

APRIL 2017 TAX UPDATE

LEGISLATION

- Enterprise Incentives No 1 Bill
- Similar business test amendments (1/7/15 start date for losses)
- Intangible assets depreciation – self assess effective life (from 1/7/16)

Company tax rate and SMEs: Enterprise Tax Plan Bill

- Company tax rate changes:

	2016-17	2017-18	2018-19	By 2026-27
Under \$10m	27.5	27.5	27.5	25
Under \$25m	30	27.5	27.5	25
Under \$50m	30	30	27.5	25
\$50m plus	30	30	30	30

- Other:
 - o increase the small business entity turnover to \$10m from 1 July 2016;
 - o increase the unincorporated small business tax discount from 5% to 10% over a 10-year period (for less than \$5m turnover); and
 - o enable small businesses with an aggregated turnover of less than \$10m to access most small business tax concessions (but NOT Div 152 small business CGT concessions).
- Tax Bills receive Royal Assent: Commissioner’s remedial power
- Bills pass Repts: innovation incentives and CGT concessions

CASES

- CGT Marriage breakdown roll-over for transfer of asset to family trust - Sandini Pty Ltd v FCT
- Work-related travel deductions largely disallowed - Re Davy and FCT [2017] AATA 376
- Revocation of tax exempt status from date of original endorsement - Re The Study and Prevention of Psychological Diseases Foundation Incorporated and FCT [2017] AATA 377
- No “special circumstances” to remit excess super contributions tax - Re Mills and FCT [2017] AATA 362
- Taxpayer claim of conscious maladministration against ATO fails - DCT v Frangieh (No 3)
- Share trading losses –partial allowance - Re Spence and FCT [2017] AATA 307
- Deductions for travel, accommodation, food not allowed as taxpayer not an itinerant worker - Re Walker and FCT [2017] AATA 324
- Carried forward losses of \$25m denied as “continuity of ownership” and “same business” tests failed - Re RGGW and FCT [2017] AATA 238

ATO

- Super reforms: \$1.6m pension cap; no exemption for actuary's certificate - Regulations registered
- Super reforms Practical Compliance Guidelines:
 - Transition to retirement income streams - PCG 2017/3
- Super reforms Law Companion Guidelines:
 - Transitional CGT relief for pension assets; Pt IVA warning - LCG 2016/8
 - Pension transfer balance accounts; \$1.6m cap - LCG 2016/9
 - concessional contributions and defined benefit interests - LCG 2016/11
 - total superannuation balance - LCG 2016/12
- FBT rates, thresholds and other amounts for 2017-18 FBT year - Taxation Determinations TD 2017/2-6
- Deductibility of cost of travelling to have a tax return prepared - Tax Determination TD 2017/8
- New fast objection processing;
- Individuals work-related tax deductions represent biggest "tax gap"
- ATO targets 400+ restaurants and cafés, hair and beauty businesses- cash economy crackdown
- Proposed one chance before applying SME and individual penalties - ATO consultation feedback
- CGT compliance - self-assessment, data analytics and risk reviews
- Foreign investment framework - consultation paper on proposed changes
- Consultation on UPE, Div 7A and safe harbour options - completion soon
- Updated small business benchmarks expected in April 2017

Other

Board of Taxation - latest update of projects

SHARE BUYBACKS: PUBLIC V PRIVATE

What do we need to understand?

- Types of buyback
- When you would participate or implement
- Tax consequences

Different types of buyback

- **Public company**

Essentially a “special” dividend

Example in SMSF:

1. Share sale at 70. Capital gain 15% so nets about 60 (or 70 if in pension mode)
2. Buyback Dividend of 70 is franked. Grossed up dividend of 100. Gives net benefit of 85 (or 100 in pension due to refund of credits)
n.b buyback discount to listed price

Common to participate and buy back in on market.

