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December 2012 Update

If you have been keeping an eye on our staff news section over the past few years you would have seen many new people starting with our firm. The reason for the additional staff is that our client base is constantly growing thanks to you, our clients, referring your friends, family and acquaintances to us. There is no bigger compliment you can pay us than this and for that we say thanks and ask that you please keep them coming.

Due to this we are outgrowing our current offices and are about to extend the building. Plans are at council and we hope to start the process in March / April 2013.

From our clients perspective it's business as usual and we anticipate there will be little interruption to our work flows. The extension will give room for our practice to grow over the coming years while providing a more functional professional office space as opposed to the renovated house which we have enjoyed for almost a decade.

Included in our newsletter is a column from Tony Catt of Catapult Wealth. Tony has a fresh approach to financial planning and wealth creation and works closely with us to achieve client's goals collaboratively. If you have not met with Tony and would like to do so please contact our office to make a time.

Have a great Christmas and festive season and we look forward to seeing you in the New Year.

Michael Van Dyk and Jarrad Newbold

Christmas Closure

Over the Christmas break our office will be closed from Monday December 24th and reopen on Monday January 7th 2013.

Facebook

Please like our Facebook page so that we can keep you up to date with all things tax in a timely manner. A link to this page can be found on our web page or at the bottom of any emails we send.

Staff News

Congratulations to Donna and Brad on the arrival of their first child Paige.

We are pleased to welcome Vanessa Fowler and Michelle Stafford to our team.

ATO Compliance Program 2012/13

The ATO has released its 'Compliance Program 2012/13' outlining key focus areas attracting its attention for the coming year, stating that it is important for the community to be given the opportunity to understand the ATO's compliance activities and practices.

Focus areas identified by the ATO as significant risks to tax and superannuation compliance this year include:

- occupations that have shown a pattern of relatively high levels of work-related claims, including IT managers, plumbers and defence force non-commissioned officers;
- high income earners involved in tax avoidance schemes, with a particular focus on widely-marketed financial products that promise substantial tax benefits, as well as investments by medical practitioners;
- unreported cash transactions within the plastering and café industries;
- contractor arrangements, in particular in the construction industry, and the SMSF sector; and
- employer obligations for superannuation in high risk industries.

Stopping false claims and identity crime are a continuing priority this year, with the ATO increasingly analysing and matching information provided by third parties.

The ATO checks over 600 million transactions a year to detect those who do not report all their income from things like dividends and interest, capital gains, and foreign income.

Last year they stopped more than 109,000 income tax returns for potentially incorrect or fraudulent claims "saving the community almost $200 million in revenue".

Audit insurance

A few months ago you should have received a letter regarding audit insurance. The most common question we have had about this is what does it cover and do we need it?

The insurance covers the cost of our services if you are subjected to an audit by the ATO or other body such as Workcover. Whether you need it or not depends on the complexity of your business and your risk perception.

Shortly a reminder letter will be sent to all those clients who did not respond to our initial letter. If you are unsure whether or not you should take up this insurance, please feel free to contact us to discuss it further.

ATO's Motor Vehicle Data Matching Program

The ATO has obtained, or will obtain, data identifying all motor vehicles sold, transferred or newly registered in the 2011/12 and 2012/13 income years, where the transfer and/or market value is $10,000 or greater, from all of the State and Territory motor vehicle registering bodies.

Data relating to approximately 2.8 million individuals will be matched against taxpayer records to identify those participating in the cash economy, and/or those who may not be declaring all their income or deliberately avoiding their tax obligations.

The ATO recommends that those identified as being at risk of potentially skimming some or all of their cash takings, running part of their business 'off-the-books', or in other ways not reporting all their income, contact them to make a voluntary disclosure of any under-reported amounts.

Cars on the ATO's 'FBT radar'

This financial year, the ATO will be conducting a campaign to make sure employers who have purchased a car during the 2011 and/or 2012 fringe benefits tax (FBT) year are aware that they may have FBT obligations.

Data has been obtained from various motor vehicle registering bodies to identify employers who have purchased a business registered vehicle but have not registered for FBT.

