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Practice Update

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

March - April 2018

New superannuation rates and thresholds released

The ATO has published the key superannuation rates and thresholds for the 2018/19 income year.

- ❑ The **Non-Concessional Contributions cap** will remain at \$100,000 (although transitional arrangements may apply), and the **Concessional Contributions cap** will remain at \$25,000.
- ❑ The **CGT cap amount** will be \$1,480,000.
- ❑ The **Division 293 tax threshold** will be \$250,000.
- ❑ The **maximum super contribution base** for superannuation guarantee purposes will be \$54,030 per quarter.
- ❑ The **maximum superannuation co-contribution entitlement** for the 2018/19 income year will remain at \$500 (with the lower income threshold increasing to \$37,697 and the higher income threshold increasing to \$52,697).

The superannuation benefit caps for the 2018/19 income year include:

- a **low rate cap amount** of \$205,000;
- an **untaxed plan cap amount** of \$1,480,000;
- a **general transfer balance cap** of \$1.6m;
- a **defined benefit income cap** of \$100,000;

- an **ETP cap amount** for life benefit termination payments and death benefit termination payments of \$205,000; and
- the **tax-free part of genuine redundancy payments and early retirement scheme payments** comprising a **base limit of \$10,399** and for each complete year of service an additional \$5,200.

Super guarantee payable on 'public holidays' and 'additional hours'

The Federal Court has held that superannuation guarantee contributions were payable with respect to the 'additional hours' and 'public holidays' component of annualised salaries paid by BlueScope Steel, on the basis that these particular components formed part of ordinary time earnings ('OTE').

Under an enterprise agreement, primarily due to the specific working environment, the employees in question were required to be available (at short notice) 365 days per year and 24 hours per day, including a requirement to work additional hours and public holidays.

As such, the employees were paid an annualised salary, which was made up of a base rate, as well as a component which absorbed all additional payments, such as penalty rates, allowances, public holiday loadings and pay-outs, and payment for additional hours worked outside the normal rostered hours.

However, when paying superannuation, adjustments were made to the annualised salary, so that the additional hours and public holiday components were **not included** by BlueScope Steel as OTE for superannuation guarantee purposes.

Decision

The Federal Court did not agree with the employer's adjustments, instead finding that, under the circumstances, the 'additional hours' and 'public holidays' formed part of an employee's 'ordinary hours of work' and, therefore, were considered OTE for superannuation guarantee purposes.

This remained the case whether or not the employee *actually* worked the additional hours or the public holidays.

That is, the ordinary conditions of the employee's work required them to be available outside their rostered shifts and on public holidays (on short notice) and, as this was factored into their annual salary, they were considered ordinary hours for **these particular employees**.

Commissioner's speech highlights ATO's focus areas

Recently, the Commissioner of Taxation highlighted the areas in which the ATO has recently increased its focus, including:

- undeclared income;
- individuals' unexplained wealth or lifestyle;
- incorrectly claimed private expenses;
- unpaid superannuation guarantee; and
- cash-only businesses and those with low usage of merchant banking facilities, with black economy visits to over 2,600 businesses across 8 locations in 2017.

The Commissioner also highlighted ongoing ATO concern with respect to the predicted 'work-related expense claim gap', which (at least by the ATO's estimates) could amount to being greater than the 'large corporate tax gap' of \$2.5 billion of lost revenue.

No need to actually 'downsize' for 'downsizer contributions'

From **1 July 2018**, individuals aged 65 or over may use the proceeds from the sale of an eligible dwelling that was their main residence to make superannuation contributions (referred to as '**downsizer contributions**'), up to a maximum of \$300,000 per person (i.e., up to \$600,000 per couple), without having to satisfy the age or gainful employment tests that usually apply.

This measure was announced in the 2017/18 Federal Budget, and aims to provide an incentive for older Australians to 'downsize' their home.

This, in turn, is expected to reduce pressure on housing affordability by freeing up stocks of larger homes for growing families.

Importantly, it should be noted that there is no requirement for an individual **to actually 'downsize'** by acquiring a smaller property, or to even acquire another property at all.

In this regard, all that is required is that the individual (or their spouse) 'downsized' by selling their 'main residence'.

The individual can then move into any living situation that suits them, such as aged care, a retirement village, a bigger or smaller dwelling than the one sold, a rental property, or living with family.

