



ML|Partners Pty Ltd

COMBINING ACCOUNTING & WEALTH MANAGEMENT

AYR:
(07) 4783 3944

145 Edwards Street
AYR 4807

HOME HILL:
(07) 4782 2733

96/98 Eighth Avenue
HOME HILL 4806

Practice Update

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

January - February 2018

What's changing in 2018?

1 January 2018

- **Vacancy fees** for foreign acquisitions of residential land - An annual vacancy fee imposed on foreign owners of residential real estate if the property is not occupied or genuinely available on the rental market for at least 183 days in a particular 12 month period. Foreign owners can avoid the fee by living in the property (or have a family member live in the property), leasing the property, or making it available for rent, for a total of 183 days in a 12 month period. Short term letting arrangements often won't be sufficient to avoid the levy.
- **CGT concession for investments in affordable housing** - The CGT discount will be increased for individuals who choose to invest in affordable housing. The current 50% discount will increase by 10% to 60% for resident individuals who elect to invest in qualifying affordable housing. Non-residents are not generally eligible for the CGT discount. This change is not yet legislated.

1 July 2018

- **Super concessions for downsizers come into effect** - If you are over 65, have held your home for 10 years or more and are looking to sell, you can contribute a lump sum of up to \$300,000 per person to superannuation without being restricted by the existing non-concessional contribution caps - \$100,000 subject to your total superannuation balance - or age restrictions.
- **Using super to save for your first home** - The first home savers scheme will enable first-home buyers to save for a deposit inside

their superannuation account, attracting the tax incentives and some of the earnings benefits of superannuation. Home savers can make voluntary concessional contributions (for example by salary sacrificing) or non-concessional contributions (voluntary after-tax contributions) of \$15,000 a year within existing caps, up to a total of \$30,000. When you are ready to buy a house, you can withdraw those contributions along with any deemed earnings in order to help fund a deposit on your first home.

- **GST on low value imported goods** - GST will apply to retail sales of low value physical goods (\$1,000 or less) that have been imported into Australia and sold to consumers.
- **Who pays the GST on residential property & subdivisions** - Property developers will no longer manage the GST on sales of newly constructed residential properties or new subdivisions. Instead, the Government will require purchasers to remit the GST directly to the ATO as part of the settlement process. This change is not yet legislated.
- **\$20k immediate deductions ends** - The \$20,000 immediate deduction threshold for assets purchased by businesses with an aggregated turnover of under \$10 million ends 30 June 2018.
- **Taxable payments reporting system extended to couriers & cleaners** - Businesses in the courier and cleaning industries will need to collect information from 1 July 2018, with the first annual report required to be lodged in August 2019.
- **Single Touch Payroll - Single Touch Payroll reporting starts for employers with 20 or more employees.** Employers will

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report payments such as salaries and wages, PAYG withholding and super information directly to the ATO from their payroll system at the same time they pay their employees.

- **Closing salary sacrifice loopholes to reduce super guarantee** - Loopholes that enable employers to reduce the Superannuation Guarantee (SG) contributions owed to employees by using salary sacrifice contributions will be closed. This change is not yet legislated.
- **Access to reduced company tax rate limited** - Limits access to the 27.5% company tax rate by replacing the existing 'carrying on a business test' with a passive income test. Under the new rules, a company will not be able to access the reduced company tax rate if more than 80% its assessable income is passive in nature. This change is not yet legislated.
- **Wine equalisation tax rebate tightened eligibility** - Wine producers will be required to own at least 85% of the grapes used to make the wine throughout the winemaking process and brand wine with a trademark.

New data breach laws come into effect

New data breach rules in effect from 22 February 2018 place an onus on business to protect and notify individuals whose personal information is involved in a data breach that is likely to result in serious harm.

Who is covered by the data breach scheme?

The Notifiable Data Breach (NDB) Scheme affects organisations covered by the Privacy Act - that is, organisations with an annual turnover of \$3 million or more. But, if your business is 'related to' another business covered by the Privacy Act, deals with health records (including gyms, child care centres, natural health providers, etc.), or a credit provider etc., then your business is also affected. Special responsibilities also exist for the handling of tax file numbers, credit information and information contained on the Personal Property Securities Register.

What you need to do

It's important to keep in mind that complying with these new laws means more than notifying your database when something goes wrong. Organisations are required to take all reasonable steps to prevent a breach occurring in the first place, put in place the systems and procedures to identify and assess a breach, and issue a notification if a breach is likely to cause 'serious harm'.

