TAXWISE BUSINESS NEWS

September 2014

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

Several tax measures introduced when the Minerals Resource Rent Tax (MRRT) was introduced in 2012 are set to be repealed when the MRRT is repealed. The measures directly relevant to small business taxpayers that will be affected are:

- loss-carry back rules; and
- capital allowances for small business entities ($6,500 instant asset write-off and accelerated depreciation for motor vehicles).

Previous editions of *TaxWise* have talked extensively about these measures. To recap, the repeal of the loss-carry back measure applies from the start of the 2013-14 income year. The changes to be made to the capital allowances for small business entities generally apply on and after 1 January 2014.

Two attempts have been made to repeal the MRRT and the other measures affected. However, at the time of writing, the Bill to repeal these measures had not yet been passed.

Tip!

There is guidance on the ATO website about what business taxpayers should do in the meantime while these measures have not yet been repealed. However, it is always best to seek advice from your tax adviser about what you should do, particularly if you are in the process of preparing your 2014 tax return.

Have you relied on tax measures that are not going to become law?

Since late last year, the Government has been trying to get on top of nearly 100 tax-related measures that had been announced over the last decade or so but had not made it into the law. There are some measures that are not proceeding that taxpayers would have still relied on assuming they would be brought into the law at some stage.

A provision has been passed into law to protect taxpayers who might have made decisions affecting their business and prepared tax returns on the assumption particular measures would eventually become law. This provision ensures outcomes are preserved in relation to tax assessments where taxpayers have reasonably and in good faith anticipated the impact of identified announcements made by a previous government that the tax law would be amended with retrospective effect, and the current government has now decided that the announced proposal to change the law will not proceed. Note that only *some* announced measures that are not proceeding are covered by this provision, not all.

Some of the identified announcements affect the following areas:

- Bad debts - consistent treatment in related party financing arrangements;

- Certain improvements to the company loss recoupment rules;
- Some technical changes to the capital allowances (asset depreciation) regime;
- A variety of measures affecting consolidation.

To do!

See your tax adviser if you think you have relied on one of these proposed changes in making decisions about your business. Your tax adviser will be able to give you peace of mind if you have any uncertainty and are unsure whether you have the protection of this new provision or you might have to amend a past business tax return.

Do you properly characterise receipts from property development in your trust?

If you are a property developer and you have structured your business to include trusts, you need to be aware that in July this year, the ATO issued a Taxpayer Alert TA 2014/1 entitled "Trusts mischaracterising property development receipts as capital gains".

The Taxpayer Alert describes arrangements where property developers use trusts to return the proceeds from property development as capital gains instead of income on revenue account.

The ATO considers that arrangements of this type give rise to various issues relevant to taxation laws, including whether:

a) the underlying property constitutes trading stock on the basis that the trustee is carrying on a business of property development;
b) the gross proceeds from sale constitute ordinary income on the basis that the trustee is carrying on a business of property development;
c) the net profit from sale is ordinary income on the basis that, although the trustee is not carrying on a business of property development, it is nevertheless involved in a profit making undertaking.

The ATO has commenced a number of audits and has made adjustments to increase the net income of a number of trusts. The ATO has warned property developers against using trusts to return the proceeds from property developments as capital gains instead of income.

To do!

If you are a property developer and you operate your business through trusts, speak to your tax adviser about whether your business may be affected by the ATO's audit activity in this space.

Farm Management Deposits

In the previous edition of *TaxWise*, we alerted readers to the changes that were being made to farm management deposits (FMD). The changes, which have now passed into law, improve the operation of the FMD Scheme.

The changes are:

- changes to the FMD scheme to allow FMD owners to consolidate their existing accounts that have been held for longer than 12 months, without triggering tax liabilities; and
- increasing the non-primary production threshold for FMDs from $65,000 to $100,000.

These changes apply to income years commencing on or after 1 July 2014.

In addition to the above changes, amendments were also made to the *Banking Act 1959* (Cth) to exclude FMDs from the operation of the unclaimed moneys scheme from the date of Royal Assent (30 May 2014).

Effective life of depreciating assets from 1 July 2014 - TR 2014/4

Taxpayers with depreciable assets should note that in June this year, the ATO issued Taxation Ruling TR 2014/4 "Income tax: effective life of depreciating assets (applicable from 1 July 2014)".

The ruling discusses the methodology used by the Commissioner in making a determination of the effective life of depreciating assets under the relevant provisions of the tax law.

Taxpayers may choose to use the Commissioner's determination of the effective life of a depreciating asset or may make their own estimates. The explanation provided in this ruling of the methodology used by the Commissioner in making a determination of effective life may assist taxpayers who choose to make their own estimate of the effective life of a depreciating asset.

This information is important for depreciating assets for the purpose of preparing your business income tax return.

Tip!

In working out how much to depreciate assets in your business, make sure you refer to the right ruling for the right income year. ***TR 2013/4*** has the rates that apply in your business 2014 tax return and ***TR 2014/4*** has the rates that will apply in your business 2015 tax return.

Capital gains improvement threshold for 2014-15 - TD 2014/16

The capital gains improvement threshold for the 2014-15 income year is **$140,443**: taxation determination TD 2014/16 "Income tax: capital gains: what is the improvement threshold for the 2014-15 income year under section 108-85 of the *Income Tax Assessment Act 1997*?".

