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1. READER QUESTION

A new client has contacted us. They have brought to our attention their self-managed superannuation fund.

The SMSF had a trustee company "Something Pty Ltd".

"Something Pty Ltd" was an operating company that ran a shop.

'Something Pty Ltd" went into liquidation was liquidated and has been wound up quite some time ago circa 4 years.

The Superannuation fund has a property in it, 500 acres of farm land worth $650,000.

There is no debt and the members pay the rates on the property each quarter.

The trust deed is unable to be located.

Where should we start in remedying this situation? Given that the SMSF has no trustee.

ANSWER

Given there is property title and potential conveyancing issues along with trust law and SISA compliance issues, there is no quick fix.

The services of a reputable law firm with expertise in all the above areas will be required.

Clearly the SMSF is well behind in its lodgements – otherwise the independent auditor would have picked this up.... along with missing deed.

A new trustee will need to be chosen by the members and a corporate trustee is recommended.

A trust deed of variation will need to be done for the SMSF ... trust deed or no trust deed – you could check with the bank and/or last known SMSF auditor to see if they have a copy.

We suspect a raft of compliance issues will come into play when the SMSF's compliance obligations are being updated.

These will not be limited to:

- the trustee issue
- possible investment standards
- in-house/personal use assets
- sole purpose test

Steps need to be taken to get this SMSF into compliance mode as soon as possible and it cannot be done on the cheap – some professional fees will be involved.

2. READER QUESTION

I just wanted clarification on the latest company tax rate changes down from 30% to 27.5%.

In relation to the franking account do we now have to go back and re-calculate the company's franking account as we had to do many years ago when the company tax rate had gone down from 34% to 30%?

I am not too sure if the Legislation is retro or just effects the franking account from 1 July 2016.

Could you please clarify?

ANSWER

We refer you to draft Practical Compliance Guideline PCG 2017/D7 published by the ATO.

Nothing contained therein indicates that the franking account balances need to be altered.

The key change is that since 1.7.2016 dividends are only allowed to be franked to 27.5%.

In the event shareholders of small companies (less than $10 million) have received dividend statements since 1 July 2016, then they need to be sent amended advices, advising that their dividends are only franked to 27.5%

3. READER QUESTION

Can the costs of obtaining probate for a deceased estate be claimed against the Capital Gain of a property if the asset being sold was the only asset transferred to the beneficiaries through the Will?

ANSWER

The cost of obtaining probate may be included in the fifth element of the cost base of the property. The cost base of a CGT asset consists of five elements. The fifth element is capital expenditure that you incurred to establish, preserve or defend your title to the asset. The cost of obtaining probate may be characterised as title establishment expenditure.

You may wish to apply for a private ruling.

We note that the cost of obtaining a simple probate would not be significant.

However in our research we came across two interpretative decisions which indicate that where there is a dispute over control of the Estate that legal costs may be added to the cost base.

Of course this is where significant costs may be incurred.

We recommend you review ATO ID 2001/730 and ATO ID 2004/425.

4. READER QUESTION

We have two clients Mr. A & Mrs. B (husband and wife). On the 1st January they decide to live separately. On the 30th April the divorce is granted by the Court. As part of the divorce settlement, Mrs. B keeps the family home. Mrs. B decides to sell the family home. Can Mr. A's SMSF purchase the house? I don't see that Mr. A's SMSF is not able to purchase the property. We think that after the divorce Mr. A & Mrs. B are not associates, could you please confirm? Is there anything else we need to consider?

ANSWER

It's a really good Question but too close to the line for comfort.

First of all you would have to clear the 'associate' issue and we would recommend an application for private ruling in this instance fully explaining why this purchase was consistent with the SMSF's investment strategy SISR s52(2).

In the event your client had his children living in the dwelling at any time then it would be an in-house asset. In the unlikely event these hurdles could be overcome, then market value would have to be paid for the building and this would have to be demonstrated to the satisfaction of the Auditor of the SMSF.

5. READER QUESTION

Scenario: A couple have taken out a mortgage on their house to lend those funds (approximately $250,000) to the business of a relative (Business A), and deduct the interest they pay to the bank from their tax, as they receive interest from the business. Due to a restructure, they want to transfer these loan funds to another family business (but legally separate) (Business B). Business B actually owes money to Business A. Business A wants to repay the couple, so they can put their loan account down to $0, before they transfer the funds to Business B; however Business A does not have sufficient funds to do this ($250,000).

Would there be a problem with the 2 businesses doing general journals to reflect the change in the funds? And, is there a problem with the couple then claiming interest incurred in loaning the funds to Business B, considering there was no literal cash transfer of funds (it was all on paper/journals)?

The journals I envisaged were: Business A: Debit Loan account from the Couple Credit Loan account to Business B (i.e. reducing the amount Business B owes Business A). Business B: Debit Loan account from Business A (i.e. reducing the amount owing to Business A) Credit Loan account from the couple.

ANSWER

The fundamental test for deductibility of interest as consistently applied by the Courts is the "use" Test i.e. the use to which the funds have been put.

So only by the proper tracing of the application of the funding can you determine its tax deductibility. By this, whether the loan was used for working capital in a business or to purchase an income producing asset.

Securitisation or presentation in the balance sheets of particular entities is irrelevant. So by a strict interpretation of the relevant case law you could run into trouble by simply doing journals.

6. READER QUESTION

In GST Concession one is non-commercial event. The sale is GST-free if the amount charged is either of the following: less than 75% of the amount the registered charity, gift deductible entity or government school paid to purchase the item that is subsequently sold. My Question is what can be defined as purchase? We are growing seedlings and sell. Can we count in the wages paid to staff to grow the seedlings? Can we count the rental of the nursery, water, electricity etc?

ANSWER

Non-commercial activities

The commercial activities of a registered charity, gift deductible entity or government school are taxable but the non-commercial activities of these organisations can be GST free.

This means that, if it is registered for GST, the registered charity, gift deductible entity or government school does not pay GST on the payment it receives for its non-commercial sales, and it can claim GST credits for the GST included in the price of purchases it uses to make these sales.

The term 'non-commercial activities' refers to sales made when the payment received for the sale is less than a specified amount. The sale is GST-free if the amount charged is either of the following:

Less than 50% of the GST-inclusive market value

Less than 75% of the amount the registered charity, gift deductible entity or government school paid to purchase the item that is subsequently sold.

Your Question relates to Section 38-250 of A New Tax System (Goods and Services Tax) Act 1999. You seek interpretation of subparagraph 38-250(2)(b)(ii) which provides 'if the supply is not a supply of accommodation – is less than 75% of the consideration the supplier provided, or was liable to provide, for acquiring the thing supplied.'

It is possible to interpret subparagraph 38-250(2)(b)(ii) narrowly such that it only applies where the thing acquired is identical to thing supplied. However, the Commissioner has a long standing view the subparagraph 38-250(2)(b)(ii) can apply to any sort of supply other than accommodation, and that it is not a requirement for the thing acquired to be identical to the thing supplied.

Accordingly, the word 'acquiring' in the phrase 'acquiring the thing supplied' is interpreted as including acquisitions of things that are on-supplied, the acquisition of those things used up in providing services or manufacture and acquisitions of things that are 'used' in combination in making a supply of something else.

The charities consultative committee resolved issues document (CCCRID) states:

When working out the cost of providing something, a charity should include:

All direct costs incurred – for example, materials and direct labour; and

A reasonable apportionment of indirect costs incurred – for example marketing, administration, office expenses, electricity, telephone and insurance.

We refer you to the section titled Non-commercial activities of charities, cost of supply and market value tests. It provides a methodology for working out the cost of providing a supply for the purpose of subparagraph 38-250(2)(b)(ii).

7. READER QUESTION

I work for a charity and have access to Fringe Benefits Tax Exemption which is taken out fortnightly and put on to my home loan. I was wondering on top of this can I also Salary Sacrifice into my Superannuation or get a car on

a lease. If I am allowed to Salary Sacrifice is there a cut off amount per year that I am allowed to utilise?

ANSWER

Yes, speak to your employer for limits and we refer you to page 85 of the 2016 Publication:

Capping of concessional FBT treatment for certain employers:

Employer	**FBT Concession**
Public benevolent institution (other than public hospitals) and health promotion charities	FBT exemption (capped at $31,177)
Public hospitals, non-profit hospitals and public ambulance services	FBT exemption (capped at $17,667)
Rebatable employers – certain non-government and non-profit organisations	FBT rebate (capped at $31,177)
Religious institutions	FBT rebate (capped at $31,177)

Note this incurs the mark-up factor of 2.1463 (type 1 benefits) and 1.9608 (type 2 benefits). Superannuation is not included in the above limits.

