GIBSON & PARTNERS
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Welcome to Gibson & Partners' Newsletter February 2023

Non-deductible threshold removed for self education expenses

Self education expenses are generally tax-deductible for individuals if there's a sufficient connection with your income-producing activities.However, until new legislation was recently passed, the amount you could deduct was limited by s 82A of the *Income Tax Assessment Act 1936* so that only the amount spent over a $250 threshold was deductible.

This threshold was an artefact from when the self education deduction measure was first introduced more than 40 years ago, alongside a long-repealed concessional tax rebate of $250. The original intention of the deduction limit was to ensure that taxpayers didn't receive both the tax rebate and a tax deduction for the same set of expenses.

With the non-deductible threshold removed, you will only need to ensure the following applies when you claim a self education deduction:

- you incurred the expense in gaining or producing your assessable income;
- the expense isn't private, domestic or capital in nature; and
- the deduction isn't prevented by another provision of the tax law (eg such as some childcare and travel expenses that would previously have been useable to reduce the $250 threshold).

The change applies for tax assessments for the 2022–2023 income year and onwards.

TIP: This change doesn't affect the types of self education expenses that are deductible. The costs of textbooks, stationery and professional journals will still be deductible, while certain student contributions and payments to reduce HELP, financial supplement and other higher education debts stay non-deductible, as do expenses you incur before commencing an occupation or to help you obtain a new occupation.

Tax debts and relationship breakdowns: a warning

The ability of the Family Court to divide the assets owned personally by a couple – including superannuation – on a relationship breakdown is largely without question. A recent case has now shed further light on the ability of the Family Court to allocate responsibility for payment of the tax debts of either spouse.

A High Court decision in 2018, *Commissioner of Taxation v Tomaras*, confirmed that tax debts can be apportioned by the courts where a couple's relationship has broken down. In that case, the wife had failed to pay her tax debts and was out of time to challenge the debt assessments. The husband had been declared bankrupt. As part of the property settlement proceedings, the wife asked the court to order that the husband should become the debtor who would have to pay the ATO.

The court found that one spouse could indeed be substituted for the other in relation to a tax debt like this, but it also confirmed this isn't always appropriate. Given that the husband was bankrupt and there was no time left to challenge the debt assessments, the court did not exercise its powers to make him liable for the tax debts that had been assessed to the wife.

More recently, the case of *Cao & Trong* in 2022 further explored the Family Court's powers in relation to tax debts. In this case, allocation of an amount in the region of $3.1 million was in dispute between the former spouses, the ATO and the Child Support Register.

The ATO was owed more than $7 million in unpaid tax, and in the end the court found that it was entitled to 100% of the disputed amount. In making this finding, the court said that the parties had enjoyed an opulent lifestyle while the debt was due to the ATO, and in fact this lifestyle was mainly possible because they avoided paying the large amounts they owed.

This recent finding is a timely reminder that the ATO can and will intervene in family law disputes to protect the revenue due to the Commonwealth, and that the courts will actively ensure the rights of the ATO are protected and enforced.

Sharing economy reporting regime commences soon

As a part of the Federal Government's strategy to combat the tax compliance risks posed by the sharing economy, it has passed into law new requirements for operators of electronic distribution platforms to provide information to the ATO on transactions made through their platforms.

An "electronic distribution platform" is one that delivers services through electronic communication (ie over the internet, including through applications, websites or other software) and allows entities to make supplies available to end-user consumers through the platform. A service isn't considered an electronic distribution platform if it only advertises or creates awareness of possible supplies online, operates as a payment platform or serves a communication function.

Examples of sharing economy electronic platform operators include Uber, Airbnb, Car Next Door, Menulog, Airtasker and Freelancer.

TIP: The new reporting regime applies to platform operators rather than to individuals who use their sites or apps, but if you're part of the sharing economy it's still important to give the ATO the right information. If you rent out your home for short stay accommodation, work as a delivery driver or take on side jobs as a freelancer, we can help you keep your tax affairs in order.

Electronic platform operators will soon be required to regularly provide transaction information to the ATO through the Taxable Payments Reporting System (TPRS). The information obtained will be used in ATO data-matching to help identify entities that may not be meeting their tax obligations.

Administrative Appeals Tribunal to be replaced

The Federal Government has announced that it will abolish the Administrative Appeals Tribunal (AAT) and replace it with a new Federal administrative review body. According to Attorney-General the Hon Mark Dreyfus, the AAT's dysfunction has had a very real cost to the tens of thousands of people who rely on it each year to independently review government-body decisions. A dedicated taskforce within the Attorney-General's department has been formed, and stakeholder consultation will be held on the design of the new body.

The government has said it will implement a transparent and merit-based appointment process. It has committed to providing additional capacity to enable the rapid resolution of existing backlogs, and to implementing consistent funding and remuneration arrangements to enable the new system to respond flexibly to fluctuating case numbers. Thus far, it has committed to appointing an additional 75 new members to the AAT to deal with existing backlogs.

To ensure the new body is user-focused, accessible, fair and efficient, the government says it will also improve additional support services and emphasise early resolution where possible. A single, modern, reliable and fit-for-purpose case management system will be introduced.

Current cases before the AAT will continue. Taxpayers who have already applied to the AAT for a review of a decision will not need to submit a new application. The government envisages that many current cases before the AAT will be decided or finalised before the establishment of the new Federal administrative review body. Any undecided remaining cases will transition to the new review body when it is established.

SMSF changes and reminders for 2023

If you're thinking of starting a self managed superannuation fund (an SMSF) in 2023, you need to be aware of the recent changes made by the ATO on fund registration, and the application of the Director ID regime to funds with corporate trustees.

Previously, after an SMSF was established and trustees were appointed, the trustees had 60 days to register the SMSF with the ATO by applying for an Australian Business Number through the Australian Business Register. That application included a section where bank account details of the SMSF could be added, along with other information such as the fund's Tax File Number.

Due to the recent explosion in fraudulent schemes targeting SMSFs, this feature has been removed in a bid to protect the retirement savings of Australians. New SMSFs will now need to provide the ATO with their bank account details after the SMSF registration process, using the online portal for businesses, via phone, or through a registered tax agent.

If you're contemplating starting an SMSF with a corporate trustee, you'll also need to ensure the directors of the corporate trustee apply for Director IDs before their appointment is made through Australian Business Registry Services (ABRS). The Director ID is a unique 15-digit identifier that will follow each individual through their business life and was introduced as a part of a suite of measures to combat phoenixing and other illegal activities. The process is free, simple, online and only requires individuals to confirm their identity. Every individual must apply for their own Director ID, and no one else can apply on their behalf.