



JUNE 2016 CLIENT NEWSLETTER

Welcome...to The Enterprise Sanctuary's June 2016 newsletter. Today, we will have a look 2016 tax time and what the key changes and new measures to be aware of are. We also talk about the small business restructure roll over and foreign resident capital gains withholding payments.



Tax Time 2016

Small business
restructure roll-over

Foreign resident
capital gains
withholding payments

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TAX TIME 2016

Simplified depreciation for small business

Small businesses can immediately deduct the business portion of most assets if they cost less than \$20,000 and were purchased between 12 May 2015 and 30 June 2017.

They can claim the deduction through their tax return.

They can also immediately deduct the balance in the small business pool if it is less than \$20,000 at the end of an income year that ends on or after 12 May 2015 to 30 June 2017 (including an existing pool).

Company tax cuts for small business

The small business company tax rate reduced from 30% to 28.5% for income years commencing on or after 1 July 2015. This lower rate also applies to small businesses that are corporate unit trusts and public trading trusts.

The company tax rate remains at 30% for all other companies that are not small business entities.

Small business income tax offset

From 2015–16, an individual is entitled to a tax offset on the tax payable on their share of net small business income earned by a sole trader, partnership or trust that is a small business entity.

Sole traders, partnerships and trusts that are small business entities need to work out their net small business income as well as the partner's and beneficiary's share of that income.

Net medical expenses tax offset phase-out

From 1 July 2015, the offset can only be claimed by taxpayers with net expenses for disability aids, attendant care or aged care. The offset is income tested.

The offset will be abolished from 1 July 2019.

New tax system for managed investment trusts

Managed investment trusts (MITs) have access to a new tax system, which modernises the tax rules for eligible MITs and increases certainty for investors.

If enacted, the proposed rules will apply from 1 July 2016. Eligible MITs can elect to apply the rules from 1 July 2015. They can attribute trust income to beneficiaries on a fair and reasonable basis according to their ownership interests in the MIT. An eligible MIT electing into the system is known as an attribution managed investment trust (AMIT).

Among other things, the new tax system introduces provisions relating to amounts that affect the cost base of a member's interest in the trust.

Increasing access to company losses

At the time of publishing, this had not become law.

On 7 December 2015, the government announced, as part of its National Innovation and Science agenda, that the current 'same business test' for company losses will be relaxed to allow businesses to access past year losses when they have entered into new transactions or business activities.

To give effect to this, a new 'predominately similar business test' will be introduced. Under this test companies will be able to access losses where their business is similar in regard to:

- the extent to which the company generates assessable income from the same assets and sources
- whether any changes to the business are changes that would reasonably be expected to have been made to a similarly placed business.

This measure is expected to take effect from 1 July 2015.

Please contact us at The Enterprise Sanctuary if you would like to talk about this topic in more detail.

SMALL BUSINESS RESTRUCTURE ROLLOVER

From 1 July 2016, small businesses will be able to change their legal structure without incurring any income tax liability for certain transactions. This applies when transferring active assets that are CGT assets, trading stock, revenue assets and depreciating assets.

To use this roll-over, each party to the transfer must also be a small business entity or an entity that:

- has an affiliate that is a small business entity
- is connected with an entity that is a small business entity
- is a partner in a partnership that is a small business entity.

The roll-over is available if the following criteria are met:

- all parties to the transaction choose to apply the roll-over
- there is no change to the ultimate economic ownership
- the transfer is part of a genuine restructure
- assets transferred are eligible assets
- all parties meet the residency requirement.

This roll-over is in addition to existing roll-overs for assets transferred in the course of carrying on a business. The roll-over is not available to an exempt entity or a complying superannuation fund.

Please contact us at The Enterprise Sanctuary if you would like to talk about this topic in more detail.

FOREIGN RESIDENT CAPITAL GAINS WITHHOLDING PAYMENTS

Broadly, where a foreign resident disposes of certain taxable Australian property, the purchaser will be required to withhold 10% of the purchase price* and pay that amount to the Australian Taxation Office (ATO).

This withholding is limited to taxable Australian property, being:

- Real property in Australia – land, buildings, residential and commercial property;
- Lease premiums paid for the grant of a lease over real property in Australia;
- Mining, quarrying or prospecting rights;
- Interests in Australian entities whose majority assets consist of the above such property or interests – this is called an indirect interest;
- Options or rights to acquire the above property or interest.

There are a number of exclusions. If the foreign resident vendor falls within one of these categories then the 10% withholding is not applicable:

- Real property transactions with a market value* under \$2 million, ensuring that the vast majority of residential house sales will be unaffected by this measure;

* Note: if a purchase price negotiated between a purchaser and vendor is on an arm's length basis, then the purchase price may be used as a proxy for market value.

- Transactions listed on an approved stock exchange;
- The foreign resident vendor is under external administration or in bankruptcy.

The legislation introduces a clearance certificate model to provide certainty to purchasers regarding their withholding obligations. The clearance certificate confirms that the withholding tax is not to be withheld from the transaction.

For real property transactions with a market value of \$2 million or above, the purchaser must withhold 10% of the purchase price unless the vendor shows the purchaser a clearance certificate from the ATO. This certificate can be provided to the purchaser on or before the settlement of the transaction. Where a clearance certificate is provided, the purchaser is not required to withhold an amount from the purchase price.

If the vendor fails to provide the certificate by settlement, the purchaser would be required to withhold 10% of the purchase price and pay this to the ATO. This means Australian resident vendors of real property with a market value of \$2 million or above will need to apply for a clearance certificate and provide this to the purchaser before settlement to ensure no funds are withheld from the sale proceeds.

The vendor may apply for a clearance certificate at any time they are considering the disposal of real property. This can be before the property is listed for sale. The clearance certificate will be valid for 12 months and must be valid at the time the certificate is given to the purchaser prior to settlement.

The ATO is implementing an 'automated' process for issuing a clearance certificate. This would involve:

- the vendor (or their agent) completing an online 'Clearance certificate application for Australian residents' form;
- the information on the application being automatically checked against information held by the ATO to assess if the vendor should be treated as an Australian tax resident for the purposes of the transaction; and
- the automatic issuance of a clearance certificate which removes the need for the purchaser to withhold the 10% from the sale proceeds.

In straightforward cases where the ATO has all the required information, it is expected that clearance certificates will be provided within days of being submitted.

Where a withholding obligation exists, the purchaser must withhold the relevant amount at settlement and pay it to the ATO without delay (general interest charge may apply to late payments). The penalty for failing to withhold is equal to the amount that was required to be withheld and paid. An administrative penalty may also be imposed.

Where an amount is withheld, the purchaser is required to complete an online 'Purchaser Payment Notification' form to provide details of the vendor, purchaser and the asset being acquired to the ATO.

Please contact us at The Enterprise Sanctuary if you would like to talk about this topic in more detail.

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