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Practice Update

July 2019

'Cash in hand' payments to workers no longer tax deductible

The ATO has reminded employers that any 'cash in hand' payments made to workers from 1 July 2019 will not be tax deductible.

'Cash in hand' refers to cash payments to employees that do not comply with pay as you go ('PAYG') withholding obligations.

Payments made to contractors where the contractor does not provide an ABN and the business does not withhold any tax will also not be tax deductible from 1 July.

In addition to the loss of a tax deduction, employers caught not complying with their PAYG withholding obligations may be penalised for failing to withhold and report amounts under the PAYG withholding system.

However, employers who mistakenly classify their employee as a contractor will not lose their deduction where their worker provides them with an ABN.

Uber drivers not employees

The Fair Work Ombudsman has completed its investigation relating to Uber Australia Pty Ltd and its engagement of drivers, concluding that the relationship between Uber Australia and the drivers is **not** an employment relationship.

The investigation found that Uber drivers are not subject to any formal or operational obligation to perform work.

Instead, Uber drivers have control over whether, when, and for how long they perform work, on any given day or on any given week, and, in particular, Uber Australia does not require drivers to perform work at particular times.

As a consequence, the FWO will not take compliance action in relation to this matter.

Making a Division 293 election

The ATO is reminding taxpayers and tax practitioners that the process to release money from super fund accounts to pay additional tax on concessional contributions (referred to as 'Division 293') changed on 1 July 2018.

Since then, practitioners or their clients must send the Division 293 election form to the ATO, **not** to the super fund (if the election form is sent to the fund it will be rejected and returned to the sender).

When the ATO receives the election form, they will have the client's nominated super fund release and send the money to the ATO, which will then be offset against any outstanding tax or other Australian Government debts before they refund any remaining balance to the client.

ATO targeting false laundry claims

The ATO will target false clothing and laundry work-related expense claims this Tax Time.

In 2018, around six million people claimed work-related clothing and laundry expenses totalling nearly \$1.5 billion.

Assistant Commissioner Karen Foat said although many Australians can claim clothing and laundry expenses, it's unlikely that half of all taxpayers are required to wear **uniforms, protective clothing or occupation-specific clothing** to earn their income.

"Last year a quarter of all clothing and laundry claims were exactly at the record-keeping limit", Ms Foat said.

"But don't think that we won't scrutinise a claim because we don't require receipts".

She also said the ATO does not ignore incorrect claims *"just because they are small, because small amounts add up"*.

The ATO is also concerned about the number of people claiming deductions for conventional clothing, such as retail workers claiming normal clothes *"because their boss told them to wear a certain colour, or items from the latest fashion clothing line"*, or others claiming normal clothes because they only wear them to work.

The ATO's sophisticated data analytics is constantly improving and can identify unusual claims by comparing taxpayer claims to others in similar occupations.

Taxpayers who can't substantiate their claims should expect to have them refused, and may be penalised for failing to take reasonable care when submitting their tax return.

Lifestyle assets data matching program

The ATO has released details of their *"Lifestyle assets 2013-14 and 2014-15 financial years data matching program protocol"*.

They will obtain information on **insurance policies** for certain classes of assets, including marine vessels, enthusiast motor vehicles, thoroughbred races horse, fine art and aircraft to improve their profiling of taxpayers and provide a more comprehensive view of their assets and accumulated wealth.

Tax time tips for small business

To lend a 'helping hand' to small businesses to get their tax right this Tax Time, the ATO has identified the top 3 issues they see when small businesses lodge their tax returns:

- ◆ Failing to report all of their income;
- ◆ Not having the necessary records to prove small business expenses claims; and
- ◆ Claiming private expenses as business expenses (such as travel expenses).

Fixing incorrectly issued excess NCCs determinations

The ATO has recently identified a system error that inadvertently led them to issue incorrect pre-dated excess non-concessional (superannuation) contributions ('NCCs') determinations to clients.

The ATO will extend the election due dates for all affected clients, so this issue will not disadvantage them, and will not take default action in relation to these affected clients who do not make their election by the due date.

Amended determinations will automatically issue on a case-by-case basis in coming weeks to any clients that will have a modified excess NCC amount due once their income tax return is processed.

Car parking threshold for 2020 FBT year

The car parking threshold for the FBT year commencing on 1 April 2019 is **\$8.95** (replacing the amount of \$8.83 that applied in the previous year commencing 1 April 2018).

Trustee obligations on the ATO's radar: TFN reports

The ATO is currently reviewing adherence to certain trustee obligations, including the lodgment of Tax File Number ('TFN') reports for TFN withholding for **closely held trusts**.

Beneficiaries are required to quote their TFN to trustees to avoid having tax withheld from payments or unpaid present entitlements, and trustees must lodge a TFN report for any quarter in which a beneficiary quotes their TFN to the trustee.

If beneficiaries have not quoted their TFN to the trustee, the trustee must:

- withhold tax at the rate of 47% from the distribution;
- pay this tax to the ATO; and
- report, in an annual report, details of all withheld amounts.

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.