



FLOWERS EDDY CPA

PO Box 220
WILLETTON WA 6955
Tel: 08 9354 6000
Fax: 08 9354 6020
Email: admin@fecpa.com.au

Practice Update

Please read this update
and contact this office
if you have any queries

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ATO warns property developers to declare income

Editor: The ATO has issued a media release warning property developers against using trusts to return the proceeds from property developments as capital gains instead of income.

Deputy Commissioner Tim Dyce said, "A growing number of property developers are using trusts to suggest a development is a capital asset to generate rental income, and claim the 50% capital gains discount.

Furthermore, he said that the ATO has begun auditing property developers who are carrying out activities which seem to be in conflict with their claim that they are undertaking a capital investment.

Some pointers to that are:

- finance arrangements indicate the property is to be sold within a certain timeframe;
- communication with local councils indicate sales plans; or
- real estate agents are engaged early in the process for off-the-plan sales.

In addition, the property is often sold soon after completion of the development, where the underlying property may have been held for as little as 13 months.

He suggested that taxpayers in these situations should consider self-amending to correct their tax return, as penalties of up to 75% of the tax avoided can apply.

Ignorance of the law is no excuse

In a recent case, a taxpayer decided to transfer shares he owned and had inherited, into a joint account he held with his wife without first asking his accountant/tax agent.

His accountant subsequently correctly advised him that he had triggered a capital gain of \$19,415.

He appealed the ATO's decision to tax him to the AAT and argued that he just wanted to transfer his shares into joint names with himself and his wife who, in this case, was "*entitled in equity to half of them anyway.*"

However, in deciding against the taxpayer the AAT said ". . . *partners to a marriage or marriage-like relationship who hold the assumption that his or her assets are 'our' assets, would be well advised to continue with that assumption, without taking the step of formalising any joint ownership arrangements, as there will be a taxing point if they do, if the transferred assets have increased in value.*"

ATO Div.7A benchmark interest rate

The benchmark interest rate for 2014/15, for the purposes of the deemed dividend provisions of Div.7A, can now be calculated as 5.95% (down from 6.20% for 2013/14).

SMSFs and succession planning

In a recent speech, an ATO Deputy Commissioner emphasised how important it was for trustees of SMSFs to have a plan in place for the succession and control of the SMSF on the death or incapacity of members who are trustees (or directors of the corporate trustee).

He said that other documentation such as wills, enduring powers of attorney (EPoA), binding death benefit nominations and reversionary pension documents should be checked to ensure they are consistent and in agreement with the members' goals.

In some cases, surviving member/s of the fund may not wish to continue as trustee/s (or director/s of the corporate trustee).

An exit strategy, that can enable the surviving members to enjoy the benefits of the fund without having to remain trustees, is to appoint an approved trustee licensed by APRA (that is, become a small APRA fund).

Editor: If you would like to discuss any of this please contact our office.

SMSFs and trauma insurance

From 1 July 2014, an SMSF can generally only provide an insured benefit for a member that is consistent with one of the following conditions of release of a member's superannuation benefits:

- death;
- terminal medical condition;
- permanent incapacity (causing the member to permanently cease working); or
- temporary incapacity (causing the member to temporarily cease working).

Trauma insurance is not consistent with any of these conditions of release.

Trauma insurance typically pays out a lump sum where an insured person is diagnosed with one of the critical illnesses, or injuries, defined in the policy, such as cancer, stroke, coronary bypass and heart attack.

Therefore, from 1 July 2014, an SMSF that takes out a *new* trauma insurance benefit in relation to a member will generally be in breach of the new regulation. The new regulation does not apply to insured benefits for members who joined a fund before 1 July 2014, and were covered by that benefit before 1 July 2014.

IGT – ATO debt collection

With uncollected taxes blowing out to \$17.7 billion in 2012/13 (over 60% owed by small businesses), the Inspector General of Taxation (IGT) has stepped into the fray and announced that he is going to review the ATO's approach to debt collection.

The ATO has stated that more recent increases are a result of economic conditions and its assistance to viable businesses to stay afloat, but the IGT is concerned that it is a persistent source of taxpayer complaint.

Other aspects of the ATO's debt management, including its use of third party debt collectors, have also been questioned.

Confidential submissions can be made to the IGT until 18 July 2014.

ATO keen for taxpayers to avoid tax-related scams

The ATO is concerned about the number and frequency of email and mobile phone scams that are occurring.

These scams claim to come from the ATO and usually offer a tax refund. Generally, they link to a bogus ATO website asking for personal information and credit card details.

The ATO advises that while it may email, SMS message or phone taxpayers, it will never ask for:

- personal details, such as driver's licence, mother's maiden name; or
- credit card, including CVN, or bank details.

Where this happens, they advise that taxpayers should not progress with the email, SMS or phone call. If a taxpayer is in doubt about the authenticity of a call that they receive from the ATO, they should contact the ATO on one of its publicly listed numbers to verify the legitimacy of the call.

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| <p>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.</p> |
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