

Newsletter

September 2011

In this issue:

- ❖ ATO advice of its action on overstated refund claims
- ❖ Refund of Excess Super Contributions: Consultation Paper Released
- ❖ Compulsory Super of 12%: Assistant Treasurer
- ❖ GST-Free Threshold on Imports to Stay: Draft Productivity Commission Report
- ❖ CGT Exemption for Life Insurance Policy Payments – ATO Administrative Treatment
- ❖ Concern at Companies Unfairly Shifting Losses to Avoid Taxes
- ❖ SMSFs and Money Lending: ATO Warning
- ❖ Key Dates September 2011
- ❖ G J Walsh Financial Services
- ❖ Team Members



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ATO Advice of its Action on Overstated Refund Claims

Thomson Reuters has been advised by the Tax Office of the following information concerning its action on detecting overstated or fraudulent tax refund claims:

"Since 1 July 2011, we have stopped over 49,000 returns [that had risen to 55,000 returns as at 24 August 2011] with total refunds claimed of around \$190m [over \$220m as at 24 August 2011] that are believed to include overstated claims or be potentially fraudulent. Of these nearly 22,000 returns have been prepared and lodged by registered tax agents (total refunds claimed \$98m).

Each return stopped has been identified as containing some information that requires verification prior to issuing a notice of assessment. As data supplied by other parties continues to become available (such as payment summaries from employers) we regularly re-examine these returns and to date have released some 5,600 returns where we have been able to verify the information contained in the return that we were unable to do at the time of lodgment.

For those returns where this type of verification is not possible we are issuing review letters to taxpayers or their tax agents asking them to provide supporting documentation of their claims and where appropriate a satisfactory explanation as to how their claims relate to their income earning activities.

To date some 12,000 reviews have commenced or are currently with compliance officers with the review letters about to issue. Given the increased numbers of refunds that have been stopped so far this year compared to last year we are developing strategies to vastly increase this number in the coming weeks, focussing on those returns where tax agents may have the documentation and explanations to verify claims. We expect to commence reviewing the remaining taxpayers within the 12 weeks from lodgment timeframe previously advised.

Upon receipt of our review letter it would be appreciated if responses and documentation were provided in a timely manner to assist us in reviewing claims."

The ATO says it will continue to issue updates on the progress of its strategies.

In its Tax Agent update of 26 August 2011, the ATO said that when it receives a return containing what it believes are potentially fraudulent or over-stated claims, it sends a letter to the affected taxpayer to let them know of the extended time for processing. In response to concerns raised by tax agents and by members of the ATO Tax Practitioner Forum, the ATO said it is reviewing the letter and the process for managing these returns. According to the ATO, changes that will be occurring are:

- the letter advising that a review is commencing will be sent to the postal address of affected taxpayers, *not to the residential address*;
- the letter will advise of the reason for the review and the required substantiation;
- if tax agents call the ATO after receiving one of these letters, they will be directed to an ATO compliance office better able to address their concerns;
- consideration of other refinements to the letter.

Refund of Excess Super Contributions: Consultation Paper Released

The Assistant Treasurer has released a consultation paper on the Government's proposal to refund certain excess concessional contributions.

Under this measure, eligible individuals will be given a once-only option to have excess concessional contributions up to \$10,000 (not indexed) refunded and assessed at their marginal tax rate for the financial year in which the contribution was made. The refund option will only apply for the first year in which the concessional contributions cap is breached, commencing from 2011-12.

The paper proposes that individuals will effectively pay tax at their marginal tax rate (less a 15% refundable tax offset for the tax already paid by the fund on the contributions), rather than the potentially higher excess contributions tax (ECT) of 31.5% (in addition to the 15% contributions tax for the fund).

Eligibility for refund option

The paper states that an individual will be eligible for the refund option if:

- the excess concessional contributions are made in 2011-12 or a later year;
- the excess concessional contributions are \$10,000 or less;
- it is the first time the individual has had excess concessional contributions in a financial year being the 2011-12 or a later year; and
- the individual has lodged an income tax return for the relevant year. An individual must lodge the income tax return within one year of the end of the financial year in which the excess concessional contributions were made to be eligible for the refund offer.

