Tax Time Monthly

HALL CHADWICK

DECEMBER 2017

INCOME TAX

STATE TAXES

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1. INCOME TAX

Limit on deduction for travel and depreciation deductions on residential properties now law

On 30 November 2017, Treasury Laws Amendment (Housing Tax Integrity) Bill 2017 received Royal Assent. This legislation limits:

1. Travel expenditure incurred from 1 July 2017 is denied where it is incurred to earn assessable income from residential premises.

2. Depreciation deductions on depreciating assets is denied from 1 July 2017 where:

- It is a depreciable asset installed in existing residential property (second-hand assets used in residential property); or

- Depreciable assets installed in a property at a time when it was used as a residence of the taxpayer (rather than a rental property), whether as a main residence or holiday home; but

- Depreciation deductions will continue to be available for depreciating assets acquired as part of new residential premises, subject to certain conditions, or if the property was acquired before 9 May 2017.

Deductions for travel and depreciation as above will not be denied if the expenditure is necessarily incurred in carrying on a business, or if it is incurred by a company, a superfund (that is not an SMSF), a managed investment trust (**MIT**), a public unit trust, a unit trust or partnership if each member of the unit trust/partnership is a company/ superfund not SMSF, MIT, public unit trust. Where the travel expenditure is not deductible it does not form part of the cost base of the residential property. Where depreciation deduction is not available, it would form part of the cost base of the depreciating asset and a capital loss may be available under CGT Event K7 where the asset is disposed or scrapped. A quantity surveyor's report should be considered to assign consideration to such assets to bring forward capital losses where depreciating assets are to be scrapped (if this occurs prior to disposal of the residential property).

The limitation on deduction for depreciating assets does not extend to deduction for building works under Division 43 which remains deductible for all taxpayers. Clients considering investing in residential property should discuss the impact of this legislation with their Hall Chadwick advisors.

3. A vacancy fee is imposed on foreign owners of residential real estate where it is not occupied or genuinely available on the rental market for at least 6 months in a 12 month period. A foreign person must give the Commissioner of Taxation a "vacancy fee return" in respect of each dwelling on residential land which the foreign person holds an interest in within 30 days after the end of a "vacancy year". A vacancy year is a 12 month period that commences on the owner's initial right to occupy the dwelling. This fee is levied annually and will be equivalent to the relevant foreign investment application fee imposed on the property at the time it was acquired by the foreign investor.

Single Touch Payroll from 1 July 2018

Currently employers report their PAYG withholding, salaries and wages to the ATO via business activity statements and annual PAYG payment summary statements.

Single touch payroll (**STP**) is a reporting change to the ATO for employers.

From 1 July 2018, employers with 20 or more employees will need to report directly to the ATO salaries and wages, superannuation and PAYG withholding via their payroll software solution, at the same time they pay their employees.

Employers with 19 or less employees are required to comply from 1 July 2019, and subject to legislation being passed in parliament.

Clients who are employers should get in touch with their payroll solution provider to ensure they will be STP compliant from 1 July 2018.

ATO flags unpaid present entitlement unitisation arrangements

The ATO in their publication "What attracts our attention" sets out that they have identified cases where a private group seeks to extinguish unpaid present entitlements (UPEs) or avoid the interest and repayment obligations under Division 7A by implementing an arrangement where a private company subscribes for units in a unit trust, and the unit trust provides payments or loans to other entities within the private group.

The ATO is concerned the arrangements may give rise to income tax consequences including the application of the anti-avoidance provisions in Part IVA of the ITAA1936.

Clients with Division 7A issues should be aware of ATO's attention to such schemes and contact Hall Chadwick if concerned.

TD 2017/20 Family trust can provide benefits to non-beneficiaries resulting in family trust distribution tax

The ATO issued TD 2017/20: *Income tax: is a person who is not a beneficiary of the trust capable of having a distribution made to them for the purposes of section 272-60 of Schedule 2F to the Income Tax Assessment Act 1936?*

A trust that has made a family trust election would be subject to family trust distribution tax (FTDT) at the top marginal rate, if it makes a distribution to a party that is not a member of the family group of the specified individual named in the family trust election.

