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Rana Jewell
Public Accountant & Lifestyle Consultant

BENEATH THE SURFACE

SUPERANNUATION SPLITTING STARTED 1 JANUARY 2006

Superannuation contributions can now be 'split' or shared with a spouse. This will allow non-working or low-income spouses to accumulate their own superannuation, and gives families more choices in how they prepare for their retirement.

Following the end of each financial year, a fund member can request that contributions made in the previous financial year be split with their spouse. This splitting is voluntary on superannuation funds – so you will need to check with your current fund/s to see if it is an option available to you.

Family Court Super Kit

The Family Court of Australia has on its website a superannuation information kit regarding the splitting of superannuation interests on marriage breakdown.

www.familycourt.gov.au/presence/connect/www/home/forms_fees/forms/do+it+yourself+kits/diykit_superannuation_info.

SUPERANNUATION GUARANTEE & CONTRACTORS

If a contractor has an ABN, I don't have to worry about superannuation guarantee (currently 9%), right? Maybe, maybe not. An individual with an ABN can still be an employee.

Some key indicators of whether an individual is an employee or *independent* contractor (with an ABN)

Control – what degree of control does the employer have over hours, deadlines, style of work, etc

Results – in contracts to produce a result, payment is often made for a negotiated contract price, as opposed to an hourly rate.

Delegation – must the individual employed conduct the work or can he/she delegate or subcontract it to another?

Risk – who will be sued? The employer or the worker?

Tools and equipment – who provides the tools and equipment, and payment of business expenses? The employer or the worker?

Note that the above factors are only some of the indicators to be considered when deciding if an individual is an employee or a contractor and that no one factor will absolutely determine their characterisation. If deemed an employee, then superannuation guarantee, annual, sick and long service leave provisions need to be considered.

HOLIDAYS

Our office will be closed for holidays from 4-26 March 2006 inclusive.

ATO Compliance Program – some of the targets

- **capital gains tax** – data matching to check on capital gains from the sale of rental properties, vacant land, holiday homes, and shares and managed fund investments; claiming the main residence exemption when the taxpayer never moved in; insufficient record keeping, eg receipts not kept for renovations, interest and insurance costs, market valuations and contracts not held on file; when taxpayers sell a property, they should declare the gain in the tax year when they **sign the contract** to sell – **not** the tax year when the **contract finally settles**.
- **work-related expenses** – (questionable) self-education expenses when there is no clear connection between the course of study and the taxpayer's current occupation.
- **home office** – unsubstantiated claims for car expenses, home office, mobile phones and computers. Log books, diary records, floor plan showing business use percentage, usage logs, etc are all required for these respective entitlements.

Life is Precious

As some of you know, my Dad passed away unexpectedly in late October 2005. This has been a time of grief, loss and introspection. Thank you for your support, patience and condolences. May this year sit lightly on your shoulders at times and may you be visited here and there by peace of mind, and sparkling moments.

Private Companies and 'At Call' Loans From Shareholders

If you run your business through a private company, it is common to loan money to the company from time to time. Frequently these loans are interest-free and remain unpaid for a long time.

The tax office has issued new guidelines to private companies on the treatment of these 'at-call' loans by owners/shareholders. These new *debt/equity* rules are used to classify whether the loan is a debt or an equity interest, for **tax** purposes only.

After much lobbying, the government has thankfully announced that there is now a carve-out for most small businesses that choose to operate through a private company. The good news is that if your company's annual turnover is less than $20 million, then you continue on as is, no change.

How to Minimise Capital Gains Tax (CGT) on Main Residence

When a taxpayer moves out of their existing home and then rents the property to tenants, the main residence exemption (or partial exemption) could apply to any capital gain (or capital loss) that arises when the property is eventually sold by the taxpayer.

Example – partial main residence exemption

Rene bought her home in 1990 and lived there with her family for the first 3 years. In 1993, Rene bought a new bigger home. She moved out of the existing house and into the new house. The existing house was rented to tenants for the next 12 years before it was sold.

The sale of the existing house generated a capital gain of $200,000 for Rene. Assuming that Rene does **not** apply the temporary absence rule (explained below), Rene's capital gain will only attract a **partial** main residence exemption because the house was Rene's main residence for only part of her period of ownership (ie for 3 years out of a total of 15 years ownership).

