Client Newsletter

Fox & Rynne

June 2018

SUPERANNUATION GUARANTEE AMNESTY

On 24 May 2018, Minister for Revenue and Financial Services announced the commencement of a 12 month Superannuation Guarantee Amnesty (the Amnesty).

The Amnesty is a one-off opportunity for employers to self-correct past super guarantee (SG) non-compliance without penalty.

Subject to the passage of legislation, the Amnesty will be available from 24 May 2018 to 23 May 2019. The Amnesty applies to previously undeclared SG shortfalls for any period from 1 July 1992 up to 31 March 2018.

The benefits to Employers who voluntarily disclose previously undeclared SG shortfalls during the Amnesty, and **must** be before the commencement of an audit of their SG include:

- the administration component of the super guarantee charge (SGC) is not payable
- Part 7 penalty will not be applied
- all catch-up payments made during the 12-month Amnesty period will be tax-deductible.

Employers will still be required to pay all employee entitlements. This includes the unpaid SG amounts owed to employees and the nominal interest, as well as any associated general interest charge (GIC).

Employers who are not up-to-date with their SG payment obligations to their employees and who don't come forward during the Amnesty may face higher penalties in the future.

Legislation to give effect to the Amnesty was introduced into Parliament on 24 May 2018 and is intended to apply retrospectively once enacted. Until the legislation is enacted, the existing law applies, meaning that if the proposed law does not come into effect:

- any contributions and payments made under the Amnesty will not be tax-deductible
- any self-assessments that anticipated the new law will need to be amended to include the administration component, and you will be required to pay the administration component.

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2018/19 FEDERAL BUDGET

- **Low and Middle Income Tax Offset.** From the 2019 income year, the government will introduce a *non-refundable* tax offset of up to $530 per annum to Australian resident low and middle income taxpayers.

- **Extending the $20 000 immediate write-off for small business**
    - The $20 000 immediate write-off for small businesses will be extended by a further 12 months **to 30 June 2019** for businesses with aggregated annual turnover less than $10 million.
    - Assets valued at $20 000 or more can continue to be placed into the small business simplified depreciation pool, and depreciated at 15% in the first income year and 30% each income year thereafter. The pool can also be immediately deducted if the balance is less than $20 000 over this period (including existing pools).
    - The current 'lock out' laws for the simplified depreciation rules (preventing small businesses from re-entering the simplified depreciation regime for five years if they opt out) will continue to be suspended until 30 June 2019.

- Removing tax deductibility of payments where withholding obligations have been disregarded. From **1 July 2019**, business will no longer be able to claim a deduction for the following payments:
    - Payments to their employees, such as wages, where they have not withheld any amount of PAYG from these payments (ie despite the fact the PAYG withholding requirements apply).
    - Payments made by businesses to contractors where the contractor does not provide an ABN and the business does not withhold any amount of PAYG (despite the withholding requirements applying).

- From 1 July 2019, the Government will introduce a **limit of $10 000 for cash payments** made to businesses for goods and services. This measure will require transactions over this threshold to be made through an electronic payment system or cheque.

- **Expanding the contractor payment reporting system.** Under the contractor payment reporting system, businesses are required to report payments to contractors to the ATO. The Government has announced it will further expand the contractor payment reporting system to the following industries:
    - Security providers and investigation services;
    - Road freight transport; and
    - Computer system design and related services.

  Businesses will need to ensure that they collect information **from 1 July 2019,** with the first annual report required in **August 2020.**

- **Superannuation related changes**
    - From 1 July 2019, the Government will introduce an exemption from the work test for voluntary contributions to superannuation, for people aged 65-74 with superannuation balances below $300000, in the first year that they do not meet the work test requirements.
    - From 1 July 2018, the ATO will modify income tax returns to alert individuals to the 'notice of intent' (NOI) requirements, by asking them to confirm they have complied. Currently, some individuals receive deductions on their personal superannuation contributions but do not submit a NOI, despite being required to do so. If individuals tick no to the NOI in their tax returns, the deduction will not be allowed.

