When paying accounts online please remember to include a reference either your client code or invoice number. This will ensure all payments are receipted correctly.

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Friendly Reminder:

Please remember to forward information for your December BAS as soon as possible in the New Year to save the last minute rush.

Christmas Greetings – December 2015

Another year has fallen behind us and new challenges are on the horizon. We are pleased to see improved conditions for many primary producers and hope these improvements are more widespread in the New Year.

During the year, we welcomed Scott Clegg (Accountant) and hope you have the opportunity to meet him in person when next you visit. We wish you all a wonderful Christmas and look forward to working with you throughout 2016.

WE WILL BE CLOSING OUR OFFICE FROM 3PM FRIDAY 18th DECEMBER 2015 and REOPEN MONDAY 4th JANUARY 2016

Capital gains & property: The top questions and answers

The Australian Tax Office (ATO) sharing up to 50% of any gain you make on an investment decision is enough to strike fear into the hearts of most people. We are often asked about the impact of capital gains tax (CGT) on property. Below, we explore the most frequently asked questions.

CGT generally applies to any change of ownership of a CGT asset, unless the asset was acquired before 20 September 1985 when the CGT rules first came into effect. Most CGT questions on property are based on the main residence exemption that exempts your home (main residence) from any CGT exposure when you sell.

I jointly own an investment rental property with my elderly mother. Neither of us has ever lived in the property. The lawyer says that if Mum's will gifts her half of the property to me then this will not attract capital gains tax. Is this correct? Kind of.

If you inherit your mother's share of the property, there would generally be no tax liability until you sell the property.

Basically, if the property was bought on or after 20 September 1985 then when you sell the property your taxable profit will be based on the original purchase price. That is, you will end up being taxed on the increase in value of the property since it was acquired, including the period that your mother was still alive.

If you jointly own an investment property, your individual exposure to CGT will depend on how the property is owned. If the property is held as tenants in common then any CGT exposure is in line with your ownership interest. If the property is owned as joint tenants then any CGT exposure is shared equally.

I bought a house in 2000, and lived in it until 2003. I was posted overseas with my job between 2003 and 2011. During that time my brother lived in the house rent free – he just paid for utilities. In 2011 to 2012, I rented the house out (no one I knew). I moved back into the property in 2012 and have just sold the house. Do I have to pay capital gains tax on the property?

The capital gains tax rules are more understanding about how people live their lives than other laws and in some circumstances allow you to continue to treat your home as your main residence even if you are not actually living in it.

While you are overseas, if you leave the property vacant or let a friend or relative live in the property rent-free, assuming you claim no any other property as your main residence, then you can continue to claim the main residence exemption.

If you rent the property while you are away, you can still claim the property as your main residence as long as the period you rent it for is less than a total of 6 years. This 6 year period can actually be reset by moving back into the property again.

Effectively, you can move out and move back in as many times as you like and still claim the property as your main residence as long as it is your only main residence during that time and if renting it out, you do not rent it for more than a total of 6 years across the period you are claiming the property as your main residence.

During the rental period you can also claim deductions against the rent, even though the property might still be exempt from CGT during this period.

I bought a property in 2008 and expected to move in straight away, but there were tenants still in the property and their lease still had 8 months to go. I waited for the lease to expire and then moved in. I have lived there ever since. Can you just confirm that I would still qualify for a full CGT exemption on the sale of the property? This is very common but is probably overlooked much of the time. Unfortunately, you would not qualify for a full exemption in this case.

The main residence rules allow you to treat a property as your main residence since settlement date as long as you actually move into the property as soon as practicable after settlement. This is intended to cover situations where there is some delay in moving into the property due to illness or some other "reasonable cause". The ATO's view is that this rule cannot apply if you are waiting for existing tenants to vacate the property.

This means you would only qualify for a partial exemption under the main residence rules. We need to calculate your gross capital gain and then apportion it to reflect the period of time when it was actually your main residence (i.e., from when you actually moved in).

As long as you are a resident of Australia and have owned the property for more than 12 months we can also apply the 50% CGT discount to reduce the leftover capital gain.

It is important in this case to gather as much evidence as possible of non-deductible costs that have been paid for the property such as stamp duty, legal fees, commission, interest, rates, insurance, etc. This will help to reduce the gross capital gain that is subject to tax.

Bad Deeds: Is your SMSF at risk?

Your SMSF's trust deed is its rulebook. If the deed does not allow or recognise something then the trustees can't do it. Despite this, a lot of trustees are unaware of what their trust deed says – it was just something that was required when the fund was established. The problem with any document is that unless you amend it, it is only current for the circumstances that existed at that time. However, the law changes regularly and so do individual circumstances. As a result, it may be necessary to adopt new rules for your SMSF.

This month, we shortcut the review process and highlight the key SMSF trust deed problem areas.

Trust deed does not allow the types of payments being made

A common audit issue is SMSFs paying pensions and other payments to members that are not allowed by the trust deed. The assumption is that because the superannuation laws allow that type of payment then it must be ok.

