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Welcome to our September newsletter.

Spring and change is in the air. There is no doubt that the new season has commenced.

As the 2010 financial year begins we find ourselves at a very interesting time. The Global Financial Crisis continues to drive high levels of uncertainty. The topography has changed. Different riding conditions require different techniques.

This is a time of challenge and potential opportunity.

In early July a new computer system was installed for RJC Evans & Co. During this transition phase clients would have noticed that we were forced to go, “off the air”, for a few days. As the upgrades straddled a weekend this was in effect four days. What an inconvenience. Our apologies to those of you who had difficulties in communicating with us during this period.

This period reminded me how dependent we have become on technology in all parts of our daily lives. How did we manage without emails, mobile telephones, Blackberrys, Ipods, etc?

Change does create its own short term turmoil. Some were even heard saying, “If only we were back in the, “good old days!” I’m sure that there are aspects of the, “good old days” which none of us want to revisit.

George Bernard Shaw once declared, “Progress is impossible without change.” Change is a constant in this era.

The Federal Government used the May budget to introduce a raft of changes to the superannuation system. Getting money into superannuation will now be increasingly difficult. For those approaching retirement it is imperative that you have an understanding of the transitional rules. Details are contained in this issue of the newsletter.

Additionally those previously salary sacrificing into superannuation may need to review the amounts so that the reduced concessional contribution cap is not exceeded. The caps are outlined within the newsletter.

In these difficult times we need to maintain perspective, look for the bigger picture, be prepared to adjust plans and it’s perhaps then that we will be able to claim the future.

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Beware – Tax Refund Scam

The Tax Office has issued media releases warning taxpayers of two email scams, purporting to offer a tax refund.

The scams operate by requesting a taxpayer's credit card and personal details.

Generally, the subject heading of the emails are entitled:

- “Get refunds on your Visa or Master Card”;
- “Notification – Please read”;
- “Australian Taxation Office – Please Read This”

The Tax Office does not send emails requesting personal information including credit card details.

Individuals who receive emails of this nature should immediately delete them.

The 10% rule – revisited

A person who works as an employee during the year can choose to claim a tax deduction for personal superannuation contributions if they meet the 10% rule for that year.

Under the 10% rule, assessable income (plus reportable fringe benefits) from employment must represent less than 10% of total assessable income plus fringe benefits.

If this rule is satisfied, the person can choose to claim a tax deduction for personal contributions made by providing a Section 290-170 notice of intention to claim a tax deduction to the trustee of the superannuation fund. This notice must be provided before;

- The tax return is submitted for that financial year, or
- The contributions are used to start an income stream, or
- The contributions are split with a spouse.

If the person is over the age of 65, they must be eligible to contribute to superannuation (that is, have worked 40 hours within 30 consecutive days) before making any contributions.

Please note that from 1 July 2009 any amounts sacrificed into superannuation from salary or wages will be added back to assessable income to determine whether an employee meets the 10% rule or not.

This change will mean that this strategy may no longer be appropriate for those employees wanting to make a personal deductible contribution to super.

Keep your receipts

In two separate but related media releases, the Government and the Tax Office reminded parents to keep receipts relating to expenses incurred on their children's education if they wish to claim the Education Tax Refund.

From 1 July 2008, eligible families can receive a maximum refund of \$375 for each child undertaking primary studies and \$750 for each child undertaking secondary studies.

The Tax Office states that only expenses which are paid for by parents will qualify for the refund. It also states that if an item is used for different purposes, only the amount that relates to a child's education is eligible for the refund.

Avoid stress, cost: Sort out succession

I have noticed during recent years a number of reported judgments involving farming families, where claims have been made, often successfully, by children or, in one case, a nephew successfully claiming an interest in their parents' (or blood relatives) land either while they were alive, seeking land which was not left to them or a right to damages.

Space does not permit me to summarise the facts of those cases. I can only set out some general principles which have evolved from those and earlier judgments.

If a son or daughter, for example, works on the family farm, or some other family business, for many years and they have worked in that family business because of promises that the business will one day pass to them and in reliance on the promise(s) they have worked to their detriment, in that they may have, for example, received less in wages, built up less in the way of assets or given up some other opportunity, such as another occupation, then they may have a claim of the kind I have already mentioned.

