



QUARTER UPDATE

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PRACTICE UPDATE - JULY 2018

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PERSONAL INCOME TAX CUTS PASSED!

Parliament has passed the Government's Personal Income Tax plan, meaning that the first stage of the proposed income tax cuts will start to take effect from 1 July 2018.

According to the Prime Minister, taxes "will now be lower, fairer and simpler". The Government's plan has three steps:

1. The Government will introduce the Low and Middle Income Tax Offset (in addition to the Low Income Tax Offset) from **1 July 2018**, being a non-refundable tax offset of up to \$530 per annum to Australian resident low and middle income taxpayers (apparently over 10 million taxpayers will get at least some tax relief from this new offset in 2019 income year). The offset will be available for the 2019, 2020, 2021 and 2022 income years and will be received as a lump sum on assessment after an individual lodges their tax return.

2. Lifting tax brackets, to protect Australians from the impact of 'bracket creep', as follows:
 - From **1 July 2018**, the top threshold of the 32.5% personal income tax bracket will increase from \$87,000 to \$90,000.
 - From 1 July 2022, the 19% personal income tax bracket will increase from \$37,000 to \$41,000, and the top threshold of the 32.5% personal income tax bracket will further increase from \$90,000 to \$120,000.The low income tax offset will also be lifted to \$645.
3. The 37% tax bracket will be removed entirely from 1 July 2024, and the top threshold of the 32.5% personal income tax bracket will be increased from \$120,000 to \$200,000.

TAX TIME TIPS FOR SMALL BUSINESS

The ATO claims that it is committed to supporting small businesses and making it as easy as possible for them to understand and meet their tax obligations at tax time.

Consequently, Assistant Commissioner Mathew Umina has some tips to help small business in the lead up to and during tax time, including:

- keeping up-to-date records, which will help small businesses to complete and lodge their tax returns, manage cash flow, meet their tax obligations and understand how their business is doing;
- consider small business tax concessions, such as:
 - simplified trading stock rules (if the estimate of the difference between opening and closing trading

stock is \$5,000 or less, the small business doesn't need to do a stocktake);

- concessions that allow new small businesses to claim an immediate deduction for start-up costs like professional, legal and accounting advice;
- simplified depreciation rules, including the \$20,000 instant asset write-off for assets costing less than \$20,000 bought and installed by 30 June 2018.

Please contact our office if you need any advice as to how any of the above mentioned small business tax concessions may be relevant to your business.

ATO PUTTING CLOTHING CLAIMS THROUGH THE WRINGER

A focus on work-related clothing and laundry expenses this Tax Time will see the ATO “more closely examine taxpayers whose clothing claims don’t suit them”.

According to Assistant Commissioner Kath Anderson, around **6 million people** claimed work-related clothing and laundry expenses last year, with total claims adding up to nearly \$1.8 billion.

She went on to say:

“While many of these claims will be legitimate, we don’t think that half of all taxpayers would have been required to wear uniforms, protective clothing, or occupation-specific clothing.”

With clothing claims up nearly 20% over the last five years, the ATO believes a lot of taxpayers are either making mistakes or deliberately over-claiming.

Common mistakes include people claiming ineligible clothing, claiming for something without having spent the money, and not being able to explain the basis for how the claim was calculated.

“Around a quarter of all clothing and laundry claims were exactly \$150, which is the threshold that requires taxpayers to keep detailed records. We

are concerned that some taxpayers think they are entitled to claim \$150 as a ‘standard deduction’ or a ‘safe amount’, even if they don’t meet the clothing and laundry requirements,” Ms Anderson said.

“Just to be clear, the \$150 limit is there to reduce the record-keeping burden, but it is not an automatic entitlement for everyone. While you don’t need written evidence for claims under \$150, you must have spent the money, it must have been for uniform, protective or occupation-specific clothing that you were required to wear to earn your income, and you must be able to show us how you calculated your claim.”

Ms Anderson said the ATO also has conventional clothing in its sights this year. *“Many taxpayers do wear uniforms, occupation-specific or protective clothing and have legitimate claims. However, far too many are claiming for normal clothing, such as a suit or black pants. Some people think they can claim normal clothes because their boss told them to wear a certain colour, or items from the latest fashion clothing line. Others think they can claim normal clothes because they bought them just to wear to work. Unfortunately they are all wrong – you can’t claim a deduction for normal clothing, even if your employer requires you to wear it, or you only wear it to work”.*

ATO SCRUTINISING CAR CLAIMS THIS TAX TIME

The ATO has announced that it will be closely examining claims for work-related car expenses this tax time as part of a broader focus on work related expenses.

Assistant Commissioner Kath Anderson said:

“We are particularly concerned about taxpayers claiming for things they are not entitled to, like private trips, trips they didn’t make, and car expenses that their employer paid for or reimbursed.”

This is no doubt because over 3.75 million people made a work-related car expense claim in 2016/17 (totalling around **\$8.8 billion**), and, each year, around 870,000 people claim the **maximum amount** under the cents-per-kilometre method.

