

DECEMBER 2016 - JANUARY 2017 TAX UPDATE

TAX CASES

- GST liability barred from recovery after 4 years - despite recovery action under insolvency laws - Re Tomker Pty Ltd (In Liquidation)
- Payment on termination of employment assessable - Blank v FCT [2016] HCA 42
- Summary judgment for director penalty notice amounts set aside - Shaw & Anor v DCT

LEGISLATION

- GST on low value imported goods less than \$1,000 – draft legislation released
- Super legislation- next round introduced to House of Reps (9/11/16)
 - Superannuation (Objective) Bill 2016.
 - Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016.
 - Superannuation (Excess Transfer Balance Tax) Imposition Bill 2016

ATO ANNOUNCEMENTS

- ATO flags issues that attract its attention re private and wealthy groups
 - Key behaviours of concern
 - Key problems in common SME areas such as CGT, Div7A, trusts
 - Key problems in more complex areas such as TOFA., international tax and tax consolidations
 - Comments on corporate governance
- Overdue taxable payments annual reports – get back on track to avoid penalties, says ATO
- Higher than expected deductions in ATO sights
Ensure:
 - no reimbursement;
 - expense is directly related to earning income; and
 - records to prove it.
- Tax implications of crowd funding – current ATO view
 - donation-based
 - reward-based
 - equity-based
 - debt-based
- Commissioner of Taxation's Annual Report 2015-16 released
- Draft Guideline on fixed trusts under trust loss provisions - Draft Practical Compliance Guideline PCG 2016/D16
 - When is a trust a fixed or non fixed trust for the purposes of the trust loss provisions?

OTHER

- Inspector-General of Taxation's 2015-16 Annual Report released
The most common complaints involve:
 - the ATO's debt collection action
 - ATO delays in responding to activity statement and income tax return issues
 - the ATO's audit activities

ATO - WHAT ATTRACTS OUR ATTENTION

1. Behaviours and characteristics of concern to ATO
 - tax or economic performance is not comparable to similar businesses
 - low transparency of your tax affairs
 - large, one-off or unusual transactions, including transfer or shifting of wealth
 - a history of aggressive tax planning
 - tax outcomes inconsistent with the intent of tax law
 - choosing not to comply or regularly taking controversial interpretations of the law
 - lifestyle not supported by after-tax income
 - treating private assets as business assets
 - accessing business assets for tax-free private use
 - poor governance and risk-management systems.

2. Specific areas of concern
 - Common SME areas
 - Capital gains tax
 - Private company profit extraction (including Division 7A)
 - Trusts
 - Franking credits
 - Fringe benefits tax
 - Non-lodgment
 - Professional firms
 - Revenue losses
 - Self-managed super funds

 - More complex areas
 - International
 - Taxation of financial arrangements
 - Consolidation
 - Demergers
 - Research and development tax incentive

3. What to do?
 - Contact/clarify/correct with ATO
 - Corporate governance (ATO 7 Principles)
 - Accountable management and oversight
 - Recognise tax risks
 - Seek advice
 - Integrity in reporting
 - Professional and productive working relationship
 - Timely lodgments and payments
 - Ethical and responsible behaviour

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