Practice Update

October 2017

No small business tax rate for passive investment companies

The Government has released draft tax legislation to clarify that passive investment companies cannot access the lower company tax rate for small businesses of 27.5%, but will still pay tax at 30%.

The amendment to the tax law will ensure that a company will not qualify for the lower company tax rate if 80% or more of its income is of a passive nature (such as dividends and interest).

The Minister for Revenue and Financial Services said the policy decision made by the Government to cut the tax rate for small companies was meant to lower taxes on business, and was not meant to apply to passive investment companies.

ATO to be provided with more super guarantee information

The Government has announced a package of reforms to give the ATO near real-time visibility over superannuation guarantee (SG) compliance by employers.

The Government will also provide the ATO with additional funding for a SG Taskforce to crackdown on employer non-compliance.

The package includes measures to:

- require superannuation funds to report contributions received more frequently (at least monthly) to the ATO, enabling the ATO to identify non-compliance and take prompt action;
- require employers with 19 or fewer employees to transition to single touch payroll ('STP') reporting from 1 July 2019;
- improve the effectiveness of the ATO's recovery powers, including strengthening director penalty notices and use of security bonds for high-risk employers, to ensure that unpaid superannuation is better collected by the ATO and paid to employees' super accounts; and
- give the ATO the ability to seek court-ordered penalties in the most egregious cases of non-payment, including employers who are repeatedly caught but fail to pay SG liabilities.

Editor: Following extensive consultation when STP was originally announced, it was decided that employers with 19 or fewer employees would not be required to comply.

*Given the backflip here, the business community will be hoping the Government does not introduce compulsory real-time **payments** of SG and PAYG withholding, as well as real-time reporting.*

ATO: Combatting the cash economy

The ATO has reminded taxpayers that it uses a range of tools to identify and take action against people and businesses that may not be correctly meeting their obligations. Through 'data matching', it can identify businesses that do not have electronic payment facilities.

These businesses often advertise as 'cash only' or mainly deal in cash transactions. When businesses do this, they are more likely to make mistakes or do not keep thorough records.

The ATO's ability to match and use data is very sophisticated. It collects information from a number of sources (including banks, other government agencies and industry suppliers), and also obtains information about purchases of major items, such as cars and real property, and then compares this information against income and expenditure reported by businesses and individuals to the ATO.

Example: Unrealistic personal income leads to unreported millions

The income reported on their personal income tax returns indicated that a couple operating a property development company didn't seem to have sufficient income to cover their living expenses.

The ATO found their company had failed to report millions of dollars from the sale of properties over a number of years.

They had to pay the correct amount of tax (of more than $4.5 million) based on their income and all their related companies, and *also* incurred a variety of penalties.

Example: Failing to report online sales

A Nowra court convicted the owner of a computer sales and repair business on eight charges of understating the business's GST and income tax liabilities.

The ATO investigated discrepancies between income reported by the business and amounts deposited in the business owner's bank accounts, and found that the business had failed to report income from online sales.

The business owner was ordered to pay over $36,000 in unreported tax and more than $18,400 in penalties, and also fined $4,000 (and now has a criminal conviction).

Get it in writing and get a receipt

The ATO also notes that requesting a written contract or tax invoice and getting a receipt for payment may protect a consumer's rights and obligations relating to insurance, warranties, consumer rights and government regulations.

Consumers who support the cash economy, by paying cash and not getting a receipt, risk having no evidence to claim a refund if the goods or services purchased are faulty, or prove who was responsible in case of poor work quality

Higher risk trust arrangements targeted

The ATO’s 'Tax Avoidance Taskforce – Trusts' continues the work of the Trusts Taskforce, by targeting higher risk trust arrangements in privately owned and wealthy groups.

The Taskforce will focus on the lodgment of trust tax returns, accurate completion of return labels, present entitlement of exempt entities, distributions to superannuation funds, and inappropriate claiming of CGT concessions by trusts.

Arrangements that attract the attention of the Taskforce include those where:

- trusts or their beneficiaries who have received substantial income are not registered, or have not lodged tax returns or activity statements;
- there are offshore dealings involving secrecy or low tax jurisdictions;
- there are agreements with no apparent commercial basis that direct income entitlements to a low-tax beneficiary while the benefits are enjoyed by others;
- changes have been made to trust deeds or other constituent documents to achieve a tax planning benefit, with such changes not credibly explicable for other reasons;
- there are artificial adjustments to trust income, so that tax outcomes do not reflect the economic substance (e.g., where someone receives substantial benefits from a trust but the tax liability on those benefits is attributed elsewhere, or where the full tax liability is passed to entities with no capacity/intention to pay);
- transactions have excessively complex features or sham characteristics (e.g., round robin circulation of income among trusts);
- revenue activities are mischaracterised to achieve concessional CGT treatment (e.g., by using special purpose trusts in an attempt to re-characterise mining or property development income as discountable capital gains); and
- new trust arrangements have materialised that involve taxpayers or promoters linked to previous non-compliance (e.g., people connected to liquidated entities that had unpaid tax debts).