M G ARTHUR & ASSOCIATES
Accounting • Taxation • Business Services

# About Tax

A FRIENDLY TAX NEWSLETTER FROM MANU GUPTA

VOLUME 10, 2011

## IN THIS EDITION



### Practice News

**M G Arthur & Associates continues to provide high end tax solutions for Australian – Indian Dual Tax Issues.**

**Our tax solutions span across various issues and opportunities encountered by individuals and small to medium sized business entities.**

**Please note change of our postal address :**
**PO BOX 264**
**Baulkham Hills NSW 1755**

# PLANNING POINT

## CHARMED BY INDIAN GROWTH STORY?

As an Indian-Australian and an NRI (Non-Resident Indian), I have often been charmed by the 'Indian Growth Story'. Only recently the Finance Minister of India declared that India was heading towards 9% p.a. GDP growth for some time to come. Keen investors would be interested to note that returns on Term Deposits in India are appx. 8%-9% p.a. with Mutual Funds returning from 12% to 25% p.a on a long term basis. Often the currency risk has dampened spirits but with Australian Dollars at record high, it is quite possible that there may be opportunities to make money in the long run.

Clients have often asked me if they could cash into these opportunities. The good news is, as an NRI, you are allowed to invest your overseas funds in the Indian Economy.

- ✓ **You can buy properties, shares & mutual fund interests, or invest in Term Deposits.**
- ✓ **You can borrow in Australia to invest in India and enjoy negative gearing here.**
- ✓ **You can even use your Self Managed Superfund (SMSF) to invest in India.**

However, it is pertinent to ensure that channels used are legal and that the funds invested can be repatriated back to Australia. Some of the hurdles to cross are;

- ***Using legal channels to transfer funds across so that funds can be brought back***
  - Under Indian Repatriation Laws, capital invested using overseas funds through legitimate NRE (Non Resident External) bank account can be repatriated once the investments are sold and any tax required is paid.
  - For repatriation of funds generated in India (e.g. through sale of properties held prior to taxpayer becoming a non resident), there are some additional conditions to satisfy.

**Indian Income Tax Rates**

| *Taxable income ($)* | | *Tax Rates (%) +surcharge* |
|---|---|---|
| Men | Women | |
| Up to 1.8 lacs | Up to 1.9 lacs | NIL |
| 1.8 lacs to 5 lacs | 1.9 lacs to 5 lacs | 10% |
| 5 lacs to 8 lacs | 5 lacs to 8 lacs | 20% |
| Above 8 lacs | Above 8 lacs | 30% |

**Australian Income Tax Rates**

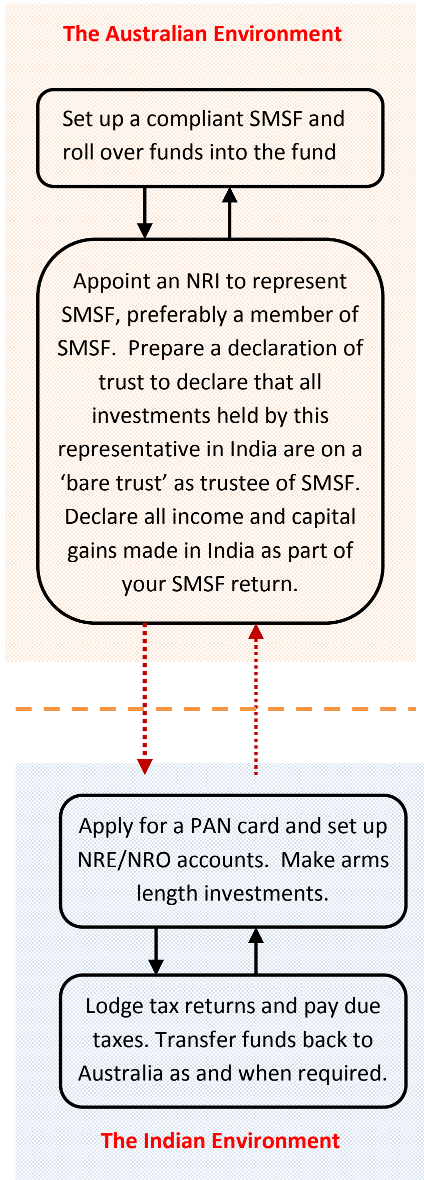
| *Taxable income ($)* | *Tax payable ($)* |
|---|---|
| 0 - 6,000 | Nil |
| 6,001 - 37,000 | Nil + 15% of excess over 6,000 |
| 37,001 - 80,000 | 4,650 + 30% of excess over 37,000 |
| 80,001 - 180,000 | 17,550 + 37% of excess over 80,000 |
| 180,001 + | 54,550 + 45% of excess over 180,000 |

The above rates exclude the 1.5% Medicare levy and the flood levy.
The low income tax offset is a maximum of $1,500.

