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Superstream

A NEW MANDATORY WAY TO PAY YOUR SUPERANNUATION OBLIGATIONS

The Government's new SuperStream standard has already commenced for larger employers (ie 20+ employees) and will also start for all remaining businesses (including small business) on 1 July 2015.

Under the requirements, employers are required to send the superannuation contribution data **AND** the payment electronically using the new electronic standard. The ATO have released a webpage for employers which outlines the SuperStream standard and explains the process. This information can be accessed at: <https://www.ato.gov.au/Super/SuperStream/In-detail/What-you-need-to-know/Employers/>

All super funds (including SMSFs) must receive any employer contributions sent to their fund via the SuperStream standard. The ATO stressed that an electronic service address is not an email address, having found this to be a common misconception with employees.

Even smaller employers (who may only employ family members and have their own SMSF) must comply with and use, the new SuperStream standard.

For our clients who have their own SMSF, we took a pro-active approach last year whereby we undertook a mass registration process for all our SMSF clients as part of our annual work. Your SMSF should be registered to be able accept contributions under the SuperStream standard. The ATO has also released a webpage dedicated to Superstream and SMSF which can be accessed at: <https://www.ato.gov.au/Super/SuperStream/In-detail/What-you-need-to-know/SMSFs/>

Property Development Update

TARAS NOMINEES PTY LTD – A joint venture gone wrong

The Full Federal Court has confirmed that capital gains tax is payable on the transfer of land to a trustee (VGD) to hold on trust for a joint venture development.

Three neighbors signed a "JV Agreement" and a "deed of trust" whereby they agreed to make their land available to the JV to develop the entire site over a period of time. The ATO argued that there was a transfer/settlement of the land to the JV trustee and assessed Taras Nominees on the capital gain being \$7,637,227. Taras objected arguing that its beneficial interest in the land had not changed however the full court found in favour of the ATO (however the court did grant some limited allowance for some additional costs to be included to reduce the gain). The court held that Taras had created a trust over its land by the transfer to VGD as trustee for the land holding parties under the terms of the deed and hence there was a settlement.

BRYXL PTY LTD – GST credits denied as there is no business of property development

This case was just handed down in late Feb 2015 and involved the company which had lodged several Business Activity Statements seeking GST refunds for around \$226k in GST credits for property development activities. The ATO denied the GST claims, the Company lodged an appeal however the AAT held in favour for the ATO. In the end, the AAT denied the GST credits and also imposed a 50% penalty (\$113k) for recklessness!

Bryxl claimed to have purchased land in Victoria (mid 2010) on which it planned to subdivide into 285 blocks. The Tribunal was presented with pages claiming to be parts of the contract of purchase however: (1) the documents revealed the parties to be the seller (Rylene) and "Mr Thompson or nominee";

(2) the full contract could not be produced and (3) the signature pages could not be produced.

The Tribunal found that there was no evidence that Bryxl was a party to the contract and indeed a current title search showed the seller was still listed on title and there were no caveats registered. The Tribunal held that Bryxl was not carrying on the development activity as there was no evidence it was a party to any purchase contract, the planning permit requirements were not adhered to and there was no evidence of a deposit being paid.

STAMP DUTY CHANGES AFFECTING PROPERTY DEVELOPMENT

There have been a couple of major stamp duty changes since July 2014. Firstly, the Queensland government abolished the duty exemption for the transfer of completed strata-titled units from a special purpose development company to its shareholders. Previously, if structured correctly, Qld investors in a strata-titled project (usually units and townhouses) could achieve both a CGT rollover and also stamp duty exemption for the "roll-out" of the completed stock to the shareholder investors at the completion of the project. From July 2014, the stamp duty concession has been removed.

The NSW Government has also introduced stamp duty on Option agreements over NSW property. These changes mean that where a purchaser acquires (for consideration) a right to become the purchaser of NSW land under an existing option, duty will be payable on the nomination/novation. Basically, duty will also be payable on the actual transfer of the land once the option is exercised but a credit will be allowed for the earlier duty paid on the option nomination/novation.

In NSW, there is an exemption in the Duties Act which allows a member to transfer business real property (eg commercial property) into to their self managed super fund with nominal duty. That duty was levied at \$50 however has now been increased to \$500. The concession has also been extended to allow for joint owners of commercial property to be able to transfer the asset to their SMSF provided the property is apportioned to them in their super fund in the same percentage of ownership. ☺

ATO to receive Swiss Bank data

Australia and Switzerland have agreed to automatically exchange information to crack down on tax avoidance. Under the agreement, the ATO will automatically receive details of investment income and financial account balances that Australians hold in Switzerland.

