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2013 FINANCIAL YEAR END NEWSLETTER

By our reckoning this is Yearend Newsletter number 29. The Newsletter is again being delivered electronically as we strive to do our small part to help save the world. The Federal Government has worked out that it cannot keep up its spending levels unless it increases its revenue base. Lots of people are the bunnies in the taxing cross hairs including those who have diligently saved for their retirement within superannuation. The Mining Tax and the Carbon Tax were failures as revenue earners and yet the money that was intended to be raised from these new taxing systems has already been promised and committed.

What that means is that the money has to come from somewhere and even a government can only borrow so much and there comes a point where taxes have to be raised and/or services cut. We have gone from zero Federal Government debt to nearing \$300 billion in six years. That equates to sum \$25,000 for every working Australian. So if you feel the load just got heavier after the May 2013 Federal Budget as you will read --up are right.

We also remind you of our new website (www.lpraylor.com.au) where you can access this Newsletter as well as other riveting information. As always we are looking forward to the new financial Year with keenness and enthusiasm. With our team rested and up to strength we are confident that we can meet your every need.

FOR THOSE REALLY BUSY PEOPLE WHO ONLY READ THE FIRST PAGE - SOME REMINDERS:-

Log book method – motor vehicles

Remember that you must retain your logbook and that it cannot be older than 5 years. Thus, if you have misplaced your logbook or if your business usage has changed or if it is older than 5 years, then it is time to prepare another covering at least 3 continuous months.

Motor vehicle

Odometer readings are required for ALL motor vehicles being claimed for tax purposes as at 30th June 2013 IRRESPECTIVE of the proposed method used to claim your tax deduction.

Stock take

Don't forget to do a physical stock take as at 30 June 2013 setting out the stock items and cost thereof (unless you are a Small Business Entity and your stock value movement has been less than \$5,000.)

Bad debts

Don't forget that bad debts are not deductible unless they are physically written off before 30th June 2013 and the debt must have been brought to account by the taxpayer as assessable income.

Cents per kilometre method

If you are using the cents per kilometre method you need to be able to show how you arrived at your estimated number of business kilometres and have sufficient records identifying the purpose of the trips. Under this method you can claim a maximum of 5,000 kilometres per vehicle.

Superannuation contributions

For the 2013 year you employers would be paying the 9% (up to 9.25% in 2014) compulsory superannuation contributions and these amounts must be remitted to your employee's superannuation funds quarterly. To ensure that the final quarter complies and will qualify as a tax deduction for the 2012 / 2013 Financial Year, all contributions must actually be made by the 30th June 2013 (e.g. a payment in cash/cheque or transfer of assets must be in the hands of the Fund Trustee. Direct credits must actually be in the bank of the Trustee).

The deadline to avoid SGC penalties for contributions for the 2012 / 2013 year is 28th July 2013 (we suggest that your payment be made a week in advance before the due date.

ATO increases penalty for late lodging

The ATO is the Federal Government's revenue collector and it cannot do its job if you have not lodged a tax return. So to encourage you to lodge your tax returns (big stick approach) there are now greater penalties in place for breaches of most Australian tax laws.

The ATO has increased the value of a penalty unit from \$110 to \$170, (the first such increase since 1997.) What this means in hard dollars is that for a very late tax return for an individual or small business the penalty increases from a maximum of \$550 to \$850.

For businesses, penalties will also apply for each late tax return including PAYG withholding annual reports, FBT returns and activity statements such as BAS, IAS and GST.

Keeping with the Robin Hood philosophy medium sized businesses with a turnover of between \$1 million and \$20 million face an even higher fine of \$1,700. Rubbing salt into the wound, the Failure to Lodge (FTL) penalty cannot be claimed as a tax deduction.

Superannuation

New super changes

According to the Government's Australian Prudential Regulation Authority's (APRA), the total funds in superannuation assets jumped by \$49.6 billion, or 3.7 per cent, to \$1.4 trillion in the 12 months to 30 June 2012. Thus, envelope mathematics would put the total to the 30th June 2013 to be \$1.450 trillion or thereabouts.

The Federal Government seeing the debt grave (the Federal Deficit) it had dug for itself looked to super savings as fair game and easy pickings. This was regardless of the fact that a person's monies held in superannuation are there as a consequence of a sacrifice of money or assets in the past for use in the future.

The people's angst from the mere anticipation of these "hand in your pocket" tax changes forced the Gillard Government to announce the detail of the intended changes pre Federal Budget.

Although the new changes have yet to be passed through Federal Parliament, it is worth being prepared as if they do come into effect later this year you need to be on the front foot. The changes include:

Limiting tax exemption on super income streams:

The government proposes to limit the tax free earnings that support a pension, such as dividends and interest to \$100,000 from 1 July 2014. This means that the first \$100,000 income earned by a member within the fund will be tax free, and the subsequent amounts over this limit will be taxed at 15%.

