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TAX MATTERS

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Single Touch Payroll exemptions

Single Touch Payroll (STP) reporting has been extended to include all businesses from 1 July 2019 and there are exemptions that employers need to be aware of.

Financial year exemptions:

Businesses may be exempt from reporting through STP for one or more financial years, or exempt from reporting certain payments. Insolvency practitioners for employers that are required to report through STP are not required to report through STP on their behalf in 2018-19. Administrators of long service leave or redundancy schemes, who don't use STP-enabled payroll software to manage payments to members, are exempt from reporting those payments through STP for the 2018-19 and 2019-20 financial years. Employees' tax and super information will still need to be reported through STP. Those who have a withholding payer number, because they are registered for PAYG withholding and are not entitled to an ABN, are exempt from STP reporting for the 2018-19 and 2019-20 financial years.

There is no need to apply for exemptions or notify the ATO, although supporting records should be kept. Employers that are exempt from STP reporting for a particular financial year will need to start STP reporting in the following year or apply for another exemption. With the exemption from STP is in place, employers must continue to comply with their existing PAYG withholding obligations.

Employee exemptions:

Some employers may be exempt from reporting payments made to employees through STP for the 2018-19 financial year. Payments made by employers with 19 or less employees to closely held payees, such as directors and family members, are exempt from STP until 1 July 2020. Payments made to foreign employees will be exempt for the 2018-19 financial year if all of the following apply:

- The employee is employed by an offshore entity.
- The employee is seconded to Australia.
- All or part of the employee's base salary and other remuneration is paid by an offshore entity, and;
- A shadow payroll arrangement for the employee is maintained.

You will need to report any employee that does not meet all the criteria listed above. For the financial year commencing 1 July 2019, the ATO is considering concessional reporting arrangements for these types of employees.

Restructure rollover for small business

As a business grows, it is possible that the original structure no longer satisfies the needs of the business and restructuring is necessary.

Typically when a business is sold, you would have to pay income tax due to transferring assets. However, when a business is restructuring, the ownership of assets remains unchanged, qualifying the business to receive the Small Business Restructure Rollover from the ATO. This allows for the transfer of active assets from one entity to one or more separate entities without incurring an income tax liability.

A business may be eligible for the small business restructure rollover provided that:

- The change is a genuine restructure as opposed to an artificial or inappropriately tax-driven scheme.
- There is no change to ultimate economic ownership in the sense that the economic owners of an asset are not changed or transferred, including if there is more than one owner of that asset

Businesses should note that there may be potential liabilities such as stamp duty or goods and services tax (GST) consequences to consider prior to restructuring.

The commissioner's remedial power has repealed laws that incurred tax consequences on depreciating assets during a business restructure. When transferring depreciating assets, like cars during a business restructure, the commissioner's remedial power will automatically apply. There is nothing businesses need to do differently to qualify for this tax exemption.

Disclosing personal living expenses

During an audit, the ATO requests information to help identify unreported cash income when looking at household expenditure.

When making an assessment in the course of examining an individual's tax affairs, the ATO follow assessment guidelines that are presented in the form of questionnaire worksheets. These worksheets require taxpayers to provide particular details about the living expenses of their household. An individual may also be required to provide information to determine if they need to make adjustments to their business and record-keeping practices.

The questionnaire worksheet outlines what the tax office looks at when examining personal living expenses. The worksheets can be used at any time by individuals to:

- Compare their household income to expenses and assess if their declared income is enough to support their lifestyle.
- Review their record keeping.
- Make adjustments to their reported income.
- Consider whether making a voluntary disclosure is necessary.

Discrepancies in tax returns that have been discovered by individuals can be adjusted through voluntary disclosure. Making a voluntary disclosure will enable correction of tax affairs without admitting liability. Individuals would still have to pay any tax owed, interest and penalties applied. Taxpayers that voluntarily inform the ATO of mistakes before an audit may be eligible for reduced penalties.

