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Accountants | Auditors | Business Advisers

TAX ALERT - DECEMBER 2021

ATO MEDICARE EXEMPTION DATA-MATCHING CONTINUES

The ATO has announced the extension of its Medicare exemption statement data-matching program. This program has been conducted for the last 12 years, and has now been extended to collect data for the 2021 through to 2023 financial years. It is estimated that information relating to approximately 100,000 individuals will be obtained each financial year.

If you live in Australia as an Australian citizen, a New Zealand citizen, an Australian permanent resident, an individual applying for permanent residency or a temporary resident covered by a ministerial order, then you are eligible to enrol in Medicare and receive healthcare benefits. However, this also means you need to pay Medicare levy at 2% of your taxable income to partly fund the federal scheme.

The Medicare exemption statement (MES) is a statement that outlines the period during a financial year that an individual was not eligible for Medicare. It can be obtained from Services Australia. Individuals who are not eligible for Medicare will then be exempt from paying the Medicare levy in their tax returns.

The information that will be obtained as part of the ATO's extended data-matching program includes MES applicants' identification details, entitlement status and approved entitlement period details.

In previous years of this data-matching program, the ATO was able to verify around 87% of the Medicare exemptions claimed in individual tax returns without needing to contact the taxpayers directly. However, the remaining 13% of taxpayers (around 11,000 individuals) who claimed Medicare exemptions were subjected to ATO review.

BUILDING DELAYS MAY COST YOU IN MORE WAYS THAN ONE

Most of Australia has been experiencing a building boom, fuelled by government policy such as the HomeBuilder scheme and a general desire to make our living spaces better as we spend more time working, educating and living at home. However, with global supply chains and transport routes disrupted due to the effects of COVID-19, there have been well publicised material shortages and builder collapses in the sector. If you're building or substantially renovating your home, any related delays you experience may also end up costing you when you decide to sell.

For most individual Australian tax residents, there's an automatic exemption from CGT for the capital gain (or loss) that arises when you sell your home, known as the "main residence exemption". Generally, the home must have been your main residence for the entire ownership period; however, exemptions may apply where you've had to move out while building, renovating or repairing.

The related building concession allows you to treat a dwelling as your main residence from the time that the land was acquired for a maximum period of up to four years, applying from either the time you acquire the ownership interest in the land or the time you cease to occupy a dwelling already on the land. If it takes more than four years to construct or repair the residence, you may only be entitled to a partial main residence exemption. This means that if you later sell the residence, the period when you didn't live there during construction or renovation will be subject to CGT.

If you're unable to complete your main residence construction or renovation project within the four-year maximum timeframe either due to the builder becoming bankrupt or due to severe illness of a family member, you may be able to apply to the ATO for discretion to extend the four-year period so you don't get penalised financially.

CRYPTOCURRENCY SCAMS ON THE RISE

As investing in cryptocurrency becomes more popular in Australia, there is also a corresponding increase in the number of scams being reported. Due to the unregulated nature of cryptocurrency and the recent failure of two Australian cryptocurrency exchanges, this investment space has become a risky free-for-all, with Scamwatch estimating that around $35 million was lost to cryptocurrency scams in the first half of 2021.

If you're one of the unlucky ones to have been scammed, depending on the circumstances you may be able to claim a capital loss deduction.

Cryptocurrency scams come in a variety of forms, the most common being impersonation, where scammers pretend to be from a reputable trading platform and have legitimate-looking digital assets – like fake trading platforms which look like the real thing and email addresses that impersonate a genuine company – to lure people in. Investors who fall into this trap will usually see the initial money they invested skyrocket on fake trading platforms and may even be allowed to access a small return. Once people are hooked, though, the scammers will typically ask for further investments of large sums of money before cutting off contact and disappearing completely.

TIP: If you think you've been scammed, you should contact your bank or financial institution as soon as possible. You can also make reports to Scamwatch and to the Australian Securities and Investments Commission (ASIC). Finally, you can contact IDCARE, a free, government-funded service, if you suspect identity theft. Contact us for more information and assistance.

Are crypto scam losses tax deductible?

Whether you can deduct a loss all boils down to whether you actually owned an asset. For example, if you actually owned cryptocurrency such as Bitcoin in a digital wallet and due to the collapse of an exchange all the cryptocurrency you owned has disappeared, then it is likely you can claim a capital loss. This is likely to also apply if the cryptocurrency you own is stolen in a scam.

Unfortunately, it's unlikely that a deduction can be claimed for people who have been scammed into handing over money for supposed "cryptocurrency investment" in schemes where no actual cryptocurrency ownership occurred. This is because they have not technically lost an asset, as they did not own the cryptocurrency in the first place, and the money invested is not considered a capital gains tax (CGT) asset under Australian tax law.

TAKE CARE WITH SMALL BUSINESS CGT CONCESSIONS

Recently, the ATO has noticed that some larger and wealthier businesses have mistakenly claimed small business capital gains tax (CGT) concessions when they weren't entitled. By incorrectly applying the concessions, these businesses were able to either reduce or completely eliminate their capital gains.

The ATO has urged all taxpayers that have applied the small business CGT concessions to check their eligibility.

Primarily, this means that the business should meet the definition of a CGT small business entity or pass the maximum net asset value test.

Australia's tax law provides four concessions to enable eligible small businesses to eliminate or at least reduce the capital gain on a CGT asset, provided certain conditions are met.

TIP: If you run a small business and are thinking of retiring or selling the business, we can help you work out whether you qualify for the CGT concessions, and how to use them optimally to reduce or eliminate potential capital gains.

