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Practice Update

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

SEPTEMBER - OCTOBER 2014

Launch of ML Partners Website



The ML Partners new website is now live. Information on the partners, staff, services, contact details, links, past newsletters and more are now available at www.mlpartners.com.au. Please let us know what you think.

Welcome back Jodi

Jodi Gudge has re-commenced work in the Ayr office after taking maternity leave from February this year. Jodi is working 3 days a week at this stage. Welcome back Jodi.

What happened to all of those Budget cutbacks?

If you're confused about what happened to all of those announced Budget cutbacks then you're not alone. Many of the Government's initiatives are stalled in the Senate awaiting final negotiation. Here's a quick summary of where everything is up to:

What's changed?

- 2% debt tax on high income earners from 1 July 2014 (and FBT rate increase from 1 April 2015)
- Superannuation guarantee re-phased - now SG will remain at 9.5% until 1 July 2021
- Mining tax repealed
- The company loss carry back rules abolished

- The instant asset write off threshold of \$6,500 for small business entities under the simplified depreciation rules has reduced back to \$1,000 from 1 January 2014
- The accelerated deduction of \$5,000 for motor vehicles has been removed from 1 January 2014
- School kids bonus repeal - moved to 31 December 2016 and a means test applied until the repeal date
- Low income superannuation contribution repeal delayed until the 2017/2018 financial year onwards
- Income support bonus repeal delayed until 31 December 2016

What's still up for debate?

- Co-payments for visiting a doctor
- Fuel excise increase
- Retirement age increase to 70
- Changes to pension indexation
- Tightening of access to family tax benefits
- Removal of add-on family tax benefit for additional children

- Cuts to R&D incentive
- 6 month wait for employment benefits
- Deregulation of University fees

The Treasurer has flagged that he will seek savings elsewhere – so watch this space.

ATO launches voice authentication

The ATO says that they need to ask the caller to verify their identity in about 75% of the 8 million calls it receives each year.

Australians contacting the ATO by phone will now be given the choice to record a short “voiceprint” that can be used to verify their identity for future calls.

A voiceprint is a digital representation of the sound, rhythm, physical characteristics and patterns in a voice.

The ATO believes that this will provide a more secure, more convenient call experience and will speed up the authentication process, therefore reducing the time taxpayers need to spend on the phone to the ATO.

Why it's sometimes worthwhile taking on the taxman

Where 'special circumstances' exist, taxpayers can get relief from the 'non-commercial loss' provisions in the income tax law.

Effectively, what this 'relief' means, is that a taxpayer can claim losses, (often) incurred in farming, in the year they are made, rather than having to wait until the venture turns a profit.

Case

For the 2010 to 2014 income years, the taxpayer applied to the Commissioner for relief from the 'non-commercial loss' provisions.

The ATO refused to accept that 'special circumstances' existed, even though:

- ◆ the taxpayer's olive grove: was in a region that was drought declared for much of the time and it was plagued by the Olive Lace bug from 2000 onwards; and
- ◆ in late 2009, his wife, who had project management skills, an agribusiness education and extensive experience as an oil maker and blender, underwent major surgery and was only expected to be back working at 100% by 2014.

Strangely, the AAT Member was not too complimentary to the tax officers who decided

that none of these circumstances were 'special'. In fact, he found that they had taken a "regrettably inattentive approach".

Importantly, he found that drought and the pest infestation were special circumstances.

As to the taxpayer's wife, he found that as she was a highly qualified member of the team and an experienced oil maker and blender, her illness constituted a special circumstance.

On balance, the AAT Member decided the taxpayer should be granted the relief from the non-commercial loss provisions for the 2010 to 2013 income years, but not the 2014 income year, when the taxpayer's wife was finally expected to be back full-time.

Lost super climbs to \$14 billion

New statistics released by the ATO reveal that more than \$14 billion in lost super is waiting to be claimed.

“There’s over \$6 billion of super, sitting in accounts where funds have not been kept up-to-date with changes to personal details,” said Mr Shepherd.

“It’s easy for this to happen because when people get married or move house, the last thing on their mind is updating their name and address details with a super fund.”

An additional \$8 billion in super is sitting in accounts that have not received a contribution in five years or more.

Visit www.ato.gov.au/superseeker for more advice on how to track down lost and unclaimed super.

