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Client Information Newsletter - Tax & Super November 2014

Allowance for travel (and some common mistakes)

The idea of making allowances to cover the cost of necessary travel by employees is not a new area of tax, but it is becoming increasingly significant, especially with today's fast-moving and ever more global economy. Businesses are increasingly moving staff around to achieve expansion and build greater ties across greater distances.

It can however be an area of tax law that is still misunderstood by many. First because of recent legislative changes to the LAFHA (living away from home allowance, which we looked at in the previous newsletter) and secondly because so many employees rely heavily on these types of allowances. As travelling for work purposes can affect employees both financially and emotionally, there is plenty of interest in ensuring that employers get it right.

The purpose of both types of allowances is to compensate employees for the additional costs they incur due to being required to travel and/or live away from home as a part of their employment duties. However the fact that there are two types of allowances is a legitimate situation as there are relevant issues, for both employer and employee, that will determine which allowance better suits an employee. Having more than one option means tax outcomes can be tailored to match the circumstances, as opposed to a "blanket" policy or allowance to cover all travelling employees.

Although they are both referred to as "allowances," they are dealt with by different taxation regimes. LAFHA is dealt with under the fringe benefits tax (FBT) regime and travel allowances are dealt with under the income tax regime. As we have covered LAFHA recently, we will focus on the travel allowance options available (although ask this office if you require more information on the LAFHA).

Travel allowances are paid to employees who are travelling on business but are not considered to be living away from their home. As a general rule of thumb, the Tax Office considers being on the road for 21 days or less to be travelling. Also there is no change of employment location, and generally an employee travelling for business is not accompanied by spouse and children. A travel allowance provided by an employer is not taxed under the FBT regime but may be taxed under the PAYG withholding regime as a supplement to salary and wages.

The Tax Office publishes guidelines each year on what it considers to be reasonable amounts for a travelling employee. These guidelines give a reasonable daily travel allowance amount and take the following factors into consideration:

- destination of travel (broken down into metropolitan cities, country centres within Australia and international countries)
- accommodation

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Contact Us

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Also in this issue:

Up in the air: Airbnb and the Tax Office..... 3

Solar panels for your business: Don't forget the tax consequences..... 5

Professional firms warned of audits on income splitting..... 7

Time is running out to disclose offshore income 8

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Allowance for travel (and some common mistakes) (cont)

- meals
- other incidentals
- employee annual salary (in ranges), and
- specific rates for truck drivers.

Countries other than Australia are split into "cost groups", with each determining the reasonable amount of the daily allowance. These are determined based on the cost of living in that country and then numbered between cost groups one to six. Cost group one has the lowest daily allowance and cost group six the highest.

The reasonable amounts are intended to apply to each full day of travel covered by the travel allowance, with no apportionment required for the first and last day of travel (ask this office if you are interested in what the reasonable amounts are for 2014-15).

Where the employer has paid the employee less than the Tax Office reasonable amount, then the employer is not obligated to withhold from the allowance nor does the employer have to include the allowance on the employee's PAYG payment summary for that relevant taxation period.

Where a travel or overtime meal allowance is not shown on the employee's PAYG payment summary, it does not exceed the reasonable amounts, and has been fully expended on deductible expenses, neither the allowance nor the expenses should be included in the employee's income tax return. If the employee has not expended the entire travel allowance amount, then both the allowance amount and the deductible expenses should be included in their income tax return.

The employee can claim in their personal income tax return the costs of meals, accommodation and other incidentals they incurred as part of their business travel. Expenses claimed however must have been incurred and must be an allowable deduction. The mere fact that they received a travel allowance does not in itself allow a deduction to be claimed.

Where the employee is claiming no more than the reasonable amounts as per Tax Office guidelines, substantiation of the claim with written evidence is not required. If however, the employee claims more than the reasonable amounts, then substantiation is required for the entire amount of the claim and not just the excess above the reasonable amounts.

Main areas of confusion

Some taxpayers get confused by the interaction between the LAFHA and travel allowances, and in some cases people have tried to claim against the LAFHA where no deduction is available. In fact, if an employee tries to make a claim for travel expenses where a LAFHA has been provided by the employer, they are essentially taking "two bites of the cherry" as they would not have had income tax withheld from the amount, nor have they included the allowance received in their income tax return as assessable income. This is because the employer would have dealt with any tax (FBT) liability on the LAFHA, if there was any FBT payable after available concessions.

