

## *InfoConnect*

Newsletter from the Aspiron Consulting Group

### 2013 Autumn Edition

Welcome to the Autumn edition of *InfoConnect*, the newsletter from Aspiron Consulting Group.

#### In this issue:

- ◆ Smoother tax transition for business restructuring
- ◆ No cut to company tax rate
- ◆ Rules against tax avoidance
- ◆ Special rules affecting private companies
- ◆ Business in net GST refund position may use GST instalment system
- ◆ What is a supply for GST and why it matters.
- ◆ Refunding excess GST
- ◆ In-house fringe benefits—FBT changes
- ◆ Current issues for SMSFs
- ◆ Tax statistics

#### Smoother tax transition for business restructuring

The Federal Government is looking to remove certain income tax impediments that impact business restructures contained in the capital gains tax (CGT) provisions. The changes affect rollovers which apply to deferring when taxable capital gains are recognised for tax purposes and would involve:

- Providing rollovers for revenue assets and trading stock where a person who owns units in a unit trust exchanges units for shares in a company (because the assets of the business are being moved from a trust into a company structure);
- Providing rollovers for revenue assets and trading stock where shares are exchanged in one company for another company (because a new company is introduced into the business ownership structure);
- Ensuring integrity in the tax system for a rollover to apply where replacement assets are of the same character for tax purposes (eg capital or revenue)
- Resolving technical defects with certain rollovers offered for restructures.

The amendments are captured in some draft legislation the government put out for review late last year.

#### No cut to company tax rate

In the previous edition of *InfoConnect*, we mentioned that Treasury had set up the Business Tax Working Group to see if some changes could be made to the business tax system to assist businesses in operating in the current tough economic environment. The working group considered whether the company tax rate could possibly be cut, but this would likely have involved removing some other business tax concessions.



**Chartered  
Accountants**



**THE TAX INSTITUTE**

CHARTERED TAX  
ADVISER

#### ASPIRON CONSULTING GROUP

People Make the Difference

Suite 516, Level 5  
100 Victoria Parade  
EAST MELBOURNE VIC 3002  
www.aspiron.com.au

Phone: (03) 9663 9639  
Fax: (03) 9663 9657  
E-mail: enquiries@aspiron.com.au

The working group received much feedback from the tax profession and business community about various possibilities. However, the working group found a lack of agreement among stakeholders and has been unable to recommend a package of reforms that would lead to a cut in the company tax rate.

### Rules against tax avoidance

Following some decisions in cases going against the ATO, the government has decided to tighten up the rules which target tax avoidance by taxpayers. Legislation bringing in the changes will be introduced in the Autumn sittings of Parliament.

Previous editions of *InfoConnect* have mentioned this change, and now it is on our doorstep.

It is necessary to be aware that such provisions exist and bear them in mind when embarking on transactions. Please discuss with your tax adviser if there is any concern about these provisions with respect to your business activities.

### Special rules affecting private companies

The Board of Taxation has announced that it will review the special rules, colloquially known as "Division 7A", which apply to certain transactions between shareholders, their associates (eg their family trusts) and private companies. The rules as they currently stand have been in place for approximately 14 years and therefore are due for a review into how they have been implemented and whether they successfully achieve their purpose.

The rules are designed to treat certain loans, payments and debts forgiven as "dividends" unless certain conditions have been met. They prevent shareholders from taking money out of a private company in a way where the money has not been subject to tax.

These rules also interact with other areas of the tax law. The Board will have a look at these interactions and consider if the results are appropriate.

If you run your business through a company, at some stage you may wish to use a company asset at no consideration, borrow money from the company, or may have borrowed money from the company in the past. Your loans are required to comply with the requirements of Division 7A. You should see your tax adviser if you have any concerns about loans or other transactions between yourself and your private company or if you plan to borrow money out of your company in the future.

