Practice Update

February 2017

Changes to the 'backpacker tax'

From 1 January 2017, tax rates changed for **working holiday makers** who are in Australia on a 417 or 462 visa (these rates are known as 'working holiday maker tax rates').

If a business employs a working holiday maker in Australia on a 417 or 462 visa, from 1 January 2017, they should withhold 15% from every dollar earned up to $37,000, with foreign resident tax rates applying from $37,001.

Businesses must register with the ATO by 31 January 2017 to withhold at the working holiday maker tax rate.

If they don't register, they will need to withhold at the foreign resident tax rate of 32.5% (and penalties may apply to businesses employing holiday makers that don't register).

Editor: Therefore, if this affects you and you haven't registered by the time you read this, please contact us immediately!

Also, note that businesses already employing working holiday makers will need to issue two payment summaries (with different rates) this year – one for the period to 31 December 2016, and a second for any period from 1 January 2017.

ATO data matching programs

Editor: The ATO has announced that it will be undertaking the following two data matching programs.

Ride Sourcing data matching program

The Ride Sourcing data matching program has been developed to address the compliance risk of the registration, lodgement and reporting of businesses offering ride sourcing services as a driver.

Editor: 'Ride sourcing' = Uber (basically).

It is estimated that up to 74,000 individuals ('ride sourcing drivers') offer, or have offered, this service.

The ATO will request details of all payments made to ride sourcing providers from accounts held by a ride sourcing facilitator's financial institution for the 2016/17 and 2017/18 financial years, and match the data provided against their records.

This will identify ride sourcing drivers that may not be meeting their registration, reporting, lodgement and/or payment obligations.

Where the ATO is unable to match a driver's details against ATO records, it will obtain further information from the financial institution where the driver's account is held.

Credit and debit card and online selling data matching program

The ATO is collecting new data from financial institutions and online selling sites as part of its credit and debit cards and online selling data-matching programs, specifically:

- the total credit and debit card payments received by businesses; and
- information on online sellers who have sold at least $12,000 worth of goods or services.

The ATO will be matching this data with information it has from income tax returns, activity statements and other ATO records to identify businesses that may not be reporting all their income or meeting their registration, lodgement or payment obligations.

Can a UPE be written off and claimed as a bad debt?

Editor: A 'UPE' (or 'unpaid present entitlement') arises where a trust makes a beneficiary entitled to an amount of the trust's income (and therefore the beneficiary may have to pay tax on their share of the trust's taxable income that year), but that amount has not been physically paid to the beneficiary.

If the beneficiary ***never*** *receives payment from the trust, they may want to write their entitlement off as a bad debt, and claim a tax deduction.*

The ATO has released a Taxation Determination explaining their view that there is **no ability** to claim a 'bad debt' deduction where a beneficiary of a trust writes off as a bad debt an amount of a UPE.

This is because of the technical wording of the tax legislation regarding claiming deductions for 'bad debts', which requires the debt (e.g., the UPE) to have been previously included in the beneficiary's taxable income – however, a beneficiary is not taxed on the UPE itself. Instead, the amount of the UPE is used to calculate the amount to include in their assessable income (and this may be different to the actual amount of the UPE).

Example

Archie Pty Ltd ('Archie') is a beneficiary of the Linus Family Trust ('Linus'), which rents out a property.

In the 2014 income year, Linus's **trust income** (made up of net rent) was $25,000, but its **net (taxable) income** was actually $20,000 (thanks to a 'capital works deduction' of $5,000).

Archie was made presently entitled to 100% of the trust income (i.e., $25,000). As a result, it was also assessed on 100% of the net (taxable) income of the trust (i.e., $20,000).

The $25,000 was not paid to Archie (i.e., it was recorded as a UPE) and was invested by Linus in a related entity, but during the 2017 income year it was clear the investment had failed and was now worthless.

Archie was now well aware that Linus was no longer in a position to satisfy the UPE and wrote the $25,000 off as a bad debt.

Can Archie claim a deduction for the bad debt?

No. While the debt is clearly bad and has been written off as such, no part of Archie's UPE (of $25,000) was included in its assessable income. Rather, Archie included its share of Linus's net (taxable) income of the trust (i.e., the $20,000) in its assessable income.

Deductibility of expenditure on a commercial website

The ATO has released a public taxation ruling covering the ATO's views on the deductibility of expenditure incurred in acquiring, developing, maintaining or modifying a website for use in the carrying on of a business.

Importantly, if the expenditure is incurred in **maintaining** a website, it would be considered 'revenue' in nature, and therefore generally deductible upfront.

This would be the case where the expenditure relates to the preservation of the website, and does not:

- alter the functionality of the website;
- improve the efficiency or function of the website; or
- extend the useful life of the website.

However, if the expenditure is incurred in acquiring or developing a commercial website for a new or existing business, or even in modifying an existing website, it would generally be considered capital in nature (in which case an outright deduction cannot be claimed).

Editor: Please contact us if you want any guidance about the ATO's latest views on this important issue.

Easier GST reporting for new small businesses

The ATO has notified taxpayers that, from 19 January 2017, newly registered small businesses have the option to report less GST information on their business activity statement (BAS).

Therefore, if you plan to register for GST after receiving this Update, we can help you access the reporting benefits of the simpler BAS early.

Editor: From 1 July 2017, small businesses generally will only need to report GST on sales, GST on purchases, and Total sales on their BAS.

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.