

InForm Accounting and Taxation

E - NEWS BULLETIN BROUGHT TO YOU BY BT CORPORATE ADVISORY PTY LTD

Welcome to the Oct/Nov 2017 Edition of InForm Accounting and Taxation

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No small business tax rate for passive investment companies

The Government has released draft tax legislation to clarify that passive investment companies cannot access the lower company tax rate for small businesses of 27.5%, but will still pay tax at 30%.

The amendment to the tax law will ensure that a company will not qualify for the lower company tax rate if 80% or more of its income is of a passive nature (such as dividends and interest).

The Minister for Revenue and Financial Services said the policy decision made by the Government to cut the tax rate for small companies was meant to lower taxes on business, and was not meant to apply to passive investment companies.

ATO to be provided with more super guarantee information

The Government has announced a package of reforms to give the ATO near real-time visibility over superannuation guarantee (SG) compliance by employers.

The Government will also provide the ATO with additional funding for a SG Taskforce to crackdown on employer non-compliance.

The package includes measures to:

- require superannuation funds to report contributions received more frequently (at least monthly) to the ATO, enabling the ATO to identify non-compliance and take prompt action;
- require employers with 19 or fewer employees to transition to single touch payroll ('STP') reporting from 1 July 2019;
- improve the effectiveness of the ATO's recovery powers, including strengthening director penalty notices and use of security

bonds for high-risk employers, to ensure that unpaid superannuation is better collected by the ATO and paid to employees' super accounts; and

- give the ATO the ability to seek court-ordered penalties in the most egregious cases of non-payment, including employers who are repeatedly caught but fail to pay SG liabilities.

Following extensive consultation when STP was originally announced, it was decided that employers with 19 or fewer employees would not be required to comply.

Given the backflip here, the business community will be hoping the Government does not introduce compulsory real-time **payments** of SG and PAYG withholding, as well as real-time reporting.

ATO: Combatting the cash economy

The ATO has reminded taxpayers that it uses a range of tools to identify and take action against people and businesses that may not be correctly meeting their obligations. Through 'data matching', it can identify businesses that do not have electronic payment facilities.

These businesses often advertise as 'cash only' or mainly deal in cash transactions. When businesses do this, they are more likely to make mistakes or do not keep thorough records.

The ATO's ability to match and use data is very sophisticated. It collects information from a number of sources (including banks, other government agencies and industry suppliers), and also obtains information about purchases of major items, such as cars and real property, and then compares this information against income and expenditure reported by businesses and individuals to the ATO.

Example: *Unrealistic personal income leads to unreported millions*

The income reported on their personal income tax returns indicated that a couple operating a property development company didn't seem to have sufficient income to cover their living expenses.

The ATO found their company had failed to report millions of dollars from the sale of properties over a number of years.

They had to pay the correct amount of tax (of more than \$4.5 million) based on their income and all their related companies, and also incurred a variety of penalties.

Example: *Failing to report online sales*

A Nowra court convicted the owner of a computer sales and repair business on eight charges of

understating the business's GST and income tax liabilities.

The ATO investigated discrepancies between income reported by the business and amounts deposited in the business owner's bank accounts, and found that the business had failed to report income from online sales.

The business owner was ordered to pay over \$36,000 in unreported tax and more than \$18,400 in penalties, and also fined \$4,000 (and now has a criminal conviction).

Get it in writing and get a receipt

The ATO also notes that requesting a written contract or tax invoice and getting a receipt for payment may protect a consumer's rights and obligations relating to insurance, warranties, consumer rights and government regulations.

Consumers who support the cash economy, by paying cash and not getting a receipt, risk having no evidence to claim a refund if the goods or services purchased are faulty, or prove who was responsible in case of poor work quality.

Higher risk trust arrangements targeted

The ATO's 'Tax Avoidance Taskforce – Trusts' continues the work of the Trusts Taskforce, by targeting higher risk trust arrangements in privately owned and wealthy groups.

The Taskforce will focus on the lodgment of trust tax returns, accurate completion of return labels, present entitlement of exempt entities, distributions to superannuation funds, and inappropriate claiming of CGT concessions by trusts.

Arrangements that attract the attention of the Taskforce include those where:

- trusts or their beneficiaries who have received substantial income are not registered, or have not lodged tax returns or activity statements;
- there are offshore dealings involving secrecy or low tax jurisdictions;
- there are agreements with no apparent commercial basis that direct income entitlements to a low-tax beneficiary while the benefits are enjoyed by others;
- changes have been made to trust deeds or other constituent documents to achieve a tax planning benefit, with such changes not credibly explicable for other reasons;
- there are artificial adjustments to trust income, so that tax outcomes do not reflect the economic substance (e.g., where someone receives substantial benefits from

a trust but the tax liability on those benefits is attributed elsewhere, or where the full tax liability is passed to entities with no capacity/intention to pay);

- transactions have excessively complex features or sham characteristics (e.g., round robin circulation of income among trusts);
- revenue activities are mischaracterised to achieve concessional CGT treatment (e.g., by using special purpose trusts in an attempt to re-characterise mining or property development income as discountable capital gains); and
- new trust arrangements have materialised that involve taxpayers or promoters linked to previous non-compliance (e.g., people connected to liquidated entities that had unpaid tax debts).