As a result, the ATO will be writing to about 5,000 employers who fall into this category, to tell them about car fringe benefits and what they need to do to comply with FBT obligations. The ATO will particularly highlight that:

- if a car is garaged at home, it is taken to be available for private use;
- as a general rule, travel to and from work is private use of a vehicle; and
- there are only limited circumstances where an employee's private use of a car is exempt from FBT.

Please note that a common method of accounting for the FBT without having to register for FBT is to "cash out" the private use component against an owner's loan account when the end of year tax work is completed. By doing this, it removes the need for you to submit an FBT return to the ATO while still recognising a business vehicle is used for private purposes.

Changes to Director Obligations

The ATO has reminded company directors of recent changes to the law affecting their personal liability for certain company obligations.

On 29 June 2012, changes were made to the tax laws to reduce the scope for companies to engage in fraudulent 'phoenix activity' or to escape liabilities and payments of employee entitlements. The changes:

- extend the director penalty regime and the estimates regime to apply to unpaid superannuation guarantee charge (SGC);
- ensure that directors cannot avoid director penalties by placing their company into administration or liquidation when PAYG withholding or SGC remains unpaid and unreported 3 months after the due date; and
- in some instances, make directors and their associates liable to 'PAYG withholding non-compliance tax' – which effectively reduces directors' PAYG credit entitlements where the company has failed to pay amounts withheld to the ATO.

Trading Stock Taken for Private Use

Every year, the ATO provides details of the amounts it will accept as reasonable estimates of the value of goods taken from trading stock for private use by taxpayers in certain industries.

The main assumption in calculating these "goods own use" amounts is that if a business has an item in stock then the taxpayer would take the item from stock for their own use rather than purchase the item elsewhere.

The value of goods taken from trading stock for private use in the 2012/13 income year is:

Type of business	Amount* for Adult / Child over 16 years	Amount* for Child 4-16 years
	$	$
Bakery	1,300	650
Butcher	770	385
Restaurant/café (licensed)	4,300	1,685
Restaurant/café (unlicensed)	3,640	1,820
Caterer	3,640	1,820
Delicatessen	3,370	1,685
Fruiterer/ greengrocer	760	380
Takeaway food shop	3,240	1,620
Mixed business (includes milk bar, general store and convenience store)	4,030	2,015

Note(*): Amount excludes GST

Use Caution with SMSF Property Investments

The ATO is concerned that people are using their SMSFs to invest in property without fully understanding their obligations under the law, or that some people are seeking to take advantage of certain types of arrangements.

The ATO is primarily concerned with arrangements where:

- an SMSF invests in a related unit trust by acquiring units in the trust, and the unit trust acquires property, but the arrangement breaches the superannuation compliance rules in some way, such as where the property is subjected to a mortgage, or is acquired from or rented to a related party, when it would otherwise be prohibited; and
- an SMSF enters into a Limited Recourse Borrowing Arrangement (LRBA) to acquire an asset, and the arrangement does not comply with the strict conditions that must be met for SMSFs that borrow.

In particular, these borrowings must generally be used to acquire a single asset (that the fund is not otherwise prohibited from acquiring), and the asset acquired cannot be held directly by the SMSF but must be held by a separate 'holding trustee' (or 'custodian'), solely for the benefit of the SMSF.

The ATO has also stated that:

- the trustee of the holding trust must be in existence, and the holding trust must be established, by the time the contract to acquire the asset is signed; and
- the SMSF cannot borrow to acquire a vacant block of land and then use the same borrowing to construct a house on the land.

The fine details are important and trustees need to be sure that property is the right investment for their SMSF and that the arrangement is legal. Some of these arrangements, if structured incorrectly, cannot simply be restructured or rectified. The only option may be to unwind the arrangement which could involve forced sale of assets at an inconvenient time. This could be very expensive for the fund with potential stamp duty and tax consequences.

SMSFs that do not comply with the superannuation laws may also become 'non-complying' for tax purposes and, if the SMSF or the unit trust needs to dispose of the relevant property, they may incur a CGT liability. In addition, the ATO states that where arrangements are deliberately entered into to get around the law, the fund's trustees may be disqualified, face civil penalties or even face criminal charges.

New Changes Affecting SMSFs

The Government has recently amended the SIS Regulations to impose further requirements on self managed superannuation funds (SMSFs) from the 2012/13 income year.

