



QUARTER UPDATE

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PRACTICE UPDATE - December 2018

THIS EDITION

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INCREASED SCRUTINY OF HOME OFFICE CLAIMS

Last year, 6.7 million taxpayers claimed a record \$7.9 billion in deductions for 'other work-related expenses', which includes home office expenses.

Reportedly, due to a high number of mistakes, errors and questionable claims for home office expenses, the ATO has recently advised that it will be increasing attention, scrutiny and

education on these claims this tax time.

In particular, the ATO has flagged their concerns relating to taxpayers who are claiming:

- expenses they never paid for;
- expenses that their employer has reimbursed them for;
- private expenses; and
- expenses with no supporting records.

Whilst additional costs incurred as a direct result of working from home can be claimed, care must be taken not to claim private expenses as well.

The ATO has indicated that one of the biggest issues they face is people claiming the entire amount of expenses (e.g., their internet or mobile phone), rather than just the extra portion relating to work.

Provided the taxpayer is able to demonstrate that they have incurred additional costs of running expenses (e.g., electricity for heating, cooling and lighting), then these are generally deductible.

In contrast, employees are generally not able to claim any portion of occupancy-related expenses (e.g., rent, mortgage repayments, property insurance, land taxes and rates).

Taxpayers are warned that the ATO may contact their employers to verify expenses claimed for working from home.

In addition, the ATO expects to disallow a lot of claims where the taxpayer has not kept adequate records to prove that they have legitimately incurred the relevant expense and that the expense was related to their work.

As with the claiming of deductions in general, supporting records must be kept when claiming work-from-home expenses, which may include receipts, diary entries and itemised phone bills.

Importantly, only the additional work-related portion of the relevant expense is deductible.

Advancement in technology has allowed the ATO to deploy sophisticated systems and analytics to spot claims that do not 'add up' and claims that are out of the ordinary compared to others in similar occupations, earning similar income.

Finally, the ATO has reminded taxpayers of the 'three golden rules' to follow when claiming work-from-home deductions, being:

- the taxpayer must have spent the money themselves and have not been reimbursed;
- it must be directly related to earning the taxpayer's income, not a personal expense; and
- the taxpayer must have a record to prove the expense.

MORE HELP FOR DROUGHT-AFFECTED FARMERS

As part of the next phase of its **drought assistance policy** (which includes various other measures), the Government announced that farmers will be able to **immediately deduct** the cost of **fodder storage assets**.

Previously, these types of assets (such as silos and hay sheds used to store grain and other animal feed storage) were required to be depreciated over three years.

This measure is designed to make it easier for farmers to invest in more infrastructure to stockpile fodder during the drought.

This measure is available for fodder storage assets first used, or installed ready for use, **from 19 August 2018** (being the date of the announcement), and complements the \$20,000 instant write-off already available to small business entities.

The relevant legislation giving effect to this announcement was fast-tracked through Parliament to provide certainty for these drought-stricken farmers, passing both Houses on 20 September 2018.

INCREASE IN PRIVATE HEALTH INSURANCE EXCESSES

Legislation has been passed by Parliament to implement the Private Health Insurance ('PHI') reforms announced by the Government in October 2017.

The measures are designed to simplify PHI and make it more affordable for consumers by improving the value of PHI either in the form of lower premiums and/or improved cover for certain benefits.

Of particular interest from a tax perspective is the **increase in the maximum voluntary excess** levels for products providing individuals with an exemption from the Medicare levy surcharge.

The increased levels of voluntary excesses that insurers can apply are:

- \$750 (up from \$500) in any 12-month period for singles; or
- \$1,500 (up from \$1,000) in any 12-month period for couples/families.

These increases will apply from the 2019 income year, with private health insurers permitted to offer products with the new higher excesses from 1 April 2019.

LEGISLATION TO COMBAT ILLEGAL PHOENIX ACTIVITY

The Government has announced a package of reforms to tackle illegal phoenix behaviour.

By way of background, phoenixing occurs when the controllers of a company strip the company's assets and transfer them to another company, to avoid paying the original company's debts.

The proposed measures will deter and disrupt the core behaviours of phoenix operators by:

- creating new criminal and civil offences, attaching the highest penalties available under the law, to target those who engage in and facilitate illegal phoenix transactions;
- preventing directors from backdating their resignations to avoid personal liability;
- preventing sole directors from resigning and leaving a company as an empty corporate shell with no directors;
- restricting the voting rights of related creditors of the phoenix company at meetings regarding the appointment or removal and replacement of a liquidator;
- making directors personally liable for GST liabilities, as part of extended director penalty provisions; and
- extending the ATO's existing power to retain refunds where there are outstanding tax lodgments.

A new Phoenix Hotline is also being established, which will make it easier to report suspected phoenix behaviour.

According to the Government, the proposed measures are tightly targeted at those who misuse the corporate form, while minimising any unintended impacts on legitimate business restructuring. Whether they will be able to achieve this goal or not is yet to be seen...

FAST-TRACKING TAX CUTS FOR SMALL AND MEDIUM BUSINESSES

The Government has fast-tracked the already legislated tax cuts to small and medium businesses by bringing them forward five years.

Companies with an aggregated turnover of less than \$50 million will have a tax rate of 25% in the 2022 income year (instead of the 2027 income year based on the previously legislated timeline).

Similarly, the increase in the tax discount to 16% for unincorporated entities will apply from the 2022 income year, rather than the 2027 income year.

Small and medium businesses will appreciate the earlier access to the already legislated tax cuts.

PROPOSED EXPANSION OF STP TO SMALLER EMPLOYERS

Single Touch Payroll ('STP') commenced on 1 July 2018 for approximately 73,000 employers who have 20 or more employees.