*To do: Check with your tax adviser for any new loans provided by the company, or if the terms of an existing loan you, as shareholder, have from your private company comply with Division 7A. Also see your tax adviser for issues you should look out for if you have plans to enter into transactions with your private company.*

### Business in net GST refund position can use GST instalment system

In the 2011-12 Federal Budget, the government announced that it planned to extend the current GST instalment system to allow small businesses that are in a net GST refund position to continue to use the GST instalment system. The government released some draft legislation in November 2012 which will bring this to fruition.

The proposed amendments are intended to enable small business taxpayers who are paying their GST by instalments, and who subsequently move into a net refund position, to continue to use the GST instalments option if they wish to do so. Under the proposed amendments, taxpayers who move into a net refund position and who wish to continue to pay GST by instalments would receive an instalment amount of zero each quarter.

If you have any queries on the issues contained in this edition of InfoConnect, or how a specific tax measure may apply to you, please contact your adviser at Aspiron Consulting Group

Phone: (03) 9663 9639

Fax: (03) 9663 9657

Email: [enquiries@aspiron.com.au](mailto:enquiries@aspiron.com.au)

Small business taxpayers who are currently not using the instalment option and are already in a net refund position will remain ineligible to pay their GST by instalments while they remain in a net refund position.

This is a beneficial administrative amendment for small businesses who find themselves on occasion in a net GST refund position.

*To do: Speak to your tax adviser to see what this may mean for you in preparing and lodging your BAS statements, particularly in relation to your business GST liabilities.*

### What is a supply for GST purposes and why it matters?

Recently, the High Court handed down a decision in which it held that Qantas had made a taxable supply for GST purposes in the case where a passenger does not board a booked flight and either a refund for payment of the flight is not claimed by the passenger or the payment is not refundable. This is because the High Court considered that, in simple terms, the passenger was supplied with the right to fly even though they didn't take the flight and so Qantas had made a supply for GST purposes.

#### **What this might mean for your business**

In response to the decision, the ATO has taken the view that it does not significantly change the way the ATO approaches determining what is a supply, though the particular facts and circumstances of each case will always play a role.

On the flip side, the High Court has also held, in a separate case, that the forfeiture of a deposit from a customer may constitute a taxable supply and subject to GST.

If you have any concerns about transactions you may have entered into in the course of your business, for example with your customers or suppliers, and you are concerned with whether there may be any change to the GST treatment on those transactions, your tax agent is the person to speak to. They will gladly review any transactions you have concerns about and will be able to advise you of the proper GST treatment.

### Refunding excess GST

In the last edition of *InfoConnect*, we mentioned that the Government recently released Exposure Draft legislation to clarify the operation of a provision in the tax legislation that inhibits a taxpayer from getting a refund of GST already paid to the Commissioner if it turns out GST was overpaid because a supply was incorrectly treated as a taxable supply.

This new measure has not yet progressed. However, the ATO has published the administrative treatment it will apply until the new measure is introduced into law. Essentially, the ATO will follow its current procedures until the new law comes into force.

*Tax Tip: If you are concerned the new law might affect your GST liabilities, speak with your tax adviser now so your business is prepared for the change once it becomes law.*

If you have any queries on the issues contained in this edition of *InfoConnect*, or how a specific tax measure may apply to you, please contact your adviser at Aspiron Consulting Group

Phone: (03) 9663 9639  
Fax: (03) 9663 9657  
Email: [enquiries@aspiron.com.au](mailto:enquiries@aspiron.com.au)

### In-house fringe benefits—FBT changes

In the Mid-Year Economic and Fiscal Outlook report released by the government in late October 2012, the government announced a change would be made to the FBT treatment of in-house fringe benefits provided through a salary sacrifice arrangement.

An "in-house fringe benefit" is a benefit (goods and services) provided by an employer (or their associate) to an employee that are identical or similar to goods and services ordinarily provided by the employer (associate) to their customers.

Under the proposal, the value of the fringe benefit subject to FBT will become either the lowest price that an identical good or service is sold to the public or the lowest price of the good or service under an arm's length arrangement.

