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Client Information Newsletter - Tax & Super June 2020



Last-minute tax planning tactics

This financial year is almost over, but there are still effective strategies you may be able to employ to make sure you pay the right amount of tax for the 2019-20 year and maximise any refund entitlement. This is still, if not more so, the case in the current COVID-19 environment.

While the best strategies are adopted as early as possible in a financial year and not at the end, it's worth remembering proper tax planning is more than just sourcing bigger and better deductions. The best tips involve assessing your current circumstances and planning your associated income and deductions.

Not all of the following tips will suit your specific circumstances, but they should provide a list of possibilities that may get you thinking along the right track. Of course, check with this office if you need further information.

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Contact Us

Welcome to Collison Accounting's client information newsletter, your monthly tax and super update keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics covered, please contact us.

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Last-minute tax planning tactics *cont*

INVESTMENT PROPERTY

Expenses stemming from your rental property can be claimed in full or in part, so, if possible, it can be helpful to bring forward any expenses that can be undertaken before June 30 and claim them in the current financial year. If you know that your investment property needs some repairs, some gutter clean up or some tree lopping, for example, see if you can bring the maintenance and (deductible) payments into the 2019-20 year.

It should also be noted that deductible rental property expenses remain deductible even if the property is not rented, as long as it is genuinely available for rent (and this may be relevant in the current COVID-19 environment).

PRE-PAY INVESTMENT LOAN INTEREST

If you have spare cash, see if you can negotiate with your finance provider to pay interest on borrowings upfront for the investment property or margin loan on shares (or other loan types) and make that deduction available this year. Most taxpayers can claim a deduction for up to 12 months ahead. But make sure your lender has allocated funds secured against your property correctly, as a tax deduction is generally only allowed against the finance costs incurred for the purpose of earning assessable income from investments.

Be aware that a deduction may not be available on funds you redraw from a loan of this type that is put to other purposes. Also, a component of the National Rental Affordability Scheme payment is not assessable income and therefore the deduction on these properties may need to be apportioned. Ask this office if you want to know more.

BRING FORWARD EXPENSES OR DEFER INCOME

Try to bring forward any other deductions (like the interest payments mentioned above) into the 2019-20 year. If for instance you know that next income year you will be earning less (for example, due to maternity leave or going part-time), then you will be better off bringing forward any deductible expenses into the current year.

An exception will arise if you expect to earn more next financial year. In that case it may be to your advantage to delay any tax-deductible payments until next financial year, when the financial benefit of deductions could be greater. Tax planning is the key, as your personal circumstances will dictate whether these measures are appropriate.

It's probably a bit late to adopt this strategy now, but you could take advantage of this sort of timing and place money into a term deposit that matures after 30 June 2021. Then interest will accrue to you in the following tax year.

Again, this type of strategy may be invaluable if you are anticipating less or more income next year as a result of the effect of COVID-19 on the economy.

USE THE CGT RULES TO YOUR ADVANTAGE

If you have made and crystallised any capital gain from your investments this financial year (which will be added to your assessable income), think about selling any investments on which you have made a loss before 30 June. Doing so means the gains you made on your successful investments can be offset against the losses from the less successful ones, reducing your overall taxable income.

And while there may be many opportunities to realise capital losses in the current circumstances, you should be aware that the deliberate realisation of capital losses for the purpose of reducing capital gains in some circumstances is not acceptable to the ATO. Speak to this office about this.

Keep in mind that for CGT purposes a capital gain generally occurs on the date you sign a contract, not when you settle on a property purchase or share transaction. When making a large capital gain toward the end of an income year, knowing which financial year the gain will be attributed to is a great tax planning advantage.

Of course, tread carefully and don't let mere tax drive your investment decisions – but check with this office to determine whether this strategy will suit your circumstances, and whether you risk attracting the attention of the ATO in any way.

FINAL REMINDERS

You can claim up to $300 of work-related expenses without receipts, provided the claims are reasonable for outgoings related to earning assessable income. If the total amount you are claiming is $300 or less, you need to be able to show how you worked out your claims, but you do not need written evidence.

