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Practice Update

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JULY 2007

Simpler Superannuation changes

The changes to superannuation, which start from 1 July 2007, include the following :

- ❑ taxpayers who have had tax paid on their super contributions (that's most workers) will pay no tax on their super payout after they turn 60, whether the amount is taken as a lump sum or as a superannuation pension;
- ❑ self-employed taxpayers can claim a full tax deduction for their super contributions, and may also be eligible for the Government Super Co-contribution scheme;
- ❑ "concessional contributions" (including employer contributions and deductible personal contributions) are generally capped at \$50,000 p.a. (although there are transitional arrangements for people aged 50 or over);
- ❑ "non-concessional contributions" (including undeducted personal contributions) are generally capped at \$150,000 p.a. (although there is a 'bring-forward' option under which people under 65 years of age can contribute up to \$450,000 over a three-year period);
- ❑ reasonable benefit limits are abolished;
- ❑ most employment termination payments (ETPs) will not be able to be rolled over into super;
- ❑ ETPs will be concessionally taxed up to a cap of \$140,000 for 2007/08 and will not be subject to tax on any tax-free component;

- ❑ treatment of death benefit ETPs will depend on whether they are made to a dependant or not, and how much is paid; and
- ❑ the maximum superannuation contribution base for superannuation guarantee (SGC) purposes for the 2007/08 year is \$36,470 per quarter (an employer is only required to contribute a maximum of 9% of this amount each quarter for each employee).

ATO focus on 2007 Tax Returns

The Tax Office has advised that it will be paying particular attention to the following in 2006/07:

- ◆ Capital gains from assets sold to contribute to superannuation;
- ◆ Capital returns on shares, and capital gains or losses on share buy-backs; and
- ◆ Work related expenses (WREs), including motor vehicles, self-education, home-office, and travel expenses.

Occupations targeted

Each year, the ATO selects a number of occupations for specific focus because they have above average WRE claims, a high number of WRE claimants or because the ratio of WRE claims is high compared to the salary and wages. For 2007, the ATO will focus on:

- tourism, travel consultants and guides;
- fitness and sporting industry employees;

- construction tradespeople who are employees;
- guards and security employees; and
- a continued focus on mining site employees.

Rental property deductions for 2007

In 2007 returns, the ATO will be looking at:

- renovations claimed as repairs – such as remodelling of bathrooms and kitchens;
- claiming too much interest on loans that have a private component;
- claiming the full cost of an inspection visit when it is combined with a private purpose;
- claiming deductions for properties only available for rent part of the year;
- claiming the cost of land as a capital works deduction; and
- claiming depreciation on assets such as fixtures, instead of capital works deductions.

Is a property really your main residence?

The main residence exemption is a valuable capital gains tax (CGT) concession, which can provide a full exemption from CGT on the amount received on the sale of a taxpayer's residence.

However, the taxpayer has to prove that the property was really their main residence.

A recent case shows how far the ATO will go to work out if a house really is a "main residence", because the ATO did not believe these particular taxpayers, and the case ended up before the Administrative Appeals Tribunal.

Through investigation and by the taxpayers' own testimony, the Tribunal found that:

- the only items that were moved into the house during the time they claimed it as their main residence were the main bedroom furniture, a TV, some casual chairs and table, some bar stools, a small amount of crockery and utensils, and some clothing and personal items;
- the taxpayers did not use the kitchen cooking facilities, choosing instead to use a portable gas cooking stove;
- there was no telephone installed;

- there were no clothes washing facilities;
- the electricity consumption was only about \$20 for February to April and from April to June; and
- they did not amend their address details with VicRoads, Centrelink, the electoral roll or insurance or banking institutions.

Therefore, the Tribunal held that the taxpayers were not eligible for the main residence exemption.

Double trouble for joint owners of shares

Two brothers, who jointly owned a block of 4,000 shares and decided to rearrange their shareholding for convenience, have found that to be a costly exercise, as CGT applied to two "disposals".

The brothers had been given 4,000 shares, and the shares were registered in their joint names.

In 2006, the brothers each executed a transfer to "restructure" their holdings, so that each brother would absolutely own half the shares.

While they contended that this restructure simply put the original intention of the gift into effect (i.e., that they would each have half of the shares) the restructure was a disposition and acquisition for CGT purposes.

Even though no money changed hands, each brother effectively sold 50% of their shareholding to the other brother, and had to pay CGT as if they had received the market value of the shares at that time.

Tax help for people affected by floods

The ATO has moved to assure people affected by the floods that they don't need to worry about their tax right now.

The Tax Office has offered to help by:

- ◆ fast tracking refunds;
- ◆ giving extra time to pay debts and meet BAS and other lodgment obligations – without interest charges or penalties;
- ◆ helping reconstruct tax records; and
- ◆ providing field officers to help reconcile lost records.

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.