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Project DO IT nearing end, taxman focus on non-disclosure

The ATO has responded to fears expressed by some taxpayers that disclosing previously undeclared offshore income and assets could set them up for future tax investigations. The ATO has reassured taxpayers that disclosing under Project DO IT will not give them a “red flag”. ATO Deputy Commissioner Michael Cranston said the ATO was far more concerned with taxpayers who don’t disclose than those who do.

TIP: Project DO IT provides individuals with a last chance opportunity to declare their overseas assets and income to the ATO if they have not done so previously to avoid steep penalties and the risk of criminal prosecution for tax avoidance. As at 6 November 2014, some 1,000 individuals have made disclosures worth more than \$190 million in income and over \$1.1 billion in assets. The last day to come forward under Project DO IT is 19 December 2014.

Inbound tour operators to contact the ATO

The ATO has issued a statement on a Full Federal Court case in which the ATO Commissioner was successful in arguing that a supply made by an Australian inbound tour operator (ITO) to overseas customers was fully subject to GST.

Although the decision relates to specific facts, the ATO said the Commissioner remains of the view that the decision applies to all ITOs that:

- transact as principal (and not as an agent of a non-resident travel agent); and
- are engaged by non-resident travel agents to enter into contracts with Australian providers for the provision of products to non-resident tourists.

The ATO was of the view that, under the Court’s reasoning, the supplies made by the ITOs to their non-resident travel agent clients are properly characterised as supplies of promises to ensure products are provided, and the supplies are wholly taxable.

TIP: The Commissioner has requested that all ITOs that have transacted as principal and have an outstanding amount due to the ATO to contact the ATO within 28 days of the publication of the statement (ie by 10 December 2014) to discuss payment of the amount owed. ITOs that consider that they are not affected by the decision on the basis that they operate as an agent are also asked to contact the ATO within the 28-day period.

Tax win for retirement village operators

The ATO has issued a statement in response to a decision of the Administrative Appeals Tribunal (AAT) which ruled that a taxpayer that owns and manages a number of retirement villages was entitled to a deduction for payments it was contractually required to make to “outgoing residents”. The AAT concluded that such payments were properly characterised as an ordinary part of carrying on the business, and were not capital or of a capital nature and therefore deductible under the tax law.

TIP: The ATO said it will amend Taxation Ruling TR 2002/14 to reflect the Tribunal’s decision. It said the amendment will confirm that, where a retirement village operator makes a payment to an outgoing resident (or to their legal personal representative) that represents a share of any increase in the entry price payable by a new resident (ie the difference between the initial entry price paid by the outgoing resident and the entry price payable by the new resident), such payments will be deductible. In the meantime, the ATO

said taxpayers may request that the Commissioner amend an assessment.

Crowdfunding could have GST implications, says ATO

The ATO has released information on its views on the GST treatment of crowdfunding. Crowdfunding involves using the internet and social media to raise funds for specific projects or particular business ventures. Typically the promoter of the project or venture will engage an intermediary to operate an online platform that allows the promoter to connect to potential funders. Various models are used to attract funding.

For example, in a “donation-based” model, where funders receive nothing apart from having their contribution to a project or business venture acknowledged by the promoter, the promoter will have no GST liability. However, the intermediary will be treated to have made a taxable supply of services to the promoter that is subject to GST. But in this case, the promoter will be entitled to a GST credit for the services he or she acquires from the intermediary.

Couple refused small business tax concession

The AAT has recently affirmed a decision of the Tax Commissioner refusing a couple’s request to apply a capital gains tax concession in relation to the sale of their business.

The husband and wife were the sole shareholders and directors of a private healthcare company which they had sold, via their shareholding, for some \$14 million in the 2007 income year. They claimed they were entitled to the tax concession in respect of the capital gain they made on the sale of their shares. In particular, they claimed they satisfied that relevant asset test to be eligible for the concession on the basis that the company had a liability just before the sale to pay them eligible termination payments totalling some \$2.75 million.

In rejection of the couple’s argument, the AAT confirmed that the eligible termination payments paid to the couple were not to be taken into account for the purposes of the relevant asset test in determining whether they qualified for the small business CGT concession. The couple have appealed to the Federal Court against the decision.

Employee share scheme reform on the way

The Government is reforming the taxation of employee share schemes to bolster entrepreneurship in Australia and support innovative start-up companies. It said the changes to the tax treatment of employee share schemes that were introduced by the former

Government in 2009 have effectively brought to a halt the use of such schemes for start-up companies in Australia.

The Government said it would unwind those 2009 changes, beginning with reversing the changes made to the taxing point for options, to ensure that employees may opt to have “discounted” options taxed when they are exercised (ie converted to shares), rather than upon acquisition by the employee. This change would apply to employees of all companies.

The Government also announced that it will allow employee share scheme options or shares that are provided to employees at a small discount by eligible start-up companies not to be subject to upfront taxation, provided that the shares or options are held by the employees for at least three years.

Options issued to employees by eligible start-up companies under certain conditions will have the employee’s taxation events deferred until the sale of the shares. In addition, shares issued to employees by eligible start-up companies at a small discount will have those discounts exempted from tax for the employees.

The Government will also extend the maximum time for tax deferral on discounted options and shares issued to employees by eligible start-up companies from the current seven-year period by a further eight years – that is, a 15-year deferral period.

The Treasurer is expected to consult widely on the draft legislation. The legislation is proposed to come into effect from 1 July 2015.

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