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COMBINING ACCOUNTING & WEALTH MANAGEMENT

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Practice Update

Please read this update
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OCTOBER - DECEMBER 2022

How high will interest rates go?



Low interest rates have been a mainstay since the global financial crisis of 2008. When the pandemic hit, Governments pushed stimulus measures through the economy and central banks reduced interest rates even further. Coming out of COVID, housing market demand was strong and prices boomed but at the same time, supply chains remained restricted and the problems amplified by geo-political tensions increasing input costs. Supply could not keep up with demand to support the recovery, pushing inflation higher and broader than expected for a longer period of time. To control inflation, central banks have responded by tightening monetary policy and lifting interest rates. But the good news is that inflation is likely to ease.

Inflation in the US has started to decrease from a high of over 9% in June 2022 to 7.7% in October, suggesting that interest rates may not rise as high and as aggressively as expected.

Similarly in Australia, the Reserve Bank of Australia (RBA) Board raised the cash rate by 0.25% to 2.60% at its October 2022 meeting, a lower increase than many expected. The lower than expected rise suggests that inflation pressures, particularly wages growth, will be more subdued in Australia than overseas. Comparatively, Australian households are more sensitive to interest rates with more than 60% of mortgages variable rate loans. This is unlike the

US where most borrowers are on 30-year fixed loans.

The increase in interest rates is starting to take effect helping to restore price stability. However, in its statement, the RBA said that it will be a challenge to return inflation to 2-3% while at the same time “keeping the economy on an even keel”. It concluded the path to achieving this balance is “a narrow one and it is clouded in uncertainty”.

In housing, the correction in house prices deepened and broadened across Australia, with capital city prices falling by 1.4% in September 2022, rounding out a 4.3% decline over the third quarter. Housing finance approvals also continued to mirror the broader correction to date, with further declines across investor and owner-occupier loans.

So, where does all of this leave us? Inflation will stay higher for longer than originally anticipated. As a result, interest rates are expected to continue to increase, albeit at a slower rate, with the RBA resetting their view along the journey. Economists are predicting that the cash rate will increase to somewhere between 3.10% and 3.85% in the first half of 2023 and then remain stable until early 2024 before RBA policy pivots and interest rates lower in early 2024.

Canstar analysis suggests that a 3.85% cash rate translates to an average variable rate of 6.73%. The difference between a 5.73% variable rate mortgage and 6.73% is \$650 per month on a \$1 million, 30 year mortgage.

ATO warning to SMSFs: "Paying the price for non-compliance"

There are various courses of action available to the ATO when trustees of self-managed super funds ('SMSFs') have not complied with the super laws, including applying administrative penalties.

A number of factors determine the amount of the administrative penalty, including:

- ❑ the type of contravention;
- ❑ when it occurred; and
- ❑ the number of penalty units that apply.

For example, if an SMSF contravenes a provision in relation to borrowings during the 2021/22 financial year, the ATO may apply a penalty of 60 penalty units and, at \$222 per unit for that year, this would result in the SMSF trustee having to pay \$13,320. This could be even more if there are multiple contraventions.

Note that the Government recently introduced a Bill to increase the value of a penalty unit for Commonwealth offences committed on or after 1 January 2023 from \$222 to \$275.

The ATO imposed total administrative penalties of around \$3.4 million on SMSF trustees last year for contraventions such as trustees illegally accessing super benefits, loans, or financial assistance given to members.

Also, just because a trustee receives an administrative penalty doesn't mean the ATO won't undertake any other compliance action, such as issuing a notice of non-compliance or disqualifying the relevant entity as a trustee.

ATO's record-keeping tips

The ATO has reminded taxpayers that they should understand the record-keeping requirements for their business and keep accurate and complete records as they occur, as this should help them avoid penalties that may apply and reduce the possibility of the ATO denying their expense claims.

