

CFO Series Symposium

18 February 2013



Tax Issues for the
CFO in the know

Presented by
Malcolm Wight
Tax Director
William Buck

Topics to be discussed

- Research & Development
- Payments to Contractors
- Superannuation
- LAFHA
- Dividend Payments
- GST- Qantas Airways
- Payroll Tax Contractor Payments
- Non Residents
- Loss Carry Back Rules
- Not For Profit Sector

Research & Development

- New enhanced incentive but with more restrictive eligibility criteria.
- Start date 1/7/2011
- New refundable 45% tax credit where turnover < \$20M and a 40% non-refundable tax credit to other entities.
- Core activities are those whose outcome is not known or determined in advance on the basis of current knowledge, information or experience but can be determined by applying a systematic progression of work. A core activity under the new incentive must have a combination of new knowledge and uncertainty.

Research & Development (cont.)

- An outcome cannot be determined in advance on the basis of current knowledge.
- Supporting R & D activities must be undertaken for the dominant purpose of supporting a core R & D Activity.
- Applicants must be able to show through evidence that the supporting R & D activity have an immediate relationship to the core activity. Registration requires that core and supporting activities are separately tracked.
- Advance findings can be sought from Innovation Australia.

Payments to Contractors in the Building and Construction Industry

- From 1 July 2012 businesses in the building and construction industry must report the total payments they made to each contractor for building and construction services on an annual basis.
- Completed on the Taxable payments annual report. The report must be prepared on a cash basis and must be lodged by 21 July 2013.
- Information required is the ABN, name & address, gross and the GST paid to the Contractor.

Superannuation

- The government has shifted from penalising superannuation contributors with excessive payouts to limiting the amounts that can be paid into superannuation funds.
- Excessive contributions arise where concessional contributions exceed \$25,000 for the year 2012/2013 & 2013/2014 and non concessional contributions exceed \$150,000 per annum. For those persons under 65, a bring forward rule exists to allow \$450,000.
- Excess concessional contributions are taxed at 31.5%. Non-Concessional Contributions tax is levied at 46.5%

Superannuation (cont.)

Table 1- Number of ECT assessments issued

| Type of assessment | Transitional* | 2007-08 | 2008-09 | 2009-10 | 2010-11 ** |
|---|----------------|---------|---------|---------|---------------|
| Excess concessional contributors only | Not applicable | 18,258 | 15,832 | 49,786 | 31,217 |
| Excess non-concessional contributors only | 1,787 | 1,690 | 1,610 | 1,212 | 630 |
| Both excess concessional and non-concessional contributions | Not applicable | 427 | 413 | 378 | 117 |

*Transitional non- concessional contributions cap - between 10 May 2006 & 30 June 2007, individuals could contribute up to \$1 million of non-concessional contributions

** Incomplete - more pre-assessment letters and assessments to issue for this year

Superannuation (cont.)

Table 2 Value of ECT liabilities at 4 July 2012 (\$m)

| Type of assessment | Transitional* | 2007-08 | 2008-09 | 2009-10 | 2010-11 ** |
|---|----------------|---------|---------|---------|---------------|
| Excess concessional contributors only | Not applicable | 73 | 58.3 | 142.8 | 85.7 |
| Excess non-concessional contributors only | 50.0 | 34.4 | 31.8 | 28.6 | 14.5 |
| Both excess concessional and non-concessional contributions | Not applicable | 8.8 | 6.5 | 5.2 | 1.7 |

*Transitional non- concessional contributions cap - between 10 May 2006 & 30 June 2007, individuals could contribute up to \$1 million of non-concessional contributions

** Incomplete- more pre-assessment letters and assessments to issue for this year

Superannuation (cont.)

- For the year commencing 1 July 2012 where a persons income is in excess of \$300,000 the contribution tax payable on the superannuation contribution is 30%.
- Taxable income is measured by taking the taxable income, concessional superannuation contributions, adjusted fringe benefits and total net investment loss. Where the concessional contribution takes the amount over \$300,000 it is only that contribution that exceeds \$300,000 that is counted.