### Current issues for SMSFs

There is lots of activity going on in relation to self-managed superannuation funds (SMSF). More and more people are deciding to set up their own SMSFs. We highlight below some of the current issues for SMSFs.

#### 1. Regulations relating to audits of SMSFs - StrongerSuper

New regulations will be introduced relating to the SMSF auditor registration regime and the prescribed period for the provision of an audit report and accompanying explanatory material for an SMSF. The government recently released the draft proposed regulations for public consultation.

The purpose of the regulations is to ensure auditors of SMSFs meet a high standard of competency so that they may carry out their role as auditor of SMSFs to the highest standards.

If you run your own SMSF, it is useful to know that an auditor you obtain to audit your SMSF will be required to meet these high standards.

#### 2. SMSF arrangements to acquire property which contravene superannuation law

The ATO has released a Taxpayer Alert (TA 2012/7) about certain arrangements entered into by SMSFs to acquire property. There are certain arrangements which the ATO consider do not comply with the superannuation laws. These are described in the Taxpayer Alert.

The ATO is concerned that some arrangements, if structured incorrectly, may not be able to be fixed up easily and may require sale of the property.

If you have an SMSF, you need to ensure care is taken when investing in property particularly where certain types of borrowing arrangements are involved.

#### 3. Pre-retirement super withdrawals

A recent decision of the Administrative Appeals Tribunal held that an individual who withdrew funds from their self-managed super fund without meeting the qualifying conditions for withdrawal was subject to tax on the amounts withdrawn.

If you are thinking about withdrawing funds from your SMSF, speak to your tax adviser about whether you have met the qualifying conditions that will allow you to draw the funds out without triggering a liability to tax.

#### 4. Acquisitions and disposals of certain assets by SMSFs and related parties

Some draft legislation was released by the Government which affects certain transactions involving acquisitions and disposals of certain assets (eg real property used in a business) between SMSFs and parties associated with the SMSF.

If you have plans to transfer an asset into your SMSF or for the SMSF to dispose of an asset, you should speak to your tax adviser about how these proposed rules may affect your proposed transaction.

### Tax statistics

The ATO has released *Your case matters (third edition)* which discusses key tax and superannuation litigation trends from July 2007 to December 2012.

In a nutshell, during the period 1 July to 31 December 2012:

- around 350,000 reviews and audit activities were completed, with just over 226,000 resulting in amended assessments

If you have any queries on the issues contained in this edition of InfoConnect, or how a specific tax measure may apply to you, please contact your adviser at Aspiron Consulting Group

Phone: (03) 9663 9639

Fax: (03) 9663 9657

Email: [enquiries@aspiron.com.au](mailto:enquiries@aspiron.com.au)

- around 16,500 objections were received, with around 13,500 (82%) related to income tax assessments; and
- the settlements reduced tax liabilities by \$168 m which reflects a 21% variance of the pre-settlement position

Other interesting observations:

- The majority of taxpayers seeking independent review of Tax Office decisions do so through a tribunal; and
- Most of the matters concern income tax assessments, although the majority of taxpayers applications are resolved well before litigation.

## About your advisers

**Alan Leung B.Bus (Acc.), B.Comp., M.Tax., FCA., CTA., Registered Tax Agent.**

### Principal

Alan is the Founder and Managing Director of Aspiron Consulting Group. Alan began his professional career in taxation and management consulting in 1996 and had worked in two of "Big 4" top global accounting firms both within Australia and abroad. Alan's speciality is in corporate and business taxation consulting and he regularly services clients across industries such as mining, manufacturing, distribution, financial services, IT Consulting, health, professional services and high-net worth individuals.

**Alan can be contacted at +61 3 9093 0078 or [alan.leung@aspiron.com.au](mailto:alan.leung@aspiron.com.au)**



**David Wilson B.Ec., CA., Registered Tax Agent**

### Principal

David, the Principal of David Wilson Business Services, has worked continuously in Chartered Accounting practices for more than 25 years, and before joining Aspiron Consulting Group as an independent associate, worked at Ernst & Young and WHK Horwath.