TRADING NAMES ARE BEING RETIRED

After 31 October 2018, the ABN Lookup will cease displaying trading names, and only registered business names will be listed.

From November 2018, entities operating a business or trading under a specific name in Australia should ensure they have that business name registered with ASIC, unless one of the limited exceptions apply.

Exceptions to this include:

- if you are operating as an individual and your operating name is the same as your first name and surname
- if you are in a partnership and your operating name is the same as all the partners' names, or
- if you are an already registered Australian company and your operating name is the same as your company's name.

The law does not allow any changes from the business holder's name if you wish to rely on the above exemptions. For example, if your name is John Smith, and the name of your business is 'John Smith & Co', you will need to register the business name 'John Smith & Co'.

TAX TIME INSURANCE DETAILS

When preparing the information to facilitate the preparation of Income Tax Returns for the year, please ensure that you provide a **copy of your insurance policy** so that we are able to calculate an accurate breakdown of the policy paid.

In addition to this, you will need to provide **detailed information concerning any claims** made during the year. This includes confirmation of the extent of the damage claimed for, such as was the car written off or repaired, was the shed completely destroyed or is it going to be repaired? There may be a different taxation treatment for certain circumstances, and it is important that this is correct.

EXTENDING DEDUCTIONS FOR PERSONAL SUPER CONTRIBUTIONS UNDER NEW REFORMS

From 1 July 2017, the Government has removed the requirement for individuals to satisfy the 10% test in order to be eligible to claim a deduction for a personal contribution. The remaining tests will still apply, namely:
(a) **Age limit** – The contribution must have been made no later than 28 days after the end of the month in which the individual turned 75 years of age.
(b) **Minors** – If the individual was under age 18 at the end of the income year, they must have derived income for the year from being an employee or from carrying on a business.
(c) **Complying fund** – The contribution was made to a complying superannuation fund.
(d) **Notice requirements** – The following two basic 'notice requirements' were satisfied:

- The individual had given a valid written notice (in the approved form) to the trustee of the receiving fund, advising the trustee of their intention to claim a tax deduction.
- The trustee had provided the individual with a written acknowledgment of their notice.

To the extent that a personal contribution is deductible, the contribution is treated as a concessional contribution ('CC'). All such CCs **will be counted towards the reduced CC cap** of $25,000 from 1 July 2017.

INTEREST DERIVED FROM CHILDREN'S BANK ACCOUNTS

The ATO has recently issued Taxation Determination TD 2017/11, which outlines the ATO's current views on who should be assessed on interest derived from bank accounts, particularly focusing on interest derived from **joint bank accounts** and **children's bank accounts**. The ATO advises that interest income derived from a bank account is assessable to (and should therefore be declared by) the person or persons who **beneficially own** the moneys in the account.

For example, TD 2017/11 indicates that where:
• a parent opens and operates a bank account on behalf of a child;
• the funds in that account are genuinely the child's (e.g., money received as birthday or Christmas presents, from part-time work, or from pocket-money); and
• the parent does not use the money in the account for themselves or others, **the child** will be considered to be the **beneficial owner** of the money in the account.
As a result, in this case, all interest earned from the account will be assessable to the child.

A child under the age of 18 (i.e., a minor) is generally eligible for a limited 'tax-free threshold' of only **$416** where 'unearned income' (e.g., interest income, dividend income and trust distributions) exceeds this amount.

GOVERNMENT INTRODUCES NEW 'DOWNSIZER CONTRIBUTION' ON THE SALE OF A DWELLING

Broadly, under this measure, individuals **aged 65 years or more** would be allowed to make **contributions of up to $300,000** (or up to $600,000 per couple) from the **sale of a dwelling that was used as their main residence**, if the individual or their spouse owned the dwelling **for at least 10 years**.

