



# ML|Partners Pty Ltd

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## Practice Update

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

**March - April 2015**

### **ATO super crackdown – child care, building, cleaning, pubs**

The ATO has identified employers in the following industries as having a higher risk of not meeting their super obligations:

- child care services;
- building and industrial cleaning; and
- pubs, bars and taverns.

The ATO is currently running an education campaign for business owners in these industries to help them better understand their super obligations.

It will be undertaking **audits** from July 2015 of employers who continue to not meet super obligations for their employees.

The ATO is also reminding directors of companies that are required to pay Superannuation Guarantee (SG) for their employees, that they may be **personally liable** for any unpaid or unreported SG Charge liabilities of their companies.

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### **Inappropriate loans from super funds**

The ATO has issued a guide for trustees of self-managed superannuation funds (SMSFs) that asks:

*"Has someone asked you to invest your SMSF funds into a trust, company or investment product, and then offered to lend some or all of that money back to you, your company or any entity you control?"*

If the answer is 'yes', then it is likely this arrangement contravenes superannuation laws.

### **What's wrong with this type of arrangement?**

The ATO understands that some individuals and organisations are promoting arrangements where SMSF monies are deposited into unit trusts or pooled investment trusts, less a management fee.

This money is then used to obtain a personal or business related mortgage, which results in the SMSF assets being used to provide members with current-day benefits.

That is, the primary purpose of such arrangements is to enable individuals and any associates to use their super savings to provide assistance to members or relatives.

As such, the ATO is currently closely scrutinising these lending arrangements, and it reminds trustees that these arrangements would breach the sole purpose test, as the SMSF is being used for a purpose other than providing retirement benefits for members.

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### **ATO's audit targets**

The ATO has set up a new page on its website called "Building confidence", which talks about its current compliance activities, and the amounts of tax and penalties it has collected in 2014 from its various initiatives.

Some of the areas that the ATO has stated it will be focusing on are:

- ◆ Work-related expenses:
  - motor vehicle expenses for travelling between home and work;

- overnight travel; and
- the work-related proportion of use for computers, phones and other electronic devices.
- ◆ Rental property expenses:
  - excessive deductions being claimed for holiday homes (deductions should be limited to the amount of income earned, or to the number of days actually rented out at a commercial rate);
  - husbands and wives inappropriately splitting rental income and deductions for jointly owned properties; and
  - interest deductions being claimed for the private proportion of loans.
- ◆ Cash economy:
  - the building and construction industry; and
  - the restaurant, café and takeaway industry.
- ◆ Contractors – employers misusing contracting arrangements with the intention of avoiding employment overheads.

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### Contractor payments data matching program

The ATO has announced that it will continue to acquire details of entities that receive contractor payments from other businesses for the 2013/14, 2014/15 and 2015/16 financial years.

The data that will be obtained includes:

- Australian Business Number (ABN) of the payer business;
- ABN of the payee business (contractor);
- Name, address and telephone details of the contractor;
- Dates of payments to the contractor; and
- Amounts paid (including details of whether the payment included GST).

The ATO estimates that records for approximately 25,000 entities will be obtained each year, including the records for approximately 12,500 individuals.

The purpose of this data matching program is to ensure that taxpayers are correctly meeting their taxation obligations in relation to contractor payments.

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### Eligibility for net medical expenses tax offset

The ATO has reminded taxpayers that the net medical expenses tax offset (NMETO) is being phased out.

To be eligible for the NMETO for 2014/15, a taxpayer must have received an amount of the tax offset in **both** of their 2012/13 and 2013/14 income tax assessments.

If a taxpayer's 2012/13 notice of assessment shows an amount of zero for NMETO, they wouldn't have received this offset in that year and so are not eligible to make a claim in 2013/14 or 2014/15.

However, the eligibility rule for the NMETO does not apply to clients with out-of-pocket medical expenses relating to disability aids, attendant care and aged care (these expenses can continue to be claimed until 30 June 2019).

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### Property developers – be careful what you wish for, *from the outset*

A recent case before the Administrative Appeals Tribunal (AAT) involved a taxpayer who tried to argue that profit from the sale of two properties should be treated as a capital gain (meaning they would get the 50% CGT discount), even though they had originally acquired the land for the purpose of developing it and reselling it at a profit. "No way" said the taxman!

The taxpayer acquired two adjoining properties in Brisbane, hoping to develop the two parcels as part of a joint venture with another large property developer. However, negotiations broke down and the joint venture proposal came to nothing.

The taxpayer rented out the two properties in their unimproved state. Shortly before their sale in the 2013/14 year, to improve their resale value, the taxpayer obtained a development application (DA) in relation to the conjoined blocks.

The taxpayer asked the ATO for a private ruling in relation to the profit made on the sale of the properties, and the ATO stated that the sale was not simply the realisation of a capital asset: it was the end result (even if not the **planned** end result) of a commercial property development that commenced when the properties were acquired.

The AAT found that the sale occurred in the ordinary course of the taxpayer's business, which meant that profits generated by the sale should be brought to account as ordinary income.

## Small business company tax cut to go ahead

The Prime Minister announced that the government is currently working on a small business and jobs package, and that at the heart of this package was a small business company tax cut from 1 July 2015 which was “at least as big as the 1.5% already flagged”.