8. READER QUESTION

My electrical business operates as a trust. I am showing a gross profit of $2 million and a net profit of $1.2 million. In addition to the standard run of the mill deductions which I am already claiming, what mechanisms are there to defer 50% of this profit until next year? Can the trust invest in shares?

ANSWER

Given your trust has a gross profit of $2 million, it is clear that the business is not a small business entity.

Investing in shares prior to 30.06.2016 is a capital outlay which will not reduce tax – you need tax deductions.

The following are suggestions **prior to 30.06.2016**:

- Maximise super for yourself and family members working the business – either $30,000 or $35,000 (if over 50).
- Choose the best method to value (low) stock on hand in order to increase cost of goods sold – see our annual publication page 87.
- Stock up on consumables you will require in the coming year.
- Write off and discard obsolete items of plant.
- Write off bad debts in books of accounts – refer to Supplementary Bonus on our website "Year End Tax Planning".
- Delay revenue into the next financial year if you use accrual accounting system.
- Bring forward expenses into this financial year. Care should be taken to ensure that any actions do not breach the tax anti-avoidance rules and tax prepayment rules.

9. READER QUESTION

We deal with the Australian Agent of a Singapore based company. We invoice the Australian agent who is registered for GST. The parent company (Singapore) has asked if we can invoice them direct to avoid GST. Is this correct? We still deal with the Australian Agent but invoice the Singapore entity. All work is

completed domestically by an Australian based business and is registered or GST.

ANSWER

There will only be no GST if you genuinely do work for the Singaporean Company and it is not a supply in connection with Australia. That means the product or service will be used in Singapore. If that is the case it will be classified as an export.

However, if the work is domestically based then you should charge GST.

10. READER QUESTION

I am a Senior. I am a self-funded pensioner. Bonus issue #85 page 34, suggests I should be able to earn up to $29,000 per year tax free from interest, rents or other sources. I earn income including from interest and rents but I do not get any offset. I went to ATO website and it told me I wasn't entitled to the offset. It didn't ask how much I earnt. Please tell me what could be the reason for this conclusion.

ANSWER

If your taxable income is $29,000 then here is your tax position:

Taxable Income	$29,000
Tax thereon	$ 2,052
Medicare Levy	$ 580
Total Tax	$ 2,632
Less tax offsets	
Senior Australians and	
Pensions Tax Offset	$ 2,230
Low Income Tax Offset	$ 445
Tax Payable	Nil

Kindly, note tax offsets do not result in refunds.

Your circumstances may be that your taxable income is much higher than $29,000.

When we said "earn up to $29,000" we were referring to your taxable income. We are sorry if this was not clear.

11. READER QUESTION

Is there any template for the Division 7A Agreement?

ANSWER

Be very careful with templates as they may become outdated. Speak to your Accountant or Lawyer to ensure any document you use complies in all respects.

There are documents that may be purchased such as on the Law Central website but tread very carefully as this is an area of ATO focus.

12. READER QUESTION

Would you please clarify the tax position of a home you buy to own and use occasionally but never rent out, if you mainly live at another location where you pay rent. For example, you buy and own only one house, say outside of a city, but you pay rent to live in a city apartment close to family for the majority of your time.

ANSWER

You cannot claim a tax deduction on your city apartment if the use is private and domestic in nature.

However for CGT purposes, you may add to the cost base of the asset ownership expenses you incur for which you do not claim a tax deduction.

These include (but are not limited to) insurance, interest, rates and taxes and repairs.

You may be eligible for capital gain tax main residence exemption as the property has never been used to produce income. You should speak to your accountant before you sell the property. Note, that at any one time you may only have one principal place of residence.

13. READER QUESTION

When calculating private kilometres for residual benefit in relation to a utility, are we able to use our best 3 months Business % (from a logbook) against total kilometres to work out the private kilometres travelled during the year? Or, do we have to record the actual private kilometres travelled? When using the cents per kilometre method.

ANSWER

We would refer you to Miscellaneous Tax Ruling MT 2034 which gives guidance along with an example of an employee declaration regarding private kms.

Paragraph 23 of the ruling states 'As noted in paragraph 13, the appropriate reduction factor is the proportion of business kilometres travelled to total kilometres travelled in the vehicle DURING THE YEAR.

Paragraph 27 states 'Detailed logbook requirements of the kind specified for the determination of the value of car benefits are not required by law in the case of vehicles other than cars. However, many businesses would in any event, maintain some form of logbook records…'

In the event you had chosen to keep a logbook for 12 consecutive weeks (3 months), you could have estimated the business kilometres over the whole year. You must consider any variation in pattern of use. For instance, large private travel over the Easter holidays must be taken into account in estimating business kilometres travelled for the whole year.

Paragraph 15 of the ruling indicates that the ATO accepts the use of the utility will be overwhelmingly business.

The onus is on the employee to keep records or make reasonable estimates as they will be signing the declaration.

The short answer though is that if you have the actual kms then you must use them.

14. READER QUESTION

Super Stream. We're a small company with 9 employees. Super Guarantee contributions paid monthly in various Super Accounts direct via Bpay or EFT. Using Reckon Accounts Software. I can send the Super File via my business portal; can I continue to pay the contributions myself instead of using a Clearing House? I believe the Bpay & EFT method is far quicker & more accurate than the Clearing House. Can someone please advise?

ANSWER

SuperStream requires you to pay super and send employee information electronically and there are four options available to achieve this:

- A payroll system that meets the SuperStream standard (current versions or Sage One, MYOB, Reckon & Xero are SuperStream ready)
- Your super fund's online system
- A super clearing house (including the ATO's free Small Business Super Clearing House – for businesses with fewer than 19 employees).
- A messaging portal

Please note that you do not need to use SuperStream for:

- Contributions to your own self-managed super fund (SMSF) (i.e. if you're a related-party employer – for example, if you're an employee of your family business and your super guarantee contributions go to your SMSF), or
- Personal contributions – for example, if you're a sole trader and you contribute to a super fund for yourself.

15. READER QUESTION

I have recently inherited a payroll system run via MYOB that appears not to capture the correct Superannuation Contribution Guarantee for some of staff.

Under the relevant award, staff who work a Saturday or Sunday as part of their ordinary 38

hour week should meet the definition of OTE and get super for their respective Saturday or Sunday work. I have identified how to get this working correctly and can see how this has been impacted in the 2015/2016 financial year, so I can run calculations to see how much superannuation contributions are short for each employee.

The real Question I have is when did the new definition of OTE come into effect?

The other question, potentially how far back would be reasonable to go back and substantiate previous year contributions that may have been impacted? The difficult part of this task is that once our payroll system and financial year rolls over, visibility to run previous year reports is only possible by accessing back-up files.

Your clarification in this matter is appreciated.

ANSWER

The relevant ruling is Superannuation Guarantee Ruling SGR 2009/2.

Further guidelines on how to calculate SG Contributions for drivers in the transport industry can be found in ATO Fact Sheet" Super for long distance drivers".

I have perused its history and the Ruling itself has not changed since 1 July 2008.

What may have changed are various industrial and workplace agreements.

However if a person's standard hours included some weekend work (i.e. shift workers), then they were always to the Superannuation Guarantee for that work.

It is possible that some worker entitlements may have been overlooked.

16. READER QUESTION

Income received from a private Canadian pension income code 46, what offsets are available on 2015 ITR? The items do not state a UPP. They have paid tax to Canada.

Basically, how to claim on the tax return?

ANSWER

These overseas pensions can be a minefield and we note that concessions available to domestic pensions generally do not exist for overseas pensions.

With enhanced data matching the ATO is now detecting these and this will further increase from 1 July 2017.

The Canadian pension will be assessable income in Australia with a tax credit available for any tax paid in Canada.

Net foreign pension without UPP is reported under 20L and net foreign pension with UPP is reported under 20D.

You will need to work out foreign income tax offset and report it in item 20O. We refer you to ATO guideline "Guide to Foreign Income Tax Offset Rules (NAT 72923)".

