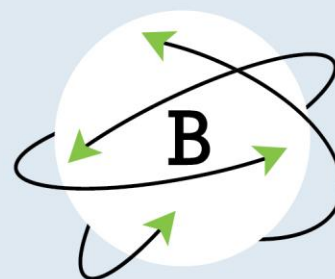
TAXWISE BUSINESS NEWS



LeCornu Lewis Hancock November 2017

IN THIS ISSUE

- New rules for accessing the 27.5% corporate tax rate from 1 July 2017
- When does a company carry on a business? ATO releases guidance
- Small business tax concessions at a glance
- Deductions for small business
-
- Tax consequences of trust splitting
- Government cracks down on illegal phoenixing
- Streamlined reporting with Single Touch Payroll
- Lump sum payments for healthcare practitioners
- Superannuation guarantee – new measures announced
- Understanding the sharing economy and tax
- Industry assistance payments to taxi licence holders
- FBT: Uber case: definition of 'taxi' – ATO Technical Discussion Paper
- Reduction of wine equalisation tax (WET) rebate cap
- Other legislation that may impact on you or your business

New rules for accessing the 27.5% company tax rate from 1 July 2017

The Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Bill 2017 was introduced into the House of Representatives on 18 October 2017. This Bill amends the *Income Tax Rates Act 1986* (Cth) (**Rates Act**) to ensure that, from the 2017-18 income year, a company will qualify for the lower company tax rate for an income year if:

- no more than 80% of the company's assessable income for that income year is 'base rate entity passive income'; and
- the company's aggregated turnover for the income year is less than the aggregated turnover threshold for that income year (for the 2017-18 income year, the threshold is less than $25 million).

These amendments will modify the requirements that must be satisfied for a company to qualify as a 'base rate entity' by replacing the 'carrying on a business' test with a passive income test. Under the passive income test, companies that are generating predominantly passive income (eg rent, royalties etc) will not be eligible for the lower company tax rate.

The purpose of this legislation is to ensure that passive investment companies cannot access the lower company tax rate that is otherwise available small businesses.

Currently, to qualify as a 'base rate entity' in order to apply the lower company tax rate, a company must be 'carrying on a business' as well as meet the relevant aggregated turnover threshold.

The Bill will apply prospectively from the 2017-18 income year.

An amount of assessable income that qualifies as 'base rate entity passive income' includes items such as:

- a distribution that is not a 'non-portfolio dividend';
- franking credits attached to such a distribution;
- interest income (as defined in the income tax legislation);
- a royalty;
- rent; and
- a net capital gain.

When does a company carry on a business? ATO releases guidance

The ATO has released draft Taxation Ruling TR 2017/D7 *Income tax: when does a company carry on a business within the meaning of section 23AA of the Income Tax Rates Act 1986?* for consultation.

This draft Ruling provides guidance on when a company carries on a business within the meaning of section 23AA of the Rates Act.

A company will be a 'base rate entity' under section 23AA if it carries on a business and meets the aggregated turnover requirement. For the purposes of section 23AA, 'business' is defined in the income tax law to include 'any profession, trade, employment, vocation or calling', but excludes 'occupation as an employee'.

The draft Ruling confirms that it is not possible to definitively state whether a company is carrying on a business. It does however confirm that 'Limited' and 'No Liability' companies are *likely* to be carrying on a business where they are established and maintained to make a profit for their shareholders, and invest their assets in gainful activities which have both a purpose and prospect of profit.

The draft Ruling addresses whether a company carries on a business in a general way. It does not address what the scope or nature of a company's business is. This is a separate question that needs to be answered in order to work out the taxation consequences of the transactions a company undertakes, such as whether a gain made is ordinary income or a capital gain, or whether an outgoing or loss is capital in nature.

A variety of examples are included in the draft Ruling to assist a taxpayer to understand when a company may be 'carrying on a business'.

Note!

The issue of whether a company is 'carrying on a business' is relevant under the current law. However, if the *Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Bill 2017* becomes law, the draft Ruling will not be relevant from 1 July 2017 going forward.

You should discuss with your tax agent or adviser whether your company may be eligible to access the lower company tax rate.

Small business tax concessions at a glance

The ATO has prepared a table that is available on their website which sets out at a glance all the tax concessions that may be available to small businesses. These include:

- simplified depreciation rules (eg the instant asset write-off, accelerated depreciation for primary producers);
- eligibility for the lower company tax rate;
- PAYG instalment concessions;
- simplified trading stock rules;
- simpler BAS;
- accounting for GST on a cash basis; and
- the various small business CGT concessions.