Once-only option - use it or lose it!

Only the first eligible breach will be refundable. Once an individual has received a notice of offer, whether or not exercised, they will no longer be eligible for the refund option in subsequent years, unless the contribution amount is subsequently amended so that there is no breach of the concessional contributions cap. That is, a notice of offer will operate on a "use it or lose it" basis.

If an individual makes excess concessional contributions of greater than the \$10,000 limit, they are not eligible for the refund option. In addition, they are not eligible for the refund option in subsequent years.

Notice of offer for refund

It is proposed that the Commissioner will provide eligible individuals with a choice, via a notice of offer, to have excess concessional contributions released from their superannuation fund and assessed as income at their marginal tax rate.

Eligible individuals will be provided with a notice of offer from the Commissioner and will have 28 days to accept the offer to refund excess contributions of \$10,000 or less. Alternatively, an individual will be able to advise the Commissioner via the notice that the amount of concessional contributions is not correct or that they intend to apply within 60 days for the Commissioner's discretion to disregard or reallocate contributions.

Note that the Commissioner will apply an amount refunded from the superannuation fund towards any outstanding tax liability of the individual *before refunding it*. The excess concessional contribution refunded will *not count towards the non-concessional contributions cap*.

Superannuation funds

Once the choice to refund is received from the individual, the Commissioner will provide a superannuation fund with a compulsory release authority for 85% of the amount of excess concessional contributions. This takes account of the 15% contributions tax effectively paid by the fund.

The superannuation fund must pay the relevant amount to the Commissioner (together with a release authority statement) within 30 days of receiving the release authority.

The fund will not need to make any fund income tax adjustments and the proportioning rule will not apply to the released amount. Regulations may also specify how the Commissioner will determine which superannuation interest the money is to be released from. The measure will not apply to defined benefit interests.

Example

The Assistant Treasurer provided the following example. Brendan made an excess concessional contribution of \$10,000 for 2012-13. His taxable income for the year is \$60,000. Brendan takes the refund option and so pays \$3,400 income tax (where \$10,000 is taxed at Brendan's marginal tax rate of 34% including Medicare levy). In comparison, under the excess contributions tax regime, Brendan would have paid effectively \$4,650.

Unfortunately, the once-only nature of the measure only provides partial relief where a taxpayer may have repeated the error over a couple of financial years. Due to the time lag for the Commissioner to collect and process contributions data to notify a taxpayer about a potential cap breach, it may be a couple of years before a taxpayer becomes aware of a problem. The "use it or lose it" nature of the refund option also means that a taxpayer will not be able to save up this "get out of jail card" to only use it for a subsequent breach to prevent a severe penalty where an excess contribution automatically triggers the \$450,000 bring forward rule for non-concessional contributions.

In addition, the refund option will not provide any relief for taxpayers who inadvertently exceed the concessional cap by more than \$10,000 or for breaches before 1 July 2011. Such taxpayers will need to apply to the Commissioner to disregard or reallocate the excess contributions under s 292-465 of the ITAA 1997 - an extremely narrow concession.

Compulsory Super to 12%: Assistant Treasurer

The Assistant Treasurer has foreshadowed that legislation will be introduced later this year to raise compulsory super, the Superannuation Guarantee, from 9% to 12%. He said actuaries had calculated that the average Australian needs a 70% replacement rate of his or her accustomed income to live in retirement comfortably. Mr Shorten said the 9% won't achieve this. He said the Government's proposed Minerals Rent Resource Tax would pay for "the tax concessional treatment of the additional 3% Superannuation Guarantee - with workers retirement contributions taxed at 15% instead of their higher marginal personal income tax rate".

