News Bulletin

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Accountants & Business Advisors

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IN THIS ISSUE:

❖ ATO Crackdown on Rental Properties
❖ EOFY Reminder of S.100A impact on Trust Distributions
❖ 2023 Victorian Budget Tax Changes
❖ 2023 Tax planning Strategies

TAX DEVELOPMENTS UPDATE

ATO Crackdown to Reduce the Rental Property "Tax Gap"

The ATO has bolstered its data-matching arsenal in a bid to crack down on rental property claims which it considers to be one of the biggest contributors to the $9 billion "tax gap" involving individuals-not-in-business.

Banks and other lenders will now be required to collect information on 1.7 million residential property loans which the ATO can then compare with taxpayer claims and returns.

The ATO will acquire residential investment property loan data from financial institutions and use this information to identify individuals who may not be correctly reporting rental property interest deductions and net capital gains.

Small business late lodgment penalty amnesty

On 9 May 2023 as part of the 2023 Budget the government announced a lodgment penalty amnesty program for small businesses to give small businesses an opportunity to get their outstanding tax returns and business activity statements (BAS) back on track.

To be eligible for the amnesty small business taxpayers must meet the following criteria:

- had an annual turnover of under $10 million at the time the original lodgment was due
- have outstanding tax returns or BAS that were due between 1 December 2019 and 28 February 2022
- lodge between 1 June and 31 December 2023.

The amnesty does not apply to privately owned groups, or individuals controlling over $5 million of net wealth.

If eligible for the amnesty, any failure to lodge penalty that applies to the late lodgement will be automatically remitted. However, general interest charge will continue to apply.

IMPORTANT REMINDER OF S.100A IMPACT ON PLANNING FOR YEAR END TRUST DISTRIBUTIONS

Trusts have been traditionally used, (among other things like asset protection etc.) to split income between family members (trust beneficiaries) and utilise each family members lower marginal tax rate and thus reduce the overall tax.

This was achieved by making the family member "presently entitled" to a share of the income of the trust by way of a Trustee Resolution. The intended effect of this is to allow family members with lower marginal tax rates to be included as trust beneficiaries and be taxed on their share of trust income at their lower rates of tax than if that income was taxed to beneficiaries with higher tax rates.

However, as detailed in our previous Bulletins, the ATO has significantly tightened its position on S.100A and is giving particular focus to arrangements where adult children receive a present entitlement to trust income whilst at least part of the economic benefit ends up with another person, typically their parents or guardians.

If the ATO deems a distribution to be in breach of S.100A the distribution is deemed never to have been made and the trustee is taxed at the top marginal rate (47%) on the full distribution, plus potential penalties.

EOFY Trust Distribution Resolutions

With the 2023 financial year coming to an end, clients with trusts must ensure that the trustee resolutions outlining the distribution of income must be prepared AND signed before 30 June.

This allows for beneficiaries to be assessed on their share of the trust's net income. Otherwise, the trustee could be assessed on that income at the top marginal tax rate (47%).

As in previous years, we will be in touch to assist you in preparing the resolution before year end.

S.100A however, does not apply in certain circumstances such as when the reimbursement agreement arises out of ordinary family or commercial dealings

It is therefore important that S.100A should be seriously considered in deciding which beneficiaries are to receive trust distributions.

2023 VICTORIAN BUDGET TAX CHANGES

The Victorian Budget was handed down on 22 May imposing a number of new taxes to business and investors, including:

Payroll Tax

From 1 July 2023, large businesses with national payrolls above $10 million a year will temporarily pay additional payroll tax:

- a rate of 0.5 per cent will apply for businesses with national payrolls above $10 million, and
- businesses with national payrolls above $100 million will pay an additional 0.5 per cent.

The additional rates will be paid on the Victorian share of wages above the relevant threshold.

Land Tax

From 1 January 2024:

- the tax-free threshold for general land tax rates will temporarily decrease from $300,000 to $50, 000.
- those who pay land tax will attract a temporary additional fixed charge starting at $500 for landholdings between $50,000 and $100,000.
- there will be a $975 fixed charge for landholdings above $100,000, and
- the tax rates will temporarily increase by 0.1 per cent for both general and trust taxpayers with holdings above $300,000 and $250,000 respectively.

Stamp Duty

From 1 July 2024, the lump-sum stamp duty system for commercial and industrial properties will be phased out. Instead, an "Annual Property Tax" of 1% tax on the unimproved value of such property will be introduced.

In short, the first time a parcel of commercial or industrial land is transferred after 1 July 2024, the transferee will still have to pay transfer duty, either as a lump sum; or over 10 years, in annual instalments and at interest.

Ten years after the transfer of that property, the Annual Property Tax will apply, locking that property into the new system (apparently, regardless of whether the transfer duty was paid as a lump sum or in annual instalments).

This means subsequent transfers of that property will not trigger a transfer duty liability but will instead be subject to the Annual Property Tax.

