bO2
Corporate Essentials

Tax Smart Australia

Issue
#0093

Tax Essentials

Federal Budget Update 2018-19

JUNE	2018

THE NEWSLETTER
Tax Planning Opportunities for Everyday Business

LEIGH'S CORNER
Industrial Relations Update April 2018 *Article No.41*

YEAR END BONUS INCLUDING YEAR END TAX PLANNING
We promise the following will be very useful

SPECIAL BONUS ISSUE
2018 Federal Budget Update

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Contents

Before we commence our budget commentary, we emphasise that at bO2 Tax Essentials we aim to be apolitical at all times while paying due respect to the Government of the day and its regulatory bodies. It is acknowledged that political ideology underpins economic policy when dealing with the collection and allocation of government revenue.

While journalists and politicians comment on government spending, taxation deficits and debt, we aim to objectively outline the changes that impact directly on our subscribers.

As such kindly be aware... these are only proposed changes.

The Newsletter

SBSCH SYSTEM STATUS

The ATO has identified some issues with the Small Business Superannuation Clearing House (SBSCH) system that impacted the processing and crediting of payments to some employee's super fund accounts. They are working closely with super funds to resolve these issues.

This caused some concern but it would appear that the issues impacting the allocation of payments have been resolved and all payments are now with funds. The backlog of payments has been cleared and the ATO does not hold any payments earlier than 16 April. The exception is a small number of payments requiring some manual intervention, such as where incorrect fund account numbers have been supplied. This is in-line with normal practice.

Reassurance in relation to Super Guarantee Obligations

Also, the ATO has confirmed that where an employer has made a payment to the SBSCH by the quarterly due date they are considered to have met their obligations under the Superannuation Guarantee (Administration) Act 1992. This is irrespective of any delays in crediting amounts to employee superannuation accounts.

If employers are unable to make SBSCH payments by the 28 April quarterly due date because of difficulties arising from the transition to the new system, or access issues, the ATO will not pursue the lodgment of super guarantee charge statements. This is provided the employer:

- had funds available to pay their SG liability by the 28 April due date
- took all reasonable steps to make the payment, and
- made the payment promptly once the ATO system or access issues were resolved.

We will keep you update on developments throughout the June Quarter and advise on any problems.

OMBUDSMAN CALLS FOR SMALL BUSINESSES IN TROUBLE WITH ATO TO "CONTACT US"

Small business owners are advised to urgently contact the Australian Small Business and Family Enterprises Ombudsman (ASBFEO) if they have experienced heavy handed tactics by the Australian Taxation Office (ATO).

"Minister for Revenue and Financial Services, Kelly O'Dwyer, has requested an inquiry into the allegations raised in the joint Fairfax/Four Corners investigation," Ms Carnell said.

"Under the direction of Treasury, my office and the Inspector-General of Taxation, Ali Noroozi, will examine cases of unfair conduct by the ATO.

"Our timeframes on this inquiry are extremely tight, so its important small business owners tell us their story as a matter of urgency – within the next week or two.

"My office is interested in examples where the ATO has targeted small businesses unfairly and the business owner has been affected financially.

"According to the ATO's latest annual report, there are 3.8 million small business taxpayers, including sole traders, in the tax system. The Inspector-General says in roughly 5% of cases, the ATO gets it wrong ... which on the face of it is way too many.

"We want to gain a better understanding of how the ATO is adversely interacting with small businesses, so we can provide government with constructive and realistic advice."

With complete anonymity assured, small business owners can explain their situation by emailing: inquiries@asbfeo.gov.au

If you have raised your concerns with ATO and the Inspector-General and your matter has not been resolved, ASBFEO may be able to assist via emailing: info@asbfeo.gov.au

DECISION IMPACT STATEMENT

Panayi v Deputy Commissioner of Taxation

Outlines the ATO's response to this case which concerns the application of the lockdown director penalties provisions as introduced by the Tax Laws Amendment Act 2012.

The ATO commenced proceedings to recover liabilities due under the director penalty regime against the taxpayer in his capacity as director of a company. The taxpayer defended the proceedings on grounds that he was not a director of the company at the relevant time and that the liability had been remitted when members of the company resolved that it be wound up voluntarily. The success of this argument depended on the application of section 269-30 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* (TAA) in its unamended form as in force before 30 June 2012.

The primary judge applying the decision of the Western Australian Court of Appeal in R*oche v. Deputy Commissioner of Taxation* [2015] WASCA 196 at [56] -[58], rejected the arguments and held that the amended form of section 269-30 of Schedule 1 to the TAA applied to the appellant's penalty because the appellant, as a director of the company, did not stop being under the relevant obligation under section 269-15 of Schedule 1 to the TAA until after 30 June 2012, the date of commencement of item 9 of the Tax Laws Amendment Act 2012. Applying that section as amended, subsection (1) did not apply to effect a remission of the appellant's penalty because the company did not give the Commissioner any notification under section 16-150 of Schedule 1 to the TAA within the period of three months after the due date for the payment of any of the withheld amounts.

Issues decided by the court

The issue in the appeal as relevant to the special leave application was limited to:

- whether the primary judge erred in applying the amended form of section 269-30 of Schedule 1 to the TAA.

The Court of Appeal held that an amendment that prospectively alters a person's unexercised opportunity to have a liability remitted does not engage the common law presumption that statutes do not have a retrospective operation.

The High Court refused to grant special leave and dismissed the application with costs.

ATO View of Decision

The decision accords with the ATO's view of the application of the lockdown director penalties provisions as introduced by the *Tax Laws Amendment Act 2012*.

SMSFs AND NON-ARM'S LENGTH INCOME FROM TRUSTS

This issue has been a constant for the last 25 years and simply will not go away. Given the tax concession SMSFs enjoy there will always be an incentive to divert income into these entities. Be warned the ATO has a focus on this issue and SMSF Auditors are more vigilant given this.

The non-arm's length income rules can apply to investments, transactions and other arrangements undertaken by self-managed funds (SMSFs) when the terms of the relevant investment, transaction or arrangement is uncommercial in nature.

Let your clients know that if they distribute any income from their discretionary trust to a SMSF beneficiary, it is:

- automatically deemed non-arm's length income of the SMSF (regardless of the nature of the dealings between the relevant parties)
- taxable at the highest marginal rate.

Income received by a SMSF that is a fixed entitlement to trust income is also non-arm's length income if it is:

- income from a scheme where the parties were not dealing with each other at arm's length
- more than the SMSF might have expected to derive if the parties were dealing with each other at arm's length.

HOLIDAY HOMES

The timing of this ATO media release was particularly interesting – just prior to Easter when owners of holiday homes head there for the Easter break.

They have in their sights the large number of mistakes, errors and false claims made by rental property owners who use their own property for personal holidays.

According to Assistant Commissioner, Kath Anderson:

- As Australians enjoy the Easter break, they should be aware that the ATO is focusing on taxpayers who claim deductions for holiday homes that are not actually available for rent or only available to friends and family.
- While private use by family and friends of a holiday home is entirely legitimate, it does reduce your ability to earn income from the property. This in turn impacts the deductions you can claim.

- You can only claim deductions for your holiday home if your property is genuinely available for rent. You cannot claim for times when you were using it for your own personal holidays or letting friends and family stay rent-free. It's not ok to expect everyone else to pay for your holiday.
- Holiday home owners also need to remember that if their property is rented to friends and family at mates' rates, they can only claim deductions for expenses up to the amount of the income received.
- Besides holiday rentals, the ATO is also focused on other times when a property is not rented or genuinely available for rent. While some taxpayers claim their property is available for rent, but when the ATO investigates, it is clear they have little intention of renting it out.
- The ATO sees things like unreasonable conditions placed on prospective renters, rental rates set above market rates, or failing to advertise a holiday home in a way that targets people who would be interested in it.
- Incorrect rental property claims will not go unnoticed. Whether it is a genuine mistake or a deliberate attempt to over-claim, new technology, data matching and other systems allow the ATO to identify unusual claims.
- Where something raises a red flag, it will be investigated. Property owners whose claims are disproportionate to the income received can expect scrutiny from the ATO.
- All rental property owners should double-check their claims before lodging their tax return, even if submitting through a tax agent.
- Taxpayers should make sure that you declare all rental income and only claim deductions for periods that the property is rented or was genuinely available for rent at market rates.
- Taxpayers need to keep accurate records of the income they receive from the rental property, expenses incurred, and evidence of the property being rented or genuinely available for rent at market rates. Also keep records of who stayed at the holiday home and when, including the time you and your family stay at the property.

If you refuse to rent out your property to interested potential tenants without a good reason, this indicates that you may not have a genuine intention to make income from the property and could be reserving it for private use. In this case, your property wouldn't meet the criteria for being genuinely available for rent.

CASES

Income earned from foreign employment by independent contractor not exempt

PZTL and Commissioner of Taxation [2018] AATA 461 (23 February 2018)

The above AAT case found that income earned by a taxpayer while deployed overseas in a support role by the Australian Defence Force was not exempt under s 23AG of the Income Tax Assessment Act 1936. The taxpayer was employed by an independent contracting entity as a Field Service Representative.

The AAT found that the taxpayer's continuous foreign service did not arise from his being deployed by the Commonwealth or a Commonwealth, State or Territory authority, within s23AG(1AA)(d). Crucially it was the taxpayer's employer who was the relevant responsible entity.

TAX CHALLENGES ARISING FROM DIGITALISATION – INTERIM REPORT 2018

OECD/G20 Base Erosion and Profit Shifting Project

This interim report of the OECD/G20 Inclusive Framework on BEPS is a follow-up to the work delivered in 2015 under Action 1 of the BEPS Project on addressing the tax challenges of the digital economy. It sets out the Inclusive Framework's agreed direction of work on digitalisation and the international tax rules through to 2020. It describes how digitalisation is also affecting other areas of the tax system, providing tax authorities with new tools that are translating into improvements in taxpayer services, improving the efficiency of tax collection and detecting tax evasion.