Also, the property sold does **not** need to have been the individual's (or their spouse's) main residence during their *entire* ownership of it, provided the property was owned for at least 10 years and was their main residence at **some time** during the ownership period. Therefore, the sale of an investment property that at one stage was their main residence may enable an individual (or their spouse) to make downsizer contributions.

The pros and cons of using your super to save for your first home

The First Home Super Saver Scheme (FHSS) enables 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. You have been able to make contributions since 1 July 2017 (although the legislation did not pass Parliament until 7 December 2017), but withdrawals cannot be made until 1 July 2018. Note that mandated employer contributions cannot be withdrawn under this scheme, it is only additional voluntary contributions made from 1 July 2017 that can be withdrawn.

If you have a Self-Managed Superannuation Fund (SMSF), you will need to ensure that the trust deed allows for withdrawals under the FHSS to be made. The SMSF must also identify these contributions and report these to the ATO.

When you are ready to buy a house, you can withdraw the contributions along with any deemed earnings (90-day Bank Accepted Bill rate with an uplift factor of 3%), to help fund a deposit on your first home. To extract the money from super, home savers apply to the Commissioner of Taxation for a first home super saver determination. The Commissioner then determines the maximum amount that can be released from the fund. When the amount is released from super, it is taxed at your marginal tax rate less a 30% offset (non-concessional contributions are not taxed).

The upside of the FHSS is the tax benefit. For example, if you earn \$70,000 a year and make salary sacrifice contributions of \$10,000 per year, after 3 years of saving, approximately \$25,892 will be available for a deposit under the scheme - \$6,210 more than if the saving had occurred in a standard deposit account (you can estimate the impact of the scheme on you using the [estimator](#)).

Another upside is that the scheme applies to individuals. So, if you are a couple, you both could utilise the scheme for a deposit on the same home - effectively increasing your cap to a maximum of \$60,000.

If you don't end up entering into a contract to purchase or construct a home within 12 months of withdrawing the deposit from superannuation, you can recontribute the amount to super, or pay an additional tax to unwind the concessional tax treatment that applied on the release of the money.

Home savers also need to move into the property as soon as practicable and occupy it for at least 6 of the first 12 months that it is practicable to do so.

The home saver scheme can only be used once by you.

The cons of this scheme are mostly administrative. On the investment side of things, using the above example, \$6,210 over three years is an upside but may not be a huge upside compared to other investment returns given the administrative requirements of the scheme. But, for many, it may be the best offer available.

Who can use the first home saver scheme?

You must:

- Be 18 years of age or older (to make a withdrawal under the scheme – you can contribute before the age of 18);
- Never had held taxable Australian real property (this includes residential, investment, and commercial property assets)

Big changes proposed to eligibility for the CGT SBCs

The Treasurer has released draft legislation containing new "integrity improvements" to the CGT small business concessions ('SBCs') (i.e., including the 15-year exemption, the retirement exemption, the 50% active asset reduction and the small business roll-over).

Due to the government's "*continued support for genuine small business taxpayers*", it proposes making amendments so that the CGT SBCs can only be accessed in relation to assets used in a small business or ownership interests in a small business.

Predominantly, the amendments include **additional basic conditions** that must be satisfied for a taxpayer to apply the CGT SBCs to a capital gain arising in relation to **a share in a company** or an interest in a trust (i.e., **a unit in a unit trust**).

This integrity rule is designed to prevent taxpayers from accessing these concessions for assets which are unrelated to their small business, such as where taxpayers arrange their affairs so that their ownership interests in larger businesses do not count towards the tests for determining eligibility for the concessions.

Under the proposed amendments, the measure would be backdated to apply **from 1 July 2017**.

The proposed amendments, if enacted as currently drafted, will significantly restrict access to the CGT SBCs where taxpayers owning shares in a company, or units in a unit trust, seek to dispose of their interests in the entity.

This will particularly be the case where such interests are held in an asset-owning entity (i.e., which holds and/or leases business assets across to a separate, yet related, business entity).

It is to be hoped that the more draconian aspects of these measures may be scaled back, but due to the retrospective nature of the proposed amendments (i.e., from 1 July 2017), caution is warranted with respect to the SBCs in relation to the disposal of shares or units.