For example, the son/daughter might be able to prove that rather than working on the on the family farm, with free board, a car and a low wage, they could have alternatively left the farm and become a lawyer, doctor, teacher or taken up a trade or skills, where they might have accrued more assets over the years than they had on the farm.

That son/daughter may have an enforceable claim to the family farm, or at least a substantial portion of it, even if their parents at a later date decide whether through a falling out, or a subsequent remarriage, that they do not want to pass the family farm to the son/daughter.

Alternatively, they may have a claim to damages.

Each case depends on its own circumstances. There are many variables to be taken into account, only some of which I have mentioned above in determining the rights and merits of any case.

The evidence proving the promised, the reliance on the promise, and the loss are not always easily established.

These issues crop up not only when a falling out occurs while the parents are alive, but also when their will does not leave the farm to the son/daughter working it but instead leaves it, or part of it, to other relatives who may not have, in some cases, worked on the farm for a long time.

The more families recognise these issues and sit down to work them out, the less likely they are to come up before the courts, although sometimes – even with the best goodwill – you cannot satisfy one or the other of the parties involved.

I think these issues will continue to confront families and lawyers in the future, particularly with people living longer, and becoming more dependent on others who may influence them to change their wills or to forego their earlier promises. The earlier these issues are discussed and documented, the increased likelihood that at least some families will be saved the stress and cost in dealing with these issues in a confrontational manner at a later date.

**Andrew Goode,
Mellor Olsson Lawyers
Published with permission from Stock Journal
12th March 2009**

Repairs to rental property carried out after cessation of income production

Taxation ruling number IT180 indicates that a deduction may be allowed for cost of repairs carried out after the property ceased to be used in the production of assessable income providing;

- The necessity for the repairs can be related to a period of time during which the premises have been used to produce assessable income of the taxpayer, and,
- The premises have been used in the production of such assessable income of the year of income in which the expenditure is incurred

Minimum pension annual payment amounts

Age of Pensioner	Minimum Annual Drawdown (percentage)
0-64	4%
65-74	5%
75-79	6%
80-84	7%
85-89	9%
90-94	11%
95+	14%

FBT implications - employer's contributions to employee social club

In a recent ATO Interpretive Decision the ATO looked at the issue of whether or not Fringe Benefits Tax (FBT) would apply to employer monetary contributions made to an employee social club. In this instance, the employer provided the social club with an annual donation, which in turn was supplemented by personal contributions made by employee members during the year and through fundraising events.

The ATO considered that a "property fringe benefit" as defined in subsection 136(1) of the Fringe Benefits Tax Assessment Act 1986 has not been provided by the employer because no particular employee has been identified who will benefit from that contribution to the social club.

Transition to Retirement Pension

We are often asked whether a taxpayer can implement a withdrawal and re-contribution strategy while they are taking a transition to retirement pension. Unfortunately this is not possible under a TRAP. A restriction imposed on transition to retirement pensions is no lump sum withdrawals; the essential first step of withdrawal and re-contribution strategy. The most money you can take is the maximum amount under the pension rules, which is 10% of the pensioner's superannuation account balance.

Rates per business kilometre 2008-09

Engine Capacity		Cents per km
Ordinary Car	Rotary Engine Car	2008/09 Income Year
1600cc or less	800cc or less	63 cents
1601cc - 2600cc	801cc - 1300cc	74 cents
2601cc and over	1301cc and over	75 cents

Defining a self managed super fund

For a fund to be a self managed super fund (SMSF);

- It must have a maximum of four members
- Every member of the fund must be a trustee, or be a director of the fund's corporate trustee
- Every trustee or director of the fund's corporate trustee must be a member of the fund
- No member of the fund should be an employee of any of the other fund members unless they are related, and
- No trustee should receive any remuneration for their services as a trustee.

These requirements apply to funds with two to four members.

Single member funds

It is possible to have a SMSF with only one member. These funds must have either a corporate trustee or two individuals as trustees.

If the single member fund has a corporate trustee, the member must either;

- Be the sole director of the trustee company
- Be related to the only other director of the trustee company, or
- Not be an employee of the only other director of the trustee company.

If the single member fund does not have a corporate trustee there must be only two individuals as trustees, the member and one other person. The other person must be either a relative of the member, or a person who is not the member's employer.

