

## TAX ALERT - MAY 2019

### ATO to ramp up ABN investigations and cancellations

As part of the ATO's work to ensure the integrity of the Australian Business Register, it investigates the business activities of Australian Business Number (ABN) holders when it seems their ABN is no longer being used – for example, if business income isn't being reported, or where the Australian Securities and Investments Commission (ASIC) deregisters a company. The ATO may then cancel the ABN where there's sufficient evidence the business is inactive. An ABN will also be cancelled when the taxpayer themselves advises they've stopped their business activities, or when they lodge their final tax return.

The ATO is ramping up its focus on cancelling inactive ABNs over the coming months, saying it's refined its models to help identify businesses that are no longer active or whose owners have forgotten to cancel their ABN when they ceased business.

If an ABN is cancelled and the holder is still running a business, or an ABN application is refused, the taxpayer can object to the decision within 60 days.

***TIP: If your ABN seems to be inactive, the ATO may ask you for evidence that you're setting up or still running a business. We can help you with putting together this information, or with applying to have your ABN reinstated if it's incorrectly cancelled.***

### Fringe benefits tax: rates, thresholds and ATO focus for 2019-2020

The ATO has issued its annual rulings about rates and thresholds that apply for the new FBT year (1 April 2019 to 31 March 2020), including the benchmark interest rate, the cents-per-kilometre amounts for calculating the value of a fringe benefit from private use of a motor vehicle other than a car, the threshold for the FBT record-keeping exemption, state-by-state amounts for valuing housing benefits, and the weekly amounts the ATO considers reasonable for food and drink expenses incurred by employees who receiving a living-away-from-home allowance.

The ATO will focus on monitoring a range of FBT issues this year, including looking for employers who fail to

report motor vehicle fringe benefits or incorrectly apply exemptions for vehicles; identifying mismatches between amounts on FBT returns and the income amounts on the employer's tax return; looking for incorrect classifications of entertainment expenses; monitoring issues around car parking fringe benefits; and following up with taxpayers who don't lodge FBT returns on time.

### Guidance on when a company carries on a business

With reduced company tax rates available for some businesses in recent years, and changes in eligibility for capital gains tax (CGT) small business concessions, it's become increasingly important for us to understand how the law and the ATO deal with concepts like "small business entity" and "carrying on a business".

New guidance is now available on the types of factors the ATO considers when deciding whether a company "carries on a business in a general sense", and how the scope and nature of the business come into play when the ATO determines the tax consequences of a company's activities and transactions.

The guidance emphasises that it's not possible to definitively state whether a company is carrying on a business, but it's a question of fact that the ATO must decide on a case-by-case basis by looking at a range of indicators across the company's features and activities. One key indicator is whether the company's activities have the purpose of making a profit. The ATO accepts that where a profit-making purpose exists, it's likely the other indicators will support a conclusion that the company carries on a business.

### Super guarantee amnesty not yet law, but \$100 million recovered

The ATO has recovered around \$100 million in unpaid superannuation from employers since the 12-month super guarantee amnesty was proposed on 24 May 2018, even though the law hasn't yet changed to put the amnesty in place.

At a Senate Economics Legislation Committee hearing in April, ATO Deputy Commissioner, Superannuation Mr James O'Halloran estimated that there has been

a 10-15% increase in the number of employers coming forward to self-report unpaid super guarantee amounts in response to the announcement of the amnesty, despite it not yet being law. Mr O'Halloran said 19,000 employers have come forward within the normal super guarantee charge process for reporting unpaid contributions.

The Bill to implement the amnesty lapsed on 11 April when the Federal Election was called, so the ATO must keep applying the existing law. This means employers who make a voluntary disclosure of historical non-compliance won't be entitled to the proposed concessional treatment, unless and until the amnesty is legislated by a future Parliament. The ATO has said if this eventually happens, it will apply the new law retrospectively to voluntary disclosures made up until 23 May 2019.

***TIP: Employers who've missed a super payment or haven't paid employees' super on time must lodge a superannuation guarantee charge statement and, while the current law applies, pay all of the relevant amounts, including interest and administration fees.***

#### Instant asset write-off with Budget changes now law

Changes to the instant asset write-off rules have now become law, including measures recently announced in the government's Federal Budget.

The write-off has been extended to medium sized businesses (with aggregated annual turnover of \$10 million or more, but less than \$50 million), where it previously only applied to small business entities (with aggregated annual turnover of less than \$10 million).

The second important change is that the instant asset write-off threshold increases to \$30,000, where it was previously \$25,000.

The changes apply from 2 April 2019 to 30 June 2020, and the write-off works on a per-asset basis, so eligible businesses can instantly write off multiple assets.

#### Rental deductions: ATO audits to double

The ATO has warned that it will increase its scrutiny of rental-related deductions this year. It says some people are still claiming travel to residential rental properties, but from 1 July 2017 taxpayers (aside from excluded entities) have no longer been permitted to claim tax deductions for travel expenses related to inspecting, maintaining or collecting rent for a residential rental property.

The ATO expects to more than double the number of its in-depth audits this year to 4,500, with a specific focus on over-claimed interest, capital works claimed as repairs, incorrect apportionment of expenses for holiday homes let out to others and omitted income from accommodation sharing.

#### Shortfall penalties reduced under new ATO initiative

The ATO has heard from community and tax professionals that people should have a chance to correct their mistakes when they get their tax wrong, provided there isn't dishonest intent behind their errors, and is taking a new approach that seems to be having positive effects.

Under this new approach, if the ATO finds an error on a tax return or an activity statement during an audit or review, the taxpayer may be eligible for automatic penalty relief. This means the ATO will show the taxpayer where they made the error, won't apply a penalty and will educate the taxpayer on getting it right in future.

In the first six months of the initiative, the ATO has assisted thousands of people and small businesses and individuals with errors on their tax returns or activity statements, and shortfall penalties for "failure to take reasonable care" and "not having a reasonably arguable position" have been reduced by 89.2% for individuals and 83.8% for small businesses.

#### How the ATO identifies wealthy individuals and their businesses

The ATO uses sophisticated data matching and analytic models, drawing on tax returns and referrals from other government agencies or the community, to identify wealthy and high wealth individuals and link them to associated businesses. Given the importance of this group to community confidence in the tax and super systems, the ATO says it has an ongoing focus on engaging with such taxpayers, letting them know what information the ATO holds about them, and offering assistance and services to help "get things right up front". This early engagement is part of the ATO's commitment to improving the client experience, increasing transparency and reducing red tape.

**Important:** This is not advice. Clients should not act solely on the basis of the material contained in this Tax Alert. Items 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. The Tax Alert is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.

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