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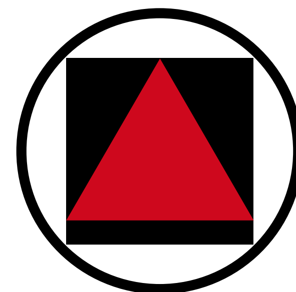

Shareholders liable for tax payments on company assets

With proposed amendments to Division 7A taxation laws currently under review, shareholders with licence to access assets owned by private companies may soon be taxed on the value of those assets if the Bill becomes law.

What is Division 7A?

Under present law, Division 7A applies to private companies transferring ownership of assets to shareholders, treating such assets as company dividends and therefore taxable income. The proposed amendments to Division 7A will extend this law to include licence to use of company assets for shareholders, as well as ownership.

How is value of the payment determined?

The value of the payment will be determined by either availability of the asset to the shareholder, or actual usage by the shareholder, depending on who controls access to the asset on a permanent basis.

If a shareholder holds the key to a holiday house which is owned by the company that they hold shares in, they are considered as controlling access to that asset. In this case, even if the shareholder only uses the asset for four weeks out of the year – during school holidays for example – the value of the asset for them will be based on 12 months availability of use, because they have access to the property on a permanent basis, to the exclusion of anyone in the company being able to access it.

If, on the other hand, the company or a third party such as a real estate agent controls access to the property by holding onto the keys, and the shareholder only has access to the property for those four weeks of the year that they use it by specifically requesting use during these periods and returning the keys to the owner or agent when they are not using the property, the asset value for them will only be based on market value rent for the period that the asset is used.

In cases where the shareholder is also the director of the company that owns the asset, it could be worthwhile for the shareholder to enter into a formal agreement stating when they are able to access the asset, in order to limit the value of the asset to them to actual

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MARISA GONZALEZ
ACCOUNTANT
REGISTERED TAX AGENT

Isaacs Chambers
5/2 Farr Place
Isaacs ACT 2607

TEL (02) 6162 0908
FAX (02) 6162 0907

E-MAIL
marisa@marisagonzalez.com.au

WEBSITE
www.marisagonzalez.com.au

Property Investors
Business Startups
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usage, and to avoid confusion. However, as the ATO has not yet confirmed that such action will be effective, it is best to consult a taxation specialist prior to 30 June 2010 to see how these amendments could apply to you in this financial year.

Exceptions to the rule

There are a few exceptions to this proposed new rules regarding licence to use company assets, including minor benefits, otherwise deductible once-off payments and dwellings used by a shareholder.

- Minor benefits: Access to assets that have a monetary value of less than $300, which is also infrequent and irregular, will not count as payment by the company to the shareholder under the amended Bill.
- Otherwise Deductible Payments: If the shareholder pays for the use of the asset it is not regarded as a benefit and they are not liable for any further payments on its value.
- Dwellings used by the shareholder: In cases where the shareholder is granted access to a residence owned by a private company, on a piece of land or body of water also owned by the company which they have been given a lease to in order to conduct a business, they are not considered as receiving access to the residence as payment from the company.

Who does this apply to?

If you are a shareholder of a private company with access to that company's assets, Division 7A and its proposed amendments will apply to you. The Bill currently under review states that if you as a shareholder are given licence to use a company's property such as a holiday house, a boat or a car for any period of time, this will be considered as payment from that company and you will be liable to pay tax on the value of that asset retrospectively from 1 July 2009.

Claim travel expenses correctly

To make sure that they are properly prepared for their tax returns in the lead up to the end of the financial year, the ATO have recently released a publication for rental property owners called Rental properties - claiming travel expense deductions.

In this report, rental property owners can find information on what they can and cannot claim in relation to travel for their properties, how to work out their expenses to make the most out of their claim, and what records they need to keep for taxation purposes.

