CLIENT ALERT

September 2013

GIC and SIC rates for September 2013 quarter

For the September 2013 quarter, the GIC (General Interest Charge) rate is 9.82% (0.02690411% daily compounding rate). The SIC (Shortfall Interest Charge) rate is 5.82% (0.01594520% daily compounding rate).

Medicare Levy increase becomes law

The DisabilityCare Australia legislation that provides for a half a percentage point increase in the Medicare levy has passed the Parliament and become law.

The legislation will increase the Medicare levy from 1.5% to 2% of taxable income from 1 July 2014.

Editor: This will have a flow-on effect to other tax rates than implicitly incorporate the Medicare levy, such as FBT, the family trust distribution tax rate and the excess non-concessional contributions tax rate, all of which increase to 47% from 1 July 2014.

Super funds keep pension exemption after death

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

Broadly, a superannuation fund is entitled to a tax exemption for income that supports the payment of superannuation income stream benefits (i.e., superannuation pensions).

Under the amendments, where a complying superannuation fund member was receiving a superannuation income stream immediately before their death, the superannuation fund will continue to be entitled to the earnings tax exemption in the period from the member's death until their benefits are cashed:

- by paying them out as a lump sum; and/or
- by commencing a new superannuation income stream;

subject to the benefits being cashed as soon as practicable.

The level of the exemption would be no greater than it was before the member's death (allowing for investment earnings after the member's death).

Simpler depreciation rules for business

The ATO has reminded small businesses with turnover of less than $2 million (i.e., small business entities or 'SBEs') that the depreciation rules for business assets are now simpler from the 2012/13 income year onwards.

Assets costing less than $6,500

The small business instant asset write-off threshold has increased from $1,000 to $6,500 allowing small businesses to immediately write-off most new depreciating assets costing less than $6,500.

Assets costing $6,500 or more

Depreciating assets that cost $6,500 or more (regardless of their effective life) are now added to the general small business pool and deducted at a single rate of 30%.

Newly acquired assets are deducted at 15% (half the pool rate) for the first income year.

Motor Vehicles

Small businesses that purchase a vehicle can now also claim an additional deduction of up to $5,000 in the income year it is purchased, effectively bringing forward the depreciation deduction to earlier in the vehicle's life.

Where the vehicle is used exclusively for business and has not been written off immediately under the instant asset write-off, the cost of the motor vehicle is added to the general small business pool and the deduction in the first year is made of up of $5,000 plus 15% of the vehicle's remaining value.

Example

An SBE purchased a motor vehicle on 29 June 2013 for $20,000 which is used exclusively in their business. Under the new rules, the deduction in the first income year will be $7,250, being $5,000 plus 15% of the $15,000 remaining value.

Under the old rules the deduction would have been $3,000 in the first year (i.e., 15% of $20,000).

The ATO on work related expenses

With $18 billion in work-related expenses (WREs) being claimed each year, the ATO says that it will focus on occupations with a pattern of large or rising claims, as well as claims which do not fit the pattern for a particular occupation.

What's new this year?

This year the ATO is writing to around 218,000 people employed in the following occupations:

- building construction project managers and supervisors;
- building construction labourers; and
- sales and marketing managers.

Travel to work claims

Many building construction labourers drive a vehicle to work each day.

If they can prove they have had to carry bulky equipment then this travel becomes a deductible expense, *as long as:*

- they can verify that their employer requires them to carry such equipment as part of their job; and
- there is no alternative storage solution at the workplace. If the employer does provide secure storage, then no deduction.

ATO's 2013 Compliance Program

As usual, the ATO has released its annual Compliance Program, and following are some of the main 'highlights' that will attract their attention in the coming year, including:

- High **work-related expenses claims**, particularly those made by:
  - building and construction labourers, construction supervisors and project managers; and
  - sales and marketing managers;
- **Wealthy individuals** and people who may be using secrecy jurisdictions (i.e., tax havens) to avoid paying tax;
- **Employers** who intentionally try to avoid their tax and super obligations by **improperly treating workers as contractors** rather than employees;
- Small businesses that **overclaim concessions**, attempt to hide income and operate in the **cash economy**, and **claim CGT concessions** they are not entitled to;
- **Businesses with outstanding returns**, particularly trusts, partnerships and companies and entities with privately owned groups;
- **Fraudulent phoenix activity,** particularly by property developers; and
- **SMSFs** that misuse the concessional tax environment deliberately **or unintentionally**.

