

# Tax Time Monthly

MAY ISSUE 2018



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# 1 INCOME TAX

## 1.1 Pre-Budget Announcements

The Government will release its 2018-19 Budget at 7:30pm on Tuesday, 8 May 2018. The Government has already made a number of tax-related announcements as a preview to the Budget as follows:

- Government will not be proceeding with its planned increase in the Medicare Levy to 2.5% (from 2%) from 1 July 2019.
- There will be changes to the Research and Development tax incentive in response to the R & D Tax Incentive Review conducted in 2016.

Hall Chadwick will publish a special Budget Edition of this newsletter on 9 May 2018.

## 1.2 Small Business CGT bill introduced to Parliament

On 28 March 2018, the Government introduced into Parliament *Treasury Laws Amendment (Tax Integrity and Other Measures) Bill 2018*, which includes its proposal to amend the operation of the small business CGT (SBCGT) concessions.

These changes were tabled as Exposure Draft legislation on 8 February 2018 and [summarised here](#).

The 2 key differences between the Exposure Draft and Bill as introduced are:

- Removal of the requirement that the Object Entity must carry on a business just before the CGT Event; and
- Removal of the condition that cash is only counted as an active asset of the company if held as trading stock.

Under the bill, the conditions to apply SBCGT proposes significant amendments where shares in a company or interests in a trust are sold, are as follows:

- Either the taxpayer must be a CGT concession stakeholder in the Object Entity, or CGT concession stakeholders in the Object Entity must hold at least 90% of the interests in the taxpayer;
- Unless the taxpayer satisfies the maximum net asset value test (MNAVt), the taxpayer must have carried on a business just prior to the CGT event;
- The Object Entity must either be a CGT small business entity for the income year or satisfy the MNAVt; and

- The shares or interests in the Object Entity must satisfy a modified active asset test.

The current SBCGT Concession rules treat shares or interests as active assets based on the underlying assets of the company or trust. Conversely, the modified test looks through membership interests to include the proportionate amount of the value of the assets of others entities to which the membership interest ultimately relate.

Under the bill, when working out if the Object Entity satisfies the MNAVt or is a CGT small business entity:

- The turnover or assets of entities that may control the Object Entity would be disregarded; and
- An entity would be treated as controlling another entity if it has an interest of 20% or more (rather than 40% or more as is currently provided for in s 328-125 of the ITAA 1997).

This will mean that more entities are 'connected with' each other for the purpose of calculating the turnover and assets of the Object Entity.

The bill proposes that these amendments would apply to CGT events that occur on or after 1 July 2017. The retrospective application of the amendments is consistent with the Government's 2017- 18 Budget announcement on 9 May 2017.

Any clients considering application of SBCGT from 1 July 2017 should contact Hal Chadwick for advice.

## 1.3 CGT Rollover Relief for marriage breakdowns: *Ellison v Sandini Pty Ltd*

In *Ellison v Sandini Pty Ltd* [2018] FCAFC44, the Full Federal Court held that no CGT relationship breakdown roll-over was available for the transfer of shares to a corporate trustee controlled by the former spouse.

Section 126-5 provides roll-over relief where a CGT event happens involving an individual (the transferor) and his or her spouse (the transferee) or a former spouse (also the transferee) because of a court order.

Ms Ellison (the former wife) obtained an order from the Family Court that mining shares to the value of \$2.5M were to be transferred to her following the parties' divorce. A week after the family court order was made, Ms Ellison emailed Mr Ellison (the former husband) requesting the shares instead be transferred to the corporate trustee of her family trust, which he did.

The Commissioner argued that roll-over relief was not available as the shares were not transferred directly to the spouse but to her controlled entity. The Federal Court

confirmed the view that relief is only available where the asset is being transferred to the spouse personally, and not available where the transfer is to a related entity.

This meant that Mr Ellison would pay tax on his disposal of mining shares and Ms Ellison received a market value cost base in the mining shares.

The application of any roll-overs under the CGT provisions are complex and clients should contact Hall Chadwick for advice prior to applying such roll-overs.

### 1.4 Request for submission re joint Fairfax/Four Corners investigation into ATO

On 9 April 2018, the Four Corners program was aired with allegations of unfair treatment by the ATO in particular to small business sector. In response the Treasurer has confirmed that Kelly O'Dwyer, the Minister for Revenue and Financial Services, is to conduct a review into the ATO.

As part of this investigation, the Australian Small Business and Family Enterprises Ombudsman, Kate Carnell, has advised small businesses to contact her urgently if they have experienced "heavy-handed tactics" by the ATO. With completed anonymity assured, small business owners can make a submission by emailing [inquires@asbefeo.gov.au](mailto:inquires@asbefeo.gov.au).

## 2 GST

### 2.1 Buyer's obligation to pay GST on taxable supply of new residential premises: Draft Law Companion Ruling LCR 2018/D1

On 26 April 2018 the ATO issued Draft Law Companion Ruling LCR 2018/D1 on the newly enacted measure requiring purchasers of newly constructed residential premises to remit GST directly to the ATO as part of the transaction, to commence from 1 July 2018 with transitional rules applicable for contracts entered into before 1 July 2018 when consideration is to be provided by 30 June 2020. The Draft LCR covers:

- When the purchaser is required to pay an amount to the ATO (generally the settlement date). No amount is payable at the time the deposit is paid;
- The amount that needs to be paid to the ATO (generally 1/11th of the contract price, or where the margin scheme applies, 7% of the contract price). For supplies between associates, 10% of the GST-exclusive market value of the supply must be paid.

### 2.2 GST obligations re low-value goods

From 1 July 2018, GST will apply to sales of low-value goods (value under \$1000) sold to consumers in

Australia. Businesses that meet the A\$75,000 registration threshold will need to register for GST, charge GST on relevant sales and remit the GST to by lodging returns.

This new law is designed so that businesses:

- will not charge GST on a sale when GST will be charged at the border, because an item is worth over A\$1,000, a tobacco product, or alcoholic beverage
- will not need to charge GST on a sale if it is clear that multiple goods will be shipped to Australia in one consignment worth over A\$1,000 – GST will be charged at the border instead.

The ATO has outlined its compliance approach [here](#). Some key points to note are as follows:

- From 1 July 2018 to 30 June 2019, where a business is compliant (i.e. registered for GST, made a genuine attempt to collect, pay and report GST, and contacted the ATO where a situation arise that needs to be resolved) has made a mistake, the ATO will ask the business to correct the mistake and not impose any penalties. The ATO will also not contact a business unless it believes the business has made a mistake.
- Businesses that are not compliant (i.e. taken no action, or registered for GST but have not collected/report/paid GST required) will have their liability calculated by the ATO, with an additional 75% penalty administrative penalty and debt recovery action taken if required.

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Should you wish to discuss your tax queries, please contact our office.  
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Find out how we can help, contact your [local office](#)

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