

## **MARCH 2017 TAX UPDATE**

### **ATO UPDATE**

- Depreciating assets - composite items - Draft Taxation Ruling TR 2017/D1
- ATO Tax risk management and governance review guide
- CGT: Intangible capital improvements made to a pre-CGT asset - a separate asset - Taxation Determination TD 2017/1
- Re-characterisation of income from trading businesses – ATO releases Taxpayer Alert TA 2017/1 – stapled structures and diverting income to a trust
- Enhanced ATO record-keeping tool for sole traders
- NFP –What attracts ATO attention

### **SUPERANNUATION**

- Personal services income diverted to SMSFs: ATO offer to remit penalties extended (from 31 January to 30 April 2017)
- Draft Law Companion Guide - LCG 2017/D3- \$1.6m transfer balance cap and death benefit pensions

### **LEGISLATION**

- Treasury Laws Amendment (2017 Measures No 1) Bill 2017 – Allows Innovation concession to flow through trusts

### **CASES**

- Alternate assessments not tentative - Whitby Land Company Pty Ltd (Trustee) v DCT
- No deduction or capital loss for guarantee liability - Re Carioti and FCT
- Work deductions disallowed:
  - o Re Vakiloroyaya and FCT – motor vehicle and self education
  - o Re Kael and FCT –overtime allowance
  - o Re Ishaq and FCT- cost of tools
- Super safe from garnishee –Can Barz Pty Ltd - Qld Court of Appeal
- Turnover and small business CGT concessions - Dutch case –applied for leave to appeal to High Court

### **OTHER**

- Tax Inspector-General 2017 work program:
  - Future of the Tax Profession
  - Delayed GST refunds
  - PAYG Instalments system
  - ATO Advice and Guidance
  - Fraud or evasion opinions
  - Research & Development
  - Influencing willing participation in the tax and super systems

## **CGT AND PRINCIPAL RESIDENCE EXEMPTION (“PPR”)**

### **General rules**

- Minimum occupation period
- Individuals only (not entities)
- One “nominated” residence only (including one per married couple)
- Dwelling plus 2 hectares
- Actual occupation required (intention not enough)
- Can be overseas residence

### **Common circumstances**

#### **1. Absences**

- Can maintain exemption indefinitely if not rented out
- If rented out can maintain exemption for 6 year period
- Where 6 year period exceeded must pro rate gain on sale into exempt and taxable portion (based on pro rata holding period formula)
- Must have only one PPR

#### **2. Gearing**

- Can only claim interest on renting out principal residence where funds are owed (i.e can't claim interest borrowed to purchase new residence)

#### **3. Death**

- Full exemption where not rented immediately prior to death and sold within two years from date of death (i.e. gains post death are also exempt even if rented out)
- If rented prior to death then need to consider pro rating formula

#### **4. Marriage breakdown**

- Can have PPR each if living separately
- Transfer from one ex spouse to other – PPR exemption maintained if occupied as PPR
- CGT rollover where transferred from an entity to individual (but watch for pre PPR period on sale)

#### **5. Selling off the backyard/farm**

- Excess over 2 hectares not exempt
- Subdivision proceeds taxable – with prorated cost base

## PERSONAL SERVICE INCOME RULES

### What is PSI?

income that “is mainly a reward for your personal efforts or skills”

### What is excluded from PSI?

- income from the sale or supply of goods
- income generated by an income producing asset
- income from granting a right to use property
- income generated by a business structure

### What happens if income is PSI?

Two broad effects:

- your business entity will not be entitled to claim certain deductions. These relate principally to business expenses relating to an individual’s primary residence and payments to associates
- there is an attribution rule which means that the assessable income of the entity is treated as the income of the individual.

### What are the rules?

(a) Results test

If engagement is to produce a result then income likely not PSI **OR**

(b) 80% test

If engagement is not to produce a result then must not have 80% or more of income sourced from one client

**Plus** must satisfy one of:

- Unrelated client test
- Employment test
- Business premises test

### PSB Determinations

- Consider applying to ATO for Personal Service Business determination i.e. ATO sign off that PSI rules do not apply

### Part IVA

- Regardless of whether PSI rules apply, consider ATO views in relation to income splitting (particularly in relation to professional practices)