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client alert

tax news | views | clues

Medicare levy increase to fund DisabilityCare Australia

The Medicare levy has been increased by 0.5% to help fund the government's National Disability Insurance Scheme, known as DisabilityCare Australia. This will take the Medicare levy from 1.5% to 2% of taxable income from 1 July 2014.

Under the changes implemented by the government, low income earners continue to receive relief from the Medicare levy through the low income thresholds for singles, families, seniors and pensioners. The exemptions from the Medicare levy for blind pensioners and sickness allowance recipients also remain in place.

Closing the "dividend washing" loophole

The government is seeking to close what it perceives to be a loophole allowing sophisticated investors to engage in what it calls "dividend washing". The government says "dividend washing" is a process that allows sophisticated investors to effectively trade franking credits, and can result in some shareholders receiving two sets of franking credits for the same parcel of shares.

The government has issued a discussion paper to facilitate consultation and has proposed tax law changes to take effect from 1 July 2013. The changes would aim to prevent shareholders from receiving two sets of franking credits for the same effective parcel of shares through dividend washing, and to ensure that there would be negligible impacts on legitimate market activities.

ATO taskforce to target trust structures

In the 2013–2014 Federal Budget, the ATO was provided with $67.9 million over four years to undertake compliance activity in relation to trust structures. The taskforce will utilise intelligence systems as well as new tax return labels to gather information.

The ATO says the taskforce will not target ordinary trust arrangements or tax planning associated with genuine business or family dealings, but will focus on what it refers to as "higher-risk taxpayers". Situations that would attract the attention of the ATO include arrangements where trusts or their beneficiaries who have received substantial income are not registered.

Superannuation income stream following death of member

The government has made tax law changes to provide tax certainty for superannuation trustees and deceased estates in situations where a person has died while in receipt of a superannuation income stream.

Investment earnings derived by complying superannuation funds from assets supporting current pensions are generally exempt from tax. However, a draft tax ruling issued by the ATO in 2011 caused some uncertainty over the eligibility of this tax exemption in situations following the death of a member to whom a pension was being paid.

In response to the uncertainty, the government last year announced that it would amend the law from 1 July 2012 to allow the tax exemption to continue following the death of the pension recipient until the deceased member's benefits have been paid out of the fund (subject to the benefits being paid as soon as practicable).

Liability limited by a scheme approved under Professional Standards Legislation

Delivery drivers were common law employees

The Administrative Appeals Tribunal (AAT) has recently affirmed tax assessments issued to a taxpayer after finding that delivery drivers hired by the taxpayer were common law "employees" and not independent contractors.

The taxpayer had contracts to deliver bakery goods to supermarkets and had engaged a number of drivers to make those deliveries. It contended that those drivers were independent contractors and were responsible for their own taxes and superannuation. However, the Tax Commissioner determined that the drivers were common law "employees" of the taxpayer.

Among other things, the Commissioner noted that the drivers did not own or lease their own vehicles, did not control or delegate any of the work, and wore uniforms (vests) identifying the taxpayer's business name. Based on the evidence before it, the AAT was of the view that the drivers were "employees" of the taxpayer during the relevant period and held that the taxpayer had failed to withhold amounts as required under the pay-as-you-go (PAYG) withholding rules.

Losses from farming activities to be deferred

A medical doctor has been unsuccessful before the AAT in arguing that the Tax Commissioner should exercise his discretion to allow the doctor to claim non-commercial business losses of his cattle and sheep farming activities against his medical practice income.

The taxpayer had applied to the ATO for a private binding ruling, requesting that the Commissioner allow him to claim the losses from the farming activities against his medical practice income. However, the Commissioner issued a private ruling in which he refused to exercise the discretion sought. Notwithstanding the ruling, the taxpayer then lodged his 2010 tax return and claimed losses in relation to the farming business.

The AAT affirmed the Commissioner's decision and found that the taxpayer had not discharged the onus of proving that the conditions of the relief sought had been met. Accordingly, the AAT held that the losses incurred must be deferred until those activities produce assessable income against which the deductions could be claimed.

TIP: There are rules in the tax law designed to prevent losses from a non-commercial business activity from being offset against income from other sources, unless the activity satisfies one of the commerciality tests, or the Commissioner exercises his discretion to not apply the non-commercial loss rules. However, there are strict requirements surrounding the exercise of this discretion. Note that there are specific exemptions from the non-commercial loss rules for low income primary producers and professional artists.

Also, since 1 July 2009, losses incurred by individuals with an adjusted taxable income of $250,000 or more from non-commercial business activities have been quarantined, even if they satisfy the relevant commerciality tests. The effect is that these individuals are not able to offset excess deductions from non-commercial business activities against their salary, wages or other income. Please call our office for further information.

Superannuation redeposit during GFC results in tax hit

A taxpayer, a retiree, who withdrew and re-deposited his superannuation savings during the global financial crisis has been hit with excess contributions tax of $31,620 after the AAT agreed with the Tax Commissioner that there were no "special circumstances" to disregard the excess contributions under the tax law.

After observing a significant decline in his superannuation savings in a matter of months and following the government's announcement that it would guarantee bank deposits, the retiree withdrew his superannuation savings in early 2009 and deposited the amounts in term deposits. When the term deposits matured six months later, he re-deposited the money back into his superannuation.

In May 2012, the Tax Commissioner informed the taxpayer that he had exceeded his non-concessional contributions cap for the 2009–2010 financial year. The taxpayer argued that the imposition of excess contributions tax was "unfair" and that he had not obtained a tax advantage.

However, while noting that the taxpayer had made an unfortunate error, the AAT still ruled that there was nothing "unique" or "special" to allow the relief sought. It also considered that it was reasonably foreseeable that the re-depositing would result in excess contributions.

TIP: Managing an individual's contributions caps for any year is a critical consideration to ensure that any tax benefits of superannuation contributions are not later reversed (and punished) via the imposition of excess contributions tax.

Given the constant tinkering with the contributions caps, extreme care is needed with the amount and precise timing of contributions.

Important: Clients should not act solely on the basis of the material contained in Client Alert. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. Client Alert is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.