Highlights: More than 100 countries agree to work towards a consensus-based solution.

NEW LAWS WILL CLAMP DOWN ON TAX EVASION IN PROPERTY DEVELOPMENT SECTOR

On 28.3.2018, The Federal Government passed legislation to clamp down on GST evasion in the property development sector.

From 1 July 2018, the tax law will require purchasers of new residential premises and new residential subdivisions to withhold the GST on the purchase price at settlement and pay it directly to the Australian Taxation Office (ATO).

According to the Minister for Revenue and Financial Services, Kelly O'Dwyer: This measure targets illegal phoenix activity in the property development sector. It puts an end to the problem of some developers collecting GST on new properties but then dissolving their business to avoid remitting the tax when it is owed to the ATO.

This measure complements the Government's comprehensive package of reforms to combat illegal phoenix activity, including the Government's commitment to introduce a Director Identification Number.

The legislation also delivers on the Government's commitments to:

- make regulatory improvements to Treasury portfolio laws such as in superannuation and corporations law,
- extend tax relief for merging superannuation funds until 1 July 2020,
- provide ongoing funding to the SuperStream gateway network governance body, and
- transfer the regulator role for early release of superannuation benefits on compassionate grounds from the Department of Human Services to the ATO, cutting the administrative burden for superannuation trustees and helping applicants to receive their funds sooner.

SENTENCE HANDED DOWN IN LARGEST EVER PROSECUTED TAX FRAUD

On 29.3.2018, the Supreme Court of NSW sentenced Michael Issakidis to 10 years and three month's jail for his involvement in the largest prosecuted tax fraud case in Australia's history. He and co-conspirator Anthony Dickson deliberately absorbed $450 million of otherwise assessable income through falsely created losses overseas to evade $135 million in corporate tax netting themselves $63 million in fees.

This result follows the sentencing of co-accused Dickson, who in 2015 was sentenced to 11 years' jail, later increased to 14 years on appeal. Dickson's sentence marked the longest ever jail time for tax fraud and money-laundering.

The significant sentences handed down to both Issakidis and Dickson bring to a conclusion the multi-year fraud investigation by the Serious Financial Crime Taskforce involving members from the ATO and the AFP.

The pair created a web of false identities to aid their deception and siphoned money through the UK, Hong Kong and the UAE via fake domestic and international companies to fund their lavish lifestyles, netting them approximately $63 million.

While the scheme was incredibly complex - involving the worldwide movement of funds - this didn't mean it couldn't be detected. The ATO maintains that parties who pursue dishonest and fraudulent behaviour, including the use of abusive trust arrangements and the guise of commercially justified business transactions are on notice that they will use all our available powers, including partnering with law enforcement agencies, to bring them to justice.

The sentencing of Issakidis and Dickson may serve as a wake-up call to the lawyers and accountants who devise and promote tax evasion schemes and never think they could go to jail.

According to the Commissioner, Chris Jordan,

- There are serious consequences and personal impacts for these crimes. Those unethical lawyers and accountants devising these schemes don't want to have to face the reality of having to going home, pack your bags and to tell your family "daddy's going to jail".
- The ATO maintains enforcement strategy for dealing with complex financial fraud arrangements is robust and effective. Through the partnership of the Serious Financial Crime Taskforce and Criminal Assets Confiscation Taskforce, the ATO will continue to successfully uncover significant fraud operations and bring the perpetrators to justice.

COMPLIANCE EXAMPLES

Recently the ATO published a fact sheet outlining their compliance approach to the superannuation guarantee. The superannuation is payable when employers fail to meet their compliance obligations.

It would be fair to say that while employers are usually aware of their obligations, they are often unaware of the consequences of failing to meet their obligations and in particular the ATO's approach to these breaches. The four examples below may prove useful and bear in mind the superannuation guarantee payment and associated penalties are not a tax deduction.

Example 1 - On 2 October 2016, employer Big Books reviewed their super guarantee obligations and identified that due to a payroll anomaly, some eligible employees had not been paid all of their SG entitlements for the last 3 quarters. Big Books is usually up to date with all their obligations and took action to immediately rectify the situation by lodging SGC statements with payment in full to the ATO. The ATO will consider Big Books to be an example of an engaged employer and will not consider additional penalties in this circumstance.

Example 2 - Employer Beck Tools has been experiencing cash flow problems due to non-payment of invoices by several of their customers. As a result, Beck Tools is struggling to meet their SG obligations and pay all of their eligible employee's super for the quarter ending 31 December 2016. Beck Tools takes steps to rectify the situation and lodges SGC statement, but still experiences difficulty in paying the resulting debt by the due date. The ATO contacts Beck Tools to follow-up the outstanding liability and an arrangement is negotiated for Beck Tools to pay their debt in instalments.

The ATO will consider Beck Tool's circumstances and compliance history. In this example, Beck Tools generally has a good compliance history, cooperated with the ATO once contacted, met their payment arrangement conditions and voluntarily took action to rectify their non-compliance prior to the ATO commencing an audit. The ATO will not consider additional penalties in this circumstance.

Example 3 - Employer Robopen has been experiencing cash flow problems due to unexpected changes in seasonal demand for their products. As a result, Robopen hasn't met their SG obligations for their eligible employees for the quarter ending 31 December 2016. Robopen decides to do nothing for the time being, hoping to be able to rectify the situation once their cash flow improves. The ATO receives a notification from an employee of Robopen reporting that their superannuation appears to have been unpaid for a period. The ATO investigates the notification and commences an employer audit. Robopen is found to be non-compliant with their obligations and is advised to lodge an SGC statement.

Robopen lodges the required SGC statement and after discussing their cash flow concerns with the ATO, they negotiate an appropriate payment arrangement. Although Robopen did co-operate with the ATO audit, they should have voluntarily disclosed that they had not met their obligations by lodging an SGC statement by the due date. As such, penalties were considered by the ATO for their non-compliance, but were reduced based on Robopen's circumstances and willingness to co-operate during the audit process.

Example 4 - Employer Paper Jam has not paid their employees SG entitlements for the quarter ending 31 December 2016. They are aware that this is a failure to comply, but as they already have debts to both the ATO and other creditors, they decide that these are more pressing to keep their business afloat. Paper Jam does not take any action to rectify the situation or discuss their circumstances with the ATO. The ATO receives a notification from an employee of Paper Jam reporting that their superannuation appears to have been unpaid for a period. The ATO investigates the notification and notes that Paper Jam has a history of non-compliance and has previously been subject to an audit for an earlier period.

The ATO commences an employer audit. Paper Jam does not respond to the ATO's requests for contact or provision of information and does not lodge an SGC statement. The ATO raises a default assessment for the quarter ending 31 December 2016 and informs Paper Jam of the outcome in writing. The ATO will consider Paper Jam to be an example of a disengaged employer. In this example, heavy penalties will be imposed due to Paper Jam's failure to comply with their obligations, previous compliance history, and failure to engage with the ATO when requested to do so.

The important take out here is that the ATO is unlikely to impose additional penalties for employers who engage with them and have a generally good compliance history. Losing tax deductibility when the S.G. is imposed is costly and it is suggested that borrowing to fund on time superannuation contributions is a tax deduction and that this may prove to be very cost effective for a genuine going concern.

TAXABLE PAYMENTS REPORTING SYSTEM AND CONTRACTORS IN COURIER AND CLEANING INDUSTRIES

The *Treasury Laws Amendment (Black Economy Taskforce Measures No.1) Bill 2018*, will to taxable payments reporting system to business in the courier and cleaning industries form 1.7.2018. The ATO has updated its draft guidance on the proposed expansion of the taxable payments reporting system.

PERSONAL TAX UPDATE

Government response to inquiry into Tax Deductibility

With the stresses on the revenue, work related expenses claims remain an area of focus.

Recently the Government released its response to the report produced by the House of Representatives Standing Committee on Economics' inquiry into tax deductibility. The Government is clear that Treasury should provide a clear estimate of the cost of work-released expenses to Government revenue to aid policy formulation. The Government notes that denying these deductions will result in lost revenue as individuals affected, and their employers are likely to adjust their behaviour in response to any changes.

The ATO agreed with the Committee's recommendation to review its compliance activity in relation to work related expenses, nothing that it currently undertakes a range of activities to consider how compliance can be further improved. The ATO also agreed to continue with technological development and progress on pre-filling of returns to simplify taxpayer's interaction with the tax system, with the eventual goal being to minimise, and ultimately remove, the need for taxpayers to amend pre-filled returns.

RECENT COMMENTS FROM THE ATO

Indicate that for the 2018/19 year, tax agents will be held accountable for excessive W.R.E. claims made in tax returns that they lodge on behalf of their clients.

ATO ISSUES RULINGS ON APPLICATION OF GST TO LOW VALUE GOODS

The ATO has issued the following taxation rulings in relation to the application of the goods and services tax (GST) on low value imported goods:

- Law Companion Ruling LCR 2818/1, which outlines the new rules to apply from 1.7.2018 to ensure that Australian GST is payable on offshore supplies of low value goods that are purchased by Australian consumers.
- Law Companion Ruling LCR 2018/3, outlining the amendments that make a 'redeliverer' responsible for GST on an offshore supply of low value goods brought to the indirect tax zone.

Finally, Law Companion Ruling LCR 2018/2 explains how GST will apply to supplies made through electronic distribution platforms (EDPSs). This ruling applies to supplies of digital services and digital products for tax periods starting on or after 1.7.2017, and respect of offshore supplies of low value goods for tax periods starting on or after 1.7.2018.

bO2 READERS QUESTIONS AND ANSWERS............

