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Practice Update

Please read this update and contact this office if you have any queries

May - June 2018

2018 Budget Update

The Government handed down the 2018/19 Federal Budget on Tuesday 8th May 2018. Some of the important proposals include:

- The introduction of the 'Low and Middle Income Tax Offset', a temporary non-refundable tax offset of up to $530 p.a. to Australian resident low and middle income taxpayers for the 2019 to 2022 income years. This offset will apply *in addition* to the Low Income Tax Offset.
- Providing tax relief for individual taxpayers by progressively increasing some of the tax brackets (including an increase in the top threshold of the 32.5% personal income tax bracket from $87,000 to $90,000 from 1 July 2018), and eventually removing the 37% tax bracket en tirely.
- The $20,000 immediate write-off for small business will be extended by a further 12 months to 30 June 2019 (i.e., for businesses with aggregated annual turnover less than $10 million).
- From 1 July 2019:
  - Increasing the maximum number of allowable members in an SMSF from four to six members;
  - Ensuring that unpaid present entitlements (or ‘UPEs’) come within the scope of Division 7A; and
  - Denying deductions for expenses associated with holding vacant residential or commercial land.

Superannuation guarantee amnesty introduced

The Government has introduced legislation to complement the superannuation guarantee ('SG') integrity package already before Parliament by introducing a **one-off, twelve month amnesty** for historical underpayment of SG.

The Bill incentivises employers to come forward and "do the right thing by their employees" by paying any unpaid superannuation in full, as well as the high rate of nominal interest (but without the penalties for late payment that are normally paid to the Government by such employers).

Employers that do not take advantage of the amnesty will face higher penalties when they are subsequently caught – in general, a minimum 50% on top of the SG Charge they owe.

In addition, throughout the amnesty period the ATO will still continue its usual enforcement activity against employers for those historical obligations they don't own up to voluntarily.

The amnesty will run for twelve months from 24 May 2018.

ATO scrutinising car claims this tax time

The ATO has announced that it will be closely examining claims for work-related car expenses this tax time as part of a broader focus on work related expenses.

Assistant Commissioner Kath Anderson said:

"We are particularly concerned about taxpayers claiming for things they are not entitled to, like private trips, trips they didn't make, and car expenses that their employer paid for or reimbursed."

This is no doubt because over 3.75 million people made a work-related car expense claim in 2016/17 (totalling around **$8.8 billion**), and, each year, around 870,000 people claim the **maximum amount** under the cents-per-kilometre method.

Ms Anderson said that the ATO's ability to identify claims that are unusual has improved due to enhancements in technology and data analytics: *"Our models are especially useful in identifying people claiming things like home to work travel or trips not required as part of your job . . . simply travelling from home to work is not enough to qualify, no matter how far you live from your workplace."*

Ms Anderson said there are three golden rules for taxpayers to remember to get it right.

"One – you have to have spent the money yourself and can't have been reimbursed, two – the claim must be directly related to earning your income, and three – you need a record to prove it."

Case studies

False logbook

A traffic supervisor claimed over $11,000 for work related car expenses, and provided a logbook to substantiate his claim.

However, upon investigation the ATO discovered that the logbook wasn't printed until the following year – the taxpayer admitted the logbook was fraudulent and it was ruled invalid.

Even though the logbook was invalid, the taxpayer was able to provide other evidence to show that he had travelled at least 5,000 kilometres for work-related purposes, so the ATO used the cents per kilometre method to calculate the taxpayer's deduction (but his claim was reduced from over $11,000 to under $4,000).

Claiming for home to work travel

A Laboratory Technician claimed $3,300 for work-related car expenses, using the cents per kilometre method for 5,000 kilometres.

However, he advised that his employer did not require him to use his car for work; this claim was based on him needing to get to work.

The ATO advised the taxpayer that home to work travel is a private expense and is not an allowable deduction – his claim was reduced to nil and the ATO applied a penalty for failure to take reasonable care.

What the super housing measures mean for SMSFs

The ATO has reminded members of SMSFs that they will be able to use their voluntary super contributions to assist with buying their first home, or to make a contribution into their super from the proceeds of the sale of their main residence (under changes passed by Parliament in December 2017).

The First Home Super Saver Scheme

The First Home Super Saver (FHSS) Scheme allows SMSF members to save faster for a first home by using the concessional tax treatment available within super.

From 1 July 2018, SMSF members can apply to release certain voluntary concessional and non-concessional contributions made from 1 July 2017, along with associated earnings to help buy their first home.

