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Practice Update

Please read this update
and contact this office
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November - December 2017

Reforms to stop companies avoiding employee entitlements

The Government will introduce new laws to stop corporate misuse of the Australian Government's Fair Entitlements Guarantee (FEG) scheme.

The FEG scheme is an avenue of last resort that assists employees when their employer's business fails and the employer has not made adequate provision for employee entitlements, but it is clear that some company directors are misusing the FEG scheme to meet liabilities that can and should be paid directly by the employer, rather than passed on to Australian taxpayers.

The proposed changes will:

- ◆ Penalise company directors and other persons who engage in transactions which are directed at preventing, avoiding or reducing employer liability for employee entitlements;
- ◆ Ensure recovery of FEG from other entities in a corporate group where it would be just and equitable and where those other entities have utilised the human resources of the insolvent entity on other than arm's length terms; and
- ◆ Strengthen the ability under the law to sanction directors and company officers

with a track record of insolvencies where FEG is repeatedly relied upon.

These changes will be targeted to deter and punish only those who have inappropriately relied on FEG, and so should not affect the overwhelming majority of companies who are doing the right thing.

The Government has separately released a 'Comprehensive Package of Reforms to Address Illegal Phoenixing', which will assist regulators to better target action against those who repeatedly misuse corporate structures and enable them to take stronger action against those entities and individuals.

These reforms will include (for example) the introduction of a Director Identification Number (DIN) (to identify all directors with a unique number), and making directors personally liable for GST liabilities as part of extended director penalty provisions.

Residential property tax legislation passed

The Government has passed changes to the tax legislation that will limit, or deny, deductions for **travel expenses** and **depreciation claims** for certain residential premises.

Legislation to impose vacancy fees on foreign acquisitions of residential land has also been passed.

Cleaners and couriers latest black economy target

The detail of the Government's crackdown on cleaning and courier companies was recently revealed.

From 1 July 2018, the taxable payments reporting system will extend beyond the building industry to cleaning and courier businesses. This means that these businesses will need to report payments they make to contractors (individual and total for the year) to the ATO. By 'payment' the ATO means any form of consideration including non-cash benefits and constructive payments.

The building industry has had this form of "enhanced reporting" since 2012-13. The result was an additional \$2.3 billion in income tax and GST liabilities collected through voluntary reporting in the first year alone.

What is a cleaning and courier service?

The terms 'cleaning service' and 'courier service' take their ordinary meaning.

Courier services include activities where items or goods are collected from, and/or delivered to, any place in Australia using a variety of methods including by truck, car, station wagon, van, ute, motorcycle, motorised scooter, bicycle or other non-powered means of transport, or on foot. Freight services, blood and blood product couriers, and passenger transport are not affected.

A cleaning service is any service where a structure, vehicle, place, surface, machinery or equipment has been subject to a process in which dirt or similar material has been removed from it. This includes office cleaning, road sweeping or street cleaning, swimming pool cleaning, park and facilities cleaning, or cleaning for certain types of cultural or sporting events.

Mixed business that supply services including courier or cleaning services will also be affected.

What you need to do

The first annual report for affected cleaning and courier companies is due by 29 August 2019 for the 2018-19 year. The types of information reported to the ATO about contractors include:

- ABN (where known)
- Name
- Address

- Total paid to the contractor (including GST) for the financial year, and
- Total GST included in the gross amount that was paid.

If an invoice you receive from a contractor includes both labour and materials, whether itemised or combined, you will need to report the total amount of the payment.

If your business is likely to be affected by the new requirements and you currently do not have systems in place that allow you to readily access the information required by the ATO, it's important to start your planning now.

New legislation restricts access to the reduced company tax rate

Legislation restricting access to the small business company tax rate reduction entered Parliament last month. The changes specifically preclude companies with passive investments such as rental property income from qualifying for the small business entity tax rate of 27.5%.

For the 2017 income year a company could access the reduced company tax rate if it was carrying on a business and it had an aggregated turnover of less than \$10 million. The changes replace the 'carrying on a business test' with a 'passive income test' from the 2018 income year onwards. Under the new rules, to access the reduced company tax rate, 80% or less of the entity's assessable income must be passive in nature.

