bO2 Corporate Essentials

Tax Smart Australia

Issue
#0105

Tax Essentials

Year End Special Bonus Issue

JUNE	2020

THE NEWSLETTER

Tax Planning Opportunities for Everyday Business

MICHAEL'S CORNER

Article No.05

Are Your Casual Employees True Casuals?

.... It's Time for EOFY HR/IR House Keeping

SPECIAL BONUS ISSUE

Year End Tax Planning Tips

bO2.com.au

Contents

The Newsletter

BANKRUPTCY LAW CHANGES TO PROVIDE RELIEF

The Australian Government has temporarily changed bankruptcy law to help protect people who are facing unmanageable debt because of the economic impacts of COVID-19.

If you are a sole trader, or operating a business as a partnership, you could face personal bankruptcy if you cannot pay your debts.

If you are in financial difficulty you can now apply for temporary debt protection; this prevents recovery action by unsecured creditors for six months. You can use the time to:

- seek free advice from a financial counsellor
- negotiate payment plans with creditors
- consider whether you require a formal insolvency option.

In addition, the temporary debt relief measures have increased the:

- minimum amount of debt that can trigger bankruptcy (from $5,000 to $20,000)
- time an individual has to respond to a Bankruptcy Notice (from 21 days to six months).

If you are concerned about your finances, help is available. You can access advice from an insolvency practitioner registered with the Australian Financial Security Authority (AFSA) or get free support through the National Debt Helpline by calling 1800 007 007.

STP EXEMPTION FOR CLOSELY HELD PAYEES

The ATO has extended the Single Touch Payroll (STP) exemption for small employers (19 or fewer employees) to report their closely held payees from 1 July 2020 to 1 July 2021.

Closely held payees include family members, directors or shareholders of a company, and beneficiaries of a trust.

If your business has any other employees (also known as arm's length employees) they must be reported now through STP.

You can choose to report your closely held payees sooner if it is easier. If you are already reporting through STP, you can report closely held payees each time you make a payment just as you would for your other employees.

Reporting through STP may support your JobKeeper payment application and help you meet your monthly reporting requirements for the subsidy. STP reporting enables employers to notify of their eligible employees, their eligibility start and finish periods, and the amounts those employees have been paid, including any JobKeeper top-up.

COVID-19 EARLY RELEASE OF SUPER

If you have been financially affected by COVID-19 you can access up to $10,000 of your superannuation in 2019–20 and a further $10,000 in 2020–21.

You will not need to pay tax on amounts released and the money withdrawn will not be taken into account for any income or means tests.

From 20 April 2020, you can apply online through myGov to access up to

- $10,000 of your superannuation by 30 June 2020
- a further $10,000 between 1 July 2020 and 24 September 2020.

The government has also announced that eligible temporary residents will be able to apply to access up to $10,000 of their super before 1 July 2020.

Citizens and Permanent Residents of Australia And New Zealand

To be eligible for early release of super, a citizen or permanent resident of Australia and New Zealand must be in one of the following circumstances:

- You are unemployed
- You are eligible to receive one of the following:
  - jobseeker payment
  - youth allowance for jobseekers (unless you are undertaking full-time study or are a new apprentice)
  - parenting payment (which includes the single and partnered payments)

- special benefit o farm household allowance.
- On or after 1 January 2020 either:
  - you were made redundant
  - your working hours were reduced by 20% or more (including to zero)
  - you were a sole trader and your business was suspeded or there was a reduction in turnover of 20% or more.

Temporary Residents

To be eligible for early release of super, temporary residents must be in one of the following circumstances:

- You hold a student visa that you have held for 12 months or more and you are unable to meet immediate living expenses.
- You are a temporary skilled work visa holder; your working hours have reduced to zero and you remain engaged with your employer.
- You are a temporary resident visa holder (excluding student or skilled worker visas) and you cannot meet immediate living expenses.

Assessing Your Eligibility

You do not need to attach evidence to support your application. However, you should keep records and documents to confirm your eligibility as they may ask you for this information.

It is important that you assess your eligibility accurately. The ATO is administering this measure on behalf of all Australians and will manage the eligibility criteria with strict guidelines to ensure they can support those financially affected by COVID-19. There are penalties for making false and misleading statements.

Implications of Accessing Your Super Early

Accessing your super early will affect your super balance and may affect your future retirement income.

Withdrawing superannuation may also affect your:

- income protection insurance
- life / total permanent disability insurance cover.

Insurance may not be available on accounts that:

- are fully withdrawn
- have a balance below $6,000
- are inactive low balance accounts.

You should consider whether you need to seek financial advice before submitting your application for early release of super.

Get Ready to Apply

You can register your interest now by logging into your myGov account and following the Intention to access coronavirus support instructions. The ATO will notify you by email or SMS when applications open. You do not need to phone the ATO.

There are four ways you can check your super balance:

- Check your total superannuation balance in ATO online services. There will be an ‘as at’ or ‘effective’ date for the balance. In a lot of cases it will be 30 June 2019 as funds are only required to report to us once a year. This means your account balance may have changed.
- If you have access to your super fund’s online member portal, you can log on and check your current account balance there. It might be a good time to establish a login to your fund portal if you have not already.
- Check the last statement that your fund issued to you. This might be by paper or email.
- Call your fund but understand that they have had a large increase in members calling and there could be delays in having your call answered.

Submitting an Application

Applications for early release of superannuation will be accepted through ATO online services via myGov from 20 April 2020.

You can only submit one application in each financial year:

- year one, between 20 April and 30 June 2020
- year two, between 1 July and 24 September 2020.

This is even if the total amount released is less than $10,000.

The online form on myGov will display all your superannuation accounts, as reported to the ATO by your funds. You can request the release of your super from multiple super accounts. For example, if you want to receive a total of $10,000 you can request $5,000 from one fund and a second $5,000 from another fund. This must be done within one application form.

Be sure to check your fund’s online portal to confirm that there is sufficient money in your account for you to claim.

Make sure you provide your correct bank account details in the application.

After You Apply

Once the ATO has processed your application they will send you a letter of approval or rejection (called a determination). This will be available in your myGov Inbox within 2–3 days.

Once your application is approved you do not need to contact the ATO or your fund. Your fund will make the payment to you without you needing to apply to them directly.

However, if your fund is a SMSF, you will need to let them know that you have received the determination so they can make the payment to you.

THE SUPERANNUATION GUARANTEE AMNESTY WINDOW IS NOW OPEN – UNTIL 7 SEPTEMBER 2020

Given the cash flow stresses businesses are now facing, this may not be the top of the list of priorities for employers who have outstanding superannuation payments for their staff prior to 31.3.2018. However, it is worth noting, the superannuation guarantee amnesty Bill has finally become law.

