Merry Christmas!

May the good times and treasures of the present become the golden memories of tomorrow.

Wishing you lots of love, joy and happiness from us all at Pooles Accountants and Tax Specialists

PLEASE NOTE OUR OFFICE WILL BE CLOSED FROM FRIDAY 22ND DECEMBER TO MONDAY 8TH OF JANUARY

POOLES RANKED 76 IN THE FINANCIAL REVIEW TOP 100 ACCOUNTING FIRMS 2017

“Technology isn’t proving to be the end of accountants but rather a way for the most innovative firms to improve internal operations and take on more work.”

Pooles Accountants and Tax Specialists is proud to have been ranked number 76 in the Australian Financial Review’s Top 100 Accounting Firms 2017

POST HARVEST REVIEWS

2017 has been a mixed bag & in some areas farmers are reporting excellent yields. Average to good yields combined with improved commodity prices could see growers recording reasonable profits this season. Managing the income generated from this harvest and ensuring your tax liability is kept to a minimum will be Pooles’ major focus for the next 6 months, & potentially into the 2019 financial year if grain is carried over beyond June 2018. The first element in our tax planning process is our Post Harvest Review. As soon as harvest is completed we will be eager to complete our reviews & get an early indication of potential profits & tax liabilities. In the coming weeks we will be in touch with you & encourage you to contact us so together we can gather the information to complete the review. Included is a summary sheet which will need to be completed after harvest, this sheet & the completion of the December BAS will allow us to commence the Post Harvest Review. If you have any queries please do not hesitate to contact our office as we look forward to a very busy January & February.

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<th>2017 Harvest Summary</th>
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Most people think that they can move in to a property, renovate it, and then sell it without paying tax. The main residence exemption - the exemption that protects your family home from tax - does not apply if your primary purpose is to ‘flip’ the property for a profit. The fact that you are living in the property does not mean it’s exempt from tax.

Some people reading this are probably thinking, but who is going to know? How can the Australian Taxation Office (ATO) really know what my intention is when I buy a property to live in? Generally, the ATO is looking for a pattern of behaviour or a declaration of intention. For example:

- You are not employed and earn your income moving in, renovating then selling / you have a pattern of renovating and selling properties / your loan documents on your mortgage suggest the property is for flipping and not for the long term / you go on national television stating that you are looking to move in, renovate and flip the property (hello The Block contestants).

The ATO’s guide on property is clear: “If you’re carrying out a profit-making activity of property renovations also known as ‘property flipping’, you report in your income tax return your net profit or loss from the renovation (proceeds from the sale of the property less the purchase and other costs associated with buying, holding, renovating and selling it).”

People often make the assumption that any gain made from property flipping will be exempt from tax as long as the property is their main residence for the entire ownership period. However, this is only the case where the property is held on capital account. A property would generally be held on capital account if it is bought with the genuine intention of using it as a private residence or rental property for the foreseeable future and there is evidence to back this up.

The ATO indicates that someone who is renovating a property with the intention of selling the property again at a profit could be taxed on revenue account where the property is held on capital account. A property would generally be able to argue that the sale is dealt with on capital account, which means that the main residence exemption and/or Capital Gains Tax (CGT) discount could apply.

Isolated profit making undertaking – this is someone who buys a property with the primary intention of carrying out renovations and then selling the property when the work is completed. Someone in this category is likely to be taxed on revenue account with no access to the main residence exemption or CGT discount.

Business of renovating properties – this is someone who undertakes property-flipping activities on a regular or repetitive basis and where the activities are organised in a business-like manner. As with the category above, there is generally no access to the main residence exemption or CGT discount.

Just because you live in the property for all or part of the ownership period does not automatically mean that the profits from sale are exempt from tax. The main residence exemption can only reduce capital gains; it cannot reduce amounts that are taxed on revenue account.

**What is the main residence exemption?**

Generally, you do not pay CGT on the sale of your private home.

A full exemption should be available if the following conditions are met:

- You are an individual who is selling a dwelling or an ownership interest in a dwelling;
- The dwelling has been your home for the entire ownership period;
- The dwelling has not been used to produce assessable income (i.e., rented out); and
- The dwelling is situated on land that is 2 hectares or less.

In some situations it is possible to apply a full exemption even if you have not lived in the property for the entire ownership period or where the property has been rented out for a period of time. However, the rules can be complex and need to be analysed in detail to confirm the position.

If a full exemption is not available, it may still be possible to apply a partial exemption. The general 50% CGT discount can also be applied if you have owned the dwelling for more than 12 months (subject to your residency status).