Rental property expenses—what you can and can't claim

It's not uncommon for landlords to be confused about what they can and can't claim for their rental properties. What often seems to make perfect sense in the real world does not always make sense for the Australian Tax Office (ATO).

In general, deductions can only be claimed if they were incurred in the period that you rented the property or during the period the property was genuinely available for rent. This means a tenant needs to be in the property or you are actively looking for a tenant. If, for example, you keep the property vacant while you are renovating it, then you might not be able to claim the expenses during the renovation period if it was not rented or available for rent during this time (there are some exceptions to this general rule). There needs to be a relationship between the money you make and the deductions you claim. Here are a few common problem areas:

Interest on bank loans

Only the interest on repayments for investment property loans, and bank charges, are deductible - not the actual loan itself. Also, if a loan facility is used for multiple purposes then only some of the interest expenses might be deductible. For example, if some of the loan is used to acquire or renovate a rental property but further funds are drawn down to pay for a holiday then this is a mixed purpose loan and an apportionment needs to be undertaken.

Repairs or maintenance?

Deductions claimed for repairs and maintenance is an area that the ATO is looking very closely at so it's important to understand the rules. An area of major confusion is the difference between repairs and maintenance, and capital works. While repairs and maintenance can often be claimed immediately, the deduction for capital works is generally spread over a number of years.

Repairs must relate directly to the wear and tear resulting from the property being rented out. This generally involves restoring a worn out or broken part - for example, replacing damaged palings of a fence or fixing a broken toilet. The following expenses will not qualify as deductible repairs, but are capital:

- Replacement of an entire asset (for example, a complete fence, a new hot water system, oven, etc.)
- Improvements and extensions where you are going beyond the work that is required to restore the property back to its former state

Also remember that any repairs and maintenance undertaken to fix problems that existed at the time the property was purchased are not deductible, even if you didn't find out about the problem until later.

The sharing economy

The deductions you can claim for 'sharing' a room or an entire house are similar to rental properties. You can claim tax deductions for expenses such as the interest on your home loan, professional cleaning, fees charged by the facilitator, council rates, insurance, etc. But, these deductions need to be in proportion to how much and how long you rent your home out. For example, if you rent your home for two months of the financial year, then you can only claim up to 1/6th of expenses such as interest on your home loan as a deduction. This would need to be further reduced if you only rented out a specific portion of the home.

Friends, family and holiday homes

If you have a rental property in a known holiday location, the ATO is likely to be looking closely at what you are claiming. If you rent out your holiday home, you can only claim expenses for the property based on the time the property was rented out or genuinely available for rent and only if the property was not actually being used for private purposes at that time.

If you, friends or relatives use the property for free or at a reduced rent, it is unlikely to be genuinely available for rent and as a result, this may reduce the deductions available. It's a tricky balance particularly when you are only allowing friends or relatives to use the property in the down time when renting it out is unlikely.

A property is more likely to be considered unavailable if it is not advertised widely, is located somewhere unappealing or difficult to access, and the rental conditions - price, no children clause, references for short terms stays, etc., - make it unappealing and uncompetitive.

ATO take 'gloves off' on overseas income

Five years ago, the Australian Taxation Office (ATO) offered a penalty amnesty on undisclosed foreign income. Five years on, the ATO has again flagged that underreporting of foreign income is an issue but this time the gloves are off.

How you are taxed and what you are taxed on depends on your residency status for tax purposes. As tax residency can be different to your general residency status it's important to seek clarification. The residency tests don't necessarily work on 'common sense.' For tax purposes:

Australian resident - taxed on worldwide income including money earned overseas (such as employment income, directors fees, consulting fees, income from investments, rental income, and gains from the sale of assets).

Foreign resident - taxed on their Australian sourced income and some capital gains. Unlike Australian resident taxpayers, non-resident taxpayers pay tax on every dollar of taxable income earned in Australia starting at 32.5% although lower rates can apply to some investment income like interest and dividends.

There is no tax-free threshold. Australian sourced income might include Australian rental income and income for work performed in Australia.

