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BUSINESS TAX & ACCOUNTING SPECIALISTS

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Recent changes to Paid Parental Leave, Family Tax Benefit and other entitlements

The recent passage of the Social Services and Other Legislation Amendment Bill has given rise to changes across a range of entitlements. Due to the delayed passage of the bill however, several amendments will take effect from a later date than initially proposed. We run through the various changes below and what they mean for you.

Paid Parental Leave

The Paid Parental Leave has generated much debate in the business community. This is perhaps why the government has decided to ease the administrative burden on businesses by removing the requirement for employers to provide government-funded parental leave pay to their eligible long-term employees.

From July 1, 2014 (initially March 1, 2014), the Department of Human Services will directly pay employees their parental leave, unless you as an employer opt in to provide parental leave pay to employees and an employee agrees for their employer to pay them.

Pension Bonus Scheme

From July 1, 2014 (initially March 1, 2014), registrations will close for the soon-to-be phased out Pension Bonus Scheme.

The tax-free lump sum incentive was introduced in 1998 for eligible older Australians who deferred claiming their Age Pension and instead remained in the workforce. People who are already registered for the scheme will not be affected by the change. Those who are eligible however have been urged to lodge their applications for the scheme before the closure date.

The Pension Bonus Scheme will be replaced by a Work Bonus for age pensioners.

There are a few subtle differences between the Pension Bonus Scheme and the new Work Bonus. Under the scheme, an individual could accrue their 960 hours of paid work a year by being self-employed whereas income earned as a self-employed person, sole trader or from a partnership does not qualify for the Work Bonus. Additionally, the maximum accrual period for the scheme is five years whereas the Work Bonus can continue for as long as an individual continues to work after reaching Age Pension age. Ultimately, both schemes have their advantages and whether an individual or couple is better off using the Work Bonus depends entirely on their circumstances.

Family Tax Benefit Part A

From May 1, 2014 (initially January 1, 2014), young people aged 16 to 17 years who have completed their Year 12 or an equivalent qualification will no longer qualify for Family Tax Benefit Part A.

Payments will cease at the end of the calendar year when the child completes schooling. Individuals who no longer qualify may instead be eligible for the Youth Allowance.

Exemptions will continue to apply for children who cannot work or study due to physical, psychiatric, intellectual or learning disability.

End of indexation for certain entitlements

From the time the bill becomes law, indexation pauses will be implemented for certain higher income limits until June 30, 2017. This means:

- income limit, the parental leave pay as well as the dad and partner pay adjusted taxable

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income limits of $150,000 or less in a financial year, and the higher income free area for Family Tax Benefit Part A, will stay the same

- the annual end-of-year family tax benefit supplements will remain at current levels
- the annual child care rebate limit will be maintained at $7,500 for three years. As a result, an individual will be able to receive up to the maximum amount of $7,500 per child per financial year for out-of-pocket childcare costs for those three years.

Age pension – increase in period of Australian residency

From July 1, 2014 (initially January 1, 2014), age pensioners will be required to have been Australian residents for 35 years during their working life – from age 16 to age pension age – to receive their full means-tested pension after a 26 weeks absence from Australia. This is a change from the current requirement of 25 years.

It is important to note that pensioners who are living overseas immediately before July 1, 2014 will continue to be paid under the current 25-year rule, unless they return to Australia for longer than 26 weeks and leave again, in which the new rules will start to apply to their pension calculation.

Pensioners will also be paid for pensions calculated based on their own Australian working life residence, rather than their partner's. Again, pensioners who are living overseas before July 1, 2014 are exempt from this change unless they are eligible for a higher pension rate under the new rules.

Changes to the rules for receiving payment overseas

From July 1, 2014, the length of time families can be temporarily overseas and continue to receive family and parental payments will reduce from three years to 56 weeks (slightly over a year). Eligibility for payments will remain for up to three years where individuals of the Australian Defence Force or Australian Federal Police are deployed overseas.

