HALL CHADWICK

Tax Time Monthly

JUNE ISSUE 2020

1. INCOME TAX

1. ATO COVID-19 Support

The ATO has announced and implemented many concessions and extensions from March 2020 to assist with the impact of Covid-19. These are being changed, updated and extended regularly so you should check this page prior to applying any of the concessions.

Below is a list of current concessions

- Ability to defer income tax, FBT and excise payment due dates up to 12 September 2020, stopping interest accruing on tax liabilities and low interest payment arrangements, by application to the Commissioner.
- Remission of interest and penalties incurred after 23 January 2020, by application to the Commissioner.
- FBT for 31 March 2020 has a blanket deferral applicable to 25 June 2020.
- 2019 income tax returns are now due by 5 June 2020.
- SMSF 2019 income tax returns are now due by 30 June 2020.
- Variation of PAYG instalments and claiming of refund of instalments made during FY 2020.

2. Cash Flow Boost - ATO updates

The ATO issued this fact sheet regarding its administration of the Cash Flow Boost on 18 May 2020. The ATO indicated in this fact sheet that

- Eligible clients should receive a total cash flow boost of $10,000 or the amount withheld from payments made to employees up to $50,000;
- If there is excess credit on the activity statement, it will be refunded (as opposed to being offset against any existing debt);
- Clients who do not automatically receive the cash flow boost should review their eligibility and contact the ATO if they believe they are in fact eligible.

We are also aware that some businesses have incorrectly received the cash flow boost when they are not eligible (for example, they have aggregated turnover in excess of $50M but their income tax return shows turnover <$50M), and need to contact the ATO to refund this amount. Please contact Hall Chadwick if you require advice regarding eligibility for Cash Flow Boost.

3. JobKeeper Update

Since JobKeeper was originally announced in March 2020, there have been many changes and concessions introduced to allow more employers to access JobKeeper and extension of time to register/claim JobKeeper. We have released a series of publications during this time, which can be found in our Covid-19 hub. Below is a summary list of these changes/ concessions, and clients should be aware of these as they administer JobKeeper to their employees.

- Legislative Instrument: *Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules* 2020. This provides alternative decline in turnover test that may be satisfied by an entity, where they do not satisfy the basic decline in turnover test, for 7 types of entities, being entity that newly commenced business, entity that acquired/disposed of a part of their business, entity that restructure, entity with substantial increase in turnover, entity affected by drought, entity with irregular turnover, and entity that is a sole trader/partnership and didn't work due to illness, injury or on leave.
- *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 2)* 2020, which amended the original JobKeeper legislation to provide a modified decline in turnover test for certain group structures, confirm the one-in, all in rule, as well as other modifications to universities, religious practitioners, charities, and impose additional requirements that must be met for children to be eligible nominees.
- The ATO has provided a number of extensions including enrolment for April and May JobKeeper fortnights having been extended to 31 May 2020, and monthly business declaration (of GST turnover for the month, projected GST turnover, and number of employees eligible for JobKeeper that month) extended to 14th of the following month (previously due the 7th of the following month).
- The ATO published PCG 2020/4 where the ATO sets out its view on when it will review the application of JobKeeper in certain scenarios. The ATO indicated that there is a high risk that they will deploy resources to review arrangements where the entity has qualified for JobKeeper by deferring supplies, bringing forward supplies transfer the business to result in a reduction of income, defer or reduce price paid to suppliers so supplier gets JobKeeper, and defer/reduce/waive revenue to a company solely to enable the company to get JobKeeper.
- The ATO has also produced a number of other

publications regarding application of the JobKeeper rules including LCR2020/1: JobKeeper payment: Decline in turnover test, PSLA 2020/1: Commissioner's discretion to allow further time for an entity to register for ABN registration or provide notice to the Commissioner of assessable income or supplies.

Clients requiring advice re application for JobKeeper should contact their Hall Chadwick advisor.

4. Car depreciation limit increase for FY 2020-2021

The car depreciation limit has increase for the first time since FY 2017, increasing to $59,136 from 1 July 2020 (previously $57,581).

5. Online Access to deceased estates information from 15 May 2020

From 15 May 2020, the registered tax or BAS agent can access a deceased persons information if nominated to represent a Legal Personal Representative (LPR) for a deceased estate. This will only be lawful access if the executor or administrator has a grant of probate or letters of administration (respectively). See here for the ATO publication as to what is required for access.

6. ATO: International business FAQ where COVID affected

The ATO last updated this FAQ on 8 May 2020 for international businesses that are COVID affected. A few notable points are as follows:

- Transfer pricing documentation cannot be prepared by income tax lodgement due date due to COVID-19: ATO has indicated that they will take an administrative approach for penalties whereby a portion may be remitted from penalties arising from a lack of a reasonably arguable position where certain criteria are met.

- Thin capitalisation and safe harbour cannot be met due to the balance sheet being COVID-19 affected: ATO has advised the taxpayer to use alternative measurement options (such as monthly measurement) to smooth out this impact, and explore other options including the arm's length debt test.

