HALL CHADWICK

Tax Time Monthly

JULY ISSUE 2018

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1 INCOME TAX

1.1 Personal tax cuts Bill now law

As part of the Budget, the Government proposed a 7 year personal income tax reform plan. This became law on 21 June 2018 with no amendments.

The following table shows the legislated personal tax threshold and rate changes, excluding the 2% Medicare levy:

Rate	2018-19 to 2021-22	2022-23 to 2023-24	2024-25 onwards
0%	$0-18,200	$0-$18,200	$0-$18,200
19%	$18,201-$37,000	$18,201-$41,000	$18,201-$41,000
32.5%	$37,001-$90,000	$41,001-$120,000	$41,001-$200,000
37%	$90,001-$180,000	$120,001-$180,000	N/A
45%	$180,001+	$180,001+	$200,001+

There is also a Low and Middle Income Tax Offset (**LMITO**) available from 1 July 2018 to 30 June 2022 (in addition to the existing Low Income Tax Offset (**LITO**), as follows:

Income	Offset
Up to $37,000	$200
$37,001 to $48,000	$200 plus 3 cents for each dollar over $37,000
$48,001 to $90,000	$530
$90,001 to $125,333	$530 less 1.5 cents for each dollar over $90,000

From 1 July 2022 both the LMITO and LITO will be replaced by a single low-income tax offset of up to $645.

1.2 ATO provides key changes for Tax Time 2018

The ATO provided a overview of key changes for Tax Time 2018 **here**. We note important changes as follows:

- Cost of managing tax affairs is now required to be separately disclosed between interest charged by ATO, litigation cost, and other expense in managing tax affairs;
- Foreign resident capital gains withholding – increased to 12.5%
- Temporary budget repair levy of 2% no longer applies in FY2018.
- Tax deduction for personal super contributions – from 1 July 2017, most taxpayers under 75 years old are able to claim a deduction for their personal super contributions regardless of their employment arrangement.

1.3 Set rate per km rate increases from 1 July 2018

On 8 June 2018, the ATO issued a draft determination to increase the cents per km deduction to 68cents/km (increase from 66 cents). Once the determination is finalised, the increase rate will apply from 1 July 2018.

1.4 ATO announced approach to professional firm profit allocations for FY2018

Professional firms have previously relied on ATO web materials which set out guidelines as to acceptable profit allocations for professional firms between a service trust and the trading entity. These materials were withdrawn on 14 December 2017 due to the ATO stating it was being misinterpreted in relation to arrangements that go beyond the scope of the guidelines.

The ATO **announced** on 25 June 2018 that taxpayers who have entered into arrangements that fall under the guidelines prior to 14 December 2017 and did not exhibit any high-risk factors can continue to rely on the withdrawn guidelines for FY2018. The high-risk factors are as follows:

- lack of any meaningful commercial purpose regarding arrangements including, but not limited to:
  - disposal of an equity interest through multiple assignments
  - the creation of new discretionary entitlements such as Dividend Access Shares
  - utilising amortisation leading to differences between tax and accounting income.
- Disregard for CGT consequences and inappropriate use of CGT concessions.
- Assignments where profit sharing is not directly proportionate to the equity interest held.
- The creation of artificial debt deductions.
- Undertaking an assignment to dispose of an equity interest to a self-managed super fund.
- Assignments where the arrangement is not on all fours with the principles of Everett and Galland.

1.5 CGT small business CGT concession changes: start date changed

Treasury Laws amendment (Tax Integrity and Other Measures) Bill 2018 (which has passed House of Reps without amendment is currently before the Senate) proposed additional conditions to be satisfied prior to accessing the small business CGT concessions where shares/units are sold. For further details see previous monthly tax update **here**. These changes were proposed to apply retrospective from 1 July 2017, but it has been reported that the Government will amend this to apply from 8 February 2018.

Clients seeking to apply the small business CGT concession for FY2018 should contact Hall Chadwick for advice.

