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DECEMBER 2013 QTR NEWS LETTER

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HPS Tax Consulting Pty Ltd.
Main address: Suite 2 Level 1, 195-197 Thomas St, Dandenong, VIC 3175
Branch: 2/6 First Ave, Dandenong North, VIC 3175
Tel: (03) 8774 7509 Fax: (03) 9792 2642 Mob: 0433 729 333
Email: harish@hpsgroups.com.au.
www.hpsgroups.com.au

A. 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.”

B. 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

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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.

C. 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.

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D. 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**.

E. Taxi cents per kilometre rates

The current taxi cents per kilometre earnings rate (for the 2012 income year) is $1.27/km (up from $1.24/km for the 2011 income year).

This rate is the average amount of gross income earned by a taxi for the total kilometres travelled by the taxi in a year, including GST.

Taxi operators and drivers can use the rate to:

- compare their performance to the rest of the taxi industry; and
- check that their tax records accurately reflect their income.

The ATO also uses the cents per km rate where taxi operators or drivers do not have proper records.

F. 2013/14 CGT improvement threshold

For the 2013/14 income year, the improvement threshold is $136,884 (up from $134,200 for the 2012/13 income year).

This threshold is used for working out when a capital improvement to a pre-CGT asset is a separate asset and for capital improvements to CGT assets where a rollover may be available.

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G. Tax help for people affected by bushfires

The ATO has advised that refunds will be fast-tracked for people directly affected by bushfires, and they will have additional time to lodge income tax returns and activity statements due between October and December 2013 (the new lodgement date is 28 January 2014).

"You do not need to apply for a deferral or a faster refund if your business or residential address is in one of the identified affected postcodes. It will happen automatically. You can visit our website to see the new lodgement dates and check if your region is included," Tax Commissioner Chris Jordan said.

People outside of the identified postcodes that have been impacted by the disaster are still able to contact the ATO for assistance on 1800 806 218.

If taxpayers are experiencing any difficulties meeting their tax obligations, the ATO will make arrangements on a case-by-case basis.

"We understand that for many people their tax affairs are the last thing on their minds right now."

"When people are ready, we will make sure they are supported in dealing with their tax obligations."

The ATO can also provide more time for people to pay tax debts and can help reconstruct tax records where documents have been destroyed.

In addition, people donating up to $10 to 'bucket appeals' and other disaster relief funds this financial year will be able to claim a tax deduction without a receipt. For donations greater than $10, people should keep a receipt to substantiate their claim.

H. Tax changes under the new government

The new government has identified 92 announced but still unlegislated and unresolved tax and superannuation changes.

Of these, the government stated it will proceed with 18 initiatives, a further three initiatives will be significantly amended, and it will not proceed with seven initiatives. The remaining announced changes will be considered and, if required, the government intends that the bulk of any legislation that is to be progressed should be passed by Parliament by 1 July 2014.

Specifically, the government will **not** proceed with the following three measures which directly affect individual and business taxpayers:

- **Self-Education Expenses Cap** – the proposed $2,000 cap on the amount people would be able to deduct as self-education expenses, including training and educational courses, textbooks and other accreditation expenses.
- **Removal of the FBT Statutory Formula method for car fringe benefits.**
- **Tax on Superannuation Pensions** – proposed new tax on earnings on super assets, which would have taxed superannuation fund income above $100,000 in the draw-down phase.

The un-enacted measures the government **will** proceed with include:

- **Net Medical Expenses Tax Offset phase out** – the phasing out will allow current claimants to remain eligible for the offset until 2014/15.

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- **Increase FMD threshold** – increasing the non-primary production income eligibility threshold for Farm Management Deposits from $65,000 to $100,000.
- **Dividend washing** – preventing 'dividend washing' whereby sophisticated investors can 'double dip' on franking credits

I. Update on issues affecting SMSFs

ATO compliance

At a compliance level, the ATO says that it is focusing on:

- engaging with new trustees to ensure they can operate their SMSF and are not seeking illegal early access to their retirement benefits;
- ensuring that trustees understand their obligations and that, although their tax agent or accountant will assist trustees to meet their obligations, they themselves are the ones who are accountable;
- ensuring annual returns are lodged, and lodged on time (all SMSFs with two or more years of overdue lodgements will have their regulation details removed from Super Fund Lookup, potentially affecting rollovers from APRA funds, and employer contributions);
- for new funds, whether they are entitled to receive their notice of compliance;
- reviewing irregularities in exempt current pension income and non arm's-length transactions;
- re-reporting of contributions and compliance with excess contributions tax release authorities;
- arrangements involving holiday travel claimed as investment expenses by SMSF trustees; and
- every fund reported to it by approved SMSF auditors. The ATO wants to make those trustees more fully aware of their obligations and ensure the contraventions are dealt with appropriately.

Related party transactions

The breaches most commonly reported to the ATO by SMSF auditors are trustees investing in, or transacting with, related parties in breach of the rules. This can include providing a loan or other financial assistance to a member or relative, which is prohibited.

Further, it is also common when there is a 'loan' to a member that it doesn't meet the characteristics of a genuine loan anyway, and the member is simply accessing their super before they are entitled to.

ASIC warning to real estate industry

ASIC has warned the real estate industry that agents recommending investors use a SMSF to invest in property must ensure they are appropriately licensed to provide such advice.

Real estate agents may not realise they are providing 'financial product advice' and need an Australian financial services (AFS) licence when making recommendations or

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statements of opinion to a person to use an SMSF to invest in property.

Editor: Although this affects the real estate agents personally, it's obviously important for SMSF trustees in this situation to ensure they are receiving appropriate advice from a person qualified to do so.

J. ATO to target work-related expense claims

This year the ATO is paying particular attention to a range of industries and occupations including:

- building and construction project managers and supervisors;
- building and construction labourers; and
- sales and marketing managers.

The ATO says that it is also looking closely at:

- overnight travel expense claims; and
- claims for transporting bulky tools and equipment

K. ATO Data Matching Program

The ATO has advised that it will request and collect records relating to approximately 600,000 individuals receiving 'Carer Allowance' or 'Carer Allowance Healthcare Card Only' from the 'Department of Human Services – Centrelink program', to ensure that claims for the Dependent (invalid and carer) tax offset are being made correctly

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