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Most Popular Q&As

2019

Question 1

We are a building materials wholesales company. If we provide the company Ute to our sales rep. who need to carry the goods to customer from time to time, does it fall into the FBT?

I don't know the percentage of private use but from my understanding, at least driving between home and company will be the private use. Technically we need staff to do the logbook and pay the FBT if only small portion of private use.

Answer

As you are an associate of the employer technically it could fall within the ambit of FBT.

However, if the private use of the Utility is incidental there should not be a problem with this.

The ATO recently published guidelines on this matter. We also covered this in detail in issue #0094.

Question 2

I am writing to seek clarification of the Company Tax Rate in line with payments of dividends for the year ended 30.6.2018 and the franking credits they now hold. I understand that some of the proposed Legislation did not pass as the Government had intended. That is where my confusion lies/starts.

I understand that if a company's turnover is less then 25mil for 2017/18 that the tax rate is 27.5%. Our company was previously on 30% in 2016/17 year and as the T/O is less than $25m. is will now be on 27.5% in 2017/18 tax year.

No problem with this at all. However, my problem lies in the imputation credits/franking account associated with the company.

In years ended 30.6.16 and 30.6.17 the franking account was tracking imputation credits at the tax rate of 30%. Dividends were paid to the shareholders at that rate.

There remains a sizable balance of dividends/imputation credits to pay by 1.7.2017. [presumably to 30.6.17 these hold the 30% imputation credits]?

At this point the tax rate and therefore the franking account/imputation credits changed to 27.5% [new tax rate as the company's T/O was less than $25m].

I have therefore accounted for the tax paid at 27.5% for the year ended 30.6.2018. I have also paid shareholders dividends throughout the 2017/18 year.

I have read PCG 2018/D5. Even though I have paid dividends the actual dividend statements have not yet been prepared. These will be done this month with the correct imputation attached to it. [27.5%]

The confusion arose when the directors' external accountant sent some information about the new imputation tax and from my own research it didn't appear to be consistent with what I had previously read. I always held that the dividends paid for the y/e 30.6.18 were to be franked at 27.5% [as I know that we were going to come in at less than $25m.]

The accountant, on the other hand insisted that 30.0% was the rate to be used even though the company was going to be taxed at 27.5%.

Question (i): What rate is the imputation credits attached to these dividends paid in 2017/18? 30% or 27.5%?

I know for example that as the company rate changed on 1.7.2017 to 27.5% that any imputation credits were now accumulating at this lower rate?

Question(ii): I read in your articles that "paying fully franked dividends by 30.6.18 for companies with T/O less than $25m. in 2017 and 2018 [as in my case], given that any dividend paid in 2019 will be subject to the lower 27.5% corporate tax rate for imputation purposes?"

As I pay dividends monthly to the shareholders, then is my understanding correct that dividends paid in 2017/18 tax year [for the year ended 30.6.2018] still have an imputation credit attached to them at 30%? When does the tax rate of 27.5% actually kick in? When the company tax is physically assessed and paid for the year ended 30.6.18?

Question (iii): Last point is that if the tax rate changes, as it has in 2018, then the extra imputation credits if not used up by 30.6.18 will be lost. Correct? [i.e. 30% - 27.5% = 2.5%].

Could you kindly clarify these questions please?

Answer

Q1. It is 27.5% and your assumption in the second sentence is also correct.

Q2. Dividends paid during the year ended 30 June 2018 by base rate companies are in fact subject to the lower 27.5% franking credit. Your assumption of the 30% franking credit is not correct. As the 27.5% company tax rate applies for base rate companies from 1.7.2017, the maximum franking credit rate of 27.5% also applies.

Please refer to PCG 2018/D5 which contains information on the administrative approach to incorrect franking.

Q3. Yes, unfortunately the excess franking credit is trapped in the company until such times as its status changes and it reverts to the 30% company tax – we think this unlikely.

Question 3

We require an opinion on the following: -

We have a client that owns two car yards with multiple brand dealerships, and they run a sprint car operation that competes around Australia. We are wanting to know more about the deductibility of the sprint car expenses.

The sprint car set up is a serious operation, all drivers/mechanics etc. are employees and are not family members. The main business owner and his son are involved as managers of the sprint car operation, but not day to day managers as their day job is actually running the car yards. The primary purpose of the sprint car operation is to promote the car yard businesses. Ball park numbers $400k expenses and $200k prize money.

The "Sprint Car' business is operating under the same entity as the car business. The 'loss' has been written off as advertising in previous years.

Do you know of any ATO guidance documents on the deductibility of these types of expenses? Do you have any advice on general deductibility of the expenses?

Answer

This is a division of the business that derives assessable income and as long as all expenses are incurred in deriving that assessable income, we don't see a problem. As the owner and son are not actively engaged in driving the sprint cars, it cannot be suggested that this is a personal pursuit - it is crucial that there is genuine and prominent advertising on the vehicles along with other promotional material.

Although this is not a sponsorship situation, ATO interpretative decision ATO ID 2005/284 is worth a read as well as it makes it clear sponsorship payments in broadly the same context will be deductible – this ID deals with motorcycle sponsorship.

Question 4

I am enrolled as a full-time master's student at Melbourne Uni. I receive a tax-free graduate research stipend. The role is part of a training program, so I can qualify as a veterinary pathology specialist, and I teach, perform research and also perform diagnostic duties as part of the role. I recently submitted my tax return and claimed $2000 in veterinary textbooks that I purchased that are directly related to performing my role at Uni and will also aid in completion of my specialist examinations. Are these not tax deductible? My tax return has been "delayed".

I started this role in January and prior to this was working as a veterinarian (and paying tax).

Answer

The fundamental test for deductibility is... was the expense incurred in earning assessable income?

As this research stipend is not assessable... the ATO may fairly take the view that expenditure is not a tax deduction.

Did you have any assessable income for the year ended 30 June 2018 and could it be argued that the expenditure (at least in part) related to this income?

Also, there is the possibility of some of this expenditure being self-education expenses.

All this would depend on what disclosures you have already made to the ATO.

Question 5

I would appreciate your response to a tax and superannuation question that I have.

For the purposes of the question, please assume:

- The entity is definitely a 'religious institution' according to the meaning of the term 'religious institution' as it appears in the ITAA and the FBTAA.
- The employee, a minister of religion, is definitely a 'religious practitioner' as defined in subsection 136(1) of the FBTAA.
    - Their duties are predominantly pastoral duties and other duties directly related to the practice, study, teaching and propagation of religious beliefs.
- (subparagraph 57(d)(i) of the FBTAA), or other duties or activities that are directly related to the practice, study, teaching or propagation of religious beliefs (subparagraph 57(d)(ii) of the FBTAA). The latter duties and activities are referred to in this Ruling as 'directly related religious activities'.
- Because of the application of TR 92/17, benefits provided to this employee will be exempt benefits. Therefore, they are not fringe benefits and so the FBT with or without the rebate is not relevant.

- Benefits provided to certain employees of a 'religious institution' are exempt benefits under section 57 of the Fringe Benefits Tax Assessment Act 1986 (FBTAA). A benefit provided by a religious institution to an employee is an exempt benefit under section 57 of the FBTAA if:

a) the employee is a religious practitioner (i.e. a minister of religion, a full-time member of a religious order, or a person training to become a minister of religion or a member of a religious order); and

b) the benefit is provided to the employee, the employee's 'spouse' as defined in subsection 136(1) of the FBTAA, or the employee's 'child' as defined in subsection 136(1) of the FBTAA; and

c) the benefit is not provided principally in respect of duties of the employee, other than pastoral duties or any other duties or activities directly related to the practice, study, teaching or propagation of religious beliefs.

- The employer has taken the initiative toward the employee in the years leading up to retirement age, in order to provide a more adequate superannuation balance at retirement age. This is because the minister only receives a 'minimum award wage' level of salary upon which the SGA contribution of 9.5% is paid. Therefore, their superannuation balance will be insufficient to provide an adequate income stream to cover basic living expenses. The benefits received by the minister are in the form of a stipend which merely covers living expenses and so there is no capacity for the minister to accumulate any other savings.

There is no question that in this situation, that any benefit provided to the spouse of the employee is an exempt benefit. Therefore, it is not subject to PAYG or FBT.

The point for clarification is around making a contribution to the superannuation fund of the employee's spouse. So, the question is twofold:

1. Is a superannuation contribution to the employees' spouse a benefit and therefore an exempt benefit?

a) I believe the answer to this question is 'YES', for the following reasons:

In TR 2001/10, paragraph 38. It states:

38. It is possible for an employee to enter into an effective SSA where the employer makes a superannuation contribution in respect of someone other than the employee, e.g., spouse. However, any such superannuation contribution will be a fringe benefit.

This would suggest that in accordance with an effective SSA, an employer can make a superannuation contribution to the superannuation fund of an employee's spouse and that the contribution would be regarded as a fringe benefit. Therefore, in the scenario presented, because any fringe benefit provided to the minister of religion is regarded as an exempt benefit, the superannuation contribution will be an exempt benefit, which means it is not subject to either PAYG or FBT.

a) Is the superannuation contribution a 'non-concessional' contribution and therefore subject to the non-concessional contribution limits of the spouse (i.e. $100,000 p.a.)?

I believe the answer to this question may be 'NO', for the following reasons:

Refer to the ATO website, it states:

Types of non-concessional contributions include:

- contributions you make, or your employer makes on your behalf, from your after-tax income;
- **contributions your spouse makes to your super fund** (unless your spouse makes the contributions because they're your employer).

However, as I understand it, to be non-concessional, the contribution must be an 'after-tax' contribution. If the additional contribution is a 'benefit', then I am certain that it can only be regarded as a 'before-tax' contribution even though it is an 'exempt benefit' and not subject to tax. If my understanding here is incorrect, I would be happy to hear that. Also, because the employer has taken the initiative in this situation and the employee has not influenced the payment in any way, the contribution will be non-reportable.

b) If the answer to part (a) is 'NO', then is the superannuation contribution a 'concessional' contribution and therefore subject to the concessional contribution limits of the spouse (i.e. $25,000 p.a.)?

I believe the answer to this question may be 'YES', for the following reasons:

A superannuation contribution made through an effective SSA would be regarded as a 'before-tax' contribution and so it would be regarded

as a 'concessional' contribution, subject to the concessional contribution limits of the spouse (i.e. $25,000 p.a.) and would be taxed in the super fund at the current tax rate of 15%.

The contribution would be counted under the spouse's concessional contribution cap and would therefore not be counted under the employee's concessional contribution cap.

A contribution made directly to the spouse's superannuation fund as part of an effective SSA would be different from splitting superannuation contributions, because it is effectively a before-tax contribution by the employee to the spouse's superannuation fund rather than a 'contributions-splitting super benefit' in relation to a contribution already made to the employee's super fund. Therefore, the rules with regard to super splitting would not apply.

I would appreciate your confirmation of my understanding or any correction or your advice regarding any other relevant matters.

Answer

It is necessary to determine whether this charity would qualify as a religious institution and you would need to be certain that the FBT rebate applies before embarking on this course of action.

It is suggested that if an effective salary sacrifice occurs then PAYG does not apply but there may be a taxable value for FBT.

There may be other options...

If the pastor salary sacrifices the amount into his own fund (assumes he is below yearly contribution limit – 25k), then he may consider superannuation splitting with his wife.

If the religious practitioner's wife plays any active role in the charity... then it may be possible for her to be engaged as an employee and then do an effective salary sacrifice.

Note it is only fund members who can make non-concessional contributions.

Question 6

We have a construction company and I was wondering if we were allowed to salary sacrifice mortgage repayments for some employees, and if so, would the company have to pay 40% FBT?

Answer

Your employee can certainly salary sacrifice his/her mortgage repayments. Company needs to pay 47% FBT tax.

Question 7

My question is about Super contributions & Director fees.

Super contribution: - My accountant has suggested we salary sacrifice contributions to the super limit of 25,000. Can I make the personal contribution of $25,000 direct into SMSF account as we use a family trust (my husband is a director - he does not work in the business) to operate the business? We use another family trust (myself is a director- I work in the business) to own the property.

Will this save me having to pay more workers compo? Am I just required to complete the" notice of intent to claim or vary deductions for personal super contributions " and send it to the SMSF so it is received by SMSF before 30/6 each year?