The passive income test is not simple. Where a company is receiving income from trusts or partnerships, you need to trace through to determine the nature of the income that was derived by that trust or partnership, and this might need to be done on multiple levels. For example, Trust 1 might distribute income to Trust 2, which then distributes income to a company. Whether dividends are treated as passive income will depend on the shareholding percentage involved.

These changes mean that companies that only hold rental properties will not qualify for the lower tax rate, even if the rental activities amount to a business under general principles. However, a company that receives distributions from a related trust could still qualify for the lower rate if 20% or more of its income is attributable to trading profits (directly or indirectly through the trust).

Under the proposed new rules, it will no longer be necessary to determine whether the company carries on a business in its own right

under ordinary principles to determine its tax rate. The removal of the 'carrying on a business test' should eliminate some of the uncertainty that is currently faced when trying to determine the tax rate that applies to many private companies. However, this would still be relevant in determining whether a company can access other concessions that are available to small business entities.

Changes will also be made to the maximum franking percentage rules. In determining a company's maximum franking rate for a particular income year, you need to look at the tax rate that would apply in the current year if the following assumptions are made:

The company's aggregated turnover in the current year is the same as in the previous year;

The company's assessable income in the current year is the same as in the previous year; and

The company's passive income in the current year is the same as in the previous year.

There have been a lot of changes to the company tax rules and who and what they apply to. This development should finally provide some much needed certainty around which companies can qualify for the lower corporate tax rate and the flow-on impact that this has on franking rates for dividends paid by companies.

Scams targeting ASIC customers

We have had a few enquires recently from clients who have received emails requesting payment of their business name registration or similar. If you are ever unsure if an email or text is from a legitimate source, please contact the government agency directly. Do not click on a link in the email or text and do not make any payments until you have verified the legitimacy of the sender.

[Scams targeting ASIC customers](#)

ATO's annual closure

This year, the ATO's annual office closure is between noon Friday 22 December and 8.00am Tuesday 2 January 2018.

Also, the ATO may have systems maintenance on some weekends, so they recommend that lodgments be made as early as possible, as even returns or activity statements lodged in early December may not be finalised until after 2 January 2018.

Truck drivers' reasonable amounts for travel updated

Following detailed consultation with the transport industry, the ATO has amended their determination for travel expenses for truck drivers to provide separate reasonable travel allowance expense amounts for breakfast, lunch and dinner for employee truck drivers for the 2017/18 income year.

The reasonable amount for travel expenses (excluding accommodation) of employee truck drivers who have received a travel allowance and who are required to sleep away from home was originally reduced for 2017/18 to a total of \$55.30 per day, but this daily rate has now been **replaced** with the following amounts for all domestic travel destinations for the 2017/18 income year:

Breakfast	\$24.25
Lunch	\$27.65
Dinner	\$47.70

The amounts for each of these meal breaks are separate and cannot be aggregated into a single daily amount, and amounts cannot be moved from one meal to another (e.g., if the full amount for breakfast is not expended, it cannot be carried over to lunch or dinner).

A driver's work diary (as maintained for fatigue management purposes) can be used to demonstrate when meal breaks were taken.

Tool for applying the margin scheme to a property sale

The ATO is recommending that taxpayers use their recently updated *GST property decision tool* to work out if GST applies to their property sales.

The tool can be used to determine GST on the sale, lease or purchase of real property, and was recently updated for easier use on mobile devices.

In particular, after providing the relevant information, the tool will generate a GST decision that:

- advises whether GST is payable on a sale;
- estimates the amount of GST payable when applying the margin scheme; and
- advises whether the taxpayer is eligible to claim input tax credits.

Note that the ATO does not record any personal information and users will remain anonymous.

Other GST News

The Government has released draft legislation on "improving the integrity of GST on property transactions", as announced in the 2017/18 Federal Budget.

They intend to amend the GST law so that, from 1 July 2018, **purchasers will withhold the GST** on the purchase price of new residential premises and new residential subdivisions, and remit the GST directly to the ATO as part of settlement.

