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ATO guidelines: profit allocation within professional firms

The ATO has become aware that its guidelines on Everett assignments and the allocation of profits within professional firms are being misinterpreted for some higher-risk arrangements, including the use of related-party financing and self managed superannuation funds (SMSFs).

The guidelines have been suspended from 14 December 2017 to allow the ATO to consult with stakeholders on replacement guidelines.

Anyone considering new arrangements beginning after the cut-off date should contact the ATO to discuss the arrangement risk profile and the possibility of a private ruling.

Arrangements beginning before the cut-off date that comply with the guidelines and do not exhibit high risk factors shouldn't require action, but arrangements with high risk factors may be subject to ATO review.

> **TIP:** The ATO encourages anyone who is uncertain about how the law applies to their existing circumstances "to engage with us as soon as possible".

Housing affordability measures now law

Legislation has been passed to implement the 2017–2018 Federal Budget housing affordability measures. The following will start on 1 July 2018:

- the First Home Super Saver (FHSS) Scheme, which allows individuals to use specific amounts from their super to buy or construct a first home; and
- the option for individuals aged 65+ to make "downsizing" contributions of up to $300,000 to their super from selling a home they have owned for at least 10 years.

> **TIP:** An exemption from meeting the FHSS Scheme "first home" requirement will be available for people suffering financial hardship. "Financial hardship" criteria are likely to include circumstances where someone has limited savings, is currently renting and had a past interest in a home that was in a cheaper real estate market or when the person was in a relationship that has since broken down.

Fringe benefits tax: employees' private use of vehicles

The ATO has issued guidance for employers on determining an employee's private use of a vehicle.

Draft Practical Compliance Guideline PCG 2017/D14 should provide more certainty and transparency about the circumstances where the ATO won't apply compliance resources to investigating whether private vehicle use meets the car-related FBT exemptions.

Eligible employers who rely on this guideline won't need to keep records to prove that an employee's private use of a vehicle is minor, infrequent and irregular.

> **TIP:** The guideline includes specific eligibility conditions for employers and their employees' vehicle use. Talk to us about whether the new guidance applies to your FBT circumstances.

Tax consequences of trust vesting

The ATO has issued a long-awaited ruling on trust vesting, including changing a trust's vesting date and the CGT and income tax consequences of vesting.

TIP: A trust's "vesting date" is the day when the beneficiaries' interests in the trust property become fixed. The trust deed will specify the vesting date and the consequences of that date being reached. Vesting does not, of itself, ordinarily cause the trust to come to an end or cause a new trust to arise. In particular, the underlying trust relationship continues after vesting while the trustee still holds property for the takers.

The key points in the draft ruling are that:

- before vesting, it may be possible to extend the vesting date (by applying to a court or by the trustee exercising a power to nominate a new vesting date);
- it is too late to change the vesting date once it has passed (and the ATO says it is unlikely that a court would agree to do so); and
- continuing to administer a trust in a way that is inconsistent with the vesting terms can have significant CGT and income tax consequences.

Disclosing business tax debt information to credit agencies

The Federal Government has released draft legislation and a draft legislative instrument that, when passed, will authorise the ATO to disclose a business's tax debt to registered credit reporting bureaus where the business has not effectively engaged with the ATO to manage the debt.

The draft legislation intends to place tax debts on a similar footing as other debts, to encourage timely payment or engagement with the ATO for businesses that want to avoid having their debt information affect their creditworthiness. Disclosure to credit reporting bureaus will only be permitted if the ATO has given the taxpayer at least 21 days' notice beforehand.

Taxing employee share scheme dividend equivalent payments

The ATO has made a new determination that dividend equivalent payments made under an employee share scheme (ESS) are assessable to an employee as income when they receive the payment for or in connection with services they provide as an employee.

A "dividend equivalent payment" is a cash payment to an employee participant and beneficiary an ESS funded from dividends on which the trustee has been assessed in previous income years because no beneficiary of the trust was entitled to the income at the time.

A trustee that makes a dividend equivalent payment under an ESS must withhold an amount from the payment, even though the trustee is not the employee's employer.

TIP: The ATO offers a safe harbour from such payments being treated as income under specific circumstances. Get in touch with us to talk about whether your situation makes you eligible.

The new determination applies to dividend equivalent payments paid under the terms and conditions attached to ESS interests granted on or after 1 January 2018.

Superannuation integrity changes

The Government has released a consultation paper and exposure draft legislation to give effect to the following superannuation taxation integrity measures it announced in the 2017–2018 Federal Budget:

- the non-arm's length income (NALI) rules in s 295-550 of the *Income Tax Assessment Act 1997* for related-party superannuation fund transactions will be expanded from 1 July 2018 to also include expenses not incurred that would normally be expected to apply in a commercial arm's length transaction (eg reduced interest expenses, brokerage, accountancy fees or legal costs); and
- a member's share of the outstanding balance of a limited recourse borrowing arrangement (LRBA) will be included in the member's "total superannuation balance" for new LRBAs entered into on or after 1 July 2018.

The measures are designed to ensure that related-party transactions with super funds and LRBAs can't be used to circumvent the reduced contribution caps that apply from 1 July 2017. The changes should generally not affect LRBAs entered into with unrelated third parties for commercial rates of interest (and other expenses).

Guidance for SMSFs on transfer balance reporting

The ATO has released further guidance on when SMSFs need to report events affecting their members' transfer balance accounts (by making a transfer balance account report, or TBAR) for the purposes of the $1.6 million pension cap.

From 1 July 2018, SMSFs that have any members with a total superannuation balance of $1 million or more must report events impacting that member's transfer balance account within 28 days after the end of the quarter in which the event occurs.

SMSFs where all members have total super balances of less than $1 million can choose to report events which impact their members' transfer balances at the same time that the fund lodges its annual return.

The guidance also covers reporting requirements for retirement phase income streams and commutations (including commutation authorities).