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Mini-budget tightens fringe benefits, health rebates and more

The Government's mid-year budget update was handed down in late October 2012. The Treasurer revised down the expected Budget underlying cash surplus to \$1.1 billion for 2012–2013 – down from \$1.5 billion estimated in the May 2012 Budget.

The Government did not announce anticipated changes to claw-back superannuation tax concessions (much to the relief of many superannuation investors). However, the update did contain a host of small, but not insignificant, tax proposals.

In the mini-budget update the Government announced the removal of the concessional treatment for in-house fringe benefits that are accessed through a salary sacrifice arrangement. The proposal will apply from 22 October 2012 to salary sacrifice arrangements entered into on or after 22 October 2012, and from 1 April 2014 for salary sacrifice arrangements entered into prior to 22 October 2012.

Changes to the Private Health Insurance Rebate were also announced. From April 2014, the premium to which the rebate is applied will move in line with the CPI or commercial premium increase, whichever is lower.

The Government is also widening the circumstances for which monies in "lost" or "inactive" superannuation accounts are to be transferred to the ATO. However, the Government said that from 1 July 2013, interest at a rate equivalent to CPI inflation will be paid on lost superannuation monies reclaimed from the ATO.

TIP: These proposals, including many others, are subject to the formal enactment of legislation. Please contact our office for further information.

ATO to data-match motor vehicle purchases

The ATO is collecting details of individuals and businesses who have purchased or acquired a vehicle with a transaction value of \$10,000 or greater in the 2011–2012 or 2012–2013 financial years. The information will be collected from state and territory motor vehicle registries and matched electronically with the ATO's records. The ATO is seeking to address potential non-compliance in the following areas:

- income tax;
- superannuation;
- goods and services tax;
- fringe benefits tax; and
- luxury car tax.

AUSTRAC shares information with the ATO

AUSTRAC has recently highlighted the growing role of financial intelligence in tackling crime, including tax evasion. In 2011–2012, AUSTRAC reported that information sharing with the ATO assisted with over 3,500 cases that resulted in \$252 million in additional tax assessments being raised. The year before, AUSTRAC reported that its information directly contributed to some 1,600 ATO investigations, leading to tax assessments of around \$241 million.

Honest mistake in not documenting private company loans

A taxpayer has been, in most part, successful before the Administrative Appeals Tribunal (AAT) in relation to a matter concerning loans from a private company. These loans were made to him, over various years, as a shareholder and director of the private company. The

ATO had treated the loans, which were made in the 2005, 2006 and 2007 income years, as assessable dividends.

The AAT sided with the ATO in relation to the 2005 loans. However, the AAT decided differently in respect of the 2006 and 2007 loans. It found that a discretion under the tax law should be exercised to disregard the deemed dividends because it found that there was an “honest mistake” in failing to properly document the loans.

TIP: The Tax Commissioner has the ability to disregard a deemed dividend, or allow it to be franked, if certain conditions are met. Generally, a taxpayer must apply to the Commissioner to ask for the discretion to be exercised, and must be able to demonstrate that the failure to meet the requirements of the law was due to an honest mistake or an inadvertent omission.

In making his decision, the Commissioner must have regard to various factors specified in the law. Please contact our office if you have any questions.

Depreciation deduction allowed for certain equipment

A recent case before the AAT has highlighted the need for businesses to maintain appropriate records of plant and equipment used in business.

The taxpayer, who was a partner of a box manufacturing business, was partially successful before the AAT in relation to claims for depreciation for certain items of plant and equipment used in the business. The AAT found that there was sufficient evidence that some items of plant and equipment were used in the business for the purpose of deriving assessable income. However, the AAT found it was not possible to allow the depreciation claimed for a number of other items. A key problem noted by the AAT “was the fact that the partnership did not keep basic business records”.

TIP: The depreciation rules for small businesses have recently been amended. The changes only apply to small businesses (including connected or affiliated businesses) that have an aggregated turnover of less than \$2 million. Businesses must keep appropriate records. From the 2012–2013 income year:

- the small business instant asset write-off threshold has increased from \$1,000 to \$6,500;
- small businesses can claim an accelerated initial deduction for motor vehicles acquired in 2012–2013 and subsequent years; and
- the long-life small business pool and the general small business pool have been consolidated into a single pool to be written off at one rate.

Special circumstances found to set aside excess contributions tax

A taxpayer has successfully argued before the AAT that there were special circumstances in his situation to allow for the exercise of the Commissioner’s discretion under the law to reallocate superannuation contributions. Accordingly, monies paid into his superannuation account in late July 2009 could be attributed to the 2008–2009 financial year, and this meant that the taxpayer would not exceed the (then) \$50,000 contributions cap.

The taxpayer had a salary sacrifice arrangement with his employer, whereby funds were paid on his behalf to his super fund. The taxpayer had the intention of contributing super each month and staying below the relevant cap.

However, the AAT heard that the disputed payments occurred because salary sacrifice amounts for the months of April, May and June 2009 were not transferred by the taxpayer’s employer to the fund until July 2009.

The taxpayer claimed that he had been unaware of the delay because he believed the sums were transferred to the fund, based on his monthly payslips. The AAT found that, in this case, there were “special circumstances” that allowed the reallocation of the monies to the previous year.

TIP: This case highlights the need for individuals to check their payslips for their super contributions (especially year-to-date amounts) and know when their super contributions are being paid into their super fund by their employer.

Individuals should also consider reviewing their salary sacrifice arrangements to check whether there is an agreement as to when salary sacrifice amounts will be transferred by the employer to the individual’s super fund. Please contact our office if you have any questions.

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