Tax Alert

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Tax negotiation limited to known debt amounts

Two company taxpayers have been unsuccessful before the Federal Court in seeking to set aside statutory demands issued by the ATO.

The matter essentially involved two individuals who carried on property development activities through several entities (including the taxpayers) and their recollections of an alleged "global deal" with the ATO at a meeting on 10 April 2014 to resolve various debt recovery disputes – including security arrangements – while objections and appeals were on foot. The taxpayers contended that, after the meeting, the ATO sought demands that were contrary to the "deal" (this included a demand for a security in the amount of $8 million in relation to a related trust) and made "threats" to issue statutory demands. The statutory demands against the two taxpayers were issued in September 2014.

The Federal Court dismissed the taxpayers' applications to set aside the statutory demands. The Court said it did not doubt that the individual representing the taxpayers held a "genuine subjective belief" that he and the ATO had entered into a binding legal agreement at the April 2014 meeting that went beyond the terms of the Deeds of Agreement, which were subsequently executed. However, it considered the representative's subjective belief was not supported by either objective documentary evidence or by the evidence of the ATO representatives who attended the meeting, which it preferred. Among other things, the Court accepted the ATO's evidence that the negotiations involved only "established debts" reflected in a spreadsheet that was used at the meeting and did not include further tax liabilities, including those of the trust.

TIP: The above case demonstrates that to avoid confusion among negotiating parties, particularly in relation to future treatment of liabilities, agreements as to arrangements and the terms must be reached and agreed to by the parties in a subsequent written Deed of Agreement.

CGT roll-over for small business restructures on the way

The Government has released exposure draft legislation that proposes to provide roll-over relief for small businesses that change their legal structure. The proposed measures were announced in the 2015–2016 Federal Budget, and will apply to the transfers of assets occurring on or after 1 July 2016. Public consultation closes on 4 December 2015.

The proposed measures will provide an optional roll-over where a small business entity transfers a business asset to another small business entity without changing the ultimate economic ownership of the asset. The roll-over can also apply to affiliates or entities connected with the small business entity for assets they hold that are used by the small business entity.

The roll-over will apply to gains and losses arising from the transfer of capital assets, depreciating assets, trading stock or revenue assets between entities as part of a small business restructure. Discretionary trusts may be able to access the roll-over if the assets continue to be held for the benefit of the same family group.

TIP: The proposed new roll-over is in addition to roll-overs currently available where a sole trader or partner in a partnership transfers assets to, or creates assets in, a company in the course of a business restructure. Note also that, with any proposed "tax relief", the devil is in the detail. Please contact our office for further information.

ATO starts issuing "certainty" letters

The ATO has commenced contacting more than half a million individual taxpayers to let them know that their recently submitted tax returns "are shipshape and will not be subject to further review". The ATO said people who receive one of its "certainty" letters (also known as "A-OK" letters) can be assured that the ATO is happy with their tax returns, and has closed its books permanently on their returns, providing there is no evidence of fraud or deliberate avoidance.

The letter is being trialled with a sample of people who meet certain criteria. This includes having broadly simple tax affairs, a taxable income of under $180,000, and a good lodgement

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and compliance history. Depending on the success of the trial, the ATO said it aims to expand the program to more taxpayers for Tax Time 2016.

TIP: Despite the aim to provide "certainty", it remains to be seen how the letters will operate in practice, particularly if the Commissioner can change his position on the issued letter if taxpayers amend their 2015 tax return or if the Commissioner relies on the concept of fraud or evasion to invalidate the certainty letter.

Government rejects SMSF borrowing ban recommendation

Direct borrowings by superannuation funds via limited recourse borrowing arrangements (LRBAs) are safe (at least for the next three years), following the Government's decision to reject the Murray Financial System Inquiry recommendation to ban or restrict LRBAs. This is welcome news for trustees of self-managed superannuation funds (SMSFs) who have faced uncertainty about the future of such borrowing arrangements, which have become popular for investments in direct property and shares.

In releasing its response, the Government said that it did not agree with the recommendation. While the Government noted there are "anecdotal concerns" about LRBAs, it said the data did not justify policy intervention at this time. However, the Government said it will commission a report on leverage and risk in three years' time. According to the Government, this timing will allow recent improvements in ATO data collection to wash through the system. The report will be used to inform any consideration of whether changes to the borrowing rules might be appropriate at a future date.

TIP: Despite the Government's "green light" for LRBAs, a decision to establish an SMSF and invest in property using an LRBA is not one to be taken lightly. It would be prudent to obtain professional tailored advice on any possible LRBA issues that should be considered before committing to purchase a property via an SMSF.

Car expenses and FBT concessions on entertainment

A Bill is currently before Parliament that introduces two important changes. Key details are as follows.

Work-related car expenses

The Bill proposes to repeal the "12% of original value method" and the "one-third of actual expenses method". Taxpayers will continue to be able to choose to apply the "cents per kilometre method" (for up to 5,000 business kilometres travelled), or the "logbook method", depending on which method in their view best captures the actual running costs of their vehicle.

The Bill also proposes to provide a streamlined process for calculating the "cents per kilometre method" by providing a single rate of deduction. That is, the current three rates based on vehicle engine capacity will be replaced with a single rate of deduction. In the 2015–2016 income year, the rate will be set at 66 cents/km. The changes are proposed to apply from 1 July 2015.

TIP: So the Government will set 66 cents/km as the rate for using the "cents per kilometre method", irrespective of a car's engine size. Based on 2012–2013 figures, this would see those who drive smaller vehicles getting a slight increase in deductible expenses, and those who drive larger cars having a decrease in their deduction.

FBT concessions on salary packaged entertainment benefits

The Bill proposes amendments to the law governing fringe benefits to introduce a separate grossed-up cap of $5,000 for salary sacrificed meal entertainment and entertainment facility leasing expenses for certain employees of not-for-profit organisations, and all use of these salary sacrificed benefits will become reportable. The changes are proposed to apply from 1 April 2016.

TIP: Note that organisations affected include public and not-for-profit hospitals, public ambulance services, public benevolent institutions (except hospitals) and health promotion charities. It may be prudent to discuss with your adviser as to whether the above changes apply to your circumstances.

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