Practice Update

Please read this update and contact this office if you have any queries

NOVEMBER 2014

Can you access your super fund for medical procedures?

Editor: The following relates to a newspaper article that appeared recently in a national newspaper and was then subsequently picked up by national TV and radio.

As it concerns a taxpayer withdrawing all of her $30,000 balance from her superannuation fund for weight loss, a tummy tuck and breast implants, clients who heard about it or saw it on TV may be incorrectly contemplating accessing their super.

Compassionate grounds to withdraw superannuation

The taxpayer involved suffered from obesity. On this basis, she obtained a written statement from her medical practitioner in which it was argued that without this stomach reduction procedure, it was likely that she would experience severe ill health that could possibly be a life threatening condition.

However, applications for early release of superannuation on medical grounds:

1. must be approved by the Department of Human Services (DHS); and
2. applicants need to supply letters from their GP and a specialist certifying that their condition is **life threatening**, and provide proof that expenses cannot be met by other means, including savings.

The taxpayer said that given her family history of diabetes, cancer and hypertension, her case met the criteria.

Breast implants and tummy tuck?

However, the taxpayer apparently made a second withdrawal (of approximately $20,000) from her superannuation fund to pay for breast implants and a tummy tuck.

Editor: Clients need to understand that there are only very limited circumstances under which superannuation monies can be withdrawn to pay for a medical procedure, under the umbrella of 'compassionate grounds'.

When can super monies be released on 'compassionate grounds'

Where an SMSF member is suffering a severe medical condition and **cannot** afford to pay for such medical expenses, they can apply to the DHS (not the ATO) to have some of their super funds released on 'compassionate grounds'.

Basically, a member will be entitled to claim 'compassionate grounds' where:

- the medical treatment (which is not readily accessible through the public health system) is necessary to treat a life threatening condition, to alleviate acute or chronic pain, or to alleviate an acute or chronic mental disturbance/illness; and
- two registered medical practitioners (one of whom is a specialist) have certified that the above requirements have been satisfied.

Editor: However, there are many other issues involved, including significant penalties where funds are withdrawn incorrectly, so clients should contact our office before trying to withdraw any funds from their superannuation fund.

How to protect your identity – ATO's (anti) fraud video

The ATO continues to warn taxpayers about the dangers of not protecting important details such as their tax file number, date of birth, current address and driver's licence number.

So it has put out a video called *"Don't let yourself disappear",* which shows what can happen when personal information gets in the wrong hands.

In it, while discussing identity fraud, one of the characters says, "*Yeah, I saw an ad for a cleaning job."*

"Great pay, low hours. I thought awesome, extra cash. So I gave them all my details, and then I never heard back about the job."

"Then at tax time my refund was taking forever, so I called the Tax Office and they told me that it's already been issued."

"So the scammer stole my identity and my refund."

"The Tax Office is helping me sort it out, but I should have thought twice about giving out my details."

ATO's data matching program on specialised payment systems

The ATO has announced a data matching program in relation to electronic payments made to businesses through specialised payment systems.

For the period 1 July 2013 to 30 June 2014, it will request and collect data from the following businesses:

- Ausfit
- BillBuddy
- Debit Success
- eDebit
- Ezidebit
- EzyPay
- Integrapay
- IP Payments
- Paymate
- PayPal Australia
- PaySmart
- POLi Payments
- Quickpay

and the following banks BPAY data:

- ANZ Bank
- Commonwealth Bank
- National Australia Bank
- St George Bank
- Westpac

The ATO will collect details of merchant and biller business names, contact details, settlement amounts, and transaction records. Records relating to approximately 25,000 individuals will be matched.

Changes to employee share schemes

The government has announced that, effective 1 July 2015, it will claw back many of the former government's changes to the taxation of Employee Share Schemes.

While the Treasurer will consult with industry in finalising the draft legislation, the main proposal centres around discounted options generally being taxed when they are exercised (converted to shares), rather than when the employee receives them.

ATO says beware of 'boiler room' sales tactics

The ATO has warned that some operators are using telemarketers to apply high-pressure sales tactics to lure superannuation trustee investors into high risk or suspect investments. This practice is known as 'boiler room' type operations.

Such tactics are being used to coerce investors to invest in artwork at inflated prices while promising inflated rental returns on these investments.

The value of complex asset classes such as artwork and collectables can be very subjective in nature.

There have been concerns raised with the ATO about how some of these assets are being valued in the marketplace.

To avoid any pitfalls in relation to such investments, trustees are encouraged to:

- ❑ seek a second, independent opinion when purchasing assets such as artwork;
- ❑ undertake a separate valuation of the asset (to confirm the SMSF has complied with relevant super laws); and
- ❑ ensure that the asset type is the right investment for their SMSF and complies with the sole purpose test.

Editor: If clients are contacted by telephone by anyone suggesting, that as trustees of their super fund, that they undertake new investments they should contact our office.

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.