PRACTICE UPDATE

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ATO Focuses on Rental Property Owners

With Tax Time 2016 in full swing, the ATO has stated it will be paying close attention to excessive interest expense claims, and incorrect apportionment of rental income and expenses between owners.

The ATO is also looking at holiday homes that are not genuinely available for rent, and incorrect claims for newly purchased rental properties.

An ATO spokesperson said that their ability to identify incorrect rental property claims is becoming more sophisticated due to enhancements in technology and the extensive use of data.

SuperStream Deadline Extended

With the SuperStream deadline of 30 June 2016 now passed, the ATO noted that, while many small businesses had implemented the required changes, *"some small businesses may need extra time and help to become SuperStream compliant"*. The ATO has announced that for small businesses that are not yet SuperStream ready, it will provide a further extension to 28 October 2016.

Cents per km Deductions Rate for Motor Vehicle Expenses

The ATO has determined that the rate at which work-related motor vehicle expense deductions may be calculated using the cents per kilometre method is **66 cents per kilometre** for the income year commencing 1 July 2016.

Case Studies

Holiday home not genuinely available for rent

John has a newly purchased rental property that had not returned any rental income.

He told the ATO that the property was occasionally advertised on community noticeboards and websites.

John was unable to prove there was a genuine arrangement in which he actively sought tenants, or had taken sufficient steps to genuinely advertise the property for rent.

A rental loss of almost $60,000 was disallowed and penalties were applied.

Interest

Rental property owner Sarah reported high rental interest claims and was required to provide bank statements as evidence to the ATO. The statements showed borrowings well in excess of the purchase price of the rental property. The interest charges relating to the private part of the loan were disallowed.

Sarah was required to pay more than $15,000 back to the ATO.

Incorrect claims for a newly purchased rental property and false claims

Nancy recently purchased a rental property and had her tax return amended by the ATO to remove deductions for repairs, capital works and incorrectly apportioned borrowing expenses.

Nancy had inappropriately claimed a deduction for repairs to defects present in the newly purchased property, and the capital works and borrowing expenses should have been spread over several years.

She also provided false receipts for property management fees undertaken by a family member.

Nancy was required to pay more than $57,000 back to the ATO as well as over $10,000 in penalties for making a false statement in her tax return.

Apportioning expenses between joint owners of a property

A rental property claim was investigated by the ATO where the rental expenses had not been apportioned correctly. The property was jointly owned by a couple but the higher income earner claimed the larger proportion of the expenses. The expenses were adjusted to reflect the ownership interest and the higher earner had to pay back more than $8,000 in tax.

Tax Time is Prime Time for Scams

The ATO is reminding Australians to be on the lookout for tax-related scams during tax time, as scammers are particularly active because of the large number of people lodging their tax returns.

Assistant Commissioner Graham Whyte said that, while most people were able to identify scams, it is important to remain alert during tax time.

For example, although the ATO makes thousands of outbound calls to taxpayers a week, there are some key differences between a legitimate call from the ATO and a call from a potential scammer:

"We would never cold call you about a debt; we would never threaten jail or arrest, and our staff certainly wouldn't behave in an aggressive manner. If you're not sure, hang up and call us back on 1800 008 540".

ATO also warns against identity theft

The ATO is also reminding Australians to protect themselves against identify theft this tax time. Highly organised crime networks use a range of methods to steal personal information in order to commit refund fraud.

The ATO recommends following a few easy steps for taxpayers to protect themselves against identity theft:

- Put a padlock on their letterbox;
- Shred documents containing personal details (especially their tax file number (TFN)) before throwing them away;
- Use legitimate and up-to-date antivirus, firewall and anti-spyware software; and
- Make sure passwords are strong, using a combination of letters, numbers and symbols, don't share them with anyone, and ensure they are changed regularly.

The ATO also says that taxpayers should report the loss or theft of their TFN without delay, if they can't find their TFN, and/or think their TFN has been stolen or misused.

Goods taken from Stock for Private Use 2015/16

The ATO has provided an update of the amounts it will accept for 2015/16 as estimates of the value of goods taken from trading stock for private use by taxpayers in certain specified industries.

The amounts (which exclude GST) are:

Type of Business	Adult/Child over 16 years	Child 4–16 years
Bakery	1,350	675
Butcher	800	400
Restaurant/cafe (licensed)	4,580	1,750
Restaurant/cafe (unlicensed)	3,500	1,750
Caterer	3,790	1,895
Delicatessen	3,500	1,750
Fruiterer/greengrocer	790	395
Takeaway food shop	3,410	1,705
Mixed business (includes milk bar, general store, and convenience store)	4,230	2,115

The ATO recognises that greater or lesser values may be appropriate in particular cases. It says it will adjust the values annually.

Tax Implications for the Sharing Economy

The ATO is reminding taxpayers who earn income through the sharing economy that they have tax obligations they should consider.

Examples of sharing economy services include:

- ride-sourcing – providing taxi travel services to transport passengers for a fare;
- renting out a room or a whole house or unit on a short term basis;
- renting out parking spaces; or
- providing personal services, such as web or trade services, or completing odd jobs, errands, deliveries, etc.

As is usual under the GST and income tax law, the nature of the goods or services they provide and the extent of their activities will determine what they need to do for tax purposes.

