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Federal Election tax announcements

The next Federal Election will be held on 7 September 2013. Both sides of politics have made various announcements and promises. Some of the key announcements to keep in mind include the following:

- ***Company tax rate cut*** – On 7 August 2013, the Coalition announced that, if elected, it would cut the company tax rate by 1.5% with effect from 1 July 2015. It said the proposed new company tax rate of 28.5% is part of its "significant tax reform agenda to be delivered within the first term". Note that the Coalition has also previously proposed a levy on large companies to fund its proposed paid parental leave scheme.
- ***GST and tax reform*** – On 7 August 2013, Shadow Treasurer Joe Hockey reaffirmed that the Coalition had "no plans whatsoever to change the GST". "We are prepared to have a debate about tax reform but any changes arising out of the white paper process would first be put to the Australian people at the next election," Mr Hockey said.

ATO compliance target areas

The ATO has released its compliance program for 2013–2014, setting out key activities and focus areas for the coming year. Some key points include the following:

- The ATO says it will pay particular attention to large work-related expense claims made by: (i) building and construction labourers, construction supervisors and project managers; and (ii) sales and marketing managers.
- This year, the ATO will use new information sources to check correct reporting of: (i) private health insurance rebate claims; (ii) flood levy exemptions; and (iii) taxable government grants and payments.
- The ATO has set up a new taskforce to deal with promoters, individuals and businesses that seek to misuse trusts. The ATO plans to conduct 5,000 data-matching cases and around 700 income tax reviews and audits over the next four years.

CGT small business concessions denied

The Administrative Appeals Tribunal (AAT) has held that the exclusion in the tax law from the capital gains tax (CGT) small business concessions for assets used "mainly to derive rent" applies even if the assets are used in "carrying on a business" of deriving rent.

In this case, the taxpayer argued that in interpreting the rules, it was necessary to distinguish between those assets used to derive passive investment income such as rental income, and those actively used in carrying on a business. Essentially, the taxpayer argued that the strict view that all properties that are used mainly to derive rent are automatically excluded from the concessions unfairly discriminates against small leasing businesses.

However, the AAT considered that the words in the law must be considered first and that it was not "unduly pedantic to begin with the assumption that words mean what they say".

TIP: This case demonstrates the need to be aware of the various conditions required to be satisfied in order to claim the CGT concessions for small businesses. In this case, the key issue was whether three commercial properties that the taxpayer used in carrying on a business of deriving rent qualified as "active assets" and were therefore potentially eligible for the concessions. However, the AAT found that a specific exclusion under the tax law for assets used mainly to derive rent applied. Please contact our office if you would like further information.

Deductions for accommodation and food refused

An individual employed by a mining company at Port Hedland on a "fly-in fly-out" basis has been unsuccessful before the Federal Court in appealing an earlier decision that refused his deduction claim of $36,000 for accommodation and food against an allowance.

In the earlier decision, it was held that the allowance was properly characterised as a living-away-from-home allowance (LAFHA) under the fringe benefits tax (FBT) rules. As a result, it was subject to FBT in the hands of the taxpayer's employer, and travel expenses could not therefore be claimed in relation to it. In affirming the earlier decision, the Court said the expenses in relation to accommodation, food and travel were not incurred by the taxpayer in the course of gaining or producing his assessable income. Rather, the expenditure arose from the taxpayer's decision not live in Port Hedland and to instead travel to Port Hedland on a fly-in fly-out basis.

Redundancy payment for overseas work assessable

The AAT has ruled that a taxpayer who was the managing director of a company in various countries from 2002 to 2007, and who was paid an employment termination payment (ETP) when he returned to Australia, was not assessable on the part of the annual and long service leave component of the ETP that was attributable to his foreign service (in view of the exemption in the tax law at the time).

However, the AAT confirmed that he was assessable on the taxable component of the ETP, despite its foreign source, on the basis that he was a tax resident of Australia when the ETP was paid to him.

ATO telephone advice does not excuse wrong GST claim

In a recent decision, the AAT has affirmed the Commissioner's decision to impose on a taxpayer an administrative penalty at the rate of 50% for "recklessness" in relation to incorrectly claimed input tax credits (ITCs). The taxpayer had lodged a claim in the relevant business activity statement (BAS) for almost $72,000 in ITCs in relation goods said to be from Hong Kong. This was despite the goods never having left the country or having been manufactured.

The taxpayer's representative claimed that he had relied on telephone conversations with the ATO in which the ATO had allegedly advised to the effect that the taxpayer could claim ITCs. However, the AAT did not accept the taxpayer's arguments in that regard and affirmed the Commissioner's decision. The AAT noted, among other things, that the discussions post-dated the filing of the BAS and, accordingly, any advice received at that time could not have influenced the making of a false or misleading statement.

TIP: Most taxpayers will, often or not, rely on spoken advice. They may contact one of the many enquiry lines that have been set up by various governmental departments, which provide callers with free and quick advice on not only the operation of the law, but also how it is being put into practice within those departments. However, taxpayers need to be cautious about relying on such advice. As the AAT said in this case, given the size of the taxpayer's claim, "a private taxation ruling, or at least informed professional advice, could and should have been sought".

Money from ex-husband's company assessable

A taxpayer has been unsuccessful before the AAT in arguing that $1.6 million she received from a company run by her (then) husband was provided to her as part of a domestic arrangement with her husband and was not therefore assessable in her hands.

Broadly, the taxpayer contended that she had agreed to finance her then husband's purchase of shares in the company and that she was behaving as a "good" wife who deployed the resources at her disposal in support of her husband, and that she was not an independent investor in her husband's business. The AAT did not accept that the taxpayer was simply acting as a supportive spouse who passively received benefits provided to her by her husband under a matrimonial arrangement. The AAT essentially agreed with the Commissioner that the taxpayer was an investor in the business and found that the payments were "income" assessable to her under the tax law.

Poor recordkeeping, so fuel tax credit claims refused

A trustee of a family trust that operated a construction and earthmoving equipment business has been unsuccessful before the AAT in its claim for fuel tax credits. Following an audit of the business in 2010, the Commissioner refused the credits, citing that records maintained by the taxpayer did not accurately describe the amount of fuel acquired or used, or adequately describe the purpose for which the fuel was used.

The taxpayer acknowledged that there were problems with its recordkeeping but said the difficulties were caused by employee delinquency. Further, it said its true entitlements were actually much greater than the amount claimed. However, the AAT was not satisfied with estimates provided by the taxpayer. It was also critical of the taxpayer's records, saying they "were a mess". The AAT affirmed the Commissioner's decision, as well as the imposition of penalties at 25%.