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ABOLITION OF THE SMALL BUSINESS ASSET WRITE-OFF

With the Coalition winning the recent Federal Election, one of immediate impacts on small business taxpayers is the proposed reduction in the threshold for the immediate deduction for low cost assets from \$6,500 to \$1,000 and the abolition of the immediate deduction for the first \$5,000 of the cost of motor vehicles.

Proposed legislation¹ was subsequently introduced to the Parliament, passed by the House of Representatives without amendment on 20 November 2013 and now moves to the Senate.

In short, it is proposed that the threshold for low cost assets is reduced back to \$1,000 from 1 January 2014. Assets costing \$1,000 or more must then be allocated to the Small Business general pool to be depreciated at a rate of 15% for the first year and a rate of 30% in subsequent years. Similarly, a small business entity can no longer deduct the first \$5,000 of the cost of a motor vehicle.

Small business owners only have a few weeks in which to take advantage of the existing concessions. Importantly, the assets must be first used or installed ready for use **before** 1 January 2014. For example, if an entity purchases an asset for \$5,000 on 20 December 2013 but is not delivered (due to the Christmas and New Year holiday season) until 5 January 2014, then the asset is not eligible for the immediate deduction. Therefore, consideration should also be given to any potential delay if the asset requires delivery or installation to be ready for use.

If you would like to discuss the Government's proposed tax measures and how they may affect your clients, please contact **Peter**.

¹ Minerals Resource Rent Tax Repeal and Other Measures Bill 2013

TAX SHOCK ON MARRIAGE BREAKDOWN

The ATO has recently released Draft Taxation Ruling TR 2013/D6 which outlines the tax implications of private companies paying money or transferring property in satisfaction of Family Court orders in matrimonial property proceedings under s 79 of the *Family Law Act 1975* ("**FLA 1975**"). The draft ruling is controversial as it represents a U-turn to the ATO's previous position on the issue.

In short, the ATO states that such payments of money can no longer be excluded from the operation of Division 7A by relying on section 109J of the *Income Tax Assessment Act 1936* ("**ITAA 1936**"). As a result, Division 7A would be likely to apply to the payments and deemed dividends would then be assessable to the shareholder and/or their associate.

In the past, the ATO allowed private companies to rely on section 109J of the ITAA 1936, which states that Division 7A does not apply where a payment is made to discharge an obligation of a private company and the private company is required to make the payment under the terms of the Family Court Order on the basis that the payment was accepted as an arm's length amount.

However, the ATO states in the draft ruling that the section 109J exemption does not apply because the "arm's length" requirement cannot be satisfied. The ATO considers that such payments are by nature gratuitous payments as the private company does not receive anything of value in return. Therefore, any payment made necessarily exceeds what would be paid in an arm's length dealing and it would be virtually impossible to make an arm's length payment in satisfaction of a Family Court order.

The ATO acknowledges that this view is contrary to many private rulings that have been released previously. The ATO states that taxpayers who have previously received private rulings from the ATO will be protected from any adverse activity by the ATO. However, the ATO will seek to apply the views in the draft ruling for any new application for a private ruling on the issue. When the final Ruling is issued, it is proposed to apply both before and after its date of issue (13 November 2013).

If you would like to discuss the ATO's new draft ruling and how it may affect your clients, please contact **Peter or Nigel**.

TAX AND YOUR CHRISTMAS PARTY

The costs (such as food and drink) associated with Christmas parties are exempt from FBT if they are provided on a working day on your business premises and consumed by current employees. However a taxable fringe benefit will arise in respect of an associate of an employee who attends the party, unless the minor benefits exemption applies.

1 Minor Benefits Exemption

Where you provide a Christmas party for your employees and their partners you don't add the costs together, but instead look at the cost of the benefit provided to each person. Each benefit that is less than \$300 may be a minor benefit and exempt if certain conditions are met. The minor benefits exemption **can** apply provided you don't use the 50/50 method in determining your entertainment fringe benefits.

2 Gifts provided to employees at a Christmas party

All benefits associated with the Christmas function should be considered separately to the Christmas party when considering the minor benefits exemption. For example, the cost of gifts such as bottles of wine and hampers given at the function should be looked at separately to determine if the minor benefits exemption applies to these benefits.

3 Tax deductibility of a Christmas party

The cost of providing a Christmas party is income tax deductible only to the extent that it is subject to FBT. Therefore, any costs that are exempt from FBT (that is, exempt minor benefits and exempt property benefits) can't be claimed as an income tax deduction. The costs of entertaining clients are not subject to FBT and are not income tax deductible.

