

Client Alert December 2011

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Brentnalls WA news

Our team would like to wish you a very Merry Christmas! We will be closing the office on 23 December 2011 and will re-open 3 January 2012.

Superannuation guarantee to be increased to 12%

Legislation has been introduced into Parliament which proposes to increase the superannuation guarantee (SG) rate from 9% to 12%, phasing in from 1 July 2013. The Government also announced that it would abolish the age limit for which employers no longer need to provide superannuation guarantee.

TIP: If the SG age limit is to be abolished, then from 1 July 2013, employers will be required to make SG contributions for employees regardless of an employee's age.

Taxpayer entitled to prompt GST refund, says court

An exporter of mobile phone goods has been successful before the Federal Court in a case concerning GST refunds. The Federal Court ordered that the Commissioner comply with the GST and tax law and immediately pay the exporter the net amount notified in its GST returns for various tax periods covering January to May 2011. The ATO had alleged that the refunds claimed were unsubstantiated and were fraudulent. It refused to pay the amounts until an audit had concluded. However, the Court did not agree that in the circumstances the law allowed the withholding of a payment pending an investigation by the Commissioner. The Full Federal Court later also dismissed the Commissioner's appeal against the decision.

Uncertainty with private rulings system

In a recent case, the Full Federal Court unanimously affirmed assessments issued by the Commissioner to a taxpayer, a sports club, even though the assessments were inconsistent with a private ruling issued to the club. In 2004 the club had received a private ruling stating it was exempt from income tax for the 2003 to 2010 income years. However, the Commissioner in 2006 claimed the facts of the club's situation had changed and withdrew the ruling. The club claimed it should be afforded with protection under the tax law. However, the Court disagreed.

TIP: The court's decision could cause taxpayers to lose confidence in the private rulings system

CGT test includes commission liability after CGT event

In a recent decision, the majority of the Full Federal Court held that for the purposes of accessing the small business capital gains tax (CGT) concessions, a real estate agent commission incurred on the sale of a hotel business could be included as a liability for the purposes of the maximum net asset value test. This was the case even though the taxpayer was invoiced for the commission after entering the contract of disposal.

TIP: Small businesses can access a range of tax concessions to reduce CGT on the sale of certain assets if certain conditions are met. One of the conditions is that the taxpayer must satisfy the "maximum net asset value" test. To pass the test, the net value of all the CGT assets of the taxpayer (including affiliates and connected entities) must not exceed \$6 million. Debts owed to the taxpayer are included as CGT assets for the purpose of the test.

Personal services income rules apply, finds Tribunal

The Administrative Appeals Tribunal has recently held that the personal services income (PSI) rules applied to an IT professional to include in his assessable income amounts derived by his company through the provision of his IT expertise to a small number of clients from the same company group. The Tribunal also held the company was not a "personal services business".

TIP: Many consultants and contractors operate as a sole trader or through a company, partnership or trust. In many cases, the income received for the work they do may be classified as PSI if certain tests are not passed. However, the PSI rules do not apply to individuals or interposed entities carrying on a "personal services business". It should be noted that the PSI rules remain a tax compliance risk area for the ATO.

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Small business benchmarks under microscope

The Inspector-General of Taxation, Ali Noroozi, has advised that he will review the Australian Tax Office's use of small business performance benchmarks. The benchmarks produced by the Australian Tax Office (ATO) are used to identify taxpayers who may not be declaring all of their income and who may be involved in the cash economy. Mr Noroozi said he will investigate whether the benchmarks are an appropriate tool for identifying underreporting of income.

There has been growing concern among tax advisers about the use of benchmarks. The Inspector-General said he will also consider whether the ATO's expectations of small business in relation to record keeping are clearly communicated and reasonable. The investigation is expected to commence later this year.

Carbon tax scheme to commence on 1 July 2012

The Government's controversial carbon tax scheme has passed Parliament and will commence on 1 July 2012. From that date, the country's biggest polluters will be required to pay \$23 for each tonne of carbon pollution released into the atmosphere. As part of the scheme, tax cuts to assist households and support measures for businesses to assist them in adapting to the new carbon tax will also be implemented.

TIP: Although the carbon tax scheme will not commence until next year, businesses should consider how they may be affected, both directly and indirectly, by the scheme.

Tax changes for small businesses introduced

The Government has introduced legislation into Parliament which proposes to increase the small business instant asset write-off threshold from \$1,000 to \$6,500, and create a single depreciation pool to write-off assets at a rate of 30% (15% in the first year). To qualify for small business concessions your aggregated turn over must be less than \$2 million or you must have net assets of less than \$6 million. The changes are proposed to commence from the 2012-2013 year; however, their formal enactment would first require the commencement of the Government's carbon tax scheme (which will start on 1 July 2012) and the proposed Minerals Resource Rent Tax (MRRT). The changes also propose to allow an immediate write-off of up to \$5,000 for motor vehicles from the 2012-2013 income year. The Assistant Treasurer, Bill Shorten, said under the changes small businesses would benefit from improved cash flow and reduced compliance costs.

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