Director Fees: - Can my husband be paid for Director fees when the resolution is passed close to the end of each financial year, and the fees are paid the next each financial year. My husband is liable for PAYG tax & super guarantee the next financial year. Could we claim the directors' fees as the current financial year deductions?

Answer

I would be guided by your Accountant and make the contribution by way of salary sacrifice. This deals with the statutory superannuation (Super Guarantee) on the director's fees and ensures that the total contributions stay under the $25k limit.

It is true that from 1.7.2017 that individuals can make tax deductible contributions into super - in the event the workers compensation saving is significant then ensure that the super guarantee payments are made by the employer on the directors' fees and then top this up with a personal superannuation payment to the $25k limit. The danger here is that a $25k contribution is made in your own name and then the Trust has a liability for 9.5% statutory super which must be paid placing you into an excess contributions' situation.

The tax deferral you suggest is quite possible, but it must be genuine... the directors fee must be paid within a reasonable time and PAYG must be deducted and paid.

We refer you to Taxpayer Alert TA 2011/4 which deals with deductibility of unpaid directors' fees and sham arrangements.

Question 8

Scenario:

2015 - company had profit of $10,000. Company paid 30% tax

2016 - company had profit of $12,000. Company paid 28.5% tax

2017 - company had a loss of $100.00

2017 - company ceased trading, capital losses of $160,000

2018 - company had no income, trading losses of $2,000

My Questions are:

1. Can the company pay 30% franked dividends to its shareholder in 2018? Can the shareholder (who had no income in 2018) claim the franking credits in 2018?
2. Has the Surplus Asset Test had any impact in the above distribution?

Answer

We suggest not. The Commissioner clarified his views in Taxation Ruling 2012/5 after 254T of the Corporation Law was amended to suggest what you want is possible.

We will confine our comments to the Commissioner's views which is notwithstanding 254T, the dividend must be paid out of either current year or accumulated profits.

The question becomes... are there accumulated profits? With the capital losses it is considered that the company would be in a negative net asset position.

Given this a franked dividend cannot be paid.

Question 9

I have a client who had appropriate private health insurance for the whole year. On their own I know they wouldn't be liable for the Medicare Levy Surcharge (MLS), but the problem lies with the fact their de facto spouse didn't have private health.

Can you tell me if they are both liable for the MLS or just the spouse?

Answer

I know it sounds unfair. Your client and their spouse are both liable for MLS if their combined income for Medicare purpose is greater than the threshold. You need to print N at label E at the Medicare question.

Question 10

AP Co provides accounting and advisory services to clients. The company employs the individual partners and the same partners hold both ordinary shares (voting rights) and preferential shares in the same proportion upon which income is paid via franked dividends. Partner E holds ordinary (voting) shares personally but preference shares are held by their private company. AP Co meets the small business test and 27.5% tax rate with dividends franked at that rate. Does Partner E's company also qualify for the 27.5% small company tax rate given that its major source of income is from dividends from AP Co, together with some minimal dividends, capital gains from public companies and share of net rental income from practice unit trust?

The practice operates via a private company, the shares in which are owned by various entities of the partners of the practice. All partners are employed by the practice company with annual profits paid by way of franked dividends. The query relates one partner who holds a 7% interest in the practice company and whether their private company qualifies for the low company tax rate. My understanding is that the gross income of various entities is below the income threshold, the concern being that the income (dividends) derived by partner E's company, and the others for that matter is classified as passive income and thus excluded from the low company tax rate.

Answer

Your concerns would appear to be justified.

Go to Draft Law Companion Ruling LCR 2018/D7 para 7. The only way this is not passive income is if the dividend is a non-portfolio dividend.

This is defined in section 317 of ITAA 1997 as a dividend with at least 10% of the voting power. Your colleague only has 7%.

Question 11

Regarding downsizing etc. I am getting different answers. I am hoping you can answer my questions.

Scenario 1

My clients own 2 properties (both clients are over 65 years old).

Property A: is their current living address which both have resided there over 30 years.

Property B: (pre-Capital Gain period) is where the husband has been running their financial planning business for the last 30 years.

If my clients sell **PROPERTY A** and invests the money in the bank and also do some renovations to **PROPERTY B**, with the intention of living there... (they are not too sure if they will like living there due to the fact that public transport and supermarkets are a few miles away).

If after a year or two they decide that they would move into a Unit (2 b/room) close to public utilities and sell **PROPERTY B**....

My question is... will they be able to put the sale proceeds of **PROPERTY B** into their existing super accounts if they downsize and go into a 2 b/room Unit?

I have been advised that if they have owned **PROPERTY B** for more than 10 years, they can sell it and put the proceeds into their superannuation account (say $250,000 each) both have only $275,000 in their super account. **PROPERTY A** does not come into the equation...is that correct?

Answer

To answer your specific question regarding property B.... No as the property has not been their PPR for 10 years.

However, your client is spoilt for choice in any case and will have no difficulty putting substantial funds into Super if this is their choice.

The proceeds from the sale of property B can be contributed into super under the 15 Year Exemption up to a lifetime limit of $1,480,000 per person.

The advice you received on this was correct. There is still the downsizing option on the proceeds of property A.

As long as no non-concessional contributions have been recently made (very likely) then each individual may contribute $300k each into super without entry tax.

Be careful on the renovations for property B – if these exceed $150,386 then these will be regarded as a separate (post CGT) asset for capital gains tax purposes.

Question 12

I have a client who purchased an investment property back in 2005 for $275,000. They borrowed the full amount of the purchase price plus associated stamp duty and costs. The loan has been 'interest only' for the whole period.

Unfortunately, they have been in and out of work and have not been able to reduce the principal on the loan and have just sold the property for $215,000. They have reduced the debt from the sale of the property, but they roughly have a debt still of $100,000 which is secured against their PPR.

My questions are:

1. Is the interest on this loan still tax deductible?
2. Where in the tax return if it is tax deductible should it be claimed?
3. Should the loan be quarantined, or can it be combined with their home loan?
4. Does it have to now be P & I?

Answer

The 'Use Test' governs the deductibility of the interest expense on a loan.

As long as the initial loan has not been refinanced, interest on the amount is still tax deductible after the sale of rental property.

You continue to claim the interest expense in Item 21 of the individual tax return.

Question 13

Can you clarify the following?

If parents decide to gift a house to their daughter will there be any Capital Gains implications apart from the Stamp Duty payable to the OSR on the transfer?

Answer

If we are dealing with main residence here, CGT is exempt.

If they are not entitled to the exemption, or partially entitled to the exemption, CGT will apply if they're taken to have received its market value at the time you disposed of it.

Question 14

I have a client with a company business. (e.g. XYZ Pty. Ltd. Trading as...ABC Hair Salon). Purchase Cost $17,000.00 on 30 January 1998. Possible sale by end of December 2018...Est Net Sale Proceeds...$115,000.00.

Facts

- The Business is a small trading business.
- The 15 Year exemption does not apply.
- There is no retirement exemption.
- There is no small business rollover.

One of the current directors may continue to be employed by a new purchaser of the business. The other director is leaving the business and is transferring to a country location to live. The company is not being sold...only a transfer of the Trading Business name. I anticipate the sale will be subject to the 50% CGT exemption.

It would be appreciated if you could advise accordingly.

Answer

We assume that the 15-year exemption and retirement concession do not apply because the absence of a significant individual?

In order to access the 50% active asset concession, the company only needs to meet the basic conditions in

Subdivision 152-A. One of the conditions is that the asset being disposed of is an active asset.

This can include the goodwill of a business.

An active asset is one that the entity owns and uses or holds ready for use in carrying on a business and includes intangible assets such as goodwill. Section 152-40(4) outlines some exclusions.

In the past we have outlined the shortcomings of a company when dealing with the CGT Small Business Concessions. The Active Asset discount is effectively lost when the company has to eventually pay unfranked dividends. For this reason, every effort should be made to legitimately access the retirement concession which is a tax deduction to the company.

Question 15

Second-hand business GST/ITC query. I have a client who has a second-hand shop, they buy from garage sales, businesses, car bodies and many other things. As it is too difficult to analyse each item to calculate the GST/ITC to be claimed back (except purchases under $ 300), can I use the global accounting method? The client also sells figurines etc from their private collection with a cost price unknown, is there a way of calculating a notional value for the GST to be claimed back? The client is registered for GST and the turnover is over $ 75,000.

Any sales regardless if sold to a business or a private person, GST of 10% must be added to each sale; even goods sold from their private collection. That is correct?

Answer

Yes, your client can use the global accounting method. We are not aware of a method of calculating a notional GST value for private items. You are correct that anything sold under their ABN attracts a 10% GST.

Question 16

I would like some advice about the payment of a phone allowance to employees. Normally we supply company phones but recently some staff have requested to receive an allowance for their personal phone plans. It seems other companies do pay set allowances after tax for personal phone plans, but my understanding of allowances and reimbursements is that it is not that easy.

Can you advise:

A. If the allowance should be before tax or after tax?

B. Whether a phone allowance can be treated as a reimbursement and therefore not tax related?

The basis of reimbursement might be:

1. Based on the cost to the company of phones on company owned plans.
2. Employee keeps a logbook for 28 days to establish an allowance level and then this amount is paid as an expense reimbursement.
3. Some generally accepted principle.

Answer

The phone allowance should be paid to your employee after deducting the appropriate PAYG Withholding tax. The allowance is essentially taxed the same as ordinary salary. Reimbursement is possible if you know the exact work-related usage of the employee's phone and the cost of the mobile phone plan.

Taxation ruling TR92/15 sets out the commissioner's view on reimbursement. A reimbursement arises when the recipient is compensated exactly (meaning precisely, as opposed to approximately), whether wholly or partly, for an expense already incurred although not necessarily disbursed.

Question 17

Can you provide some insights to the following Scenarios?

A. Mrs. Z is an educator doing FDC business during the week and occasionally during the weekend. Children come to her house and the back yard is also available to kids.

Currently, she pays an accountant $4000 to $5000 per annum, to do the accounting (e.g. sending invoices, checking the bank account for receipt of money, sending reminders, preparing tax returns, maintaining invoices and listing them for tax etc.)

If she decides to do this work on her own, can she claim a deduction for the hours she spends (2 hours per week for 48 weeks @ $30 per hour: 2 X 48 X $30= $2880)?

B. Mrs. Za is an educator doing FDC business during the week and occasionally during the weekend. Children come to her house and the back yard is also available to kids.

All educators are compelled to maintain daily records of the children, plan and record what they do during the day (called daily story) and what outcome it relates to (daily story). Being attached to the YMCA scheme she records this in a book called "Family day care and in-home care weekly program and planner". Book costs $ 40 which is

charged as a deduction. She does this recording after children leave and normally spends 30 minutes per day doing so.

Can she claim a deduction for the hours she spends on this activity (say 2.5 hrs. X 48 weeks X $30 /hr.= $3600)?

Answer

In both cases.....If the business is carried out under their personal ABN, then they can't charge their own time to themselves and claim deduction against the income. If the business is conducted through a trust or a company, then the trust or company can claim deduction for their time. But you need to declare this in their tax return as income.

Question 18

We have a client who owns a small farm which they rent to a neighbouring farmer. They have done some land (laser grading) and irrigation works (channel construction) to the land totalling about $16,000. In normal primary production if they're a primary producer these works would be 100% deductible. As they are a property owner (Landlord) what is the tax treatment of these works and what might be their tax deduction?

Answer

Clearly your client acts as the landlord only and not as a primary producer. We suggest these are CGT third element expenses to be added to the cost base of the asset. It is hoped that such expenditure would be recouped in a higher rental yield.

Question 19

We supplied a one-off service to a company in the Philippines and an amount equal to 30% withholding tax has been deducted from our invoices. Its values exceed $1,000.00.

Kindly advise how we could claim back the above tax either from the ATO or tax department there.

Answer

You will claim this back as a foreign tax credit when you lodge your 2018-19 tax return.

The gross amount of the bill will need to be returned as assessable income with a credit claimed for the tax paid in the Philippines.

Question 20

I will really appreciate receiving some answers as soon as possible on the below queries. We subscribe to the premium package.

Query 1: My daughter and I purchased a property on 3/3/2014 which we renovated over two years whilst she was living in it.

