

AUGUST 2016 TAX UPDATE

ATO GUIDELINES

- Law Companion Guidelines: Small business restructure rollover - Law Companion Guidelines LCG 2016/2-3
- Car expenses cents per km rate for 2016-17
- GIC and SIC rates: 1 July to 30 September 2016
- Car depreciation limit 2016-17 - Taxation Determination TD 2016/8
- Foreign resident CGT withholding- ATO Compliance guidelines
- Effective life of depreciating assets Taxation Ruling TR 2016/1
- Div 7A benchmark interest rate for 2016-17 - Taxation Determination TD 2016/11
- Capital gains improvement threshold 2016-17 - Taxation Determination TD 2016/12
- Reasonable travel and meal allowance amounts for 2016-17 - Taxation Determination TD 2016/13
- SMSF related-party LRBA: ATO interest rate for 2016-17
- Lending rate for capital protected borrowings - Taxation Determination TD 2016/10

CASES

- CGT small business concessions not available for block of units “managed” by taxpayer – no business - Re The Executors of the Estate of the late Peter Fowler and FCT [2016] AATA 416
- Full Federal Court confirms loans for purchase of property were shams - Millar v FCT
- Superannuation excess concessional contributions: no special circumstances - Re Azer and FCT [2016] AATA 472
- Div 7A applies to various advances as no evidence of existence of loan at relevant time - Re Rowntree and FCT [2016] AATA 420
- Profits from “discrete” sale of commercial property assessable as capital gain - Re FLZY and FCT [2016] AATA 348

APPEALS

- Partnership found not to be a limited partnership; shares issued were a debt interest - D Marks Partnership by its General Partner Quintaste Pty Ltd & Ors v FCT
- Div 7A interposed entity rules applied to payments and loans: taxpayers lose appeal - NR Allsopp Holdings Pty Ltd as General Partner of Q Uniform Partnership & Ors v FCT

ATO ADMINISTRATION

- “No goodwill” professional practices: ATO administrative treatment
- ATO small business benchmarks updated for 2014 data
- New tax governance guide for SMSFs released by ATO
- Work-related deductions: ATO checks on claims in real-time
- Rental property owners: ATO focus on claims
- Tax governance for privately owned groups – ATO expectations

SMALL BUSINESS ROLLOVER – SUB-DIVISION 328-G

Pre- Conditions

- SBE
- Active asset
- No change in ultimate economic ownership
- Resident transferor and transferee
- Special rules for trusts (family trust election)
- Genuine restructure of business
- applicable to CGT assets, revenue assets, trading stock and depreciable assets

Methodology

- consider legal nature of transferor and transferee
- taxpayer has the choice of transferring for nil consideration, nominal, book for market value
- consider impact of transfer methodology on the subsequent sales

Rollover Consequences

- no CGT events arises for transferor
- adjustments required to equity and transfer rule to ensure no artificial capital losses
- transferee inherits the original cost base of the asset
- pre-CGT assets are grandfathered (but not new equity in transferee)

Potential Opportunities

- splitting assets out of entities
- Transferring assets between family trusts
- Succession planning
- Simplification of structures
- asset protection

New tax concessions for Venture capital investors

What are the tax concessions?

20% non refundable tax offset

- Capped at \$200,000 per annum (\$1million investment p.a) –sophisticated investors
- Capped at \$10,000 per annum (\$50,000 p.a) – non sophisticated CGT exemption on disposal
- Hold less than 12 months- fully taxable on gain
- Hold between 1 to 10 years – CGT exempt on sale
- Hold 10 years plus – deemed MV cost base at end of year 10

What types of investments are eligible?

General

- Company
- Australian
- Unlisted

Satisfy both of:

- Early stage limb and Innovation limb

Early stage:

- Incorporated for less than 3 years
- Less than \$1m expense in prior year
- Less than 200k income in prior year

Innovation Limb:

- Objective Test or Principles Based Test
- Objective Test: points based (100 points required per specified criteria)
- Principles Based Test (company to demonstrate key specified business criteria)

Investment restrictions?

- Must be a new issue of shares
- Must not be issued as ESS
- Investor must not be affiliated with the company
- The investor must hold no more than 30% interest