

NEWSLETTER – JULY 2014

1 July – What Now?

The 2% debt tax is in and the carbon tax is out. We look at some of the highlights for the new financial year.

The Push for Change

The Senate composition changed on 1 July and, with it, the Government's opportunity to push through its reform agenda. The reintroduced repeal Bills for the carbon tax and mining tax have already passed the House of Representatives with high expectations of being passed by the new Senate when it sits on 7 July. Clive Palmer recently came out supporting the repeal of the carbon tax, but only time will tell the position of the Palmer United Party (PUP) on other reforms.

Assuming the Labor Party will not support the bulk of the Government's reform Bills, the Government needs the support of either the Greens or PUP and three of the independents/minor parties to achieve a Senate majority.

The Government's Budget contained some fairly radical reforms particularly to social welfare and education. The position of the Greens, the minor parties, and independents on these reforms will be crucial. At stake is a bolstered maternity leave scheme, in some circumstances a dramatic change to Government subsidies for families and the unemployed, and the structure and affordability of higher education.

For business, a number of changes have already been announced but not enacted after the Bills were rejected by the previous Senate. The Bill repealing the mining tax contains the amendments to remove the loss carry-back rules for companies from the 2013/2014 financial year, remove the instant \$5,000 deduction for motor vehicles acquired by small business entities from 1 January 2014, and reduce the instant asset write-off threshold from \$6,500 to \$1,000 for small business entities from 1 January 2014.

If enacted, the Bill repealing the carbon tax will also see the Australian Competition and Consumer Commission (ACCC) step up its campaign against businesses that used the carbon tax as an excuse to artificially inflate prices. The repeal Bill gives the ACCC greater powers to monitor pricing in key sectors and take action where they

believe a business has made "...false or misleading claims about the effect of the carbon tax repeal or carbon tax scheme on the price for the supply of goods or services".

Overseas Assets and Income? Why the ATO Wants You

The ATO is heavily targeting individuals that have assets and income from overseas. A month ago, the ATO announced an amnesty - called Project DO IT - that allows people to declare unreported assets and income they have received from overseas. These voluntary disclosures have already raised over \$13 million in back taxes.

Now the ATO are backing up that amnesty with a new data matching program to target those who have not voluntarily declared foreign income. The data matching program will troll through information from overseas tax authorities on Australians with offshore investments and bank accounts; information from Australian and foreign banks on fund flows, interest and account balances; information from informants about offshore accounts, and money transfers to and from offshore bank accounts.

The bottom line is that if you don't declare income you receive from overseas that you should be paying tax on in Australia and the ATO catch you, you can expect little mercy. Don't assume that just because your foreign income is genuinely not subject to tax overseas that it is not taxable in Australia.

If you suspect you might have a problem, talk to us today to assess your position and manage your approach.

SMSFs and Protecting \$558bn in Assets

Access to, and the use of, the \$558 billion in assets currently held in Australian self-managed superannuation funds (SMSFs) is a touchy subject. From 1 July 2014, the ATO has new powers to deal with delinquent trustees, including directly levying financial penalties.

Trustees should read the bolstered ATO powers more broadly as part of an overall campaign to 'add teeth' to the ATO's SMSF compliance programs. So, if your SMSF has borrowed funds, has overseas interests, has

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undertaken related party transactions, etc., make sure your investment strategy allows it, and all the paperwork supporting your position is in place and within the rules.

Employers Paying SG

Employers can expect a renewed focus from the ATO on superannuation guarantee (SG) payments made to employees. With the increase in the SG rate from 9.25% to 9.5% on 1 July 2014, employers will need to make sure that payments are made on time and that the calculations are accurate. Just be aware that the increase in SG does not necessarily reduce the take home pay of employees. In many cases employee contracts are 'base plus superannuation'. In this case, the employer absorbs the increased SG rate not the employee.

Are Your Contractors Really Employees?

The ATO continues to enjoy a high success rate challenging the treatment of contractors under the superannuation guarantee (SG) legislation. Despite recent comments made by the Government that the ATO should 'relax' its approach to contractors, the ATO has no reason to simply walk away from such a potentially lucrative revenue stream – why would they when the law is on their side?

As there is no real time limit on the recovery of outstanding SG obligations, business owners need to take a proactive approach reviewing arrangements to ensure that the business is not exposed to material liabilities - the start of the new financial year is a great time to do this.

The underlying issue is often that employers take the contractor relationship at face value - that is, what the piece of paper describing the relationship actually says. The reality is quite different as the law is based on the character of the relationship, not what is stated in writing. So if your business has contractors (or you are a contractor) performing the same role as an employee, then it's possible the ATO will classify them as employees for SG purposes.

A genuine independent contractor who is providing personal services will typically be:

- Autonomous rather than subservient in their decision-making;
- Financially self-reliant rather than economically dependent upon the business of another; and
- Chasing profit (that is a return on risk) rather than simply a payment for the time, skill and effort provided.

There are a number of tests that can apply to help determine the status of a contractor – such as control, whether the worker has been hired to produce a result, the ability for them to freely delegate work to someone else, risk exposure, ownership of tools and equipment, and the treatment of business expenses, etc.

Employers cannot contract out SG responsibilities by adding fail safe clauses in contracts, and there is no certainty that a contractor using an interposed entity (e.g. setting up a company and operating through it) is foolproof.

Clear Out the Old: New Year Housekeeping

For business, July is the month you need to make sure you have properly closed off the last year and can start the New Year the right way. Here is the essential checklist to prevent last year overflowing into this year:

- Reconcile your GST control account.
- Does the income declared in your BAS for the last year reconcile to your annual income?
- Check that the minutes for all director and trustee resolutions pre-June 30 are documented and signed off.
- Make sure that your stocktake has been completed and documented.
- If you have paid management fees to a related entity during the year, ensure that all of the tax invoices have been documented and that there is a reasonable commercial basis for the charges applied.
- Where dividends have been declared to manage Division 7A loan payments, ensure that there are letters of instruction on file that the dividend is to be credited against the loan account. Dividend statements still need to be completed.
- If you have cross border related party transactions, make sure you have your transfer pricing file completed with all of the requirements signed off.
- Review all contractors for the year going forward to ensure that they would not be deemed to be employees.
- Get your operating budget completed for the year.
- Get your cash flow budget in place.
- Check the adequacy of your funding arrangements with your bank.
- Check that you meet any loan covenants that you have with the bank at 30 June.