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Mining tax gone but watch for associated tax changes

The mining tax has been repealed. However, in order to pass the legislation through the Senate, the Government made a deal with the Palmer United Party and Senator Muir to defer the abolition of:

- the Income Support Bonus to 31 December 2016;
- the Schoolkids Bonus to 31 December 2016 (and restrict the Bonus to families earning less than $100,000 per annum); and
- the Low Income Super Contribution to 30 June 2017.

The Government also agreed to freeze the superannuation guarantee rate at 9.5% for seven years. Under the changes, the rate will increase to 10% from 1 July 2021 and by 0.5% per year from 1 July 2022 until it reaches 12% for the year beginning 1 July 2025.

No other changes were made to the legislation, meaning the abolition of the associated measures such as loss carry-back (from 1 July 2013 for 30 June balancing companies), and geothermal expenditure deduction (from 1 July 2014), will proceed.

The reduction of the instant asset write-off threshold for small businesses (from $6,500 to $1,000), and the discontinuation of the accelerated depreciation arrangements for motor vehicles, will also go ahead (from 1 January 2014).

TIP: The abolition of the loss carry-back, the reduction of the instant asset write- off threshold for small businesses and the discontinued accelerated depreciation for cars apply retrospectively. Taxpayers who have made these claims for the 2013–2014 year are now required to amend their returns. The ATO has indicated that it will *not* impose penalties on those taxpayers who amend their returns if the amendments are lodged within “reasonable time”. Also, in light of the superannuation changes, individuals may want to consider reviewing their retirement savings strategy. Please contact our office for further information.

Professional firms and profit distribution under scrutiny

The ATO is investigating arrangements involving the allocation of profits from a professional firm carried on through a partnership, trust or company, where the income of the firm is not personal services income. Firms which could be affected include, but are not limited to, those that provide architectural, engineering, financial, legal, and medical services.

In particular, the ATO wants to take a closer look at arrangements where practice income is treated as being derived from a business structure, even though the source of that income remains, to a significant extent, from the provision of professional services by one or more individuals. The ATO said it was concerned that the general anti-avoidance rules under the tax law could apply to a scheme which is designed to ensure that the individual practitioner professional is not directly rewarded for the services they provide to the business, or receives a reward which is substantially less than the value of those services. The ATO further indicated that the lower the effective tax rate achieved by the scheme, the higher the risk of attracting the Commissioner’s attention.

Dividend washing compliance still on ATO’s radar

The ATO has been chasing up individuals who did not respond to its initial letter indicating that the individual may have entered into dividend washing transactions. The ATO has reiterated its position that obtaining two sets of franking credits from one dividend event was not allowed. In March 2014, the ATO issued letters to these individuals asking them to amend their returns in order to reverse franking benefits they may have received from dividend washing transactions.

Having obtained new information, the ATO has also issued new letters to more individuals that it believes may have entered into dividend washing transactions. The ATO said it will continue to monitor dividend washing and apply the law to disallow additional franking credits.

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Rental property deductions – avoid common errors

The ATO has warned landlords that it is increasing its focus on rental property deductions. The ATO has identified a number of common errors made by rental property owners. Key errors include claiming rental deductions for properties that are not genuinely available for rent, or incorrectly claiming deductions for properties only available for rent part of the year, such as a holiday home.

TIP: If a property is only available for rent for part of a year, a partial deduction reflecting when the property was available for rent could be available. The correct apportionment needs to be made with the relevant documentation to substantiate the claim. Contact our office for further information.

Data-matching offshore bank accounts

The ATO is widening the breadth of data it obtains on individuals from financial institutions, possibly revealing hidden or undisclosed offshore income. The ATO has recently announced a data-matching program targeting offshore bank accounts. Under the program, the ATO will collect account details of bank customers from various financial institutions to identify Australian resident taxpayers with offshore bank accounts which may indicate evidence of undeclared income and/or gains.

TIP: The Tax Commissioner earlier this year announced a tax "amnesty" called Project DO IT which aims to encourage individuals to disclose previously undeclared offshore income or assets. Under the program, individuals could be offered reduced penalties for disclosing their offshore income. The ATO has been warning individuals to come forward before 19 December 2014, which is when the project will end.

Settlement for damages subject to capital gains tax

The Administrative Appeals Tribunal (AAT) has held that an individual was liable to capital gains tax on a settlement payment of $350,000 received in respect of litigation she pursued for damages for breach of contract and negligence. The litigation was in relation to an agreement to facilitate the retirement of a partner of a law firm and to hand over the clients to another solicitor. The AAT was of the view that the taxable assets in question were the various claims made in her statement of claim. It also held the individual had failed to establish any relevant cost base for legal expenses, which meant she could not reduce the amount to be taxed on.

In making its decision, the AAT said it was clear law that damages received by way of settlement of a legal claim could be subject to capital gains tax. It also affirmed the Commissioner's decision to impose an administrative penalty of 50% of the shortfall amount for "recklessness". The AAT noted the taxpayer took no steps to seek independent legal advice in relation to whether tax may be payable on the amount, as well as her failure to keep records as required by tax law.

Bitcoin tax guidance from the ATO

The ATO has released its views on the tax treatment of Bitcoins. Users of Bitcoins and businesses transacting with Bitcoins should be aware that the ATO has confirmed that it does not consider Bitcoins to be money or a foreign currency – rather, the ATO considers Bitcoins to be property. This means, the ATO will treat Bitcoin transactions as barter transactions, with similar tax consequences.

Taxpayers will need to keep transaction records such as the date of the transaction, the amount in Australian dollars (taken from a reputable online exchange), what the transaction was for, and who the other party was (eg their Bitcoin address).

TIP: If you are considering transactions involving Bitcoins and other crypto-currencies, it would be prudent to seek advice on how the transaction would be treated for tax purposes. If you have any questions, please contact our office.