The following are some of the ATO's top tips to help businesses get it right and avoid record-keeping errors (based on common record-keeping errors the ATO sees):

- Keep accurate records of all cash and electronic transactions.
- Reconcile cash and EFTPOS sales regularly (by ensuring payments recorded internally match external records) and enter the amounts into the main business accounting software system.
- Check for mistakes if things don't add up.
- For expenses that are for both business and private use, work out and record the business portion accurately.
- If the taxpayer has used trading stock for private purposes, remember to account for the stock as if the business sold it, and include the value in the business's assessable income.
- Don't use estimates to prepare tax returns and business activity statements ('BASs').
- If claiming credits for GST, set aside the GST in a separate ledger account to make record-keeping and calculations easier.
- Most records must generally be kept for at least 5 years — from when the record was prepared or obtained, or the transaction or related acts were completed, whichever is later. Records relating to the calculation of losses may need to be kept longer, depending on when that loss is deducted (or offset against a capital gain).
- Accurate and detailed records must also be kept when paying contractors to provide certain services on behalf of the business (so the business can easily complete its taxable payments annual report at the end of each year).
- Use the ATO's *Record-keeping evaluation tool* to find out how well the business is currently keeping its records.

If businesses aren't sure how this information applies to their situation, the ATO recommends they ask their registered tax or BAS agent, or contact the ATO for help. The ATO says it will help businesses get back on track if they make an error.

Input tax credits denied due to lodging BASs late

The Administrative Appeal Tribunal ('AAT') has held that a taxpayer could not claim \$91,239 of input tax credits ('ITCs') at least partly because it lodged the relevant BASs more than 4 years too late.

Specifically, the GST Act operates such that, if an extension of time to lodge a BAS has not been granted prior to the expiry of **4 years** after the day on which it was required to be given to the ATO, the entitlement to ITCs **immediately ceases**.

The AAT also noted that there is no discretion to circumvent this part of the GST Act, and the ATO **cannot** provide further time to lodge a BAS retrospectively outside of the relevant 4 year period.

It did not matter that the taxpayer was (for example) involved in a dispute with a franchisor

nor that they were impacted by lockdown restrictions.

Therefore, the taxpayer was no longer entitled to claim ITCs in relation to the BASs lodged by the taxpayer 4 years after they were required to have been given (and was also denied other ITCs for BASs that were lodged within the required 4 year period, as a substantial amount of the ITCs claimed remained unsubstantiated by a valid tax invoice).

Chef spending most of a year on cruise ships still a 'resident'



The AAT has also held that a taxpayer, an Australian chef with over 20 years' experience both in Australia and overseas, was an Australian resident for taxation purposes in the 2016 income year.

During that year, he spent only 86 days in Australia, being the period prior to him leaving Australia to commence employment with a cruise ship company, and a period during which he visited his family between deployments.

However, the AAT noted that he had no intention that any new place of residence be indefinite, and he did not become a resident of a new place.

Importantly, his 'domicile' for tax purposes (being Australia) did not change (and the AAT stated that *"a ship cannot be a domicile"*).

Requesting stapled super fund details for new employees

The ATO is reminding employers that, when they have new employees that have not provided them with their choice of super fund, super contributions should be made into:

- ◆ the employee's stapled super fund; or
- ◆ the employer's nominated account (but only if the ATO advises that the employee does not have a stapled super fund).

A stapled super fund is an employee's existing super account which is linked, or 'stapled', to them and follows them as they change jobs.

In December 2022, the ATO is releasing a solution that enables employer software and payroll products to request stapled super funds. That is, stapled super enabled software will allow the employer to request stapled super details from within their business software, so they will no longer have to request them separately via ATO online services.

Employers should contact their software provider to find out if their software solution will incorporate the stapled super functionality.

The ATO also encourages employers using the 'bulk request process' to begin discussions with their software providers, as the ATO's current bulk request process will be decommissioned from mid-2023.

'Talking tax' with new workers

The ATO is reminding employers that have taken on new employees that those employees can complete a TFN declaration through *ATO online services*, and that this is an easy way for them to provide both their employer and the ATO with the information needed.

If a new employee has a myGov account linked to the ATO, they can:

- ☐ access ATO online services;
- ☐ go to the 'Employment' menu; and
- ☐ select 'New employment' and complete the form.

This sends the TFN declaration details straight to the ATO, so the employer doesn't have to.

Employees will need their employer's ABN to complete the form and, once they've submitted it, they need to print it and give their employer the summary of their tax details so the employer can input the data into their system.

