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IN THIS ISSUE

- Superannuation Changes
- Various changes announced in Mid-Year Economic and Fiscal Outlook 2011-12
- Changes to the taxation treatment of the living-away-from-home allowance
- Changes to the income tax law affecting consolidated groups
- Trust reform
- Changes to the tax treatment of losses
- GST refunds

Superannuation Changes

A number of changes in relation to the taxation of superannuation have recently been announced:

- Individuals earning up to $37,000 will effectively pay no tax on their superannuation guarantee contributions from 1 July 2012. Under the low income superannuation contribution, the 15% contributions tax will effectively be refunded into the superannuation account of the relevant taxpayer in 2013-14.

- Reporting obligations will also be simplified and streamlined so that individuals who do not otherwise need to lodge an income tax return will not need to do so in order to claim the benefit of these reforms. Instead, the ATO will verify an individual's income using available data to identify those taxpayers who qualify for assistance to boost their superannuation savings. These reforms will be especially helpful as approximately a million additional low-income earners will no longer have any income tax reporting obligations once the tax-free threshold increases from $6,000 to $18,200 as of 1 July 2012.

- The government will pause the indexation of the superannuation general concessional contributions cap for one year in 2013-14, so it remains at $25,000. Indexation of the cap will be deferred until 2014-15, when the cap is expected to rise to $30,000. The pause in indexation of the general concessional contributions cap will also result in a pause in the indexation of the concessional contributions cap for individuals aged 50 and over and the non-concessional contributions cap.

- From 1 July 2012, the government will reduce the super co-contribution (whereby the government matches the individual's contribution dollar for dollar) by 50% to 50c per $1 contribution. This reduces the maximum benefit from $1,000 to $500. The measure also means that those earning more than $46,920 will no longer get a partial benefit compared with the current upper income threshold of $61,920.

These changes are unlikely to require a revision of your business practices in relation to superannuation contributions for your employees. However, it is important to be aware of these changes when making decisions in relation to your contributions in 2012. It is also important to bear these changes in mind when negotiating employment contracts with your employees.

To Do

The laws governing the taxation of superannuation are set to change. Seek advice from your tax adviser so that you can find out how these changes affect you.

Various changes announced in Mid-Year Economic and Fiscal Outlook 2011-12

Due to the current budgetary restraints faced by the government, the implementation of a number of previously announced tax law measures will be deferred until a later date. In addition, a number of additional measures have also been announced. Further details are as follows:

- The government will restrict the dependent spouse tax offset to those with spouses born before 1 July 1952, effective from 1 July 2012. This reform will not affect people whose spouse is an invalid or a carer, or who receive the zone, overseas forces or overseas civilian tax offsets.
- The dependent spouse tax offset is a measure to reduce the amount of tax you're expected to pay. To claim the offset, the dependent spouse cannot have earned more than $9,426 for the year, must be an Australian resident for tax purposes, and must have been otherwise dependent on the breadwinner. The main earner's income has to be less than $150,000.

The government will defer the following previously announced tax reforms by one year:

- The start date of the standard deduction for work-related expenses will be deferred until 1 July 2013. Once available, the standard deduction will start at $500 and then increase to $1,000 in the subsequent year. We will provide further detail on how the standard deduction will operate closer to its time of introduction.
- The start date of the 50% tax discount for the first $500 of interest income will be deferred until 1 July 2013. This amount will increase to $1,000 in the subsequent year. We will provide further detail on how the discount will operate closer to its time of introduction.
- The start date of the new tax system for managed investment trusts will be deferred until 1 July 2013.

The start date of the phase down in interest withholding tax for financial institutions will be deferred until 2014-15.

Changes to the taxation treatment of the living-away-from-home allowance

The government recently announced that, due to some perceived rorting of the existing tax treatment of the living-away-from-home allowance (LAFHA), changes will be made to:

- Remove the taxation of LAFHA from the FBT sphere into the income tax sphere. This means that the employee (rather than the employer) is liable to be taxed on any LAFHA received that is not exempt,
- Limit access to the tax exemption for temporary residents to those who maintain a residence for their own use in Australia, from which they are living away from for work purposes.
- Require individuals to substantiate their actual expenditure on food and accommodation beyond a statutory amount.

These changes are due to apply from 1 July 2012, with consultation currently ongoing in relation to a range of implementation issues, including whether transitional measures are appropriate.

According to the Treasurer's media release, no permanent resident legitimately using this tax exemption for accommodation and food expenses will lose any entitlements.

Regardless, these changes will require re-examination of any LAFHA you pay to your employees, both in relation to the increased compliance burden that will result and also to determine the substantive issue of whether your employees will continue to benefit from the tax exemption. If the tax outcome under the proposed laws differs from the outcome under the current laws, and the allowances paid to the affected employee are governed or affected by an existing arrangement (such as an employment agreement or a rental agreement), you will need to consider how the changes will affect those contracts and whether renegotiation is necessary.

To Do!

If you currently pay LAFHA to any of your employees, the rules are set to change from 1 July 2012. You should seek advice from your tax adviser in relation to how these changes will affect you.

