Corporate Tax Update

1 February 2014

Tax consolidation – rights to future income and residual tax cost setting rules

On 15 January 2014 the Australian Taxation Office (ATO) issued a series of draft Taxation Determinations (TD 2014/D2 – D6) which outline the Commissioner’s preliminary view as to the operation of the ‘application provisions’ to the 2012 year amendments that were made to the consolidation rights to future income (RTFI) and residual tax cost setting rules. Specifically, they address various scenarios that relate to whether an assessment or an amended assessment has been issued. The determinations relate to which particular amendments apply to the various scenarios. With less than six months before the 29 June 2014 deadline for amending assessments in respect of the RTFI consolidation changes, taxpayers should note the issues raised in these determinations in the context of ensuring appropriate ‘protection’ to relevant assessments.

Comments on the Draft Determinations can be made until 21 February 2014.

For further information in relation to these draft Taxation Determinations and the RTFI and the residual tax cost setting rules, contact your usual PwC adviser.

Dividend washing schemes and Part IVA

On 15 January 2014 the Australian Taxation Office (ATO) issued a draft Taxation Determination (TD 2014/D1) in which the Commissioner expresses the preliminary view that section 177EA of Pt IVA of Income Tax Assessment Act 1936 (ITAA 1936) will generally apply to a ‘dividend washing scheme’ of the kind described in the draft Taxation Determination. Section 177EA is a specific anti-avoidance provision in Part IVA that safeguards the operation of the imputation system.

The features of the scheme as described in the draft Taxation Determination are as follows:

- a taxpayer, Payton (in the example, it is the trustee of a self-managed superannuation fund), holds a parcel of 10,000 shares in a company listed on the Australian Stock Exchange (ASX). The shares have been held for more than 45 days
- On 12 August, the company announces a fully franked dividend of 14 cents per share with a franking credit of 6 cents per share. The shares will go ‘ex dividend’ on 27 August
- On 27 August, Payton sells the 10,000 shares for $5.00 each on an ‘ex dividend’ basis on the normal ASX market. The sale proceeds are $50,000
- Payton purchases a further 10,000 shares in the same company for $5.16 per share on a “Special Market” operated by the ASX. The cost of this transaction is $51,600. The shares are purchased ‘cum dividend’, i.e. with rights to receive the franked dividends announced on 12 August
- On 14 October, Payton receives franked dividends of $1,400 with franking credits of $600 from the two parcels of shares. As such, it receives dividends totalling $2,800 including franking credits of $1,200.
As a result of the above transactions (ignoring brokerage fees), Payton incurred a cost of $1,600 which is the difference between the sale and the purchase of the shares ($50,000 – $51,600). It earned additional dividends of $1,400 from the parcel purchased. Had Payton not received the additional franking credits of $600 attached to the dividends, it would have incurred a loss of $200.

At the end of the transaction, Payton still holds the same number of shares in the same company. It is assumed that Payton holds the purchased shares for at least 45 days.

The draft Taxation Determination states that a dividend washing as described “would likely be a scheme entered into for a more than incidental purpose of enabling a participant to obtain an imputation benefit for the purposes of paragraph 177EA(3)(e)” of section 177E.

The Commissioner considers that the relevant circumstances of the scheme point to a conclusion that a person or entity undertaking the trades as described did so for a more than an incidental purpose of enabling the holder of the shares to obtain an imputation benefit. That conclusion can be drawn even if it is clear that the holder also had some other commercial purpose or purposes in entering into the scheme.

Where s177EA applies to a dividend washing scheme, the Commissioner may make a determination under section 177E that no imputation benefit is to arise in respect of the distribution to the holder of the shares.

When the final determination is issued, it is proposed to apply both before and after its date of issue.

Interested parties are invited to comment on the draft determination.

For further information, contact your usual PwC adviser.

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**Let's talk**

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