Question 1

Can you provide information about flat rates of pay and what is included in the rate? Are holidays & holiday pay incorporated in the rate? How are public holidays paid? How is sick leave applied or are these all part of the Flat rate payment. Can the flat rate for ordinary hours 38 hrs be say $40.00 and the rate for the balance of hour worked be say $40.25 for superannuation purposes?

Answer

Each workplace requirements are different, and there is no one size fits all.

In order to reach agreement on a flat rate of pay for an employee covered by a Modern Award all provisions of Clause 7 of the applicable award (detailed below) must be complied with and pass the Better Off Overall Test (BOOT).

7. Award flexibility

[Varied by PR986427, PR542122]

7.1 Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:

(a) arrangements for when work is performed;

(b) overtime rates;

(c) penalty rates;

(d) allowances; and

(e) leave loading.

[7.2 varied by PR542122 ppc 04Dec13]

7.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer.

7.3 The agreement between the employer and the individual employee must:

(a) be confined to a variation in the application of one or more of the terms listed in clause 7.1; and

[7.3(b) varied by PR542122 ppc 04Dec13]

(b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.

7.4 The agreement between the employer and the individual employee must also:

(a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;

(b) state each term of this award that the employer and the individual employee have agreed to vary;

(c) detail how the application of each term has been varied by agreement between the employer and the individual employee;

(d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and

(e) state the date the agreement commences to operate.

7.5 The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.

7.6 Except as provided in clause 7.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.

7.7 An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.

7.8 The agreement may be terminated:

[7.8(a) varied by PR542122 ppc 04Dec13]

(a) by the employer or the individual employee giving 13 weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or

(b) at any time, by written agreement between the employer and the individual employee.

[Note inserted by PR542122 ppc 04Dec13]

Note: If any of the requirements of s.144(4), which are reflected in the requirements of this clause, are not met then the agreement may be terminated by either the employee or the employer, giving written notice of not more than 28 days (see s.145 of the Fair Work Act 2009 (Cth)).

[New 7.9 inserted by PR542122 ppc 04Dec13]

7.9 The notice provisions in clause 7.8(a) only apply to an agreement entered into from the first full pay period commencing on or after 4 December 2013. An agreement entered into before that date may be terminated in accordance with clause 7.8(a), subject to four weeks' notice of termination.

[7.9 renumbered as 7.10 by PR542122 ppc 04Dec13]

7.10 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

Question 2

My client owns all the shares in a private company and is the director also. The business in the company has been making losses for a number of years, to fund these losses the client has contributed his own personal funds. This has a created a substantial loan liability on the balance sheet to the client. No interest has been charged on the loan ever.

The client is now ceasing the business, paying out all debts, and will then deregister the company.

Will the client be able to claim a capital loss for not being repaid the company loan? Is there a process to follow in order to be able to claim this capital loss?

Answer

It can be a capital loss to the director. On the other hand, it may be a capital gain to the company.

The company minutes can be drafted up in relation to the debt forgiven.

The key here is whether your client has charged interest on the loan – if not then there is a problem. Refer to our last Issue #0092 the answer is on Page 11 Question 15.

Question 3

I have a question regarding allowable deductions....

Q1 - A few years ago I wrote a question about if remedial massages, chiropractic fees were allowable deductions for someone who works in remote areas doing fauna research which involves climbing trees and other physical and strenuous activities. I was trying to find the response that was written to that question or If you could answer it again for me.

Answer

A deduction is not allowable for the costs of maintaining general fitness or body shape. A deduction may be allowable if a taxpayer can show that physical fitness and physical activity are essential elements of the income-earning activities and are the means by which the taxpayer earns his/her income (see Taxation Determination TD 93/114).

Q2 - I would also like to know if these types of expenses fall under health & fitness expenses Health and fitness quote on ATO website for professional athletes Deductions for the cost of fitness are allowable, because maintaining a very high level of fitness and physical activity is an essential element to you gaining income.

Answer

Fitness expenses including chiropractic/massage/ physiotherapy.

Question 4

We have been long term members and have a question regarding family trust distribution of interest to a non-resident beneficiary.

In a past publication you wrote that interest income in a family trust retains its character and can be distributed to a non-resident beneficiary and attracts 10% tax. Our family trust has earned interest from bank deposits and we would like to distribute just that interest to a beneficiary who is a non-resident for tax purposes, and we would also physically pay the amount owed to her in her beneficiary account. Our accountant states that the interest was earned by the family trust, not the beneficiary personally, and distribution to her would be taxed 32.5%. Could you clarify.

Answer

Yes, income does retain its character as it flows through a trust but here is the crucial distinction.

You can distribute and allocate interest income to the non-resident beneficiary, but it is the RESIDENT TRUST that has earned the interest.

Trust this clarifies the matter.

Question 5

Re- our casual employees...

What is the max you can give them in hours in 1 day before it goes to over time?

Answer

Each Modern Award has the minimum and maximum hours that can be worked in the Hours of Work Clause contained in the applicable award.

They can vary significantly depending upon the industry and nature of the work (shift-work etc), however the normal working week is a 38-hour week before overtime is applicable, and certain awards allow for this amount to be averaged over a fortnight or monthly roster with a maximum of 12 hours per day at ordinary time.

A normal working week is 38 hours, made up of 5 days of 7.6 hours per day, and any hours worked in excess of this amount deemed to be overtime, with additional penalty rates on weekends.

Question 6

I am a 70-year-old tax payer who is a sole trader and has previously received a tax-free threshold of $30,000 however this year because I have earned in excess of $65,000 taxable income according to my Accountant I am not able to receive it. Do I or do I not receive the tax-free threshold?

Answer

As long as you are Australian tax resident, you will get the tax-free threshold which is currently $18,200. The excess is subject to income tax.

Question 7

GST Question - Sale of Property

1. Our clients are about to enter into a Contract for the Sale of a bush block consisting of approximately 1,100 acres for a consideration of $265,000.00. The block is the balance of their grazing property, the remainder of the grazing property having been sold approximately 10 years ago;
2. The Vendors have effectively not been running a business on the property for many years. There are only a couple of their horses grazing on it. It is obviously not a going concern and the Vendors cannot warrant that the land is a land on which is a farming business has been carried on for a period of five years preceding the supply.
3. They remain registered for GST, however, their income from all sources is only interest which is less than $20,000.00 per year and therefore, presumably they could de register for GST as they are no longer required to be registered for GST.

What is the correct GST treatment for the sale of the land?

Is there a possible GST exemption on the sale of the land?

If the vendor (our client) deregisters for GST, does that exclude the land to have GST on it for sale?

Our view is that our client is not required to charge GST on the sale of the land because it is not in the ordinary course of business.

Could you please advise if the client should charge GST on the property, if they deregister for GST?

Answer

The going concern exemption cannot apply s 38-325.

Your comments on the 5-year exemption appear correct s38-480.

Section 9.5 there is no requirement to be registered as turnover is less than $75k.

Note the sale of a capital asset is not included in 75k threshold… section 188-25.

Our preliminary view is the same as yours… that if your client validly deregisters for GST then no GST will be payable on the sale…

However, we stress you should not rely on this advice and that you should take legal advice on this matter.

Question 8

I have a couple of CGT issues that need clarifying….

The facts are:

1. H and W buy property in 1993 for $500k and reside in it as the PPR.
2. W dies in 2016 and H takes title by survivorship. Property then worth $2.2m.
3. H does not live in property after W's death but never rents it out.
4. H dies in 2018. Property now worth $2.8 m. Valued at that.
5. No CGT issue so far. The three children are the beneficiaries of the estate. One of the children is my client.
6. Property is to be sold. An in-specie transfer to a beneficiary with one buying out the others' interests is not possible.
7. My understanding is that if the executor sells the property to a third party within two years then no CGT liability arises against the estate. Is that correct?
8. If the property was to be sold hypothetically more than two years after the death of the deceased what are the CGT consequences? When does cost base start?

There is no life tenant in the strict legal sense. One of the joint tenants (wife) died in 2016 and the survivor (husband) then became the sole registered proprietor of the PPR. He dies in 2018 (just within 2 years of death of wife) as sole RP so I assume the two years runs from the date of his death. If sold after 2 years following his death the cost base for CGT is value at date of his death, not at the date of the death of the wife.

Assuming above figures are provable but say in 2019 the property sells for a lot more. The question is in simple terms is if the executor sells the property to a third party more than two years after the death of the deceased and there is therefore a CGT liability, is CGT determined on the increase to the value of the property from the date of death or does it go all the way back to the date of original acquisition (in this case 1993) and the value of the property at that time?

One more question if I may on a similar vein….

Wife purchases an investment property in 2004 for $100,000.00 in her own name.

Wife dies in Feb 2016. Husband is sole beneficiary of her estate.

Title transferred to Husband by Transmission Application (TA) in August 2016. Property then valued at $215,000.00.

Does a transfer by TA in the 2017 Tax year create a CGT event that should be disclosed by the wife's estate in the 2017 tax year?

In the case H survives W and takes title to the investment property she owns in the same year as her death. The cost base is the same as the deceased so no CGT event.

If H then dies two years later as sole RP with the property remaining an investment property during that time, and leaves it to children in his will, is there a CGT consideration arising from any gain in value above from the cost base set at wife's death and any increase in value two years later on H's death? If so is it payable by H's estate?

I assume the beneficiaries of the estate of H, if they take title to the property, do so at the same cost base as the deceased so no CGT event.

Answer

A 1- THE FIRST CASE: the executor sells the property to a third party more than two years after the death of the deceased…. the cost base starts from the market value on the date of death.

