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MARCH 2014 QTR NEWS LETTER

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

Car expense rates per km – 2013/14

The car expense rates per kilometre have been set for the 2013/14 year (and they have been increased for the first time since 2008/09).

Year	Small car	Medium car	Large car
2012/13	63c	74c	75c
2013/14	65c	76c	77c

Tax help for people affected by bushfires

The ATO has assured people directly affected by bushfires that their refunds will be fast tracked and that they will have additional time to lodge income tax returns and activity statements.

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

Editor: If you have been affected by bushfires or other natural disasters, contact us and we'll see what we can do for you with the ATO.

Donations
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.

Data Matching Programs

The Government has announced that it will request and collect information for the purposes of the following data matching programs.

Credit and Debit Card Data Matching Program
The ATO will request and collect data relating to credit and debit card sales of approximately 900,000 businesses for the periods from 1 July 2012 to 30 June 2014 from major banks and other financial institutions, including American Express and Diners Club Australia.

This data will be electronically matched with certain sections of ATO data holdings to help provide a more level playing field for those businesses which meet their obligations by identifying those who may not, for potential corrective action.

Injured Worker Data Matching Program
The Comcare Chief Executive Officer has announced that Comcare will request and collect from the ATO details of approximately 4,500 individuals who are currently

receiving, or have received, incapacity payments in relation to a Comcare workers' compensation claim for any period during the financial years 2009/10 through 2011/12.

Comcare will collect information reported by individuals to the ATO for each relevant financial year and utilise this information to ensure injured workers have received and continue to receive the correct level of entitlements from Comcare.

The importance of BDBNs

Two recent court cases dealing with self-managed superannuation funds (SMSFs) have highlighted the importance of making, and recognising, Binding Death Benefit Nominations (BDBNs).

Editor: A member of a superannuation fund may generally make a 'BDBN' which, if valid, requires the trustee of the fund to pay out their death benefits (i.e., after they die) exactly as set out in the BDBN.

In the first case, a member of an SMSF expressed a desire in her Will that her superannuation benefits be left to her children (and specifically not to her husband).

However, she did not make a BDBN, and the Supreme Court of Western Australia held that the preference in her Will did not affect the rights or duties of the trustee of the fund under the fund's trust deed. Consequently, the remaining trustee (i.e., the husband) had no obligation to appoint the deceased's executor as a trustee of the fund, and was also entitled to distribute the death benefits at his discretion, contrary to the direction in the deceased's Will.

In the second case, the deceased member of an SMSF **had** executed a BDBN in favour of his two children, but the trustees (basically the deceased's spouse and her son from a previous relationship) had wrongly believed that the BDBN was invalid and so had ignored it.

Nonetheless, the Supreme Court of Victoria held that the BDBN was valid and binding on the trustees of the SMSF, and ordered that **both** the current trustee of the fund **and** the deceased's spouse **personally** were liable to make payment of the full amount of the deceased's benefits as at the date of death, plus an interest component and costs, to the nominated beneficiaries under the BDBN.

Reminder: Lodging SMSF returns

To help prepare for lodgment, the ATO is reminding those with SMSFs that their fund's **audit report** needs to be completed before their SMSF annual return can be lodged.

This is especially important for new registrants (i.e., those SMSFs registered in the 2012/13 year), as their 2013 SMSF annual return is due on 28 February 2014.

Note that newly registered funds that did not have assets set aside for the benefit of their members and did not commence operating in their first year of registration may request a 'return not necessary' for their first year only.

However, funds that were set up in the 2012 year that have not yet set aside assets for the benefit of members, and have not operated, must have their registration **cancelled**.

ATO compliance: Taxable payments annual reports

The ATO has advised that it is phoning some businesses in the building and construction industry to:

- test the levels of understanding of the new reporting requirements for businesses in that industry; and
- help those businesses to comply with their taxable payments annual reporting obligations.

They have also been contacting them to:

- ensure lodged reports are correct and complete;
- follow up with businesses that have not yet lodged a report (where ATO records indicate they should have); and
- follow up with businesses who have advised that they are not required to report (where ATO records indicate they have a reporting requirement).

Editor: If your business is contacted, let us know.

Small Business Super Clearing House Reform

The Government has announced that the ATO will take over the running of the Small Business Superannuation Clearing House.

Editor: The Small Business Superannuation Clearing House is a free online service that helps small businesses with 19 or fewer employees meet their superannuation guarantee obligations by allowing employers to pay superannuation contributions in one transaction to a single location (currently administered by Medicare) to reduce red tape and compliance costs.

According to the Government, the ATO is best placed to increase the take up rate of the Clearing House, as they have access to data on who is eligible for this free service, and employers will be able to remit their compulsory superannuation payments directly to the ATO (which will then distribute contributions to individual accounts).

