TAXWISE
BUSINESS NEWS

June 2013

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The end of the financial year is coming!

The end of the financial year is coming and it's time to start thinking about your 2013 Income Tax Return! Now is a good time to start reviewing certain assets and liabilities owned by your business and consider if there is anything you should do prior to 30 June 2013 rolling around.

- Are there any repairs and maintenance you should carry out prior to 30 June 2013 so you can claim the deduction in your 2013 return?
- Are there any bad debts to write off out of your receivables?
- Are there any recently announced measures in the May 2013-14 Budget you should talk to your tax adviser about?
- If you have an outstanding investment loan, see if you can prepay some of the interest prior to 30 June 2013 (you will need to speak to your lender.)
- Are there purchases or disposals of assets you should make prior to the next financial year starting?
- Review your depreciable assets (capital allowances) register and write-off or dispose of any assets no longer used eg assets used in your business such as computer equipment, office furniture (eg desks and chairs) and kitchen appliances;
- Re-consider funding strategies for your business – end-of-year is a good time to consider whether you have the right debt funding and equity funding mix in place;

It is also a good time to review things that you think about at the time you put them in place but don't otherwise turn your mind to – for example, see if you have the right mix of debt and equity funding for your business to carry you through to the next financial year.

To Do!

Your tax adviser can help you with these decisions as they know your business and have experience with other businesses similar to yours. They are able to offer you sound advice about how to best prepare your business for the start of the 2013-14 financial year.

Small business tax concessions and the scrip for scrip roll-over strengthened

Recently, the Federal Government introduced into Parliament legislation that will impact trusts, superannuation funds and life insurance companies. The changes will mean that certain integrity rules in the small business concessions, concessions that many small businesses would be familiar with, will now also apply to trusts, superannuation funds and life insurance companies as well other types of entities to which they already apply. The changes will also mean that certain asset-holding arrangements will be "looked through" and treat the underlying entity as the owner of the asset. For example a beneficiary of a trust may be regarded as the owner of the asset rather than the trustee who is the legal owner.

Company loss carry-back

In previous editions of TaxWise, the introduction of the company loss-carry-back measure has been mentioned. It is worth noting that this measure is progressing through Parliament and may soon become law. To recap the measure for you, companies (and entities taxed like companies) will be able to take advantage of this measure. There are some limitations including that the most amount of losses that will be able to be carried back to offset an earlier year's income will be $1 million and only revenue losses will be able to be carried back.

The ATO has also set out on its website how it plans to administer this measure. The ATO's main advice is that companies who are able to lodge their 2013 tax returns already are not advised to try and carry back losses until the changes become law. Once the law comes into effect, the ATO will issue advice about how to claim the loss carry back tax offset if a company has already lodged its 2013 income tax return. A company affected by this will then also be able to amend its company tax return and claim the loss carry back tax offset. Interest on overpayment of tax will be paid where applicable.

To Do!

If your company is not having a good year and you think it may make a loss, speak to your tax agent about whether you might be able to carry back the loss you might make.

Rules against Tax Avoidance

Previous editions of *TaxWise* have highlighted the Government's intentions to tighten up the rules which target tax avoidance by taxpayers. These are provisions that taxpayers should bear in mind when embarking on transactions.
Since the last edition of *TaxWise*, the legislation bringing in these changes has been introduced into Parliament.

If you have any concerns about how these measures could affect any business or transactions you are planning to undertake, seek advice from your tax adviser.

In the meantime, the ATO has published on its website the administrative treatment that will be applied until the changes become law.

Capital allowances - other machinery and equipment repair and maintenance assets

The ATO has started a review of assets used in the repair and maintenance of other machinery and equipment as defined by ANZSIC code 94290, with a view to making new effective life determinations.

The review will cover all assets used to repair, certify and maintain:

- construction equipment and machinery
- heavy machinery and equipment
- hydraulic equipment
- material-handling equipment
- earthmoving machinery, equipment or parts
- forklifts
- mining excavation equipment
- tractors.

The ATO expects its review of these assets to be completed within 12 months, with new effective life determinations applying from 1 July 2014.

If you have assets of this nature, you may be impacted by the review. You should also keep an eye out for the new effective life determinations.