Employers have until 7.9.2020 to take advantage of the amnesty and disclose to the ATO any superannuation guarantee shortfalls for the March 2018 and earlier quarters.

In the event employers do not take advantage of the amnesty in relation to historical shortfalls, they will be subject to a penalty of up to 200% of the shortfall. Notwithstanding current cash flow stresses, relevant employers should if possible, take advantage of the amnesty. The ATO will not have the power to remit that penalty below 100% for historical quarters.

Businesses may have inadvertently underpaid compulsory superannuation by:

1. treating individuals as contractors when they are actually employees
2. miscalculating ‘ordinary time earnings’ – especially in relation to ‘overtime’ amounts

DIRECTORS ABOUT TO BE PURSUED PERSONALLY FOR THEIR COMPANY GST DEBT

The Commissioner is now able (from 1.4.2020) to pursue directors personally for their company’s outstanding GST liabilities.

A company’s GST ‘net amounts’ will be subject to the same director penalty notice (DPN) system that applies to PAYG withholding amounts and superannuation guarantee charge.

The DPN system applies when a company must pay ‘an assessed net amount’ to the ATO by the due date for each tax period.

When that happens, each director has an obligation to do one of the following:

- cause the company to pay the assessed net amount to the ATO
- appoint an administrator
- start to have the company wound up.

If the due date passes, and none of these things has happened, each director is liable to a penalty – equal to the company’s unpaid amount.

The director’s penalty will not apply if:

- the company pays the assessed net amount to the ATO
- an administrator is appointed, or the company begins to be wound up – before the ‘lockdown’ date.

The penalty is ‘locked down’ to each director if the company fails to pay the assessed net amount and has not lodged its BAS within three months after the due date for the BAS. Meaning each director will continue to be personally liable for that amount.

Possible defences include illness on the part of a director or being able to demonstrate all reasonable steps were taken to meet the obligations outlined above.

Directors will not be liable for a penalty if they take ‘reasonable care’ and have a ‘reasonably arguable position’.

Given the financial devastation caused by COVID-19, it will be interesting to see how hard the ATO runs on this.

TR 2020/1 DEDUCTIBILY OF WORK-RELATED EXPENSES

Taxation ruling TR 2020/1 has just been released in its final form by the ATO.

This is fundamental stuff but worthy of review. This year more than ever there will be a rush to lodge individual tax returns in July 2020 as cash strapped Australians chase refunds. To avoid further problems down the line, taxpayers should make every effort to ensure their tax returns are correct and the following examples are contained in the TR 2020/1.

Example 1 – not deductible – not incurred

Corey's parents buy him a 12-month technical magazine subscription for Christmas which is connected to his work. Corey cannot claim a deduction for the subscription price because he did not incur the expense. If Corey had subscribed himself, he would have incurred the expense when he paid or became obliged to pay the subscription amount.

Example 2 – not deductible – reimbursed

Alex takes a company car to attend a work-related meeting. He spends $28 to park the car at a location of the meeting. When he returns to his office, he provides the car parking receipt to his employer and his employer pays him the $28 he has spent. As this is a reimbursement, Alex cannot claim a deduction for the car parking expense. For the same reason, he would not declare the amount from his employer as income in his tax return.

Example 3 – circumstances for and against a deduction

Michael, an arborist employed by a local council to maintain trees and gardens in a large city park, incurred expenses on a hat, sunscreen, and sunglasses. Michael can claim a deduction for these expenses items as they protect him from risks directly attributable to his work and, consequently, have a real and close connection to his income-earning activity. That is, the nature of Michael's employment obligations and duties is such that he will inevitably be exposed to the sun for prolonged periods in carrying out his work activities. Outdoor workers of this type necessarily incur sun protection expenses because of the nature of their occupation, irrespective of their personal circumstances.

Example 4 – not deductible – not 'in the course of'

Mark, an employed building manager, uses public transport to travel to and from work each day. He also incurs expenses for the care of his two young children during the period of the day when he is at work. Mark's expenditure on fares and childcare may be necessary prerequisites to allow him to attend his workplace and commence working, but the expenses are not incurred in the course of gaining or producing his assessable income. Accordingly, they are not deductible.

Example 5 – not deductible despite employer's requirements

Kayne is employed as a waiter in a wine bar and is required by his employer to wear a white collared shirt, black trousers, and black shoes. Notwithstanding his employer's specific instructions, Kayne's clothing remains conventional, maintains its private nature, and is not expenditure incurred in earning his employment income.

Example 6 – deductible without employer's requirement

Salome works as the practise manager for a suburban doctor's surgery. To help develop her skills in her current role she undertakes a Diploma of Practise Management. Her employer does not directly encourage her to do the course and does not offer any financial incentive or time off. Despite not having her employer's direct support, Salome can claim a deduction for the cost of undertaking the course as it will assist her in carrying out her current employment duties by improving the specific knowledge and skills she requires to do her job.

Example 7 – not deductible despite employer's encouragement

Dermott is employed as a receptionist at a dental practise. His employer encourages him to undertake a Certificate III in Dental Assisting, offering study leave and a guaranteed job with the increased salary as a dental assistant if he completes the course. Dermott cannot claim a deduction for the course fees despite his employer encouraging the study. The course does not assist him in carrying out his existing employment duties or improve the knowledge or skills he needs as a receptionist to earn his current income. As the study relates to a potential new job as a dental assistant, the expenses of that study are a prerequisite to earning income from a new role and not incurred in the course of earning his income.

Example 8 – not deductible – outside scope of duties

Barry drives a courier van provided by his employer. In the event that the vehicle breaks down, Barry's employer has provided him with a road service phone number and instructed him to not attempt to carry out any repairs himself. Barry cannot claim a deduction or depreciation for auto repair tools he may have purchased. He has been employed only to drive the van and the repair activities cannot be done in connection with his employment. As the expenses do not relate to his employment, they do not have the necessary connection with the earning of assessable income and are not deductible.

Example 9 – apportioning expenses

Toby is employed as a real estate agent and he uses his personal mobile phone for work. He owns his own handset and is on a mobile plan which costs $40 per month. Toby keeps suitable records which shows that 80% of the time he spends on calls is for work purposes. When claiming a deduction, he could use the time basis to reasonably apportion his mobile expenses between their work and private elements. As 80% of his usage relates to earning his employment income, 80% of the expenses are deductible. The remaining 20% are private in nature and not deductible.

