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December 2013 Update

Business must be a team approach. We, Michael & Jarrad have been together (in business!) for almost 10 years. This as it turns out is longer than the average marriage which is 8.7 years. A successful business partnership is similar to a successful marriage. It takes honesty, commitment, openness, trust etc. just to mention a few.

Clients are often interested in our story just as we are in their story. For those of you who don't know us both well, there is one thing that we both agree on and that is that we are different. We approach business, relationships, problems etc. in our own unique way which we believe provides for better advice and outcomes for our clients.

Due to our differences we are always willing to challenge each other in a respectful way to ensure we get the best out of ourselves and each other. This process often rubs off on how we approach our clients in that often we recognise the best advice we can give is to challenge our clients, hopefully for the better.

As I said at the start, business is a team approach. Often some clients don't have a team around them and, as a result, we as the accountant and advisor become their sounding board. This is a privileged role which we do not take for granted.

Without a team approach the business environment can be a lonely place. We look forward to further challenging and supporting you in 2014 and beyond.

Michael Van Dyk and Jarrad Newbold

Christmas Closure

Over the Christmas break our office will be closed from Monday December 23rd and reopen on Monday January 6th 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.

Office update

Our office extensions have finally begun. The slab is being poured as we speak and building will begin in January with an April expected completion date. The new office will better support our business needs and vision together with providing a more comfortable place for our staff and clients. Check out our Facebook page for updates as it progresses.

Tax changes under the new government

The new government has identified 92 announced but still unlegislated and unresolved tax and superannuation changes.

Of these, the government stated it will proceed with 18 initiatives, a further three initiatives will be significantly amended, and it will not proceed with seven initiatives. The remaining announced changes will be considered and, if required, the government intends that the bulk of any legislation that is to be progressed should be passed by Parliament by 1 July 2014.

Specifically, the government will not proceed with the following three measures which directly affect individual and business taxpayers:

- *Self-Education Expenses Cap* – the proposed $2,000 cap on the amount people would be able to deduct as self-education expenses
- *Removal of the FBT Statutory Formula method for car fringe benefits*
- *Tax on Superannuation Pensions* – proposed new tax on earnings on super assets, which would have taxed superannuation fund income above $100,000 in the draw-down phase.

The un-enacted measures the government will proceed with include:

- *Net Medical Expenses Tax Offset phase out* – the phasing out will allow current claimants to remain eligible for the offset until 2014/15.
- *Increase FMD threshold* – increasing the non-primary production income eligibility threshold for Farm Management Deposits from $65,000 to $100,000.

Although timelines are currently unknown, some of the other important commitments the Government propose to make include:

- No changes to the GST rate before the next election
- Abolish the carbon tax
- Abolish the mining resource rent tax (MRRT)
- Discontinue the tax loss carry-back measure (linked to the MRRT)
- Discontinue the small business instant asset write-off (currently $6,500)
- Remove accelerated depreciation for motor vehicles for small business (currently $5,000)
- Introduce a 1.5% levy on companies with taxable incomes above $5m to fund a Paid Parental Leave (PPL) Scheme from 1 July 2015
- The superannuation guarantee will increase from 9% to 12%, but will be delayed by 2 years, so that the 12% target is achieved in 2021 rather than 2019.

Update on issues affecting SMSFs

ATO compliance

At a compliance level, the ATO says that it is focusing on:

- engaging with new trustees to ensure they can operate their SMSF and are not seeking illegal early access to their retirement benefits;
- ensuring that trustees understand their obligations and that, although their tax agent or accountant will assist trustees to meet their obligations, they themselves are the ones who are accountable;
- ensuring annual returns are lodged, and lodged on time (all SMSFs with two or more years of overdue lodgments will have their regulation details removed from Super Fund Lookup, potentially affecting rollovers from APRA funds, and employer contributions);
- for new funds, whether they are entitled to receive their notice of compliance;
- reviewing irregularities in exempt current pension income and non arm's-length transactions;
- re-reporting of contributions and compliance with excess contributions tax release authorities;
- arrangements involving holiday travel claimed as investment expenses by SMSF trustees; and
- every fund reported to it by approved SMSF auditors. The ATO wants to make those trustees more fully aware of their obligations and ensure the contraventions are dealt with appropriately.

Related party transactions

The breaches most commonly reported to the ATO by SMSF auditors are trustees investing in, or transacting with, related parties in breach of the rules. This can include providing a loan or other financial assistance to a member or relative, which is prohibited.

Further, it is also common when there is a 'loan' to a member that it doesn't meet the characteristics of a genuine loan anyway, and the member is simply accessing their super before they are entitled to.

ASIC warning to real estate industry

ASIC has warned the real estate industry that agents recommending investors use a SMSF to invest in property must ensure they are appropriately licensed to provide such advice.

Real estate agents may not realise they are providing 'financial product advice' and need an Australian financial services (AFS) licence when making recommendations or statements of opinion to a person to use an SMSF to invest in property.

When a superannuation pension commences and ceases

The ATO has published a Ruling about "starting and stopping a new superannuation income stream" (i.e. a superannuation pension).

The Ruling applies to complying superannuation funds (including SMSFs) which commence an 'account-based pension', including a 'transition to retirement pension', and focuses on when a pension commences and when it ceases and, consequently, when a pension is payable.

These concepts are relevant to determining the income tax consequences for both the superannuation fund (including the availability of the pension exemption) and the member in relation to superannuation income stream benefits paid.

