

NOVEMBER 2016 TAX UPDATE

TAX CASES

- Re Three Wickets Pty Ltd and Tax Practitioners Board [2016] AATA 786-Termination of individual and company tax agent registrations upheld
- Re ZDCW and FCT [2016] AATA 788- Tax debt release refused
- Re Moriarty and FCT [2016] AATA 796- Tax debt release application refused
- Full Fed Court - Ward v FCT- Excess super contributions: too narrow view of “special circumstances”;
- Re Edwards and FCT [2016] AATA 781- Lump sum workers’ compensation payment derived in year of receipt
- Re Kishore and Tax Practitioners Board [2016] AATA 764- Tax agent registration terminated following separation from former employer
- Re FKYL and FCT [2016] AATA 810- GST: new residential premises, margin scheme did not apply

ATO ANNOUNCEMENTS

- Precedential ATO view: ATO Practice Statement updated
- ATO’s approach to client engagement
- Early engagement for private advice: ATO extends to all business types
- FBT: Fleet cars and simplified approach for calculating car fringe benefits - Practical Compliance Guideline PCG 2016/10
- SMSF related-party LRBAs: Arm’s length terms for “hypothetical” borrowings - Taxation Determination TD 2016/16; PCG 2016/5 updated
- ATO to Streamline private ruling applications
- Lodgement due date concessions
- Termination of tax agent registrations
- Correcting GST errors - draft amendment Determination released
- Legal database improvements
- Advice under development program including income tax, CGT,FBT, GST and superannuation
- Renting out a room is rental income
- Record keeping evaluation
- New tools to check your client’s super entitlements; including eligibility tool, estimate tool, complaint tool
- Papers for comment: including Single Touch Payroll: Substantiation exception for reasonable travel allowance expenses, proposed changes to penalties for small business and individuals
- Q+A for SMSF including leasing to related parties, collectables, preservation age, buying shares in private companies and cross insurance arrangements

OTHER

- Inspector-General of Taxation work program 2017 - call for submissions

SMALL BUSINESS CGT CONCESSIONS

Threshold requirements:

1. Active Asset plus
2. \$6 million net asset test Or \$ 2million turnover

Tips:

- Asset must be used in active business of taxpayer, connected entities or affiliates
- Can be passive for certain part of holding period
- Must value all assets including intangibles at market value
- Include certain liabilities
- Certain key assets excluded from calculation (e.g superannuation, principal residence and personal use assets)
- Turnover includes turnover of taxpayer, connected entities or affiliates

The concessions:

- 50% active asset
- 15 year exemption
- Retirement exemption
- Replacement active asset

Tips:

Consider active asset holding period.

For 15 year exemption to apply:

- Must be over 55
- Payment "in connection with retirement"
- Significant individual requirement for companies or trusts

For retirement exemption:

- Over 55 can take the money
- Under 55 must roll into super so need cash
- No connection with retirement requirement
- Lifetime limits

For replacement asset:

- Must be active asset
- Only a deferral not permanent tax savings
- Time limit for acquisition of replacement asset
- Consequence if time period failed

EMPLOYEE SHARE PLANS- THE TAX FRAMEWORK

Tip: Encourage clients to design plan around commercial parameters such as valuation, funding and forfeiture/retention concepts before considering tax issues.

Two preliminary steps:

Issue 1. Has equity been issued at a discount?

Issue 2. Which tax rules apply?

- a. Normal CGT rules
- b. Upfront rules
- c. Deferred rules
- d. Start up concession

Tax Issues to consider:

1. Valuation of equity

- Shares vs option rules
- Is an arm's length valuation required? Are "short cut" valuation concessions allowed?

2. Which tax rules?

Normal CGT rules

- Cost base

Upfront rules

- Default position is taxation of discount at time of issue of equity

Deferred rules

- Application will depend on design of plan including existence of forfeiture conditions, minimum holding period and maximum percentage requirements

Start up concession

- Company must meet definition of start up
- Minimum holding period and maximum percentage requirements
- Can have up to 15% discount on shares not taxed