Client Information Bulletin

BLAZE ACUMEN
CHARTERED ACCOUNTANTS

Spring 2015

Contents

Amendments to Superannuation release authority

The *Tax and Superannuation Laws Amendment (2014 Measures No 7) Act 2015* have now been given Royal Assent and individuals who exceed their non-concessional contributions cap can elect to release from superannuation an amount equal to the contributions that exceed the cap, plus 85% of an associated earnings amount.

The new regulation amends the previous release authority provisions to enable superannuation providers to pay amounts released to individuals that make such an election in accordance with a release authority issued by the Commissioner.

Excess non-concessional contributions that are released from superannuation will not attract excess non-concessional contributions tax. However, individuals can elect not to release an amount from superannuation, in which case their excess non-concessional contributions will be taxed at the top marginal tax rate.

The new regulation also amends the previous rules to allow superannuation providers to make payments under release authorities issued by the Commissioner in relation to the Division 293 regime which was previously omitted from earlier regulation.

Division 293

Division 293 of the Income Tax Administration Act 1997 (ITAA 1994) was introduced with effect from 1 July 2012 to impose additional tax on certain superannuation contributions made by or on behalf of individuals who are high income earners. The Division 293 tax is an additional rate of 15% on contributions by individuals whose income and low tax contributions (ie. generally contributions to a super fund which are concessionally taxed) broadly exceeds $300,000.

The individual can then elect to pay the Division 293 tax using their own monies or using a Division 293 release authority to have the entire or a partial amount released from their superannuation fund.

ATO's increased powers under general anti-avoidance provisions - Part IVA

When Part IVA was first introduced, it was never intended to compel taxpayers to pay the greatest amount of tax possible. Part IVA was designed to counter artificial or contrived taxation arrangements.

However, the government has amended the general anti-avoidance provision - Part IVA of the *Income Tax Assessment Act* – to give the ATO wider powers to reconstruct what actually happened to cancel any tax benefit.

These changes were prompted by the Commissioner losing a string of high profile cases.

How does Part IVA work?

The underlying elements of Part IVA remain the same.

- There must be a 'scheme' in relation to a

transaction. This requirement will almost always be satisfied because the concept of a 'scheme' is defined very widely.
- The taxpayer must get a 'tax benefit'.
- The taxpayer's sole or dominant purpose in entering the scheme must be to obtain a tax benefit.

What has changed?

Part IVA is now based on two possible approaches:

- the annihilation approach - where the scheme is aggressive and the ATO just identify the tax benefit and cancel it; and
- the reconstruction approach - a comparison of what actually happened (the scheme) and what would have happened without the scheme (alternate postulate).

The Commissioner lost a number of cases because the Court found that if the taxpayer had not entered into the scheme they may not have done anything at all and therefore there was no alternate postulate. This meant there could be no 'tax benefit' as this requires a comparison with tax that would have been paid under the alternate postulate.

As there was no tax benefit there was no need to examine the taxpayer's purpose.

Under the amended law, the Commissioner must determine that, except for the scheme, either:

- no tax benefit would have arisen; or
- no tax benefit might reasonably have been expected to have arisen.

However, the amendments create substantial uncertainty where the Commissioner considers that, except for the scheme, something would have happened but in a different manner.

The crux of the problem with these amendments is that the alternate postulate must be reasonable, but in determining what a reasonable alternative is, the Commissioner must not consider tax consequences.

From a policy perspective, the Government are of the view that "the operation of Part IVA as a general anti-avoidance provision would be better served if the inquiry focused on whether or not there were other ways (for example, more convenient, or commercial, or frugal ways) in which the taxpayer might reasonably have achieved the substance and effect (tax implications aside) that it achieved from, or in connection with, the scheme. That inquiry would assist in exposing the purposes of the participants in a scheme and prevent taxpayers who achieve substantive non-tax effects from a scheme avoiding the normal tax consequences of what they have actually done by arguing that they would have done something completely different, or done nothing at all."

Although the Government has also stated that Part IVA was not intended to "cast unnecessary inhibitions on normal commercial transactions by which taxpayers legitimately take advantage of opportunities available for the arrangement of their affairs" only time will tell if these changes are to result in an increase to the ATO's powers in cancelling a tax benefit.