You mention that the date of death is 2016 and the life tenant died in 2018…. If the two events occurred within two years… i.e. 24 months then if within that time and vigorous efforts are made to sell the property within the two-year period, then it may be possible to apply for a private ruling to have the two years extended – we could assist in this regard.

A2- THE SECOND CASE: the beneficiary inherits the property with the same cost base as the deceased…. there is no capital gains tax event….

On the death of a joint tenant, the asset automatically passes to the other or others, regardless of the terms of the will of the joint tenant that died.

As it is the PPR, there should be no CGT implications if the asset is sold within 2 years of the husband's date of death…

As this asset has always been a PPR, the relevant cost base is the date of death of the husband.

Question 9

I have a question concerning the house I built and am selling. I am a Builder.

The house was nearly sold last year. The prospect owners paid a deposit and moved in under contract. They paid rent for about 5 months and finally couldn't get finance and vacated.

I've put the house back on the market and now have potential buyer with contracts about to be exchanged. The real-estate agent has said that now the house is no longer new because someone was living in it and paying rent that it should not have any GST owing. The solicitor has said its not eligible for first home buyer exemptions and is also needing to know whether any GST is owing and how much. I've had the block of land for 10 years.

Answer

The real estate agent is incorrect – if this house has not been sold (it hasn't) and in broad terms it is within 5 years of completion then it will attract GST. Section 40-75 of the GST Act states that the vendor does not need to pay GST on sale of residential premises if they have been used solely for rental purposes for the period of at least five years since they were built, substantially renovated or replaced. Clearly, you don't pass the five-year rule.

Clearly this house was not built for investment purposes and it is highly probable that you have claimed input tax credits for supplies and contractors on the way through.

You need to confer with your accountant as to whether you applied the margin scheme on the purchase of the land and as mentioned the treatment of the income tax credits.

If you applied the margin scheme, then you will not have claimed the input tax credits on the construction...

Regarding the first home buyer schemes... the solicitor is in all likelihood correct but you may wish to apply for private rulings with the relevant state revenue body.

Question 10

This relates to a loan owed by Trust A to Company B... Please provide an answer to our query as follows:

1) Trust A distributed $5000 to Company B in 2015/16.
2) The distribution was a book entry only. Therefore, there was a loan of $5000 owed by Trust A to Company B.
3) There was no repayment or interest paid by Trust A to Company B in 2016/17.
4) Under Division 7A, we have to treat the $5000 as dividend paid by Company B to its shareholders in 2016/17.
5) Is it correct? If so, how do we treat the loans between Trust A and Company B? what are the ledger entries?

Answer

For the amount of money involved a you should definitely declare dividends.

Other alternatives could have been a sub trust or a complying Div 7A loan agreement if you have not lodged for 2017.

The sub trust arrangement is not really practical i.e. $5000 on term deposit earing interest for a maximum of 7 years Neither is the division 7A loan agreement for the amount of money involved.

The other alternative is to physically pay the money into a bank account in the company's name.

The journals are simply loan accounts...

in company B

Dr Loan A Trust (or unpaid present entitlement)

Cr Dividend received

When dividend is paid

Dr dividend paid (P&L appropriation a/c)

Cr Loan A Trust

in Trust A

Dr distribution Company A

Cr Loan company A

When dividend paid

Dr Loan company A

Cr cash at bank

This assumes the Trustee (trust) as the main entity pays the dividend and not the bucket company.

Question 11

Capital Gains tax question.

A large dwelling was constructed by a taxpayer in such a manner that it could be converted into strata title or two units/ flats. It was resided in as the principal Place of Residence by the taxpayer and his wife and their three children for in excess of 12 months.

The proposal is to split the building into two strata titled units, sell off one, finish the other unit by construction its own kitchen and ensuite to the main bedroom, and use it as their principal place of residence.

Other considerations are:

1. The couple have not owned jointly or separately any other residence as their principal place of residence apart from the construction stage of the new building (one now being strata titled).
2. They; jointly or separately; do not intend to own any other principal place of Residence during the period in question.
3. Costs to strata title property say $50,000.

Question is....

To what extent does the principal place of exemption apply for capital gains tax purposes?

1. If the property was sold tomorrow for $800,000 there is no capital gains- providing no other property is held by either party as their PPR.
2. He completes the strata titling and his unit, and the other unit become two separate properties.
3. My logic would be the valuation of the property done now at $800,000. No capital gain using this figure, but as a cost basis.

- Costs for Strata titling say $50,000.
- Costs for completing new kitchen and ensuite 2nd unit $40,000.
- Sells one unit for $500,000. (net commissions and legal costs excluded).
- The capital gain calculation on that unit would be acquisition cost $400,000 plus half strata titling.
- $25,000 from the selling cost gives capital gain of $75,000. (this also assumes he does not operate this activity as a business). Because the property is in a sole taxpayers' name, it's not a Small business (no concession), not an active asset, no concession therefore any capital gain is (basically income) taxable at marginal rates, if sold within 12 months or longer.

4. Is the strata titled unit a New property and therefore subject to GST? Original building Is less than 5years old- fails all three tests and no GST would apply.
5. Cost of the second unit is $400,000 (based on valuation NOW), plus $40,000 renovations, plus $25,000 strata titling, making his cost base for new unit PPR $465,000.
6. Does the taxpayer need to physically live in the unit to gain the PPR exemption? - No during the building phase, providing not income producing or rented in excess 6 yrs., no other PPR exists for either party.

As a strategy, if the building in total was completed, 2nd Kitchen and bathroom and ensuite completed, and had it valued at this stage prior to strata titling say gives the value of $800,000. The cost of doing the finishing of the house is not relevant as part of the cost base. AND

The title was changed into joint names- adding the wife to the title- stamp duty could apply unless they physically live in the house for 6 months and move into the house within three months. This is a legal question, and residency question, but makes the whole building the PPR. This may give the ability to split any capital gain in sale of the first unit, and the wife's income is currently nil.

However, there are giant cracks that need to carefully document, and adhered to if called upon to verify all these elements. Some of these are: -

A. The owner is an invalid on insurance payments (sickness and injury benefits), is a registered plumber, worked as a building supervisor, and holds qualifications as a building contractor. He has never operated as a building contractor. He has these qualifications to undertake the supervisory role, as an employee prior to becoming an invalid.
B. Would the building improvements/finishing inside be undertaken by the current owner as an owner builder, and just supervised by him.
C. Original intention for the dwelling?
D. Are we just maximising total receipts from the dwelling, or part of a business plan?
E. Timing and residency issues for Principal Place of Residency exemption and Stamp duty minimising, and necessity to own property for 12 months for capital gains tax. Given the 2nd unit is a separate legal asset, and if sold within 12 months does the PPR exemption apply.

Assuming the following: -

Costs:	Strata Titling	$50,000
	Renovations	$40,000
	Tax on $65000 @34% = 22100 first unit.	
	Total	$112,100

Therefore, the taxpayer needs to clear $912,100 on both units in order to be as well off as just selling at net of $800,000 now.

- Hidden costs like Council headworks and lodgement fees and charges;
- Surveyors costs;
- Engineering costs for fireproofing and certifications;
- Underestimating cost of new kitchen and ensuite for a unit of $500,000 value?
- Commissions on sales;
- Actual selling price.

Variables would dictate leaving that prospect to new owners as a possibility and sell as is.

Answer

We can find nothing to indicate an uplift of the cost base is possible – the concessions available in section 188-145

(97 Act) only apply when the property is rented out.

So, it will be necessary for your client to clearly establish what the cost base is from detailed records.

This could be a complication as sometimes builders are tempted to mix private building costs with client building costs.

Yes, the client will definitely have to live in the relevant strata unit that is sold to have any chance of obtaining the CGT exemption.

The full facts and circumstances including timing issues may be later considered by the Commissioner with a view to determine what was the original intention of the taxpayer.

Is an enterprise being carried on? – we think not but note the ATO register of private rulings shows the decisions can be inconsistent and arbitrary.

Complicating the issue for you is the client's activity as a building contractor.

A private ruling would be the safest option and the above does not constitute taxation advice.

Question 12

I have some questions about FBT & staff loans:

1. If you provide a staff loan, then you must charge the FBT benchmark rate of interest to avoid any FBT liability?
2. If you provide a loan to staff to buy shares as an investment, will the interest be "otherwise deductible" for FBT purposes?
3. Does it make any difference if the shares are in the employers' company?
4. If "otherwise deductible", can the interest cost be Salary Sacrificed with no FBT applying?

Answer

1) The answer is... generally yes unless the otherwise deductible rule applies and the benchmark rate of interest is 5.45%.
2) If there is a realistic expectation that the shares will derive dividends at some point, then the otherwise deductible rule will apply meaning no FBT will be payable even if the interest is not paid. What happens here is that the taxable value of the loan benefit is reduced if the funds are used to derive assessable income by the employee.
3) If the shares are in the employer's company, then for obvious reasons.... No employee declaration is required. The employer already knows how the funds are being used
4) it is quite possible to formalise this arrangement as a salary sacrifice with the employee when negotiating their employment package.

Question 13

We would like to get your opinion on the interpretation in relation to the active asset test. In particular, we want to confirm how the ">50% period that the property is used to carry on the business" is measured.

Please refer to the following scenario:

Active Asset Test requirements.

1. Taxpayer acquired a property to carry on his business on 21/7/2005 [contract date]. Settlement date was 29/11/2005.
2. Taxpayer commenced trading / carrying on the business immediately.
3. Taxpayer ceased his business on 1/12/2011 but kept the property.
4. Taxpayer demolished the property and sold vacant land on 31/10/2017 [date of contract].
5. According to my understanding, the test period according to s152-30 is 4486 days being the time from acquisition 21/7/2005 to the date of the CGT event 31/10/2017]?

