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Client Information Bulletin

Tax Office's Compliance Program 2005/06

The Commissioner has released the Tax Office's Compliance Program for 2005/06.

The tax office's compliance efforts are targeted at the following segments:

- Individuals – the tax office is concerned with the increase in work expenses and rental deductions claimed
- Micro-businesses – high-risk 'cash economy' taxpayers and industries will be under review with the tax office stepping up its revisit program conducting unannounced visits
- Small to medium enterprises – the tax office will examine profit-shifting, CGT and GST in businesses with a turnover of between \$50m and \$100m
- Large businesses – coming in for close scrutiny will be consolidations, international related-party dealings, International Financial Reporting Standards, and the GST margin scheme
- Non-profit organisations – the involvement of scheme promoters with non-profit organisations will be monitored
- Tax agents and other intermediaries – the tax office's focus will include increased security and control for Tax Agent Portal users as well as investigating those who may be operating illegally as tax agents.
- Government – the tax office's concern includes the correct treatment of grants and appropriations.

For more information contact BDH & Co.

False statements in BAS

Business owners are urged to correctly complete their Business Activity Statements (BASs) and seek advice from their Chartered Accountant should they be uncertain about the taxation laws.

The Administrative Appeals Tribunal recently found a taxpayer guilty of making false statements thereby obtaining GST credits to which they were not entitled. The taxpayer attracted penalties of 75 per cent of the shortfall, consistent with Taxation Ruling TR 94/4 (para 21).

Business owners completing BASs are expected to have an understanding of taxation laws.

Super snippets

Self Managed Super Funds

The Australian Tax office (ATO) has announced it will be contacting registered Self Managed Superannuation funds (SMSF) that do not appear to meet the definition of a SMSF to confirm fund details from July 2005.

The reason behind this is to verify that the fund information held by the ATO is correct.

The ATO only regulates funds that meet the definition of SMSF; the Australian Prudential Authority administers all other funds.

Funds will be given an opportunity to meet the definition of an SMSF to continue to remain regulated by the ATO.

In June the Deputy Commissioner of Superannuation, Mark Jackson set out the ATO's approach to superannuation for the next 12 months. His speech covered the following areas:

- The ATO has moved to an active compliance approach to SMSFs
- The ATO plans to complete 3,600 audits for the 2005/06 income year using its new risk assessment profiling tool
- The ATO will take a keen interest in SMSF trustee actions and will make SMSFs non-compliant where large breaches have occurred
- The ATO will also examine closely whether an SMSF has legal ownership of fund assets.

The ATO will initially be in an educational phase and assist compliance. From November 2005, it will shift to a compliance approach to ensure employers correctly implement the new system, and from 1 July 2006 the ATO will shift to a 'business as usual' approach, penalising employers who fail to meet their obligations.

For more information on SMSF structures please contact Gede Barone, BDH & Co

Super Choices booklet now in 7 languages

The *Super Choices* booklet is now available in Chinese, Vietnamese, Russian, Korean, Turkish, Arabic as well as English.

Super Choices is a useful booklet for everyone who is thinking about their super. It will help you to understand your super, make informed decisions and maximise your savings for retirement.

To obtain a copy, please go to www.fido.gov.au/superchoices

Workplace harassment and bullying

Workplace harassment and bullying are issues for employers, which can be dealt with in a fair manner.

SEXUAL HARASSMENT

Sexual harassment continues to be one of the main grounds of complaint in discrimination tribunals. While traditional forms of sexual harassment are less common, new issues are emerging, including sexual harassment at work related functions and use of technology to sexually harass.

What is sexual harassment?

Sexual harassment is unwelcome conduct of a sexual nature that a reasonable person, having regard to all of the circumstances would have anticipated would cause offence, humiliation or intimidation. Sexual harassment laws apply to both men and women, and cover same sex harassment. There is no requirement for a pattern of behaviour - one incident may be

sufficient to constitute sexual harassment.