The ASIC Money search website is also a good place to search for lost bank accounts, shares and life insurance. This search can be done at:

<https://www.moneysmart.gov.au/tools-and-resources/find-unclaimed-money/unclaimed-money-search>

New ATO initiatives for small businesses

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*

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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.

Changes to QBCC Minimum Financial Requirements from 1st October 2014

For those clients holding a QBCC licence (previously BSA licence) there are a number of changes which will take effect from 1st October 2014. In summary, the key changes are:

- There is no longer a requirement to provide financial information at the time of licence renewal (reducing the cost of having your accountant prepare the independent review/audit report). A MFR report is required only if you are applying for a licence or want to change your maximum revenue.

- Under the new policy, you need to pay all debts within agreed trading terms. Failure to pay a legitimately owed debt that is not subject to genuine dispute will result in loss of licence.
- Limits for self-certification categories have increased. Revenue limits have doubled to \$200,000 (trade contractors only) and \$600,000 (entry level for builders).
- Internal management accounts must be prepared quarterly for all licences. Licensees must provide internal management accounts to QBCC if requested after the end of a quarter.

For more information visit:

<http://www.qbcc.qld.gov.au/contractors/financial-reporting-licensees/minimum-financial-requirements-1-october-2014>

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.

Centrelink changes to assessment of superannuation pensions or account based income streams

From 1 January 2015, the Centrelink deeming rules that apply to financial investments will be extended to superannuation account-based income streams.

This change will start on 1 January 2015. Account-based income streams held by prior to 1 January 2015 will continue to be assessed under the existing rules unless recipients choose to change products or buy new products from 1 January 2015.

If you think you will be affected by these changes and wish to discuss this further, please contact us.

Superannuation - What Happens To It When You Die?

The general rule is that superannuation is not part of your estate unless you expressly make it part of your will, right? Well, maybe not. A recent case before the courts serves as a warning to make sure that you take care of the details.

Generally, superannuation is passed directly to your nominated beneficiaries and not to your estate. However, a recent case before the Supreme Court, however, may change current belief and convention on what happens to your superannuation when you die.

In this case, an unmarried son, James, tragically dies at the age of 40. His mother and father had an acrimonious relationship since separating when James was 5 (divorcing just under 2 years later).

At the time of his death, James did not have a valid will in place (intestate). Generally, when a child dies intestate, the estate is divided equally between the parents. James' estate was worth about \$80,000 and his superannuation over \$450,000.

James lived with his mother at the time of his death. She applied for Letters of Administration and Probate to manage his estate as there was no will. As administrator of his estate, her obligation was to "use her best endeavours to maximise the size of the estate."

The mother received advice from her lawyers that superannuation does not form part of the estate. As such, she sought to have James' superannuation distributed to her in her personal capacity (and not to the estate). While James' mother was not a nominated beneficiary for James superannuation, she was a non-binding beneficiary because of their interdependent relationship.

The superannuation benefits were eventually paid to the mother by three different funds

because she had a relationship of financial and emotional dependency with James (James was bipolar and had lived with her 30 of his 40 years and they shared the household expenses).

During this time, the father's lawyers queried the mother's intentions for the superannuation benefits stating that to have the superannuation transferred to her in person was a breach of her fiduciary duties as administrator of the estate. The response they received was that superannuation is not an asset of the estate. And so it went to court.

The court agreed with the father's lawyers, ordering that the superannuation benefits form part of the estate, that the mother (having been granted Letters of Administration to deal with the estate) had a duty to maximise the value of the estate, and that her self interest in the superannuation benefits should not have come before her responsibilities as administrator.

By becoming an asset of the estate, the superannuation benefits were to be split between the mother and father.

The outcome of this case would have been different had James had a binding death benefit nomination in place for his superannuation in favour of his mother, and made a will naming his mother as executor. While these factors do not guarantee that the payment of superannuation benefits will not be contested (and there are a number of SMSF related cases that do), the measures will go a long way.

The top three things you must do:

1. Check your superannuation death benefit nominations - who is nominated and do you want them to receive your superannuation benefits if you die?
2. Review your will to make sure it is up to date for your current circumstances.
3. Check nominations for the legal representative of your estate and whether this nomination is current and appropriate.

If you need help structuring your assets and managing your superannuation, please call us today.

Quote of the month

"We cannot solve our problems with the same thinking we used when we created them."

Albert Einstein

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.