Taking all reasonable steps – assessing risk

The Privacy Act already requires organisations to take all reasonable steps to protect personal information. The new data breach laws merely add an additional layer to assess breaches and notify where the breach poses a threat. For example, if you have not already, you should assess issues such as:

How personal information flows into and out of your business. For example:

- What information do you gather (including IP data from websites)
- What information do you provide (for example, do you provide information on your clients to third parties?)
- Where private information is stored – map out what systems you use, where these systems store data (if cloud based, your data may be held in a foreign country), what level of security is provided within those systems, and what level of access each team member has (and what they should have access to for their role)
- How private information is handled by your business across its lifecycle and who has access at each stage (not just who is accessing the information for their work but who 'could' access this information)
- Possible impacts on an individuals' privacy (risk assessment)
- The policies and procedures in place to manage private information, including risk management and mitigation, whether these are adhered to, and actively managed
- The policy review process - review policies and procedures at least annually but again with the introduction of new systems and technology. Remember, you can't just have a policy sitting somewhere, it needs to be actively reinforced and adopted by team members
- Instate new project protocols for ensuring privacy where personal information is at risk
- Document everything including your reviews and procedural updates even if nothing changed. If there is ever an issue where your business's culpability is assessed, your capacity to prove that you took all reasonable steps will be important.

When it comes to data breaches, all organisations must have a data breach response plan. The data breach plan covers the:

- Actions to be taken if a breach is suspected, discovered or reported by a staff member, including when it is to be escalated to the response team
- Members of your data breach response team (response team), and

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- Actions the response team is expected to take.

For more information go to:

[Notifiable data breaches scheme](#)

Directors on 'hit list' for not paying employee super

Proposed legislation would see the ATO pursue criminal charges against Directors who fail to meet their superannuation guarantee (SG) obligations.

New legislation seeks to introduce a series of changes to how employers interact with the SG system and give some teeth to the ATO to pursue recalcitrant employers. The new rules, if passed by Parliament, generally come into effect from 1 July 2018.

The key changes include:

The ATO can force you to be educated about your SG obligations

At present, if an employer fails to meet their quarterly SG payment on time they need to pay the SG charge (SGC) and lodge a Superannuation Guarantee Statement. The SGC applies even if you pay the outstanding SG soon after the deadline. The SGC is particularly painful for employers because it is comprised of:

- The employee's superannuation guarantee shortfall amount – so, all of the SG owing
- Interest of 10% per annum, and
- An administration fee of \$20 for each employee with a shortfall per quarter.

Unlike normal SG contributions, SGC amounts are not deductible, even if you pay the outstanding amount. That is, if you pay SG late, you can no longer deduct the SG amount even if you bring the payment up to date.

And, the calculation for SGC is different to how you calculate SG. The SGC is calculated using the employee's salary or wages rather than their ordinary time earnings. An employee's salary and wages may be higher than their ordinary time earnings particularly if you have workers who are paid for overtime.

Under the quarterly superannuation guarantee, the interest component will be calculated on an employer's quarterly shortfall amount from the first day of the relevant quarter to the date when the SG charge would be payable.

Where attempts have failed to recover SG from the employer, the directors of a company

automatically become personally liable for a penalty equal to the unpaid amount.

Under the proposed rules, the ATO will also have the ability to issue directions to an employer who fails to comply with their obligations. The Commissioner can direct an employer to undertake an approved course relating to their SG obligations where the Commissioner reasonably believes there has been a failure by the employer to comply with their SG obligations, and, of course, a direction to pay unpaid and overdue liabilities within a certain timeframe.

Criminal penalties for failure to comply with a direction to pay.

Employers who fail to comply with a directive from the Commissioner to pay an outstanding SG liability face fines and up to 12 months in prison. Before hauling anyone off to prison the ATO has to consider the severity of the contravention including:

- The employer's history of compliance (superannuation and general tax obligations)
- The amount of unpaid super relative to the employer's size
- And steps taken by the employer to pay the liability, and
- Any matters the "Commissioner considers relevant".

The ATO will tell employees if an employer is under paying or not paying SG.

The proposed new rules will allow the ATO to tell current and former employees about the failure (or suspected failure) of an employer to comply with their SG obligations. The ATO can also advise the employees what action has been taken by the ATO to recover their SG.

This disclosure cannot relate to the general financial affairs of the employer.

The draft laws extend Single Touch Payroll to all employers from 1 July 2019, and will require superannuation funds to commence 'event-based' reporting to the ATO of payments they receive for employees from their employer from 1 July 2018.