Ms Anderson said that the ATO’s ability to identify claims that are unusual has improved due to enhancements in technology and data analytics:

“Our models are especially useful in identifying people claiming things like home to work travel or trips not required as part of your job... simply travelling from home to work is not enough to qualify, no matter how far you live from your workplace.”

Ms Anderson said there are three golden rules for taxpayers to remember to get it right.

“One - you have to have spent the money yourself and can’t have been reimbursed, two - the claim must be directly related to earning your income, and three - you need a record to prove it.”

INACTIVE ABNS WILL BE CANCELLED BY THE ATO

The ATO has recently advised that, in an effort to maintain accurate data, the Australian Business Register (or ‘ABR’) periodically checks its records for Australian Business Numbers (‘ABNs’) and automatically cancels those that appear inactive.

Ultimately, a taxpayer’s ABN may be cancelled if they:

- have told the ATO they stopped their business activity;
- declared no business income in the last two years; or

- have not lodged a BAS or an income tax return in more than two years.

To avoid cancellation, the ATO has reminded taxpayers that they need to bring their lodgments up to date, and have reminded sole traders that, regardless of their income, they need to lodge the individual tax return with the supplementary section, as well as the business and professional items schedule.

EARLY RELEASE OF SUPER ON COMPASSIONATE GROUNDS

From 1 July 2018, responsibility for the administration of the early release of superannuation benefits on compassionate grounds will be transferred from the Department of Human Services (DHS) to the ATO.

Since the ATO is responsible for most of an individual’s interactions with the superannuation system, this change will enable the ATO to build on these existing relationships and provide a more streamlined service to superannuation fund members.

A key improvement under the new process is the ATO providing electronic copies of approval letters to superannuation funds at the same time as

to the applicant, which will mitigate fraud risk and negate the need for superannuation funds to independently verify the letter with the Regulator.

Individuals will also upload accompanying documentation simultaneously with their application, rather than the current ‘two-step process’.

Since DHS will accept early release applications up until 30 June 2018, there will be a short transition period where DHS will continue to process those existing applications and complete any necessary reviews.

Nonetheless, from 1 July 2018 the ATO will process all new applications.

CASE STUDIES

A. False logbook

A traffic supervisor claimed over \$11,000 for work related car expenses, and provided a logbook to substantiate his claim.

However, upon investigation the ATO discovered that the logbook wasn’t printed until the following year – the taxpayer admitted the logbook was fraudulent and it was ruled invalid.

Even though the logbook was invalid, the taxpayer was able to provide other evidence to show that he had travelled at least 5,000 kilometres for work-related purposes, so the ATO used the cents per kilometre method to calculate the taxpayer’s deduction (but his claim was reduced from over

\$11,000 to under \$4,000).

B. Claiming for home to work travel

A Laboratory Technician claimed \$3,300 for work-related car expenses, using the cents per kilometre method for 5,000 kilometres.

However, he advised that his employer did not require him to use his car for work; this claim was based on him needing to get to work.

The ATO advised the taxpayer that home to work travel is a private expense and is not an allowable deduction – his claim was reduced to nil and the ATO applied a penalty for failure to take reasonable care.

EMPLOYEE DENIED DEDUCTIONS FOR WORK-RELATED EXPENSES

An employee photographer has been denied deductions for travel expenses (when travelling with his family), and other purported work related expenses.

The AAT held that the travel expenses were primarily incurred for the purposes of a family trip or holiday and were therefore non-deductible, as they were private and domestic in nature.

Also, in relation to the taxpayer’s reliance on bank statements in the absence of invoices and receipts, the AAT observed that “evidence of the mere transfer of funds, be it by way of bank transfer or by any other means, is not sufficiently informative of the actual character of an expense”, so the other disputed expenses could not be claimed as allowable deductions.

SUPERANNUATION GUARANTEE AMNESTY INTRODUCED

The Government has introduced legislation to complement the superannuation guarantee ('SG') integrity package already before Parliament by introducing a **one off, twelve month amnesty** for historical underpayment of SG.

The Bill incentivises employers to come forward and "do the right thing by their employees" by paying any unpaid superannuation in full, as well as the high rate of nominal interest (but without the penalties for late payment that are normally paid to the Government by such employers).

Employers that do not take advantage of the amnesty will face higher penalties when they are subsequently caught – in general, a minimum 50% on top of the SG Charge they owe.

In addition, throughout the amnesty period the ATO will still continue its usual enforcement activity against employers for those historical obligations they don't own up to voluntarily.

The amnesty will run for twelve months from 24 May 2018.

CAR LIMIT FOR 2018/19

The car limit is \$57,581 for the 2018/19 income year (unchanged from the previous year). This amount limits depreciation deductions and

GST input tax credits.

MINIMUM WAGE INCREASE 1 JULY 2018

The Fair Work Commission has announced a 3.5% increase to the minimum wage. **The increase will apply from the first full pay period starting on or after 1 July 2018.** The new national minimum wage will be \$719.20 per week or \$18.93 per hour.