According to this publication, travel expenses relating to a rental property that can be claimed in the property owner's tax return are those incurred while inspecting or maintaining the property, or while collecting rent paid for the property. The cost of travelling to and from a rental property for the purpose of collecting rent from tenants is also able to be claimed on tax, as is the expense of visiting an agent to discuss a rental property.

There are rules covering what constitutes a legitimate claim, however, and these must be followed in order to make the most of a claim, and to avoid legal complications at a later date.

For example, although travel expenses incurred while performing maintenance or repairs on a rental property can be claimed when the property is in use or between tenant occupation, any costs for travel undertaken before the owner takes on their first tenant, or when the property is not rented or available for rent, are not able to be claimed.

In addition, the report explains how to calculate expenses for car travel, long distance travel and even overseas travel, including costs for accommodation and meals relating to extended trips. It is best to be very careful when claiming expenses for extended trips, especially those taken overseas.

While Australian residents who own properties overseas can claim the cost of international travel and some expenses incurred while overseas, the taxation office requires the proper documentation to prove that only expenses relating to rental property inspection and upkeep, and rent collection are being claimed, and not those relating to the property owner's holiday.

It is important to keep proper records for any expenses being claimed, and taxation professionals, particularly those specialising in accounting for rental properties, are the best people to speak to if in doubt about what can and cannot be claimed as travel expenses for rental properties, how to calculate these expenses properly, and what records the tax office will require to substantiate these claims.

ATO targets contribution limits

Contributing to superannuation is a good thing to do. However, under the current superannuation system, people who contribute more than the limits allowed face strict penalties – in the form of excess concessional contributions tax. That tax is currently set at 31.5%.

Where super contributions exceed the annual limits, the amount by which they exceed the relevant cap are effectively taxed at a rate of 46.5%. That is the excess contributions tax of 31.5% plus the 15% tax that is paid by the super fund.

"Concessional contributions" are basically superannuation contributions made by or in respect of an individual for a financial year and are included in the assessable income of a complying superannuation fund. Contibutions that count towards the concessional contributions cap for a financial year include:

- employer contributions for superannuation guarantee purposes;
- salary sacrifice contributions made by an employer for an employee from before-tax income;
- personal super contributions made by a self-employed person.

The concessional contributions cap is set at $25,000 per annum (indexed) for the 2009-10 financial year and later financial years. The annual cap on concessional contributions applies per annum per person. It does not matter how many employers are contributing on behalf of the person. That means that if a person works for three separate employers, the concessional contributions cap for the individual for 2009-10 is $25,000 and not $25,000 per employer.

A transitional concessional contributions cap of $50,000 pa applies for those aged 50 and over for the 2009-10, 2010-11 and 2011-12 financial years.

New rules for self-managed super funds

The current review of the Australian superannuation industry could see self-managed super funds facing strict new bans and restrictions if Australian Securities and Investment Commission (ASIC) recommendations are followed.

Self-managed super funds (SMSF) are now the biggest segment of the retirement industry in Australia, overseeing $330 billion worth of assets. Because of this, and concerns that SMSFs are not being properly managed, the federal government has proposed an overhaul of the entire retirement industry, with a focus on self-managed funds.

One bone of contention currently being argued over is the proposed ban of collectible assets such as works of art, exotic cars and wine cellars from SMSFs. ASIC's review panel suggested that such personal-use assets should not be included in self-managed funds under the new rules, as they should not be entitled to tax concessions. Individuals would still be entitled to invest in such items personally, just not as part of their SMSFs.

Detractors of the regulation reform argue that art and collectibles have been included in self-managed super fund assets by the government in the past, as long as members of the fund are not benefiting from them presently, and that the current economic climate highlights the wisdom and stability of such investments when opposed to shares, for example, which have always been considerable risks and have recently become even more so.

It has also been suggested that restrictions be placed on who can open a SMSF, depending on their qualifications, requiring trustees to undergo academic and/ or professional training in order to prove that they can manage their funds effectively. While the review panel did dismiss this suggestion, they are considering setting up an online questionnaire for anyone interested in setting up a self-managed fund, to determine who is and is not a suitable candidate.