These changes will only apply to earnings that support a person's superannuation pension account and be taxed within the super fund, with pension payments and lump sum withdrawals remaining tax free.

Higher concessional contributions cap:

The having breached the concessional contributions cap rules will be simplified, with those employer contributions and salary sacrificed member contributions in excess of the cap to be taxed at 46.5% instead of the marginal tax rate of 15%.

The new changes provide that members who have made excess contributions from 1 July 2013 are to be able to withdraw the excess from their super fund and have the amount taxed at the marginal rate plus an interest charge.

Effectively members will be taxed on excess contribution amounts as though they had been received an income, with there being no limit to the excess concessional contribution amount that can be withdrawn.

Defined Benefits Fund (some are more equal)

When you retire and cease contributing to your superannuation fund you will retire with a nest egg that is comprised of the assets within your fund. The value of that nest egg over your remaining days will depend on such things as interest rates, dividends streams and capital growth.

The positive performance of your investments will enhance your retirement and a negative performance will impact on your income stream and in the end it will impact on your financial well-being.

Did you ever wonder how/why Politicians seemingly without care can pass laws creating new taxes such as the Carbon Tax, the Mining Tax and even new direct taxes on super funds that have the negative impact on the value of your fund assets and in turn your members balance? You may think that when they harm your members balance they also harm their own. This is not the case for they are in a Defined Benefit Fund. A better name would be Guaranteed Benefits Fund.

For a Federal Politician there is no accumulated balance from which they draw their pension, rather the pension is paid from Consolidated Revenue. Further as our funds ride the roller coaster of our economy a Federal Politician's pension is guaranteed. What's more whenever our Federal Politicians receive a pay rise, there is an increase in the level of pensions paid to retired politicians. So the next time a Federal Government's taxing decision has an adverse impact on the value of your fund, just remember that we are all equal but some are more equal than others.

Fringe benefits tax

When you are a Government having trouble getting the people to accept new taxes, what you do is go back and tighten the net (or screws) on those taxes you already have in place. One such taxing net is Fringe Benefits Tax.

In August 2012 the ATO reported that the number of employers providing Car Fringe Benefits had decreased across all market segments. Furthermore, the Gross Taxable value has declined by 4%. What that means is that the ATO has determined that FBT related to motor vehicles had fallen (that was not something they would expect).

The ATO is not taking this laying down but rather is connecting the dots and contacting employers who recently purchased a motor vehicle and have this vehicle registered in company name but do not lodge FBT returns.

You might think to gather this information would be difficult but it is not. For those of you who would have recently purchased a vehicle in a company name, you will have no doubt advised the car company of your ABN. Guess who gets that information?

But there is more. On all business tax returns there is a box that captures motor vehicle running expenses. This box gets matched with a box where you report your FBT. No doubt the ATO's Big Bertha computer flashes amber light when there has been reported vehicle expenses but no FBT commitment.

Having stated the negatives, it is not difficult to comply with FBT, it is only that proper records need be maintained. Furthermore, FBT is only payable on the private use portion of the benefit and to further lighten the pain, the FBT itself as well as the costs the employer incurs is tax deductible.

The trap in the definition of "car"

In the big picture it is the act of providing a car to an employee that triggers the FBT. A motor vehicle is not a car if it is designed to carry a load of more than one tonne or designed to carry more than nine passengers. These vehicles that are not "cars" because they are outside the definition are referred to as "workhorse" vehicles.

So you have your big-city engineering firms who are providing their senior employees with unrestricted use of a one tonne Toyota Utility. They may think that they have skirted the FBT net but they have not. If the right one doesn't get you, the left will as this utility although not a Car Fringe Benefit, will be a Residual Fringe Benefit if the vehicle is used for anything other than home to work and work to home (and other private use which is minor, infrequent and your irregular).

As an indicator of how seriously the ATO is taking this matter, it has announced that it will be contacting the various State Road Traffic Authorities to identify any "workhorse" vehicles that cost \$10,000 or more and are now registered with an employer.

The trap of parking at home and deemed private use

We have heard the argument that yes a car is provided, the employer owns the vehicle and the employee takes the car home but that vehicle is not available for private use. Unfortunately this does not wash with the ATO as the mere fact that the car is at the employee's residences means it is deemed to be available for private use.

Thus unless you can demonstrate that the car is being used 100% for business purposes, you as an employer have a FBT issue.

To conclude on FBT: FBT is politically expedient to inflict and collect as the employer pays. The tax has its own legislation being the FBT Assessment Act 1986. The provisions seek to capture a wide range of extra benefits provided by an employer to an employee. If you are an employer and would like to discuss a benefit being providing by you to your employees you are invited to contact us. It is better that you are on the front foot and in control rather than the ATO knocking on your door and setting the agenda.

