CLIENT ALERT

MARCH 2017

Making 'intangible' capital improvements to pre-CGT assets

The ATO has confirmed that, if intangible capital improvements are made to a pre-CGT asset, they can be a 'separate CGT asset' from that pre-CGT asset if the relevant requirements are satisfied.

Editor: The result of this is that, while the disposal of the pre-CGT asset itself will be exempt from CGT, the improvements which are treated as a separate, post-CGT asset could still give rise to CGT.

Example

A farmer, holding pre-CGT land, obtains council approval to rezone and subdivide the land.

Those improvements may be separate CGT assets from the land, so if the land is sold with those improvements (the council approval), there may be some CGT (even though the land itself is exempt).

Fringe benefits change for tax offsets from 1 July 2017

The ATO has issued a reminder that the government has changed the way fringe benefits will be treated for the calculation of several tax offsets from 1 July 2017.

The meaning of 'adjusted fringe benefits total' (which is used to calculate a taxpayer's entitlement for the *low income superannuation tax offset*, the *seniors and pensioners tax offset*, the *net medical expenses tax offset* and the *dependent tax offset*) has been modified so that the **gross**, rather than the adjusted net value, of reportable fringe benefits is used.

Fringe benefits received by individuals working for registered public benevolent institutions, registered health promotion charities, some hospitals and public ambulance services will **not** be affected by this change.

This aligns the treatment for tax offsets to the treatment for the income tests for family assistance and youth payments.

Diverting personal services income to SMSFs

The ATO is currently reviewing arrangements where individuals (at, or approaching, retirement age) purport to divert their personal services income to an SMSF, so that the income is taxed concessionally (or exempt from tax) in the fund, rather than being subject to tax at the individual's marginal tax rate.

These arrangements normally involve the individual's income being paid to another entity (e.g., a company) which then makes distributions to the SMSF as a 'return on investment' (e.g., dividends, where the SMSF holds shares in the relevant company).

The ATO advises any people that have entered into such an arrangement to contact the ATO by 30 April 2017, so they can work with them to resolve any issues in a timely manner, and minimise the impact on the individual and the fund.

Individuals and trustees who are not currently subject to ATO compliance action, and who come forward will have administrative penalties remitted in full (although interest may still be payable on any tax collected later than it should have been).

Credit and debit card and online selling data matching program

The ATO is collecting new data from financial institutions and online selling sites as part of its credit and debit cards and online selling data-matching programs, specifically:

- the total credit and debit card payments received by businesses; and
- information on online sellers who have sold at least $12,000 worth of goods or services.

The ATO will be matching this data with information it has from income tax returns, activity statements and other ATO records to identify businesses that may not be reporting all their income or meeting their registration, lodgement or payment obligations.

Deductibility of expenditure on a commercial website

The ATO has released a public taxation ruling covering the ATO's views on the deductibility of expenditure incurred in acquiring, developing, maintaining or modifying a website for use in the carrying on of a business.

Importantly, if the expenditure is incurred in **maintaining** a website, it would be considered 'revenue' in nature, and therefore generally deductible upfront.

This would be the case where the expenditure relates to the preservation of the website, and does not:

- alter the functionality of the website;
- improve the efficiency or function of the website; or
- extend the useful life of the website.

However, if the expenditure is incurred in acquiring or developing a commercial website for a new or existing business, or even in modifying an existing website, it would generally be considered capital in nature (in which case an outright deduction cannot be claimed).

Superannuation death benefits and transfer balance cap

The ATO has recently issued Draft Law Companion Guideline **LCG 2017/D3** to clarify how superannuation income streams that are superannuation death benefits will be treated under the transfer balance cap provisions.

Under recently enacted legislation, a transfer balance cap is imposed as from 1 July 2017 (which is $1.6 million for the 2018 income year) to limit the amount of capital individuals can transfer to the retirement phase to support superannuation income streams.

Where an individual exceeds their transfer balance cap (e.g., the total value of their retirement phase income streams exceeds $1.6 million indexed), their superannuation fund(s) will lose the entire pension exemption unless the excess amount (plus notional earnings) is rolled-back (commuted) to accumulation phase within a specified time frame. 'Excess transfer balance tax' is also imposed in respect of the excess amount plus a notional earnings amount.

Normally, the value of a superannuation income stream in the retirement phase is counted towards an individual's transfer balance cap at the time the pension commences to be payable to the individual.

However, if an income stream commenced before 1 July 2017, the value of that income stream on 1 July 2016 will be counted towards their transfer balance cap (i,e., a credit in the individual's transfer balance account will arise, equal to the value of their pension, on 1 July 2017).

Where an individual receives a death benefit pension that is a **reversionary pension** (i.e., the pension has automatically reverted to them upon the death of a fund member), the ATO effectively confirms (in LCG 2017/D3) that their pension will also be counted towards the transfer balance cap (e.g., $1.6 million for the 2018 income year).

However, their reversionary pension will **not count towards the cap** (i.e., a credit in the individual's transfer balance account will not arise) **until**:

- for a reversionary pension that commenced on or after 1 July 2017 - 12 months after the individual started to receive the reversionary pension; or
- for a reversionary pension that commenced before 1 July 2017 - the later of 1 July 2017 or 12 months after the pension first became payable to the individual.

The reason for the 12-month delay (especially for a reversionary pension commencing on or after 1 July 2017) is to give a reversionary beneficiary sufficient time to adjust their superannuation affairs (especially if the reversionary pension causes the individual to breach their transfer balance cap) before any consequences for breaching their cap take effect.

The amount that is counted towards a beneficiary's transfer balance cap (i.e., the credit that arises in the beneficiary's transfer balance account), for a **reversionary pension**, is equal to the value of the pension on the day the pension commences (or the value of the pension just before 1 July 2017, for a reversionary pension that commenced before this date).