The downsizing measure

SMSF members who are 65 or over and exchange a contract for sale of their main residence on or after 1 July 2018 may be eligible to make a downsizer contribution of up to $300,000 into their super.

This downsizer contribution won't count towards their contributions caps or total super balance test in the year it's made.

However, it will count towards the transfer balance cap and be taken into account for determining eligibility for the age pension.

SMSFs must ensure the member's contribution has satisfied all relevant conditions and completed the downsizer contribution form before accepting a downsizing contribution.

Car limit for 2018/19

The car limit is $57,581 for the 2018/19 income year (unchanged from the previous year). This amount limits depreciation deductions and GST input tax credits.

GST withholding measures now law

Legislation has been passed to "clamp down" on GST evasion in the property development sector.

From 1 July 2018, purchasers of new residential premises and new residential subdivisions will generally be required to withhold the GST on the purchase price at settlement and pay it directly to the ATO.

Property developers will also need to give written notification to purchasers regarding whether or not they need to withhold.

The new obligations are primarily aimed at ending the practice of some developers collecting GST on new properties before dissolving their business prior to remitting such tax to the ATO.

Continued ATO focus on holiday home rentals

The ATO has recently advised that they are *"setting their sights on the large number of mistakes, errors and false claims made by rental property owners who use their own property for personal holidays"*.

While it confirms that the private use of holiday homes by friends and family is entirely legitimate, the ATO states that such use reduces a taxpayer's ability to earn income from the property, and therefore impacts on (i.e., reduces) the amount of claimable deductions.

As a result, the ATO has reminded holiday home owners that:

- They can only claim deductions for a holiday home with respect to periods it is genuinely available for rent.
- They cannot place unreasonable conditions on prospective tenants/renters, set rental rates above market value, or fail to advertise a holiday home in a manner that targets people who would be interested in it and still claim that the property was genuinely available for rent.
- Where a property is rented to friends or relatives at 'mates rates', they can only claim deductions for expenses up to the amount of the income received.
- Property owners whose claims are disproportionate to the income received can expect greater scrutiny from the ATO.

What's changing on 1 July 2018?

Individuals

- Personal tax bracket changes - The top threshold of the 32.5% personal income tax bracket will increase from $87,000 to $90,000.
- Introduction of the Low and Middle Income Tax Offset* providing a tax offset for those with taxable income of up to $125,333.
- GST on property developments and residential subdivisions – The way GST is collected on sales of newly constructed residential properties or new subdivisions will change from 1 July. Purchasers will be required to remit the GST directly to the ATO as part of the settlement process. If you are buying a property, it is essential that you check the details to ensure that these new requirements have been managed (see this issue in Business also).

Business

- Single touch payroll - Employers with 20 or more employees at 1 April 2018 must use standard business reporting-enabled software from 1 July 2018 to report payments such as salaries and wages, PAYG withholding and superannuation. Single touch payroll is expected to be compulsory for businesses with 19 or less employees from 1 July 2019.
- The $20k instant asset write-off for small business has been extended until 30 June 2019.
- GST on low value goods – GST will apply to overseas sales of goods supplied to Australian consumers with a value under $1,000.
- GST on property developments and residential subdivisions – The way GST is collected on sales of newly constructed residential properties or new subdivisions will change from 1 July. The vendor will no longer collect and remit GST on the purchase price of the residential premises. Instead, the vendor must notify the purchaser in writing that the GST needs to be paid to the Commissioner and advise the amount that must be paid. In most situations, the amount will be 1/11th of the contract price. Where the margin scheme is used, it is 7% of the contract price. Where the transaction is between associates, it is 10% of the GST-exclusive market value. Notification rules will also apply to the vendor, even if the transaction does not trigger a GST liability.
- R&D changes* - the way the R&D tax incentive is managed will change with caps introduced on cash rebates and for large companies, a refocussing of R&D to high intensity R&D activities.

Superannuation

- Event based reporting for SMSFs - A new reporting regime commences for SMSFs. All SMSFs must report events that affect their members' transfer balance accounts (for example, when an SMSF member first starts to receive a pension from their fund). Timeframes for reporting are determined by the total superannuation balances of the SMSF's members. Where all members of the SMSF have a total superannuation balance of less than $1 million, the SMSF can report this information at the same time as the annual return. SMSFs that have any members with a total superannuation balance of $1 million or more must report events affecting members' transfer balances within 28 days after the end of the quarter in which the event occurs.