Special interest charge for certain study allowances

From July 1, 2014 (initially January 1, 2014), a special interest charge will apply to certain debts related to Austudy payments, fares allowance to help cover the costs of travelling between your permanent home and your place of study, youth allowance payments to full-time students and apprentices, and ABSTUDY living allowance payments. The interest charge will only be applied where the debtor does not have or is not honouring an acceptable repayment arrangement.

Consult this office to find out more about any of these changes and how you may be affected.

Tax and marriage: Tips on nuptial know-how

Every couple's "big day" will of course be marked more by flying champagne corks and numerous speeches of questionable quality, instead of the tax implications that go along with swapping rings. Having a general understanding of what it means to be a "spouse" under tax law can change the approach taken to certain financial arrangements, clarify potential pitfalls and allow clearer planning.

Meaning of "spouse" under tax law

Broadly speaking, the tax law defines a "spouse" as:

- another individual, of any sex, who is in a relationship registered under state or territory law (that is, married), or
- if not registered, lives with another on a genuine domestic basis as a couple (a de facto relationship).

Some general tax implications from being a tax law "spouse" are as follows:

Post-nuptial tax return

When tax time comes around, each partner in a couple still needs to lodge their own individual tax return.

There is no "family" tax return that can be used in Australia, unlike some foreign tax jurisdictions. However each will be required to disclose, in certain parts of these tax returns, some specific details of their other half.

Apart from a possible name change and a change of address for one or both in the couple, the Tax Office will need to know the period during the income year that each became a spouse.

It will also require, for example, information on taxable income for a spouse, such as foreign income, distributions from a trust, reportable fringe benefits and also if any government pensions or allowances have been received.

The details provided are used to work out certain government entitlements that may be based on overall "family income" thresholds (see below), as well as possible eligibility to other rebates and offsets. It is therefore critical that such information is completed in each spouse's tax return accurately to ensure that the correct entitlement and offsets

are claimed.

Personal assets taken into marriage

Getting married does not change the ownership of personal asset holdings held by an individual.

For example, listed shares that were 100% owned by a partner prior to marriage will continue to be held in that capacity (unless the individual decides to transfer their interests). Any capital gain or loss arising from the disposal of the shares will therefore be included in the assessable income of the legal owner (regardless of marital status).

The same applies to the assessment of franked dividends and entitlements to imputation credits – again, this will be assessed fully in the hands of the owner.

Joint bank account

Generally, the Tax Office assumes a 50/50 split of interest income where spouses open a joint bank account together. In most cases, spouses would have a joint and equal entitlement to the interest income from their joint account.

The Tax Office has indicated however that interest income can be assigned to one partner in favour of the other in respect of a joint bank account in certain scenarios. This will depend on whether there is evidence to show that one spouse is "beneficially entitled" to that interest.

For example, evidence will be required if one partner initially contributed a greater proportion (in dollar terms) to the joint bank account than the other partner and there is a desire to have the interest derived assessed in the hands of the primary contributor rather than jointly (that is, 50/50).

According to the Tax Office, relevant evidence to demonstrate whether a spouse has beneficial entitlement to the interest include such things as who contributed to the account, and in what proportions, the nature of the contributions (is the money held on trust for a dependant, for example), and if one partner accessed the funds and any accrued interest for their own purposes.

Main residence exemption for the family home

1) How does the main residence exemption work?

The ownership of a family home is something that most newly weds aspire to and work towards.

The family home is generally exempt from CGT under the main residence exemption.

A capital gain or loss arising from the changing value of a house would be disregarded if the dwelling is subsequently disposed. A full exemption is available where the dwelling is treated as a "main residence" throughout the period that it is owned.

As far as defining that term "main residence", there are no specific rules as to when a dwelling is deemed to be a main residence. This is subject to the relevant facts and is considered on a case-by-case basis. The Tax Office outlines some factors to consider which may include, but are not limited to, the length of time the dwelling is occupied, the address to which mail is delivered, connection of utilities and where one's family resides.

2) Spouses with different main residences

It is not unusual for one or both partners to come into the marriage already owning a property in their own names.

