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Partners' Message - September 2014



Already three quarters of the way through 2014 and it seems thoughts will soon turn to vacations and resolutions.

The Commonwealth Government has finally managed to satisfy one of its own resolutions by repealing the Minerals Resource Rent Tax (MRRT), although not without some concessions being granted to some interested parties. With the repeal are a bevy of tax changes that will also impact small and medium enterprises as well as some families. A broader review of the repeal and its impact is contained within this newsletter.

Still on the legislative front, we await the release of the Government's "White Paper" on tax and superannuation reform; the Paper is due out in October and will no doubt be the centre of a great deal of debate and discussion. We look forward to providing you with an in depth analysis on its release.

Closer to home, the team at Weston Woodley & Robertson have been busy improving our cloud based service offerings to further enhance your engagement experience and take the effort and worry out of your taxation, business and planning affairs. Members of our team have been engaged in various seminars, webinars and conferences to ensure that we can offer you the most up to date systems available. The implementation of these systems gives us the opportunity to spend more time with you, one on one, on the issues that matter most. Please feel free to contact our office if you want to find out more about ways we can add some innovation to your business or take the leg work out of your compliance requirements. Referrals are also greatly appreciated.

If you haven't arranged to get your taxation information collated and into our office, now is the perfect time to be putting it together and making an appointment to see us.

We are extremely excited to announce that we are expecting a number of new additions to our extended Weston Woodley & Robertson family in the coming weeks; Ashtika (second), Fiona (first) and May (first) are all expecting in the coming weeks; we wish them all the best as they enter a new and exciting time of their lives. Tips and traps on parenting is no doubt going to be a hot topic in the coming weeks!

On the international level, our GMNI affiliation continues to grow as we look to add firms in Singapore and Japan. Delegates from our office are due to depart for the United States in November to attend the annual GMNI conference; this year being hosted by the North American affiliate firms at a venue in Las Vegas.

In closing, it is with great sadness that we recall the passing of our former managing partner and friend to many, Mr John Staniforth Woodley. John's distinguished career spanned over 4 decades and he will be fondly remembered by everyone who knew him.

We look forward to seeing and hearing from you in the near future. All feedback concerning our newsletters and our services overall is greatly appreciated and helps us improve your experience.

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ATO Target Areas: Rental Property & Work Related Deductions



The ATO has advised that it is increasing its focus on rental property deductions claimed by property investors and certain work related deductions this tax season to ensure that the deductions claimed are genuine and correctly calculated.

The ATO has released common errors in the tax returns of property investors. According to the ATO, some common errors made by rental property owners include:

- Claiming rental deductions for properties not genuinely available for rent;
- Incorrectly claiming deductions for properties only available for rent part of the year (eg holiday homes);
- Incorrectly claiming capital / structural improvement costs as repairs when they are capital works deductions (such as re-modelling a bathroom or building a pergola); and
- Overstating deduction claims for the interest on loans taken out to purchase, renovate or maintain a rental property.

The ATO will be paying particular attention to work-related deductions claimed that relate to:

- Overnight travel;
- Transporting bulky tools and equipment; and
- Work related use of computers, phones and other electronic devices.

Please contact our team to discuss your circumstances and we can assist in identifying the expenses that can or cannot be claimed.

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Superannuation - Taking Control



When reviewing your estate plan, it is essential to understand the nature of assets that you hold or control. The balance of members funds in their Self Managed Superannuation Fund (SMSF) may not automatically form part of their estate upon the death of the member. Hence, it needs to be considered as a separate item within a wealth succession plan. A well-planned SMSF succession plan can ensure the death benefit is paid to the intended beneficiaries in a tax effective manner.

Binding Death Benefit Nominations (BDBN) are one of the tools commonly used by members of SMSF to ensure that their balance can be paid in accordance to their intention. Under subsection 59(1A) of the Superannuation Industry (Supervision) Act 1993 (SISA), member of an SMSF may give trustee a binding nomination. Trustees of SMSF are bound by the nomination provided that it is prepared in compliance with the governing rules of the fund.