The new regulations require that:

- trustees of SMSFs must consider insurance for their members as part of the fund's investment strategy;
- money and other assets of an SMSF is to be kept separate from those held by a trustee personally (and by some employers); and
- SMSF assets are to be valued at market value for reporting purposes.

Payments for Electricity Generated from Solar Panels

More and more homeowners are installing solar panel systems in their homes. In some cases, the solar panel system may produce more electricity than they consume. If this is the case, the homeowner can often "sell" the excess electricity back to their electricity company, which will be released into the electricity grid.

This obviously begs the question: will the payments they receive from the electricity company be included in their assessable income?

The ATO has basically confirmed that, in typical situations where payments are received from electricity retailers by homeowners for the power generated by their solar panels that is exported to the grid, the payments would generally not be classed as assessable income, as they would be private or domestic in nature. This conclusion takes into account the amount of equipment used to generate the electricity, the current pricing structure, and the fact the homeowner produces the electricity for a domestic purpose only.

In addition, since the payments are not assessable income and are private or domestic in nature, a homeowner in the above situation would not be able to claim a deduction for the costs associated with the solar system, such as interest and depreciation.

Note, however, that if the characteristics of the activity change (including the motivation for undertaking that activity, how the activity is undertaken and whether there is a real prospect of profit from the activity), the receipts or credits from the activity may become assessable income.

Are you an 'Employee or Contractor'?

The ATO has established a new 'Employee or Contractor' homepage, which has been developed to help address areas of confusion and "highlight common reasons businesses get the employee or contractor decision wrong".

The Commissioner stated that the "Employee or Contractor" homepage has all the information businesses need in one place to help them determine if their workers are employees or contractors, including:

- the basics – things every business needs to know;
- common reasons businesses get the decision wrong;
- industry specific information;
- an Employee/Contractor decision tool which will guide businesses in making their decisions; and
- a summary of the obligations businesses need to meet for their employee or contractor.

Contractor Payments Data Matching Program

The ATO is requesting and collecting information in relation to payments made to approximately 75,000 contractors for the 2010 to 2013 income years.

The information they collect will be electronically matched with ATO data holdings to identify non-compliance with lodgment and reporting obligations under taxation law, and will enable the ATO to:

- identify and address the compliance behaviour of contractors who may not be correctly meeting their taxation obligations;
- be more strategic in its approach to determine appropriate educational and compliance strategies to encourage voluntary compliance for contractors.

Reminder about the Small Business Instant Asset Write Off

As part of the Carbon Tax Measures the small business instant asset write-off threshold has been increased from $1,000 to $6,500 for the 2012-13 year. In addition to this, the long-life small business pool and the general small business pool have been consolidated into a single pool to be written off at a 30% rate.

When buying a motor vehicle, small businesses can claim an accelerated initial deduction of $5,000 of the initial cost with the remaining amount being depreciated at 30%.

Building Industry Payments Reporting System

As advised in our June newsletter, businesses in the building and construction industry now need to report to the ATO (from the 2012/13 income year) the total payments they make each year to each contractor for building and construction services. The aim of the system is to improve voluntary compliance with tax obligations by those contractors who are currently not doing the right thing.

Businesses will only need to report if all of the following apply:

- they are primarily in the building and construction industry;
- they make payments to contractors for building and construction services; and
- they have an Australian business number (ABN).

Businesses are only required to report the total of the payments made (i.e., on a cash basis) to each contractor during the year, not the individual amounts.

Where the invoice from the contractor includes both labour and materials, whether itemised or combined, it is the total amount of the payment that needs to be reported.

The first annual report is due by 21 July 2013 for payments made in the 2012/13 financial year, although if businesses lodge their BAS's quarterly, for this first year they may lodge by 28 July 2013.

New Rural Street Addresses

Rural clients are currently being issued with new residential addresses to make locating them simpler.

The new number is the distance in metres from the start of the road to your entrance, divided by 10. Odd numbers are on the left hand side of the road and even numbers are on the right hand side.

All clients being allocated these new addresses should notify us as soon as possible so that we can update our records.

Disclaimer

We suggest that you do not act on the basis of the information in this report as they are general comments only and may be subject to misinterpretation.

Also, changes in legislation occur quickly and we recommend you seek our advice before acting in any of these areas