To be eligible to apply these CGT concessions, the business must have a maximum net asset value of less than $6 million. Failing that, the business must qualify as a "CGT small business entity". That is, it must be carrying on a business, and have an aggregate turnover of less than $2 million.

The CGT asset that gives rise to the gain must be an active asset, which just means it is an asset used in carrying on a business by either you or a related entity. Shares in a company or trust interests in a trust can also qualify as active assets.

Once the basic conditions are satisfied, your small business can choose to apply one or all of the four CGT concessions provided the additional conditions to each concession is also met. Meeting all the conditions means that the concessions can be applied one after another, in some cases eliminating the entire capital gain.

ATO CONCERNS ON LUXURY CAR TAX

The ATO has issued an alert warning taxpayers that it is investigating certain arrangements where entities on-sell luxury cars without remitting the requisite luxury car tax (LCT) amount.

Businesses and individuals who sell cars valued over a certain threshold (the luxury tax threshold) in the course of their business are subject to luxury car tax (LCT). This is a requirement if your business is registered or required to be registered for GST. LCT doesn't just apply to instances where a dealer is selling a car to an individual or a business – it also applies in instances where a business sells or trades in a car that is a capital asset.

TIP: For the 2021–2022 financial year, the luxury car thresholds are $79,659 for fuel-efficient vehicles and $69,152 for all other vehicles.

If your business buys a car with a GST-inclusive value above these thresholds, you are generally liable to pay LCT.

If you're the seller of a luxury car, whether or not it's within your usual course of business, you're required to charge LCT to the recipient, report the associated LCT amount in your BAS and remit it to the ATO by your BAS payment date. You can't legitimately avoid LCT by selling a luxury car to an employee, associate, or employee of your associate for less than market value, or by giving it away. The LCT value of the car in those situations will always be the GST-inclusive market value.

The ATO is currently investigating arrangements where a chain of entities that progressively on-sell luxury cars have improperly obtained LCT refunds and evaded remitting LCT. Usually, in this arrangement, one of the entities claims a refund of LCT while creating a consequential liability to another entity in the supply chain. One or more of the participating entities down the chain will then not correctly report and pay their LCT liabilities. Finally, these entities will be liquidated to thwart ATO compliance or recovery action.

These arrangements are concerning because they can result in luxury cars being sold without income tax and GST obligations being met. For example, luxury cars could be sold to end-users at more competitive prices with generally higher profit margins, disadvantaging legitimate businesses in the market that are meeting all their tax obligations.

UP AND COMING CHANGES TO SUPER

Recently, a number of significant superannuation changes were proposed in Parliament as a part of the government's plan to enhance super outcomes for Australians.

Work test and bring-forward rule changes

Currently, individuals aged between 67 and 75 either need to pass the "work test" or satisfy the work test exemption criteria if they want to make non-concessional and salary sacrifice contributions to their super. The amendments would allow individuals aged between 67 and 75 to make certain non-concessional contributions and salary sacrifice contributions without meeting the work test. Also, individuals aged under 75 could access bring-forward non-concessional contributions.

Lowered downsizer contributions age

Current downsizer contribution measures allow individuals aged 65 or over to make a contribution into super of up to $300,000 from the proceeds of selling their home. The government is seeking to reduce the lower eligibility age to 60.

Increased maximum releasable amount for first home buyers

The First Home Super Saver Scheme was designed to help first home buyers save for a deposit by allowing them to make voluntary concessional and non-concessional contributions into super, and later withdraw those eligible contributions and associated earnings to purchase a home.

Currently, the maximum amount releasable from super is $30,000. The proposed changes would increase that maximum to $50,000, although the amount of voluntary contributions eligible to be released in any single financial year would not change from $15,000.

Removing super guarantee minimum threshold

Currently, an employer does not have to pay super guarantee for an employee who earns less than $450 in a calendar month with that employer. This threshold was originally introduced to minimise employers' administrative burden. However, with the technological advancement of single touch payroll (STP), the government no longer sees a need for the threshold, which is increasingly affecting young, lower-income, part-time and female workers, and has proposed removing it, so that employers must pay super guarantee to all employees.

SMSF TRUSTEES: REMINDER TO APPLY FOR DIRECTOR IDS

Directors of corporate trustees of self managed superannuation funds (SMSFs) should be aware that the director identification regime is now in force. Depending on when you became a director, the deadline for application is either November 2022 or within 28 days of the appointment. The application process itself is easy and can be done online through the new Australian Business Registry Services (ABRS). Once you receive it, your 15-digit identification number will be permanently linked to you even if you change companies, stop being a director, change your name or move interstate or overseas.

The director ID regime was implemented as a way to prevent the use of false or fraudulent director identities, make it easier for external administrators and regulators to trace directors' relationships with companies over time, and identify and eliminate director involvement in unlawful activity, such as illegal phoenix activity.

TIP: Each director needs to submit a separate application for their own director ID.

To apply for your director ID, you first need to set up myGovID, which is different to myGov. The myGovID is an app that you need to download onto your smart device and confirm your identity in using standard documents (drivers licence, passport, etc). You'll then be able to log on to a range of government services, including the online director ID application with the ABRS.

To complete the director ID application, you need to provide additional information such as your tax file number (TFN), residential address, and/or details from two additional specified documents to verify your identity, such as: bank account details; ATO notice of assessment; super account details; a dividend statement; Centrelink payment summary; or PAYG payment summary.

Once you receive your director ID, you need to pass it onto the record-holder of the corporate trustee, which may be the company secretary, another director, a contact person or an authorised agent of the company. If the corporate trustee changes or you become the director of another company, you will need to pass on this information to the new corporate trustee or the other company.

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