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Practice Update

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

OCTOBER-NOVEMBER 2013

ML Partners support Movember

In case you were wondering - Brett, Dave & Pete are not having a mid-life crisis, they have donated their faces to a good cause this month – Men's Health. Donations to the Movember Foundation supports world class men's health programs that combat prostate and testicular cancer and mental health challenges. These programs, directed by the Movember Foundation, are focused on:

- Awareness and education
- Staying mentally healthy
- Living with and beyond cancer
- Living with and beyond mental illness
- Research

If you would like to support this cause please log on to: <http://moteam.co/ml-partners>



Pictured: Dave Catanzaro & Peter McKaig (absent Brett Butler)

Mining tax repeal and the impact on other tax measures

On 24 October 2013 the Government released exposure draft materials relating to the repeal of the Minerals Resource Rent Tax (mining tax) from 1 July 2014. While the repeal of the mining tax is likely to have limited direct application to many SMEs and individual taxpayers, the Government also plans to abolish a number of other tax measures which will have a broader impact. The key items and dates are summarised below:

▪ Loss carry back measures

It looks like companies will only be able to apply the newly introduced loss carry back rules for a single income year (i.e., the 2013 income year). The Government plans to repeal the loss carry back rules from the start of the 2014 income year. This means that companies that are late lodging their 2013 tax returns will still be able to utilise the loss carry back rules for the 2013 income year.

▪ Immediate deductions for small business entities (SBEs)

From 1 January 2014, SBEs will only be able to claim an immediate deduction for depreciating assets costing less than \$1,000. SBEs will have until 31 December 2013 to ensure that newly acquired assets are either actually used or installed ready for use to access the existing \$6,500 deduction threshold.

▪ Immediate deduction for motor vehicles

The \$5,000 immediate deduction for motor vehicles acquired by SBEs will be removed from 1 January 2014. As above, SBEs will have until 31 December 2013 to qualify for the \$5,000 deduction by acquiring and using a motor vehicle by this date.

▪ **Superannuation guarantee (SG) percentage**

The SG percentage will be kept at 9.25% for the 2014, 2015 and 2016 financial years. From 1 July 2016 the SG percentage will rise to 9.5% and will then increase by half a percentage point each year until it reaches 12% for years starting on or after 1 July 2021.

▪ **Low income super contribution**

The Government plans to remove the rules which currently allow the contributions tax paid on concessional contributions for individuals earning up to \$37,000 to be returned. The changes will apply to concessional contributions for financial years starting on or after 1 July 2013.

▪ **Income support bonus (ISB)**

The Government will remove the ISB which is currently paid twice a year to certain social security recipients. The next instalment of the payment is due to be paid to recipients in March 2014 unless the rules are repealed by then.

▪ **Schoolkids bonus (SKB)**

This tax-free bonus payment will also be removed. The next instalment of the SKB would be in respect of the "test day" occurring on 1 January 2014 unless the rules are repealed by then.

Spike in email scams

The ATO is warning taxpayers to protect their personal and financial details following a sharp spike in reports of tax-related email scams.

Since June, reports from the public of 'phishing' scams have quadrupled from 3,586 to 15,441 compared with the same period last year.

"While the public is reporting scam emails to the ATO in increasing numbers, scammers are also becoming more sophisticated in the way they trick taxpayers into handing over their personal details," Tax Commissioner Chris Jordan said.

"We advise people to be vigilant of emails that mimic the ATO's online publications. Think very carefully before clicking on links and attachments in emails or on social networking sites.

"The ATO will never send taxpayers an email asking them to confirm, update or disclose confidential information including your name, date of birth, home address, passwords or credit card details."

Be careful about property arrangements with family!

The Administrative Appeals Tribunal (AAT) has held that a taxpayer who jointly owned a townhouse with his son (who lived there) was liable for CGT on his share of the property when it was sold.

▪ **Facts**

In April 2002, the taxpayer purchased a townhouse for his adult son to reside in, but he had both of them registered on the title of the property, to "guard against his son acting unwisely".

