Contact Us: 370 Blackshaws Road Altona North VIC 3025 Ph: (03) 9314 6011 Fax: (03) 9314 4774

JAMES. W. MANN & ASSOCIATES ACCOUNTANTS

2016 Autumn Newsletter

Contents

Hopefully you all enjoyed a relaxing and refreshing holiday break and are well back into the swing of things. With interest rates unchanged since the last .25 drop in May last year, it looks like more of the same ahead. If you have not yet taken the opportunity to review business loans, property loans and vehicle and equipment loans, we are able to assist.

This issue takes a look at whether your income is business income or personal services income, ATO updates on recognising a dodgy tax scheme and changes to student loans of overseas residents, what to be aware of from a tax perspective in the sharing economy, FBT changes relating to electronic devices, SMSF and property valuations, and staying on track to reach your business goals in 2016.

We hope you find the newsletter of value and extend to you and yours happy Easter wishes and hope you are all enjoying a prosperous start to the Year of the Monkey.

If there is any area within this newsletter that you would like to discuss, please call us. We are here to help.

Is Your Business Income Personal Service Income?

Personal Service Income (PSI) is income received from your personal efforts or skills through an ABN and can be earned in almost any industry, trade or profession. If you have earned income from contracts and sales for which more than 50% of the income was for your labour, skills or expertise, then all of that income is considered to be PSI. If 50% or less of the income received for a contract was for your labour, skills or expertise, then none of the income is considered to be PSI.

The Australian Tax Office (ATO) now provides a tool on their website for you to easily ascertain if you are receiving PSI income or not. This tool can be found at www.ato.gov.au/Calculators-and-tools/Personal-services-income-tool.

As noted in February 2015, the National Tax and Accountants' Association (NTAA) reported that 'war' had been declared by the ATO on many professional practices, with everything the ATO has previously accepted from a tax perspective with respect to taxing income generated by professional practices 'under fire' from the ATO.

Traditionally, the ATO had a rule of thumb that income generated by a professional practice was not regarded as personal services income where there were 'at least as many non-principal practitioners as principal practitioners'. It was then accepted that all income generated by these practices did not have to be included in the assessable income of the principal practitioner. It is important to note that this approach had been accepted by the ATO for decades.

The ATO has undertaken a complete backflip in relation to this issue. In Taxpayer Alert TA 2013/3 and the draft guidelines titled 'Assessing the risk: allocation of profits within professional firms', the ATO has changed the long standing principles highlighted above. In particular, TA 2013/3 and the guidelines make it clear that income generated by a professional practice may effectively be regarded as personal exertion income even though there are as many (or more) non-principal professionals as principal professionals (i.e. owners). As such, the ATO will require some professional practitioners to include greater amounts in their assessable income under these new guidelines.

Always keep in mind that the ATO has 3 audit risk tests for PSI income for professional firms. The guidelines have outlined 3 tests that must be considered when assessing whether a professional practice will be classified as 'high' or 'low' risk from an audit perspective. If a professional practice satisfies at least one of the 3 tests highlighted below, then it will be classified 'low risk' for audit purposes.

THE 3 TESTS ARE AS FOLLOWS:
1. Satisfying the equivalent remuneration test
Under this test, a professional practitioner must basically ensure that their assessable income from (or in relation to) the professional practice includes an amount that is at least equal to the highest band of professional employees providing equivalent services to the firm. A professional practice is entitled to use comparable firms or relevant benchmarks where the firm has no such employees.
2. Satisfying the 50% remuneration test
Under this test, 50% or more of the income the practitioner and his/her associated entities are collectively entitled to receive from the practice (whether directly or through the associated entitles) is included in the assessable income of the professional practitioner
3. Satisfying the 30% effective tax rate test
Under this test, the effective tax rate of the professional practitioner and their associated entities must be at least 30% in relation to the income received from the practice.

High risk heightens the likelihood of audit

It is made very clear from TA 2013/3 and the guidelines that any professional practitioner who is unable to pass any of these tests will then be assessed as high risk, and there is a "greater likelihood of ATO compliance action being undertaken".

Make no mistake: this is a seismic shift in attitude by the ATO.

The NTAA noted this backflip in attitude has occurred without any support from case law and may be seen as a declaration of 'war' on many professional practices.

Australian Business Registry is Cancelling Inactive Trust ABNs

From February 2016, the Australian Business Registry has begun cancelling the ABNs of approximately 220,000 Trusts which they believe are no longer carrying on an enterprise.