A common scenario would be where one spouse moves into the other spouse's home and leases their former residence following their nuptials.

Special CGT rules apply in relation to the main residence where each partner comes to the marriage each owning a main residence.

In simple terms, for the period where this occurs the special rule requires each spouse to choose one of the following options:

- **Option A:** Choose only one of the dwellings to be their main residence, or
- **Option B:** Nominate the different dwellings as their respective main residences.

Further, if option B is chosen, the extent of the exemption for the period will depend on the ownership interest that individual has in the dwelling.

Specifically:

- Individuals who hold more than a 50% interest in the dwelling are allowed an exemption for half of the period.
- Where the interest is equal to or less than 50%, the exemption fully applies for the period.

The main residence CGT exemption may therefore be split between dwellings depending on the option chosen by each spouse.

Note that the special rules for spouses do not apply if they are living permanently apart from each other. An example may be where one partner takes up an employment contract in another city for a year and they buy another dwelling in that city, with the other partner staying in the original house. After the contract ends, the new dwelling is sold. The main residence exemption would typically apply on the sale of this dwelling.

The application of the main residence exemption

can be complex where it involves spouses each having a different main residence. Consult this office if you if need assistance.

Where "family" income determines a tax offset

Certain entitlements and offsets may be affected once a couple marries – a common offset being the private health insurance rebate.

The private health insurance rebate is a measure that encourages Australians to take up private health insurance by offering a reduction in premiums. This can be an "upfront" benefit by way of reduced premiums or can be claimed as an offset upon lodgement of the individual's tax return.

The rebate offered on premiums is income-tested and determined by specific income "tiers". The maximum rebate is 30% and phases out depending on the individual's income (consult this office for the exact definition of what constitutes "income").

In the case of individuals who move from "single" status to living as spouses (deemed "family" for this rebate), the level of rebate on insurance premiums in relation to an individual can change if a person had a spouse at year-end. Family income tiers would apply instead of single income tiers.

For example, say the prospective wife, while still single, is on a good annual salary of $140,000. Assuming no other income for the purposes of the rebate, the income level will place her in the "tier 3" threshold, which puts her in an income range that means no rebate is available (that is, 0%).

The prospective husband however earns $90,000 a year, which while single, entitles him to a 19.36% (from April 1, 2014) rebate on his private health insurance premiums under "tier 1".

If they marry prior to June 30, 2014, their combined income of $250,000 as a "family" means that the rebate available to each of them is set to "tier 2", or 9.68% of insurance premiums.

The consequences for each spouse will be different. Mr Taxpayer's rebate will be reduced by about 10%, which means if he has claimed the rebate entitlement upfront through his policy, he will be required to incur a private health insurance debt in his 2014 tax return. This will be shown in the notice of assessment as an "excess private health reduction". Mrs Taxpayer on the other hand will enjoy a rebate that was denied to her before due to her previous income level, with the approximate 10% rebate on her premium refunded as an offset that will be shown on her notice of assessment.

Certain other tax offsets are also income-tested as a family unit, such as the Net Medical Expenses Offset, however this is being phased out.

Superannuation spouse contributions

A tax offset is available for superannuation contributions made on behalf of one spouse to the other spouse's super fund, should for example the couple decide to have children and one partner leaves paid employment to do so. The offset applies to contributions made on behalf of a non-working or low income-earning spouse (with assessable income of less than $13,800, which includes reportable fringe benefits and reportable employer super contributions).

The offset claimant may be entitled to claim 18% on super contributions up to $3,000, but with a maximum offset available of $540. Note that a spouse contribution would constitute a non-concessional contribution and will count towards the contributing partner's non-concessional cap (which is $150,000 for 2013-14 and $180,000 for 2014-15).

May their problems be little ones

Down the track, there is always the prospect of the happy household being home to one or more budding taxpayers-to-be.

It is worth noting that the Baby Bonus no longer applies from March 1, 2014. Nonetheless, there is the incumbent Paid Parental Leave scheme to consider, and the proposed and more generous paid parental leave plan from the current government to keep an eye on.

