CLIENT ALERT

MARCH 2018

Further 'affordable housing' measures passed

Parliament has passed the legislation allowing first home buyers to save for a deposit inside superannuation through the First Home Super Saver Scheme (FHSSS), and also allowing older Australians to 'downsize' and then contribute the proceeds of the sale of their family home into superannuation.

From 1 July 2018, a first home buyer will be able to withdraw voluntary superannuation contributions they have made since 1 July 2017 (up to $30,000 each, with individuals being able to contribute up to $15,000 a year within existing caps), along with a deemed rate of earnings, to help buy their home.

Also, from 1 July 2018, when Australians aged 65 and over sell a home they have owned for at least 10 years, they may contribute up to $300,000 from the proceeds into their superannuation accounts, over and above existing contribution restrictions. Both members of a couple may take advantage of this measure, together contributing up to $600,000 from the proceeds of the sale into superannuation.

ATO warning regarding small business record-keeping

According to the ATO, of all of the things that can cause small businesses to fold, *"high on that list is poor record keeping".*

More than half of the businesses they visited in their *Protecting honest business* campaign needed to improve their record keeping.

Issues they found include businesses:

- estimating their sales and income;
- using the 'no sale' and 'void' button on cash registers when taking cash payments;
- not keeping cash register tapes and not reconciling at the end of the day; and
- paying their employees cash-in-hand.

They are writing to these businesses to recommend they attend one of the ATO's record keeping workshops, which cover why good record keeping is important and how it will save them time.

Big changes proposed to eligibility for the CGT SBCs

The Treasurer has released draft legislation containing new "integrity improvements" to the CGT small business concessions ('SBCs') (i.e., including the 15-year exemption, the retirement exemption, the 50% active asset reduction and the small business roll-over).

Due to the government's *"continued support for genuine small business taxpayers"*, it proposes making amendments so that the CGT SBCs can only be accessed in relation to assets used in a small business or ownership interests in a small business.

Predominantly, the amendments include **additional basic conditions** that must be satisfied for a taxpayer to apply the CGT SBCs to a capital gain arising in relation to **a share in a company** or an interest in a trust (i.e., **a unit in a unit trust**).

This integrity rule is designed to prevent taxpayers from accessing these concessions for assets which are unrelated to their small business, such as where taxpayers arrange their affairs so that their ownership interests in larger businesses do not count towards the tests for determining eligibility for the concessions.

Under the proposed amendments, the measure would be backdated to apply **from 1 July 2017**.

Editor: The proposed amendments, if enacted as currently drafted, will significantly restrict access to the CGT SBCs where taxpayers owning shares in a company, or units in a unit trust, seek to dispose of their interests in the entity.

This will particularly be the case where such interests are held in an asset-owning entity (i.e., which holds and/or leases business assets across to a separate, yet related, business entity).

ATO's focus on work-related expenses

This year, the ATO is paying close attention to what people are claiming as 'other' work-related expense deductions, so it's important when taxpayers claim these expenses that they have records to show:

- they spent the money themselves and were not reimbursed;

- the expense was directly related to earning their income; and
- they have a record to prove it.

If the expense is for work *and* private use, the taxpayer can only claim a deduction for the work-related portion.

Importantly, taxpayers are not automatically entitled to claim standard deductions, but need to be able to show how they worked out their claims.

Editor: 'Other' work related expenses are expenses incurred by employees in relation to their work that are not for travel, clothing or self-education, such as home office expenses.

Government to fix a problem with reversionary TRISs

The government has released draft legislation to ensure that a reversionary Transition to Retirement Income Stream ('TRIS') will always be allowed to **automatically** transfer to eligible dependants (i.e., upon the death of the primary recipient).

Currently, a reversionary TRIS cannot transfer to a dependant if the dependant has not personally satisfied a condition of release.

If this positive measure is legislated, it will apply to reversionary TRISs **from 1 July 2017**.

New small business benchmarks are available

The ATO has updated its small business benchmarks with the latest data from the 2015/16 financial year.

In addition to helping businesses to see if they are performing within their industry average, the benchmarks are one of the tools the ATO uses to identify businesses that may be a higher risk.

Editor: That is, they use the benchmarks to pick their audit targets, so please contact us if you would like us to check whether your data is inside or outside the average benchmark range for your industry.

Guide to the new Small Business Super Clearing House

The Small Business Superannuation Clearing House (SBSCH) joined the ATO's online services on 26 February 2018.

This is intended to streamline how businesses use the SBSCH, and will also include extra functionality, such as the ability to sort employee listings and payment by credit card.

Editor: The SBSCH is a free service that businesses with 19 or fewer employees (or which are SBEs) can use to comply with their super obligations.

Consultation on 'protecting superannuation entitlements'

Following the recommendations of the Superannuation Guarantee Cross-Agency Working Group, the Government has released draft legislation *"to protect workers' superannuation entitlements and modernise the enforcement of the superannuation guarantee"*.

The draft laws extend Single Touch Payroll to all employers from 1 July 2019, and will require superannuation funds to commence 'event-based' reporting to the ATO of payments they receive for employees from their employer from 1 July 2018.

Combined, these measures (if passed as drafted) should provide the ATO with more timely information to support earlier detection and proactive prevention of non□payment of superannuation owed to employees.

The ATO will have a suite of enforcement and collection tools for employers who break the law, including

- strengthened arrangements for director penalty notices and security deposits for superannuation and other tax-related liabilities;
- the ability (for the first time) to apply for court-ordered penalties, including up to 12 months imprisonment; and
- the ability to require employers to undertake training.

The Government's commitment to a Director Identification Number will also help identify those directors who are robbing their employees of their superannuation.

Editor: The Government introduced legislation last year to implement another recommendation by the Working Group to close a loophole that could be used by unscrupulous employers to short□change employees who use salary sacrifice arrangements, and will progress that legislation along with this broader compliance Bill.