LAFHA Changes

- Very significant changes have evolved with these provisions.
- The new laws will restrict the concessional tax treatment of LAFHA to a maximum period of 12 months. Furthermore, the concessional tax treatment will only apply in relation to employees:
 - That maintain a home in Australia for their immediate use and enjoyment at all times (not available for rent or sub let) must also be reasonable that reoccupation occurs after living away from home
 - Who are required to live away from their normal residence because of their duties of employment

LAFHA (cont.)

- Resident employees who are subject to arrangements prior to May 8 2012 have until 30/6/2014 to be subject to the new rules. Non-Resident employees and employees who are temporary residents will be subject to the new provisions from 1 October 2012.
- This measure will remain within the FBT system
- For example, Bob lives away from his normal home receives \$208 for food and has his accommodation paid.
- Minimal substantiation required \$208 + cost of accommodation tax free to Bob.

LAFHA (cont.)

- Australian residents with who had an agreement in place prior to 8/5/2012 do not need to satisfy home requirement and not effected by the 12 month rule.
- What is happening with existing employees affected by the announcements at 1 October 2012, especially those who are non or temporary residents?

Dividend Payments

- S 254T of the Corporations Act subsequent to 28 June 2010 was amended to prohibit a dividend unless the company's assets exceed its liabilities and the excess is sufficient for the dividend payment, is fair and reasonable to all members and creditors are not materially prejudiced.
- A distribution cannot be franked where that distribution represents an unauthorised reduction of share capital.

Qantas Airways

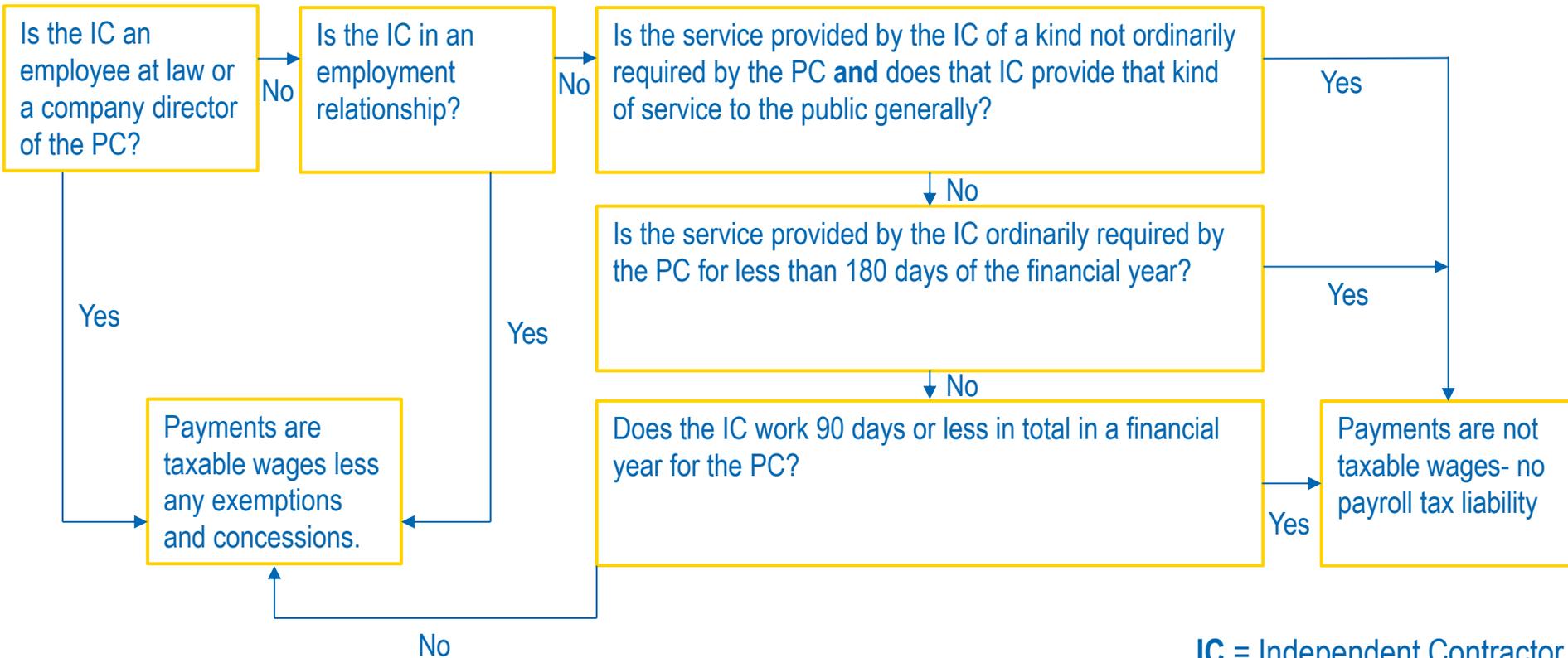
- This GST case concerned Qantas and its subsidiaries and the way GST had been treated on ticket sales. When a prospective passenger failed to take flights for which reservations had been received. Some fares were forfeited some were refundable within a specified timeframe.
- Qantas contended that GST previously remitted on the unused fares should be refunded.
- The full Federal Court ruled in favour of Qantas where a passenger did not take a flight, there had been no supply.