The review is designed to make sure that those investing in SMSFs are completely capable of managing their own funds, and of adhering to the laws applying to superannuation, and that they are fully aware of the responsibilities and drawbacks related to self-managed funds, including higher than industry standard fees for accounts below $200,000. With this in mind, the panel is also advising that restrictions be placed on financial advisers administering to trustees of self-managed funds, and on auditors of such funds, suggesting independents as the sole performers of SMSF audits.

Making the most of the margin scheme

Businesses can save thousands in GST payments when selling property, just by applying the margin scheme.

Normally, when a business sells a property that has been used as a business asset, they are required to pay one-eleventh of the sales price to the government as GST. With the margin scheme, however, it is possible for businesses that are already registered for GST to considerably reduce the amount of tax that they pay on the sales price of property, using one of two very simple equations.

By applying the margin scheme, businesses are required to pay one-eleventh of the margin; that is either the difference between the selling price and the original purchase price of the property if using the consideration method, or between the selling price and a professional valuation of the property as at 1 July 2000 if using the valuation method.

There are two main factors that will influence which of these two methods to use when applying the margin scheme, and therefore how much GST should be paid on the property sales price; when the property was purchased, and who it was purchased from.

Consideration method [Margin = selling price – purchase price]

This method can be used regardless of when you bought the property. If you purchased the property after the introduction of the GST on 1 July 2000 or if you purchased the property after this date from a seller who:

- was not registered for GST,
- was selling you an existing residential property,
- sold the property as part of a GST-free going concern, or
- applied the margin scheme when selling,

this method should be the correct way to calculate the margin on which GST will be paid. The amount that you are selling the property for minus the purchase price of the property will be the margin.

When using this method to calculate the margin, make sure that you do not include any of the following in the purchase price:

- property development costs,
- legal fees,
- any options purchased,
- stamp duty, or
- any other purchase-related expenses.

Valuation method [Margin = selling price – property value as at 1 July 2000]

If the property was purchased before the introduction of the GST, a professional valuation will need to be performed, in order to determine the value of the property as at 1 July 2000. This can then be used to calculate the margin amount on which GST will need to be paid.

Changing which method you will use can be done, but only up until the activity statement due date for the relevant tax period (financial year that the property is sold in). In order apply the margin scheme to your property sale, both you and the buyer must agree in writing before the settlement date that you are selling under the margin scheme.

The Bookshelf

The Money Book for Freelancers, Part-Timers, and the Self-Employed: The Only Personal Finance System for People with Not-So-Regular Jobs

Author: Joseph D'Agnese and Denise Kiernan

Published by Three Rivers Press

When you have no boss but yourself, no set working hours and no reliable regular income, it is imperative that you are properly organised and as well-informed as possible in order for you to manage your money effectively. Unfortunately, the self-employed have a tendency to shut their eyes, stick their fingers in their ears and hum when terms such as 'budgeting', 'cashflow' and 'business accounting' are brought up in conversation.

Fortunately, for those people in business who are not particularly business-minded, this entertaining and accessible book can help alleviate – or at least lessen - the headaches associated with financial management, taxation, and saving for the future.

Prolific authors and journalists D'Agnese and Kiernan are both old hands at the freelancing game, having been writing together and separately for over a decade each on a variety of topics. They have also both featured articles in The Wall Street Journal and The New York Times, and their latest collaborative effort comes out of their many years of experience, often costly trial and error and countless lessons learnt the hard way.

This easy to read and surprisingly enjoyable guide to financial planning for the independent worker contains expert financial advice that is relevant and simple to understand, to help the self-employed avoid making the same mistakes as so many have made before them, and successfully manage their businesses and their finances for a better and more profitable future.

We are sometimes asked if we are able to help additional clients. We are a growing firm and do appreciate your referrals. We consider it a compliment when you recommend us to your friends and business contacts.

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