Example 10 – acceptable substantiation

William paid for his annual professional association fees but did not get a receipt. He did have the membership renewal form which showed the amount of the expense, the business name of the supplier and the amount of the expense. His bank records show he paid the professional organisation on the date the fees were due, which shows the date the expense was incurred and that it was for the amount set out on the membership renewal form. By contrast, if William only had his bank statement, it would not be acceptable for substantiation purposes because the statement does not have all the elements required by the legislation for written evidence.

Example 11 – expenses with different substantiation rules

During the years, Xannel incurs laundry expenses of $140 and $250 for work boots. As Xannel's total works expenses are more than $300, the written evidence does not apply. This means Xannel must substantiate his claim for work boots.

However, because of the laundry expense exception, he does not need written evidence of his laundry expenses, though he will need to show how he calculated his expenses.

EARLY CHILDHOOD EDUCATION AND CARE RELIEF PACKAGE

Around one million families are set to receive free child care during the coronavirus pandemic under a plan from the Federal Government that will help deliver hip pocket relief and help the early childhood education and care sector make it through to the other side of this crisis.

Under the plan, the Government will pay 50 per cent of the sector's fee revenue up to the existing hourly rate cap based on a point in time before parents started withdrawing their children in large numbers, but only so long as services remain open and do not charge families for care. The funding will apply from 6 April based on the number of children who were in care during the fortnight leading into 2 March, whether or not they are attending services.

The plan supports families while also ensuring as many of the sector's 13,000 childcare and early learning services as possible could keep their doors open for workers and vulnerable families who need those services.

The plan provides funding certainty to early childhood education and care services at a time where enrolments and attendance are highly unpredictable. This, along with the JobKeeper payment, means services can offer free education and care.

The plan means the sector is expected to receive $1.6 billion over the coming three months from taxpayer subsidies because of the March 2 baseline that has been set, compared to an estimated $1.3 billion if current revenues and subsidies had continued based on the existing system and the significant reduction of enrolments the sector has seen.

The new system will see payments start flowing from 9.4.2020. The system will be reviewed after one month, with an extension to be considered after three months. The payments will be paid in lieu of the Child Care (CCS) and Additional Child Care Subsidy payments.

Until the payments arrive, the Government is allowing services to waive gap fees for families who keep their children home, and families will be able to use the 20 extra absence days the government has funded for coronavirus related reasons without giving up their place in a child care centre.

If you have terminated your enrolment since 17 February, you are able to get back in contact with your centre and re-start your arrangements. Re-starting your enrolment will not require you to send your child to child care and it certainly won't require you to pay a gap fee. Re-starting your enrolment will, however, hold your place for that point in time when things start to normalise, and you are ready to take your child back to their centre.

The Federal Government will also make payments of higher amounts available in exceptional circumstances, such as where greater funding is required to meet the needs of emergency workers or vulnerable children.

SUPPORTING SOLE TRADERS THROUGH THE EFFECTS OF CORONAVIRUS

On 26.3.2020, the Federal Government is expanding the eligibility criteria for JobSeeker Payment to support sole traders and Australians who are self-employed if their income is negatively affected by the economic impact of the Coronavirus.

Under temporary changes to social security rules, sole traders will be encouraged to keep their business operating but may be able to access income support should their earnings take a significant hit.

These new rules are designed to make sure sole traders can access income support if they find their income significantly reduced through no fault of their own.

Previously to determine if a self-employed person was unemployed for the purpose of accessing social security payments, they had to be genuinely willing to seek and be available to take up alternative work effectively requiring their business to close.

If someone remained committed to continuing with their business, then they were not considered unemployed and could not access payments.

This test has been temporarily removed to allow sole traders to continue operating. Income testing will apply consistent with current arrangements which allows individuals to earn more than $1000 per fortnight before losing access to payment.

Under the temporary arrangements a range of JobSeeker Payment eligibility criteria has been relaxed including waiving the assets test, liquid assets waiting period, seasonal work preclusion period and newly arrived residents' waiting period.

In line with the changes sole traders will be able to use work in their own business to meet their mutual obligations.

This ensures sole traders have maximum flexibility to maintain cash flow in these extraordinary circumstances.

From 30.3.2020, the self-employed are also able to register their interest in the JobKeeper allowance which could mean $1,500 per fortnight, before tax. Note it is either or – only one of the JobSeeker or JobKeeper allowance is available for an individual.

THE AUSTRALIAN BUSINESS SECURITISATION FUND SUPPORTS SME'S

On 3.4.2020, the Australian Office of Financial Management (AOFM) announced a round of funding from the Australian Business Securitisation Fund (ABSF) to enable smaller lenders to continue supporting Australian small and medium sized businesses (SME's).

The AOFM will invest $250 million of ABSF funding in securities issued by a warehouse facility to support lending to SME's.

The investment will fund a portfolio of loans for a period of up to four years and will assist with deepening the market for SME asset backed securities.

Small lenders are critical to Australia's lending markets in creating more competition, especially for SME's, during the current coronavirus crisis.

This funding complements other initiatives undertaken by the Government and the Reserve Bank of Australia (RBA) to support lending to SME's, including:

- $15 billion to allow AOFM to invest in wholesale funding markets used by small ADIs and non-ADI lenders. The AOFM made its first investment under this program on 27 March, purchasing residential mortgage backed securities valued at $189 million.
- The SME Guarantee Scheme to support up to $40 billion of lending to SMEs. Under the Scheme, the Government will guarantee 50 per cent of new loans issued by eligible lenders.
- The RBA's $90 billion term funding facility for ADIs with a priority for SME lending.

NEW WORKING FROM HOME SHORTCUT

The Australian Taxation Office (ATO) is announcing special arrangements this year due to COVID-19 to make it easier for people to claim deductions for working from home.

The new arrangement will allow people to claim a rate of 80 cents per hour for all their running expenses, rather than needing to calculate costs for specific running expenses.

Multiple people living in the same house can claim this new rate. For example, a couple living together could each individually claim the 80 cents per hour rate. The requirement to have a dedicated work from home area has also been removed.

This new shortcut arrangement does not prohibit people from making a working from home claim under existing arrangements, where you calculate all or part of your running expenses.

Claims for working from home expenses prior to 1 March 2020 cannot be calculated using the shortcut method and must use the pre-existing working from home approach and requirements.

The ATO will review the special arrangement for the next financial year as the COVID-19 situation progresses.

Example

Bianca is an employee who works as a copy writer and editor. Bianca starts working from home on 16 March because of COVID-19 and replaces her face-to-face meetings with online video conferencing.

Bianca has just bought a new laptop, desk, chair, and stationery. She also wants to claim some additional gas, electricity, phone, and internet costs due to working from home.

Under the shortcut method, Bianca can now claim all her expenses under a rate of 80 cents per hour. All she needs is her timesheets.