The Swiss tax authority will also receive details of Swiss residents' financial accounts in Australia.

Opportunities to improve the provision of financial services between Australia and Switzerland will also be explored under the agreement. ☺



A Must Read for SMSF Trustees

The legislation to enact the new Penalty Regime for SMSFs now apply to contraventions that occur or are unrectified from 1 July 2014.

The new Penalty Regime provides the ATO with greater flexibility when dealing with a Fund's non-compliance with the law, including the power to:

- Issue rectification and education directives to trustees of SMSF; and
- Impose administrative penalties for trustees for certain contraventions of the SIS Act.

The below table is a summary of the administrative penalties that can be imposed on trustees.

RULE	PENALTY
34(1) – Compliance with operation standards	\$1,700
35B – Failure to prepare Financial Statements	\$10,200
65(1) – Prohibition on lending or providing financial assistance to members and their relatives	\$10,200
67(1) – Prohibition on super fund borrowing, except as permitted eg limited recourse borrowing arrangement	\$10,200
84(1) – Contravention of In-House Asset Rules	\$1,700
103(1) & (2) – Failing to keep Trustee minutes for at least 10 years	\$1,700
103(2A) – Failing to maintain a s.71E election regarding Pre-99 unit trusts	\$1,700
104(1) – Failing to keep change of Trustee records for at least 10 years	\$1,700
104A(2) – Failing to sign ATO Trustee Declaration with 21 days of appointment as Trustee and retain for at least 10 years	\$1,700
105(1) – Failing to keep member reports for at least 10 years	\$1,700
106(1) – Failing to notify the ATO of an event that has significant adverse effect on the fund's financial position	\$10,200
106A(1) – Failing to notify ATO of change of status of SMSF, eg Fund ceasing to be a SMSF	\$3,400
124(1) – Where an Investment Manager is appointed, failing to make appointment in writing	\$850
160(4) – Failing to comply with ATO Education directive	\$850
254(1) – Failing to provide the ATO with information on the approved form with the prescribed time upon establishment of the fund	\$850
347A(5) – Failing to complete a form with requested information provided by the ATO as part of the ATO's Statistical Program	\$850

The penalties are applied to each Trustee separately and the Trustee cannot reimburse themselves from the assets of the Fund. For instance, if an SMSF has two individual trustees that have lent money to themselves, they can be fined \$10,200 each. However, if those two individuals were directors of a Corporate Trustee, it would be the Company that receives one \$10,200 fine. To discuss any issue around SMSF contraventions, please don't hesitate to contact us. ☺

The case of Morrison, their SMSF and a Samoan Bank

The Morrisons transferred \$600,000 from the SMSF to Hua Wang Bank Berhad (HWBB), a bank incorporated in Samoa on the advice of Mr Vanda Gould (their advisor) after being advised it was a "condition" of getting finance for a purchase of their residential property. Three days later HWBB transferred the funds into the trust account of the Morrisons solicitors for the purchase of the property, the purchase of which was then completed. The ATO ruled that the transaction was a sham and that the loan documents were a façade to disguise the underlying reality which was for the Morrisons to access their super fund money to purchase the property. The AAT held that the amended assessments issued and the penalties applied by the ATO were valid. ☺

HKS Financial Planning Update

MARCH MARKET WRAP

AUSTRALIAN EQUITY MARKET

The ASX200 finished March down -0.1% despite recording an intraday high just short of the ('magical') 6,000 point threshold. However, despite the ongoing contraction in commodity prices the market was up a fantastic **10.3% for the quarter** making it one of the better developed global markets over the period. Banks were a standout sector (+2.5%), along with the Industrials (+1.9%) and Health Care (+2.1%) sectors, whilst the material sector was down (-4.5%).

BHP Billiton (down 7.8% for March) released documentation relating to its proposed South32 de-merger, which is expected to start trading on 18 May 2015. Cost-out is a likely driver of value creation for BHP, with \$100m pa of pre-tax cost savings identified. A shareholder vote is scheduled for 6th May-15. If approved, shareholders will receive one South32 share for one BHP share.