ATO's focus on work-related expenses

This year, the ATO is paying close attention to what people are claiming as 'other' work-related expense deductions, so it's important when taxpayers claim these expenses that they have records to show:

- they spent the money themselves and were not reimbursed;
- the expense was directly related to earning their income; and

- they have a record to prove it.

If the expense is for work *and* private use, the taxpayer can only claim a deduction for the work-related portion.

Importantly, taxpayers are not automatically entitled to claim standard deductions, but need to be able to show how they worked out their claims.

'Other' work related expenses are expenses incurred by employees in relation to their work that are not for travel, clothing or self-education, such as home office expenses.

Taxpayer can't explain where she got the money to pay her expenses

The Administrative Appeals Tribunal has upheld amended assessments issued by the ATO to a beauty technician, based on the high volume of money passing through the taxpayer's various accounts when compared with the modest income she had included in her tax returns.

For example, in the 2015 income year, the taxpayer had declared income of \$61,842, but the ATO's analysis of her bank accounts, records of international money transfers, and casino data suggested she had spent \$107,328.

The Tribunal noted that, in cases like this, the ATO is effectively making an "informed guess" as to the taxpayer's income, but, provided there is a rational basis for the estimate, the ATO's assessment will stand, unless the taxpayer can:

- demonstrate the assessment was excessive; *and*
- establish what the correct (or more nearly correct) figure is.

After hearing from the taxpayer and witnesses at the hearing, and after reviewing the documents, the Tribunal was not persuaded that the taxpayer had demonstrated that the Commissioner's assessments were 'excessive'.

In particular, the taxpayer's explanation regarding her income and expenditure was not supported by the objective facts in the hearing, being:

- the 'churn' through her bank accounts;
- the absence of contemporaneous records beyond the bank accounts (for example, she was always paid in cash without receiving pay slips); and
- the deficiency in corroborating evidence from other witnesses.

In addition to upholding the amended assessments, the Tribunal was also satisfied that

the ATO's 75% administrative penalty on top of the tax payable was properly imposed.

New small business benchmarks are available

The ATO has updated its small business benchmarks with the latest data from the 2015/16 financial year.

In addition to helping businesses to see if they are performing within their industry average, the benchmarks are one of the tools the ATO uses to identify businesses that may be a higher risk.

That is, they use the benchmarks to pick their audit targets, so please contact us if you would like us to check whether your data is inside or outside the average benchmark range for your industry.

[Small business benchmarks - Compare your business now](#)

Guide to the new Small Business Super Clearing House

The Small Business Superannuation Clearing House (SBSCH) joined the ATO's online services on 26 February 2018.

This is intended to streamline how businesses use the SBSCH, and will also include extra functionality, such as the ability to sort employee listings and payment by credit card.

The SBSCH is a free service that businesses with 19 or fewer employees (or which are SBEs) can use to comply with their super obligations.

Labour Hire Licencing

New labour hire licencing laws came into effect from 16th April 2018. Labour hire providers must be licenced by 15th June 2018. Key features of the Act include:

- labour hire providers must be licensed to operate in Queensland
- persons who engage labour hire providers to only engage licensed providers
- labour hire licensees to satisfy a fit and proper person test to establish that they are capable of providing labour hire services in compliance with all relevant laws
- the labour hire business is financially viable.
- licensees must provide six monthly reports on labour hire and associated activities including accommodation, and

in relation to compliance with relevant laws

- strong penalties for breach of obligations

Who is a labour hire provider?

A labour hire provider is a person who, as part of carrying on a business, supplies labour hire workers to do work for another person or business (the labour hire user).

Examples of labour hire providers include:

- a contractor who supplies workers to a farmer or fruit grower to pick produce for the farmer or grower
- a group training organisation or principal employer organisation that supplies an apprentice or trainee to a host employer
- an employment agency that on-hires temporary administration staff to a business.

The Act includes a number of new offences. There are high penalties for the most serious contraventions, such as operating as a labour hire provider without a licence, entering into arrangements with unlicensed providers and entering into arrangements intended to circumvent the Act's requirements.

