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|  | **Newsletter****Tax & Super** |
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| **July 2017** |
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| **About this newsletter**Welcome to SME's monthly newsletter - full of great content and ideas!***“At SME Care and Communication is Key!"***Our newsletter highlights current tax developments and topical areas of tax. Any questions from this easy read please call us to discuss.T: 02 9411 2644 | E: stuart@smeba.com.au |  | ***In this issue:****Taking Money from a Private Company…………. 1* *ATO on Work-related Clothing and Laundry Expenses …………………………………… 3**Buying or Selling Property? Beware of Capital Gains Tax Withholding Rules …………..…..… 3**Simpler BAS ………………………………..3**GST and Online Purchases and Services ………...4**Superannuation Deductions 2017/2018 ………4**Superannuation Deductions 2016/2017….…….4* *Accounting on a Cash Basis …….…………….5* |
| **TAKING MONEY FROM A PRIVATE COMPANY**This article is a must-read for all private company shareholders. Specifically, it is aimed at individuals who operate their business through a company structure and from time-to-time take money from the company for personal use. Are you aware that there can be significant tax consequences when doing so? **RELEVANCE**:The vast majority of companies in Australia are run by one or two directors. These people are invariably also the shareholders of the company; operating a small or medium business. It’s not an uncommon practice for the directors to arrange for their company to ‘loan’ them or their associates (e.g. spouses, related trusts, related companies etc.) money instead of paying them wages, a franked dividend, or directors fees. The benefit of this is that no PAYG with-holding or income tax is applied and no superannuation guarantee is paid. As amounts are informally taken as a ‘loan’, the ATO will not necessarily become aware of these ‘transactions’ in the absence of an audit, and therefore these amounts may never need to be paid back to the company…. or so you might think! This is where Division 7A of the Tax Act steps in! |

**OVERVIEW:**Division 7A was introduced into the tax legislation with effect from 4 December 1997. In essence, it is an integrity measure designed to ensure that private companies cannot make tax-free distributions to share-holders or their associates in the form of payments, loans and debts forgiven etc. Division 7A is one of the most commonly encountered problems for accountants when taking on new clients, and is a tax ‘time-bomb’ waiting to go off for a number of company owners/shareholders as they are simply unaware of this aspect of the tax law.

The introduction of the Division 7A legislation means that previous practices of “loaning” shareholders or their associates money, interest-free, and never repaying that debt is a thing of the past. In bringing in the Division 7A legislation, the ATO has ensured that any informal loans or payments made to share-holders or associates are either:

1. Treated as unfranked dividends OR
2. Treated as a loan, with a loan agreement in place and with interest and principal repayments being due each year.

**CONSEQUENCES**:

**INCOME TAX**
If Division 7A is not dealt with properly a deemed dividend may arise for the amount of the loan to the extent of the company’s distributable surplus for the year.

That is, an unfranked dividend (with no franking credits) will be deemed to have been earned by the recipient who received the loan or payment from the company (even if this person/entity is not a shareholder of the company). If this amount has not been declared in the recipient’s tax return in the relevant year (the amount paid /lent/taken) then their tax return may be amended to include this amount – to be taxed at the recipient’s marginal tax rate. ATO general interest charge and in some cases penalties may also be applied if the amount was not declared and the tax return is amended.

**PERSONAL LIABILITY**Aside from this income tax cost, if the company you own gets into financial difficulty and gets wound up (for example, after an application from a creditor) you could be left exposed personally.  If a liquidator is appointed and examines the company’s books they will be intent on “clawing back” any money owed to the company – including any ‘loans’ made to directors or their associates.

Where there is a loan in your name or money is owed, the liquidator will generally demand that it be paid back. Where the loan/payment is significant, the liquidator may seek to bring legal proceedings against you which in the worst-case scenario could possibly bankrupt you.

Suddenly, this tax-free “loan” has come back to haunt you!