Rental properties-keeping what you can

As interest rates have fallen and property values and rental returns continue to increase, more investors have

purchased the rental property as a haven to protect the value of their money. We have included some interesting things about rental properties that you might like to know:

Renovations by previous owner

If you buy an existing rental property, chances are that there would have been capital improvements done in the past period. If these improvements have been recorded on a depreciation schedule then normally you can carry on claiming the depreciation where the prior owner left off.

Prepare an accurate depreciation schedule

If you are buying a property for rental and it is constructed after 21st August 1984 or renovations have been completed after that date, then it is normally worthwhile to have a Depreciation Schedule prepared by a Qualified Quantity Surveyor. The depreciation is claimable and can result in a significant tax deduction. As an added sweetener, the cost of the report is also tax deductible. It is true that when you sell the depreciation gets added back for CGT purposes but it is better just the same to save now and pay later.

Interest Prepayments

If allowed by your lender, the prepayment of interest is a sound strategy to defer the payment of tax. But before forking out the extra cash in advance, you need to factor in such things as anticipated future income, interest rates and cash flow impact.

Repairs v Improvements One of the more vexing issues

Expenses for repairs to property are generally deductible provided that they related to wear and tear or other damage as a result of earning rental income. However, the costs of initial repairs at the time of purchase are not deductible nor are the costs of improvements. As to the distinction, books have been written on it but as a starting point, a repair takes the property back to where it was before the damage but an improvement provides greater efficiency of function in the property.

If you have any doubts about the distinction, contact us and we can talk it through or email you our check list.

Interest- Keeping your property loan Separate

You are allowed to claim the interest you pay on

your rental property loan even if it exceeds the rent. But you need to be able clearly identify the interest that relates to income producing activities. So do not mix private and rental property borrowings within the same loan. Failure to keep the loan separate can result in the ATO denying your interest claim or at very least significantly increase you accounting costs we have to pick through the numbers.

The final word, do not use your rental property loan for personal purposes.

When it comes time to sell it

If all goes well, when you decide to sell you are up for a healthy profit. Just be mindful that the Taxman considers himself your Partner and wants his share of your good fortune so keep some money aside.

Get your timing right

Remember that the date of the CGT event is the day that the contract is made (think signed) and not the Settlement date. We recently received an ATO Private Ruling where the Tax Office ruled that a contract was made on the 28th June 2012 even though it was conditional both as to finance and conditional as to the Purchaser being able to get a licence to work in a particular industry.

Correctly disclose your Capital Gains

The ATO is closely monitoring land transactions by tapping into the records of the various State Title Offices (eg Landgate). In short, if you have completed a land sale, the ATO is going to know about it so ensure that if you have not disclosed the transaction, your records are good enough to explain why!

Some Financial Planning things

Putting on our Financial Planning hat there are things that can be done before the 30th June 2013 that may assist you to increase your wealth. We have set some of these ideas out under their various heading below:

Superannuation and Insurance Strategies

Salary Sacrifice

If you are an employee, consider sacrificing some of your pre-tax salary or your bonus into super rather than taking it in hand. Not only can you possibly reduce your tax on your salary by as much as 31.5%, but you can

also assist to reach your concessional contributions cap of \$25,000.

Make tax deductible super contributions

If you are self-employed or earn less than 10% of your income from employment, you can contribute and get a tax deduction of \$25,000 a year. Apart from ensuring that your income is in a concessional earning environment (ie 15% tax rate), you will be saving yourself tax by lowering your taxable income.

A better place to earn investment income

You might have investments in your own name that are producing income and if you are in a tax bracket of 46.5%, you are losing nearly half of your earnings return. You may consider cashing out the investment and feeding the money into your Superfund as a Member's Contribution. The tax rate on earnings within your Superfund is 15%. Remember the annual contribution ceiling for a non deductible Members contribution is \$150,000 per annum.

If you made a capital gain this year

If you are self-employed or earn less than 10% of your income from employment and you have made a capital gain, you may consider taking some of that capital gain and investing it as a contribution to your super. The benefits will be at least two fold. One- you have increased the balance in your superannuation fund and two- in the right circumstances you will have triggered a tax deduction which will reduce the amount of tax you need to pay.

Government Co-contribution

If you earn less than \$46,920 PA of which at least 10% is from employment or a business, you can make a contribution to your Superfund and depending on the amount you contribute, you can be eligible for a contribution of up to \$500 from the Federal Government.

Increase the balance of your spouse's super

If you have a spouse who earns less than \$13,800, you can make an after tax superannuation contribution on their behalf. You not only receive a tax offset up to \$540 but you also increase your spouse's retirement savings.