Another incorrect assumption is that the substantiation exemption means having no records at all. In addition, where there has been reliance on the substantiation exemption for travel claims, there may still be a requirement in appropriate cases that an employee should be able to produce the following:

- how they worked out their claim
- that the expense was actually incurred
- an entitlement to a deduction (that is, that work related travel was undertaken)
- a bona fide travel allowance was paid; and
- if accommodation is claimed, that commercial accommodation was used.

It is also crucial that an employer is aware of the differences between the two forms of travel allowance, and which one suits the circumstances at hand. Other important factors an employer should consider when determining the correct allowance to give to their employees include:

- the enterprise bargaining agreement (EBA) or employment contract
- the policies and governance for the business
- any industry awards
- the industry standard practices
- the experience and level of the employee
- the employee's personal situation (that is, with family, house etc)
- any exceptions to the general rules (for example, fly in-fly out employees).

Not only is it essential to ensure the correct classification, but employers and the tax professionals helping them also need to apply the appropriate tax treatment for each allowance. Ask this office for guidance. ■

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Up in the air: Airbnb and the Tax Office



Global upstart Airbnb is leading a charge with what is best described as open-source citizen subcontracting. It's a collectivist, internet-based concept whereby everyday people provide accommodation services as private entities on an ad hoc basis. Airbnb basically sets up accommodation seekers with ideally placed property owners, making them provisional innkeepers. The model fosters a personal touch, but its success is driven by the potential to save money by avoiding traditional market channels. We're seeing in Airbnb a cultural desire for crowd-funded alternatives. There's money to be made, and assessed for tax. Naturally the Tax Office has been slow on the uptake.

Airbnb's networking domain is app-based (on your smartphone) and web-based (on your computer). Rental property owners advertise their properties, stipulating their own personal terms, and accomodation-seekers agree to stay in those properties based on those terms. There is generally no minimum stay requirement, and the leasers and leasees devise their own personal rental agreement under Airbnb's guidelines. It's most important to note that Airbnb leasers and leasees correspond personally to reach a mutually beneficial agreement. They work in symbiosis; property owners have neither power nor interest in imposing unattractive fees and rigid terms.

The Tax Office's challenge is creating tax rulings based on the largely undefined (read "informal") terms of engagement with Airbnb. If the Tax Office does not understand the terms under which citizens become single-serving subcontractors for these companies, they can't lay down appropriate tax obligations.

In this vacuum of legislative silence sits the matter of assessable income. Without a specific ruling distinction, it has the potential to complicate Airbnb's operation in Australia. Consider the following with regards to an Airbnb user (henceforth Airbnb-er to us) with a property to offer paying guests.

Say the property was bought as a rental property prior to and independently of Airbnb engagement. It's not the primary place of residence for the soon-to-be Airbnb-er, and would otherwise be let as a means for generating income. Subsequent leasing out to Airbnb users in this case may be seen as a venture for profit, and its proceeds would likely be assessable, just as those from traditional rental arrangements outside of the Airbnb model would be. But Airbnb rental arrangements are by their nature short-termed, and they don't always involve rental properties exclusively. This may change the Tax Office's scope for assessing earnings. It's all a question of leaser intent.

Consider the leasing of holiday houses through Airbnb (meaning a holiday house bought with the intention of seasonal use by the owner, and not for leasing out for profit). As far as tax law goes right now, letting out a private residence (a holiday house in this case) would likely equate to entering into a boarding-style arrangement. Boarding-style lease agreements can produce income that can be assessed — but Airbnb's model complicates things.

The Tax Office's ruling on rental properties is holey to say the least, but provides a general reference point for the letting of holiday houses as well as boarding-type arrangements.

It defines a holiday house as "located in holiday resort areas or away from mainstream residential areas". It understands that if such residences are let, they'll be let short-term — presumably the length of a holiday, maybe a few weeks, months etc. The ruling says that if owners of such properties let to friends or relatives, "at no or minimal cost", any resulting income would not be assessable. This precludes an Airbnb-style arrangement, because Airbnb-ers and Airbnb-ees are not friends or relatives. Objectively, though, the Tax Office would have a hard time determining relational connections between Airbnb-ers and 'ees if their rental agreement is ultra-short term and, for the Airbnb-er, economically irrational.