Note!

If you think this review might impact on your business and potential capital allowance claims you may make, you should talk to your tax adviser.

Do you do research and development?

If so, you may be interested to know that the Government recently announced changes to the R&D tax concession. What is proposed is noted below:

- Very large businesses with annual Australian turnovers of $20 billion or more will no longer be eligible for the R&D Tax Incentive but will be eligible to claim their R&D expenditure under general tax law provisions, for example, as deductions at the corporate tax rate for business expenditure.

- The change will add a third tier to the eligibility requirements for the program and targets the program to SMEs. It will apply to income years starting on or after 1 July 2013.

- Companies with a turnover of less than $20 million doing eligible R&D can receive an uncapped fully refundable offset if they are in tax loss and, from 2014, eligible companies will be able to receive refunds as quarterly credits - improving cash flow and helping them conduct more R&D.

Tax transparency and large and multinational businesses

The Federal Government is pursuing ways to make the amount of tax that large and multinational businesses pay in Australia more transparent.

Recent events in Australia and around the world have called into question whether large and multinational businesses should maintain the same level of confidentiality about the taxes they have paid that other taxpayers have.
In particular, the Government will explore:

- How the policy could best be designed to cover large and multinational businesses, including whether a threshold test would be appropriate;

- Which Federal taxes should be disclosed; and

- How the tax information should be made publicly available.

Improving the transparency of Australia's business tax system is intended to encourage enterprises to pay their fair share of tax and discourage aggressive tax minimisation practices. It is also intended that this will allow the public to better understand the business tax system and engage in debate about tax policy.
Though this is only said by the Government to be aimed at large and multinational businesses, the business tax system also applies to smaller-sized businesses. Therefore smaller businesses could potentially get swept into broader discussions around the business tax system.

Getting ready for changes to super

If you are an employer, in April this year, the ATO may have sent to you some information regarding superannuation guarantee obligations.

Employers across Australia will have new super obligations under a range of reforms that are being implemented from 2013 to 2019.

From 1 July 2013, employers must:

- increase the minimum rate for super guarantee payments on behalf of their employees from 9% to 9.25%

- start making super guarantee contributions for employees aged 70 years and over with the removal of the existing upper age limit.

Accordingly, you may need to update your processes and systems to incorporate the changes.

To Do!

Talk to your tax agent about what changes are coming and how you might modify your existing systems to accommodate the changes.

Self-Managed Super Funds

The activity in the self-managed superannuation funds (SMSF) area continues. As more and more people decide to set up an SMSF, it is wise to stay abreast of the changes. We highlight some below:

1) **SMSF Supervisory Levy Bill introduced into Parliament**

Recently, the Government introduced into Parliament a bill which amends the *Superannuation (Self-Managed Superannuation Funds) Supervisory Levy Imposition Act 1991* and the *Superannuation (Self-Managed Superannuation Funds) Taxation Act 1987*. The Bill will reform the SMSF supervisory levy arrangements. The changes ensure that the levy is collected from SMSFs in a more timely way, and the ATO's costs of regulating the sector are fully recovered. In particular, the Bill increases the maximum levy payable by a trustee of an SMSF for a year of income from $200 to $300, effective from the 2013-14 income year. The Bill also provides that the regulations may specify when the SMSF levy is due and payable so that the amount may be levied and collected in the same income year.

The proposal was announced in the 2012-13 Mid-Year Economic and Fiscal Outlook on 22 October 2012.

2) Approved SMSF auditors – registrations for auditors started 31 January 2013

If you have your own SMSF, you should note that, as part of the 'Stronger Super' reforms, from 1 July 2013, auditors who conduct SMSF audits must be registered with the Australian Securities and Investments Commission (ASIC) as an approved SMSF auditor.

Auditors can apply for registration as an approved SMSF auditor and pay fees online with ASIC from 31 January 2013.

Tip!

If you are arranging for your SMSF to be audited, ensure the auditor you choose is registered.

3) SMSF annual return 2012 and impacts on PAYG instalments

The ATO recently advised that over the years, it has identified that many SMSFs are inaccurately claiming some deductions when they:

- pay an income stream;
- are entitled to claim exempt current pension income.

