



## Winter 2014

### Contents

- 1
  - SuperStream
  - Top tax and superannuation issues emerging from the 2014-15 Federal Budget

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- 3
  - Things to check prior to 30 June 2014
  - Deductions for occupancy expenses (home office)
  - Rental property deductions – are you claiming your full entitlements?

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- 4
  - The threat of public examinations



**Chartered Accountants**

## SuperStream

To create greater efficiencies in the superannuation system, the government has introduced a new reform called 'SuperStream'. Under SuperStream, employers must make super contributions by submitting data and payments electronically in accordance with the SuperStream standard. Equally, all superannuation funds, including self managed super funds (SMSFs), must receive contributions electronically in accordance with this standard.

From 1 July 2014:

- employers with 20 or more employees can start implementing SuperStream to send contribution data and payments electronically and must comply by 30 June 2015.
- all super funds (including SMSFs) can start to receive any employer contributions sent to their fund in accordance with the SuperStream standard.

From 1 July 2015, employers with 19 or fewer employees will also be required to send contributions data and payment electronically. These employers have the option to implement SuperStream sooner than this date but must comply by 30 June 2016.

All SMSF trustees need to determine when employers intend to start implementing SuperStream.

It is important to note that contributions sent to an SMSF from a related-party employer are exempt from the SuperStream system. The fund can continue to make contributions using their existing processes.

The government concedes that businesses will need to make changes to accommodate the new system.

These may include:

- Upgrading your payroll system
- Using an outsourced payroll function or service provider
- Using a commercial clearing house or the free Small Business Superannuation Clearing House for organisations with 19 or fewer employees.

The government expects that once the SuperStream system is bedded down, the ongoing efficiencies it generates will outweigh its implementation costs.

## Top tax and superannuation issues emerging from the 2014-15 Federal Budget

While the spending cuts announced in the government's recent Federal Budget have received much of the publicity, there are several tax and superannuation issues that everyone should also heed.

### Personal Taxation

The government announced several changes to personal taxation. In order to determine the impact of this change the following recommendations are made:

#### The Budget Repair Levy

- Quantify the impact of the levy on your after-tax income for the three years to come
- Review your salary packaging arrangements to determine the impact of the higher FBT rate which also reflects the levy.

Please contact us to assess the different outcomes which may result from legitimate tax planning ideas, such as bringing forward the timing of income, maximizing deductions, salary sacrifice and income splitting.

#### Changes to Family Tax Benefit

- The current Family Tax Benefit payment rates will be frozen for two years from 1 July 2014. Under this measure, indexation of the maximum and base rates of Family Tax Benefits Part A and the rate of Family Tax Benefit Part B will also be paused until 1 July 2016.
- From 1 July 2015, Family Tax Benefit Part B will be reduced when the primary earner's income exceeds \$100,000 per year (currently \$150,000 per year).

Again please contact us if relevant to quantify the impact of these changes to your after-tax income.

#### **Company Taxation**

The federal government announced several changes to the company taxation rates.

#### A lower company tax rate (for some) from 1 July 2015

- A 28.5% tax rate for companies is expected to apply from 1 July 2015
- At a company level, consider the impact of the tax cut on after-tax profits and franking capability. Changes in the tax rate warrants an examination of business tax planning ideas.
- At a shareholder level, consider the impact on future franked dividends and the associated tax offset for resident shareholders.

#### The Paid Parental Leave levy on large companies with taxable incomes exceeding \$5 million

The benefit of the 28.5% company tax rate will be offset for large companies by the

imposition of the Paid Parental Leave levy of 1.5% on that part of their taxable income exceeding \$5 million.

- At a company level, the design and implementation of the levy should be the focus of tax implementation teams who will also need to communicate the impact of the levy to shareholders
- At a shareholder level, consider the impact on future franked dividends and the associated tax offset for resident shareholders.

#### **Loss Carry Backs**

The loss carry back was implemented by the previous Labour government, with effect from the 2012-13 income year. It provides a refundable tax offset for the current year that is a proxy for the tax the entity would save if it deducted the loss in the income year to which the loss is carried back. The offset is capped at the lesser of \$300,000 or the entity's franking account balance.

