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Election 2013

With the certainty of the 2013 Federal Election being held on 7 September 2013, for the last few weeks, the Government has been in Caretaker mode. Until the Election passes and the new Government settles in, apart from Election promises made, we are unlikely to see much activity in the tax space. However, prior to the Election officially being called this quarter, there was significant activity in the tax space as noted below.

ATO Compliance Focus

The ATO has published its "[Compliance in focus 2013-14](#)" document. This document sets out what the ATO is doing to manage the risks to and maintain the integrity of Australia's taxation and superannuation systems for the next 12 months.

- If you are an employer, you should note that the ATO will be focusing on the reporting of PAYG withholding by employers and the identification and correct reporting of fringe benefits provided to employees as well as whether an employer has properly characterised a person as an employee or contractor.
- If you run a company, you should note that the ATO will be focusing on companies that engage in practices that are designed to avoid tax obligations or shift profits offshore.

Some other areas businesses should note that the ATO will be focusing on in its compliance activities throughout the 2013-14 year are:

- fraudulent phoenix activity;
- inappropriate consolidation outcomes;
- research and development;
- use of the Reportable tax position schedule;
- fuel tax credits;
- private company schemes;
- wine equalisation tax (WET) producer rebate;
- 'taxable payments' reporting in the building and construction industry;
- small business: cash economy;
- small business: benchmarks;
- tax crime and
- misuse of trusts.

The ATO will also be focusing on activity statement refunds to ensure businesses are correctly reporting their GST transactions and will be looking out for instances of fraud.

Information for Businesses and Contractors in the Building and Construction Industry

In previous issues of *TaxWise*, we have noted that from 1 July 2012, businesses in the building and construction industry will need to report to the ATO each year the total payments they make to each contractor for building and construction services.

The first *Taxable payments annual report* was due by 21 July 2013 (or by 28 July 2013 for those who lodge activity statements quarterly). An extension was granted to tax agents to lodge these reports on behalf of their clients to 26 August 2013.

Businesses are required to report each contractor's ABN, name and address, the total amount paid for the year and the total GST included in that amount. You should be able to find most of the information you need for the report in the invoices received from contractors.

Separately, if you are a contractor, you will need to:

- lodge your 2012-2013 tax return by the due date and include all income;
- lodge any prior year tax returns as soon as possible;
- consider making a voluntary disclosure if a mistake may have been made in a previously lodged tax return. Where you voluntarily advise the ATO of any errors or omissions, any penalties that apply may be reduced.

The information reported will allow the ATO to identify those contractors who have either not included all their income in their tax return, or not lodged tax returns.

To do!

If you have received notification from the ATO, but you do not believe you have any information to provide to the ATO or that you have received the notification by mistake, it is best to contact the ATO to advise them of this. Your tax agent will be able to assist you with this process.

Combatting "Dividend Washing"

The Assistant Treasurer has announced a measure to combat "dividend washing".

Dividend washing occurs when a person sells shares ex-dividend and the person selling the shares retains the right to the dividend and the franking credits. Then the same person immediately buys equivalent cum-dividend shares (which include the right to an additional dividend and franking credits). This can be done with listed shares where a special "cum-dividend" market is created for the shares for the two days after they go ex-dividend. This allows the same person to obtain the dividend and franking credits twice while only holding one set of shares.

The measure will prevent investors who have been able to engage in this practice from claiming both sets of franking credits on the one parcel of shares. Per the Assistant Treasurer's press release on 28 June 2013, "The measure will not have an impact on typical 'mum and dad' investors, as it will only apply to investors that have franking credit tax offset entitlements in excess of \$5000."

Taxpayers with investments in shares shouldn't be impacted by this new measure unless they have engaged in dividend washing which is, of course, discouraged. The measure is intended to apply from 1 July 2013.

Annual Pay As You Go (PAYG) Instalments

The ATO will be sending annual pay as you go (PAYG) instalment notices to taxpayers. Payment is due by 21 October 2013. If you would like to vary the instalment amount or calculate the instalment using the "income times rate" method instead, you must lodge the variation notice by the same date.

Your tax agent will be able to assist you to decide whether you should vary your PAYG instalment amount. Your income tax return will include a credit for your annual PAYG instalment, regardless of whether you have paid this amount. If their income tax returns are lodged before they pay the annual instalment, they must still pay this liability by the due date.

Tax Avoidance Schemes – Warning to Investors from ATO

In a media release issued in June this year, the ATO recently warned investors about new and complex tax avoidance schemes being marketed as people get ready to lodge their 2013 tax returns.

"It is important for anyone considering an investment or any other arrangement that will affect their tax liabilities to do their research and seek independent advice," the Commissioner, Chris Jordan said.

Some recent schemes have offered people financial security, opportunities of wealth creation and others have even attempted to exploit a social or environmental conscience.

Be wary of someone offering you a scheme that might assist you to avoid tax, particularly at this time of year when you are likely to be focused on doing your tax return.