The quickest way to get the new rates is through Fair Work's Pay and Conditions Tool (PACT) at: <https://calculate.fairwork.gov.au/>

Saving your PACT calculations or pay guide to your 'My account' profile means they will be automatically updated whenever there's a wage increase.

You can also get the new award rates by viewing the modern award at:

<https://www.fairwork.gov.au/awards-and-agreements/awards>

Or by downloading the **pay guides** at:

<https://www.fairwork.gov.au/pay/minimum-wages/pay-guides>

The increase only applies to employees that get their pay rates from:

- the national minimum wage
- a modern award or
- a registered agreement (in some cases).

The increase won't affect employees who are already getting paid more than the new minimum wages.

CONTINUED ATO FOCUS ON HOLIDAY HOME RENTALS

The ATO has recently advised that they are "*setting their sights on the large number of mistakes, errors and false claims made by rental property owners who use their own property for personal holidays*".

While it confirms that the private use of holiday homes by friends and family is entirely legitimate, the ATO states that such use reduces a taxpayer's ability to earn income from the property, and therefore impacts on (i.e., reduces) the amount of claimable deductions.

As a result, the ATO has reminded holiday home owners that:

- they can only claim deductions for a holiday home with respect to periods it is genuinely available for rent.

- they cannot place unreasonable conditions on prospective tenants/renters, set rental rates above market value, or fail to advertise a holiday home in a manner that targets people who would be interested in it and still claim that the property was genuinely available for rent.

- where a property is rented to friends or relatives at 'mates rates', they can only claim deductions for expenses up to the amount of the income received.

- property owners whose claims are disproportionate to the income received can expect greater scrutiny from the ATO.

FBT: CAR PARKING THRESHOLD

The car parking threshold for the FBT year commencing 1 April 2018 is \$8.83.

This replaces the amount of \$8.66 that applied in the previous year commencing 1 April 2017.

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.

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.

WHAT THE SUPER HOUSING MEASURES MEAN FOR SMSFS

The ATO has reminded members of SMSFs that they will be able to use their voluntary super contributions to assist with buying their first home, or to make a contribution into their super from the proceeds of the sale of their main residence (under changes passed by Parliament in December 2017).

The First Home Super Saver Scheme

The First Home Super Saver (FHSS) Scheme allows SMSF members to save faster for a first home by using the concessional tax treatment available within super.

From 1 July 2018, SMSF members can apply to release certain voluntary concessional and non-concessional contributions made from 1 July 2017, along with associated earnings to help buy their first home.

The downsizing measure

SMSF members who are 65 or over and exchange a contract for sale of their main residence on or after 1 July 2018 may be eligible to make a downsizer contribution of up to \$300,000 into their super.

This downsizer contribution won't count towards their contributions caps or total super balance test in the year it's made.

However, it will count towards the transfer balance cap and be taken into account for determining eligibility for the age pension.

SMSFs must ensure the member's contribution has satisfied all relevant conditions and completed the downsizer contribution form before accepting a downsizing contribution.

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.

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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GST WITHHOLDING MEASURES NOW LAW

Legislation has been passed to "clamp down" on GST evasion in the property development sector.

From 1 July 2018, purchasers of new residential premises and new residential subdivisions will generally be required to withhold the GST on the purchase price at settlement and pay it directly to the ATO.

Property developers will also need to give written notification to purchasers regarding whether or not they need to withhold.

The new obligations are primarily aimed at ending the practice of some developers collecting GST on new properties before dissolving their business prior to remitting such tax to the ATO.

HIGHLIGHTS ON 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.

GET READY FOR SINGLE TOUCH PAYROLL

Single Touch Payroll (or 'STP') is mandatory for 'substantial employers' (being those with 20 or more employees) from 1 July 2018.

All employers are required to count the number of employees on their payroll on **1 April 2018** to find out if they are a substantial employer (note that this can be done after 1 April, but they need to count the employees who were on their payroll on 1 April).

They must count each employee (not the full time equivalent), including full-time, part-time and casual employees, as well as those employees based overseas or absent or on leave (paid or unpaid).

Employers that are part of a company group must include the total number of employees employed by all member companies of the wholly-owned group.

However, employers don't have to include the following in the headcount:

- any employees who ceased work before 1 April;
- casual employees who did not work in March;
- independent contractors;
- staff provided by a third-party labour hire organisation;
- company directors or office holders; or
- religious practitioners.

Note that, although directors, office holders and religious practitioners are not included in the headcount, if the employer starts reporting through STP, the payment information of these individuals will need to be reported (because the payments are subject to withholding and are currently reported in the *Individual non-business payment summary*).

Employers don't need to send the ATO the headcount information, but they may want to keep a copy for their own records.

Once an employer becomes a substantial employer, they will need to continue reporting through STP even if their employee numbers drop to 19 or less (unless they apply for and are granted an exemption).

From 1 July 2019, employers with less than 20 employees will be required to use the STP reporting system. These employers will be able to transition during a 12 month period at a time suitable to their business model. This will mean that although their commencement date for using

STP is 1 July 2019, penalties will not be imposed for the first 12 months.

Please contact our office if you need any assistance regarding the new STP regime.