4 Christmas party held off the business premises

The costs associated with Christmas parties held off your business premises (for example, a restaurant) will give rise to a taxable fringe benefit for employees and their associates unless the benefits are exempt minor benefits.

If you have any queries on the tax consequences of your upcoming Xmas Party, please contact **Peter** or **Sean**.

RECENT DEVELOPMENTS AFFECTING CONTRIBUTION STRATEGIES

With various changes in legislation around superannuation contributions over the past few years, practices and strategies need to be adapted to ensure compliance with new laws and make sure no "nasty" tax surprises arise from inadvertent breaches of contributions caps. Businesses should also ensure they are well aware of changes to legislation to ensure they meet their minimum superannuation obligations in relation to their employees. Some of the major changes affecting both business and superannuation fund members are highlighted below.

1. Superannuation Guarantee increase and abolition of age limit

While legislation to progressively increase the Superannuation Guarantee has been in place for a couple of years, it is worth ensuring that concessional contributions caps are not breached by employees making additional salary sacrificed contributions. For the 2013/14 tax year the superannuation guarantee levy is 9.25% before jumping to 9.5% from July 1, 2014. The superannuation guarantee age limit has also been abolished from July 1, 2013 so employers need to ensure that all their employees receive superannuation contributions by the due dates irrespective of their age.

2. Increased Concessional Contributions Cap

From July 1, 2013 superannuants 60 years or older have been given a welcome increase in their concessional contributions cap to \$35,000 up from the \$25,000 cap for all other superannuants. This is a temporary measure for the 2013/14 financial year to be replaced with a higher cap of \$35,000 for superannuants aged 50 and over for the 2014/15 financial year. Superannuation fund members in their final years of work should consider taking advantage of these new higher contributions caps to maximise their superannuation balances and claim maximum allowable deductions for their superannuation savings. The Non-Concessional (non-tax deductible) contributions cap remains at \$150,000 for all members irrespective of their age.

Example 1: Bill's birthday is 25 March 1954. He is 59 at June 30, 2013. For the 2013/14 financial year his concessional contributions cap will be \$35,000 as he will turn 60 during the 2014 financial year.

3. Increased Contributions Tax for High Income earners

From July 1, 2012 taxpayers with adjusted taxable incomes of greater than \$300,000 will have their superannuation contributions taxed at 30% instead of the standard 15% usually applied to concessional contributions. Adjusted taxable income is the taxpayers' taxable income plus their reportable concessional contributions plus any losses from negatively geared investments plus their reportable Fringe Benefits amount. The amount of the super contributions that cause the adjusted taxable income to be over \$300,000 will be taxed at an additional 15%. This additional tax will be levied upon the taxpayer personally once they and their superannuation fund have lodged income tax returns for the financial year.

Taxpayers have three options with regards to making payment for the extra liability.

1. Pay the extra tax from their own funds and recover the money from their superannuation fund by forwarding a release authority to their fund within 120 days of making the payment;
2. Pay the extra tax from their funds and don't recover the money from their superannuation fund. Note that payment of this liability by members personally without recovering the funds will NOT be deemed a contribution; or
3. Don't pay the extra tax from personal funds and instead forward a release authority to their superannuation fund within 120 days requesting payment of the tax directly to the ATO.

Example 2: In the 2013 financial year Samantha earns income of \$285,000 and has reportable superannuation of \$25,000 taking her adjusted taxable income to \$310,000 exceeding the

threshold by \$10,000. Her additional tax liability will be \$1,500 which will be levied on her once both she and her superannuation fund have lodged their 2013 tax returns.

If you have any queries on your superannuation contributions, please contact **Chris**.

MKT'S CHRISTMAS MESSAGE

MKT wishes all our clients and colleagues a very merry Xmas and Happy New year. We thank you for your continued support during 2013 and look forward to continuing to be of service to you in 2014.

Over the Christmas break our office will be closed from Friday 20 December and will re-open on Monday 6 January 2014.

MKT'S PREMIUM ACCOUNTANTS NETWORK

Would you like Priority Access to Tax Advisors that spend every day dealing with Business Tax matters?

MKT Tax Advisors has been providing specialist tax support to Accountants, Lawyers and Financial Planners for over 20 years through our Accountant's Network and are proud to offer our Premium subscription that elevates the services and value we provide to you and your clients.

If you would like to know more, please contact Sean Pearce or Nigel Kingston on 9481 8448 or contact Janine for the Subscription Flyer.