Tax Round Up

July 2019

The key issues for accountants and advisers over the month

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The ATO has exempted closely held payees such as Directors and family members from single touch payroll for the 2020 financial year.

While this is a relief to many, this issue will continue to create problems as from 1 July 2020, the ATO expects employers to make a reasonable estimate of year-to-date amounts where the payment is not at arms-length.

Parliament sits again on 2 July 2019 - follow Knowledge Shop's twitter feed (@knowledgeshopAU) for the latest!

If you have any questions about any of the information contained in the **Tax Round Up**, please contact the help desk online (see Ask Us) or call us on 1800 800 232.

Let us know if we can help!

Andrew Matthews
Tax Adviser | Knowledge Shop

From Government

New resources for charities

The ACNC has issued a range of factsheets, guides and templates in its 'Small Charities Library' for the use of small charities in meeting their compliance obligations. These documents provide guidance on a range of issues applicable for small charities, including complying with governance requirements, access to tax concessions and keeping appropriate records to comply with reporting obligations.

Tax agents with clients who operate small charities are encouraged to review the information in the library and consider advising their clients of any relevant information which may assist in meeting their obligations (which can mean less pressure on tax agents to deal with any issues).

More information

- Small Charities Library

From the ATO

STP and payments to directors and family members

The ATO has advised that small employers (i.e., 19 or less employees) with closely held payees are exempt from reporting through STP for the 2020 financial year. There is no need for entities to apply to the ATO for the concession, although entities will need notify the ATO of closely held payees and report through STP from 1 July 2020.

Closely held payees receive payments which are not at arm's length (i.e., they are directly related to the entity from which they receive payment) For example, this includes:

- family members of a family business
- directors or shareholders of a company
- beneficiaries of a trust

Payments to arm's length employees will need to be reported using STP.

For the 2021 income year, the ATO has indicated that small employers will need to begin reporting payments to closely held payees through STP although these employers will have the option of reporting closely held payee information quarterly. This would need to be done through a STP-enabled solution and cannot be lodged through the ATO portals.

When it comes to reporting quarterly information for closely held payees the ATO expects the employer to make a reasonable estimate of year-to-date amounts up to and including the last pay day of the relevant quarter. The ATO indicates that

three methods could potentially be used for this purpose, which are summarised below:

- Withdrawals taken by the payee (but don't include payments of dividends or payments which reduce liabilities owed by the business to the closely held payee).
- Calculating 25% of the total salary or director fees from the previous year or the year of the last lodged tax return of the closely held payee.
- Vary the previous years' amount (to take into account trading conditions) within 15% of the total salary or directors fees for the current financial year.

If a business chooses to report closely held payees quarterly they will have until the due date of their 2021 tax return to finalise the information that has been reported for the year and make any adjustments to the amounts that have been reported.

More Information

- Closely held payees

Non deductions if PAYG obligations not up to date

Following the passage of the *Treasury Laws Amendment (Black Economy Taskforce Measures No. 2) Bill 2018* (refer to the December 2018 Tax Round-Up), the ATO is reminding businesses that from 1 July 2019 deductions can no longer be claimed for certain payments that do not comply with pay as you go (PAYG) withholding obligations. In particular, the ATO advises that this includes 'cash in hand' payments made to workers.

It should also be noted that in addition to the loss of the 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.

More Information

- Unreported 'cash in hand' payments to workers no longer tax deductible

ATO targeting clothing and laundry claims

As we are coming up to "tax time" the ATO is again being active in announcing the areas in individual tax returns which it will be focusing on. One area the ATO has indicated it will be keeping a close eye on this year is deductions claimed for clothing and laundry expenses.

The increased focus is based on data for the 2018 income year which indicated that nearly half of all taxpayers claimed work-related clothing and laundry expenses, which are only allowed for uniforms, protective clothing or occupation-specific clothing.

Further, as almost a quarter of these claims were for precisely the amount allowed without requiring full substantiation, the ATO is concerned that taxpayers are claiming 'standard' deductions without actually incurring the expenses.

It is important to note that even where substantiation is not required, the ATO can still ask how the claim has been calculated and are now going to the extent of asking employers if their employees have a required uniform.

If your clients are claiming deductions for clothing and laundry expenses, it would be a good idea to review the rules in this area and to confirm that clients do have eligible expenses and evidence to support deductions that are being claimed.

More Information

- ATO to iron out false laundry claims
- Clothing, laundry and dry-cleaning expenses

Rulings

Main residence safe harbour when selling an inherited property

PCG 2019/5 The Commissioner's discretion to extend the two year period to dispose of dwellings acquired from a deceased estate

The ATO finalised its practical compliance guideline dealing with situations where inherited dwellings are sold more than two years after the date of death of a deceased individual.

