

Year end tax planning 2016 – business & investors

Important in 2015/16

Reduction to company tax rate for small business companies from 1 July 2015

From 1 July 2015, the income tax rate of a small business company (that is a company with an aggregated turnover of less than \$2 million) is reduced by 1.5% to 28.5%.

Companies with an aggregated annual turnover of \$2 million or more will remain subject to an income tax rate of 30%.

The maximum franking credit that can be allocated to a frankable distribution is usually set by the applicable income tax rate. From 1 July 2015 small business companies can still frank to 30%, the same as larger businesses. From 1 July 2015 small business companies will have a higher franking credit cap than their income tax rate of 28.5%. Importantly, the normal franking credit distribution provisions will apply.

Tax discount for unincorporated small businesses

For the 2015/16 income year and later income years an individual who runs a small business (business with an aggregated annual turnover of less than \$2 million) or

whose assessable income includes a share of a small business trust's or small business partnership's net income, providing the small business is not a corporate tax entity will be entitled to the "Small Business Tax Offset".

The amount of the Small Business Tax Offset for an income year is calculated by first determining the percentage of the individual's taxable income for the year that is total net small business income. This percentage is then applied to the individual's basic income tax liability for the income year, with the amount of the tax offset being equal to 5% of that calculation, capped at a maximum amount of \$1,000.

Changes to work related car expense deductions

For the 2015/16 income year and later income years there are currently two methods, the cents per kilometre method (for up to 5,000 business kilometres travelled) and the log-book method that taxpayers may choose to claim work related car expense deductions.

Previously, there were four methods. The 12% of original value method and the one third of actual expenses method have been repealed effective 1 July 2015.

Further, from 1 July 2015 there will be a single cents per kilometre rate of deduction determined by the Commissioner.

For the 2015/16 income year the single rate of deduction determined by the Commissioner is 66 cents per kilometre.

Detailed records assist in maximising deductions.

Superannuation changes

SuperStream

The SuperStream deadline for employers with 19 or fewer employees is 30 June 2016 (larger employers should already be using SuperStream). It is recommended that employers with 19 or fewer employees ensure their system is ready for SuperStream as soon as possible.

SuperStream is a standard for processing superannuation data and payments electronically, and must be used by:

- employers
- self-managed superannuation funds and;
- APRA-regulated funds

SuperStream data is in a standard format so it can be transmitted consistently across the super system between employers, funds, service providers and the ATO. SuperStream allows employers to make all their contributions in a single transaction, even if they're going to multiple super funds.

Superannuation guarantee

The gradual increase in the Superannuation Guarantee rate to 12% has been re-phased, with the 2015/16 year rate of 9.5% now frozen until 1 July 2021, from which date it will increase by 0.5% per year.

Reduction to the Research and Development ("R&D") tax offset

The income tax law is being amended to reduce the rates of the tax offset available under the R&D tax incentive for the first \$100 million of eligible expenditure by 1.5 percentage points.

The higher (refundable) rate of tax offset, for eligible entities with annual turnover of less than \$20million and which are not controlled by an exempt entity or entities, for the first \$100 million of eligible expenditure will be reduced from 45% to 43.5%.

The lower (non refundable) tax offset rate, for all other eligible entities, for the first \$100million of eligible expenditure will be reduced from 40% to 38.5%.

The amendments are proposed to apply to assessments for income years on or after 1 July 2014. The passage of the Bill may require amendments to previously lodged 2015 company tax returns containing an R&D tax incentive claim.

Small Business Entities: capital allowances

Currently, the capital allowances concessions provided to small businesses include:

- Immediate deduction for depreciating assets that cost less than \$20,000, provided the asset is acquired at or after 7:30pm on 12 May 2015, and first used or installed ready for use on or before 30 June 2017.
- Immediate deduction for an amount included in the second element cost of a depreciating asset that are first used or installed ready for use in a previous income year, where the amount of the cost is less than \$20,000 and incurred on or after 7:30pm on 12 May 2015 and on or before 30 June 2017.

- Immediate deduction for the balance of the Small Business Entity's general small business pool where the balance is less than \$20,000 at the end of the income year. The income year must end on or after 12 May 2015 and on or before 30 June 2017.