In *Donovan v Donovan*, for instance, the member wrote a letter to the Trustee of his SMSF expressing his wish to leave his residuary member balance to be dealt with his legal personal representative in accordance with his will. The Court held that the letter was not a binding death nomination as it did not specify the type of nomination it was purporting to be.

However, in the recent case *Wooster v Morris*, the Court found that the trustee is bound by the death benefit nomination made by Mr Morris despite the claim from Mrs Morris that the nomination was never delivered to her. The reason as to why the nomination is valid is not mentioned in the judgement.

When there are no binding death nomination, the trustee will have the power to decide on the allocation of death benefit. Trustee has the obligation under trust law and general law to follow the following course of actions:

- Identification of all potential beneficiaries;
- Identification of the deceased's legal personal representative;
- Inform all parties the amount of benefit in writing and ask whether they consider any of the benefit should be paid to them and why; and
- Make decision after considering all responses.

The binding death nomination is only triggered upon death. In the event that a member becomes incapacitated, one of the available course of action is appointing a person with an enduring power of attorney. The person who has the enduring power of attorney will be able to act on behalf of the member. If there is no enduring power of attorney, the remaining member/trustee of the SMSF should:

- Obtain legal advice
- Consider the trust deed and the governing documents of any corporate trustee to determine if succession measures exist in the event of incapacity; and
- Consider having a representative appointed through a local jurisdictional authority (e.g. in NSW the NSW Civil and Administrative Tribunal). In some cases it will be necessary to consider the ability of such an appointed representative (e.g. administrator or guardian) to act on behalf of the trustee/trustee director.

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ATO Guidelines on Professional Practices and Income Splitting



The ATO has released guidelines on how it will select professional practices for review where it is concerned with the allocation of profits from the professional firm to its owners.

The guidelines are not law but a case selection tool for the ATO which will be used by the ATO during the 2014-15 and later tax years, subject to review in the 2016-17 and/or later judicial guidance. The guidelines covers how the ATO will assess tax compliance risks associated with the allocation of profits from the business structure of a professional firm and highlights the structures that the ATO will deem to be high or low risk. .

The guidelines apply if:

- An individual professional practitioner (called an "IPP" in the guidelines) provides professional services to clients of a firm or is actively involved in the management of the firm and, in either case, the IPP and/or associated entities have a legal or beneficial interest in the firm;
- The firm operates by way of a legally effective partnership, trust or company; and
- The income of the firm is not personal services income, but from the business structure.

The ATO's view is that a professional practice can be conducted via any legal structure (be it a partnership, trust or company) and that there are also no restrictions on the structures used by the owners of the practice to hold their interests in the practice. The relevant practice structure will however, have to be legally effective and meet professional body requirements.

The ATO is concerned that the IPP is not directly rewarded for the services they provide to the business or the reward received is substantially less than the value of the services. Where the guidelines apply, the ATO will tolerate income splitting provided a certain level of income derived from the practice is included in the personal tax return of the IPP. The ATO is not concerned with the payment method of the income (ie. it can be paid by way of salary, distributions of partnership or trust profits, distributions from associated service entities, dividends from associated entities or any combination of these).

There are 3 tests which will be used by the ATO as a tax audit case selection tool. To be rated as low risk and not subject to compliance action, the individual practice partner will need to meet one of the 3 following tests:

1. The IPP receives assessable income from the firm in their own hands as an appropriate return for the services they provide to the firm. In determining an appropriate level of income, the taxpayer may use the level of remuneration paid to the highest band of professional employees providing equivalent services to the firm, or if there are no such employees in the firm, comparable firms or relevant industry benchmarks - for example, industry benchmarks for a region provided by a professional association, agency or consultant;

2. 50% or more of the income to which the IPP and their associated entities are collectively entitled (whether directly or indirectly through interposed entities) in the relevant year is assessable in the hands of the IPP; or
3. The IPP, and their associated entities, all have an effective tax rate of 30% or higher on the income received from the firm.