Bianca can also decide to claim using existing working from home calculations. Under that method, Bianca can claim the desk, chair, gas and electricity under the 52 cents per hour, but would need to work out the decline in value of the laptop, and calculate the work-related portion of the laptop, stationery, phone and internet.

Working from home claims for 1 March to 30 June

There are three ways that you can choose to calculate your additional running expenses for the 1 March – 30 June period:

- claim a rate of 80 cents per work hour for all additional running expenses.
- claim a rate of 52 cents per work hour for heating, cooling, lighting, cleaning and the decline in value of office furniture, plus calculate the work-related portion of your phone and internet expenses, computer consumables, stationery and the decline in value of a computer, laptop or similar device
- claim the actual work-related portion of all your running expenses, which you need to calculate on a reasonable basis.

The ATO reminds us that the three golden rules for deductions still apply. Taxpayers must have spent the money themselves and not have been reimbursed, the claim must be directly related to earning income, and there must be a record to substantiate the claim.

Working from home before 1 March 2020

Claims for working from home expenses prior to 1 March 2020 should be calculated using the existing approaches and are subject to the existing requirements.

JOBKEEPER PAYMENT – THE LATEST DEVELOPMENTS

The government has introduced a $130 billion JobKeeper Payment scheme to support businesses significantly affected by the coronavirus to help keep more Australians in jobs.

The JobKeeper payment is open to eligible employers to enable them to pay their eligible employee's salary or wages of at least $1,500 (before tax) per fortnight.

Eligible employers will be reimbursed a fixed amount of $1,500 per fortnight per each eligible employee.

Employers will need to pay eligible employees a minimum of $1,500 (before tax) per fortnight to claim the JobKeeper payment. This will be paid to the employer in arrears each month by the ATO. The first payment to eligible employers commenced in the first week of May 2020. JobKeeper payments can be made for the period beginning 30 March 2020.

If employers do not continue to pay their employees for each pay period, they will cease to qualify for the JobKeeper payment.

To be eligible for the JobKeeper payment, employers and their employees must meet a range of criteria.

ELIGIBLE EMPLOYERS

Employers will be eligible for the JobKeeper payment if all the following apply:

- On 1 March 2020, you carried on a business in Australia or were a not-for-profit organisation that pursued your objectives principally in Australia.
- You employed at least on eligible employee on 1 March 2020.
- Your eligible employees are currently employed by your business for the fortnights you claim for (including those who are stood down or re-hired)
- Your business has faced a
  - 30% fall in turnover (for an aggregated turnover of $1 billion or less)
  - 50% fall in turnover (for an aggregated turnover of more than $1 billion) or,
  - 15% fall in turnover (for ACNC-registered charities other than universities and schools)
- Your business is not in one of the ineligible categories.

You should note that the turnover calculated is based on GST turnover, but there are some modifications, including disregarding GST grouping where two or more associated businesses entities operate as a single GST group. The ATO intends to provide further information soon about applying the turnover test.

You will be able to enrol in the JobKeeper scheme from 20 April 2020 using an online form on the ATO's website. Many of you have already registered your interest. After you enrol, you will later identify your specific eligible employees and submit the information to the ATO.

If you have registered with the ATO for an update on the JobKeeper Payment, you will soon receive a notification from the ATO when the online enrolment is available.

Aggregated Turnover

Your aggregated turnover broadly includes your annual turnover, plus the annual turnover of all the entities that you are connected or affiliated with you, subject to specific adjustments (for example, for transactions between you and those other entities). These connected entities or affiliates may be based in Australia or overseas.

Ineligible Employers

An employer is not eligible for the JobKeeper payment if:

- The Major Bank Levy was imposed on the entity or a member of its consolidated group for any quarter before 1 March 2020
- The entity is an Australian government agency (within the meaning of the Income Tax Assessment Act 1997)
- The entity is a local governing body
- The entity is wholly owned by an Australian government agency or local governing body
- The entity is a sovereign entity
- The entity is a company in liquidation
- The entity is an individual who has entered bankruptcy.

Sole Traders

Sole traders can be eligible for the JobKeeper payment if their business has experienced a downturn according to the eligibility criteria. More information will be forthcoming about the eligibility of sole traders for the JobKeeper payment.

Business Owners Actively Engaged in Their Business

Other businesses in form of a company, trust or partnership can also qualify for JobKeeper payments where a business owner (a shareholder, adult beneficiary or partner) is actively engaged in the business, or a director is actively engaged in the business. This is limited to one entitlement for each entity even if there are multiple business owners or participants. The ATO will provide more information soon about the eligibility of these businesses for the JobKeeper payment.

How to Determine A Fall in Turnover

You only need to satisfy the requirement once – you do not need to retest turnover each month.

At the time you enrol in the JobKeeper payment scheme, you need to confirm that your business in a relevant period has had, or is likely to have a:

- 30% fall in turnover (for an aggregated turnover of $1 billion or less)
- 50% fall in turnover (for an aggregated turnover of more than $1 billion); or
- 15% fall in turnover (for ACNC-registered charities other than universities and schools)

How to calculate a fall in turnover for the first fortnight starting 30 March 2020

To work out your fall in turnover, you can compare either:

- GST turnover for March 2020 with GST turnover for March 2019
- Projected GST turnover for April 2020 with GST turnover for April 2019
- Projected GST turnover for the quarter starting April 2020 with GST turnover for the quarter starting April 2019.

How you choose to project your fall in turnover is not dependent on whether you report a quarterly or monthly BAS, though you can do that if it is easier. The turnover calculation is based on GST turnover, but there are some modifications, including disregarding GST grouping (where two or more associated business entities operate as a single GST group). The ATO will provide more information soon about applying the turnover test.

If you work out that you qualify for the JobKeeper payments for the first fortnight because your turnover has declined by the relevant amount, you remain eligible and do not need to keep testing turnover in following months. However, you will have ongoing monthly reporting requirements. More information will be provided soon.

The Commissioner of Taxation also has the discretion to set out alternative tests that can establish your eligibility when turnover periods are not appropriately comparable (for example, if your business has been in operation less than a year). The ATO has more information about alternative tests, and its available on their website.

Entities That Are Members of a Larger Group

Where an entity is part of a larger group this may affect how they apply the decline in turnover test to determine whether they are eligible. If the larger group has, or estimates they will have, an aggregated turnover of more than $1 billion for the income year in which the test period occurs or had an aggregated turnover of more than $1 billion for the precious year, the entity will be required to show a 50% decline in turnover to be eligible to receive JobKeeper payments.

Testing the decline in turnover is done on an individual employer entity basis. It only takes into account the turnover of the entity, which is the employer, and no other members of the group.