The ATO states there has been a lot of interest as to when a pension ceases, and the most common circumstances for a pension ceasing are summarised as follows:

- When all pension capital is exhausted;
- There has been a failure to comply with the superannuation pension rules (Note there are limited circumstances where the Commissioner

may apply his powers to nonetheless allow the pension to still continue);

- The pension is fully commuted (i.e. when a member, or beneficiary of a deceased member, chooses to exchange all of their pension entitlements for a lump sum); or
- The member has died – A pension ceases as soon as the member in receipt of the pension dies, unless a dependant beneficiary is automatically entitled to a reversionary pension.

Note that recent amendments to the tax law, applicable to the 2012/13 income year and later income years, ensure that where a member was receiving a pension immediately before their death, the fund will continue to be entitled to the pension exemption from the time of the member's death until their benefits are cashed, provided the relevant requirements are met (e.g the benefits must be cashed 'as soon as is practicable' following the death of the member).

Are you sure your 'independent contractors' are not 'employees'?

Two recent cases have highlighted how important the distinction between 'independent contractors' and 'employees' is:

- in one case, it was held that a plumbing business did not meet its superannuation guarantee obligations in respect of five of its plumbers that it had treated as independent contractors; and
- in a case between a taxi driver and the owner of the taxi, the Fair Work Commission held that the relationship between them was one of employer/employee, and therefore the unfair dismissal laws applied to their relationship.

As a general proposition, an independent contractor provides personal services whilst working in and for *his or her own business*, whereas an employee provides personal services whilst working in the *employer's business*.

Common errors when applying the CGT concessions

The ATO has noticed some common errors occurring when taxpayers apply the small business CGT concessions, and has offered tips to help avoid those errors.

Satisfy the maximum net asset value test

Just prior to the CGT event, the total net value of the taxpayer's CGT assets cannot exceed $6 million. This includes the net value of the CGT assets of any entity that is 'connected with' the taxpayer, is an 'affiliate' of the taxpayer, or who is connected with the taxpayer's affiliates.

Determine the market value of a business or asset

Where the market value is required, accepted valuation principles should be applied.

Use the contract date, not settlement date

The CGT event occurs at the time the contract is entered into, not at the settlement date. For disposals of assets, the time of the CGT event is when the disposal contract is signed.

Where contract and settlement dates cross over financial years, the capital gain or loss should be declared in the financial year in which the contract was signed.

Bank account details for Tax Refunds

According to the ATO, the fastest, most secure way to receive a tax refund is to have it paid directly into a nominated Australian bank account using electronic funds transfer (EFT).

From 1 July 2013, individual tax returns will require bank account details, including BSB and account number, to be entered, where a refund is expected.

Joint accounts and trust accounts will be acceptable.

While the ATO have not announced what will happen if bank details are not provided, we believe this will lead to delays in the issuing of refunds.

Simpler depreciation rules for business

The government intend to remove the new simpler depreciation rules for small businesses with turnover of less than $2 million (i.e., small business entities or 'SBEs'). While not confirmed, there is talk that this will only be available for assets purchased before 31 December 2013.

We take this opportunity to remind you of the rules in case you wish to take advantage of them.

Assets costing less than $6,500

The small business instant asset write-off threshold has increased from $1,000 to $6,500 allowing small businesses to immediately write-off most new depreciating assets costing less than $6,500.

Assets costing $6,500 or more

Depreciating assets that cost $6,500 or more (regardless of their effective life) are now added to the general small business pool and deducted at a single rate of 30%.

Newly acquired assets are deducted at 15% (half the pool rate) for the first income year.

Motor Vehicles

Small businesses that purchase a vehicle can now also claim an additional deduction of up to $5,000 in the income year it is purchased, effectively bringing forward the depreciation deduction to earlier in the vehicle's life.

Where the vehicle is used exclusively for business and has not been written off immediately under the instant asset write-off, the cost of the motor vehicle is added to the general small business pool and the deduction in the first year is made of up of $5,000 plus 15% of the vehicle's remaining value.

ATO's 2013 Compliance Program

The ATO has released its annual Compliance Program, and following are some of the main 'highlights' that will attract their attention in the coming year, including:

- High work-related expenses claims, particularly those made by building and construction labourers, construction supervisors and project managers; and sales and marketing managers;
- Wealthy individuals and people who may be using secrecy jurisdictions (i.e., tax havens) to avoid paying tax;
- Employers who intentionally try to avoid their tax and super obligations by improperly treating workers as contractors rather than employees;
- Small businesses that overclaim concessions, attempt to hide income and operate in the cash economy, and claim CGT concessions they are not entitled to;
- Businesses with outstanding returns, particularly trusts, partnerships and companies and entities with privately owned groups;
- Fraudulent phoenix activity, particularly by property developers; and
- SMSFs that misuse the concessional tax environment deliberately or unintentionally.

The ATO has also advised that they investigate every time an employee tells them that their employer has not paid their superannuation guarantee entitlement. The ATO will also specifically audit employers in the cafes and restaurants, carpentry services, and real estate services industries, due to these industries presenting a higher risk of employers not complying with their superannuation guarantee obligations.

In addition, more than 640 million transactions are reported to the ATO annually from sources such as banks, share registries, employers, merchants, states and territories and other government departments, and the ATO uses this information to detect people trying to avoid their tax and superannuation obligations.

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

Merry Christmas from the team at Van Dyk Newbold & Co!

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