In some cases, a deceased estate or beneficiary can access full exemption on sale of an inherited dwelling if it is sold within 2 years of the date of death and either:

- It was acquired pre-CGT by the deceased individual; or
- The dwelling was the main residence of the deceased individual just before they died and the dwelling was not used to produce income at that time.

If the property is sold more than 2 years after the date of death then it is more difficult to apply a full exemption, although this depends on whether certain individuals have used the property as their main residence after the date of death. The rules give the Commissioner the power to extend the 2 year period in some cases, but this is subject to the Commissioner's discretion.

Normally it would be necessary to submit a private ruling to the ATO seeking the exercise of this discretion. However, PCG 2019/5 states that an automatic 18 month extension is provided without having to ask the Commissioner if all of the following conditions are satisfied:

- During the first two years after the deceased's death, more than 12 months was spent addressing one or more of the circumstances described in paragraph 12 of the PCG (e.g., determining ownership of the dwelling, dealing with challenges to the will etc);
- The dwelling was listed for sale as soon as practically possible after those circumstances were resolved (and the sale was actively managed to completion);
- The sale completed (settled) within 12 months of the dwelling being listed for sale;
- If any of the circumstances described in paragraph 13 of the PCG were applicable (eg, waiting for the market to pick up, refurbishing the property etc), they were immaterial to the delay in disposing of the interest; and
- The longer period for which you would otherwise need the discretion to be exercised is no more than 18 months.

Effective lives of depreciating assets

TR 2019/5 effective life of depreciating assets (applicable from 1 July 2019)

The Commissioner has released the annual ruling which sets out the effective lives of depreciating assets from 1 July 2019. Taxpayers can choose to use the effective lives set out in the ATO ruling or make their own estimate of the effective life of a depreciating asset.

FBT car parking threshold

TD 2019/9 for the purposes of section 39A of the Fringe Benefits Tax Assessment Act 1986, what is the car parking threshold for the fringe benefits tax year commencing on 1 April 2019?

The car parking threshold for the fringe benefits tax (FBT) year commencing on 1 April 2019 is $8.95. This replaces the amount of $8.83 that applied in the previous year commencing 1 April 2018. The car parking threshold is relevant for determining whether a car parking fringe benefit arises.

Prepayment arrangements

PR 2019/3 taxation consequences for a Customer entering into a Prepay Plus Agreement with Landmark

While we do not ordinarily cover product rulings in the tax round-up, we have received a number of enquiries from practitioners in relation to this particular arrangement and other arrangements which have reasonably similar features.

This Product Ruling involves prepayments by customers under a Prepay Plus Agreement offered by Landmark Operations Limited (Landmark) to purchase goods to be used by the customer in their business. Landmark is a supplier operating in the primary production industry, selling agricultural supplies and equipment.

The product ruling confirms the following for taxpayers who have entered into a Prepay Plus Agreement and are classified as a small business entity for income tax purposes:

a) The prepayment amount paid by the business to Landmark under the arrangement is deductible under section 8-1 ITAA 1997 in the income year it is paid;
b) The prepayment rules in section 82KZM ITAA 1936 will not apply to deny the business an immediate deduction if the prepayment does not exceed 12 months and will end in the following income year; and
c) The general anti-avoidance provisions in Part IVA will not be applied to deny the deductibility of the prepayment amount paid under the arrangement.

Fringe benefits tax – benefits provided to religious practitioners

TR 2019/3 benefits provided to religious practitioners

The ATO has finalised this ruling (previously issued as draft ruling TR 2018/D2) relating to fringe benefits which can be exempt when they are provided to religious practitioners under Section 57 FBTAA.
The ruling provides clearer guidance on the Commissioner's view on the meaning of 'registered religious institution', 'religious practitioner', 'pastoral duties' and directly related religious activities, taking into account law changes which mainly relate to the commencement of the Australian Charities and Not-for-profits Commission (ACNC).

The ruling replaces the former ruling (TR 92/17) which covered this same issue and there are no major substantive changes to the overall ATO view.

Cases

Proving ownership of trust assets

Mingos v FC of T [2019] FCA 834

The taxpayer in this case was an individual who had become the owner of a property which was used as their main residence as a result of a Family Court order relating to a family law settlement. However, the taxpayer had effectively caused the property to be held in the name of a trust (with a corporate trustee of which the taxpayer was a director).

