April 2017

TaxTalk Monthly

Keeping you up to date on the latest Australian and international tax developments

Corporate Tax Update

ATO consultation on tax incentives for early stage innovation companies

The Australian Taxation Office (ATO) has released the following discussion papers on technical issues associated with the tax incentives that apply to investors in early stage innovation companies (ESICs) from 1 July 2016:

- when must a company be a 100 per cent subsidiary for its income and expenses to be accounted for under the ESIC 'early stage' test,
- 3-year expense test and whether expenditure incurred after the test time being the time when shares are issued to investors but still in the 'current year', are to be included, and
- The meaning of the phrase 'incurred total expenses' in the innovation company tests.

Comments can be made until 10 April 2017.

Addendum to R&D alert on software development projects

An Addendum was made to Taxpayer Alert TA 2017/5:Claiming the Research and Development Tax Incentive for software development activities to further clarify when routine testing steps in software development projects should not be claimed and when they may be eligible Research and Development (R&D) activities.

Let's talk

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

Tom Seymour, Managing Partner
+61 (7) 3257 8623
tom.seymour@pwc.com

Warren Dick, Sydney
+61 (2) 8266 2935
warren.dick@pwc.com

Murray Evans, Newcastle
+61 (2) 4925 1139
murray.evans@pwc.com

Alistair Hutson, Adelaide
+61 (8) 8218 7467
alistair.hutson@pwc.com

David Ireland, Sydney
+61 (2) 8266 2883
david.ireland@pwc.com

Julian Myers, Brisbane
+61 (7) 3257 8722
julian.myers@pwc.com

Jason Karametos, Melbourne
+61 (3) 8603 6233
jason.karametos@pwc.com

Kirsten Arblaster, Melbourne
+61 (3) 8603 6120
kirsten.arblaster@pwc.com

Rob Bentley, Perth
+61 (8) 9238 5202
robert.k.bentley@pwc.com

Employment Taxes Update

New superannuation changes

A number of changes to the superannuation system announced by the Australian Government in the 2016-17 Federal Budget to improve the sustainability, flexibility and integrity of Australia's superannuation system are now law and will take effect from 1 July 2017.

While the changes will primarily impact the personal tax affairs of employees, all employers need to be aware that the changes may have flow on impact for a business's existing payroll systems and processes in supporting the needs of its employees. As an example, the new carry-forward of unused concessional contributions from 1 July 2018 will be best used by employees when they are able to easily access information from their employer in relation to their concessional superannuation contributions made in earlier financial years.

If you have any questions in relation to how the changes impact either your obligations as an employer or your payroll systems, please reach out to your local PwC contact.

Changes to NSW payroll tax provisions

The *State Revenue Legislation Amendment Bill 2017* (NSW) was passed by both Houses of Parliament during the month without amendment.

The purpose of the measures enacted by this Bill is to remove any doubt that wages paid under an employment agency contract to a service provider who is a common law employee of the employment agent will be exempt from payroll tax, as long as the wages would be exempt from payroll tax had the service provider performed the services as an employee of the client. This would typically be the case where the client is a not-for-profit entity that is not liable for payroll tax.

Other legislative changes brought about by this Bill include the creation of a payroll tax exemption for wages paid under the Supporting Leave for Living Organ Donors Programme, and updates to the cents-per-kilometre motor vehicle allowance exemption to reflect recent changes in Commonwealth legislation.

Submission on the impact of non-payment of Superannuation Guarantee

The Inspector-General of Taxation (IGOT) has released its submission to the Senate Economics References Committee's Inquiry into the impact of non-payment of the Superannuation Guarantee. The submission explores some of the challenges and potential solutions in contrast to previous IGOT reviews on the Australian Taxation Office's administration of the superannuation guarantee charge and its employer obligations compliance activities which provide more detailed discussion and analysis.

