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AC Tax Desk

Issue No.8

Tax bits

ATO - Clamp on work-related tax deduction claims

The ATO has signalled that one of its key areas of focus in relation to individuals for the year ended 30 June 2018 will be work-related tax deductions being claimed.

And, if you consider some of the claims ATO has had to deal with, we are not surprised. Here are some examples provided by the ATO:

- Taxpayer claiming \$25,000 for a skiing trip when only \$2,000 related to the business part of their trip;
- Taxpayer, who was a teacher, claiming a deduction for their Foxtel bill on the basis that they had to watch TV to keep up with their students;
- Taxpayer claiming some of the costs for his 8 year old "receptionist" son as the son every so often answered the phone for the taxpayer when he was working from home; and
- Taxpayer claiming costs for his Maltese dog on the grounds that the dog was a "guard dog".



Making Tax Simpler Bill

The Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Bill was introduced in June 2018 and includes proposals targeted at simplifying tax compliance for individuals. Here is a summary of some of the key proposed measures.

Individual's income tax

Automatic tax refunds: Where an individual only has income (such as PAYE salary, resident or non-resident passive income) and IRD consider that the income information it holds is correct, a refund (or tax to pay) will be automatically calculated. And, any refund will be automatically paid based on this calculation.

Donation tax credits: Individuals can submit donation receipts throughout the year (including electronically) and if this is done, the donation credits will automatically be taken into account, without the person having to file a separate claim form.

Information Use

Clarification that information gathered by IRD for one revenue purpose can be used for other revenue purposes.



Short Process Binding Ruling

A person can apply for a short process binding ruling if their annual gross income for the prior tax year is \$5m or less, and the person wants a ruling on a tax matter that is expected to amount to less than \$1m.

The application process is simpler than a standard binding ruling application. For instance, the application does not have to state the taxation laws and the propositions of law for which the ruling is sought.

The fees charged for the shorter binding ruling will be at a lower rate than is charged for a "standard" binding ruling (at rates of \$280 and \$140 plus GST per hour).

In addition, the scope re binding rulings will be expanded to include specific fact situations such as: whether a person had the purpose/intention of selling property when they acquired it, whether a person is a New Zealand tax resident, and financial arrangement questions (the CIR can only issue determinations at the moment).



This is a really positive move as it will make the binding ruling service both accessible and affordable, and allow taxpayers to obtain tax certainty. These changes will come into effect from the date of enactment.

Amending Assessments

Taxpayers will be able to include an error (omission) in a subsequent return if the total amount of the errors for the relevant return is equal to or less than \$10,000 AND 2% of the person's taxable income or GST liability.

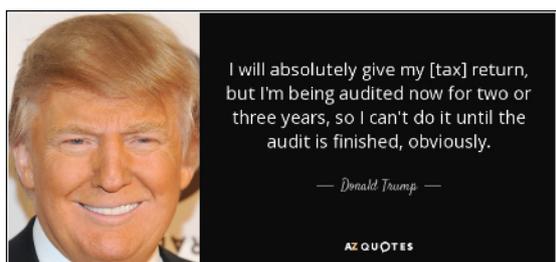
Taxpayers can also automatically include an error in a subsequent return if the total errors for the return (including FBT, income tax and GST) are equal to or less than \$1,000.

Care and Management Powers

The Commissioner's care and management powers will be extended so that identified legislative anomalies can be rectified. Under the proposed rules, the Commissioner will be able to address a legislative anomaly in the form of either an order in council, a Commissioner's binding determination or a Commissioner's administrative action.

Anti-Money Laundering & Countering Financing Terrorism Act 2009

The AML/CFT is an activities-based Act in that if an entity undertakes specific types of activities/ transactions, it has to then develop a programme to combat money laundering (and terrorism financing) as prescribed by the Act.



Law firms, accounting firms, conveyancing practitioners, trust & company service providers who conduct activities specified in the definition of "designated non-financial business or profession" are caught by the Act (unless any specific exemptions apply).

The activities include, for example:

- (a) acting as a formation agent of legal persons or legal arrangements;
- (b) acting or arranging for someone to act as a nominee director, shareholder or trustee;
- (c) managing client funds (other than amounts paid for professional services) accounts, securities or other assets;
- (d) providing a registered office or business address for a company or partnership; and
- (e) any conveyancing, transfers of beneficial interest in land or other real property, etc.

If a person undertakes such activities then, unless any specific exemptions apply, the person has to comply with the requirements of the AML/CFT Act. This includes:

- Appointing a compliance officer;
- Conducting a risk assessment (in writing);
- Developing an AML/CFT compliance programme;
- Maintaining the compliance programme: conducting customer due diligence and enhanced customer due diligence for certain types of customers (such as trusts that hold personal assets), ongoing customer due diligence and account monitoring, reviewing the compliance programme; and
- Report and Audit: An annual report must be submitted, and the risk assessment and compliance programme must be audited every two years by an independent person who is suitably qualified to conduct this audit (this does not have to be an accounting auditor).



HOW WE CAN HELP

Contact us if you want:

- **to determine whether you are caught by the AML/CFT legislation;**
- **us to assist with the preparation of the risk assessment and compliance programme (we can prepare tailored templates/documents for your business; and**
- **us to provide you with guidance on which customers require enhanced due diligence, the details you must have for all of your customers, tailored template checklists that can be provided to clients to assist with the collation of the relevant information.**

Screening: Residential Land

The Government introduced the Overseas Investment Amendment Bill in December 2017. The Bill introduces requirements to ensure that overseas persons (who are not resident in NZ) cannot buy existing residential houses or land. It also provides a pathway/consent process for such overseas persons who do wish to purchase such property. Here are some key points re this Bill:

- (a) NZ citizens can buy residential property in NZ regardless of where they live;
- (b) NZ permanent residents and other resident visa holders can buy residential property if they are ordinarily resident in NZ. "Ordinarily resident" means that when the S&P agreement became unconditional, the person has: a visa, has lived in NZ for at least 12 months, been physically present in NZ for at least 183 days and is a NZ tax resident.
- (c) Australian and Singapore citizens and permanent residents: treated the same way as NZ citizens and permanent residents - so they can continue to purchase land.
- (d) Other overseas persons: must apply to purchase land and will be screened. The following types of factors will be considered: The person's commitment to reside in NZ and to become a tax resident, whether housing supply in NZ will be increased by the person's investment, whether the development will be beneficial to NZ, etc.
- (e) Other entity types: company, trust, body corporate and other entity types will be subject to the same rules to the extent the entity is 25% or more owned or beneficially owned or controlled by overseas persons. These rules apply regardless of whether the entity was established/incorporated in NZ. Foreign companies will be overseas persons. Trusts will be overseas persons if overseas persons control 25% or more of the decision making of the trust or 25% or more of the beneficiaries are overseas persons.

The Bill is waiting its third reading and will (in the most part) apply 2 months from the date on which it receives Royal assent.

AC Tax Law - Update

On 1 January 2018, I joined Julie Crengle as a partner of Crengle Shreves & Ratner ("CSR"), following the retirement of Peter Ratner and Rob McInnes. AC Tax Law is now a division of CSR - at a practical level, it's business as usual for clients. We have also moved premises and are now located at: Level 11, City Chambers (entrance on Johnston St).