17. READER QUESTION

My client purchased a house in 2012 with the intention to live in. However, after the settlement, he had to rent it out for 3 months because the owner of the house could not find another place. After that he moved in and lives there until now. This year, he wants to sub-divide the land and build another property at the back of the current property. When the building is completed, he will move into the new house and sell the old one. Will there be CGT on the sale of the old property? If yes, how will it be calculated?

ANSWER

There will be CGT on the sale of the residence.

This will be calculated on the number of days.

For instance 3 months would be 92 days divided by 1460 days (4 years)…divided by 50% for the CGT discount.

An adjustment needs to be done for the market value of the land retained by your client.

So say the capital gains was $100,000 the taxable capital gain is:

92 divided by 1460 times 50% times 100k = $3,150.

18. READER QUESTION

I have an associate who is paid via our payroll. He has just resigned with a positive account balance. He has set up a new company and wants me to pay this balance on invoice to the new company rather than through our payroll system. Is this legitimate?

ANSWER

No, if the entitlements relate to his time as an employee or his work as individual on an ABN, it is best that he be paid according to what actually transpired.

If the engagement was with an individual, it is not wise for either party to change it after the event.

The ATO takes a dim view of situations where a taxpayer is an individual on wages Friday afternoon but an independent company the following Monday morning.

19. READER QUESTION

I have clients who have purchased off the plan an apartment for rent in Bali, August 2014.

The loan was secured in the 2014/15 financial year and so to date not generated any income. It is anticipated it will start earning a rental income in the current financial year 2016/17.

The client wants to claim the loan interest in both the 2015 and 2016 tax returns. My understanding is the lead time between purchase and completion of the apartment is too long.

The client's intent is that it has been from date of purchase a rental property.

The two scenarios' I see is as follows:

Tax Office allows the interest for both years as a deduction

The interest for both years is capitalised and forms part of the cost base for any future Capital Gains.

ANSWER

Interest is deductible to the extent to which it is incurred in gaining or producing assessable income and is not of a capital, private or domestic nature. It seems that the courts have looked at the purpose of the borrowing and the use to which the borrowed moneys have been put in determining the deductibility of interest.

The lead time may not be too great – it is more a Question of fact - you need a timeline of when the apartment was completed.

Was it immediately made available for rent?

Does evidence exists for this?

If not…why not

Note, that in the event the client has stayed there the private portion has to be adjusted.

The client must be truthful as this has the look of a holiday home and it is very easy for the ATO to check immigration/passport records.

It is not necessary to show that the interest was incurred in producing income of a particular year, though a large gap may indicate that the necessary connection does not exist. The court examined the 'connection' with income of later years in Steel's case (Steele 97 ATC 4239).

In addition, the Commissioner limits the operation of Steel's case to circumstances where:

The interest is not preliminary to the income producing activities. In other words, it is not incurred too soon.

The interest is not of a private or domestic nature

The period prior to the derivation of income is not so long that the required connection between the outgoings and income is lost (TR 2004/4).

Similarly, interest was deductible where the taxpayer purchased the property with the intention of deriving rental income, even though no income was ever derived (Ormiston v FC of T 2005 ATC 2340).

You may want to seek a private ruling in which the Commissioner could affirm whether the lead time is too long that the necessary connection between interest expenses and income is lost.

20. READER QUESTION

We are a transport company that also, as part of our business, leases out a commercial shed to a bus company.

We are in the process of selling the shed and believe that we do not have to charge GST on the sale (being a going concern), to another business that will be using it for commercial purposes. Are we correct?

ANSWER

This is only a commercial property if the shed is business real property that has a separate land title.

In the event this is the case…is there a current lease in place with the bus company?

If answer is yes to both questions then it is likely that this is a going concern but we do not have the full facts and circumstances before us and suggest you confirm this matter with your lawyer.

21. READER QUESTION

If two entities each purchase a half share of an asset costing $35,000, can each claim their share outright as it is less than $20,000? Or, does the immediate write-off only apply if the total cost of the assets is less than $20,000.

ANSWER

No, in all likelihood the two entities you refer to are related and the anti-avoidance provisions contemplate this.

The reference is to "artificial or contrived arrangements." In this case one entity would be using the asset and in any case the $20,000 limit has been breached.

22. READER QUESTION

We would like to obtain an ABN for a business unit (division) of our company.

The Company has its own ABN, but we would like to obtain an ABN for the activities and transactions undertaken by the business unit/division. Is this possible?

ANSWER

You can only have one ABN per legal entity. A subsidiary company may have its own ABN but clearly…it is a separate entity.

23. READER QUESTION

Your Taxation Summary Guide indicates that Gifts are generally not taxable. The ATO website appears to indicate that 'Large' Gifts may be taxable. Has the definition of 'Large' been established and what dollar gift may we give to our children without impacting their tax?

ANSWER

A gift through family dealings – "natural love and affection" has no tax implications. For Centrelink purposes there may be implications (for the Assets Test) particularly if the donor is seeking the age pension.

For Centrelink purposes gifts beyond allowable limits are considered 'deprived assets' which are asset tested for five years and are subject to the deeming rules.

Two tests apply when gifting assets:

Clients may gift up to $10,000 per financial year.

A limit of $30,000 over a rolling five-year period applies.

The extent to which Centrelink will treat a gift as a deprived asset depends on the value of

financial gifts made in any one financial year (rule 1) plus the value of any financial gifts made in any one financial year (rule 2). To prevent double counting, the rules then make an adjustment for financial gifts that are already being treated as a deprived asset.

24. READER QUESTION

We have a Question in relation to ETPs.

Back in 2014/15 our organisation made an existing position partially redundant (0.2 FTE). At the time, we believed this qualified as a genuine redundancy and proceeded to pay the employee a redundancy payment and a payment in lieu of notice under lump sum D. We now know that this partial redundancy is not a genuine redundancy. In order to revise the employees payment summary for 2014/15, our Question is, which category does an ETP non genuine redundancy go under? Is it lump sum E?

ANSWER

This payment was made in a prior year.

Lump Sum E is a payment made in the current year that relates to a prior year.

As such it should not be used. If this is not a valid redundancy, this in effect becomes a gratuity (code o) that is fully assessable.

Please note unused leave payments are not employee termination payments. They should be reported at Lump Sum A or B on PAYG Payment Summary – Individual Non-Business.

You should issue a "PAYG payment summary – employment termination payment" using the correct code (o) and tell the ex-staff member that he will need to prepare an amended tax return for 2015.

25. READER QUESTION

Expenses spent on a Private House before it was rented out. Are these fully deductible, depreciable etc. if the home was a private residence for over 60 years prior to it being renovated for rental purposes?

Expenses incurred:

- *New electrical wiring in whole of house*
- *Repairs to part of driveway (due to tree roots etc.)*
- *Painting inside the home in full*
- *Steam clean tiled roof and re-cement in small areas*
- *Steam clean inside carpets*
- *Repairs to shower glass in door*
- *Remove rubbish sheds, trees, plants in whole yard*
- *Repairs to sliding door tracks inside and fly wire netting on outside sliding doors*
- *New ceiling lights throughout home*
- *Cost of airfare, taxi and bus fares interstate to organise these repairs and also do some small repairs myself – over 9 month period.*
- *Many other smaller expenses to bring the private home up to rental condition – these done myself.*

ANSWER

We refer you to example 16 paragraph 182 Taxation Ruling TR97/23.

These are capital expenses and are not a tax deduction.

When the costs were incurred, you were NOT holding or using the house to produce rental income. The costs are an expense in preparing the house for producing rent.

They are of a capital nature. We would recommend a quantity surveyor be engaged to produce a depreciation schedule for you. Depreciation could be claimed on some of this expenditure.

26. READER QUESTION

I have consulted with a prospective client who trades with purchasing second hand goods. Could you please clarify the GST implications that apply to a pawn shop? Additionally, any specific provision that would relate to a pawn shop e.g. sales, GST purchases, and goods bought from individuals. This would help to clarify if the past entries require an adjustment.

ANSWER

The term 'second-hand' means 'previously used' or 'not new.'

From a Pawn Brokers view point it is important to note second-hand goods do not include the following:

- Precious metal,
- Goods to the extent that they consist of gold, silver, platinum or any other substance which, if it were of the required fineness, would be precious metal,
- Animals or plants.

You may use either the accounts method or the calculation worksheet method to complete the relevant GST boxes on your activity statement for the reporting period.