This move will be followed by an extensive consultation process so the Government can better understand superannuation compliance cost concerns and develop further options to reduce these costs.

High risk industries targeted for super obligations

The ATO has identified that employers in the following industries have a higher risk of not meeting their super obligations:

- hairdressing and beauty;
- clothing retailing; and
- management advice and consulting.

The ATO is currently running an education campaign for business owners in these industries to help them better understand their super obligations.

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Further, from July 2014, it will be undertaking audits of employers who continue to not meet super obligations for their employees – including:

- paying their minimum super contributions quarterly (or lodging an SGC statement);
- offering employees (and some contractors) a choice of fund;
- keeping accurate records; and
- passing on an employee's TFN to their super fund as required.

Contractor/Council data matching program

The ATO has advised that it will acquire details of approximately 20,500 individuals providing contractor services to local government authorities in the 2010/11 and 2011/12 financial years from various local government Council and Shire authorities throughout:

- Queensland;
- Tasmania;
- New South Wales; and
- Victoria.

These will be electronically matched with certain sections of ATO data holdings to identify non-compliance with lodgment and payment obligations under taxation law.

Vineyard scheme promoters penalised

The Federal Court has fined a company running a managed investment scheme, and its directors, more than $1 million for breaching the promoter penalty provisions of the *Taxation Administration Act*.

The Court awarded civil penalties to the ATO against Barossa Vines Limited (and its four directors) because they failed to carry out their wine grape growing activities in accordance with the agreed terms of their product ruling.

ATO Deputy Commissioner Tim Dyce said, "We issue product rulings to give investors certainty about the tax consequences of their investment. However, the scheme must be implemented as it was described.

"As we discovered, this was not the case and the promoters' actions had unfortunate consequences for investors, whose deductions were disallowed."

In delivering the judgment, Justice Besanko said, "these are significant contraventions… The failure to heed the warnings of the viticultural experts and others and to check on the progress of the [grape vine] rootlings mean, to my mind, that the respondents were prepared to put their own commercial interests ahead of their important obligations to investors."

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The ATO, TFNs and Australia Post

The ATO has announced that red tape affecting Tax File Number (TFN) applications has been removed thanks to a partnership between the ATO and Australia Post.

TFN applications are now simpler and easier, as they can now be applied for online at *www.ato.gov.au/TFNapply* and a printout of the application summary can then be verified at one of the 460-odd Australia Post retail outlets throughout the country.

Additional services also now available at Australia Post include updating a date of birth on a taxpayer's ATO record and providing notification of a deceased person.

Parents and guardians can also apply for a TFN on behalf of their children.

ATO encouraging women to put more into super

The ATO is encouraging women to take an active interest in their superannuation to help overcome the retirement savings shortfall many are currently experiencing, saying "It's never too late".

Assistant Commissioner Megan Yong said, "On average, Australian women currently retire with super account balances of just $112,600.

"That's much less than the amount a single woman needs for a $40,000 a year retirement income, which is at the lower end of the 'what's adequate' scale.

"It surprises a lot of people that putting the equivalent cost of one cup of coffee a day into your super can add up to an extra $128,000 when you retire*."

(*) This is based on a 30 year old woman investing $3.80 per day into a moderate fund and assuming 5% growth over a 35 year period.

Ms Yong encourages women to go online to *ato.gov.au/5stepsuper* and complete the ATO's 5-step super check.

Super update from the ATO

Some SMSF statistics

As at 30 September 2013, there were over 516,000 SMSFs holding around $531 billion in assets.

Although SMSFs are nearing one million SMSF members (980,000), or 8% of the 11.6 million members of Australian super funds, they account for 31% of the $1.6 trillion total super assets as at 30 June 2013.

Common problems and ATO audit action

The top contraventions reported to the ATO on auditor contravention reports relate to:

- loans;
- borrowings;
- a lack of separation of assets;
- in-house assets;

- not investing at arm's length;
- making acquisitions from related parties; and
- sole purpose breaches.

This year the ATO will review every fund reported to it by approved SMSF auditors.

In 2012/13, the ATO's audits:

- made 150 funds non-complying; and
- disqualified 440 people from being a trustee.

New ATO powers and penalties

The government has announced that, from 1 July 2014, administrative penalties will apply to breaches of the super laws (note that this is still just proposed law at this stage).

If the proposed legislation is adopted, SMSF trustees will be personally liable for penalties between $850 and $10,200, depending on the provision contravened.

As trustees will become **personally** liable for these new penalties, they cannot use the resources of the fund to pay the penalty.

While the start date is 1 July 2014, it should be appreciated that contraventions, such as loans to members or relatives, still existing on that date will come under the new penalty regime.

The ATO says the message for SMSF trustees is clear: "Rectify any contraventions as soon as possible or be liable for a penalty."

Editor: If you're unsure about anything to do with your superannuation please contact our office.

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