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TAX NEWS, VIEWS & CLUES FROM AUSWILD & CO
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Compensation for ATO systems outages

After the ATO's unplanned systems outages, it provided lodgement deferrals, and remitted interest and penalties where the outages affected practitioners and their clients' lodgements.

The ATO has also advised that it assesses claims for compensation in two ways:

- compensation for legal liability (eg negligence); and
- compensation under the Compensation for Detriment caused by Defective Administration (CDDA) scheme, which allows the ATO to consider claims and pay compensation for disadvantage or loss because of defective administration.

The ATO considers claims in accordance with guidelines issued by the Department of Finance.

TIP: If your tax affairs were affected by the ATO systems outages, contact us to find out if you're eligible to seek compensation.

Small business restructure rollover: changes

The ATO is proposing to modify how the small business restructure rollover (SBRR) operates.

The SBRR means that small businesses can restructure from one legal entity to another – for example, from a company to a trust – and transfer the business's assets to the new structure without immediately causing a capital gains tax liability.

The ATO's latest proposed changes address the fact that the transferred business assets in this type of restructure could still give rise to a dividend for the transferee.

TIP: Are you thinking about changing how your small business operates? Talk to us for more information about the options and tax implications.

Tax cut closed off for passive investment companies

The Government has released exposure draft legislation to deny access to the lower corporate tax rate of 27.5% (down from 30%) for companies with predominantly passive income. Under the changes, companies will qualify for the lower tax rate only if:

- their passive income is less than 80% of their assessable income for the year;
- they "carry on a business" in that year; and
- they come below the aggregated turnover threshold for the year (\$25 million for 2017–2018).

Identification numbers for directors: an Icarus moment for phoenix activities?

The Government has announced a package of reforms to combat phoenix activities, including the introduction of a Director Identification Number (DIN).

Phoenixing involves deliberately transferring assets from a failed or insolvent company to a new company, with the intention to avoid paying the original company's creditors, tax and employee entitlements (that is, the new company illegally "rises from the ashes" of the indebted company).

The DIN would identify each director with a unique number, allowing regulators to map the relationships directors have with entities and other people.

Tax measures for affordable housing

The Government has released draft tax legislation to implement elements of its housing affordability plan. The proposed measures include an increased capital gains tax discount for people who hold affordable rental housing investments for at least three years.

Under the draft legislation, managed investment trusts would be allowed to hold affordable housing investments with the main aim of deriving long-term rental income, but purchasing residential property that is not affordable housing would no longer be permitted for these trusts.

TIP: If this legislation is passed, there will be a transitional period for managed investment trusts that already hold non-affordable housing residential property to change their investments to comply with the changes.

Legislation for First Home Super Saver scheme and downsizer super contributions

A Bill has been introduced into Parliament to establish the First Home Super Saver (FHSS) scheme and allow people aged 65 or over to make "downsizer contributions" to their super.

The FHSS scheme will allow people to make voluntary contributions into super, take advantage of the associated tax concessions, and later withdraw the contributions and associated earnings to buy their first home.

The downsizer contribution changes will allow older Australians who sell their main residence from 1 July 2018 to make non-deductible contributions of up to \$300,000 to their superannuation from the sale proceeds.

No GST on digital currency: Bill

The GST Act (*A New Tax System (Goods and Services Tax) Act 1999*) is being amended to ensure that digital currency, such as Bitcoin, is disregarded for GST purposes unless the supply is made in exchange for a payment of money or digital currency.

To achieve this, a definition of "digital currency" will be inserted into the GST Act. Under the new definition, a digital currency has broadly the same features as state fiat currencies (legal tender). In particular, the value of a digital currency must derive from the market's assessment of its value. A digital currency's value cannot be based on the value of anything else, so it must not have, for example, a value pegged to Australian or United States dollars.

The currency units must be useable as consideration for any type of supply, and must be generally available to the public.

Units will not be considered digital currency if they give the holder benefits (such as memberships or vouchers), other than entitlements incidental to holding the unit or using it as consideration.

TIP: When the new definition passes into law, no GST will apply for supplies of digital currency made on or after 1 July 2017.

New financial and superannuation complaints authority

Legislation has now been introduced to establish a new external dispute resolution framework and an enhanced internal dispute resolution framework for the Australian financial system.

Consumers will have easy access to a single external dispute resolution scheme, the Australian Financial Complaints Authority (AFCA). Certain firms that provide financial and credit services will need to be members of AFCA, including Australian financial services licensees, unlicensed product issuers, unlicensed secondary sellers, Australian credit licensees and credit representatives, regulated superannuation funds (other than SMSFs), approved deposit funds, retirement savings account providers, annuity providers, and life policy funds and insurers.

Before AFCA will consider a dispute, it will refer the complaint back to the financial firm so it can attempt to resolve the dispute within a defined timeframe. AFCA will also have an independent assessor to investigate any complaints about how disputes are handled.

Superannuation guarantee Crackdown on employer non-compliance

The Government has announced a package of reforms to give the ATO near-real-time visibility over employers' superannuation guarantee (SG) compliance. The package includes measures to:

- require super funds to report contributions at least monthly to the ATO;
- roll out Single Touch Payroll (STP); and
- give the ATO the ability to seek court-ordered penalties in severe cases of non-payment.

Salary sacrifice integrity

Legislation has also been introduced to prevent employers from using an employee's salary sacrifice contributions to reduce the employer's own minimum SG contributions. This change would apply to working out employers' SG shortfalls for quarters beginning on or after 1 July 2018.