Other News

1 September 2014

Exploring retirement income product options

On 21 July 2014, the Acting Assistant Treasurer announced the release of a discussion paper which considers key retirement income areas such as:

- The regulatory barriers restricting the availability of relevant and appropriate retirement income stream products;
- The minimum payment requirement for account-based pensions; and
- Facilitating deferred lifetime annuities by extending concessional taxation treatment.

The discussion paper asks a number of questions in respect of each of these areas, the aim of the questions being to ascertain interested parties’ views on possible design alternatives.

The discussion paper is available on the Treasury website and submissions will be accepted until 5 September 2014.

Productivity Commission draft report on childcare

On 22 July 2014 the Productivity Commission has released its draft inquiry report on Childcare and Early Childhood Learning which raises a number of recommendations aimed towards making childcare more affordable, flexible and accessible. From a taxation perspective, the Commission recommends that the current multiple childcare subsidies be replaced with a single subsidy that would see all eligible families receiving a minimum of 30 per cent of their reasonable childcare fees reimbursed by taxpayers. The Commission also recommends the removal of fringe benefits tax (FBT) concessions for not-for-profit childcare services, and the removal of the FBT exemption for employer provided childcare.

The Commission is inviting submissions on the draft report by 5 September 2014.

Takeovers Panel: Dividends Consultation Paper

On 10 January 2014, the Takeovers Panel released a Draft Guidance Note aimed at assisting market participants in understanding the Panel's approach in takeover offers to the treatment of franking credits when dividends are paid during a bid. The Panel received five submissions in relation to the Draft Guidance Note.

On 24 July 2014, the Panel issued a media statement advising that, following consideration of the submissions, the Panel had decided not to publish a Guidance Note on dividends at this time. The Panel also stated that “...as the Panel’s position on a number of issues arising from the consultation paper has not been settled, the Panel has decided not to publicly respond to the submissions made.”

ATO warning to property developers on incorrectly treating profits as capital gains

On 28 July 2014 the Australian Taxation Office (ATO) issued Taxpayer Alert 2014/1 which warns property developers against using trusts to treat proceeds from developments as capital gains instead of income. The Taxpayer Alert describes an arrangement whereby a trust (commonly a special purpose or new trust) is used by an entity that carries on property development to undertake a particular property development and to then return the proceeds for sale on capital account. This treatment purportedly results in access to the general 50 per cent
capital gains tax (CGT) discount. The Alert states that in some cases the trust deed may expressly state that the purpose of the trust is to hold the developed property as a capital asset to generate rental income. In other cases the trust deed may be silent as to its purpose. However, the arrangements to which the Alert is directed are those whereby the development is then undertaken in a manner which is at odds with the stated purpose of treating the developed property as a capital asset. According to the Alert, relevant matters that may indicate a revenue profit making motive as opposed to a long term capital investment include:

1. The documents prepared in connection with obtaining finance for the development may indicate that the dwellings constructed on the land are to be sold within a certain timeframe and that the proceeds are to be used to repay the loan.

2. Communication with local government authorities overseeing building approvals may describe the activity as being the development of property for sale.

3. Real estate agents may be engaged early in the development process, and advertising to the general public may indicate that the dwellings/subdivided blocks of land are available to be purchased well in advance of the project’s completion, including sales off the plan.

4. The sale of the property soon after completion of the development, where the underlying property may have been held for as little as 13 months.

According to the Alert, the ATO will audit these arrangements to determine whether the gross proceeds should be treated as proceeds from the sale of trading stock, or alternatively, whether the net proceeds (i.e. the profit) should be assessed as ordinary income. In either case, relative to treating the arrangement on capital account, there will usually be an increase in assessable income of the trust, and this increase in assessable income would attract administrative penalties payable by the trustee and/or the beneficiaries.

In its media release, the ATO is encouraging affected property developers to voluntarily disclose any understatement of assessable income arising from adopting these arrangements and treating the proceeds on capital account. Where there is voluntary disclosure, administrative penalties in respect of the disclosed positions taken in tax returns lodged will be reduced from the level that will otherwise apply.