The amounts you report on your activity statement will depend on the accounting basis you have chosen or are otherwise required or permitted to use.

You can account on a cash basis or a non-cash basis.

You should report sales and purchases of second-hand goods on your activity statement in accordance with the instructions at GST – completing your activity statement (NAT 7392). We have sent our subscriber a copy of this.

You can claim GST credits for your purchases of second-hand goods even if the price you paid did not include GST. You can do this for second-hand goods that you purchase for resale from sellers who do not charge GST in the price of the goods.

There are two ways to calculate these GST credits:

- Direct approach
- Global accounting method

The system you use depends on whether you sell the second-hand goods as single items, or divide them into separate parts.

In your case given that some purchases may not qualify as second hand goods.

27. READER QUESTION

Corporate boxes/corporate events (i.e. golf day) and travelling employees - can I please confirm that travelling employees are not exempt from FBT for either of the above examples?

ANSWER

Travelling employees are not exempt from FBT but you could consider if the minor and infrequent benefits of less than $300 applies.

28. READER QUESTION

Can an employee salary sacrifice their tool allowance to purchase tools used at work?

ANSWER

Tools of trade are regarded as work-related and are specified as exempt fringe benefit. Cleary, exempt benefits are the most tax effective benefits to package. Packaging does not provide a further tax benefit as you have already saved income tax on salary forgone. However it provides cash flow benefits if you do not salary sacrifice your tools of trade.

Effectively that is what happens...the employer pays an assessable tool allowance which is subject to pay as you go tax.

If the employee requires tools he then makes a purchase and claims an outright tax deduction if the time is less than $300. If more than $300 then depreciation applies.

29. READER QUESTION

Can an employee cash in Long Service Leave?

ANSWER

Cashing out annual leave means an employee receives payment instead of taking time off work.

Annual leave can only be cashed out when an award or registered agreement (http://fairwork.gov.au/Dictionary.aspx?TermID=2034) allows it.

Cashing out annual leave under a registered agreement

If you're covered by a registered agreement, check it for information on whether leave can be cashed out. To find a registered agreement, go to the Fair Work Commission Website (https://www.fwc.gov.au/awards-and-agreements).

Certain rules apply when cashing out annual leave:

- An employee needs to have at least 4 weeks annual leave leftover.
- A written agreement needs to be made each time annual leave is cashed out
- An employer can't force or pressure an employee to cash out annual leave
- The payment for cashed out annual leave has to be the same as what the employee would have paid if they took the leave.

It is suggested that in practice LSL can be cashed out by mutual consent but I would check the relevant award.

30. READER QUESTION

It is about working holiday maker's tax arrangement. ATO recently stated a 19 per cent tax rate started from 01/01/2017. Could you tell me on which tax rates can be applied for them for the period between 01/07/2016 and 31/12/2016?

ANSWER

Normal resident tax rates applied to those on holiday visas who spend more than 6 months here between 01/07/2016 and 31/12/2016.

As you can imagine it is possible that in some cases residency tests were not met but by the time it came to the ATO's attention (if at all) the person concerned had left Australia.

31. READER QUESTION

Our client resigned from his job on the 1st August 2016, his shares in the company who employed him were then sold. The shares are valued on the 1st April every year. The Company has stated the "sale date" on the share valuation as at 1 April 2016. We feel the capital gain event occurred on the 1st August when he resigned so should be included in the 2017 tax return. Please confirm our thoughts on this.

The proceeds from the above sale will be distributed to the client over 20 quarterly payments. As the company is based in New Zealand the payments will be dependent on the exchange rate at the time of payment. Should the capital gain be calculated at the 1 August 2016 and paid with the 2017 tax return in its entirety or should the capital gain be calculated every quarter and paid over five years? Your answer to the above two questions will be greatly appreciated.

ANSWER

Subsection 83A 115(4) states that the deferred taxing point for shares is the earliest of when:

- There is no real risk that the employee will lose the share under the conditions of the scheme, other than by disposing of it and there are no restrictions preventing the disposal or;
- The employee ceases the employment in respect of which they acquire the share or;
- 15 years after the employee acquired the share.

In your case, it seems that the deferred taxing point is 1 August 2016.

No, the CGT event (to be confirmed) occurs on 1.08.2016 and the liability is crystallised on that date. The taxpayer is assessable in full in the year ended 30 June 2017. The 4X gain or loss is a separate matter.

Another thought…1.4.2016 is the first day of the NZ tax year which ends 31st March.

Possibly that's why that date was used. It still is in the correct NZ tax year, but certainly brings the taxing point forward for an Australian tax resident.

32. READER QUESTION

Could you please advise whether an individual or trust claims depreciation and loan interest paid where a vehicle is owned by an individual, however the business is operated through a trust. Reference to rulings would also be appreciated.

ANSWER

As the legal owner the individual will claim these motor vehicle expenses subject to the business use...but will reduce the claim by the amount of reimbursement from the employer.

We note that depreciation is a non cash out going.

The employer claims a full tax deduction but for the interest is subject to Fringe Benefits Tax (FBT) as an "expense payment fringe benefit." This FBT is reduced under the "otherwise deductible rule." So if the business portion was 80% then the FBT liability would also be reduced by 80%.

33. READER QUESTION

In June 1985 we agreed with a commercial company to buy a vacant block and build a warehouse upon it to their specific requirements and lease it to them upon completion. On 3/07/1985 we signed a contract for the land. On 05/07/1985 the company gave to us their "Letter of Intent" to lease and on 21/08/1985 they paid deposit into our solicitor's trust account as acknowledgement of their intention to sign lease upon completion of warehouse construction. Between 03/07/1985 and 30/10/1985 we proceeded with engaging an architect to draw plans, lodge at council and await approvals. Actual construction i.e. digging of foundations commenced early November '85. We are now wishing to sell this property and would like to know if there would be CGT on the building component. The agreement to buy land, and lease to that company had commenced before 20/09/1985.

ANSWER

This is what the ATO says,

Building and structure on land acquired before 20.09.1985:

A building or structure on land that you acquired before 20.09.1985 is a separate asset if you entered into a contact for the:

- Construction of the building or structure on or after that date or;
- There is no date for its construction – construction began on or after that date.

Your only chance is if the "letter of intent" could be construed to be a construction contract. We think not but you may wish to apply for a private ruling.

34. READER QUESTION

Are education institutions able to claim GST credits even if their courses are GST free?

ANSWER

Yes. Entities making GST free supplies are able to claim input tax credits.

35. READER QUESTION

My son works on a Fly In Fly Out position in W.A. and I keep getting mixed messages about what he can claim. Firstly just to clarify when he arrives at his base he is usually sent to another camp which is not his designated base. My belief is he is able to claim the taxi fares from his home in W.A. to the airport. Then I believe he can claim a living away from home allowance for the period he is away from his designated base. I believe the Long Distance Truck Driver daily allowance would be appropriate. Note if he worked for the Government he would able to claim the full daily travel allowance. Note his employer is a contractor and does not record which location he is working and I believe a diary entry is sufficient to substantiate his claim.

ANSWER

This has been covered in part in past issues and the ATO are cracking down on these claims.

Firstly, Taxi fares to Perth airport are not a tax deduction because they are in the nature of commuting. An employee travelling to work in the Perth C.B.D by taxi would not be able to a tax deduction and this situation is no different.

The "living away from home allowance" is problematical as your son is a Fly In Fly Out worker. Whether your son could claim the daily travel allowance would depend upon whether the conditions outlined in tax determination TD 2016/13 had been met.