Your tax agent or adviser will be able to assist you to work out which of these concessions your small business may be entitled to.

Deductions for small business

The ATO has published answers to the most common questions taxpayers have been asking about deductions for small business. Find out more on the ATO website.

Tax consequences of trust splitting

The ATO is developing guidance in relation to the tax consequences of trust splitting arrangements.

A trust splitting arrangement occurs when separate trustees are appointed over different assets of an existing discretionary trust. Each trustee is typically controlled by a different party.

The intention of trust splitting is to produce a structure where each trustee is able to deal with the assets it holds independently of the other trustees. In particular, the trustee is able to deal with the assets largely for the benefit of the controlling party.

If you hold assets through trusts, this ATO guidance may be relevant to you.

Government cracks down on illegal phoenixing

The Minister for Revenue and Financial Services, the Hon Kelly O'Dwyer MP, announced on 12 September 2017 that the Government is taking action to crack down on illegal phoenixing activity to ensure those involved face tougher penalties.

The Government's package of reforms will include the introduction of a Director Identification Number (DIN) and a range of other measures to both deter and penalise phoenix activity.

The DIN will identify directors with a unique number. The DIN will interface with other government agencies and databases to allow regulators to map the relationships between individuals and entities and individuals and other people.

In addition to the DIN, the Government will consult on implementing a range of other measures to deter and disrupt the core behaviours of phoenix operators, including non-directors such as facilitators and advisers.

The Government will consult on how best to identify high risk individuals who will be subject to new preventative and early intervention tools, including:

- a next-cab-off-the-rank system for appointing liquidators;
- allowing the ATO to retain tax refunds; and
- allowing the ATO to commence immediate recovery action following the issuance of a Director Penalty Notice.

The Government put out a discussion paper in October containing numerous ideas for how to combat phoenixing behaviours.

Streamlined reporting with Single Touch Payroll

Previous editions of *TaxWise Business* have contained information about Single Touch Payroll, which is a reporting change for employers. It means employers will report payments such as salaries and wages, PAYG withholding and super information to the ATO directly from their payroll solution at the same time they pay their employees.

For employers with 20 or more employees, Single Touch Payroll reporting starts from 1 July 2018. The first year will be a transition and penalties will not apply.

The Government has also announced that it will expand Single Touch Payroll to include employers with 19 or less employees from 1 July 2019. This will be subject to legislation being passed in Parliament.

Therefore, if your business has 20 or more employees, Single Touch Payroll starts for you on 1 July 2018. If you have less than 20 employees, Single Touch Payroll will start for you on 1 July 2019 if the relevant legislation gets passed.

Lump sum payments for healthcare practitioners

If you are a healthcare practitioner, you may receive a lump sum payment when starting or amending an agreement with a healthcare centre operator. The ATO is concerned that some healthcare practitioners may be incorrectly treating these payments as proceeds from the disposal of a capital asset. This may result in underpayment of tax and expose you to later tax adjustments and penalties.

To do!

If you have received one of these payments, talk to your tax agent to make sure you treat it correctly for tax purposes.

Superannuation guarantee – new measures announced

The Government has announced a further package of reforms to give the ATO near real-time visibility over superannuation guarantee (SG) compliance by employers.

The Government will provide the ATO with additional funding for a Superannuation Guarantee Taskforce to crackdown on employer non-compliance. The package builds on legislation already announced to close a legal loophole used by unscrupulous employers to short-change employees who make salary-sacrifice contributions to their superannuation.

The package includes measures to:

- require superannuation funds to report contributions received more frequently, at least monthly, to the ATO. This will enable the ATO to identify non-compliance and take prompt action;
- update payroll reporting through the rollout of Single Touch Payroll (STP). This will reduce the regulatory burden on business and transform compliance by aligning payroll functions with regular reporting of taxation and superannuation obligations;
- improve the effectiveness of the ATO's recovery powers, including strengthening director penalty notices and use of security bonds for high-risk employers, to ensure that unpaid superannuation is better collected by the ATO and paid to employees' super accounts; and
- give the ATO the ability to seek court-ordered penalties in the most egregious cases of non-payment, including employers who are repeatedly caught but fail to pay superannuation guarantee liabilities.

Understanding the sharing economy and tax

The ATO has updated their sharing economy and tax web page to help you understand your clients' income tax and GST obligations, and how to avoid tax debts. Information includes:

- Working in the sharing economy
- Income tax and GST in the sharing economy
- Deductions you can claim
- Ride-sourcing
- Renting out all or part of your home
- Renting out a car parking space
- Record keeping
- How to avoid a tax debt

Tip!

