JUST TAX UPDATE

WHEN IT COMES TO THE SUPER GUARANTEE LEVY WHO REALLY IS AN EMPLOYEE?

The definition of an employee for the super guarantee levy is much wider than employees subject to PAYG. Where you pay remuneration to the following parties, super contributions may be required by law:-

- Individual contractors, where you are contracting for a particular person's labour.
- Company directors.
- Specific contractors obtained via employment agencies.

Ignorance is unfortunately not a defence, and if you fail to pay the contributions by 28 days after the end of each quarter you can incur interest and penalties if the omission is discovered.

If you are unsure whether you have super guarantee obligations in relation to contractors or directors please contact our office for assistance.

INTEREST DEDUCTIONS DISALLOWED

Be careful if you are combining your private and deductible borrowings.

In a recent case, a husband and wife utilised their mortgage redraw facility to finance the purchase of three rental properties. The rent received from these properties, together with funds from other sources like wages were applied against this loan, while monies were redrawn from the facility to pay both tax deductible as well as private expenses. The ATO rejected the tax deduction for the interest on these redraws, as it was impossible to prove that the redraws related to the rental properties, and not private expenditure. The court confirmed the ATO's decision that the mixing of the funds made it impossible to

prove the link between the expense and the interest on the borrowing. To succeed the taxpayer would have to prove which draw-down was used to pay tax deductible expenses.

Many people are using these redraw facilities to acquire negatively geared investments. This taxpayer's misfortune may be a timely lesson. Make sure all your documentation is correct and retained. If you combine your private and tax related transactions through the one account be sure to clearly identify any payments or withdrawals that relate to tax deductible activities. This will help us at the end of the tax year when gathering all your return information.

Planning tip:- It is preferable to segregate your borrowings completely. You should have separate loans for business and private purposes, if at all possible. However, please do not re-organise your borrowings before discussing the matter with us first!

CGT CAN LURK IN SURPRISING PLACES

Usually the last thing people think of when finalising deceased estates, or marriage settlements is the CGT implications.

There are a number of instances when significant capital gains tax may arise. Below is just a sample:-

- If you sell an inherited asset which was acquired by the deceased after 20th September 1985.
- Assets received from a divorce settlement.
- The sale of your home.

Some examples of these are:-

1. On the 14th April 2000 you inherit 100 shares in Fools Gold Pty Ltd. Your Dad bought these on 10th July 1990 for a total of $100, and on the 14th April 2000 they were worth $8,000. You sell these shares on 31st March 2004 for $10,000. The taxable capital gain arising from this sale is $9,900 ($10,000 - $100). Even though the shares have increased in value by only $2,000 whilst you held them, you will be required to pay tax on the full $9,900. You pay tax on your Dad's capital gain as well.
2. After 20 years of marriage you and your spouse part ways on 29th February 2000. In the divorce settlement you receive the rental property which you both purchased for $100,000 on the 15th October 1987. The real estate agent values the property at $450,000 for divorce settlement purposes on the 29th February 2000. You decide to take a holiday, and therefore sell the property on 19th May 2001 for $440,000. This property has been rented the entire time it was owned by you and/or your spouse. The taxable capital gain arising from this sale is $340,000 ($440,000 - $100,000). Not only have you been rocked by the divorce, you are now stunned by the drop in the market value and the fact you have to pay tax on the capital gain for the period up until the divorce as well as after. You got less than you realised in the marriage settlement!
3. You purchase a home on 2nd December 1994 for $100,000. You decide to continue living with your parents, and rent the property for 4 years to help pay it off. On the 2nd December 1998 the

tenant moves out, and you move in with your new husband. On the 2nd December 2004 you and your husband sell the residence for $300,000 as you have a baby on the way, and need some extra room. Because you rented the home for a proportion of the time of ownership there is an estimated taxable capital gain of $80,000. This is estimated as follows:-

Years you owned the property	10
Years the property was rented	4
Percentage of rented time / owned time	40%
Gain on sale of property ($300,000 - $100,000)	$200,000
Taxable gain ($200,000 x 40%)	$80,000

Just remember capital gains tax can apply if you use your home to generate any income, and claim deductions relating to the property. If we take the same example as above but instead of renting it for 4 years, you move in on the 2nd December 1994 and operate your business from your home for 4 years. You calculate that 10% of the home area and expenses relate to your business, and claim these as tax deductions during the 4 years. When you marry, you move the office out of the home on 2nd December 1998 and rent business premises. 6 years later you sell the home and buy another. The estimated taxable capital gain is $8,000:-

Years you owned the property	10
Years the property was used for business	4
Percentage of time used for business / owned time	40%
Percentage of home claimed as being used for business	10%
Gain on sale of property ($300,000 - $100,000)	$200,000
Taxable gain ($200,000 x 40% x 10%)	$8,000

Please note that the rules in relation to exempting your residence from capital gains tax are extremely complex. Different results will arise depending on the circumstances. In some cases no taxable capital gain may arise even when you rent the property for a period of time. As well apportionment calculations are done on a daily basis. Please contact us for advice prior to selling your home.

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