The Annual Property Tax will not impact industrial and commercial property acquired before 1 July 2024, but only once such property is transferred (and therefore permanently entered into the new regime).

Other tax measures contained in the Budget:

- from 1 July 2024, the tax-free threshold for payroll tax will increase from the existing $700,000 to $900,000, with a further increase to $1 million from 1 July 2025
- from 1 July 2024, removal of the payroll tax exemption for high-fee non-government schools
- from 1 January 2024, an extended land tax exemption for up to 2 years where construction of a principal place of residence is delayed due to builder insolvency
- from 1 January 2024, an increase in the “absentee owner surcharge rate” from 2% to 4% with the minimum threshold being decreased from $300,000 to $50,000 and
- from 1 July 2023, an increase in the Special Disability Trust (SDT) land transfer duty threshold from $500,000 to $1.5m for transfer of a principal place of residence.

2023 TAX PLANNING STRATEGIES

As the end of another year approaches, it is always productive to conduct some tax planning. Below are some (non-exhaustive) areas that may be worth looking at:

Deferring income

Sometimes taxpayers will receive payments in advance of goods or services being provided. If the taxpayer accounts on an accruals basis then there

Temporary full expensing (TFE)

A reminder that TFE provisions will end from 1 July 2023.

For any upcoming capital purchases before 30 June 2023 – to the extent possible – clients should ensure the assets are installed and ready for use before 30 June 2023.

From 1 July 2023 the instant write off will be available only for assets costing less than $1,000

However, the government will temporarily increase the TFE for businesses with aggregated turnover of less than $10M to $20,000 from 1 July 2023 to 30 June 2024.

might be an opportunity to defer the inclusion of this income in the taxpayer's tax return until a later income year.

A business that accounts for income on an accruals basis would normally derive the income at the time when an invoice is issued, and a recoverable debt arises. However, there are exceptions to this, especially in the situation where some of the income has not been earned yet. For example:

- where income is received in advance, it may not be taxable until the relevant services have actually been provided (Arthur Murray principal).
- where the contractual arrangements require some or all of the income received in advance is to be repaid if certain conditions are not met, then there is a reasonably arguable position for only bringing the income to account for tax purposes as those conditions are met.

Capital gains and realising capital losses

Shares and real estate held for capital gain are deemed to be disposed of on contract date for tax purposes, rather than when settlement occurs.

For any upcoming disposals, consider whether the contract should be entered into this side of 30 June, or after 30 June.

Where capital gains have been derived during the year and unrealised capital losses exist, you may consider disposing of those assets to crystallise the loss and offset the capital loss against the capital gain

While these capital losses would normally be available to offset against the capital gains in the current year, there are some issues to be aware of:

- Beware of the ATO's ruling on 'wash sales' (TR 2008/1); and
- Consider whether the capital gains may be subject to any concessional tax treatment.

Division 7A & Loan/Payment from Companies

Loans and payments made by private companies to shareholders and their associates may be treated as assessable income to the shareholder under the provisions of Division 7A.

Where loans and payments have been made during the current financial year, consider if these amounts can be repaid to the company prior to 30 June.

If not, a loan agreement should be put in place between the company and shareholder to repay the loan over a maximum term of seven years.

For loans that arose in a prior year and are subject to a complying loan agreement, ensure the minimum loan repayment is made prior to 30 June.

A common way in which minimum repayments may be made is by declaring dividends to satisfy the minimum repayment obligation and then setting off the dividend against the loan repayment obligation.

Trading stock

Clients can choose one of three methods to value their trading stock and a different basis can be chosen for each class of stock or for individual items within a particular class of stock.

This provides an opportunity for the taxpayer to minimise the trading stock adjustment at year end. There is no requirement that the same method be applied every year and the client can chose the most tax effective method for each year.

Clients should also identify obsolete stock that can be written off or scrapped which will also result in a deduction for this loss.

Directors' fees and employee bonuses

Directors' fees and employee bonuses may be deductible for the 2023 year if you are 'definitely committed' to the payment by 30 June 2023, even if the fee or bonus is paid after 30 June 2023.

The employer would generally be definitely committed to the payment by year end if the directors pass a properly authorised resolution to make the payment by year end. The employer should also notify the employee of their entitlement to the payment or bonus before year end.

The accrued directors' fees and bonuses should be paid within a reasonable time after year end.

Bad debts

Ensure that any bad debts are physically written off prior to year-end to ensure a deduction in that year. This is only relevant for accruals taxpayers

The Commissioner states in TR 92/18 that "no deduction will be allowed in a year, if the debt is written off after the year's end at the time when the books of account are being prepared". An income tax deduction will not be available for simply creating a provision for doubtful debts.

It should be noted that for company taxpayers, the continuity of ownership or same business requirements need to be considered. Similarly, in the case of trusts other than family trusts, similar restrictions apply for deducting bad debts.

Repairs & Maintenance

Prior to 30 June may be an opportune time to have any plant and equipment in need of service or repairs attended to and capture the tax deductions this side of 30 June.