But, if your deed does not allow the types of payments your fund is making then you're breaching your deed. Check the deed detail well before you anticipate the fund needing to make payments. This is particularly important for deeds created before 1 July 2007 when the superannuation laws on pension payments changed significantly.

Trust deed does not recognise life changes and estate planning needs

There are several aspects of a SMSF deed that have a direct impact if you die or your circumstances change:

- Does your deed allow you to nominate who will receive your super if you die? Some deeds don't allow for binding death nominations. In some cases the remaining trustees decide who gets your super.
- If you have death nominations in place, is the wording consistent with the requirements of the trust deed.
- Who has the power to add or remove trustees? There are a lot of court cases around this with kids excluded from a parent's super by a new spouse or vice versa.
- When does someone become or stop being a member? Some deeds will automatically remove members with a nil balance.

Flexibility and control

Does your deed allow the use of reserves or other strategies that your accountant may recommend at year end to minimise tax? Some deeds don't allow for effective tax planning strategies!

Business structures and restructures: Is your structure working against you?

Many business owners don't realise that the business has outgrown its structure until something comes up – and this something is usually something negative.

Are your assets at risk?

Legal action (by employees, customers and suppliers) as well as divorce are the two primary risk issues for many business operators. If you have been operating as a sole trade or as a partner in a partnership or have simply been holding all business assets in a single entity, your structure may not provide sufficient asset protection. If any personal assets or valuable assets of the business are held in the same entity which carries on the trading operations of the business, those assets may be at risk. To protect your assets it is generally preferable to separate as many valuable assets as possible from the trading operations.

Can you introduce new business partners or investors?

If you want to provide key employees or investors with an equity interest in your business, your current business structure may not allow for this. For example, it is not generally possible to provide fixed entitlements to the profits of a business operated by a discretionary trust.

Entities such as companies and unit trusts are a much more effective vehicle to facilitate the introduction of new equity partners as they can provide a fixed interest in the income and capital gains generated by the business. New investors can also potentially claim interest deductions on funds borrowed to invest in the company or unit trust.

Reinvesting in growth

Reinvesting profits in your business is important if you have or expect a strong growth path. Some business structures however don't readily facilitate profits being retained by the business. For example, it is generally more difficult for a trust to retain profits, as the trustee of a trust is taxed on these profits at penalty tax rates if they are not distributed to the beneficiaries of the trust each year. This is compared to private companies where profits are taxed at a maximum rate of 30% or 28.5% and can be retained in the company without the need to distribute these profits annually.

Can you take money out of the business?

When you first establish your business, it's hard to know what your profits are going to be and for many, there are a few lean years of losses to get things up and running. Your personal circumstances might have changed as well – marriage, children, a spouse, etc. These changes can drive the need for change. The structure of your business has a direct impact on how money flows through to the investors. For example, one of the benefits of a discretionary trust is that the income of the trust can be distributed to any of the beneficiaries of the trust in any proportion, and that proportion can change annually.

Impeding international expansion

If you are contemplating expanding overseas this can significantly increase the complexity of your operations. All of a sudden you will be exposed to a new set of Australian tax rules in addition to the legal and regulatory requirements that will need to be considered in the foreign jurisdiction. On top of the complexity, control may also become an issue. The right business structure can limit your exposure to risk.

Access to tax incentives and concessions

Research & Development (R&D) concessions are only available to companies. If you have a significant level of R&D activity that could qualify for the tax incentives, it's worth exploring your options if you are not already in a company structure.

Can you exit your business?

The business lifecycle has shortened considerably with less business owners seeking to create empires but more opportunistic business models. The wrong structure will limit your ability to sell your business interests and may have a dramatic and detrimental impact on the amount of tax you pay on the sale proceeds. It's important that you explore this issue well before you actually plan to sell or reduce your stake in the business.

China: Opportunities, investment & appetite

According to Austrade, one in every three Australian export dollars earned is from sales of goods and services to China. On top of that, 80 per cent of the value of Australia's export growth in 2013-14 was from trade with China. It's not surprising then that we have a fixation with the welfare and continued consumption of Australian goods and services by China and China's rising influence on the Australian economy.

Free Trade with China

The Free Trade Agreement with China is set to pass Parliament with the Labor Party negotiating a series of reforms to protect workers rights. The amendments put in place minimum wage safeguards for temporary skilled migration, new 457 visa conditions linked to relevant trade licenses, and the capacity to impose a ceiling on the number of new work agreements for 457 visa workers.

Australian expansion into Asia is increasing for businesses of all sizes. In a recent survey, the ANZ recently reported that the majority of Australian businesses that have expanded into Asia have experienced a substantial lift in profits, with almost 40 per cent of small businesses making a return on investment within 12 months. If your business is not already looking at its international potential, is it time to review the opportunities?

Quote of the month:

"Do not worry about avoiding temptation. As you grow older it will avoid you." ***Actor & comedian, Joey Adams***