Corporate Essentials

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Tax Practitioner

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MYEFO

Before Christmas, the government released its mid-year economic fiscal outlook (MYEFO). It contained several measures, including:

Penalty unit increase

The Government will increase the amount of the Commonwealth penalty unit by 5.4% from $313 to $330, commencing four weeks after passage of legislation. The increase will apply to offences committed after the relevant legislative amendment comes into force. The amount will continue to be indexed every three years in line with the CPI per the pre-existing schedule.

Advisor fees from superannuation

The Government will address the high cost of advice, better protect consumers, and bolster ethical standards to ensure Australians can access reliable and affordable financial advice through its *Delivering Better Financial Outcomes Package*. The first stream of the package reduces the cost of providing advice by removing onerous red tape that adds no benefit to consumers. As part of this stream, the Government will provide a clear legal basis for superannuation trustees to pay advice fees agreed between a member and their financial adviser from the member's superannuation account and prescribe that such fees are a tax-deductible expense of the fund retrospectively from 2019/20.

Denying deductions for ATO interest charges

The Government will deny deductions for ATO interest charges. Specifically, the general interest charge (GIC) and shortfall interest charge (SIC) are incurred in income years starting on or after 1 July 2025. GIC and SIC are incurred where tax debts have not been paid on time or a tax liability has been incorrectly self-assessed and resulted in a shortfall of tax paid, respectively.

Both GIC and SIC are currently tax-deductible for all entities. Removing these deductions will enhance incentives for all entities to correctly self-assess their tax liabilities and pay on time and level the playing field for individuals and businesses who already do so.

The Commissioner of Taxation will continue to have the ability to consider individual circumstances and remit GIC or SIC where appropriate.

Boosting the integrity of the foreign resident CGT withholding regime

If you have clients acquiring property from foreign resident vendors, note that the Government will increase the foreign resident capital gains withholding tax rate from 12.5% to 15% and reduce the withholding threshold from $750,000 to $0. The changes will apply to real property disposals with contracts entered from 1 January 2025.

The foreign resident capital gains withholding regime is an integrity measure that first came into effect on 1 July 2016. It imposes an obligation on the purchaser of certain Australian real property (and related interests) to withhold a percentage of the purchase price and remit that to the ATO, where the property is acquired from a foreign resident vendor.

The measure will complement the Government's initiatives to improve housing affordability for Australians. It will ensure better compliance by foreign residents with their Australian tax obligations and support the collection of tax liabilities from foreign residents.

Modernising LCT for fuel-efficient vehicles

The Government will modernise the Luxury Car Tax (LCT) by tightening the definition of a 'fuel-efficient vehicle' and updating the indexation rate for the LCT value threshold for all other luxury vehicles from 1 July 2025.

MYEFO

Cars with an LCT value over the relevant threshold attract the LCT at a rate of 33%. The LCT has two thresholds: a higher threshold for fuel-efficient vehicles and a lower threshold for all other luxury vehicles.

This new measure will tighten the definition of a fuel-efficient vehicle for the LCT by reducing the maximum fuel consumption from 7 litres per 100km to 3.5 litres per 100 km. It will update the LCT value threshold indexation rate for all other luxury vehicles from the headline CPI to the motor vehicle purchase sub-group of the CPI, aligning it with the indexation of the LCT value threshold for fuel-efficient vehicles.

These changes will encourage greater take-up of fuel-efficient vehicles, consistent with the Australian Government's National Electric Vehicle Strategy. This measure is part of the Australian Government's commitment to reduce greenhouse gas emissions by 43% by 2030 and achieve net zero emissions by 2050.

SUPERANNUATION'S 'VALLEY OF DEATH'

Superannuation is still an individual's best way to save money for retirement and save tax at the same time, but there remain some traps that can kill part of your finances. One of these traps is called the 'valley of death', where having your super balance hit a certain level becomes financially pointless.

The valley opens at around $800,000 for a couple, and it can reduce age pension payments more than the extra money's investment returns on your balance are likely to deliver. The sad reality is there is minimal benefit in retiring with a balance between $800,000 and $1.2 million. (Note that while people may think they will never have a balance this large, it's a combined balance with your spouse. Furthermore, as compulsory superannuation guarantee hits 12% of ordinary time earnings, it will become more common for individuals to have $400,000+ balances).

There is little benefit in such balances because Centrelink's age pension assets test starts reducing payments when a homeowner couple has $451,500 of assets excluding their family home, which is exempt from means testing.

That same couple can hold assets totalling $1.03million before age pension payments – and associated concessions – cut out completely.

A couple with $ 1.5 million will not significantly benefit from the pension system until their money runs down to about $800,000, while a combined nest egg above $2 million means they are unlikely ever to require a pension.