The recent reporting season has provided little guidance for future expected earnings, which has seen the market trade in a volatile manner. While performance was generally sound and above that of global equity markets, evidence of headline earnings growth continues to disappoint. Combined with moderate growth in the domestic economy along with the ongoing decline in commodity prices and mixed global growth, we expect that overall earnings momentum will be muted. While any further domestic interest rate cuts are likely to provide a positive tailwind across the higher yielding sectors, investors need to remain focused on the quality and sustainability of company fundamentals.

GLOBAL ECONOMIC COMMENTARY

The one word that can best summarise financial markets performance in March is 'volatile'. The extent of economic and geopolitical factors that were present over the month resulted in quite significant performance swings across asset classes. The most notable moves came in currency markets, highlighted by the move in the AUD from US\$0.78 (at the beginning of the month) down to US\$0.75, before a rally mid-month saw it back to US\$0.79, before being sold down in the last week to end the month down at US\$0.76. This was mirrored in equity and bond markets globally as investors looked to digest a raft of economic data as well as dealing to machinations around changes in central bank positioning and the increasing possibility that Greece may exit the Euro bloc.

If we consider the economic data, there were numerous data points that highlighted the overall trajectory of growth, particularly in the US, UK and China. Additionally, major emerging market economies (i.e. Sth Korea) also disappointed with weaker than expected industrial data.

From a market standpoint much of the moves hinged on the mid-month comments from the US Fed as to when it would look to begin to raise official cash rates. While the Fed removed the word 'patient' from its March (compared to January) statement, it also watered-down the tone about the overall strength of the US economy, pointing to the moderating housing market and weaker consumer confidence. Additionally, the sharp decline in durable goods orders as well as disappointing retail sales data all contributed to a view that the Fed would take a longer 'wait and see' approach on the economy before looking to raise rates.

To this end financial market volatility is expected to remain high, making the outlook for the next quarter a challenging one. In a nutshell we expect to see our market take its lead from its global peers, most notably the US, where our bond market has basically moved lock-step with US Treasuries in recent periods. Additionally, for equity markets, the slowdown across China (along with lower commodity prices) will continue to be a drag on the domestic equity market.

AUSTRALIAN ECONOMY AND THE RBA

After it's first move since August 2013, The RBA kept cash rates steady (at 2.25%). However, we continue to expect that the RBA will deliver at least one further rate cut in this cycle. Nominal GDP has moved markedly lower in recent periods (at 1.7%), and with ongoing decline in commodity prices, particularly iron ore as well as a weak consumer and business environment combined with a 'sticky' currency, we see little option for the RBA. Additionally, the softer data out of the US is also providing a supportive backdrop for the RBA to move.

More, now than ever, it is important to have a tailor made investment solution for your personal needs. A mere strategy of "set and forget" in the current climate is far from ideal, active ongoing management is imperative to ensure that your goals are achieved.

Should you wish to discuss this, or any other matter, please contact the team at HKS Financial Planning on 3397 7315. ☎

We are Licenced!

Many clients may not be aware but the previous Federal Government legislated that all SMSF (self managed super fund) auditors be licenced. We are pleased to advise that all of our directors were approved and are fully licenced SMSF auditors.

In addition, the Government also brought in legislation to require accountants to be licenced from 30/6/2016 in order to continue to provide certain advice concerning SMSF's. In doing so, the Government removed the current exemption which allowed the accountants to provide this SMSF advice. The transitional period for accounting practices to obtain the new licence expires 30/6/2016 after which date, accountants will be prohibited for providing specific advice to clients unless they are licenced.

We have pro-actively taken on the challenge of becoming licenced including the completion of all the required courses and gaining the qualifications needed for the new advice licence. We are planning on launching our new accountants advice services in July 2015 (one full year before we are required to) and will provide further details in a separate communication. ™

Our Purpose

Hoffman Kelly are no ordinary bean counters! We strive to provide world class business advisory services to enable clients to accomplish their goals and maximise their wealth. To achieve these objectives, we focus on 8 key areas; Tax Minimisation, Asset Protection, Succession Planning, Financial Retirement & Superannuation, Growth, Profit, Cashflow and Legacy.

