Other News

1 March 2014

Notice of data matching program

On 28 January 2014, the Commissioner of Taxation published a Commonwealth Gazette Notice stating that the Australian Taxation Office (ATO) will acquire details from various local government Council and Shire authorities throughout Queensland, New South Wales, Victoria, Tasmania, South Australia, Western Australia and the Northern Territory, of entities receiving taxable payments from local government authorities in the 2010-11, 2011-12, 2012-13 and 2013-14 financial years.

This information will be electronically matched with certain sections of ATO data holdings to identify non-compliance with lodgment and payment obligations under taxation law.

This program is called the Local Government Payments (2011, 2012, 2013 and 2014 financial years) Data Matching Program.

Future of financial advice (FOFA) amendments

On 29 January 2014, the Federal Assistant Treasurer released for public consultation, draft regulations and legislation to enact its announced reforms to FOFA. Proposed key amendments include:

- removing the opt-in requirement;
- streamlining the annual fee disclosure requirements;
- amending the best interests duty to allow for scaled advice;
- exempting general advice from conflicted remuneration; and
- amending ‘grandfathering’ to allow for adviser movements.

In releasing the draft regulations and legislation, the Assistant Treasurer said that - “In order to provide certainty for industry and to ensure that the measures have effect as soon as possible, the Government will implement time sensitive measures through regulations to the extent legally possible, with amendments to be subsequently made in the primary legislation.”

It is the Government’s intention that ‘interim regulations’ (i.e. those made redundant by the passing of the legislative amendments) will be repealed once the legislative amendments have been passed, while those amendments best addressed via regulations will remain in place.

According to the Assistant Treasurer’s media statement, the Government anticipates that regulations will be made at the end of March 2014 and that a Bill will be introduced into Parliament in the 2014 autumn sitting period, with passage scheduled for the winter sitting period.

Offshore Banking Unit reforms

On 30 January 2014, the Federal Assistant Treasurer announced that 1 July 2015 will be the start date for reforms to the Offshore Banking Unit (OBU) regime that were originally announced in the 2013-14 Federal Budget.

In his media statement, the Assistant Treasurer said that - “This step will provide business with certainty by allowing targeted integrity rules together with other Offshore Banking Unit reforms, including recommendations by the Johnson Report, such as reviewing the activities eligible for the OBU concession, to be fully considered and implemented in one complete package.”
Investment Manager Regime - Element 3 - Exposure Draft Three

On 31 January 2014, the Federal Government released a further exposure draft for the third and final element of the Investment Manager Regime (IMR). According to the media statement issued on 31 January 2014, the exposure draft legislation is designed to remove tax impediments to foreign investment into or through Australia by foreign managed funds. Under the proposed legislation, the gains of qualifying foreign funds from the disposal of certain financial arrangements will be exempt from Australian tax.

The exposure draft follows industry consultation, including submissions received on earlier exposure drafts.

Tax compliance: Enhanced third party reporting, pre-filling and data

The Commonwealth Treasury has released a discussion paper on a 2013-14 Federal Budget measure designed to improve taxpayer compliance by enhancing the information reported to the Australian Taxation Office (ATO) by a range of third parties through the introduction of new reporting regimes.

Treasury is specifically interested in hearing views on the potential compliance cost impact on third party entities involved in the sale of real property, shares and units in unit trusts and the provision of merchant debit and credit services which, under this proposal, will be required to collate and report certain taxpayer information to the ATO on a regular basis from 1 July 2014.

Submissions on the discussion paper are due by Tuesday, 11 March 2014.

Inspector General of Taxation: Work Program for 2014 and beyond

The Inspector-General of Taxation (IGT) has announced the consultation process to establish his future Work Program. The IGT reviews systems and processes set up by the Australian Taxation Office (ATO) to administer tax and superannuation laws. A number of possible topics have been listed as potential items of review including the ATO’s application of the general anti-avoidance rules in the tax law and the ATO’s audits of employer obligations.

If you have any relevant issues you would like raised with the IGT, contact your usual PwC adviser or contact Nick Houseman on +61 (2) 8266 4647.

Submissions for suggested topics are due by 21 March 2014.

Amendments to the Farm Management Deposits Scheme

On 12 February 2014, the Federal Assistant Treasurer announced that the Federal Government will amend the Farm Management Deposit (FMD) scheme to exclude FMDs from the operation of the unclaimed money provision in the Banking Act 1959 (Cth).