The 'sharing economy' in the ATO's sights

The ATO is concerned that those earning money from the 'sharing economy' may not realise they have to declare these amounts on their tax return.

In the sharing economy, buyers and sellers are connected through a facilitator who usually operates an app or website.

Assistant Commissioner Graham Whyte said:

"If you earn money from doing odd jobs or providing a service like task sharing, transporting passengers through things like ride-sourcing, or renting out a room or house, you need to declare it because it counts as assessable income. If you are running a business through the sharing economy you also need to declare this income.

"It's a bit different if the goods you provide or the activity you complete through a sharing economy website or platform is done as a hobby or recreational activity. The amount you are paid may not be assessable income."

Mr Whyte said ATO technology was keeping up with the sharing economy, and, thanks to their data collection and data matching activities, the ATO would know if taxpayers have left out a significant amount of income.

In addition, some taxpayers may need to register for, and pay, GST (especially those earning an income from carrying on an enterprise of ride-sourcing services, regardless of how much money they earn).

Latest ATO Benchmarks Released

The ATO has released the latest benchmarks for small business based on the data from 2014 income tax returns and business activity statements, covering over 1.3 million small businesses.

Assistant Commissioner Matthew Bambrick said that, if a small business is inside the benchmark range for their industry and the ATO hasn't received any extra information that may cause concern, they can be confident that they probably won't hear from the ATO.

Mr Bambrick said the benchmarks were also a helpful guide for small businesses to see how they stack up against others in their industry.

"For example, one business told us how their accountant used the tailored benchmarks to work out that their expense to turnover ratio was higher than other businesses with a similar turnover. Using this information the business adjusted some of their inputs and how they were pricing their products. These changes resulted in an overall improvement in their performance."

While the benchmarks are a helpful guide for small business, Mr Bambrick said it was also one of a number of tools the ATO uses to ensure a level playing field.

Deductibility of Gifts Provided to Clients

The ATO has confirmed that a taxpayer carrying on business is generally entitled to a deduction for expenses incurred on a gift made to a former or current client, if the gift is characterised as being made for the purpose of producing future assessable income.

However, the expense may not always be deductible (e.g., if the gift constitutes the provision of entertainment that is not deductible).

The ATO's recent determination also highlights that a deduction will be denied where expenditure on gifts is more accurately described as being 'private' in nature (for example, where a gift is provided to a relative outside a business' usual practice of providing client gifts).

Deductibility of Airport Lounge Memberships

The ATO has also confirmed that the cost to a business taxpayer of a yearly airport lounge membership (e.g., Qantas Club, Virgin Lounge) that will be used by its employees is ordinarily deductible, and should not give rise to any FBT liability for the employer (even if the majority of (or indeed *only*) use of the airport lounge membership is for private purposes).

ATO Exposes Dodgy Deductions

With over eight million Australians claiming work-related expenses each year, the ATO is reminding people to make sure they get their deductions right this tax time.

Assistant Commissioner Graham Whyte said that, in 2014/15, the ATO conducted around 450,000 reviews and audits of individual taxpayers, leading to revenue adjustments of over $1.1 billion in income tax.

"Every tax return is scrutinised using increasingly sophisticated tools and data analytics developed (by) the ATO. This means we can identify and review income tax returns that may omit information or contain unreasonable deductions," Mr Whyte said.

The ATO also set out some case studies, which provide a fascinating insight into the ATO's methods, including:

- A medical professional who made a claim for attending a conference in America, and provided an invoice for the expense, but when the ATO checked, it found that the taxpayer was *still in Australia* at the time of the conference (the claims were disallowed and the taxpayer received a substantial penalty); and
- A taxpayer who claimed deductions for car expenses, but the ATO found they had recorded kilometres in their log book on days where there was *no record of the car travelling on the toll roads*, and further inquiries identified that the taxpayer was out of the country. Their claims were also disallowed.

Pre-retirees Avoid 'too good to be true' Tax Schemes

The ATO has launched a new project called 'Super Scheme Smart', an initiative aimed at educating individuals about the potential pitfalls of 'retirement planning schemes', to keep them safe from risking their retirement nest egg.

According to the ATO, individuals most at risk are those approaching retirement, including anyone aged 50 or over, looking to put significant amounts of money into retirement, particularly SMSF trustees, self-funded retirees, small business owners, company directors, and individuals involved in property investment.

While retirement planning schemes can vary, there are some common features that people should be aware of.

Usually these schemes:

- are artificially contrived and complex, usually connected with a SMSF;
- involve a lot of paper shuffling;
- are designed to leave the taxpayer with minimal or zero tax, or even a tax refund; and/or
- aim to give a present day tax benefit by adopting the arrangement.

Individuals caught using an illegal scheme identified by the ATO may incur severe penalties under tax laws, which includes risking the loss of their retirement nest egg and also their rights as a trustee to manage and operate a SMSF:

"Retirement planning makes good sense provided it is carried out within the tax and superannuation laws. Make sure you are receiving ethical professional advice when undertaking retirement planning, and if in doubt, seek a second opinion from an independent, trusted and reputable expert".

For more information about the specific schemes, they can visit their website at:

www.ato.gov.au/superschemesmart.