1. This Determination should be read together with Taxation Ruling TR 2004/6 Income tax: substantiation exception for reasonable travel and overtime meal allowance expenses which explains the substantiation exception and the way in which these expenses are able to be claimed. It is important to remember that in "setting the reasonable amount"…the Commissioner does not determine the amount of allowance an employee should receive or an employer should pay their employees. The amount of an allowance is a matter to be determined between the payer and the payee. (Refer to paragraph 33 of TR 2004/6)
2. Key points from TR 2004/6 about claiming travel allowance expenses and overtime meal allowance expenses are:
    a. Expenses claimed must have been incurred and be an allowance deduction – The payment of an allowance does not of itself allow a deduction to be claimed. Before a deduction can be claimed:
        i. The expenses claimed cannot exceed the amount actually incurred, and the expenses must be incurred for the work-related purposes and be deductible under the income tax law.
    b. Allowance must be paid - The substantiation exception only applies if the employee is paid an overtime meal allowance or a travel allowance. The allowance must have an identifiable connection with nature of the expense covered.
    c. For travel allowance expenses – The employee must sleep away from home.
    d. Substantiation exception – where the amount claimed is no more than the applicable reasonable amount, substantiation of the claim with written evidence is not required.
    e. Claims in excess of reasonable amounts – If the amount claimed is more than the reasonable amount, the whole claim must be substantiated, not just the excess.
    f. Verification of reasonable claims – In appropriate cases, where the substantiation exception is relied on, the employee may still be required to show:
        i. how they worked out their claim
        ii. the expense was actually incurred
        iii. an entitlement to a deduction (for example that work-related travel was undertaken)
        iv. a bona fide travel allowance was paid and
        v. if accommodation is claimed, that commercial accommodation was used.

The nature and degree of evidence will depend on the circumstance: for example the circumstances under which the employer pays allowances, the occupation of the employee, and the total amount of allowance received and expenses claimed during the year by the employee.

- Tax return treatment – where a travel or overtime meal allowance is not shown on the payment summary, does not exceed the reasonable amount and has been fully spent on deductible expenses, neither the allowance nor the expenses should be shown on the employee's tax return. If an amount less than the allowance has been spent, the income tax return must include the allowance and the deductible expenses claimed. Whenever a claim is made for overtime meal or travel allowance expenses

the allowance must also be included in the tax return.

It is doubtful that the above conditions have been met and that the claims you suggest can be made. We are not unsympathetic as many Fly In Fly Out employees work in the most arduous and difficult circumstances.

We would also refer you to tax tip #129 in edition #85.

36. READER QUESTION

How long can you own an investment house without having a tenant in it? Can you own a house and not live in it and it still be an investment house that you can claim tax deductions on?

ANSWER

There is no set time as such but you need to be able to demonstrate that the property was genuinely available for rental. This would include placing it with an agent and advertising it as available for rent at a reasonable market rental without onerous conditions.

37. READER QUESTION

We are a wholesale finger food manufacturer. We just want to be able to determine what products would be charging GST.

We are a manufacturer that uses different ingredients to create a finished product that we on-sell to our customers.

The customer then is only required to cook it or heat it up and serve.

Can you please provide the criteria for items requiring GST?

ANSWER

As soon as you manufacture food or prepare it in platters it is taxable for GST purposes.

GST should be charged on sales.

Certain prepared foods will be subject to tax regardless of whether they are supplied hot or cold.

Examples are:

- Quiches
- Sandwiches
- Pizza
- Platters
- Hamburgers
- Hot dogs and
- Food marketed as a prepared meal

However the fish finger is an exception. It is classified as GST free.

It sounds like your products fall into the category of “prepared Meal”. The term “prepared meal” is not defined in the GST legislation. It clearly requires that the food in Question needs to be assembled, dressed, cooked or partly cooked and only required reheating for them to be ready for consumption.

The ATO has released a comprehensive list of food and drink items together with their GST status and relevant notes. As the list comprises more than 100 pages, it is not feasible to reproduce it here.

The latest version (effective September 2011) may be accessed on the ATO website at: www.expertsystems.ato.gov.au/scripts/net/SearchableFoodList/scSearchableFoodList.aspx?PID=68&ms=Businesses.

38. READER QUESTION

I have Question regarding GST.

The company I work for is involved in the gaming industry. We organise and run poker games in clubs and pubs.

As part of our events calendar we run major finals where event tickets are won by our players or can be purchased for direct entry.

The ticket price includes a prize pool component and an admin fee for running the tournament.

So we charge: $500 (which goes into the prize pool) + $50 (admin fee) + GST on the whole amount i.e. $55 = $605 Total per Ticket

According to:

Goods and Services Tax Ruling

GSTR 2002/3 Section 20/21/22

Giving prize money is not making a supply

20. When an event holder gives prize money to a winner, it is not making a supply for GST purposes, as a supply does not include a supply of money unless the money is provided as consideration for a supply that is itself a supply of money.

However, prize money, as well as prizes of goods or services, may be consideration for a supply made by the winner.

Part B of this Ruling

21. Part B, dealing with Division 126 and prizes resulting from gambling, commences at paragraph 174. Division 126 defines several terms for its purposes. In particular, Division 126 (and, therefore, Part B) uses the term 'monetary prize', which is defined in section 195-1.

Ruling with explanations

Part A

Taxable supplies in an event

22. The supply of a thing made in the course of an event is a taxable supply if the elements of section 9-5 are satisfied. That section states:

'You make a taxable supply if:

- (a) you make the supply for consideration; and
- (b) the supply is made in the course or furtherance of an enterprise that you carry on; and
- (c) the supply is connected with Australia;
- (d) you are registered, or required to be registered. However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.'

Furthermore, according to the ATO website: How GST applies to gambling sales you make...

Gambling sales are taxable, but you only apply GST to your margin - not to individual gambling sales.

To work out your margin:

- work out the total amount you received in gambling event wagers for the tax period
- subtract the total monetary prizes you paid for the tax period.

If the total wagered amount you received is more than the total amount of monetary prizes you paid, you must pay GST on one-eleventh of this margin.

My Question is: Should we be paying GST on both the Prize pool and Admin Fee as we are, OR paying GST only on the Administration Fee component i.e. 10% of $50 = $5?

ANSWER

The short answer to your Question is no. Please follow the following steps in calculating the GST:

For each tax period:

(1) calculate the total amount wagered for all gambling activities attributable to the period

(2) subtract the total monetary prizes (including casino gambling chips and “high roller” rebates) that you are liable to pay during that period

(3) take 1/11th of the difference. This gives you your gambling GST for the period (the legislation calls this your “global GST amount”)

(4) add this to any other GST you are liable for on non-gambling activities, and subtract your input tax credits other than monetary prizes.

This gives you the net GST payable (s 126-5; 126-10).

38. READER QUESTION

Salary Sacrifice Question. We have a long term employee 25+ years who is looking at retiring in the coming months. They've asked if they can make a lump sum payment in their final pay towards their superannuation fund.

ANSWER

Salary sacrificed superannuation contributions are subject to superannuation contributions tax (15%) up to a concessional contribution cap ($35,000 or $30,000 depending on her age).

In addition, there is no fringe benefit tax on superannuation contributions made by the employer to a complying superannuation fund for the benefit of an employee under a salary package.

Did you and the employee enter into an effective salary sacrifice arrangement (SSA) before the employee became entitled to the long service leave?

ATO provides that you can only sacrifice future earnings or entitlement. Obviously the critical time is the point where the employee started her employment.

Any salary sacrifice agreement (SSA) which is entered into to exchange an entitlement to take leave for a superannuation contribution is ineffective if the entitlement to the leave that is exchanged arose prior to the entry into the SSA.

Such an agreement is termed by the ATO as an ineffective SSA.

If a SSA is ineffective, the amounts sacrificed will remain salary or wages.

The employer will have a PAYG withholding liability on these amounts and no FBT will be payable.

The employee will be required to report the amounts in his assessable income. Any sacrificed superannuation contributions made by the employer will be taken to be salary or wages and thus made from post-tax income. As such, they will not satisfy the employer's liability to make superannuation contribution under the Superannuation Guarantee Assessment Act and the employer is still liable for Superannuation Guarantee Charge.

You need to seek independent legal advice on an effective SSA.

39. READER QUESTION

We have a client who purchased land and house in May 2014 for investment purposes.

In October 2015 they subdivided the land and built a new property at the back. Building of that property was completed August 2016.

They are now considering selling the back property.

My Question is... will they receive the 50% discount on the sale of the 2nd property? The land has been owned longer than a year, though the 2nd house was only completed 4 months ago.

ANSWER

It is a general rule of property law that whatever is attached to the soil becomes part of the soil.

Consequently, when a building is constructed on land, the materials of which the building is constructed become, in law, part of the land.

The subdivided blocks are treated as separate assets under the capital gains provisions.

They are taken to have been acquired by the owner of the original land parcel when that original parcel was acquired.

The tax payer is eligible for CGT discount for selling any parcel of land and the building immediate above it.

