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Repeal of measures affecting small businesses that were to be funded by the mining tax

In previous editions of *TaxWise*, it was noted that three measures affecting small businesses that were tied to the introduction of the Minerals Resource Rent Tax (mining tax) would likely go if the mining tax went. This has now happened since the mining tax was repealed in September this year.

What this means for businesses that were eligible to apply these measures is that the measures were short-lived and are now no longer available. What the measures look like 'before' and 'after' the repeal of the mining tax are summarised in *Appendix 1* on the last page.

Companies who have claimed the loss carry-back offset and are now no longer eligible to do so will be contacted by the ATO, who will amend the affected assessments. The ATO have advised taxpayers will not be subject to penalties and interest if payment is made within a reasonable time.

Taxpayers who have lodged their 2013/14 income year return applying the higher depreciation

amounts should speak to their tax agent about amending their return to reduce their depreciation claim. The ATO has advised they will not apply penalties or shortfall interest if taxpayers request to amend their assessments within a reasonable period of time.

To Do!

Your business' 2013 and 2014 tax returns are the ones that will be affected by these changes if you applied any of these measures in preparing your return. See your tax agent if you think your business' tax return might be affected.

Employee share scheme changes

In October this year, the Government announced that it will reform the tax treatment of employee share schemes. The purpose of the change is to help boost entrepreneurship and support innovation led by start-up companies.

Employee share schemes are a way of employers giving their employees a slice of the ownership of the business in which they are employed. This can encourage employees to become more 'invested' in the business because they quite literally do have an investment in the business.

The previous Government changed the tax treatment of employee share schemes in 2009 so that tax usually became payable upfront on the discount when an employee received a discounted interest (for example, shares or options) under an employee share scheme.

Under the announced changes, it is intended that options or shares that are provided at a small discount by eligible start-up companies should not be subject to up-front taxation, so long as the employee holds the interest for at least three years.

The changes are to take effect from 1 July 2015 and may well encourage increased use of employee share schemes. Note though, there is no draft law yet to give effect to the changes.

Revised Superannuation guarantee charge percentages

Following the repeal of the mining tax in September this year, the scaled increase in the superannuation guarantee rate will increase to 9.5% from 1 July 2014, pause at this rate until 30 June 2020, and then rise by 0.5% annually reaching 12% in the 2025 – 26 income year.

See the following table:

Year	Superannuation guarantee charge percentage
From 1 July 2013	9.25%
From 1 July 2014	9.5%
From 1 July 2015	9.5%
From 1 July 2016	9.5%
From 1 July 2017	9.5%
From 1 July 2018	9.5%
From 1 July 2019	9.5%
From 1 July 2020	9.5%
From 1 July 2021	10%
From 1 July 2022	10.5%
From 1 July 2023	11%
From 1 July 2024	11.5%
From 1 July 2025	12%

There is useful information on the [ATO website](#) about the caps on superannuation contributions.

Now is the time to prepare for SuperStream

If you are an employer, you need to start preparing for SuperStream now. Your start date will depend on how many employees you have. SuperStream is a new data and payment standard with a set of minimum conditions for the transmission of data and payment information from employers to super funds.

It started on 1 July 2014 with larger employers (20 or more employees) having to implement the new standard by 30 June 2015. Smaller employers (19 or less employees) will have to implement the new standard between 1 July 2015 and 30 June 2016 (unless they want to start to apply it earlier). More information can be found on the [ATO website](#), though you would be wise to seek advice from your tax agent about how SuperStream may affect your business (and employees).

Do you have an FBT lodgement obligation?

If your business is liable to pay FBT for the FBT year or has paid FBT instalments for the year, you will need to ensure you lodge an FBT return for your business. However, if the fringe benefits taxable amount during an FBT year is nil, you will need to lodge a 'Notice of Non-lodgement'.

Tip!

Your tax agent will be able to tell you what your business' FBT obligations are. The FBT year runs from 1 April to 31 March, so there is plenty of time to work out your obligations for the 2015 FBT year.

Decision Impact Statement – GST credits

The ATO has published a [Decision Impact Statement](#) in relation to the AAT's decision in *North Sydney Developments Pty Ltd and FCT* [2014] AATA 363; 2014 ATC 10-365.

The case concerned a taxpayer's entitlement to input tax credits for acquisitions made more than 4 years previously in the context of a development business operated by the taxpayer. Also concerned was whether adequate notice was given within the 4 year period, and the effect of a lodgement and payment notice issued to the taxpayer.

The AAT found for the taxpayer on the question of adequate notice, finding that the taxpayer's letter to the Commissioner satisfied the 'notification' requirement in the relevant provisions of the *Taxation Administration Act 1953*. The ATO accepts the decision.

Following this decision, the ATO will be reviewing some of its guidance currently on issue concerning the ATO's ability to recover GST (and other indirect taxes) outside the usual 4 year recovery period.

Note!

If you operate a development business, or are planning to do so, you may wish to talk to your tax adviser about this case or to find out if there are any implications for your business should the ATO amend some of its published guidance.