For our purposes, the question is again about intent: Are Airbnb-ers leasing their private residences to Airbnb-ees to achieve profit? For example, consider the following scenario.

Alfred owns a holiday house in Lakes Entrance. It costs Alfred $300 a week to maintain the property. Ten months out of the year, Alfred doesn't visit his property,

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Up in the air: Airbnb and the Tax Office (cont)

so he advertises it on Airbnb. He figures he may attract a leasee during the winter, and the advertisement is low-risk.

Airbnb-ee Sam expresses interest in renting Alfred's property for a week while doing business in a nearby town. Sam proposes a $200 a week payment for staying at Alfred's property. Alfred agrees; he knows that Sam is paying less than the $300 weekly cost of owning the property, but sees the benefit in a once-off contribution at a time of year when he wouldn't use the property anyway. As a result, Alfred would only wear a $100 cost for his property for that week. Alfred hasn't achieved a profit per se, but is receiving money that eases his expenses.

Alfred is receiving income, yes, but that income may not necessarily be assessable if it does not adhere to ordinary concepts. The money is — given the period of Sam's stay, in an off-season period of the year — not a regular or recurrent payment (conversely, a traditional holiday rental arrangement would be considered regular). This alone does not preclude it from being ordinary income. Sam's payment *may* be treated as ordinary income — albeit income generated as an isolated transaction outside the ordinary course of business — if Alfred's purpose was to make a profit. But we've established Alfred is not making a profit from his dealings with Sam. As their arrangement stands, Alfred's $200 income would be counted as ordinary. His motive, as far as the Tax Office would be concerned, is economically irrational.

Airbnb allows prospective Airbnb-ers to let *part* of their *primary* place of residence, too. Now we are looking at how the Tax Office's ruling on boarding-style arrangements fits in with the Airbnb model. If an Airbnb-er lets a bedroom of their house to an Airbnb-ee at a minimal rate, the income from that arrangement may be assessable. The Tax Office is chiefly concerned with whether the residence owner benefits from the arrangement or not. For example, consider the following.

- Deborah's primary place of residence has two bedrooms. She sleeps in one, and the other is unused. The bedrooms each take up one sixth of the total floor space of the residence. She decides to advertise her spare bedroom on Airbnb to attract boarders at a low rental rate. She figures that if she gets periodic, short-term Airbnb-ees to stay in the otherwise empty second room, she'll make a little money to help pay her utility bills.
- Airbnb-ee Charlene stays in Deborah's second room for two weeks. She pays $50 per week. By the end of the fortnight, Deborah has made $100. She puts this $100 toward her $400 electricity bill for that month, so her electricity expense has thus dropped to $300. Deborah doesn't attract another Airbnb-ee for the rest of that financial year.

As with Alfred's scenario, Deborah's $100 income may not be ordinary because it is a once off, non-recurring payment. But it is clear Deborah benefited marginally from sub-letting to Charlene for the two-week period.

However, with regard to the main residence exemption, we should consider that when Deborah comes to selling her property she may be subject to capital gains tax. This applies in the case that Charlene's payment is counted as assessable income. The room Charlene rented represents only a part of Deborah's residence, and Charlene only stayed for a limited period in comparison to Deborah's total ownership period, so her capital gains tax liability may be limited to that space and that length of lease. In that case, the reduction of the main residence exemption will be minimal.

Intent must be weighted again, too. If Deborah listed her property on Airbnb as available for leasing over, say, two years, but still attracted only one Airbnb-ee over that period, the Tax Office may construe that Deborah sought to make a profit by advertising for so long regardless of how much money she actually made. We know that with matters of intent, the Tax Office is trying to make concrete out of sand. Airbnb-er profit motives, fleeting though they may be, will most likely be determined on a case-by-case basis.