40. READER QUESTION

If we have a project that is in interstate, as we would need to send consultants over for certain period time, say initially 6 months, but now it has been last for nearly 2 years. Consultants (staff & Independent Sub-Contractors) fly to interstate on weekly (some fortnightly) base. So my Question is that would company liable for

FBT for paying the travel expenses of Accommodations and flights?

ANSWER

Payment of your employees' travel and accommodation expenses while they are interstate falls into the category of expense payment fringe benefit.

However the fringe benefit is exempt if the employer has made a 'no private use' declaration that they will only pay or reimburse expenses that have a business purpose.

An expense payment benefit is also exempt if all the following conditions are satisfied:

1. The expense payment is in respect of the accommodation of the recipient and/or eligible family members.

2. The accommodation is not required because the recipient is travelling in the course of work.

3. The accommodation is required because the recipient is required to live away from his or her usual place of residence.

4. The recipient gives a declaration as to their usual place of residence and actual place of residence.

READER QUESTION

GST Question...

I have a client who has recently started up a business nursing people that have been injured in accidents. They directly bill the insurance company for looking after the injured persons.

Should they be charging GST to the insurance company, as they have provided medical care to people?

ANSWER

Medical services are GST-free if a Medicare benefit is payable for the service.

If a Medicare benefit is not payable, the medical service is still GST-free if both of the following apply:

- you perform it, or it is performed on your behalf
- it is generally accepted by the medical profession as a necessary and appropriate treatment for the patient.

From 1 July 2012, where a supply is made to the insurer, the scheme operator or the Australian government agency, the supply is GST-free to the extent that the underlying supply of medical services to the patient is GST-free.

Based on the above fact, your client's service is GST-free.

43. READER QUESTION

When having a meeting with an employee to discuss a disciplinary matter or performance issue that may lead to a formal warning or even dismissal, should we allow a support person to be present with the employee and what is their role.

ANSWER

It is good practice to advise the employee of the reason for the meeting, the time and date of the meeting, who will be present at the meeting and to also advise that the matter to be discussed involves work related issues and possible disciplinary matters.

If the meeting is about a specific incident or event, then this needs to be disclosed as the reason for the meeting.

It is up to the employee to request that a support person be present with them at the meeting and all reasonable requests should be considered.

It is, however, good practice to advise the employee that they can bring a support person to the meeting if they desire to do so.

The support person should not be a lawyer, and refusal to allow a support person to be present may cause problems if contested.

The role of the support person is to provide emotional support only to the employee, not to be their representative or spokesperson.

You may allow the support person to add information or advice if the circumstances arise where this may assist the matter in question, but this needs to be carefully managed as the discussion is principally between the employer and employee.

44. READER QUESTION

Hi, I get this Question asked frequently but there seems to be differing answers. Are you able to confirm how long individual and business taxpayers are required to keep tax returns and relevant documentation pertaining to those each tax return? Is there a difference between individuals and business entities such as companies, trusts etc…Thanks

ANSWER

Assessment Type

Review Term ITAA 1936 Sec 170 (1)

Retention Period (PS LA 2005/2)

Individuals (Non-Business)

2 years

5 years from when you lodge your annual tax return

Small Business Entities

(up to $ 2 million turnover)

2 years

5 years from when the business record is prepared or the transaction is completed, whichever occurs later

Companies

4 years

7 years from when the business record is prepared or the transaction is completed, whichever occurs later (Corporations Law)

All other Taxpayers

4 years

5 years from when the business record is prepared or the transaction is completed, whichever occurs later

Substantiation and Car Expenses

2 or 4 years, depending on the tax structure

5 years from when the business record is prepared or the transaction is completed, whichever occurs later

We emphasise also the need to keep detailed permanent files for assets that may be eventually subject to capital gains.

45. READER QUESTION

Hi, we have an employee who is on a work visa (from Sweden). His partner is an Australian resident, and they are both living in Australia and renting in Adelaide under both their names. They also have an Australian bank account under both names and his intention is to be an Australian resident. Would the employee be taxed as a resident for tax purposes or would he be taxed as a non-resident for tax purposes?

ANSWER

If it is a 457 visa and the person is here for more than 183 days in the tax year then it is suggested you proceed on the basis the person is an Australian resident.

46. READER QUESTION

Hello, I have a Question about obligations to withhold GST. We use a contractor whose invoice states an ABN and is titled “Tax Invoice” however who is no longer registered for GST. The invoice does not include any GST. However, I strongly suspect, although do not know for certain, that the contractor earns more than $75,000 a year in his enterprise. Do we as a business have an obligation to investigate and/or withhold 49% - on what basis should we or should we not?

ANSWER

As long as a valid ABN is quoted there is no requirement to deduct 49%. Carefully read the Tax Invoice to note any reference to “includes GST.” If not confirm with the contractor whether GST has been changed. The contractor may be using the term “Tax Invoice” out of habit. If no GST has been charged then you cannot claim it as an input tax credit. Check the Australian Business Register to establish whether the contractor is registered for GST. As long as you comply with the law this is not your problem.

47. READER QUESTION

We purchased a farm in 2/2/2004. The purchase price was $180,000.00. We are primary producers with an ABN no. We worked the farm from 2/2/2004 to the 15/10/2007, after that date we leased it out to a cattle producer at so many dollars per month. At the moment we are wishing to retire and liquidate the farm.

Our Question is, how can we limit the amount of capital gains tax we may have to pay?

ANSWER

Here it is clear that the capital gains tax small business concessions do not apply because the farm was not an active asset for the required period - rather it was used to derive passive income. Refer to page 18 of our annual publication. You have not mentioned a company and/or trust. Assuming you are a simple partnership, then the individual capital gains tax discount of 50% will apply to the capital gain.

Assuming the sale contract is signed in this financial year, you may then wish to prior to 30 June 2017 consider putting up to $35,000 each into superannuation. If you are less than 65, then you don't have to meet a work test. This of course depends on the extent of the capital gain and your marginal rate of tax.

48. READER QUESTION

When did the 45 day Holding Rule for shares cease and when did the replacement Holding Rule for 45 days come into effect?

ANSWER

The 45 day holding rule applies but in the May 2013 Federal Budget the Government effectively closed a loophole which allows sophisticated investors to engage in dividend washing which results in two sets of franking credits being claimed on what is effectively the same parcel of shares in ASX listed companies.

The 45 day holding period rule requires investors to hold their shares "at risk" for a minimum of 45 days to receive the benefits of franking credits. The 45 days at risk does not include the purchase date or sale date. The 45 day holding period does not apply where an investor's total franking credits is below $5,000 for a financial year.

49. READER QUESTION

Hello there – I am hoping that I can pose this Question to you, being a subscriber to TTE for many years. Client purchases a café/bar 29/08/12 and sold it 04/05/15. The business basically failed and left her with a substantial loan to the bank ($160K approx.) she is paying approx. $1600 per month with a struggle.

The business was purchased under the family trust and financed to the trust (client is the principal and primary beneficiary). My query is whether she can claim the interest on this loan in her own individual taxation return? I contacted the ATO and they would not give a direct answer although think they were leaning towards deductibility – ruling PR2004/4 para 45 was quoted but I cannot locate it.

ANSWER

The relevant ruling is taxation ruling TR2004/4. If the loan had been in the trust's name or the business had been operated in the individual's name then if the conditions (outlined in paragraphs 43-51 of the ruling) had been met, then this could have been a deduction. To clarify in the event, the loan had been in the trust's name; then the tax deduction could still have been available in a trust not the individual. Losses are captured a trust and need to be carried - forward they cannot flow down to individual beneficiaries.

We suggest the amount of the loan and any other funds invested in this business is a capital loss.

50. READER QUESTION

We run a small business and operate as a family trust. The family trust was established in 2010. I have been told that the trust can claim part of the costs of the member's rental (home) as they

work in the business and are part of the trust (also directors). Could you please advise if this is so and how much can be claimed and how? Thank you.

ANSWER

The trustee company has directors and the trust has beneficiaries. If individual beneficiaries use their rental home as a place of business and pay the rent then it is the individual who should make the claim against trust income distributed to them.

It is very important that a part of the home / garage or workshop be separately set aside as a place of business and that the claim be factual and genuine.

Apportionment of floor space is normally used but if the floor space has a dual use (business+personal), then it should not be claimed. The floor space must be exclusively business.

51. READER QUESTION

Is a Federal Government Research & Development Grant (read Tax rebate) taxable income or is it simply treated like an investment allowance?