GST-Free Threshold on Imports to Stay: Draft Productivity Commission Report

On 4 August 2011, the Productivity Commission released the Draft Report of its inquiry into the economic structure and performance of the Australian retail industry. Among other things, it looked at the sustainability and appropriateness of current indirect tax arrangements, including the current \$1,000 low value threshold (LVT) below which GST and duty is not collected on most imports.

Approximately 55m international parcels arrive in Australia under the \$1,000 threshold. The Commission estimates that with current processes, if the low value threshold was abolished, about \$578m of revenue would be collected and over \$2bn of collection costs would be borne by businesses, consumers and government. These costs are a deadweight loss on the community, the Draft Report said.

The Productivity Commission said that reducing the threshold to \$100 would raise an additional \$472m, but, based on the current customs processing charges, this would cost consumers and businesses approximately \$715m. Effectively, with extra costs to couriers, etc included, the Commission said it may cost the community over \$1bn to facilitate the collection of \$472m in revenue. It concluded that any reduction to the threshold could not be implemented in the short term "without very significant cost impacts".

The Assistant Treasurer said the Draft Report identified that, if the Government was to abolish the GST exemption on goods purchased from overseas, this would cost the taxpayer \$1.6bn to collect the tax that would raise approximately \$500m. So, for every dollar of tax raised, at this stage with the current technology in place, he said it would cost the taxpayer 3 times as much to collect GST on items below \$1,000. Mr Shorten said there was "no way you can sell that to the Australian people even though we do support, as a general principle, the general idea of tax neutrality, that the tax should be the same on all items". He said the idea that taxpayers would spend 3 times more to collect the tax was "just plain crazy".

CGT Exemption for Life Insurance Policy Payments – ATO Administrative Treatment

The ATO has released details of its administrative treatment regarding the proposed changes to the taxation of gains and losses arising from life insurance policies announced in the 2011-12 Budget

The ATO says proposed reforms will ensure that gains and losses arising from life insurance policies that are generally exempt from CGT are not taxed under the ordinary income tax provisions. It says the changes will apply to CGT events occurring in the 2005-06 and later income years.

The Tax Office says it will accept tax returns as lodged during the period up until the proposed law change is passed by Parliament. Further, it says prior year assessments will not be reviewed until the outcome of the proposed amendment is known.

After the new law is enacted, the ATO says taxpayers will need to review their positions back to the 2005-06 income year and amend their returns accordingly. It says if a reduction in liability results, interest on overpayment will be paid. If an increase in liability results, the ATO says no tax shortfall penalties will be applied and any interest accrued will be remitted up to the date of enactment of the law change.

In addition, the ATO says any interest in excess of the base rate accruing after the date of enactment will be remitted where taxpayers actively seek to amend assessments within a "reasonable timeframe" after enactment.

Concern at Companies Unfairly Shifting Losses to Avoid Taxes

Due to the recent financial and economic crisis, global corporate losses have increased significantly. Numbers at stake are vast, with loss carry-forwards as high as 25% of GDP in some countries. Though most of these claims are justified, a new OECD report says some corporations find loopholes and use "aggressive tax planning" to avoid taxes in ways that are not within the spirit of the law. The OECD says this aggressive tax planning is a source of increasing concern for many countries and they have developed various strategies to deal with it.

The OECD report, [Corporate Loss Utilisation through Aggressive Tax Planning](#), looks at a number of commonly used schemes and identifies 3 key risk areas: corporate reorganisations, financial instruments (eg currency swaps, "refreshing" losses) and non-arm's length transfer pricing. The report covers Australia, Austria, Canada, Denmark, France, Germany, Ireland, Italy, New Zealand, Norway and Sweden, from 2000 to 2009. Jeffrey Owens, director of the OECD's Center for Tax Policy and Administration, said that while the OECD did not have United States data, "there is no reason to suspect that the losses are any less in the US".

The report said banks headquartered in high-tax countries were buying and selling derivatives among operating subsidiaries in low-tax jurisdictions and then shifting losses to higher-tax jurisdictions to "manage large loss-making financial assets" held on their balance sheets.