We then rented it out. My daughter owned 99% and I had 1%. My daughter declared the rent and deductions in her tax return. I did not. I then bought my daughter's share on 25/10/17 at market value.

My question is: Can I claim depreciation on the renovation costs? Or do I lose them all?

Query 2: I have losses from share trading as a business several years ago. I was audited by the ATO and they accepted that it was a business loss. My deferred loss is $56,832.

After a year's break, I then bought one more lot of shares and sold them for a profit of $725. Can I offset this against the loss?

Also, I am doing some Airbnb and made a profit of $625 after expenses. Can I offset this against the business loss?

Answer

You will be able to claim a nominal 1% of the depreciation costs – however you should consider that a reasonable chunk of the renovation costs will relate to capital works which are deductible at 2.5%.

These capital works claims are not affected by the May 2017 Federal Budget changes. If you have not already engaged a Quantity Surveyor to apportion the renovation expenses, you should do so as this will save you tax.

Yes... you may offset this income from the sale of the shares against the loss. Whether you are still in the business of share trading is a moot point.

If you are not in the business of share trading and you held the relevant shares for longer than 12 months you may be able to apply the 50% capital gains tax discount to profit on the shares before offsetting the loss.

The Airbnb income can also be offset against the carried forward share trading loss.

Question 21

My client wants to setup a discretionary trust. Settlement sum will be $10. Considering in NSW its $500 stamp duty and Qld its $nil. The trustee lives in NSW.

How should things be done to avoid stamp duty? What are the rules in relation to Stamp duty?

Answer

You are correct in stating the stamp duty fees for establishing a trust deed vary throughout Australia. The

type of property held by the trust and the purpose of the trust can also have a bearing on the stamp duty payable.

The following guide provides a quick overview of the stamp duty fees applicable to trust deeds in different states of Australia.

A notable exception to the fees below are superannuation funds, many of which are exempt from stamp duty.

The following fees apply for trusts generally...

State	Exemption for super trusts?	Establishment Fee	Must be stamped within
NSW	Yes	$500 and $10 for each duplicate	90 days
Vic	Yes	$200	30 days
Tas	No	$50	90 days
NT	No	$20 and $5 for each duplicate	60 days
SA	-	No fee but can be stamped upon request for free	-
Qld, WA, ACT	-	No fee	-

It is noted that your firm is in NSW. To avoid problems and possible later complications, it is recommended that the stamp duty simply be paid.

In general, if the trust is genuinely established in Queensland with the meetings taking place there along with the trustee company being incorporated there and the initial company, registered office is a Queensland address, then arguably NSW stamp duty will not be payable.

It is a lot of trouble to go to just to save $500 – also as a responsible publication are cannot advocate artificial or contrived arrangements.

Question 22

I just have some technical questions received from a client regarding change in residency status due to a new job they're taking overseas.

Basically, questions 1 and 2 are straight forward if they are determined to be a non-resident for Tax purposes, then they will only have to declare their Australian income on their Australian Tax Return as well as complete the schedule for worldwide income for determining if they have to repay their HELP debt.

The only thing I am not entirely sure on the consequences on questions 3 and 4 on the implications as a Director and trustee of 2 companies and being a non- resident for tax purposes. The other question is whether there are any implications for returning of money earned overseas to Australia during the term of the contract or at the end. From previous experience, I know that the Tax Office can pick up the transfer of large sums of money to Australia and question it to ensure it does not have to be declared. Can you comment on this please?

Facts:

- They currently are a permanent public servant with the Dept of Defence.
- To take the new position they will need to resign from the current position or get a leave of absence for 3 years.
- The new position is with the Australian Embassy working on similar projects for the Dept of Defence.
- The new position is contracted for 3 years. Payment is in USD.The embassy does not deduct tax from the salary.
- The embassy requires they use the online ATO test to determine residency for tax purposes. (It seems that it is standard practice for Embassy staff not to pay tax in the USA due to an IRS classification).

Considerations:

1. Has a HELP debt.
2. Holds Australian shares, with dividend income.
3. Is a Director and trustee of two companies.

Questions:

1. If they declare as a non-resident will they be liable for Australian tax, other than Australian income?
2. If so, will they need to declare income in Australia to the Australian tax Dept?
3. Should they remain as a Director and trustee of the two companies?
4. Should they transfer all the shares to one of the trusts to avoid complications?

Other:

- Are there implications for the repatriation of money to Australia during the term of the contract or at the end?

- Would their partner be treated in the manner if they work in the USA either for the Embassy or otherwise?
- Would income earned in Australia before departure for the new position be normally taxed in Australia?
- Do you see any issues with the attached ATO test of residency?

Answer

1>If it can be fairly determined your client is a non-resident then they will only be assessable on Australian source income in Australia.

2>Correct

3>When you say Director and Trustee, we assume they are the director of a trustee company. We would stress that every company incorporated in Australia needs at least one Australian resident to be the director. So yes, they may still be a director but will need to have another person appointed – possibly a family member or close personal friend.

4>As there may be issues with overseas controlled trusts, they may wish to consider selling shares or having more issued to family members – there may be stamp duty and/or CGT issues to carefully consider – it really depends on the underlying assets. Also, if there is no change in beneficial ownership there usually is not a problem, but legal advice should be sought.

First dot point.... No there should not be issues.

Second... each individual has their own unique circumstances and subjective intention plays a part – the key for both would be in what their intentions are at the end of the three years - If they were open to staying on and had a permanent dwelling/residence in the USA then it is suggested they would be considered non-residents.

Third... yes, with the tax-free threshold adjusted for the months in the year.

Fourth... as the entire family are moving to the USA and it is an OECD nation then we do not see issues – the ATO can quite rightly enquire but it is all above board. We have sent you material pertaining to diplomatic staff indicating USA tax would be payable on the earnings. They effectively must waive diplomatic rights or risk losing permanent residence status in the USA. This appears to be the official IRS position but in practice... for Australian diplomatic staff it may be different. Your client can be guided by the Embassy and what happens in practice.

Question 23

A mum and dad partnership are going to incorporate. I have reviewed MTG 12-090.

Could you please advise I have the correct understanding, given the following extracted from the balance sheet of the partnership.

	Book Value	Market Value
SBE Pool (WDV of Buses)	$350,000	$400,000
Total Goodwill	$112,000	$100,000
Outstanding Chattel Mortgages	$424,000	$424,000
Bank Loan	$100,000	$100,000

When the company is incorporated the non-redeemable shares cost base will be the market value of the above?

What happens in this case when the net is negative? Is all the cost base lost?

I assume the bank loans and the chattel mortgage amounts outstanding will transfer over the other new entity and therefore leave goodwill and the SBE pool as the cost base of the non-redeemable shares?

Answer

Given the circumstances you outline, there could be a problem.

Under section 122-140 (ITAA 1997) where a taxpayer disposes of an asset and the taxpayer assumes one or more liabilities in respect of it, the amount of liabilities is limited.

For a post CGT asset which we assume to be the case here, the assumed liabilities cannot be more than the asset's cost base at the time of disposal.

However, we should consider that CGT does not apply to most depreciating assets you use solely for taxable purposes.

Effective rollover relief also applies to the trading stock, revenue assets and depreciable assets. So, when we consider the buses, the balancing adjustment is considered at partnership level. Where the joint written election for rollover relief is made, no balancing adjustment is necessary and the company's deduction entitlement and depreciation tax basis in respect of the assets are transferred to the transferee (S.40-345, ITAA 1997).

Given banks and financial institutions will have securities to transfer this transaction could be rather complicated.

If you are thinking of asset protection a better course of action may be to simply have an operating company.

Question 24

Capital Gains Question.

Scenario...

2004 Capital Loss $(84,500)

2017 Trading Loss $(74,850). Figures Rounded for convenience.

2018 Trading Profit $ 8,500

2018 Capital Gain $ 660,000

1) Please advise if My Calculation is correct?

2) If yes? Can you see a better way of doing this?

2018 Trading Profit $ 8,500 Less 2017 Trading Loss $(74,850) = $(66,350) Loss *** Capital Gain $ 660,000

2004 Capital Loss (84,500) $ 575,500 Trading Loss *** (66,350) $ 509,150

50% CGT Discount (254,575) $ 254,575

50% Active asset Discount (127,287) $ 127,288

15 Year Business Exemption (127,288) $ Nil

Answer

It is very important to be careful when applying the CGT small business concessions.

As we have very limited information, we will also be cautious in our advice.

We don't even know what entity this is or the age of the "significant individuals."

If the entity is a trust, individual or partnership (with individual partners) then the best course of action may be to simply apply the 15-year retirement exemption if this is available.

Note that this must coincide with retirement and the individual must be over 55 years of age or permanently incapacitated.

Note where the 15-year concession applies, there is no need to apply the other three small business concessions.

As mentioned, the capital gain is disregarded. The capital losses do not need to be applied against a capital gain arising from the 15-year exemption concession. There is no need to use up the revenue (income) losses either.

Using your example there will still be revenue losses of $66,350 and capital losses $84,500 available which will give rise to some tax planning opportunities.

Comment from member.... Thank You - Especially for getting back to me so quickly.

Yes - Trust Distribution to 4 Individuals all over 55 years of age & 100% retired for past 4 years. Only income now is from SMSF + Residential & Commercial Rentals in the hands of an agent.

I have now applied the 15-year exemption & will be free to use the Revenue Losses & Capital Losses at a future date.

Question 25

The details are of a person who is involved in only a couple of racehorses. On our research it appears racehorses are treated as personal use items.

In 2014 he purchased a racehorse for $180,000, had it trained and cared for, with costs of about $120,000. Overall cost about $300,000 invested. The horse never raced and eventually was sold off for $50,000 in 2017, in effect a loss of $250,000.

What we are trying to do is treat the loss as a general capital loss to be offset with a capital gain made from the sale of land in 2018.

Can you provide an opinion or point us to any tax references which either precludes us from claiming the loss or offsetting the loss against the land's capital gain?

Answer

The key here is whether or not a business has been carried on. Given the way the question is framed, we consider this highly unlikely.

We confirm that you are correct and that a horse that is acquired by a taxpayer who races it as a hobby is a personal use asset. (Taxation Ruling IT 2585 – see also Taxation Ruling TR93/26).

This means the capital loss cannot be claimed.

Question 4 (a)

FBT Implications of Upgrading the Depot vehicles. Under the new ATO Ruling MT2024 we wish to confirm the FBT implications.

Key Facts

- It is proposed to change the Depot vehicles from Mitsubishi Tritons to Ford Ranger and Toyota Hilux.
- There is a new ATO ruling (MT2024) on private use of work utility vehicles.

Key Questions

1. Are the Dual cab Ford Ranger and Dual cab Toyota Hilux eligible for the FBT exemption including eligible work-related travel or private travel, which is minor, infrequent and irregular?
2. If the vehicles are not eligible for the exemption, how is the FBT calculated?

Eligibility for FBT Exemption

The Dual cab Ford Ranger and Dual cab Toyota Hilux are eligible for the above mentioned FBT Exemption under s8. (b) of MT2040 which says:

"while having a designed load capacity of less than one tonne, they are not designed for the principal purpose of carrying passengers (sub-section 8(2))".

The Test is:

- If the designed seating capacity and passenger weight assuming each passenger weighs 68kg, is less than the remaining load capacity of the vehicle then the vehicle is eligible for the above mentioned FBT exemption.

Ford Ranger -Dual Cab

The Ford Ranger has flexible seating and engine options but the FBT Exemption test can be shown as follows:

Ford Ranger Dual cab

Seating Capacity	5 persons	6 persons	7 persons
Gross Vehicle Weight	3,200 kg	3,200 kg	3,200 kg
Kerb weight	2,235 kg	2,235 kg	2,235 kg
Load Capacity	965 kg	965 kg	965 kg
Passenger Weight	340 kg	408 kg	476 kg
Excess Load capacity	625 kg	557 kg	489 kg
Excess load capacity > passenger weight	**Yes**	**Yes**	**Yes**

Note:

Ford Ranger kerb weight: Kg

As per Ford Brochure (including 1 driver 75kg): 2,260

Kerb weight without driver: 2,185

Kerb weight with canopy & tow bar (Estimate 50kg): 2,235

Kerb weight for Council vehicles: 2,235

Where the excess load capacity exceeds the passenger weight the vehicle is eligible for the above-mentioned work related FBT exemption with limited and infrequent private use.

