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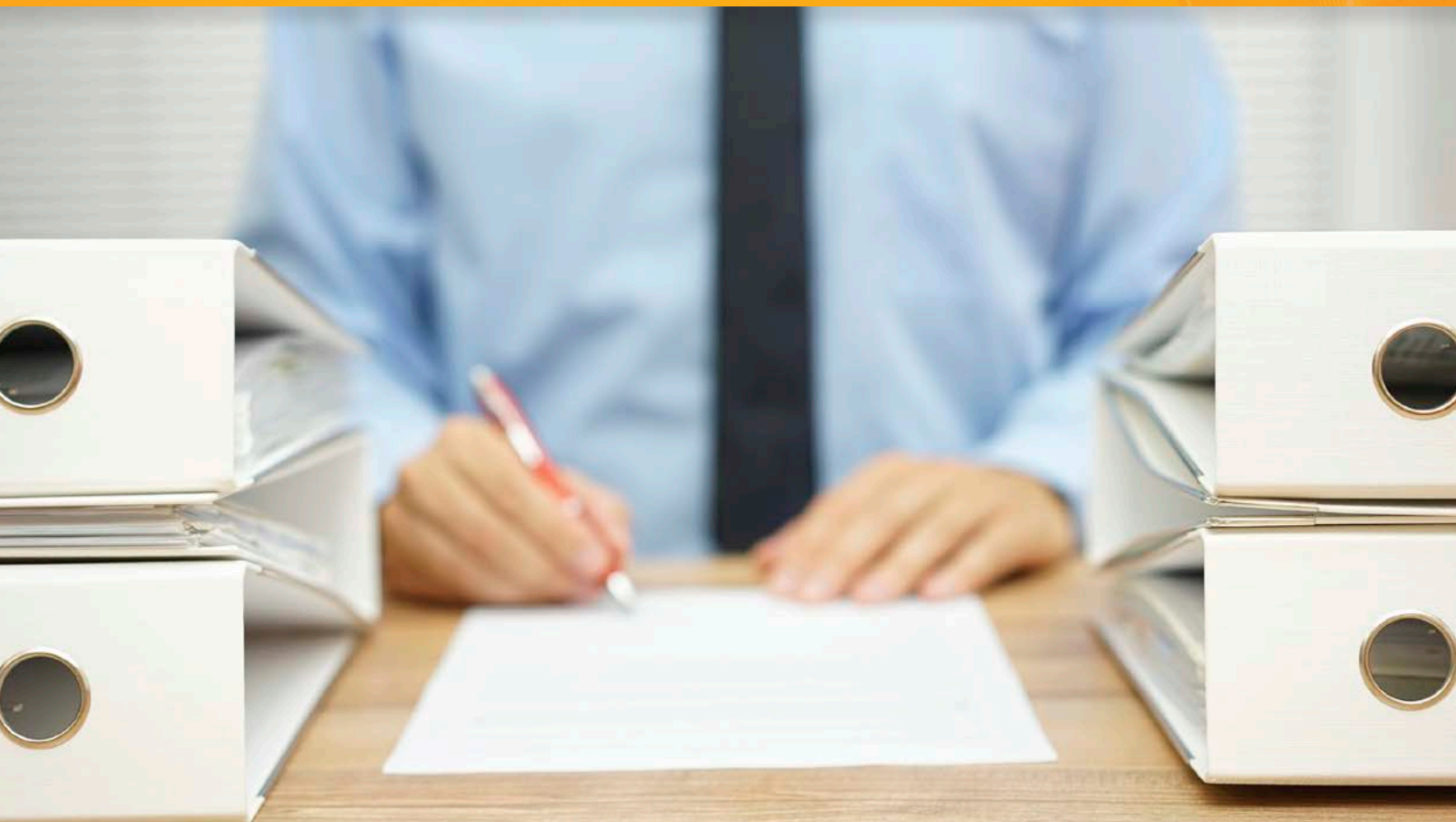
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Professional Firms 'Risk Profiled' by the ATO

Many lawyers, accountants, architects and other professional firms were historically operated as partnerships and the income earned by the business was assessed directly to individuals.

Currently a majority of smaller professional businesses are setting up by way of companies or trusts to improve their asset protection and this also affords an opportunity to reduce income tax by not having 100% of the business' profits taxed to the professional. The ATO is not particularly happy about the decrease in revenue and while they admit these are businesses like any other and the taxation outcomes can be the same as any other business as long as it is not personal services income, they have taken a new approach to the 'problem' of professionals who also own the professional services business.

