Tax update

AUGUST 2022

Tax time focus on rental property income and deductions

The ATO is focusing on four major concerns this tax season for rental properties.

1: Include all rental income: When preparing tax returns, ensure all rental income is included, such as from short-term rental arrangements, renting part of a home, and other rental-related income, like insurance payouts and rental bond money retained.

2: Accuracy of expenses: Not all expenses are the same – some can be claimed immediately, such as rental management fees, council rates, repairs, interest on loans and insurance premiums. Other expenses, such as borrowing expenses and capital works, are claimed over several years. Depreciating assets, for example, new dishwashers or ovens costing more than $300, are also claimed over their effective life.

3: Capital gains tax on sale of rental properties: When selling a rental property, consider capital gains tax. Any capital gains or capital losses need to be reported. When calculating a capital gain or loss, it's important to get the cost base calculation right. When selling any property for $750,000 or more, vendors/sellers must have a clearance certificate otherwise 12.5% will be withheld. Clearance certificate applications can take up to 28 days to process so, to avoid delays, sellers should apply as early as practical using the online form.

4: Record keeping: Keep records of rental income and expenses for five years from the date of tax return lodgements or five years after the disposal of an asset, whichever is longer.

Sessional lecturer entitled to superannuation support

The Federal Court has agreed with the ATO that a lecturer providing services to a higher education provider was a common law employee and therefore entitled to superannuation support, despite being engaged as an independent contractor.

The ATO reviewed the situation and concluded the lecturer was entitled to receive superannuation. That was on the basis that, for super guarantee purposes, they were either an 'employee' within the ordinary meaning of that term, or what is referred to as an 'extended definition employee', as someone engaged primarily to provide their labour services.

Factors that indicated the lecturer was in an employment relationship with the higher education provider included:

- the lecturer was engaged in their personal capacity and not through an interposed entity (such as a company or trust)
- the higher education provider had a right of control over the lecturer, including the question of how, when and where they were required to provide teaching services, and
- the mode or manner by which the lecturer was to be remunerated was clearly expressed by reference to the time the lecturer was engaged in delivering lectures and marking, not by reference to any readily identifiable or quantifiable product or result.

Please seek Advisory Partner's advice on scenarios where a 'contactor' is engaged personally, remunerated on an hourly basis for hours worked, and not provided with superannuation support.

Discretionary trusts and corporate beneficiaries

When a trustee of a trust decides to create an entitlement to income of the trust in favour of a corporate beneficiary (ie, a privately held company), steps need to be taken to ensure that if the entitlement to the distribution remains unpaid (ie, no cash equal to the amount of the entitlement is paid to the corporate beneficiary), that does not trigger what is called a deemed dividend in the hands of the trust.

A deemed dividend is likely to give rise to unwanted taxation consequences for the trust. Historically, one way to avoid triggering a deemed dividend in such circumstances was to put an amount representing the unpaid distribution into a sub-trust for the corporate beneficiary's benefit.

With sub-trust arrangements, the funds are generally invested in the main trust to be used for working capital or to buy plant and equipment or real property. Sub-trust arrangements were typically based on interest-only loans, with the requirement that the principal be repaid at the end of seven years (ie, an option 1 arrangement) or 10 years (ie, an option 2 arrangement).

The ATO has now decided that, for entitlements to trust income from 1 July 2022 (effectively from the 2023 income year), interest-only options 1 and 2 arrangements are no longer sufficient to avoid potentially triggering a deemed dividend for unpaid present entitlements.

Broadly speaking, from 1 July 2022, for an unpaid distribution payable to a corporate beneficiary, one way to avoid the distribution giving rise to a potential deemed dividend is for the unpaid distribution to be replaced with what is called a complying Division 7A loan.

Division 7A loans are made under s109N of the Income Tax Assessment Act 1936. Ordinarily, such a loan is repaid on a principal-and-interest basis over seven years, based on an interest rate provided by the ATO for each year of the loan, with annual minimum loan repayments calculated based on a formula provided by the income tax legislation.

Advisory Partner can advise whether this new tax determination (TD 2022/11) has any implications for how your family group distributes its income.

Pandemic leave disaster payment reinstated

In recognition of the risks associated with new, more infectious Covid-19 variants through winter, the Federal Government has agreed to reinstate the pandemic leave disaster payment to 30 September 2022, which was otherwise set to end at 30 June 2022.

Payment eligibility will be backdated to 1 July 2022, to ensure anyone unable to work owing to isolation requirements in that period, without access to paid sick leave, is supported. Access to the payments started on Wednesday 20 July 2022, with existing eligibility requirements to continue.

The federal, state and territory governments have agreed to share the payment costs 50:50. For each seven-day period of self-isolation, quarantine or caring, the disaster payment is:

- $450 if you lost at least eight hours or a full day's work and less than 20 hours of work, or
- $750 if you lost 20 hours or more of work.

Pandemic leave disaster payments are assessable income and should be reported in the recipient's tax return in the year of receipt.