Earlier this year the Government announced that non-residents and temporary residents would no longer able to access the main residence exemption (existing properties held prior to 9 May 2017 will be able to access the exemption until 30 June 2019). However, these proposed changes are not yet law and we are still waiting on the final version of the new rules to be released.

Whether a dwelling is your main residence is a question of fact. The following factors are often taken into account to help determine the issue:

- The length of time you have lived in the dwelling;
- The place of residence of your family;
- Whether you have moved your personal belongings into the dwelling;
- The address you have your mail delivered;
- Your address on the Electoral Roll;
- The connection of services such as telephone, gas and electricity;
- And your intention in occupying the dwelling.
Other tax and renovation issues
The main residence exemption is not the only issue that comes up with property flipping. Tax deductions for rental properties and renovating for profit inside an SMSF are common topics:

Can I claim a tax deduction for renovations on my investment property?
It is not generally possible to claim an upfront deduction for amounts spent on improving a property unless you are carrying on a business of buying, renovating and selling properties. If the property is held for long-term investment purposes then it is generally possible to claim a deduction for these costs over a period of time while the property is used to generate rental income.

Can I renovate a rental property owned by my SMSF?
An SMSF can renovate a property it owns as long as the money used to pay for the renovation is from money already within the fund. If the members pay for the renovation themselves (instead of using money in the fund), the renovation costs can create a contribution issue and the value could even be the improved value of the asset. The usual restrictions around a SMSF acquiring assets from a related party should also be considered, so the SMSF should pay for all the required materials for the renovations directly (or under an agency agreement) rather than reimbursing a related party for the expense.

Does superannuation offer an avenue to help downsizers and first home savers? The Government seems to think so. Late last month the detail of the housing initiatives announced in the Federal Budget were released for consultation. We explore what’s on offer and the implications. It’s important that generational succession is managed as closely and diligently

Super concessions for downsizers
If you are over 65, have held your home for 10 years or more and are looking to sell, from 1 July 2018 you might be able to contribute some of the proceeds of the sale of your home to superannuation.

The benefit of this measure is that you can contribute a lump sum of up to $300,000 per person to superannuation without being restricted by the existing non-concessional contribution caps - $100,000 subject to your total superannuation balance - or age restrictions. It’s a way of building your superannuation quickly and taking advantage of superannuation’s concessional tax rates. The $1.6 million transfer balance cap will continue to apply so your pension interests cannot exceed this amount. And, the Age Pension means test will continue to apply. If you are considering using this initiative, it will be important to get advice to ensure that you are eligible to use this measure and the contribution does not adversely affect your overall financial position.

The downsizer initiative applies to the sale of any dwelling in Australia – other than a caravan, houseboat or mobile home – that you or your spouse have held continuously for at least 10 years. Over those 10 years, the dwelling had to have been your main residence for at least part of the time. As long as you qualify for at least a partial main residence exemption (or you would qualify for the exemption if a capital gain arose) you may be able to access the downsizer concession. This means that you do not actually need to have lived in the property for the 10 year period being tested. The rules also take into account changes of ownership between two spouses over the 10 year period prior to the sale. This could assist in situations where a spouse who owned the property has died and their interest is inherited by their surviving spouse. The surviving spouse can count the ownership period of their deceased spouse in determining whether the 10 year ownership period test is satisfied. This rule could also assist in situations where assets have been transferred as a result of marriage or de facto relationship breakdown.

In general, the maximum downsizer contribution is $300,000 per contributor (so, $600,000 for a couple) but must only come from the proceeds of the sale. The contribution/s need to be made within 90 days after your home changes ownership (generally, the date of settlement) but you can apply to the Tax Commissioner to extend this period. And, the initiative only applies once – you cannot use it again for future properties.

Using super to save for your first home
Saving for a first home is hard. From 1 July 2018, the first home savers scheme will enable first-home buyers to save for a deposit inside their superannuation account, attracting the tax incentives and some of the earnings benefits of superannuation.

Home savers can make voluntary concessional contributions (for example by salary sacrificing) or non-concessional contributions (voluntary after tax contributions) of $15,000 a year within existing caps, up to a total of $30,000. If you don’t end up entering into a contract to purchase or construct a home within 12 months of withdrawing the deposit from superannuation, you can re-contribute the amount to super, or pay an additional tax to unwind the concessional tax treatment that applied on the release of the money. To access the scheme, home savers must be 18 years of age or older, and cannot ever have held taxable Australian real property (this includes residential, investment, and commercial property assets). Home savers also need to move into the property as soon as practicable and occupy it for at least 6 of the first 12 months that it is practicable to do so. As with the concession for downsizers, the first home saver scheme can only be used once by you.

