BELLEVILLE SMITH & CO PTY LTD
CERTIFIED PRACTISING ACCOUNTANTS

CLIENT UPDATE

tax news | views | clues

To subscribe to our monthly Client Update, please visit our website at www.bellevillesmith.com.au or send us an email to info@bellevillesmith.com.au

ATO small business benchmarks updated

The ATO has announced the latest benchmarks for small businesses. Based on the data from 2014 income tax returns and business activity statements, the benchmarks cover over 1.3 million small businesses.

ATO Assistant Commissioner Matthew Bambrick said one of the great things about the benchmarks was that they gave a lot of small-business owners peace of mind.

"If a small business is inside the benchmark range for their industry and the ATO hasn't received any extra information that may cause concern, they can be confident that they probably won't hear from us", Mr Bambrick said.

Mr Bambrick said some small businesses outside the benchmark range may simply be incorrectly registered, or the business intent may have changed since starting up. "These types of small administrative errors can be easily fixed by checking the previous year's tax return to see which business industry code was used and then updating it in the next return and on the Australian Business Register", Mr Bambrick said.

TIP: Business owners can use the benchmarks to compare their businesses with other similar businesses. They can also be used by the ATO to identify businesses that may not be meeting their tax obligations.

SMSF early voluntary disclosure service for contraventions

The ATO has introduced a new self-managed super fund (SMSF) early engagement and voluntary disclosure service. Each year, an approved SMSF auditor must audit a fund. The auditor is required to report certain regulatory contraventions to the ATO using the auditor/actuary contravention report. The ATO encourages SMSF trustees to voluntarily disclose regulatory contraventions, which they can now do using the ATO's SMSF early engagement and voluntary disclosure service. This service provides a single entry point for SMSF trustees to engage early with the ATO in relation to unrectified contraventions.

TIP: Before using this service, the ATO says trustees should engage with an SMSF professional to receive guidance about rectifying the contravention so they have a rectification proposal to include with their voluntary disclosure. Please contact us for further information.

New tax governance guide for SMSFs

The ATO has released a new tax governance guide that can be used by SMSFs. The ATO has worked with businesses to design a guide to help private groups with tax governance. The guide also provides practical guidance about the key elements of SMSF governance. When managing an SMSF, trustees need to apply a high level of governance to meet the requirements of both the income tax and superannuation laws.

SMSF trustees can use this guide to develop an effective governance framework and to identify ways to improve existing governance practices within their SMSFs. Issues covered in the guide include:

- corporate governance and tax governance;
- starting your business;
- business expansion;
- funding and finance;
- philanthropy;
- succession planning;
- exiting a business;
- retirement planning (covering SMSFs and CGT small business concessions); and
- estate planning.

Property developer entitled to capital gain tax concession

A taxpayer has been successful before the Administrative Appeals Tribunal (AAT) in arguing that a commercial property it acquired, developed and later sold for a profit of some $40 million had been acquired as a capital asset to generate rental income, and not for the purpose of resale at a profit. The AAT reached this decision despite indicating that the taxpayer was essentially involved in "property development" activities on a broad analysis of its activities. As a result, the AAT found that the profit of $40 million was assessable as a capital gain and entitled to the 50% capital gains tax (CGT) discount.

TIP: This case is a good example of the need to maintain contemporaneous documentation should there be a dispute with the ATO. The ATO has recently reiterated its focus on trusts developing and selling properties as part of their normal business and incorrectly claiming the 50% CGT discount.

Superannuation concessional contributions caps must be observed

An individual taxpayer has been unsuccessful before AAT in seeking to have excess superannuation concessional contributions for the 2014 financial year ignored. In addition to having a full-time job, the individual also held a number of casual part-time jobs. To grow his retirement savings, he salary sacrificed super, but he did not check on his super balances. In June 2015, the individual was advised by the ATO that he had excess concessional contributions of around $11,000 for the 2014 financial year, an amount which was added back to his taxable income. He was therefore charged interest of $250. The AAT praised the individual's efforts to save for his retirement, but it said the circumstances did not amount to "special circumstances" in which it could invoke its powers to ignore the excess contributions.

TIP: The taxpayer's ultimate tax bill in this case would have been the same if he had stayed under the relevant cap, albeit the tax bill would have been met by PAYG deductions over time. Even so, this case is a good reminder for to monitor your super balances to ensure you don't have a tax burden caused by extra contributions being added back to your taxable income.

Help the kids buy homes, but watch for land tax

A taxpayer has been unsuccessful before the Queensland Civil and Administrative Tribunal in a land tax dispute in arguing that there was a "constructive trust" in relation to three residential properties. The taxpayer, a father, had purchased the properties for each of his three adult children to live in. There were agreements that the children would pay their parents rent and, upon the death of both parents, as specified in mutual wills, the property would be left to the respective child. The Queensland Commissioner of State Revenue assessed land tax on the aggregate value of the three properties as at 30 June 2013 and 30 June 2014 respectively. The Tribunal affirmed the Commissioner's decision, holding that the taxpayer was the "owner" of the properties and it was not convinced that there was a "constructive trust". Therefore, it held the exemption under the *Land Tax Act 2010* (Qld) to assess separately trust land did not apply. In this case, the Tribunal hinted at the possibility that in future assessments the taxpayer could, on sufficient evidence, persuade the Commissioner or Tribunal otherwise.

TIP: For parents looking to assist their adult children with buying homes, this case highlights the need to consider land tax implications. It is important to note that the land tax regimes differ from state to state. Please contact our office for assistance.

Looking beyond Super for tax effective investment structures

With proposed changes to superannuation announced in the 2016 Federal Budget, many investors are seeking advice on their investment options.

Company Structures and Investment Bonds are two investment structures worth considering as a means of supplementing superannuation.

A Company Structure may suit clients who are happy to set up a private company to hold investments. But this may only be a tax deferral mechanism, as eventually funds may need to be paid out of the company and personal tax be payable at the investor's marginal tax rate, less any franking credits.

They also have the following limitations:

- Capital gains tax reporting or compliance is required.
- The company structure offers little protection from creditors following a bankruptcy event.
- Estate duties may be payable if the investor dies, at a loss to the surviving beneficiaries

Investment Bonds may be a more appropriate longer-term strategy given that personal tax obligations no longer apply after 10 years. They can be a simple and flexible alternative to investing via company structure for the following reasons:

- No personal income tax on your investment during the term
- No declaration of growth or income is required on your income tax return
- No tax on any withdrawals (whether made before or after 10 years) if due to death, disability or serious illness of the Life Insured or unforeseen financial difficulties of the investor
- Investor funds are protected from creditors in the event of bankruptcy (if nominated Life Insured is the investor's spouse)
- No tax on proceeds paid directly to beneficiaries on death of the life insured. (Source: Centuria Capital: http://centuria.com.au Looking beyond super for tax-effective investment structures)

Level 7
488-490 Bourke Street
Melbourne VIC 3000
T: 03 9670 7044
F: 03 9670 8209
E: info@bellevillesmith.com.au
W: www.bellevillesmith.com.au

A.B.N. 98 096 990 939

Directors:
Timothy Smith C.P.A.
Matthew Belleville C.P.A.