QUARTER UPDATE

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PRACTICE UPDATE - MARCH 2018

THIS EDITION

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FURTHER 'AFFORDABLE HOUSING' MEASURES PASSED

Parliament has passed the legislation allowing first home buyers to save for a deposit inside superannuation through the First Home Super Saver Scheme (FHSSS), and also allowing older Australians to 'downsize' and then contribute the proceeds of the sale of their family home into superannuation.

From 1 July 2018, a first home buyer will be able to withdraw voluntary superannuation contributions they have made since 1 July 2017 (up to $30,000 each, with individuals being able to contribute up to $15,000 a year within existing caps), along with a deemed rate of earnings, to help buy their home.

Also, from 1 July 2018, when Australians aged 65 and over sell a home they have owned for at least 10 years, they may contribute up to $300,000 from the proceeds into their superannuation accounts, over and above existing contribution restrictions. Both members of a couple may take advantage of this measure, together contributing up to $600,000 from the proceeds of the sale into superannuation.

ATO WARNING REGARDING SMALL BUSINESS RECORD-KEEPING

According to the ATO, of all of the things that can cause small businesses to fold, "*high on that list is poor record keeping*".

More than half of the businesses they visited in their Protecting honest business campaign needed to improve their record keeping.
Issues they found include businesses:

- estimating their sales and income;
- using the 'no sale' and 'void' button on cash registers when taking cash payments;
- not keeping cash register tapes and not reconciling at the end of the day; and
- paying their employees cash-in-hand.

They are writing to these businesses to recommend they attend one of the ATO's record keeping workshops, which cover why good record keeping is important and how it will save them time.

REVIEW OF RULES FOR EARLY RELEASE OF SUPERANNUATION

The Government has announced that Treasury will review the current rules governing early release of superannuation on grounds of severe financial hardship and compassionate grounds.

It will also review whether, and the circumstances in which, a perpetrator’s superannuation should be available to pay compensation or restitution to victims of crime.

The review will not examine other general conditions of release for superannuation.

The Government also announced that it will transfer the regulatory role of administering the early release of superannuation benefits on compassionate grounds from the Department of Human Services to the ATO in 2018, to enable the ATO to provide a more streamlined service to members.

TASKFORCE TO HELP DIGITISE SMALL BUSINESS

The Government has established a Small Business Digital Taskforce, to be headed by entrepreneur Mark Bouris AM, to ensure more Australian small businesses can thrive in an increasingly digital economy.

Mark Bouris said: "*When a business begins to digitise and use digital tools, it opens up new opportunities to grow, diversify revenue streams, find talent, access finance, work smarter and enhance the value of the business when it is time to sell. If you're not going digital, you should be*."

Deloitte research has found that small businesses with advanced levels of digital engagement are 1.5 times more likely to be growing revenue, 8 times more likely to be creating jobs and 14 times more likely to be innovating.

The Taskforce will conduct a series of meetings, workshops and 'hackathons' with businesses over the coming months to explore impediments for business in engaging with digital technologies and how these impediments might be addressed.

BIG CHANGES PROPOSED TO ELIGIBILITY FOR THE CGT SBCS

The Treasurer has released draft legislation containing new "integrity improvements" to the CGT small business concessions ('SBCs') (i.e., including the 15-year exemption, the retirement exemption, the 50% active asset reduction and the small business roll-over).

Due to the government's "*continued support for genuine small business taxpayers*", it proposes making amendments so that the CGT SBCs can only be accessed in relation to assets used in a small business or ownership interests in a small business.

Predominantly, the amendments include **additional basic** conditions that must be satisfied for a taxpayer to apply the CGT SBCs to a capital gain arising in relation to **a share in a company** or an interest in a trust (i.e., **a unit in a unit trust**).

This integrity rule is designed to prevent taxpayers from accessing these concessions for assets which are unrelated to their small business, such as where taxpayers arrange their affairs so that their ownership interests in larger businesses do not count towards the tests for determining eligibility for the concessions.
Under the proposed amendments, the measure would be backdated to apply **from 1 July 2017**.

