Practice Update

October 2020

Special COVID-19 Superannuation Condition of Release Extended

Regulations that extend the time frame of the special condition of release to access **$10,000** from superannuation for individuals experiencing financial difficulties due to COVID-19 have been formally registered.

The ability to withdraw up to $10,000 from superannuation (if certain conditions are met) was initially set to expire on 24 September 2020.

The newly registered Regulations to the SIS Act will now enable an eligible individual to withdraw up to $10,000 from superannuation (which is not assessable to the individual) **until 31 December 2020**.

To be eligible, a citizen or permanent resident of Australia (and New Zealand) must require the COVID-19 early release of super to assist them to deal with the adverse economic effects of COVID-19.

In addition, **one** of the following circumstances must apply:

- ❑ The individual is unemployed;
- ❑ The individual is eligible to receive one of the following;
  - JobSeeker payment;
  - Youth Allowance for job seekers (unless they are undertaking full-time study or are a new apprentice);
  - Parenting payment (which includes the single and partnered payments);
  - Special Benefit; or
  - Farm Household Allowance;
- ❑ On or after 1 January 2020 either;
  - they were made redundant;
  - their working hours were reduced by 20% or more (including to zero); or
  - they were a sole trader and their business was suspended or there was a reduction in turnover of 20% or more (partners in a partnership are not eligible unless the partner satisfies any other eligibility criteria).

Editor: Please contact our office for assistance if your financial circumstances have taken a turn for the worse due to COVID-19 and you wish to see if you are eligible to access your superannuation.

Tax treatment of JobKeeper Payments

Broadly, JobKeeper Payments received by an employer are assessable income to the employer.

Likewise, the payments an employer subsequently makes to an employee that are funded (in whole or in part by the JobKeeper Payment) are generally allowable deductions to the employer.

The ATO has recently issued some guidance for employers in receipt of JobKeeper Payments.

For sole traders, they will need to include the payments as business income in their individual tax return.

For partnerships or trusts, JobKeeper payments should be reported as business income in the relevant partnership or trust tax return.

For a company, report JobKeeper payments as income in the company tax return.

For a taxpayer that has repaid (or is in the process of repaying) any of their JobKeeper payments to the ATO, these amounts do **not** need to be included in their tax return.

Editor: Note a business would be refunding JobKeeper payments to the ATO if it had been discovered that the business had incorrectly claimed JobKeeper payments, and had either voluntarily disclosed this to the ATO, or the ATO made this determination as a result of audit activity.

The normal rules for deductibility apply in respect of the amounts a taxpayer pays to their employees, even where those amounts are subsidised by the JobKeeper payment.

That is, if the underlying salary is deductible, then it is still deductible to the employer where it has been subsidised by a JobKeeper payment.

For employees who have received JobKeeper payments, these will be included as salary and wages (or an allowance) in their income statement (or payment summary) as provided by their employer.

Editor: If you have any queries about the JobKeeper Payment scheme, please contact our office.

Deduction for work-related vehicle expenses disallowed

In a decision of the Administrative Appeals Tribunal, a taxpayer, Mr Bell, was a denied a deduction for $21,565.73 of work-related vehicle expenses for the 2016 income year.

Mr Bell, was a construction worker who predominantly worked on a construction site in an eastern suburb of Melbourne and lived approximately 100 kilometres away from that worksite.

Mr Bell owned a ute that had a load carrying capacity of more than one tonne – so it fell outside the definition of a 'car' for the purposes of the ITAA 1997.

Mr Bell claimed a total deduction for $24,865.73 for motor vehicle expenses and received an allowance under his Enterprise Bargaining Agreement.

This allowance did not vary with the amount of travel undertaken and totalled $15,221 for the year.

Mr Bell contended that he was required to use his vehicle to transport **heavy/bulky goods** (tools) between his home and his workplace and to collect supplies and equipment from hardware stores while travelling between his workplace and his home.

Ordinarily, travel from home-to-work (and back again) is considered non-deductible. However, if an employee is required to carry heavy/bulky equipment **for which there are no secure storage facilities at work**, the travel between home and work with the heavy/bulky equipment can be considered deductible.

Unfortunately for Mr Bell, evidence before the Tribunal indicated that there were safe and secure storage facilities for his tools (the bulky/heavy equipment) at the worksite.

Accordingly, Mr Bell was unable to rely upon the **'bulky goods' exception** to recharacterise home-to-work travel as being a deductible work expense.

Instead, it retained its ordinary private and non-deductible status.

Mr Bell was unsuccessful in advancing the argument that he was entitled to a deduction in relation to the motor vehicle expenses because he was in receipt of an allowance.

However, Mr Bell was able to convince the ATO that he had undertaken at least some work-related travel using his vehicle. The ATO allowed Mr Bell a deduction under the 'cents per kilometre method' up to the maximum dollar amount for 5,000 kilometres for the 2016 income year of $3,300.

Editor: This decision provides a timely reminder that simply carrying bulky equipment between home and work will not make these trips deductible, where there is a secure place for the equipment to be stored at the employee's worksite. The decision also highlights the fallacy of assuming that being in receipt of an allowance somehow entitles the taxpayer to an offsetting deduction.

The taxpayer was technically 'lucky' that he was allowed the 'cents per kilometre method' deduction for work-related travel, given that his motor vehicle fell outside the definition of a 'car'.

*This is because the cents per kilometre method **only** applies to 'cars', so it could be said that the ATO was generous to the taxpayer in these circumstances.*

Please contact our office if you have any queries as to the deductibility of work-related travel.