Importantly, the 2016-17 income year is the last income year the increased thresholds apply. From 1 July 2017 the capital allowances concessions provided to small businesses will be reduced to:

- Immediate deduction for depreciating assets costing less than \$1,000 if the asset is first used or installed ready for use on or after 1 July 2017.
- Immediate deduction for an amount included in the second element cost of a depreciating asset that are first used or installed ready for use in a previous income year, where the amount of the cost is less than \$1,000 and incurred on or after 1 July 2017.
- Immediate deduction for the balance of the Small Business Entity's general small business pool where the balance is less than \$1,000 at the end of an income year that ends after 30 June 2017.

Small Business Entities restructure roll-over Bill

A Bill that may present opportunities for small business owners to restructure in a broader variety of ways than was previously permitted without income tax cost has received Royal Assent on 8 March 2016. The Bill which provides optional roll-over relief will be available where a Small Business Entity transfers an active asset of the business to another Small Business Entity as part of a "genuine business restructure", without changing the ultimate economic ownership of the asset.

The effect of the roll-over is to provide for tax neutral tax consequences for the transfer, but only for the income tax purposes of the transfer and not for the purposes of Goods and Services Tax (GST), Fringe Benefits Tax (FBT) or duty.

The Bill provides a safe harbour rule for determining a "genuine" restructure.

The bill applies to apply to transfer of assets occurring on or after 1 July 2016.

We strongly suggest that small business owners considering applying this roll-over relief in connection with a business restructure seek the advice of a Crowe Horwath Tax Specialist.

Monthly PAYG tax instalments

From 1 January 2015, companies which had base assessable instalment income over \$100 million (as determined from their most recent tax return) moved to the monthly PAYG tax instalment program. From 1 January 2016, this shall apply more broadly to companies with assessable income over \$20 million.

Trust distributions

If your entity structure is a trust, then it is crucial that your trustee resolution to appoint or distribute income to beneficiaries is effective as at 30 June 2016. This means that tax planning for trusts should be done as soon as possible to ensure the resolution can be made with tax effective considerations in mind and also finalised/documentated prior to 30 June.

Areas of ATO focus in 2016

The ATO has developed small business benchmarks for over 100 industries, using data from income tax returns and business activity statements. Taxpayers can use these benchmarks to compare their performance with the rest of their industry. Moreover, they enable the ATO to identify taxpayers whose performance is outside of the benchmark range, who are more likely to be subject to compliance activities such as reviews and audits.

The ATO is concerned with small businesses who fail to report income and over-claim tax concessions, whether as a result of deliberate attempts to hide income and operate in the hidden or cash economy, or through inadvertent mistakes such as companies inappropriately seeking capital gains tax concessions available to small businesses.

For small businesses, the ATO's concerns continue to include:

- employers not deducting and/or not sending to the ATO the PAYG Withholding from employee wages;
- employers not paying the superannuation guarantee;

- businesses registered for GST but not actively carrying on a business;
- failure to lodge activity statements; and
- incorrect and under reporting of sales.

Other planning considerations

Variation of PAYG tax instalments

Subject to a review of your year-to-date tax position, it may be possible to reduce the amount of your remaining tax instalments for the 2015/16 year (i.e. the quarterly tax payments for March 2016 and June 2016). This can provide a cash flow advantage as compared to the delay in waiting for your 2016 tax return refund to be paid by the ATO. Please contact your Crowe Horwath advisor to discuss this issue.

Bad debt

If you have any bad debt, ensure you write them off prior to 30 June 2016 and prepare minutes approving the write-off. This will also enable an adjustment for any GST charged on the original invoice.

Franking credits

Shares must generally be held “at risk” for at least 45 days for entitlement to franking credits. Individuals and superannuation funds can receive a refund of excess imputation credits. Un-utilised excess franking credits in a company may be carried forward as a revenue loss.

Maximising allowable deductions

Expenses that are incurred before year end can reduce taxable income. Consider upcoming liabilities and the value in incurring them before year end. Allowable deductions may include:

- paying directors’ fees and bonuses;
- repairs on property and machinery;
- pooling depreciating assets; and
- scrapping of depreciating assets which are no longer being used.

Non-commercial losses

Non-commercial loss provisions restrict the ability of an individual who carried on a ‘non-commercial’ business activity to offset that loss against other income earned in that income year.

The provisions will not apply if certain tests are satisfied. There are also special exceptions for primary producers and artists.

