

Tax Time Monthly

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1 INCOME TAX

1.1 Budget Legislation Introduced

On 8 May 2018, the Treasurer, Mr Scott Morrison, presented the 2018-19 Federal Budget. In our **2018 Budget report**, we cover everything YOU need to know about the Budget and how the Budget can affect you and your business.

A number of proposals in the Budget have been introduced into Parliament as Bills but none passed at the date of writing.

Only the proposal to extend by 12 months to 30 June 2019 the \$20,000 instant asset write-offs for small business entities in *Treasury Laws Amendment (Accelerated Depreciation for Small Business Entities) Bill 2018* is expected to be passed through Parliament based on the Senate Economics Legislation Committee recommendations.

Hall Chadwick will keep you updated as Budget proposals become law via this monthly newsletter.

1.2 ATO tax targets for 2018 tax time

The ATO has indicated in a number of media releases what it plans to target as part of 2018 tax time, including:

- Work-related car expenses, where a taxpayer claims 5,000 km as “standard” deduction with no evidence of having travelled that distance or having undertaken any travel at all, or where a car is provided as part of a novated lease or salary sacrifice arrangement.
- Holiday home rentals, where a taxpayer claims deductions for holiday homes that are not actually available for rent or only available to friends and family; or where the taxpayer claims the property is available for rent but with unreasonable conditions placed on prospective renters, above market rent, or failing to advertise a holiday home in a way that targets people who would be interested in it.

1.3 Year-End Planning key issues

With the end of financial year fast approaching, Hall Chadwick has published its “Year-End Planning Key Issues” Newsletter to assist you with managing your tax obligations and tax planning for FY2018 and onwards.

See [here](#) for a copy of this publication and contact your Hall Chadwick advisor for further discussions.

1.4 Legislation to remove CGT main residence exemption for foreign residents being delayed

The Australian Chamber of Commerce Hong Kong and Macau has advised that the Government will review the proposed changes to remove entitlement to CGT main residence exemption for foreign residents as part of the *Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No. 2) Bill 2018* currently in Parliament.

The Minister for Financial Services, Kelly O’Dwyer, has undertaken that she will make direct representations to the Treasurer and Prime Minister as a matter of urgency to discuss “*the proposed crippling changes to Capital Gains Tax on the family home - this change discriminates against those of us working internationally*”.

1.5 2018-19 Rates and thresholds released by the ATO so far

The ATO has commenced publishing rates and thresholds for the 2018-19 financial year, as follows:

- Car depreciation limit is \$57,581 from 1 July 2018 (which remains unchanged from 2017-18).
- FBT car parking threshold is \$8.83 from 1 April 2018 (increased from \$8.66).
- Luxury car threshold is \$66,331 (increased from \$65,094).
- Fuel-efficient car limit is \$75,526 (unchanged from 2017-18).

2 SUPERANNUATION

2.1 Super shortfall amnesty announced and Bill introduced into Parliament

The Minister for Revenue and Financial Services, Kelly O’Dwyer, announced on 24 May 2018 a 12-month amnesty for employers to disclose and pay underpayments of superannuation guarantee (SG) amounts without penalties and interest, and have the SG shortfall paid deductible. This applies to SG shortfalls between 1 July 1992 to 1 April 2018. To qualify for the amnesty, the employer must disclose the super guarantee shortfall to the Commissioner.

This was part of the *Treasury Laws Amendment (2018 Superannuation Measures No.1) Bill 2018* introduced in Parliament on 24 May 2018 which includes the following additional proposed changes:

- SG opt out for high-income earners – High-income earners with multiple employers will be able to opt-out of SG scheme to avoid breaching the \$25,000

concessional contribution caps.

- Non-arm's length income includes expenses not incurred – Non-arm's length income (**NALI**) rules currently taxes NALI at 45%. This bill proposes to extend this to expenses not incurred, such that where the expense is not incurred (e.g. reduced interest rates) the income associated with such an expense will be taxed as NALI at 45%.
- Total super balance to include Limited Recourse Borrowing Arrangement (**LRBA**) - A members' ability to contribute into super is limited by the Total Super Balance (**TSB**). The bill proposes to include in TSB a member's share of a LRBA where the LRBA is from an associate or where the member has satisfied a condition of release (e.g. over 65 years old). This is proposed to apply to LRBAs commencing after 1 July 2018.

Please contact Hall Chadwick if you wish to access the SG amnesty or if you think you will be affected by the proposed changes to super.

3 GST

3.1 GST withholding on new residential property commences 1 July 2018

Vendors and purchasers of new residential property are reminded that GST withholding on new residential property commences for contracts entered into from 1 July 2018. Purchasers are required to withholding the following amounts at settlement:

- 1/11th of the purchase price where the margin scheme is not claimed; or
- 7% of the purchase price where the margin scheme is applied.

