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Private health insurance rebate changes looming

Income testing of the 30% private health insurance rebate starts on 1 July 2012. Essentially, singles earning over \$84,000 per annum and families earning over \$168,000 per annum will receive a reduced rebate that is less than the current 30% rebate.

The ATO says that it will calculate a taxpayer's private health insurance rebate entitlement after they have lodged their income tax return for the 2012–2013 year. If a taxpayer has claimed too much of the rebate, the ATO says it will "recover the amount" as a tax liability by adding the amount to the tax bill. However, if the full entitlement was not claimed, the ATO says it will credit the amount to the taxpayer as a refundable tax offset.

TIP: You may want to carefully consider your personal circumstances in response to the changes. Please contact our office if you have any questions.

CGT small business concessions denied

A recent case before the Administrative Appeals Tribunal (AAT) has demonstrated the need for great care when structuring arrangements to ensure a taxpayer's eligibility for the small business capital gains tax (CGT) concessions.

The Tribunal held that the taxpayer had not passed the "maximum net asset value" test for the purposes of the CGT small business concessions in respect of a capital gain made on selling shares to his family trust. The taxpayer was a director and shareholder of a series of interlocking companies. The issue turned on whether a bank loan to the family trust was a liability that could be taken into account in applying the "maximum net asset value" test. However, the Tribunal

held the loan could not be taken into account for various reasons.

TIP: One of the conditions for accessing the CGT small business concessions is that the taxpayer (other than those who qualify as small business entities) must satisfy the "maximum net asset value" test. To pass this test, the net value of all the CGT assets of taxpayer (including affiliates and connected entities) must not exceed \$6 million (previously \$5 million).

The rules are complex. The AAT decision highlights the importance of careful planning when structuring transactions. Please contact our office if you have any questions.

Director penalty regime – take two!

The Government has now passed legislation to extend the director penalty regime. This will, among other things, make directors personally liable for their company's unpaid superannuation guarantee amounts.

The changes also aim to ensure that directors cannot discharge their director penalties by placing their company into administration or liquidation while PAYG withholding or superannuation guarantee remains unpaid and unreported for three months after the due date.

The changes also propose a new "PAYG withholding non-compliance tax" that arises when a company has failed to pay amounts withheld to the Commissioner of Taxation. This tax will be levied on directors or associates of directors, provided certain criteria are met.

This legislation is effective from 29 June 2012 but can apply prior to this date in the case of PAYG withholding amounts not paid to the Tax Office.

TIP: In 2011 the Government withdrew its original legislation from Parliament following calls for more consultation after a Parliamentary committee noted that innocent directors could be caught by the proposed rules.

Directors and those considering becoming a director (or those who might be considered an associate of a director) should take note of the changes. Please contact our office if you have any questions.

Minors and low income tax offset changes

The Government has introduced legislation to implement its 2011 Budget announcement to bring an end to the ability of minors (children under 18 years of age) to access the low income tax offset (LITO) to reduce tax payable on their "unearned income" such as dividends, interest, rent, royalties and other income from property.

The changes are designed to discourage income splitting between adults and children, including through the use of trusts. Once formally enacted, the changes will apply to assessments from the 2011–2012 income year onwards.

Under the new rules, a trustee who is assessed on the income of a minor will not have access to the LITO in circumstances where the income is considered to be unearned income of that minor.

Non-resident tax rate increases on the way

Legislation has been introduced into Parliament to amend the income tax rates for non-residents from 1 July 2012.

The changes, pending formal enactment, will essentially increase the non-resident tax rates from the 2012–2013 year onwards. Changes have also been made to the tax rates applicable to non-resident minors. Please contact our office for further details.

Commissioner's new power to withhold refunds

Legislation is making its way through Parliament to give the Commissioner of Taxation a new power to withhold "high risk" refunds pending integrity checks of a taxpayer's claim.

The changes are being introduced in response to court proceedings in which the Commissioner was ordered to pay a GST refund to a taxpayer, despite the fact that the outcome of an ATO audit was still pending. The proposed legislation is designed to address this by providing the Commissioner with a new legislative power to retain refunds in such circumstances.

It should be noted that the Commissioner's power will apply to all refunds and claims arising under the tax law – not just GST. Some commentators have warned that the proposed measures are very broad and provide the Commissioner with the widest of discretions to withhold refunds.

Living-away-from-home concessions to be tightened

The Government has proposed a raft of changes concerning living-away-from-home allowances (LAFHAs) and benefits. Essentially, the Government is restricting access to the concessions. Employers and employees who may be affected need to take note.

Broadly, the following will apply:

- LAFHAs will no longer be available for international secondments to Australia;
- LAFHAs will only be available to Australian taxpayers who maintain a second home and only then for a time limit of 12 months per location; and
- allowances will be taxable to employees with deductions for actual expenditure, rather than being taxable as fringe benefits that are subject to exemptions.

In order to obtain a deduction, the proposed new regime will also create requirements for employees to provide written evidence of their expenditure in some circumstances.

The proposed changes are set to take effect on 1 July 2012. However, there will be grandfathering provisions to preserve tax concessions for up to two years for some arrangements that were in place prior to Budget night (8 May 2012).

TIP: The proposed changes are complex and will raise significant issues for affected employers and employees.

Following these developments and before the enactment of the legislation, it will be critical to identify how the changes may apply to your circumstances. If you have any questions, please contact our office.

Important: Clients should not act solely on the basis of the material contained in Client Alert. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. Client Alert is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.