Prepaying Income Protection Insurance

Whether you are employed or self-employed you can prepay 12 months premium for Income Protection Insurance and this will result in you not only having the benefit of the cover but also have brought forward a tax deduction and thus will pay less tax this year.

Investment Strategies

Some thoughts on how to make you money do some of the lifting.

Made Capital Gain

If you have been fortunate enough to have made a capital gain during the year, then you might go through your portfolio and see if you have any poorly performing investments. If yes, then consider disposing enough of those duds to use the loss to offset some or all of your gain. The benefits are at least twofold, one, you pay less tax and two, you free up money from a non-performing asset.

Delay asset sales to defer and reduce tax

If you need to turn an investment into cash, consider waiting until 1st July so that any gain will be in 2014 year such that actual tax payments could be deferred to say May of 2015. You will no doubt make better use of the money than the taxman will.

Pre-pay interest on your investment loan

You can prepay interest on your investment loan for up to 12 months in advance. This prepayment will enable you to defer your tax until the next financial year

Make good use of your tax refund

Assume that after all of your fine planning work and deferred gratification you receive a tax refund. Rather than squander the refund on a second TV, use the money to reduce your debt or plough it into your Superfund. In short, make your money work for you rather than you having to do all the work for it.

Year-end tax planning for business

Small business: the economic engine room of Australia -some thoughts for you:

Instant asset right off- Costing less than \$6,500

We remind you that some of you are entitled to an immediate deduction in the 2013 tax year for depreciating assets costing less than \$6,500.

The claim is not without its obstacles, for example you must be a Small Business Entity (SBE). To be an SBE, you must have a business turnover of less than \$2 million and at the end of the year either be an SBE or in your 2013 tax return elect to be an SBE.

On the positive, once you are over the hurdles you are able to purchase an asset costing less than \$6,500 and receive an immediate right off. Further that \$6,500 can apply to an addition to an existing asset that in itself had cost less than \$6,500 (and was purchased in a previous period).

The asset must cost less than \$6,500 but the good news is that you can have more than one asset that qualifies for the write off and you are not required to amalgamate identical or substantially identical assets that would form part of the set when determining whether or not the less than \$6,500 threshold has been met.

Motor vehicles- \$5,000 upfront deduction

Again for SBE taxpayers, there is an upfront deduction of \$5,000 for the purchase of a qualifying motor vehicle during the 2013 year. As always the devil is in the detail but in the broad picture, a SBE taxpayer is entitled to accelerate their depreciation deduction by claiming an immediate \$5,000 upfront deduction. It is not like an extra investment allowance rather it is simply claiming more of the total depreciation up the front.

The rules include that the SBE taxpayer is using the SBE depreciation provisions, the motor vehicle's main function is related to public road use and the taxpayer is not already entitled to the immediate deduction for an asset costing less than \$6,500 in this year.

(For you bikers the \$5,000 deduction can also apply to motor cycles and scooters as well as second- hand vehicles.)

Accelerating Expenditure

Coming up to the 30th June 2013 is a good time to make those expenses that you know you will have to make in the near future.

For example ensure that your stationery cupboard has been stocked with your office supplies for say the next three months.

Ensure your superannuation contributions are in by 30 June 2013. Most importantly, do not forget that they must actually be paid by the 30th June.(so pay them on the 25th!)

If you know that you are going to need to make repairs to your business equipment and maybe the business premises, make sure you do that before the 30 June.

Deductions without expenditure

Short on cash-it is possible to claim cashless deduction before 30 June 2013.

For example remembering that trading stock within your trading account works such that the lower the value of trading stock on hand the lower your profits. Your trading stock on hand can be valued at its cost, market selling value or replacement value. In addition, it pays when doing your stock take to identify that stock which is obsolete and assign it a reduced value.

Making use of accruals

Just a reminder that most businesses are on accrual based accounting. As such the business can have deductible expenses that have been incurred but not yet

paid by the 30th June. In other words the expense although not paid is a "presently existing liability". In such a state the expense is considered to be incurred and a deduction can be claimed as at 30 June (even though it has not been paid.)

For example salary and wages as well as commissions that are owing at 30 June but not yet paid can be claimed as a tax deduction.

Director's Fees fall into the same category where they are definitely committed as at 30th June.

Staff bonuses where the amount has been definitely committed can also be claimed.

In all these cases the paperwork needs to be done to show that the transaction is a bona fide accrued expenses. Remembering that amounts owing to employees as wages and salaries, bonuses and Directors Fees are not taxable to the recipient until they are physically paid. Thus the business taxpayer can get a tax deduction in 2013 year where as the amounts will not be taxable to the recipient's until the money is paid and received.