The main residence exemption will not apply for the period that the dwelling was not actually Rene's main residence (ie for 12 rental years). Therefore, Rene's **taxable capital gain** is basically calculated as 12/15 x $200,000 = **$160,000.**

After applying the 50% individual CGT discount (assuming it applies), Rene is left with a taxable capital gain of **$80,000** (ie 50% of $160,000). Assuming this is taxed at the top marginal rate (incl. Medicare levy), the tax payable on Rene's capital gain is **$38,800** (ie 48.5% x $80,000).

Extending the Main Residence Exemption

Temporary absence rule

Where a taxpayer moves out of their existing home and rents the property to tenants, the **partial** main residence exemption that would otherwise apply (as noted above) can be extended (or converted into a full exemption) under the 'temporary absence rule'. A taxpayer can choose to continue to treat the dwelling as their main residence for a maximum period of up to 6 years while the property is rented to tenants during a period of absence.

Rene's example (cont)

If Rene elected to apply the temporary absence rule to her sold house, then her pro

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Gifts - Private Schools & Donors, Beware!

The tax office has issued a new ruling (TR2005/13) that explains what is a gift for the purposes of the gift deductions provisions. Even though the term 'gift' is not defined, the ruling provides principles to help determine whether a particular transfer of money or property constitutes a gift.

Selected example – 'gift' not voluntary

A private school's half-yearly fee accounts include an amount described as a 'donation to the school building fund' (a registered deductible gift recipient, ie a DGR). It is included in the same way as all other amounts on the account, there is no other indication that its payment is not required, and it is included in the total amount shown as due and payable.

The amount shown as a 'donation' is not a voluntary payment; it is not a gift. If on the other hand the account shows the amount as being optional, and it is not included in the total amount shown as due and payable, it is considered a voluntary payment and in the absence of contrary features, regarded as a gift.

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Rene's example (cont)

rata capital gain would be 6/15 x $200,000 = **$80,000.**

In her case, the 50% individual CGT discount would reduce her taxable capital gain to **$40,000** (ie 50% of $80,000). Tax at the top marginal rate (incl. Medicare levy), on this gain is **$19,400** (ie 48.5% x $40,000).

Which Dwelling to Choose – what is the best option?

As you can see, the temporary absence rule can significantly reduce a taxable capital gain. However, please note that where a taxpayer chooses to apply the temporary absence rule, they **cannot** generally treat *any other* dwelling as their main residence during the period that the temporary absence rule applies. Therefore, in the above example, Rene's new home will be effectively subject to CGT for the first six years of her ownership period.

As a general rule, the main residence exemption should be maximised for the dwelling that is likely to generate the greatest taxable capital gain for the taxpayer when it is sold. This choice does not have to be made until one of the dwellings is sold.

Part IVA and Partnerships

The tax office has released a practice statement on Part IVA which explains the basic principles about how and when the general anti-avoidance (of income tax) rules apply. Contrary to previous advice, it contains some good news for husband and wife (and de facto) partnerships by stating that Part IVA would not apply to a typical husband and wife partnership arrangement, ie where both partners share equally in profits and losses, notwithstanding that (usually) only one party performs the main bulk of the income generating work.

Graduation Celebration

On Thursday 2 February 2006, I graduated from QUT, Carseldine, with a Master of Counselling. My thesis was on "Couples with Financial Difference" and focussed on how couples in a committed relationship managed, or did not manage their financial differences. What does this have to do with tax and accounting? Some years ago as various clients were coming to me for help to "change" their financial management style, I noticed that planning was usually not enough. Often there also had to be changes in attitudes and behaviour. I felt under-equipped to assist them with this part of their transformation process, and thus enrolled in the Master of Counselling course. After three years, and some months, I now realise that this training also deepens and supports the relationship style of accounting (and tax) that I currently practice.

Rana Jewell
Public Accountant & Lifestyle Consultant
13 Park Rd
Ferny Hills Q 4055
M 0408 51 0001
P 07 3351 4689 F 07 3851 0132
ranajewell@beneaththesurface.com.au