

Practice Update

January/February 2019

Division 293 assessments

The ATO has been issuing '**Additional tax on concessional contributions (Division 293) assessments**' with respect to liabilities relating to the 2018 income year.

Division 293 imposes **an additional 15% tax** on certain concessional (i.e., taxable) superannuation contributions.

It applies to individuals with income and concessional superannuation contributions exceeding the relevant annual threshold.

This means that impacted individuals may ultimately pay **30% tax** (when the Division 293 tax is combined with the existing 15% contributions tax) with respect to:

- superannuation contributions made on their behalf as a result of employer super guarantee obligations or effective salary packaging arrangements; or
- personal deductible contributions.

The ATO reportedly expects to issue about 90,000 assessments during the first two months of 2019.

Payment needs to be made by the due date to avoid any additional interest charges, although alternative payment methods are available (including the ability to release money from any existing super balances).

Editor: More individuals will receive Division 293 assessments (and be required to pay the additional 15% tax) for the 2018 financial year due to a drop in the applicable threshold from \$300,000 to \$250,000.

Additionally, one of the key ALP tax policies for the upcoming Federal Election includes a further reduction of this Division 293 threshold from \$250,000 to \$200,000.

Claims for home office expenses increased

The ATO has updated the hourly rate taxpayers can use to determine deductions for home office expenses from 45 cents to **52 cents per hour** for individual taxpayers, effective 1 July 2018 (i.e., from the **2019 income year**).

According to the ATO's recently updated PS LA 2001/6, individual taxpayers who claim deductions for either work or business-related home office running expenses may either:

- claim a deduction for the actual expenses incurred; or
- calculate the running expenses at the rate of 52 cents per hour.

Taxpayers who use the rate per hour method to claim a deduction for home office running expenses only need to keep a record to show how many hours they work from home.

This reduced substantiation requirement can be recorded either:

- during the course of the income year; or alternatively
- they can keep a representative four-week diary (where their work from home hours are regular and constant).

MYEFO report

The Mid-Year Economic and Fiscal Outlook ('MYEFO') report was recently released.

It indicates that the underlying Budget deficit is expected to be \$5.2 billion in 2019 (down from the \$14.5 billion deficit estimated in the 2018/19 Federal Budget).

The substantial deficit reduction is reportedly a result of **increased tax collections**, with individual tax collections up \$4.1 billion and company tax collections up \$3.4 billion.

Additionally, the MYEFO report also provides a useful snap shot of what the Government is thinking when it comes to tax policy – particularly where previously announced reforms are still pending.

A few tax-related policy updates confirmed in the MYEFO worth mentioning include the following:

- **GST compliance program** – The Government is looking to provide \$467 million of ATO funding from 2020 to 2024 to fund additional GST-related audits and the development of analytical tools to combat emerging risks to the GST system.
- **\$10,000 cash payment limit** – The Government will delay the introduction of an economy-wide cash payment limit of \$10,000 from the originally proposed 1 July 2019 start date, until 1 July 2020.
- **Abandonment of the proposed changes to intangible asset depreciation** – The Government has announced it will not be proceeding with the current proposal to allow taxpayers to self-assess the effective lives of certain intangible depreciating assets.
- **Super access for victims of crimes** – The Government proposes to introduce legislation to allow victims of certain crimes (i.e., serious violent crimes) access to their perpetrator's superannuation to pay any outstanding compensation.
- **Increasing the integrity of limited recourse borrowing arrangements ('LRBAs')** – The Government is making an adjustment to the previously announced reforms requiring outstanding balances of LRBAs to be included in a member's total superannuation balance by extending the start date and limiting impacted taxpayers.
- **Superannuation guarantee ('SG') penalty increase** – Where employers fail to come forward during the 12-month SG amnesty, the Government is proposing to increase the minimum penalty from 50% to 100% of the Superannuation Guarantee Charge.

Editor: Note the required legislative amendments needed to implement the tax concessions promoted by the ATO under the SG amnesty (at the time of writing) is yet to be passed by Parliament.

This is despite the fact that the Government's proposed SG Amnesty is meant to run from 24 May 2018 to 23 May 2019.

Taxation of income for an individual's fame or image

The Government has released a consultation paper with respect to the implementation of the 2018/19 Federal Budget announcement relating to the direct taxation of an individual's fame or image at their marginal tax rates.

The proposed reform aims to ensure that all remuneration (including both cash and non-cash benefits) provided for the commercial exploitation of a person's fame or image will be included in their assessable income.

Editor: These reforms reflect the Government's concern that high-profile individuals (including sportspersons, actors and other celebrities) have been 'taking advantage' of lower tax rates by licencing their fame or image to another (generally related) entity for the purpose of tax-effective income splitting.

Following the Federal Budget announcement, the ATO withdrew its draft Practical Compliance Guideline PCG 2017/D11 (the 'draft PCG').

The draft PCG had set out a 10% safe harbour for apportioning lump sum payments for the provision of a professional sportsperson's services and the use and exploitation of their 'public fame' or 'image' under licence.

In withdrawing the draft PCG, the ATO advised that for the period up to 1 July 2019, it will not seek to apply compliance resources to review an arrangement complying with the terms of the draft PCG if it was entered into prior to 24 August 2018 (i.e., being the date the draft PCG was withdrawn).

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.