To work out whether the building qualifies for the SBE CGT concessions, the asset needs to be an active asset. If the entity owned the CGT asset for less than 15 years, the CGT asset has to be an active asset for at least one-half of the test period and the entity uses the asset, or holds it ready for use, in the course of carrying on a business.

What is the active asset period used in carrying on the taxpayer business?

1. The days from 29/11/2005 (settlement date) to the date the taxpayer ceased business on 1/12/2011? Total active asset period is 2194 days. OR
2. The days from acquisition of the property 21/7/2005 (contract date) to date taxpayer ceased business on 1/12/2011? Total active asset period is 2325 days.

We would like your opinion and please provide reference or example (if applicable).

Answer

You have real problems with this one because we believe with the demolition of the building there has been a loss of character of an "active asset".

This is the same when you sell vacant land after demolishing your family home (PPR exemption)

What is that you are selling?...... it is vacant land.... not an active asset or in the above case the PPR.

It is a real tax trap.

The legislation on the period for determining eligibility as an active asset is the "use" period - the contact dates are used for the calculation of any CGT liabilities.

This may not be the news you wanted to hear, and we would encourage to apply for a private ruling from the ATO as this is our initial interpretation from the limited facts given.

Question 14

We are an Australian consolidated group registered for GST with a subsidiary company in NZ. An IT firm (Australian Entity) did some work for our NZ business, and have charged out Head Company for the work but with no GST. Is this correct or should they charge us GST?

Answer

It is suggested that the firm takes the view while it is highly likely that the provision of the service is "in connection with Australia" that the services were exported refer to section 38-190 of the GST Act and GST ruling 2000/31.

The supply of a service may be GST free where the requirements in item 1,2,3 or 5 in the table in subsection 38-190(1) are satisfied.

Billing the head company may be a simple oversight or merely a means of ensuring the firm gets paid for its services.

Question 15

I have couple of questions on how income from deceased estate are taxed. Unfortunately, one of our director has passed away with a massive heart attack before Christmas so I need below clarifications:

- Main Residence: Director has a house which is his main residence. He brought that house before 1985 (Pre CGT). As per his will this house will be sold and distributed to his Wife, 3 Children's and 2 Grand Kids.

So, my query is:

1. Because it his Main Residence there is no Capital Gain Tax and
2. How the distribution of Sale Proceeds of this house to his Wife, 3 Children's and 2 Grand Kids will be taxed? Will they be taxed or not? I am assuming that they will not pay because main source is not taxed in the first place?

- Transfer of Shares Transfer in Unit Trust and Company: The deceased director has shares in Unit Trust and also holds shares in our company. As per his will these shares are equally given equally to his children. Does CGT apply? I assume CGT does not apply as it is just transfer, not sale. Please clarify in each instance – Trust and Company

Answer

We are sorry for your loss. In broad terms a deceased estate will be taxed on the same scales as a resident individual in the three years following the date of death.

In the event the executors are delayed by factors beyond their control, it is possible to apply to have the time extended and for the aforesaid rates of tax to continue.

It is confirmed there will be no CGT on the sale of the house as long as it sold within two years. In the event it is not then its cost base is the market value at the date of death.

Subject to this, the distribution of the proceeds is not taxable to the children.

You are correct in stating there should be no CGT on the transfer of the shares to the children – assuming they are post September 1985 assets, they are deemed to have acquired the shares at the same cost base as the deceased.

The same applies for both the shares and the units. Here we assume the shares are in the trustee company for the unit trust.

Question 16

We operate a farming business which includes a company. We would like to insure through the farm one of the directors who works on the farm. Is this possible or does it have to be personal? We would insure for death and PD and income protection.

Answer

We have just confirmed with our valued subscriber that we are dealing with a family business.

Thus, there is no arm's length "keyman" context to this question.

The company is the trustee of a discretionary trust and it is fine for the trust to pay the income replacement policy on behalf of the director.

There should be no FBT implications due to the otherwise deductible rule.

Regarding the death and PD cover… the most effective way to do this is through your superannuation fund.

You get a tax deduction for the super contribution and the death cover is fully tax deductible within the fund.

It is not a tax deduction for the trust or for the individual.

Question 17

Structure overview…but in summary:

The Hotel/Restaurant partnership disposed of its business, land and buildings in June 2017. The net capital gain on which has been distributed between the 2 (unrelated) partners which are family trusts.

The share of gain flowing through to Partner A family trust will be in turn distributed to Beneficiary A (Ben A) …an individual. Ben A is also a 50% owner in another land/building partnership, a self-managed superfund of which both Ben A and Ben B are members, owns the other 50%. The land/buildings in the partnership is a restaurant…the restaurant business is run via a unit trust. 79% of this unit trust is owned by the Partner A Family Trust.

Some of the capital gain proceeds distributed to Ben A have been re-invested in the restaurant land and buildings as his share of the cost of a major upgrade. Both the sale of the Hotel/Restaurant and restaurant upgrade have occurred during 2017. Although most of the upgrade occurred before the hotel sale.

It would appear on the surface the Partner A family trust would not meet the revenue test but may meet the $6m asset test.

The question:

Is Partner A Family Trust able to claim the small business rollover relief. e.g. 50% asset reduction in addition to the 50% discount and also defer the balance or part thereof for 2 years to invest in another replacement asset. And then declare the gain in 2 years' time if no replacement asset is acquired? OR

Is Ben A able to claim rollover relief for the portion of capital gains allocated from his family trust that were paid into the renovation costs. OR…is he able to defer the gain or part thereof on the basis of a potential investment in another asset within 2 years. And if no such investment occurs…including the gain in that year. OR

Is there any other option to defer or minimise the CGT exposure…? e.g. Ben A contributing $500k under the lifetime Ben A is 69 years of age…

Answer

The overview here is that the claiming of these concessions is frequently subject to ATO audit due to the sums of money involved.

Where multiple entities are involved it is sometimes better to get a legal opinion as a safeguard

The following comments should be taken as a guide only and should not be acted upon.

We doubt the renovations will be eligible because the Act talks about replacements.

The fact that the restaurant is no longer an active asset does not help either.

It is essential to establish beyond doubt that Ben A meets all the requirements to be a significant individual and that the $6 million threshold test is not offended.

It is suggested that Ben A should use the lifetime $500,000 superannuation concession after applying the active asset and individual discounts.

As Ben A is over 55 years of age there is no requirement for him/her to even make a super contribution in order to access the concession.

Leigh's Corner

Article No.41

INDUSTRIAL RELATIONS UPDATE APRIL 2018

****

FAMILY AND DOMESTIC VIOLENCE LEAVE

The following abbreviated summary follows the recent decision of the Fair Work Commission as part of the 4-year review of Modern Awards to insert a model domestic violence clause into the awards to allow employees to access 5 unpaid days where they can provide reasonable proof that they are experiencing family or domestic violence issues.

Summary of Decision 26 March 2018 – 4 yearly review of modern awards — Family and Domestic Violence AM2015/1 [2018] FWCFB 1691

This decision takes a cautious regulatory response to this issue with the following decision of the Full Bench of the Fair Work Commission.

"We have decided to provide five days' unpaid leave to employees experiencing family and domestic violence, if the employee needs to do something to deal with the impact of that violence and it is impractical for them to do it outside their ordinary hours of work.

We have decided to defer our consideration of whether employees should be able to access paid personal/carer's leave for the purpose of taking family and domestic violence leave.

The extent to which the new entitlement to unpaid leave will be utilised is unknown, as is the impact of the new entitlement on business.

We propose to revisit this issue in June 2021, after the model term has been in operation for three years.

At that time, we will consider whether any changes are needed to the unpaid leave model term, and whether to allow access to personal/carer's leave.

At that time, we will also revisit the question of whether provisions should be made for paid family and domestic violence leave."

The Full Bench exempted from this general finding the Australian Government Industry Award 2016, the Road Transport and Distribution Award 2010 and the Road Transport (Long Distance Operations) Award 2010, which are to be the subject of separate consideration.

FLEXIBLE WORKING ARRANGEMENTS

Also, as part of the 4-yearly review, the FWC considered the ACTU claims in relation to flexible working arrangements and, although some of the claims were rejected, the FWC has determined that there needs to be additional provisions inserted into the awards to meet the expectations of employees with family and carer responsibilities, and the abbreviated summary below sets out the basis of their decision and what to expect once the clause is finalised.

The Full Bench reached the provisional view that the modern award minimum safety net should be varied to incorporate a model term to facilitate flexible working arrangements for parents and carers.

The provisional model term proposed by the Full Bench is summarised below.

The provisional model term would supplement the NES in the following ways:

- The group of employees eligible to request a change in working arrangements relating to parental or caring responsibilities, will be expanded to include ongoing and casual employees with at least six months' service but less than 12 months' service.
- Before refusing an employee's request, the employer will be required to seek to confer with the employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances.
- If the employer refuses the request, the employer's written response to the request will be required to include a more comprehensive explanation of the reasons for the refusal.
- The written response will also be required to include the details of any change in working arrangements that was agreed when the employer and employee conferred, or, if no change was agreed, the details of any changes in working arrangements that the employer can offer to the employee.

A note will draw attention to the Commission's (limited) capacity to deal with disputes.

We will circulate these model clauses when they are finalised and update the policy manuals where required.

FINES INCREASE FOR UNDERPAYMENT OF WAGES

The Fair Work Ombudsman is targeting organisations that are deliberately underpaying their employees and are becoming increasingly effective at prosecuting these employers with large fines being imposed in the Federal Circuit Court.

The recently introduced Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 has increased penalties for these offences to up to $630,000 for companies and up to $126,000 for individuals where serious breaches are found to have occurred and the employer has deliberately attempted to pay wages and conditions below the mandated amounts.

