



THE REPORT

June / July 2016

Tax News, Views and Clues

Tax incentives to promote innovation

Innovative companies with an interest in getting involved in the “ideas boom” need to be aware of the Government’s proposed tax incentives to help promote innovation. The Government has released draft legislation to implement more of the proposed tax measures announced as part of its National Innovation and Science Agenda (released in December 2015).

One of the tax measures will allow companies that have changed ownership to access past year tax losses if they satisfy a similar business test. Under the current law, companies that have changed ownership must satisfy the same business test to access past year tax losses. This measure is designed to encourage entrepreneurship by allowing loss-making businesses to seek out new opportunities to return to profitability.

The other measure proposes to allow taxpayers the choice to either self-assess the effective life of certain intangible depreciating assets (such as patents or copyrights) or use the statutory effective life. The current law only provides an effective life set by statute. According to the Government, changing the tax treatment for acquired intangible assets will make startups’ intellectual property and other intangible assets a more attractive investment option.

Holiday homes: tax considerations

Australians who let their holiday homes for only part of the year should be aware of the ATO’s compliance focus on excessive holiday home deduction claims.

The ATO has released guidance on claiming deductions in relation to holiday homes. If a taxpayer rents out their holiday home, they can only claim expenses for the property based on the proportion of the income year when the property was rented out or was genuinely available for rent. Notably, the new guidance indicates what is meant by “genuinely available for rent”. According to the ATO, factors that may indicate a property is not genuinely available for rent include that:

- it is advertised in ways that limit its exposure to potential tenants (for example, the property is only advertised by word of mouth);
- the location of, condition of or accessibility to the property mean that it is unlikely tenants will seek to rent it;
- there are unreasonable or stringent conditions on renting out the property that restrict the likelihood of the property being rented out; or

- interested people are turned away without adequate reasons.

TIP: Although it is always prudent to check things over before tax time, holiday home owners may particularly want to take the opportunity to review their circumstances and ensure that any deduction claims are made correctly before “the taxman cometh”.

Individuals caught in “Panama Papers” leak

The ATO has advised that it is investigating more than 800 individuals after a leak of taxpayer data in relation to a Panamanian law firm.

Deputy Commissioner Michael Cranston said that since the completion of the offshore disclosure initiative “Project DO IT”, the ATO has ramped up its compliance work to deal with taxpayers who have failed to disclose offshore income and assets.

Mr Cranston said the ATO has been analysing the latest data against information these taxpayers had reported and against the information the ATO already has. The information the ATO received regards some taxpayers who it had previously investigated, as well as a small number of taxpayers who disclosed their arrangements to the ATO under Project DO IT. The information also regards a large number of taxpayers who have not previously come forward, including high-wealth individuals, and Mr Cranston said the ATO is already taking action on those cases.

ATO’s data-matching net widens

The ATO has announced details of its various data-matching programs. Most of the announcements regard extensions to existing data-matching programs. Records obtained through the programs will be electronically matched with ATO data holdings to identify non-compliance with registration, lodgement, reporting and payment obligations under taxation laws. The following are key points:

- The ATO will acquire details of registered voters on the Commonwealth electoral roll from the Australian Electoral Commissioner. This data-matching program aims to identify taxpayers who are not registered with the ATO when they are required to be.

The ATO will acquire data from businesses that it visits as part of its employer obligations compliance program during the 2016–2017, 2017–2018 and 2018–2019 financial years. This program aims to obtain intelligence to identify

risks and trends about contractors who may not be complying with their taxation obligations.

- The ATO will acquire data relating to electronic payments made to merchants through specialised payment systems for the 2014–2015, 2015–2016 and 2016–2017 financial years. This data will be used to detect unreported income and to identify those operating a business but failing to meet their registration, lodgement and payment obligations.

Tax Time 2016: take care with work and rental property claims

The ATO encourages people to check which work and rental property-related expenses they are entitled to claim this tax time, and to understand what records they need to keep.

Assistant Commissioner Graham Whyte has reminded taxpayers that there has been a change in the rules for calculating car expenses this year, and people need to use a logbook or the cents-per-kilometre method to support their claims.

“It’s important to remember that you can only claim a deduction for work-related car expenses if you use your own car in the course of performing your job as an employee”, Mr Whyte said.

The ATO will pay extra attention to people whose deduction claims are higher than expected, in particular those claiming car expenses (including for transporting bulky tools), and deductions for travel; internet and mobile phones; and self-education. Mr Whyte also noted that “the ATO will take a closer look at any unusual deductions and contact employers to validate these claims”.

The ATO also encourages rental property owners to better understand their obligations and get their claims right. Mr Whyte said the ATO would pay close attention to excessive interest expense claims and incorrect apportionment of rental income and expenses between owners. “We are also looking at holiday homes that are not genuinely available for rent and incorrect claims for newly purchased rental properties”, Mr Whyte said.

TIP: The ATO says advances in technology and data-matching have enhanced its ability to cross-check the legitimacy of various claims.

