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Change of Tax Commissioner

There has been a change of Commissioner at the Australian Taxation Office. Michael D'Ascenzo AO ceased to be Commissioner on 31 December 2012 and Chris Jordan AO commenced as the new Commissioner on 1 January 2013.

2013 Federal Election

With the early announcement of the 2013 federal election, this will cause the government to re-prioritise tax measures it may choose to pursue or no longer pursue over the coming months. There

may be delays in areas where change was pending and changes sped up in other areas. We will keep you informed of these changes as they are announced by the government.

Restructuring your business - removing income tax impediments

The federal government is looking to remove certain income tax impediments that impact business restructures contained in the capital gains tax (CGT) provisions. The changes affect rollovers which apply to deferring when taxable capital gains are recognised for tax purposes and would involve:

- Providing rollovers for revenue assets and trading stock where a person who owns units in a unit trust exchanges units for shares in a company (because the assets of the business are being moved from a trust into a company structure);
- Providing rollovers for revenue assets and trading stock where shares are exchanged in one company for another company (because a new company is introduced into the business ownership structure);
- Ensuring integrity in the tax system for a rollover to apply where replacement assets are of the same character for tax purposes (eg capital or revenue)
- Resolving technical defects with certain rollovers offered for restructures.

The amendments are captured in some draft legislation the government put out for review late last year.

Note!

If you are planning on changing the structure of your business, for example, converting from a trust to a company, speak to your tax adviser to see if any of the proposed changes to the CGT provisions might affect your restructuring plans.

The rules are designed to treat certain loans, payments and debts forgiven as “dividends” unless certain conditions have been met. They prevent shareholders from taking money out of a private company in a way, where the money has not been subject to tax.

These rules also interact with other areas of the tax law. The Board will have a look at these interactions and consider if the results are appropriate.

If you run your business through a company, at some stage you may wish to borrow money from the company, or may have borrowed money from the company in the past. Your loans are required to comply with the requirements of Division 7A. You should see your tax adviser if you have any concerns about loans or other transactions between yourself and your private company or if you plan to borrow money out of your company in the future.

To Do!

Check with your tax adviser if the terms of loans you, as shareholder, have from your private company comply with Division 7A. Also, see your tax adviser for issues you should look out for if you have plans to enter into transactions with your private company.

Businesses in net GST refund position can use GST instalment system

In the 2011-12 Federal Budget, the government announced that it planned to extend the current GST instalment system to allow small businesses that are in a net GST refund position to continue to use the GST instalment system. The government released some draft legislation in November 2012 which will bring this to fruition.

The proposed amendments are intended to enable small business taxpayers who are paying their GST by instalments, and who subsequently move into a net refund position, to continue to use the GST instalments option if they wish to do so. Under the proposed amendments, taxpayers who move into a net refund position and who wish to continue to pay GST by instalments would receive an instalment amount of zero each quarter.

Small business taxpayers who are currently not using the instalment option and are already in a net refund position will remain ineligible to pay

Cutting the company tax rate – no conclusion

In the previous edition of *TaxWise*, we mentioned that Treasury had set up the Business Tax Working Group to see if some changes could be made to the business tax system to assist businesses in operating in the current tough economic environment. The working group considered whether the company tax rate could possibly be cut, but this would likely have involved removing some other business tax concessions.

The working group received much feedback from the tax profession and business community about various possibilities. However, the working group found a lack of agreement among stakeholders and has been unable to recommend a package of reforms that would lead to a cut in the company tax rate.

Rules against Tax Avoidance

Following some decisions in cases going against the ATO, the government has decided to tighten up the rules which target tax avoidance by taxpayers. Legislation bringing in the changes will be introduced in the Autumn sittings of Parliament.

Previous editions of *TaxWise* have mentioned this change, and now it is on our doorstep.

It is necessary to be aware that such provisions exist and bear them in mind when embarking on transactions. Your tax agent will be able to advise you if there is any concern about these provisions with respect to your business activities.

Special rules affecting private companies

The Board of Taxation has announced that it will review the special rules, colloquially known as “Division 7A”, which apply to certain transactions between shareholders and private companies. The rules as they currently stand have been in place for approximately 14 years and therefore are due for a review into how they have been implemented and whether they successfully achieve their purpose.

their GST by instalments while they remain in a net refund position.

