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CHARTERED ACCOUNTANTS & BUSINESS ADVISORS

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In the previous edition of *TaxWise Business*, we noted that these small business concessions will change for the 2017 income year:

- the tax rate for small businesses operating through corporate structures will be further reduced to 27.5% where the aggregated turnover is less than \$10 million;
- the tax offset for unincorporated entities will be progressively increased from 5% to 16% over the next 10 years (starting with 8% remaining constant for the next eight years then moving to 10% in the 2025 income year, 13% in the 2026 income year and 16% in the 2027 income year). However, the cap remains at \$1,000.

The [*Treasury Laws Amendment \(Enterprise Tax Plan\) Bill 2016*](#) which contains these measures is, at the time of writing, sitting before the House of Representatives.

Single Touch Payroll

On 31 August 2016, the **Budget Savings (Omnibus) Bill 2016** was introduced into the House of Representatives, which contains a number of measures relating to budget savings. This includes the "Single Touch Payroll" reporting framework.

"Substantial employers" (with 20 or more employees) will be required to automatically provide payroll and superannuation information to the Commissioner of Taxation (Commissioner) at the time it is created. Entities that report under this framework will not have to comply with a number of existing reporting obligations under the taxation laws.

A pilot will be run by the ATO to test whether the Single Touch Payroll reporting framework should also be adopted by employers with less than 20 employees in the near future.

Your small business may be entitled to a lower tax rate

Depending on the structure of your business, the lower tax rate of 28.5% may apply to your business if you run your business through a company for the 2016 year. Your aggregated turnover must be less than \$2 million. This lower rate also applies to small businesses that are corporate unit trusts and public trading trusts.

If you run your business through a non-corporate structure, such as a sole trader, partnership or trust, you are also entitled to receive a tax offset of up to 5% of your tax payable capped at \$1,000.

2016 PAYG withholding schedules

On 2 September 2016, the ATO made a legislative determination entitled the ***Taxation Administration Act Withholding Schedules October 2016*** (legislative instrument F2016L01380; registered 2 September 2016).

The instrument makes the withholding schedules, which set out the amounts, formulas and procedures to be used for calculating the amount required to be withheld by entities from withholding payments. The withholding schedules facilitate the collection of income tax, Medicare levy, Higher Education Loan Program, Student Start-up Loans, Trade Support Loans and Financial Supplement repayments.

These withholding schedules are being updated to incorporate the rates and thresholds contained in the [Treasury Laws Amendment \(Income Tax Relief\) Bill 2016](#). The change is to the third personal income tax threshold from \$80,000 to \$87,000. These updates are needed in order for businesses to work out the amount they must withhold from payments made to individual taxpayers.

The date of effect for these schedules is **1 October 2016**. Employers, payroll providers and software developers were advised by the ATO of this change well in advance to ensure systems were updated appropriately by this time.

From 1 October 2016, employers are required to lower the amount of tax withheld for affected taxpayers to factor in the new lower tax rate. Any tax overpaid beforehand will be refunded by the ATO on assessment after the end of the 2016-2017 financial year.

The instrument contains eight withholding schedules. Each schedule provides information for calculating the withholding amount, taking into account the particular circumstances presented in the schedule.

Note that this legislative instrument will revoke eight schedules which formed part of the *Taxation Administration Act Withholding Schedules 2016* (legislative instrument F2016L01035; registered 16 June 2016). The revoked schedules have been superseded by the eight schedules made by the new instrument.

To do!

All employers must make sure that they have made appropriate changes to their payroll systems to ensure they are withholding and reporting the correct amounts from employees.

Reminder: GST cross-border changes started 1 October 2016

This is just another reminder that overseas business clients may no longer be subject to GST from 1 October 2016.

Overseas businesses supplying Australian businesses do not need to register for GST if they:

- only make GST-free supplies through an enterprise carried on outside Australia;
- have a business presence in Australia of less than 184 days in a 12-month period; and
- have a GST turnover below the GST registration threshold of AUD\$75,000 (because certain supplies will no longer be included in the GST turnover).

GST-registered importers no longer need to identify the exact amount paid for international transport, insurance and other costs to calculate the value of the taxable importation for GST purposes.

The measure aims to ensure Australia does not draw non-residents into the GST system unnecessarily. It relieves non-resident suppliers of the obligation to account for GST on certain supplies, therefore reducing their compliance costs.

