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Practice Update

Please read this update and contact this office if you have any queries

September - October 2017

Single Touch Payroll update

A limited release of 'Single Touch Payroll' began for a small number of digital service providers and their clients on 1 July 2017, with Single Touch Payroll operating with limited functionality for a select number of employers.

Single Touch Payroll will effectively require some employers to report information regarding payments to employees (or to their super funds)in 'real time', via their payroll software.

The following timeline sets out what is happening in the lead-up to the mandatory commencement of Single Tough Payroll next year.

September 2017 – the ATO will write to all employers with 20 or more employees to inform them of their reporting obligations under Single Touch Payroll.

1 April 2018 – employers will need to do a headcount of the number of employees they have, to determine if they need to report through Single Touch Payroll.

From 1 July 2018 – Single Touch Payroll reporting will be mandatory for employers with 20 or more employees.

ATO to be provided with more super guarantee information

The Government has announced a package of reforms to give the ATO near real-time visibility over superannuation guarantee (SG) compliance by employers.

The Government will also provide the ATO with additional funding for a SG Taskforce to crackdown on employer non-compliance.

The package includes measures to:

- require superannuation funds to report contributions received more frequently (at least monthly) to the ATO, enabling the ATO to identify non-compliance and take prompt action;
- require employers with 19 or fewer employees to transition to single touch payroll ('STP') reporting from 1 July 2019;
- 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 SG liabilities.

Following extensive consultation when STP was originally announced, it was decided that employers with 19 or fewer employees would not be required to comply.

Given the backflip here, the business community will be hoping the Government does not introduce compulsory real-time **payments** of SG and PAYG withholding, as well as real-time reporting.

No small business tax rate for passive investment companies

The Government has released draft tax legislation to clarify that passive investment companies cannot access the lower company tax rate for small businesses of 27.5%, but will still pay tax at 30%.

The amendment to the tax law will ensure that a company will not qualify for the lower company tax rate if 80% or more of its income is of a passive nature (such as dividends and interest).

The Minister for Revenue and Financial Services said the policy decision made by the Government to cut the tax rate for small companies was meant to lower taxes on business, and was not meant to apply to passive investment companies.

Research & Development Grants & Tax Incentives

AusIndustry, a division of the Department of Industry, Innovation and Science, is putting the needs of Australian businesses first by simplifying and streamlining access to information and advice. Information and support is available through the North Queensland office, and through business.gov.au, which offers simple and convenient access to government information, forms and services. It's a whole-of-government service providing essential information on planning, starting and growing your business.

Funding initiatives include:

Entrepreneurs' Programme

Business Evaluation — provides an analysis of the eligible business carried out on-site by skilled and experienced Business Advisers. This service may include advice, referrals and recommendations for improvement which is based on the customer's capacity, commitment and need to undertake significant improvements to their business.

Business Growth Grants — small, co-funded grants to engage external expertise to assist businesses with implementing improvements recommended by their Business Evaluation, Supply Chain Facilitation, Growth Service or Tourism Partnership.

Accelerating Commercialisation — provides expert guidance, connections and financial support to assist small and medium businesses, entrepreneurs and researchers to find the right commercialisation solutions for their novel products, process or service. Funding is through competitive matched grants of up to $1 million over two years for commercialisation activities.

Innovation Facilitators help businesses assess the gaps in their knowledge and provide specialist support which may include assistance through the following services:

- IT Facilitation — helps business to find solutions to their information technology needs.
- Technology and Knowledge Facilitation — helps business to find expertise, technology and advice.
- Research Facilitation — identifies critical and strategic research needs for business.

R&D Tax Incentive

The R&D Tax Incentive is the Australian Government's principal measure to encourage industry investment in research and development (R&D) which it does by providing tax offsets to eligible entities that undertake eligible R&D activities. It is a self-assessment programme open to all industry sectors, companies assess for themselves whether they are eligible for the programme and whether the activities they are undertaking are eligible.

The North Queensland AusIndustry office is available for meetings and advice. Please call Kay or Renee on 4750 2780.

Limited opportunity to avoid 'transfer balance cap' problems

If the total value of a superannuation fund member's pensions exceeded $1.6 million on 1 July 2017, they may face adverse tax consequences.

However, there is a transitional provision that permits a minor excess over $1.6 million to be ignored, subject to certain conditions being met.

Basically, this will be satisfied if the value of their pension interests on 1 July 2017 exceeded $1.6 million by no more than $100,000 (i.e., their total value did not exceed **$1.7 million**), but the member is able to commute the pension(s) by an amount that is at least equal to that excess no later than **31 December 2017.**

This will mean that no 'transfer balance cap' consequences arise (e.g., no 'excess transfer balance earnings' will accrue on the excess and no 'excess transfer balance tax' will become payable).

Therefore, it is important that this issue is identified and, if applicable, dealt with promptly.

Please contact us if you believe this may affect you and you need more information.

New Approved Occupational Clothing Guidelines 2017

The government has issued new guidelines to set out criteria for tax deductible non-compulsory uniforms.