Reporting of transfer balance account information

The recent superannuation reforms introduced the concept of a 'transfer balance account', to basically record the value of member balances moving into or out of 'retirement phase'.

In order to monitor these amounts, the ATO is introducing new reporting requirements and forms.

The ATO has released the new Transfer Balance Account Report ('TBAR'), which is now available on ato.gov.au, and the ATO plans to have an online TBAR form available from 1 January 2018.

The TBAR is the approved form to provide data relating to transactions associated with the payment of retirement phase income streams to the ATO.

Reporting on events that affect a member's transfer balance account is vital to minimising the taxation consequences if the transfer balance cap is exceeded.

While SMSFs **will not be required** to report anything until 1 July 2018, SMSFs can use the TBAR to report events that affect an individual member's transfer balance account from 1 October 2017.

SMSFs with relatively straightforward affairs are likely to have only a few events per member to report over the life of the fund, including the commencing values of any retirement phase income streams to which an SMSF member is entitled (e.g., account based pensions, including reversionary income streams), and the value of any commutation of a retirement phase income stream by an SMSF member.

ATO's occupation-specific guides

The ATO has developed occupation-specific guides to help taxpayers understand what they can and can't claim as work-related expenses, including:

- car expenses;
- home office expenses;
- clothing expenses; and
- self-education or professional development expenses.

The guides are available for the following occupations:

- construction worker;
- retail worker;
- office worker;
- Australian Defence Force;
- sales and marketing;
- nurse, midwife or carer;
- police officer;
- public servant;
- teacher; and
- truck driver.

Binding Death Benefit Nomination ('BDBN') upheld

A recent decision by the Full Court of the South Australian Supreme Court has provided guidance about the operation of BDBNs.

Members of super funds may generally make a BDBN directing the trustee of the fund to pay out their superannuation benefits after their death in a particular way and/or to particular beneficiaries.

In this case, the member had executed a BDBN that nominated his legal personal representative ('LPR') as the beneficiary to receive his death benefits.

Because he frequently lived outside Australia, he had also executed an enduring power of attorney ('EPOA') allowing his brother to be the sole director of the corporate trustee of his SMSF in his place.

Following his death, the executor of his estate (Dr Booth) brought an action for declarations that the trustee was bound by the BDBN.

Both the executor of a will and a person acting under an EPOA are 'LPRs' for superannuation purposes.

The Full Court held that the BDBN was effective and that Dr Booth, as executor of the will, was the LPR for these purposes.

Although the brother was the LPR of the deceased during his lifetime, the EPOA was terminated upon his death.

Reforms to stop companies avoiding employee entitlements

The Government will introduce new laws to stop corporate misuse of the Australian Government's Fair Entitlements Guarantee (FEG) scheme.

The FEG scheme is an avenue of last resort that assists employees when their employer's business fails and the employer has not made adequate provision for employee entitlements, but it is clear that some company directors are misusing the FEG scheme to meet liabilities that can and should be paid directly by the employer, rather than passed on to Australian taxpayers.

The proposed changes will:

- Penalise company directors and other persons who engage in transactions which are directed at preventing, avoiding or reducing employer liability for employee entitlements;
- Ensure recovery of FEG from other entities in a corporate group where it would be just and equitable and where those other entities have utilised the human resources of the insolvent entity on other than arm's length terms; and
- Strengthen the ability under the law to sanction directors and company officers with a track record of insolvencies where FEG is repeatedly relied upon.

These changes will be targeted to deter and punish only those who have inappropriately relied on FEG, and so should not affect the overwhelming majority of companies who are doing the right thing.

The Government has separately released a 'Comprehensive Package of Reforms to Address Illegal Phoenixing', which will assist regulators to better target action against those who repeatedly misuse corporate structures and enable them to take stronger action against those entities and individuals.

These reforms will include (for example) the introduction of a Director Identification Number (DIN) (to identify all directors with a unique number), and making directors personally liable for GST liabilities as part of extended director penalty provisions.

Can travel in an Uber be exempt from FBT?

The ATO has released a discussion paper to facilitate consultation regarding the definition of 'taxi' contained in the FBT Act, and the exemption from FBT for taxi travel undertaken to or from work or due to illness.

Although the provision of travel by an employer to an employee would generally be a benefit upon which FBT would be payable, employers are specifically exempted from having to pay FBT in respect of travel undertaken by their employees in a 'taxi' to or from work or due to illness of the employee.

The ATO has previously advised that this exemption "*does not extend to ride-sourcing services provided in a vehicle that is not licensed to operate as a taxi.*"

However, in light of a recent Federal Court decision regarding Uber, and proposed changes to licensing regulations in a number of states and territories, the ATO is reviewing its interpretation of the definition of 'taxi' in the FBT Act and may adopt an interpretation that accepts that a taxi may include a ride-sourcing vehicle or other vehicle for hire.

Until this matter is resolved, private travel (including between home and work) undertaken using ride-sourcing vehicles and other vehicles for hire may possibly be exempt from FBT under the minor benefits exemption.

YOUR IMPORTANT ACTION STEPS FOR THIS MONTH

Early preparation is a key for the financial health of a business. Come to our office for a chat regarding planning for 2018!!