Airbnb's model is confusing because short-term open-source rental arrangements have not been broached in concrete legislative terms. The Tax Office can really only assess Airbnb proceeds where they fall in with traditional rental arrangements. Traditional rental arrangements may occur between Airbnb users, but the take-home point is that within a collectivist business network clients and proprietors work in symbiosis. They work in financial tandem, deciding upon rates and tax interpretations (see the "friends and relatives" clause) for mutual benefit. There's no standard Airbnb arrangement, no algorithm for payments, no uniform cases to set precedence. Assessability is up for dispute. And the Tax Office, it seems, has no interest in beating Airbnb and its trailblazing contemporaries to the punch. ■

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Solar panels for your business: Don't forget the tax consequences

If the prospect of punishing electricity bills continuing to arrive has led you to think about installing solar panels at your business premises, further considerations could include the fact that not only will you be helping the environment, but you could also be helping your own bottom line — and not just through reduced energy bills. There can also be some positive tax outcomes that should flow through to ease your energy impost. The outcomes, while relying to some extent on a taxpayer's specific circumstances, can certainly go some way to reducing operating expenditure.



The two main types of taxpayer who stand to be able to use the existing tax guidances to their benefit when making an investment in solar panels are businesses and investors. The problem however, and which theoretically has resulted in these strategies not being more widely utilised, is that the tax laws as they stand have very few provisions that specifically address the treatment of solar panels for tax purposes.

There are however some public documents and interpretive decisions that are able to point taxpayers in the right direction. Importantly, as these are Tax Office guidances, they serve to protect a taxpayer from penalties where they are relied upon in good faith, should any of the principles outlined be subsequently proven to be not applicable.

Assessable income and deductions

Before the introduction of the renewable energy target, the government had a scheme that offered cash rebates through issuing "Renewable Energy Certificates" based on the amount of solar panels that were bought and installed. On the back of this scheme, the Tax Office released an interpretive decision that makes it clear that Renewable Energy Certificates (RECs) will be considered as "assessable recoupments". This basically means that where there is a reimbursement of costs (such as legal fees if you win a court case, to give another example), this is to be considered as assessable income.

The impact of following this interpretation is largely on a taxpayer's cash flow. When looking at the price of solar panels, an invester or business taxpayer should be aware that the rebate should be included in assessable income for the year of purchase.

The other significant inflow that will need to be addressed is the recurrent feed-in tariff — in other words the amount a power retailer pays to the owner of a solar panel installation for the power generated from their unit in any given period. Generally, this feed-in tariff will be viewed as assessable income, and mostly likely as a form of ordinary income.

The cost of electricity for a business represents an allowable deduction, much like other relevant taxpayers for their income generating property. It is important to note that for taxpayers with solar panels, this gross deduction will need to be offset by the incomings derived by the feed-in tariff provided by power retailers.

Clearly interest on loans taken to fund the purchase of solar panels used on premises that are used wholly to produce assessable income will be deductible.

The two main considerations that will arise when thinking about solar panels for investors as opposed to businesses are the application of depreciation provisions, and how GST will apply to various transactions.

CGT and depreciable assets

The Tax Office interpretation is that although a Renewable Energy Certificate is a CGT asset, the assignment of that certificate to the installer of solar panels will not result in a CGT event. Instead an assessable recoupment will arise, as discussed earlier, which will flow through to assessable income.

The Tax Office makes it clear that it considers a small energy generation unit or a solar water heater to be a depreciating asset. This means that a deduction is available where that asset is installed on a property wholly used to produce assessable income through rent

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Solar panels for your business: Don't forget the tax consequences (cont)

or through the operation of a business. Importantly, the cost for the purposes of this deduction would be the gross price of the unit. In other words, the cost for depreciation purposes would be the amount the taxpayer pays the installer to install the unit plus the rebate they have received (and included in assessable income).

So while the saving in energy costs is a big consideration, the value of this depreciation deduction should be factored in by a business or investor when analysing whether the installation of this type of asset makes economic sense.

GST

Whether a taxpayer makes taxable supplies such as those typically produced in a majority of businesses, or input taxed supplies such as rent from residential property, will largely drive the GST consequences of acquiring a solar unit.

A business taxpayer who wholly makes taxable supplies from the use of premises is able to claim input tax credits associated with the purchase of a solar unit. However, where a taxpayer is making supplies of residential accommodation and receiving rent, they will typically not be able to claim GST credits.

Bringing it all together

One way to see how a typical scenario would play out is to look at a hypothetical case study; in this case let's look at the Smith family, which has a family company that owns a property, which it uses in a warehouse and distribution business.