Contracts entered into prior to 1 July 2018 will be excluded from withholding obligations.

The ATO has indicated that GST property settlement online forms and instructions will be available from **late June 2018**.

4 STATE TAXES

4.1 NSW Payroll tax: Fees paid by company to partnership taxable as wages - *B & B Stevenson Pty Ltd v Chief Commissioner of State Revenue*

In June 2003 Mr and Mrs Stevenson purchased the management rights to the Quest Serviced Apartments in Newcastle as franchisees. Mr and Mrs Stevenson considered themselves as partners holding the

franchise. There was no written partnership agreement, but partnership accounts were prepared.

The parties to the agreement were the franchisor, Mr and Mrs Stevenson as franchisees and as guarantors, and a company, which was appointed as manager of Quest Serviced Apartments. That company made payments to the partnership. The shareholders and directors of the company were Mr and Mrs Stevenson.

The Commissioner assessed these payments from the company to the partnership as wages, but the company argued that these payments were not wages as they were sub-licence fees paid to the partnership for the right to manage the apartments, not to Mr and Mrs Stevenson as directors of the company.

The NSW Civil and Administrative Tribunal found there was no evidence that these payments were in fact, sub-licence fees, and the most likely explanation for the payment of these fees were remuneration for services provided by its directors, being Mr and Mrs Stevenson and are accordingly subject to payroll tax.

We are currently seeing significant increase audit activity in NSW payroll tax and would suggest clients review their payroll tax obligations including grouping and contractors to ensure they comply with their payroll tax obligations.

4.2 Landholder duty: Company is primary producer and not assessed based on land value - *Adams Bidco Pty Ltd v Chief Commissioner of State Revenue*

The taxpayer company purchased all the issued shares in a company (Ingham) which operated a poultry production business. Ingham operated a fully vertically integrated poultry production business both in Australia and NZ.

Ingham held, directly and indirectly, substantial landholdings in connection with the business of Ingham. There were 92 separate parcels of land in Australia and New Zealand with a total area of 3,974 hectares and total value is \$654,206,775. By area, approximately 90% of Ingham's land is used for primary production; and by value, approximately 35% of Ingham's land is used for primary production.

Section 163D provided an exemption from landholder duty on acquisition of a landholder (in this case, a company that holds land) where the landholder is a primary producer. A primary producer is defined by the legislation as "a landholder whose landholding in all places, whether within or outside Australia, wholly or predominately comprise of land used for primary production".

The Chief Commissioner argued that the primary producer exemption was not available as most of the land is not used for primary production, based on value. The NSW Supreme Court held that there was no basis





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for the Chief Commissioner's "value" approach, and based on the actual operation of Ingram; it was a primary producer which used its land wholly or predominately for primary production. On this basis, no landholder duty applies when the taxpayer company purchased the shares in Ingram.

The Court cautioned that same result would not necessarily apply with same values and combinations and would be dependent on what the landholder's actual activities. The Court provided an example of a landholder with 300 hectares of rural goat country and a city office building on half a hectare worth ten times as much as the rural land which would not be considered a primary producer.

4.3 Qualifying land exempt from stamp duty in SA from 1 July 2018

In South Australasia, stamp duty on non-residential, non-primary production land ("Qualifying Land") is being phased out with no stamp duty payable from 1 July 2018. From 7 December 2015, the duty payable was reduced by one-third, with a further one-third reduction from 1 July 2017 (a total reduction of two-thirds) and abolished from 1 July 2018. Transfers of qualifying land are still required to be stamped and registration fees payable.

Should you wish to discuss your tax queries,
please contact our office
Telephone 07 3221 2416

Email general@hallchadwickqld.com.au

Website www.hallchadwickqld.com.au

Find out how we can help, contact your [local office](#)

NEW SOUTH WALES

Level 40, 2 Park Street

Sydney NSW 2000

Tel: 02 9263 2600

sydney@hallchadwick.com.au

VICTORIA

Level 14, 440 Collins Street

Melbourne VIC 3000

Tel: 03 9820 6400

hcm@hallchadwickmelb.com.au

QUEENSLAND

Level 4, 240 Queen St

Brisbane QLD 4000

Insolvency Services

Tel: 07 3211 125

brisbane@hallchadwick.com.au

General Services

Tel: 07 3221 2416

general@hallchadwickqld.com.au

NORTHERN TERRITORY

Paspalis Business Centre Level 1

Suite 11, 48-50 Smith Street

Darwin NT 0800

Tel: 08 8943 0645

darwin@hallchadwick.com.au

WESTERN AUSTRALIA

Allendale Square, Level 11

77 St Georges Terrace Perth WA 6000

Tel: 08 6557 6200

perth@hallchadwick.com.au

ADELAIDE

Level 21, 25 Grenfell Street

Adelaide SA 5000

Tel: 08 8545 8422

adelaide@hallchadwick.com.au

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