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tax news | views | clues

Small business tax review finds first steps for improvement

The results of a review into tax impediments affecting the success and growth of small businesses has been released by the Government. The review focused on small business tax reform and, in particular, simplifying processes and cutting excessive red tape. In releasing the review findings, the Minister of Small Business, Bruce Billson, said the ATO has already begun implementing most of the administrative recommendations identified in the review.

Mr Billson said the removal of tax impediments for small businesses will make it easier for businesses to start, enable established businesses to grow, and provide greater security for small business owners in retirement. He said the review findings will feed into the Government's broader considerations on small business taxation and was particularly timely ahead of the Government's release of the Tax White Paper.

The Small Business Minister also highlighted the review's recommendations concerning superannuation, and accepted that superannuation penalties on small businesses can be harsh, with disproportionate outcomes. Mr Billson said the Government will ensure that penalties for paying super late or for short-paying super by a small amount would reflect the nature of the breach. He proposed that these changes would take effect from 1 July 2016 and that the Government will consult with stakeholders on implementation details.

Valuation reports for tax purposes could be easier

A review examining the ATO's administration of valuation matters has found room for improvement. The review was undertaken by the Inspector-General of Taxation, Ali Noroozi. In his 129-page report, the Inspector-General identified inherent difficulties associated with the nature and associated costs of valuations. Given these issues, the Inspector-General made a range of recommendations to the ATO aimed at taking a more practical and transparent approach to assessing taxpayer valuations and developing administrative safe harbours.

According to the Inspector-General, disputes between taxpayers and the ATO may be purely attributable to the differing professional judgment of each party's valuer. In these circumstances, and given the nature of the self-assessment regime, the Inspector-General was of view that the taxpayer's valuation should be accepted notwithstanding that it is not exactly the same as the ATO's valuation. In this regard, the Inspector-General recommended that the ATO provide guidance to its compliance officers to assist them in determining when to accept a taxpayer's valuation. The Tax Office agreed with this recommendation, and many others aimed at reducing disputes.

Employee share scheme tax law changes on the way

The Government says it will improve the taxation arrangements for employee share schemes. According to the Minister of Small Business, Bruce Billson, the proposed changes to the tax law are designed to increase the international competitiveness of the country's tax system and allow innovative Australian firms to attract and retain high-quality employees.

A key change proposed is to reverse some of the changes made in 2009 to the point at which rights issued as part of an employee share scheme are taxed for employees of all corporate tax entities. Another key change is to provide employees of certain small start-up companies with further concessions when acquiring certain shares or rights in their employer. These further concessions would be an income tax exemption for the discount received on certain shares and the deferral of the income tax on the discount received on certain rights, which are instead tax under the capital gains tax (CGT) rules.

The ATO has also commenced consultations with stakeholders on how to streamline the process of establishing and maintaining an employee share scheme.

TIP: The tax law amendments are proposed to commence on 1 July 2015. This could mean swift passing of legislative amendments through Parliament. Companies should keep a watch on the progress of the legislation.

ATO code of settlement

A code of settlement has been developed by the ATO. The code sets out the ATO policy on the settlement of tax and superannuation disputes, including disputes involving debt. It states that settlement negotiations or offers can be initiated by any party to the dispute and can occur at any stage including prior to assessments being raised.

The ATO notes that when deciding whether or not to settle, it will consider all the following factors:

- the relative strength of the parties' position;
- the cost versus the benefits of continuing the dispute; and
- the impact on future compliance for the taxpayer and broader community.

According to the ATO, settlement would not generally be considered in situations where there is a contentious point of law which requires clarification, or when it is in the public interest to litigate, or when the taxpayer's behaviour is such that the ATO needs to send a strong message to the community.

TIP: According to the code, a settlement agreement provides a reasonable basis for treating similar issues in future years unless it is specifically stated that it is not to apply to future years or transactions, or the taxpayer's circumstances change materially, or the law remains either unclear or amended. However, the Code states the ATO can provide greater certainty to a taxpayer for future years if required.

Court confirms tax on transfer of land to joint-venture trust

A corporate trustee (the taxpayer) has been unsuccessful before the Full Federal Court in a tax matter concerning the transfer of land owned by the taxpayer to a joint-venture trust. The taxpayer had purchased the land in 1995 and began discussions with other adjoining lot owners in 1997 with the idea of commercially developing the combined lots and selling them off. In 1998, a joint venture agreement and the joint-venture trust were created among the landholders, and the land was transferred to the trust.

The ATO assessed the land transferred to capital gains tax (CGT). The taxpayer argued there was no taxing event under the CGT rules, or that there were exemptions to the rules that applied. Essentially, the taxpayer argued there had been no change in the beneficial ownership of the land. However, in disagreeing with the taxpayer, the Full Federal Court confirmed that the transaction effecting the transfer of the land from the taxpayer to the joint-venture trust for the purpose of redevelopment was taxable under the CGT rules and that the specific exemptions under those rules did not apply.

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Personal services income when no service is provided

The ATO has determined that a payment received by a personal services entity (PSE) from a service acquirer during a period the service provider is not providing services to the acquirer until further called upon is personal services income (PSI) under the tax rules. The ATO says there may be circumstances where a payment made by a service acquirer to a PSE during a period in which the service provider is not called upon to do anything is not PSI because the payment appears to be in consideration for doing nothing. However, the ATO says such a view is "clearly not in accord with the intention of the legislature given the alienation measure is targeted at salary like payments".

The following example illustrates the ATO's point:

A sole director/shareholder ("Jim") provides his expertise and skills to a client company for a flat monthly contractual fee that is non-contingent. During a specified period, a dispute arises between Jim and the client company which results in no work being performed for the period. However, Jim is still paid the monthly contractual fee. According to the ATO, the monthly fee during the dispute period is considered to be personal services income under the tax rules notwithstanding that the client company did not call upon Jim to undertake further services.