News Bulletin

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ATO: HIGH WEALTH GROUPS – "WHAT ATTRACTS OUR ATTENTION"

The ATO has published information on the behaviours, characteristics and tax issues of privately owned and wealthy groups that attract its attention to in order to "help you get things right" and "be transparent in our dealings with you".

It states, among other things, that the following behaviours and characteristics may attract its attention:

- tax or economic performance not comparable to similar businesses.
- low transparency of your tax affairs.
- large, one-off or unusual transactions.
- aggressive tax planning.
- accessing business assets for tax-free private use; and
- lifestyle not supported by after-tax income.

ATO UPDATE ON SECTION 100A

Further to the ATO's crackdown on Family Trust distributions (as detailed in our March 2022 News Bulletin), the ATO has issued an update on draft guidance on trust reimbursement agreements and unpaid present entitlements under section 100A of the *Income Tax Assessment Act 1936* (ITAA 1936).

ATO Deputy Commissioner, Louise Clarke, has reaffirmed that section 100A can apply where:

- a distribution is made under an agreement where a payment or other benefit is provided to an entity other than the named beneficiary.
- the other entity has a higher income tax rate than the beneficiary; and
- a purpose of that agreement is that someone will pay less tax.

In a further clarification, the Deputy Commissioner has issued the following statement on the operation of S.100A :

- If the beneficiary of the trust gets the benefit, section 100A has no role to play. The ATO is not concerned about ordinary family trusts where the relevant family members benefit from the distributions.
- The ATO is not concerned when profits from the family business are distributed to members of the family who work in the management of the business and then that family member chooses to reinvest the profits in the business.

The ATO also reassures taxpayers that the ATO "won't have a retrospective element". It states that the ATO will not be pursuing taxpayers that entered into arrangements between 1 July 2014 and 30 June 2022 where, in good faith, they concluded that section 100A did not apply to them based on the previous 2014 guidance.

Clients are encouraged to contact us to discuss how the ATO's new focus on S.100A may affect you.

DIRECTOR PENALTY WARNING LETTERS

The ATO has ramped up recovery action to combat the huge backlog of outstanding tax debts that the ATO needs to collect.

Over the past few months, the ATO has issued thousands of Director Penalty Warning letters as a prelude to sending out DPNs.

The increased recovery activity and in particular the increased use of DPNs is a reminder 3of the importance of minimising any exposure to *lockdown* DPNs by ensuring that:

- BAS lodgements are made by their due date or at the very least within 3 months of that day; and
- Superannuation Guarantee Charge (**SGC**) statements are filed by their due date (if applicable).

If the unpaid amounts are not reported to the ATO by the relevant deadline (thus being subject to a Lockdown DPN), then the only way for the penalty to be remitted is for the debt to be paid in full.

Winding up the company at this stage will not make the liability of the directors go away.

To recover this debt, the ATO will issue a Director Penalty Notice to the individual directors. *The ATO can then take action to recover the unpaid amount from the individual director, including:*

- By issuing garnishee notices,
- By offsetting tax credits owed to the director against the penalty, or
- By initiating legal recovery proceedings against the director.

If you have received a warning letter from the ATO or a director penalty notice, then you should contact us immediately.

WHAT'S CHANGING ON 1 JULY 2022?

A series of reforms and changes will commence on 1 July 2022. Here's what is coming up:

Super guarantee increase to 10.5%

The Superannuation Guarantee (SG) rate will rise from 10% to 10.5% on 1 July 2022 and will continue to increase by 0.5% each year until it reaches 12% on 1 July 2025.

If you have employees, what this will mean depends on your employment agreements.

If the employment agreement states the employee is paid on a 'total remuneration' basis (base plus SG and any other allowances), then their take home pay might be reduced by 0.5%. That is, a greater percentage of their total remuneration will be directed to their superannuation fund.

$450 super guarantee threshold removed

From 1 July 2022, the $450 threshold test will be removed, and all employees aged 18 or over will need to be paid superannuation guarantee regardless of how much they earn.

For employees *under* the age of 18, super guarantee is only paid if the employee works more than 30 hours per week.

Lowering PAYG tax instalments for small business

PAYG instalments are regular prepayments made during the year of the tax on business and investment income. The actual amount owing is then reconciled at the end of the income year when the tax return is lodged.