ANSWER

Here we are dealing with tax offsets. The R&D tax incentive encourages companies to engage in R&D benefiting Australia, by providing a tax offset for eligible R&D activities. It has two core components:

- a refundable tax offset for certain eligible entities whose aggregated turnover is less than $20 million
- a non-refundable tax offset for all other eligible entities

The research and development (R&D) Tax Incentive replaced the R&D Tax Concession from 1 July 2011, and applies differently from the concession.

52. READER QUESTION

Hi, when invoicing a Tax invoice should you give it an individual Invoice Number? Or you can issue multiple invoices with the same Tax Invoice Numbers?

ANSWER

As a matter of internal control each invoice should have a different number so that it may be readily identified. This is more an accounting procedural issue and not a tax compliance matter.

53. READER QUESTION

The grossed up meals and entertainment threshold for public hospitals is $5000. If a member of staff salary packages up to this amount but costs incurred is a lesser amount (leaving a value available for spending but not yet spent), does the difference become taxable income to that employee?

ANSWER

It depends on the agreement but this would normally be the case to ensure staff members get their full entitlements under salary packaging, if the amount has already been paid then this would convert to taxable income.

54. READER QUESTION

We have several work vehicles used by various employees which on occasion are used by smokers who leave ash trays full and a residual smoke/smell in the vehicle which is offensive to other employees who use the vehicles. Can I stop employees smoking in work vehicles?

ANSWER

Yes, you can stop this practice.

The first step is to have a policy which covers smoking in the workplace and vehicles and advise all employees that from a certain date this policy will apply and that failure to comply with the policy will result in disciplinary action up to and including dismissal.

Keep a log of who uses the vehicle on each occasion so that any smokers will be easily identified.

You may have designated smoking areas at your workplace if practicable, excluding all company vehicles, but you do have the right to ban all smoking in the workplace.

55. READER QUESTION

SMSF I am over 70yrs I am a single member of fund and have over $1.6 invested in shares & cash. What are the options can I include my children in the fund.

ANSWER

You are unable to allocate part of your member's account to your children. Regarding your SMSF assets, there is some cost setting opportunities discussed in this bonus issue which should be attended to...well before 1.7.2017.

Note that although allocated assets (in excess of $1.6 million) will be in accumulation phase they will still be concessionally taxed. Given your age you are able to access funds in your SMSF – if you remove funds from your SMSF, there may well be tax effective options involving your children regarding them investing in super. However there are too many variables involved and you should speak to a reputable financial planner.

56. READER QUESTION

We have a client that had land owned by a family trust and is not registered for GST. It has been sold to a developer. The sale paperwork does not show any reference to GST – is it applicable? Also in regards to capital gain – what discounts would be available; two of the trustees have been involved with the trust since the land was purchased in 1986.

ANSWER

We assume this is a discretionary trust. On the face of it, GST it not applicable however, if the trust had engaged in activities such as property development then that would be a different matter...even on "one off" transactions. It is not necessary that the acquisition of land be repetitive – a single acquisition of land for the purpose of development, subdivision and sale by a business begun for that purpose would lead to the land being treated as trading stock.

The business activity is taken to have begun when you embark on a definite and continuous cycle of operations designed to lead to the sale of the land.

So the key here is not whether the trust is registered for GST but whether it is required to be registered. If the land has just been passively owned then there will not be a problem. This is not the case of there is any evidence of a profit making purpose or undertaking.

For instance, if development approvements or subdivisions have been applied for then GST would be payable. As for CGT, the individual discount will be available if the taxable capital gain is properly distributed to individual beneficiaries. This is because a discretionary trust is a "flow through" for taxation purposes.

57. READER QUESTION

I have a tax question: I have a client who purchases and hires shipping containers. I understand that the shipping containers are depreciating assets as they are used to generate assessable income. This is a small business and is under a simplified depreciation. My Question is: is the business owner eligible to claim these containers under instant write off if the costs were less than $20,000 each? Your feedback is very much appreciated.

ANSWER

We confirm that the containers qualify as a depreciating asset and as you are sure this is a SBE, there shouldn't be a problem. This is subject to the container NOT being leased to another party on a depreciating asset lease s.328-175(6). A short term hire arrangement should be fine.

58. READER QUESTION

In the Newsletter of February 2017, (Pg 19, Issue #0085) 23. Companies and the CGT Small Business Concessions. In this article, could you explain further more about what benefits can be provided when withdrawing the funds from the company after the retirement exemption? As well, I have a situation as below, a couple, over both 55, recently sold their own business after a few years and applied for the retirement exemption of SBC. It is my understanding: in this situation, they don't have to pay the company tax, but if they are taking the fund from the company, it will be unfranked dividend of the company. Am I correct?

ANSWER

Simply put if your clients make a decision not to put the $500k retirement concession into a superannuation fund, then it is paid as outright expense and tax deduction in the company - but it is not assessable income in their individual taxation returns.

As such it will not be an unfranked dividend.

It really is a decision that will require some financial advice – it is getting harder to put money into super with lower concessional thresholds (down to 25k from 1.7.2017) and similarly lower non concessional thresholds (100k from 1.7.2017).

The conventional advice would be to put as much as possible into super – of course this has to be balanced with any pressing personal or family financial needs e.g. paying out a mortgage or business loan.

Even with the super reforms set to commence 1.7.2017, attractive tax concessions still exist within superannuation and they should be maximised wherever possible.

59. READER QUESTION

A staff member purchased a property in Oct 2016 and was living in it. In March 2017 he has to move due to work (1 and half hour away from the house).

1. Should he stay in the house for one whole year to avoid the CGT if he decides to sell it after one year?
2. What if he decides to rents it after one year (while living in it). How long does he need to rent it for to minimise the CGT and other tax.
3. What happens he purchases another property while his first house in on rental.

Also does he get an exemption on CGT if he sells it before one year as he needs to move to a different place due to work.

ANSWER

Principal Place of Residence (PPR)

1. He does not have to stay in the house for one year - refer to detailed analysis in our bonus edition.
2. Similarly discussed is the A.T.P. view on the sharing economy such as Airbnb. Here the PPR exemption is affected.
3. Only one residence can be his PPR – when transitioning between two homes and awaiting a sale on the former residence there can be an overlap of six months.

Your final Question – if he had to move for work and he had definitely moved into the dwelling on the basis it would be permanent and there was evidence, e.g. electoral roll, connection of power, telephone, ET AL then the PPR exemption would apply.

60. READER QUESTION

Hello, we're looking at bonuses and two questions came up about paying Superannuation.

1. My understanding is that if it relates to an employee's normal work then superannuation is payable. If it is payable on a special project or something outside their normal work then no superannuation is payable. Can you please confirm?

2. If an employee has a bonus letter from an overseas head office that says superannuation (Pension) is not payable on their bonus, does this supersede Australian law?

ANSWER

Statutory super (otherwise knew as the "Superannuation Guarantee") is payable on bonuses - refer to Superannuation Guarantee ruling SGR 2009/2.

The only exception could be if the bonus related to overtime worked in that the bonus was solely paid for overtime worked (highly unlikely). Superannuation is payable on a performance bonus.

Australian Law is not superseded.

61. READER QUESTION

Can an apprentice whose training contract has been terminated claim unfair dismissal?

ANSWER

If the training agreement was for a specified time, and the agreement/apprenticeship was cancelled before this specified time has elapsed, the apprentice would have access to the Unfair Dismissal laws as contained in the Fair Work Act 2009 section 386 (2) (b).

62. READER QUESTION

Can a Teacher chaperoning students overseas for a Student Exchange for a school that he is employed claim expenses incurred in his tax return? Thank you.

ANSWER

If the Teacher is chaperoning the students at a residence outside of school hours then the answer is probably not – it depends on the exact circumstances.

If there was a genuine need for such a chaperone then the school concerned would reimburse the expenditure. Given that this runs contrary to the nature of a genuine student exchange, this has the hallmarks of the teacher making a personal decision to undertake the trip and incur the expenditure.

63. READER QUESTION

I am emailing with regard to a tax question. During a storm, sheds were damaged. A payout was received from the insurance company. The payout and other money were used to purchase/build another shed. Is it correct that we are to be taxed on the difference between the payout and the depreciation value?

ANSWER

You are on the right track.

The insurance payout is fully assessable.