While the capacity to voluntarily contribute to the first home savers scheme started on 1 July 2017 (with withdrawals available form 1 July 2018), it’s best to wait until the legislation is confirmed by Parliament just in case anything changes.
Every so often the Australian Taxation Office (ATO) sends a ‘shot across the bow’ warning taxpayers where their gaze is focussed. Last month in a speech to the National Press Club, Tax Commissioner Chris Jordan did exactly that. Part of the reason for this public outing is the gap between the amount of tax the ATO collects and the amount they think should be collected – a gap of well over 6% according to the Commissioner.

"The risks of non-compliance highlighted by our gap research so far in this market are mainly around deductions, particularly work related expenses. The results of our random audits and risk-based audits are showing many errors and over-claiming for work related expenses – from legitimate mistakes and carelessness through to recklessness and fraud. In 2014-15, more than $22 billion was claimed for work-related expenses. While each of the individual amounts over-claimed is relatively small, the sum and overall revenue impact for the population involved could be significant,“ the

**Individuals – the hit list**
- Claims for work-related expenses that are unusually high relative to others across comparable industries and occupations;
- Excessive rental property expenses;
- Non-commercial rental income received for holiday homes;
- Interest deductions claimed for the private proportion of loans; and
- People who have registered for GST but are not actively carrying on a business.

While small in value, the ATO are also concerned about the amount of people who appear to be claiming deductions by default for items such as clothing expenses. In 2014–15, around 6.3 million people made a claim for $150 for work related clothing - the level you can claim without having to fully substantiate your expenses. Those 6.3 million claims amounted to $1.8 billion in deductions.

**Small business – the hit list**
- Those deliberately hiding income or avoiding their obligations by failing to register, keep records and/or lodge accurately;
- Businesses that report outside of the small business benchmarks for their industry;
- Employers not deducting and/or not sending PAYG withholding amounts from employee wages;
- Employers not meeting their superannuation guarantee obligations;
- Businesses registered for GST but not actively carrying on a business;
- Failure to lodge activity statements; and
- Incorrect and under reporting of sales.

If your business is outside of the ATO’s benchmarks, it’s important to be prepared to defend why this is the case. This does not mean that your business is doing anything wrong, but it increases the possibility that the ATO will look more closely at your business and seek an explanation.

**Private groups – the hit list**
- Tax or economic performance not comparable to similar businesses;
- A lack of transparency in tax affairs;
- Large, one-off or unusual transactions, including transfer or shifting of wealth;
- A history of aggressive tax planning;
- Choosing not to comply or regularly taking controversial interpretations of the law;
- Lifestyle not supported by after-tax income;
- Treating private assets as business assets; and
- Poor governance and risk-management systems.

**Property developers – the hit list**
- Developers using their SMSF to undertake or fund the development and subdivision of properties leading to sale;
- Where there has been sale or disposal of property shortly after the completion of a subdivision and the amount is returned as a capital gain;
- Where there is a history in the wider economic group of property development or renovation sales, yet a current sale is returned as a capital gain;
- How profit is recognised where related entities undertake a development (i.e., on the development fees as well as sales of the completed development);
- Whether inflated deductions are being claimed for property developments;
- Multi-purpose developments - where units are retained for rent in a multi-unit apartment, to ensure that the costs are appropriately applied to the properties produced.

These are just a small sample of the ATO’s area of focus. Other areas include tax and travel related expenses and self-education expenses. We’ll guide you through the risk areas pertinent to your individual situation but if you are concerned about any of the ‘hit list’ areas mentioned, please contact us.
What everyone selling a property valued at $750k or more needs to know

Every vendor selling a property needs to prove that they are a resident of Australia for tax purposes unless they are happy for the purchaser to withhold a 12.5% withholding tax. From 1 July 2017, every individual selling a property with a sale value of $750,000 or more is affected.

To prove you are a resident, you can apply online to the Tax Commissioner for a clearance certificate, which will remain valid for 12 months.

While these rules have been in place since 1 July 2016, on 1 July 2017 the threshold for properties reduced from $2 million to $750,000 and the withholding tax level increased from 10% to 12.5%.

The intent of the foreign resident CGT withholding rules is to ensure that tax is collected on the sale of taxable Australian property by foreign residents. But, the mechanism for collecting the tax affects everyone regardless of their residency status.

Properties under $750,000 are excluded from the rules. This exclusion can apply to residential dwellings, commercial premises, vacant land, strata title units, easements and leasehold interests as long as they have a market value of less than $750,000. If the parties are dealing at arm’s length, the actual parties are dealing at arm’s length, the actual purchase price is assumed to be the market value unless the purchase price is artificially contrived.