Other business expenses such as the cost of deductible goods or services that had been invoice to the business but not paid by 30 June can also be claimed as a deduction in the 2013 year (subject to the prepayment rules). Examples include repairs and maintenance, legal advice, advertising, power, telephone and Tax Agents fees.

The old Bad Debt

If you have an amount owing to your business and you know is that it is bad, we remind you to ensure that that debt is physically written off as a bad debt before the end of June 2013. The ATO is truly a stickler on the timing as a bad debt cannot be claimed if it is written off in July even though at 30th June you knew it was bad. What's more the ATO can require the taxpayer to be able to provide evidence that debt has been written off before the end of the income year.

The Asset Depreciation List

As part of our year-end processes we provide you with a list of your assets that are being depreciated within your business. Often the list includes plant and equipment that you have scrapped but still shows a value to be written off. If you take the time to review the list and let us know those assets that are no longer alive we can ensure that you get a tax deduction for the balance of the value to be written off on scrapping.

The ATO's Arsenal continues to develop-Benchmarking

GST was touted as a taxation system that would see the demise of the cash economy. It would seem that at this stage the cash economy is proving hard to kill. But ever

determined the ATO has continued to develop a small business benchmarking system to assist in the process of keeping small business honest and their taxes paid. The benchmarking is the tool to help identify businesses that engage in activities such as paying cash wages, pocketing cash taking, failing to report barter transaction, operating “two “sets of books , operating without a TFN/ABN or not being registered for GST when required to do so.

The core of the tool is that the ATO has developed a benchmark for over 900,000 small businesses in over 100 different industries. These benchmarks are based on information reported in tax returns and BAS and from other sources to help identify non-complying business operating in the cash economy.

The concept of benchmarking is simple in that your business, say a restaurant, has a certain level of purchases. Those purchases would provide an indicator as to what would be your gross sales. If the relationship between purchases and gross sales is not compatible then Big Bertha sends a warning signal that there is a possibility you are putting some of the sales into your pocket rather than the cash register.

The Tax Office has proven there is tax leakage arising from the cash economy and found that as a consequence of sending 30,000 letters to below par businesses in 2011, 17% of those recipients have now raised their reported turnovers to now be the within the industry benchmark range.

However the ATO believes that about 10% of businesses within those benchmark industries are still reporting significantly lower numbers than the benchmark and the ATO will be on the case of those underreporting businesses.

The process is quite simple in that the Tax Agent is required to include a particular industry code within the business tax return. That code is used to categorise the nature of the business and thus allow for its performance to be measured against businesses within the same code group. When the performance is outside the benchmark range, the Tax Office will write to that business and afford them the opportunity to confess their sins and amendment past Tax Returns. If your house is in order there is no need to respond.

If you are selected for audit, the Tax Office will ask you for records that enable you to justify why your business is outside the benchmark performance. This is where it gets ugly if your records are not up to scratch.

The presumption of innocence does not apply to benchmarking rather if you are outside the range it is up to you to justify/prove why. In other words the Tax

office does not have to prove that you have been cheating rather you have to prove that you have not.

The moral of this story is that you need to have tax records that will show beyond all doubt that the numbers story you have been telling in your tax returns is true.

In a practical application, you need to have a working cash register with daily tapes, you need to be able to show where and how these daily takings were banked. If not banked, you need show how they were spent. You need to be able to show the link between your daily sales records and the numbers reported in your tax return.

If there are deposits into your bank account which you have not shown as sales, you need to be able to show where that money has come. If the relationship between your purchases and sales is such that your sales do not reflect a value in line with your purchases then you need to be able to explain why.

The Tax Office will look at your activities during the audit and can ask for just about any information that they wish. In one case the taxpayer had applied for a loan and in that application stated his taxable income to be 20 times higher than what was declared in his tax return. The Tax Office used this information as a basis for reaching the conclusion that he was understating income within returns.

To be fair the Tax Office is just doing it’s job and they have recently released a document entitled Record-Keeping and Cash Transactions which is available on their website.(www.ato.gov.au) The document provides guidance as to best practice and guidelines to assist Tax Agents and their clients to adapt best practices.

Why we ask so many questions

We recently had a client enquire of us as to our need and our persistence with seeking information in order to ensure a more accurate income tax return. Those dedicated readers of our newsletters will recall that Tax Agents to a great extent have been made responsible for the accuracy of the client’s tax return.

The formal wording per the Tax Agent Services Act 2009 is that “Registered Agents must take reasonable care in ascertaining a client state of affairs.” Decisions by the Tax Practitioners Board basically leads to the conclusion that if there are material errors in the client’s Tax Return it means that the Tax Agent did not take reasonable care in ascertaining a client’s state of affairs.