First home saver account

From the 1st October 2008 first home saver accounts have been available to individuals between 18-65 years of age and who have never previously bought or built a first home in which to live. These accounts can take the form of a savings account with a financial institution.

Individuals who open an account will receive a Government contribution of 17% of the first \$5,000 contributed annually. Earnings in the account will be taxed at 15%.

Employee share schemes

The taxation treatment for employee share schemes has changed. For shares or rights acquired under the employee share scheme after the 1st July 2008, employees who make an election to be taxed up front must include the value of the discount in their tax return for the year of income in which those shares or rights were acquired.

Note that this measure will only apply where the value of the shares or rights exceeds the \$1,000 exemption amount. Therefore, most employees who are eligible to participate in an employee share scheme will be untouched by the measure, as the value of share or rights typically do not exceed \$1,000.

Where the amount is not included in the taxpayer's tax return, the taxpayer will be taxed under the deferral option.

Superannuation contributions

Can too much super mean extra tax?

Caps apply to superannuation contributions. Tax is payable if these caps are exceeded. Taxpayers need to ensure that they are aware of the contribution limits that apply.

A cap amount and how much extra tax is paid, once it is exceeded, depends whether the contributions are concessional or non-concessional contributions.

Concessional Contributions are sometimes known as “before tax contributions”

Concessional contributions include but are not limited to;

- Contributions the employer makes for the taxpayer, including contributions made under a salary sacrifice arrangement, and
- Personal contributions claimed as a tax deduction (where the taxpayer is eligible to claim).

Non-concessional contributions

Are sometimes referred to as “after-tax contributions”. They include but are not limited to;

- Personal contributions that the taxpayer does not claim an income tax deduction for, such as contributions they make from their take-home pay;
- Contributions made by the taxpayer’s spouse to their superannuation fund; and
- Amounts transferred from foreign superannuation funds (excluding amounts included in the funds assessable income).

The concessional contributions cap for the 2009-2010 financial year is \$25,000 per person (or \$50,000 if the person is aged 50 years or over).

The non-concessional contributions cap for the 2009-2010 financial year is \$150,000 per person. If a taxpayer is under 65 in a financial year, they have the option of “bringing forward” some of their contributions. Instead of a yearly cap of \$150,000, a contribution of up to \$450,000 in one year of a three-year period can be made.

Sale of business - A going concern?

There are a number of strict conditions that must be adhered to in order to classify the transaction as a sale of a going concern.

The sale of a business is a GST-free going concern if;

- Before the sale, the buyer and seller agree in writing that the sale is of a going concern.
- Everything for the continued operation of the business is supplied to the purchaser.
- The vendor carries on the business until the day it is sold.
- The purchaser is registered or required to be registered for GST, and
- The sale is for consideration.

Dividend reinvestment – CGT records

An often an overlooked consequence of Dividend Reinvestment is the associated record keeping to determine the purchase cost. Clients are now experiencing this problem more and more. Recently we encountered a problem where an investor had held her National Australia Banks shares for 15 years and had also participated in a dividend reinvestment scheme. The question related to, “How do I calculate the CGT to be paid on the sale of these shares?”

The Australian Taxation Office expects investors to have the information in order to calculate the appropriate capital gain. Poor record keeping in this instance creates a costly headache for the investor.

In the case of each dividend reinvested, the price at the time becomes the cost-base for the newly issued shares. With two (2) dividends often issued per year in the above example then there are thirty different Dividend Reinvestment cost-bases.

Our office uses a computer program called STM to maintain these records for clients. Should you be interested in this service please contact our office.

Another important record keeping factor note in relation to CGT records is that these records will need to be kept for five (5) years **after you have disposed of the asset.**

Reportable Superannuation Contributions

There has been some confusion what is included on payment summaries as reportable superannuation contributions. Please note that the SGC 9% doesn’t go on the payment summary. Rather it is only amounts above this, which includes salary sacrificed amounts. Many computerised payroll systems will no doubt commence the 2010 financial year with the facility to be able to record the salary sacrificed amounts electronically. Please contact our office should you require any further clarification.

