Tax Time Monthly

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1 INCOME TAX

1.1 Small business reduction in tax rate brought forward – now law

The tax rate for small businesses for FY2018 and FY2019 is currently 27.5%, and was legislated to be reduced progressively to 25% starting FY2025.

Tax Laws Amendment (Lower Taxes for Small and Medium Business) Bill 2018 received Assent on 25 October 2018 and legislated the reduction in corporate taxes be brought forward to FY2021 (with the tax rate at 26%) and reduced to 25% by FY2022 for small businesses with turnover of less than $50M, as follows:

Financial Year	Revised Rate	Previously Legislated (%)
2018-19	27.5	27.5
2019-20	27.5	27.5
2020-21	26	27.5
2021-22	25	27.5
2022-23	25	27.5
2023-24	25	27.5
2024-25	25	27
2025-26	25	26
2026-27	25	25

The Bill also brought forward the increased small business income tax offset, but the amount of the offset remains capped at $1,000 per individual per year:

Year	Revised Rate (%)	Previously Legislated (%)
2018-19	8	8
2019-20	8	8
2020-21	13	8
2021-22	16	8
2022-23	16	8
2023-24	16	8
2024-25	16	10
2025-26	16	13
2026-27	16	16

1.2 Treasury releases long-awaited consultation paper to amend operation of Division 7A

As part of the Budget 2017 the Government announced it will make targeted amendments to Division 7A of the *Income Tax Assessment Act 1936* (Div 7A) including a self-correction mechanism to rectify inadvertent breaches of Division 7A, introduce safe harbour rules, simplify Div 7A rules for loan duration and minimum interest rate, and other technical amendments. This was followed by Budget 2019 where the Government indicated its intention to clarify the operation of Division 7A integrity rule for unpaid present entitlements (UPE).

On 22 October 2018, the Treasury released its Consultation Paper (the Paper) regarding these proposed changes with an anticipated start date of 1 July 2019. The following changes were raised in the Paper for consultation:

- **Single 10 year loan:** Under the existing Div 7A rules, the maximum term of the loan is 7 years or 25 years if it is secured against real property. The Paper proposes to replace this with a single maximum term of 10, with no requirement for a written loan agreement (but evidenced in the income tax returns of the parties to the loan). The interest is to be calculated for the full year (regardless of repayments made during the year). Interest for Year 1 of the loan is to be calculated on the balance owing at lodgement day.

- **Removal of the distributable surplus concept:** Currently, the deemed dividend from a private company is limited to the distributable surplus, which is broadly the retained profits of the company. This is proposed to be removed by the Paper such that dividends may be deemed for the entire value of the benefit that is extracted from the private company (even if it is capital or from revaluations).

- **Self-correction mechanism:** Currently, section 109RB allows the Commissioner to exercise a discretion to disregard a deemed dividend or allow it to be franked if the dividend arose as a result of an honest mistake or inadvertent omission. The Paper proposes that qualifying taxpayers will be able to self-assess their eligibility for relief from the consequences of Div 7A where they meet the eligibility criteria. If eligible, a taxpayer will be able to convert the deemed dividend into a complying loan on the same terms that would have applied had the loan agreement been entered into when it should have been, and make catch up payments of principal and interest where there is a shortfall in minimum repayments.

- **Safe harbour for assets provided to shareholder's use:** The current regime deems a dividend to a shareholder where they use assets of the company, calculated based on the amount that would have been paid for the provision of the asset by parties dealing at arm's length less any amounts actually paid. The Paper proposes an additional method, being a safe harbour calculation which calculates the deemed dividend as:

  Market value of the asset at 30 June for income year in which the asset was used *multiplied by* Benchmark interest rate + 5% uplift *multiplied by* Number days asset used (or had exclusive right to use the asset).

Many of the changes proposed by the Paper appears to be detrimental. Clients concerned with the operation of their Division 7A loans should contact Hall Chadwick for advice.

1.3 ATO publishes guidance on non-deductible expenditure on residential rental property travel expenses: LCR 2018/7

From 1 July 2017, clients are reminded that non-business travel costs incurred by individuals, SMSFs and "private" trusts and partnerships in relation to residential rental property are not deductible. These expenditures are also excluded from forming part of the cost base or reduced cost base of a CGT asset.

The ATO has published LCR 2018/7 to provide guidance on:

- The meaning of residential premises;
- The meaning of "carrying on a business" for the purpose of the business exclusion; and
- The application to travel expenditure that serves more than one purpose.

Residential premises is defined as that in the GST Act. Consistent with GSTR 2012/5, the Commissioner has indicated in this LCR that residential premises are one that is fit for human habitation and provides shelter and basic living facilities.

The business exclusion allows a deduction for travel if the taxpayer carries on a business of property investing or a business of providing retirement living, aged care, student accommodation or property management services. The Commissioner referred to TR 97/11: Income tax: Am I carrying on a business of primary production, to determine if a taxpayer is in fact carrying on a business and eligibility for the business exclusion.

The Commissioner considers that apportionment is required where travel-related expenses are partly for producing income from the use of residential premises and also in gaining other assessable income (such as business or employment income).

1.4 Draft legislation for deductions disallowed for vacant land

As part of the 2019 Budget, the Government announced that it would introduce measures to disallow deductions for expenses associated with holding vacant land, due to some taxpayers claiming deductions for holding vacant land when it is not genuinely for the purpose of deriving assessable income.

The draft legislation proposes to deny deductions for expenses incurred in holding vacant land, unless:

- They are necessarily incurred in the course of the business the taxpayer carries on, or an affiliate, spouse or child of the taxpayer or an entity connected with the taxpayer of which the taxpayer is an affiliate, uses the land in carrying on a business.
- The holder of the land is a corporate tax entity, superannuation plans (other than SMSFs), managed investment trusts, public unit trusts, and unit trusts or partnerships of which all the members are entities of the aforementioned types.

2 STATE TAXES

2.1 WA legislates increase in foreign property buyer surcharge

The Duties Amendment (Additional Duty for Foreign Persons) Bill 2018 has received Assent and increases the foreign property buyers surcharge from 4% to 7% from 1 July 2019. This means WA is now in line with other States (NSW, Victoria, and SA). This surcharge applies to direct and indirect acquisition of residential property by a foreign individual, corporation or the trustee of a foreign trust.

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