There is currently legislation before Parliament to expand STP to all employers from 1 July 2019 and it is estimated that there will be more than 700,000 employers who will enter STP as a result.

The ATO recommends that smaller employers consider voluntarily opting-in to STP early.

The ATO acknowledges there is a large number of very small employers who have less than five employees ('micro-employers') who do not currently use a payroll product and has indicated that they are not looking to force them to take up a product to do STP.

Efforts are being made to work with industry to look at some alternate reporting mechanisms.

It is being reported that software developers, and even some of the larger banks, have shown an interest in developing some kind of product that would enable micro-employers to provide the necessary data to comply with STP at a low cost.

Employers who are in an area that has internet issues or challenges are reminded that there are potential exemptions available under STP.

The ATO is currently consulting with focus groups to look at flexible options to transition micro-employers to STP over the next couple of years.

Assuming the relevant legislation passes, the ATO does not realistically expect that everyone will start STP from 1 July 2019 and has indicated that it will be flexible with the commencement date,

This is a very positive message from the ATO, particularly for micro-employers. Hopefully, together with the relevant software developers, they are able to come up with a low-cost and simple alternative for those who do not currently use payroll software to comply with their STP obligations.

EXPANSION OF THE TPRS

The Taxable Payments Reporting System ('TPRS') has been expanded to the cleaning and courier services industries from 1 July 2018.

Businesses that have an ABN and make any payments to contractors for cleaning or courier services provided on behalf of the business must lodge a Taxable Payments Annual Report ('TPAR') each income year.

The first TPAR for payments made to contractors from 1 July 2018 to 30 June 2019 will be due by 28 August 2019.

Where cleaning or courier services are only part of the services provided by the business, they will need to work out what percentage of the payments they receive are for these services each income year to determine if a TPAR is required to be lodged.

SCAMMERS IMPERSONATING TAX AGENTS

The ATO has received increasing reports of a new take on the 'fake tax debt' scam, whereby scammers are now impersonating registered tax agents to lend legitimacy to their phone call.

The fraudsters do this by coercing the victim into revealing their agent's name and then initiating a three-way phone conversation between the scammer, the victim, and another scammer impersonating the victim's registered tax agent or someone from the agent's practice.

As the phone conversations with the scammers appeared legitimate and the victims trusted the advice of the scammer 'tax agent', victims have been falling for this new approach.

In a recent example, a victim withdrew thousands of dollars in cash and deposited it into a Bitcoin ATM, fearing that police had a warrant out for their arrest.

The ATO is reminding taxpayers that they will never:

- demand immediate payments;
- threaten them with arrest; or
- request payment by unusual means, such as iTunes vouchers, store gift cards or Bitcoin cryptocurrency.

Taxpayers are advised that if they are suspicious about a phone call from someone claiming to be the ATO, then they should disconnect and call the ATO or their tax agent to confirm the status of their tax affairs and verify the call.

ATO TO SEND TEXT MESSAGES IF BANK ACCOUNT DETAILS INCORRECT

The ATO has advised that it will send SMS text messages directly to taxpayers where incorrect bank account details were included in their tax returns and they were entitled to a refund.

The SMS will advise impacted taxpayers that:

- their refund cannot be processed due to incorrect bank account details; and
- they should phone the ATO on 13 28 61 to correct their details.

If impacted taxpayers contact the ATO with their correct details within seven days, any refund due will be issued electronically.

In the wake of an increase in recent tax fraud attempts, it is clear that taxpayers need to exercise additional caution when dealing with electronic messaging from (or purportedly from) the ATO.

The authenticity of ATO correspondence can be verified by calling the ATO on 1800 008 540; however, if you are ever unsure about any correspondence received, please contact our office.

EXTERNAL COLLECTION AGENCIES TO ENFORCE ATO LODGEMENT OBLIGATIONS

The ATO has finalised a trial relating to sending overdue taxpayer lodgement obligations to external collection agencies.

As a result, it may now refer taxpayers to an external collection agency to secure tax return lodgement.

The ATO has stated that it will only refer a taxpayer to an external collection agency where the taxpayer takes no action in response to its initial correspondence letters.

ATO DATA MATCHING AND SHARE TRANSACTIONS

The ATO has extended its data matching program, this time focusing on share data.

The ATO will continue to receive share data from ASIC, including details of the price, quantity and time of individual trades dating back to 2014, with more than 500 million records obtained.

The ATO will use the information to identify taxpayers who have not properly reported the sale or transfer of shares as income or capital gains in their income tax returns.

It seems share transactions are high on the ATO's priority list, given more than 5 million Australian adults (almost one-third) now own shares.

ATO GUIDANCE REGARDING 'DOWNSIZER CONTRIBUTIONS'

The ability to make 'downsizer contributions' effectively commenced on 1 July 2018, prompting the ATO to release further guidance with respect to this new superannuation contribution classification.

This new measure will be of most assistance for individuals approaching retirement, where they dispose of their family home in an effort to 'downsize' and they want to contribute part or all of the proceeds to superannuation.

Basically, these measures allow older Australians to make a downsizer contribution where:

- they are aged at least 65;
- there was consideration received for the disposal of an eligible Australian dwelling;
- the contract of sale for the property was entered into on or after 1 July 2018;
- a superannuation contribution is generally made within 90 days of settlement;
- the contribution does not exceed the lesser of \$300,000 and the proceeds received from the sale of the dwelling;
- an ownership interest in the dwelling had been held for at least 10 years (usually by the individual making the contribution or their spouse);
- either a full or partial CGT main residence exemption applies to the disposal of the dwelling;
- a choice to treat the contribution as a downsizer contribution is made in the approved form; and
- broadly speaking, it is the first downsizer contribution the taxpayer has made.

**Unsubscribe**

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