Other News

1 June 2015

Supreme Court of NSW refuses application to extend trust’s vesting date to avoid CGT and duty

On 10 April 2015 in Paloto Pty Limited v Herro [2015] NSWSC 445, Justice Darke in the Supreme Court of New South Wales (NSW), dismissed an application to change the vesting date of a trust so as to avoid capital gains tax (CGT) and stamp duty liabilities arising. Justice Darke held that it was not correct to characterise the circumstances of the case as involving an emergency that has arisen in the course of the administration of the estate which needs to be resolved in the interests of preserving the trust property. Accordingly, Justice Darke held that this was not a case where the Court would be justified in sanctioning a variation of the terms of the trust to provide for a later vesting day.

Remedial powers given to Commissioner

On 1 May 2015, the Assistant Treasurer announced that the Federal Government will provide the Commissioner of Taxation with a statutory remedial power to allow for a more timely resolution of certain unforeseen or unintended outcomes in the taxation and superannuation law. This power will allow the Commissioner to make legislative instruments to modify the law in a manner that is favourable to taxpayers in order to achieve its purpose or object.

Taskforce to tackle serious financial crime

On 5 May 2015, the Federal Treasurer announced the establishment of a new taskforce to tackle serious financial crime. The taskforce will focus on superannuation and investment fraud, identity crime and tax evasion, and will build on the work done by Project Wickenby which finishes in 2015.

HECS debts to be recovered from Australians living abroad

On 2 May 2015, the Minister for Education and Training announced that the Federal Government will legislate to ensure that debts under the Higher Education Contribution Scheme (HECS) will be recovered from Australians who move overseas for more than 6 months. Under the proposal, Australian graduates living offshore will start making HECS payments from July 2017 based on their income in the 2016-17 tax year if they earn above the threshold of A$53,000.

Wine Equalisation Tax rebate

On 1 May 2015, the Assistant Treasurer announced that the Federal Government will ask the Commonwealth Treasury to prepare a discussion paper on the operation of the Wine Equalisation Tax (WET) rebate to help inform consideration of the issue as part of the Government’s Tax White Paper process.

In his media statement, the Assistant Treasurer said that growers and producers have raised concerns whether the current operation of the WET rebate, which was introduced in October 2004, continues to meet the original policy intent. The rebate provides small and medium sized wine producers with a rebate of WET payable up to a maximum of $500,000 a year.

The discussion paper will be released in July 2015.

Early access to superannuation for terminally ill people

On 1 May 2015, the Assistant Treasurer announced that the Federal Government will amend the law so as to allow people suffering a terminal illness to have access to their
superannuation. The changes will have effect from 1 July 2015.

Information sharing

On 8 May 2015, the Commonwealth Treasury released exposure draft regulations which when introduced will allow taxation officers to continue to share taxpayer information with Project Wickenby agencies, or a court or tribunal, until 30 June 2017. The regulations will also list the Fraud and Anti-Corruption (FAC) Centre (established in 2014 to focus on serious financial crime in Australia) as a prescribed taskforce to enable taxation officers to share taxpayer information with other FAC Centre agencies on an ongoing basis.

Home ownership

On 24 April 2015, the Federal Treasurer asked the House of Representatives Standing Committee on Economics to inquire into and report on Home Ownership. Specifically, the terms of reference require the Committee to inquire and report on:

- current rates of home ownership
- demand and supply drivers in the housing market
- the proportion of investment housing relative to owner-occupied housing
- the impact of current tax policy at all levels
- opportunities for reform.

Submissions can be made to the inquiry by Friday 26 June 2015.

Separate to that enquiry, on 8 May 2015, the Senate Economics Reference Committee tabled its Affordable Housing Report which includes a range of recommendations directed primarily toward improving home purchase affordability. From a tax perspective, the Committee recommended that State governments phase out conveyancing stamp duties and transition to more efficient taxes, potentially land tax levied on a broader base, and also recommended that the Federal Government investigate the effect of the current taxation treatment of investment housing, in particular negative gearing and the capital gains tax discount, on home purchase affordability, and consider if alternative approaches would help improve affordability.