- Central management and control being affected due to restriction of international travel: The ATO indicated that if the only reason for holding board meetings in Australia or directors attending board meetings from Australia is because of the effects of COVID-19, then they will not apply compliance resources to determine if central management and control is in Australia.

Clients who are inbound internationals should contact Hall Chadwick if they are affected for access to concessions.

7. Trust disposal of shares on capital account: XQPZ, KYZC, DHUP and FCT [2020] AATA 1014

The gains made on disposal of shares in mining companies by a trust was income according to ordinary concepts and not capital gains.

In this case, the trustee of a trust acquired shares in mining companies and disposed of them at a gain (of $17M), treated them as a discounted capital gain and distributed these to beneficiaries. The Commissioner issued amended assessments on the basis that the gain is income according to ordinary concepts and not capital gains. The Court agreed with the Commissioner on the basis that

- It was known by the trustee that the shares were acquired with the knowledge that the mining company was attempting to increase shareholder value by seeking to obtain an exploration licence;

- There was no evidence dividends would be derived from the mining shares which inferred that the intention was to dispose of the shares at a profit;

- The trustee acquired the shares in a "business operation or commercial transaction", on the basis that the controller of the trustee was also a director of the mining company. Together the trustee and mining company director was in business operation to enhance the value of the trust's shareholdings, by executing the plan for the mining company to seek an exploration licence.

Clients with trusts with significant gains being treated on capital account should contact Hall Chadwick for confirmation of this position if they are uncertain.

2. SUPERANNUATION

1. ATO provide FAQ to SMSF that are COVID-19 affected

The ATO has provided a number of concessions to SMSF that are COVID-19 affected, via its FAQ, as follows:

- Where an SMSF has a compliant limited recourse borrowing arrangement (LRBA) in place with a related party, and repayment relief is provided to the SMSF trustee due to COVID-19, the ATO will not apply the non-arm's length income (NALI) provisions and accept the parties are dealing at arm's length. This should be documented and relief provided in line with what commercial banks are offering for real estate investment loans.

- Where an SMSF owns real estate and wants to provide rent relief to a related party tenant due to impact of COVID-19, the ATO will not take compliance action for FY 2020 and FY 2021. This also applies to an interposed entity such as a non-geared unit trust that leases property to a related tenant, if the interposed entity provide a deferral of rent due to impact of COVID-19. These changes of terms should be documented as a minute or a renewed lease agreement or some other contemporaneous document.

- Where a member of an SMSF temporarily resides outside of Australia for less than 2 years, and was to return to Australia but became stranded overseas due to COVID-19 and consequently being out of Australia in excess of 2 years, the ATO indicated that they will not apply compliance resources to determine if the SMSF meets the relevant residency conditions.

- Where as a result of the downturn in market conditions, the fund's in-house assets would be more than 5% of the fund's total assets at FY 2020, the ATO will not undertake compliance activity if there is a rectification plan in place to be implemented during FY 2021, but could not be done if the market has not recovered or it was unnecessary to implement the plan as the market has recovered. This also applies where the SMSF has exceeded the 5% in-house asset threshold at 30 June 2019 but could not rectify the breach by 30 June 2020 due to circumstances caused by COVID-19.

3. STATE TAXES

1. QLD Government COVID-19 Relief

We have previously provided a client alert regarding land tax relief along with payroll tax relief for QLD, as well as other concessions that are available from the QLD Government here.

Note each State has their own package of COVID-19 relief measures and should be reviewed depending on which State you operate in.

Should you wish to discuss your tax queries, please contact our office:
Hall Chadwick QLD
Level 4, 240 Queen Street
Brisbane QLD 4000
general@hallchadwickqld.com.au
+61 7 3212 2500

Find out how we can help, contact your [local office.]

NEW SOUTH WALES
Level 40, 2 Park Street
Sydney NSW 2000
T: + 61 2 9263 2600
sydney@hallchadwick.com.au

VICTORIA
Level 14, 440 Collins Street
Melbourne VIC 3000
T: + 61 3 9820 6400
hcm@hallchadwickmelb.com.au

QUEENSLAND
Level 4, 240 Queen Street
Brisbane QLD 4000

General Enquiries
T: +61 7 3212 2500
general@hallchadwickqld.com.au

Insolvency Services
T: +61 7 3211 1250
brisbane@hallchadwick.com.au

SOUTH AUSTRALIA
Level 21, 25 Grenfell St
Adelaide SA 5000
T: + 61 8 8545 8422
adelaide@hallchadwick.com.au

NORTHERN TERRITORY
Paspalis Business Centre
Level 1, 48-50 Smith Street
Darwin NT 0800
T: + 61 8 8943 0645
darwin@hallchadwick.com.au

WESTERN AUSTRALIA
General Services
283 Rokeby Road
Subiaco WA 6008
T: +61 8 9426 0666
perthgeneral@hallchadwickwa.com.au

Insolvency Services
Level 11 Allendale Square,
77 St Georges Terrace Perth WA 6000
T: +61 8 6557 6200
perth@hallchadwick.com.au

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