

No small business tax rate for passive investment companies

The Government has released draft tax legislation to clarify that passive investment companies cannot access the lower company tax rate for small businesses of 27.5%, but will still pay tax at 30%.

The amendment to the tax law will ensure that a company will not qualify for the lower company tax rate if 80% or more of its income is of a passive nature (such as dividends and interest).

Editor: Following extensive consultation when STP was originally announced, it was decided that employers with 19 or fewer employees would not be required to comply.

*Given the backflip here, the business community will be hoping the Government does not introduce compulsory real-time **payments** of SG and PAYG withholding, as well as real-time reporting.*

ATO to be provided with more super guarantee information

The Government has announced a package of reforms to give the ATO near real-time visibility over superannuation guarantee (SG) compliance by employers.

The Government will also provide the ATO with additional funding for a SG Taskforce to crackdown on employer non-compliance.

The package includes measures to:

- ◆ require superannuation funds to report contributions received more frequently (at least monthly) to the ATO, enabling the ATO to identify non-compliance and take prompt action;
- ◆ require employers with 19 or fewer employees to transition to single touch payroll ('STP') reporting from 1 July 2019;
- ◆ improve the effectiveness of the ATO's recovery powers, including strengthening director penalty notices and use of security bonds for high-risk employers, to ensure that unpaid superannuation is better collected by the ATO and paid to employees' super accounts; and
- ◆ give the ATO the ability to seek court-ordered penalties in the most egregious cases of non-payment, including employers who are repeatedly caught but fail to pay SG liabilities.

Reporting of transfer balance account information

Editor: The recent superannuation reforms introduced the concept of a 'transfer balance account', to basically record the value of member balances moving into or out of 'retirement phase'.

In order to monitor these amounts, the ATO is introducing new reporting requirements and forms.

The ATO has released the new Transfer Balance Account Report ('TBAR'), which is now available on ato.gov.au, and the ATO plans to have an online TBAR form available from 1 January 2018.

The TBAR is the approved form to provide data relating to transactions associated with the payment of retirement phase income streams to the ATO.

Reporting on events that affect a member's transfer balance account is vital to minimising the taxation consequences if the transfer balance cap is exceeded.

While SMSFs will not be **required** to report anything until 1 July 2018, SMSFs can use the TBAR to report events that affect an individual member's transfer balance account from 1 October 2017.

SMSFs with relatively straightforward affairs are likely to have only a few events per member to report over the life of the fund, including the commencing values of any retirement phase income streams to which an SMSF member is entitled (e.g., account based pensions, including reversionary income streams), and the value of any commutation of a retirement phase income stream by an SMSF member.

ATO's occupation-specific guides

The ATO has developed occupation-specific guides to help taxpayers understand what they can and can't claim as work-related expenses, including:

- car expenses;
- home office expenses;
- clothing expenses; and
- self-education or professional development expenses.

The guides are available for the following occupations:

- construction worker;
- retail worker;
- office worker;
- Australian Defence Force;
- sales and marketing;
- nurse, midwife or carer;
- police officer;
- public servant;
- teacher; and
- truck driver.

Parliamentary update

Tax legislation passed

In other news, the Government has passed changes to the tax legislation that will limit, or deny, deductions for **travel expenses** and **depreciation claims** for certain residential premises.

Legislation to impose vacancy fees on foreign acquisitions of residential land has also been passed.

ATO relief for SMSFs reporting 'transfer balance account' events

The ATO has announced that, from 1 July 2018, SMSF event-based reporting regarding events impacting a member's transfer balance account (i.e., via a Transfer Balance Account Report) will be limited to SMSFs with members with total superannuation balances of **\$1 million or more**.

Editor: This new reporting is only required if an event that impacts a member's transfer balance account actually occurs (e.g., such as starting an account based pension, or commuting such a pension).

This effectively means that up to 85% of the SMSF population will not be required to undertake any additional reporting with respect to a member's transfer balance cap, outside of current time frames (as SMSFs with members with account balances below \$1 million can choose to simply report events which impact their members' transfer balances when the fund lodges its SMSF annual return).

However, from 1 July 2018, SMSFs that have members with total superannuation account balances of \$1 million or more will be required to report any events impacting members' transfer balance accounts within 28 days after the end of the quarter in which the event occurs.

*Editor: Whilst SMSFs are not required to report anything to the ATO until 1 July 2018, SMSF trustees should be mindful that, where the \$1.6 million transfer balance cap has been breached in respect of a member from 1 July 2017, any resulting tax liability will continue to accrue until the excess amount is commuted (i.e., irrespective of when **reporting** that breach is required).*

Numerous work-related expense claims disallowed

The AAT has denied a taxpayer's deductions for work-related travel, clothing, self-education and rental property expenses (totalling \$116,068 and \$140,581 for the 2013 and 2014 income year respectively), and upheld the ATO's 50% administrative penalty on the tax shortfall for recklessness.

Apart from being unable to prove (or 'substantiate') some claims due to lack of receipts, and documents being in the wrong name, the AAT also criticised the taxpayer for:

- ◆ claiming work-related travel expenses on the basis of the 'gap' between travel expenses reimbursed by her employer and the ATO's reasonable rates (which "was clearly not permissible under any taxation law"); and
- ◆ claiming clothing expenses for "formal clothes of high class", despite her clothing not being distinctive or unique to her employment at the Department of Finance, and was instead rather conventional in nature (and so was not deductible).

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.