These changes also include increases in the penalties for failing to keep proper records (which are to be retained for seven years) to $63,000 for employers and $12,600 for individuals.

It is becoming increasingly important to ensure that employees are paid correctly and that the provisions of the Fair Work Act and the National Employment Standards are being met. This includes ensuring that any contracts and/or contractors are being paid correctly, including superannuation entitlements where applicable.

Please note that this is general advice for information only and any application of legislation and/or Industrial Relations or contractual requirements may require professional advice to suit your individual circumstances.

Want to know more about our HR/IR Smart Guides, Smart ToolPacks, WHSmart Safety Essentials and other business related online services.........

If you have question for Leigh's team send us an email info@bO2.com.au

Call us on our toll free
P 1300 555 533

Bonus Issue

YEAR END BONUS EDITION

INCLUDING
YEAR END TAX PLANNING TIPS

OVERVIEW

The fringe benefits tax (FBT) year ended on 31.3.2018. If you operate through a company or trust, carefully consider whether all FBT matters have been attended to and whether an FBT return needs to be lodged. The most common fringe benefit supplied to staff is a motor vehicle benefit. In a small business audit, the two main areas of ATO focus are fringe benefits and Division 7A loans – see below.

SMALL BUSINESS

Check eligibility for small business tax regime

Small businesses (sole traders, partnerships, companies and/ or trusts with a turnover of less than $2 million) may be eligible for a range of tax benefits including immediate write off of assets costing less than $20,000, a 27.5 per cent company tax rate, simplified depreciation, capital gains tax concessions and accounting on a cash basis.

These measures have now been extended to businesses with a turnover of less than $10 million with the notable exception of the CGT Small Business Concessions.

Maximise depreciation deductions

Small businesses can get an immediate tax deduction for nearly all individual assets purchased costing less than $20,000, to the extent such assets are used for an income producing purpose and is installed ready for use by the end of the financial year.

This measure expires on 30 June 2019.

For businesses registered for GST, the $20,000 threshold is calculated on a GST-exclusive basis, but for businesses not registered for GST, the threshold is calculated on a GST-inclusive basis.

Review salary sacrifice arrangements

Employees can consider salary sacrifice arrangements under which their gross salary may be foregone to obtain either a packaged car for fringe benefits tax (FBT) purposes, or they can make additional superannuation contributions.

We note that the option for employees to make tax deductible contributions became law on 29.11.2016 and took effect from 1.7.2017.

Make trust resolutions by 30 June

Trustees of discretionary trusts are required to make and document resolutions on how trust income should be distributed to beneficiaries for the 2017-2018 financial year by 30 June.

In the event a valid distribution is not made then a default beneficiary may be assessable if there are no default beneficiaries, then the trustee will be assessable at the highest marginal rate.

Seeking professional advice when starting a business

Professional expenses associated with starting a new business, such as legal and accounting fees, are deductible in the year those expenses are incurred rather than deducted over a five-year period as was the case prior to 1.7.2015.

Small business restructure rollover relief

Since 1.7. 2016, small businesses have been able to change the legal structure of their business without incurring any income tax liability when active assets are transferred by one entity to another. This rollover applies to active assets that are CGT assets, trading stock, revenue assets and depreciating assets used, or held ready for use, in the course of carrying on a business. Seek professional advice.

Stream trust capital gains and franked dividends

Trustees of discretionary trusts may be able to stream capital gains and franked dividends to different beneficiaries if the trust deed allows the trustee to make a beneficiary “specifically entitled” to those amounts, the trustee must document this resolution before 30 June and the beneficiary receives or is entitled to receive an amount equal to the net financial benefit of that gain or dividend.

Private company loans

Income tax law can potentially treat a payment or a loan by a private company to a shareholder or an associate as an unfranked deemed dividend unless an exemption applies.

The most common exemption is to enter into a written loan agreement requiring minimum interest and principal repayments over a specified loan term, which may be seven or 25 years depending on whether or not the loan is secured.

Prior to 30 June you should carefully review such debit loans on the company’s balance sheet.

Prevent deemed dividends in respect of unpaid trust distributions

An unpaid distribution owed by a trust to a related private company beneficiary that arises from 1. 7. 2017 will be treated as a loan by the company, if the trustee and the company are controlled by the same family group. In these circumstances, the associated trust may be taken to have derived a deemed dividend for the amount of the unpaid trust distribution in 2017-2018.

However, a deemed dividend may be prevented if the unpaid distribution is paid out, or a complying loan agreement is entered into before the company’s 2017-2018 income tax return needs to be lodged. Alternatively, a deemed dividend will not arise if the amount is held in an eligible sub-trust arrangement for the sole benefit of the private company, and other conditions are satisfied. These rules are complex and professional advice should be sought.

Write-off bad debts

Businesses can only obtain income tax deductions for bad debts. If the debt still exists at the time it is written off. Thus, if the debt is forgiven or compromised before it is written off as bad in the accounts no deduction will be available. The debt must also be unrecoverable and written off in the accounts as bad prior to 30 June. The bad debt must have been previously brought to account as assessable income or lent in the ordinary course of carrying on a money-lending business.

Year End “tax effective” investment products

Proceed with caution and make sure you get independent professional advice.

TAX PLANNING TIPS 2017-18

INDIVIDUALS

In general, individual income is derived and deductions are incurred on a receipts basis. The following suggestions may reduce your current year tax liability.

Prepayment of deductible expenses

An individual can claim a deduction for prepaid expenditure for a period not exceeding 12 months. The most common types of prepayments include:

- Income protection insurance
- Interest on investment loans
- Interest on share portfolios
- Investment properties
- Membership and subscriptions
- Investment property expenses
- Corporate Body levies
- Insurance
- Repairs and maintenance
- Rates

Prior to year-end an individual should review the gains and losses on each asset within their investment portfolio. There may be opportunities to:

- Make sure assets have been held greater than 12 months before sale so the 50% discount can be applied to the gross capital gain – remember this is from “contract” to “contract” … not settlement;
- Realise capital losses to offset any capital gains that were made earlier in the income year;
- Defer realisation of capital gains until July.

Salary Packaging Arrangements

An effective salary sacrifice arrangement will reduce an individual’s marginal rate of tax.

The contractual arrangements should be documented or amended before year end as an individual cannot make a retrospective salary sacrifice arrangement for income already earned. A typical salary sacrifice arrangement may include the following components:

- Motor vehicle expense
- Additional superannuation contributions
- School fees

The top marginal tax rate applies on income in excess of $180,000. With the “mark-up” factors, fringe benefits tax effectively applies the top marginal rate regardless of your income. However, for taxpayers not on the top marginal rate it is still possible to take advantage of FBT concessions.

Ongoing Tax Planning Issues

Kindly note, there is no tax deduction for non-concessional contributions.

2018 Contribution Caps from 1 July 2017

- Concessional contribution (Employer contributions) $25,000.
- Non-concessional contribution (Personal contributions) $100,000 or 3-year limit of $300,000.
- Again, if you want to contribute more than $100,000 in non-concessional contributions contract your Accountant as this involves a 3-year average and you need to be certain you are eligible.

Salary Sacrifice Bonus into Superannuation

You may be able to optimise your tax position by salary sacrificing any prospective end of year bonus into super. Seek advice to ensure it is tax effective and that contribution caps are not breached.

Superannuation – income

Individuals aged over 60 and retired are generally not taxed on any payments from a superannuation fund. Individuals aged between 55 and 60 will generally be taxed concessionally.

Superannuation – rebate

A rebate of up to $540 is available for superannuation contributions made during the 2018 year for your spouse where you spouse’s income is less than $37,000 p.a. (this rebate reduces for income amounts up to $40,000 p.a.).

Superannuation – government co-contribution

The maximum co-contribution amount that you received is $500, based on an after-tax contribution of $1,000 (i.e. for every $1 contribution made, the government contributes $0.50). This is reduced by 3.33 cents for each $1 of income over $36,813 p.a. up to $51,813 p.a. As there are also other qualifying criteria, you should contact this office if you wish you access this benefit in 2018.

Transition to retirement income streams

If you are 55 or older at 30 June 2018, you may be eligible to commence a "Transition to retirement" pension. Benefits may include:

- Receiving pension income while still working;
- Ability to salary sacrifice to superannuation to access lower tax rates; and
- Concessional tax treatment within your super fund.

Note that up to 30.6.2017, the income from assets supporting a transition to retirement income stream was tax exempt. Since 1.7.2017 this exemption no longer applies.

Medicare Levy Surcharge (MLS) and Private Health Insurance Rebate (PHIR)

The thresholds for the imposition of the MLS (If not covered by private hospital insurance) are broadly as follows:

- Singles (no dependants) - $90,000 pa; and
- Families - $180,000 pa (plus $1,500 for each dependant child after the first)

There are a number of income amounts such as reportable fringe benefits, reportable superannuation contributions and investment losses counted in calculating these thresholds.

Further, there is a "tiered" system for calculating MLS in the 2018 income year. The rate of MLS will be between 1% and 1.5% depending on the extent to which income exceeds the relevant thresholds.

In addition, the PHIR is also means tested in the 2018 income year under a "tiered" system. The rate of rebate will be between 0% and 30% depending on income levels. This means some taxpayers who have claimed a full 30% rebate from their health insurance provider on their premiums will have an additional liability on lodgement of their return.

ATO recovery of Higher Education Loan Programme and Trade Support Loan Debt

The Higher Education Loan Programme (HELP) and Trade Support Loan (TSL) repayment rules to debtors who reside overseas have been extended by assessing their repayment obligations on their worldwide income. Repayment obligations will commence a from 1 July 2017.