Figures from the Association of Superannuation Funds of Australia show that average super balances for 60-64-year-olds were $403,000 for men and $318,000 for women as of mid-2023.

Most people retire receiving age pension payments, often a part pension these days, thanks to compulsory superannuation guarantees that have existed since the early 1990s.

Despite the craziness of the pension and super rules making things tricky for people with just over $800,000 in superannuation, multiple strategies can help savers and seniors navigate the system successfully.

The first is to build a more significant balance if you have enough years ahead of retirement. Salary sacrifice and other tax-deductible contributions, after-tax contributions, co-contributions, spouse contributions and downsizer contributions are among the incentives to help people build a significant nest egg faster.

People can also turn some of their nest egg into exempt money by injecting it into their home via renovations or buying a more expensive property. Still, there are hefty buying and selling costs, so everything would have to be weighed up.

Another legitimate strategy could be to feed your travel bug early in retirement, as Centrelink will no longer assess money spent on those memorable life experiences.

Also, where one member of an older couple is significantly younger than the other and below the pension age of 67, the extra money can be put into the younger partner's super fund, which Centrelink won't count until they reach 67.

The complexity of our system means good financial planners are worth their weight in gold, as they can often save people tens of thousands of dollars simply by recommending tax-effective superannuation strategies.

Super's valley of death lurks on the horizon for many, but how Australians approach and navigate it can result in only a tiny amount of money being killed off by crazy super, tax and pension rules.

2024 BUSINESS PLANNING

The start of a new year is traditionally when business owners – including accountants – review their business model for the year ahead. In an accounting context, when planning, be mindful of the Commissioner's warning two years ago when speaking at Xerocon 2022:

...if your business model is high-volume, low-margin, simple tax returns, your business will not be viable in three to five years. You should be looking to diversify to remain viable longer-term.

Is this prediction (made more than a year ago now) on track to be true if you own such a practice? If so, or even if you just wish to diversify your service offerings moving forward, the following are some suggested additional service offers:

- Compliance (financial statements, Activity Statements, FBT returns, ASIC and company filings)
- Tax consulting (tax planning, CGT strategies including the purchase and sale of businesses, GST advice, advising on trust deeds and trust distribution resolutions, negotiation of payment arrangements and interest remissions with the ATO)
- Business consulting (cash flows/ forecasts/ budgets, benchmarking, business valuations, KPIs, working with bankers and financiers, shareholder agreements and buy-sell agreements, succession planning)
- Structuring and restructuring (establishment of companies/ discretionary trusts/ unit trusts/ SMSFs, re-examination of existing trading structures, ATO and ASIC registrations, strategies to move assets (including businesses) from one structure to another, facilitation of legal agreements)
- Accounting software services (advice on choice of software, assistance with implementation and set-up).

R&D WARNINGS

A few weeks ago, the ATO issued two alerts relating to the Research and Development (R&D) tax incentive:

- TA 2023/4 - *Research and development activities delivered by associated entities* – The ATO is currently reviewing claims made by research and development (R&D) entities for a tax offset under the R&D tax incentive (R&DTI) for expenditure incurred under an agreement with an associate of the R&D entity (the Service Provider) who itself conducts the R&D activities.
- TA 2023/5 - *Research and development activities conducted overseas for foreign-related entities* – The ATO is currently reviewing arrangements where Australian-resident R&D entities claim a tax offset under the R&DTI rules for expenditure incurred on R&D activities conducted overseas. The ATO has seen instances where an R&D entity has purported that the R&D activities were conducted for the R&D entity's benefit. Still, those activities were instead being conducted for (or, to a significant extent, for) a foreign entity connected with or is an 'affiliate' of the R&D entity (foreign-related entity).

More broadly, the key for clients being eligible for the R&D Incentive is that they must have engaged in a systematic progression of work that follows the scientific method, which is:

If you are having difficulties making an R&D application for a client, you may wish to consult a registered R&D consultant.

The ATO and Aus Industry have concerns with some of the practices of tax agents and R&D consultants in this space. These include:

- Cold calling taxpayers and advising them that their business activities are eligible R&D activities.
- Using late registrations to amend claims to access the R&D refundable offset to fund companies in financial difficulties.
- Charging excessive commissions that are a large per cent of the refundable R&D tax offset.
- A registered activity relating to the whole project rather than a specific activity.
- Registered tax agents, including R&D consultants, advise companies to make incorrect R&D tax incentive claims. They may be referred to the Tax Practitioners Board to consider whether there has been a breach of the Tax Agent Services Act 2009.

Hypothesis → **Experiments** → **Observation** → **Evaluation** → **Conclusions**

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