It also reduces the compliance costs for GST-registered importers in calculating the value of taxable importations.

To help businesses understand the operation of the new law and to help decide if your business needs to register for GST, the ATO has released [Law Companion Guideline LCG 2016/D1 GST and carrying on an enterprise in the indirect tax zone \(Australia\)](#).

Superannuation reform packages

Since the last edition of *TaxWise Business*, the Government released for consultation several tranches of legislation in relation to the 2016-17 Budget measures that relate to the taxation of superannuation.

Tranche 1

Tranche 1 contains the following measures:

- the objective of superannuation;
- tax deductions for personal superannuation contributions;
- improve superannuation balances of low income spouses;

- introduce a Low Income Superannuation Tax Offset (LISTO); and
- harmonising contribution rules for those aged 65 to 74.

The Treasurer and the Minister for Revenue and Financial Services have said that the draft legislation will:

- enshrine the objective of superannuation in legislation, being to provide income in retirement that substitutes or supplements the age pension, which has guided the development of the Government's reforms;
- improve access to concessional contributions by allowing people (under age 75) to claim a tax deduction for personal superannuation contributions, irrespective of their employment arrangements. This will assist around 800,000 people, particularly benefiting those who are partially self-employed, partially wage and salary earners (for example contractors) and those people whose employers do not offer salary sacrifice arrangements;
- provide more flexibility and choice for older Australians, including by removing the restrictions that currently prevent some people aged between 65 and 74 from making voluntary contributions to their superannuation. Around 40,000 older Australians will benefit from this change by having increased flexibility to make additional contributions and to increase their retirement savings from sources not necessarily available to them before retirement, such as proceeds from downsizing their home;
- encourage more people to make contributions to the superannuation fund of a low income spouse; and
- introduce the Low Income Superannuation Tax Offset (LISTO). Around 3.1 million low income earners will have their superannuation savings boosted by the LISTO, including 1.9 million women. This change will ensure individuals do not pay more tax on their superannuation contributions than on their take-home pay.

Tranche 2

Tranche 2 contains the following measures:

- introduce a \$1.6 million transfer balance cap and transitional arrangements for individuals who already have retirement phase balances above \$1.6 million;
- reform the taxation of concessional contributions (i.e. lower the Division 293 tax income threshold to \$250,000 and reduce the concessional contributions cap to \$25,000);
- allow catch-up concessional contributions for those with balances less than \$500,000;

- remove regulatory barriers to innovation in the creation of retirement income stream products;
- improve integrity of transition to retirement income streams; and
- remove the anti-detriment provision.

The Treasurer and the Minister for Revenue and Financial Services have said that this tranche of measures will do the following:

- the \$500,000 lifetime non-concessional (after-tax) cap will be replaced by a new measure to reduce the existing annual non-concessional contributions cap from \$180,000 per year to \$100,000 per year;
- individuals aged under 65 will continue to be able to "bring forward" three years' worth of non-concessional contributions in recognition of the fact that such contributions are often made in lump sums. The overwhelming bulk of such larger contributions are typically less than \$200,000;
- individuals with a superannuation balance of more than \$1.6 million will no longer be eligible to make non-concessional contributions from 1 July 2017. This limit will be tied and indexed to the transfer balance cap. This ensures that the entitlement for after tax contributions is focused on those Australians who have an aspiration to maximise their superannuation balances and reach the transfer balance cap in the retirement phase, where a zero tax on earnings applies;
- with their annual concessional contributions, Australians will be able to contribute \$125,000 each year and, if taking advantage of the non-concessional "bring-forward" contributions, up to \$325,000 in any one year until such time as they reach \$1.6 million;
- broadly commensurate treatment will apply to members of defined benefit schemes;
- the Government will now not proceed with the harmonisation of contribution rules for those aged 65 to 74 in order to fully offset the cost of reverting to a reduced annual non-concessional cap;
- individuals aged 65 to 74 who satisfy the work test will still be able to make additional contributions to superannuation. This will encourage individuals to remain engaged with the workforce; and
- the commencement date of the proposed catch-up concessional superannuation contributions will be deferred by 12 months to 1 July 2018 to ensure the full cost of changes to non-concessional contribution arrangements are met over both the forward estimates and the medium term.

