HALL CHADWICK

Tax Time Monthly

MARCH ISSUE 2018

1 INCOME TAX

1.1 CGT small business concessions: restricted to assets used in business – draft legislation released

Draft Legislation has been tabled to give effect to previous Budget announcements that seek to limit access to the small business CGT concessions to assets that are used in a small business. Although the existing basic conditions for relief set out in subs 152-10(1) of the ITAA 1997 will remain unchanged, the Draft Legislation proposes that additional basic conditions will apply for capital gains relating to shares in a company or interests in a trust (Object Entity) as follows:

- Either the taxpayer must be a CGT concession stakeholder in the Object Entity, or CGT concession stakeholders in the Object Entity must hold at least 90% of the interests in the taxpayer;
- Unless the taxpayer satisfies the maximum net asset value test (MNAVT), the taxpayer must have carried on a business just prior to the CGT event;
- The Object Entity must carry on a business just prior to the CGT event, and either be a CGT small business entity for the income year or satisfy the MNAVT; and
- The shares or interests in the Object Entity must satisfy a modified active asset test.

The current SBCGT Concession rules treat shares or interests as active assets based on the underlying assets of the company or trust. Conversely, the modified test looks through membership interests to include the proportionate amount of the value of the assets of others entities to which the membership interest ultimately relate.

Under the Draft Legislation, when working out if the Object Entity satisfies the MNAVT or is a CGT small business entity:

- The turnover or assets of entities that may control the Object Entity would be disregarded; and
- An entity would be treated as controlling another entity if it has an interest of 20% or more (rather than 40% or more as is currently provided for in s 328-125 of the ITAA 1997).

This will mean that more entities are 'connected with' each other for the purpose of calculating the turnover and assets of the Object Entity.

The amendments would apply to CGT events that occur on or after 1 July 2017. The retrospective application of the amendments is consistent with the Government's 2017-18 Budget announcement on 9 May 2017.

1.2 Amendments to consolidation regime to close loopholes – Bill introduced

The Bill proposes to amend the ITAA 1997 to make a number of amendments to the consolidated regime that were announced in the 2013-14, 2014-15 and 2016-17 Federal Budgets, with the aim of improving the integrity of the consolidation regime by preventing multinational groups form sheltering future income tax by "churning' entities between related parties. The amendments are:

- the deductible liabilities measure, which will remove a double benefit that can arise in respect of certain liabilities held by an entity that joins a consolidated group (date of effect from 1 July 2016);
- the deferred tax liabilities measure, which will simplify the operation of the entry and exit tax cost setting rules by ensuring that deferred tax liabilities are disregarded (date of effect from 15 February 2018);
- the securitised assets measure, which will remove anomalies that arise when an entity joins or leaves a consolidated group where the entity has securitised an asset (date of effect from 3 May 2016);
- the churning measure, which will switch off the entry tax cost setting rules for a joining entity where a capital gain or capital loss made by a foreign resident owner when it ceases to hold membership interests in the joining entity is disregarded and there has been no change in the majority economic ownership of the joining entity for a period of at least 12 months before the joining time (date of effect from 14 May 2013);
- the TOFA measure, which will clarify the operation of the TOFA provisions when an intra- group asset or liability that is, or is part of, a Div 230 financial arrangement emerges from a consolidated group because a subsidiary member leaves the group (date of effect from 1 July 2010); and
- the value shifting measure, which will remove anomalies that arise when an entity leaves a consolidated group holding an asset that corresponds to a liability owed to it by the old group by ensuring that the amount taken into account under the exit tax cost setting rules for the asset is aligned with the tax

cost setting amount for the corresponding asset of the leaving entity.

1.3 CGT changes for foreign residents; extra CGT discount: Bill introduced

The Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No 2) Bill 2018 was introduced in the House of Reps on 8 February 2018. It proposes the following amendments with effect from 9 May 2017:

- Remove the entitlement to the CGT main resident exemption for foreign residents that have dwellings that qualify as their main residence. Therefore, any such capital gain or loss arising upon disposal of a foreign resident's main residence would need to be recognized; and
- Modify the foreign resident CGT regime to clarify that, for the purpose of determining whether an entity's underlying value is principally derived from taxable Australian real property (TARP), the principal asset test is applied on an associate inclusive basis.

1.4 New residential premises: purchasers to pay GST

The Treasury Laws Amendment (2018 Measures No 1) Bill 2018 was introduced in the House of Reps on 7 February 2018. It contains the measures which will require purchasers of newly constructed residential premises (or new subdivisions) to remit GST directly to the Tax Office as part of the transaction. The more important details of the changes are as follows:

- The new remittance rules will first apply from 1 July 2018, i.e. where consideration (other than a deposit) is first provided on or after that date. However, there is a general transitional rule where the contract of sale was first entered into before 1 July 2018 and consideration is to be provided before 1 July 2020. Supplies from such arrangements will not be subject to the new rules.
- The requirement for the purchaser to pay the GST at settlement arises in relation to any sale or long-term lease of new residential premises. Importantly, residences that become new residential premises (for GST purposes) due to them having been substantially renovated are specifically exempt from the new rules. The new rules will not apply to the sale of commercial residential premises.
- The new rules will also apply to potential residential premises. This term broadly refers to land who permissible use is for residential purposes, but does not contain any buildings that are residential premises.
- The amount to be withheld and paid to the ATO depends on whether or not the margin scheme is being used in relation to the sale, in terms of calculating the GST payable. Where the margin scheme does not apply, the amount of GST is 1/11th of the contract price or, if there is no contract price, then the price for the supply. If the margin scheme applies, then the amount payable will be a standard 7% of the contract price. Note that the Commissioner may increase that amount to a maximum of 9%.
- From 1 July 2018, vendors selling residential premises or potential residential land must provide a notice to the purchaser containing certain matters such as whether the purchase has a requirement to withhold GST at settlement and pay it to the ATO.