Qantas (cont.)

- The High Court found in favour of the Commissioner concluding that Qantas supplied at least a promise to use best endeavours to carry the passenger and baggage.
- The court ruled that Qantas when entering into a contract with a customer supplied rights, obligations and services in addition to the proposed flight. The court ruled that this was a taxable supply and the GST had been properly remitted.
- Transactions with no supply and no GST remitted may not be correctly treated.

Contractor Provisions

See diagram below:



IC = Independent Contractor
PC = Principal Contractor

Contractor Provisions (cont.)

One confusing assignment tax advisers have is to navigate their way around is the myriad of different employment taxes. There is perhaps no more confusing than the application of payroll tax.

The Office of State Revenue can assess contractors using the contractor provisions. Where you believe there is other than an employment contract, is that contract covered for payroll tax?

- Is there a written contract?

Contractor Provisions (cont.)

- Is the IC required to perform the services outlined in the contract personally?
- Are you moved to sites that you do not tender for?
- Did you provide essentially labour only services?
- How was the payment for work calculated?
- Have you ever been an employee of the employer?

The Office of State Revenue will also try and determine whether the contractor provides services to the public generally.

- What is the nature of your business?

Contractor Provisions (cont.)

- Are your services advertised to the public?
- What has been the duration of your contract with the employer?
- Do you quote competitively?
- Who supplied the equipment?
- Who supplied the materials for the job?
- Did you provide services to the employer for a period in excess of 90 days?

Contractor Provisions (cont.)

- What percentage of your income is earned from this particular employer?
- Where the contract is one where that particular service is required for less than 180 days in a financial year (seasonal contractors) payroll tax will not apply.

Contractor Provisions Payroll Tax

- Not a relevant contract where the contractor employs 2 or more persons unless the contract is established to avoid payroll tax.

Non Residents

A number of important changes for non residents from 8/5/2012:

- Where an asset is held by a non resident where that would be taxable to the non resident no further 50% discount subsequent to 8/5/2012. Valuations required.
- Jump in lowest tax rates.

Loss Carry Back Rules

A Corporate tax entity is entitled to a refundable tax offset for losses it chooses to carry back:

- A company can carry back all or part of a tax loss from an income year or the preceding income year against unutilised income tax payable in either of the two income years preceding the current year.
- Maximum cap \$1M (\$300,000 in tax)
- Include similar integrity rules to those employed now
- Proposed to apply from 2012/2013 year (can carry back where there is a loss 2013, profit 2012)

Not for Profit Sector

- This sector benefits from a range of taxation concessions.
- On the 27 May 2011 a consultation paper released. This paper questioned all NFP concessions.
- The proposal in part was to limit the concessions to new unrelated commercial activities that commence after 10 May 2011 where the profits or gains not directed back to altruistic purposes.
- Government has postponed the commencement of the “Better Targeting of Tax Concessions” until 1 July 2014.

Not for Profit Sector (cont.)

- This date 1 July 2014 is proposed for activities commencing after 10 May 2011 and will not impact on activities tax concessions prior to 1/7/2014 this date has now become 1/7/2015.

Contact Details

Malcolm Wight

Tax Director – William Buck

Phone (08) 8409 4333

Email malcolm.wight@williambucks.com.au

Address Level 6, 211 Victoria Square, Adelaide
GPO Box 11050, Adelaide 5001

williambuck.com

CFO Series Symposium

18 February 2013



Tax Issues for the
CFO in the know

Presented by
Malcolm Wight
Tax Director
William Buck