The ATO has also advised that they investigate **every time** an employee tells them that their employer has not paid their superannuation guarantee entitlement. The ATO will also specifically audit employers in the cafes and restaurants, carpentry services, and real estate services industries, due to these industries presenting a higher risk of employers not complying with their superannuation guarantee obligations.

In addition, more than 640 million transactions are reported to the ATO annually from sources such as banks, share registries, employers, merchants, states and territories and other government departments, and the ATO uses this information to detect people trying to avoid their tax and superannuation obligations.

CGT: Keep the right records

The ATO has reminded taxpayers that they should keep all records of purchases or acquisitions of assets that may be subject to CGT, and records relating to their sale or disposal, including details of the nature of the act, transaction, event or circumstance, how it resulted in a capital gain or loss, the date it occurred, and the parties involved.

The records used to work out the amount of the capital gain or capital loss should also be kept, which may include:

- receipts of a purchase or transfer;
- details of interest on money borrowed relating to the asset;

- records of agent, accountant, legal and advertising costs;
- receipts for insurance costs;
- receipts for rates, land tax and stamp duty;
- any market valuations;
- receipts for the cost of maintenance, repairs or modifications;
- accounts showing brokerage on shares; and
- records from the previous owner – for example, for inherited assets.

Car depreciation limit for 2013/14

The ATO has advised that the car depreciation limit for the 2013/14 financial year is $57,466 (unchanged from the 2012/13 year).

Common errors when applying the CGT concessions

The ATO has noticed some common errors occurring when taxpayers apply the small business CGT concessions, and has offered tips to help avoid those errors.

Satisfy the maximum net asset value test

Just prior to the CGT event, the total net value of the taxpayer's CGT assets cannot exceed $6 million.

This includes the net value of the CGT assets of any entity that is 'connected with' the taxpayer, is an 'affiliate' of the taxpayer, or who is connected with the taxpayer's affiliates.

Determine the market value of a business or asset

Where the market value is required, accepted valuation principles should be applied.

Use the contract date, not settlement date

The CGT event occurs at the time the contract is entered into, not at the settlement date. For disposals of assets, the time of the CGT event is when the disposal contract is signed.

Where contract and settlement dates cross over financial years, the capital gain or loss should be declared in the financial year in which the contract was signed.

When a superannuation pension commences and ceases

The ATO has published a Ruling about "starting and stopping a new superannuation income stream" (i.e., a superannuation pension).

The Ruling applies to complying superannuation funds (including SMSFs) which commence an 'account-based pension', including a 'transition to retirement pension', and focuses on when a pension commences and when it ceases and, consequently, when a pension is payable.

These concepts are relevant to determining the income tax consequences for both the superannuation fund (including the availability of the pension exemption) and the member in relation to superannuation income stream benefits paid.

The ATO states there has been a lot of interest as to when a pension **ceases**, and the most common circumstances for a pension ceasing are summarised as follows:

- When all pension capital is exhausted;
- There has been a failure to comply with the superannuation pension rules (*Editor: Note that there are limited circumstances where the Commissioner may apply his powers of general administration to nonetheless allow the pension to still continue*);
- The pension is fully commuted (i.e., when a member, or beneficiary of a deceased member, chooses to exchange all of their pension entitlements for a lump sum); or
- The member has died – A pension ceases as soon as the member in receipt of the pension dies, unless a dependant beneficiary is automatically entitled to a reversionary pension.

Note that recent amendments to the tax law, applicable to the 2012/13 income year and later income years, ensure that where a member was receiving a pension immediately before their death, the fund will continue to be entitled to the pension exemption from the time of the member's death until their benefits are cashed, provided the relevant requirements are met (e.g., the benefits must be cashed 'as soon as is practicable' following the death of the member).

Segregation of pension assets

Editor: The ATO has also recently released a document setting out their views on what a super fund needs to do to 'segregate' its pension assets and, therefore, ensure that income from those assets is exempt from tax, without the need to obtain an actuarial certificate.

Although the document is only a 'draft determination', it provides very practical guidance.

For example, it states that a superannuation fund will often require ***two separate bank accounts*** *in order to maintain one of them as a segregated bank account.*

That is, to properly segregate the bank account so that the fund won't need an actuarial certificate, a separate bank account will need to be held for the sole purpose of paying the pension, and another bank account may need to be held for other or general purposes.

If you would like advice about superannuation compliance and taxation advice generally, please contact our office.