Board of Taxation

On 14 May 2015, the Assistant Treasurer announced three new appointments to the Board of Taxation, being Mr Neville Mitchell, Ms Karen Payne and Mrs Ann-Maree Wolff. Additionally, the Assistant Treasurer announced the appointment of Mr John Emerson as Deputy Chair of the Board.

Visas

On 15 May 2015, the Minister for Trade and Investment, and the Assistant Minister for Immigration and Border Protection, announced the complying investment framework arrangements for the enhanced Significant Investment Visa (SIV) and new Premium Investor Visa (PIV). Further information on the new complying investment framework for the SIV and PIV can be found on Austrade webpage.

Penalty units to increase

From 31 July 2015, the value of a Commonwealth penalty unit will increase from $170 to $180, after which it will be indexed based on the Consumer Price Index every three years commencing from 1 July 2018. Penalty units are relevant in the context of various tax administration penalties including late lodgement.

Managed Investment Trust (MIT) measures deferred until 2016

As announced in the Federal Budget 2015-16, the start date of the new tax system for MITs is to be deferred by 12 months to 1 July 2016, with an optional early start date of 1 July 2015. The proposed new tax system for MITs is intended to provide certainty to the funds management industry and its investors on a number of tax issues.

For further information on the new system see our TaxTalk Alert, which was published before the Government’s announcement of the deferred commencement date.

Small business entities may need to urgently amend 2014 year tax returns to avoid penalties

On 5 September 2014 the Minerals Resource Rent Tax Repeal and Other Measures Act 2014 received Royal Assent. Included in that Act were provisions repealing concessions in the income tax law available to ‘small business entities’. For small business entities with a standard (i.e. 30 June) tax year end, the changes apply from 1 January 2014.
Specifically for small business entities with a 30 June tax year end:

- From 1 January 2014, only those depreciable assets costing less than $1,000 (that the entity starts to use or have installed ready for use, after 31 December 2013) will be eligible for immediate write-off. Depreciating assets costing $1,000 or more will need to be depreciated in the general small business pool.

This $1,000 cap replaces the previous $6,500 cap that applied until 1 January 2014.

- From 1 January 2014, the cost of a motor vehicle will only be immediately deductible (as a depreciable asset) if the cost is less than $1,000. Motor vehicles costing $1,000 or more, acquired and available for use after 31 December 2013, will need to be depreciated in the general small business pool.

Under the repealed legislation, small business entities could claim up to $5,000 as an immediate deduction for motor vehicles costing $6,500 or more that were acquired from the 2012-13 income year onwards. The remaining value was to be depreciated in the general small business pool at a rate of 15 per cent in the first year and then at 30 per cent per year thereafter.

Motor vehicles acquired and available for use between 1 July 2013 and 31 December 2013 will still be eligible for an immediate initial deduction of up to $5,000.

For small business entities with a substituted accounting period, the application date of the above changes may be 1 January 2013.

In lodging their tax return for the 2014 year, some small business entities may have claimed tax deductions based on the repealed law, in circumstances where the new law actually applied. These taxpayers will need to amend their return to claim the correct amounts under the measures outlined above.

In a notice on the Australian Taxation Office web site, the Commissioner has stated if an amendment is sought by 30 June 2015, no shortfall penalty will apply, and any shortfall interest charge (SIC) will also be remitted. However, to ensure that penalties and SIC are not imposed, the amendment request needs to state: “This amendment relates to the repeal of the accelerated initial deduction for motor vehicles. The ATO has advised that shortfall penalties and shortfall interest charges are not to be applied”.

Affected taxpayers will need to take urgent action to avoid the penalty and SIC consequences that will otherwise apply to amendments made by the Commissioner to give effect to the above law changes.

