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WHAT A COALITION GOVERNMENT MEANS FOR SMALL BUSINESS TAXPAYERS

With the Coalition winning the recent Federal Election, small businesses need to be aware of the ramifications to their bottom line of the tax changes that will follow. Some are good, others not so!

Let's start with the Good:

1. Car Fringe Benefits to stay as they are – the former Governments proposal to remove the Statutory Method for calculating the FBT liability of a car provided to an employee will not be introduced by the Coalition Government.
2. There will not be any "unexpected detrimental changes" to Superannuation during its first term;
3. The corporate tax rate will be cut to 28.5% from 1 July 2005;
4. Allow investors and shareholders to claim a tax deduction for exploration expenditure incurred by small exploration companies from 1 July 2014;
5. Repeal both the Carbon Tax and the Mining Tax.
6. Potentially "Scrap the Cap" being the \$2,000 self-education deduction cap proposed by the former Government – as per former Shadow Minister for Education, Christopher Pyne.

And then the Bad:

1. Abolish the \$6,500 instant asset write-off for Small Business entities – we expect the abolition to be tied to when the Mining Tax is actually repealed but are still awaiting confirmation from the new Government;
2. Abolish the immediate \$5,000 deduction for motor vehicles – timing as above;
3. Abolish the Loss carry back rules which currently allow companies to carry back up to \$1 million of 2013 losses to refund tax paid in 2012 – we expect the abolition to be for 2014 and subsequent years.
4. Paid Parental Leave levy of 1.5% for companies with taxable incomes in excess of \$5 million from 1 July 2015.

If you would like to discuss any of the new Government's proposed tax measures and how they may affect you, please contact Tae on 08 9842 9677.

HOW LONG DO THE ATO HAVE TO AMEND YOUR ASSESSMENT?

As a general rule, an individual taxpayer's income tax assessment may be amended within 2 years after the day the notice of the assessment ("**NOA**") is issued to the individual. However, this does not apply if the individual is a beneficiary of a trust that is **not** a small business entity for that year, or the trustee of the trust is not a full self-assessment taxpayer for the income year (e.g. public trading trusts). In this case, the amendment period is 4 years from the issue of the original NOA.

In *Yazbek v Commissioner of Taxation [2013] FCA 39*, the Federal Court upheld the Tribunal's view that a person who has received no income or benefit from the trust in a given year is still a beneficiary of that trust provided the deed states so.

Most discretionary trust deeds are widely drafted and include a broad range of individuals and related entities as "potential beneficiaries". Where the trust is not a small business entity or the trustee of the trust is not a full self-assessment taxpayer, individual beneficiaries may inadvertently have a 4-year amendment period, instead of the standard 2-year period.

If individual taxpayers invest in managed funds or managed investment schemes which commonly use unit trusts as the investment vehicles, they are likely to be beneficiaries and, therefore, fall under the 4-year amendment period.

This acts as a double-edge sword for the Australian Taxation Office ("**ATO**") as well as individual taxpayers. Whilst this may allow the ATO more time to issue amended assessments, it will also have the consequence of allowing more time for taxpayers to seek amendments to earlier years.

This is particularly relevant in the more complex cases involving an individual who is a beneficiary of a trust where the ATO may require additional time to examine the taxpayer's affairs. Such cases may arise, for example:

- in audits of high wealth individuals and family groups (whether or not the individual received a distribution from the trust in that income year), particularly where there is a close familial relationship between the beneficiary and the trust, the beneficiary is actively involved in the administration of the trust and/or the beneficiary is able to influence the distribution of income or capital from the trust;
- where there is an adjustment to the taxable income of the individual emanating from compliance action in respect of the trust; or
- in other circumstances involving complexity, including complex audits relating to claims for work-related expenses which cannot be concluded within two years.

In those cases, the ATO may then take advantage of the fact that the taxpayer is a beneficiary of a trust and, thus, have a 4-year amendment period.

If you would like to discuss any of these issues please call Tae on 08 9842 9677.

TIME LIMITS FOR GST REFUNDS

The guidelines for determining how and in what periods to correct GST errors changed on 10 May 2013. The new rules allow you to correct a 'credit error' in a later period activity statement if:

- The credit error is corrected within the credit error time limit; (four years)
- You are not subject to GST compliance activity; and
- You have not corrected the GST error in another reporting period

We note that under the new rules credit errors are no longer subject to value limits so you can amend a GST error of any size, as long as the correction occurs within four years of the BAS period in which the error occurred. **However**, if there is an unclaimed refund more than 4 years old, there are stricter guidelines for a GST refunds.

Under section 105-55 in Schedule 1 to the Tax Administration Act, a taxpayer's entitlement to a refund ceases within 4 years after the end of the tax period to which an ITC is attributed, unless the taxpayer notifies the Commissioner of its entitlement to the refund. The notification can be by any means, including a GST return: s105-55(1)(a). The 4-year time limit also does not apply if within that period the Commissioner notifies the taxpayer ("in a notice of assessment or otherwise") that it is entitled to the refund: s105-55(1)(b).

We are of the view that it is best to correct and claim unclaimed GST refunds within the 4 year time limit. In circumstances where the 4 year period is exceeded, evidence that the Commissioner was notified that the entity was entitled to a refund must adhere to strict administrative guidelines.

If you would like assistance in regard to claiming an unclaimed GST refund or any other GST matters, please contact Tae on 08 9842 9677.