Let's talk

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

Greg Kent, Melbourne
+61 (3) 8603 3149
greg.kent@pwc.com

Stephen Baker-Smith, Melbourne
+61 (3) 8603 0045
stephen.baker-smith@pwc.com

Rohan Geddes, Sydney
+61 (2) 8266 7261
rohan.geddes@pwc.com

Katie Lin, Sydney
+61 (2) 8266 1186
katie.f.lin@pwc.com

Stephanie Males, Canberra
+61 (2) 6271 3414
stephanie.males@pwc.com

Maria Ravese, Adelaide
+61 (8) 8218 7494
maria.a.ravese@pwc.com

Paula Shannon, Brisbane
+61 (7) 3257 5751
paula.shannon@pwc.com

Penelope Harris, Perth
+61 (8) 9238 3138
Penelope.harris@pwc.com

Global Tax Update

Latest news from international tax and transfer pricing

Draft ruling on corporate tax residency

On 15 March 2017, the Australian Taxation Office (ATO) released Draft Tax Ruling TR 2017/D2 setting out the Commissioner's 'preliminary but considered view' on how to apply the central management and control test for determining the tax residency of a company that is not incorporated in Australia, following the recent High Court decision in *Bywater Investments Ltd & ors v Commissioner of Taxation; Hua Wang Bank Berhad v Commissioner of Taxation.*

The Draft Ruling is proposed to apply from 15 March 2017 and replaces TR 2004/15 which was withdrawn on the same day.

A key issue to note is that the draft ruling indicates that, having regard to the High Court decision, if a company has its central management and control in Australia and it carries on business, it will satisfy the central management and control test of residency. That is, the central management and control of a business is considered to be factually part of carrying on that business.

Refer to this TaxTalk Alert, which reviews this draft ruling and other issues concerning corporate residency.

High Court refuses special leave application to appeal in Tech Mahindra

The High Court has refused the taxpayer's application for special leave to appeal against the decision of the Full Federal Court in *Tech Mahindra Limited v Commissioner of Taxation* [2016] FCAFC 130. In this case, the Full Federal Court held that Australia has the right to tax 'royalties' under the Indian Treaty in relation to payments received from services performed in India. Refer to TaxTalk Monthly: November 2016 for a background of the case.

Singapore-Australia Free Trade Agreement

On 20 March 2017, the Minister for Trade, Tourism and Investment tabled the agreement to amend the Singapore-Australia Free Trade Agreement and the accompanying National Interest Analysis in the House of Representatives. The review of the free trade agreement is a key plank of the Singapore-Australia Comprehensive Strategic Partnership, which was announced in 2015.

Double tax agreement with Israel

Prime Minister Malcolm Turnbull and the Prime Minister of Israel, Benjamin Netanyahu, indicated in a joint statement that Australia and Israel will work towards concluding a Double Taxation Agreement which would remove tax impediments to bilateral economic activity and enhance the integrity of the respective tax systems.

New Zealand's next steps in the BEPS journey

The New Zealand (NZ) Government is consulting on a range of new measures to tackle Base Erosion and Profit Shifting (BEPS). It has released three consultation papers proposing new measures in relation to permanent establishments, interest limitation rules and transfer pricing to strengthen NZ's rules for taxing large multinationals. In addition, stricter administrative measures have been proposed to give the NZ Inland Revenue extensive new powers when collecting information from multinational taxpayers who they consider to be non-cooperative. Refer to NZ TaxTips Alert for further information on the proposed measures.

OECD developments

The Organisation of Economic Co-operation and Development (OECD) has released the Economic Survey of Australia for 2017, which examines recent economic developments, policies and prospects. The survey also includes special chapters which cover innovation-driven productivity and boosting Research and Development outcomes.

The OECD and the International Monetary Fund (IMF) have jointly released a report which explores the nature of tax uncertainty, its main sources and effects on business decisions, and outlines a set of concrete and practical approaches to help policymakers and tax administrations shape a more certain tax environment. Over 80 per cent of survey respondents identified tax certainty as a very high or extremely high priority of their tax administration. Recommendations made in the report include: clarity, consultation/cooperative compliance and timely tax policy design and legislation; improvements to tax administration for avoiding and resolving disputes; and cooperation and coordination on the development of coherent international standards and guidance.

OECD and BEPS

2017 is the year of implementation of the measures delivered under the G20/OECD BEPS Project. In this regard, the OECD Secretary-General has released a report to G20 Finance Ministers which consists of:

- an update report by the OECD Secretary-General regarding the latest developments in the international tax agenda, including the G20/OECD Inclusive Framework on BEPS implementation; tax transparency (in particular, on automatic exchange of information) and tax and development, and
- a Progress Report to the G20 by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

In the Communiqué from the G20 Finance Ministers and Central Bank Governors Meeting in Germany, it was confirmed that work will continue on achieving a globally fair and modern international tax system. Some of the key commitments include:

- The OECD will report back on the progress of BEPS implementation by the G20 Leaders Summit in July 2017.

- The first signing round of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS will occur on 7 June 2017.