- Carry forward concessional contributions – people with super balances below $500,000 will be able to rollover their unused concessional caps for up to 5 years. Unused cap amounts can be carried forward from the 2018-19 financial year; which means the first opportunity to use these new rules will be 2019-20.
- Downsizer contributions - if you are over 65, have held your home for 10 years or more and are looking to sell, you might be able to contribute some of the proceeds of the sale of your home to superannuation.
- First home saver scheme – First home savers are able to withdraw voluntary, after-tax superannuation contributions they have made to put towards their first home.
- Changes to protect employees against inadvertent breaches of concessional caps* - Individuals whose income exceeds $263,157 and have multiple employers will be able to nominate that their wages from certain employers are not subject to the superannuation guarantee (SG).

*Change has been announced but has not become law at the time of writing.

CGT and the family home: Expats and foreign residents beware

The family home of foreign residents and expats may be taxed if legislation before Parliament is passed by the Senate.

If you are a foreign resident living in Australia or an Australian working overseas who owns residential property in Australia, this reform potentially has serious tax implications for you.

Currently, individuals are generally not subject to capital gains tax (CGT) on the sale of the home they treat as their main residence. If the home was your main residence for only part of the ownership period or if the home is used to produce income (for example, you use part of the home as business premises or rent out part of the property), then a partial exemption may be available. In addition, if you move out of your home and you don't claim any other residence as your main residence, then you can continue to treat the home as your main residence for up to six years if you rent it out or indefinitely if you don't rent it out (the 'absence rule').

The main residence exemption is currently available to individuals who are residents, non-residents, and temporary residents for tax purposes.

Under new laws before Parliament, you will not be able to claim an exemption under the main residence rules if you are a non-resident for tax purposes at the time you sell, even if you were a resident for some (or even most) of the ownership period. The new rules do not allow for partial exemptions. If, however, you are an Australian resident at the time you sell, then the normal main residence exemption rules apply, even if you were a non-resident for some or most of the ownership period.

Someone holding property at 9 May 2017 can apply the current rules if the CGT event occurs on or before 30 June 2019 - for a sale of a property the CGT event date is likely to be the date of contract not the settlement date. This transitional period gives non-residents some time to sell their main residence (or former main residence) if they choose and obtain a level of tax relief under the main residence rules.

Keep in mind that we are talking about tax residency, which has its own set of rules to the immigration, visa and citizenship requirements. It's different and you need you need to be clear about where you fit.

Australians working overseas

If you are an Australian citizen working overseas but a non-resident for tax purposes, these new rules are likely to affect your main residence in Australia.

If you maintain your main residence in Australia, you can use the absence rule to maintain the exempt status of your property just in case you decide to return to Australia. When you return permanently to Australia and decide to sell, you are likely to be able to access the main residence exemption (or a partial exemption). If you rent out your property while you are away, the absence rule allows you to treat the property as your main residence for up to six years. Be wary of exact dates here. One day the wrong way or a misapplication of the absence rule could make a significant difference to the tax you pay.

If you sell the property while you are a non-resident, once these new laws come into effect, you will not be entitled to the main residence exemption at all. Similarly, if you die while overseas, and your home is sold within two years of the date of your death, it's likely that your beneficiaries will not be able to claim the main residence exemption.

Example from the legislation

Vicki acquired a dwelling in Australia on 10 September 2010, moving into it and establishing it as her main residence as soon as it was first practicable to do so.

On 1 July 2018 Vicki vacated the dwelling and moved to New York. Vicki rented the dwelling out while she tried to sell it. On 15 October 2019 Vicki finally signs a contract to sell the dwelling with settlement occurring on 13 November 2019. Vicki was a foreign resident for taxation purposes on 15 October 2019.

The time of CGT event A1 for the sale of the dwelling is the time the contract for sale was signed, that is 15 October 2019. As Vicki was a foreign resident at that time she is not entitled to the main residence exemption in respect of her ownership interest in the dwelling.

Foreign residents living in Australia

If you are a foreign citizen currently living in Australia but planning to leave Australia at some stage in the short to medium term, then these new rules are likely to impact on you. If you owned your home at or before 9 May 2017, you can access the main residence rules on or before 30 June 2019 if you sell the property.

However, if you leave Australia and cease being a resident of Australia before selling the property and the sale occurs after 30 June 2019 then you will not be able to access the main residence exemption. This will mean that you will pay tax at your marginal tax rate on any gain you make on the sale of the property. You are also likely to have limited access to the general CGT discount.

Quote of the month

"Courage is fear holding on a minute longer."

- General George S. Patton