The ATO also reminds people engaged in the share economy (eg ride-sourcing) to include income and deductions from those enterprises in their tax returns.

TIP: Ride-sourcing drivers are likely to be carrying on a business and be eligible for deductions and concessions in their tax returns. This could include depreciation deductions and GST input credits.

SMSF borrowing arm's-length terms deadline extended

The ATO has extended until 31 January 2017 the deadline for trustees of self managed super funds (SMSFs) to ensure that any related-party limited recourse borrowing arrangements (LRBAs) are on terms consistent with an arm's-length dealing. The ATO had previously announced a grace period whereby it would not select an SMSF for review for the 2014–2015 year or earlier years, provided that arm's-length terms for LRBAs were implemented by 30 June 2016 (or non-compliant LRBAs were brought to an end before that date).

The deadline extension to 31 January 2017 follows the ATO's release of Practical Compliance Guideline PCG 2016/5, which sets out "safe harbour" terms for LRBAs. If an LRBA is structured in accordance with PCG 2016/5, the ATO will accept that the LRBA is consistent with an arm's-length dealing and the non-arm's length income (NALI) rules (47% tax) will not apply.

TIP: The ATO requires arm's-length payments of principal and interest for the year ended 30 June 2016 to be made under LRBA terms consistent with an arm's-length dealing by 31 January 2017.

Lifetime \$500,000 non-concessional superannuation cap

As announced in the 2016–2017 Federal Budget, the Government has proposed a lifetime non-concessional superannuation contributions cap of \$500,000 to apply from Budget night (3 May 2016). This means that people who are planning to make non-concessional contributions now need to check their historical non-concessional contributions data back to 1 July 2007 (which will be counted against the \$500,000 lifetime limit). To this end, the ATO can calculate non-concessional contribution amounts for the period 1 July 2007 to 30 June 2015, provided that the individuals and funds have met their lodgement obligations.

TIP: The ATO can only calculate the amount of non-concessional contributions based on the information it has. It may be prudent to review your own history of contributions. Please contact our office for further information.

ATO clearance certificates for property disposals

A new foreign resident capital gains withholding tax regime has been introduced. The new rules will apply where real property contracts are entered into on or after 1 July 2016, but will only apply to sales of residential property where it has a market value of \$2 million or more. Where the new rules apply, the transaction will incur a 10% non-final withholding amount at settlement.

Withholding does not apply to sales by Australian resident sellers, but these sellers will need to obtain a clearance certificate from the ATO and provide it to the purchaser. Note that Australian resident vendors will need to obtain this clearance certificate before settlement to ensure they do not incur the 10% non-final withholding amount. Vendors can also apply for a variation if they are not entitled to a clearance certificate, if a vendor's declaration is not appropriate or if 10% withholding is too high compared to the actual Australian tax liability on the sale of the asset.

TIP: The ATO has talked to real estate agents, conveyancers and legal practitioners to ensure the industry is prepared to help its clients meet their withholding obligations.

Hotel owner liable to GST for accommodation supply

A hotel owner has been unsuccessful before the Administrative Appeals Tribunal (AAT) in seeking a GST refund of \$476,610.

The hotel owner had a management agreement with a hotel operator. Under the agreement, the operator was to "act solely as the agent" for the owner. The ATO ruled that the owner was making a taxable supply of accommodation in commercial residential premises for the purposes of the GST Act. The owner objected, arguing that it had incorrectly accounted for GST.

The AAT said the only issue it was required to determine was whether the supply of accommodation in the hotel by the owner was correctly described as a supply of accommodation in commercial residential premises, provided to an individual by the entity that owns or controls the commercial residential premises. If it was so, then the hotel owner could not claim that the supply was input taxed under the GST law.

The AAT concluded that the supply in this case was made by the hotel owner through its agent, the operator. Accordingly, the AAT affirmed the Commissioner's decision that GST was payable on the supply of the accommodation.

ATO to make new decision on superannuation death benefit

The Administrative Appeals Tribunal (AAT) has ordered the Commissioner to request that a couple make an application for another private ruling in relation to a life insurance payout they received after the death of their adult son.

In 2013, the couple's son died in a motorbike accident. He was employed as a pilot and up to the time of his death had lived at home with his parents. As administrators of their son's estate, the couple received a lump sum payment of \$500,000 under their son's life insurance policy, which was part of his employer's super scheme.

The couple applied for a private ruling that the \$500,000 was a superannuation lump sum that was not assessable under the tax law. The Commissioner issued a private ruling to each taxpayer ruling that they were not death benefit dependants.

Although the AAT held that the Commissioner's ruling was correct, it noted the couple had provided "additional information" asserting they had a close personal relationship with their son. The AAT said that had the Commissioner been provided with that information earlier, he would have asked the couple to make an application for another private ruling. Accordingly, the AAT ordered the Commissioner to request that the couple make another private ruling application.

Important: This is not advice. Clients should not act solely on the basis of the material contained in this Bulletin. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Bulletin is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.