- **Private company**

Return surplus cash to shareholders

Reduce NTA to make entry price lower for new participant

“Realign” shareholder amongst shareholders

Exit strategy for a shareholder/s instead of sale

By:

- Reducing an existing shareholder’s % holding
- Eliminating an existing shareholder’s holding
- Reducing all existing shareholders’ % holding pro rata

Commercial aspects

- A. Funding:
 1. Company own funds
 2. New funds contributed:
 - (i) External debt
 - (ii) New capital in (existing or new shareholder)

- B. Pre and post buyback

Relative percentage equity amongst shareholders
Balance sheet
Market Value

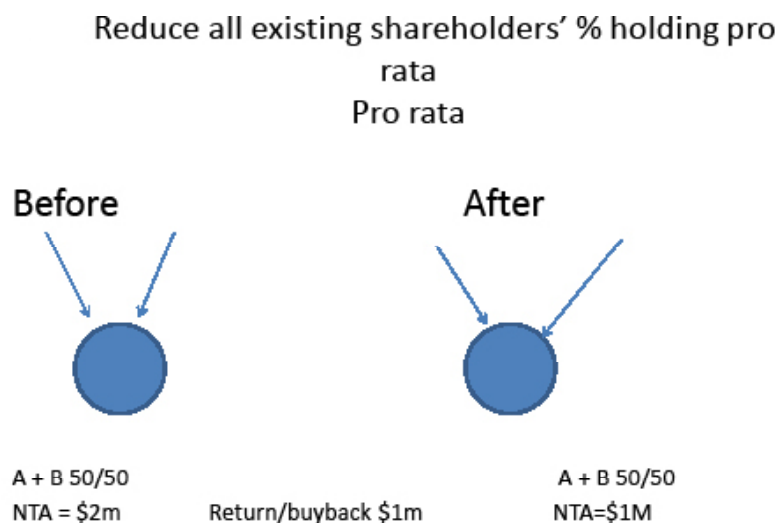
Key tax consequences

- Share buyback provisions (Div 16K 1936 ITAA)
 - At market
 - Excess over share capital is a dividend (can be franked)
- Franking provisions
- Anti avoidance provisions (s45A,45B,45C, s177EA)

ATO guidelines

- Key issues:
 - What is market value i.e justify buyback price
 - How much of buyback price is a dividend and how much is capital
 - How much can or should be franked
- Public Company – Class Ruling from ATO
- 14% discount and tender process
- Private company - Private Ruling? Much harder.
 - What is market value?
 - How much of buyback price is a dividend and how much is capital?

Appropriate allocation example



- Assume share capital \$1m and retained earnings \$1m
- Outcome likely 50/50 – share capital return plus franked dividend

Example 2

- MV is 2m but share capital of 1m (cash) and goodwill value of 1m. No franking.
- If do buyback would want all out of share capital but ATO probably want 50/50 resulting in unfranked dividend

CHANGES TO TRUST DEEDS

- The ATO has said looking it's looking at the vesting date issue and issues Addendum to TD2012/21
- Key considerations include:
 - Key parties
 - Key clauses
 - Changes: common examples + tax consequence

READ THE DEED!

Key parties involved in a trust

- Settlor
- Appointor
- Guardian (aka Protector)
- Trustee
- Beneficiary – general and specified (in Deed or schedule)
- Default beneficiary
- Notional Settlor(sometimes)

Key clauses in a trust deed

- Definition of income
- Definition of capital
- Distribution/retention of income
- Distribution/retention of capital
- General/specific powers of amendment
- General powers of trustee to administer the trust
- Ability to partition trust assets
- Vesting of trust

Key tax issues associated with changing a deed

1. Is there a re-settlement?
2. If there is, what are the consequences?
 - Pre CGT freshening up
 - Post CGT gains crystallised
 - Trust Losses
 - Family Trust elections
 - Stamp duty?

What is a resettlement?

- Change that is so fundamental as to create a new trust

ATO view:

No resettlement if:

- Court ordered
- Power in Deed

Common changes & resettlement risks

Categorise potential changes into:

- No resettlement risk
- Possible resettlement risk

No resettlement risk

- adding/removing trustee general powers of administration
- removing notional settlor clause
- changes to appointor/guardian
- change to trustee
- vesting date

Possible resettlement risk

- adding General power of amendment
- adding/removing particular named beneficiaries
- adding/removing classes of beneficiaries
- changing definitions e.g. income and capital
- Changing distribution/accumulation clauses
- adding non-family members

Final words

- Definitely read the deed
- Possibly get a ruling