Though these risk areas are generally used for sound business and economic reasons, the report says some taxpayers use them to obtain undue tax advantages. For example, countries have identified financial instruments that create artificial losses or obtain multiple deductions for the same loss. They have also seen loss-making companies acquired solely to be merged with profit-making companies and loss-making financial assets artificially allocated to high-tax jurisdictions through non arm's length transactions.

Some of the report's recommendations include:

- Data collection on losses should be improved.
- Restrictions on use of losses should be introduced or revised.
- Restrictions should be introduced on the multiple use of the same loss.
- Temporary measures should be evaluated on the use of losses for tax purposes.

The report says Governments should introduce policies to restrict the multiple use of the same loss and to introduce or revise restrictions on the use of certain losses in the context of mergers, acquisitions, or group taxation regimes. Finally, the report identifies emerging threats for tax revenue, such as aggressive tax planning schemes based on after-tax hedges, and suggests that countries analyse the policy and compliance issues related to them.

SMSFs and Money Lending: ATO Warning

The ATO has issued a warning to trustees of SMSFs to ensure loan terms comply with the law and are in the best interests of retirement.

The ATO says it is concerned that some trustees are lending money on favourable terms from their SMSFs to people who provide advice or assist in the running of the fund. It warns that this arrangement may lead to the loss of the complying status of the fund and concessional tax rates.

Before lending any money, the ATO says trustees should consider the fund's investment strategy and seek advice before entering into such arrangements. Should the trustee decide to lend money from their SMSF, it says the following appropriate documentation should be retained:

- an appropriate loan agreement signed by all parties specifying all the terms of the loan, such as:
 - the security for the loan;
 - the repayment period;
 - repayment due dates;
 - the amount of the repayments;
 - the interest rate.

The ATO notes the trustee should ensure the conditions of the loan agreement do not provide the borrower with favourable terms. Further, the trustee should also ensure the interest and repayments received by the fund accord with the loan agreement, the ATO says. Should the loan agreement not be followed, it says the trustee should take appropriate action to ensure that members' benefits are not put at risk.

KEY DATES

September 2011

21 September

- August 2011 monthly activity statement - due date for lodging and paying.

30 September

- Due date for lodging PAYG withholding payment summary annual report for payers whose registered agent (BAS agent or tax agent) helped prepare the report. If a payer has only closely held payees and their tax agent helps prepare their report, they may be eligible for a concession to lodge this report by the due date of their income tax return.
- *2011 Annual TFN withholding report* - due date for lodgment where a trustee of a closely held trust has been required to withhold amounts from payments to beneficiaries.

G J WALSH & CO FINANCIAL SERVICES

G J Walsh & Co have enjoyed a very close and productive relationship with Planwealth for a number of years now. This alliance has provided our clients tailor- made financial planning solutions with very beneficial results.

Planwealth has recently been successful in obtaining its own Australian Financial Services Licence (AFSL) and this became operational on October 20th. This has long been a goal of Planwealth as they want to be able to offer our clients access to options that their previous licensee was not in a position to offer.

What does this mean to GJ Walsh & Co clients?

More individualised investment structures which focus on a high level of asset diversification.

An "in-house" financial planner to discuss your needs.

Soon to be released new investment offerings which

- Provide you better control by using directly held securities (no possibility of ever being frozen)
- Provide you with better transparency of the assets in your portfolio
- Provide a better system of managing your investments - this is likely to lead to more efficient administration, as well as added value for you
- Provide a method of enhancing how investment risk is managed
- Provide a new way of investing in international shares

Enhanced Strategic Opportunities:

- Gearing properties and shares into your Self Managed Superannuation Fund (SMSF)
- Having your SMSF purchase your business property
- Having your SMSF own and pay for your life insurance, disablement cover and trauma cover
- Having your SMSF own and pay for your business succession or "buy/sell" insurance
- Planning how to legally reduce your income and capital gains tax and create additional wealth at the same time