Temporary resident – Generally, those who have come to work in Australia on a temporary visa and whose spouse is not a permanent resident or citizen of Australia. Temporary residents are taxed on Australian sourced income but not on foreign sourced income. In addition, gains from non-Australian property are excluded from capital gains tax.

Just because you work outside of Australia for a period of time does not mean you are not a resident for tax purposes during that period. And, for those with international investments, it's important to understand the tax status of earnings from those assets. Just because the asset might be located overseas does not mean they are safe from Australian tax law, even if the cash stays outside Australia. Don't assume that just because your foreign income has already been taxed overseas or qualifies for an exemption overseas that it is not taxable in Australia.

How your money is being tracked

A lot of Australians have international dealings in one form or another. The ATO's analysis shows China, the United Kingdom, Switzerland, Singapore and the United States are popular countries for Australians.

The ATO shares the data of foreign tax residents with over 65 foreign tax jurisdictions. This includes information on account holders, balances, interest and dividend payments, proceeds from the sale of assets, and other income. There is also data obtained from information exchange agreements with foreign jurisdictions.

In addition, the Australian Transaction Reporting and Analysis Centre (AUSTRAC) provides data to the ATO (and the Department of Human Services) on flows of money to identify individuals that are not declaring income or paying their tax.

It's not uncommon for taxpayers to forget to declare income from a foreign investment like a rental property or a business because they have had it for a long time and deal with it in the local jurisdiction with income earned 'parked' in that country. However, problems occur when the taxpayer wants to bring that income to Australia, AUSTRAC or the ATO's data matching picks up on the transaction and then the taxpayer is contacted about the nature of the income. If the income is identifiable as taxable income (for example, from a property sale or income from a business), you can expect the ATO to look very closely at the details with an assessment and potentially penalties and interest charges following not long after. There is no point telling the ATO the money is a gift if it wasn't, they can generally find the source of the transaction and will know it's not from a very generous grandmother - misdirection is only going to annoy them and ensure that there is no leniency.

What you need to declare in your tax return

If you are an Australian resident, you need to declare all worldwide income in your tax return unless a specific exemption applies, although in some cases even exempt income needs to be reported. Income is anything you earn from:

- Employment (including consulting fees)
- Pensions, annuities and Government payments
- Business, partnership or trust income
- Crowdfunding
- The sharing economy (AirBnB, Uber, AirTasker etc.,)

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ATO take 'gloves off' on overseas income continued

- Foreign income (pensions and annuities, business income, employment income and consulting fees, assets and investment income including offshore bank accounts, and capital gains on overseas assets)
- Some prizes and awards (including any gains you made if you won a prize and then sold it for a gain), and
- Some insurance or workers compensation payments (generally for loss of income).

You do not need to declare prizes such as lotto or game show prizes, or ad-hoc gifts.

Do I need to declare money from family overseas?

A gift of money is generally not taxable but there are limits to what is considered a gift and what is income. If the 'gift' is from an entity (such as a distribution from a company or trust), if it is regular and supports your lifestyle, or is in exchange for your services, then the ATO may not consider this money to be a genuine gift.

I have overseas assets that I have not declared

Your only two choices are to do nothing (and be prepared to face the full weight of the law) or work with the ATO to make a voluntary disclosure. Disclosing undeclared assets and income will often significantly reduce penalties and interest charges, particularly where the oversight is a genuine mistake.

How to repatriate income or assets

Before moving funds out of an overseas account, company or trust it is important to ensure that you seek advice on the implications in Australia and the other country involved. This is a complex area and the interaction between the tax laws of different countries requires careful consideration to avoid unexpected consequences.

If you need to clarify your residency status for tax purposes or are uncertain about the tax treatment of income, please contact us.

Personal tax changes now law

The Government's complete package of individual tax adjustments that were announced in the 2019-20 Federal Budget, have passed parliament and are now law.