Due dates for quarterly instalments activity statements

Clients must pay the amounts on these notices (and lodge their forms if varying the instalment amount) by the original due dates of:

- 28 October 2009 (quarter 1, 2009-10)
- 28 February 2010 (quarter 2, 2009-10)
- 28 April 2010 (quarter 3, 2009-10)
- 28 July 2010 (quarter 4, 2009-10)

Personal tax rates and thresholds

Rates from 1 July 2009		Rates from 1 July 2010	
Taxable Income (\$)	Rate (%)	Taxable Income (\$)	Rate (%)
0 - 6,000	0	0 - 6,000	0
6,001 - 35,000	15	6,001 - 35,000	15
35,001 - 80,000	30	35,001 - 80,000	30
80,001 - 180,000	38	80,001 - 180,000	37
180,001+	45	180,001+	45

Note: Excludes 1.5 percent Medicare Levy

Low-income tax offset

From 1 July 2009, the low-income tax offset will be increased to \$1,350 and will begin to phase out from \$30,000. Taxpayers eligible for the full offset will not pay tax until their annual income is over \$15,000 (up from the current \$14,000).

From 1 July 2010, the offset will be increased further to \$1,500 and taxpayers eligible for the full offset will not pay tax until their annual income is more than \$16,000.

Superannuation Guarantee Ruling

The Tax Office has issued a ruling in which the Commissioner states his view regarding the treatment of payments made to employees for purposes of the Superannuation Guarantee (SG).

The ruling has been modified from the draft ruling previously released to include several important changes. These changes include;

- Christmas bonuses are now considered to be Ordinary Time Earnings (OTE) and to be included when determining the minimum SG payable for an employee; and
- regular overtime payments made outside an employees ordinary hours of work would generally not be included in OTE and, therefore, not included in calculating the required level of SG for the employee.

Bonuses and Superannuation Guarantee

In a 2008 case the AAT affirmed the Commissioner's decision that bonus payments paid by an employer to its employees should be taken into account when calculating the employees' superannuation guarantee.

The tribunal found that the payments were paid in an employment context and by reference to the specific performance of its employees as a group.

Tip: Generally, bonus payments that don't relate to the specific performance criteria of employees are not taken into account when calculating their superannuation guarantees.

Increase in ASIC Fees

In 2009/10 Federal Budget, the Government stated that it will index fees and charges collected by the Australian Securities and Investments Commission (ASIC) to the consumer price index CPI from the 2010/11 income year.

Minor's Income Thresholds

Year	Income Limit	Low Income Rebate
30/06/09	\$2,667.00	\$1,200.00
30/06/10	\$3,000.00	\$1,350.00
30/06/11	\$3,333.00	\$1,500.00
30/06/12	\$3,333.00	\$1,500.00

Genuine Redundancy Payments

Taxation Ruling TR 2009/2 was released on 22 April 2009. It outlines the conditions to qualify for concessional tax treatment as a "Genuine Redundancy Payment." The Ruling says the four necessary components to qualify as a Genuine Redundancy Payment are;

- The Payment must be received "in consequence of" an employee's termination.
- That termination must involve the employee being dismissed from employment.
- That dismissal must be caused by the redundancy of the employee's position.
- The redundancy payment must be made genuinely because of a redundancy.

The Commissioner's view is that a genuine redundancy payment can only arise where there is no suitable job available for the employee with the employer. All employment with the employer must be severed. According to the Ruling a "dismissal" requires a decision to terminate employment at the employer's initiative without the consent of the employee.

The Ruling also addresses situations involving dual capacity employee's (e.g. a director who is also an employee of the company) who may have the ability to terminate their own employment or actively participate or influence this decision.

First - Homebuyers Grant Extended

Under the Federal boost scheme, eligible first home buyers signing purchase contracts between July 1 and September 30 will continue to receive \$7,000.00 for the purchase of established homes and \$14,000.00 for the purchase of new homes, up until the 30th of September 2009.

After including the \$7,000.00 first - homebuyers grant, buyers of new homes will be eligible for total assistance of \$21,000.00 over the first three months of the 2010 financial year, or \$14,000.00 for established homes.

From October 1 2009 to the end of December 2009, the grants will be halved to \$3,500.00 for the purchase of established homes and \$7,000.00 for new homes. That will involve total assistance to first-homebuyers of \$14,000.00 for new homes and \$10,500.00 for existing homes.