Although the accuracy obligation flows across the whole Tax Agent/client relationship, looking specifically at the Benchmark System as part of our Tax Agents

obligations we are required to compare your small business performance with like others and if we find that your performance is outside the relevant industry benchmark we have to make further inquiry as to why. In a practical application/interpretation of that we must make further checks including reviewing your processes for recording and reporting income including cash sales. We then need to confirm that your systems are operating as they should do. This would include reconciling a sample of transactions against the relevant source documentation.

If we find your records are deficient we must advise you of that deficiency and also of your obligations under tax law that you need to keep and be able to provide complete records to the ATO at all times and to further advise you of the consequences of your failing to do so.

But it gets worse; if we tell you that in our view your income has been understated but you insist the tax return or BAS be lodged without adjustment, we have to refuse to lodge the document as if we do, we face civil penalties for making false and misleading statements to the ATO and also likely loss of Tax Agents License. Still further we may also be obligated to terminate the client/agent relationship.

So now you know why we ask all those questions.

GST and Hire Purchase (HP)

No newsletter would be complete without something on GST. For those of you who are registered for GST and for those of you who have had the need to purchase an asset say a business vehicle or other business equipment using finance, you will have considered whether to fund the purchase with a Hire Purchase or Chattel Mortgage.

The issue was that if you purchased using a Chattel Mortgage, then you were able to claim the GST upfront. On the other hand if you funded the asset using HP, you were allowed only to claim the GST as a portion of each instalment. Thus if you purchased a new truck using HP that cost say \$110,000 (i.e. included \$10,000 GST) and your contract was for five years. Then it took five years (60 instalments) to claim the GST credit of the \$10,000 you were paying. On the other hand if you made the same purchase using what a Chattel Mortgage then you could claim the whole of the \$10,000 upfront.

Well the good news is that from the 1st July 2012, the anomaly in the process of claiming the GST whether it be HP or Chattel Mortgage has ended. In short, in most circumstances HP is treated the same as Chattel

Mortgage. That is the good news as some lenders do not use Chattel Mortgages.

Division 7A: Loans to private company shareholders or their associates

Do not ever forget the perils and pitfalls associated with extracting money from your private company. In the big picture the company tax rate is 30%. A shareholders tax rate can be as high as 46.5%.

The ATO takes a dim view of the situation where money flows from a private company and into the hands of a shareholder or associate and the additional tax arising from the additional tax rate is not paid. You can draw out from the company the surplus money as Dividends, Wages, Directors' Fees and Employee Bonuses. However to draw out those funds as a loan and not meticulously conform to Division 7A will see those monies being treated as a Deemed and Unfranked dividend. This Unfranked aspect is particularly painful because you may have to pay another 46.5 cents tax per dollar even though the company has already paid \$0.30 in the \$1.00.

At the core of getting through the Division 7A gauntlet is to have in place a complying loan agreement and make sure that without fail you comply with the terms and conditions including interest and repayments. Those of you who have been with us over the years would already know the above the dangers.

What we would like to share here is one small aspect and that is that it is not acceptable to use a new loan to repay an old loan.

For example say you took out a complying loan each year over the last four years. You might find that having to make your yearly payments on four different loans has become tedious. You may think it would be much easier to simply borrow in the fifth year an amount large enough that the sum would enable you to pay out all of the earlier loans and have only one loan repayment to make.

The above described situation may seem not only logical but also reasonable to you and me but the legislation does not see it that way.

In fact to the contrary per Sec. 109R(2)(b) of ITAA 1997, the repayment by the new bigger loan of all the small loans will be disregarded and thus not treated as a repayment of the existing loans. You might say bad luck no harm done but to the contrary as a consequence of the amount of not being treated as a repayment, you have not made the repayment and are therefore in default and loan will then fall within the ambit of being a deemed dividend. That's would be a bad,bad outcome.

Another Target: Personal Services Income (PSI)

For those of you who are providing services on contract whether it be through a company, trust, partnership or simply as an individual you would be or should be aware of the rules concerning the taxing of personal services income (PSI).

As a reminder in the broad brush if you are providing personal services, you are then earning personal services income and that is intended to be taxed in your hands regardless of the nature of the structure providing that service.

As a simple example, if you are in a company and you are doing all the work and it is of the nature of a personal service then the taxation system requires that you include all of the taxable income in your tax return.

Like all taxation law there are exceptions.

For example your structure can be the Personal Services Entity (PSE) (and this is good) if it passes the Results Test. The Results Test basically means that you get paid based on results (ie not by the hour), you supply your own equipment and you accept responsibility for the rectification of your mistakes.

But there is another way through the taxing forest and that route has as its first step the proviso that no one customer provides more than 80% of your income. However that does not set you free and clear for there are still hills to climb and streams to cross as you must still pass one of three more tests.

The first of the three tests is to have an employee (but your wife does not count unless she actually does client work), and other test is that you have a business premises from which you work (but that cannot be a home office or the garage) and finally as an alternative, you can escape the bear in the woods if you can demonstrate that you pass the unrelated clients test.

