

client alert

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September 2015

1. Small business tax discount on the way

In a surprise – but welcome – move in the 2015 Federal Budget, the Government announced a small business tax discount. The Government said that, with effect from 1 July 2015, individual taxpayers with business income from an unincorporated business that has an aggregated annual turnover of less than \$2 million will be eligible for a small business tax discount. The discount will be 5% of the income tax payable on the business income received from an unincorporated small business entity. The discount will be capped at \$1,000 per individual for each income year, and delivered as a tax offset through the individual's end-of-year tax return.

Example: A person running a business as a sole trader has an annual turnover of \$300,000 and taxable income of \$75,000. Under the current law, the business would pay tax, at the owner's marginal tax rate, of around \$16,000 in total. Under the proposed new law, the \$16,000 tax bill on the business income would be reduced by 5%, or \$800. While there is no change in the owner's tax rate, under the new law the owner would pay only \$15,200 tax.

Legislation to implement the small business tax discount is currently awaiting formal enactment.

2. Ride-sharing provider challenges ATO's GST view

Uber BV has lodged an application in the Federal Court to challenge the ATO's view on GST in relation to ride-sharing drivers.

In May 2015, the ATO released information on its website providing its view of the tax obligations of people providing services in the sharing economy. The ATO was of the view that people who provide ride-sourcing (or ride-sharing) services were providing "taxi

travel" under the GST law, and were therefore required to register for GST regardless of turnover, charge GST on full fare amounts, lodge BASs and report income in their tax returns. The ATO had given ride-sourcing drivers until 1 August 2015 to obtain their ABN and be registered for GST.

However, in a company statement, Uber argued that the ATO's position unfairly targets Uber's driver-partners. In the meantime, the ATO has maintained its view that people who provide ride-sourcing services are providing "taxi travel" under the GST law, and that it expects all ride-sourcing drivers to be registered for GST.

TIP: According to the ATO, although ride-sourcing drivers need to account for the GST on full fare amounts, they can also claim GST credits for relevant business expenses. The ATO says drivers must report income earned from providing ride-sourcing services; however, they can also claim deductible business costs. Please contact our office for assistance.

3. Crowdfunding for small proprietary companies: consultation

Crowd-sourced equity funding (or equity crowdfunding) is an innovative form of fundraising that allows a large number of individuals to make small equity investments in a company.

The Government is looking at ways to facilitate equity crowdfunding and has released details of its proposed regulatory framework for public companies. However, a key part of the Government's public consultation is to also examine whether its proposed regulatory framework for public companies should be extended to proprietary companies.

The Government notes that proprietary companies are subject to limitations under the Corporations law on the

way they can raise funds. These limitations make it difficult for proprietary companies to effectively use equity crowdfunding to raise funds from a large number of small shareholders. Accordingly, the Government is seeking views on way it could amend the law to make capital raisings by small proprietary companies more flexible. Public consultation closed on 31 August 2015.

4. SMSFs in pension phase need to exercise care

The ATO is of the view that most trustees of self managed super funds (SMSFs) do the right thing. However, it has identified a number of issues concerning SMSFs in pension phase, noting the growing number of people expected to receive a pension in the next 10 years.

The following gives a snapshot of some key issues identified by the ATO:

- **Setting up and starting a pension:** In the pension establishment phase, a fundamental and critical question that should not be overlooked is whether the member has reached preservation age. The ATO has reminded trustees that the legislated rise in the preservation age came into effect from 1 July 2015 – this affects people born after 30 June 1960.
- **Paying a pension:** One of the most common reasons for an SMSF in the pension phase not being entitled to applicable income tax exemptions under the exempt current pension income (ECPI) provisions is that the trustee has failed to pay the required annual minimum pension amount to a member.

Ceasing a pension: The ATO is starting to see a range of issues related to what happens in the unexpected event of a pensioner's death. For example, is the nominated reversionary beneficiary entitled to receive a death benefit pension under the terms of the SMSF's deed and the law?

TIP: The ATO is starting to see liquidity problems associated with real property exacerbated for SMSFs in pension phase where the asset has been acquired under a limited recourse borrowing arrangement (LRBA). As the income of the SMSF is diverted to meeting the loan obligations of the fund, the ATO has found there can be insufficient funds remaining to make the required pension payments. There is also an added level of complexity to LRBAs involving related parties where the trustees fall foul of the arm's-length rules in an effort to try to overcome their liquidity issues. If you have any concerns, please contact our office for further information.

5. ATO data-matching: immigration visa holders

The ATO has announced that it will acquire names, addresses and other details of visa holders, their sponsors and migration agents for the 2013–2014, 2014–2015, 2015–2016 and 2016–2017 financial years from the Department of Immigration and Border Protection (DIBP). The purpose of the data-matching program is to ensure that taxpayers are correctly meeting their taxation obligations. It is estimated that records relating to one million individuals will be obtained.

The ATO has been data-matching visa data from the DIBP (and its predecessors) against ATO data holdings for a number of years. The ATO said this electronic data-matching has been very effective in assisting to mitigate compliance risks. According to the ATO, empirical evidence from earlier data-matching programs has confirmed an elevated level of risk within the subset of taxpayers who are first-time lodgers with DIBP links.

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