- ***Ensuring compliance with both Indian Taxation and Australian Taxation and avoiding double taxation***
  - As an investor in India, you would be subject to Indian tax on income and capital gains in India.
  - As a tax resident of Australia, you would be subject to tax on worldwide income and capital, including Indian income and capital gains.
  - Australian Tax Law provides credit for tax paid overseas on such income up to average Australian Tax applicable, called Foreign Income Tax Offset (FITO). You would be required to pay only the difference in Australia.
  - In the event that Indian Tax is higher than Australian Tax, there would not be any refund by ATO. Fortunately Indian Tax rates are generally lower than Australian rates, thereby mitigating this problem.
  - Double Tax Avoidance (DTA) Treaty further restricts Indian Tax Rates on certain Sources of Income (e.g. 15% on Interest).
  - A loss on Indian Investment (e.g. negative gearing loss on property investments or capital loss) can be claimed in Australian Tax Returns in the same way as Australian losses are claimed.
  - Interest borrowed in Australia for Indian investment can be claimed against returns on Indian investment as normal. However if you borrow in India for Indian investments, the interest would be deductible here only if a withholding tax of 10% is paid to ATO.

- ***Satisfying additional conditions for Superfund Investments Overseas***
  - Superannuation Law does not restrict you from investing funds of your SMSF funds overseas, provided you comply with the law. These include ensuring arm's length investments and complying with sole purpose test.
  - Some of the conditions to ensure are investments are held in the name of the trustee of superfund, funds kept separate from personal funds and invested as per investment strategy towards retirement benefits.
  - Indian tax and investment laws however do not recognise a SMSF. Thus one of the members would need to represent SMSF, and make investments in India under 'declaration of trust'.
  - The member would accordingly hold investments in India and pay Indian Taxes on behalf of the SMSF. Such income generated and tax paid would be declared in Australia as income and taxed in SMSF.
  - It is critical to ensure that this representative member satisfies NRI status, so that funds moved into India can be invested and subsequently repatriated under concessions available to NRIs.

## *How SMSF Investments in India Work*




**TIP!** To say the above strategy is tedious would be an understatement. It is important that all the 't's are crossed and all the 'i's are dotted to ensure complete compliance. We have substantial expertise and experience in helping our clients manage these requirements. Feel free to contact us if you are be interested in the above investment strategy.

**Super Tax Rates**

| | Compliant Funds | Prior to Starting Pension | During Pension |
|---|---|---|---|
| Tax on Income | | 15% | NIL |
| Tax on Capital Gains | | 10% | NIL |

## Move Your Business Property to Your SMSF – FREE !

Consider this. You and your spouse own a business property, currently used in your own business. The business makes substantial profits and pays market rent to you, on which you pay top dollar tax! How good would it be if this property was in your SMSF. You would pay only 15% tax on Rent, and 10% on Capital Gain s while your business claims rent as deduction at higher tax rates. Even better, if you are in pension phase, the tax in the superfund would be NIL on both Rent and Capital Gains.

The hurdles to cross are ;

1. Capital Gains on your transfer of property to SMSF.
2. Stamp Duty on transfer.
3. Funding the purchase or transfer with insufficient funds in SMSF.

The good news is that with recent changes in law, your SMSF can borrow funds to purchase your own property for your business use. This could even be up to 100% of the value, provided you have collateral property to provide as security. Recent changes to Duties Act NSW may make your transfer eligible for a $50 stamp duty ($500 if there is a borrowing involved). Further, by using Small Business CGT Concessions, you may be able to get away without paying any Capital Gains on such transfer. How good is that?

**TIP!** We have organised a number of such transfers successfully. If you would like to make use of this golden opportunity, do not hesitate to contact us.



# NEWS POINT

## Are You on ATO Hot List This Year?

Every year ATO releases its compliance program, which includes professions and areas on which ATO's compliance activities will focus. Presenting here a snap shot of the areas to watch out;

Occupations under watch;

- Teachers, especially expenses on study tours and gifts for students
- Engineers, especially on study courses
- Technicians, especially on travel to work with heavy tools

Investors under watch;

- Property investors - first time claimers.
- Property investors - initial expenses, just before or just after purchases, mostly not claimable and need to be capitalised.
- Foreign source income and capital gains.

Business Watchlist;

- High Net Worth Individuals
- Personal Services Income (PSI), especially Doctors and IT Professionals using companies and trusts
- Sham contracting, businesses using ABN contractors to avoid employee entitlements including super, worker's compensation and payroll tax
- Cash economy and business benchmark

Superfund areas of concern;

- Illegal Early Access to superfund
- Personal super contribution deduction
- Excess Contribution Tax
- SMSF compliance with law

**TIP!** What does it mean for you? Non compliance in any area of tax law could result in heavy penalties and costs. While it is important that all taxpayers comply with the law, if your tax affairs relate to one or more of the above, it is advisable to review your affairs closely for compliance.