- The first automatic exchange of financial account information under the OECD Common Reporting Standard (CRS) will commence in September 2017.

- All jurisdictions were called on to sign and ratify the multilateral Convention on Mutual Administrative Assistance in Tax Matters and were urged to commit to implementing the CRS, and to take all necessary actions in order to start exchanges under the CRS by September 2018 at the latest.

In other developments:

- Belgium, Canada, Guernsey, the Netherlands, Italy and Mexico have signed a competent authority agreement with Hong Kong.

- Panama deposited its instrument of ratification for the Convention on Mutual Administrative Assistance in Tax Matters. Panama is expect to start exchanging CRS information in 2018. The Convention will enter into force for Panama on 1 July 2017.

- Malaysia has joined the inclusive framework on BEPS.

UK Spring Budget 2017

The United Kingdom (UK) Chancellor of the Exchequer announced his first budget on 8 March 2017. Although no significant new announcements regarding UK corporation tax were reflected in the budget, it reaffirmed the new government's commitment to previously announced measures, including:

- cutting the UK corporate tax rate to 17 per cent,

- changing the interest deductibility (refer to Tax Insights from International Tax Services for further information) and loss relief rules, and

- simplifying the UK participation exemption (the substantial shareholdings exemption).

The budget also includes announcements of several reviews and consultations, giving rise to the potential for legislative changes in the forthcoming 2017 Autumn Budget.

For a detailed analysis of the key budget measures, refer to Tax Insights from International Tax Services and the PwC UK budget website.

South African Budget

The South African 2017 Budget was handed down by the South African Minister of Finance on 22 February 2017. Highlights include:

- Personal Income Tax: a new 45 per cent tax bracket for individuals, which will apply to taxable income in excess of R1.5 million

- Corporate Tax: increase in the dividend tax rate from 15 per cent to 20 per cent and a commitment to focus on BEPS, including automatic exchange of financial information from 1 September 2017.

Refer to PwC South Africa's 2017 Budget highlights.

US President Trump calls for action on tax reform and other priorities

In his first address to a joint session of Congress, President Donald Trump called for action on tax reform to "restart the engine of the American economy – making it easier for companies to do business in the United States (US) and much harder for companies to leave." While offering few details, President Trump said his economic team is "developing historic tax reform that will reduce the tax rate on our companies so that they can compete and thrive anywhere and with anyone." President Trump also said his plan "will provide massive tax relief for the middle class." Refer to Tax Insights from Washington National Tax Services for further information.

US: IRS guidance on safe harbour for information reporting penalties

The US Internal Revenue Service (IRS) has issued a Notice to provide guidance on a de minimis error safe harbour from information reporting penalties for failure to file correct information returns or correct payee statements. The Notice applies to information returns required to be filed and payee statements required to be furnished after 31 December 2016. Refer to Tax Insights from Financial Markets for further information.

US: Denial or revocation of US passports if certain taxes are unpaid

The IRS will begin enforcing a new law in early 2017 that could result in the US State Department revoking, limiting, or refusing to renew a US passport for travelers with 'seriously delinquent tax debt.' This new enforcement action appears to encourage individual taxpayers to be in compliance with their tax debts before availing themselves of the privilege of travelling with a US passport. Refer to Tax Insights from Global Mobility for further information.

Explore PwC's global tax research and insights

Let's talk

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

Peter Collins, Sydney
+61 (3) 8603 6247
peter.collins@pwc.com

Robert Hines, Sydney
+61 (2) 8266 0281
robert.hines@pwc.com

Paul McNab, Sydney
+61 (2) 8266 5640
paul.mcnab@pwc.com

Michael Taylor, Melbourne
+61 (8) 8603 4091
michael.taylor@pwc.com

Nick Houseman, Sydney
+61 (2) 8266 4647
nick.p.houseman@pwc.com

Eddy Moussa, Sydney
+61 (2) 8266 9156
eddy.moussa@pwc.com

Greg Weickhardt, Melbourne
+61 (3) 8603 2547
greg.weickhardt@pwc.com

Michael Bona, Brisbane
+61 (7) 3257 5015
michael.bona@pwc.com

Indirect tax update

ATO consultation on GST on low value imported goods

The Goods and Services Tax (GST) law is to be amended by Treasury Laws Amendment (GST Low Value Goods) Bill 2017 to ensure that GST is payable on certain supplies of low value goods that are purchased by consumers and are imported into Australia. In this regard, the Australian Taxation Office (ATO) has issued draft Law Companion Guideline LCG 2017/D2. The draft LCG discusses when a supply of low value goods will be connected with the indirect tax zone, and how to calculate the GST payable on such a supply. It also addresses the rules to prevent double taxation of goods, to correct errors or deal with changes in the GST treatment of a supply and how the rules interact with other rules.

