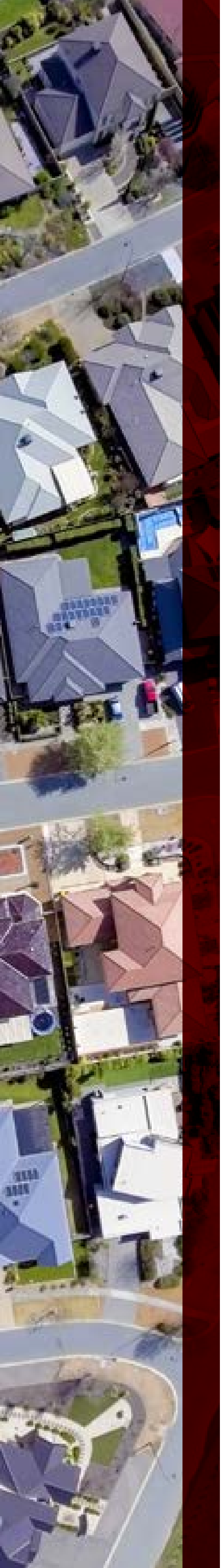

HALL CHADWICK

Tax Time Monthly

APRIL ISSUE 2018

R&D Registration Deadline 30 April 2018

If your company is intending to claim the R&D Tax Incentive for the 2016-2017 income year and it ends on 30 June 2017, your R&D Tax Incentive registration application must be lodged by midnight local time on 30 April 2018.

Please contact Hall Chadwick as soon as possible if you need to register.

1 INCOME TAX

1.1 CGT changes for foreign residents: Senate Committee recommends passage

The Senate Economics Legislation Committee has released its report into the *Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No 2) Bill 2018* and the *Foreign Acquisitions and Takeovers Fees Imposition Amendment (Near-new Dwelling Interests) Bill 2018* which are currently both before the Senate. The Senate Economics Legislation Committee has recommended that the Bills be passed and that the Australian Government ensures that the changes to the CGT main residence exemption for foreign residents and the transitional arrangements are made aware to Australians living and working overseas.

The main Bill contains amendments that would impact foreign residents to:

- remove the entitlement to the CGT main residence exemption for foreign residents; 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 TARP, the principal asset test is applied on an associate inclusive basis.

Please contact Hall Chadwick for advice to plan accordingly if affected by the new measures.

1.2 Purchases to remit GST on residential property and super changes: Bill received Assent

The Treasury Laws Amendment (2018 Measures No 1) Bill 2018 passed both Houses of Parliament without amendment and received Royal Assent on 29 March 2018.

The Bill contained measures which would require purchasers of newly constructed residential premises (or new subdivisions) to remit GST directly to the Tax Office as part of the transaction.

Under the new measures, purchasers of new residential premises or subdivisions of potential residential land must make a payment to the ATO of part of the price. If the margin scheme does not apply, the purchaser must withhold 1/11th of the contract price or price. If the margin scheme applies to the taxable supply, the purchaser must withhold 7% of the contract price or price, or a greater amount that has been determined by the Minister in a legislative instrument. However, any determination by the Minister cannot require more than 9% of the contract price or price to be withheld, which prevents an amount being set in excess of the GST payable on the supply.

Generally, the withholding obligation and all associated amendments apply in relation to supplies for which any of the consideration is first provided (other than consideration provided solely as a deposit) on or after 1 July 2018, whether or not the supply was entered into before, on or after the commencement of the schedule. However, as a transition measure, there is an exception to this general rule where the contract for supply was entered into before 1 July 2018, and consideration for the supply is first provided before 1 July 2020, providing a two year transitional period for pre-existing contracts.

1.3 NSW: Exemption from surcharge purchaser duty – foreign persons – Ruling

Revenue NSW has released Revenue Ruling G 013 on *Exemption from Surcharge for New Home Development by Australian Based Developers that are Foreign Persons.*

Surcharge purchaser duty applies to acquisitions of residential land by a foreign person from 21 June 2016. Surcharge land tax applies to foreign persons who are owners of residential land from 2017 land tax year.

The Ruling relates to a concession whereby an exemption from surcharge purchaser duty or surcharge land tax is available if the Chief Commissioner is satisfied that the foreign person will use land, in respect of which the person would otherwise incur liability for surcharge, for the following purposes:

(i) construction and sale of new homes, or

(ii) subdivision and sale for new home construction.

