Tax Time Monthly

FEBRUARY ISSUE 2019

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1 INCOME TAX

1.1 The battle for your vote continues- Government and Labor announcements and notable pending legislation before the election

a) Small business instant asset write-off increase to $25,000

Prime Minister Scott Morrison announced on 29 January 2019 that the Government will increase the instant asset write-off for small business from $20,000 to $25,000, and extend this to 30 June 2020 (it was due to revert to $1,000 on 1 July 2019). This would be available to eligible small businesses with turnover of up to $10M, for assets acquired after 29 January 2019. The Government indicated that legislation would be introduce to enact this measure when Parliament resumes 12 February 2019.

b) Labor's national conference – tax policies summary

Labor had its National Conference in Adelaide on 16-18 December 2018, and released a paper for delegates titled *A Fair Go for Australia.* The Paper outlined the following tax policy items:

- Lower annual contribution caps to $75,000 and lower the high-income superannuation contribution threshold to $200,000.
- Remove catch-up concessional contributions and tax deductibility for personal superannuation contribution introduced by the Government.
- Limit negative gearing to investment in new housing and halving the capital gains tax discount to 25%.
- Prospectively restore the prohibition on direct borrowing by superannuation fund for housing investment in the form of limited recourse borrowing arrangements.

c) How much of pending legislation will get through prior to the election?

The Federal election is expected sometime in May 2019.

Parliament is also expected to resume 12 February 2019 with a large amount of outstanding legislation that may or not be enacted prior to the election. The timeline is tight. Notable outstanding legislation includes proposed amendments to deny non-residents the main residence exemption when they sell their property in Australia, with transitional rules for property disposed of prior to 30 June 2019. The bill to introduce this measure is currently before the Senate, with no movement since 19 March 2018.

Navigating pending legislation and how it impacts your business is complex. Please contact Hall Chadwick if you have any concerns as to how it could impact you and strategies to put in place to mitigate this impact.

1.2. ATO updates practice statement on home office running expenses

On 19 January 2019, the ATO released an updated person of PSLA 2001/6, its guidance on verification approach for home office running expenses and electronic device expenses. This has changed from the previous version as follows:

- Specifically exclude from this PSLA deductions for computer consumables and stationary, and home office occupancy expenses such as rent, mortgage interest, council and water rates or house insurance premiums (which are only available to taxpayers using a part of their home exclusively as a place of business).
- A new section on evidencing expenditure and extent of deductibility. The ATO indicated that evidence of expenditure might include invoices, but where this is not available, corroborating evidence such as bank and credit card statements may be accepted. To evidence extent of deductibility, a taxpayer may prepare records showing their detailed usage pattern over a representative period (such as a 4 week diary), or a reasonable estimate where the claim is small.
- A taxpayer may calculate their home office running expenses by keeping records and written evidence to determine their work-related proportion of actual expense incurred (per above), or use a rate of 52 cents an hour (from 1 July 2018, increased from 45 cents an hour). This includes all items such as lighting, heating, cooling, cleaning costs, and decline in value of home office items such as furniture used for work.
- For device usage expenses, a taxpayer can calculate this by keeping records and written evidence to determine their work related proportion of actual expenses, or claim up to a total of $50 with limited documentation.

1.3 Treasury issues consultation paper on Initial Coin Offerings

Treasury issued an Issues Paper canvassing the issues associated with Initial Coin Offerings (ICO). ICO typically involves the creation of digital tokens by an issuer using distributed ledger technology (DTL). These digital tokens generally have certain rights attached which grants to the holders which could include right to another digital currency (a 'currency' token), a right to promised future cash flow linked to an underlying business or investment (a 'equity'/'asset'/investment' token) or the right to access a product or service provided by the issuer of the ICO at some future point in time (a 'utility'/ or 'access' token).

The Issues Paper covered various issues such as their impact on the economy, the regulatory framework that it falls into and more relevantly their current tax treatment. For issuers:

- Where the tokens are issued in respect of a debt or equity instrument, the proceeds may not be assessable upfront;
- Where the tokens are issued in respect of prepayment of a service, the proceeds are likely to be assessable income to the issuer;
- Proceeds of a token that are issued as an offer of a derivative could be taxed under the taxation of financial arrangement rules in Division 230.

For token holders, the tokens acquired through and ICO are considered an asset for tax purposes and any gain on disposal could be subject to capital gains tax, or taxed as ordinary income. Tokens acquired and used solely for purchase of goods and services for personal use and consumption could be regarded as a personal use asset, and if acquired for <$10,000 could be disregarded for tax purposes if disposed for a gain/loss.

Where the token is neither digital currency or a security, GST could apply on sales of the token.

1.4 LinkedIn Account is not offers to the public at large: *Fortunatow and FCT*

In this case, the taxpayer generated income through his company via the consulting services he provided to various clients. The income generated was personal services income and would be fully attributable to him as his assessable income as an individual unless the company conducted a personal services business.

The taxpayer argued that his company is conducting such a personal services business by satisfying the results test and also the unrelated clients test.

The AAT held that the taxpayer failed the results test as he was unable to present evidence that he was being paid to produce a result. Instead the contracts paid him based on number of hours worked and no requirement for a specified task to be completed prior to payment being made.

As one of the conditions of the unrelated clients test, it required the services being provided as a direct result of the individual or personal services entity making offers or invitations to the public at large, or to a section of the public, to provide the services. The taxpayer contended that he had an active profile on LinkedIn and this plus his marketing by word of mouth through industry functions would satisfy this requirement.

The AAT held that the taxpayer also failed the unrelated clients test, because the taxpayer (and his company) were only engaged by recruiters or other intermediary (and never the end client), and it was with these recruiters/intermediary which eventually contracted with the taxpayer's company. The AAT ruled that the exception in s87-20(2) applied *"the individual or personal services entity is not treated... as having made offers or invitations to provide services merely by being available to provide the services through an entity that conducts a business of arranging for persons to provide services directly for clients of the entity."* Ie. The public offer test is not satisfied if they are only made to recruiters or intermediaries.

It is interesting to note that a LinkedIn profile could, in certain scenarios, satisfy the public offer test for personal services income purposes (i.e. if they were to the public at large and a taxpayer was directly engaged by a number of unrelated clients as a result of thier marketing effors on LinkedIn).

2 GOODS AND SERVICES TAX

2.1 Courier driver is carrying on an enterprise for GST purposes

In *Qian and FCT* a courier driver has been held to be carrying on an enterprise, rather than working as an employee. The ATO's decision to cancel his GST registration was set aside and he was able to claim input tax credits.

The AAT discussed how it had difficulty obtaining evidence as to the facts surrounding the taxpayer including "obscurity of Mr. Qian's description of his courier work". The AAT inferred from the documents provided to it that Mr. Qian entered into an agreement with HF Express to work as a courier driver for their clients, and he could choose to work

for any of their 3 courier company clients. Mr. Qian choose to work for Mail Call and worked exclusively for Mail Call.

The Court considered a number of factors which could influence whether Mr. Qian is a contractor or an employee, however, the most important factor it considered was the provision of equipment by Mr. Qian in the form of his own van, which cost Mr. Qian $46,000. The importance of the van given its large cost contributes to the conclusion that Mr. Qian was carrying on his own enterprise.

The Court considered the parallels between Mr. Qian and the bicycle couriers in *Hollis v Vabu* (who were ruled as employees) but considered Mr. Qian to be carrying on an enterprise as a contractor because of Mr. Qian's responsibility for the van, its character as a commercial transport vehicle, the possibility of his income and profit being influenced by Mr. Qian's own work and the form of regular accounting undertaken by Mr. Qian.

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