**Full Court holds that section 14ZYA notice can be withdrawn**

On 16 March 2015, in Commissioner of Taxation v McGrouther [2015] FCAFC 34, the Full Federal Court upheld the Commissioner’s appeal against the decision of Justice Edmonds in McGrouther v Commissioner of Taxation [2014] FCA 1102. In that decision, Justice Edmonds had held that a taxpayer who gives to the Commissioner a notice under section 14ZYA of the *Taxation Administration Act 1953*, it not thereafter allowed to withdraw or revoke the notice. A notice under section 14ZYA requests the Commissioner to within determine an objection lodged by the taxpayer, and failing to determine the objection within 60 days of the notice, the Commissioner is deemed to have disallowed the objection.

In finding for the Commissioner, Justice Pagone and Davies (with whom Chief Justice Allsop agreed) observed that there was nothing in the provision itself which prevented the notice from being withdrawn, “the rights conferred by s 14ZYA, and the statutory consequences that flow, exist solely for the personal benefit of the taxpayer exercising them”, and “notions of good public administration and timely objection decisions do not turn the provision into a provision with a wider public interest”. Having regard to this analysis, their Honours concluded that the answer as to whether a taxpayer can withdraw a notice given under section 14ZYA lies in the application of the principle that a person who has the sole benefit of a statutory provision can waive that provision (within the limitations of that principle).

After considering relevant case law, and in particular what was said in *Commonwealth v Verwayen* (1990) 170 CLR 394 their Honours concluded that the taxpayer was authorised to waive the rights obtained by the taxpayer upon serving the section 14ZYA notice on the Commissioner.
For further information contact Judy Sullivan on (02) 8266 0197.

Government strengthens foreign investment framework

On 2 May 2015, the Prime Minister and the Treasurer issued a joint media statement detailing proposed changes to the law relating to foreign investment in Australia. The proposed changes as outlined in the media statement include:

- Stronger enforcement of the existing foreign investment rules by transferring all of the residential real estate functions to the Australian Taxation Office (between now and 1 December 2015). The Australian Taxation Office will improve compliance and enforcement through sophisticated data matching systems and specialised staff with compliance expertise.

- Supplementing the existing criminal monetary penalties (which will be increased from $85,000 to $127,500 for individuals) and divestment orders, with civil pecuniary penalties and infringement notices for less serious breaches of the residential real estate rules.

- Subjecting third parties who knowingly assist a foreign investor to breach the rules to civil and criminal penalties.

- Charging application fees so as to ensure that Australian taxpayers no longer have to fund the cost of administering the screening of foreign investment applications. For residential properties valued at $1 million or less, foreign investors will pay a fee of $5,000. Higher fees will apply to more expensive residential properties as well as business, agriculture and commercial real estate applications.

- Increasing scrutiny around foreign investment in agriculture. From 1 March 2015, the screening threshold for agricultural land was lowered from $252 million to $15 million (cumulative).

- From 1 December 2015, introducing a $55 million threshold (based on the value of the investment) for investments in agribusiness.

- Increasing the transparency on the levels of foreign ownership in Australia through a comprehensive land register.

- From 1 July 2015, establishing an agricultural land register with information provided directly to the Australian Taxation Office by investors.

In addition, the media statement noted that the Federal Government was in negotiations with the States and Territories to use their land titles data to expand the register to include all land (including residential real estate).

The Government proposes to introduce legislation into Parliament in the Spring Sittings to ensure that the legislative reforms will commence on 1 December 2015.

Following this media statement, the Commonwealth Treasury released an Options Paper seeking views from interested parties on proposed options to modernise and simplify Australia’s foreign investment framework. The proposed options include:

- Incorporating policy only notification and prior approval requirements under Australia’s Foreign Investment Policy into the legislative framework.

- Updating the legislation to reflect current administrative practices and regulatory concepts, as well as for modern business and corporate finance practices.

- Exempting proposals that are unlikely to affect the national interest and increase the consistency of exemptions across the different acquisition types.

- Amending the legislation so that it applies irrespective of the transaction structuring (for example, moving from shares to securities, inclusive of units in trusts, and providing similar outcomes whether a direct or indirect acquisition (for example, acquiring a property or its holding company).
Let’s talk

For a deeper discussion of how these issues might affect your business, please contact:

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