In the same speech, he also indicated that his paid parental leave scheme has been shelved.

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## Deductibility of a 'working with children check'

Where the cost of a *working with children check* application is borne by an employee, the expense is deductible in the following situations:

- ❑ if the employee is an existing employee and is required to obtain a suitability notice in order to continue to derive assessable income in that position; or
- ❑ if a new employee has recently derived assessable income from being continuously employed within the field of child-related employment.

The cost of obtaining the initial suitability notice for a new employee who has not recently been continuously employed in the field of child-related employment is **not** deductible.

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## Time limits for family assistance payments

The ATO has reminded taxpayers who want to claim family assistance payments for the 2014 financial year that they must lodge a claim with the Department of Human Services (Centrelink) by 30 June 2015 to be eligible.

This deadline applies to taxpayers who intend to lodge a claim for:

- ◆ Family Tax Benefit;
- ◆ Child Care Benefit; and
- ◆ Single Income Family Supplement (SIFS).

These people must also lodge their 2014 Individual income tax returns by 30 June 2015 to receive their full Family Tax Benefit and SIFS entitlements (whether lump sum payments or payments that have been received throughout the year).

If they do not need to lodge an income tax return for the 2014 financial year, they must notify Centrelink by 30 June 2015.

These are separate requirements, so taxpayers can lodge their claim for family assistance lump

sum payments even if their income tax returns have not yet been lodged or finalised.

## Tax return deferrals past 30 June *not* taken into account by Centrelink

Any lodgment deferral granted by the ATO for lodgment of the 2014 income tax return does not affect or influence Centrelink's requirements that family assistance customers **must lodge their returns by 30 June 2015**.

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## ATO update regarding the 'Director Penalty Regime'

The release of this ATO fact sheet follows a number of recent cases involving directors being largely unsuccessful in arguing why penalties under the director penalty regime should not apply to them.

The ATO has issued a new fact sheet aimed at helping directors (and those that are about to become a director) understand their obligations under the Director Penalty Regime in respect of unpaid and unreported Pay As You Go ('PAYG') and Superannuation Guarantee Charge ('SGC') amounts.

In particular:

- Directors will be personally liable for unpaid PAYG withholding or SGC amounts.
  - Director penalties can apply even if an individual is no longer a director of a company, or is a newly-appointed director.
  - The ATO is likely to issue a director penalty notice to collect company debts where the company hasn't engaged to resolve outstanding obligations.
  - Payment is the only option to remit the penalty if the associated company liability was not reported within three months of the due date (e.g., if an SGC statement was required to be lodged by 28 August, but this had still not been done by 28 November).
  - The ATO recommends that address details with the ATO and ASIC are kept up to date to ensure any time-sensitive action can be taken by impacted directors.
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## 'Single Touch Payroll' on the horizon

The government announced on 28 December 2014 that they intended to simplify tax and superannuation reporting obligations through 'Single Touch Payroll'.

Under Single Touch Payroll, employers will be

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required to electronically report payroll and super information to the ATO when employees are paid, using Standard Business Reporting (SBR) enabled software.

In addition, Single Touch Payroll will streamline tax file number (TFN) declarations and Super Choice forms by providing a digital channel to simplify the process of bringing on new employees.

It may also cut red tape by notifying super funds and government agencies, such as the Department of Human Services (DHS), when an employee ceases employment.

It is intended that Single Touch Payroll will be available from July 2016, with all employers "operating in a Single Touch Payroll environment" by 1 July 2019 (though exemptions may apply in exceptional circumstances).

Note that, to meet their obligations under Single Touch Payroll, employers would be required to use, and if necessary acquire, appropriate payroll software.

The government is yet to make final decisions on the implementation of this proposal, and is currently seeking submissions regarding issues such as transition arrangements and how to minimise implementation and compliance costs.

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## Pension deeming rates to be lowered

The social security deeming rates\* will be lowered from 20 March 2015 as follows:

- ❑ the 'lower deeming rate' will decrease from 2% to 1.75% for financial investments up to \$48,000 for single pensioners and allowees, \$79,600 for pensioner couples and \$39,800 for each member of an allowee couple; and
- ❑ the 'upper deeming rate' will decrease from 3.5% to 3.25% for balances over these amounts.

*(\* The deeming rules are part of the social security income test, and are used to assess income from financial investments for social security and Veterans' Affairs pension and allowances, such as the Age Pension, Disability Support Pension and Carer Payment, income support allowances and supplements such as the Parenting Payment and Newstart.*

*Deeming rates reflect the rates of return that people receiving income support payments are deemed to earn from their financial investments.*

The deeming rates have been reduced as actual

returns available to pensioners and other allowees have decreased.

However, if income support recipients actually earn more than these rates, the extra income is not assessed for the purposes of the social security income test.

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## Congratulations on 10 years of service Dave!

Dave Catanzaro, our Home Hill Office Manager, has recently reached the 10 year milestone with our firm. Thanks for your dedication, hard work, sweat, blood & tears (& laughter) over the years Dave. We hope this is the first of many more decades with ML Partners.



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## Farewell to Tianna

It is with much sadness that we farewell Tianna Previtera who joined ML Partners as a school-leaver in 2013. Tianna has decided to commence studying Education at university full-time this year. We wish Tianna well with her studies and future career.



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.