In addition, the ATO is also consulting on the following aspects of its administration of the new rules:

- the information requirements for suppliers, or entities treated as suppliers for GST purposes (i.e the actual supplier of the goods, an operator of an electronic distribution platform, or a redeliverer)
- an alternative method for converting foreign currency amounts to Australian dollars to determine whether supplies are low value goods, and
- an alternative method for converting foreign currency amounts to Australian dollars when calculating GST payable under the proposed amendments.

ATO reviewing GST and non-commercial activities of charities – benchmark market values

The ATO is currently reviewing its publication, *GST and non-commercial rules – benchmark market values*. Accommodation supplied by an endorsed charity or gift-deductible entity is GST-free if the consideration received for the accommodation is less than 75 per cent of market value including GST. This publication includes the ATO view of suitable market values for certain supplies of accommodation, meals and employment services. The review will focus on Table 5: Long-term accommodation – weekly figures and Table 6: Employment service fees.

Release of Draft GST legislative determinations

The ATO has released the following Draft GST legislative determinations for comment:

- WAN 2017/D2: Draft *A New Tax System (Goods and Services Tax) Act 1999*: Waiver of Adjustment Note Requirement (No XX) 2017 – Decision of a Court or Tribunal
- PAR 2017/D1: Draft *A New Tax System (Goods and Services Tax) Act 1999* (Particular Attribution Rules for Cooling off Periods) Determination (No. 5) 2017
- PAR 2017/D2: Draft *A New Tax System (Goods and Services Tax) Act 1999* (Particular Attribution Rules for Retention Payments) Determination (No. XX) 2017
- PAR 2017/D3: Draft *A New Tax System (Goods and Services Tax) Act 1999* (Particular Attribution Rules for Supplies and Acquisitions made through Agents) Determination (No. 6) 2017
- PAR 2017/D4: Draft Goods and Services Tax: Application of Particular Attribution Rules Determinations (Determination (No.08) 2017)
- PAR 2017/D5: Draft *A New Tax System (Goods and Services Tax) Act 1999* (Particular Attribution Rule for Supplies of Gas or Electricity made by Public Utility Providers) Determination (No XX) 2017
- PAR 2017/D6: Draft Goods and Services Tax: Particular Attribution Rules Devices Determination (No XX) 2017 for Banknote and Coin-operated Machines and Similar
- PAR 2017/D7: Draft Goods and Services Tax: Particular Attribution Rules Determination (No XX) for Lay-By Sales
- RCTI 2017/D5: Draft *Goods and Services Tax: A New Tax System (Goods and Services Tax)* Act 1999 Recipient Created Tax Invoice Determination (No. 0023) 2017 for wholesalers of photographic imaging equipment and related supplies
- RCTI 2017/D6: Draft Goods and Services Tax: Recipient Created Tax Invoice Determination (No. XX) 2017 for Agricultural Products, Government Related Entities and Large Business Entities
- RCTI 2017/D7 Draft Goods and Services Tax: Recipient Created Tax Invoices Determination (No XX) 2017 for Demand Side Response Aggregators
- RCTI 2017/D8 Draft Goods and Services Tax: Recipient Created Tax Invoices Determination (No XX) 2017 for Quarry Operators
- RCTI 2017/D9 Draft Goods and Services Tax: Recipient Created Tax Invoice Determination (No XX) 2017 for Australian Direct Property Investment Association Inc and their Originating Members
- WTI 2017/D1: Draft *A New Tax System (Goods and Services Tax) Act 1999* Waiver of Tax Invoice Requirement Determination (No. XX) 2017 – Decision of a Court or Tribunal
- WTI 2017/D2: Draft *A New Tax System (Goods and Services Tax) Act 1999* Waiver of Tax Invoice Requirement Determination (No. XX) 2017 – customers of Custom Service Leasing Pty Ltd
- WTI 2017/D3: Draft *A New Tax System (Goods and Services Tax) Act 1999* Waiver of Tax Invoice Requirement Determination (No XX) 20XX for intangible supplies from offshore

AAT considers entitlement to input tax credits

In *Eastwin Trade Pty Ltd v Commissioner of Taxation (Taxation)* [2017] AATA 140, the Administrative Appeals Tribunal (AAT) has affirmed the Commissioner's decision and held the applicant was not entitled to input tax credits on the purchase of 'scrap gold' as it failed to prove that it actually made any 'creditable acquisitions' and did not hold any valid tax invoices for such acquisitions. Although the evidence pointed to the fact that there was some kind of acquisition, it was "devoid of any credible details about the identity and reality of the 'supplier' and that entity's circumstances and activities".