It is the Unrelated Client's Test that we wish to briefly focus on. It seems benign enough but a Full Federal Court decision in the 2012 year (Cameron V FCT) has highlighted that it is not enough that you pass the 80/20 rule and that are providing your services to two or more entities who are not Associates of either each other or yourself.

But there is a second limb and that is that in addition you must be able to show that the services you are providing are as a direct result of your making offers or invitation to the public at large or to a section of the public.

The conclusion to this is that if the personal service you provide (for example drafting) is a service that a wide range of people could make use of to ensure that you are seen to be advertising to the public at large.

On the other hand, if your service is one being provided to a specific niche industry, ensure that you can demonstrate how you have marketed your business to various potential clients in your industry. Even if it be by word-of-mouth or other referrals that ensure that you have held yourself out as being available and have made offers or indications and accepted those advances to and from new clients.

CGT: You decided to sell your business

Say after a life time of work in your small business you have your money in superannuation and you're tired of being treated as a beast of burden so you decide to sell your business and go cruising. The good news is that although there are taxation consequences arising from when you sell your business they are not as painful as they once were. In the broad brush when you sell it is hoped that you will make a capital gain. Under Division 152 of the ITAA 1997 there are four different CGT small business concessions which (if can be made to fit) will enable small business taxpayers to defer, reduce and in some cases eliminate all together the tax consequences arising from the of the sale of active business assets.

The most attractive concession is the full exemption that is afforded for the capital gain that is in relation to an asset that has been owned for at least 15 years where you have reached at least 55 and are either retiring or have become fully incapacitated.

Then there is the small business 50% reduction to any remaining capital gain (after capital losses and the general 50% discount) (not available to companies) by a reduction of a further 50%

Next in the queue is the Small Business Retirement Exemption where all or part of any remaining capital gain may be disregarded up to the lifetime limit of \$500,000. (A small proviso is that if you are under 55 you must park your \$500,000 into your superannuation fund until you are 55 years of age)

Finally maybe you just want to take a breather from business and in such circumstances you can defer some or all of any remaining capital gain for a minimum of two years. You do this by acquiring a replacement active asset or spending money to improve an existing active asset within the allowed time. The effect of these is to defer the capital gain until that replacement active asset

is sold or its use changes away from being an active asset.

For those of you who have read the whole of this Newsletter you may deduce that we are trying to conclude on a positive note. Nonetheless we must

remind you that these small business concessions are not available to everyone. For example you must pass some basic conditions including the active asset tests and either the small business entity test or the \$6 Million maximum net asset tests.

CHECKLIST & HOW CAN WE HELP YOU

There was so much to tell and so little space to tell it. So by popular demand, we included an extra page for the checklist. We also set out a new page on the reverse of the checklist, headed "HOW CAN WE HELP YOU".

If you wake up in the middle of night in cold sweat and say to yourself "I wish I could talk to someone about this commercial problem", jot it down on the form and share it with us.

Financial Planning

There are items in this Newsletter that are of the nature of Financial Planning but none of which should be seen other than as General Advice. Just for completion and compliance the following should be noted;

Lane Taylor is a Director of L.P.R. Taylor Financial Services Pty Ltd of 5 Sayer Street, Midland WA 6056 and is an Individual Authorised Representative (No 346050) of Dover Financial Advisers Pty Ltd of 71 Tulip St, Cheltenham VIC 3192

CONCLUSION

This Newsletter has been produced with pride in part by the whole team but a special mention of Sherryl seeing it through. For those of you who either by reading or skimming this newsletter have got to the end, well done. Thank you for sharing it with us. If there is anything on which you would like further information then please contact us either by email: info@lprtaylor.com.au or by telephone: (08) 9274 6944. Finally copies of earlier Newsletters are on our Website at www.lprtaylor.com.au

Please note this Newsletter should be taken as a guide only and none of the comments contained in this letter are intended to be taken as advice and this Newsletter is for the exclusive use of the clients of L.P.R Taylor & Associates Pty Ltd.

Kind regards,

Lane Taylor and the team

HOW CAN WE HELP

Complete this form and fax / email it back to us. Our fax number is (08) 9274 3011 and email address is info@lprtaylor.com.au

Name: _____ Company: _____

Telephone: _____ Email: _____

ESTABLISH YOUR OWN BUSINESS

Business Structure (i.e. Sole Trader / Partnership / Company / Trust)

- Explain the difference of each business structure
- Analyse the advantage and disadvantage of each structure.
- Help you to choose the best structure that suits you
- Provide you guidance with your business plan

Business Registration

- Company Formation and prepare all required documents that the ASIC needs
- Business Name Registration
- Apply for ABN & TFN
- GST Registration
- Fringe Benefits Tax Registration
- Payroll Tax Registration

Buying an Existing Business

- Analyse Seller's Financial Statements
- Valuation of Goodwill
- Calculate the amount of Duty
- Valuation of Inventory

Other Services

- Preparing an effective business plan
- Prepare financial reports for bank
- Prepare budget for cash flow statement
- Provide support on accounting systems
- Explain what your tax and legal obligations are (including Workers Compensation Insurance, Wages, Superannuation, PAYG Withholding etc.)