Combined, these measures (if passed as drafted) should provide the ATO with more timely information to support earlier detection and proactive prevention of non-payment of superannuation owed to employees.

The ATO will have a suite of enforcement and collection tools for employers who break the law, including

- strengthened arrangements for director penalty notices and security deposits for

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superannuation and other tax-related liabilities;

- the ability (for the first time) to apply for court-ordered penalties, including up to 12 months imprisonment; and
- the ability to require employers to undertake training.

The Government's commitment to a Director Identification Number will also help identify those directors who are robbing their employees of their superannuation.

The Government introduced legislation last year to implement another recommendation by the Working Group to close a loophole that could be used by unscrupulous employers to short change employees who use salary sacrifice arrangements, and will progress that legislation along with this broader compliance Bill.

ATO warning regarding small business record-keeping

According to the ATO, of all of the things that can cause small businesses to fold, "high on that list is poor record keeping".

More than half of the businesses they visited in their Protecting honest business campaign needed to improve their record keeping.

Issues they found include businesses:

- estimating their sales and income;
- using the 'no sale' and 'void' button on cash registers when taking cash payments;
- not keeping cash register tapes and not reconciling at the end of the day; and
- paying their employees cash-in-hand.

They are writing to these businesses to recommend they attend one of the ATO's record keeping workshops, which cover why good record keeping is important and how it will save them time.

ATO data matching program – Visa Holders

The ATO will acquire information on holders of a Visa from the Department of Immigration and Border Protection for the 2017/18, 2018/19 and 2019/20 financial years.

It is estimated that records of 20 million individuals will be obtained over the course of the three year period.

These records will be electronically matched with ATO data holdings to identify non compliance with obligations under taxation and superannuation laws, as well as (for example) support compliance activities under Australia's foreign investment rules.

Review of rules for early release of superannuation

The Government has announced that Treasury will review the current rules governing early release of superannuation on grounds of severe financial hardship and compassionate grounds.

It will also review whether, and the circumstances in which, a perpetrator's superannuation should be available to pay compensation or restitution to victims of crime.

The review will not examine other general conditions of release for superannuation.

The Government also announced that it will transfer the regulatory role of administering the early release of superannuation benefits on compassionate grounds from the Department of Human Services to the ATO in 2018, to enable the ATO to provide a more streamlined service to members.

Safe harbour for exempt car fringe benefits - PCG 2017/D14

When an employer provides an employee with the use of a car or other vehicle then this would generally be treated as a car fringe benefit or residual fringe benefit and could potentially trigger an FBT liability.

However, the FBT Act contains some exemptions which can apply in situations where certain vehicles (e.g., utes and other commercial vehicles) are provided and the private use of the vehicles is limited to work-related travel, and other private use that is 'minor, infrequent and irregular'.

One of the practical challenges when seeking to apply the exemption is how to determine if private use has been minor, infrequent and irregular. PCG 2017/D14 explains how the Commissioner will approach this issue from a compliance perspective. PCG 2017/D14 sets out situations where the Commissioner will not devote compliance resources to review whether the exemption is available as well as providing some examples of situations when the guidelines can be used.

Generally, the ATO has indicated that private use by an employee will qualify for the exemptions where:

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- The employer provides an eligible vehicle to the employee to perform their work duties;
- The employer takes reasonable steps to limit private use and they have measures in place to monitor this;
- The vehicle has no non-business accessories;
- The value of the vehicle when it was acquired was less than the luxury car tax threshold;
- The vehicle is not provided as part of a salary sacrifice arrangement; and
- The employee uses the vehicle to travel between their home and their place of work and any diversion adds no more than two kilometres to the ordinary length of that trip, they travel no more than 750 kms in total for each FBT year for multiple journeys taken for a wholly private purpose and, no single, return journey for a wholly private purpose exceeds 200 kms.

More information - [PCG2017/14](#)

New Staff - Welcome Judy & Megan

We would like to extend a warm welcome to Judy Taylor who joined the ML Home Hill team in January. Judy's is our new accounts receivable administrator and reception assistant and brings a wealth of experience to the role. Welcome Judy!



The Ayr office would also like to welcome Megan Cockfield who commenced work in January in the financial planning division. Megan holds a Diploma of Business and has a passion for financial planning so will be a great addition to the team. Welcome Megan!



Quote of the month

"Perseverance is the hard work you do after you get tired of doing the hard work you already did."
- Newt Gingrich

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.