No-one knows your affairs better than yourself, so you will recognise if any of these tax tips apply to your circumstances. But no-one is better informed as to what is appropriate, or indeed allowable, than your tax agent (and don't forget, any fee is an allowable deduction in the year it is paid).

Every individual taxpayer is required to lodge their return before October 31, but tax professionals are generally given more time to lodge, which can be a handy extension to a payment deadline if any arises.

Of course, if you're sure you are going to get a refund there is no use delaying, so in these cases it is worth getting all of your information to this office as soon as you can after July 1 – especially if the importance of a refund looms large to you.■



Expatriates: Part-year resident or non-resident for tax purposes?

So what happens from a tax point of view when a person leaves Australia part-way through the income year? How is the income they derived before that time taxed? And how is any income they derived after that time taxed (whether from Australian or foreign sources)?

Well, the answer will primarily depend on whether the person ceases to be a "resident of Australia" for tax purposes at the time they leave Australia.

And this can be one of the most difficult issues in tax law to determine. Not only will it depend on the precise facts and the intention of the taxpayer, but it can also involve what often seems to be a "judgement-call" at the relevant time. This is especially the case as a taxpayer's residency status is worked out on an income year basis, and this can change from one income year to another.

But putting aside all the issues involved in actually determining whether a person ceases to be a resident of Australia for tax purposes part-way through an income year, let us assume this is the case.

So, what are some of the general tax consequences associated with such part-year residency?

For a start, the person's tax threshold for the relevant income year will be adjusted downwards (pro-rated) to reflect the fact that the person ceased to be a resident for tax purposes part-way through the income year. As a result, this pro-rated threshold will apply to the person's assessable income:

- from all sources both within and outside Australia for the period they are a resident of Australia, and
- from sources within Australia while they are a foreign resident.

Importantly this, in effect, means that the resident tax rates do not change on the basis of a person's part-year residency – but only the relevant tax free threshold.

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Expatriates: Part-year resident or non-resident for tax purposes? *cont*

It should also be noted that assessable income derived from sources outside Australia during the period in the income year that the person is a "foreign resident" will not be subject to tax in Australia as it will be outside the Australian taxing jurisdiction.

And, of course, for the following income years the person will be assessed as a foreign resident and therefore only pay tax in Australia on Australian sourced assessable income at foreign resident rates.

Another consequence that is often overlooked is that a person ceasing to be a resident of Australia for tax purposes will be deemed to have disposed of all their Australian sourced CGT assets for their market value at that time. However this is subject to an exception, "taxable Australian property" (which always remains subject to CGT regardless of the taxpayer's residency status) and any "pre-CGT" assets of the taxpayer.

Furthermore, a person can instead choose to opt out of this "deemed disposal" rule – in which case all their Australian sourced CGT assets will be treated as taxable Australian property until they are actually disposed of or the taxpayer becomes a resident of Australia again for tax purposes.

So, these are some of the tax considerations to be taken into account on a person ceasing to be a resident of Australia. But it does leave unanswered the key question of determining if this has in fact occurred — and the equally important question of, if so, when does it occur? ■



Rental (passive) income and 'carrying on a business' for JobKeeper eligibility

When assessing eligibility for JobKeeper assistance, the first question that must be answered is whether the entity was carrying on a business as at 1 March 2020. This question is of particular relevance to entities that have solely or predominantly rental income (other than input taxed supplies).

One Administrative Appeals Tribunal case noted that "the letting of a property by itself is an activity in the nature of investment rather than a business, or an adventure or concern in the nature of trade". But another High Court case looking at the same issue stated that "whether the activities of an entity constitute the carrying on of a business is a question of fact, and must be answered based on a wide survey, and the overall impression gained, of the activities of the entity having regard to the indicia of carrying on a business as a whole".

The moral of the story is that where an entity with rental income, or more generally passive income, is concluding on the question of whether it is carrying on a business, comprehensive analysis and documentation must be undertaken, particularly where the conclusion is in the affirmative.

This analysis may be irrelevant for entities making solely input taxed supplies (for example, the supply of residential premises) as these supplies are excluded from the determination of a decline in turnover.

