CLIENT ALERT

'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.

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.

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.

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.

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 lodgement 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.

Tax cuts now law

The Government has announced that more than 10 million Australians will receive immediate tax relief following the passage of legislation through the Parliament, which increases the top threshold for the 19% tax rate from $41,000 to $45,000 and increases the low-income tax offset from $645 to $700 in 2022/23.

In combination with the legislated removal of the 37% tax bracket in 2024/25, the Government is also *"delivering structural reform to the tax system"* by reducing the 32.5% tax rate to 30%.

Low and middle income tax offset also now law

In addition, from the 2018/19 income year (i.e., last income year):

- The low and middle income tax offset ('LAMITO') has been increased from a maximum amount of $530 to $1,080 per annum and the base amount increased from $200 to $255 per annum; and
- Taxpayers with a taxable income:
  - of **$37,000 or below** can now receive a LAMITO of up to $255;
  - **above $37,000 and below $48,001** can now receive $255, plus an amount equal to 7.5% to the maximum offset of $1,080;
  - **above $48,000 and below $90,001** are now eligible for the maximum LAMITO of $1,080; and
  - **above $90,000 but is no more than $126,000** are now eligible for a LAMITO of $1,080, less an amount equal to 3% of the excess.

ATO "puts the brakes" on dodgy car claims

The ATO is making work-related car expenses a key focus again during Tax Time 2019.

Assistant Commissioner Karen Foat said over 3.6 million people made a work-related car expense claim in 2017/18, totalling more than $7.2 billion.

"We are still concerned that some taxpayers aren't getting the message that over-claiming will be detected and if it is deliberate, penalties will apply," she said.

"While some people do make legitimate mistakes, we are concerned that many people are deliberately making dodgy claims in order to get a bigger refund. We see taxpayers claiming for things like private trips, trips they didn't make, and car expenses their employer paid for or reimbursed them for."

One in five car claims are exactly at the maximum limit that doesn't require receipts.

Under the cents per kilometre method, taxpayers don't need to keep receipts, but they **do** need to be able to demonstrate how they worked out the number of kilometres they travelled for work purposes.

Where the ATO identifies questionable claims, they will contact taxpayers and ask them to show how they have calculated their claim, and in some cases the ATO **may even contact employers** to confirm whether a taxpayer was required to use their own car for work-related travel.

FBT and taxi travel

Taxi travel by an employee is an exempt benefit for FBT purposes if the travel is a single trip beginning or ending at the employee's place of work (or if it is a result of sickness or injury in certain circumstances).

However, the ATO is reminding taxpayers that this exemption is limited to travel undertaken in a vehicle that is **licensed to operate as a taxi** by the relevant State or Territory, and does **not** extend to travel undertaken in a ride-sourcing vehicle or other vehicle for hire that do not hold such a licence.

ATO rates and thresholds

Editor: The ATO has updated a number of rates and thresholds on their website, including the following.

Division 7A – benchmark interest rate

The Division 7A benchmark interest rate for the 2020 income year is 5.37% (up from the rate for the 2019 income year of 5.20%).

Car cost limit for depreciation

The maximum value taxpayers can use for calculating depreciation of cars is the car limit in the year in which they first used or leased the car. In the 2019/20 income year, the car limit is $57,581, unchanged from the 2018/19 year.

Capital improvement threshold

The improvement threshold for the 2019/20 income year is $153,093, up from $150,386 for the 2018/19 income year.

SMSF LRBA interest rates

An interest rate of 5.94% charged by an SMSF in the 2020 income year under a limited recourse borrowing arrangement ('LRBA') to acquire real property would be consistent with the ATO's safe harbour terms (or 7.94% for listed shares or units).

ATO watching for foreign income this Tax Time

The ATO is urging taxpayers who receive any foreign income from investments, family members or working overseas to make sure they report it this tax time.

New international data sharing agreements allow the ATO to track money across borders and identify individuals not meeting their obligations.

"This year, the ATO has received records relating to more than 1.6 million off-shore accounts holding over $100 billion and is now using data-matching and sophisticated analytics to identify foreign income that has not been reported," Assistant Commissioner Karen Foat said.

The ATO has shared data on financial account information of foreign tax residents with over 65 foreign tax jurisdictions across the globe, including information on account holders, balances, interest and dividend payments, proceeds from the sale of assets, and other income.

In addition to a small number of individuals deliberately engaging in tax avoidance, the ATO is concerned about a large number that are unsure of how to meet their obligations.

"If you're an Australian resident for tax purposes, you are taxed on your worldwide income, so you must declare all of your foreign income no matter how small the amount may be. This may include income from offshore investments, employment, pensions, business and consulting, or capital gains on overseas assets," Ms Foat said.

"Even if you have paid tax on the overseas income it must be reported to the ATO, however you may be able to claim a foreign income tax offset to account for any foreign tax paid."