

OCTOBER 2017 TAX UPDATE

ATO

RULINGS

- Commissioner's remedial power – small business restructure roll-over – draft Determination Draft CRP 2017/D2
- Fixed entitlements and fixed trusts: ATO guidance - Practical Compliance Guideline PCG 2016/16

ANNOUNCEMENTS

- ATO targets higher risk trust arrangements
- Industry assistance payments to taxi licence holders probably ordinary income
- Tax practitioners should use the pre-lodge check in the PLS
- SMEs may qualify for 2-week extension to lodge and pay activity statements
- Tax Office push on the sharing economy: ATO website material updated
- New crackdown on employer SG non-compliance: super funds to report at least monthly; STP to be expanded to smaller employers
- SMSF tax exemption on pension assets: ATO confirms view but grants admin concession
- Occupation-specific tax deduction guides from the ATO
- GIC and SIC rates for second quarter 2017-18 (Oct-Dec) GIC: 8.7%; SIC 4.7%

LEGISLATION

- Residential premises: no deduction for travel; limited depreciation deductions; vacant residential land fee – Bills introduced
- First Home Super Saver Scheme - Bills introduced
- Downsizing a home: super contributions up to \$300,000 - Bill introduced
- Increasing affordable housing: new CGT discount, MIT investment changes – draft legislation released
- Consolidation integrity measures – draft legislation released
- Super system accountability: MySuper outcomes test; APRA powers; director penalties - Bill introduced
- Salary sacrifice integrity and choice of super fund: Bill introduced
- Independent super fund trustees and directors: Bill introduced
- New one-stop financial and superannuation complaints authority – Bill introduced
- New lower education HELP repayment threshold – Bill passes Reps
- Passive investment companies and lower company tax rate: draft legislation

CASES

- Commissioner entitled to recover GIC accruing outside agreement - Bazzo & Anor v FCT
- Super death benefit paid to bankrupt via deceased estate not protected from creditors - Cunningham (Trustee) v Gapes (Bankrupt)
- GST: Sale of apartment not going concern, subject to margin scheme - MSAUS Pty Ltd as the Trustee for the Melissa Trust & Anor v FCT [2017] AATA 1408
- Beneficiary not presently entitled to trust distributions - Lewski v FCT

OTHER

- Latest Board of Taxation CEO update: may look at simplicity of CGT small business concessions

TOP 10 TIPS ON DIVISION 7A

1. The company must have a “distributable surplus”
2. Don’t forget to make the principal and interest repayments
3. Using funds for business/investment purposes doesn’t make it ok
4. Company to company loans are excluded
5. Loans through interposed entities can be a problem
6. UPEs – grandfathered pre 2009 can still trip you up
7. UPEs- post 2009- watch out for impending “balloon” repayment
8. Too conservative approach – “just pay out a dividend” may be wrong
9. Ignoring Div7A exposure – make voluntary disclosure- “open” amendment periods
10. Loans made to party other than shareholder (or associate) are not subject to Div7A- but watch FBT etc

TOP 10 TIPS ON CGT SMALL BUSINESS CONCESSIONS

1. Ensure you have a CGT asset
2. Ensure you have an active asset
3. Remember the \$6m test is based on “net” assets
4. Don’t forget the \$2 million turnover test
5. Make sure you count connected and affiliated entities
6. Don’t forget additional tests for shares/units
7. Remember 15 year test requires over 55 and “in connection with retirement”
8. Watch for “clawback” on gains flowing through companies and trusts
9. Don’t forget replacement asset rollover
10. Sometimes it’s just better to pay the tax