If you participate in the sharing economy, you need to understand your tax obligations. Talk to your tax agent or adviser if you are unsure about what your tax obligations are or whether you are meeting them.

Industry assistance payments to taxi licence holders

The ATO is providing assistance to taxpayers who hold a taxi licence (including a car hire licence).

If you hold a taxi licence (including a hire car licence) and you receive an industry assistance payment from your State Government in relation to the licence (excluding a licence surrender payment), it is probably not a capital receipt. It's more likely to be ordinary income. There are no GST consequences. More guidance can be found on the ATO website.

FBT: Uber case: definition of 'taxi' – ATO Technical Discussion Paper

In light of a recent Federal Court decision in the matter of *Uber B.V. v. Commissioner of Taxation* [2017] FCA 110 (Uber), and certain proposed changes to licensing regulations in a number of states and territories, the ATO has released *Technical Discussion Paper TDP 2017/2 'Fringe Benefits Tax - Definition of Taxi'*.

TDP 2017/2 considers the definition of 'taxi' contained in the *Fringe Benefits Tax Assessment Act 1986* (Cth) (FBT Act) and the exemption from fringe benefits tax (FBT) for taxi travel undertaken to or from work or due to illness.

The purpose of this paper is to facilitate consultation between the ATO and the community as part of the process of developing advice on the application of the FBT law. The ATO advises that all views in this paper are preliminary in nature and should not be taken as representing either an ATO view or that the ATO will take a particular view.

Reduction of wine equalisation tax (WET) rebate cap

In the 2016-17 Budget, the Government announced that it will address integrity concerns with the wine equalisation tax (WET) rebate by reducing the WET rebate cap and tightening eligibility criteria.

The scheduled changes include:

- strengthening the associated producer provisions, so that from 1 October 2017 the associated producer test applies at any time during the financial year;
- reducing the WET rebate cap from $500,000 to $350,000 on 1 July 2018;
- introducing tightened eligibility criteria for the producer rebate from 1 July 2018 with some transitional arrangements from 1 January 2018; and
- creating a stronger link between rebate claims and the payment of WET by limiting entitlements to WET credits and changes to the quoting rules from 1 July 2018.

The changes were passed into legislation in August 2017.

Other legislation that may impact on you or your business

i) Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Bill 2017

The Bill extends the crowd-sourced funding (CSF) regime to proprietary companies, making a new funding source available for small businesses, while maintaining adequate investor protections through additional obligations on companies. The measure extends upon the *Corporations Amendment (Crowd-sourced Funding) Act 2017* to enable proprietary companies to access CSF without transitioning to public company status.

ii) Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017

Choice of fund for workplace determinations and enterprise agreements

- The Bill amends the *Superannuation Guarantee (Administration) Act 1992* (Cth) (SGAA) to ensure employees under workplace determinations or enterprise agreements have an opportunity to choose the superannuation fund for their compulsory employer contributions.

Salary sacrifice integrity

- The Bill also amends the SGAA to improve the integrity of the superannuation system by ensuring that an individual's salary sacrifice contributions cannot be used to reduce an employer's minimum superannuation guarantee (SG) contributions.

iii) Treasury Laws Amendment (Enterprise Tax Plan No. 2) Bill 2017

Further to the *Treasury Laws Amendment (Enterprise Tax Plan) Act 2017,* this Bill amends the Rates Act to:

- progressively extend the lower 27.5% corporate tax rate to all corporate tax entities by the 2023-24 financial year; and
- further reduce the corporate tax rate in stages so that by the 2026-27 financial year, the corporate tax rate for all entities will be 25%.

To do!

Talk to your tax agent or adviser to see if any of these Bills will impact on you or your business.

DISCLAIMER

TaxWise® News is distributed by professional tax practitioners to provide information of general interest to their clients. The content of this newsletter does not constitute specific advice.

Any financial product advice included in this newsletter is provided by LLH Financial Services Pty Ltd AFSL No. 487699. The information provided is general in nature and is not personal financial product advice. The information provided has been prepared without taking into account your objectives, financial situation or needs and because of this you should, before acting on it, consider the appropriateness of it having regard to your objectives, financial situation and needs. You should carefully read and consider any Product Disclosure Statement that is relevant to any financial product that has been discussed before making any decision about whether to acquire the financial product.

Please contact LeCornu Lewis Hancock if you would like advice on specific matters.