I would like further information and advice on the following: (please tick)

- How I can improve my business performance and profitability
 - Better strategic planning for the future of my business
 - How your Company Secretarial services can offer me peace of mind
 - Making my estate tax-efficient for my heirs
 - Tax-efficient investments and savings
 - How will the Government Budget affect me / my business
 - Minimising capital gains tax legally
 - Retirement planning
 - I would like to know more about the following areas:
-
-

PRE-APPOINTMENT CHECKLIST 2012/2013

INDIVIDUAL DETAILS:	BUSINESS DETAILS:
<ul style="list-style-type: none"> <input type="checkbox"/> PAYG Payment Summaries <input type="checkbox"/> PAYG Payment Summary - Employment Termination Payment <input type="checkbox"/> PAYG Payment Summary – Superannuation Income Stream / Lump Sum <input type="checkbox"/> Pensions & Other Social Security Certificates / Documentation <input type="checkbox"/> Bank Statements / Passbooks (<i>Detailing Interest Earned</i>) <input type="checkbox"/> Dividend and Re-investment Statements <input type="checkbox"/> Partnership & Trusts Taxable Distribution Statements <input type="checkbox"/> Share Trading Statements (<i>i.e. Buy & Sell Contracts</i>) <input type="checkbox"/> Rental Property Income & Expenses <input type="checkbox"/> Rental Property Depreciation Report <input type="checkbox"/> Buying or Selling Contract / Final Settlement Statements/ Offer & Acceptance Forms Re: Purchase/Sale of Property <input type="checkbox"/> Details of Personal Property Sold (<i>if acquired for \$10,000 or more</i>) e.g. <i>Antiques Jewellery, Art etc.</i> <input type="checkbox"/> Receipts for Work-Related Expenses <input type="checkbox"/> Motor Vehicle Logbook <input type="checkbox"/> Travel Diary <input type="checkbox"/> Business / Private Use Diary <input type="checkbox"/> Receipts for Donations <input type="checkbox"/> Medical Receipts – excluding cosmetic procedures (<i>must incur over \$2,060 net of refunds</i>) <input type="checkbox"/> Private Health Insurance Statement <input type="checkbox"/> Superannuation Contribution Documentations <input type="checkbox"/> Zone & Overseas Forces Rebate Location: _____ No. of Days: _____ <input type="checkbox"/> Medicare Exemption / Reduction Certificate <input type="checkbox"/> HECS Statement <input type="checkbox"/> Family Information (Spouse's & Child's - Name, TFN, DOB & Taxable Income) <input type="checkbox"/> Receipts for Education Expenses 	<ul style="list-style-type: none"> <input type="checkbox"/> Cashbook / Computer Disks/USB (e.g. MYOB or Quickbook file) <input type="checkbox"/> Cheque Butts & Deposit Books <input type="checkbox"/> Summary of Cash Income Not Banked <input type="checkbox"/> Summary of Cash Expenses Not Recorded in accounts <input type="checkbox"/> Bank Statements <input type="checkbox"/> Bank Reconciliation Statements <input type="checkbox"/> Loan Statements <input type="checkbox"/> Loan, Lease, Chattel Mortgage & Hire Purchase Agreements <input type="checkbox"/> Details of Income Invoiced, but not received at 30th June (Debtors) <input type="checkbox"/> Details of Expenses Invoiced, but not yet paid at 30th June (Creditors) <input type="checkbox"/> Valuation of Stock at 30th June <input type="checkbox"/> Details of Livestock Numbers Sales: _____ Killed (Rations): _____ Deaths: _____ Closing Stock: _____ Purchases: _____ Births: _____ <input type="checkbox"/> PAYG Payment Summaries <input type="checkbox"/> PAYG Payment Summary Reconciliation <input type="checkbox"/> Superannuation Summary <input type="checkbox"/> Motor Vehicle Details & Logbook(s) <input type="checkbox"/> Motor Vehicle Odometer Readings at 31st March & 30th June <input type="checkbox"/> Buying or Selling Contract / Final Settlement Statements/ Offer & Acceptance Forms Re: Purchase/Sale of Business <input type="checkbox"/> Personal Services Income (if applicable) <input type="checkbox"/> Annual GST Returns <input type="checkbox"/> Insurance Statements