CLIENT ALERT

MARCH 2020

Lifestyle assets continue to be an ATO audit target

The ATO has revealed it will request a further five years' worth of policy information from over 30 insurance companies about taxpayers who own marine vessels, thoroughbred horses, fine art, high-value motor vehicles and aircraft.

The ATO expects to receive information about assets owned by around 350,000 taxpayers from 2016 to 2020 as part of its data-matching program.

This information (provided by insurers) is intended to be used by the ATO as part of its compliance profiling activities.

Aside from helping identify taxpayers who may be understating their income, the data from insurers may be used by the ATO to identify taxpayers who have made capital gains on the disposal of certain assets but who have not declared this to the ATO.

It will also be used by the ATO to identify incorrect claims for GST input tax credits where taxpayers are incorrectly claiming GST credits as if the (private) item was a business asset.

Additionally, SMSFs the ATO suspects may be acquiring lifestyle assets purely for the personal enjoyment of the fund's trustee or beneficiaries are also likely to be looked at by the ATO.

Insurers are required to provide the ATO with policy information where the value of assets is equal to or exceeds the following thresholds:

- Marine vessels $100,000
- Motor vehicles $65,000
- Thoroughbred horses $65,000
- Fine art $100,000 per item
- Aircraft $150,000

Editor: If you feel that you may be targeted by this latest ATO data collection activity and are concerned about the implications, please feel free to contact our office to discuss your individual circumstances.

Ref: ATO website, 18 December 2019

Disclosure of business tax debts – Declaration made

Following the enactment of legislation in late 2019, the ATO can disclose certain business tax debt information to external credit reporting bureaus.

This information will primarily be used when issuing external creditworthiness reports in relation to relevant businesses, effectively treating tax debts in a similar manner to other business debts.

More recently, the Government issued a Declaration to determine exactly what class of entities may be subject to such disclosures, including entities that:

- are registered in the Australian Business Register and are not a complying superannuation fund, a DGR, registered charity or government entity; and
- have one or more tax debts totalling at least **$100,000** that are overdue for more than **90 days**, disregarding:
  - tax debts where the entity has an arrangement to pay the ATO by instalments (i.e., via a payment plan);
  - tax debts subject to an application for release on grounds of hardship; and/or
  - tax debts subject to dispute via an objection, AAT or Federal Court review that has not been finalised.

Additionally, the Declaration does not allow debt disclosure for taxpayers who have an active complaint concerning the disclosure of tax debt information that is, or could be, the subject of an Inspector-General of Taxation ('IGOT') investigation.

Importantly, if there is such a complaint, the ATO can only proceed with a disclosure of the debt where it is not aware of it after taking reasonable steps to confirm whether the IGOT has such a complaint.

Ref: Taxation Administration (Tax Debt Information Disclosure) Declaration 2019

The ATO's Bushfire crisis response

In response to the devastating bushfires across large parts of Australia, the ATO has been keen to advise those impacted that it understands people's priority is their family and community.

If taxpayers live in one of the identified impacted postcodes, the ATO will **automatically** defer any lodgments or payments, meaning that income tax, activity statement, SMSF and FBT lodgments

(and their associated payments) are deferred until **28 May 2020**.

For those affected not in the current ATO postcodes list, assistance can still be provided, with impacted taxpayers encouraged to phone the **ATO's Emergency Support Infoline** on **1800 806 218**.

Editor: Please contact our office if you have been impacted by this or another disaster for assistance. Ref: ATO website, 20 January 2020 and ATO media release, 20 January 2020.

Court confirms ATO's position on foreign income tax offsets

The ATO has welcomed the decision of the High Court to basically uphold the decision of the Full Federal Court in a case which the ATO won, in relation to foreign income tax offsets ('FITO').

An Australian tax resident had sold some US investments and paid US tax on the gains.

The taxpayer was then basically taxed on half of those gains in his assessable Australian income (i.e., the gains were eligible for the CGT discount in Australia).

The taxpayer included the whole of the US tax paid in his FITO to offset against his Australian income tax.

However, when determining the FITO available, the ATO only allowed the proportion of the US tax paid that related to the capital gain included in his Australian assessable income.

The Full Federal Court affirmed the ATO's position.

"This decision reminds taxpayers that they can only claim the foreign income tax offset to the extent that the capital gain is assessable in Australia, rather than the full amount assessed in a foreign jurisdiction," Deputy Commissioner Tim Dyce said.

"We believe that others may have similarly incorrectly claimed the foreign income tax offset. Now is the time to review any claim and make any necessary voluntary amendments as we intend to commence compliance activity on this issue in the near future."

Employer's requirements and the deductibility of WREs

Some employees may wonder whether a work-related expense (or 'WRE') becomes deductible merely because their employer specifically requires the employee to incur the expense.

Importantly, the ATO's recent draft ruling on the deductibility of work-related expenses reiterates that an employer's requirements do **not** determine the question of deductibility.

Specifically, a number of examples contained in the draft ruling confirm that a WRE expense may be deductible without an employer requiring the expenditure. For example, a taxpayer incurring expenditure in relation to a course directly connected to their current employment (without their employer's specific support) may still be in a position to claim self-education deductions.

Alternatively, expenses may be non-deductible despite an employer's specific directions, such as a restaurant requiring its waiters to dress in 'black and whites', or support such as where an employer encourages a dental practice receptionist to undertake a 'Certificate in Dental Assisting' so as to open up a new career opportunity.

Further STP developments

Editor: In an indication of the far-reaching changes that Single Touch Payroll ('STP') will be bringing, Treasury has recently finished consulting on draft legislation that expands the data that may be collected through STP by the ATO (as announced in the 2019/20 Budget).

The legislation, if enacted, will broaden the amounts that employers can voluntarily report under the STP rules, to include employer withholding of child support deductions from salary or wages and child support garnishee amounts from salary or wages that are paid to the Child Support Registrar.

Amendments will also be made to ensure that if employers choose to report under STP to the Commissioner of Taxation, they do not also have to report the amounts to the Child Support Registrar.