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Returns with refunds will need bank account details

According to the ATO, the fastest, most secure way to receive a tax refund is to have it paid directly into a nominated Australian bank account using electronic funds transfer (EFT).

From 1 July 2013, individual tax returns will generally require bank account details, including BSB and account number, to be entered, where a refund is expected.

Joint accounts and trust accounts will be acceptable.

SMSF update from the ATO

Editor: In a recent speech, Alison Lendon, Deputy Commissioner Superannuation, spoke to a number of issues that affect super funds and their trustees and advisers. The following are excerpts:

Applying to the ATO for advice

If trustees of superannuation funds want a written explanation of the ATO's view on how the super laws apply to their SMSF, they can apply for 'SMSF specific advice'.

While this advice isn't legally binding, it will provide certainty to trustees about the application of the super laws to their fund, and the fact that trustees acted in accordance with the advice would be an important factor in their favour.

Editor: We can assist with this application process.

The most common topics the ATO is asked about for specific advice are:

- confirming when a property meets the requirements to be 'business real property', and working through the acquisition of business real property from related parties;
- understanding the limitations of investing in unrelated unit trusts;
- what's an 'improvement' or a 'repair' to property acquired under a limited recourse borrowing arrangement (LRBA);
- the acquisition of assets from related parties and low-interest loans for LRBAs; and
- requests about collectable and personal use assets since specific requirements regarding their storage and usage were introduced in 2011, especially regarding insurance and gold bullion.

Related party transfers

From 1 July this year, new legislation will broaden the types of assets currently prohibited from being acquired from a related party, but will also provide more transparent exceptions whereby acquisitions will be permissible.

By way of example, the acquisition of 'business real property' will be prohibited unless acquired at market value as determined by a qualified independent valuer.

Similarly, listed securities acquired from a related party will also be prohibited unless they are acquired in a way that is prescribed under the regulations.

The legislation will also introduce a prohibition on the disposal of SMSF assets to a related party, unless similar exceptions are satisfied.

Changes to the SMSF Levy

The government recently announced that it will reform the supervisory levy arrangements for SMSFs by:

- increasing the levy from $191 in 2012/13 to $259 per year from 2013/14 onwards; and
- bringing the payment of the levy forward so it is levied and collected in the same year of income. This will be phased in over 2013/14 and 2014/15, to give SMSFs time to adjust.

Date of disposal occurred when Heads of Agreement signed

Editor: In what seems a surprising result, the Administrative Appeals Tribunal (AAT) has held that the date of disposal of an asset for CGT purposes was the date the Heads of Agreement was signed, not when the contract was signed four months later.

The Facts of the Case

The taxpayer had an interest in a business in Melbourne which he decided to sell in 2008. The taxpayer, his partner, and the purchaser executed a

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Heads of Agreement on 7 August 2008, which commenced by stating:

"The Vendor agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Vendor, the Vendors interest in the … business described in the First Schedule below on the terms and conditions set out in such schedule"

A deposit of $20,000 was payable on the signing of the Heads of Agreement and a further $20,000 (described as the balance of the deposit) was to be paid on the signing of the formal contract.

The Contract of Sale of Business was provided to the purchaser's lawyers on 9 December 2008, and appeared to have been executed by the purchaser on 17 December 2008.

The date was crucial to the taxpayer because, if the earlier date applied, he would not be entitled to access the CGT small business concessions, as he did not satisfy the 'maximum net asset value test'* just before that date.

(*) The threshold for this test is currently $6 million.

On the basis the disposal occurred in December 2008, the taxpayer claimed the small business active asset exemption and the small business retirement exemption to reduce the net capital gain of $704,129 to zero, but the ATO did not accept this.

The AAT's Decision

The AAT Member stated that the question was whether the Heads of Agreement was a legally binding document between the vendors and the purchaser which bound the parties to the disposal and acquisition of the business in question.

"In my opinion," he said, "the Heads of Agreement document in this matter leaves little room for doubt that the parties to that document had agreed to the sale and purchase of the business in question."

"At this point, it is worthwhile noting that the Heads of Agreement document makes it very clear that the vendors and the purchaser had agreed to the sale of the business as the document expressly states that to be the case. . ."

"I have found that the Heads of Agreement was legally binding on the parties upon its execution. Furthermore, by that agreement, the parties agreed to the sale and purchase of the business.
In other words, I have found that the disposal of the taxpayer's CGT asset comprising his interest in the business occurred on 7 August 2008."

Car expense per km rates – 2012/13

The car expense per kilometre rates have been set for the 2012/13 year. They are the same as the 2011/12 rates.

Type of car	Engine capacity – non-rotary	Engine capacity – rotary	Km rate (cents)
Small	0 – 1,600	0 – 800	63
Medium	1,601 – 2,600	801 – 1,300	74
Large	2,601+	1,301+	75

ETP cap amount for 2013/14

Editor: The ATO has recently provided updated rates and thresholds for the 2013/14 income year for superannuation and related payments.

For life benefit and death benefit termination payments, the amount up to the ETP cap amount (which will be $180,000 in 2013/14, up from $175,000 in 2012/13) is generally taxed at a concessional rate. The amount in excess of the ETP cap amount is taxed at the top marginal rate.

Editor: Incidentally, the superannuation 'low rate cap' will also be $180,000 in 2013/14.