Normally, GST and PAYG instalment amounts are adjusted using a GDP adjustment or uplift. For the 2022-23 income year, the Government has set this uplift factor at 2% instead of the 10% that would have applied. The 2% uplift rate will apply to small to medium enterprises eligible to use the relevant instalment methods for instalments for the 2022-23 income year:

The effect of the change is that small businesses using this PAYG instalment method will have more cash during the year to utilise. However, the actual amount of tax owing on the tax return will not change, just the amount you need to contribute during the year.

ESSENTIAL YEAR-END TAX PLANNING

With the close of yet another financial year almost upon us, it is an opportune time to consider what tax planning options are available to minimise tax.

In essence, Tax planning involves the organising your tax affairs, as far as is legally or commercially possible, to minimise your tax.

While tax advice is very much geared to your specific circumstances, below we list some broad areas that should be considered.

Reducing your assessable income

There are a number of strategies that can be utilised to defer income, including:

- *Invoicing, or billing of work in progress* – can it be properly deferred until next year? Also defer raising accounts for interim fees for incomplete work.
- *Identify unearned income* — for example, certain receipts for the provision of services are not assessable until, or as, the services are provided.
- *Capital gains* - Defer the realisation of capital gains until after year-end, however if gains have occurred, then consider realising capital losses before year-end.
- *Rent* - usually assessed on a cash basis, although prepaid receipts may not be derived until the end of the period to which the payment relates.

Acceleration of entitlement to deductions

A simple but effective method of decreasing taxable income is to bring forward or accelerate the recognition of expenses even if those expenses have not yet been paid. This strategy

involves recognising deductions when the liability has been incurred.

In some instances, this may mean the actual amount of the liability has not yet been quantified. There is an entitlement to the deduction, however, provided the taxpayer is definitely committed to the liability and it is capable of being reasonably estimated.

An example of the above Strategy Is the payment of ***Directors' fees and staff bonuses.*** A company may be entitled to claim a deduction for directors' fees, employee bonuses and other such payments, even if those payments were not made during the income year. To qualify for the deduction, the company must become definitely committed to the payment of a quantified amount (eg by passing a properly authorised resolution).

Another example of accelerating the recognition of expenses is to ***Write-off Bad debts.***

All book debts should be reviewed and debts that are bad (not merely doubtful) written off **before** year end. (whole or partial).

In Ruling TR 92/18, the Tax Office accepts that a debt is written off for tax purposes if: –

- The Directors have decided **before year end** as a matter of commercial judgement, that the loan is bad in that it is unlikely to be recovered
- The decision is recorded in writing: and
- There is a physical writing off in the books of account in the next year

Valuation of Trading Stock

Taxpayers 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.

The most obvious example is where the stock can be valued at below its purchase price value because of market conditions or damage that has occurred to the stock. This should give rise to a deduction even though the loss has not yet been incurred.

Taxpayers should also identify obsolete stock so that it can be written off or scrapped which will also give the taxpayer a deduction for this loss.

Temporary Full Expensing

The temporary full expensing rules allow entities with an aggregated annual turnover of less than $5 billion to claim an immediate deduction for the cost of depreciating assets.

Unlike the previous instant asset write offs, the important thing to note about temporary full expensing is that there is no limit to the cost of the asset when it comes to claiming an immediate deduction.

While temporary full expensing was originally intended to end on 30 June 2022, the rules have been extended to 30 June 2023

Loss carry back offset

At a high level, the rules now allow companies which have tax losses in the 2020, 2021, 2022 or 2023 income years to offset the losses against taxable profits made in the 2019, 2020, 2021 or 2022 income years.

The relief is provided in the form of a refundable tax offset that is claimed through the tax returns.

Superannuation Contributions

For the 2021 -2022 year, you can contribute an annual amount of up to $27,500 as concessional superannuation contributions to Super and claim it as a tax deduction.

Also, from 1 July 2018, if your total super balance at the end of the previous year is less than $500,000, you can carry forward your unused cap concessional contribution for five years.

This means that if you don't use the full amount of your concessional contributions cap ($25,000 from 2017 to 2021 and $27,500 from 1 July 2021), and your total super balance at the end of the previous financial year is less than $500,000, you can carry forward the unused amount and take advantage of it for up to five years later.

While concessional superannuation contributions are taxed at 15%, for most people this will be lower than their marginal tax rate.

Another benefit of contributing to super is that earnings on your money within super are taxed at only a maximum of 15%. If you're receiving a pension through your super, earnings on assets supporting your pension are tax-free. The same investment earnings outside super may be taxed at your marginal tax rate.

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