The improvement threshold applies when a capital improvement to a pre-CGT asset is a separate asset as well as to capital improvements to CGT assets for which a rollover may be available.]

Note that this threshold applies for the 2015 income year. The threshold that applies to the 2014 income year is $136,884 (see TD 2013/19).

Benchmark Interest Rate for Private Company Loans

If you have a private company that has made loans to any of its shareholders, you should be aware of the benchmark interest rate that applies. The rate for the 2015 income year has been decreased to 5.95% (see TD 2014/20). The rate that applied in the 2014 income year was 6.2% (see TD 2013/17).

PAYG instalments threshold increases

Recently, the Small Business Minister has announced changes to the pay as you go (PAYG) instalments entry and exit thresholds. From 1 July 2014, PAYG instalment entry and exit thresholds will increase:

- business or investment income - from $2,000 to $4,000;
- adjusted balance of assessment - from $500 to $1,000; and
- notional tax - from $250 to $500.

This might mean that you no longer need to pay instalments. However, you can voluntarily re-enter the PAYG instalment system. It would be wise to seek some professional advice about whether it is better for you to stay in the PAYG instalment system or stay out of it if you don't meet the higher thresholds.

To do!

Talk to your tax agent to see if these changes are likely to affect you. If they do result in you no longer being in the PAYG instalment system, you should speak to your tax agent to determine whether you should voluntarily re-enter the system.

Are you in the wine business?

Earlier this year, the ATO issued Wine Equalisation Tax Ruling WETR 2014/1 entitled "Wine equalisation tax: arrangements of the kind described in Taxpayer Alert TA 2013/2 Wine equalisation tax (WET) producer rebate schemes".

The ruling provides the Commissioner's views on the arrangements set out in Taxpayer Alert TA 2013/2 "Wine equalisation tax (WET) producer rebate schemes".

The ruling considers whether the general anti-avoidance provisions in the GST Act (that also apply to WET) may apply to the arrangements in TA 2013/2. The provisions allow the Commissioner to negate a permanent or timing advantage that an entity gets in relation to one of those taxes if the tax benefit results from a scheme and it is reasonable to conclude that the sole or dominant purpose of entering into or carrying out the scheme, or the principal effect of the scheme, is to get an entity such a benefit.

If you think you might be affected by the ATO's ruling, you should see your tax adviser to find out if the ruling has any impact on your business.

Do you have an SMSF?

If so, you might be interested in the following:

i) *Running an SMSF* – there is information on the ATO's website about how an SMSF should be run.
ii) *Regulation of an SMSF* – there is information on the ATO's website about how SMSFs are regulated.
iii) *Approved SMSF auditors* - for updated ATO information about the role and responsibilities of approved self-managed super fund auditors, go to the ATO website.

Note!

When it comes to setting up and running an SMSF, always seek the advice of a professional. They will make sure that your SMSF meets all its compliance obligations.

Superannuation Data and Payment Standards contribution transitional arrangements amended

If you are an employer, you should be aware of the changes to the data and payments standards that apply to superannuation contributions.

Among other things, the Superannuation Data and Payment Standards 2012 (2012 Standard) sets out the specifications and requirements for the following:

- employee registration messages;
- employee contribution messages; and
- superannuation contribution payments.

Employers are required to send, and trustees of APRA-regulated superannuation entities and SMSFs are required to receive, information and payments that conform with the contributions standard.

Schedule 1 to the 2012 Standard contains transitional provisions that allow employers and trustees to use electronic file formats to send contribution messages that are not fully compliant with the contributions standard during a transitional period referred to as the contribution transition-in period.

The existing transitional arrangements have been amended by extending the existing contribution transition-in period by 12 months to 30 June 2017, and by providing additional transition-in arrangements that can be used during that period. These changes apply with effect from 28 May 2014.

Speak to your adviser if you have any queries about how the changes to the data and payment standards may affect how you report information on superannuation.

Updates from the ATO

a) Business Industry Codes

The Business industry codes 2014 for use by individuals, partnerships, trusts and companies to assist with the completion of 2014 tax returns have been released.

b) 2014 PAYG withholding schedules made

The 2014 PAYG withholding schedules have been made. They apply from 1 July 2014 and incorporate changes, such as the increase in the Medicare levy from 1.5% to 2% and the introduction of the Temporary Budget Repair Levy for employees earning more than $3,461 per week ($180,000 per year). Businesses wanting to know how much tax should be withheld from the salary and wages they pay to their employees should refer to the Tax Tables published on the ATO website.

c) *Back to Business Bulletin*

The ATO's *Back to business bulletin - Quarter 4 2013-14* is now available. This bulletin contains practical and relevant information to help businesses understand their tax obligations. Highlights in this edition include changes to managing activity statements, the latest small business benchmarks and what recent changes to the privacy laws mean for the information the ATO collects about your business.

d) Business Communicator

The latest edition of the ATO's *Business Communicator* (Business Communicator for June 2014) is now available on the ATO website. It contains news and updates for businesses with an annual turnover between $2 million and $250 million.

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Accountants | Finance & Lending | Financial Planners | Investment Management

www.carnegiefin.com.au

For Tax Advice contact Ravi Raja and Jon Fowell

ravi@carnegiefin.com.au

jon@carnegiefin.com.au

For Financial Planning, Investment Management, Insurance and Self-Managed Superannuation contact Sheila Cabacungan

Sheila@carnegiefin.com.au