

Practice Update

December 2017

Parliamentary update

Editor: The ongoing citizenship saga in Parliament has resulted in the Government losing its one-seat majority in the House of Representatives, thanks to the resignations of Barnaby Joyce and John Alexander.

By-elections have been scheduled in the relevant electorates and, in the meantime, some of the cross-benchers have guaranteed the Government's (current) survival by committing to vote with it on motions of no-confidence and supply.

Tax legislation passed

In other news, the Government has passed changes to the tax legislation that will limit, or deny, deductions for **travel expenses** and **depreciation claims** for certain residential premises.

Legislation to impose vacancy fees on foreign acquisitions of residential land has also been passed.

ATO relief for SMSFs reporting 'transfer balance account' events

The ATO has announced that, from 1 July 2018, SMSF event-based reporting regarding events impacting a member's transfer balance account (i.e., via a Transfer Balance Account Report) will be limited to SMSFs with members with total superannuation balances of **\$1 million or more**.

Editor: This new reporting is only required if an event that impacts a member's transfer balance account actually occurs (e.g., such as starting an account based pension, or commuting such a pension).

This effectively means that up to 85% of the SMSF population will not be required to undertake any additional reporting with respect to a member's transfer balance cap, outside of current time frames (as SMSFs with members with account balances below \$1 million can choose to simply report events which impact their members' transfer balances when the fund lodges its SMSF annual return).

However, from 1 July 2018, SMSFs that have members with total superannuation account balances of \$1 million or more will be required to report any events impacting members' transfer balance accounts within 28 days after the end of the quarter in which the event occurs.

Editor: Whilst SMSFs are not required to report anything to the ATO until 1 July 2018, SMSF trustees should be mindful that, where the \$1.6 million transfer balance cap has been breached in respect of a member from 1 July 2017, any resulting tax liability will continue to accrue until the excess amount is commuted (i.e., irrespective of when reporting that breach is required).

ATO's annual closure

This year, the ATO's annual office closure is between noon Friday 22 December and 8.00am Tuesday 2 January 2018.

Also, the ATO may have systems maintenance on some weekends, so they recommend that lodgments be made as early as possible, as even returns or activity statements lodged in early December may not be finalised until after 2 January 2018.

Truck drivers' reasonable amounts for travel updated

Following detailed consultation with the transport industry, the ATO has amended their determination for travel expenses for truck drivers to provide separate reasonable travel allowance expense amounts for breakfast, lunch and dinner for employee truck drivers for the 2017/18 income year.

The reasonable amount for travel expenses (excluding accommodation) of employee truck drivers who have received a travel allowance and who are required to sleep away from home was originally reduced for 2017/18 to a total of \$55.30 per day, but this daily rate has now been **replaced** with the following amounts for all domestic travel destinations for the 2017/18 income year:

Breakfast	\$24.25
Lunch	\$27.65
Dinner	\$47.70

The amounts for each of these meal breaks are separate and cannot be aggregated into a single daily amount, and amounts cannot be moved from one meal to another (e.g., if the full amount for breakfast is not expended, it cannot be carried over to lunch or dinner).

A driver's work diary (as maintained for fatigue management purposes) can be used to demonstrate when meal breaks were taken.

Tool for applying the margin scheme to a property sale

The ATO is recommending that taxpayers use their recently updated *GST property decision tool* to work out if GST applies to their property sales.

The tool can be used to determine GST on the sale, lease or purchase of real property, and was recently updated for easier use on mobile devices.

In particular, after providing the relevant information, the tool will generate a GST decision that:

- advises whether GST is payable on a sale;
- estimates the amount of GST payable when applying the margin scheme; and
- advises whether the taxpayer is eligible to claim input tax credits.

Note that the ATO does not record any personal information and users will remain anonymous.

Other GST News

The Government has released draft legislation on "improving the integrity of GST on property transactions", as announced in the 2017/18 Federal Budget.

They intend to amend the GST law so that, from 1 July 2018, **purchasers will withhold the GST** on the purchase price of new residential premises and new residential subdivisions, and remit the GST directly to the ATO as part of settlement.

This is to address tax evasion through "phoenixing arrangements", where developers collect GST from their customers but dissolve their company to avoid paying it to the ATO.

To provide certainty for contracts that have already been entered into, the draft legislation provides a two-year transitional arrangement – contracts entered into before 1 July 2018 will not be affected as long as the transaction settles before 1 July 2020.

Editor: In addition, the GST Act has been amended to ensure that supplies of digital currency receive equivalent GST treatment to supplies of money (particularly foreign currency).

Numerous work-related expense claims disallowed

The AAT has denied a taxpayer's deductions for work-related travel, clothing, self-education and rental property expenses (totalling \$116,068 and \$140,581 for the 2013 and 2014 income year respectively), and upheld the ATO's 50% administrative penalty on the tax shortfall for recklessness.

Apart from being unable to prove (or 'substantiate') some claims due to lack of receipts, and documents being in the wrong name, the AAT also criticised the taxpayer for:

- ◆ claiming work-related travel expenses on the basis of the 'gap' between travel expenses reimbursed by her employer and the ATO's reasonable rates (which "was clearly not permissible under any taxation law"); and
- ◆ claiming clothing expenses for "formal clothes of high class", despite her clothing not being distinctive or unique to her employment at the Department of Finance, and was instead rather conventional in nature (and so was not deductible).

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.