What does this mean for taxpayers?

The risk is that sensible tax planning may now be caught under the general anti-avoidance provisions, thus highlighting the importance of considering whether applying for a private binding ruling from the ATO before implementing any major transaction or restructure is an appropriate step in the process.

It also highlights the importance to ensure commercial, family or other factors motivating a decision are properly documented.

A private binding ruling can be sought for transactions that have either already occurred or that are being seriously contemplated, allowing taxpayers to have certainty regarding the tax outcome before entering into transactions. Blaze Acumen has extensive experience with applying for private binding rulings from the ATO. Should you wish to consider the option of a private binding ruling please talk to your Blaze Acumen advisor.

The importance of Estate Planning

The main reason you need to plan your estate is to make sure your financial wealth and other assets are inherited by the people you want.

Your Will plays a large part in this planning so you should make sure it is up to date and correctly reflects your wishes. Having a valid and comprehensive Will provides clear instructions to your executors and can include many important features (e.g. testamentary trusts) of benefit to your beneficiaries. Proper consideration and planning can save your beneficiaries much angst and heartache.

Importantly, many people also forget that superannuation does not automatically form part of their estate and therefore needs to be specifically dealt with, for

example by way of a binding death benefit nomination (BDBN).

A number of recent cases before the Courts have highlighted and reinforced the need to ensure that a valid BDBN exists if you want certainty as to the beneficiaries of your superannuation entitlements. Rarely is preparing a BDBN as simple as filling in a form, and a failure to take proper advice can lead to expensive, time-consuming and distressing litigation for those left behind.

Working together with a legal practitioner specialising in estate planning (we would be pleased to assist with a recommendation if one is required), we are able to help you create or update your estate plan to ensure that your assets are dealt with under your Will in an appropriate and tax effective manner. We believe that creating a Will that protects your assets and provides for the well-being of your nominated beneficiaries should be an essential part of managing your financial affairs.

ATO focus on work-related expenses

The ATO has advised taxpayers that it will be focusing this year on unusually high work-related expense claims across all industries and occupations.

Enhancements in technology and the use of data means the ATO are able to take a much broader approach than previous years; and identify and investigate claims that differ from what is normal across all industries and occupations.

The ATO will also be paying particular attention to claims:

- that have already been reimbursed by employers, and
- for private expenses such as travel from home to work.

Three easy rules you can follow to make sure you're not over claiming on work-related expenses:

- you must have spent the money yourself,
- it must be related to your job, and
- you must have a record to prove it.

Source: ATO website

Draft legislation on car expense deductions

Following the announcements in the recent Federal Budget, draft legislation has now been released to amend the methods for calculating deductions for work-related car expenses.

Up until 30 June 2015, taxpayers had the option of four methods to access the work-related car expenses deduction. These were the cents per kilometre method, logbook method, 12% of original value method, and one-third of actual expenses incurred method.

The proposed amendments will remove the 12% of original value and the one-third of actual expenses methods. While the other two methods will be retained, the cents per kilometre method will be amended by replacing the three current rates based on engine size with a single rate of 66 cents per kilometre for all motor vehicles.

The amendments will apply from the 2015/16 income year.

Accordingly, taxpayers should consider whether they should complete a logbook and retain records of all their motor vehicle expenses to be able to claim car expense deductions for the 2015/16 income year.

Valid for five years

Each logbook you keep is valid for five years, but you may start a new logbook at any time.

If you establish your business-use percentage using a logbook from an earlier year, you must keep that logbook and maintain odometer readings in the following years.

Your first year

If this is the first year you have used the logbook method, you must keep a logbook during the income tax year for at least 12 continuous weeks. That 12-week period needs to be representative of your travel throughout the year.

If you started to use your car for business purposes less than 12 weeks before the end of the income year, you can continue to keep a logbook into the next year so it covers the required 12 weeks.

ATO's app myDeductions tool

The ATO is promoting the myDeductions tool on the ATO app. Taxpayers can use the myDeductions tool to:

- capture and classify work-related expenses, gifts and donations or the cost of managing their tax affairs;
- store photographs of receipts; and
- record car trips.