Under the law, there is no requirement of intention to harass the person. Sexual harassment is not defined as what the alleged harasser considers to be appropriate behaviour. Rather, the test asks whether the harasser should reasonably have expected their behaviour might cause offence, humiliation or intimidation to the person harassed. This test therefore takes into account the particular sensitivities of the person harassed.

Recent statistics show that 80 per cent of employees experience some kind of sexual encounter at work and that 40 per cent of people meet their partners at work (*Geoff Carter, 'Love and Work'*). The test of sexual harassment requires 'unwelcome conduct' and accordingly, where the interaction is genuinely consensual, this will not constitute sexual harassment.

Examples of sexual harassment include:

- Physical contact
- Sexual propositions
- Inquiries into sex/private life
- Persistent requests to go out
- Suggestive comments
- Leering/staring.

Work functions

Sexual harassment laws extend beyond work hours and work premises to any function that is 'work-related'. This may include Christmas parties, conferences, work lunches and even Friday night drinks.

Employers are liable for sexual harassment that occurs at work functions, unless 'all reasonable steps' were taken to prevent the harassment occurring. Practical steps employers should take to meet this defence are detailed below. Taking 'all reasonable steps' also assists employers to

deal with inappropriate behaviour that may occur at work functions, including taking disciplinary action.

WORKPLACE BULLYING

Another form of workplace harassment facing many employers is workplace bullying. Workplace bullying is becoming a significant issue in the modern workplace. With an increased focus on the issue, employers should be aware of the legal risks associated with bullying and steps that can be taken to minimise potential liability.

What is bullying?

Unlike sexual harassment, there is no legal definition of workplace bullying. While there is no accepted definition, there have been a number of guidelines published recently relating to bullying. The *Victorian Worksafe Bullying Code of Practice* and the *Western Australian Worksafe Guidelines* provide examples of bullying definitions.

Both include the following criteria:

- Repeated conduct
- That is unreasonable in the circumstances
- Causes a risk to the health and safety of the employee
- Victimises, humiliates, undermines or threatens.

Generally for conduct to constitute bullying the conduct has to be repeated. A one-off incident would not normally be considered workplace bullying. There is no requirement that the person deliberately or intentionally bully the person, however, intention may be a relevant consideration in assessing the level and severity of the conduct.

There are still cases involving obvious forms of bullying, including physical assault or threats, initiation rites, and

verbal abuse. However, the emerging issue for many employers is claims of bullying with respect to more subtle behaviour such as 'psychological harassment' including:

- Targeting certain employees for performance management or menial tasks
- Excluding or isolating certain employees.

These issues can be more difficult to deal with than more obvious forms of bullying, as it is not clear where reasonable managerial action ends and bullying begins.

The current authorities do provide some guidance on what bullying is **not**. The guidelines include specific reference to reasonable performance management, disciplinary action, managerial prerogative and allocation of work in compliance with systems. The guidelines even say that poor management does not necessarily constitute bullying.

Managerial prerogative is not, however, a defence to bullying. In one case, a manager who called his staff morons, among other expletives, was unsuccessful in arguing that this was within his managerial prerogative.

Legal risks

As noted, there is no single law dealing with bullying. However, there is potential for claims arising from bullying to be pursued under various laws. Common claims include workers' compensation claims for psychological injuries arising from bullying and constructive dismissal claims from employees who resign their employment due to workplace bullying. Other potential claims include negligence claims, contract claims and claims under OHS, discrimination or criminal laws.

PRACTICAL STEPS

The following practical steps may assist employers to deal with workplace harassment and minimise the risks associated with such conduct:

Policy: Address workplace harassment (including sexual harassment and bullying) in company policies and procedures. The policy should clearly identify what constitutes harassment, the consequences if an employee engages in harassment and provide a specific complaints procedure.

Effective complaints procedure: Implement a complaints procedure specifically for workplace harassment issues, because these issues are different to other workplace grievances.

