GREEN & STERNFELD

Chartered Accountants | Business Advisors

Winter Newsletter 2018

Key points on the latest
Australian tax developments.

Businesses

Changes to small business CGT concessions

On 28 March 2018, the *Treasury Laws Amendment (Tax Integrity and Other Measures) Bill 2018* was introduced into Federal Parliament. The Bill is a result of an announcement in the 2017/18 Federal Budget (released on 9 May 2017).

The Bill aims to significantly restrict access to small business CGT concessions by introducing new conditions designed to ensure that these concessions are only available for CGT assets that are either used or held ready for use in the course of a small business or are an interest in a small business.

Broadly, the new conditions include the following:

- If the taxpayer does not satisfy the $6m net asset value test, then they must have carried on a business just before the CGT event;
- The object entity must either be a CGT small business entity itself or satisfy the $6m net asset value test (by applying a modified rule about when entities are 'connected with' other entities), and
- The share or interest being sold must satisfy a modified active asset test that looks through the shares in companies and the interests in trusts through to the activities and assets of the underlying entities.

The modified rule regarding connected entities will lower the controlling interest threshold from 40% or more to 20% or more. This change will result in more entities being connected, increasing the pool of entities and therefore assets to be considered in calculating the MNAV test for the purposes of ownership interests in companies and trusts. This will in turn make it more difficult for the MNAV test to be satisfied.

The changes are proposed to apply from 1 July 2017. We note however, that amendments have been tabled which would change the start date to 8 February 2018.

TIP

If this Bill is enacted, taxpayers who intend to claim the small business CGT concessions in 2018, will need to reconsider whether they would be eligible for the concessions pursuant to the new law once enacted.

Companies

Changes to the research and development tax incentive

In the 2018/19 Federal Budget (released on 8 May 2018), the Government announced an overhaul of the research and development (R&D) tax incentive.

For companies with aggregated annual turnover of $20 million or more, the Government will introduce an R&D premium that ties the rates of the non-refundable R&D tax offset to the incremental intensity of R&D expenditure as a proportion of total expenditure for the year. The marginal R&D premium will be the claimant's company tax rate plus:

- 4% for R&D expenditure between 0% to 2% R&D intensity;
- 6.5% for R&D expenditure above 2% to 5% R&D intensity;
- 9% for R&D expenditure above 5% to 10% R&D intensity; and
- 12.5% for R&D expenditure above 10% R&D intensity.

The R&D expenditure threshold, which is the maximum amount of R&D expenditure eligible for concessional R&D tax offsets, will be increased from $100 million to $150 million per year.

For companies with aggregated annual turnover below $20 million, the refundable R&D offset will be a premium of 13.5 percentage points above the company's tax rate for the income year that the claim is made. Cash refunds from the refundable R&D tax offset will be capped at $4 million per year. R&D tax offsets that cannot be refunded will be carried forward as non-refundable tax offsets to future income years.

The changes are proposed to apply from 1 July 2018. The Government is currently in the process of preparing draft legislation to affect the changes.

Employers

Single Touch Payroll

Single Touch Payroll (STP) reporting started from 1 July 2018 for employers with 20 or more employees.

STP is a government initiative to streamline reporting obligations. STP aims to reduce red tape and provide the ATO with real time information. From 1 July 2018, employers with 20 or more employees will need to report employee payments through STP. From 1 July 2019, employers with 19 or less employees will need to report through STP (subject to legislation currently before parliament).

When employers pay their employees through STP-enabled software, payments such as salaries and wages, allowances, deductions, PAYG withholding and superannuation information will be reported to the ATO at the same time. An employer's payroll cycle does not need to change and an employer can continue to pay employees weekly, fortnightly or monthly. A single employer may still have different pay cycles for different employees.

It is anticipated that employees will be able to access the data provided by employers throughout the year via their myGov portal. It is also anticipated that employers will no longer need to provide annual PAYG payment summaries (i.e. group certificates) to employees.

TIP

Contact your payroll software provider to understand how your payroll system will be upgraded to be STP-compliant. Furthermore, we strongly recommend reviewing your payroll systems to ensure that all of the payments that need to be reported to the ATO are being captured accurately. Please feel free to contact us with any concerns.

SG Amnesty

On 24 May 2018, the Federal Government announced a 12-month amnesty for employers to self-correct past superannuation guarantee (SG) non-compliance.

Subject to the passage of legislation, the proposed 12-month amnesty (from 24 May 2018 until 24 May 2019) allows employers to self-correct historical underpayments of SG amounts. It applies to SG shortfalls as far back as 1 July 1992 but will not apply to shortfalls for quarters starting from 1 April 2018. The benefits of taking advantage of this amnesty include:

- Not being liable for the additional administration charges normally associated with late payment
- Not being liable for penalties of up to 200%
- Tax deductibility for payments made prior to 24 May 2019

To qualify for the amnesty, voluntary disclosure of previously undeclared SG shortfalls must be made to the ATO in the approved form prior to any ATO investigations.