Consult this office if this seems to be your circumstances and you're thinking of accessing JobKeeper. ■

This information has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation or needs.



COVID-19 and residential rental property claims

Many residential rental property owners have had their rental income affected by COVID-19. As a result of this income year ***not*** being business as usual, the ATO has provided answers to some typical scenarios that may crop up in this area for tax time.

Q If tenants are not paying their full rent of have temporarily stopped paying rent as their income has been affected due to COVID-19, can a property owner still claim deductions on their rental property expenses?

Yes. If tenants are not meeting their payment obligations under the lease agreement due to COVID-19 and you continue to incur normal expenses on your property, then you will still be able to claim these expenses in your tax return.

Q A property owner is considering reducing the rent for tenants whose income has been adversely affected by COVID-19 to enable these tenants to stay in the property (they are not in default of their rent). Will the owner's deduction for rental property expenses be reduced because of this?

No. If they decide to reduce the rent to enable tenants to remain in the property (thereby maximising rental return in a changed rental market), their deduction for rental property expenses will not be reduced.

Q If an owner receives a back payment of rent or an amount of insurance for lost rent, is this assessable income to the property owner?

Yes. These amounts should be declared as income in the tax year in which you receive the amounts.

Q If the bank defers loan repayments for a period due to COVID-19, can a property owner continue to claim interest on the loan as a deduction?

Yes. If interest continues to accumulate on your loan, it will be an expense that you have incurred and is therefore deductible. Interest remains deductible on the loan even if the bank defers the repayments.

Q Is a rental property owner able to access the new increased instant asset write off for their property?

No. If you are a property investor, you cannot access the instant asset write-off deduction.

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Concerns on property development and SMSFs



The ATO, as regulator of self-managed superannuation funds, has reported an increase in the number of SMSF trustees entering into arrangements involving buying and then developing property (either with related or unrelated parties) that is subsequently sold or leased.

Trustees should be aware that the ATO is taking an active interest in property development investments undertaken by SMSFs.

While it says this is not specifically prohibited, the ATO recently published guidance that indicates that these arrangements need to be carefully approached to ensure compliance with relevant regulations and laws. For example, could investments of this sort be viewed as having what it calls a "collateral purpose" (that is, not within what would be considered compliant with the sole purpose test), or if it crosses a line regarding the in-house asset rules.

An SMSF, to remain compliant in the view of the regulator, should continue to meet the relevant operating standards, including record-keeping requirements, ensuring assets are appropriately valued and recorded at market value, and keeping the fund's assets separate from members' assets.

A key feature of property investment — borrowed funds and loans — figures largely in the ATO's concerns. For example, if the arrangement features the SMSF borrowing money, the ATO focus will be on whether that borrowing fails to meet the requirements to be exempted from the prohibition on borrowing for a limited recourse borrowing arrangement (LRBA). Also whether the arrangement includes the provisions of a loan or financial assistance (directly or indirectly) to a member or their relative.

Another tripping point here is the question of whether payments out of the SMSF under the arrangement are in fact payments of benefits contravening the relevant payment standards (more usually known as illegal early release of superannuation).

Where the ATO's concerns are particularly awakened is over arrangements in which the investment activity is undertaken utilising joint venture arrangements, partnerships or investments through an ungeared related unit trust or company.

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Concerns on property development and SMSFs *cont*

Complex structures used in property development can also obscure, the ATO says, where income may be inappropriately diverted into the concessionally treated superannuation arena, possibly in a way that may also be contrary to proper retirement outcomes (again, the sole purpose test).

Trustees must be aware of issues that could expose compliance weaknesses, the ATO says, such as ensuring proper arm's length dealings, including but not limited to:

- the purchase of land or other assets
- the value of services provided
- the terms (including the use of personal or related party guarantees) of any borrowing arrangements of the SMSF or other entities involved in the development, and
- the return on investment and income or capital entitlements.

Manipulation of the transfer balance account (through deliberate undervaluing for example) is another concern when a fund enters retirement phase and the asset would count towards the cap. This may allow a greater amount of earnings within the fund to be treated as exempt current pension income.

Before entering into property development arrangements, it may be prudent to have professional advice as there may be significant adverse consequences for trustees and members of an SMSF, including the forced sale of assets or having to wind up the SMSF.

