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Bill to implement housing affordability CGT changes

As part of the 2017–2018 Budget, the Federal Government announced a range of reforms intended to reduce pressure on housing affordability. Legislation has now been introduced into Parliament that proposes to:

- remove the entitlement to the capital gains tax (CGT) main residence exemption for foreign residents; and
- modify the foreign resident CGT regime to clarify that, for the purpose of determining whether an entity's underlying value is principally derived from taxable Australian real property (TARP), the principal asset test is applied on an "associate inclusive" basis.

The Bill also proposes to amend the tax law to provide an additional discount on CGT for affordable housing. The discount of up to 10% will apply if a CGT event happens to an ownership interest in residential property used to provide affordable housing.

TIP: The main residence exemption means that CGT doesn't apply for a capital gain or loss that an individual makes from selling their main residence. A CGT discount applies if the dwelling was their main residence for only part of the time they owned it, or they partly used it to produce assessable income.

Changes to small business CGT concessions

Treasury has released draft legislation to make sure that taxpayers will only be able to access the small business CGT concessions for assets that are used (or held ready for use) in the course of a small business or are an interest in a small business.

The draft also proposes additional conditions to be satisfied from 1 July 2017 when applying the small business CGT concession for capital gains related to a share in a company or an interest in a trust.

TIP: A range of tax concessions are available for small businesses. Talk to us to find out how your business could benefit.

Bill to change residential property GST arrangements

A Bill has been introduced into Parliament that, when passed, will require purchasers of new residential premises and new subdivisions of potential residential land to pay the goods and services tax (GST) on the purchase directly to the ATO as part of the settlement process from 1 July 2018.

TIP: Under the current law, the supplier of the property (eg the developer) is responsible for paying the GST to the ATO when lodging a business activity statement (BAS). This can happen up to three months after settlement.

The new measure was announced in the 2017–2018 Federal Budget. It is intended to speed up the GST payment process, and to deal with the problem of some developers dissolving their business and setting up a new entity to avoid paying GST (a form of "phoenix" tax avoidance).

Moving to combat the black economy

The Black Economy Taskforce was established in 2017 "to develop an innovative, forward-looking whole-of-government policy response to combat the black economy in Australia, recognising that these issues cannot be tackled by traditional tax enforcement measures alone". In May 2017 the taskforce made a its initial recommendations, which it based on foreign jurisdiction experiences, consultation with stakeholders and anecdotal evidence it had received.

TIP: The black economy includes people who don't correctly report and meet their tax obligations, and people who operate entirely outside the tax and regulatory system.

The Government accepted a number of the taskforce's recommendations, and has now introduced a Bill into Parliament, proposing to combat the black economy by:

- prohibiting the production, distribution and possession of sales suppression tools, which are typically used to remove or alter transaction information recorded by point-of-sale (POS) systems;
- prohibiting the use of electronic sales suppression tools to incorrectly keep tax records; and
- requiring entities that have an ABN and that provide courier or cleaning services to report to the ATO (from 1 July 2018) information about transactions that involve engaging other entities to undertake those services for them.

Corporate tax avoidance: latest ATO targets

The ATO has provided an update on its latest focus areas and the compliance projects it is undertaking to reduce corporate tax avoidance. These include:

- investigating possible manipulation of the thin capitalisation rules, including 27 taxpayers' asset revaluations totalling $78 billion;
- looking into arrangements that move intellectual property assets and rights offshore to multinational entities' related parties;
- focusing on the treatment of oil and gas industry labour costs associated with high-value asset construction;
- examining the arm's length conditions operating in pharmaceutical industry arrangements;
- identifying tax professionals and advisers who are promoting unacceptable tax planning; and
- looking at the tax affairs of various major e-commerce players.

Social security means testing of lifetime retirement income streams

The Department of Social Services (DSS) has released its proposed means testing rules for pooled lifetime retirement income streams.

The pension standards were amended from 1 July 2017 to allow for more tax-exempt lifetime superannuation income stream products that enable pooling risk to manage longevity risk. Lifetime pensions and annuities that meet these new standards qualify for tax concessions tax treatment.

The DSS proposes to consider the following amounts when assessing such pooled lifetime income streams as part of social security means testing:

- income test: 70% of all income paid from the income stream product; and
- assets test: 70% of the purchase price of the product until the person reaches the age of their life expectancy at the time they made the purchase, and 35% from then on.

TIP: Under the new rules, deferred super income stream products would receive the same asset test assessment as products where payments begin immediately.

ATO now issuing excess transfer balance determinations

The ATO has advised that is now sending out excess transfer balance (ETB) determinations to individuals who have exceeded their superannuation transfer balance cap and not taken steps to remove the excess amount.

TIP: The transfer balance cap, currently set at $1.6 million, is a limit on the total amount of super that can be transferred into retirement phase. You can make multiple transfers as long as the total amount transferred remains below the cap.

Self managed superannuation fund (SMSF) members that had exceeded their transfer balance cap by $100,000 or less on 1 July 2017 had until 31 December 2017 to remove the excess capital from retirement phase. If they didn't do so, they will now have to remove the excess capital and ETB earnings, and also pay ETB tax.

Windfarm grant was an assessable recoupment

The Full Federal Court has dismissed a taxpayer's appeal and held that a Commonwealth grant of almost $2.5 million for the establishment of a windfarm was an assessable recoupment (*Denmark Community Windfarm Ltd v FCT* [2018] FCAFC 11).

In May 2011, the taxpayer was given a renewable energy grant for 50% of the project costs it incurred in constructing two wind turbines. The grant was paid in instalments on the completion of identified project milestones.

The ATO made a private ruling that the grant would be assessable income. The taxpayer argued against the ruling, but the Full Federal Court dismissed the taxpayer's appeal.