The Coalition government wants to repeal this measure from the start of the 2013-14 income year, but the necessary legislation is contained in the MRRT Repeal Bill, blocked in the Senate.

#### **Small Business Measures**

The Coalition has introduced legislation to lower the small business instant asset write-off from \$6,500 to \$1,000, and withdraw special rules for vehicle depreciation (which allow a deduction for the first \$5,000 of the cost). Both measures are meant to apply from 1 January 2014 but the government has been unable to pass the legislation through the Senate.

Until they are repealed, these concessions are still available under the law.

#### **Announced, but 'unenacted' tax and superannuation measures**

On 14 December 2013, the government announced its decision concerning 'announced but unenacted tax measures' with which it would proceed. These were measures identified by organisations such as the Institute of Chartered Accountants, deemed most important from a taxpayer certainty viewpoint. The Federal Budget includes reconsideration of these unenacted measures – specifically those to do with tax consolidation and managed investment trusts.

#### Tax measures to proceed

The 'to proceed' measures include:

- Debt equity rules – limiting the scope of the integrity provision in section 974-80 of the *Income Tax Assessment Act 1997* (Cwlth)
- Loss recoupment rules – multiple classes of shares
- Look-through treatment of earn-out arrangements for CGT purposes
- Changes to tax hedging rules (Taxation of Financial Arrangement provisions)
- Cross-border GST 'connected with Australia' rules
- Superannuation changes (fund mergers and unlawful payments from funds).

#### Protection for taxpayers who relied on announcements, but now find the tax measure will not proceed

Safe harbour measures have been developed to protect those taxpayers who relied on the announcement of specific tax changes, only to find the government will no longer proceed with them. This protective legislative measure is expected to be introduced to

Parliament soon.

## Superannuation Guarantee

In response to uncertainty surrounding the rate at which the Superannuation Guarantee would apply from 1 July 2014, the government has confirmed that the 9.5% rate will apply and remain in place until 1 July 2018. This is essentially a 're-phasing' of the eventual rate increase to 12%.

Employers may wish to contact us to discuss how to manage their Super Guarantee obligations and to provide assistance designing workplace communications explaining the impact on employer-employee remuneration arrangements.

## Superannuation Excess Contributions Tax

Excess non-concessional contributions to superannuation funds are currently taxed at penalty rates, up to as much as 93%. In a win for common sense, the government has announced that individuals who make excess contributions after 1 July 2013 can simply withdraw the excess component (and associated earnings). No excess tax will apply, and the related earnings will be taxed at the individual's marginal rate.

For more advice about this, and the other tax and superannuation changes, please contact us.

## Things to check prior to 30 June 2014

This is a reminder that, prior to 30 June 2014, everyone should check:

- You have not breached the \$25,000 employer contributions limit (or \$35,000 if you are over 60 years of age) if you have

been salary sacrificing into super; and

- If you have a pension from a super fund, make sure you take at least the minimum pension amount required by 30 June 2014 otherwise the pension will be treated as lump sum withdrawals and the super fund will not receive the pension tax exemption on the income derived within the super fund.

It is also worth noting that 30 June 2014 is a Monday this year. This means you will need to make your super contributions by Friday 27 June 2014, or preferably beforehand, as the fund must have received the contribution by this date. Be wary of relying on internet transactions made on Monday 30 June 2014 as they will most likely not be counted for the current year as the transaction receipt may be dated 1 July 2014, not 30 June 2014.

If you have breached your contribution cap or wish to be reminded of your minimum pension withdrawal amount please contact us.

## Deductions for occupancy expenses (home office)

Occupancy expenses are those expenses you pay to own, rent or use your home, even if you are not conducting a home-based business.

Occupancy expenses typically include:

- Rent, or mortgage interest
- Council Rates
- Water Rates
- Land Taxes
- House insurance premiums.