The proposed amendments, if enacted as currently drafted, will significantly restrict access to the CGT SBCs where taxpayers owning shares in a company, or units in a unit trust, seek to dispose of their interests in the entity.

This will particularly be the case where such interests are held in an asset-owning entity (i.e., which holds and/or leases business assets across to a separate, yet related, business entity).

It is to be hoped that the more severe aspects of these measures may be scaled back, but due to the retrospective nature of the proposed amendments (i.e., from 1 July 2017), caution is warranted with respect to the SBCs in relation to the disposal of shares or units.

ATO'S FOCUS ON WORK-RELATED EXPENSES

This year, the ATO is paying close attention to what people are claiming as 'other' work-related expense deductions, so it's important when taxpayers claim these expenses that they have records to show:

- they spent the money themselves and were not reimbursed;
- the expense was directly related to earning their income; and
- they have a record to prove it.

If the expense is for work and private use, the taxpayer can only claim a deduction for the work-related portion.

Importantly, taxpayers are not automatically entitled to claim standard deductions, but need to be able to show how they worked out their claims.

'Other' work related expenses are expenses incurred by employees in relation to their work that are not for travel, clothing or self-education, such as home office expenses.

TAXPAYER CAN'T EXPLAIN WHERE SHE GOT THE MONEY TO PAY HER EXPENSES

The Administrative Appeals Tribunal has upheld amended assessments issued by the ATO to a beauty technician, based on the high volume of money passing through the taxpayer's various accounts when compared with the modest income she had included in her tax returns.

For example, in the 2015 income year, the taxpayer had declared income of $61,842, but the ATO's analysis of her bank accounts, records of international money transfers, and casino data suggested she had spent $107,328.

The Tribunal noted that, in cases like this, the ATO is effectively making an "informed guess" as to the taxpayer's income, but, provided there is a rational basis for the estimate, the ATO's assessment will stand, unless the taxpayer can:

- demonstrate the assessment was excessive; and
- establish what the correct (or more nearly correct) figure is.

After hearing from the taxpayer and witnesses at the hearing, and after reviewing the documents, the Tribunal was not persuaded that the taxpayer had demonstrated that the

Commissioner's assessments were 'excessive'.

In particular, the taxpayer's explanation regarding her income and expenditure was not supported by the objective facts in the hearing, being:

- the 'churn' through her bank accounts;
- the absence of contemporaneous records beyond the bank accounts (for example, she was always paid in cash without receiving pay slips); and
- the deficiency in corroborating evidence from other witnesses.

In addition to upholding the amended assessments, the Tribunal was also satisfied that the ATO's 75% administrative penalty on top of the tax payable was properly imposed.

GOVERNMENT TO FIX A PROBLEM WITH REVERSIONARY TRISS

The government has released draft legislation to ensure that a reversionary Transition to Retirement Income Stream ('TRIS') will always be allowed to **automatically** transfer to eligible dependants (i.e., upon the death of the primary recipient).

Currently, a reversionary TRIS cannot transfer to a dependant if the dependant has not personally satisfied a condition of release.

If this positive measure is legislated, it will apply to reversionary TRISs **from 1 July 2017**.

NEW SMALL BUSINESS BENCHMARKS ARE AVAILABLE

The ATO has updated its small business benchmarks with the latest data from the 2015/16 financial year.

In addition to helping businesses to see if they are performing within their industry average, the benchmarks are one of the tools the ATO uses to identify businesses that may be a higher risk.

That is, they use the benchmarks to pick their audit targets, so please contact us if you would like us to check whether your data is inside or outside the average benchmark range for your industry.

GUIDE TO THE NEW SMALL BUSINESS SUPER CLEARING HOUSE

The Small Business Superannuation Clearing House (SBSCH) joined the ATO's online services on 26 February 2018.

This is intended to streamline how businesses use the SBSCH, and will also include extra functionality, such as the ability to sort employee listings and payment by credit card.

The SBSCH is a free service that businesses with 19 or fewer employees (or which are SBEs) can use to comply with their super obligations.

Please Note – Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.

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