When the property was sold, the ATO assessed the taxpayer on the capital gain made on the sale of the property on the basis that the taxpayer had been made presently entitled to income of the trust (i.e. as a trust distribution). This meant that the taxpayer was not able to apply the main residence exemption as it can generally only apply where the CGT event happens to an individual taxpayer (there are some limited exceptions to this, including where a property is held by a special disability trust).

The taxpayer argued that the property was not an asset of the trust but was rather held by the trustee in a different capacity (effectively as a bare trustee) and that the taxpayer was absolutely entitled to the asset. The ATO has indicated that the main residence exemption can apply in situations where a property is held in trust but the individual living in the dwelling is absolutely entitled to the property as against the trustee. The taxpayer's argument was based on the terms of the Family Court orders. The taxpayer argued that any capital gain on the sale of the property could be disregarded under the main residence exemption.

The decision by the Federal Court in this case relied heavily upon the evidence surrounding the transfer of the property to the trustee pursuant to the Court orders issued with respect to the family breakdown. The Court agreed with the ATO in finding that there was insufficient evidence to support a contention that the property was held on a bare trust and that the taxpayer was an absolutely entitled beneficiary.

Aside from one key point in relation to the Family Court orders (which allowed the property to be transferred to the taxpayer or a nominee, rather than specifically providing that the taxpayer was to have ownership of the property), the principal reason underlying the decision was that the evidence suggested that the trust was the owner of the property. This included the fact that the taxpayer had effectively acquiesced to the transfer, had signed financial statements including the property as a trust asset, the proceeds were accounted for as an asset of the trust, and there was a valid resolution by the trustees distributing the net capital gain to the taxpayer.

There are two broad lessons which can be taken from this case. For tax agents and accountants – the importance of accuracy. The argument that "everyone understands it was this way" was not successful. For taxpayers, the importance of understanding what is presented in the financial records. The actions of the taxpayer in this case in signing the accounts was one factor which led to the court finding that the property was an asset of the trust.

Evidence when claiming input tax credits

Very Important Business Pty Ltd v FC of T [2019] AATA 1120

This case is another which reiterates the importance of maintaining proper records for tax purposes, this time in the context of claiming input tax credits. The taxpayer had claimed input tax credits in relation to acquisitions of scrap gold as part of a precious metal refinery business.

The taxpayer had effectively acquired the business from his previous employer, which had previously been involved in a dispute with the Commissioner on this very same issue. One of the key issues in the case was the fact that the taxpayer had very limited financial capacity and that there was significant doubt whether it was actually the taxpayer who had provided consideration or was liable to provide consideration for all acquisitions of scrap gold.

The ATO had argued that there was no evidence that the taxpayer had made the relevant acquisitions and that therefore the taxpayer could not claim the input tax credits.

The AAT affirmed the ATO decision, noting that *"there were serious shortcomings in VIB's evidence and documentation regarding the alleged purchase transactions"* and that due to this lack of evidence, the AAT was not satisfied that the acquisitions had actually been made by the taxpayer.

Can a client's lack of sophistication with respect to tax matters actually help them?

Bosanac v FC of T [2019] AATA 1240

This AAT case was something of a strange case, involving a dispute over the Commissioner's discretion to remit administrative penalties. In this case the penalty involved an intentional disregard of the tax law. The original case was covered in the April 2018 tax round-up in relation to a separate issue.

Essentially, the taxpayer in this case argued that the determination regarding whether to exercise the Commissioner's discretion to remit a penalty was a different question to the determination of the appropriate penalty.

The ATO had originally decided to apply a 75% penalty on the taxpayer for intentional disregard of the tax law by the taxpayer's tax agent. Accepting that the penalty for that conduct was appropriate, the taxpayer then appealed the decision on the basis that the ATO had failed to re-exercise the discretion to remit administrative penalties. The taxpayer's argument was that in deciding whether to remit the penalties, it is necessary to consider the fact that the taxpayer's own conduct (as opposed to the conduct of their tax agent) had not amounted to intentional disregard of the tax law.

Interestingly, the taxpayer succeeded in this case, with the penalty being reduced from 75% to 60%.

While the ATO had argued that exercising the discretion in this case would effectively undermine the penalty regime by reconsidering or altering the level of the penalty essentially by 'back door' means, the AAT found that the taxpayer's position was correct and that *"The Applicant's lack of financial understanding and the lack of actual intent*

to lodge a false or misleading tax return are personal circumstances making it appropriate to remit, in part, the penalty."

Legislation

Parliament sits again on 2 July 2019.

Many previously announced or debated amendments may or may not be re-introduced, including the super guarantee amnesty and the removal of the CGT main residence exemption for non-residents.

We are also awaiting further details on other key tax related proposals including the changes to Division 7A and interest deductions for holding vacant land.