Let's talk

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

Michelle Tremain, Perth
+61 (8) 9238 3403
michelle.tremain@pwc.com

Adrian Abbott, Sydney
+61 (2) 8266 5140
adrian.abbott@pwc.com

Jeff Pfaff, Brisbane
+61 (7) 3257 8729
jeff.pfaff@pwc.com

Brady Dever, Sydney
+61 (2) 8266 3467
brad.dever@pwc.com

Mark Simpson, Sydney
+61 (2) 8266 2654
mark.simpson@pwc.com

Ross Thorpe, Perth & Sydney
+61 (8) 9238 3117
ross.thorpe@pwc.com

Matthew Strauch, Melbourne
+61 (3) 8603 6952
matthew.strauch@pwc.com

State Taxes Update

NSW legislative amendments

The State Revenue Legislation Amendment Bill 2017 (NSW) has passed the New South Wales (NSW) Legislative Assembly and will now proceed to the NSW Legislative Council. The Bill makes various amendments to the *Duties Act 1997 (NSW), Land Tax Management Act 1956 (NSW), and the Payroll Tax Act 2007 (NSW).*

In relation to duty, the Bill proposes a number of amendments to improve the effectiveness of landholder duty provisions, including measures to improve the integrity of the provisions, and in some cases increase the level of consistency with other jurisdictions. The Bill also strengthens the duties general anti-avoidance provisions and to clarify the administration arrangements for assessment of electronic documents.

The Bill also includes a provision to better make lessees aware of their potential land tax liabilities.

NSW Revenue Ruling on application of foreign person surcharges to discretionary trusts

The NSW Office of State Revenue has released Revenue Ruling No. G 010: Surcharge Land Tax and Duty – Discretionary Trusts. A discretionary trust may be liable for duties and land tax surcharges on foreign persons if any potential beneficiary is a foreign person. This ruling indicates that the surcharge legislation is to be administered on the basis that the Chief Commissioner has discretion to exempt a trustee of a discretionary trust from surcharge purchaser duty and/or surcharge land tax if satisfied that the trustee is not involved in a scheme or arrangement for the evasion or avoidance of these taxes. Furthermore, within six months after granting the exemption, the trust deed must be amended so that the trustee is no longer liable for the taxes. If the trust deed is not amended within the required timeframe, the exemption will be rescinded with retrospective effect.

This Ruling is to operate with retrospective effect from 21 June 2016, until retrospective legislation is passed to confirm the concession.

WA State Administrative Tribunal finds duty applied to deeds executed on windup of partnership

In *Rojoda Pty Ltd V Commissioner of State Revenue* [2017] WASAT 35, the Western Australia State Administrative Tribunal has affirmed the decision and assessment of duty by the Commissioner of State Revenue on deeds executed in relation to winding up two partnerships. The Tribunal found that the deeds were new declarations of trust which created new equitable interests in the relevant properties, and therefore attracted duty. The Tribunal also rejected the applicant's argument that a reduction of duty should be allowed under section 78 of the *Duties Act 2008 (WA)*.

Victoria to address housing affordability

New measures were announced by the Victorian Government to address housing affordability. This includes the abolition of stamp duty for first home buyers for purchases of both new and established homes below $600,000, with a concession available for homes valued between $600,000 and $750,000; removal of off-the-plan stamp duty concessions on investment properties; and the introduction of a new tax for 'vacant' dwellings. In addition, the Victorian Government has announced two new 'shared equity' programs that aim to assist first home owners get into the property market. This TaxTalk Alert considers the proposed changes in detail.

Let's talk

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

Barry Diamond, Melbourne
+61 (3) 8603 1118
barry.diamond@pwc.com

Costa Koutsis, Sydney
+61 (2) 8266 3981
costa.koutsis@pwc.com

Superannuation update

Objective of superannuation

At the time of writing, the Superannuation (Objective) Bill 2016 was still before Federal Parliament. The Senate Economics Committee tabled its report on the Bill and recommended that it be passed. The Bill establishes a legislative framework to guide the development of future superannuation policy by enshrining the primary objective of the superannuation system in legislation and the subsidiary objectives of the superannuation system in regulation.

