THE CP CATCHUP

WELCOME TO THE FIFTH EDITION OF THE CP CATCHUP | **DECEMBER 2012**

It is amazing how quickly this year has flown! With Christmas fast approaching, the team at CP would like to thank you for your support during 2012. We wish you & your families all the best this holiday season and we look forward to working with you again next year. Merry Christmas!

Please check out our website at www.cpnumbers.com.au and don't forget to follow us:

Changes to the Director Penalty Regime

On 29 June 2012, the Federal Government passed changes to the director penalty regime. The amendments widen directors' personal liability in relation to company liabilities, particularly tax and superannuation liabilities. The legislative changes target directors participating in "phoenix activity". Phoenix activity typically involves activity by company officers that seeks to avoid debts by transferring assets from an indebted company into a new company that they control. The director then places the initial company into administration or liquidation with no assets to pay creditors, while continuing the business using the new company structure.

The Extra Risks for Directors

1. Under previous law, directors were personally liable for PAYG withholding tax. Under the new laws, directors will also be personally liable for unpaid employee superannuation.
2. Under previous laws, when the Tax commissioner filed to enforce personal liability for tax liabilities against a director (Director Penalty Notice), the director could achieve remission of that personal liability by appointing an administrator or beginning to wind up the company within 21 days. Under the new law, if PAYG or superannuation contributions remain unpaid and unreported for 3 months after the due date, the director cannot achieve remission of the personal liability.
3. Associates of directors (including spouses) are captured by the regime if a company has failed to remit tax amounts withheld. The consequences impact upon the director and their associate's personal tax return in that they will not be entitled to claim PAYG credits.
4. Failures by associates of a director to take action where tax failings and oversights have occurred will be held personally liable if they:
   a. do not influence the director to pay the outstanding tax to the ATO; or
   b. report the director's activities to the relevant regulator.

GST Liability Omitted from Regime Changes

When a company is in financial distress, GST often represents the largest component of its unpaid tax liability. Under the new regime, directors remain free from personal liability where companies have outstanding GST.

It is vital that all advisors and directors are aware of these important changes and the impacts of the Tax Law amendments. Directors now must act even more promptly once their company is insolvent and now seek immediate assistance. It is recommended that all company directors review their systems in respect to ensuring that all statutory lodgements, in particular PAYG and superannuation are attended to when due or at the very latest 3 months after their due date.

The ATO have extended the grace period from 14 days to 30 days for newly appointed directors to ensure PAYG and superannuation obligations are up to date before they become liable on amounts outstanding at the time of their appointment.

Dividend Franking Credits & the 45 Day Rule

For a Self Managed Superannuation Fund (SMSF) to be entitled to dividend franking credits, certain conditions must be met. Franking credits represent tax already paid on the profits of the company providing the dividend. The franking credit trading rules prevent SMSF's from claiming franking credits unless they have held the relevant shares for the required minimum time period – the holding period. The holding period rule is applied to the first franked dividend received following acquisition of the shares and is only required to be passed once for that parcel of shares. To be entitled to the franking credits in relation to a particular dividend, a taxpayer must be a qualified person in relation to the dividend.

Qualified Person

An SMSF or taxpayer will be a qualified person if they have satisfied the holding period, i.e. they have held the shares on which the dividend is paid for a continuous period of at least 45 days (or 90 days for preference shares), in the primary qualification period.

Primary Qualification Period

The primary qualification period begins the day after the day the taxpayer acquires the shares and ends on the 45th day after the day on which shares become ex-dividend. The ex-dividend date refers to the owner of the share at that time having entitlement to the future dividend. The days of acquisition and disposal are excluded in determining if the shares have been held at risk for 45 days. To be entitled to the franking credits, the taxpayer must hold the shares for at least 45 days during days 2 – 85 and also hold them at the ex-dividend date.

Disposals – LIFO Rule and CGT

The LIFO (Last In First Out) rule is used when calculating if shares are held for the required timeframe under the 45 day rule. The LIFO rule only applies for the purposes of the holding period rule and only applies to those shares which have an entitlement to a franking dividend. It does not affect the application of the CGT rules which operate based on the actual disposal of shares. For CGT purposes, specific identification, or a first in first out basis, can also be used to determine the shares sold.

Client In Focus - Balnarring Village Motor Inn

Frank & Diane Frankcom, your hosts, have a hands on approach to their business that enables them to build a rapport with their guests and make them feel comfortable. Their 16 unit boutique style property, on the Westernport side of the Mornington Peninsula, is beautifully appointed and enjoys comfortable facilities. Surrounded on three sides by the waters of Port Phillip and Western Port Bays, and Bass Strait, the Mornington Peninsula provides the closest ocean beaches to Melbourne and a stunning crescent of safe bayside beaches. This is Australia's newest and fastest growing boutique wine district, featuring over 100 vineyards and 35 cellar door facilities, many of which include restaurants with breathtaking views over sea and countryside. Call Frank or Diane to book your next holiday away.

BALNARRING VILLAGE MOTOR INN

Balnarring Village Motor Inn, 3055 Frankston - Flinders Road, Balnarring - www.balmotel.com.au/

OUR OFFICE WILL BE CLOSED

FROM 5PM THURSDAY 20 DECEMBER 2012

& WILL REOPEN 8:30AM MONDAY 7 JANUARY 2013