G J Walsh & Co Financial Services is pleased to introduce Richard Peauril, who is licensed through Planwealth Pty Ltd AFSL324595. Richard is our "in-house" financial planner and is available for you to discuss all these strategies and more, to see if he can help you



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- Retirement Planning
- Superannuation
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- Transition to Retirement Planning
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- Trauma Insurance
- Income Protection
- Investment Strategies
- Stock Brokering Services
- Managed Investments



Partners Greg Walsh B. Bus, FCPA, FTIA • David Richardson B. Bus, CPA

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improve your financial position.

Following a career as an RAAF Air Traffic Controller, Richard has been in the “people person” industry for over 35 years, including more than 20 years in the financial services industry. Commencing as an agent with A.M.P in July 1988, Richard completed his Diploma of Financial Planning (Dip FP) with Deacon University in 1995 and became a Certified Financial Planner (CFP).

Richard created and successfully operated ExcelsiorOne Financial Planners Pty Ltd for 16 years prior to merging the business into Planwealth Pty Ltd in 2004.

While Richard has a broad experience in all facets of Financial Planning, he has developed significant skills and expertise in the areas of self managed superannuation, tax minimization and wealth accumulation strategies.

Should you wish to meet with Richard to discuss your financial position, please contact our office to arrange an appointment.

How to Improve your Super Fund Balance and Maintain your Lifestyle

You may not be aware that for people over age 55 and still working, there is an opportunity to replace a portion of your fully taxable wage with a more tax effective income stream and at the same time increase your accumulation of superannuation benefits.

Yes - it is possible.

As your accountants we would like to draw this opportunity to your attention to see if it can work for you. We are referring to current Superannuation rules which provide greater flexibility for individuals to access their superannuation from age 55.

Recognising that this level of planning requires specialised expertise, we are pleased to be able to provide our clients with this service through Richard Peauril, our “in-house” financial planning professional. Richard is an important member of our team here at GJ Walsh & Co, operating through our Financial Services Division.

Retirement Strategies

Planwealth has devised a number of innovative strategies to help individuals

- Receive income in a more tax effective manner
- Increase the rate of accumulation for your retirement
- Allow a person to reduce their working hours as they approach retirement
- Commence an income stream that supplements reduced salary income.

We look forward to discussing this with you further to see if it is possible for you to improve your superannuation nest-egg.

At GJ Walsh & Co Financial Services we want you to benefit from our professional, in-house financial planning to grow and protect your wealth.

TEAM MEMBERS

Meet our team members and feel free to phone, fax or email them with any enquires or for professional advice.

Partner - **Greg Walsh FCPA FTIA**

Email: greg@gjwalsh.com.au

Greg is the founding partner of G J Walsh & Co. He has worked as a practising accountant since 1983 after graduating from the Queensland Institute of Technology in Brisbane. He is a Fellow of CPA Australia having been a member of this professional body for 25 years. He is also a Fellow of the Taxation Institute of Australia. He has worked with clients throughout Australia since the practise was established. His specialties include taxation, small and medium business advice, financial reporting, auditing of clubs and associations and small business and taxation planning. Greg has given his time to the local community for over 20 years, having sat on various school boards and committees during this time. He has coached rugby league and cricket at local and representative levels, been actively involved in various categories of motorsport from local to international levels. Greg is currently Chairman of Brothers Leagues Club Ipswich Inc and has served on this board since 1995, chairman since 2003 and served as an executive board member from 1997. Ipswich Brothers is one of the leading Queensland Clubs and founding Club in the confraternity of Brothers Clubs.

