TAX MATTERS

TAX STRATEGIES FOR YOU AND YOUR BUSINESS

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Restoring damaged tax records after a natural disaster

With the recent bushfires devastating many parts of Australia, it is not a top priority to be thinking of tax obligations, either personal or business related.

In the event that your records have been damaged or destroyed in a natural disaster, such as bushfires, there are a number of ways you can reconstruct them. The ATO is able to help with reconstruction in the event tax records have been lost or damaged.

Where the tax records are lost or destroyed as a result of a natural disaster, the ATO will allow time for individuals to get their more pressing issues in order. They provide support by:

- Allowing lodgment deferrals of activity statements or tax returns without penalties.
- Allowing additional time to pay tax debts without incurring general interest charges.
- Making arrangements for tax payments to be done by instalments.
- Fast-tracking refunds.
- Arranging field visits to help with reconstructing tax records.

The ATO holds and can re-issue or supply copies of tax documents, such as:

- Income tax returns.
- Activity statements.
- Notices of assessment.

If you have lost your TFN, you can still access your tax information by phoning the ATO. They will allow for other information to verify identity, such as an individual's date of birth, address or bank account details.

Employers should have copies of individuals' PAYG payment summaries and banks should be able to provide bank records that have been destroyed. Registered agents may also have copies of individual records. In the event your bank charges a fee for replacing bank records and other services to help reconstruct records or provide information due to a disaster, individuals can claim a deduction in the income year that those fees are charged.

If you are unable to substantiate claims made in your tax returns or activity statements because records have been damaged or destroyed, the ATO can accept the claim without substantiation, where it is not reasonably possible to obtain the original documents.

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FBT exemption for emergency assistance

Businesses that provide benefits to employees during an emergency situation are likely to have assistance costs be exempt from fringe benefits tax (FBT).

It is worthwhile to know what kinds of benefits you as a business owner can provide for different emergencies that will be excluded from FBT. Exemptions will apply to benefits you provide to employees who are being impacted by or will be potentially impacted by:

- A natural disaster such as a bushfire, flood or cyclone.
- An accident such as a car accident.
- A serious illness such as cancer.
- An armed conflict such as a war.
- A civil disturbance such as a riot.

The types of benefits you provide to your employees that can be exempt from FBT include health care, temporary repairs or emergency needs such as food supplies, clothing, accommodation, transport or household goods.

Short-term benefits you provide to an employee such as temporary repairs to damaged property due to a natural disaster are exempt from FBT. However, long-term benefits provided to employees after an emergency event will not be exempt, such as a replacement car, new house or ongoing renovations.

When providing health care, there are certain requirements that must be followed. FBT exemptions only apply to health care provided:

- For an employee of yours or from a related company.
- On your premises or the premises of a related company.
- By a company doctor at an accident site.
- At or near an employee's worksite.

If you decide to pay for your employee's ongoing medical or hospital bills, then the FBT exemption will not apply.

The costs of benefits would be deductible to the employer but not assessable to the employee and will not appear as part of their salary and wages on their payment summary.

Removal of the main residence exemption for non-residents

Individuals who are considered to be a foreign resident for tax purposes can face new capital gains tax (CGT) rules, increasing the cost of selling residential property in Australia.

CGT rules for foreign residents have changed under the Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures) Bill 2019, which was granted assent on 12 December 2019.

The law change no longer allows foreign residents to claim the CGT main residence exemption, which will impact people who are overseas or will be going overseas and want to sell residential property in Australia while they are a tax non-resident of Australia. However, this may not apply if you were a foreign resident for tax purposes for a period of six years or less during a CGT event occurrence on your Australian residential property, and a 'life event' occurred, including if:

- You, your spouse or your underaged child had a terminal medical condition.
- Your spouse or underaged child died.
- The CGT event involved the distribution of assets between you and your spouse because of divorce, separation or other maintenance agreements.

Individuals who will be impacted by the changes are non-tax residents who:

- Sell a property bought after 9 May 2017 and do not experience a 'life event'.
- Sell property after six years of becoming a tax non-resident of Australia, regardless of a life event.

If you were not an Australian resident for tax purposes while living in your property, then it is unlikely that you will meet the requirements for the CGT main residence exemption.

Amendment to Housing Affordability Measures introduced

The Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures) Bill 2019 introduces an additional 10% capital gains tax (CGT) discount for resident individuals who invest in qualifying affordable housing from 1 January 2018.

The amendment was re-introduced to parliament on 23 October 2019, after it was first announced in the 2017-18 Federal Budget. These changes will increase the maximum CGT discount to 60%. A registered community housing provider (CHP) must manage the properties and the investment is to be held for at least three years before the discount applies.

The discounts will go through managed investment trusts (MITs). CHPs determine the tenant eligibility criteria, including the rent charged, consistent with state and territory affordable housing policies.

For the discount to be received, housing investments must meet qualifications and provide proof of eligibility. Tenants must have low to moderate incomes and landowners must charge rent at a discounted rate below the private market rental rate.

Investors who already have invested in affordable housing with the National Rental Affordability Scheme (NRAS) will not receive the additional 10% discount as they already get a yearly financial incentive.

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