This is a beneficial administrative amendment for small businesses who find themselves on occasion in a net GST refund position.

Your tax agent is able to advise you what this may mean for you in preparing and lodging your BAS statements, particularly in relation to your business GST liabilities.

What is a supply for GST purposes – the Qantas case

Recently, the High Court handed down a decision in which it held that Qantas had made a taxable supply for GST purposes in the case where a passenger does not board a booked flight and either a refund for payment of the flight is not claimed by the passenger or the payment is not refundable. This is because the High Court considered that, in simple terms, the passenger was supplied with the right to fly even though they didn't take the flight and so Qantas had made a supply for GST purposes.

What this might mean for your business

In response to the decision, the ATO has taken the view that it does not significantly change the way the ATO approaches determining what is a supply, though the particular facts and circumstances of each case will always play a role.

If you have any concerns about transactions you may have entered into in the course of your business, for example with your customers or suppliers, and you are concerned with whether there may be any change to the GST treatment on those transactions, your tax agent is the person to speak to. They will gladly review any transactions you have concerns about and will be able to advise you of the proper GST treatment.

Refunding Excess GST

In the last edition of *TaxWise*, we mentioned that the Government recently released Exposure Draft legislation to clarify the operation of a provision in the tax legislation that inhibits a taxpayer from getting a refund of GST already paid to the Commissioner if it turns out GST was overpaid because a supply was incorrectly treated as a taxable supply.

This new measure has not yet progressed. However, the ATO has published the

administrative treatment it will apply until the new measure is introduced into law. Essentially, the ATO will follow its current procedures until the new law comes into force.

Tip!

If you are concerned the new law might affect your GST liabilities, it may be a good idea to speak with your tax agent now so your business is prepared for the change once it becomes law.

In-house fringe benefits – FBT changes

In the Mid-Year Economic and Fiscal Outlook report released by the government in late October 2012, the government announced a change would be made to the FBT treatment of in-house fringe benefits provided through a salary sacrifice arrangement. An "in-house fringe benefit" is a benefit (goods and services) provided by an employer (or their associate) to an employee that are identical or similar to goods and services ordinarily provided by the employer (associate) to their customers.

Under the proposal, the value of the fringe benefit subject to FBT will become either the lowest price that an identical good or service is sold to the public or the lowest price of the good or service under an arm's length arrangement.

Note!

This change only affects in-house benefits provided through salary sacrifice arrangements. If you provide benefits to your employees in relation to goods or services you sell in your business through salary sacrifice arrangements, you should see your tax adviser to see if these new rules might affect you.

Self-Managed Super Funds

There is lots of activity going on in relation to self-managed superannuation funds (SMSF). More and more people are deciding to set up their own SMSFs. We highlight below some of the current issues for SMSFs.

1) Regulations relating to audits of SMSFs - StrongerSuper

New regulations will be introduced relating to the SMSF auditor registration regime and the prescribed period for the provision of an audit report and accompanying explanatory material for an SMSF. The government recently released the draft proposed regulations for public consultation.

The purpose of the regulations is to ensure auditors of SMSFs meet a high standard of competency so that they may carry out their role as auditor of SMSFs to the highest standards.

If you run your own SMSF, it is useful to know that an auditor you obtain to audit your SMSF will be required to meet these high standards.

2) SMSF arrangements to acquire property which contravene superannuation law

The ATO has released a Taxpayer Alert (TA 2012/7) about certain arrangements entered into by SMSFs to acquire property. There are certain arrangements which the ATO consider do not comply with the superannuation laws. These are described in the Taxpayer Alert.

The ATO is concerned that some arrangements, if structured incorrectly, may not be able to be fixed up easily and may require sale of the property.

If you have an SMSF, you need to ensure care is taken when investing in property particularly where certain types of borrowing arrangements are involved.

3) Pre-retirement super withdrawals

A recent decision of the Administrative Appeals Tribunal held that an individual who withdrew funds from their self-managed super fund without meeting the qualifying conditions for withdrawal was subject to tax on the amounts withdrawn.