The Ford Ranger is eligible for the Work related FBT exemption with limited and infrequent private use in all passenger configurations.

However, employees issued with these vehicles will have unlimited private use and FBT will apply.

Method of Calculating FBT

Where FBT does apply the employer has the option of using the logbook method or the statutory formula for calculating the FBT.

Council does not use the logbook method for any vehicles and will use the Statutory Method consistent with past practice.

Question 4 (b)

Could you please confirm that our calculation methodology is correct? The information regarding vehicle weight has been provided by Ford.

Are there any other considerations to take into account?

Answer

It is confirmed your analysis is correct and in full compliance with the law.

However, given the statutory method results in significant FBT and in the event the vehicle (with FBT) is salary sacrificed and costed to the employee's package, it is open for an employee to contend that personal use beyond commuting to work is indeed minor and infrequent.

This may be the case if the employee's family owns a second vehicle.

Comment from member... I acknowledge your note regarding employees use possibly being minor and infrequent however this is not an issue for Council or employees, as Council pays the FBT which is not costed back to the employee.

If we thought the private use might be minor and infrequent, we could consider using the logbook to test the usage and find out. Anecdotal evidence suggests continuous private use.

Question 26

We are requiring assistance to resolve an issue with an employee's personal hygiene.

Our employee has attended work of several occasions with very distinct body odour. This person is our first point of contact for visitors to the premises and works in our admin department which comprises 4 staff in total. Our office is open plan and includes a parts, sales, service and admin

sections. I had received complaints from other staff in other departments and was also concerned about visitors to our office.

Initially I held individual meetings with all (3) staff in the office and discussed with them personal hygiene and the importance of using deodorant as necessary though out the day. Meetings were held with everyone in the office as I was trying to not single the person out. Response from staff was positive and after this discussion things improved for a while, occasionally I would notice an odour, but it was much more tolerable. However, this was mostly through the winter period.

I then had another day where the smell was unbearable, I spoke to the staff member again and advised that there was a problem. She acknowledged this and advised she had forgotten to put more deodorant on at lunch time. I suggested that she might like to bring some deodorant to work and leave it in the ladies' toilet, so it was accessible to her throughout the day. She indicated okay to this.

Another period of time has passed before again, we have had a day where the smell was unbearable. Again, I have spoken to the staff member and indicated that she must do something different as her deodorant was not working. Again, I have had staff within our immediate office and from other departments mention to me about the smell.

When I speak to the worker about the issue she does not get upset, she acknowledges there is an issue and that she needs to fix it. But it only works for a while and then we go back to having the problem. My concern is that we are going into summer and as it gets hotter this problem is likely to worsen.

I'm not sure what else I can do to address the problem; I have discussed with my manager and we are both at a loss as to how to resolve. The staff member is generally well presented in appearance and completes her work to a satisfactory standard and is polite and helpful in the office. But when the body odour is bad it is nearly unbearable. How else can we address the issue? This staff member is on a contract for 12 months as replacement for another employee on parental leave, her contract expires in April 2019.

Answer

This is quite a common issue for employers, and to date it appears to have been handled delicately and professionally.

From the information provided, the next step may be a formal disciplinary process where the employee is informed that they must take suitable actions to improve their hygiene not only for their benefit, but the employer has a duty of care to protect other employees and customers who may suffer as a result of the poor hygiene of the individual.

Failure to rectify could result in further disciplinary action up to and including dismissal.

Question 27

Can you let me know if there is a maximum amount that an employer has to pay to an employee for Superannuation including Super for any Bonus payments? I was advised a maximum of 17K per annum from one source.

Answer

In 2018-19, the maximum salary threshold has increased to $54,030 per quarter meaning maximum statutory super payments at 9.5% of $5,132.85 per quarter or $20,531.40 annually.

Question 28

I previously used tax agent for a discretionary trust with rental property. I need to find out how to do it without agent? Any suggestions?

Answer

The danger of doing the work yourself is that you may miss some claims. We take your point that a rental property is not complicated.

Carefully review all claims on the tax return to establish you understand all the claims.

The only point may be depreciation and you should ask the accountant for a depreciation schedule to determine the yearly claims. This is usually on fixtures, fittings and major appliances.

The 2.5% building claim (if relevant) should also be reviewed and you may wish to check as to whether you or the accountant has a quantity surveyor's report.

This will give information on the yearly claims to be made.

If the discretionary trust's sole source of income is rental income, then it is not strictly necessary to prepare financial statements – only a tax return.

Yours is a small proprietary company as defined in section 3.1.2 (Corp Law) and the relevant section for no need to prepare a financial report is Part 2M.3

It is possible that the Accountant is preparing financial statements as well as the tax return and that you believe you are paying too much for what you rightly perceive to be a relatively simple exercise.

You could attempt to do the work yourself, but you may wish to consider telling the accountant you do not require financial statements and that as a result you require a much more competitive quote.

If you are still not satisfied think about changing accountants and get alternative quotes making it clear you only require basic tax returns.

If you are still not happy, by all means attempt to do the work yourself by completing the ATO document named Trust Tax Return 20XX.

Question 29

A client with a SMSF in 2017 elected to defer $4622 capital gains on assets associated with the balance cap provisions. In drafting the fund's 2018 accounts/tax return deciding whether this deferred gain can be offset against 2018 realised losses or do the assets associated with the deferred gain have to be actually sold?

Alternatively, is the fund able to simply pay the tax due on the deferred gain to essentially "have it dealt with".

Answer

The deferred capital gain can only be realised when the assets associated with the deferred gain is physically sold.

Question 30

Farmer Brown owned 2 post 1985 farming properties. Sold one in Jan 2018, capital gain, say $1,000,000...claimed 50% discount and 50% active asset reduction leaving balance of $250,000...then claimed rollover relief. Considering the purchase of residential rental property. Can he offset the $250,000 rollover against the purchase price of this investment, or is the rollover offset limited to another active business asset and or capital improvement thereon?

Answer

It is a requirement that the purchase must be that of an active asset. Residential property for investment purposes will not qualify.

Question 31

As part of the Environmental Upgrade Program and in collaboration with local City Council, ABC Property Holdings P/L has installed Solar PV System (ABC P/L are the tenant). Repayments for the project are made to the Council monthly by ABC Property Holdings P/L until May 2028. Could you please advise how the system needs to be recognised for taxation purposes?

Answer

On the face of it this is a tax deduction as it is an expense of doing business and it is surmised your power costs will reduce as a result.

There is no suggestion that legal title to the solar panels has changed hands and it appear the equipment remains the property of the Council.

However, if legal title has changed hands and this is in the nature of an instalment purchase then you would be claiming interest on the financing component and depreciation on the asset i.e. the solar panels.

Question 32

Scenario...

My client is an Australian citizen that is currently a tax resident in the United Kingdom. He owns an investment property in Australia directly in his name and is currently paying GST on all property expenses. As he is not an Australian tax resident are there any property expenses which should be GST exempt?

He argues that when services are provided to non-residents such as tax and legal services, the provider can exclude GST if they are being provided to someone who is not an Australian resident at the time the advice is provided. Is this correct or even permissible?

If so, does the same also apply to items such as property Management fees, rates, repair costs and other advisory fees that relate to his property expenses?

Answer

If they are taxable supplies in connection with Australia... then GST is definitely payable irrespective of residency status.

This is clearly the case here.

The accounting and legal services you refer to relate to matters outside of Australia and are deemed to be exports.

If it relates to an Australian tax return regarding Australian transactions, then notwithstanding the fact they are non-residents it is still a "taxable supply in connection with Australia"

Question 33

I am wondering whether if I complete any template (say employment letter) on behalf of a client and I charge for my services in this regard, do I have an issue as a CPA but doing the work of a solicitor in preparation a legal document.

Answer

You correctly point out that Accountants cannot charge a fee for the preparation of legal documents.

I would tread very carefully in this area.

Preparing the documents but rewording the bill to say "commercial advice on the need for engagement letters" is fraught with danger.

You could posit that you had merely passed on a template, but this document may not consider every exposure your client may have.

It would be safer to recommend that they get legal advice.

Question 34

Can you help me with this question re Facie Rights to build a building?

If the company buy a right (e.g. right to build a building in the other people land). That right can be amortised in accounting.

Can it be amortised for tax purpose?

If the right is perpetual, what amortisation rate should be applied?

Answer

On the basis this is an existing business... this is simply a capital investment.

There is no connection between the expenditure and the derivation of assessable income and no tax deductions available under ITAA 1997.

In the event the right expires or is otherwise disposed of at less than its purchase cost, then this is a capital loss to be offset against future capital gains.

In the event the right is exercised then this is a third element addition to the cost base for capital gains tax purposes.

It certainly is not eligible expenditure for the purposes of the 2.5% building write off.

Question 35

A company of which I am a director is entering voluntary liquidation. We have a staff member on a 489-visa issued March 2018. He is a Malaysian citizen. Is he eligible for the Fair Entitlement Guarantee (FEG)?

Answer

He will only be entitled to the FEG if the 489 Visa allows him to stay in Australia upon cessation of employment which is imminent.

Question 36

I have property held under a unit trust. 100 %of the units in the trust now belongs to SMSF, (my personal 0%), as any income from unit trust is distributed to SMSF, so I tried to transfer the title of property to SMSF as beneficiary of unit trust and SMSF are the same, but state revenue of NSW still want to charge stamp duty, can you advice how can I do it without paying stamp duty for transferring?

Answer

It is the lawyer doing the conveyance who should advise you on this.

You need to be able to clearly demonstrate there is no change in beneficial ownership on the change in title.

You say "the SMSF now owns 100% of the units" – this indicates to us there has been a recent change in beneficial ownership.

If the SMSF did not always own 100% of the issued units there is an issue.

If the transfer has been from yourself personally to the SMSF then there is little doubt that there has been a change in beneficial ownership meaning stamp duty is payable.

You should be guided by your lawyer on this matter as State Revenue Law is normally handled by lawyers.

There is only one possible suggestion.... That if you are the sole member (beneficiary) of the SMSF, then it may be possible to argue "no change in beneficial ownership," but once again your lawyer will advise on this.

As we don't have the full story and documentation this really is a matter you need to take legal advice on.

Question 37

Re: public holiday payment

I am a new business owner and I have a part time employee in my business.

Our business had a holiday break from 22nd Dec 2018 to 26th Dec 2018 and re-opened again on the 27th and 28th Dec. Then we had another break until the 2nd Jan 2019 and reopened on the 3rd Jan 2019. The part time employee asked me to give public holiday pay total of 3 days for the 25th/26th Dec and 1st Jan and one day annual leave on the 2 Jan. I am unsure why I have to pay for the public holiday, is this right? If it is right, do I have to pay on every public holiday? What if we all went on holiday for a certain period, do I still need to pay? And from now on, do I have to keep doing this? Is this accumulated in the annual leave for the hours

in the public holiday pay? I look forward for your explanation.

Answer

This will depend on the letter of offer and whether the employee is "permanent part-time" or "casual."

Full-time and part-time employee who normally work on the day a public holiday falls, are normally entitled to a paid day off.

This is paid at the base pay rate for the ordinary hours they would have worked. Casual employees don't get paid for public holidays, unless they work on the actual day.

Question 38

My client is running a retail business and transport drivers often bring customers to retail shop. This is happening more often these days.

Surely, transport drivers get paid by their employers. However, they often request for tips or small appreciation, i.e. $20 or $30 per transport.

Issue: transport drivers (or their employers) do not provide a receipt of this money or proof of receipt although we requested, and this seems to be their general practice. Sure, this is unacceptable for business deduction. Therefore, my client records the bus registration number, name of driver and amount with payment date.

In this industry, it's difficult to say NO for this sort of payment as driver is acting regardless of the policy in their company / employer.

Would you please give us the advice about deductibility of these expenses?

If not deductible, please check whether there was any public ruling, which can be applied to this case.

Answer

This really is a question of scale - if the drivers deliver customers who generally spend a substantial amount then your client should not be complaining.

Here is the situation - if your client makes a payment and seeks to claim a tax deduction... then in the event of a tax audit he will be directed by the ATO to pay an amount of 47% of the total payments.

