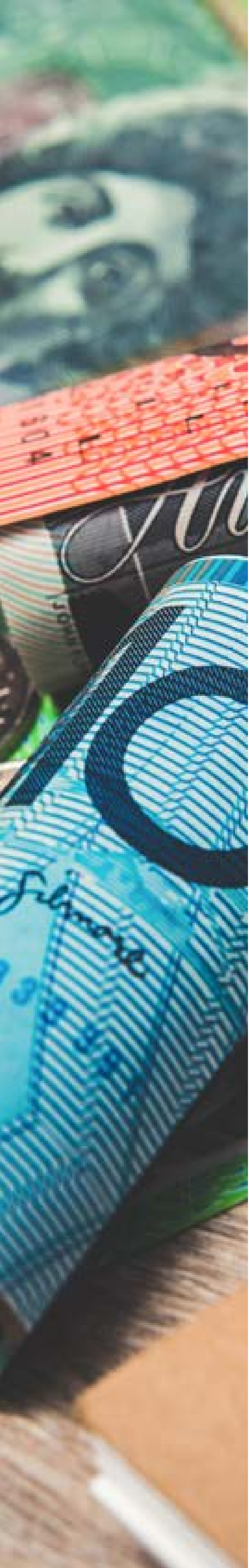

Tax Time Monthly

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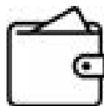

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1. CLIENT ALERTS

1. Act now to access SG Amnesty!

Parliament finally passed *Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019* on 24 February 2020 and granted Royal Assent on 6 March 2020. This legislation provides a long-awaited one-off amnesty to self-correct historical superannuation guarantee (SG) shortfall for the period 1 July 1992 to 24 May 2018.

This SG Amnesty provides the following:

- Tax deduction for payments made in respect of SG charge made during the amnesty period, and deductions for contributions that are offset against SG charge (1 July 1992 to 24 May 2018), as opposed to no deduction outside of the SG Amnesty.
- Under the amnesty, this administrative component of $20 per employee per month won't be charged.
- No penalty applied.
- If the ATO subsequently discovers a SG shortfall in the amnesty period (that is not voluntarily disclosed), there is a minimum penalty of 100% of the SG charge.

Please read our SG Amnesty Client Alert for further details. The ATO has published how they will administer the penalty here, including relevant forms and how to apply for the amnesty. The amnesty period started from 24 May 2018 and ends 6 months after the date of Royal Assent (**7 September 2020**). If you are an employer and you know you have an SG shortfall for the period 1 July 1992 to 24 May 2018, please contact your local Hall Chadwick office for a confidential discussion about how the amnesty can apply to your circumstances.

2. Coronavirus Stimulus Package

On 12 March 2020, the Government announced its stimulus package to protect the Australian economy from the economic impact of the coronavirus. Detailed legislation is to be introduced into Parliament in the week beginning 23 March 2020 and Hall Chadwick will keep you updated when the stimulus package becomes final.

The package included the following highlights:

- $750 one-off payments to those who are on social security, veteran and other income support recipients and eligible concession card holders on 12 March 2020;
- Increase in the instant asset write-off threshold from $30,000 to $150,000, and increasing access to this for businesses with aggregated annual turnover of less than $500M (up from $50M) until 30 June 2020 (when the instant asset write-off threshold is to revert to $1,000).
- For assets acquired and installed prior to 30 June 2021, businesses with turnover of less than $500M will be able to deduct 50% of the cost of an eligible asset on installation. The balance of the cost of the asset will be depreciated over the life of the asset per existing rules.
- Provide up to $25,000 cash for small and medium-size businesses, with a minimum of $2,000 for eligible businesses. This cash amount is tax-free. Eligible businesses are those with aggregated annual turnover with <$50M that employ staff.

Please see this Tax Alert for further details.

2. INCOME TAX

1. Loss on shares deductible and taxpayer wins appeal - *Greig v FCT*

In a 2 versus 1 decision, the Full Federal Court has held (by a majority) that share losses of $11.85M and legal fees of just over $500k were deductible under section 8-1 of the *Income Tax Assessment 1997.*

In this case, the taxpayer was a senior executive in the Bechtel group of companies. In January 2008, the taxpayer retained a financial advisor to advise him on the purchase and sale of shares. The taxpayer told the financial advisor that he knew quite a bit about mining and wanted to purchase stocks that were undervalued and likely to up go in the short term. He wanted to find undervalued stocks that he could buy at decent volumes and then sell quickly to make a profit.

The taxpayer bought shares on 218 separate occasions between 2007 to 2014, and held them mostly on a short term basis, usually for less than two years. All losses and gains with regards to these shares were returned on capital account in his income tax return for the relevant financial years.

In March 2012, the taxpayer's financial advisor recommended he buy shares in Nexus Energy. The taxpayer bought Nexus shares between March 2012 to May 2014 at a total cost of $11.85M. By June 2013 the taxpayer became a substantial shareholder in order to bring about quickly a sale of the company or of its assets so the company's share price would rise and he would make a profit on disposal of his shares. The directors of Nexus appointed voluntary administrators and the creditors approved a Deed of Company Arrangement (**DOCA**) during August 2014. The taxpayer and 16 other defendants unsuccessfully contested the DOCA to resist the involuntary disposal of Nexus shares. Consequently, the taxpayer incurred loss of the $11.85M on disposal of Nexus shares and legal fees of $500k+.

The taxpayer contended that even though he is not in the business of share trading, he is nevertheless entitled to the Nexus losses and legal fees under both limbs of section 8-1. He argued they were incurred in a "business operation or commercial transaction" of a kind contemplated in *Myer Emporium.* The ATO contended the losses and legal fees were on capital account, and at first instance, the Court agreed with the ATO.