Since 1 January 2016, HELP and TSL debtors who are going overseas for more than 6 months were required to register with to ATO. Debtors already living overseas had until 1 July 2017 to register.

ATO Data Matching

The ATO's extensive data matching capabilities is based on information it receives from various sources including banks, share registries, employers, government agencies and via its network of global information exchange agreements.

In terms of focus areas for compliance activities, the ATO continues to closely monitor:

- Claims for work-related expenses that are unusually high relatively 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.

INCUR EXPENSES BEFORE YEAR END

Expenses that are incurred before year end can reduce taxable income. Consider forthcoming liabilities and the value in incurring them before year end.

If you have a rental property, consider whether you are maximising claims for capital works deductions on the property. A report from a quantity survey or suitably qualified specialist will maximise your entitlements.

Pay income protection insurance premiums before year end.

Motor Vehicle Expenses

There are now only two methods which can be used to claim a deduction for motor vehicle expenses.

There are:

- The cents per km method (for up to 5,000 business kilometres travelled); and
- The log book method (log book kept over 12 weeks and updated every five years).

Also, from 1 July 2015, there is a single cent per kilometre rate of deduction determined by the Commissioner.
For the year ended 30 June 2018 the single rate of deduction determined by the Commissioner is 66 cents per kilometre.

Detailed records assist in maximising deductions.

Zone Tax Offset

Since 1 July 2015 the zone tax offset has been limited to those taxpayers whose usual place of residence is within the designated zones. The zone tax offset is a concessional tax offset available to individuals against their income tax liability in recognition of the isolation, extreme climate and high cost of living associated with living in designated zones.

The changes made to the zone tax offset will remove "fly-in-fly-out" and "drive-in-drive-out" employees, whose usual place of residence is located outside of the zone, from being eligible to claim the zone tax offset for the 2016 income year and later income years.

Claiming Travel Allowance Deductions

An audit focus by the ATO continues on travel allowance expenses being claimed by individual taxpayers. If you intend to use the exception for retaining substantiation for these claims the following must apply:

- You must be receiving a bona fide travel allowance from your employer;
- You must be working away from home (on overnight stays) in the course of performing employment duties;
- You must calculate the claim correctly for your salary level and location of work; and
- You must be able to show that you are incurring travel expenses.

OTHER BUSINESS CONSIDERATIONS

Defer Income

- Cash or accruals reporting – recognition of income on a receipts basis will generally defer the point of derivation.
- Review service contacts – do the terms of the contract mean income can be recognised periodically when the services are performed?

Bad debts

Write off bad debts in the books of accounts prior to 30 June 2018.

Bonuses

Ensure all bonuses are determined and properly documented before year end.

Depreciation

- Scrap obsolete item of plant and equipment;
- Utilise depreciation pools to their full extent; and
- For SBEs (see above) consider taking advantage of the immediate write-off up to $20,000 for each individual asset acquired after 7.30 pm 12 May 2015 up until 30 June 2018.

Trading stock

Consider these may be obsolete stock to write off and note closing stock can be valued at year end at the lesser of cost, market value or replacement value.

Generally, an entity must perform a stock take to determine the physical quantity and value of each item at year end.

Prepayment of Expenses

In some circumstances, small businesses (with turnover of less than $10 million) should consider prepaying expenses prior to 30 June 2018. A tax deduction can be brought forward into this financial year for expenses like insurance premiums, subscriptions and memberships, travel, advertising and interest. A deduction for prepaid expenses will generally be allowed where the payment is made before 30 June 2018 for services to be rendered within a 12-month period.

Special Bonus Issue

2018 FEDERAL BUDGET UPDATE..................

COMMITMENT TO ENTERPRISE TAX PLAN

The government has re-affirmed its commitment to the Enterprise tax plan including company tax cuts.

This ten-year enterprise tax plan aims to progressively reduce the corporate tax rate to 25 per cent by the 2026-27 income year.

Since the ten-year corporate tax rate reduction proposal in the 2016-17 Budget, the government has only been able enact a 25% rate, but only for companies with an aggregated turnover of up to $50 million, with the 30% rate still applying to all other companies.

Income tax rates for Australian tax residents

Rate (%)	Current tax thresholds Income range ($)	Thresholds from 1 July 2018 Income range ($)	Thresholds from 1 July 2022 Income range ($)	Thresholds from 1 July 2024 Income range ($)
Tax free	0 – 18,200	0 – 18,200	0 – 18,200	0 – 18,200
19	18,201 – 37,000	18,201 – 37,000	18,201 – 41,000	18,201 – 41,000
32.5	37,001 – 87,000	37,001 – 90,000	41,001 – 120,000	41,001 – 200,000
37	87,001 – 180,000	90,001 – 180,000	120,001 – 180,000	–
45	>180,000	>180,000	>180,000	>200,000

Income tax offsets for Australian tax residents

Income tax offsets	Current	From 1 July 2018	From 1 July 2022
Low and Middle		Up to $530	
Low	Up to $445	Up to $445	Up to $645

Seven-year personal tax plan

This aims to target tax relief for low and middle-income earners first address ‘bracket creep’ and make personal taxes simpler and flatter.

It will be delivered in three steps:

Step 1

- A new non-refundable low and middle-income tax offset will provide tax relief of up to $530 to low and middle income earners every year from 2018-19 to 2021-22.
- The offset will be delivered on assessment after an individual submits their tax return and is in addition to the existing low-income tax offset. This is projected to assist over 10 million Australians, and around 4.4 million people will receive the full $530 benefit for 2018-19.

Step 2

- Will increase the top threshold of the 32.5 per cent tax bracket from $87,000 to $90,000 from 1 July 2018, providing a tax cut of $135 per year to around 3 million people. This will prevent more middle-income earners from being pushed from the 32.5 per cent tax bracket into the second highest tax bracket of 37 per cent.
- In 2022-23, to lock in the tax relief for low and middle-income earners from the new offset, the Government will increase the top threshold of the 19 per cent tax bracket from $37,000 to $41,000 and increase the low-income tax offset from $445 to $645.
- Tax relief of up to $1,350 per year will be provided by further increasing the top threshold of the 32.5 per cent tax bracket from $90,000 to $120,000 from 1 July

2022. This tax cut is projected to stop around 1.8 million taxpayers facing the 37 per cent tax rate in 2022-23, keeping them in the 32.5 per cent tax bracket.

Step 3

- Will ensure more Australians pay less tax and make personal taxes simpler and flatter. Under this final step, from 1 July 2024 the Government will increase the top threshold of the 32.5 per cent tax bracket from $120,000 to $200,000, removing the 37 per cent tax bracket completely.

The plan means that around 94 per cent of all taxpayers are projected to face a marginal tax rate of 32.5 per cent or less in 2024-25. This compares with a projected 63 per cent of taxpayers in 2024-25 under current settings without change.

The Government maintains it is prioritising tax relief to low and middle-income earners to help them with cost of living pressures while being fiscally responsible.

The Government will take decisive action in the fight against the black economy

The Budget reforms follow recommendations made by the Black Economy Taskforce in their final report to Government and will be complemented by a comprehensive suite of supporting measures which build on our significant tax integrity measures.

The Government will establish a multi-agency Black Economy Standing Taskforce to undertake a cross agency approach to combatting the black economy, with more effective exchange of information to develop increased intelligence and be equipped to identify and prosecute the most egregious cases of black economy activity.

Additional funding for the Australian Taxation Office (ATO) will expand its data analytics and data-matching capabilities and allow greater leveraging of community information through the introduction of a hotline for the reporting of black economy and illegal phoenixing activity.

This new capability will be supported by an enhanced enforcement strategy including mobile strike teams to break-up illegal behaviour as it is identified.

Together, this new approach will deliver targeted, stronger and more visible enforcement which will demonstrate the very real consequences for participating in the black economy.

The Government will introduce new measures to strike at the illicit tobacco market and prevent the flow of funds to organised crime syndicates.

An economy-wide cash payment limit

The Government will introduce an economy-wide cash payment limit of $10,000, applying to payments made to businesses for goods and services from 1 July 2019.

This cash payment limit will capture high-value transactions and help stamp out opportunities for criminals to launder the proceeds of crime into goods and services, or for businesses to hide transactions to reduce their tax liabilities.

The Government will consult on the implementation of this measure.

Stronger Commonwealth procurement processes

The Government will ensure that it is a leader in best practice procurement and promotes supply chain integrity by introducing changes to Commonwealth procurement processes. From 1 July 2019, businesses tendering for Commonwealth contracts over $4 million (inclusive of GST) will be required to provide evidence of a satisfactory tax record.

Further measures – Phoenix Companies

Reforms to combat illegal Phoenixing and black economy

The government will reform the corporations and tax laws and provide the regulators with additional tools to assist them to deter and disrupt illegal phoenix activity. The package includes reforms to:

- Introduce new phoenix offences to target those who conduct or facilitate illegal Phoenixing
- Prevent directors improperly backdating resignations to avoid liability or prosecution
- Limit the ability of directors to resign when this would leave the company with no directors
- Restrict the ability of related creditors to vote on the appointment, removal or replacement of an external administrator
- Extend the Director Penalty Regime to GST, luxury car tax and wine equalisation tax, making directors personally liable for the company's debts, and
- Expand the ATO's power to retain refunds where there are outstanding tax lodgements.

Superannuation measures

The Protecting Your Super Package — announced today in the Commonwealth Budget and due to commence on 1 July 2019 — aims to proactively reunite Australians with their low balance, inactive super through the existing Australian Taxation Office (ATO)-led account consolidation regime.

Fee protections

In 2015-16 there were around 9.5 million super accounts with balances of less than $6,000. The Government will act to protect accounts like these from excessive erosion by capping administration and investment fees on these accounts at three per cent annually. This change will prevent the application of hundreds of millions of dollars of fees on these accounts.