If required, the Tax Commissioner has the power to vary the amount that is payable under these rules, including varying the amounts to nil. Either a vendor or purchaser may apply to the Commissioner to vary the amount to be paid to the ATO. This might be appropriate in cases where:

- The foreign resident will not make a capital gain as a result of the transaction (e.g., they will make a capital loss on the sale of the asset);
- The foreign resident will not have a tax liability for that income year (e.g., where they have carried forward capital losses or tax losses etc.); or
- Where they are multiple vendors, but they are not all foreign residents.

If the Commissioner agrees to vary the amount, it is only effective if it is provided to the purchaser.

The withholding rules are only intended to apply when one or more of the vendors is a non-resident. However, the rules are more complicated than this and the way they apply depends on whether the asset being purchased is taxable Australian real property or a company title interest relating to real property in Australia.

Please contact us if you need assistance navigating the foreign resident CGT withholding rules or are uncertain about how the rules are likely to apply to a transaction.

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.
ASIC is in the midst of a concerted campaign targeting private companies that have outgrown the reporting exemptions.

ASIC requires companies to prepare and lodge a financial report and a directors’ report each financial year, and have the accounts audited unless the company is exempt. Most small companies are exempt from the compliance requirements as are small foreign owned companies in certain circumstances.

Utilising data from the Australian Taxation Office (ATO), ASIC is contacting companies that have moved beyond or not complied with the exemption and are now in breach of their reporting requirements.

If your company has never had to lodge financial reports with ASIC in the past, it’s very easy to breach the rules without realising it. The reporting requirements are hard and fast and ASIC is not overly sympathetic to “oops” as a reason for a breach.

What is a small company?

Small companies are exempt if they satisfy at least two of the following:

- The consolidated gross revenue for the financial year for the company and any entities it controls is less than $25 million
- The value of consolidated gross assets at the end of the financial year of the company and any entities it controls is less than $12.5 million, and
- The company and any entities it controls have fewer than 50 employees (full time equivalent) at the end of the financial year.

No longer a small company? Then you are a large company and are required to lodge audited financial statements.

Will the auditor want to audit the previous year’s figures when we were still a small company? Yes. This exemption is for companies not controlled by a foreign entity or disclosing entities.

Failure to lodge annual accounts with ASIC may result in penalties and potentially the company being deregistered.

The rules for foreign controlled companies

Small companies controlled by a foreign company may also be exempt in some circumstances.

For small companies that are not part of a large consolidated group, the directors must resolve to rely on relief provided by ASIC and lodge this resolution (form 384). Timing is everything to be eligible for this exemption, if the right form is not lodged between the period starting 3 months prior to the start of the financial year relief is first applied and ending 4 months after the end of the relevant financial year, the exemption is unlikely to apply.

ASIC warns that, “in most cases, relief is not granted for financial reports that were due in the past”.

Foreign companies that fail to lodge the appropriate financials and are not exempt may be deregistered.

Again, if you have a requirement to lodge financial statements with ASIC, they must be audited.

If you are uncertain about the requirements for your company, please contact us and we’ll work with you to ensure your company is compliant.
The ATO’s own risk assessments suggest that between 11% and 20% of employers could be non-compliant with their SG obligations and that non-compliance is “endemic, especially in small businesses and industries where a large number of cash transactions and contracting arrangements occur.”

Celebrity chefs are the latest in a line of employers to publicly fall foul of the rules - one for allegedly inventing details on employee payslips and another for miscalculating wages. But what happens if your business gets SG compliance wrong?

Under the superannuation guarantee legislation, every Australian employer has an obligation to pay 9.5% Superannuation Guarantee Levy for their employees unless the employee falls within a specific exemption. SG is calculated on Ordinary Times Earnings – which is salary and wages including things like commissions, shift loadings and allowances, but not overtime payments.

Employers that fail to make their superannuation guarantee payments on time need to pay the SG charge (SGC) and lodge a Superannuation Guarantee Statement. The SGC applies even if you pay the outstanding SG soon after the deadline. The SGC is particularly painful for employers because it is comprised of: The employee’s superannuation guarantee shortfall amount – so, all of the superannuation guarantee owing Interest of 10% per annum, and An administration fee of $20 for each employee with a shortfall per quarter. Unlike normal superannuation guarantee contributions, SGC amounts are not deductible, even if you pay the outstanding amount. That is, if you pay SG late, you can no longer deduct the SG amount even if you bring the payment up to date.

And, the calculation for SGC is different to how you calculate SG. The SGC is calculated using the employee’s salary or wages rather than their ordinary time earnings. An employee’s salary and wages may be higher particularly if you have workers who are paid for overtime.

