and Warmest Regards

The BTA Team

### Reminder of Lodgement Dates

**21 January 2010** – December 2009 IAS  
**28 January 2010** – December 2009 quarter superannuation guarantee contributions  
**21 February 2010** – January 2010 IAS  
**28 February 2010** – December 2009 quarter activity statement  
**21 March 2010** – February 2010 IAS  
**31 March 2010** - Income tax return for companies and superannuation funds with total income in excess of \$2 million in latest year lodged (excluding large/medium business taxpayers) and Income tax return for individuals and trusts which were tax level 6 as per latest year lodged (excluding large/medium business trusts).

### GIC and SIC rates for January to March 2010

The ATO has advised that the General Interest Charge (GIC) and Shortfall Interest Charge (SIC) rates for the period 1 January 2010 to 31 March 2010 are as follows:

- GIC rate – 10.95%
- SIC rate – 6.95%

### Delay in Tax Office Processing

The Tax Office's computer systems will be unavailable from Friday, 22 January until Wednesday, 27 January 2010 while they implement their new system. In addition, the Tax Office will need to suspend some processing in the weeks leading up to the implementation.

There will also be some processing delays in the weeks following the implementation as the new system gradually returns to full processing levels. The Tax Office expects that these delays may continue during February 2010.

### Capital gains tax (CGT) concessions for small business - more changes for the 2006-09 years

Changes to the capital gains tax (CGT) small business concessions over recent years have improved access and made it easier for you to work out if you are eligible for the concessions.

As some changes are retrospective, you have additional time to make your choice to use the concessions where they become eligible as a result of the June 2009 amendments.

You have until the later of:

- the day the entity lodges its income tax return for the income year in which the relevant CGT event happened;
- 12 months after the day on which these amendments receive Royal Assent; and
- a later day allowed by the Commissioner.

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The extension of time to make a choice applies to CGT events happening before the 23 June 2009.

### **Draft tax law for Forestry Managed Investment Schemes**

The draft legislation aims to amend the four-year rule to allow an investor's deduction to stand if a capital gains tax event happens because of circumstances outside the initial investor's control.

It would also allow the deduction to stand if the initial investor could not have reasonably foreseen this capital gains tax event happening at the time they acquired the forestry interest.

The Federal Government decided to introduce the changes after the collapse of Timbercorp and Great Southern earlier this year.

The rule applies to capital gains tax events from July 1, 2007, and the amendments in the draft legislation would take effect from this date.

### **Tax Office attacks unpaid trust entitlements**

On 16 December 2009, the Tax Office released Draft Taxation Ruling TR 2009/D8 'Income tax: Division 7A loan: trust entitlements' (**TR 2009/D8**).

TR 2009/D8 represents an immediate - and, in part, retrospective - attack by the Tax Office on any unpaid present entitlement (**UPE**) owed by a trust to a company beneficiary.

Whilst only a draft ruling at this stage, it is expressed to apply if finalised:

- with retrospective effect - for the circumstances regarded as causing an UPE to become an actual loan, and
- of immediate effect from 16 December 2009 - for characterisation of an UPE as financial accommodation or an in-substance loan.

This approach by the Tax Office, as reflected in the draft ruling, provides another area of uncertainty

It is proposed that the final ruling will apply both before and after the date of issue meaning it is the Commissioner's view that what is outlined has always been the correct position.

However, and if certain criteria are met, UPE balances arising up to and including 15 December 2009 may be (favourably) quarantined in a similar manner to what was generally done for 'pre-December 1997' loan balances as a consequence of the introduction of Division 7A.

### **Declare offshore income now**

Should you have previous unreported income from offshore activities, now is the time for you to report it.

An Offshore voluntary disclosure initiative (OVDI) is available to all taxpayers until **30 June 2010**.

If you are concerned about the consequences of coming forward, particularly the potential for criminal investigation, this offer provides the following benefits:

- you can approach the Tax Office anonymously
- the Tax Office will indicate whether they will investigate arrangements for any potential criminal law breaches
- reduce shortfall penalties
- concessions for the general interest charge

### **Audit activity**

It is important for you to take early advantage of OVDI benefits as these benefits will not be available after notification of an audit.

However, if taxpayers intentionally disregard the tax law and do not voluntarily disclose their offshore income to the Tax Office, penalties can be up to 90% of the tax shortfall.