They have determined this by collecting information about the lodgement history of trusts, where there have been no activity statements and/or trust tax returns lodged over the last two years. The exclusions to the cancellations are trusts which are registered with Australian Charities and Not-for-profits Commission.

If the ABN of your trust has been cancelled and you disagree with the decision, there will be a contact number within the correspondence letter you receive which enables you to contact the Australian Business Registry and have the ABN reinstated immediately.

If the ABN of your trust is cancelled and you have not received a letter, it could mean your contact details are not up-to-date on the ABN record.

ATO Changes to Recovering Student Loans of Overseas Residents

Before 1 January 2016, anyone with a student loan, through the Higher Education Loan Programme (HELP) or Trade Support Loan (TSL) schemes, who moved overseas was under no obligation to repay their loan, as long as they were not Australian residents.

As of 1 January 2016, anyone who has a HELP or TSL debt will be required to start making payments towards their debt once their income is over the minimum threshold, which at the moment stands at $54,126, regardless of where in the world they live.

The rationale behind this move is that the Australian Government has estimated that between $20-30 million was lost each year, due to graduates moving overseas. They also estimated around $800 million has been lost since the inception of the student loan scheme in 1989, through students leaving Australia and living overseas with no obligation to repay their loan.

The government now expects all Australians who have a HELP or TSL debt to notify the ATO via the my.gov.au website to make payment arrangements if they are moving overseas for six months or more.

The Sharing Economy (Airbnb and Uber)

The 'sharing economy' (also referred to as collaborative consumption) is a new way of connecting buyers ('users') and sellers ('providers') for economic activity. Sharing economy arrangements are generally booked through a facilitator using a website or app. Some well-known examples of sharing economy services include Uber and Airbnb.

The ATO has provided some outlines of what you should do if you are operating one of these sharing economy businesses and the tax implications they may have.

Airbnb Rentals

If you are using Airbnb to rent out a room or even your whole house from time to time, you should register for an ABN, declare ALL Income and keep a log book (number of days a year) to apportion expenses into private usage and business usage.

The bad news is that whilst Airbnb may sound like a fabulous way to earn extra cash, you must be mindful that if you are renting out your primary residence, when you sell it, if it has been used for an Airbnb/rental scheme you will not be able to apply the full capital gains Principle Place Of Residence exemption, only a partial exemption will be allowed, based on your record keeping from your log book.

The good news is you do not have to register for GST (even if your turnover is above $75,000) as residential rental income is not subject to GST.

Uber Drivers

Unfortunately Uber drivers have been slammed by the ATO. Uber drivers must declare ALL income; keep a log book and all details/receipts of ALL expenses and on top of that UBER drivers should ideally be registered for GST, as they are treated the same as taxi drivers. Whilst the GST issue is still being decided in court, it is advisable to be registered to be on the safe side. As you would be registered for GST, opening a dedicated bank account for all expenses income is recommended as it can help you keep on top of your GST commitments.

Other Issues to Consider

If you are conducting any of these businesses, it's advisable to set aside some money to help with any potential tax debts. As you will be taxed on these income sources, the tax rate will be your marginal tax rate. As your assessable income increases, so too will your tax liability.

Fringe Benefit Tax (FBT) and Electronic Devices

In the 2015–16 Budget, the Government announced that it will allow a fringe benefits tax (FBT) exemption from 1 April 2016 for small businesses with an aggregated annual turnover of less than $2 million that provide employees with more than one qualifying work-related portable electronic device, even where the items have substantially similar functions.

Currently, an FBT exemption can apply to more than one portable electronic device used primarily for work purposes, but only where the devices perform substantially different functions. Removing the restriction that a tax exemption is only provided for one work-related portable electronic device of each type will remove confusion where there is a function overlap between different products (such as between a tablet and a laptop).

As of 1 April 2016 (the start of the 2017 FBT year), the government has extended their FBT exemption to any

Continued page 8.

SMSFs and Property Valuations

The requirements for SMSF property valuations can be confusing. This is partly because there are no hard and fast rules. The ATO has produced guidelines but these are open to some interpretation. Factors to consider include the domain expertise of the Trustee, and the expectations of the ATO and Fund Auditor.

Why Assets Need to be Valued

SMSF Financial Accounts are in some ways unique in that they require the market valuation of assets to be done each year. Reasons for this are so that the SMSF financial reports and member statements are more meaningful to members and allow for decisions to be made. It is also useful for a SMSF to be able to compare its investment returns against the wider superannuation investment sector.

Other Events Requiring Valuation

Certain events may require a valuation at the time of that specific event, for example:

- Business Real Property is acquired from, or disposed to a related party to ensure the transaction is at arms-length.
- Determining the value of assets that fund a member's pension.

