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Specific tax rule to prevent dividend washing

The Assistant Treasurer, David Bradbury, has announced that the Government will prevent "dividend washing" by introducing a specific integrity rule into the tax law. This follows the Government's announcement in the 2013–2014 Federal Budget that it will implement reforms to close, with effect from 1 July 2013, a loophole it believes currently enables some investors to engage in this practice.

"Dividend washing" potentially allows investors who undertake certain sophisticated share transactions to receive two sets of franking credits on what is essentially the same parcel of shares. Mr Bradbury says the proposed specific integrity rule will end this practice. He adds that the measure will not impact typical "mum and dad investors" as it will only apply to investors who have franking credit tax offset entitlements in excess of $5,000.

Overseas doctor a tax resident of Australia

A doctor has been unsuccessful before the AAT in arguing that he should be declared a non-resident of Australia for tax purposes. The doctor had been working in East Timor since 2006 and submitted that he "resided" in East Timor as that was where he spent his time and lived.

The AAT heard that the doctor was an Australian citizen and spent nine to 11 months of the year in East Timor, with the remainder of his time spent in Australia and Bali. However, the AAT noted that the doctor owned a property in Australia which the Tax Commissioner described as the "family home". The AAT also noted that the doctor had a property in Bali which he and his wife called "home". The AAT found that the doctor "resided" in Australia for tax purposes because the taxpayer had retained a "continuity of association" with Australia.

Individual denied interest deduction

In a recent decision, the Administrative Appeals Tribunal (AAT) has affirmed a decision of the Tax Commissioner to deny a taxpayer's claim for a personal deduction for interest and bank fees of over $120,000. These were incurred over a two-year period in relation to rental properties purchased by a family discretionary trust that had been set up for that purpose, and of which the taxpayer was the trustee.

The AAT was of the view that the bank had lent the money to the taxpayer in his capacity as trustee of the trust, and not in his personal capacity. The AAT was also not convinced by the taxpayer's argument that the bank had been mistaken in relation to the legal character of the person to whom it had lent the money. The AAT therefore upheld the Commissioner's decision not to allow a personal deduction.

Partnership denied GST credits

The AAT has held that a partnership was not carrying on an enterprise and was not entitled to input tax credits claimed in respect of the relevant period.

The taxpayers, a married couple, argued that their partnership had provided handyman and other maintenance services to a hotel, a business they also controlled and which they had taken over from their sons. The AAT was not convinced that the partnership was an entity providing the claimed services to the hotel. Therefore, the taxpayers were not entitled to claim input tax credits during the relevant period.

However, the AAT was of the view that the net amount of GST owed for the relevant period was zero, and not a positive net amount as argued by the Commissioner.

Division 7A benchmark interest rate

The ATO has advised that, for the income year that commenced on 1 July 2013, the benchmark interest rate to be used in calculating the interest component on the repayment of a private company loan received by a shareholder (or an associate of a shareholder) is 6.20%.

Reasonable travel and meal allowance amounts

The ATO has announced the amounts that the Commissioner considers are reasonable for the 2013–2014 income year in relation to claims made for:

- overtime meal allowance expenses;
- domestic travel allowance expenses;
- overseas travel allowance expenses; and
- travel allowance expenses for employee truck drivers.

Car depreciation limit

The ATO has announced that the car depreciation limit for the 2013–2014 income year is $57,466.

Key superannuation changes

The Government has recently enacted a number of key superannuation changes. These are discussed below. Importantly, these rule changes are not simple and individuals would be prudent to consider their options before deciding what to do.

Excess concessional contributions

The rules in relation to the taxation of excess concessional contributions have been amended with effect from 1 July 2013. The Government says the new rules will be "fairer for individuals who exceed their annual concessional cap".

Under the new rules, excess concessional contributions are automatically included in an individual's assessable income and subject to an interest charge to account for the deferral of tax. Broadly, the new rules ensure that individuals who make excess concessional contributions are taxed on the contributions at their marginal tax rates, rather than at the effective 46.5% tax rate that previously applied for all taxpayers before the changes were introduced.

TIP: These proposed changes will undoubtedly be welcomed by the 40,000-odd taxpayers who are expected to pay (on average) $1,100 less tax on their excess concessional contributions in 2013–2014.

However, taxpayers on the top marginal tax rate are expected to have a slightly higher tax liability for their excess concessional contributions (due to the additional interest charge).

Higher contributions cap of $35,000

On 1 July 2013, the concessional contributions cap increased from $25,000 to $35,000 for individuals aged 60 years and over. The same threshold will apply from 1 July 2014 for individuals aged 50 years and over.

TIP: Eligibility for the higher cap depends on a person's age on 30 June in the *previous* income year. This means:

- persons who were aged 59 years or over on 30 June 2013 are eligible for the higher cap in 2013–2014; and
- persons who will be aged 49 years or over on 30 June 2014 will eligible for the higher cap in 2014–2015.

Please contact our office if you wish to discuss your eligibility for the higher cap.

Under the new cap, eligible individuals will potentially be able to claim greater deductions for superannuation contributions, or salary-sacrifice larger contributions. It is important to note that this temporary concessional cap will cease when the general cap reaches $35,000 through indexation (which is expected to be 1 July 2018).

TIP: Taxpayers aged 59 years or over on 30 June 2013 should consider reviewing their salary-sacrificing arrangements, deductions for personal contributions and transition to retirement pensions to take into account the higher concessional cap of $35,000 for 2013–2014.

Extra 15% contributions tax for $300,000+ incomes

From 1 July 2012, individuals earning above $300,000 must pay an additional 15% tax on concessional contributions. That is, the effective contributions tax has doubled from 15% to 30% for concessional contributions (up to the cap of $25,000 or, for older taxpayers from 2013–2014, $35,000) made on behalf of individuals above the $300,000 income threshold.

However, despite this extra 15% tax, it should be noted there is still an effective tax concession of 15% (ie the top marginal rate less 30%) on concessional contributions up to the cap of $25,000 (or $35,000).

TIP: Individuals with incomes above $300,000 may want to consider limiting their concessional contributions to compulsory superannuation guarantee contributions (9.25% for 2013–2014) where such benefits can be packaged in a more tax-effective manner. Alternatively, these individuals may want to consider whether it is more beneficial to instead make after-tax non-concessional contributions.