The subsidiary objectives of the superannuation system will be prescribed by regulation. They are to:

- facilitate consumption smoothing over the course of an individual's life,
- manage risks in retirement,
- be invested in the best interests of superannuation fund members,
- alleviate fiscal pressures on Government from the retirement income system, and
- be simple, efficient and provide safeguards.

Investment in infrastructure or privatisations

In February 2017, the Australian Taxation Office (ATO) released a draft framework covering its views on a range of tax issues related to privatisations and infrastructure investments. Since its release, and when combined with the ATO's subsequent Taxpayer Alert 2017/1, the overall result has been to generate a great deal of uncertainty around:

- infrastructure investments structures,
- the use of stapled structures more generally,
- the concept of 'control',
- the impact for foreign bidders on Australian infrastructure asset sales (eg FIRB's consideration of Australian tax consequence)
- the use of gearing; and the potential application for the tax law's general anti-avoidance provisions.

We expect this to continue to develop for some time.

The ATO has expressed some strong views in regards to these matters which many funds will need to consider when undertaking any transactions in this area. In addition, funds should consider the ATO's views in light of historical transactions.

ATO publishes guidance on the superannuation changes

The ATO has published new guidance for individuals regarding the recent superannuation changes, including guidance on determining which changes apply, examples, and actions that can be undertaken pre – and post-1 July 2017 in relation to the change to the concessional and non-concessional contributions caps.

Concessional contributions – defined benefit interests and constitutionally protected funds

The ATO has released Law Companion Guide LCG 2016/11 on 28 February 2017 (previously issued in draft on 9 December 2016) dealing with how the amendments to the calculation of concessional contributions and excess concessional contributions apply to contributions and amounts allocated by superannuation providers with defined benefit interests and constitutionally protected funds.

The various examples in LCG 2016/11 highlight the complexities that need to be taken into account by members with defined benefit interests.

Legislative instrument relating to reporting of new and closed member accounts

A new legislative instrument made on 1 February 2017, sets out the way in which superannuation funds (other than self-managed superannuation funds) need to report all new and closed member accounts from 31 March 2017.

The reporting, as a general rule, is required to be done daily or as soon as practicable after the event, but no later than five business days.

Fund administrators should be aware of these changes. However, funds may want to confirm this with their administrators.

CGT relief and the 2016 Budget measures

Another area of great uncertainty is the application of the Capital Gains Tax (CGT) relief provisions contained in the superannuation reform measures from the 2016-17 Federal Budget (relating to the transfer balance cap and assets of funds supporting Transition to Retirement Income Streams). For trustees of super funds, there is a great deal of uncertainty around how to consider the available elections in these provisions within the objective of acting in members' best interest. While the elections are formally required by the due date for lodgment of the 2017 income tax return, practically, the decisions need to be made a lot earlier than that.

There are a number of important questions funds need to address in regards to the CGT relief. Funds should start investigating these now.

Let's talk

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

David Ireland, Sydney
+61 (2) 8266 2883
david.ireland@pwc.com

Alice Kase, Sydney
+ 61 (2) 8266 5506
alice.kase@pwc.com

Matthew Strauch, Melbourne
+ 61 (3) 8603 6952
matthew.strauch@pwc.com

Marco Feltrin, Melbourne
+ 61 (3) 8603 6796
marco.feltrin@pwc.com

Peter Kennedy, Sydney
+ 61 (2) 8266 3100
peter.kennedy@pwc.com

Ken Woo, Sydney
+ 61 (2) 8266 2948
ken.woo@pwc.com

Abhi Aggarwal, Brisbane
+ 61 (7) 3257 5193
abhi.aggarwal@pwc.com

Jeff May, Melbourne
+ 61 (3) 8603 0729
jeffrey.may@pwc.com

Naree Brooks, Melbourne
+ 61 (3) 8603 1200
naree.brooks@pwc.com

Legislative update

Commonwealth revenue measures introduced into Parliament or registered as legislative instruments or regulations since our previous TaxTalk publication include:

- *Treasury Laws Amendment (2017 Enterprise Incentives No. 1) Bill 2017*, introduced into Parliament on 30 March 2017, proposes to give effect to further measures to support the Government's National Innovation and Science Agenda. Specifically, the Bill proposes amendments to introduce the 'similar business test' as an alternative test for companies to potentially access tax losses and net capital losses (and tax losses for listed widely held trusts) where they have changed their ownership. The objective of this measure is to enable those companies and trusts to seek out opportunities to innovate and grow without losing access to those losses made for years commencing on or after 1 July 2015. In addition, the Bill will allow taxpayers the ability to self-assess for depreciation purposes, the effective life of certain intangible assets that start to be held on or after 1 July 2016.