If an employer's payroll software can link to the online commencement forms, it will automatically receive any new employees' information from the ATO, saving them time spent otherwise entering the information manually.

Employers can also use the *New employment* form to collect a range of information contained in other forms, and employees can use it to authorise variations to the amount to be withheld from their pay for tax or the Medicare levy, or to advise of their choice of super fund.

They can also use it to update their tax circumstances with their employer; for example, if their residency status has changed or they are claiming the tax-free threshold from a different employer.

However, employers can continue to use their current processes when preferred, including providing a paper TFN declaration where employees can't create a myGov account or don't have access to the internet.

ATO advice for SMSFs thinking about investing in crypto assets



The ATO recommends that trustees of self-managed super funds ('SMSFs') thinking about investing in crypto assets should seek professional advice from a licensed financial adviser.

There are organisations who offer trustees help to set up a fund or use their existing fund to invest in crypto assets.

However, the ATO notes that some of these organisations are not licensed to provide financial advice, which means the usual consumer protections and access to the Australian Financial Complaints Authority ('AFCA') are not available for using these services.

There are many things to consider before deciding to invest in crypto assets, so it's important to get it right, especially since trustees are ultimately responsible for ensuring the investment complies with the super and tax laws.

When investing in crypto assets, trustees must ensure it is allowed under the fund's trust deed, is made in accordance with the fund's investment strategy, and the trustee has considered the level of investment risk given the highly volatile nature of the investment.

From a regulatory perspective it's important that:

- ◆ The crypto assets are owned by the fund and are held separately from the trustee's own personal or business assets. This means the fund must have its own digital wallet, separate to any used by the trustee for personal or business purposes.
- ◆ The investment is valued at market value in line with the ATO's valuation guidelines.
- ◆ Any crypto assets that a member or related party hold personally are not sold to the fund or transferred to the fund as a contribution.
- ◆ The investment is consistent with the sole purpose test, and does not involve the giving of financial assistance to a member.

Check that holiday employees get the right super

The ATO is reminding employers that their holiday casuals may now be eligible for super.

From 1 July 2022, employers need to pay super for employees at a rate of 10.5%, regardless of how much they are paid, because the \$450-per-month threshold for super guarantee ('SG') eligibility has been removed.

This change doesn't affect other eligibility requirements for SG. In particular, workers who are under 18 still need to work more than 30 hours in a week to be eligible.

For example, Anish is a 17-year-old employee working a job at a hotel over the holiday season.

Anish works 32 hours in a week at the hotel and earns \$800 before tax. He also works 5 hours at his local café, earning \$150.

As Anish worked more than 30 hours in one week at the hotel, his employer will need to pay him super on the \$800 earned. However, as Anish works less than 30 hours a week at the café and is under 18, he is not entitled to super from this employer.

The ATO recommends that employers check their payroll and accounting systems are up to date so they are correctly calculating their employees' SG payments, and that registered tax agents and BAS agents can help with their tax and other obligations.

Optus data breach

The ATO is aware of the recent Optus data breach and that people who have been affected might be concerned about their personal data, and is assuring people that ATO systems have not been affected by the Optus data breach.

The ATO recommends that anyone who thinks they have been affected by the Optus data breach should contact Optus Customer Service on 13 39 37.

Information for those caught up in the data breach is available from the Australian Cyber and Security Centre at [cyber.gov.au](https://www.cyber.gov.au).

The ATO also reminds the community that it is important to always be vigilant for suspicious activity. The following tips can help protect accounts and keep personal information safe:

- Use multi-factor authentication for accounts where possible.
- Be careful when clicking on links and providing personal information.
- Make sure contact details are up to date when using online services.

How the myGov update affects taxpayers

Clients using myGov will see that it has recently been updated with a new look and more features.

When signed in to myGov, clients might receive notifications through 'Payments and claims' from other government services, such as Centrelink.

However, the ATO has stated that it will not communicate using this feature. Instead, the ATO will continue to send messages to the myGov Inbox, and to tax agents on behalf of their clients, if that's their communication preference.

Therefore, clients don't need to do anything different, and can still:

- ◆ find myGov at the same website address (i.e., my.gov.au);
- ◆ sign in using their current sign-in details; and
- ◆ have access to all their linked services, including the ATO.