Legislation to give affect to the amnesty was introduced into Federal Parliament on 24 May 2018.

TIP

Please contact us if you require an update on the latest developments.

Employees

ATO closely examines work-related car expenses

The ATO has announced their continued focus on work-related expenses. For the 2018 tax returns, they have advised that they will be focusing on work-related car expenses.

All work-related car expense claims should meet the following three criteria:

- You paid for the expense yourself and you were not reimbursed (i.e. by your employer);
- It is directly related to earning your income
- You have a record to support your claim (even if you are claiming under the cents per km method).

TIP

We can help you avoid mistakes and assist you in understanding what you are legitimately entitled to claim.

GST

GST on low value imported goods

From 1 July 2018, overseas vendors with a GST turnover of $75,000 or more (calculation of turnover is limited to Australian sales only), will have to account for GST on sales of low value goods (i.e. imported goods costing $1,000 or less) to consumers in Australia (i.e. purchasers not registered for GST or GST-registered purchasers that acquired such low value goods solely for private purposes).

TIP

Overseas businesses must register for Australian GST once their annual turnover reaches $75,000. Registration is optional for businesses with lower turnovers. The low value goods changes will apply from 1 July 2018 for all businesses registered for GST, whether their registration was required or they chose to register.

Superannuation

New reporting obligations for self-managed superannuation funds ("SMSFs")

To support the introduction of the transfer balance cap (TBC), the ATO has introduced new reporting obligations for superannuation funds, including SMSFs.

From 1 July 2017, SMSFs are required to report events to the ATO which impact an individual's transfer balance account (TBA). This reporting will assist the ATO to track an individual's TBA and to monitor if an individual's TBC is exceeded. The report is called the transfer balance account report (TBAR).

An SMSF is only required to lodge a TBAR if one of its members has an event that impacts their TBA. Events which impact a member's TBA and are therefore required to be reported include the following:

- The commencement of a new superannuation income stream
- Pension commutations
- The cessation of a superannuation income stream; and
- Structured settlement contributions received on or after 1 July 2017

SMSFs that have no members with a total superannuation balance equal to or greater than $1 million at the end of the previous financial year will generally lodge the TBAR at the same time as their SMSF annual return. For all other SMSFs, the events listed above will need to be reported to the ATO via the TBAR within 28 days after the end of the financial quarter in which the event occurred.

TIP

We have updated our software to comply with the new reporting requirements. Please feel free to contact us for further information.

Contributing the proceeds of downsizing to superannuation

From 1 July 2018, individuals aged 65 or over can make a contribution to superannuation of up to $300,000 from the proceeds of selling their main residence.

The downsizer contribution cap of $300,000 will be in addition to existing caps and these contributions will not count towards the existing concessional or non-concessional contribution caps. In addition, the individual making the contribution will not need to meet the existing maximum age, work or $1.6m balance tests for contributing to superannuation.

To be eligible, the property sold must have been owned by the individual or their spouse for the past ten or more years and have been eligible for the CGT main residence exemption. Both members of a couple can contribute to superannuation under this policy from the proceeds of the sale and the downsizer contribution must be made within 90 days of receiving the sale proceeds (which is typically settlement day). Only properties where the contract of sale was exchanged on or after 1 July 2018 will be eligible.

TIP

Thinking of downsizing? Speak to us about what this could mean for you in terms of tax concessions.

First Home Super Saver Scheme

The FHSS Scheme allows individuals to save money for their first home within their superannuation fund. It is intended to help first home buyers save faster by using the concessional tax treatment within super.

From 1 July 2017, individuals can make voluntary concessional and non-concessional contributions into their superannuation fund. From 1 July 2018, individuals can then apply to their superannuation fund for these voluntary contributions to be released, along with associated earnings, to help finance the purchase of their first home.

One can apply for the release of voluntary contributions up to a maximum of $15,000 from any one financial year and $30,000 in total across all years.

TIP

To be eligible to use the FHSS Scheme, a person must be 18 years or over, have not used the scheme before and have never previously owned property in Australia.

Property

Limitation of plant and equipment depreciation deductions

From 1 July 2017, depreciation deductions for individuals, discretionary trusts and SMSFs (not companies) are restricted, depending on the time of acquisition for the relevant items of plant and equipment (such as air conditioning units, blinds and dishwashers).

For both previously used and new items of plant and equipment acquired before 9 May 2017, in a property that had been a rental property on or before 30 June 2017, owners will still be able to claim a depreciation deduction, regardless of whether a previous owner had claimed depreciation deductions on these items.

