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client alert

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Budget Levy from 1 July 2014

The Government's Temporary Budget Repair Levy is now law. The levy is payable at the rate of 2% of each dollar of an individual's annual taxable income over \$180,000. The levy is active for three financial years, starting on 1 July 2014 and ending on 30 June 2017. That means the top marginal tax rate is effectively 49% (including the 2% Temporary Budget Repair Levy plus the 2% Medicare levy).

For example: Individuals with taxable income of \$200,000 will pay 2% of \$20,000 (ie a levy of \$400). Those with taxable income of \$300,000 will pay 2% of \$120,000 (ie \$2,400 of levy).

A number of other taxes are also affected by the levy. According to the Government, these other changes are important to maintain integrity and fairness in the tax system. Notably, the fringe benefits tax (FBT) rate will be increased from 47% to 49%. As the FBT year commences on 1 April and concludes on 31 March, the increase in the FBT rate is to be applied from 1 April 2015. The increase in the FBT rate will cease on 31 March 2017.

TIP: High-income earners may want to review salary sacrificing arrangements and the possible effect of the levy. Please contact our office for further information.

PAYG instalment threshold changes

The ATO has confirmed the Government's recent announcement that the pay-as-you-go (PAYG) instalment thresholds will change with effect from 1 July 2014. Following the Minister's announcement, the ATO advised the following instalment threshold changes:

- the business or investment income threshold is increased from \$2,000 to \$4,000;

- the balance of assessment threshold is increased from \$500 to \$1,000;
- the notional tax threshold is increased from \$250 to \$500; and
- the requirement for entities registered for GST to remain in the system even if they have a zero instalment rate is removed.

As a result, many taxpayers will no longer have to pay PAYG instalments. According to the Minister of Small Business, around 32,500 small businesses that have no GST reporting requirements will no longer have to lodge a business activity statement (BAS) where to date lodgements have been made only to report PAYG instalments. In addition, around 340,000 small businesses with modest or negative income which are required to lodge a BAS, will no longer have to interact with the PAYG instalment system.

TIP: If taxpayers still wish to pay instalments towards their end-of-year tax liability, they may voluntarily re-enter PAYG instalments by contacting the ATO. Please contact our office for further information.

ATO mining data to find offshore tax evaders

The ATO says it is mining data to identify individuals with undisclosed offshore income and assets. "The net is closing for people who have undeclared offshore income – we're looking at all our data and will be in touch with financial institutions, advisers and thousands of people over the coming months," said Deputy Commissioner Michael Cranston. As at 30 June 2014, the ATO's Project DO IT initiative to encourage voluntary disclosure has received 166 disclosures, raising an additional \$13 million in tax liabilities. The ATO has also obtained more than 250 expressions of interests from taxpayers indicating that they will be making a disclosure.

TIP: The last day to make a disclosure under Project DO IT is 19 December 2014. The ATO had previously warned that, until it receives a disclosure, its normal compliance activities will continue. Individual taxpayers detected first by the ATO will not be able to participate in Project DO IT.

Deductions for employee welfare fund denied

The Administrative Appeals Tribunal (AAT) has refused a taxpayer's claim for deductions for contributions made to an offshore "employee welfare fund". The taxpayer and a number of related companies carried on an automotive repair and spare parts business. The fund was set up in 1998 and its beneficiaries were the two employee-operators of the business and a spouse. In 1998 the taxpayer contributed \$400,000 to the fund. In 1999 the taxpayer contributed a further \$25,000 and also claimed carried-forward losses resulting from the contribution from the previous year.

The AAT rejected the taxpayer's claim that the contributions to the fund were deductible. It also highlighted a number of concerns in the way the fund was set up and how it operated. Among other things, the AAT noted there were no documents to show that the trustee ever admitted anyone as a member of the fund and, furthermore, there was doubt and confusion about the identity of the trustee. However, the AAT found that while the Commissioner could issue amended assessments for the 1998 and 1999 income years in 2012, an amended assessment issued for the 2002 income year was out of time to deny a deduction for further carried-forward losses.

Hunger relief organisation wins FBT exemption case

Hunger Project Australia (HPA) has been successful before the Full Federal Court in seeking endorsement as a "public benevolent institution" (PBI) for fringe benefit tax (FBT) purposes. This was despite the organisation being predominantly engaged in fundraising, and not providing aid or relief directly. As a result, the provision of benefits to one of its employees is to be taken to be exempt benefits for FBT purposes.

HPA is a member of a worldwide collaboration of organisations operating under the name "The Hunger Project" whose principal aim is the relief of hunger. The activities of HPA are to raise funds, which are then disseminated to Hunger Project members in the developing world.

The Commissioner argued that an entity that merely engages in fundraising activities and does not materially perform charitable works directly for the benefit of the public is not a PBI. The Full Court rejected the Commissioner's arguments requiring a

PBI to directly dispense relief. The fact that such an institution does not itself directly give or provide that relief, but does so via related or associated entities, is no bar to it being a PBI, the Court said.

Damages assessable to director personally

The High Court has affirmed that damages received by an individual following a failed joint venture project were assessable to him personally. Broadly, the individual and others had sought for the company of which they were the directors to become an equity participant in the project and become the ultimate purchaser of the golf course. However, the other joint venturers in the project disputed this and made other arrangements to purchase the golf course.

The individual then successfully sued the other joint venturers and was awarded damages by the Victorian Supreme Court for the loss of a business opportunity. The Commissioner then assessed the individual on this amount (around \$860,000). The individual argued that he had received the money as trustee of the company and it was therefore assessable to the company.

The High Court held the individual was liable to income tax on the damages received in satisfaction of the Supreme Court judgment. It was of the view the individual did not receive the amount as a constructive trustee of the company.

Winemaker not taxable on property sale

The Administrative Appeals Tribunal (AAT) has held that an individual taxpayer who was the controller of several trusts through which he operated a winemaking business, and who was also a beneficiary of the trusts, was not presently entitled to an amount of over \$480,000 in profit that one of the trusts made from the sale of business premises.

The profit had been deposited into accounts which the taxpayer controlled for his personal benefit. The Commissioner had issued an assessment to include the profit in the taxpayer's assessable income on the basis that the amount represented revenue profit of the trust and that, as a beneficiary of the trust, the individual was presently entitled to the amount under certain rules concerning the tax treatment of trust income.

However, the AAT did not agree with the Commissioner's decision. It concluded that another of the trusts (of which the taxpayer was trustee) was beneficially entitled to the profit as a beneficiary of the trust that made the profit from the sale, and not the taxpayer in his personal capacity.

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