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Practice Update

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New ATO initiatives for small businesses

Editor: In a recent speech, the Commissioner of Taxation, Chris Jordan, announced some new initiatives for small business. The following are excerpts from his speech.

Red Tape

The Commissioner stated that the ATO was trying to reduce the amount of red tape because it understands *"that meeting your obligations takes you away from your real business, and what you are good at.*"

He said that the ATO has to:

- provide more personalised, accessible and reliable services;
- think about the effects their activities have on cash flow, and the everyday running of small business; and
- work harder to ensure its information and advice is timely, streamlined, personalised, accurate and consistent.

New initiatives

To that end the ATO has introduced:

- **Small Business Fix-it Squads** which are rapid-design groups made up of small business operators and intermediaries, and representatives from federal, state and local government, all working together to examine problems and solutions from the perspective of small business.
- A new business-friendly approach to **managing small business debt**.

  He said that his message remains, *"if you run a small business and you get into trouble, pick up the phone or go online and let us know, so we can work with you to find a solution that suits your circumstances."*
- A new **Small business newsroom** on their website which is a move away from multiple newsletters, giving taxpayers a one-stop online shop where they get tax and superannuation news and alerts.

  As well as receiving the latest news, they will be able to watch short video clips, add tax dates to their own calendars to create reminders and share articles with each other.

ATO warns property developers to declare income

Editor: The ATO has issued a media release warning property developers against using trusts to return the proceeds from property developments as capital gains instead of income.

Deputy Commissioner Tim Dyce said, "A growing number of property developers are using trusts to suggest a development is a capital asset to generate rental income, and claim the 50% capital gains discount.

Furthermore, he said that the ATO has begun auditing property developers who are carrying out activities which seem to be in conflict with their claim that they are undertaking a capital investment.

Some pointers to that are:

- finance arrangements indicate the property is to be sold within a certain timeframe;
- communication with local councils indicate sales plans; or
- real estate agents are engaged early in the process for off-the-plan sales.

In addition, the property is often sold soon after completion of the development, where the underlying property may have been held for as little as 13 months.

He suggested that taxpayers in these situations should consider self-amending to correct their tax return, as penalties of up to 75% of the tax avoided can apply.

SMSFs and succession planning

In a recent speech, an ATO Deputy Commissioner emphasised how important it was for trustees of SMSFs to have a plan in place for the succession and control of the SMSF on the death or incapacity of members who are trustees (or directors of the corporate trustee).

He said that other documentation such as wills, enduring powers of attorney (EPoA), binding death benefit nominations and reversionary pension documents should be checked to ensure they are consistent and in agreement with the members' goals.

In some cases, surviving member/s of the fund may not wish to continue as trustee/s (or director/s of the corporate trustee).

An exit strategy, that can enable the surviving members to enjoy the benefits of the fund without having to remain trustees, is to appoint an approved trustee licensed by APRA (that is, become a small APRA fund).

Editor: If you would like to discuss any of this please contact our office.

Ignorance of the law is no excuse

In a recent case, a taxpayer decided to transfer shares he owned and had inherited, into a joint account he held with his wife without first asking his accountant/tax agent.

His accountant subsequently correctly advised him that he had triggered a capital gain of $19,415.

He appealed the ATO's decision to tax him to the AAT and argued that he just wanted to transfer his shares into joint names with himself and his wife who, in this case, was *"entitled in equity to half of them anyway."*

However, in deciding against the taxpayer the AAT said *". . . partners to a marriage or marriage-like relationship who hold the assumption that his or her assets are 'our' assets, would be well advised to continue with that assumption, without taking the step of formalising any joint ownership arrangements, as there will be a taxing point if they do, if the transferred assets have increased in value."*

SMSFs and trauma insurance

From 1 July 2014, an SMSF can generally only provide an insured benefit for a member that is consistent with one of the following conditions of release of a member's superannuation benefits:

- death;
- terminal medical condition;
- permanent incapacity (causing the member to permanently cease working); or
- temporary incapacity (causing the member to temporarily cease working).

Trauma insurance is not consistent with any of these conditions of release.

Trauma insurance typically pays out a lump sum where an insured person is diagnosed with one of the critical illnesses, or injuries, defined in the policy, such as cancer, stroke, coronary bypass and heart attack.

Therefore, from 1 July 2014, an SMSF that takes out a *new* trauma insurance benefit in relation to a member will generally be in breach of the new regulation. The new regulation does not apply to insured benefits for members who joined a fund before 1 July 2014, and were covered by that benefit before 1 July 2014.

CPI – June 2014 quarter

The CPI indexation factor for the June 2014 quarter is 105.9 (an increase of 0.5 from the December 2013 quarter of 105.4).

This indexation factor is now basically only used (in a taxation context) for FBT purposes in relation to remote area housing.