The Assistant Treasurer also released for public consultation, exposure draft legislation and accompanying explanatory material that gives effect to the proposal and to the Government’s decision to:

- increase the ‘off-farm’ income threshold from $65,000 to $100,000, allowing farmers to earn more income from non-primary production sources in an income year before being prevented from making new FMDs; and
- facilitate the consolidation of FMDs, by eliminating tax consequences arising when multiple FMDs are consolidated into a single deposit.

Promoter penalties imposed for failing to properly implement scheme ruled on by the Commissioner

In Commissioner of Taxation v Barossa Vines Ltd [2014] FCA 20, the Federal Court imposed penalties on four individuals and a corporation (the scheme arrangers) under the promoter penalty regime (Division 290 of Schedule 1 to the Taxation Administration Act 1953 (Cth)). The penalties were for contravention of sub-section 290-50(2) of that Schedule.

Briefly:

- The company (Barossa Vines) was the ‘responsible entity’ of two ‘managed investment schemes’ relevant to the proceedings.
- The schemes were marketed to the public as participation (as ‘growers’) in the establishment and ongoing operation of a vineyard lot. One scheme (the 2007 year project) related to the 2007 financial year and the other scheme (the 2008 year project) related to the 2008 financial year.
Three of the individual scheme arrangers were directors of Barossa Vines, and were also directors of the company (Agribusiness) engaged by Barossa Vines to perform services, including establishing each grower’s vineyard lot, replacing rootlings which failed, and ongoing services which included maintaining each grower’s vineyard lot in accordance with good viticultural practices.

The fourth individual scheme arranger was the general manager of Agribusiness.

Each of the four individual scheme arrangers received consultancy fees from Agribusiness.

Whilst the Commissioner also instigated proceedings under Division 290 against Agribusiness, these were discontinued after Agribusiness was placed in liquidation.

Each scheme was marketed with a ‘product ruling’ issued by the Commissioner.

Each product ruling ruled on the income tax implications of each grower’s participation in the relevant scheme, such implications including that the growers would be entitled to claim certain tax deductions for amounts incurred through their participation in the relevant scheme. In this respect, the Commissioner also ruled in each ruling, that he would exercise discretion under sub-section 35-55(1)(b) of the ITAA 1997 for growers for the income years ended 30 June 2007 to 30 June 2010 (in respect of the 2007 year project) and for the income years ended 30 June 2008 to 30 June 2011 (in respect of the 2008 year project) - subject to the project being carried out in the manner described in each ruling. This conditional exercise of discretion, under the ‘non-commercial loss rules’ in Division 35 of the ITAA 1997, would have the effect of allowing losses from participation in the relevant project to be offset against the grower’s other assessable income in the income year in which the losses arose.

The schemes as outlined in each ‘product ruling’ were not however implemented by the scheme arrangers in the manner described in the relevant ruling. Relevantly, in relation to the scheme marketed in 2007, there was no planting of rootlings before 30 June 2007, and in relation to the scheme marketed in 2008 there was planting of cuttings instead of rootlings.

The effect of the schemes not being implemented in the manner outlined in the relevant ruling was that the growers were not entitled to claim the deductions that would otherwise have been available i.e. if the schemes had been implemented in the manner specified in each ruling.

The Commissioner instigated proceedings against the scheme arrangers, and after mediation, the Commissioner and the scheme arrangers put forward a statement of agreed facts and joint submissions on penalties that should be imposed.

Under sub-section 290-50(2) of Schedule 1, an entity commits an offence (and is liable to penalty under Division 290) if the entity engages in conduct that results in a scheme that has been promoted on the basis of conformity with a product ruling, being implemented in a way that is materially different from that described in the product ruling. The maximum penalty that can be imposed under Division 290 is the greater of:

- 5,000 penalty units (for an individual) or 25,000 penalty units (for a corporation); and
- twice the consideration received or receivable (directly or indirectly) by the entity and associates of the entity in respect of the scheme

At the time of the offence each penalty unit was $110.

Justice Besanko was satisfied that sub-section 290-50(2) had been contravened by the scheme arrangers, and after taking into account the conduct of the scheme arrangers, and the matters prescribed in section 290-50, Justice Besanko imposed a penalty of $125,000 on each of the four individuals and $625,000 on the Barossa Vines.
**Let’s talk**

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

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