Tranche 3

Tranche 3 contains the following measures:

- lower the annual non-concessional contributions cap to \$100,000 and restrict eligibility to make non-concessional contributions to individuals with superannuation balances below \$1.6 million; and
- further amendments to improve the superannuation administration arrangements.

The Treasurer and the Minister for Revenue and Financial Services have said that this tranche of measures will do the following:

- include legislative amendments to better target superannuation tax concessions by reducing the annual non-concessional contributions cap to \$100,000 and restricting access to individuals with superannuation balances below \$1.6 million; and
- include further amendments to make administrative arrangements simpler and more consistent for individuals and superannuation providers.

SMSFs: further guidance on LRBAs with non-arm's length terms available now

Further guidance on non-arm's length limited recourse borrowing arrangements (LRBAs) is now available in the form of Taxation Determination [TD 2016/16](#) which was released on 28 September 2016. TD 2016/16 replaces the views contained in ATOID 2015/27 and ATOID 2015/28. TD 2016/16 follows the release of the ATO's Practical Compliance Guideline [PCG 2016/5](#) which sets out when the Commissioner will accept that an LRBA is structured on arm's length terms.

The development of TD 2016/16 follows feedback the ATO received after the issue of [PCG 2016/5](#) in April this year that questioned how the non-arm's length income (NALI) provisions apply, in circumstances where an arrangement is not on arm's length terms.

SMSFs contemplating an LRBA on non-arm's length terms are strongly encouraged to seek independent professional advice, or to seek a private binding ruling from the ATO.

The release of this new taxation determination is in line with the ATO's promise to have released further LRBA guidance by 30 September 2016, ahead of the new deadline of 31 January 2017 by which borrowing arrangements must be compliant.

Note!

There are only a couple of months left to ensure LRBAs meet the relevant compliance requirements.

Reinventing the ATO: blueprint for change released

The ATO has asked its clients how they use the tax and superannuation systems, and what they want. The feedback the ATO received was that the ATO should fix the basics, provide certainty, tailor services to clients' needs and help them navigate the system.

From this consultation the ATO has created a [blueprint for change](#), which provides a clear line of sight over what they want to achieve. The measure of success will be client satisfaction and community participation in the tax and superannuation systems.

Some improvements from the blueprint have already been delivered, including for:

- [small business](#);
- [privately owned and wealthy groups](#); and
- [self-managed super funds](#).

Commissioner's statement on the tax evasion "week of action"

The Commissioner has said that the ATO has made significant progress in dealing with those taxpayers exposed in the Panama Papers who have tried to avoid their tax obligations. The Commissioner said, "This week of action further demonstrates our strong stance against tax crime, and the active collaboration between our domestic agencies in delivering a whole-of-Government response."

Following the success of Project Wickenby, the Government supported the establishment of the Serious Financial Crime Taskforce. The Taskforce has broadened the focus of Project Wickenby and reinforced the domestic agencies working together to detect and deal with serious financial crime. This week of action is, in the Commissioner's view, a good example of how the Taskforce has been able to take swift, timely and decisive action in relation to the Panama Papers.

Led by the ATO, the Taskforce made 15 unannounced access visits in Victoria and Queensland, and executed three search warrants following analysis of the leaked information. In addition, more than 100 taxpayers will be contacted and advised they are the subject of compliance action, if they have not been contacted already, and further criminal investigations have not been ruled out.

To read more on the Serious Financial Crime Taskforce and the “week of action” visit the [ATO's website](#).

Proposed changes to the ATO approach to penalties

The ATO is proposing to make changes to their approach to penalties as they apply to businesses and individuals. As part of the proposal, the ATO will take a “one chance” approach before applying a penalty in the following circumstances:

- for certain small business and individual clients, the ATO will not apply penalties for false or misleading statements for failure to take reasonable care for errors made in income tax returns and activity statements; and
- the ATO will not apply failure to lodge on time penalties for late lodgment of income tax returns and activity statements.

This will apply to the first error and late lodgment subject to penalty. The ‘one chance’ timeframe will be refreshed after a set period of time. The ATO will confirm in writing to these small business and individual clients that, while they were liable to a penalty, the ATO has chosen not to apply one on this occasion.

The ATO is of the view that it is open to the Commissioner to exercise his general powers of administration and therefore does not require a law change to adopt such an approach.