This is what happens when the recipient of such a payment does not quote a TFN/ABN.

Your client has a clear economic choice to make..... the commission to the driver is an acceptable cost of doing business and the referrals are worthwhile.

However, we would advise against claiming a tax deduction for the payment while affirming that all assessable income should be properly disclosed.

Also only pay a commission where there have been worthwhile sales made.

Question 40

Could you please assist, we're looking for the qualification of fuel tax credits for machinery, plant, equipment, heavy vehicles and light vehicles?

Answer

This question is so open ended, the best way to deal with it is to point you to the relevant government website.

Review www.business.gov.au/finance/taxation/fuel-tax-credits as this contains eligibility and calculation links which will enable you to readily assess your potential claims.

Question 41

I have a client DOB 1947 retired from the public service in receipt of a Com Super Pension comprising the following elements Total tax withheld $5,122.00 Label 7 Tax free component $19,172.00 Taxable component - taxed element $14,520.00 Taxable component - untaxed element $55,388.00 Label 7N Reversionary income stream indicator No Based on the information disclosed in his return the taxable components of this income comprises $55438 + $9586 from capped defined benefit income stream. It would be appreciated if you could confirm this calculation as I'm having difficulty determining how the $9586 is calculated. There is also no entitlement to the 10% offset on the untaxed element.

Answer

Your client has turned 60 and the Commonwealth has automatically applied the 10% tax offset on the untaxed element to the amount deducted from the fortnightly payment.

We will send you a fact sheet that explains the operation of Commonwealth pensions.

Question 42

Have a client wanting to achieve the best possible tax outcome.

The facts:

- Partnership (mum and dad) purchased a commercial property.
- Registered for GST.
- It's a cafe.
- They spent money on a shop fit out and ran the business for a bit. Then they sold the business, but not the property.

- They are 61 & 63 years old.
- Owned the property for more than 15 years.
- Each quarter they declare the GST on the lease, claim GST on the expenses.

Assuming they sell the building and make a gain. Does the property sale qualify for small business 15-year CGT exemption?

Answer

In order to qualify as an "active asset" and access the CGT Small Business Concession your clients will need to demonstrate that they ran the business on the property in question for at least seven and a half years.

Question 43

I have a query regarding a client that has sold his business as a going concern (so No GST). But the question is, the buyer did not have the funds to complete payment of the full contract sale price.

So, the value of the stock at $45,000 has been agreed to be paid off over 30 months. How do I treat this stock value in my client's books?

Should it be accounted for now as an income account "Sale of stock" and a debit loan account created in the Balance Sheet in the buyer's name?

My concern is if I do it this way, if the new owner defaults on payment, my client has declared income that he never receives OR only declare the stock sale as it is paid over the 30-month period?

Answer

As you have described the situation, it appears to be an instalment sales contract with vendor finance.

This is a sale of trading stock and the CGT Small Business Concessions are irrelevant. As such your client would declare the income in the periods as received over 30 months.

Question 44

One of my staff members resigned on Monday knowing full well that we are going on holidays on the 14th, she was asked to work until the 22nd, and agreed to it, she has contacted us and said that her father is sick and she is unable to attend work and is not sure if she will be able to work any of the days between now and the 22nd. Do I have the right to dismiss her on the spot?

Answer

Based on the limited information supplied, and taking into consideration the status of the employee e.g. award or contract, length of service number of employees in the organisation etc are unknown our view is as follows:

If the employee is entitled to a notice period and takes personal or carers leave during this notice period, dismissal is not an option.

Question 45

My client has requested information on how to best protect TPD Money paid out.

They are 63 years old; the insurer paid the TPD as a lump sum into his super fund and gave him the option to withdraw or leave it in the superfund.

He wants to know which would have the best outcome, leaving it in the super fund as a total Lump Sum or get out of super and re contribute or is there some other option?

Answer

This question really is a financial advice question (assuming the client is in a retail / industry fund they have financial planners that can assist if they do not which to engage a private planner).

We can comment on the client's options from a taxation perspective.

They can:

- Withdraw the entire balance;
- Leave all in super;
- Make a partial withdrawal;
- Commence an income stream.

Given your client is over 60 and receiving a TPD payment, we can assume that they are retired from the work force. In this case, a lump sum withdrawal would not attract tax.

The client's overall financial position really needs to be considered by a financial planner (including) taking into account future Centrelink entitlements.

Question 46

We have a lady expecting a baby mid-April, she has requested to work through to work until 3 weeks before the due date and we have a Drs note for her to do this. My understanding is that without the Drs note she should finish 6 weeks prior to the birth.

I have 2 queries for you ....

Firstly, even though the employee wants to work through to 3 weeks before the due date, we have no work for her to do, so as her employer, we would prefer her to work only to the six weeks prior to birth. Can we override the employees wish to finish work closer to the birth date?

Secondly, the employee has not had a lot of work on for the past 6 months, and our business as a whole has been considering redundancies and in fact made one person redundant just prior to Christmas. We were concerned that if we made this pregnant lady redundant it would open us up for unfair dismissal claims. I would like some advice on whether we can make a person going on/is on maternity leave redundant.

Answer

If the employee has a Doctor's certificate beyond the 6-week period prior to her due date, she is entitled to work that period as long as she is able to perform the duties as required.

I do not have enough information about the employment conditions in this instance to give advice on the question of redundancy, however any dismissal of an employee who is about to commence, or who has just commenced maternity leave, carries a high risk of an adverse action, general protections or unfair dismissal application by the employee.

We can provide detailed advice on how to reduce staff under these circumstances if required, as a private consultation charged at an hourly rate.

Question 47

I recently lodged a tax return for a 60-year female client who has retired and only received multiple super lump payments as income for the 17/18 year.

After entering these payment summaries in my tax program, her taxable income reached around $228,000 and had tax withheld of $9,330. She has private health insurance and a spouse who doesn't earn any income.

My reliable online tax program's tax estimate has repeatedly said (I have done it 3 times to check) she is getting back all the tax withheld, $9,330.

The tax office though has disagreed with my estimate in the way of lumps sum offsets (difference of $10,000) and are saying she owes around $2,000!!

I know it's hard for you to give me an answer without seeing the payment summaries, but I don't know what more I can do.

I lodged an amended tax return and again the tax office ruled the same outcome.

Can you advise what I could do from here? Maybe lodge an appeal? Do you have a link where I can do this, or can you test it and let me know of the outcome?

Is it possible you could do a calculation if I email you the payment summaries, date of birth of client?

Answer

As you commented, it is difficult for us to give a detailed answer without seeing the documentation.

Unfortunately, we really can't perform complex, specific calculations.

It goes beyond the scope of general advice.

Some points to consider are:

Taxed elements paid on or after her 60th birthday are non-assessable non-exempt income and are not included on her tax return;

There may well have been an untaxed element to the payments resulting in likely tax of 15% - 30%.

You could also review her member statements from the super funds to see if the elements have been recorded correctly in the payment summaries and with the ATO prefill.

Further you could contact the superannuation section of the ATO and request a detailed calculation of the assessment.

Question 48

Our company, an Australian company, wishes to employ NZ local residents in NZ.

Please explain briefly what the tax and superannuation matters are arising from the employment.

Answer

If you are employing NZ workers in NZ, you will need to comply with the NZ employment requirements.

It is suggested you get in touch with a NZ accountant to ensure you comply.

Your accountants' professional body (CA or CPA) may be able to put you in contact with some firms to assist.

Question 49

My client owns an investment property in Australia directly in his personal name.

He is currently paying GST on all his property expenses.

Are there any property expenses which should be GST exempt as he is not an Australian tax resident?

My understanding is that when services are provided to non-residents such as tax and legal services the provider can exclude GST if they are being provided to someone who is not an Australian resident at the time the advice is provided. Is this correct?

If so, does the same also apply to items such as property management fees, Rates, repair cost and other advisory fees that relate to his property expenses?

Answer

All of these taxable supplies are in "connection with Australia". They are certainly not exports.

The fact that your client is a non-resident is irrelevant. GST is payable.

In any case residential property is input taxed meaning no GST credits can be claimed irrespective of residency status.

Question 50

If a taxpayer who has gone overseas for a while and has been lodging his tax return as non-resident taxpayer since 2012.

He has a property which was purchased in 2007, he lives in it for 5 years until 2012 and went overseas to work since.

The new rule on Main residence exemption for foreign resident will not affect him if he moves back to live in the property before 30 June,2019 or sell before 30 June,2019 which means he is still entitled to claim Principal Home exemption from 2007 to 2012.In addition, he can use the 6 years' Absence rule to get exemption for another 6 years. Is this correct?

However, if he sells the property after 30 June,2019 when he is still a non-resident taxpayer or does not come back to live in the property before 30 June,2019, he will lose all the exemptions mentioned above, is this correct?

Answer

To answer your questions...

The clear intent of the legislation is to destroy the 6 years' temporary absence concession.

Although the housing market has come off its peaks, there are for long term holdings still some very substantial capital gains to consider.

There are four options....

1. Do nothing and pay significant CGT;
2. Move back into the dwelling prior to 30 June 2019 – this firms up the six-year temporary absence with a potential "freshen up";
3. Sell prior to 30 June 2019 and pay little CGT relying heavily on the six-year temporary absence;
4. Ensure he is a resident when selling after 30.6.2019.

Question 51

I recently read an article that said that the removal of Main Residence Exemption for Foreign or non-resident taxpayers have not become law yet. I am a bit confused on this and can you please double check whether that is true. If so, what can advise clients on the delayed legislation?

Answer

You are right – not yet passed – according to the ATO website and recent articles by Big 4.

This really shows the dysfunction of the Federal Parliament. This was introduced in March 2018 and has the support of both major parties.

So, assume it will be passed but it is quite possible the deadline will be extended to 30 June 2020. The closer we get to 30 June 2019 without the legislation being passed by the Senate the more likely this.

Very difficult times to be giving your clients advice!

Question 52

In the 2017 budget a new measure was introduced to disallow a main residence CGT exemption for foreign residents of Australia. This was a Bill and we are not sure whether it has been passed as a Law.

The question is taxpayers who are non-residents, will they still need to dispose their main residence or moved back before 30 June 2019 so that they will still get exemption on capital gains that they were entitled to as normal resident taxpayers?

We are not sure how we should advise our clients whether they should still sell the main residence before 30 June,2019 because there is no possibility of them coming back to live in it before 30 June 2019.

Answer

Yes, the legislation was introduced into Parliament in March 2018 but is not yet law.

Potential CGT is only one issue to consider when disposing of assets.

Each client will have their own set of unique circumstances to deal with.

It is very important that they explain to you their future intentions and then you can advise them accordingly.

It should be noted that if they return to Australia and move back in prior to the sale, then there should not be an issue if they change their tax residence status.

They need to be aware of this – you would be aware of the six-year temporary absence concession and clients

should also be made aware of the need to freshen this up.

If you move back in within 6 years, the next 6 years' concession starts all over again.

Also, the changes only apply to those non-residents who have derived rental income from their principal place of residence (PPR).

Other matters to discuss with your non-resident clients include their loss of the 50% discount after 8.5.2012 and the need to have valuations for any assets subject to CGT.

Also, there are CGT considerations for those changing residencies outlined in the tax tips in our last issue. Refer to the answers to the two previous questions.

Question 53

The press has quoted that the ALP, if voted in, intend interfering with trust which have tax saving advantages:

1. When distributions are made to charities, and

2. When income is shared between family members.

A: Is this assumption correct?

B: Is there a way around it?

Answer

As you correctly point out the ALP have to be elected first and then present legislation which will have to pass both houses of parliament.

In broad terms the ALP will seek to have all trust distributions taxed at 30%.

We will only know if there are alternative strategies when we see the legislation.

It is expected that family businesses rather than making distributions may employ family members and so use up the nil threshold and low marginal tax rates.

Although this could apply to young adults, say students, it would be, if audited by the ATO, necessary to demonstrate that the wage was reasonable for the work done.

The ATO would expect that an arm's length person would receive the same wage for the work done.

Question 54

We have a client who will be receiving funds for a sale of an investment property, which is in his family trust. The family trust has a company trustee, and the land and building were bought way back in 1988.