Kenny J concluded that based on the facts and circumstances of the case, there could be little doubt that the taxpayer acted as a business person would do in acquiring his Nexus shares to obtain a profit on their sale and that therefore he acquired these shares in a "business operation or commercial transaction". This is mainly because of the taxpayer's intention to make a short-term profit (as opposed to holding the shares long term), engaging a financial advisor, took significant commercial steps (including acquiring a substantial shareholding) to facilitate in his profit-making intention.

Clients who are share traders/investors should take note of this case, and ensure where losses from share trading are claimed as a deduction there are sufficient reasons to justify this approach, including documenting intention, and having size, scale and repetition to support this treatment.

2. Sale of development profit is income and not capital – *Doyle and FCT*

In this case, the AAT ruled that the profits from the disposal of development properties acquired for development were income and not capital.

Between 1993-2001, the taxpayer engaged in property development with respect to residential property. From 2004, the taxpayer purchased developed and sold industrial land. At all times, the taxpayer was the controlling mind and director of the entities made up of the Doyle Group, and sole director and shareholder of three trusts which acquired land in Bromelton, Mackay and Brendale during 2004 – 2006. The acquisition was funded by a short term lender that charged high interest. Development applications were made on each of these properties.

No actual development took place on these properties and they were sold between 2008 and 2009 completely, with the taxpayer arguing that the sale is on capital account on the basis their sale were "mere realisation", on the basis that he was forced to sell due to the impending global financial crises, and rising debt levels within the Doyle group. The ATO disagreed and assessed the profits on sale as ordinary income.

The AAT examined the evidence presented and agreed with the ATO. The AAT indicated the evidence presented indicated a flexible approach whereby profit would be realised by way of sale and/or lease or a combination of both, and accordingly, each property was acquired as part of a profit-making scheme that included, as one of its purpose, profit-making by sale.

Clients who are property developers should contact Hall Chadwick for advice if their intention in holding property changes, and want to treat the disposal on capital account.

3. FRINGE BENEFITS TAX

1. FBT time – notable developments for FBT year ended 31 March 2020

For clients where Hall Chadwick lodged the FBT return last year, they will receive their FBT packages shortly, requesting information to assist with completing the returns.

While there are no substantial changes to FBT this year, the following are items of note when preparing your FBT calculations.

Uber travel expenses not FBT-exempt

The ATO has clarified that any benefit arising from taxi travel, but not ride-sourcing service, by an employee is exempted from FBT if the travel is a single trip beginning or ending at the employee's place of work. However, the exemption does not extend to ride-sourcing services provided in a vehicle that is not licensed to operate as a taxi, such as Uber. Proposed amendments to the FBT legislation put forward in an Exposure Draft released in September 2019 to extend the exemption to ride-sharing services has not yet been legislated.

FBT-exempt commercial vehicles

Please note that if you provide an employee with the use of a commercial vehicle such as a ute, the administration of the law to exempt these vehicles from FBT recently changed (PCG 2018/3:Exempt car benefits and exempt residual benefits: compliance approach to determining private use of vehicles), such that to treat the vehicle as exempt, the following conditions must now apply

(a) you provide an eligible vehicle to a current employee;

(b) the vehicle is provided to the employee for business use to perform their work duties

(c) the vehicle ad a GST-inclusive value less than the luxury car tax threshold at the time the vehicle was acquired;

(d) the vehicle is not provided as part of a salary packaging arrangement and the employee cannot elect to receive additional remuneration in lieu of the use of the vehicle;

(e) you have a policy in place that limits private use of

the vehicle and obtain assurance from your employee that their use is limited to use as outlined in (f) and (g) below;

(f) your employee uses the vehicle to travel between their home and their place of work and any diversion adds no more than two kilometers to the ordinary length of that trip; and

(g) for journeys undertaken for a wholly private purpose (other than travel between home and place of work), the employee does not use the vehicle to travel

(i) more than 1,000 kilometers in total; and

(ii) a return journey that exceeds 200 kilometers.

Please contact us if you require further clarification on this.

If you have a fleet of 20 or more vehicles, there is a simplified approach that we can discuss with you

Commercial car park

The ATO has published its views in TR 2019/D5: Fringe benefits tax: car parking benefits, which seems to indicate a tighter view of what is considered a commercial car park.

One of the conditions for an employer providing car parking fringe benefit is that a commercial car parking station must be located within 1 km of the employer provided car park used by the employee, and the all-day parking is more than the prescribed car parking threshold.

TR 96/26 Fringe benefits tax: car parking fringe benefits (now withdrawn) excluded a number of car parking facilities as a commercial car parking station, including car parks that charges penalty rates significantly higher than rates for all-day parking (such as parking provided for short term shoppers or hotel guests), and car park that is not run with a view to making a profit which charges a nominal fee.

The ATO is proposing to retract this view through the release of TR 2019/D5 and stated: "A car parking facility may still qualify as a commercial parking station even if the facility has another purpose other than providing all-day parking, for example, it may also have a purpose of providing short term parking, such as hourly parking at a hospital, shopping centre, hotel, university or an airport."

While TR 2019/D5 has not been finalised, and the ATO has recently stated that it will not apply until 1 April 2021, clients who are currently providing car parking to employees that are currently not subject to FBT should review TR 2019/D5 as part of their FBT preparation work to consider if this treatment remains appropriate.

Please contact your accounting services Director or Manager to discuss your individual situation.

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