If you are thinking about withdrawing funds from your SMSF, speak to your tax agent about whether you have met the qualifying conditions that will allow you to draw the funds out without triggering a liability to tax.

4) Acquisitions and disposals of certain assets by SMSFs and related parties

Some draft legislation was released by the Government which affects certain transactions involving acquisitions and disposals of certain assets (eg real property used in a business)

between SMSFs and parties associated with the SMSF.

If you have plans to transfer an asset into your SMSF or for the SMSF to dispose of an asset, you should speak to your tax agent about how these proposed rules may affect your proposed transaction.

Useful superannuation publication from the ATO

The ATO has prepared a publication entitled "Super – what employers need to know" which gives employers an overview of their essential obligations in relation to superannuation and their employees.

This document may be useful for you where you have employees in your business and associated super obligations for them. A copy of the publication can be found on the ATO's website.

Changes to the Australian Business Register

The Australian Business Register website has recently been upgraded and some new functionality has been added. When registering a new entity, you should now be able to do the following:

- register for a business name, an AUSKey, GST, fuel tax credits and PAYG withholding at the same time as applying for an Australian Business Number (ABN); and
- have your details pre-filled from one registration to the next - for example, some of the details included on your ABN application should then be pre-filled on your business name application.

However, if you do not take advantage of applying for certain registrations at the initial stages of your ABN application, you will still need to:

- apply directly to each agency for additional registrations if you do not elect to apply for these registrations at the same time as you apply for an ABN, or if you already have an ABN;
- apply for a business name directly with the Australian Securities & Investments Commission (ASIC) if you are registering an entity that is not an individual or organisation with an Australian Company Number or Australian registered body number;

- go to the AUSkey website www.auskey.abr.gov.au to manage your AUSkeys - for example, cancel an AUSkey, or apply for additional AUSkeys.

It is important to look after your AUSkeys for the entities that you have.

Tip!

Before going ahead to register an entity, if you are not sure what type of entity you should register, you should seek advice from your accountant or tax agent as there may be different tax implications for different types of entities. Also, it is worth spending time working out what is the best structure for your type of business.

Taxable Payments Reporting – Building and Construction Industry

In previous editions of *TaxWise*, we noted that the new rules comprising the Taxable Payments Reporting System began to apply from 1 July 2012. As a reminder, these rules only affect participants in the Building and Construction Industry with an ABN and require certain payments made to contractors for certain building and construction services to be reported.

The reporting date of 21 July 2013 is fast approaching and businesses likely to be affected should have already started trying to record relevant transactions that they may need to report.

For this first year in which the rules apply, these payments will need to be reported by 21 July 2013, which is very soon after the financial year ends. If you make these payments, it may be worth starting to compile a list of the payments you make to contractors (including the details noted above) to assist you to meet the reporting requirements at year end.

This way, you will have compiled all the information you need in one place by year end. The ATO has indicated that it will send letters to contractors (or their tax agents) who have been identified by the ATO to raise awareness and ensure these contractors are aware of this new obligation.

If you have received one of these letters, see your tax agent who can help you get your records together to meet the requirements here.

To Do!

It is not too late to start keeping track of payments you make to contractors for the 2012-13 income year and will help you when the time comes to prepare the first report due on 21 July 2013.

Motor vehicle data matching program

The ATO has embarked on a “data matching” program where they will collect details of individuals or businesses that have acquired a vehicle with a transaction value of \$10,000 or greater in the 2011-2012 and the 2012-2013 financial years from motor vehicle registries in all States and Territories.

The ATO will then electronically match that data with data they have on file to see if individuals and businesses are meeting tax obligations in relation to the vehicles acquired. This program may pick up obligations that have not been met in regards to fringe benefits tax, luxury car tax and Fuel Scheme compliance verification activity.

If you have recently purchased a vehicle through your business, check with your tax agent if there are any associated tax obligations you may need to meet.

Useful ATO links

The ATO has published on its website a useful suite of documents for SMEs in the “[SME Communicator](#)”. It contains articles on issues particular to SMEs, such as strengthening director obligations and lodging activity statements electronically.

The ATO has also put together a “business viability” assessment tool that may be used to determine if a business is viable. However, this tool is just a guide. It would be wise to always seek professional advice if you have any concerns about the viability of your business.

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