Refunding excess GST - GSTR 2014/D4

The ATO has recently released for public consultation draft Goods and Services Tax Ruling [GSTR 2014/D4](#) entitled "Goods and services tax: the meaning of the terms 'passed on' and 'reimburse' for the purposes of Division 142 of the *A New Tax System (Goods and Services Tax) Act 1999*".

Part A of the draft Ruling sets out the Commissioner's views on when an amount of 'excess GST' has been passed on to another entity. Part B of the draft Ruling discusses the circumstances in which the Commissioner considers an amount of 'excess GST', which has been passed on to another entity, has been reimbursed to that other entity.

It is important for any business that is registered for GST to know what may amount to 'excess GST' and

when that excess GST is likely to have been passed on and reimbursed (as discussed in the draft Ruling).

To Do!

Talk to your tax adviser about what impact this draft Ruling could have on your GST obligations.

Can you have PSI when no services have been provided?

Recently, the ATO issued draft Tax Determination TD 2014/D5 which considers when a personal services entity receives a payment from a service acquirer in relation to a period, whether that payment is personal services income (PSI) even though during the period the service provider is not providing services to the service acquirer until a later time when they might be called upon.

The answer is yes, the payment will still be PSI.

Note!

If you run a business and derive personal services income through your business entity, you should become familiar with this Tax Determination. Your tax adviser can help you understand the tax implications for your personal services business, if any, from this Determination.

ANAO Audit - ATO and CGT for Individual and Small Business Taxpayers

The Australian National Audit Office is currently conducting an audit of the ATO's administration of capital gains tax for individual and small business taxpayers. The focus of the audit includes:

- Whether the ATO's management arrangements support effective administration of CGT for individual and small business taxpayers;
- The impacts of compliance and non-compliance with CGT requirements; and
- Whether the ATO's education and compliance activities are appropriate and effective.

The small business CGT concessions are a complex part of the tax law and can be difficult to understand and apply. For businesses struggling to understand their CGT obligations, this audit may well result in positive improvements to the assistance the ATO. This is something you may also wish to consider adopting into your own business to assist you in providing information to your tax agent in the same (SBR) format they will eventually be using to provide your financial information to the ATO.

can offer to small businesses trying to apply these concessions. For now, it is a matter of waiting and seeing what the ANAO recommends to the ATO as improvements so it may be something to keep on your radar.

Government response to the 'Family Businesses in Australia' report released

On 7 October 2014, Treasury released the Government's response to the [report](#) of the Parliamentary Joint Committee on Corporations and Financial Services entitled "Family Businesses in Australia – different and significant: why they shouldn't be overlooked". The report was tabled in Parliament in March 2013. The report made 21 recommendations on a wide variety of matters relating to Australia's family businesses, including some recommendations directly affecting the taxation of businesses

The Government has agreed in principle to most of the recommendations of the report, including matters affecting tax laws. You can find the Government's responses on the [treasury website](#).

Note!

Though the Government has agreed in principle to a lot of the recommendations, it may be some time before any real change is seen. For now, it may be of interest to you as a business owner just to know what recommendations have been made to the Government and what changes might occur that could affect your business at some stage in the future, both in tax and beyond.

Standard Business Reporting

The ATO is going to remove its Electronic Lodgement Service (ELS) starting on 1 July 2016 to encourage all taxpayers and their agents to provide all relevant financial information to the ATO following the "Standard Business Reporting" format. More information about SBR can be found on the [SBR website](#).

The ELS system is a system your tax agent may currently be using to interact electronically with the ATO. Soon, you will find that they will be transitioning to using SBR-enabled software.

To Do!

Talk to your tax agent about SBR, when they might be moving across to using it and if it is something you should consider adopting into your own business too.

ATO's Small Business Assist tool

A link is available [here](#) to access a wide range of topics about small business on the ATO website using its Small Business Assist tool.

Appendix 1

Measure	'Before'	'After'	What this means for your business
<i>The reduction in the instant asset write-off</i>	From 1 July 2012, the instant asset write-off was increased from \$1,000 to \$6,500. This was available to small businesses with less than \$2 million turnover. It enabled qualifying small businesses to immediately write-off low-cost assets costing less than \$6,500 rather than the assets having to depreciate the assets over time.	From 1 January 2014, the instant asset write-off amount drops back to \$1,000.	This presents a compliance headache for taxpayers for the 2013-14 income year who acquired lots of low cost assets, particularly after 1 January 2014, and expected they might be able to write them off immediately.
<i>Accelerated depreciation for motor vehicles</i>	From 1 July 2012, qualifying small businesses could immediately write-off the first \$5,000 of the cost of any motor vehicle purchased which cost at least \$6,500. The balance of the cost was then added to a small business depreciation pool.	This concession is repealed from 1 January 2014.	For qualifying small businesses who acquired motor vehicles in the 2013-14 income year, unless they anticipated the removal of this concession, they may be facing some added complications to their record-keeping.
<i>Carrying back of tax losses</i>	From 1 July 2012, companies could carry back for up to two years up to \$1 million in tax losses to offset past year income tax liabilities. Though not just designated for small businesses, because of the \$1 million cap, small businesses could benefit the most from this concession.	From 1 July 2013, the measure ceases to be available.	This measure has been short lived, as it was only available for the 2012-13 income year.

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