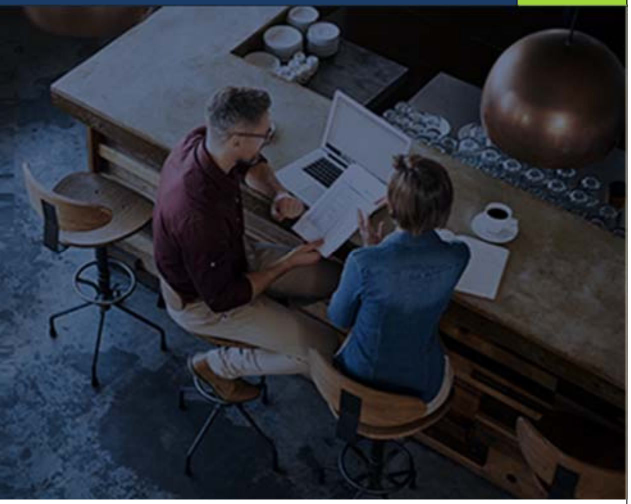
On 4 July 2019, the Treasury Laws Amendment (Tax Relief So Working Australians Keep More Of Their Money) Bill 2019 passed all stages of parliament without amendment. This was shortly followed by the Royal Assent on 5 July 2019. This passed into law all three stages of the personal tax changes.

The first stage is to increase the low and middle-income tax offset (LMITO) and this comes into operation immediately. From 2018-19 to 2021-22, the non-refundable LMITO will increase from a maximum amount of $530 to $1,080 per annum. The minimum amount will increase from $200 to $255. This will be received by taxpayers as a lump sum payment after the lodgement of their income tax return, with the first effect being for the year ended 30 June 2019. The LMITO is temporary and will expire in the 2021-22 financial year.

The second stage is to increase the low-income tax offset (LITO). From 1 July 2022 when the LMITO ends, the Government will increase the LITO from $645 to $700. Taxpayers earning up to $37,000 will be entitled to the maximum LITO of $700.

The third stage are changes to the personal income tax thresholds. From 1 July 2022, the top threshold of the 19% personal income tax bracket will increase from $41,000 to $45,000. This was increased last year from $37,000 to $41,000. From 1 July 2024, the marginal tax rate will be reduced from 32.5% to 30%. This will change in order to more closely align the middle tax bracket of the personal income tax system with corporate tax rates.

The $11.1bn small business tax shortfall



Last month, the ATO released statistics showing small business is responsible for 12.5% ($11.1 billion) of the total estimated 'tax gap',

These new figures give visibility to tax compliance issues within the small business sector and indicate where we can expect ATO resources to be focussed now and in the future.

The tax gap estimates the difference between the tax collected and the amount that would have been collected if everyone was fully compliant with the law.

Australia's small business community is doing comparatively well with international figures showing gaps in this same sector of between 9% and 30%.

ATO Deputy Commissioner Deborah Jenkins says that some small businesses are making mistakes with their tax, but these are often unintentional errors which are easily fixed.

To combat these errors, the ATO have ramped up their 'visits' to small businesses to monitor compliance, and educate business operators on compliance expectations with the goal of reducing the black economy (estimated to be 64% of the total small business tax gap). The ATO plans to visit almost 10,000 businesses this financial year.

If the ATO turn up at your business, they may spot check how you are recording your sales and the records for the past day or so. They may also check payroll records to ensure that staff are 'on the books' and superannuation entitlements are being met. If something does not look right in an initial assessment, it's likely the ATO will expand their enquiries to other elements of the business.

The ATO states that the three main drivers of the small business income tax gap are:

Not declaring all income

Failing to account for the private use of business assets or funds, and

Not sufficiently understanding tax obligations.

The small business tax gap estimate is based on a sample of 1,398 randomly selected businesses for the 2015-16 income year (around 0.03% of the small business population). The ATO are looking to expand that sample to 2,000 businesses. However, one of the criticisms of the tax gap analysis has been the size of the sample group, particularly given that ATO resources are allocated on a return on investment basis.

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