1.5 Company tax cut

The Treasury Laws Amendment (Enterprise Tax Plan No 2) Bill 2017 was passed by the House of Reps on 8 February 2018 without amendment and now moves to the Senate. The Bill proposes to progressively extend the 27.5% corporate tax rate to all corporate tax entities by the 2023-24 income year. The corporate tax rate would then be cut, for all corporate tax entities, to 27% (2024-25), 26% (2025-26) and 25% (2026-27 and later income years).

Date of effect: The progressive extension of the lower 27.5% corporate tax rate to corporate tax entities with aggregated turnover of $50m or more is proposed to commence from the 2019-20 income year.

The Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Bill 2017 was also passed by the House of Reps on 8 February 2018 but with 1 Government amendment to adjust the meaning of "base rate entity passive income" to exclude certain interest income of financial institutions from the passive income test.

The Bill now moves to the Senate. It proposes to ensure that a company will not qualify for the lower company tax rate if more than 80% of its assessable income is passive income (such as interest, dividends or royalties).

1.6 CBC lodgment reminder for December balancers

The ATO has reminded businesses that significant global entities (SGEs) that have a Country-by-Country (CbC) reporting obligation for the year ended 31 December 2017 are required to have lodged their CbC statements (ie CbC report, master file and local file) electronically by 15 February 2018 as per the extension of time to lodge previously announced by the ATO. Paper or email lodgements of CbC statements will not be accepted by the ATO. Late lodgements of the CbC reporting can incur significant fines. Taxpayers that may have CbC reporting requirements are advised to contact Hall Chadwick to ensure that they comply with the new reporting requirements. Lodgements are generally due within 12 months after the end of the financial year.

The ATO has updated, as at 1 February 2018, its document, Country-by-Country Reporting Guidance. It provides guidance on the implementation of CbC reporting in Australia. The ATO has also released updated information on its Local File instructions: 2017. These instructions are designed to help companies complete the local file as part of their CbC reporting obligation.

2 SUPERANNUATION

2.1 Reversionary super TRIS to automatically transfer upon death – draft legislation released

The Government has released exposure draft legislation proposing to ensure that a superannuation reversionary transition to retirement income stream (TRIS) will always be allowed to automatically transfer to eligible dependants upon the death of the primary recipient.

Currently, a reversionary TRIS cannot transfer to a dependant if the dependant themselves has not satisfied a condition of release under the SIS Regs.The Draft Bill proposes to amend s 307-80(3) of the ITAA 1997 to modify the rules that determine when a TRIS is in retirement phase to ensure that a reversionary TRIS can always be paid to a reversionary beneficiary. The amendment will allow the original TRIS to be paid to the dependant beneficiary, rather than having to be commuted and a new income stream started from the deceased member's underlying superannuation interests.

This proposed treatment of a reversionary TRIS also means that the reversionary beneficiary's transfer balance account will not be credited until 12 months after the death of the primary beneficiary. The amount of the credit is value of the income stream at time it first became payable to the reversionary beneficiary (ie at the date of death).

2.2 ATO admin of early release of super benefits – draft legislation

On 21 February 2018, the Government released exposure draft regulations for the proposed transfer of the early release of superannuation function to the ATO.

The draft regulations would amend the SIS Regs to implement the administrative changes to reflect the transfer of responsibility for the early release of super on compassionate grounds from the Chief Executive Medicare (Department of Human Services) to the ATO.

Currently, a notice of authorisation for the early release of super benefits on compassionate grounds is only able to be given to the applicant. The draft regulations would require the ATO to directly notify a member's super fund when it has authorised the early release of funds, removing the need for that trustee to independently confirm the amount authorised for release.

Need to discuss this article?

Please contact John Christopoulos

Telephone 03 9820 6400

Email jchris@hallchadwickmelb.com.au

Website www.hallchadwickmelb.com.au

Find out how we can help, contact your local office

NEW SOUTH WALES
Level 40, 2 Park Street
Sydney NSW 2000
Tel: 02 9263 2600
sydney@hallchadwick.com.au

WESTERN AUSTRALIA
Allendale Square, Level 11
77 St Georges Terrace Perth WA 6000
Tel: 08 6557 6200
perth@hallchadwick.com.au

VICTORIA
Level 14, 440 Collins Street
Melbourne VIC 3000
Tel: 03 9820 6400
hcm@hallchadwickmelb.com.au

NORTHERN TERRITORY
Paspalis Business Centre
Level 1, 48-50 Smith Street
Darwin NT 0800
Tel: 08 8943 0645
darwin@hallchadwick.com.au

ADELAIDE
Level 21, 25 Grenfell St
Adelaide SA 5000
Tel: 08 8545 8422
adelaide@hallchadwick.com.au

QUEENSLAND
Level 4, 240 Queen St
Brisbane QLD 4000
Tel: 07 3211 1520
brisbane@hallchadwick.com.au

A Member of PrimeGlobal
An Association of Independent Accounting Firms

PrimeGlobal