The property is solely used to derive assessable income. The managers of the business have recently complained that their electricity bills are continually rising and that if solar panels are installed this could provide significant cost savings, as energy use is predominately at peak hours during the day.

The Smiths commission their accountant to produce an economic analysis and feasibility study to examine this proposal. They ask that he provide some guidance in relation to how income tax and GST will affect the economics of this proposal. As explained above, in the absence of direct Tax Office provisions that specifically address the treatment of solar panels, the accountant conducts his analysis in accordance with general principles.

To start with, he looks at the business's current electricity tariffs, including the previous bill. Then he works out how this would change with installation of the solar panels. His analysis is laid out in the table below and the flow of transactions is shown in the chart at the bottom of page 7.

It is determined that a cash flow saving of $3,600 will be made in the first financial year of installation. The accountant also makes it clear that the deduction of the solar panels for depreciation purposes will persist, however no additional tax will be charged on the rebate (as this is a one-off item on the purchase of the panels).

The Smiths note that the company's cash flow in year one will improve by a small amount, and the company will thereafter enjoy lower electricity bills and also the benefits of additional depreciation deductions. ■

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SMITH FAMILY TRUST

FIRST YEAR - CASHFLOWS ($)						
	WITHOUT SOLAR PANELS			WITH SOLAR PANELS		
COSTS	GST ex	GST	GST inc	GST ex	GST	GST inc
Electricity bills	80,000	8,000	88,000	50,000	5,000	55,000
Cost of solar panels						
Cost paid by family trust	-	-	-	20,000	2,000	22,000
Cost paid by government (rebate)	-	-	-	7,000	700	7,700
Gross cost	-	-	-	27,000	2,700	29,700
ADD						
Additional tax on rebate (30% x 7,000)			-			2,100
LESS						
GST credits			(8,000)			(7,700)
Deduction for depreciation (20 year effective life)			-			(2,700)
Total after tax cost - electricity and solar panels			**80,000**			**76,400**

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Firms warned of audits on income splitting

Draft guidelines have been released by the Tax Office on how the general anti-avoidance legislation should apply to professional firms that allocate profits to individual professional practitioners with proprietorship in the firm. Firms potentially affected include those providing services in the accounting, architectural, engineering, financial services, legal and medical professions.

Professional firms can be structured in a range of ways, depending on the choices made by the owners, but the Tax Office has warned that in some cases the way a business is structured "can be used in ways that give rise to different tax consequences and resulting tax compliance risks".

Its concerns about tax compliance in these instances are based on where arrangements are set up so that a practice's income is treated as being derived from the business itself, even though the source of that income is actually the provision of professional services by individuals.

It said this is particularly the case where:

- the level of income received by the practitioner, whether by way of salary, distribution of partnership or trust profit, dividend or any combination of them, does not reflect their contribution to the business and is not otherwise explicable by the commercial circumstances of the business
- tax paid by the practitioner and/or associated entities on profits of the practice entity is less than that which would have been paid if the amounts were assessed in the hands of the practitioner directly
- the practitioner is, in substance, being remunerated through arrangements with their associates, and
- the structure does not provide the practitioner with advantages, such as limited liability or asset protection.

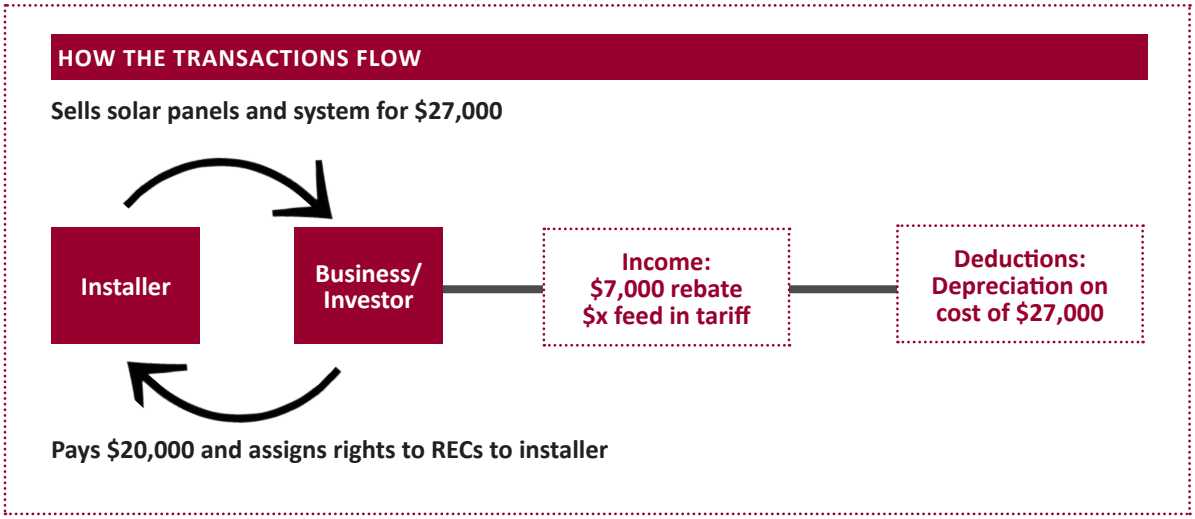
Experts comment that the release of draft guidelines before they are finalised may be a signal that the Tax Office intends to commence compliance activity, including audits, of practitioners for the 2014-15 income tax year. The guidelines (ask this office if you'd like to know more) potentially have wide application.

