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What's new

An explanation of key changes
that may affect your business

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Small business entity threshold increased to \$10m

The threshold to access the small business entity concessions has increased to \$10m from 2016-17 enabling more businesses to access these concessions. The concessions provide access to:

- **Immediate deductibility for small business start-up expenses** - New small businesses can immediately deduct a range of professional expenses required to start up a business – such as professional, legal and accounting advice as well as amounts paid to Government agencies to set up the entity.
- **Simpler depreciation rules** - Choose to pool assets and claim one deduction for each pool. Plus, access to the \$20k accelerated deductions (see \$20k accelerated deductions for small business extended another year below).
- **Simplified trading stock rules** - You can choose not to conduct a stocktake if there is a difference of less than \$5,000 between the opening value of trading stock and a reasonable estimate of the closing value of trading stock at the end of the income year.
- **Roll-over for restructures of small businesses** - The ability to change your businesses legal structure without triggering CGT or income tax implications on the transfer of depreciating assets or trading stock.
- **Immediate deductions for certain prepaid business expenses** - choose to claim an immediate deduction for prepaid expenses where the payment is for a period of service which is 12 months or less and ends in the next income year.
- **Accounting for GST on a cash basis** – You can choose to account for GST on a cash basis (i.e. when you receive payment for a sale made). Your business can also claim GST credits when you actually pay for a purchase.
- **Annual apportionment of input tax credits for acquisitions and importations that are partly creditable** - Account for the private portion of business purchases annually rather than on each activity statement. Full GST credits can be claimed for a business purchase and an adjustment made for the private portion of the purchase in a later activity statement.
- **Paying GST by quarterly instalments** - you can choose to pay a GST instalment amount worked out by the ATO that can vary each quarter. Annual GST returns are lodged for this method.
- **FBT car parking exemption** - An exemption from FBT on certain car parking benefits provided to employees.

Corporate tax rate reduction

For the 2017 income year, the tax rate for companies that carry on a business in their own right has been reduced to 27.5% if their aggregated annual turnover is less than \$10m. While this is good news, it also impacts on the franking credits that can be allocated to dividends paid by the company.

For the 2017 income year onwards, the maximum franking percentage will be based on the company's corporate tax rate for that year, which will be worked out using the company's aggregated turnover for the previous income year. This is because the company may not know its aggregated turnover for the current year at the time the dividend is paid. This means that many companies which qualify for the 27.5% tax rate in the 2017 year will also be restricted in the amount of franking credits that can be attached to the dividends.

If companies subject to the 27.5% limit have already paid dividends in the 2017 year that have been franked to 30% then this would breach the maximum franking rate rules. The shareholders would only be able to claim back franking credits at the 27.5% rate, despite what might be shown on the distribution statement that they have received.

As a practical measure, the ATO is proposing to allow companies to issue written notification to shareholders with details of the correct franking credits that can be claimed. There is no need to seek the Commissioner's discretion in this case. Also, the Commissioner will not impose penalties for providing an incorrect distribution statement in the first place as long as revised details are sent to shareholders.

It will be necessary to check that the correct amount has been subtracted from the company's franking account balance as well.

\$20k accelerated deductions for small business extended another year

The ability for small business entities to claim an immediate deduction for assets costing less than \$20,000 has been extended until 30 June 2018.

From 1 July 2018, the immediate deduction threshold will reduce back to \$1,000.

There are no limits to the number of times you can use the immediate deduction assuming your cashflow supports the purchases.

If your business is registered for GST, the cost of the asset needs to be less than \$20,000 after the GST credits that can be claimed by the business have been subtracted from the purchase price. If your business is not registered for GST, it is the GST inclusive amount.

Second hand goods are also deductible. However, there are a number of assets that don't qualify for the instant asset write-off as they have their own set of rules. These include horticultural plants, capital works (building construction costs etc.), assets leased to another party on a depreciating asset lease, etc.

If you purchase assets costing \$20,000 or more, the immediate deduction does not apply but small businesses have the ability to allocate the purchase to a pool and depreciate the pool at a rate of 15% in the first year and 30% for each year thereafter.

Cleaning and courier businesses

From 1 July 2018, courier and cleaning businesses will need to lodge additional reports to the Australian Taxation Office about payments made to contractors (individual payments and total for the year). While this is a year away, if your business is affected by the change, think about what systems you will need to track and measure these payments and collect the required information from contractors.

GST and digital products & services

From 1 July 2017, certain supplies of digital products and services to Australian consumers by overseas suppliers will be subject to GST in Australia, even if the supplier does not have a physical presence in Australia. The rules are not intended to apply in situations where the Australian customer is registered for GST and the acquisition relates to their business activities.

The new rules use a vendor registration model. That is, businesses based overseas and selling into Australia will need to register and comply voluntarily with Australian tax law.

These rules apply to supplies of music, games, apps, movies and books as well as certain professional services. Contracts, supply agreements, licensing agreements and royalty arrangements for digital products may all be affected.

Deductibility of superannuation

From 1 July 2017, the ability to claim a tax deduction for superannuation contributions has been broadened.

Currently, to claim a tax deduction for your personal super contributions you need to earn less than 10% of your income from salary or wages etc. From 1 July 2017, the 10% rule will be abolished.

This change will be useful for individuals who hold their insurance through super as they will be able to claim a personal tax deduction for these insurance premium contributions. The caveat here is that these contributions must remain within the reduced \$25,000 concessional contributions cap.

Crowd-sourced equity funding to private companies

From 29 September 2017, new rules establish a crowd-sourced equity funding regime for public companies. Private companies however have to wait a little longer with the legislation amending the Corporations Act currently in consultation. The rules for private companies are less onerous than those imposed on public companies but there will still be a level of compliance involved to access this new funding source including the preparation of annual financial and directors' reports, audited financial statements where companies raise more than \$1m, and rules that dictate how you need to interact with shareholders.

We will keep you informed about the changes when the final shape of the new regime is known to explore if a crowd based model is of benefit to you.

GST on property developments

The Government intends to change how GST is collected on sales of newly constructed residential properties or new subdivisions. From 1 July 2018, purchasers will be required to remit the GST directly to the ATO as part of the settlement process instead of the GST being managed by developers.

This proposal is only an announcement and not law. If you are affected by this change we will let you know more as soon as more details are released.

ATO Targets

Who has central management and control of a company?

The issue of who holds central management and control over a company is not always clear cut. Central management and control refers to the high level decisions that set the company's general policies and determine the direction of its operations and the type of transactions it will enter into. This does not include the mere implementation or rubberstamping of decisions made by others.

Central management and control can be important in determining the residency status of a company. Control is not always taken to be where the Board holds its meetings but where the decisions are actually made; the test is substance over form. There have been several cases lately where companies incorporated overseas were determined to be residents of Australia for tax purposes because the overseas Boards merely rubber stamped the decisions made by a local representative.

Intercompany and related party transactions

If your business has any dealings with overseas suppliers, customers or owners then unfortunately the tax rules you need to deal with are likely to be more complex than normal. For example, dealings with related parties overseas would generally fall within the scope of the Australian transfer pricing rules, which are aimed at ensuring that the transactions are undertaken on arm's length terms. While these rules can be difficult to apply in practice, the ATO has recently introduced some simplified record keeping options that can potentially be used by small to medium businesses to comply with these rules.

Even when dealing with unrelated parties there are additional tax rules that might need to be considered to ensure that your business complies with its obligations under the Australian tax system.

Please let us know if you are planning to enter into any new agreements with overseas parties so that we can review the position for you.