If you have an SMSF already developing property, or that has invested in a related property development entity or venture, it could be important to also seek professional advice or your fund's auditor to make sure that investment stays on track, with no possible contraventions or regulatory concerns.■

COVID-19 and residential rental property claims *cont*

Q COVID-19 is adversely affecting demand, including cancellation of existing bookings, for a property that is usually rented out for short-term accommodation, but has also previously had some private use by the owner. Will they be able to continue to deduct expenses associated with this property in the same proportion as they were entitled to claim before COVID-19 for the period that demand is adversely affected?

The amount you can claim will depend on how the property had been used before COVID-19 and how the owner had planned to use it during the COVID-19 period. If the reason for the adverse effect on demand for the property is because of COVID-19 (or the bushfires before that), a property owner can continue to deduct expenses associated with their property in the same proportion as they were entitled to deduct before COVID-19.

If they had started to use the property in a different way than before COVID-19, the proportion of expenses able to be claimed as a deduction may change. Examples of changed use include:

- *increased private use of the property by the owner, their family or friends*
- *a decision to permanently stop renting out the property once the COVID-19 restrictions end.*

Q A rental property owner is using their holiday home privately for themselves and family so they can isolate during COVID-19. Can they continue to claim deductions for the property for this period, as they are unable to rent the property commercially?

No. If the owner is using the property themselves or providing it to friends or family, this will increase the private usage of the property and reduce the deductions available to claim.

Q A rental property investor would like to stop paying for advertising on their short-term rental property during COVID-19 as they are not getting any queries for the property. Can they still claim deductions associated with holding the property?

It depends on a wider range of factors, not just one. Whether active and bona fide efforts are made to ensure a property is available for rent is only one factor to consider when determining the appropriate method to apportion deductions for a short term rental property. The owner would need to consider how the property had been used before COVID-19 and how they plan to use it during the period now adversely affected by COVID-19.

During this time the ATO acknowledges that it may be a reasonable commercial decision to temporarily reduce the level of paid advertising for such a property, depending on the restrictions in its locality. However this factor alone doesn't necessarily determine the allowable proportion of deductions.■

Laws on bankruptcy changed to help cope with COVID-19



The government has temporarily changed bankruptcy law to help protect people who are facing unmanageable debt as a result of the economic impacts of COVID-19. If you are in financial difficulty, application can be made for temporary debt protection, which prevents recovery action by unsecured creditors, for six months.

The threshold of debt that can trigger bankruptcy has also been increased from $5,000 to $20,000.

The body governing Australia's insolvency and bankruptcy regulations, the Australian Financial Security Authority, says being granted a temporary debt protection means enforcement action cannot be taken by unsecured creditors to recover money owed to them. This means they cannot garnish your wages, or have a bailiff or sheriff seize goods.

Note however that creditors that hold a security over an asset (such as a car, or a house under a mortgage arrangement) can still repossess that asset. These are known as secured creditors. Also temporary debt protection does not apply to some types of debt, such as HELP debts, child support, and fines imposed by court order.

During the period under the protection order, which is six months but used to be 21 days before the COVID-19 changes, a person can seek advice from a free financial counsellor, negotiate a payment plan with creditors, or consider if any of the insolvency options available may be a viable choice.

Once you apply for a temporary debt protection order, you cannot apply again for a further 12 months. After the initial six months is up, the person who applied for the protection is not automatically made bankrupt. If you don't apply for bankruptcy, creditors can still pursue you for the debt.

Importantly however, a temporary debt protection is viewed by the courts an an "act of bankruptcy" (formally known as a "declaration of intention to lodge a debtor's petition"). This means that a creditor could use the fact that a person lodged a temporary debt protection as the basis for an application to a court to make that person bankrupt. ■

APRA's early release from super data

The statistics show that up to **17 May**...

1.59 million applications had been made under the early release from superannuation scheme

1.41 million payments were made at an average of $7,510 each

Time taken to make payments averaged 3.3 business days, with 94% paid within five business days

For the week to 17 May, $1.7 billion was paid to 220,000 members