Valuing fund assets for an SMSF's annual return

The ATO has provided the following reminder and general advice for SMSF trustees regarding their obligations to value the assets annually.

One of many responsibilities trustees have when managing an SMSF is valuing the fund's assets at market value.

This must be done every income year, so the ATO knows the SMSF has complied with super laws.

The market value of an asset is the amount someone could be reasonably expected to pay if the asset was for sale.

Each year, the asset valuations will be reviewed by the fund's approved SMSF auditor as part of the annual audit prior to lodgement of the SMSF's annual return ('SAR'). The auditor will check that assets have been valued correctly, and assess and document whether the basis for the valuation is appropriate given the nature of the asset.

Trustees are reminded to get their valuations done before they go to the auditor, as this will streamline the process and avoid delays. It is also the trustees' responsibility to provide objective and supportable evidence to the auditor for the valuation of the fund's assets, including all relevant documents requested by the auditor.

Failure to do so could result in a delay in auditing the fund and potential late lodgement of the fund's annual return (and could also result in a contravention if the auditor believes mistakes have been made).

The ATO says trustees should *"start researching now"* to find who can value the fund's assets and what type of evidence is needed to support the valuation, as this can take time. In some instances, the law requires valuations to be undertaken by a qualified, independent valuer.

Varying PAYG instalments

The ATO is reminding taxpayers that they can vary their pay as you go ('PAYG') instalments if they think the amount they pay now will be more or less than their expected tax liability for the year, by lodging a variation through myGov or *Online services for business*.

Instalments for those who are PAYG instalment amount payers have been increased by the gross domestic product ('GDP') adjustment factor of 2% for the 2022/23 income year.

Avoiding the FBT Christmas Grinch!



It's that time of year again - what to do for the Christmas party for the team, customers, gifts of appreciation for your favourite accountant (just kidding), etc. Here are our top tips for a generous and tax effective Christmas season:

What to do for customers?

The most effective way of sharing the Christmas joy with customers is not necessarily the most tax effective. If, for example, you take your client out or entertain them in any way, it's not tax deductible and you can't claim back the GST. There are specific rules designed to prevent deductions and GST credits from being claimed when the expenses relate to entertainment, regardless of whether there is an expectation of generating goodwill and increased business sales. Restaurants, a show, golf, and corporate race days all fall into the 'entertainment' category.

However, if you send your customer a gift, then the gift is tax deductible as long as there is an expectation that the business will benefit (assuming the gift does not amount to entertainment). Even better, why don't you deliver the gift yourself for your best customers and personally wish them a Merry Christmas. It will have a much bigger impact even if they are not available and the receptionist tells them you delivered the gift.

From a marketing perspective, if your budget is tight, it's better to focus on the customers you believe deliver the most value to your business rather than spending a small amount on every customer regardless of value. If you are going to invest in Christmas gifts, then make it something people remember and appropriate to your business.

You could also make a donation on behalf of your customers (where your business takes the tax deduction) or for your customers (where they receive the tax deduction). Donations to deductible gift recipients (DGRs) above \$2 are

often tax deductible and can make an active difference to a cause.

What to do for your team?

Christmas is expensive. Some businesses simply can't afford to do much because cashflow is too tight. Expectations are high so if you are doing something then it's best not to exacerbate cashflow problems and take advantage of any tax benefits or concessions you can.

Christmas parties

If you really want to avoid tax on your work Christmas party then host it in the office on a workday. This way, Fringe Benefits Tax (FBT) is unlikely to apply regardless of how much you spend per person. Also, taxi travel that starts or finishes at an employee's place of work is exempt from FBT. So, if you have a few team members that need to be loaded into a taxi after over indulging in Christmas cheer, the ride home is exempt from FBT.

If your work Christmas party is out of the office, keep the cost of your celebrations below \$300 per person if you want to avoid paying FBT. The downside is that the business cannot claim deductions or GST credits for the expenses if there is no FBT payable in relation to the party.

