

MARCH 2015 QTR NEWS LETTER

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Important: This is not an advice. Clients should not act solely on the basis of the material contained in this news letter. News letter contents mentioned herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. This news letter has been issued as a helpful guide to clients and for their private information only. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.

ATO data matching programs

Editor: The ATO is carrying out two new data matching programs to identify non-compliance with registration, lodgement, reporting and payment obligations, i.e., looking for tax avoiders.

Motor vehicles

The ATO has announced a new "Motor vehicle data matching program" to collect details of individuals or businesses that have purchased or acquired a vehicle costing \$10,000 or more in the 2011/12 and the 2012/13 financial years.

It will acquire information from every State and Territory vehicle registration authority.

It is expected that records relating to approximately 2.8 million individuals will be matched.

Share transactions

The ATO has also announced a new "Share transactions data matching program" that will acquire details of share acquisitions and sales from 20 September 1985 to 30 June 2016 from:

- ◆ Link Market Services Limited;
- ◆ Computershare Limited;
- ◆ Australian Securities Exchange Limited;
- ◆ Boardroom Pty Ltd;
- ◆ Advanced Share Registry Services Pty Ltd; and
- ◆ Security Transfer Registrars Pty Ltd.

The type of data that the ATO will collect includes the name and address of the taxpayer, and the date, price and number of shares acquired or sold.

It estimates that more than 95 million records will be obtained, including the records for approximately 1.2 million individuals.

Editor: The fact that this program collects information back to 20 September 1985 raised concerns the ATO might amend assessments up to 30 years old!

*However, the ATO has come out and said that it is only going back to when CGT was first introduced so that it can identify 'post-CGT shares' and calculate the cost base where shares have **recently** been sold (for example, if they were bought in 1986 and sold in 2014).*

ATO focus on super obligations – child care, pubs and cleaning

Each year, the ATO identifies industries where employers are at a greater risk of not making super contributions for their eligible employees.

This year its focus is on:

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

Furthermore, the ATO stated that, in early 2015, it will write directly to employers in these industries to remind them of their super obligations.

It has also advised that it will be undertaking super obligation audits of these industries from July 2015.

The ATO reminds all taxpayers that they must:

- contribute at a rate of 9.5%;
- make contributions by the quarterly cut-off dates (i.e., 28 October, 28 January, 28 April, 28 July);
- pay super for eligible contractors, even if the contractor quotes an Australian Business Number (ABN); and
- give an employee's tax file number (TFN) to their super fund within 14 days of receiving it.

Editor: We've heard on the grapevine that the ATO may also be directly contacting the trustees of SMSFs (or directors of the corporate trustee).

If you receive a call from the ATO and you're at all uncomfortable answering their questions over the phone, feel free to tell them to call us instead, or (if they still insist on speaking to you) that you would like to speak them later (after speaking to us).

ATO recovers super from phoenix operators

The ATO says that it has used new powers known as Superannuation Guarantee Estimates (SGE) to recover \$8 million in worker's superannuation from the operators of labour-hire companies which have engaged in 'phoenix behaviour'.

Editor: Phoenix behaviour involves the deliberate liquidation of companies to avoid paying superannuation obligations, as well as to avoid other tax liabilities, and to avoid paying creditors and suppliers.

In this case, the network of companies provided labour-hire services such as seasonal

fruit picking and meat packing, and had been failing to pay workers their superannuation entitlements.

Single Touch Payroll

The Government has announced that it will simplify tax and superannuation reporting obligations through 'Single Touch Payroll'.

Under Single Touch Payroll, employers' accounting software will automatically report payroll information to the ATO when employees are paid.

This will eliminate the need for employers to report employee-related Pay As You Go Withholding (PAYGW) in their activity statements throughout the year, and employee payment summaries at the end of the year.

The Government stated that Single Touch Payroll will be available from July 2016, and transition arrangements will be the subject of consultation with the business community early in 2015.

Construction industry annual payments report

The ATO is writing to businesses in the building and construction industry that have not lodged their 'Taxable Payments Annual Report', which was due to be lodged by 21 July 2014.

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Each year, businesses in the building and construction industry must complete the *Taxable payments annual report* to advise the ATO the amount they paid for building and construction services.

What are 'building and construction services'?

Editor: It is important to note that the definition of building and construction services is broad and covers a wide range of occupations and activities.

It includes services such as bricklaying, plumbing, etc. However, it also includes some activities that businesses may not be aware of, such as:

- ◆ architectural work (including drafting and design);
- ◆ cable laying;
- ◆ communications construction;
- ◆ decorating (including painting);
- ◆ engineering;
- ◆ installation of hard wired alarm systems;
- ◆ installation of solar devices;
- ◆ landscaping; and

- ◆ project management.

Editor: Clients with any concerns should contact us.

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”.

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

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.

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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.

Editor: If you've paid for a working with children check and are wondering if it's deductible, contact us and we'll sort it out for you.

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 lodgement deferral granted by the ATO for lodgement 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**.

ATO update regarding the 'Director Penalty Regime'

Editor: 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.

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.

ATO's audit targets

Editor: 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.

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.

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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).

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

Editor: 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.