Under the quarterly superannuation guarantee, the interest component will be calculated on an employer’s quarterly shortfall amount from the first day of the relevant quarter to the date when the superannuation guarantee charge would be payable.

The penalties imposed on the employer for failing to meet SG obligations on time might seem harsh, but they have been designed that way on purpose. This is really money that belongs to the employee and should be sitting in their superannuation fund earning further income to support the employee in their retirement. Directors are personally liable for unpaid SG

Where attempts have failed to recover superannuation guarantee from the employer, the directors of a company automatically become personally liable for a penalty equal to the unpaid amount.

Directors who receive penalty notices need to take action to deal with this – speaking with a legal adviser or accountant is a good starting point.

“The coming together is a beginning; keeping together is progress; working together is success.”

Henry Ford
Director’s fees: What and How To Pay Them

The issue of Director’s fees often comes up – should we pay directors, how to pay, and if we do pay fees how should they be paid? We answer the common questions for private companies.

Can you pay a Director?
Directors who work in the company, executive directors, would generally have an agreed executive remuneration structure that takes into account their service including attending Board meetings (so, generally no extra fees for service outside of the agreed remuneration structure).

For non-executive directors, companies can only pay Director’s fees if the company constitution allows for it or a resolution is passed to make the payments. The resolution to pay directors fees must be made and documented prior to the fees being paid.

These fees are in addition to any agreed expenses such as travel expenses to attend board meetings or in connection with the company’s business.

Fees paid to directors are subject to disclosure requirements. Special rules exist for listed entities, not for profits, APRA-regulated financial institutions and specific advice should be sought for the management of director fees by these entities.

Tax deductibility of Director’s fees
Fees paid to Board members are tax deductible to the company in the year they are paid or intended to be paid. Many Boards pass a resolution to pay Director’s fees just prior to the end of the financial year to claim the tax deduction in that same year. The fees do not necessarily have to be paid prior to the end of the financial year but the Board must have definitely committed to paying them and then the fees paid as soon as practicable.

Tax on Director’s fees
Assuming the directors fees are being paid through an individual contractual arrangement (i.e. the contract is with Mr Smith to act as a director, not with Smith Pty Ltd to provide ‘someone’ as a director, and that happens to be Mr Smith), then the directors fees are treated like salary and wages for the purposes of PAYG withholding. PAYG is required to be withheld from the gross directors fees, reported on the IAS or BAS that is used to report the salary and wages and related PAYG W for that period, and should be remitted to the ATO.

Director’s fees fall within the definition of Ordinary Times Earnings, and superannuation guarantee applies.

Can Director’s fees be paid as super contributions?
Yes, assuming the proper process has been followed (e.g., effective salary sacrifice arrangement has been entered into before the fees have been earned), fees can be paid to the Director’s superannuation fund as a reportable employer contribution to utilise preferential tax rates. This assumes the director is within their contribution limits.
From 1 July 2018, the taxable payments reporting system will extend beyond the building industry to cleaning and courier businesses. This means that these businesses will need to report payments they make to contractors (individual and total for the year) to the ATO. By ‘payment’ the ATO means any form of consideration including non-cash benefits and constructive payments.

The building industry has had this form of “enhanced reporting” since 2012-13. The result was an additional $2.3 billion in income tax and GST liabilities collected through voluntary reporting in the first year alone.

What is a cleaning and courier service?
The terms ‘cleaning service’ and ‘courier service’ take their ordinary meaning.

Courier services include activities where items or goods are collected from, and/or delivered to, any place in Australia using a variety of methods including by truck, car, station wagon, van, ute, motorcycle, motorised scooter, bicycle or other non-powered means of transport, or on foot. Freight services, blood and blood product couriers, and passenger transport are not affected.

A cleaning service is any service where a structure, vehicle, place, surface, machinery or equipment has been subject to a process in which dirt or similar material has been removed from it. This includes office cleaning, road sweeping or street cleaning, swimming pool cleaning, park and facilities cleaning, or cleaning for certain types of cultural or sporting events.

Mixed business that supply services including courier or cleaning services will also be affected.

What you need to do
The first annual report for affected cleaning and courier companies is due by 29 August 2019 for the 2018-19 year. The types of information reported to the ATO about contractors include:

- ABN (where known)
- Name
- Address
- Total paid to the contractor (including GST) for the financial year, and
- Total GST included in the gross amount that was paid.

If an invoice you receive from a contractor includes both labour and materials, whether itemised or combined, you will need to report the total amount of the payment.

If your business is likely to be affected by the new requirements and you currently do not have systems in place that allow you to readily access the information required by the ATO, it’s important to start your planning now.

- End -