There may be capacity however to receive the new Newborn Upfront Payment and Newborn Supplement as part of Family Tax Benefit part A (if eligible, and if certain conditions are met). Ask this office for more details.

How to wind up an SMSF

Last month, we compiled a guide on the questions you have to ask yourself before deciding to establish a self-managed superannuation fund (SMSF). But what if you already have one that you want to wind up?

There could be many reasons you may need to wind up your SMSF:

- there are no members left – they may have passed away or rolled benefits into other funds
- there are no assets left – the SMSF may have paid members all of their benefits
- divorce – a marriage breakdown may force

husband and wife members to split the fund's assets and may affect the ability of members to effectively undertake their trustee obligations

- insufficient funds – there is not enough money in the fund to keep covering running costs
- relocation overseas – one or more members move to another country, rendering the SMSF unable to satisfy the definition of being an "Australian superannuation fund"
- old age – trustees' circumstances may have changed in a way that has affected their capacity to effectively manage an SMSF, which can be complex and constantly requires a significant investment of time and expertise
- death – where there is only one member, their legal personal representative will be required to pay out all benefits as per the trust deed or death benefit nomination. Where there is more than one member, other members may not wish to continue the fund.

Once the decision to wind up an SMSF has been made, there are certain obligations and requirements trustees must satisfy – both for the fund's members and for the SMSF regulator, the Tax Office. Read your superannuation fund's trust deed, as it may contain vital information about winding up your fund.

We outline the four steps you need to take below. Do remember however, once a fund is wound up, it cannot be reactivated.

Step 1: Notify the Tax Office within 28 days

You need to let the Tax Office know within 28 days of the fund being wound up. You can ask this office to help you do it in writing but you must ensure we have:

- the name of your SMSF
- the Australian business number (ABN) of your SMSF
- your name, phone number and fax number, and
- the date you wound up your SMSF.

Step 2: Deal with members' benefits

You need to make sure that:

- you deal with members' benefits according to the superannuation law and the trust deed
- you obtain market value balances of all related accounts
- you ensure all SMSF assets have been sold and member contributions dealt with in accordance with the trust deed and superannuation laws
- you ensure all proper steps are taken to transfer ownership and title of any assets
- you decide whether any corporate trustees in your fund wish to deregister with the Australian Securities and Investments Commission (ASIC), and
- your fund has no assets left once it has been wound up.

You can get this office to find out the balance of any accounts the Tax Office holds for your fund. You can also ask about the status of any activity statements and whether there are any outstanding. Make sure that all activity statements are up-to-date.

If you have wound up your fund but you, as a member, have not met a condition of release – retirement, transition to retirement, or reaching age 65 – you cannot access your superannuation. Your superannuation needs to be rolled over into another regulated superannuation fund. Remember, there are serious legal penalties for accessing your superannuation benefits before you are legally allowed.

Seek advice from this office on the potential capital gains tax (CGT) implications for your SMSF on the disposal of assets to enable the payment of benefits or the rollover of benefits to another fund. Remember though, you do not need to withhold tax when paying a benefit if the benefit is either:

- From a taxed source and being paid as either
  - (i) a superannuation income stream, or
  - (ii) a lump sum and being received by a member who is 60 years old or over at the time of the payment, or
- Being paid as a lump sum because the member has a certified terminal medical condition. These payments are normally tax free.

Step 3: Arrange a final audit of your fund

When winding up your fund, you will need to have an audit completed by an approved SMSF auditor before you can lodge your final SMSF annual return. Refer to our article *Timely tip for SMSFs: Audit your fund before annual return deadline* in our February monthly newsletter to learn more about the purpose of an SMSF annual return, how to appoint an SMSF auditor and what the ramifications are of failing to lodge an annual return when necessary.

Step 4: Complete your reporting responsibilities

When preparing and lodging your annual return, you need to complete all labels in relation to "Was

the fund wound up during the income year?"(item 9). You must also pay any outstanding tax liabilities at this time and lodge any outstanding returns from previous years. This office can assist you in these matters.