 **TAKE-HOME MESSAGES**

Company owners should be aware of the following:

* In taking money from your company for your personal use or for an associate (other than as a dividend, salary and wages, director’s fees etc.) there can be Division 7A consequences.
* If you have taken money from your company in this manner in 2016/2017, do you need to take corrective action (i.e. repay the amount or put it under a Division 7A agreement) before the earlier of the due date of your company’s 2016/2017 tax return or before your company lodges its return?
* Have you taken money from your company in previous income years in this manner? Your accountant can help you review your prior year financial statements. Does corrective action need to be taken for prior years? If so, seek direction from your accountant.

**SIMPLER BAS**

From 1 July 2017, SBEs may be eligible to complete a simplified Business Activity Statement (BAS) under the new ***Simpler BAS***  rules.

At its core, ***Simpler BAS***  involves the reduction

in the number of labels on the BAS. Under ***Simpler BAS***  SBEs now only need to report the following GST information on their BAS:

* GST on sales (label **1A**)
* GST on purchases (**1B**)
* Total sales (**G1**).

SBEs are no longer required to report Export sales (**G2**), other GST-free sales (**G3**), Capital

purchases (**G10**), and Non-capital purchases (**G11**). These labels are removed from the BAS altogether. All told, ***Simpler BAS***  is aimed at simplifying BAS preparation, but also account set-up within a software file, and GST bookkeeping. To this end, the ATO has worked closely with software companies to streamline the coding of transactions for users of ***Simpler BAS***. If you opt into Simpler BAS, within the software you will only have three tax codes to choose from which will generally be: GST, GST-free or Out of Scope. This may assist by making it easier to classify transactions, with the other tax codes not relevant (e.g. Capital Purchases etc.).

**ATO ON WORK RELATED CLOTHING AND LAUNDRY EXPENSES**

Assistant Commissioner, Ms Kath Anderson, has said that the ATO is “increasing attention, scrutiny and education” on work-related expenses including clothing and laundry expenses.

Mrs Anderson has reminded taxpayers that to be eligible for a deduction, clothing needs to be occupation-specific clothing, protective clothing or a uniform that is unique to the organisation the taxpayer works for. It is a “myth” that taxpayers could claim a standard deduction of $150 without spending money on appropriate clothing or laundry. While record-keeping requirements for laundry expenses are “relaxed” for claims up to the $150 threshold, taxpayers do need to be able to show how they calculated their deduction. There are three golden rules to follow.

1. A taxpayer has to spend the money themselves and cannot have been reimbursed
2. The claim must be directly related to earning the taxpayer’s income.
3. There must be a record to prove it.

Ms Anderson also reminded taxpayers that the *myDeductions* tool is an ATO app that assists taxpayers with record-keeping.

**BUYING OR SELLING PROPERTY? BEWARE OF THE CAPITAL GAINS TAX WITHOLDING RULES**

If you are buying or selling real estate situated in Australia for $750, 000 or more, it is important to be aware of the Capital Gains Tax Withholding rules.

With effect from 1 July 2017, for any real estate transactions of $750, 000 or above, the vendor must provide to the purchaser, prior to settlement, a “clearance certificate” obtained from the ATO. Without this, the purchaser is required to withhold 12.5% of the price and pass this on to the ATO. The vendor would then need to wait until lodgement of their income tax return before they could recover the withheld amount.

The laws were introduced to tackle the problem of foreign residents selling real estate and avoiding their capital gains tax liabilities. In practice, however, it means that the vast majority of real estate transactions not involving foreign residents are also impacted. The ATO recommend applying for a clearance certificate at least 14 days before you require it.

**GST AND ONLINE PURCHASES AND SERVICES**

The other major GST 1 July law change is the

commencement of the so-called GST “Netflix tax” which aligns the GST treatment of digital products and services with that of more traditional products and delivery methods. Broadly, the changes are intended to cover situations where supplies of things other than goods or real property are supplied by both Australian and non-Australian businesses to Australian consumers.