The tax determination sets out the ATO's view that where the value of a benefit provided by a family trust exceeds the consideration received by the family trust, this would be considered a distribution for FTDT purposes even if the recipient is not a beneficiary. A distribution will not occur where the transaction is on arm's length terms or as part of ordinary business dealings, as these are not disguised distributions of trust property.

The tax determination provided a single example where the ATO would consider a benefit provided as a distribution (and its value subject to FTDT), where a trust has a holiday home and allows a non-beneficiary to use it free of charge.

The tax determination applies to transactions carried out from 7 June 2017. Clients with family trust having non-arm's length transactions with parties outside of the family group should contact Hall Chadwick for advice and application of this tax determination.

ATO grants extension of time for country-by-country reporting

Taxpayers with global turnover in excess of $1billion are required to report to the ATO their international related party transactions and other matters as part of the new country by country reporting requirements for significant global entities. For December balancers, this due on 31 December 2017 (for the 12 months ended 31 December 2016). The ATO has announced this will be extended to **15 February 2018** for December balancers.

GST on new residential property to be remitted by purchaser – draft legislation

On 6 November 2016, the Government released exposure draft legislation proposing to give effect to its 2017-18 Budget measure to require purchasers of new residential premises to withhold and remit GST on the purchase price directly to the ATO from 1 July 2018 as part of the settlement.

Currently GST is included in the purchase price and remitted by the developer when they sell the property. The developer then has up to 3 months to remit GST after the sale of the property and some dishonest developers phoenix their entity to avoid remitting the GST.

The draft legislation proposes to require the purchaser of new residential premises, or new subdivision of potential residential land, to pay 1/11th of the purchase price ot the ATO directly, prior to or at the time the consideration is first provided (other than as a deposit). In the majority of cases this will be at time of settlement.

The supplier is required to provide the purchaser with a notification 14 days before making the supply. The purchaser is required to notify the ATO 5 days before they intend to make a remittance payment. The supplier will be entitled to a GST credit for the amount of the payment made to the ATO (but no credit is available because an amount has been withheld by the purchaser).

Once the legislation is finalised, developers should updated contracts and have systems in place to ensure compliance from 1 July 2018.

2. STATE TAXES

NSW land tax: primary production exemption denied for tree farming

The NSW Civil and Administrative Tribunal has ruled that land owned by a taxpayer was not eligible for land tax exemption as the land was not used for primary production, and the operations did not meet the commerciality test in Teebee Holdings Pty Ltd ATF *Teebee Property Trust v Chief Commissioner of State Revenue.*

Section 10AA(1) of the *Land Tax Management Act* 1956 sets out that land zoned rural is exempt from land tax if the land is used for primary production. Land not zoned rural is exempt from land tax if it is land dominantly used for primary production and the use of the land has a significant and substantial commercial purpose or character, and is engaged in for the purpose of profit on a continuous or repetitive basis (the commerciality test).

The taxpayer acquired land that was zoned partly rural, partly environmental conservation and partly general residential. At the time of purchase, the taxpayer asserted that the previous owner's solicitors has told him that there were trees planted on the land as part of a tree farming venture, and on this basis the land should be exempt from land tax as it is being used for primary production.

The Tribunal ruled that the land was not zoned rural, and was not exempt from land tax as only 9 out of 73 hectares of the land was used for tree activities. Further, the value of the trees were uncertain, there was no business plan, very little care taking of the trees occurred, there were no sale of the trees and no evidence that the tree farming activity would be profitable, so the use of the land failed the commerciality test. On this basis the taxpayer was subject to land tax.

Clients should be aware that application of the primary production exemption for land tax is strict and contact Hall Chadwick if concerned in relation to its application.

Find out how we can help, contact your local office

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