David specialises in providing accounting, taxation and consulting services including to retired partners of one of the four major accounting firms, publicly listed companies, multi-national corporations, medium sized enterprises and high net worth individuals.

**David can be contacted at +61 3 9093 0077 or [david.wilson@aspiron.com.au](mailto:david.wilson@aspiron.com.au)**



**If you have any queries on the issues contained in this edition of *InfoConnect*, or how a specific tax measure may apply to you, please contact your adviser at Aspiron Consulting Group**

**Phone: (03) 9663 9639  
Fax: (03) 9663 9657  
Email: [enquiries@aspiron.com.au](mailto:enquiries@aspiron.com.au)**

### Disclaimer

© 2013 Aspiron Consulting Group. All rights reserved.

The information in this publication is provided for general guidance on matters of interest only. It should not be used as a substitute for consultation with professional accounting, tax, legal or other advisers

This document is not intended or prepared by Aspiron Consulting Group or its Independent Associates to be used, and cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

Before making any decisions or taking any action, you should consult with Aspiron Consulting Group. No warranty is given to the correctness of the information contained in this publication and no liability is accepted by the firm for any statement, opinion, or for any error or omission.

## How we are different

We believe that our **7 Points of Difference** below set us apart from our competitors:

1. **One dedicated professional** as your adviser and point of contact
2. We prefer to **agree our fees up front**, where possible, and as such you always know how much you are paying - **no surprises**
3. **Independent sounding board** for business decisions, without turning on the fee meter
4. We guarantee a **maximum initial response time of 36 hours** if we miss your call
5. We believe in a **simple and no-nonsense approach** on our advice. We aim at structuring our advice in **simple language** that you can understand
6. We take a **honest approach** in providing advice - we have the courage to tell you things you don't want to hear
7. Like many of our clients, we are also a small business and as such **we understand the challenges our clients are facing**. However, we have worked with some of the largest organisations in Australia to know the key issues that our clients are likely to face as they grow.

## How our clients benefit

We deliver results. Some of the benefits we have recently delivered to businesses from our expertise include:

- **Fast tracked** capital allowance and tax depreciation claim by **more than \$250,000** after a review of their fixed assets register.
- Developed a **tax risk management framework** for a Fortune 500 company
- **Identified financial & well-being issues** of potential business acquisitions.
- Project managed risk reviews by the **Australian Taxation Office** ("ATO").
- Avoided and minimised the imposition of **significant penalties** by the ATO.
- Assessed, designed and implemented changes to a finance function that had **double throughput** and reduced running cost in excess of 30%.
- Brought a client up to date with **internal control** reporting from being 2 years behind schedule

## Taxation & Management Consulting Services

We offer capability and experiences for taxation and business services across the following disciplines:

- **Corporate Taxation Consulting**— beyond preparing tax returns, we proactively engage our clients to deliver effective taxation outcomes.
- **Business structuring**—assisting our clients with the establishment and financial structuring for business to enhance their operations within appropriate tax structures
- **Tax Risk Management**—we help our clients identify key tax risks, opportunities and issues and manage them real time.
- **Business Health Checks**—we help our clients undertake a reality check on the emerging issues arising from their businesses or a potential acquisition.
- **Change Management** — designing and implementing strategies on maximising buy-ins and minimising resistant for major change initiatives.
- **Finance Process Improvement** —we help our clients improve the process of their finance functions by aligning the corporate strategies with departmental directions and integrating their processes with people and technology to deliver maximum results.
- **Corporate accounting** —preparation of financial reports and tax effect accounting reports for a wide range of businesses
- **Coordination with Other Business Professionals** — coordinating with audit, legal, corporate finance, banking or other parties as may be required.
- **Succession Planning** —assisting our clients preparing options for distribution of their businesses and other financial assets to future generations.



Chartered  
Accountants



THE TAX INSTITUTE

CHARTERED TAX  
ADVISER