When to Have an Independent Valuation for Real Property

An external valuation of real property is not required each year, but the decision as to whether to seek an independent valuation should be at least reviewed every year. The valuation approach will be examined by the fund auditor each year.

A general rule of thumb is that it would appear reasonable to have an independent external valuation at least every 3 years. In determining whether an external valuation is required, more often the things to consider are:

- the value of the property in proportion of the fund's overall value;
- significant changes in market conditions;
- any event that may have affected the value of the property such as a natural disaster.

Who can provide a valuation?

The valuation may be undertaken by anyone as long as it is based on objective and supportable data.

When valuing real property, relevant factors and considerations may include:

- comparison to similar properties;
- sales history for the property;
- independent appraisals;
- value of any improvements; and
- net income yields.

An independent valuation can be provided through a number of methods. According to the ATO publication 'Valuation guidelines for self-managed superannuation funds', "A valuation undertaken by a property valuation service provider, including online services or real estate agent would be acceptable."

A Trustee can provide a valuation if they can demonstrate that they have a sufficient level of knowledge and can support their valuation with factual data that can be reasonably interpreted by a 3rd party. For most Trustees this method may suffice for years when an independent valuation hasn't been sought. For example, the Trustee may be able to find statistical evidence that market conditions have not changed significantly as support for their decision to maintain a prior year external independent valuation.

If a Trustee arranges an external independent valuation every 3 years, supplemented by an annual internal valuation with objective supporting data, then in general, the requirements will be met to the satisfaction of the Auditor and the ATO.

As a member of the National Tax and Accountants' Association, we have access to independent online property valuations for residential properties that meet the ATO valuation guidelines. The online service produces a report that lists the property sales history and provides a valuation amount/range, rent estimate and yield estimate based on key market data and comparable properties. The property valuation can be requested in conjunction with fund audits or as an independent service.

Please contact us for details if as a Trustee, this is a service you are interested in.

SMALL BUSINESS, BIG GOALS

Keeping the momentum to Reach Your Most Pivotal Goals in 2016

By Alyssa Gregory - Small Business Information Expert

Goal setting is powerful for all small business owners, and it's vital that you think about - and work on - your goals more often than once a year. How often have you set goals at the start of the year, only to get pulled away to other projects and forget about them entirely for months or even longer? Unfortunately, this is a fairly common occurrence for small business owners who are often being pulled in many different directions.

The only way to make goals count is to give them the attention they deserve. Here are some tactics to use this year as you set new goals and commit to seeing them through to fruition.

Schedule the Necessary Time

"I just don't have time," is not a valid excuse when it comes to goal setting. Think of it this way -- goal setting is not optional. If you want to succeed in business, you must make time to set and strive for your goals.

The good news is that you can start the entire process with just 30 minutes. Yes, with 30 minutes of dedicated time you can follow four simple steps to create a powerful goal for your small business. Don't put it off - schedule the time now.

STEP 1	Find a Few Minutes to Reflect
STEP 2	Pick a Theme - What one goal, wish or dream keeps popping up every time you think about the future? What do you want to accomplish more than anything else? What keeps you up at night? That should be your focus for this exercise. Aim for your goal to be specific, measurable, attainable, realistic and time-based and you will be headed for success.
STEP 3	Make an Action List – Brainstorm every possible action that you may need to take in order to achieve your goal. Then go back and break down each idea so it becomes a list of simple actions. Keep this list handy so you can add and revise as necessary.
STEP 4	Make a Commitment - Remember to take it one action item at a time and to take time to pat yourself on the back for progress you make. Taking it step by step will get you closer to your goal every single day.

Work Backwards

Creating a step-by-step process for achieving your goals can be challenging if you don't know exactly what the process will look like each step of the way. Sometimes, this area of unknown can be completely demotivating. Instead, try picturing what the end result of achieving your goal will look like and make a plan, work backwards from the result to the beginning to create your process.

Use an App

There really is an app for everything, and this includes goal setting. Whether you prefer to manage your goals on your smartphone or with a tool on your desktop computer, there is something that will help you focus and achieve even your most ambitious goals.

Continued next page.

From previous page.

SMALL BUSINESS, BIG GOALS (cont.)

Avoid Common Mistakes

Do you forget to celebrate your successes along the way when you're attacking a big goal? It's that acknowledgement that will often provide the motivation you need to continue working on your goals when the challenges sprout up. Not celebrating your wins is one of several big mistakes that can derail your process. Review this list of five goal setting mistakes as you get started so you know what not to do.