Training: Train managers to identify workplace harassment and respond appropriately to complaints and issues of workplace harassment. Managers should also receive appropriate training and guidance on performance counselling. It is important that this training is offered on an on-going basis to ensure new managers are also trained.

Appropriate action: Be aware of the warning signs of workplace harassment and act appropriately if aware of these issues in the workplace. Failure to take appropriate action or ignoring workplace harassment could leave an employer exposed to legal risks, as discussed above. It is important that employers do not 'turn a blind eye' to workplace harassment, as this may increase an employer's potential liability.

Supervision and monitoring of the workplace: Managers and supervisors should actively monitor and supervise the workplace to ensure workplace harassment is not occurring.

Without such monitoring and supervision there is a risk of a culture of workplace harassment going unnoticed.

Audits and employee

consultation: Employers may consider conducting a review or audit of areas where workplace harassment might arise. Employers may also consider conducting employee surveys, to determine whether workplace harassment is an issue in its workplace.

Commitment to harassment-free workplace: It is important for employers to communicate to employees a commitment to addressing workplace harassment. This assists in creating an environment where employees feel confident raising issues of harassment, thus minimising motivation for employees to turn to external remedies.

New remuneration and compensation limits for unfair dismissal applications

The Department of Employment and Workplace Relations announced the new remuneration and compensation limits for unfair dismissal applications by non-award employees; these limits came into effect from 1 July 2005 and are indexed each year.

New remuneration limit

From 1 July 2005, non-award employees whose remuneration exceeds \$94,900 (up from \$90,400 in 2004/05) are excluded from making an unfair dismissal application in the Australian Industrial Relations Commission.

This is covered by Section 170CBA of the *Workplace*

Relations Act 1996 which provides that certain employees are excluded from making an unfair dismissal application where their remuneration exceeds a specified rate. This amount is calculated and indexed annually.

New compensation limit

From 1 July 2005, the cap on the monetary amount that may be awarded by the Commission in lieu of reinstatement to a non-award employee who was unfairly dismissed is \$47,500 (up from \$45,200 in 2004/05).

Section 170CH of the Act provides for a cap on any remedy awarded to a non-award employee by the Commission for unfair dismissal where the Commission finds that reinstatement is inappropriate. This amount is calculated and indexed annually.

For more information go to www.wagenet.gov.au

Returning parents have a right to request part-time work

Employees will have a right to request part-time work upon returning from parental leave until the child reaches school age, as part of a federal award provision introduced by the Australian Industrial Relations Commission (AIRC).

The AIRC also ruled parents would have a right to request an extension of their unpaid parental leave from 12 months to two years.

Employers may only refuse a parental leave request on reasonable grounds, such as the effect on the workplace or the employer's business, costs, lack of adequate replacement

staffs, loss of efficiency and impact upon customer service.

The provision also grants employees the right to request increased simultaneous unpaid parental leave of up to eight weeks.

For more information go to www.airc.gov.au

BDH & Co News

The past few months has seen each partner giving informative and exciting presentations to various corporate groups around Australia.

Gede Barone presented "Maximising Your Tax Claims" and "Planning for Retirement Now" in The Entrance and Wollongong for the Division of General Practice seminars.

Brad Hodge participated in the August 2005 AGDA National Conference held in Noosa Qld. His presentation was titled, "From Start Up To Succession".

Tas Demos presented at the Best Practice Principals Retreat for Australasian Real Estate Agencies in July 2005 at the Hyatt Coolum. He delivered a presentation on a benchmarking study conducted for the Australasian real estate offices, titled the Interfirm Comparison 2005. He is currently presenting in Melbourne, with further seminars scheduled for Brisbane, Sydney and Adelaide later in September and October. He is also presenting at The Best Practice Property Management Conference on Tuesday 20 and Wednesday 21 September 2005. For more information on this seminar visit www.bestpractice.com.au.

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