TAX Flash
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KGL
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CERTIFIED PRACTISING ACCOUNTANTS

Why the Tax Office is Looking at Your Facebook Profile?

facebook

A recent article published in the online small business magazine SmartCompany will have many people reviewing what they say and expose on Facebook and other social networking sites.

Tax Office staff are the last people you expect to be looking at your Facebook profile but according to a lecturer at Latrobe University's Faculty of Law and Management cited in the SmartCompany article, the popular social networking site is being used to build prima-facie cases against investors using offshore tax havens.

Our compulsion to share our every movement on online forums is being used by the Tax Office as a tool to build profiles on high net wealth individuals. So, if you're telling the tax office that you have a modest income but are constantly posting pictures of yourself in your floral board shorts in Barbados, or your latest shopping expedition in Paris, then you can expect a call from the Tax Office very soon.

Offshore tax havens are a particular focus and this compliance program has claimed the scalps of many high profile taxpayers through Project Wikenby.

The accessibility of the information available to the Tax Office to investigate and build cases against taxpayers is increasing every day. Your Facebook profile is just another avenue.

Help!
I've Put Too Much Into My Super Fund!

One of the great things about superannuation is the concessional tax rates. Concessional contributions, which come from pre tax income, are taxed at 15%.

There are caps imposed on how much you can put into super and still get the concessional tax rate. In the 2007/2008 and 2008/2009 financial years, the concessional contributions cap was $50,000 for those under 50 years of age and $100,000 for those who were 50 or older on 30 June. The concessional contributions cap for the current financial year is $25,000 for those under 50 and $50,000 for those 50 or over on 30 June 2009. The non-concessional contributions threshold is $150,000 (which can be averaged across three years - allowing you to exceed the cap in one year and reduce your contributions in others giving you a total of $450,000 over three years). Further changes will apply from 1 July 2012 when the concessional cap will reduce to $25,000 per annum, although by that time the amount may have been subject to increase due to indexation.

Excess contributions are not uncommon and many taxpayers inadvertently breach their contribution limits. The problem is that if you breach the concessional contributions cap, the tax on the contributions over the cap is an additional 31.5% on top of the initial 15% paid by the super fund. And, it's very difficult to do anything about it once you have put the cash into the superannuation account. Where both the concessional and non-concessional caps are breached, the excess contributions tax could be as high as 93%.

The exception is when you breach the contributions limit in one transaction, for example, if you wrote a cheque for $1 million and deposited in your superannuation fund account. Superannuation funds have a fund capped contribution limit to prevent unwanted excess contributions. By law, they must refund the excess contribution to reverse it. No excess tax applies in these circumstances. The problem is, the fund acceptance cap only applies when the contributions limit has been breached in one transaction.

The problem with making excess contributions is that under the law, once the contribution has been accepted by the fund the preservation rules apply (meaning that you can only get the money out once you meet the conditions of release – for example, you turn 60).

In some cases, where an honest mistake has been made, the amount can be refunded. However, if you are over the contributions cap, have changed your mind about the contribution, or you have had a change in income levels so that you cannot utilise the tax deduction, then it is unlikely your excess contribution would be called an honest mistake. However, if you inadvertently banked money into the wrong account (and that account was the superannuation funds account) then that might be an honest mistake if you can prove it.

A few adventurous taxpayers have tried to get around the contributions cap by amending their trust deeds. Under these arrangements, a clause is inserted into the SMSF trust deed to restrict the trustee from accepting all or part of a contribution if it would cause the member to exceed a contributions cap. If the trustee does accept the contribution the trust deed directs the trustee to hold the contribution in a separate trust, even though the amount has been treated as a contribution and mixed with other assets of the super fund. But the Commissioner is onto this scheme and has stated that he considers the schemes “ineffective” and tax is still likely to apply to the excess contributions.

The important thing is to be aware of what your contributions caps are, the total amounts that have been contributed, and what’s contained in your trust deed.

Those most likely to breach the cap are those with multiple employers and those who have entered into salary sacrifice arrangements in past years and have not reviewed the amounts being paid into their superannuation fund. This includes those utilising the transition to retirement strategy.

For advice on managing your SMSF and getting money in and out of your fund, speak to us today.

Selling up? Watch out for CGT!

If you’re selling your business, the CGT small business concessions have the capacity to reduce your capital gains tax liability to $0. Understandably, the tax savings that can be achieved make the concessions very popular with business owners. However, the extent of the tax savings also means that the concessions come under close Tax Office scrutiny. Quite a few taxpayers have been stung with very large and unexpected tax bills because they claimed the concessions but did not pass the eligibility tests.

There are a number of rules and conditions that a small business and their owners need to meet to be able to access the concessions. One of the main eligibility requirements is the $6 million maximum net asset test (although an alternative $2 million turnover test is available in some circumstances). This test requires that the combined value of the assets of the business, any connected entities, any affiliates and any entities connected to the affiliates, is less than $6 million.

The $6 million maximum net asset test applies at the time when the CGT event occurs (generally when the contract of sale is entered into), so you need to satisfy yourself, and be able to substantiate to the Commissioner if you are audited, that your net assets were less than the $6 million threshold at that time.

Certain assets such as the family home, some personal assets, and your superannuation are not counted toward the threshold. With some of your assets it should be reasonably easy to calculate their value. Other assets such as privately held businesses or listed securities can provide greater problems.

The risk with listed securities is where there is volatility in their value and you are near the $6 million threshold. Because your position is counted at the time of the CGT event, if you hold listed securities and there is a spike in their value at this time, then you could breach the threshold. The value of these assets is on public record and this is an area you need to be careful about if you are near the maximum limit.

Private businesses create a different risk. In the majority of cases there is no ready market for these businesses and so their value is not readily identifiable. Without a formal valuation you may underestimate the value of your businesses. It is not uncommon for the ATO to ask for evidence of your eligibility for the concessions. If they have doubts about the value you have assessed then they may substitute their own valuation. Keep in mind that the value of your business is not necessarily what is recorded in your financial statements. Where the business holds unrealised goodwill or other intangible assets, the value of the business can be substantially greater than is recorded in the financial statements.

Clearly, the more valuable your business is, and the closer your other assets are to the $6 million threshold, the greater your risk.

If you are contemplating selling your business or want to make sure you have the right structure in place, contact us today for a review.

Keep ‘Up To Date’ with our Website

King Gibson Lewis has now launched our brand new website at www.kgl.com.au.

View staff profiles, book an appointment with your accountant, make an enquiry or do some research while checking out the latest tax updates, all at your fingertips.

Use the resources tab for links to Calculators, information on dates for upcoming lodgement, important tax facts and links to other useful websites.

End of Year checklists are available for download at your convenience with more useful forms coming soon.

Most importantly, Our Services provides a list of services that we, along with our business alliances offer to our clients. While we do provide tax and compliance services, our specialty is working with business owners to grow and optimise their business.

Ask your accountant today what business and specialty services could assist you in your wealth creation.

Quote of the month

"I tried being reasonable, I didn't like it."

Clint Eastwood

The material and contents provided in this publication are informative in nature only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained.