CTC ACCOUNTANTS

TAX & BUSINESS SERVICES

SMSF NEWSLETTER

July 2016

SPECIAL POINTS OF INTEREST:

1. Tax incentives to encourage investment in start-ups
2. Tips for the income year ahead
3. ATO issues warning to SMSF trustees who seek to avoid tax

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NEW TAX INCENTIVES INTRODUCED

New tax incentives to help encourage investment in innovation start-up companies are now law. In this article, we explore the incentives and consider whether they apply to SMSFs.

Background to the incentives

Many start-up companies fail before they start generating significant income due to cash flow problems.

The Government has introduced tax incentives to encourage investors with funding and business experience to help commercialise new ideas by investing in innovative start-up companies.

However, the start-up company must meet strict conditions before investors can benefit from the incentives, including:

- the company must be in the very early stages of development; and
- the company must be in the process of commercialising an innovation.

> **WARNING**–You are generally not permitted to invest in your own family company – the investment must be made in an arm's length company.

What are the tax incentives?

From 1 July 2016, investors looking to buy into eligible innovation companies may qualify for the following tax concessions:

- a non-refundable tax offset of up to 20% to a maximum of $200,000. Any unused offset amount can generally be carried forward to future income years; and
- a full capital gains tax exemption on the sale of shares held for at least 1 year but less than 10 years.

Note, investing in a start-up company is often high risk. Therefore, **retail investors** have an investment cap of $50,000 per income year, limiting the tax offset to $10,000 per income year.

> **WARNING**–Any capital losses incurred on failed investments held in a qualifying innovation company for less than 10 years are lost forever. This means that the loss cannot offset capital gains.

Can SMSFs qualify for the new incentives?

The new laws allow investors of all types (including an SMSF) to buy shares in a qualifying innovation company. The ATO states, however, that SMSFs looking to invest in qualifying start-ups must consider the application of the superannuation laws to the proposed investment, including:

- the sole purpose test;
- checking that any investment complies with the fund's investment strategy and is allowed under the trust deed; and
- the restrictions applying to SMSF investments in a related company.

EXAMPLE–The Angel SMSF purchases shares in Big Ben Pty Ltd (a qualifying innovation company) for $50,000. The company commercialises its investment in four years' time, leading to it being taken over by a publicly listed company. The fund sells its shares for $120,000.

What tax concessions are available?

The fund is entitled to the following concessions:

- a non-refundable tax offset of $10,000 in the year of purchasing the shares. Any unused offset can be used in future years; and
- a tax free capital gain of $70,000 because the investment is sold within 10 years.

Note, if the investment was sold for $10,000 within 10 years, the fund would forgo the capital loss of $40,000 (being sales proceeds of $10,000 less the initial cost of $50,000).

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"The ATO is concerned that individuals are trying to avoid their personal tax obligations..."

THE NEW INCOME YEAR AND YOUR SMSF

With the new financial year underway, we outline some pointers to consider for the year ahead.

Looking to start a transition to retirement income stream?

The preservation age for the 2017 income year is 56. This means that if you were born between 1 July 1960 and 30 June 1961, you qualify to commence a transition to retirement income stream on your 56th birthday.

Turning 60 this income year?

A key benefit of attaining age 60 is that any superannuation benefits received are generally tax free.

If you turn 60 this income year, consider waiting until your 60th birthday before drawing down superannuation benefits that would otherwise be taxable. This is because you must be '60 years or over' for the superannuation benefit to be tax free (exceptions apply).

INFO–You must still generally meet a condition of release before you can access your superannuation (e.g. retirement).

EXAMPLE–Helen is currently drawing down a TRIS solely comprising of the taxable component. She is turning 60 on 4 October 2016. If Helen waits until she reaches 60, the pension income should not be assessable to her.

Were you 49+ on 30 June 2016?

If so, you have a higher concessional contributions cap of $35,000 (instead of $30,000) applying for contributions made during the 2017 income year.

INFO–The Treasurer, the Hon. Scott Morrison announced in the 2016-17 Federal Budget that the concessional contributions cap will be reduced to $25,000 for all individuals from 1 July 2017.

Looking to sell your business?

Any capital gain on the sale of certain business assets (such as goodwill or real estate) could be reduced under the 'small business CGT concessions' (conditions apply). In addition to tax relief, you could qualify to boost your superannuation savings under a special 'CGT cap' if you use the proceeds of sale to contribute to a superannuation fund. Strict requirements apply.

ATO CONCERNED ABOUT PROFIT SHIFTING

The ATO has warned individuals against entering into arrangements to shift their personal services income into an SMSF.

The arrangement works like this:

- an individual works for a client;
- the client remits the fee to a structure owned by an SMSF instead of paying the individual directly; and
- the structure then pays the income to the SMSF as a dividend or trust distribution - disguising the individual's personal income as a return on investment for the fund.

INFO–The ATO has stated SMSF members at or near retirement age are using this arrangement to try and reclassify personal services income as concessionally taxed SMSF income.

What are the ATO's concerns?

The ATO is concerned that individuals are trying to avoid their personal tax obligations by treating personal services income as SMSF income.

A number of adverse tax outcomes could arise under this arrangement including penalty tax of 47% on the income directed to the SMSF. The ATO also considers the distribution or dividend to be a concessional contribution - amounting to double tax.

Individuals who have entered into this arrangement are encouraged by the ATO to seek advice or contact them directly.

INFO–This alert does not target genuine employment arrangements, such as an employer salary sacrificing concessional contributions into an SMSF for an employee.

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