His son lived in the townhouse until 2007, when he moved into another house, and in September 2007 the townhouse was sold and the proceeds from the sale were used to reduce the son's debt to the bank for the second house.

The taxpayer was assessed for the 2008 income year for CGT on 50% of the net capital gain arising from the sale of the townhouse.

▪ **Reasons for Decision**

The taxpayer claimed that:

- It was never his intention to profit from the sale of the townhouse, and that "he only went on the title to protect his 'inexperienced' son of 23 years from doing something 'silly' and selling the townhouse on a whim"; and
- He did not receive any of the proceeds of sale of the townhouse (as the entire net amount received went towards reduction of his son's loan).

However, the AAT stated that these matters did not alter his liability, as:

- For CGT purposes, a person is treated as having received money if it is applied as he or she directs;
 - To be eligible for the 'main residence exemption' in respect of his liability for CGT on disposal of his interest in the property, the taxpayer would have had to reside in the townhouse himself; and
 - There was no evidence that the taxpayer held his interest in the property 'on trust' for his son.
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Taxpayer slammed on (lack of) record keeping

The AAT has upheld the application of a 50% penalty to a taxpayer for 'recklessness' in claiming deductions that couldn't be substantiated.

Facts

In the 2011/12 tax year, the taxpayer made the following claims for tax deductions in relation to his work as a car salesman:

- Work-related car expenses of \$23,065;
- Work-related clothing and laundry expenses of \$645; and
- Other work-related expenses, including phone expenses and a car dealer's licence expense, of \$10,605.

Following an audit, these were reduced to nil, \$150 and nil, respectively, and the ATO also imposed a penalty of \$6,092, being 50% of the tax shortfall of \$12,184 (on the basis the taxpayer was 'reckless').

Reasons for Decision

The taxpayer claimed that his conduct was unintentional and that the penalty was unfairly imposed on him, being "more severe than would be imposed in a court if he had been convicted of criminal conduct".

However, it was established during the trial that:

- The taxpayer had not maintained a log book in relation to his claim for car expenses;
- The car dealer's licence expense was not incurred in the relevant financial year;
- Laundry expense records were not maintained (in any event, there was no requirement from his employer to wear specified clothing or shoes, and the taxpayer described his 'work uniform' as "merely whatever clothing he happened to be wearing on a particular day"); and
- Phone records indicated that the taxpayer had two mobile phones (one used by his wife), that the account included home internet charges and that non-work related international calls were included.

Therefore, the AAT was satisfied that the taxpayer was **grossly negligent** in claiming the deductions included in his tax return, and that his conduct was more serious than mere failure to take reasonable care, so the 50% penalty was appropriate.

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**.

Tax not always fair? What a surprise!

Case 1 is the sad tale of a taxpayer who sold a property, didn't receive the full proceeds of the sale but still had to pay the taxman the GST, as if they had received the full amount.

In this case, when the purchaser couldn't come up with the full amount at settlement, the taxpayer entered into a vendor's finance agreement. Under that agreement, the vendor effectively 'loaned' the balance of the purchase price to the purchaser.

As a result, the taxpayer had to pay GST on the full amount.

In the end, the purchaser couldn't pay the full amount they owed to the vendor. Nonetheless, GST was still payable on the full contract price.

Case 2 involved a taxpayer who deposited \$430,000 into his super fund. When the GFC hit, he panicked and withdrew half. Six months later he reconsidered, and re-deposited another \$100,000.

Now, you're only allowed to deposit \$450,000 in your own contributions in a three year period (if you're under 65). But he thought that, on a net contribution basis, he was OK given that he had withdrawn about \$200K.

Unfortunately, the rules are simple. Don't contribute more than \$450,000.

He did and was slugged excess contributions tax on the extra \$80,000 that went into the fund.

Christmas Break

Partners & staff of ML Partners would like to wish you all a Merry Christmas & happy, safe and prosperous 2014. We would also like to take this opportunity to remind you that both the Ayr and Home Hill offices will close at 2pm on Friday 20th December 2013 and re-open for business on Monday 6th January 2014.