Hoffman Kelly has been a local firm in Coorparoo for around 40 years. Since 1998, when Tony Hoffman and Troy Kelly started to lead the firm, our business has grown over 1000% and our staff have increased from six to 30! As we do not advertise, this growth has been driven entirely by you, our clients and we would like to thank you for your continued support. Our Firm's greatest strength is our team. We recruit the brightest candidates and spend more on professional development than any of our peers to ensure we're all at the cutting-edge. All our accountants are CA/CPA qualified or on their way to be and our PAs have just completed their Diploma of Management. Our Directors have between 14 and 20 years' experience assisting self-managed super funds and small to medium size businesses including specialties in property development, the medical industry, real estate agencies and legal practices. Our directors are all accredited SPAA SMSF Specialist Advisors™, and ASIC registered SMSF Auditors. As we have just added an additional five members to our team, we find ourselves in a desirable position of having excess capacity. If there are any matters which you believe we may assist you with, please don't hesitate to contact us. Furthermore, if you are happy with our service we would appreciate you recommending us to your friends and associates. We provide a free one hour no obligation structure and tax review for client referrals. ☺

Our team

Director.....	Tony Hoffman	Accountant.....	Angela Ma
Director.....	Troy Kelly	Accountant.....	Danielle Bui
Director.....	Greg Roberts	Accountant.....	Chris Chen
Director.....	Thomas Aitkenhead	Accountant.....	Cecilia Chen
Senior Manager.....	Michael Kerwin	Accountant.....	Leonard Jiang
Senior Manager.....	Claire Roberts	Accountant.....	Pranab Acharya
Manager.....	Elena Lenda	Accountant.....	Samantha Park
Manager.....	Michelle Goding	Accountant.....	Serena Ma
Manager.....	Elisha Moore	Office Manager.....	Lisa Cronin
Manager.....	Hana Gibson	PA.....	Megan Cowan
Senior Accountant.....	Gervais Morton	PA.....	Emma-Jayne Hagley
Accountant.....	Lauren Sarolis	PA.....	Chantelle Lagos
Accountant.....	Rhiane Sherriff	Receptionist.....	Madeline Hillas
Accountant.....	Matthew Yarrow	Receptionist.....	Georgie Best
Accountant.....	Vicky Lai	Admin Support.....	Sara Flores

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CHARTERED ACCOUNTANTS



NEW CHANGES flagged for Employee Payroll

On 28 December 2014, the Federal Government announced it will cut red tape for employers by simplifying tax and superannuation reporting obligations through Single Touch Payroll.

Under Single Touch Payroll, employers will be required to electronically report payroll and super information to the ATO when employees are paid, using Standard Business Reporting-enabled software.

In addition, Single Touch Payroll will streamline tax file number (TFN) declarations and Super Choice forms by providing a digital channel to simplify the process of bringing on new employees. It could also cut red tape by notifying super funds and government agencies, such as the Department of Human Services (DHS), when an employee ceases employment.

Single Touch Payroll is planned to be available from July 2016. To meet their obligations under Single Touch Payroll, employers would be required to use, and if necessary acquire, appropriate payroll software.

More information on Single Touch Payroll (which contains good concise information on current payroll obligations) can be found at: <https://www.ato.gov.au/General/Consultation/What-we-are-consulting-about/Papers-for-comment/Single-Touch-Payroll-discussion-paper/> ☺

Personal Property Securities Act (PPSA)

The PPSA changed the way security interests are dealt with across Australia from January 2012. A security interest is an interest in personal property. So what is a security interest and personal property?

Personal Property is given a wide definition which includes goods, plant and equipment, cars, boats, planes, crops, livestock, licences, contract rights and intellectual property. However, it specifically excludes land, buildings and attached fixtures.

A Security interest is an interest in personal property provided for by a transactions that secures payment or performance of an obligation. Common business transactions that can create a security interest include; leases, a fixed or floating charge, a chattel mortgage, retention of title agreements.

There are usually two parties involved in the creation of a security interest:

- The secured party (creditor, lender, supplier or lessor) and
- The grantor (debtor, borrower, supply customer or lessee).

SO WHAT IS ALL THE FUSS ABOUT?

The PPSA Act can override ownership and treat you as an unsecured creditor if you do not properly register your interest!

An example of this is the matter of Forge Group, a mining services company that was placed into receivership in February 2014. The Forge Group had been leasing two power generators worth \$50M from APR Energy on a long term basis. Once Forge was placed into Receivership, the lease was deemed to be a security interest under the PPSA and because it had not been registered on the Personal Properties Securities Register, it was considered that the power generators vested in Forge for the receivers to realise the assets. APR Energy, is understandably, not pleased with this prospect and the argument is being heard in NSW Supreme Court.

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