The Government will also ban exit fees for all superannuation accounts. Exit fees cost superannuation members around $37 million in 2015-16, simply to close an account with a super fund. This ban is a significant win for the many Australians who want to rollover their accounts to a different fund, or who hold multiple accounts and see exit fees as a barrier to consolidating their accounts.

Tailoring insurance arrangements in superannuation

Australians should not be defaulted into insurance they cannot claim on, or which is significantly beyond what they need.

The Government will tailor insurance arrangements in super by ensuring that cover is offered on an opt-in basis for accounts of young members below the age of 25, inactive accounts that have not received a contribution in 13 months (where the member has not elected to retain existing cover), and low balance accounts below $6,000.

Based on the most recent data, around 5 million individuals will have the opportunity to save an estimated $3 billion in insurance premiums by choosing to opt-in to this cover, rather than paying for it by default.

Reuniting your super

The Government's *Protecting Your Super Package* also benefits Australians with multiple superannuation accounts by supercharging the ATO's account consolidation regime to proactively reunite lost and low balance inactive accounts.

All inactive superannuation accounts with balances below $6,000 will be transferred to the ATO to protect them from further erosion. The ATO will use sophisticated data-matching processes to reunite these accounts with a member's active account where possible. This measure will include the proactive payment of lost accounts already held by the ATO.

This new system is expected to send $6 billion of superannuation back to 3 million members' active superannuation accounts in 2019-20.

High income earners with multiple employers

Individuals whose income exceeds $263,167, and have multiple employers, will be able to nominate that their wages from certain employers are not subject to the superannuation guarantee (SG) from 1.7.2018.

REFORMING THE R&D TAX INCENTIVE

The Government's reforms aim to:

- Improve the integrity of the R&D tax concession, helping ensure ineligible R&D claims are denied;
- Continue to provide support for smaller companies that undertake R&D activities; and
- Refocus support for larger companies towards those undertaking additional, higher intensity R&D.

Integrity: strengthening anti-avoidance rules in the tax law so the ATO can ensure taxpayers do not avoid paying their fair share of tax by using tax schemes involving the program;

Enforcement: additional resourcing so the Government can help ensure that ineligible R&D claims are denied;

Transparency: publishing company names claiming the R&DTI and the amounts of R&D expenditure they have claimed, to improve public accountability for R&D claimants;

Guidance: enabling Innovation and Science Australia to produce public findings similar to the ATO, and provide more effective, binding guidance on the scope of what is eligible R&D. This will help ensure taxpayers do not unintentionally misinterpret the meaning of the law;

From 1 July 2018:

- Introduce a $4 million annual cap on cash refunds for R&D claimants with aggregated annual turnover less than $20 million. Amounts that are in excess of the cap will become a non-refundable tax offset and can be carried forward into future income years;
- Exclude R&D tax offsets for clinical trials from the $4 million cap on cash refunds, recognising the critical role of R&D expenditure on clinical trials in developing life changing drugs and devices; and
- Amend the refundable R&D tax offset so it is a premium of 13.5 percentage points above the claimant's company tax rate for that year.

Refocus support for larger companies towards higher intensity R&D

A key finding of the Review is that the R&DTI is not achieving its objectives of encouraging greater additionality and that greater benefits accrue to the community from companies that are R&D intensive.

The Government's reforms aim to support and reward higher, more intensive, additional R&D investment.

The Government will, from 1 July 2018, introduce a new research and development premium for companies with aggregated annual turnover of $20 million or more, which provides higher rates of R&D support for higher R&D intensity (that is, the proportion of R&D expenditure over total annual expenditure). The research and development premium will provide multiple rates of non-refundable R&D tax offsets, increasing with the intensity of the claimant's incremental R&D expenditure.

The Review found that among larger companies, those with higher R&D intensity provide the greatest benefits to the Australian economy. Encouraging more companies to increase their R&D intensity and undertake additional R&D activities is a key objective of the R&DTI.

The research and development premium has been developed in recognition that many larger companies undertake research and development and that this should be afforded a baseline level of support, but stronger incentives are required for them to increase their overall R&D intensity.

Consistent with this objective, the Government will also, from 1 July 2018 increase the $100 million R&D expenditure threshold to $150 million, allowing larger companies to continue to be rewarded for additional R&D they undertake as they grow.

INTEGRITY MEASURES

This Budget includes new measures to further improve the integrity of the tax system.

To ensure that R&D tax incentives are used for their proper purpose, with enhanced integrity, enforcement and transparency arrangements, saving taxpayers $2 billion over the next four years.

Crack downs on multinationals have already brought around $7 billion a year in sales revenue by multinationals into the tax net. The government will maintain its focus on this.

Closing down another tax loophole that gives foreign companies a tax break over Australian companies, by changing the tax treatment of stapled structures.

Further tightening thin cap rules to stop multinationals from fiddling with how they account for debt, to reduce their tax liabilities.

Ensuring big multinational digital and tech companies pay their fair share of tax.

Continuing to work with counterparts at the G20 to bring the digital economy into the global tax net. A discussion paper that will explore options for taxing digital business in Australia will be released in June.

The recommendations of our Black Economy Taskforce will be implemented targeting sectors where there is higher risk of under reporting of income.

These measures include outlawing large cash payments of greater than $10,000 in the Australian economy.

The Directors penalties regime has been extended to GST, luxury car tax and WET tax, making directors personally liable for the company's debts.

Other Measures

Private company deemed dividends

The deemed dividend rules (Division 7A) apply to treat certain loans from private companies to its shareholders as taxable dividends.

However, currently certain trust distributions to private companies where the amounts remain unpaid (referred to as 'unpaid present entitlements' (UPEs)) have been subject to administrative guidance provided by the ATO.

From 1.7. 2019 a UPE will come within the scope of Division 7A and will either required to be repaid to the private company over time as a complying loan or will be subject to tax as a dividend.

Immediate $20,000 write-off of depreciable assets

The Government has extended the immediate deductibility of assets costing less than $20,000 for small business entities (those with an aggregated annual turnover of less than $10 million) to 30 June 2019.

Limiting tax deductions for vacant land

From 1.7. 2019, no deductions will be available for expenses associated with holding vacant land, for example, interest expense on loans, where the land is not genuinely held for the purpose of producing assessable income. This will apply to land held for residential or commercial purposes.

The deductions denied cannot be carried forward to offset against income derived in future years. However, the costs may still be added to the Capital Gains Tax (CGT) cost base of the land where they would ordinarily be an element of the cost base.

Increasing the number of members for SMSFs

The Government confirmed an announcement made in the lead up to the budget by the Minister for Revenue and Financial Services to expand start. The maximum number of members in new and existing self-managed superannuation funds (SMSF) and small Australian Prudential Regulation Authority (APRA) funds will be increased from four to six. This allows greater flexibility for larger families to aggregate their retirement savings in one fund.

Small business CGT concessions and assignments of partnership interests

The Government has announced an integrity measure focussed on access to the small business CGT concessions for partners in partnerships.

From 8.5.2018, partners that alienate their income by creating, assigning or dealing in rights to the future income of a partnership will no longer be able to access the small business CGT concessions on the capital gain made in relation to the right.

Three year audit cycle for some SMSFs

The audit cycle for SMSFs with a history of good record-keeping and compliance will be extended to three-yearly. In order to qualify, SMSFs must have a history of three consecutive years of clear audit reports and on-time lodgements. This measure will take effect from 1 July 2019.

Non-compliant payments to employees and contractors no longer deductible (effective 1.7.2019)

Businesses will no longer able to claim deductions for payments to their employees where they have not met their PAYG obligations. This includes where the employer is required to withhold PAYG from gross payments but fails to report or remit it to the ATO.

Additionally, the deduction for businesses on certain payments to contractors which have not met PAYG obligations will be removed. Currently, if a contractor does not quote an ABN in a business-to business transaction, the purchaser is required to withhold an amount at the top marginal tax rate and remit this amount to the ATO. Failure to do this correctly will render the entire payment non-deductible.

Changes to the taxation of minor beneficiaries of testamentary trusts

From 1.7.2019, the concessional tax rates available for minors receiving income from testamentary trusts will be limited to income derived from assets that are transferred from the deceased estate or the proceeds of the disposal or investment of those assets.

This ensures that minors will be taxed at adult marginal tax rates only in respect of income a testamentary trust generates from assets of the deceased estate, including the proceeds of the disposal or investment of these assets. This prevents taxpayers obtaining the benefit of the lower tax rates by injecting unrelated into the testamentary trust.

Taxing income derived from an individual’s fame or image

From 1.7.2019, high profile individuals, such as sportspersons and actors, who licence their fame or image to a related entity, such as a company or trust, will continue to be assessed on all of the income derived from such use.

Formerly the ATO had indicated that it would accept that up to ten percent of lump sum payments for the provision of a professional sportsperson’s services and the use and exploitation of their ‘public fame’ or ‘image’ under licence to an associated resident third party can be treated as the income of the associated licencee.

Extension of taxable reporting payments system

The taxable payments reporting system for payments to contractors will be expanded to include security services, road freight transport and computer system design industries, effective from 1.7.2019

Your Notes

DISCLAIMER

This information, statements and opinions expressed in this publication are only intended as a guide to some of the important considerations to be taken into account relating to taxation matters. Although we believe that the statements are correct and every effort has been made to ensure that they are correct, they should not be taken to represent taxation advice and you must obtain your own independent taxation advice. Neither the authors, nor the publisher or any people involved in the preperation of the publication give any guarantees about its contents or accept any liability for any loss, damage or other consequences which may arise as a result of any person acting on or using the information and opinions contained in this publication.

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