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Tax incentives to promote innovation

Innovative companies with an interest in getting involved in the "ideas boom" need to be aware of the Government's proposed tax incentives to help promote innovation. The Government has released draft legislation to implement more of the proposed tax measures announced as part of its National Innovation and Science Agenda (released in December 2015).

One of the tax measures will allow companies that have changed ownership to access past year tax losses if they satisfy a similar business test. Under the current law, companies that have changed ownership must satisfy the same business test to access past year tax losses. This measure is designed to encourage entrepreneurship by allowing loss-making businesses to seek out new opportunities to return to profitability.

The other measure proposes to allow taxpayers the choice to either self-assess the effective life of certain intangible depreciating assets (such as patents or copyrights) or use the statutory effective life. The current law only provides an effective life set by statute. According to the Government, changing the tax treatment for acquired intangible assets will make startups' intellectual property and other intangible assets a more attractive investment option.

Car expenses and special arrangements for the 2016 FBT year

The ATO has released guidance about using the cents per kilometre basis for claiming car expenses and making fringe benefits calculations.

From 1 July 2015, separate rates based on the size of the engine no longer apply. Taxpayers can use a single rate of 66 cents per kilometre for all motor vehicles for the 2015–2016 income year. The Tax Commissioner will determine the rate for future income years. However, the ATO acknowledges that there has been uncertainty about the correct rate to apply for the 2016 FBT year, and has advised of a special arrangement for 2016 whereby it will also accept 2016 FBT returns based on the 2014–15 rates (which are 65, 76 or 77 cents per kilometre depending on the engine capacity of the employee's car).

TIP: For future FBT years, which end on 31 March, the ATO said employers should use the rate determined by the Commissioner for the income year that ends on the following 30 June. For example, for the FBT year ending 31 March 2017, employers should use the basic car rate the Commissioner determines for the 2016–2017 income year.

Holiday homes: tax considerations

Australians who let their holiday homes for only part of the year should be aware of the ATO's compliance focus on excessive holiday home deduction claims.

The ATO has released guidance on claiming deductions in relation to holiday homes. If a taxpayer rents out their holiday home, they can only claim expenses for the property based on the proportion of the income year when the property was rented out or was genuinely available for rent. Notably, the new guidance indicates what is meant by "genuinely available for rent". According to the ATO, factors that may indicate a property is not genuinely available for rent include that:

- it is advertised in ways that limit its exposure to potential tenants (for example, the property is only advertised by word of mouth);
- the location of, condition of or accessibility to the property mean that it is unlikely tenants will seek to rent it;
- there are unreasonable or stringent conditions on renting out the property that restrict the likelihood of the property being rented out; or
- interested people are turned away without adequate reasons.

TIP: Although it is always prudent to check things over before tax time, holiday home owners may particularly want to take the opportunity to review their circumstances and ensure that any deduction claims are made correctly before "the taxman cometh".

Individuals caught in "Panama Papers" leak

The ATO has advised that it is investigating more than 800 individuals after a leak of taxpayer data in relation to a Panamanian law firm.

Deputy Commissioner Michael Cranston said that since the completion of the offshore disclosure initiative "Project DO IT", the ATO has ramped up its compliance work to deal with taxpayers who have failed to disclose offshore income and assets.

Mr Cranston said the ATO has been analysing the latest data against information these taxpayers had reported and against the information the ATO already has. The information the ATO received regards some taxpayers who it had previously investigated, as well as a small number of taxpayers who disclosed their arrangements to the ATO under Project DO IT. The information also regards a large number of taxpayers who have not previously come forward, including high-wealth individuals, and Mr Cranston said the ATO is already taking action on those cases.

ATO safe harbour for SMSF borrowings

The ATO has released guidelines that set out the "safe harbour" terms on which trustees of self managed superannuation funds (SMSFs) may structure related-party limited recourse borrowing arrangements (LRBAs) consistent with an arm's-length dealing. The ATO generally takes the view that an SMSF may derive non-arm's length income (taxable at 47%) if the terms of an LRBA are not consistent with an arm's-length dealing. If an LRBA is structured in accordance with the ATO's guidelines, it will accept that the non-arm's length income (NALI) rules do not apply.

TIP: The ATO previously announced a grace period whereby it will not select an SMSF for review provided that arm's-length terms for its LRBA are implemented by 30 June 2016, or the LRBA is brought to an end before that date. Importantly, the ATO's guidelines require arm's-length payments of principal and interest to be made for 2015–2016 (including where the arrangement is brought to an end). If an LRBA does not meet all of the safe harbour terms, it does not mean that the borrowing is deemed not on arms'-length terms. Rather, trustees who do not meet the safe harbour terms will need to otherwise demonstrate that their arrangement was entered into and maintained consistent with arm's-length terms.

ATO's data-matching net widens

The ATO has announced details of its various data-matching programs. Most of the announcements regard extensions to existing data-matching programs. Records obtained through the programs will be electronically matched with ATO data holdings to identify non-compliance with registration, lodgment, reporting and payment obligations under taxation laws. The following are key points:

- The ATO will acquire details of registered voters on the Commonwealth electoral roll from the Australian Electoral Commissioner. This data-matching program aims to identify taxpayers who are not registered with the ATO when they are required to be.
- The ATO will acquire data from businesses that it visits as part of its employer obligations compliance program during the 2016–2017, 2017–2018 and 2018–2019 financial years. This program aims to obtain intelligence to identify risks and trends about contractors who may not be complying with their taxation obligations.
- The ATO will acquire data relating to electronic payments made to merchants through specialised payment systems for the 2014–2015, 2015–2016 and 2016–2017 financial years. This data will be used to detect unreported income and to identify those operating a business but failing to meet their registration, lodgment and payment obligations.

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