Not-For-Profit Organisations

Not-for-profit entities (including charities) that meet the turnover tests are eligible to apply for the JobKeeper payment. An ACNC-registered charity, other than universities and schools, only needs to show a decline in turnover of 15% or more. Futher information has been provided to help charities - refer to the ATO website.

When You Have Worked Out You Are an Eligible Employer

After you have worked out you are an eligible employer, you then need to check whether your employee or employees are eligible.

YOUR ELIGIBLE EMPLOYEES

Your employee is eligible under the JobKeeper Payment scheme if they:

- Are employed by you (including those stood down or re-hired)
- Were either a:
  - Permanent full-time or part-time employee at 1 March 2020; or
  - Long-term casual employee (employed on a regular and systematic basis for at least 12 months) as at 1 March 2020 and not a permanent employee of any other employer
- Were at least 16 years of age on 1 March 2020
- Were an Australian resident as at 1 March 2020 within the meaning of the Social Security Act 1991, which requires that they reside in Australia, and are one of an Australian citizen, the holder of a permanent visa, or a Protected Special Category Visa Holder. Your employee can also be an Australian tax resident who is a Special Category (Subclass 444) Visa Holder. Employees who are not permanent residents of Australia must notify you of their visa status to allow you to determine if they are eligible.
- Were not in receipt of any of these payments during the JobKeeper fortnight:
  - Government parental leave or Dad and partner pay
  - A payment in accordance with Australian worker compensation law for an individual's total incapacity for work
- Agree to be nominated by you.

You cannot claim for any employees who:

- Were first employed by you after 1 March 2020, or
- Left your employment before 1 March 2020, or
- Have been, or have agreed to be, nominated by another employer.

Casual employees are not eligible unless they were employed by you on a regular and systematic basis for at least 12 months as at 1 March 2020.

If your employees have multiple employers, they can usually choose which employer they want to nominate through. However, if your employees are long-term casuals and have other permanent employment, they must choose the permanent employer and cannot nominate you. They cannot receive the JobKeeper payment from more than one employer.

Nominating Employees

Before you enrol to receive JobKeeper payments, you need to notify each eligible employee that you intend to nominate them as eligible employees under the JobKeeper scheme.

You must tell those employees that you have nominated them as an eligible employee to claim the JobKeeper payment. They must agree to be nominated by you by completing the JobKeeper employee nomination notice and returning it to you for your records.

The nomination form does not need to be provided to the ATO however employers are required to keep a copy of the completed form as a part of their record keeping obligation under the law.

Employees Who Were Stood Down or On Long Term Leave

Employees who have been stood down from work under the Fair Work Act 2009 without pay may still be eligible employees as long as they were in your employment and met the eligibility criteria on 1 March 2020. You will need to have paid them at least the minimum amount of $1,500 for each fortnight you claim for, to receive the JobKeeper payment.

Employees Who Have Been Terminated

If you terminated an employee after 1 March 2020, you can re-engage them, and they will be eligible if they met the eligibility criteria on 1 March 2020.

If you want to claim the JobKeeper payment for employees you have re-engaged, you will need to:

- Confirm they want to be re-hired and participate in the JobKeeper scheme with you
- Re-engage the employees you want to claim for
- Ask them to complete the JobKeeper employee nomination notice and return it to you. You are required to keep this form as a part of your records keeping obligations under the law
- Start paying them a minimum of $1,500 (before tax) for each fortnight they are employed, and you claim for.

You will only be paid a JobKeeper payment for employees from the fortnight they were re-engaged. You cannot claim retrospectively for employees you re-engaged.

Example

Peta runs a retail business. Due to the effects of COVID-19, Peta decides to stand down her full-time employee, John, on 20 March 2020. Peta meets the reduction in turnover test and decides she wants to receive the JobKeeper payment for John as an eligible employee for the fortnight beginning on 30 March 2020.

Peta needs to confirm that John wishes to participate and obtain a completed form from him. Peta pays him at least $1,500 to be eligible to claim a JobKeeper payment for John in the fortnight.

After You Have Worked Out You and Your Employees Are Eligible

If you meet the eligibility criteria and want to start claiming the JobKeeper payment on behalf of your employees, you need to start paying them at least $1,500 per fortnight (before tax) and continue to pay them for as long as you keep claiming.

PAYING YOUR ELIGIBLE EMPLOYEES

You need to pay your eligible employees at least the minimum amount of $1,500, even if you re-hire them or they earn less than this per fortnight. You cannot pay your employees less than $1,500 per fortnight and keep the difference. You will not be eligible for the JobKeeper payment if you pay your nominated employee less than $1,500 per fortnight.

How to Pay

You need to re-start or continue to pay your eligible employees at least $1,500 a fortnight in line with your existing pay cycle through your existing payroll solution.

When to Pay

You should pay your employees for each JobKeeper fortnight you plan to claim for. The first fortnight is from 30 March – 12 April and each JobKeeper fortnight follows after that.

For the first two fortnights (30 March – 12 April, 13 April – 26 April), the ATO will accept the minimum $1,500 payment for each fortnight has been paid by you even if it has been paid late, provided it is paid by you by the end of April. This means that you can make two fortnightly payments of at least $1,500 per fortnight before the end of April, or a combined payment of at least $3,000 before the end of April.

If you usually pay your employees less frequently than fortnightly, the payment can be allocated between fortnights in a reasonable manner. For example, if you pay your employees on a monthly pay cycle, your employees must have received the monthly equivalent of $1,500 per fortnight.

If your eligible employees change or leave your employment, you need to notify the ATO.

How Much to Pay

You must pay the minimum $1,500 before tax to each eligible employee per fortnight to claim the JobKeeper payment for that fortnight.

If your eligible employees earn less than $1,500 per fortnight before tax, you must pay them at least $1,500 for each fortnight to claim the JobKeeper payment. This is a 'top up' of their salary or wages and will ensure they remain eligible.

You cannot pay your employees less than $1,500 per fortnight and keep the difference. You will not be eligible for the JobKeeper payment if you pay your nominated employee less than $1,500 before tax per fortnight.

If your eligible employees earn more than $1,500 per fortnight, you should continue to pay them their regular salary or wages. However, you will only receive $1,500 for each eligible employee. Any amount you pay above $1,500 per fortnight is not subsidised by the JobKeeper payment.

If an employee has been stood down after 1 March 2020, you can start paying them $1,500 per fortnight to qualify for the JobKeeper payment for that employee.

If an employee ceased working for you after 1 March 2020, you can re-engage them and pay them at least $1,500 per fortnight. You will only be eligible to claim for the fortnights after you re-engaged your employee.