Note!

Always speak to a registered tax agent about any scheme that might be offered to you as a way of reducing or avoiding tax. Registered tax agents are professionals that are able to give you proper advice about your tax affairs.

Employee Share Scheme Rules Under Review

The Government announced in June this year that it will review the policy around employee share schemes (ESS). The review is part of the Government's *Advancing Australia as a Digital Economy: Update to the National Digital Economy*

Strategy project for Australia to become a trusted hub in the global digital economy.

The Government will consult with stakeholders to determine the most effective measures to address the barriers faced by start-up companies in running ESS, including:

- developing guidance to reduce the administrative burden (meaning the cost of valuing shares and options) of establishing an ESS;
- adjusting the valuation methodology of options; and
- examining the point at which share options are taxed for start-up companies.

Capping of Education Expense Deductions or Employees

In April this year, the Government announced that the deduction for work-related self-education expenses claimed by employees would be capped at \$2,000 per annum, rather than remain unlimited as it is currently. This measure has been the subject of a lot of discontent from all sectors including where further education is a continuing requirement of a profession, education providers, taxpayers likely to be adversely affected by the measure as well as the tax profession. A discussion paper considering the design of the measure was released at the end of May this year.

It is not yet clear what the impact for employers may be, but it could include FBT implications if the cost of education is salary-sacrificed by an employee or other possible FBT implications. It is uncertain whether the deduction for education expenses incurred by an employer may be affected by the cap that will be imposed on employees. There are also possible implications for sole traders and people deriving personal services income.

For employers who provide education to their employees, this is a measure to keep an eye on. Your tax adviser will be able to keep you abreast of the progress of this measure. Note that this measure is not intended to start until 1 July 2015.

Applying Small Business CGT Concessions - Avoid Common Errors

The ATO has published a [document](#) entitled "Applying small business CGT concessions - avoid common errors". It says that the ATO has noticed some common errors occurring when applying the small business capital gains tax (CGT) concessions and provides tips to help avoid those errors.

If you run a small business, it may be worth your while having a look at this document. However, if you are considering applying any of the small

business CGT concessions or want to find out more about them, you should see your tax adviser.

Income of a Trust estate

a) *Greenhatch* Decision Impact Statement

For taxpayers who have a trust, it may be useful to note that the ATO has issued a Decision Impact Statement in relation to the Full Federal Court decision in *FCT v Greenhatch* [2012] FCAFC 84.

In this case, the Full Federal Court considered how to apportion the income and capital of a trust estate to the beneficiaries of the trust.

Following the decision, the ATO has put out its views on how it believes the decision will impact on how trustees should work out a beneficiary's share of the income of the trust estate.

b) Taxpayer Alert 2013/1

The ATO has also issued a Taxpayer Alert TA 2013/1 concerning arrangements that exploit mismatches between the income of the trust according to trust law and the taxable income of the trust. The purpose of a taxpayer alert issued by the ATO is to alert taxpayers to an emerging risk the ATO has identified and is focusing on.

Income Tax Rulings and Determinations

a) *Dividend access share and s 177E - TD 2013/D5*

Draft TD 2013/D5 entitled "Income tax: is the 'dividend access share' arrangement of the type described in this Taxation Determination a scheme 'by way of or in the nature of dividend stripping' within the meaning of section 177E of Part IVA of the *Income Tax Assessment Act 1936*?" has been released by the ATO.

The draft determination focuses on the issue of a special class of shares in a private company designed to ensure that ordinary shareholders of a private company and/or their associates derive the economic benefit of significant taxed profits accumulating in the private company in a substantially (if not entirely) tax-free form where this class of shares has certain rights attached.

b) *Effective life of depreciating assets (applicable from 1 July 2013) - TR 2013/4*

TR 2013/4 has been released by the ATO which discusses the methodology used by the Commissioner in making a determination of the effective life of depreciating assets under section 40-100 of the *Income Tax Assessment Act 1997*.

The Commissioner has also made a determination of the effective life of certain depreciating assets which takes effect from 1 July 2013. This determination has been incorporated into Tables A and B in the Schedule to this Ruling.

If you have a business with depreciating assets, the ruling will assist you to work out the effective life of the assets for depreciation purposes.

c) Car limit for 2013-2014 - TD 2013/15

TD 2013/15 has been issued by the ATO containing the car limit under section 40-230 of the *Income Tax Assessment Act 1997* for the 2013-2014 financial year which is \$57,466. The limit is unchanged from 2012-2013.

The car limit under section 40-230 is used, among other things, for the purposes of working out the first element of cost of certain cars to which the car limit applies for depreciation purposes. If the first element of cost of a car to which the car limit applies exceeds the car limit, the first element of cost of that car is reduced to the car limit. The relevant car limit is the one that applies for the financial year in which the taxpayer starts to hold that car.

d) Div 7A benchmark interest rate for 2013-14 - TD 2013/17

The benchmark interest rate that applies to Division 7A loans issued by private companies is contained in TD 2013/17. The rate is 6.20% effective from 1 July 2013. If you have a private company that has issued loans to shareholders of the company, this benchmark rate can apply to those loans.