For new items of plant and equipment acquired after 9 May 2017, owners will continue to be eligible to claim depreciation deductions.

However, owners who acquire previously used items of plant and equipment after 9 May 2017 (e.g. owners who purchase a property containing items of plant and equipment that were used by a previous owner), will be unable to claim depreciation deductions.

The definition of 'previously used' includes scenarios whereby the owner did not use the items of plant and equipment originally, did not install the items of plant and equipment themselves or the items of plant and equipment were previously used for a non-taxable purpose (i.e. in the owner's residence or holiday house).

Notable exceptions to the rule regarding previously used items of plant and equipment may apply when purchasing new residential premises 'off the plan' or when purchasing residential premises within 6 months of the premises becoming new residential premises

TIP

Plant and equipment depreciation that cannot be claimed due to the above changes can be claimed as a capital loss to offset future capital gains tax. These new rules do not affect capital works deductions (such as built-in cupboards, fences and retaining walls).

Disallowance of travel deductions for residential rental properties

From 1 July 2017, travel expenses relating to inspecting, maintaining or collecting rent for a residential rental property cannot be claimed as deductions by taxpayers. The travel expenditure is also not recognised in the cost base of the property for CGT purposes.

A taxpayer can continue to deduct travel expenditure if:

- the losses or outgoings are necessarily incurred in carrying on a business for the purposes of gaining or producing assessable income; or
- the taxpayer is an excluded class of entity, which includes companies, superannuation funds and unit trusts.

TIP

Travel expenses relating to commercial properties are not affected by the above changes.

Restriction of access to main residence exemption to Australian tax residents

The Government has proposed to restrict access to the CGT main residence exemption to only Australian tax residents. Currently, foreign tax residents are also eligible for the CGT main residence exemption.

On 1 March 2018, the relevant Bill was passed without amendment by the House of Representatives and at the time of writing, the Bill is currently before the Senate. If passed, it is proposed to apply from 7.30pm on 9 May 2017. It is proposed that properties affected by this change that were held prior to this date will still be eligible for the exemption until 30 June 2019.

TIP

It can be difficult to determine whether you are an Australian or foreign tax resident for tax purposes. These rules are not the same as the rules used by the Department of Immigration and Border Protection. Please feel free to contact us if you require further information.

Changes to foreign resident capital gains withholding rules

From 1 July 2017, the foreign resident withholding tax was increased to 12.5% (from 10% in the previous year) for sales of residential property by non-residents above $750,000 (reduced from $2m in the previous year).

Tax resident vendors can avoid the withholding tax by obtaining an ATO tax clearance certificate prior to settlement date.

If more than one vendor is involved, each vendor must apply separately for a tax clearance certificate. Even if only one of the vendors fails to obtain an ATO tax clearance certificate, the purchaser must withhold 12.5% of the purchase price (in proportion to each vendor's interest in the property).

TIP

If you require assistance with obtaining an ATO tax clearance certificate, please don't hesitate to contact us.

New GST withholding regime for new residential premises

From 1 July 2018, a new GST withholding regime is in place for new residential premises or new subdivisions of potential residential land.

Prior to 1 July 2018, GST on the sale of new residential premises was included in the purchase price and the developer remitted the GST to the ATO after settlement took place.

Under the new regime, for sale contracts signed on or after 1 July 2018, the purchaser will be required to withhold and pay 1/11th of the contract price to the ATO on the day the consideration is provided (i.e. at settlement, or earlier if any instalments are paid). For properties sold under the margin scheme, the withholding rate is currently set at 7% of the GST inclusive price.

The regime will not apply to contracts entered into before 1 July 2018, provided the contract settles by 1 July 2020. If the contract settles on or after 1 July 2020, the new regime will apply regardless of the contract date.

In addition, reporting obligations are imposed on both the vendor and the purchaser. The vendor is required to provide the purchaser written notice of certain matters, including the obligation to withhold GST, the amount and other vendor details. This is proposed to apply to all taxable supplies of residential premises or subdivisions, not just new premises and subdivisions. Purchasers would be required to notify the ATO if they have a withholding obligation and notify the ATO a second time after payment has been made.

The new GST regime is aimed to address tax avoidance phoenixing arrangements, where property developers collect GST from purchasers but the company is deregistered prior to paying the GST to the ATO.

TIP

The new GST withholding regime does not apply to the sale of used residential properties, new residential premises created through substantial renovations and commercial premises.

Let's Talk

Should you have any queries or wish to organise a meeting for a more in-depth discussion as to how these issues may affect you, please feel free to contact us at any time on +61 3 9527 5041.

Robert Lebovits
robert@gsca.com.au

Leon Vilshansky
leon@gsca.com.au

Eli Lebovits
eli@gsca.com.au

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