1.6 Company residence: TR2018/5 & PCG 2018/D3

A resident of Australia is taxable on their worldwide income. Where a company is not incorporated in Australia, but carries on business in Australia, and either has its central management and control in Australia, or its voting power controlled by shareholders who are residents of Australia, is a resident of Australia (and taxable in Australia on its worldwide income).

Up until the *Bywater* case, the Courts have considered as central management and control the place where board of directors makes the day-to-day business decisions. In *Bywater*, the High Court looked through where the board of directors made their business decisions and determined that central management and control was in Australia because there was an Australian resident individual who was "pulling all the strings from Sydney".

The ATO published TR 2018/5 and set out the ATO's view in applying the central management and control test, by asking the four questions:

1. Does the company carry on business in Australia?
2. What does central management and control mean?
3. Who exercises central management and control?
4. Where is central management and control?

The ATO also published Draft PCG 2018/D3 and set out that "*the location of a company's central management and control is a question of fact and determined by reference to:*

- *where it is controlled and directed as a matter of substance, and*
- *how its control and direction is exercised over time"*

This PCG provided 14 examples. An interesting example is #13 where the ATO determined that a company incorporated overseas has its central management and control in Australia where there is a equal number of directors based on Australia and overseas, with all Board meetings conducted by video conference and directors participating from where they are based, with no single director controlling the decision making to the exclusion of others.

Clients with companies incorporated outside of Australia with Australian directors should review their residency status and contact Hall Chadwick for advice if concerned.

1.7 Government defers debate on second stage of corporate tax cuts

The Finance Minister has announced that the Government will not proceed, at this time, with the second stage of company tax cuts (which proposes to reduce the company tax rate to 25% for all companies by 2026-27, regardless of turnover).

Despite the Government's efforts to secure majority support in the Senate "we have not yet been able to secure the necessary support". The Minister indicated the Government will again argue for the company tax cuts when Parliament return from its winter break from 13 August 2018.

2 SUPERANNUATION

2.1 Superannuation guarantee amnesty provisions passes lower house but opposed by Labor

Treasury Laws Amendment (2018 Superannuation Measures No.1) Bill 2018 was passed by the House of Reps on 20 June 2018 and moves to the Senate. Importantly this includes the one-off super guarantee amnesty which allows employers to self-correct underpayments of superannuation guarantee from 1 July 1992 to 31 March 2018 with no penalties and interest (and also have the payment of superannuation guarantee shortfall deductible). The amnesty period is proposed from 24 May 2018 to 24 May 2019 but currently being opposed by Labor.

3 GST

3.1 ATO releases GST forms to enable GST withholding on new residential property from 1 July 2018

Purchasers of new residential property are required to withhold GST on acquisition of new residential property commences for contracts into from 1 July 2018. Purchasers are required to withholding the following amounts at settlement:

- 1/11th of the purchase price where the margin scheme is not claimed; or
- 7% of the purchase price where the margin scheme is applied.

The ATO has released GST property settlement online forms and instructions **here**. There are two forms:

1. *GST Property settlement withholding notification form* (form one). This is used to advise the ATO that a contract has been entered into for the supply of new residential premises or potential residential land in which there is a withholding obligation.

   The purchaser or their representative can submit form one at any time after a contract has been entered into and prior to the date the withholding obligation is due. Usually that will be the settlement date but if the contract is an instalment contract it will be the date the first instalment is paid.

2. The *GST property settlement date confirmation form* (form two) is used to confirm the settlement date.

4 STATE TAXES

4.1 NSW Payroll tax - threshold increase legislated

The *State Revenue Legislation Amendment Bill 2018* was introduced and Assented 27 June 2018. It increases the tax-free threshold for payroll tax from the current $750,000 to $1M over the next 4 years as follows:

- FY2019 $850,000
- FY2020 $900,000
- FY2021 $950,000
- FY2022 $1M

Should you wish to discuss your tax queries, please contact **Hall Chadwick QLD**.

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