I am aware of recent changes the government has made in relation to downgrading your family home and allowing up to $300,000 to be put in your super fund.

My questions are: Are there options or concessions that may apply to my client in this case to avoid paying CGT?

And because the property was purchased in a family trust with a company trustee, will the client be entitled to claim the 50% CGT discount?

Any other advice or information would be appreciated.

Answer

The property is owned by a family trust. Generally, a trustee is not eligible for main residence exemption.

The new rule concerning downsizing and super contribution is only relevant to taxpayers aged 65 years or older and the property being sold must be taxpayer's home.

The 50% CGT general discount is available to the trustee and the beneficiary as the property's been held for more than 12 months.

Question 55

A new client has come to us in the following situation:

They want to wind up the company.

2018 FY

P&L

- Profit $(390)

Balance Sheet

- Loans from directors $ 5,989
- Other loans $6,688
- Issued capital $200
- Accumulated Losses $12,877

I have noticed that the tax return shows:

1. a balance of the franking account of $27,446
2. carried forward income losses $1,258
3. carried forward capital losses $87,763

If they just wind up the company, then the directors will make a capital loss on the loans and the franking credits will be lost.

Is there a strategy to utilise as much of the franking credits as possible?

Answer

It is necessary to establish who the shareholders are and whether they are in a position to use the franking credits.

An example here would be pensioners – potentially their pension reduces 40 cents per dollar of taxable income over a certain amount.

Also, if they have a high taxable income independent of all this then they may not wish to receive dividends they will pay tax on.

This occurs when their marginal rate of tax is higher than the franking credits available.

The on-going annual costs of maintain the company will also need to be considered. Proceed with caution as the balance sheet figures you quoted are not consistent with the franking account information.

Question 56

I was having breakfast with my friend B who asked me a tax Q. regarding Rental Losses in Australia. He worked overseas for several years UK & France. He was a non-resident for tax purposes. He accrued Rental Losses here, but he says his international firm accountants have said that he cannot accrue the rental losses for future use. I believe that neither the UK nor France allow overseas rental losses to be claimed against Income earned in these countries.

ATO says: "Australian and foreign residents: Australian residents now calculate an overall tax loss based on their worldwide income and deductions. Foreign residents calculate a tax loss on the basis of their Australian income and deductions incurred in earning that income."

I believe that B can claim the rental losses accrued if he returns & becomes an Australian Resident for Tax Purposes. Can you advise please?

Answer

You are correct.

Question 57

We employed an accounts receivable officer on 01/02/18 on a three-month probationary period with a one-year contract on offer subject to satisfactory completion of the probationary period.

On 01/05/18 we extended the probationary period by one month as there were some issues with the level of performance. We changed some of the duties that they were not coping with, and trained them in other aspects of the Administration Dept. This also resulted in only just satisfactory work performance, and numerous discussions have been held regarding the level of performance.

On 05/06/18 we decided to persist and offered a one-year contract, gave more training, and changed their role once more to accommodate the level of performance, which to this day (14 months) is still not up to expectations of the Company.

We are planning on presenting a written performance review early next week which will include a non-conformance for some errors that have been made, but failing any significant improvement, we cannot foresee the individual continuing to work for us.

Regarding the one-year contract which is up on 05/06/19, can we simply not renew the contract, or do we have to substantiate (3 non-conformances etc) our decision?

My dilemma is that only three other people in the Administration Department are on one-year contracts and they have all been rolled over automatically. Everyone else (all long-term employees) are on open ended contracts. We only introduced the one-year term in 2017.

Answer

We supply the following advice in relation to the queries raised below:

The Fair Work Act 2009 allows for labour only contracts for a period of 12 months maximum duration.

Based on this fact the employee in question may be advised that the contract has expired when it is due.

Employers who place employees on employment contracts must not contract outside of the applicable Modern Award provisions or the National Employment Standards.

Question 58

Facts: Company spent meal entertainments expenses $10k during the FBT period and is using the Actual method for valuation.

A. Company had 9 times of large entertainment expenses (including Christmas party or new year party) for only employees during the year, which were infrequent, irregular and expenses per head less than $300. In result, these will be minor benefit exemptions.

B. During the year, sales managers and CEO spent meal entertainment expenses with clients / suppliers and we will treat them as general meal entertainment expenses (for only staff portion) under actual method because these sort of meetings (meal entertainment expenses were incurred) are frequent and regular, thus no minor benefit exemptions was applied.

My Question is:

Are we allowed to treat as above (decide by each case / incidence)? case (a) or (b) depends on the conditions, such as frequent / infrequent, regular or irregular, less than $300 per head or not.

Answer

A.if it could be established the expenses incurred were "minor and infrequent" then no FBT would be payable.

Taxation Ruling TR 2007/12 sets out the Commissioner's view on the application of the minor benefits exemption and it is suggested that you carefully review this.

B.We agree with your reasoning.

Regarding your question, the sales managers' entertainment expenses with third parties are clearly not minor and infrequent and there are FBT implications.

Take care when applying s58P of the FBTAA 1986 (exemption for minor and infrequent benefits) as some Practitioners and Taxpayers are being too liberal in the interpretation of this exemption.

It is permissible to consider these matters on a case-by-case basis.

Question 59

I have a rental property and over the years have had 3 tenants break their lease, leaving with money owing, either rent or water charges. I've been told by the real estate agent that the tenant has promised to pay the money back that they owe but after many requests from the real estate, there has never been any money. I have Landlord insurance that covers loss of rent and have claimed it on one occasion. But when the tenant has promised to pay it back, I have given them the benefit of the doubt and by the time it is realised that they are not going to pay, it is too late to claim the loss.

Recently I've changed insurance companies and about 2 weeks later my tenant broke their lease owing money and are now saying that they will pay it back. I don't want to put in a claim for loss of rent because it is still only 3 weeks into my new insurance policy. I am getting sick of being stiffed with these tenants who can't pay their way when they have signed a lease. I'm wanting to claim the loss on my income tax in the rental section but there really is nowhere to put it and everything I have read from the ATO doesn't mention what to do if the tenant skips out leaving money owing.

Is there somewhere on my tax return I can claim the loss of the income from these tenants who leave owing money.

Answer

I am sorry this is probably of little comfort to you... but given you're unlikely to receive the rent you will not have to pay tax on it.

This means your assessable income will be lowered by the bad debt. The ATO position on claiming bad debts is that the debt needs to have been formerly returned as assessable income.

As Landlords generally account for rent on the cash basis, this is clearly not the case with you and cannot claim the bad debt.

Question 60

We have a client with a complex scenario; therefore, your expert advice would be greatly appreciated.

The client's late father was part of a group of individuals who acquired a large piece of land as tenants in common with equal shares. The initial contract for the purchase of this land was signed on the 8/3/1985. The father was thereupon issued a title for his share.

The group then subdivided the land, and on the 23/12/1986 the client's father and mother became joint proprietors of their block of that land.

The father passed away and his land was transferred to his wife on the 25/7/1996. In June 2001, the mother passed away and the land was transferred to the newly formed family trust the client and siblings set up.

My question is concerning CGT and if this land is subject to CGT? Considering the initial purchase and contract was signed on the 8/3/1985, we believe it will be exempt as purchased before the introduction of CGT?

Answer

In these situations, there are some elections that may be made with regard to trading stock but here we are dealing with land on capital account.

As you would want to access the CGT 50% discount, you would posit that the land was originally purchased as a long-term investment.

We would also point out that there have been two changes in title.

While it is open to you to apply for a private ruling, we believe CGT will be payable.

Question 61

Legal expenses question:

Scenario: The client is an officer, stood down on full

pay pending further investigation by Internal Affairs. The matter relates to an on-duty issue.

Can the client claim a deduction for legal expenses incurred, whilst defending their employment, in excess of what the union will reimburse?

Answer

Case Law would indicate that your client would be allowed a tax deduction for these expenses.

However, we qualify this with the fact that no two cases are identical – in the event the amount is large you may wish to seek a private ruling to protect your client.

We refer you to the following cases:

- Commissioner of Taxation v Shane Day
- Romanin v Commissioner of Taxation

Question 62

My question is regarding Franking Credits... I have a company acting as trustee of a discretionary family trust.

Myself the only Director. Included in the General Beneficiaries is my partner, an adult. The trust was set up to trade in Public Company shares in 2014.

In the Tax Return for the year ended 2017, the dividends from public companies were $29,904 including franking credits of $12,816, making a total $42,720. The tax return included the sum of $42,720 and the balance sheet showed an entitlement of $12,816 of Franking Credits.

Example:

Income from Public Company Dividends: $42,720

Less Deductions and Past losses (carried Forward): $43,346

Loss to be carried forward = $626

In 2018 there were Dividends from Public Companies of $74,334, including franking credits of $22,027. After claiming deductions of $63,116, and including the loss of $626, finished up with ordinary income of $17,468.

Example:

Income:	$74,334
Other income:	$ 6,906 (shares bought and sold less than 12 months)
Total:	$81,240
Deductions:	$63,116
Total:	$18,124
Loss C/F:	$ 656
Total Income:	$17,468

My partners' tax return for the year ended 2018 has shown the income from the Trust of $17,468. They have no other income.

Are they also:

1. entitled to the Franking Credits of $22,027, paid from the Trust for 2018?
2. entitled to the Franking Credits of $12,816, for the year 2017?

There are Trustee Minutes of meetings held on the 27/6/2017 and the 27/6/2018 where the Income from Dividends from the Public Companies and the income from other sources should be payable to my partner.

Answer

2017- This issue often comes up. Ideally part of the planning for the trust would have been to ensure the trust had a taxable income to enable the use of the franking credits.

If the Trust return as already been lodged showing losses carried forward, then it is not possible to claim the $12,816 franking credits unless there has been a genuine error in overclaiming expenses.

2018- The franking credits of $22,027 can be claimed.

As these franking credits for both years exceed $5,000, ensure a family trust election concerning the losses has been made.

Question 63

A & B are joint beneficiaries and executors (trustees) of their late mother's estate (probate granted 11 December 2018). Under the will both A & B (brothers) have been bequeathed equal shares of the property of the estate. The property consists of a block of rental apartments (4) under one title...approximate value $1,000,000 and cash $500,000. B is not interested in taking his share of the real estate. They propose to enter into a deed of arrangement so that A will take 75% of the real estate and B 25% real estate and 100% of the cash. Thus, they have each acquired 50% of the "property" as stated in the will. Subsequent to the transfer of property to the beneficiaries, A proposes to acquire the 25% balance of the apartments from his brother ...this would of course trigger CGT issues and stamp duty on the transfer.

Alternatively, could the trustees sell 25% of the apartments to A before winding up the estate thus triggering a sale within the estate and associated CGT payable by the estate. B would then receive cash consisting of $500,000 + proceeds of real

estate. A, already owns 25% of the real estate and receives the balance as beneficiary.

NSW Revenue have indicated that notwithstanding the agreement to distribute the real estate on a 25/75 split, any subsequent "sale" to A would trigger stamp duty on 50% of the real estate...on the basis that the deceased bequeathed equal shares... whether this interpretation is correct is debateable...

Your advice/comment on the following would be appreciated:

Can a deed of arrangement be entered into the by the beneficiaries as suggested above?

Can the estate "sell" the 25% interest to A before finalising the distribution?

Is NSW Revenue's interpretation of the stamp duty liability correct? i.e. regardless of the deed, the property stamp duty on the subsequent sale by B to A would be assessed at 50% of the original property value. The wording of the will is as follows: I APPOINT my sons A and B Executors and Trustees of this my Will and I GIVE DEVISE AND BEQUEATH all my property both real and personal to my sons i.e. said A and B in equal shares.

Answer

Given the joint beneficiaries and executors – with no third parties.... this would appear to be an amicable and simple situation.

Take legal advice because on the face of it, A&B can take mutually agreed equal value in the proceeds of the Estate.

When you question ... can the Estate "sell" the 25% interest to A before finalising the distribution, we assume this is what you mean.

There is no CGT event until the property is transferred into individual names and the same should apply to NSW stamp duty.

Subject to legal advice the brothers should be able to exercise discretion in this matter.

We stress that a lawyer must be consulted.

