

## **FEBRUARY 2017 TAX UPDATE**

### **LEGISLATION**

- Key super reform Bills receive Assent – includes 1.6m cap, tax in fund for transition to retirement pensions, limit of \$25,000 p.a for concessional contribution and \$100,000 p.a for non- concessional contributions
- Payment on termination of employment assessable - Blank v FCT [2016] HCA 42
- Increasing penalties for significant global entities – draft legislation released

### **ATO ANNOUNCEMENTS**

#### **Superannuation**

- Superannuation transfer balance cap and TTR reforms: transitional CGT relief for super funds – Draft Guideline LCG 2016/D8
- Superannuation transfer balance cap - Draft Guideline LCG 2016/D9
- Defined benefit schemes and application of super reform –Draft Guideline LCG 2016/D10
- Guidance on concessional contributions and constitutionally protected funds - Draft Guideline LCG 2016/D11
- Super reforms: total superannuation balance - Draft Guideline LCG 2016/D12
- SMSFs: LRBA's and non-arm's length income - ATO info re interaction and application of PCG 2016/5 and TD 2016/16
- Super reforms: \$1.6m pension cap; commutations; actuarial certificates - draft reg released
- Superannuation objective - draft reg released

#### **Other**

- high priority on settling tax cases
- letters to tax agents and taxpayers to be easier to understand
- Assessability of redemption payment - Taxation Determination TD 2016/18
- work-related expenses risk profiles
- Commercial website deductibility - Taxation Ruling TR 2016/3
- Deduction for bad debts: beneficiary of a trust and UPEs - Taxation Determination TD 2016/19
- Data-matching for ride sourcing providers

### **CASES**

- Commissioner wins appeal: taxpayer failed onus of proving payments “loans” - FCT v Normandy Finance and Investments Asia Pty Ltd & Ors
- Default assessments upheld - burden of proof not satisfied re unexplained deposits and cash - Re Nguyen and FCT [2016] AATA 1041
- No disclaimer of trust interest: assessments increasing income by \$13m stand - Re TVKS and FCT [2016] AATA 1010
- Work-related travel and medical insurance expenses not deductible – taxpayer fails burden of proof - Re Thambiannan and FCT [2016] AATA 1004
- Home office expenses on floor area basis – Commissioner's method preferred - Re HWZG and FCT [2016] AATA 1017

## **OTHER**

- Taxpayers' Rights & Obligations – IGT releases report
- Government establishes taskforce to crack down on black economy

## **ESTABLISHMENT OF OFFSHORE OPERATIONS FOR PRIVATE BUSINESS**

Business owners should consider their international expansion in light of the business framework in Part A below before considering the tax issues in Part B.

### **PART A. BUSINESS FRAMEWORK**

#### **1. Set Up**

- Establish Appropriate Aust structure
- Establish Appropriate overseas structure
- Establish transaction guidelines for each phase of business

#### **2. Funding**

- Debt- to be provided from current owners, bank debt or other third parties?
- Equity- level of capitalisation, new equity participants?
- Initial/ongoing requirements

#### **3. Operational**

- Transactions with Australian related parties?
- Payment for goods or services by overseas entity
- Non payment for goods or services
- Arm's length methodology
- Forecasts and budgets- start-up phase, the best case/worst-case scenarios- consider impact of quarantining losses

#### **4. Profit Repatriation**

- Dividends- regular policy or on a needs basis
- Royalties
- Management fees etc
- Profit retention? Ongoing working capital requirements

#### **5. (a) Exit- entity**

- Timing: is there a plan to exit business within a particular timeframe?
- Is there a proposed plan e.g. IPO or trade sale?
- Has a likely purchaser been identified

#### **5. (b) Exit- Business**

- How likely is it that there will be a business sale rather than an entity sale?
- Consider whether tax consequences will be different

## **PART B. TAX FRAMEWORK**

### **Issues to resolve**

- Australian tax
- O/S tax -any foreign advice
- Treaty issues

### **Potential tax issues**

- Double tax on profits
- Availability of foreign tax credits
- Australian tax on exit (or exemption)
- Foreign tax on exit (or exemption)
- Thin capitalisation (debt/equity)rules in Australia and foreign country
- Transfer pricing rules in both jurisdictions
- Withholding tax on payments such as royalties and management fees
- Withholding on dividend payments
- Branch profits tax
- Part IVA
- Specific treaty issues
- Tax on dividends (or exemption?)
- Unfranked profit to owners
- Employee issues
- State or local taxes in a foreign jurisdiction
- Availability of concessions such as tax holiday

## **SUPERANNUATION CHANGES**

### **Concessional contribution caps**

- Change to a flat \$25,000 p.a for everyone
- 30/6/17 last year for \$35,000/\$30,000

### **Non Concessional contribution caps**

- Changed to \$100,000 p.a. (currently \$180,000 p.a.)
- Bring forward for three years of \$100,000 (currently \$540,000)
- Transitional rules for balances below \$1.6 million up to 30/6/17 and potential prorated bring forward in excess of \$300,000 prior to 30/6/17

### **Transition to retirement pensions**

- Earnings in fund supporting pension to be taxed at 15%

### **1.6 million Balance cap**

- “pension” concessions to be limited to balances up to \$1.6m
- Excess over \$1.6m to be in “accumulation” mode i.e. subject to tax in fund (or withdrawn from super)
- Elective CGT treatment to “re-base” assets to 30/6/17 market values

### **Division 293 threshold lowered**

- New level \$250,000 (down from \$300,000)
- Extra 15% tax payable

### **Contributions deductible regardless of employment status**

- No work test (all individuals under 75)

### **Catch up concessional contributions from 2019-20**

- Available where balance under \$500,000
- 5 year rolling period for “catch up” contributions