The downsizer contributions measure will apply to the disposal of an ownership interest in a dwelling **where the contract for the disposal is entered into on or after 1 July 2018**.

Despite the above measure being referred to as the **downsizer contributions** measure, there is **no** requirement for an individual to actually 'downsize' by purchasing another (smaller) dwelling to be used as their home (or main residence). Rather, an individual selling their home can move into any living situation that is suitable for them, including, for example, a retirement community, aged care, a smaller property, renting or living with family.

The Bill received Royal Assent on 13 December 2017.

NEW RESTRICTIONS IMPOSED ON TRAVEL AND DEPRECIATION CLAIMS FOR RENTAL PROPERTIES

As part of its 2017/2018 Federal Budget, the Government announced the imposition of **new** restrictions for **travel** claims and **depreciation** claims in respect of residential rental properties **from 1 July 2017**:

(a) **Restriction for travel claims** – Travel expenses incurred in respect of a residential rental property (e.g., travel related to inspecting or maintaining a rental property) will no longer be deductible, irrespective of when the property was acquired.
(b) **Restriction for depreciation claims** – Depreciation claims will no longer be available in respect of depreciating assets acquired **after 9 May 2017** (either separately or as part of a residential rental property), where those assets have been **'previously used'** (e.g., assets used by a former owner or second-hand assets).

The Bill received Royal Assent in November 2017.

CORPORATE TAX RATE FOR THE 2018 YEAR

The corporate tax rate for small business taxpayers has reduced to 27.5% for companies that qualify as a 'base rate entity'. Amendments are being proposed to the concept of a base rate entity.

Under the new rules, a company will only qualify as a Base Rate Entity for the 2018 income year (and, therefore, will pay tax at 27.5%) if **both** of the following apply:
• The company's BRE aggregated turnover for the 2018 income year, worked out at the end of the income year, is ***less than $25 million***.
• *No more than* 80% of the company's assessable income is passive in nature, technically referred to as **'base rate entity passive income'**. In other words, ***at least* 20%** of a company's assessable income must not represent passive income. Note, this requirement is **new** and replaces the 'carrying on a business' requirement, which has been abolished.

NOTIFY OF CHANGE OF COMPANY ADDRESSES

Changes to your registered office address, must be made within 28 days, to avoid late fees. The changes must be made online through ASIC's website.

To change your company addresses:
1. Register for online access using your company's corporate key
2. Log in to our online portal with your company's ACN or ABN
3. Enter your username and password
4. Select 'Start new form' and select 'Change to company details'

If you lodge a document late or don't pay the lodgement fee, a late fee may apply:
- Lodgement or payment up to one month late—$78 late fee
- Lodgement or payment over one month late—$323 late fee

Single Touch Payroll measures that apply from 1 July 2018

The new reporting rules of Single Touch Payroll essentially require, **from 1 July 2018**, 'real time' reporting of salary and wages, PAYG withholding and superannuation information to the ATO by 'substantial employers' (i.e., those with 20 or more employees) directly from their payroll software.

(a) **Substantial employers –** It will be mandatory for 'substantial employers' to commence reporting through STP from **1 July 2018**. However, the Commissioner has a discretion to **defer** the start date for an employer who may not be ready to commence reporting under STP, or to **exempt** an employer on a 'class' or 'individual' basis.

An employer will be a **substantial employer** at a particular time if, on the most recent **1 April** occurring before that time, they:
• had **20 or more** employees; or
• were a member of a **wholly-owned group of companies** and the total number of employees of **all** of the members of the group was 20 or more.

Employers with **20 or more** employees on **1 April 2018** (i.e., a substantial employer) will be required to commence reporting under STP from **1 July 2018**. Furthermore, this is the case even if the number of employees falls below 20 *after* 1 April 2018 but *before* 1 July 2018. Once an entity becomes a 'substantial employer', they **must** continue to report under STP, even though they may no longer have 20 or more employees, unless the employer applies for, and the Commissioner grants, an exemption.