If the party is held somewhere other than your business premises, then the taxi travel is taken to be a separate benefit from the party itself and any Christmas gifts you have provided. In theory, this means that if the cost of each item per person is below \$300 then the gift, party and taxi travel can potentially all be FBT-free. Just remember that the minor benefits exemption requires a number of factors to be considered, including the total value of associated benefits provided across the FBT year.

If entertainment is provided to employees and an FBT exemption applies, you will not be able to claim tax deductions or GST credits for the expenses.

If your business hosts slightly more extravagant parties and goes above the \$300 per person minor benefit limit, you will pay FBT but you can also claim a tax deduction and GST credits for the cost of the event. Just bear in mind that deductions are only useful to offset against tax. If your business is paying no or limited amounts of tax, a tax deduction is not going to help offset the cost of the party.

Christmas gifts for staff

\$300 is the minor benefit threshold for FBT so anything at or above this level will mean that your Christmas generosity will result in a gift to the Tax Office as well at a rate of 47%. To qualify as a minor benefit, gifts also have to be ad hoc - no

monthly gym memberships or giving one person multiple gift vouchers amounting to \$300 or more.

Gifts of cash from the business are treated as salary and wages – PAYG withholding is triggered and the amount is subject to the superannuation guarantee.

Aside from the tax issues, think about what will be of value to your team. The most appreciated gift is the one that means something to the individual. Giving a bottle of wine to someone who doesn't drink, chocolates to a health fanatic, or time off to someone with excess leave, isn't going to garner much in the way of goodwill. A sincere personal message will often have a greater impact than a standard gift.

Directors in name only

It's important that anyone agreeing to be a director understands the implications. Being a director is not just a title; it is a responsibility. At a financial level, directors are responsible for ensuring that the company does not trade while insolvent. The by-product of this is that the directors may be held personally liable for the debt incurred. The director penalty regime has also tightened up in recent years to ensure that directors are personally liable for PAYG withholding, net GST, and superannuation guarantee charge liabilities if the company fails to meet its obligations by the due date. For many small businesses, the directors are also often personally responsible for company loans secured against property such as the family home.

Failing to perform your duties as a director is a criminal offence with fines of up to \$200,000 and five years in prison.

Ignorance is not a legal defence. Don't sign anything unless you understand the consequences.

Directors Penalty Notices (DPN)

There are two types of DPNs that can be issued to a director by the ATO:

A Lockdown DPN

A Lockdown DPN may be issued where the director failed to cause the company to pay its tax obligations, but has also failed to cause the company to maintain its lodgment obligations. The director becomes immediately personally liable for the penalty as soon as the Lockdown DPN is served on the director. *The only way for a director to comply with a Lockdown DPN is to cause the company to pay the underlying debt or to pay the director penalty.*

A Non-Lockdown DPN

A Non-Lockdown DPN may be issued where the company has fulfilled its lodgment obligations on time but has not paid the amounts due. The director then has 21 days to implement one of the 4 options set out below

- the company pays the underlying tax debt (or the liability is discharged by the director paying the penalty);
- the company is placed into administration;
- the company is placed into liquidation; or
- the company appoints a small business restructuring practitioner (**SBRP**).

The key changes are that:

- directors of qualifying businesses can now avoid personal liability under a Non-Lockdown DPN by appointing a SBRP; and
- the option to avoid personal liability by causing the company to enter into a Payment Arrangement has been removed.

https://www.ato.gov.au/business/engaging-a-worker/in-detail/director-penalty-regime/?page=1#What_is_a_director_penalty



Peter, John & the team would like to thank you for your support in 2022 and look forward to working with you again in 2023. From all of us at ML, we would like to wish you and your families a merry Christmas and happy, healthy and prosperous new year. Please note that our offices will be closed from 1pm Thursday 22nd December and will re-open on Tuesday 3rd January 2023.

Quote of the month

“For it is in giving that we receive”

— Saint Francis of Assisi

Staff News

The Townsville office now has its first staff member! A warm welcome to Lee-Ann Whaley who commenced employment in our Townsville Office in October. Lee-Ann has a Bachelor of Business and has many years' experience in the finance industry. Lee-Ann is currently assisting the Home Hill accounting team and looks forward to being able to support our ever-growing Townsville client base. Welcome Lee-Ann!



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.
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