

In the Loop

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Message from Swai Phie, SPCA Director

After another incredibly busy year, welcome to the December 2017 edition of In the Loop.

As we reflect on the past 12 months, it is interesting to note the increasing frequency that SPCA is called on by clients to assist them solve commercial issues that are not strictly accounting or tax related matters in the traditional sense.

For example, SPCA was asked by several clients throughout the year to help setup new businesses, whether that be helping people transition from being an employee to self-employed, or through to helping overseas organisations establish new Australian operations and subsidiary companies.

In addition, we continue to assist many migrants to start their own businesses after arriving in Australia, working alongside other professional advisers such as migration agents and lawyers to navigate foreign investment and immigration legislations to get the best possible result for our clients.

Also in 2017, SPCA negotiated a number of major commercial agreements, as well as mediated several commercial disputes on behalf of clients to help them avoid costly litigation processes. As part of this work, we helped clients develop appropriate Heads of Agreement documentation, including the necessary terms and conditions before finalising contracts and transactions accordingly.

Over the past 12 months, SPCA has also undertaken professional directorships and board governance work. In fact, we now hold professional directorships on several boards and continue to undertake more consulting assignments at a board and strategic level.

In closing, and on behalf of SPCA, I extend a heartfelt thanks for your ongoing loyal support, and I look forward to working with you all again in the New Year. Merry Christmas!

Kind Regards

Swai Phie

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New rules for accessing the 27.5% company tax rate from 1 July 2017

The Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Bill 2017 was introduced into the House of Representatives on 18 October 2017. This Bill amends the *Income Tax Rates Act 1986* (Cth) (Rates Act) to ensure that, from the 2017-18 income year, a company will qualify for the lower company tax rate for an income year if:

- no more than 80% of the company's assessable income for that income year is 'base rate entity passive income'; and
- the company's aggregated turnover for the income year is less than the aggregated turnover threshold for that income year (for the 2017-18 income year, the threshold is less than \$25 million).

These amendments will modify the requirements that must be satisfied for a company to qualify as a 'base rate entity' by replacing the 'carrying on a business' test with a passive income test. Under the passive income test, companies that are generating predominantly passive income (e.g. rent, royalties etc) will not be eligible for the lower company tax rate.

The purpose of this legislation is to ensure that passive investment companies cannot access the lower company tax rate that is otherwise available to small businesses.

Currently, to qualify as a 'base rate entity' in order to apply the lower company tax rate, a company must be 'carrying on a business' as well as meet the relevant aggregated turnover threshold.

The Bill will apply prospectively from the 2017-18 income year.

An amount of assessable income is 'base rate entity passive income' includes items such as:

- a distribution that is not a 'non-portfolio dividend';
- franking credits attached to such a distribution;
- interest income (as defined in the income tax legislation);

- a royalty;
- rent; and
- a net capital gain.

Safe harbour reforms for company directors

The Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Bill 2017 (the Bill) passed both the House of Representatives and the Senate on 12 September 2017 and awaits Royal Assent.

The Bill amends the *Corporations Act 2001* (Cth) to: create a safe harbour for company directors from personal liability for insolvent trading if the company is undertaking a restructure outside formal insolvency; and *Corporations Act 2001* and *Payment Systems and Netting Act 1998* (Cth) to make certain contractual rights unenforceable while a company is restructuring under certain formal insolvency processes.

The Minister for Revenue and Financial Services, the Hon Kelly O'Dwyer MP, said that the Government has delivered on its commitment under the National Innovation and Science Agenda (NISA) to improve Australia's corporate insolvency system with the Bill receiving passage through Parliament.

Ms O'Dwyer also said the Bill promotes a culture of entrepreneurship and innovation by providing a 'safe harbour' for company directors from personal liability for insolvent trading if they are pursuing a restructure outside formal insolvency. It also makes 'ipso facto' clauses unenforceable during and after certain formal insolvency procedures.

The safe harbour provisions will commence on Royal Assent. The stay on the operation of ipso facto clauses will commence from 1 July 2018 to provide time for businesses to adapt to the new settings.

The operation of the safe harbour will be subject to an independent review two years after commencement.

The Government will shortly consult with key stakeholders on the Regulations to support the operation of the stay on ipso facto clauses.

To Do! Are you a company director? If so, contact SPCA about whether this legislation impacts on you.

Government cracks down on illegal phoenixing

The Minister for Revenue and Financial Services, the Hon Kelly O'Dwyer MP, announced on 12 September 2017 that the Government is taking action to crack down on illegal phoenixing activity to ensure those involved face tougher penalties.

The Government's package of reforms will include the introduction of a Director Identification Number (DIN) and a range of other measures to both deter and penalise phoenix activity.

The DIN will identify directors with a unique number. The DIN will interface with other government agencies and databases to allow regulators to map the relationships between individuals and entities and individuals and other people.

In addition to the DIN, the Government will consult on implementing a range of other measures to deter and disrupt the core behaviours of phoenix operators, including non-directors such as facilitators and advisers.

The Government will consult on how best to identify high risk individuals who will be subject to new preventative and early intervention tools, including:

- a next-cab-off-the-rank system for appointing liquidators;
- allowing the ATO to retain tax refunds; and
- allowing the ATO to commence immediate recovery action following the issuance of a Director Penalty Notice.

The Government put out a discussion paper in October containing numerous ideas for how to combat phoenixing behaviours.

Superannuation guarantee – new measures announced

The Government has announced a further package of reforms to give the ATO near real-time visibility over superannuation guarantee (SG) compliance by employers. The Government will provide the ATO with additional funding for a Superannuation Guarantee Taskforce to crackdown on employer non-compliance. The package builds on legislation already announced to close a legal loophole used by unscrupulous employers to short-change employees who make salary-sacrifice contributions to their superannuation.

The package includes measures to:

- require superannuation funds to report contributions received more frequently, at least monthly, to the ATO. This will enable the ATO to identify non-compliance and take prompt action;
- update payroll reporting through the rollout of Single Touch Payroll (STP). This will reduce the regulatory burden on business and transform compliance by aligning payroll functions with regular reporting of taxation and superannuation obligations;
- improve the effectiveness of the ATO's recovery powers, including strengthening director penalty notices and use of security bonds for high-risk employers, to ensure that unpaid superannuation is better collected by the ATO and paid to employees' super accounts; and
- give the ATO the ability to seek court-ordered penalties in the most egregious cases of non-payment, including employers who are repeatedly caught but fail to pay superannuation guarantee liabilities.

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