The Tax Office guidelines apply if:

- an individual professional practitioner provides professional services to clients of the firm, or is actively involved in the management of the firm and, in either case, the practitioner and/or associated entities have a legal or beneficial interest in the firm, and
- the firm operates by way of a legally effective partnership, trust or company, and
- the income of the firm is not personal services income.

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Solar panels for your business: Don't forget the tax consequences (cont)



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Professional firms warned of audits on income splitting (cont)

High and low risk

The Tax Office says taxpayers will be rated as low risk and not subject to compliance action if they meet one of the following guidelines regarding income from the firm (including salary, partnership or trust distributions, distributions from service entities or dividends from associated entities):

- the practitioner receives assessable income from the firm in their own hands as an appropriate return for the services they provide to the firm. The benchmark for an appropriate level of income will be the remuneration paid to the highest band of professional employees providing equivalent services to the firm, or to a comparable firm
- 50% or more of the income to which the practitioner and their associated entities are collectively entitled (whether directly or indirectly through interposed entities) in the relevant year is assessable in the hands of the practitioner
- the practitioner, and their associated entities, both have an effective tax rate of 30% or higher on the income received from the firm.

Where none of these guidelines are satisfied, the Tax Office said the practitioner's arrangement will be considered higher risk, with increased chance of compliance action. The lower the effective tax rate of an arrangement, the higher the Tax Office will rank the compliance risk. ■

Time is running out to disclose offshore income

The Tax Office has issued a final warning — taxpayers with undeclared offshore assets or income are running out of time and need to act now if they want to take advantage of an amnesty that runs out by December 19.

The Tax Office said that the rare opportunity provided by its offshore voluntary disclosure initiative is unlikely to be repeated. Its "Project DO IT" (disclose offshore income today) allows eligible taxpayers to come forward and voluntarily disclose unreported foreign income and assets, such as amounts not reported or incorrectly reported in tax returns.

These can include:

- foreign income or a transaction with an offshore structure
- deductions relating to foreign income that have been claimed incorrectly
- capital gains in respect of foreign assets or Australian assets transferred offshore
- income from an offshore entity that is taxable in your hands
- offshore deductions relating to domestic income.

The Tax Office said that coming forward now, ahead of a global crackdown on people using international tax havens, is the last chance for many taxpayers to escape hefty fines. With the increased global exchange of financial information, it said that it is almost certain that taxpayers doing the wrong thing with their international assets will be caught.

"Increased international cooperation means the net is closing in on tax evaders around the world," the Tax Office said in a statement. "In recent years, information sharing between countries has increased significantly. Banking data is being exchanged routinely and automatically, and the G20 is promoting global tax transparency. Even countries previously thought of as tax havens, such as Switzerland and the Cayman Islands, are working with tax authorities around the world to increase financial transparency."

Under the initiative, taxpayers have an opportunity to avoid steep penalties and the risk of criminal prosecution for tax avoidance. By voluntarily coming forward before the deadline, taxpayers can also limit assessment to only the last four years and a shortfall penalty of 10%. Ask this office for guidance if you, or anyone you know, would like to take advantage of the offshore income disclosure amnesty. ■

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