So long as the shed costs less than $20,000 and your turnover is less than $10 million and you lodge as a small business entity (SBE), then you claim the cost of a new shed as an outright tax deduction if purchased prior to 30.6.2017.

This means these two above amounts will largely offset each other.

Also any remaining written down value of the original shed damaged/destroyed is written off for a tax deduction.

64. READER QUESTION

Hi, I run an online business from my home. I am the owner of the property. There is one room dedicated for the business, which is around 12 % of the home covered area. I also have other dedicated places where I have placed a file cabinet, a computer server and another desk that is used as part of running the business. How much can I deduct as an office rental for my accounting perspective. Thanks.

ANSWER

We suggest 12 % - if your home has a desk in a dual purpose area, then it would not qualify. The area has to be set aside and have the hallmarks of a place of business.

65. READER QUESTION

Hello, I have a client whose Family Trust owns a house. No RENT received. To date we have been

capitalising the expenses for this house. Water, council, land Tax, etc. when the house is sold are the expenses capitalised taken into account for CGT purposes or are they ignored. E.g. house bought $350,000 sold less fees $450,000 = $100,000 capital gain. If $30,000 in unclaimed outgoings, do they reduce the profit to $70,000 or are they ignored. If ignored I assume they form part of beneficiaries distribution.

ANSWER

The $30,000 forms the third element of the cost base (costs of owning the CGT asset) and will reduce the capital gain.

66. READER QUESTION

I have a client who has had a property for 19 years and the last 4 years it has been rented. She is about to sell the property and is wondering the best way to account for the capital gains.

ANSWER

We assume it was a principal place of residence. (PPR)

Establish whether the six year temporary absence applies (page 17 of our annual publication) for this to be the case the lady cannot have had another PPR in the relevant time. In the event there is a taxable capital gain.

-establish whether any capital losses exist

-apply the general discount (50%)

-consider making a deductible personal contribution to super after carefully ensuring all conditions have been satisfied.

67. READER QUESTION

Dear Sir, in Brisbane, a graduate dentist had a contract with employer on a commission (%) basis. He made the ABN as a sole trader. In this case, is he contractor or employee? Could you additionally explain it with the superannuation responsibility?

ANSWER

This is not an uncommon arrangement and it can have complications.

It depends on the arrangements in the workplace but if the contractor works set hours under the control and direction of the business owner(s) then in essence the person is an employee and not an independent contractor.

Having said this, the A.T.O. generally accepts the ABN arrangements as long as all relevant tax is properly paid.

Certainly the arrangement should be included on the Work Cover contract because Work Cover QLD takes the view that such a person should be covered by the business owner.

An individual on an ABN who has a labour component in their invoices exceeding 50% (clearly the case here) is entitled to statutory superannuation (9.5%). So the fact that super needs to be paid must be incorporated into the arrangements. Another issue is P.I. insurance – what arrangements has the business owner made and what does his policy say?

68. READER QUESTION

The new dentist has no set hours during the 5 days at an office (pay rate 40:60 incl super & etc.), so he works only if there is a patient. The employer is managing the dental assistants and receptionists. He also has P.I and works no other place.

I think that he can be an employee any time. But he wants to save the superannuation payment. Is it possible for him to choose the contractor as a sole trader? Does he need to get the permission under employer?

ANSWER

Your client is obligated to attend the practice when there are patients – which would broadly confirm to set hours. Furthermore he cannot delegate his work and is paid an hourly rate. He would not appear to be an independent contractor and as an individual with a greater than 50% labour component in the contract, statutory superannuation will be payable.

69. READER QUESTION

My client is 61 years of age (male), works part time (20 hours/week) and earns $30k per year. Is he able to access some of his super and if so, how much?

ANSWER

Yes. He should be able to access a transition to retirement pension. Broadly this pension could be paid at 4 to 10 % of his super fund balance.

70. READER QUESTION

GST claim problem (company or individual) I setup the private company (CGT registration) and I am only director. But I bought a business car (Ute) in my name for the business. Can I claim the GST through the Company BAS? (I have no GST registration for myself).

ANSWER

The answer is No. The tax invoice would have to be in the name of the GST registered entity in this case the company.

71. READER QUESTION

Can I loan money to a family trust to buy a business and draw the funds out without tax on my personal income to pay me back? No interest to be paid. Only the principle when the trust makes a profit.

ANSWER

The advance (and subsequent return) of loan funds is on capital account and will not affect your taxable income. However, as you would be aware, taxable income of the family trust will need to be distributed to beneficiaries. It may be wise for you to take a secured charge over the assets of the trust and your lawyer can advise on this.

72. READER QUESTION

How long does a small business have to keep records for referral by the Taxation Office; it used to be 7 years?

ANSWER

Generally, you must keep your written evidence for five years from the date you lodge your tax return or if you:

Have claimed a deduction for decline in value (formerly known as depreciation) – five years from the date of your last claim for decline in value

Acquire or dispose of an asset – five years after it is certain that no capital gains tax (CGT) event can happen, so you know you don't need the records to work out a capital gain or loss

Are in dispute with the A.T.O. – the later of five years from the date you lodge your tax return or when the dispute is finalised.

Individuals with very simple affairs may only have to keep records for two years from the lodgement of tax returns.

73. READER QUESTION

I've been a member of bO2 Tax Essentials (TSA) for a number of years. Could you please assist me with information regarding "Transition in Retirement Pension"?

My wife and I are the owners of a small business (XYZ Group Pty Ltd and also a SMSF. I'm currently 67 years old and my wife is 63 years old.

We wish to activate a "Transition in Retirement Pension/income stream.

Our objective is to have a net income of $80,000 p.a. say $50000 for me and $30000 for my wife for coming 3- 4 years…

Can you advise what procedures need to be implemented both within "XYZ Group Pty Ltd" and the SMSF in order to satisfy the A.T.O…?

As we are both in our 60's and still working, are there any special provisions/tax benefits available under current tax law?

I understand we can salary sacrifice $25000 for each of us which will be taxed at 15% in the super fund- however what is the tax applicable on the balance of $5000 for my wife and $15000 for me?

ANSWER

As you are already over 65 you should have already commenced receiving a normal pension from your SMSF which would be tax free. Broadly SMSF income that supports such a pension is also tax free.

This could be a compliance issue for your SMSF and you should seek specialist advice.

Regarding the pensions – the achievement of your income requirements will depend on your fund balance and investment income.

While you are tidying up your pension issue, seek specialist advice – for instance does your SMSF trust deed allow for the payment of a transition to retirement pension?

There are also changes to transition to retirement pensions that apply from 1.7.2017.

Your employer is eligible to continue to make contributions to super up to 25k per annum.

74. READER QUESTION

With the recent changes to the HELP /HECS and TLS repayments, how does this effect an employee who has gone overseas for a secondment of 2 – 5 years?

I would anticipate as is out of the country for 183 + his residency would indicate that he is a non-resident for tax purposes, however we are required to report the Worldwide income on the tax return to determine whether the person is earning enough to meet the HELP Repayment thresholds. How does this work in the tax return as the HECS/HELP repayment only calculates once the resident box is a yes. Is this person considered a resident for tax purposes?

ANSWER

Firstly it will important to resolve the residency issue – the employer is Australian… the term secondment is used and if the person maintains an Australian residence and makes regular returns here… then there are issues – refer to pages 41,42 of our annual publication – depending on circumstances then it is still possible that the individual will still be an Australian resident

Leaving that aside it is clear that the ATO puts the onus on the individual to pay the HECS – this is logical as the ATO has no jurisdiction over overseas employers.

From 1.1.2016 if a person has a HELP or TSL debt and leaves Australia to work for more than 6 months… it is the individual who is obligated to notify the ATO using their MYGov account. At the end of the tax year you inform the ATO of your annual income through the MyGov site.

DISCLAIMER

This information, statements and opinions expressed in this publication are only intended as a guide to some of the important considerations to be taken into account relating to taxation matters. Although we believe that the statements are correct and every effort has been made to ensure that they are correct, they should not be taken to represent taxation advice and you must obtain your own independent taxation advice. Neither the authors, nor the publisher or any people involved in the preperation of the publication give any guarantees about its contents or accept any liability for any loss, damage or other consequences which may arise as a result of any person acting on or using the information and opinions contained in this publication.

Readers seeking taxation advice should obtain their own independent advice and make their own enquiries about the correctness of information set out in this publication and its accuracy in relation to their own particular circumstances.