The approach is to assess the risk of each individual professional practitioner and essentially ignore those assessed as low-risk and to focus on those assessed as high risk. There are 3 ways to be assessed as low risk:

- The salary received personally by the professional is higher than the remuneration paid to the lowest member of the upper quartile of other staff members in the firm. (eg, if a sole owner of a legal firm employs 8 solicitors, they must receive as personal remuneration a

wage at least as high as the 2nd mostly highly paid employed solicitor). (In the ATO draft the proposal was that the remuneration needed to be higher than the highest other wage earner, so is a slight softening);

- 50% or more of the earnings to which the professional and their associated entities are entitled is assessed directly to the professional. For example, if the earnings are \$1,000,000 then at least \$500,000 need to be taxed to the professional; or
- An effective tax rate of at least 30% must be paid on all income to which the professional and their associated entities are entitled. For example, if the earnings are \$1,000,000 at least \$300,000 tax must be paid across all entities.

If you fail to fit into any of these low-risk categories you are at much higher risk of facing ATO scrutiny. If you are unsure if the profiling will apply to your business or whether you will fit into a low-risk category we recommend contacting your accountant to discuss the matter. ☺



UBER...

IT'S A TAXI TRAVEL SERVICE, SAYS THE ATO

The ATO has recently released guidance which says Uber drivers are operating a 'taxi travel service' and must pay GST on their fares.

Their reasoning is that the GST definition of taxi travel service is making a car available for public hire and using it to transport passengers for a fare. Uber is apparently challenging this ruling, arguing they are not available for 'public hire' because a driver can't accept a street hail, can't wait at a taxi rank and does not use taxi meters. This seems a flimsy argument and taxpayers should comply with the ATO expressed view currently. We note this is about as 'hot' an issue as is possible in tax, and expect the ATO to pay vigorous attention to it.

So, if you are an Uber driver you need to obtain an ABN, register for GST and pay 1/11th of the gross fares collected to the ATO on your BAS. You will not be able to claim GST on the commission charged by Uber to you as these are fees from a foreign entity that does not need to charge you GST.

Further, you will need to pay income tax on the profits from your Uber driving enterprise. You will need to keep proper records to enable an income tax return to be prepared at the end of each financial year and you will need to pay tax on the profit you have made.

If you are travelling by Uber for business and your business is GST registered, you will be able to claim GST on the fares you pay. If the cost of the trip is \$82.50 or less you don't need a tax invoice to claim the GST back. However, you do need to obtain a tax invoice for these trips if the fare amount is more than \$82.50. Impractically, you should request a tax invoice from the driver if this is the case. The ATO's suggestion, knowing that you will not receive such an invoice, then is to 'capture the details of the car number plate and report a concern to them'.

We think that if the community actually took this advice the ATO would need to establish a large 'uber taskforce' which would cost infinitely more than the GST they would raise. This will certainly be an interesting new business to watch. ☺

Capital losses denied AND A BIG PENALTY TO BOOT!

A taxpayer has recently lost their case against the ATO to claim capital losses to offset a large capital gain from the sale of a rental property.

The taxpayer claimed she had previously made loans totalling approximately \$270,000 to some trusts and that these loans had been written-off as bad and unrecoverable in the same year as the capital gain from the sale of the property. The AAT decided the evidence presented by the taxpayer was so at odds with contemporaneous documentation and so lacking in logic as to make the evidence inherently implausible and unreliable. The full capital gain the ATO had assessed was therefore correct, and the 75% penalty the ATO had imposed for failing to include the gain was upheld. *Priestley v FC of T* [2015] AATA 893.

This case shows how important it is to document arrangements properly at the time transactions occur. If a loss occurs and documentation is prepared at that time to reflect the loss, both the ATO and any review tribunal or court will be much more likely to see it as credible evidence. If this documentation is prepared at the time of a dispute with the ATO, it is far weaker evidence. ☹

ATO TO TRIAL 'Certainty Letters'

The ATO has announced an initiative whereby certain taxpayers will receive a letter confirming their 2015 tax returns will not be subject to any further review or audit (unless the ATO receives information indicating the taxpayer was involved in fraud or evasion).

The process will be trialled with a small number of people who:

- Lodge their return through myTax, eTax or a Tax Agent;
- Have taxable income under \$180,000;
- Earn only salary, wages, allowances, Australian government payments, interest and dividends;
- Claim no deductions other than work-related expenses, interest and dividend deductions, donations and tax agent fees;
- Have a good tax history; and
- Have straightforward tax affairs.