If you usually pay your employees monthly, the payment can be allocated between fortnights in a reasonable manner. For example, if you pay your employees on a four-week pay cycle, your employees must have received at least $3,000 for every four-week period.

Tax Consequences

All JobKeeper payments are assessable income of the business that is eligible to receive the payments. The normal rules for deductibility apply in respect of the amounts your business pays to its employees where those amounts are subsidised by the JobKeeper payment.

The JobKeeper payment is not subject to GST.

Superannuation Guarantee

New rules are being introduced by the government with the intention to not require super guarantee to be paid on additional payments that are made to employees as a result of JobKeeper payments. The ATO issue updates once legislation or regulations are in place.

What You Cannot Do

You cannot claim the JobKeeper payment on behalf of employees who were not paid at least $1,500 before tax during each JobKeeper payment period.

You cannot claim the JobKeeper payment in advance. The JobKeeper payment is a reimbursement from the ATO to an employer in arrears and cannot be paid in advance in any circumstances.

JOBKEEPER PAYMENT – PROTECTING INTEGRITY

This factsheet was issued by the Australian Government.

The JobKeeper Payment and the related programs represent a significant investment to support the Australian economy and people in the face of the Coronavirus crisis. To protect this investment, the framework for the JobKeeper Payment has robust features to ensure integrity and allow swift and effective action to be taken against fraud and other abuse.

Key Features Ensuring Integrity

The JobKeeper Payment contains robust integrity features and draws on the existing regulatory and enforcement infrastructure of the Australian Taxation Office. These integrity features range from the eligibility requirements to specific rules to address contrived schemes and fraud. These requirements are in addition to the existing administrative and civil penalties and criminal offences that apply in the taxation law and general criminal law.

These measures will not affect taxpayers that do the right thing but will allow for swift and effective action to be taken against those that seek to abuse the scheme and obtain more than their entitlements.

Payment in Arrears to Guarantee Full Payment to Workers

The JobKeeper Payment is paid to employers in arrears. This is an important integrity measure. Employers will be reimbursed by the ATO from the first week of May. This gives a short, but important, period for the ATO to establish the appropriate systems, and for employers to complete their applications.

Payment in arrears facilitates the ATO conducting compliance and audit activities to ensure the JobKeeper Payment is passed on to employees, including by utilising existing reporting such as Single Touch Payroll.

Robust Eligibility Rules to Stop Double Payment

An individual can only benefit from one JobKeeper Payment per fortnight. An individual must agree to be nominated as an eligible employee to receive the JobKeeper Payment by that particular employer and confirm that he or she has not agreed to be nominated by any other employer.

An individual that receives support directly because he or she is self-employed can only do so if the individual confirms that he or she has not agreed to be an eligible employee for any employer. To be eligible, a self-employed individual must not be a permanent employee of any other employer.

Making a false statement results in an individual becoming ineligible. Any resulting overpayment may be recovered directly from the individual. Making a false statement also renders the individual liable for criminal and administrative penalties. The ATO will undertake compliance activities designed to identify multiple payments to individuals, including by utilising existing reporting such as Single Touch Payroll reporting.

Appropriate Reporting and Record-Keeping to Verify Compliance

Entities that claim the JobKeeper Payment must provide the Commissioner with information about themselves and their employees. They will also be required to report monthly to the Commissioner to show payments have been made to their employees and provide information on their turnover and other matters relevant to their entitlement and the operation of the JobKeeper Payment. This reporting will be integrated with existing reporting processes such as Single Touch Payroll, where this is possible.

In serious cases, payments can be withheld for a reasonable period if there are serious questions about the information provided by the taxpayer to allow that information to be verified.

Entities are required to retain records to allow any information provided to the Tax Commissioner to be verified for five years after it is provided in relation to a payment.

The ATO will conduct compliance and audit activities to ensure the JobKeeper Payment is passed on to employees, as well as to address attempted fraud and any other abuse of the scheme swiftly and effectively.

Preventing Exploitation by Way of Contrived Schemes

Special rules apply in the payment framework to allow the Tax Commissioner to take action against contrived arrangements relating to the JobKeeper Payment.

Under these rules, if the Commissioner is satisfied that an entity has undertaken a scheme or part of a scheme in order to gain the benefit of the JobKeeper Payment, then the Tax Commissioner may undo the effect of the scheme and recover any overpayments.

Such a scheme does not need to be criminal — the rules allow the Commissioner to deny the effect of any arrangement undertaken just to increase the payment an entity could receive. This ensures any attempt to abuse the JobKeeper Payment can be rendered ineffective.

Making Entities Involved in Fraud or False Statements Liable for Their Wrongdoing

The JobKeeper Payment is paid to employers to support the payment of wages to employees. Given the size of the payments there is risk that employees or other entities may seek to obtain benefits fraudulently or improperly.

It would not always be fair for the Commissioner to recover inappropriately obtained payment from employers, who may have acted honestly and have passed on the benefit of the payment. This would also not effectively deter those who have made false statement or engaged in fraud.

To address these cases, the Tax Commissioner may make an entity that has made a false statement or engaged in fraud liable to repay the amount. This liability applies on top of the existing significant criminal or administrative penalties for false statements and fraud. JobKeeper Payment obtained by fraud or misstatement will be recovered from wrongdoers even where the payment has passed through entities not involved in the fraud.

Building on Existing Administrative, Civil, And Criminal Penalties

An entity that does not comply with its obligations in relation to the JobKeeper Payment is also potentially liable for a wider range of significant administrative and criminal sanctions under the tax law and general criminal law, some of which are set out in the table below.

These penalties will not affect entities that act honestly and with reasonable care. However, entities that seek to abuse the scheme, especially those that seek to engage in fraud, will face penalties commensurate with the seriousness of their conduct.

List of key provisions

Provision	Description	Penalty
Section 284-75 in Schedule 1 to the Taxation Administration Act 1953	Administrative penalties for false and misleading statements	A financial penalty of up to 75 per cent of the amount of any overpayment
Section 8C of the Taxation Administration Act 1953	Criminal offence for a failure to comply with requirements under the taxation law	Imprisonment for up to 12 months and a fine of up to 50 penalty units (250 penalty units for corporate entities)
Sections 8K and 8N of the Taxation Administration Act 1953	Criminal offences for making false or misleading statements to taxation officers	Imprisonment for up to 12 months and a fine of up to 50 penalty units (250 penalty units for corporate entities)
Section 135.2 of the Criminal Code	Obtaining financial advantage	Imprisonment for up to 12 months
Section 134.2 of the Criminal Code	Obtaining financial advantage by deception	Imprisonment for up to 10 years
Section 135.4 of the Criminal Code	Conspiracy to defraud	Imprisonment for up to 10 years

BEWARE OF THE MOTOR VEHICLE DEPRECIATION COST LIMIT WHEN CLAIMING INSTANT ASSET WRITE OFF

Amongst the numerous financial and tax initiatives the Government has announced recently in relation to Covid-19, many subscribers are interested in the increase in the instant asset write-off threshold.

