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Tax & Management Tools For Small Business

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Tax News and Updates September 2023

Is tax payable on a gift from an overseas relative?

There is no simple answer to this seemingly simple question. It is possible that a cash gift of A$100,000 received from Aunt Annie in New Zealand for a milestone birthday is not tax-free as first thought.

Is it a genuine gift/loan? Broadly, if a gift of money or property was a genuine gift or loan from a foreign related entity or relative, it is not considered as assessable income and tax is not paid on that amount.

The ATO has published guidance on what it considers to be a genuine gift/loan. The ATO looks for substance over form of the transaction, whether the characterisation is supported by appropriate documentations. The ATO may also look at evidence of the donor's capacity to make the gift from their own resources depending on the size of the gift and the nature of the relationship.

It is the taxpayer's responsibility to provide evidence to prove that the money or property received from overseas is a genuine gift/loan.

If it's not just a 'gift', what do I need to do? Continuing with the example of Aunt Annie's A$100,000 gift of money, things gets a bit more complicated if the A100,000 came out of her NZ trust as a trust distribution to you. In this case, you may need to include some or all of the A$100,000 as assessable income depending on the nature and characteristics of this distribution:

- Whether the trust derived the A$100,000 in the same income year that it was distributed to you
- Whether it was sourced from NZ capital gains
- Whether it was sourced from the trust corpus (the trust settlement sum).

As well, you may also be liable for an interest charge if some or all of the A$100,000 amount has not previously subject to tax in Australia or in a listed country. As illustrated in the above example, it is important that you ask Aunt Annie to provide documentation that can identify and support the sources and components of a trust distribution to you and maintain that documentation.

Would the ATO know about my 'gift' form overseas? The ATO has access to data from a variety of sources, including AUSTRAC which shares information about international funds transfers with the ATO which uses the data to match information reported in tax returns.

More recently the ATO issued an alert (TA 2021/2) in September 2021 signalling the ATO's audit focus on foreign income in the coming years.

Disclosure of overseas assets: There is a requirement to disclose in an individual's Australian income tax return if during an income year the person owns or has an interest in assets located outside Australia which have a total value of A$50,000 or more. This disclosure allows the ATO to collect information in relation to whether the individual has not declared any foreign income.

Minimum pension payment changes from 1 July 2023

Individuals who draw an account-based pension from their super need to be aware that the 50% reduction in the minimum pension drawdown rate which applied for previous years will no longer apply from 1 July 2023. The 50% reduction in minimum annual payment amounts for superannuation pensions and annuities was introduced as a temporary measure as a response to the pandemic negatively impacting super and pension/annuity balances. It applied for the 2019-20 to 2022-23 income years.

From 1 July 2023, the super drawdown factors are:

Up to 64 years of age: 4%

65-74 years of age: 5%

75-79 years of age: 6%

80-84 years of age: 7%

85-89 years of age: 9%

90-94 years of age: 11%

95+ years: 14%

These increases in the draw down rates will create cash flow issues for many super fund particularly those that invest in lumpy assets just as property.

Essentially what this may mean is that at the end of the year a fund may need to sell off assets if it does not have enough cash flow to pay the mimimum pension.

Accordingly super funds will need to plan for this well before 30 June 2024 to ensure there is sufficient funds to pay the mimimum pension otherwise there could be adverse tax consequences.

ATO guidance on small business technology investment boost

Small businesses with an aggregated annual turnover of less than $50 million can claim an additional 20% tax deduction to support their digital operations and digitise their operations.

The ATO has recently published guidance on the small business technology investment boost including:

- what expenditure is eligible and some examples;
- when you can claim the bonus deduction; and
- how to claim the 20% bonus deduction in the tax return.

Click here to access this guidance

What happens to a HECS debt upon death?

When someone dies, their assets and debts owed are entrusted to the executor of the estate to deal with.

For a HECS debt, the executor of the estate will need to ensure that compulsory repayments of the deceased are up to date up until the date of death. Accordingly all outstanding tax returns of the deceased will need to be lodged for this period. The rest of the HECS debt is then cancelled.

Currently the same process is followed for several other Government HELP loans, including FEE-HELP, VET FEE-HELP, OS-HELP, SA-HELP and VET Student Loan Debts.

ATO Small Business Lodgement Penalty Amnesty Program

The amnesty applies to overdue income tax returns, business activity statements and FBT returns that were originally due between 1 December 2019 and 28 February 2022.

For many small business taxpayers, these would equate to:

- Income tax returns for the 2018–19 and 2019–20 income years
- Business activity statements (quarterly) for the December quarter 2019 to the December quarter 2021
- FBT returns for the 2019–20 and 2020–21 FBT years

The amnesty runs from 1 June 2023 to 31 December 2023. To be eligible for the amnesty, the overdue obligations must be lodged within that timeframe.

The ATO says small businesses looking to take advantage of the scheme simply have to lodge their overdue payments through their usual channels, either independently or through their registered tax or BAS agent.

To be eligible for the amnesty, small businesses must have an aggregated turnover of less than $10 million at the time the original lodgement was due.

Eligible small business taxpayers that lodge eligible overdue forms within the amnesty period will have any associated failure to lodge (FTL) penalties remitted. The remission will happen automatically and the taxpayer will not need to separately request a remission.

Taking advantage of the amnesty could save small businesses up to $1,100 in fines per overdue lodgement obligation.

The amnesty does not apply to:

- any interest charges which may apply to overdue payments
- late superannuation obligations
- other administrative penalties such as penalties associated with the Taxpayer Payments Reporting System.

Businesses with outstanding lodgement outside of the amnesty period can still apply for ordinary penalty remissions on a case-by-case basis.

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