The taxation law only allows a deduction to employees for expenditure on uniforms or wardrobes where either:

- *the clothing is in the nature of **occupation specific**, or **protective** clothing; or*
- *the wearing of the clothing is a **compulsory** condition of employment for employees and the clothing is not conventional in nature; or*
- *where the wearing of the clothing is **not compulsory**, the design of the clothing is entered on the **Register of Approved***

Occupational Clothing.

The new guidelines outline (among other things):

- the steps that need to be undertaken by employers to have designs of occupational clothing registered; and
- the factors that will be considered in determining whether designs of occupational clothing may be registered.

The guidelines commenced on 1 October 2017, and the previous Guidelines are revoked with effect from the same day.

New laws hold franchisors responsible for vulnerable workers

Franchisors and holding companies could be held responsible if their franchisees or subsidiaries don't follow workplace laws.

The Government has stepped in to protect workers following months of controversial headlines uncovering poor record keeping, questionable workplace practices and exploitation, underpayments, deception, and superannuation guarantee fraud by employers.

The Protecting Vulnerable Workers Bill amends the Fair Work Act to:

Increase penalties for serious contraventions of workplace laws

A 'serious contravention' of workplace laws occur if someone knowingly contravenes the law and their conduct is part of a systematic pattern. The penalties for breaches vary according to the offence and have increased up to 10 times higher than cases without the aggravating features. A breach is more likely to be a 'serious contravention' if:

- there are concurrent contraventions of the Fair Work Act occurring at the same time (e.g., breaches of multiple award terms and record-keeping failures);
- the contraventions have occurred over a prolonged period of time (e.g., over multiple pay periods) or after complaints were first raised;
- multiple employees are affected (e.g., all or most employees doing the same kind of work at the workplace, or a group of vulnerable employees at the workplace); and
- accurate employee records have not been kept, and pay slips have not been issued, making alleged underpayments difficult to establish.

Prevent record keeping failures

Appropriate record keeping is a big part of the new laws to prevent poor employer practices being used as a defence; stymieing employee complaints for lack of evidence. Now, the onus of proof is on the employer to disprove an employee's compliant.

The penalties for poor record keeping have also increased dramatically - now up to $12,600 for a standard breach and $126,000 for 'serious contraventions' by individuals and $630,000 for corporations. Maximum penalties are likely to apply where the employer knowingly falsified records and provided false or misleading payslips.

Safe harbour for directors of struggling companies

Australia's insolvent trading laws impose harsh penalties on directors of companies that trade where there are reasonable grounds to suspect that the company is insolvent. Criminal and civil penalties can apply personally including penalties of up to $200,000, compensation proceedings by creditors or liquidators, and where dishonesty has been involved, up to 5 years in prison.

You can understand why directors might choose to place a company into administration rather than face personal risk. Section 588G(2) of the Corporations Act imposes personal liabilities if a person is a director at the time the company incurs a debt, and the company is insolvent or becomes insolvent by incurring that debt, and, at that time, there are reasonable grounds to suspect that the company is or would become insolvent. It's all about timing.

The threat of Australia's insolvent trading laws, combined with uncertainty over the precise moment a company becomes insolvent have been widely criticised as driving directors towards voluntary administration even in circumstances where the company may be viable in the longer term. And, the very real personal risk is often cited as a reason why experienced directors are unwilling to engage with angel investors and start-ups.

New safe harbour provisions give directors some 'wiggle room' where they are attempting to restructure a company outside of a formal insolvency process.

Under the new rules, directors will only be liable for debts incurred while the company was insolvent if they were not developing or taking a course of action that at the time was reasonably likely to lead to a better outcome for the company than proceeding to immediate administration or liquidation. The explanatory memorandum to the amending legislation however clearly states that "hope is not a strategy" when it comes to assessing the reasonableness of the actions taken by directors.

Tolerance levels of the new laws

The new laws give directors a safe harbour from the civil insolvent trading provisions of the Corporations Act but only where the company is up to date with employee entitlements including superannuation, and has met its tax obligations – normally the first thing to go in distressed companies.

The amendments create a safe harbour for "honest and diligent company directors from personal liability for insolvent trading if they are pursuing a restructure outside formal insolvency." Directors who merely take a passive approach or allow the company to continue trading as usual during severe financial difficulty, or whose recovery plans are "fanciful", will not be protected. Directors who fail to implement a course of action, or to appoint an administrator or liquidator within a reasonable time period of identifying severe financial difficulty will also lose the benefit of the safe harbour.

Staff Changes

It is with regret that we farewell Kelsie Morris who has accepted a position with Central Queensland University as a financial accountant in Rockhampton. We wish Kelsie and her family all the best with the move and career change.

Sabrina Minuzzo has recently joined the team as an accountant in Home Hill. Sabrina has had 5 years experience in public practice in Mackay and Darwin and has recently returned home to the Burdekin. Sabrina has nearly completed her CPA qualification and will be a great addition to the team. Welcome Sabrina!

A warm welcome also, to Terri Romeo who has joined the Financial Planning team in Ayr. Terri comes with several years experience in the financial planning industry and has already proven herself to be an invaluable member of the FP team.

Quote of the month:

"*People don't want to buy a quarter-inch drill. They want to buy a quarter-inch hole."* - Theodore Levitt, 1960s Marketing guru & Harvard Business School Professor