Practice Update

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

SEPTEMBER 2013

The election is announced: It's almost over!!

Editor: I doubt this has escaped your notice, but we should report it nonetheless!

The Prime Minister, Kevin Rudd, visited the Governor-General on 4 August 2013 and Her Excellency accepted his advice that an election be held on Saturday 7 September.

Note: With the election being announced, the House of Representatives was dissolved at 5.30pm on 5 August 2013, and the Government moved into 'caretaker mode'.

The Government's Tax Plans

Some of the tax and superannuation policies the Government are taking to the election include:

- Terminating the fixed carbon price and bring forward the start date of emissions trading to 1 July 2014;
- Targeting the FBT exemption for car fringe benefits to actual business use (i.e., abolishing the 'statutory formula method');
- Staged increases to the rate of tobacco excise;
- Giving additional resources to the ATO to address ongoing levels of tax debt and unpaid superannuation; and
- Committing to make no major changes to superannuation tax policy for five-year periods commencing "immediately" (as at 31 July 2013).

Note, however, that the Government has decided to **defer the introduction of the $2,000 cap on work-related education expense deductions** until 1 July 2015.

The Coalition's Tax Plans

Some of the tax and superannuation policies the Coalition are taking to the election include:

- Reducing the company tax rate by 1.5% to a new rate of 28.5%;
- Expanding the paid parental leave scheme to provide working women their full salary for six months (*Editor: Note that they intend to partly fund this by a 1.5% levy to be imposed on businesses with taxable income exceeding $5 million, so their tax rate will effectively remain at 30%*);
- Reject Labor's $1.8 billion FBT "hit on cars";
- Defer by two years the increase in compulsory employer-funded superannuation;
- Protect the rights of independent contractors and the self-employed, and will not change current laws relating to the treatment of personal services income; and (of course)
- Abolish the carbon tax and mining tax.

Editor: Incidentally, the Australian Greens have proposed reducing the company tax rate for small businesses from 30% to 28% from 1 July 2014.

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.

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 (*Editor: Note that there are limited circumstances where the Commissioner may apply his powers of general administration 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).

Segregation of pension assets

Editor: The ATO has also recently released a document setting out their views on what a super fund needs to do to 'segregate' its pension assets and, therefore, ensure that income from those assets is exempt from tax, without the need to obtain an actuarial certificate.

Although the document is only a 'draft determination', it provides very practical guidance.

For example, it states that a superannuation fund will often require ***two separate bank accounts*** *in order to maintain one of them as a segregated bank account.*

That is, to properly segregate the bank account so that the fund won't need an actuarial certificate, a separate bank account will need to be held for the sole purpose of paying the pension, and another bank account may need to be held for other or general purposes.

If you would like advice about superannuation compliance and taxation advice generally, please contact our office.