Question 64

Hello, I am a Corporate Essentials - unlimited plan subscriber. We currently have a staff member employed as a Sales Manager in NSW who is responsible for a number of employees all based in our Head Office in QLD and put simply, not able to manage the staff from NSW. We are thinking of changing the Sales Manager position to Business Development where no staff report to them. Can we legally reduce how much we pay as there will be less responsibilities?

Answer

This is a complex matter that requires specific consulting advice.

Reducing the salary and conditions of an employee without following the correct process can attract claims of Adverse Action, Unfair Dismissal, Breach of Contract and/or Constructive Dismissal.

Reference to the Employer's Guide to Performance Management, Termination, Change and Redundancy provides basic advice in dealing with this type of issue.

Question 65

Just have few questions in relations to FBT meal entertainment...

1) We have reimbursed our CEO his Qantas club membership valued to $440 (Inc. GST), & wanting to know whether or not can we apply the exemption as per (s 58Y), if so do I need to include this payment in "Expense payment" category of FBT return & allocate the 100% under Percentage of benefit subject to "otherwise deductible" rule.

2) We have also reimbursed various employees their professional membership fee (CA, CPA membership etc.), course/tuition fee and wanting to know whether these expenses are exempt on the basis of "Otherwise deductible Rule" if that's is the case do I need to list all of the employees under "Expense payment" category of FBT return & allocate the 100% under Percentage of benefit subject to "otherwise deductible" rule.

3) We are a tax-exempt body and wanting to know the meals provided as below are tax exempt.

   a. Second Tuesday of every month we have our meeting at our Town hall and prior to this meeting, provide meals for staff & elected members and cheese platters and wine after the meeting. I gather we have no access to property benefit exemption nor minor benefit exemption being Tax exempt body, also being meals are served prior to every meeting (every second Tuesday). In this case do we need to include the cost of meals related to Staff only in our FBT under meal entertainment category? Or is there any other exemption that we can use to reduce our tax liability?

   b. We hosted Christmas dinner for its elected members & Management staff at a

restaurant and wanting to know whether meal entertainment would apply? If so want to confirm whether the meal entertainment would only be applicable to management staff but not elected members portion as they are not employees.

c. We hosted Christmas lunch for our staff members at a function room and 364 staff members attended the function and cost of meal per head was $25. I gather as a Tax-exempt body we have to pay FBT on the $9100 (364 X 25) +GST could you please correct me if I am wrong?

Answer

1)The otherwise deductible rule applies subject to getting an employee declaration outlining his/her percentage business use of the Qantas Lounge. We note that the Qantas caters mainly to business travellers.

2)Correct but be careful – where professional associations memberships would qualify for "otherwise deductible" make sure self-education courses are relevant to the employees' existing employment using ATO guidelines.

3) a. The provision of this food on council premises are refreshments to enable staff to complete the working day. The same applies to elected members. This food is reasonably incidental under the ATO guidelines and not likely to constitute entertainment.

b. As long as the cost per head is less than $300 for the staff there are no FBT implications as the minor and infrequent benefits exemption applies. If the elected members are not employees, then this could be considered entertainment. This means no tax deduction, no FBT and GST credits cannot be claimed.

c. Here we consider the minor and infrequent benefit exemption applies meaning no tax deduction, no GST claim and no FBT payable.

Question 66

We are looking at employing someone currently living in Brisbane. Our office is in Central Queensland.

Question: Can we pay for their accommodation for 3 months without attracting Fringe Benefits Tax?

Answer

If this is "an expense payment where the recipient's expenditure is in respect of the removal or storage of household effects of the employee" .... FBTAA1986 section 58B(1)(a)(i) the following is required...

"Documentary evidence of the recipient's expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date"

Section 58B(I)(e)

.... Then the benefit will be exempt.

The ATO has specific guidelines to the FBT exemption for temporary accommodation. The ongoing rent as such is not FBT exempt.

The Temporary accommodation: The FBT concession reduces the taxable value of fringe benefits arising from providing temporary accommodation (including household goods) to an employee who changes their usual place of residence during employment, or to start employment.

Where the temporary accommodation is at the new location, the employee must start to make sustained and reasonable efforts to buy or lease suitable long-term accommodation as soon as reasonably practicable after starting work at the new location.

The concession is limited to an occupancy period that begins seven days before the day the employee starts work at the new location and ends when the employee could reasonably be expected to occupy the home after it has been purchased or leased.

The concession is ordinarily limited to a maximum occupancy period of four months. However, it may apply for a maximum of 12 months, as follows.

Where the employee gives you, a declaration outlining their efforts to find suitable long-term accommodation, the concession may apply for a maximum of six months.

Where the employee: Owned a home at the former location but sold it within six months of starting work at the new location and, during that period, attempted to buy a home at the new location, and

Gives you a declaration (see below) outlining their efforts to find suitable long-term accommodation.

In either case, the concession will end before the four months, six months or 12 months elapse if the employee stops making reasonable and sustained efforts to buy or lease suitable long-term accommodation.

The Temporary accommodation relating to relocation declaration must be in a form approved by the Commissioner (refer to Declaration).

Question 67

I have a few queries...

- If we repaint the whole roof of a rental house, is it tax deductible as Repair and Maintenance?
- If we repaint inside the whole rental house, is it tax deductible as Repair and Maintenance?

Answer

This is tax deductible if it is genuine repairs and maintenance. Simple repainting could not be construed to be an improvement. The only issue would be if the rental house is a recent acquisition. In that case the expenditure would need to be capitalised and written off over time.

Question 68

My SMSF ATO fund owns an 80-acre rural property that is currently partially leased to a cattle farmer and there is also a sheep farmer who is paying a fee per head per week for his sheep that are occupying another paddock. We are at the stage now where the property needs a tractor for general maintenance including for the dam, slashing for fire protection, removal of fallen timber, erosion and stormwater mitigation issues, burial of dead animals etc. Is this an item that the SMSF can purchase?

I have done some research and I expect the new cost to be about $25k. The tractor would always be on the property (in the shed) and have no other purpose except farm use. It won't be registered for the road. There is no house on the property. I own no other rural property in my name or associated companies or trusts. If the SMSF is able to purchase a tractor would the 30k capital expense write off apply for the SMSF?

Answer

As a SMSF cannot conduct a business we do not believe the small business $30k write-off can be claimed.

As your fund is audited each year it would appear that the SMSF is complying.

In the event the property is used for your personal use and enjoyment in any way then there are compliance issues. The farm would need to be entirely leased out to third parties.

In that event a purchase of a tractor to maintain the farm may be possible with depreciation to be claimed annually.

Question 69

I need to get some advice on my pay slips. I currently pay a fixed hourly rate to cover payments at award rate or above including the first couple of hours of overtime. Once an employee goes over that threshold, I usually add a line item called adjusted pay which makes up for any discrepancy. Is this an acceptable way to present a pay sheet, i.e., they are paid X amount multiplied by the total hours worked and then an added adjustment to ensure it is better than or above award for any additional hours including allowances. I can send examples to clarify if it makes it easier.

Answer

We suggest that you separate the ordinary award rate from overtime rate because overtime time is usually paid at higher rate.

You are covered as long as your hourly rate and overtime rate are not less than the Award rates provided by Fair Work Ombudsman.

Question 70

We built and operated a supermarket. Sold the business in 2005 and kept the building. Lease payments, paying our retirement. In 2016 the Lessee went bad and suffered considerable losses.

Due to lease payments in arrears we exercised the landlord's prerogative and reoccupied the premises. To re-establish the supermarket business, we established the trading company XYZ Trading Pty Ltd with 3 directors, myself director/secretary, my wife and daughter as directors.

August 2017, we sold the business with a 10-year lease.

2018 tax affairs were completed recently. Which informed us of an $80,000 plus tax credit.

Our information: this tax credit can only be used by XYZ Trading Pty Ltd. Is this so?

Are there better options than establishing XYZ Trading Pty Ltd as a share trading company on the stock market? Can XYZ Trading P/L distribute this tax credit to the directors of XYZ trading P/L or, distribute the tax credit to UVW Pty/Ltd- XYZ Family Trust?

Are there other options?

Answer

We assume the $80,000 tax credits relate to the income tax paid by the XYZ Trading Pty Ltd.

The tax credits or franking credits can only be accessed by the shareholders of the XYZ Trading Pty Ltd.

XYZ Trading Pty Ltd can distribute the fully franked dividend to the shareholders in 2019 financial year.

Question 71

We received your newsletter Issue #0099 – Federal Budget Update 2019-20 and have the following query (please see below) with respect to "Staff bonuses".

Staff – Bonus (Issue #0099 – page 15)

A bonus may be deductible in the 2019 year if it is quantified, approved and committed to payment prior to 30 June (even if paid after 1 July). Determine whether any bonuses are to be paid and, if so, ensure the amount is quantified and approved by Directors'. The relevant staff should be notified of the bonus prior to 30 June and that any PAYG Withholding Tax is remitted in the first activity statement after 30 June.

If we have quantified and approved a bonus of say $100,000 to various staff members before 30.06.2019 can we take up the amount as a tax-deductible expense in the 2018-19 accounts even if we have not actually paid this amount to the staff members before 30.06. 2019..

If we take up the amount of $100,000 as an expense in 2018-19 but it is paid after 30.06.2019 should the amount be included in the staff members 2018-19 payment summary amount or can it be included in their 2019-20 summary as that is the year that it is being received by the staff members. We would usually pay the bonus to the staff in about October. We would remit the PAYG to the ATO once the payment to the various staff members had been made.

Answer

You can if your account income and expenses on accrual basis and you are committed to pay the bonus in 2019/20 financial year.

You are correct that the staff members don't need to include the bonus until it is being received. You don't include the bonus in PAYG Payment Summary Statement if it is not paid in the relevant financial year.

Question 72

A property is being transferred at market value for $280,000 and arm's length between mother and daughter, daughter is purchasing the property.

I am instructed that it was transferred to the mother in 1992 as an inheritance. It was valued at that time at $140,000.

The mother has been receiving rent from the property.

The mother has been intending to move into the property, but just has not due to health reasons, and had to rent the property out to cover the expenses.

1. Can the mother claim main residence exemption for the period she was intending to move?
2. What does she need to show for intention in this case?

Answer

Section 118-100 to Section 118-210 of ITAA 1997 contains a number of provisions that provide an exemption from CGT in respect of a main residence owned by an individual.

The first question is whether the real property is the mother's main residence during the ownership period. The commissioner generally takes into account the following factors to determine if the dwelling is a taxpayer's main residence:

- the length of time the taxpayer has lived in the dwelling;
- the place of residence of the taxpayer's family;
- whether the taxpayer's personal belongings have been moved into the dwelling;
- the address to which the taxpayer's mail is delivered;
- the taxpayer's address on the electoral roll;
- the connection of services such as telephone, gas and electricity, and
- the taxpayer's intention in occupying the dwelling.

A dwelling can only be the main residence of the taxpayer if the taxpayer actually occupies the dwelling. There is a case COUCH & ANOR v FC of T, AAT 2009 where commissioner considered whether the intention alone is sufficient for the exemption. The commissioner provided that the mere intention of a taxpayer to occupy the dwelling as a main residence is insufficient to obtain the exemption.

The second question is whether the main residence exemption is available under Section 118-195 to Section 118-210. These special provisions deal with the CGT treatment of a main residence that is acquired by an individual beneficiary of a deceased estate. As we don't have sufficient facts about the status of the CGT asset before the inheritance, we can't discuss further.

Question 73

A company sold a business Jan '19 (as a GST reg going concern) and has received part of the contract price upfront. The other part of the contract price is for stock and has been vendor financed over 30 months. Does the company have to remain GST reg. till all the payments have been received, when they are the only funds being received by the company? Which are just loan repayments?

Answer

Whether the client reports for GST on the cash or accruals basis is a moot point.

The act of vendor financing means that consideration has been received for the sale of stock.

You are right to say the loan payments received have no GST issues. As long as the company is not making taxable supplies in excess of $75k per annum it may deregister for GST.

Question 74

I am writing to seek confirmation of the way in which closely held, and arm's length employees are to be treated from 1 July 2019 in relation to Single Touch Payroll reporting.

The ATO website states: -

Concessional options for payers of closely held payees

There are two options available to payers of closely held payees.

