
What ‘Carrying On A Business’ Really Means

The ATO has clarified the definition of determining whether a company carries on a business for the 2015-16 and 2016-17 income years with the release of a new tax ruling.

Recently, the Australian Tax Office released Tax Ruling 2019/1, replacing the previous draft, setting out what it means when a company carries on a business for accessing the lower corporate tax rate of 27.5 per cent in the 2015-16 and 2016-17 income years, and for determining the franking percentage to be applied to dividends paid to shareholders.

Leading Australian financial expert Thomas Mousa, director and partner of Sydney-based TLK Partners, explains what this means for business.

The ruling comes after Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Bill 2017 was passed, changing the meaning of the term ‘Base rate entity’ which a company needs to be from 1 July 2017 to get the lower corporate tax rate of 27.5 per cent.

Mousa says, “You have to consider what the key elements are when determining what amounts to carrying on a business, which includes: whether the person intends to carry on a business; the nature of the activities, particularly whether they have a profit-making purpose; whether the activities are repeated and regular, organised in a business-like manner, including the keeping of books, records and the use of a system; the size and scale of a company’s activities including the amount of capital employed in them, and whether the activity is better described as a hobby or recreation.”

Mousa says “the ruling was not intended to be a statement of the Australia Tax Office’s views on carrying on business more broadly throughout the tax system, but confined to the specific matters set out in the ruling and the associated examples.

It’s clear that Accountants and Tax Practitioners should be aware that it is entirely possible that a company could have become entitled to use the lower tax rate in the 2016 or 2017 years because it was carrying on a business and below the relevant turnover threshold, but on applying the Base Rate Entity rules for the 2018 or later years it may be decided that the 30 per cent tax rate should now be applied going forward.

Mousa agrees, “This may require careful examination not only of the tax rate that has been applied to its taxable income in each of the years, but also the franking rates that have been applied to dividends paid during those years.

While some of the wording in the ruling has been tidied up from the draft, the substance of the ATO’s views is largely unchanged, and there are just a couple of areas where the extent of application of the concept of ‘carrying on a business’ has been clarified,” Mousa said.

On the same day, the Australian Tax Office released draft determination TD 2019/D4 ruling that a company whose only activity is renting out an investment property cannot claim the capital gains tax (CGT) small business concessions.

RELATED ARTICLE: CGT TAX Accountants Sydney NSW Are Investor and Property Acquisition Investment Specialists

“The ATO Tax Ruling 2019/D4 makes it clear that a property investment company would not be eligible to apply the small business capital gains tax concessions as it is carrying on a business in a ‘general sense’, because the main use of the property asset would be to derive rental income, specifically excluding it from qualifying as an ‘active asset’ as stated in the ruling,” Mousa said.

Mousa Says, “Business and investor clients must be kept abreast of the latest Tax Rulings instigated by the ATO to ensure compliance and to maximise profitability.” “TLK Partners are experts at that,” Mousa concludes.

TLK Partners Wealth Management Companies Kingsgrove, Beverly Hills | Tax Accountant & Agent | Property Advisers are financial management, retirement planning and wealth advisers serving enterprises and private individuals who hope to take care of their future through sound financial management. Visit their website or contact them at (02) 8090 4324 for an appointment to discuss your financial management and investment needs.

This material is of a general nature only, and it does not take into consideration your financial circumstances, needs or objectives. Before making any decision based on this content, you should assess your own circumstances, seek professional advice or contact our office to be directed to the appropriate professional. Whilst all care has been taken in presenting the material neither TLK Partners or its associated entities guarantee that the material is free of error and, the information may have changed since being published.

Syndicated by Baxton Media, the Market Influencers.