Individuals with an adjusted taxable income of \$250,000 or more will generally not be eligible to offset losses from non-commercial activities against other income. However, there may be an opportunity to request the Commissioner’s discretion to allow you to claim your losses.

PAYG payment summaries

PAYG payment summaries must be provided to employees by 14 July 2016 and lodged with the ATO Office by 14 August 2016, unless the ATO have granted your business an extension of time.

Personal Services Income

There are special rules about the tax treatment of Personal Services Income (PSI). The rules can apply to individuals, contractors and contracting entities by:

- limiting the deductions available; and/or
- attributing personal service income derived by an entity to the individual.

An individual or personal services entity is subject to the PSI rules, unless it can show that the “results test” is satisfied; or it does not derive 80% or more of its income from one client and passes one of three additional tests.

Personal use assets

Where assets owned by a company are used outside of a business by a shareholder or “associate” – this may result in a breach of Division 7A. This can give rise to an unfranked dividend to you for tax purposes.

If your company owns any assets that are available to be used for non-business purposes, please contact your Crowe Horwath advisor to discuss this issue.

Prepayments (other than for Small Business Entities – refer below)

Unless you are a Small Business Entity only certain prepayments are required to be made by law (e.g. worker’s compensation insurance) and amounts of less than \$1,000 are deductible as incurred.

Shareholder loans

If you or your “associates” borrowed money, received a benefit, or had a debt forgiven from a private company during the year, the Division 7A rules may apply to you.

Small Business Entities

In general terms, you are a Small Business Entity if you carry on business and your aggregated turnover is less than \$2 million, or is likely to be less than \$2 million as at the commencement of the financial year. Small Business Entities can choose to access certain concessions including:

- immediate deductions for prepayments of up to 12 months; and
- simplified depreciation and trading stock rules.

If you are transitioning beyond being able to be considered a Small Business Entity based on your turnover, it is important we consider the implications for you in this transition and consider whether there are any opportunities to minimise this impact on you and your associated entities.

Small business Capital Gains Tax (CGT) concessions

In addition to the above Small Business Entity concessions, four specific small business concessions may apply to reduce capital gains from the sale of your business assets or your business entity where you meet the \$6 million “maximum net asset value test” or the business entity is a “Small Business Entity”. These CGT concessions are:

- a 15 year exemption;
- a 50% reduction for active assets;
- \$500,000 retirement concession; and
- replacement asset roll-over relief.

If the 15 year exemption does not apply, you may apply one, two or all three of the remaining concessions.

If you sell your business or the entity that carries on the business, or are considering selling your business in the future, please contact us prior to entering into any agreement to discuss eligibility and planning to access these concessions. Note that we are observing this is an area of high risk for ATO audits at the moment.

Timing of income

Consider issues associated with the timing of income close to 30 June, such as:

- the time of billing work in progress;
- timing of sales income; and
- the date of entering into a contract for the sale of CGT assets.

Superannuation

Contributions in respect to the quarter ending 30 June 2016 must be made before 30 June for a deduction to be available in the 2016 year. For family businesses, consider maximising concessional contributions for key individuals.

The concessional contributions cap for the 2016 income year is \$30,000 for all individuals, unless you were 49 years of age or older on 30 June 2015. If you satisfy this age requirement, your concessional contribution limit for the 2016 income year is \$35,000. Concessional contributions above these caps are assessed to the individual at their marginal tax rate, and also incur an interest charge from the ATO.

The non-concessional contribution cap for 2015/16 income year is \$180,000 p.a., or a total of \$540,000 on a bring forward basis over a 3-year period (provided that the bring forward rule was not triggered in either 2013/14 or 2014/15).

Trading Stock

Stock can be valued under different methods for each item of stock.

- cost;
- sales value; and
- lower of market value or replacement cost.

Conduct a stocktake before year end and identify obsolete items. Determine whether to conduct "sales" prior to 30 June.

Have you been wondering whether a self managed superannuation fund (SMSF) is suitable for you?



Now is a good time to seek specific advice in relation to this question, as it may be appropriate to establish a SMSF in conjunction with other tax planning opportunities, to maximise the benefit of the SMSF in your circumstances.

For advice and assistance on business and investment taxation issues, please call your local Crowe Horwath office.

Talk to one of our advisors

Please contact your local Crowe Horwath advisor to find out how we can assist you.

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