Practice Update

March 2017

ATO data regarding Super Guarantee non-compliance

Editor: The ATO has provided some information about Superannuation Guarantee (SG) non-compliance in its recent submission to a Senate inquiry into the impact of the non-payment of the Superannuation Guarantee.

In addition to marketing and education activities to re-enforce the need for employers to meet their SG obligations, the ATO conducts audits and reviews to ascertain SG non-compliance, with 70% of cases stemming from **employee notifications** (the remaining 30% of cases are actioned from ATO-initiated strategies).

On average, the ATO receives reports from employees which relate to approximately 15,000 employers each year, although the ATO finds that nearly 30% of these employers *have* in fact paid the required SG to their employee.

However, an SG shortfall is identified in the remaining 10,000 cases (this represents approximately 1% of the estimated 880,000 employers who make SG payments).

The top four industries from which reports are received by the ATO are from:

- Accommodation and Food Services;
- Construction;
- Manufacturing; and
- Retail Trade.

These four industries represent approximately 50% of the audits and reviews undertaken.

The ATO also noted that the proposed Single Touch Payroll ('STP') will help overcome certain limitations in the data currently provided to the ATO (as well as simplify taxation and superannuation interactions for employers, by aligning the reporting and payment of PAYG withholding and SG with a business's natural process of paying their employees).

Use of STP is mandated for businesses with 20 or more employees from 1 July 2018, and a pilot program will be undertaken in 2017 to identify the nature of STP benefits for small businesses.

Ride-sourcing is 'taxi travel'

In a recent case, the Federal Court has agreed with the ATO that 'ride-sourcing' (such as that provided using Uber) is 'taxi travel' within the meaning of the GST law.

The ATO has advised people who are taking up ride-sourcing to earn income should:

- keep records;
- have an Australian business number (ABN);
- register for GST, regardless of how much they earn, and pay GST on the full fare received from passengers for each trip they provide;
- lodge activity statements; and
- include income from ride-sourcing in their income tax returns.

Drivers are also entitled to claim income tax deductions and GST credits (for GST paid) on expenses apportioned to the ride-sourcing services they have supplied.

The ATO warns that they can match people who provide ride-sourcing through data-matching, and will continue to write to them to explain their tax obligations.

Making 'intangible' capital improvements to pre-CGT assets

The ATO has confirmed that, if intangible capital improvements are made to a pre-CGT asset, they can be a 'separate CGT asset' from that pre-CGT asset if the relevant requirements are satisfied.

Editor: The result of this is that, while the disposal of the pre-CGT asset itself will be exempt from CGT, the improvements which are treated as a separate, post-CGT asset could still give rise to CGT.

Example

A farmer, holding pre-CGT land, obtains council approval to rezone and subdivide the land.

Those improvements may be separate CGT assets from the land, so if the land is sold with those improvements (the council approval), there may be some CGT (even though the land itself is exempt).

Fringe benefits change for tax offsets from 1 July 2017

The ATO has issued a reminder that the government has changed the way fringe benefits will be treated for the calculation of several tax offsets from 1 July 2017.

The meaning of 'adjusted fringe benefits total' (which is used to calculate a taxpayer's entitlement for the *low income superannuation tax offset*, the *seniors and pensioners tax offset*, the *net medical expenses tax offset* and the *dependent tax offset*) has been modified so that the **gross**, rather than the adjusted net value, of reportable fringe benefits is used.

Fringe benefits received by individuals working for registered public benevolent institutions, registered health promotion charities, some hospitals and public ambulance services will **not** be affected by this change.

This aligns the treatment for tax offsets to the treatment for the income tests for family assistance and youth payments.

Diverting personal services income to SMSFs

The ATO is currently reviewing arrangements where individuals (at, or approaching, retirement age) purport to divert their personal services income to an SMSF, so that the income is taxed concessionally (or exempt from tax) in the fund, rather than being subject to tax at the individual's marginal tax rate.

These arrangements normally involve the individual's income being paid to another entity (e.g., a company) which then makes distributions to the SMSF as a 'return on investment' (e.g., dividends, where the SMSF holds shares in the relevant company).

The ATO advises any people that have entered into such an arrangement to contact the ATO by 30 April 2017, so they can work with them to resolve any issues in a timely manner, and minimise the impact on the individual and the fund.

Individuals and trustees who are not currently subject to ATO compliance action, and who come forward will have administrative penalties remitted in full (although interest may still be payable on any tax collected later than it should have been).

No overtime meal allowance, no overtime meal deduction

An employee construction project manager/supervisor was denied deductions for overtime meal expenses, as he was not paid an overtime meal allowance under an industrial agreement (award).

The taxpayer often worked at nights and on weekends during the relevant income years, and so additional amounts were negotiated and 'rolled into' his salary to cover the fact that he was expected to work additional hours, and also to cover any out-of-pocket expenses associated with such overtime.

However, the taxpayer's salary was not paid under an award, which was simply used as a starting point in annual remuneration negotiations (and he was paid the same amount each week, regardless of hours worked or expenses incurred).

Therefore, the AAT agreed with the ATO, finding that the taxpayer had received no overtime meal allowance under the relevant industrial award.

As no deduction is claimable under the income tax law for overtime meal expenses unless an appropriate award overtime meal allowance is paid, the Tribunal swiftly dismissed the taxpayer's appeal, and also affirmed the 25% administrative penalty.