The following Bills have received Royal Assent:

- *Treasury Laws Amendment (Bourke Street Fund) Bill 2017* which includes the 2017 Bourke Street Fund Trust Account on the list of deductible gift recipients.
- *Tax and Superannuation Laws Amendment (2016 Measures No 2) Bill 2016* which among other things, introduces a statutory remedial power for the Commissioner and changes the primary producer income tax averaging rules .

At the time of writing, the Bills to implement the Diverted Profits Tax had completed their passage through Parliament and were awaiting Royal Assent. One of those Bills also will increase administrative tax penalties for taxpayers with total group-wide global income exceeding A$1 billion and also codify the OECD's BEPS Actions 8-10 into Australian transfer pricing laws. Refer to this Tax Talk Alert for further information.

In addition the following excise and custom notices have come into effect:

- Notice of Substituted Rates of Excise Duty for tobacco goods, effective from 1 March 2017, and
- Notice of Substituted Rates of Customs Duty for Excise-Equivalent Goods for various tobacco goods, effective from 1 March 2017.

Federal Parliament finished its Autumn session on Friday 31 March 2017. It will next resume sitting on Tuesday 9 May 2017, which is also the date for the 2017-18 Federal Budget.

Let's talk

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

Tom Seymour, Managing Partner
+61 (7) 3257 8623
tom.seymour@pwc.com

Alistair Hutson, Adelaide
+61 (8) 8218 7467
alistair.hutson@pwc.com

Jason Karametos, Melbourne
+61 (3) 8603 6233
jason.karametos@pwc.com

Warren Dick, Sydney
+61 (2) 8266 2935
warren.dick@pwc.com

David Ireland, Sydney
+61 (2) 8266 2883
david.ireland@pwc.com

Kirsten Arblaster, Melbourne
+61 (3) 8603 6120
kirsten.arblaster@pwc.com

Murray Evans, Newcastle
+61 (2) 61 4925 1139
murray.evans@pwc.com

Julian Myers, Brisbane
+61 (7) 3257 8722
julian.myers@pwc.com

Rob Bentley, Perth
+61 (8) 9238 5202
robert.k.bentley@pwc.com

Other news

Commissioner's address to the Tax Institute National Convention 2017

The Commissioner of Taxation, Chris Jordan, has delivered the keynote address to the Tax Institute's 32nd National Convention at the Adelaide Convention Centre, highlighting the Australian Taxation Office's (ATO) achievements in 2016 and new initiatives including:

- a new process in the Review and Dispute Resolution area called Fast Intensive Triage (FIT), which will triage all incoming objections,
- an update on progress of the Tax Avoidance Taskforce, and
- how the ATO is supporting clients to voluntarily get it right through its guidance products.

Commissioner's statutory remedial power now in effect

With the enactment of *Tax and Superannuation Laws Amendment (2016 Measures No 2) Act 2016*, the Commissioner's remedial powers have come into effect to allow the Commissioner of Taxation to modify the operation of existing tax law in limited circumstances. This includes when the current law produces unintended, negative impacts for taxpayers or creates excessive compliance costs. Any modifications made using the power must:

- not be inconsistent with the intended purpose or object of the law,
- have a negligible budget impact, and
- only apply where outcomes for an entity will be no less favourable than the existing law.

The ATO has developed a consultative process to submit potential issues that may be dealt with by the Commissioner's remedial power.

Board of Taxation's CEO update

The CEO of the Board of Taxation has provided an update following the first Board meeting of 2017, held on 16 February 2017 and hosted by PwC. The Board provided an update on the tax transparency code, noting that 72 organisations (including private and foreign companies) that represent more than 60 per cent of tax payable by corporate taxpayers have now indicated their intention to adopt the Code.

The Board continues to be involved with the Government's Black Economy Taskforce, as well as progressing several projects towards completion including:

- asset merger roll-over relief (the Board is in a position to finalise the report),
- residency tests for high wealth individuals,
- alignment of tax and accounting concepts,
- tax and the sharing economy,
- the consistency of core concepts applied under State and Federal tax laws, and
- targeted trust simplification.

