JAS PARTNERS

CHARTERED ACCOUNTANTS

BUSINESS ADVISERS & CONSULTANTS – TAXATION PROFESSIONALS – REGISTERED TAX AGENT

Practice Update

December 2023

ATO's lodgment penalty amnesty is about to end

The ATO is remitting failure to lodge penalties for eligible small businesses. Businesses which have not yet taken advantage of the ATO's lodgment penalty amnesty only have until 31 December 2023 to do so.

Businesses must meet the following criteria in order to be eligible for the amnesty:

- had an annual turnover under $10 million when the original lodgment was due;
- have overdue income tax returns, business activity statements or FBT returns that were due between 1 December 2019 and 28 February 2022; and
- lodge between 1 June and 31 December 2023.

When taxpayers lodge their eligible income tax returns, business activity statements and FBT returns, failure to lodge penalties will be remitted without the need to apply.

The amnesty does not apply to privately owned groups or individuals controlling over $5 million of net wealth.

Directors who bring their company lodgments up to date can also have penalties remitted and, if they are reliant on company lodgments to finalise their own tax affairs, any failure to lodge penalties will be remitted. This also applies to eligible lodgments made between 1 June and 31 December 2023.

Notice of officeholder data-matching program

The ATO will acquire officeholder data from ASIC, the Office of the Registrar of Indigenous Corporations and the Australian Charities and Not-for-profits Commission for the 2024 and 2025 income years, including details such as:

- their name, address and date of birth;
- email address and contact phone number;
- organisation class, type and status, and state of incorporation; and
- officeholder type, role type, and officeholder role start and end dates.

The ATO estimates that records relating to approximately 11 million individuals will be obtained.

This program aims to (among other things) enable the Australian Business Registry Services to increase uptake of the director ID, and better utilise registry data to combat unlawful activity.

ATO warning regarding prohibited SMSF loans

Loans to members continue to be the highest reported contravention of the superannuation laws that the ATO sees in auditor contravention reports.

SMSF trustees should remember that they cannot loan money or provide other forms of financial assistance to a member or relative, and if they do, they can incur a penalty of up to $18,780. They may also be disqualified as a trustee.

SMSF trustees also cannot loan money to a related party, such as a business, where the value of the loan exceeds 5% of the value of the fund's total assets, as this is a prohibited 'in-house asset' investment.

If the SMSF's in-house assets exceed 5% of the total value of its assets at the end of the financial year, the trustee must prepare a plan to reduce their in-house assets to less than 5%, which must be implemented by the end of the following financial year.

If a trustee has made a prohibited loan from their SMSF, the loan must be repaid as soon as possible.

Don't forget the two further 'boosts'!

Although the 'Technology Investment Boost' has come to an end (it provided a bonus deduction for eligible expenditure incurred until 30 June 2023), it is important to remember that there are two further 'boosts' providing **bonus deductions** for small businesses, and both apply to eligible expenditure incurred up until **30 June 2024**.

The **Skills and Training Boost** provides small or medium businesses with a **bonus 20% deduction** for eligible expenditure incurred on external training for employees, to support such businesses to train and upskill their employees.

This boost applies to eligible expenditure incurred from 29 March 2022 until 30 June 2024.

The **Small Business Energy Incentive (Boost)** is designed to support small business electrification and more efficient energy use, and will apply to eligible expenditure incurred between 1 July 2023 and 30 June 2024 (once the relevant legislation is passed).

This boost provides small or medium businesses with a **bonus 20% deduction** for the cost of:

- eligible depreciating assets; and/or
- eligible improvements incurred in relation to existing depreciating assets,

that support electrification or energy efficiency.

To be eligible for either of the above 'boosts', a business taxpayer must satisfy a number of conditions.

Claiming deductions in relation to a holiday home

Taxpayers should remember that they can only claim deductions for holiday home expenses to the extent they are incurred for the purpose of gaining or producing rental income.

They need to consider the following in determining whether the deductions they wish to claim are valid rental deductions:

- **How many days during the income year did they use or block out the property for their own use?** Taxpayers cannot claim deductions for the periods the property was used or blocked out by them.

- **How and where did they advertise the property for rent, and is the rent in line with market values?** If they only used obscure means of advertising, or put unreasonable restrictions or conditions in the advertisement, they may not be entitled to claim deductions.
- **Will any restrictions, or the general condition of the property, reduce interest from potential holiday makers?** If their property is not in a tenantable condition, they may not be entitled to claim deductions.
- **Has the taxpayer or their family or friends used the property?** Taxpayers cannot claim for periods of private use or when the property is kept vacant for personal reasons.
- **Is any part of the property off limits to tenants?** When taxpayers claim deductions, they should ensure they calculate and apportion deductions in relation to the part of the property that is available for rent.

Reminder of December 2023 Quarter Superannuation Guarantee ('SG')

Employers are reminded that, in relation to their SG obligations for the quarter ending 31 December 2023, the due date is 28 January 2024.

If the correct amount of SG is not paid by an employer on time, they will be liable to pay the SG charge, which includes a penalty and interest component.

The SG rate is 11% for the 2024 income year.