You must pass what the ATO calls an 'interest deductibility test' before you can claim occupancy expenses. This

generally means the ATO expects you will have an area of your home set aside exclusively for business activities, such as an office or workshop, and this area has 'the character of a place of business' rather than simply being an office you use incidentally for income producing purposes.

You can generally claim the same percentage of occupancy expenses as the percentage area of your home that is used to make income. One common way to work this out is to use the floor area put aside for work. This is calculated as a proportion of the floor area of your home as a whole. If, for example, your home office is 10% of the total area, then you may be able to claim 10% expenses. In some situations it may be necessary to adopt a basis other than floor area. For example a large workshop attached to the home may take up a great amount of floor space but contribute much less to the value of the overall property.

Please contact us to determine the best method to make this calculation.

Please note, the family home is generally exempt from capital gains tax, but if you have carried on a home business as described above, that portion of the home attributable to the business activity will be subject to CGT.

## Rental property deductions – are you claiming your full entitlements?

A survey undertaken by BMT Tax Depreciation found approximately 80% of property investors were failing to take full advantage of tax depreciation. This figure only included those investors for whom the savings afforded by a tax depreciation schedule would have outweighed the cost of ordering one.

Many property investors mistakenly believe themselves ineligible to claim depreciation. This may be due to a belief that their property is too old to qualify for such deductions. Capital works deductions are unavailable to owners of residential property where construction commenced prior to 18 July 1985; likewise owners of commercial properties miss out where construction began prior to 20 July 1982. However these same restrictions do not apply to the depreciation of plant and equipment assets as limitations here do not relate to age, rather the condition and quality of each depreciable item.

If you own an investment property and are not claiming any depreciation, a free calculator is available that will give you an estimate of standard depreciation claims. The calculator can be found at: <http://www.bmtqs.com.au/tax-depreciation-calculator>

## The threat of public examinations

A powerful tool available to insolvency practitioners is the ability to conduct public examinations of company officers or any other relevant persons that may have information regarding the affairs of a company. The use of public examinations is particularly useful when company officers are uncooperative or where detailed information is required.

Part 5.9 of the *Corporations Act 2001* (Cwth) details the public examination process. An application to the Court to conduct a public examination is required by an 'eligible applicant', which in most cases will be the insolvency practitioner but is defined to also include the Australian Securities and Investments Commission (ASIC) or a person authorised in writing by ASIC. ASIC has previously provided this authority to, amongst others, creditors of a company.

The Court will then issue a summons to the required individuals, being either an officer of the company or an individual who has taken part in or been concerned with the examinable affairs of the corporation. The examinee is compelled by law to answer all questions put to them and must not make a statement that is false or misleading.

Importantly, the Act prohibits an examinee from failing to answer a question put to them on the basis that the answer may incriminate them or make the examinee liable for a penalty.

Public examinations may be conducted for a variety of reasons. They are usually conducted to gather information from parties which have been uncooperative or unwilling to provide information when requested, or in circumstances where the insolvency practitioner considers that they may have a claim against the party being examined and wishes to acquire further information prior to commencing any legal action.

The Act allows for the examinee to have a solicitor present to represent them during the examination, however, their involvement is ordinarily limited to objecting when they consider the question does not relate to the examinable affairs of the company. The solicitor does have the right to pose questions to the examinee to allow them to explain or qualify any answers or evidence given.

The public examination process can be expensive with costs ranging from \$10,000 up to \$100,000, or more in complex matters depending on the number of examinees and other factors. The examination itself is usually conducted by a barrister after having been briefed by a solicitor. However, it is not mandatory that a barrister conduct the examination, rather a solicitor or the insolvency practitioner may do so.

Where an insolvency practitioner lacks funding to conduct public examinations, they may offer creditors the opportunity to fund the insolvency practitioner to conduct these examinations. While creditors are often hesitant to provide funding in circumstances where they have already suffered loss as a result of the insolvency, it may be in creditors' interests to provide funding if there is scope for the examinations to result in recoveries being made or if it otherwise assists a creditor with its own enquiries.

Prior to providing funding, creditors need to consider the merits of a public examination and discuss with their insolvency practitioner what they hope to obtain in the way of evidence and information from the public examination.



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