This is to address tax evasion through "phoenixing arrangements", where developers collect GST from their customers but dissolve their company to avoid paying it to the ATO.

To provide certainty for contracts that have already been entered into, the draft legislation provides a two-year transitional arrangement – contracts entered into before 1 July 2018 will not be affected as long as the transaction settles before 1 July 2020.

In addition, the GST Act has been amended to ensure that supplies of digital currency receive equivalent GST treatment to supplies of money (particularly foreign currency).

Why 'property flipping' is the next ATO target

The tax law does not allow you to 'flip' a property tax-free even if you are living in it. Most people think that they can move in to a property, renovate it, and then sell it without paying tax. The main residence exemption - the exemption that protects your family home from tax - does not apply if your primary purpose is to 'flip' the property for a profit. The fact that you are living in the property does not mean it's exempt from tax.

Some people reading this are probably thinking, but who is going to know? How can the Australian Taxation Office (ATO) really know what my intention is when I buy a property to live in? Generally, the ATO is looking for a pattern of behaviour or a declaration of intention. For example:

You are not employed and earn your income moving in, renovating then selling

You have a pattern of renovating and selling properties

Your loan documents on your mortgage suggest the property is for flipping and not for the long term

You go on national television stating that you are looking to move in, renovate and flip the property (hello The Block contestants).

People often make the assumption that any gain made from property flipping will be exempt from tax as long as the property is their main residence for the entire ownership period. However, this is only the case where the property is held on capital account. A property would generally be held on capital account if it is bought with the genuine intention of using it as a private residence or rental property for the foreseeable future and there is evidence to back this up.

The ATO indicates that someone who is renovating a property with the intention of selling the property again at a profit could be taxed on revenue account in which case the main residence exemption does not apply.

Numerous work-related expense claims disallowed

The AAT has denied a taxpayer's deductions for work-related travel, clothing, self-education and rental property expenses (totalling \$116,068 and \$140,581 for the 2013 and 2014 income year respectively), and upheld the ATO's 50% administrative penalty on the tax shortfall for recklessness.

Apart from being unable to prove (or 'substantiate') some claims due to lack of receipts, and documents being in the wrong name, the AAT also criticised the taxpayer for:

- ◆ claiming work-related travel expenses on the basis of the 'gap' between travel expenses reimbursed by her employer and the ATO's reasonable rates (which "was clearly not permissible under any taxation law"); and
- ◆ claiming clothing expenses for "formal clothes of high class", despite her clothing not being distinctive or unique to her employment at the Department of Finance, and was instead rather conventional in nature (and so was not deductible).

ACCC gets tough on credit card surcharge

The ACCC has issued a warning to businesses charging excessive credit card fees. One large merchant has already been issued with four infringement notices and has paid \$43,200 in penalties.

The new rules, which came into effect from 1 September 2017, prevent merchants from charging more than the true cost of the transaction. As a guide, where a charge is imposed, the ACCC says that consumers should expect to pay around 0.5% to 1% for payment by debit card, 1% to 1.5% by MasterCard and Visa credit cards and 2% to 3% for American Express. Consumers are

being encouraged to contact the ACCC if a business is charging more than what the ACCC expects

ATO's occupation-specific guides

The ATO has developed occupation-specific guides to help taxpayers understand what they can and can't claim as work-related expenses, including:

- car expenses;
- home office expenses;
- clothing expenses; and
- self-education or professional development expenses.

The guides are available for the following occupations:

- construction worker;
- retail worker;
- office worker;
- Australian Defence Force;
- sales and marketing;
- nurse, midwife or carer;
- police officer;
- public servant;
- teacher; and
- truck driver.

[ATO occupation specific guides](#)

Quote of the month: *Christmas gives us the opportunity to pause and reflect on the important things around us - a time when we can look back on the year that has passed and prepare for the year ahead.*

- David Cameron



Peter, John & Staff would like to wish you and your family a Merry Christmas & Happy New Year. We thank you for your support over the past year and look forward to working with you in 2018. Please note that both offices will be closed from 1pm on Friday 22nd December 2017 and will re-open for business on Monday 8th January, 2018.

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.