Partner - **David Richardson CPA**

Email: david@gjwalsh.com.au

David has been part of G J Walsh & Co for almost 10 years, taken on as a graduate accountant in 1999. David was schooled locally at St Edmund's College and completed his degree at Queensland University of Technology. During his time with the practice he has seen the practice grow from a small energetic team of 4 employee's to a dynamic team of 14 accountants, admin staff and financial planners. David obtained CPA status in July 2002 and enjoys working with a vast variety of clients that the practice brings. He specialises in working with all problems that confront small to medium sized businesses, taxation advice and planning. David's client base has been built on a strong referral basis. It is his belief that 'word of mouth' is the strongest form of achieving growth. In July 2004 David was admitted as a partner within the practice.

Adam Ault CPA

Email: adam@gjwalsh.com.au

Adam completed a degree in Bachelor of Business majoring in Accountancy in June 2004. Following the completion of his degree, Adam started work with our practice in August 2004. During the 4 years at G J Walsh & Co, Adam has progressed to become a competent accountant in many small business areas including Goods & Services Tax, Taxation, Auditing of Incorporated Associations, use of various accounting software & ASIC compliance matters. He has now finished his CPA.

Timothy Sauer B E Com

Email: timothy@gjwalsh.com.au

Tim is currently completing his post graduate studies in the Certified Practising Accountants program, having obtained a Bachelor of Electronic Commerce majoring in Accounting from the University of Queensland. Tim has been a member of the G J Walsh & Co community since January 2007, he has gained invaluable experience in his time here and looks forward to the challenges of becoming a professionally accredited accountant. Tim enjoys the team environment which G J Walsh & Co offers, and this carries through into his spare time where he enjoys playing rugby league and cricket.

Leonie Wilkins CPA

Email: leonie@gjwalsh.com.au

Leonie recently joined our firm after working for an Accountancy Practice in Brisbane for the last 10 years. Since obtaining her CPA status in 2002 she has gained valuable experience in Accountancy and Taxation matters affecting Small businesses and Superannuation Funds, including Fringe Benefits Tax and Goods and Services Tax. As she is a mother to 2 young children she has strived to achieve that right balance between family and work and feels she has found it at G.J. Walsh & Co.

Simone Hauschildt B Com

Email: simone@gjwalsh.com.au

Simone joined G J Walsh & Co in late 2008 taken on as an undergraduate. She finished her studies in July 2010 obtaining a Bachelor of Commerce majoring in accounting with the University of Queensland. Simone is looking forward to the challenges ahead when she commences the Certified Practising Accountants program, to become an accredited accountant.

Joshua Buffett B Com

Email: joshua@gjwalsh.com.au

Josh recently joined our team at the beginning of 2009 and is nearing the completion of his accounting degree.

Ash Walsh

Email: ashley@gjwalsh.com.au

Ash joined our team in 2010. He is currently studying by correspondence for his accounting degree. He works part time within our practice, while also training and competing in motorsport at national level.

Jayde Bognuda

Email: jayde@gjwalsh.com.au

Jayde is our Client Services Manager and has been working for G J Walsh & Co since 2005. She is responsible for all customer liaison, administration and team and workflow management within the practice. Any issues in relation to administration and employee workloads will be dealt with by Jayde. She is also responsible for providing all Corporate Compliance Services and Self Managed Superannuation Fund administration services.

Abby Walsh

Email: abby@gjwalsh.com.au

Abby is responsible for the reception and assists Sharna and Amanda with general administration matters.

Sharna Dilger

Email: sharna@gjwalsh.com.au

Sharna assists our Partners and administration team with general administration matters. She is also responsible for all filing and electronic filing and document retrieval for the practise. Sharna also assists with reception.

Amanda Walsh

Email: amanda@gjwalsh.com.au

Amanda joined our office during 2008 and has taken over the role as Greg and David's PA (partners assistant).

She is responsible for all administration, marketing and finance matters within the practise. Amanda brings to our office experience in customer service.

Editor's Note: Please note that the contents of this newsletter are intended to be general information only. They are not specific advice and should not be acted upon without first obtaining advice from a qualified, professional person. While we have taken every care in the preparation of this publication, no warranty is given to the correctness of information and no liability is accepted by the firm for any statement or opinion, mis-statement, error or omission.