CLIENT ALERT

DECEMBER 2022

'Talking tax' with new workers

The ATO is reminding employers that have taken on new employees that those employees can complete a TFN declaration through *ATO online services*, and that this is an easy way for them to provide both their employer and the ATO with the information needed.

If a new employee has a myGov account linked to the ATO, they can:

- access ATO online services;
- go to the 'Employment' menu; and
- select 'New employment' and complete the form.

This sends the TFN declaration details straight to the ATO, so the employer doesn't have to.

Employees will need their employer's ABN to complete the form and, once they've submitted it, they need to print it and give their employer the summary of their tax details so the employer can input the data into their system.

Input tax credits denied due to lodging BASs late

The AAT has held that a partnership's entitlement to $16,361 of input tax credits claimed for the quarterly periods of 1 July 2012 to 31 March 2017 had ceased by the time the associated BASs were lodged with the ATO on 21 June 2021, and therefore the ATO did not need to pay the taxpayer a refund.

The operation of the GST Act means that, unless an extension of time to lodge a BAS has been granted prior to the expiry of **4 years** after the day on which it was required to be given to the ATO, the entitlement to input tax credits immediately **ceases**.

The ATO has no discretion to get around this.

Valuing fund assets for an SMSF's annual return

Editor: The ATO has provided the following reminder and general advice for SMSF trustees regarding their obligations to value the assets annually.

One of many responsibilities' trustees have when managing an SMSF is valuing the fund's assets at market value.

This must be done every income year, so the ATO knows the SMSF has complied with super laws.

The market value of an asset is the amount someone could be reasonably expected to pay if the asset was for sale.

Each year, the asset valuations will be reviewed by the fund's approved SMSF auditor as part of the annual audit prior to lodgement of the SMSF's annual return ('SAR'). The auditor will check that assets have been valued correctly, assess and document whether the basis for the valuation is appropriate given the nature of the asset.

Trustees are reminded to get their valuations done before they go to the auditor, as this will streamline the process and avoid delays. It is also the trustees' responsibility to provide objective and supportable evidence to the auditor for the valuation of the fund's assets, including all relevant documents requested by the auditor.

Failure to do so could result in a delay in auditing the fund and potential late lodgement of the fund's annual return (and could also result in a contravention if the auditor believes mistakes have been made).

The ATO says trustees should *"start researching now"* to find who can value the fund's assets and what type of evidence is needed to support the valuation, as this can take time. In some instances, the law requires valuations to be undertaken by a qualified, independent valuer.

Varying PAYG instalments

The ATO is reminding taxpayers that they can vary their pay as you go ('PAYG') instalments if they think the amount they pay now will be more or less than their expected tax liability for the year, by lodging a variation through myGov or *Online services for business*.

Instalments for those who are PAYG instalment amount payers have been increased by the gross domestic product ('GDP') adjustment factor of 2% for the 2022/23 income year.

ATO advice for SMSFs thinking about investing in crypto assets

The ATO recommends that trustees of self-managed super funds ('SMSFs') thinking about investing in crypto assets should seek professional advice from a licensed financial adviser.

There are organisations who offer trustees help to set up a fund or use their existing fund to invest in crypto assets.

However, the ATO notes that some of these organisations are not licensed to provide financial advice, which means the usual consumer protections and access to the Australian Financial Complaints Authority ('AFCA') are not available for using these services.

There are many things to consider before deciding to invest in crypto assets, so it's important to get it right, especially since trustees are ultimately responsible for ensuring the investment complies with the super and tax laws.

When investing in crypto assets, trustees must ensure it is allowed under the fund's trust deed, is made in accordance with the fund's investment strategy, and the trustee has considered the level of investment risk given the highly volatile nature of the investment.

From a regulatory perspective it's important that:

- The crypto assets are owned by the fund and are held separately from the trustee's own personal or business assets. This means the fund must have its own digital wallet, separate to any used by the trustee for personal or business purposes.
- The investment is valued at market value in line with the ATO's valuation guidelines.
- Any crypto assets that a member or related party hold personally are not sold to the fund or transferred to the fund as a contribution.
- The investment is consistent with the sole purpose test and does not involve the giving of financial assistance to a member.

ATO's record-keeping tips

The ATO has reminded taxpayers that they should understand the record-keeping requirements for their business and keep accurate and complete records as they occur, as this should help them avoid penalties that may apply and reduce the possibility of the ATO denying their expense claims.

The following are some of the ATO's top tips to help businesses get it right and avoid record-keeping errors (based on common record-keeping errors the ATO sees):

- Keep accurate records of all cash and electronic transactions.
- Reconcile cash and EFTPOS sales regularly (by ensuring payments recorded internally match external records) and enter the amounts into the main business accounting software system.
- Check for mistakes if things don't add up.
- For expenses that are for both business and private use, work out and record the business portion accurately.
- If the taxpayer has used trading stock for private purposes, remember to account for the stock as if the business sold it, and include the value in the business's assessable income.
- Don't use estimates to prepare tax returns and business activity statements ('BASs').
- If claiming credits for GST, set aside the GST in a separate ledger account to make record-keeping and calculations easier.
- Most records must generally be kept for at least 5 years — from when the record was prepared or obtained, or the transaction or related acts were completed, whichever is later. Records relating to the calculation of losses may need to be kept longer, depending on when that loss is deducted (or offset against a capital gain).
- Accurate and detailed records must also be kept when paying contractors to provide certain services on behalf of the business (so the business can easily complete its taxable payments annual report at the end of each year).
- Use the ATO's *Record-keeping evaluation tool* to find out how well the business is currently keeping its records.

If businesses aren't sure how this information applies to their situation, the ATO recommends they ask their registered tax or BAS agent or contact the ATO for help. The ATO says it will help businesses get back on track if they make an error.