While detailed design would determine the extent of its application, if community consultation supports this proposal, it is expected the following parameters may apply:

- it would be available to small businesses (with turnovers under \$2 million) and individuals subject to some criteria, with eligible clients being informed at the time the ATO provides the ‘one chance’ opportunity;
- it would not be available to clients who demonstrated reckless or dishonest behaviour and those who disengage and cease communicating with the ATO during an audit or review;
- the ATO would explain that although a taxpayer could have received a penalty, it has not on this occasion;
- all clients will receive a clear explanation of how the error occurred and understand what they need to do to get things right in the future;
- after a defined period of time (e.g. a three or four-year financial cycle) the opportunity would be reset. Given the frequency of reporting for activity statements, when considering late

lodgment penalties, this set period may be different for income tax returns and activity statements;

- after the ‘one chance’ opportunity has been provided, failure to lodge on time would automatically apply if lodgment was not received by the due date; and
- consistent with current administration, interest charges would remain payable on any amounts outstanding after the date they are due for payment.

Note!

Your tax agent is the best person to assist you and your business with any penalty notices received regardless of whether the ATO adopts the proposal outlined above.

Building better incubators to support new Australian start-ups

On 20 September 2016, the Government launched the [Incubator Support Initiative](#) at Sydney-based fintech hub Stone & Chalk to help new Australian businesses and start-ups accelerate and scale-up their operations for launch into global markets.

The Incubator Support Initiative is a new element of the Entrepreneurs' Programme and is one of the measures under the National Innovation and Science Agenda (NISA). The initiative includes \$23 million to assist with the creation of new business incubators which will help start-up companies access advice, capital and valuable connections.

Applications are now open for matching grants between \$10,000 and \$500,000 for the creation of new incubators in regions or business sectors with strong links to international trade, and for existing, high-performing incubators to expand their services.

For more information, visit the website of the [Minister for Industry, Innovation and Science](#).

Tip!

Consider also the ‘tax incentives for early stage investors’ outlined in previous editions of *TaxWise Business*.

Helping the building and construction industry with debt

The ATO has been working with the building and construction industry to provide support and assistance to those with outstanding debts. In the last month, the ATO started contacting tax agents regarding their clients in the building and

construction industry who continue to have outstanding tax debts.

The ATO can offer a range of payment options to help get back on track sooner and reduce any interest liability.

If your business has an outstanding obligation, you can manage your business' debt by asking your tax agent to assist you to request a payment arrangement.

To do!

If you are in the building and construction industry and are concerned about any outstanding debts you may have, talk to your tax agent.

Educational visits to small businesses

The ATO is having one-to-one discussions with small businesses about the full range of their digital services.

If you are new to business or the circumstances of your business have recently changed, the ATO may contact you to offer to arrange a visit. The visit will demonstrate to you the products and services the ATO has to support your business and to answer questions you may have.

These visits will be covered by the 'Commissioner's Guarantee', which promises that no information gathered in these visits will be used for any other purpose.

Tip!

If you are contacted for one of these visits, ensure you let your tax agent or tax adviser know and make sure they can attend the discussion with you.

Inspector-General of Taxation's new work program for 2017

The Inspector-General of Taxation, Mr Ali Noroozi, called for submissions to help develop his new work program for 2017.

The Inspector-General of Taxation seeks to improve the tax system for the benefit of all Australians by reviewing the administration of tax and superannuation laws by the ATO and the Tax Practitioners Board (TPB).

Since 1 May 2015, the Inspector-General of Taxation has been responsible for handling taxpayer and tax practitioner complaints about the actions of the ATO and the TPB, similar to the role the Tax

Ombudsman used to have. In addition to providing specialist assistance and support to complainants, this expanded role has provided the Inspector-General of Taxation with real-time insight into tax administration issues and an opportunity to address them before they escalate into major causes of community discontent.

As the complaints handling function is continuing to develop, the Inspector-General of Taxation will consult widely to develop this upcoming work program as well as draw on themes emerging from complaints. The topics that are selected for review are those with the most potential for making tax administration fairer, simpler, more transparent or more efficient.

Mr Noroozi said, "I invite everyone to have their say in how administration of the tax system may be improved. I will consider all the issues raised and review matters with the most potential for making tax administration fairer, simpler, more transparent and more efficient."

To do!

Should you wish to have your say on issues you would like the Inspector-General of Taxation to review, talk to your tax agent about putting a submission in. Submissions are due on 9 December 2016.

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