Changes to the income tax law affecting consolidated groups

After months of uncertainty for taxpayers and the ATO, the government announced its plan to tackle the issue of the tax treatment of rights to future income in the context of consolidation late last year.

This issue relates to the manner in which rights to future income (such as the right to receive payments under a contract) were treated on consolidation following legislative amendments in 2010 to equate such tax treatment with the treatment allowable outside the tax consolidation context.

Broadly, the amendments allowed the cost base in these rights to future income to be deducted over a set period. Notably, these amendments applied retrospectively to the start of the consolidation regime (ie 1 July 2002), as the amendments were considered at the time to be a mere clarification to restore a tax treatment that was always intended to result.

Uncertainty arose after the 2010 amendments in relation to the type of assets that could constitute a “right to future income” for these purposes. The government was of the view that some taxpayers were interpreting the provisions too broadly so as to allow a more generous tax treatment than was allowable outside the consolidation regime.

The government directed the Board of Taxation to investigate and report on the issue and has now announced that the Board’s recommendations (set out below) will be implemented retrospectively (ie from 1 July 2002).

The Board made the following recommendations for changes to the future operation of the consolidation rules:

- The consolidation tax cost setting rules should apply only to assets already recognised for taxation purposes.
- The residual tax cost setting rule should be modified so that, for the purpose of applying the rule to an asset, the consolidated group is taken to acquire the asset as part of a business acquisition.
- The rights to future income rules should be limited to rights to unbilled income (or work in progress amounts) so that they align with deduction provisions in the general tax law.
- The tax cost setting rules should treat majority-owned revenue assets as retained cost base assets, to prevent the double claiming of deductions by a single economic group in relation to the same revenue asset.

While the changes are retrospective, the specific impact will depend on the time when the relevant acquisition took place.

Corporate acquisitions that took place before 12 May 2010 will be affected by the changes, subject to the application of normal amendment periods. These changes are necessary to ensure that deductions are claimed only when it was intended.

Changes for the period between 12 May 2010 and 30 March 2011 will largely protect taxpayers who made business decisions on the basis of the current law before the Board's review was announced.

For acquisitions after 30 March 2011, changes will be made to limit the circumstances in which deductions may be claimed and to ensure that a business acquisition approach is applied in specific circumstances.

Private rulings sought and received by taxpayers from the ATO, including written advice under advance compliance agreements, will be honoured.

NOTE

If you were involved in a business acquisition between 1 July 2002 and the present day, and the acquiring entity was part of a consolidated group, you should seek advice from your tax adviser in relation to how these changes affect you. Beware, these laws are very complex.

Trust reform

As noted in earlier editions of *Taxwise*, the government is currently undertaking a broad reform project in relation to the taxation of trusts.

Following the case of *Bamford* (in which the High Court confirmed that “trust income” for the purposes of Div 6 is determined by the trust deed), a number of previously established and accepted practices in relation to the taxation of trusts were potentially no longer legally viable.

These practices included:

- Streaming particular types of income to specific beneficiaries.
- Allowing primary production trusts to average income.
- Allowing trustees and beneficiaries to enter into agreements to allocate the tax liability with respect to the capital gains of the trust.

The streaming amendments introduced just before 30 June 2011 were an interim measure to allow the streaming of franked dividends and capital gains.

As previously announced by the government, a broader review of the taxation of trusts is now underway in order to tackle the other problems set out above and to bring a degree of functional simplicity to the trust tax laws.

Consultation in relation to these models is ongoing, and legislation to implement the chosen option is due to come into effect on 1 July 2013.

NOTE

If you have a trust that you currently use as an estate and/or tax planning vehicle, you should consult with your tax adviser in relation to the effect that this rewrite may have on your affairs.

Changes to the tax treatment of losses

The tax treatment of losses is currently being examined.

It is not expected that the reforms will affect losses incurred to date. Instead, the new laws will likely apply in relation to losses incurred after the date of introduction of the measure/s.

An announcement in relation to possible reforms is expected in the middle months of this year, or as part of the 2012-13 Budget papers.

NOTE

If your business has been in a loss-making position, or you expect to incur tax losses in the years ahead, you should consult with your tax adviser in relation to the potential impact of these changes on your business.

GST refunds

Late last year, the High Court of Australia ruled that the Commissioner is not permitted to withhold GST refunds for any period of time in order to investigate the legitimacy of the refund itself.

This is set to change as a result of the GST self-assessment laws due to come into effect from 1 July 2012. The precise detail of this law has not yet been settled but it is likely that the Commissioner will, under the new laws, be able to withhold refunds for the purposes of investigation, with the taxpayer holding only limited rights of review in relation to the Commissioner's decision to withhold.

In the meantime, the ATO is attempting to clear any back-log of outstanding refunds and is putting in place rapid-response teams to act in situations in which fraudulent claims are suspected

NOTE

If you have a GST refund that has been withheld, it should be refunded in the near future. Any future GST refunds cannot be withheld by the ATO for the purposes of verification. However, your claims may still continue to be subject to post-refund scrutiny by the ATO in certain circumstances.

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