ATO concern over lump sum payments received by healthcare practitioners

The ATO is concerned with the tax treatment of lump sum payments made by third parties that run healthcare centres to practitioners (which operate from these centres).

The ATO has seen some practitioners mistakenly treat the lump sum receipts as a capital gain, and apply the small business Capital Gains Tax (CGT) concessions. The ATO is of the view that generally these lump sum amounts are typically ordinary income for the practitioner's provision of services to their patients from the healthcare centre, and accordingly assessable income.

The ATO has started targeted activities and examinations of healthcare practitioners who may have incorrectly treated these lump sum payments as capital gains. It will provide advice and guidance to health practitioners to help them either self-identify these and emerging arrangements that are of concern, or as an early warning for those who may be considering them.

ATO's new draft effective life determinations

The ATO has released the following draft effective life determinations for depreciating assets used in the following industries:

- pulse and seed processing industry
- grain mill product manufacturing industry
- photographic film processing industry
- poultry processing industry
- textile floor covering industry
- cheese and other dairy product manufacturing.

The determinations are proposed to apply to assets purchased (or otherwise first used or installed ready-to-use) on or after 1 July 2017.

One-chance approach to penalties for small business and individuals

The ATO has released its Community Findings Report on its proposed changes to imposing penalties for small business and individuals where the ATO propose to offer one chance before applying a penalty for false and misleading statements for failure to take reasonable care and failure to lodge on time. The report indicates that there was majority support for the one chance approach, however some are concerned about how it would work in practice. The ATO will consider the feedback and share more information in the future.

'Sir Ivan Fire' bushfires declared a disaster for tax purposes

The Minister for Revenue and Financial Services has declared the February 2017 'Sir Ivan Fires' bushfires (Warrumbungle Shire of NSW) a disaster for the purposes of establishing Australian disaster relief funds. Donations to Australian disaster relief funds, established to provide relief in the aftermath of the bushfires, will be tax deductible for a period of two years from 13 March 2017.

Australian Small Business and Family Enterprise Ombudsman

The Minister for Small Business has announced a review into the operation of the Australian Small Business and Family Enterprise Ombudsman. The Review is to examine how efficiently and effectively the Ombudsman has undertaken the assistance and advocacy functions set out under the *Australian Small Business and Family Enterprise Ombudsman Act 2015* and to make recommendations for any improvements to these functions. Treasury is seeking comments on a short discussion paper covering key issues to guide stakeholder feedback. Submissions can be made until 12 April 2017.

Model of Australian Retirement Incomes and Assets

Currently, Treasury has a project underway to significantly enhance its capability to produce detailed modelling of retirement incomes in Australia. It has released a working paper which provides high-level details of the new Model of Australian Retirement Incomes and Assets and outlines a number of challenges and research questions for further consideration by Treasury and interested researchers.

Foreign Investment Framework 2017 Legislative Package

The Government has released a consultation paper on amendments to the Foreign Investment Framework, including proposed changes in the areas of residential land, non-vacant commercial land, low sensitivity business investment and fees. The paper also provides an opportunity for stakeholders to present examples on how technical issues in the legislation could be addressed. Submission were due to be made by 29 March 2017.

WTO's Trade Facilitation Agreement enters into force

The World trade Organisations (WTO's) Trade Facilitation Agreement entered into force on 22 February 2017. The agreement seeks to expedite the movement, release and clearance of goods across borders, launches a new phase for trade facilitation reforms all over the world, and creates a significant boost for commerce and the multilateral trading system as a whole.

Let's talk

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

Tom Seymour, Managing Partner
+61 (7) 3257 8623
tom.seymour@pwc.com

Warren Dick, Sydney
+61 (2) 8266 2935
warren.dick@pwc.com

Murray Evans, Newcastle
+61 (2) 61 4925 1139
murray.evans@pwc.com

Alistair Hutson, Adelaide
+61 (8) 8218 7467
alistair.hutson@pwc.com

David Ireland, Sydney
+61 (2) 8266 2883
david.ireland@pwc.com

Julian Myers, Brisbane
+61 (7) 3257 8722
julian.myers@pwc.com

Jason Karametos, Melbourne
+61 (3) 8603 6233
jason.karametos@pwc.com

Kirsten Arblaster, Melbourne
+61 (3) 8603 6120
kirsten.arblaster@pwc.com

Rob Bentley, Perth
+61 (8) 9238 5202
robert.k.bentley@pwc.com