Refunding Excess GST

Previous editions of *TaxWise* have noted the Government's plans 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 the GST was overpaid because a supply was incorrectly treated as a taxable supply.

The legislative amendment effecting this change is contained in *Tax Laws Amendment (2013 Measures No. 4) Bill 2013* which has now lapsed due to the 2013 Federal Election having been called.

The purpose of the amendment is to ensure excess GST is only refundable in certain circumstances. The amendments apply to overpayments of GST as a result of a mischaracterisation of a supply or arrangement or miscalculation of the GST payable, or for any other reason, if the overpaid GST has been passed on.

In most cases, the amendments allow taxpayers to determine whether they are entitled to a refund of

amounts of excess GST. The Commissioner also has discretion to refund the excess GST in exceptional circumstances where the application of these provisions to deny a refund would be inappropriate.

The amendments are intended to apply to all refund claims relating to tax periods starting on or after 17 August 2012, for those refund claims lodged on or after 26 June 2013.

If these proposed changes are likely to impact your business, it is worth keeping an eye out for the progress of this measure.

Tip!

Periodically check in with your tax agent about the progress of this measure.

Proposal to abolish FBT Statutory Formula for Cars

On 16 July 2013, the Treasurer, Chris Bowen, announced that the statutory formula to calculate car fringe benefits would be removed and that only the operating cost method would be available. The operating cost method requires log books to be kept over a twelve week period every 5 years as well as all costs associated with the car (eg registration, servicing, insurance) to be tracked for the purpose of calculating the value of the fringe benefit provided by an employer who provides a car to an employee.

The removal of the statutory formula is to take effect from 1 April 2014 and is estimated to save the Government \$1.8 billion over the forward estimates period.

Note that this measure is just a proposal, though it is something employers who provide car fringe benefits to employees should keep in mind and therefore is a measure that potentially affected employers should keep an eye on.

A factsheet entitled "A fairer treatment for FBT on cars" is available for employers who are interested in finding out more information about the proposal. The fact sheet can be accessed here.

International Tax - Risks to the Sustainability of Australia's Corporate Tax Base

Over the past few months, the Government has been focused on finding ways to preserve Australia's corporate tax base. This means that the Government will be looking to tighten up the rules that might otherwise allow a company that has derived income in Australia to take the income out of the country and not pay tax on it here.

Accordingly a scoping paper has been released in Australia to consider these issues. Businesses with international dealings are likely to be affected.

Though this may not necessarily impact your business now, if you are looking to grow and expand your business, it may be something just to note for now.

Other countries are similarly focused on protecting their own corporate bases.

Superannuation – Various

a) **Treasurer promises a 5 year freeze on superannuation changes**

The current Treasurer, Chris Bowen, has promised that a re-elected Rudd Labor Government would make no major changes to superannuation tax policy for a five-year period, commencing immediately. Given the constant changes to the taxation of superannuation over recent years, this may be welcome relief.

The Government will also bring forward legislation to establish the Super Council to ensure any future changes to superannuation are consistent with an agreed Charter of Superannuation Adequacy and Sustainability. The Charter will include the commitment to a five-year moratorium on changes to superannuation tax policy. The Government will make an announcement on the membership of the Council in due course.

b) **Small businesses to gain access to the Superannuation Complaints Tribunal**

Following an announcement by the Assistant Treasurer, David Bradbury, in July this year, small businesses will be able to access the Superannuation Complaints Tribunal (SCT). The SCT will be able to hear complaints made by small businesses against superannuation funds. Additional members with relevant experience in this area will be appointed to the SCT.

c) **Trans-Tasman super portability regulations made**

New regulations have been made which will allow Australians and New Zealanders to take their superannuation with them when they move permanently from one country to the other. The regulations began to apply from 1 July 2013.

d) **Updated ATO information on super contributions and caps from the ATO**

The ATO has updated its website for information in relation to superannuation contributions and caps. A link to this information may be found [here](#). It may be worth letting your employees know. If you have any concerns about making contributions that might exceed the cap for one or more of your employees,

Speak to your tax agent about managing your obligations.

e) **Reform of SMSF levy arrangements**

The government has reformed supervisory levy arrangements for self-managed superannuation funds (SMSFs) by:

- changing the timing for collection of the levy
- increasing the levy to ensure regulatory costs are fully recovered.

The payment of the SMSF levy will be brought forward so it is levied and collected in the same financial year. The change in the timing of the collection of the SMSF levy will be phased in over two years to give SMSFs time to adjust. Transitional provisions apply to the levy for the 2013-2014 year of income so that it is payable in two instalments.

The Government will increase the annual SMSF levy from \$191 (in 2012-2013) to \$259 from 2013-2014 onwards to ensure full cost recovery.

For more information, go [here](#).

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