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Deadlinpe looming for SMSF collectables compliance

The ATO has reminded trustees of self managed super funds (SMSFs) that if they have investments in collectables or personal-use assets that were acquired before 1 July 2011, time is running out to ensure their SMSFs meet the requirements of the superannuation law for these assets. Assets considered collectables and personal-use assets include artwork, jewellery, antiques, vehicles, boats and wine.

From 1 July 2011, investments in collectables and personal-use assets have been subject to strict rules to ensure they are made for genuine retirement purposes and they do not provide any present day benefit. SMSFs with investments held before 1 July 2011 have until 1 July 2016 to comply with the rules.

The ATO says SMSF trustees have had since July 2011 to make arrangements, and it expects that they will take appropriate action to ensure the requirements are met before the deadline.

TIP: Appropriate actions may include reviewing current leasing agreements, making decisions about asset storage and arranging insurance cover.

Overseas student debts: repayment thresholds

From 1 July 2017, anyone with a Higher Education Loan Programme (HELP) or Trade Support Loans (TSL) debt who is living overseas and earning above the minimum repayment threshold will be required to make loan repayments to the Australian Government, just as they would if they were living in Australia. The HELP minimum repayment threshold for 2016–2017 is $54,869.

TIP: If you have a student loan debt and are planning to move overseas for longer than six months, you need to provide the ATO with your overseas contact details within seven days of leaving Australia. You should also factor in potentially having to make repayments from 1 July 2017.

ATO data-matching for insured "lifestyle" assets

In January 2016, the ATO advised it was working with insurance providers to identify policy owners on a wider range of asset classes, including marine vessels, aircraft, enthusiast motor vehicles, fine art and thoroughbred horses. The ATO has since formally announced the data-matching program that covers these "lifestyle" assets, and will acquire details of insurance policies for these assets where the value exceeds nominated thresholds for the 2013–2014 and 2014–2015 financial years.

The ATO said it will obtain policyholder identification details (including names, addresses, phone numbers and dates of birth) and insurance policy details (including policy numbers, policy start and end dates, details of assets insured and their physical locations). The data-matching program will provide the ATO with a more comprehensive view of taxpayers' accumulated wealth, as well as assist in identifying possible tax compliance issues.

TIP: It is estimated that records of more than 100,000 insurance policies will be data-matched. The ATO has released a list of insurers involved with the data-matching program. Please contact our office for further information.

Market value of shares is not the selling price

The Administrative Appeals Tribunal (AAT) has ruled that the "market value" of a parcel of shares in a private company that a taxpayer sold in an arm's-length transaction (together with the other two shareholders' shares in the company) was not the proportion of the sale price he received from the sale of all the shares. Instead, the AAT agreed it was a discounted amount; the taxpayer was a "non-controlling" shareholder, so the market value was less than simply his one-third share of the sale price.

As a result of this AAT decision, the taxpayer passed the $6 million "maximum net asset value test", allowing him to qualify for small business capital gains tax (CGT) concessions, where otherwise he would not have.

The Commissioner has appealed to the Federal Court against this AAT decision.

TIP: This decision demonstrates that the actual selling price of an asset may not always represent its "market value". In this decision, the AAT agreed with the taxpayer's valuer that "all other things being equal, the average price per share of a controlling shareholding will be higher than the average price per share of a non-controlling shareholding because of the value of control".

Individual not a share trader

The Administrative Appeals Tribunal (AAT) has found that a taxpayer (a childcare worker) was not carrying on a business of share trading, and accordingly was not entitled to claim a loss resulting from her share transactions. In the year in question, the taxpayer turned over approximately $600,000 in share transactions (including both purchases and sales).

In deciding that the taxpayer was a share investor and not a share trader, the AAT considered each of the key indicators established in case law. The AAT decided that a lack of regular and systematic trade, especially in the second half of the income year, when only 10 transactions were made, went against the taxpayer's contention that she was conducting a share trading business.

TIP: The AAT weighs up all the relevant factors in cases like this. There have been cases where the AAT has found that a taxpayer was carrying on a business of share trading, and has therefore allowed them to claim a deduction for their losses.

Small business restructures made easier

The Government has made changes to the tax law to provide tax relief for small businesses that restructure. The tax law changes provide an optional rollover for small business owners who change the legal structure of their business on the transfer of business assets from one entity to another. The effect of the rollover is that the tax cost of the transferred assets is rolled over from the transferor to the transferee.

This optional rollover is in addition to existing rollovers available where an individual, trustee or partner transfers assets to, or creates assets in, a company in the course of incorporating their business.

The changes to the tax law will take effect on 1 July 2016.

TIP: You must meet strict eligibility requirements in order to access the rollover. Among other things, the rollover must be part of a genuine business restructure that does not change the ultimate economic ownership of the assets. There are also tax consequences you should be aware of.

Tax law changes to treatment of earnouts

The Government has recently amended the tax law concerning the capital gains tax (CGT) treatment of the sale and purchase of businesses involving certain earnout rights.

Specifically, the changes provide for a "look-through" treatment. Under the amended tax law, capital gains and losses that arise in respect of look-through earnout rights will be disregarded. Instead, payments received or paid under the earnout arrangements will affect the capital proceeds and cost base of the underlying assets to which the earnout arrangement relates when they are received or paid (as the case may be).

The changes apply from 24 April 2015.

TIP: These changes to the tax law do not apply for events that occurred before 24 April 2015. However, transitional protection is provided, subject to conditions, for taxpayers who have reasonably anticipated these changes to the tax law, which were originally announced by the former Government.