Fuel Tax Credit Rate change from 1 July 2009

There's been a decrease in the fuel tax credit rate for taxable fuel used in heavy vehicles travelling on a public road. From 1 July 2009 the new rate is 16.443 cents per litre.

The rates are listed in the following table.

Period	Rate per litre
From 1 July 2009	16.443 cents
1 January 2009 - 30 June 2009	17.143 cents
Before 1 January 2009	18.51 cents

SMSF Trustees

A question which is arising more regularly is, "Should I use a company or individuals as the trustee of my SMSF?" While a corporate trustee has an additional up-front cost of setting up the company to be the trustee, there are some longer-term gains which ease administration.

For example, a company has an indefinite lifespan; in other words it can't die. A corporate trustee can make control of a fund more certain in the circumstances of a death or incapacity of a member. When members are added to or taken away it is a simple matter of changing a company director. The corporate trustee doesn't change as a result entitled to all the fund's assets stay in the trustees name.

Admitting a new member to a fund with individual trustees requires that person to become a trustee. All trust assets must be held in the trustee's names, this will require the title of all assets to be transferred to the new trustees when a member is admitted to or exits the fund. With funds having a number of shareholdings this can be a time consuming process.

GST and Disposal of Business Assets

The sale of business assets should be recorded on the businesses Activity Statement. Where such sales are not input taxed or GST-free, they must be reported at labels G1 and 1A.

The proceeds received from the sale of a business must be included at label G1. Where the sale is taxable, the GST amount must be recorded at label 1A.

Where the sale is at GST-free going concern, the sale must be reported at G3 as well as G1.

The sale of a business as a going concern is quite complex and a number of factors need to be considered. These include; the vendor supplies to the purchaser all of the items that are necessary for the continued operation of the enterprise.

- The vendor and purchaser have agreed in writing that the supply is of a going concern.
- Other factors can be found at GST Ruling (GSTR) 2002/5.

Alternatively, contact our office for assistance and clarification.

Motor vehicle trade-ins

A trade in of a motor vehicle constitutes a sale. Consequently, if you are registered for GST and a vehicle has been used for business purposes, you must account for GST by including the trade in figure on your Business Activity Statement at G1 and the amount of GST collected at label 1A

Keep your TFN safe - Advice from the ATO

Identity crime has become one of the fastest growing crimes in the world and involves the use of a fabricated, manipulated or stolen/assumed identity to commit criminal activities, including tax fraud.

Over recent years it has become more organised, sophisticated and widespread, in part due to the rapid growth of, and access to new technologies (in particular, the internet). As a result, the Tax Office sees various scams each year, aimed at getting your TFN to steal your identity.

Your tax file number (TFN) is one of the most important forms of identification in Australia and you need to keep it safe at all times. Don't store it in your mobile or wallet, don't share it with friends and don't provide it on the internet when applying for work.

People who steal you identity can have a big impact on you by tricking your bank into giving them access to your money and could even take out loans. In some instances identity fraud cases take years to resolve.

If you let someone use your TFN or you sell it someone, you may have to pay a heavy fine or go to jail.

Only certain people and organisations can ask you for your TFN, including the Tax Office and some other Australian Government agencies, superannuation funds, your employer and registered tax agents.

Staff News

We say a fond farewell to Julie who had been with the firm for 9 years as Stephen Evans' Personal Assistant.

We also say goodbye to Todd from Paul's Team who has moved to Port Lincoln and Marie from the Front Office who is going overseas.

We welcome to RJC Evans & Co Laura who will be in the Front Office team. Also new to Stephen's Team is Maria who will be in Accounting and Karen who will be his new Personal Assistant.



SPECIALISING IN:

Tax returns, Taxation advice, Capital Gains Tax Planning, Accounting, Budget and Cashflow preparation, Company secretarial services, Company and Trust audits, New Business assessments, Estate Planning, Computer and software selection, Financial management, GST Advising and BAS Preparation.

DISCLAIMER:

Important: We suggest that our clients do not act only on the basis of the material contained in this Report because the items herewith are general comments only, and may be liable to misinterpretation in a particular circumstance. Also, changes in legislation sometime occur quickly. We therefore recommend that our advice be sought before acting in any of these areas. This report is issued as a helpful guide to our clients and is for private information. Therefore, it should be regarded confidentially and not be made available to any person without prior approval.