Should a practitioner wish, he / she could legitimately operate outside these guidelines in relation to the derivation of business income, but would then face the risk of an ATO review and/or challenge. The further away the practitioner is from meeting the 3 tests, the greater the chance of an ATO review.

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Changes to Small Business Tax Concessions, Super Guarantee and Family Benefits



The Senate has passed the Liberal Party's bill to repeal the Minerals Resource Rent Tax (MRRT) and the tax changes associated with the repeal.

Key points are as follows:

1. Minerals Resource Rent Tax Repeal

The effect of the repeal is that entities will not accrue further MRRT liabilities from 1 October 2014. The ATO will be consulting with industry to implement the administrative approach.

2. Repeal of Company Loss Carry-Back Provisions

The repeal of the company loss carry-back provisions **applies from 1 July 2013** for most taxpayers.

Companies that have already lodged their 2014 tax returns and claimed the offset and are now no longer eligible will be contacted by the ATO about their circumstances. The ATO will amend the affected assessments and taxpayers will not be subject to penalties and interest if payment is made "within a reasonable time".

3. Reduction in Small business Instant Asset Write-Off Threshold

Small businesses are entitled to claim a deduction for depreciable assets purchased if the cost is under a certain threshold. For the period 1 July 2013 to 31 December 2013, the instant asset write off threshold was \$6,500.

From the 1 January 2014, only assets costing less than \$1,000 (acquired and installed ready for use after 31 December 2013) will be eligible for immediate write-off.

Assets costing \$1,000 or more will need to be depreciated in the general small business pool.

Taxpayers who have lodged their 2014 tax returns under the previous rules and claimed a deduction for assets purchased after 31 December 2013 costing more than \$1,000.00 will be required to lodge amendments to their tax returns. The ATO will not apply penalties or interest if the amendments are made within a "reasonable" period of time.

4. Accelerated Deduction for Motor Vehicles

From 1 January 2014, motor vehicles will only be immediately deductible if they cost less than \$1,000.

Note that motor vehicles acquired and available for use between 1 July 2013 and 31 December 2013 will still be eligible for an immediate initial deduction of up to \$5,000.

5. Abolition of geothermal energy exploration expenditure

From 1 July 2014:

- geothermal energy exploration and prospecting expenditure will no longer be immediately deductible; and
- if a geothermal exploration right is exchanged for a geothermal energy extraction right relating to the same, or a similar area, then a capital gains tax (CGT) rollover applies to defer the liability until the sale of the extraction right.

6. Deferral of Abolition of Certain Family Benefits

In order to pass the mining tax repeal legislation through the Senate, the Government made a deal with the Palmer United Party and Senator Muir (Australian Motoring Enthusiasts Party) to defer the abolition of:

- the Income Support Bonus to 31 December 2016;
- the Schoolkids Bonus to 31 December 2016 (and it will be restricted to families earning less than \$100,000 per annum); and
- the Low Income Super Contribution to 30 June 2017.

7. Freezing of Super Guarantee Rates

The Government has also agreed to freeze the superannuation guarantee (SG) rate at 9.5% for seven years. The new SG percentage is summarised in the table below.

Financial Year	New Super Guarantee Rates
starting 1 July 2014	9.5%
starting 1 July 2015	9.5%
starting 1 July 2016	9.5%
starting 1 July 2017	9.5%
starting 1 July 2018	9.5%
starting 1 July 2019	9.5%
starting 1 July 2020	9.5%
starting 1 July 2021	10%
starting 1 July 2022	10.5%
starting 1 July 2023	11%
starting 1 July 2024	11.5%
starting on or after 1 July 2025	12%

Please contact our office if any of the above changes concern you, or if you have further questions.

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