The Ruling sets out in further detail the matters which the Chief Commissioner will consider in determining whether an exemption from surcharge purchaser duty and surcharge land tax liability should be granted to an Australian-based developer that is a foreign person.

1.4 OECD guidance on permanent establishment

The OECD has released a report providing additional guidance on the attribution of profits to permanent establishments.

As part of the final BEPS package, the OECD/G20 recommended changes to the definition of permanent establishment (PE) in Article 5 of the OECD Model Tax Convention. That definition is crucial in determining whether a non-resident enterprise must pay income tax in another State. The additional OECD guidance sets out high-level general principles for attributing profits to PEs in accordance with applicable treaty provisions. It also provides examples on the attribution of profits to certain types of PEs arising from the changes to the PE definition under BEPS Action 7.

The OECD had previously recommended changes aimed at preventing the use of certain common tax avoidance strategies that have been used to circumvent the existing PE definition.

1.5 Single Touch Payroll reporting

The ATO has advised employers with 20 or more employees to prepare now for the Single Touch Payroll (STP) reporting regime which will be mandatory from 1 July 2018.

In preparation for STP, the ATO has released on their web site information to assist employers to be STP ready, which includes a "Get ready checklist", which can be downloaded from the ATO Webpage.

Employers who will not be ready to implement STP by 1 July 2018 will need to apply to the ATO for a deferred start date. In some instance, some payroll software provides have asked the ATO for a deferred start date. Therefore, employers should ask if their provider has been given such a deferral and check when their product will be updated to offer STP reporting.

Employers with 19 or less employees are not required to use STP until 1 July 2019, however they can choose to start reporting through STP early if their software is updated.

2 SUPERANNUATION

2.1 First home super withholding tax; downsizer contributions – Regulations amended

The Treasury Laws Amendment (Reducing Pressure on Housing Affordability measures No 1) Regulations 2018 were registered on 7 March 2018 to enable super funds to accept "downsizer contributions' and prescribe a withholding tax rate of 17% for amounts released under the First Home Super Saver (FHSS) Scheme.

FHSS withholding tax

First home buyers are permitted from 1 July 2018 to withdraw super contributions (made from 1 July 2017) to pay for a first home deposit. The scheme allows first home contributions up to $15,000 per year (and $30,000 in total), subject to the contribution caps. Withdrawals from 1 July 2018 are taxed at marginal rates less a 30% offset.

If the ATO cannot make an estimate of the individual's marginal tax rate, the Regulations require the Commissioner to withhold 17% of the assessable FHSS released amount: reg 53A of Sch 1 to the Taxation Administration Regulations 2017.

Downsizer Contributions

The Regulations also amend the contribution rules in the SIS Regs to enable super funds to accept "downsizer contributions" from individuals aged 65 and older who do not otherwise satisfy the work test (or are over age 75). Eligible individuals can make additional non-concessional contributions up to $300,000 from the proceeds of selling their home (a downsizer contribution) where the contract is entered into on or after 1 July 2018.

While a downsizer contribution is not subject to the restriction on non-concessional contributions for people with a "total superannuation balance" (TSB) above $1.6m, once made, a downsizer contribution will count towards their TSB. Therefore, careful planning is necessary to get the timing right for downsizer contribution by those looking to build large super balances for retirement.

3 FRINGE BENEFITS TAX

3.1 2018 FBT

Employers are now required to collate information to complete their 2018 FBT year return for the FBT year ending 31 March 2018. Due to the removal of the Budget Repair Levy, the FBT rate for the 2018 FBT year has reduced to 47% on the grossed-up taxable value of fringe benefits.

The 2018 FBT returns must be lodged by 21 May 2018 (paper lodgement) or by 25 June 2018 (electronic lodgement through a tax agent). Payment of any liability is due by 28 May 2018.

Employers are reminded that businesses with a turnover less than $10 million in the 2017 income tax year will now be able to provide exempt car parking fringe benefits for employees.

Please contact Hall Chadwick for assistance with your 2018 FBT returns and we can also assist you by reviewing the main changes affecting the 2018 FBT year and advising on strategies to reduce your FBT.

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