It is important to wind up your fund correctly. If you fail to carry out these reporting responsibilities, you may be the focus of compliance activities and you may be subject to penalties.

To confirm you have met all of your tax responsibilities, the Tax Office will send you a letter stating that it has:

cancelled your SMSF's ABN, and

closed your SMSF's record

on its systems.

What NOT to do…

- Don't cancel your SMSF's ABN. The Tax Office will do this once it has been notified of the intention to wind-up the SMSF. The Tax Office will then send the trustee written confirmation that the ABN has been cancelled.
- Don't assume that lodging a final SMSF annual return and reporting wind up information is the last contact you will have with the Tax Office. You need to finalise all lodgement and payment obligations before you can wind up.
- Don't dispose of any paperwork. A lot of your records will need to be kept for several years, and some even up to 10 years.
- Don't close the SMSF's bank account until all expected final liabilities have been settled and requested refunds are received. Tax liabilities (including the final SMSF levy) can be prepaid or paid with lodgement of the SMSF annual return. Also, once a bank account for an SMSF has been closed, a new one cannot be opened without first producing a new trust deed.

Case study

William is a member and trustee of an SMSF. Just before Christmas in 2013, he decides to wind up and transfer his benefits to another superannuation fund. William discovers he has not lodged annual returns for the 2012, 2013 and 2014 financial years. Before his fund can be wound up, William needs to:

- have the fund audited for the 2012 and 2013 financial years and organise a final audit for the 2014 financial year
- lodge the annual return for the 2012 and 2013 financial years
- complete Item 9 in the final (2014) SMSF annual return (which relates to winding up an SMSF)
- allow enough money to pay for:
    - audit fees
    - the $200 supervisory levy for the 2012 financial year
    - the $321 supervisory levy for the 2013 financial year
    - the $388 supervisory levy for the 2014 financial year
    - any income tax liabilities due, and
    - fees to prepare annual returns and any other paperwork due for the 2012, 2013 and 2014 financial years, and
- complete a rollover benefits statement and send a copy to the fund which received his transferred benefits.

William can close the bank account of the SMSF when the final liabilities have been settled. All relevant records will need to be kept.

As you can see from the case study above, winding up an SMSF can be complicated at times. Call us if you have any questions about how to wind-up the fund, need help with filling out electronic lodgements or information about the tax implications of winding up.

Concessional and non-concessional contributions caps to rise from July 1, 2014

Did you know that the present $25,000 concessional contributions cap will increase to $30,000 come July 1, 2014? Many will welcome the $5,000 rise, seeing the cap of $25,000 has been in place since 2009-10.

The imminent increase will bring about a range of changes to various contribution strategies for self-managed superannuation funds (SMSF) members and Australian Prudential Regulation Authority (APRA) regulated fund members alike. It is therefore important to start thinking about planning for the increase.

A temporary higher cap of $35,000 has also been available to those individuals aged 59 and over as of June 30, 2013. It will extend to those aged 49 years or over on June 30, 2014 (applying from July 1, 2014).

The table below summarises these new caps:

Income year	Cap for those aged 59 years or over on June 30, 2013	Cap for those aged 49 years or over on June 30, 2014	Cap for those aged below 49 on June 30, 2014
2014-15	$35,000	$35,000	$30,000
2013-14	$35,000	$25,000	$25,000

The indexation of the concessional contributions cap has some additional flow-on effects to the non-concessional contributions cap, with this post-tax contributions cap being six times the concessional contributions cap. Therefore, from July 1, 2014, the non-concessional contributions cap will increase from $150,000 to $180,000.

Further, under "bring forward" rules, an individual who is under 65 years of age can bring forward two years' worth of future non-concessional contributions entitlements. From July 1, 2014, superannuation fund members aged 64 or less will be eligible for a higher bring-forward amount of $540,000 (up from $450,000).

Consult this office to find out what strategies you can put into place to take advantage of the soon-to-be raised contributions caps.