A closely held payee is one who is not at arm's length. This means they are directly related to the entity from which they receive payments for example:

- family members of a family business
- directors or shareholders of a company
- beneficiaries of a trust
- **1. Later start date for reporting closely held payees**

If you have 19 or less employees, you will not need to report closely held payees through STP in the 2019–20 financial year. You don't need to apply for this later start date for reporting your closely held payees.

However, all other employees (arms-length employees) must be reported through STP from 1 July 2019 or your deferred start date if one has been granted. See 'When to start' on page 2.

For closely held payees who are not reported through STP for the 2019–20 financial year, follow existing processes. This means you will still need to provide them with a payment summary and lodge a Payment summary annual report (PSAR) to us.

Link: https://www.ato.gov.au/Business/Bus/Single-Touch-Payroll-for-closely-held-employees-factsheet/

From the above information, my understanding is that if you have a mix of closely held and arm's length employees you would have to split your payroll into two - those closely held and those that are arm's length - and only report the arm's length payroll through an STP Pay Event. (There are no reasonable grounds to defer the start date of STP for any other reason for my existing clients.)

Could I please have clarification as to whether my understanding is correct. In the event that it is, could I also confirm that, as a BAS Agent, it would be prudent for me to have a client's accountant confirm in writing those employees that he would consider to be closely held.

On a side note, it would also be extremely helpful if anyone could provide me with suggestions/ recommendations as to the most user-friendly accountant software for the preparation of financial statements and tax returns.

Answer

Regarding your questions:

1. Yes, you must report for the arm's length employees, you could split between the arm's length and non-arm's length – however it is suggested that it may be easier to just report for all employees;
2. The accountant confirming in writing who is non-arm's length is helpful but not required;
3. We see many small and medium sized accounting practices using the HandiSoft suite for their financial and tax return preparation and is one of the products worth considering.

Question 75

Partnership question.

Partnership has made a revenue loss of $22,685. The non-commercial losses tests are already passed.

It is a 3-way partnership. To my knowledge there is only a verbal partnership agreement.

1 x partner has a taxable income of $70,000. - Garry

2 x other partners have a taxable income of $5,000. Mike and Mark

So, what I would like to do is split the loss unevenly. I have reviewed TR 2005/7 and would like guidance on it.

My understanding is I can apply the ruling in the following way:

Partnership Taxable Loss before partner salary: $(22,685)

Partners Salary $20,000 paid to Garry.

Partnership Distributable Loss: $(42,685) including Partners Salary

Reconciliation item $20,000

Net distribution:

Garry $(20,000)

1/3 remainder $ (895)

Total to Garry $(20,895)

Mike and Mark, get the same $(895) each.

Therefore, total loss distributed $20,895 + 895 + 895 = $22,685.

Have I applied TR 2005/7 correctly? Is it correct to complete the tax return based on this example?

Answer

No, this is not correct as laid out in example 3 of TR 2005/7. Please see below for example of the correct layout.

TR 2005/7

Income tax: the taxation implications of 'partnership salary' agreements

Example 3

34. Christine and Julia formed a partnership under which it was agreed that they share the profits and losses of the partnership equally. The partnership agreement provided, however, that Christine would be entitled to draw $20,000 a year for managing the business. The agreement regarding the sharing of profits or loss is to be construed as an agreement to share equally in profits remaining after the salary is taken into account, if any, and equally in losses. The 2003-2004 year's net (accounting) loss, after paying Christine's salary, was $30,000. Determination of the net loss, for the purpose of completing the Statement of Distribution on the Partnership return, is as follows:

Partnership net loss (after deducting salaries) $(30,000)

Plus:

Christine's salary $20,000, Net loss $(10,000)

The net loss is then distributed, in accordance with the partnership agreement, being 50%, 50%, as follows:

Christine:

Interest in partnership net loss 50% of $(10,000) $(5,000)

Distribution $(5,000)

Julia:

Interest in partnership net loss 50% of $(10,000) $(5,000)

Distribution $(5,000)

Total distribution $(10,000)

The $20,000 'partnership salary' cannot create or increase a partnership loss. The salary was taken by Christine as drawings in advance of profits. Christine's drawings do not affect her liability to tax, other than to determine her individual interest in the net income or loss of the partnership under section 92 of the ITAA 1936.

The $20,000 drawn in excess of available profits will be met from profits in future years and be assessable to Christine under subsection 92(1) of the ITAA 1936 in that future year when sufficient profits are available. If the partnership is wound up before this time, the $20,000 excess is repayable by her and thus not assessable under subsection 92(1) of the ITAA or section 6-5 of the ITAA 1997.

Question 76

Are we able to pay a wage earner on a commission rate for work completed after hours?

They will be paid for an 8-hour day, but if they wish to work after 8 hours is it legal to pay commission on what is achieved after hours? By this I mean they are sent to complete various jobs, so can we pay commission on each job after hours, or does it have to remain as an hourly rate?

Answer

If the employee is covered by a Federal Modern Award, any hours in excess of 8 hours per day (depending on the hours of work and penalty rate provisions stipulated in the applicable award) should be paid at the applicable hourly rate plus applicable overtime rates.

Call out provisions and penalties may also apply if the employee is required to attend work after the employee has left the normal place of employment.

Based on the limited information provided, payment by commission as suggested may be in breach of the Modern Award and/or the National Employment Standards and would not be advisable.

Question 77

A Client of mine operates a small Family Trust. He and his family members receive distributions from the trust.

Are the individuals eligible to receive any of the "Small Business Income Tax Offset" in thee distributions they receive from the trust?

Answer

8% tax discount (SBITO) capped at $1000 is available for individuals in receipt of income from an unincorporated small business entity. The eligibility criteria for SBITO is:

- The trust must carry on a small business;
- The aggregated turnover is less than $5 million.

Please note that the SBITO does not apply in respect of personal service income unless the PSI is produced from conducting a personal service business.

Please also note that the SBITO legislation does not allow for look-through provisions. In other words, individuals can't claim the SBITO for business income derived by another trust you aren't a beneficiary in.

Question 78

I have a query in relation to Payment Summaries.

We made a back payment to a number of employees in February 2019 which related to the period FY18, 01/07/2017 to 30/06/2018.

We have classed this as a Gross Payment on the Payment Summary and have already posted all payment summaries and uploaded the file to the ATO.

My query is should this back pay be shown in Gross payment or Lump Sum E? And are we required to re issue all payment summaries?

We have contacted the ATO, but they didn't sound confident and therefore would appreciate your advice with this.

Answer

If a back payment of salary or wages that accrued in a period more than 12 months before the date of payment (February 2019) is made, the payment should be labeled at Lump Sum E.

The ATO may calculate a tax offset on these payments.

If the payment was for a period more than 12 months before the payment, payment summaries should be reissued.

Question 79

If a person works 100% from home (work for tech company) I can see that they can claim not only running expenses but also occupancy (they rent). BUT my question concerns their initial training. This involved them flying from Brisbane to Sydney to do intensive training in head office for a week. It was done at the employees own expense and they stayed with family for the week. Flights were also paid for by the employee.

Answer

Rent may be claimed as home office occupancy expenses if your employer does not provide an office. It is important that you apportion the rent between work-related and private use. The apportionment is usually based on a floor area basis (Taxation Ruling 93/30).

You can claim the cost of attending the training sessions that are closely related to your work activities. You may have to apportion the travel expenses between work-related and private purpose.

Question 80

I have a query regarding an employee who was sacked this morning. He started on the 03/06/19, so he is still under his 3-month probation. He has displayed several instances of bad workmanship and he has been absent from work a lot. He didn't come to work Friday and Monday, his excuse being he was loading a horse into a trailer. He was not sick just didn't want to come to work. My boss rang him last night and when he found out why he didn't come to work he sacked him. My question is: Does he need to be paid his 1-week notice? Also, as it was over the phone, will he still have to come in for a meeting.

Answer

Please see my comments below:

1. There is insufficient information to provide accurate advice on this matter.
2. Is the employee, casual, permanent part time or full time, on an employment contract, covered by a Modern Award or Enterprise Agreement.
3. What are the terms of employment and notice periods in the letter of offer?
4. Is there a disciplinary policy and/or termination policy in place, and if so, were all of the steps leading to termination followed, this includes warning the employee on probation that their employment may be in jeopardy if they fail to improve to the required standards?
5. Was the process of dismissal in accordance with the Fair Work Act or the Small Business Dismissal Code (whichever is applicable).
6. Was the employee afforded due process in the telephone dismissal, from the information provided it is unlikely.

These are serious matters, and failure to follow the correct procedure could result in Adverse Action or Unfair Dismissal claims, generally it is not recommended to terminate employment over the telephone unless there are mitigating or serious circumstances which can be proven beyond doubt.

Question 81

Re: Small Business Write off.

A SMSF has a couple of commercial properties. Is registered for GST. Net assets of $1,000,000.

They have purchased an asset to go onto the buildings of $19,990 (ex GST).

Is the SMSF able to claim the under $30k instant asset write off?

Answer

Self-managed super funds (SMSFs) are not prohibited from carrying on a business, but the business must be:

- allowed under the trust deed
- operated for the sole purpose of providing retirement benefits for fund members.

It would come down to successfully making the argument that the SMSF is "in the business of" to be classified as a small business entity.

The sole purpose test is often the sticking point here, and we suggest caution in making the claim.

Question 82

We made back payments to a number of employees in February 2019 which related to the period FY18, 01/07/2017 to 30/06/2018 and also in April 2019 which related to FY19, 01/07/2018 to 30/04/2019.

Should we be including the gross and the super for WorkCover to calculate our premium as it is based on the actual wages for the year, even though these payments are one offs?

Answer

WorkCover rules are state based. We believe that you should report the back payments of wages and super on a cash basis (i.e. report in the year they were actually paid to the staff).

As far as forward premium estimates, you would only include payments that are reasonably expected to be incurred for that year.

Question 83

One of my clients, who is a pensioner with a disabled daughter has a taxable income of $22,679 and has no tax to pay but has a bill of $112.43 being for excess private health insurance reduction. Is this correct that being a pensioner does not negate this?

Answer

The Government has cut its private health insurance rebate contribution (marginally) but it should not have made that much of a difference at year end.

Ask the client to check the basis their insurer is calculating the rebate as obviously it is not matching with the ATO's calculation.

Also, double check the codes used at the private health insurance section, remember the ATO assesses eligibility for the level of rebate based on Adjusted Taxable Income.

Question 84

A client purchased a block of land approx. ½ acre for his family home to be built on.

They were living in a rented home.

Marriage breakdown occurs and the block of land is sold.

The landowner/taxpayer is able to demonstrate that he intended to build on it with builders plans etc. Water, Gas and electricity are ready for connection upon construction.

Does the capital gain qualify for the main residence exemption?

I view that the intention to live on the land and that had they have built the planned house they would have claimed main residence exemption from the date the property was purchased if the property had been constructed.

The fact that the marriage breakdown occurs further adds to the property being thought of as the family main residence, (not being built yet) rather than an investment.

The ATO website says no main residence exemption for a vacant block. However, I think this is taken out of context, and should apply to a situation where a taxpayer has purchased a vacant block purely as a speculative investment and already has a main residence.

Your thoughts please.

Answer

Sorry to advise the main residence exemption will definitely not apply in this instance.

Question 85

Please advise on the following regarding payment of wages:

Where a husband is employed as a Sales Representative/ Manager and he is paid the relevant award wage or higher, is it acceptable to employ his wife on a Casual basis and pay her the sales commission or bonuses as a wage that would otherwise be payable to her husband ? The wife would not take an active role in the business other than being a home helper to the husband's role.

Could this be an ancillary agreement (i.e. an extra remuneration) made after the original employment agreement undertaken with the husband (or may be not?)

Answer

Any employee is required to be paid the minimum award wages and conditions and also the conditions contained in the National Employment Standards (NES).

In the scenario supplied, the casual employee would need to be paid as a casual award employee with the 25% casual loading and a minimum payment per day or call in as a minimum.

The scenario proposed in my view would be in breach of the Fair Work Act and Award provisions.

The payment of sales commissions and their relativity to the applicable Modern Award and wages is complex and requires specific advice.

Any agreement made needs to meet the minimum award requirements and NES, and be in the form of an Individual Flexibility Agreement (IFA) and meet the Better Off Overall Test (BOOT).

The Fair Work helpline may be able to assist.