Many are keen to establish how this relates to purchases of Motor Vehicles.

Kindly note that not all vehicles can get the full write-off if acquired for $150,000 or below, due the fact that the motor vehicle is defined as a “car” in ITAA 1997. The definition for a “car” exists to determine calculations including FBT, GST and car deduction rules.

Most of us are aware the government has increased the threshold for the instant asset write off from $30,000 to $150,000 and expand access to businesses with an aggregated annual turnover of up to $500 million (up from $50 million).

The extended concession is available for vehicles acquired from 12 March to 30 June 2020 for new or second-hand assets first used or installed ready for use by 30 June 2020.

To automatically qualify for a full deduction up to the new limit of $150,000, the motor vehicle must be outside the definition of “car” which is “a “car” is a motor vehicle designed to carry a load of less than one tonne and fewer than nine passengers”.

From this it is clear a standard car or luxury vehicle, including four-wheel drives, are generally outside this definition. The amount of the write-off is limited to the yearly “car depreciation cost limit” published annually by the ATO. For the financial year ending 30 June 2020 the limit is $57,581. This amount does not include GST.

Example 1 – Four-wheel drive where write-off limited

A manufacturing business purchases a vehicle for $70,000. Although it has some characteristics of a commercial vehicle, it can only carry a load of less than one tonne and 7 passengers. Consequently, it is defined as a “car” at tax law.

The maximum write-off for this vehicle under the instant asset write-off is limited to $57,581, the balance beyond that $12,419 ($70,000 less $57,581) cannot be depreciated under any other depreciation rules.

Example 2 – Ute gets full write-off

A farmer acquires a new utility that is top of the range, costing $70,000. Its’ carrying capacity exceeds one tonne, so it is not a “car” at tax law.

This motor vehicle that is not defined as a “car”, the full $70,000 can be fully written-off as the $70,000 cost falls below the $150,000 threshold.

AUTOMATIC EXCHANGE OF INFORMATION GUIDANCE CRS AND FATCA

This information published by the ATO is only relevant to those of you who have offshore activities and is intended to help you understand your obligations under Australia's participation in Automatic Exchange of Information (AEOI) regimes concerning the automatic exchange of financial account information with foreign jurisdictions.

These regimes are known as the Foreign Account Tax Compliance Act (FATCA) in the case of exchange by Australia with the United States of America (U.S.) and the Common Reporting Standard – CRS or the Standard, as the context requires – in the case of exchange by Australia with other countries that have implemented the Standard.

This guidance explains AEOI obligations from 1 July 2017, the date the CRS started operation in Australia. Unless otherwise noted, the explanations in this guidance cover both FATCA and CRS from 1 July 2017.

There are some variations in terminology between FATCA and CRS. When the context requires, the following CRS terms should be read interchangeably with FATCA terms in this guidance

CRS and FATCA terms:

CRS	FATCA
Reporting Financial Institution (RFI)	Reporting Australian Financial Institution
Non-Reporting Financial Institution	Non-Reporting Australian Financial Institution
Non-Financial Entity (NFE)	Non-Financial Foreign Entity (NFFE)
Reportable Person	Specified U.S. Person
Reportable Account	U.S. Reportable Account

Dollar values stated in the guidance should be read for CRS purposes as referring to either Australian dollars or U.S. dollars according to the election by the relevant RFI, as permitted by Australian law for the CRS. For FATCA, the dollar values refer to U.S. dollars only.

References to calendar year in this guidance should be taken to include, for CRS purposes, the initial reporting period of 1 July 2017 to 31 December 2017.

This guidance provides general help and does not cover all possibilities. If you follow ATO information in this guidance and it turns out to be incorrect, or it is misleading and you make a mistake as a result, the ATO must still apply the law correctly but the ATO will not charge you a penalty.

This guidance material will be updated from time to time. Outlining the guidance in full is beyond the scope of this legislation but is available on https://www.ato.gov.au/General/International-tax-agreements/In-detail/International-arrangements/Automatic-exchange-of-information---CRS-and-FATCA/.

In the recent past the ATO has outlined the extensive exchange of information between tax jurisdictions – people who are not doing the right thing and think because they have earnings offshore…there is no need to declare the earnings in Australia are going to find themselves in serious strife.

PRACTICAL COMPLIANCE GUIDELINE PCG 2020/3

PCG 2020/3 relates to claiming deductions for additional running expenses incurred whilst working from home due to COVID-19.

Date of Effect

This Guideline will apply from 1 March 2020 and will cease to apply on 30 June 2020. If the present situation regarding COVID-19 remains unchanged at 30 June 2020, the date this Guideline will cease to apply may be extended beyond 30 June 2020.

Who This Guideline Applies To?

This Guideline will apply to employees and business owners (taxpayers) who are:

- working from home to fulfil their employment duties or to run their business (working from home) during the period from 1 March 2020 to the date this Guideline ceases to apply, and
- incurring additional running expenses that are deductible under section 8-1 and Division 40 of the Income Tax Assessment Act 1997 (incurring additional running expenses) as a result of working from home.

This Guideline does not apply to employees for any period they are on leave or stood down during the period.

This Guideline also does not apply to business owners if they have ceased trading permanently.

During the period from 1 March 2020 to the date this Guideline ceases to apply, any business owner who now carries on their business from their home or continues to carry on their business at home will be covered under this Guideline.

This Guideline is intended to cover all taxpayers working from home during this period, whether as a result of COVID-19 or not.

First Criterion - Working from Home

Minimal tasks such as occasionally checking email or taking calls while at home will not qualify as working from home. The work must be substantive and directly related to the taxpayer's income-producing activity.

Example 1 – Not Working from Home

Abed's employer has requested staff take leave while the business is suffering a turndown due to COVID-19. Abed takes four weeks annual leave. During that period, he occasionally checks his email to see if there is anything he needs to keep abreast of while he is on leave. His employer also sends him text messages to keep him up to date on changes to the business.

This would not qualify as working from home as Abed is on leave and not actively working; he is just occasionally checking in. As such, Abed cannot rely on this Guideline.

Example 2 – Working from Home

Bianca is a sole trader who works as a copy writer and editor. She usually works out of a shared workspace in the central business district as it is easier to meet with her clients face-to-face. Bianca decides to work from home because of COVID-19 and replaces her face-to-dace meetings with online video conferencing. Bianca continues to operate her business and would meet the criteria for working from home. As such, Bianca can rely on this Guideline to claim her additional running expenses.