(b) **Voluntary reporting –** An entity that is not (and has not at any time) been a 'substantial employer' is **not** required to report under STP. Nonetheless, such an entity may **choose** to report voluntarily under STP (i.e., 'opt-in'), in order to reduce its reporting obligations under other taxation laws (e.g., the requirement to provide 'payment summaries' and a 'payment summary annual report'). From **1 July 2019**, STP reporting will be *expanded* so that it applies to **all** employers (i.e., including those employers with *19 or less* employees). Whilst employers with 19 or less employees still have another year to prepare for STP, they can choose to start reporting through STP *prior* to 1 July 2019 if their payroll software is STP compliant.

ATO expresses increasing concerns that claims are being incorrectly made under the substantiation exceptions

The ATO is increasingly concerned about the number of taxpayers who are claiming deductions for items they cannot claim. Many of these relate to claims that can be made without having to provide written evidence (e.g., receipts) for the claim. Even if the substantiation exception applies, a taxpayer may still be required to show the basis for determining the amount of their claim and that the expenses claimed were actually incurred for a work-related purpose.

The ATO could expect to see documentary evidence demonstrating that the deduction was correctly claimed, including:

- include **bank statements** and **credit card statements** (showing that expenditure has been incurred),
- **diary records**
- **payment summary** or **pay slips** (showing that an allowance has been paid to the employee by their employer)

FUEL TAX CREDIT RATES

Fuel tax credit rates change twice a year, in February and August, in line with the consumer price index (CPI). Rates may also change in July for fuel used in a heavy vehicle for travelling on public roads.

The fuel tax credit calculator includes rates from 1 July 2018 and is simple, quick and easy to use. You can use this calculator to work out the fuel tax credit amount to report on your Business activity statement (BAS).
See link: https://www.ato.gov.au/Calculators-and-tools/Fuel-tax-credit-tools/

Rates for fuel acquired from 1 July 2018 to 31 July 2018

Eligible fuel type	Unit	Used in heavy vehicles for travelling on public roads	All other business uses (including to power auxiliary equipment of a heavy vehicle)
Liquid fuels, for example diesel or petrol	cents per litre	15.1	40.9
Blended fuels: B5, B20, E10	cents per litre	15.1	40.9

CHECKLIST FOR INFORMATION REQUIRED

Enclosed with this newsletter is our 2018 Checklist for Information Required for the Year End and Livestock and Motor Vehicle Schedule.

Please return the completed form to our office along with your 2018 information.

If you have completed the motor vehicle schedule detailing private use of a vehicle, please ensure you have provided this year or previously, a copy of your log book.

ATO raises awareness of fake tax debt scams involving cryptocurrencies

The Australian Taxation Office's (ATO) is making people aware of scammers impersonating the ATO and demanding bitcoin as a form of payment for fake tax debts.

The ATO's assistant commissioner Kath Anderson has stated that "So far, we have seen over A$98,000 paid in bitcoin to scammers claiming fake ATO debts, usually via bitcoin ATM machines,".

This has prompted the ATO to work with tax and financial advisers to warn people not to get sucked in by callers threatening police or legal action if a supposed debt is not paid.

"The ATO will never ask for payment in bitcoin or any other cryptocurrency and we don't accept payments via ATM machines," Anderson says.

Her message for advisers and their clients is simple when rude and aggressive callers seek crypto payments:
"Hang up, it won't be the ATO."

Demands for payment via third-party bank accounts, iTunes cards or with a pre-paid Visa gift card are also common.

Last year, taxpayers reported losing a total of almost A$2.4 million to fraudsters claiming to be from the Tax Office, including more than A$900,000 in iTunes payments.

Clients should also be aware of email and SMS scams intended to gather personal and financial information that can be used to impersonate them. Such cons typically ask the recipient to click on a link and then update their details.

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