Beware: Aged-care accommodation to get more expensive after July 1, 2014

If you are planning to enter aged-care accommodation, it should be done sooner rather than later. Aged care is likely to get a lot more expensive from July 1, 2014 when means testing for the government accommodation supplement will be based on income and assets of the recipient as opposed to just income-testing alone.

The current income-tested care fee – which is based on assessable income – will be replaced by a means-tested care fee that will be based on both assessable income and assets (which may include your home). The government will either pay the maximum accommodation supplement or a part accommodation supplement, depending on the recipient's assessed financial circumstances. For many, this will mean ongoing care fees will be higher if entering into an aged care facility on or after July 1, 2014.

Further, the manner to which payment for the accommodation should be made, the amount of accommodation fees payable and any on-going care fees will also be affected. Critically, the family home may also impact the accommodation fees payable.

The table on the following page summarises the current situation and the post July 1 changes.

The changes will not affect people who are already living in aged care facilities or those who are already receiving care at home — unless they leave care and re-enter after a period of 28 days, or if they change facilities and decide to re-enter under the new rules. However, anyone now receiving care at home who enters aged-care accommodation on or after July 1 would have to enter into a new agreement with the new provisions.

What should you do?

People are being advised to bring forward their entry into aged care before July 1, 2014 — meaning they would need to have an admittance date prior to July 1 and have all financial arrangements, such as income-friendly investment structures, in place before that.

As it often takes more than a month after receiving an aged care assessment to enter a subsidised residential aged care facility, it would be wise to act quickly.

While there are a number of factors that will influence this major decision, it is vital to know that keeping or selling your home will affect your ongoing care fees if you enter a care facility after July 1 this year.

If you decide to keep your home, consult this office to structure your accommodation costs and devise an appropriate investment strategy to reduce the amount you pay for your aged care. If you sell your home, the entire proceeds will be assessed to determine your ongoing care fees. This will need to be considered alongside the practicalities of keeping the home, such as ongoing bills and maintenance.

It is important that anyone contemplating entering aged care any time soon fully understands what impact the new rules will have on both the cost of care, and their age pension, plus any other financial implications. Consult this office for advice.

	Before July 1, 2014	**After July 1, 2014**
Aged Care Assessment Team (ACAT) assessments	An assessment is needed to determine the appropriate level of care you require – high or low.	The distinction between low-level care and high-level care will be removed. Assessments will simply be to determine if any form of care is needed.
Upfront accommodation costs	Accommodation is paid as: • an accommodation charge (daily payment) if you're entering a high-level facility, or • an accommodation bond (lump sum payment) if you're entering a low-level care or extra service facility.	You will have the option to pay for your accommodation either as: • a daily payment • a lump sum refundable deposit (similar to an accommodation bond), or • a combination of both. This is regardless of type of facility you enter. The daily payment is paid unless and until a refundable deposit is paid. Daily payments are not required more than a month in advance. You can choose to draw down daily payments from your refundable deposit. You can find the price of rooms on www.myagedcare.gov.au/ Residents will have up to 28 days after entering a facility to decide on their payment method. Your choice can have an impact on your financial assets, which can therefore influence how much you pay for your ongoing care fees.
How accommodation costs are determined	Accommodation costs are determined by a resident's assessable income.	Accommodation costs will be determined by a resident's assessable income and their asset holdings.
Ongoing care fees	• You are required to pay a basic daily fee. • If you're not receiving the full Age Pension, you will generally be required to pay an additional daily fee based on your income. • An extra service fee is payable in an extra service facility and is set by the facility.	• You are required to pay a basic daily fee. • If you're not receiving the full Age Pension, you will be required to pay an additional daily fee based on your level of income **and assets.** • All facilities will be able to offer extra services for an additional fee.
Assessment of your home	If you keep your home, it is not assessed as an asset to determine your ongoing care fees.	Up to $144,500 of the value of your home will be assessed as an asset to determine your ongoing care fees, unless it is occupied by a "protected" person – for instance your spouse.