If you meet the criteria and do not receive a letter it does not mean you are likely to be audited or reviewed by the ATO, it means you were not part of the small trial program. If you do receive a letter you may not need to keep records for the length of time that would normally be required, however we recommend that you do keep them at this stage until the program is fully adopted. ☺





Moving overseas no longer avoids a HECS / HELP debt

For a long time one, if you moved overseas after finishing study in Australia you were not required to make any payments against your HECS / HELP debt in Australia, no matter what your income was. This has changed with laws passed in November 2015 and now repayments will need to be made if a person's 'worldwide income' exceeds the thresholds. From January 2016 if you go overseas for more than 6 months and have a HELP debt you will need to register with the ATO. If you already live overseas you will need to register by 1 July 2017. The first income year which will assess worldwide income is the 2016/17 year. ☺

Motor Vehicle Claims

Do you need to keep a logbook?

Until the 2015 year there were four vehicle deduction methods being:

- Cents per kilometre (capped at 5,000km per year)
- Logbook
- 12% of original cost (if more than 5,000km travelled)
- 1/3 of all costs (if more than 5,000km travelled)

For the 2015/16 year two of the methods are abolished and only the cents per kilometre method and logbook method may be used. In addition, the c/km method previously had three different claims based on vehicle engine size, but from 2015/16 a single rate of 66c/km will apply.

If you were previously using the 12% of cost method or 1/3 of all costs method, it may be necessary to keep a logbook in order to maximise your deductions. The logbook needs to be kept for 12 continuous weeks and is then valid for a period of 5 years. Please contact your accountant if you are unsure whether you need to keep a logbook this financial year or not. ☺

SMSF borrowing not banned!

In December 2014 the Financial System Inquiry recommended to remove the ability of superannuation funds to borrow through limited recourse borrowing arrangements. Many of our clients have utilised the existing rules and the most common asset purchased with a borrowing has been residential or commercial property. After the FSI recommendation, financing of such arrangements became more difficult as banks reduced their SMSF lending, possibly in anticipation that SMSF borrowing would be banned.

On 20 October 2015 the government responded to the inquiry and said they did not agree with the recommendation to prohibit limited recourse borrowing by superannuation funds and does not believe there is justification to change policy based on existing data. They are instead asking the ATO to monitor the level of leverage and risk and reporting back to the government on the matter in three years. ☺

Does your SMSF own collectables?

Take action now!



If your SMSF owns collectables or personal use assets, such as artwork, jewellery, antiques, coins, bank notes, stamps, memorabilia, wine, vehicles (and others) you must take certain actions by 1 July 2016. After that time these items will be prohibited from being leased to a related party; prohibited from being used by related parties; must not be stored in the private residence of related parties; must be insured in the name of the SMSF; and must be independently valued if transferred / sold to a related party. (Note these rules already apply to any of these assets purchased since 1 July 2011, but these requirements did not apply yet to collectables already held at that date).

Failure to comply with the rules by 1 July 2016 will result in breaches of the legislation and will carry a penalty of \$1,800 per trustee of the SMSF. Therefore, if your fund has any of these assets, we recommend you contact us as soon as possible to discuss whether you need to make any changes to your arrangements or not. ☺



HKS Financial Planning When will you retire?

If you ask the question, 'when are you going to retire?' at a barbeque you get some very interesting answers. It is unlikely that one of them will be 'in accordance with my financial plan I will retire at 60 and be able to afford a comfortable lifestyle for the rest of my life', but it should be so easy to respond in that way.

Like anything, if you don't plan and work towards what you want to achieve, you are unlikely to end up happy with the result. The key to retirement planning is to start doing it! The longer the timeframe you give yourself to get to a goal the better, but even a short timeframe can usually achieve a significantly better result than doing nothing at all. If you have already retired but not assessed your situation within the last few years there may be improvements that can be made to your financial position.

The team at HKS are happy to meet with or discuss by phone any aspect of planning for retirement. Whether you are young, youngish, approaching retirement or already retired, there can be a lot to gain by simply beginning the process of planning. Hopefully your retirement will be a long and enjoyable time – don't be too busy now to the detriment of all that time later. You can call them directly on 3397 7315 or call and speak to your accountant about whether they might be able to assist you. ☺



Meet the team

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Director..... Michael Kerwin
Director..... Claire Roberts
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Manager..... Elisha Moore
Manager..... Tim Mouritz
Manager..... James Smith
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Accountant..... Serena Ma
Accountant..... Katie Wriedt
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