To assist trustees in completing their annual reporting obligations and to ensure that they calculate the correct tax liability, the ATO has made a significant change to how exempt current pension income (ECPI) is reported in the SMSF annual return 2012.

The ATO says it will continue to closely monitor entitlements to claim an amount of income as ECPI and intends to review a number of SMSFs as part of its ongoing compliance activity.

Note!

If you have an SMSF and are at all concerned by this, please speak with your tax agent who can advise you about this change.

4) ATO information on changes to super for super funds, including SMSFs

The ATO has published a document entitled "Changes to super for super funds, including self-managed super funds", containing information to keep super funds, including SMSFs, up to date on new super announcements by the Government and on any changes to the law which may affect them.

The ATO says that this information will be updated regularly.

Your tax agent will also be able to keep you informed of changes that might affect your own super or anything that might impact your SMSF.

Refunding excess GST Exposure Draft released

In previous editions of TaxWise, we mentioned the Government's plans to clarify the operation of a provision in the tax legislation that inhibits a taxpayer from getting a refund of GST already paid to the Commissioner if it turns out the GST was overpaid because a supply was incorrectly treated as a taxable supply.

Some progress has been made in relation to this measure as a second Exposure Draft was released in late February this year. The second Exposure Draft tries to address many of the concerns noted in relation to the first Exposure Draft, including the gap in the current law that does not address miscalculations that may lead to overpayments of GST.

In the meantime, the ATO has published on its website the administrative treatment it will apply until the change to the law is made. You should speak to your tax adviser if you have any queries about how the current law applies and how the changes might impact your business.

Tax Invoices and Adjustment Notes

The ATO recently updated its ruling on tax invoices, in particular the information that must be included on a tax invoice and when a document is in the approved form for a tax invoice.

The ATO also recently issued a draft ruling in relation to adjustment notes.

Now might be a good time to review the tax invoices and adjustment notes your business issues and ensure they meet the requirements in the rulings.

Failed payments and GST consequences

The ATO has issued a determination (GSTD 2013/1) in relation to the GST consequences of fees associated with failed payments. A failed payment means a dishonoured cheque or a declined direct debt request. Fees associated with failed payments may arise.
The ATO has confirmed in its determination that the payment of a failed payment fee is not consideration for a supply in the circumstances set out in the determination.

Reasonable amounts of food and drink expenses for living-away-from-home allowances

Taxation Determination TD 2013/4 recently issued by the ATO contains the reasonable amounts of food and drink expenses for the purposes of the fringe benefits tax law and when these expenses may or may not have to be substantiated.

PAYG – Various Issues

1) PAYG Withholding - Variation of withholding for personal services income

A variation to the amount of withholding required by a payer under the pay as you go (PAYG) withholding system may now be made for personal services income payments received by an entity for a certain class of cases. These cases are specified in the legislative instrument providing this.

If you derive personal services income through an entity, it may be worthwhile speaking to your tax adviser to see if you are able to vary the PAYG withholding amount as permitted by this legislative instrument.

2) PAYG Withholding – Variation for Allowances

A variation to the amount of withholding required by a payer under the PAYG system for allowance payments in a certain class of cases may also now be made. The classes of allowance payments are specified in the legislative instrument providing this.

3) PAYG payment summary - employment termination payment and codes

Following changes to the taxation of employment termination payments (ETP) on 1 July 2012, the ATO has updated the “PAYG payment summary - employment termination payment” to include new ETP codes. The codes describe the type of payment and will ensure the correct rate of tax is applied.

If you are paying an ETP this income year, make sure you use the correct form and codes. Your tax agent will be able to help you obtain the correct form to use.

Are you a director of a company?

If so, you should be aware of the recent changes made to the tax and superannuation laws to reduce the scope for companies avoiding liabilities and payments of employee entitlements. These changes impact on a director's obligations and personal risk in relation to their company's PAYG withholding debt.

To Do!

Check to see if the company you are a director for has any outstanding PAYG withholding debt and whether this is being properly managed.

Other useful ATO Links

The ATO has published on its website a useful suite of documents for SMEs in the SME Communicator. These documents are regularly updated and are a good tool for people to refer to.