**ATO launches new small business initiatives**

In a speech at the Council of Small Business of Australia’s 12th National Summit on 8 August 2014, the Commissioner of Taxation outlined steps the ATO is taking to streamline internal processes and procedures to improve small business engagement with the ATO, including two new initiatives:

- a Web Chat service - ‘click to chat’ - that will be piloted in October so that small business owners can have real-time online conversations with ATO customer service officers to provide them with guidance and information on particular topics, and

- a Small Business Newsroom - an online news service which will replace a range of letters that the ATO previously sent out as this tool aims to become a one-stop online shop for all tax and superannuation news and alerts for small business.

**Financial planners brought within regime administered by the Tax Practitioners Board**

The **Tax Agent Services Amendment (Tax (Financial) Advisers) Regulation 2014** (the Regulation) which was registered on 23 July 2014 brings financial planners within the regime administered by the Tax Practitioners Board (the Board). Specially, the Regulation prescribes registration requirements for tax (financial) advisers under the **Tax Agents Services Act 2009** (Cth), and also sets out a number of other changes designed to bring tax (financial) advisers in line with other entities regulated by the Board under the **Tax Agents Services Act 2009** (Cth), including allowing the Board to recognise tax (financial) adviser associations, and requiring the listing of tax (financial) adviser associations, and requiring the listing of tax (financial) adviser associations under the **Tax (Financial) Advisers) Regulation 2014**.

According to the Explanatory Statement to the Regulation, the changes allow financial planners who provide tax (financial) advice services to register with
the Board with different qualification and experience requirements to tax agents. This recognises that tax (financial) advisers provide a subset of the services provided by tax agents. The prescribed qualification and experience requirements have been tailored to reflect the different nature of the service offered, when compared to the service offered by tax agents.

In addition, the Regulation clarifies that some services which are provided by an actuary are not a tax agent service, and that services provided by a trustee to members of a trust or a managed investment scheme are not tax agent services.

The Regulation also alters the experience requirements for BAS agents.

ATO guidance paper on tax treatment for transactions associated with cryptocurrencies including Bitcoin

On 20 August 2014, the ATO released a guidance paper which provides an overview of the tax treatment for transactions associated with cryptocurrencies, specifically Bitcoin. In stating that the guidance in the paper as being ‘general in nature’, the ATO lists the following qualifications with respect to the guidance included in the paper:

1. Statements about tax deductibility assume that the ordinary conditions for a deduction are satisfied.

2. For goods and services tax (GST) purposes, the paper assumes supplies are connected with Australia, relevant taxpayers are registered or required to be registered and supplies are not GST-free. It is also assumed that acquisitions satisfy the creditable purpose requirements of the GST law.

In its summary to the paper, the ATO states that transacting with Bitcoin is akin to a barter arrangement, with similar tax consequences. The ATO also specifies the records that are required to be kept in relation to these transactions. These are:

- the date of the transactions
- the amount in Australian dollars (which can be taken from a reputable online exchange)
- what the transaction was for, and
- who the other party was (even if it’s just their Bitcoin address).

In concluding that transacting with Bitcoins is akin to a barter arrangement, the ATO’s views as stated in the guidance paper are that:

- Bitcoin is neither money nor a foreign currency.
- The supply of Bitcoin is not a ‘financial supply’ for GST purposes.
- Bitcoin is an asset for capital gains tax (CGT) purposes.

In the case where Bitcoin is used for personal transactions, the paper states that generally, there will be no income tax or GST implications if the person is not in business or carrying on an enterprise, and the person simply pays for goods or services in Bitcoin (but see comments below regarding Bitcoin investments).

Additionally, the paper states that where a person uses Bitcoin to purchase goods or services for personal use or consumption, any capital gain or loss from disposal of the Bitcoin will be disregarded (as a personal use asset) provided the cost of the Bitcoin is $10,000 or less.

