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Tax Planning

Simply put, tax planning is the arrangement of a taxpayer's affairs so as to comply with tax laws at the lowest possible cost which involves objectively assessing and actively managing tax risk.

Common tax planning techniques are deferring the derivation of assessable income and bringing forward allowable deductions.

Deferring Income

- Income received in advance of services to be provided will generally not be assessable until the services are provided.
- Taxpayers who provide professional services may consider, in consultation with their clients, rendering accounts after 30 June to defer the income.
- Consider whether the requirements to be classified as a small business entity (SBE) are satisfied. A SBE can access various tax concessions such as the simpler depreciation rules and the simpler trading stock rules.
- Individuals operating personal services businesses should ensure that they satisfy the relevant test to be excluded from the Personal Services Income regime. Alternatively, a determination to be excluded can be sought from the Commissioner.

Maximising Deductions

Business taxpayers

- Debtors should be reviewed prior to 30 June to identify and to write off any bad debts.
- Capital assets costing $100 (GST inclusive) or less are eligible for an immediate deduction.
- Review the asset register to identify any low-cost and/or low-value assets that may be pooled to access an accelerated rate of depreciation.
- Business-related capital expenditure may be deductible, including establishment of business premises, research into likely markets or profitability of a business and due diligence reports.
- Write off any depreciating assets which are no longer being held for use because a deduction may be available.
- Employees' superannuation contributions should be paid before 30 June to obtain a deduction and to avoid the Superannuation Guarantee Charge.
- Review trading stock for obsolete stock for which a deduction is available.
- A one-off bonus deduction for eligible tangible depreciating assets purchase between 13 December 2008 and 31 December 2009 may be available. (This measure has not received enactment.)

Non-business taxpayers

- Investors should consider prepaying interest on margin loans to obtain a deduction.
- Outgoings incurred for managed investment schemes may be deductible following a Full Federal Court decision.
- Assets costing $300 or less may qualify for an immediate deduction subject to certain conditions.
- A deduction for personal superannuation contribution is available where the 10% rule is satisfied.

The Tax Office says that these arrangements may involve a breach of taxation and superannuation laws.

Generally, superannuation benefits must be preserved in a member's superannuation fund until a condition of release, such as the member permanently retiring and reaching her or his preservation age (which depends on the member's date of birth).

An early access of benefits is only permitted in certain restricted circumstances. For example, severe financial hardship and compassionate grounds.

Main Residence Exemption

In a recent case, the Administrative Appeals Tribunal held that the CGT main residence exemption was not available to a husband and wife (the taxpayers) on a unit they acquired with the intention of it being their main residence, but which they ultimately never lived in.

The taxpayers purchased a unit in June 2000 with the intention of residing in it. However, due to the nature of the husband's work, they said that it only became practicable for them to reside in the unit in January 2006.

The Tribunal's view was the taxpayers did not move into the unit when it was first practicable to do so. It was also the Tribunal's view that the nature of the husband's work was not sufficient to enable the main residence exemption to be invoked.

TIP: The Commissioner has stated in a Taxation Determination that the mere intention to occupy a dwelling as a main residence is insufficient to obtain the exemption.

Deferral of HELP repayments

The Administrative Appeals Tribunal has declined a taxpayer's request to defer his compulsory Higher Education Loan Programme (HELP) repayment because the circumstances cited by the taxpayer did not amount to special reasons.

Taxpayers with an accumulated HELP debt may apply to the Commissioner to defer their repayment if making the repayment has caused or would cause serious hardship. Alternatively, the taxpayer may apply if there are other special reasons that make it fair and reasonable to defer the repayment.

If a taxpayer's HELP repayment income is below the minimum repayment threshold for a financial year, no repayment is required.

Lump Sum Payment and Assessable Income

In another case heard by the Administrative Appeals Tribunal, it held that a lump sum payment received by a taxpayer in arrears of weekly compensation entitlements was assessable income.

The Tribunal found that the lump sum payment was a replacement for loss of income. It also found that the taxpayer was not entitled to reduce his assessable income from the payment or claim a deduction for pension amounts recovered by Centrelink out of the payment.

TIP: Generally, compensation payments which are a substitute for income will be assessable income, even if received as a lump sum.

Keep Your Receipts

In two separate but related media releases, the Government and the Tax Office reminded parents to keep receipts relating to expenses incurred on their children's education if they wish to claim the education tax refund.

From 1 July 2008, eligible families can receive a maximum refund of $375 for each child undertaking primary studies and $750 for each child undertaking secondary studies.

The Tax Office states that only expenses which are paid for by parents will qualify for the refund. It also states that if an item is used for different purposes, only the amount that relates to a child's education is eligible for the refund.

Beware — Tax Refund Scam

The Tax Office has issued two separate but related media releases warning taxpayers of two e-mail scams purporting to offer a tax refund.

The scams operate by requesting a taxpayer's credit card and personal details.

Generally, the subject heading of the emails are titled:

- 'Get refunds on your Visa or Master Card';
- 'Notification — Please Read'; or
- 'Australian Taxation Office — Please Read This'.

The Tax Office does not send e-mails requesting personal information including credit card details.

Individuals who receive emails of this nature should immediately delete them.