1.	Waiting for the Perfect Time to Start
2.	Failing to Check If Your Goals Are SMART
3.	Not Working on Your Goals Every Day
4.	Not Being Flexible
5.	Forgetting to Celebrate Your Successes

Use an Action Planner

Many small business owner find that breaking down a goal into individual tasks in the goal setting process makes it easier to take forward-moving steps every single day. This can be accomplished by using an action planner (example available at www.smallbusinessbonfire.com/free-goal-setting-planner) to detail what it will take to push your goal forward and make progress, little by little. Take time to map out your progress and take it one step at a time.

Successful goal setting is all about making a commitment to doing whatever it takes, a little every day, to get from point A to point B and successfully accomplish your goal. Are you going to commit to making 2016 the year you finally tackle that big goal in your small business?

HOW TO AVOID A DODGY TAX SCHEME

Tax planning arrangements that go beyond what the law intended are tax avoidance schemes. These schemes involve deliberate approaches to exploit the tax system. The way an arrangement is structured, the financing, documentation and advice offered can all be indicators of a suspect scheme. Because some tax schemes are very cleverly dressed up as legitimate arrangements, it's important to know what to look for regarding the advice and documentation, finance and structure of the scheme.

Advice and documentation

Be wary of promoters that:

- offer zero-risk guarantees for their product.
- refer you to a particular adviser or expert (they may claim the adviser has specific knowledge about the arrangement and the promised tax benefits).
- ask you to maintain secrecy to protect the arrangement from rival firms.
- discourage you from obtaining independent advice.
- do not have a product disclosure statement (PDS) or prospectus for the product.

Finance

Many tax schemes are promoted with mechanisms to help you finance your involvement. The following are red flags:

- 'Round robin' financing, where the funds are passed through various entities and, usually, back to the initial entity (for example, the promoter lending you the money to invest in the product).

Continued next page.

HOW TO AVOID A DODGY TAX SCHEME cont.

From previous page.

- 'Non-recourse' loans that you don't have to repay if the investment goes bad (the lender has no recourse under the terms of the loan to pursue the debt if you fail to repay it).
- Complex financing arrangements involving limited recourse loans, where your liability is limited to your share in the investment.
- Investments that are primarily funded through tax deductions - for example, by including substantial interest prepayments in a financial year.

Structure

The way an arrangement is structured can indicate it might be a scheme. Be careful of any arrangement that involves:

- deferring income to a later tax period so the tax is paid in a later period too.
- not declaring income or hiding income (for example, in an offshore location such as a tax haven).
- changing the nature of the income so less tax is paid, for example, changing capital expenses into revenue expenses.
- changing private expenses into business expenses so they can be claimed against income.
- creating an entitlement to a tax offset or credit that wouldn't otherwise have been available.
- moving income to a trust or partnership to split it among people in a lower tax bracket so less tax is paid.
- inflating or artificially creating deductions.
- moving taxable income to an entity that is tax exempt or has a lower tax rate, such as a charity, company or super fund.
- setting up a business for the sole purpose of obtaining tax benefits - that is, there is no business purpose to the arrangement.

Don't take the promoter's guarantee that there is no risk in participating in the arrangement. If it has any of the above features seek independent advice before doing anything.

If you are unsure call our office to duscuss or for more information, check the ATO website at www.ato.gov.au/General/Tax-planning.

From page 4.

Fringe Benefit Tax (FBT) and Electronic Devices cont.

form of portable electronic work related item. The ATO defines a portable electronic device if it satisfies all the following criteria:

- easily portable and designed for use away from an office environment;
- small and light;
- can operate without an external power supply; and
- designed as a complete unit.

Listed examples of portable electronic devices include a mobile phone, calculator, personal digital assistant, laptop, portable printer and global positioning systems (GPS) navigation receivers.

Even though the government has lifted the rule on limiting small business entities to provide one eligible work related portable device per employee, there are limitations on the exemption. These are:

- items primarily for use in your employee's employment - that is, for work-related use; and
- one item per FBT year for items that have a substantially identical function, unless the item is a replacement item.

For example an employee can bundle together a laptop and a tablet in a FBT year because a tablet is more portable than a laptop and has slightly different purpose. This provides enough difference to not fall under the "substantially identical function" limitation. Also if an electronic device is replaced within the same FBT year, it is not considered an extra device of "substantially identical function" because the other electronic device is no longer in use.

If you are unsure whether you can benefit from these changes or would like more information, please feel free to contact us at our office.