With respect to using Bitcoin in business, the following is a summary of the views expressed by the ATO in the paper:

- In relation to receiving Bitcoin for goods or services provided as part of the entity’s business, transacting with Bitcoins is akin to a barter arrangement such as is considered in Taxation Ruling IT 2668. For these transactions involving Bitcoin, the entity will need to record the value in Australian dollars as part of the entity’s ordinary income. The value in Australian dollars will be the fair market value which can be obtained from a reputable Bitcoin exchange.

- Where, in receiving Bitcoin in return for goods and services, a business is charged GST on that Bitcoin, the business will be able to claim input tax credits if the supply of the goods and services was a ‘taxable supply’.

- In relation to the use of Bitcoin by an entity in a business to purchase business items (including trading stock), the entity is entitled to a deduction based
on the arm’s length value of the item acquired.

- GST is payable by an entity on the supply of Bitcoin made in the course of or furtherance of the entity’s enterprise. The GST, which is calculated on the market value of the goods or services, will ordinarily be equal to the fair market value of the Bitcoin at the time of the transaction.

- The disposal of Bitcoin as part of carrying on a business may also have CGT consequences, however, any capital gain would be reduced by the amount that is included in the entity’s assessable income as ordinary income.

- Where an employee has a valid ‘salary sacrifice arrangement’ with their employer to receive Bitcoins as remuneration instead of Australian dollars, the payment of the Bitcoin is a fringe benefit and the employer will be subject to the provisions of the Fringe Benefits Tax Assessment Act 1986. Where however there is no valid salary sacrifice agreement, the remuneration is treated as normal salary or wages, with resulting obligations on the employer to withhold tax.

For entities that are in the business of ‘mining’ Bitcoin, or are carrying on a business of buying and selling Bitcoin as an exchange service, the paper states that any income derived from the transfer or sale of the Bitcoin would be included in assessable income, and any expenses incurred in respect of the mining activity or exchange service (including acquisition of Bitcoin for sale) would be allowed as a deduction (subject to application of the non-commercial loss provisions of the Income Tax Assessment Act 1997). Additionally, the Bitcoin in each case would be treated for tax purposes as trading stock and subject to the trading stock provisions in that Act.

On the question of GST issues for these businesses, the paper states that the supply of the Bitcoin in the course of or furtherance of a Bitcoin mining enterprise or an exchange service would result in GST being payable on that supply. In the case of a Bitcoin mining enterprise, an input tax credit claim would be available in respect of acquisitions that made in the course of carrying on that enterprise. In the case of an exchange service, the paper states that input tax credits will be available for Bitcoin acquired if the supply of Bitcoin is a taxable supply.

With respect to the acquisition of Bitcoin as an investment, the paper states that the investor will not be assessed on any profits resulting from the sale or be allowed any deductions for any losses made, provided that:

- the transactions does not amount to a profit-making undertaking or plan.

However, the paper goes on to state that CGT may apply to the disposal of the Bitcoin i.e. because the Bitcoin is an asset for CGT purposes (but subject to comments above about personal transactions).

There would be no GST consequences where the Bitcoin is not supplied or acquired in the course or furtherance of an enterprise carried on.

The guidance paper does not bind the ATO (as does a public ruling) but in this respect it is relevant to note that the ATO has now published 4 draft Tax Determinations and a draft GST Ruling dealing with the above issues, and it is anticipated that these will be finalised as binding positions of the ATO in due course.

**ATO data matching projects**

Through the publication of Commonwealth Gazette notices the Commissioner of Taxation has notified three new data matching programs to be conducted by the ATO. These are:

- **Taxable Government Grants & Payments (2014)** where the ATO will acquire details of entities receiving taxable grants and payments from various Federal, State and Territory and Local Government departments, agencies and authorities.
Let’s talk

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

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Banking Transparency (2012-2015) where the ATO will request and collect account details of bank customers to identify Australian resident taxpayers with offshore bank accounts which may evidence undeclared income and/or gains for the years ended 30 June 2012 to 2015.

Music Royalty Payments (2011-2013) where the ATO will acquire details of entities collecting and distributing music royalty payments for the 2011, 2012 and 2013 financial years.

The purpose of the above programs is to identify non-compliance with lodgement, payment and reporting obligations under taxation laws.

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