The maximum penalties for a breach of these provisions is 1034 penalty units (\$130439) or three years' imprisonment for an individual, or 3000 penalty units (\$378450) for a corporation. For further information go to:

[Labour hire licencing Queensland](#)

Single Touch Payroll: what you need to know

Single Touch Payroll (STP) – the direct reporting of salary and wages, PAYG withholding and superannuation contribution information to the ATO – comes into effect from 1 July 2018. For employers

Employers with 20 or more employees at 1 April 2018 must use standard business reporting-enabled software from 1 July 2018. The head count for '20 employees' includes full-time, part-time, casuals (who worked any time during March), employees based overseas, or on paid or unpaid leave. Directors and independent contractors are excluded from the count. For businesses that are part of a wholly owned group, the total number of employees across the group is used (i.e., if the total number of employees employed by all member companies of the wholly-owned group is 20 or more, all group members must use STP).

STP is currently voluntary for businesses with less than 20 employees although proposed

reforms seek to extend the reporting system to all employers by 1 July 2019, regardless of the number of employees.

What must be reported

STP requires PAYG withholding and superannuation contribution details to be reported to the ATO as payments are made to employees or superannuation funds.

When it comes to PAYG withholding, employers will report details of salary and wages paid to employees as well as the PAYG withholding amount at the time the payment is made to the employee. Employers have the option of paying the PAYG withholding liability at the same time, although this is not compulsory.

Payments that must be reported include:

- Salary & wages
- Director remuneration
- Return to work payments to individuals
- Employment termination payments (ETPs) – not compulsory if the employee has died
- Unused leave payments
- Parental leave pay
- Payments to office holders
- Payments to religious practitioners
- Superannuation contributions (at the time the payment is made to the fund).

The Government intends to extend STP to salary sacrificed amounts in the near future although these reforms are not legislated.

An end to payment summaries?

While not compulsory, employers can choose to include reportable employer superannuation contributions and reportable fringe benefit amounts. These payments are reported either at the time the payment is made or through an update event. If these payments are included, the employer will not need to provide payment summaries as employees are able to access their live data through myGov.

If your business does not report through STP or does not finalise its reporting, payment summaries are still required.

New employees

If your business utilises STP, when a new employee joins they have the option to electronically complete a pre-filled Tax file number declaration and Superannuation standard choice form online instead of completing the form for you to lodge with the ATO.

Exemptions

Some exemptions exist for STP for rural employers that do not have access to a reliable

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internet connection, and employers that employed a group of people during the year for a short period of time, such as seasonal workers. For employees

While the Government and ATO are promoting STP as a way to improve the efficiency of payroll processes and meeting reporting obligations (i.e., cutting down on duplication of work etc.), there is also a clear benefit to the ATO and Government in implementing this system. One advantage is that the ATO will have early warning of businesses that are finding it difficult or simply failing to meet their PAYG withholding and superannuation guarantee obligations. This should have a flow on benefit to employees who might otherwise miss out on benefits to which they are entitled.

If you are registered with myGov and your employer reports using STP, you will be able to see your year-to-date tax and super information online.

Sage Handisoft Client Portal

Last year we implemented a new facility called 'Client Portal' in order to increase data security for our clients. Clients are able to receive, send and electronically sign documents via the client portal. To use the portal each signatory must have a separate email address. The Ayr and Home Hill offices both have separate portals & can be accessed via our website [MLP Ayr](#) or [MLP Home Hill](#)

The benefits of this facility include:

- Provides clients with secure access to documents at any time.
- Significantly reduces document handling and processing times (instead of email or post).
- No requirement to print, sign, scan & email documents when using electronic signatures.
- Operates within industry best practice high level security, with 128 bit

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.

encryption and authenticated digital signatures.

- Automatic notifications when we upload a file to a client's secure area and when a client sends us a file.

If you have not yet set up this facility, please contact the ML staff member who handles your affairs to assist.

To Do: See accountant before June 30



For those of you who would like assistance with tax planning strategies, are uncertain how recent legislative changes may affect you or who simply don't like unpleasant surprises, then we can assist. We offer a tax planning service that provides clients with a written report detailing their estimated tax position for the current financial year and options to assist with tax minimisation and cash flow management. Please contact us if you would like further information.

Instant asset write off – Small Business Entities

Just a reminder that the instant asset write off threshold for small business entities will be reduced from \$20000 to \$1000 from 1st July 2018.

Quote of the month:

'Success is no accident. It is hard work, perseverance, learning, studying, sacrifice and most of all, love of what you are doing or learning to do.'

- Pele