Specifically, from 1 July 2017, offshore supplies of services and intangibles will potentially be subject to GST where the recipient of the supply is an “Australian consumer” which is basically defined as

individuals or other parties such as businesses who are not registered for GST or – if they are – the acquisition is not for business purposes, and they are an Australian resident. For businesses to avoid GST, you should supply your ABN and business details when making the purchase.

Affected sales that will be caught by the new law include not only the streaming or down-loading of movies, music, apps, games, e-books and other digital products but also offshore services such as consultancy and professional services (e.g. legal advice etc.). As a result of the law changes all of these supplies will receive similar GST treatment whether they are supplied by a local or foreign supplier.

**SUPERANNUATION DEDUCTIONS
2017/2018**

There are a range of changes to superannuation effective 1 July 2017. In terms of beneficial changes that an individual can act upon, the main change is the ability for virtually all employees (subject to standard age contribution restrictions) to now claim a deduction for their personal, after-tax super- annuation contributions.

From 1 July 2017, all individuals up to age 75 will be allowed to claim an income tax deduction for personal superannuation contributions. Before this date, you could only claim a deduction for your personal contributions where less than 10% of your assessable income, your reportable fringe benefits and your reportable employer superannuation contributions (e.g. salary sacrifice contributions) for the year were from being an employee – this was known as the 10% Rule. This rule prevented most employees from claiming a tax deduction for this type of contribution.

**SUPERANNUATION DEDUCTIONS
2016/2017**

If you made a superannuation contribution in 2016/ 2017 for which you can claim a deduction, then you will need to complete paperwork to ensure its deductibility.

To be eligible to claim a deduction for contributions made to superannuation, the contribution must be made between 1 July 2016 and 30 June 2017. In terms of timing:

* A contribution in cash is made when received by the fund
* A contribution by electronic funds transfer is made when the amount is credited to the superannuation fund’s bank account – this may occur some time after you have done what is necessary to effect the payment, and
* A contribution by cheque is made when the cheque is received by the fund unless it is dishonoured.

If you have met this timing requirement then you can claim a deduction in 2016/2017 for your personal after-tax contributions only if you have met the conditions of the “10% rule”. Broadly speaking this rule requires that less than 10% of your assessable income, your reportable fringe benefits and your reportable employer superannuation contributions (e.g. salary sacrifice contributions) for the year were from being an employee. This rule prevented most employees from claiming a tax deduction for this type of contribution. Although it has been abolished from 1 July 2017, it still applies for the 2016/2017 financial

year.

Even where you met the 10% Rule in 2016/2017, a deduction is only allowable if you have given a notice to the trustee of your superannuation fund or to the Retirement Savings Account (RSA) provider stating your intention to claim a deduction for the whole or part of a contribution covered by the notice, and an acknowledgement of that notice has been received. In practical terms, this requires you to complete a *Notice of intent to claim or vary a deduction for personal superannuation*

*contributions* and then send it to your superannuation fund or RSA. Copies of this notice are available on the ATO website. The notice must be given by the earlier of:

* The day you lodge your 2016/2017 personal tax return, and
* The end of the financial year following the year in which the contributions are made (i.e. 30 June 2018).

**ACCOUNTING ON A CASH BASIS**

SBEs can elect to account on a cash basis. This means they can:

* Claim GST credits on business purchases in the tax period in which you pay for those purchases. If you pay only part of the cost of a business purchase in a tax period and have a valid tax invoice, you will only claim GST credits for that part of the cost in that tax period.
* Account for the GST payable on your sales in the tax period in which you receive payment. If you only receive part payment for a sale in the tax period, you will account only for the part of the GST payment that relates to that part of the sale in that tax period.

All things being equal, for small business the cash basis of accounting is less of a threat to cash-flow than the accruals basis. The cash basis will defer payment of GST on supplies from when an invoice is issued (accrual basis), to when cash is received on a sale (cash basis). Cash-flow will also be easier to monitor if your business operates on a cash basis. Practically speaking, however, if you account for income on an accruals basis it may be impractical to have a different accounting method for GST.

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