Second criterion – incurring additional running expenses

The second criterion requires taxpayers to have incurred additional running expenses as a result of working from home. This means that the employee or business owner must be paying or be liable to pay for additional running expenses that are deductible. In circumstances where a third party is reimbursing the taxpayer for their additional running expenses or incurring the additional running expenses on the taxpayer's behalf, the taxpayer would not meet this criterion.

Incurring additional running expenses may take a number of forms. It may be an increased usage in electricity as more electronic devices are plugged in while working from home, heating and cooling costs incurred during days when taxpayers would not be at home or the purchase of additional office supplies and equipment to use while working home.

An additional running expense may also arise as a consequence of a previously non-deductible private expense now becoming deductible due to a change in the way it is being used. For example, if a home computer had only ever been used for private purposes and is now being used to fulfill employment duties or in running a business, it would be an additional running expense that is incurred.

For the purpose of this Guideline, incurring additional running expenses does not require having a separate or dedicated area of your home set aside for working such as private study, but having a dedicated space makes it easier to show additional running expenses have been incurred. Incurring additional expenses does not meant the taxpayer has to have all the expenses listed in paragraph 26 of this Guideline, just that they have incurred additional running expenses in some of those categories as a result of working from home.

Example 3 - Additional Running Expenses Incurred - Existing Arrangement

Duyen is an employee of an online trading business. Up until the end of February, Duyen spent two days working from home and three days working at the office of her employer. As a result of COVID-19, she starts working from home five days per week from 1 March 2020. For the period from 1 July 2019 to 29 February 2020, Duyen uses the current fixed rate of 52 cents per hour to calculate her additional running expenses including electricity expenses, cleaning expenses and the decline in value and repair of her office furniture. She also calculates her work-related phone and internet expenses using the itemised phone bill for one month on which she has marked her work-related phone calls and the four-week representative diary of internet usage that she kept.

As Duyen is working from home she can rely on this Guideline to claim her additional running expenses for the period from 1 March 2020.

Duyen ends up working from home for five days per week until 30 June 2020 as a result of COVID-19. Rather than continuing to use the current fixed rate and working out the actual expenses she incurred on her phone and internet expenses from 1 March 2020 to 30 June 2020, Duyen decides, for simplicity, to calculate all of her running expenses using the shortcut rate. Duyen uses the timesheets she is required to provide to her employer to calculate the number of hours she works from home in the period from 1 March 2020 to 30 June 2020 and keeps those timesheets as evidence of her claim.

Example 4 - Additional Running Expenses Incurred - Business Owner

Elizabeth runs a small business selling art and framing pictures. She has a store with a workshop to display the art and frames. She also does all her bookkeeping and administrative tasks in the office at the store. As a result of the downturn in people coming into her store due to COVID-19, Elizabeth decides to close her store and continue running her business online from home. As Elizabeth continues to run her business from home due to COVID-19, she can rely on this Guideline to claim her additional running expenses.

The Practical Approach

If a taxpayer meets both of the criteria outlined in paragraph 7 of this Guideline a taxpayer can rely on this Guideline and use the shortcut rate to calculate their additional running expenses for the period they work from home due to COVID-19. However, if a taxpayer would rather claim their actual additional running expenses, they do not have to use the shortcut rate. They can claim their actual expenses and keep all records necessary to substantiate their claim, as per normal record-keeping rules.

Taxpayers can also choose to use the fixed rate of 52 cents per hour for relevant expenses and keep records of other expenses in accordance with PS LA 2001/6, instead of using the shortcut rate.

The Shortcut Rate

The shortcut rate is 80 cents per hour. This rate can be claimed for every hour that is worked at home. The hourly rate covers all additional running expenses, namely:

- electricity (lighting, cooling/heating and electronic items used for work, for example a computer) and gas (heating) expenses
- the decline in value and repair of capital items such as home office furniture and furnishings
- cleaning expenses
- phone expenses including the decline in value of a phone handset
- internet expenses
- computer consumables
- stationery, and
- the decline in value of a computer, laptop, or similar device.

If a taxpayer uses the shortcut rate to claim a deduction for their additional running expenses, they cannot claim a further deduction for any of the expenses listed above.

Record Keeping

If a taxpayer wishes to rely on the shortcut rate to calculate their additional running expenses, they will need to keep a record of the hours they have worked at home. This could be in the form of timesheets, rosters, a diary, or similar document that sets out the hours worked.

Tax Return Description

Taxpayers who:

- rely on this Guideline to use the shortcut rate of 80 cents per hour to calculate their additional home office expenses during the period from 1 March 2020 to the date this Guideline ceases to apply, and
- lodge their tax return through myGov or through a tax agent must include the notation ‘COVID-hourly rate’ next to their deduction for home office expenses in their 2019-20 tax return.

Example 5 - Calculating Additional Running Expenses Using Shortcut Rate

Ephrem is an employee and as a result of COVID-19 he is working from his home office. In order to work from home, Ephrem purchases a computer on 15 March 2020 for $1,299. He intends to use the shortcut rate to claim his additional running expenses.

During the entire period he is working from home as a result of COVID-19, Ephrem notes in the calendar on his computer, when he starts and finishes each day along with a note about any breaks he has and how long those breaks were.

When it comes to lodging his 2019-20 tax return, Ephrem works out that during the period he worked from home as a result of COVID-19, he worked a total of 456 hours.

Ephrem calculates his deduction for the 2019-20 income year for additional running expenses as:

456 hours × 80 cents per hour = $364.80

As Ephrem has claimed his additional running expenses using the shortcut rate, he cannot claim a separate deduction for the decline in value of his computer. Ephrem keeps a record of the calendar entries he has made to demonstrate how he calculated the number of hours he worked from home. Ephrem also keeps the receipts for his computer purchase in case he will need to claim depreciation in future.

When he lodges his 2019-20 tax return using myGov, Ephrem includes the notation ‘COVID-hourly rate’.

UPDATE ON THE IMPLEMENTATION OF THE BANKING, SUPERANNUATION AND FINANCIAL SERVICES ROYAL COMMISSION

On 8.5.2020, the Morrison Government announced a six-month deferral to the implementation of commitments associated with the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry as a result of the significant impacts of the Coronavirus.

The deferral will enable the financial services industry to focus their efforts on planning for the recovery and supporting their customers and their staff during this unprecedented time.

Under the updated timetable, those measures that the Government had indicated would be introduced into the Parliament by 30 June 2020, will now be introduced by December 2020. Similarly, those measures originally scheduled for introduction by December 2020 will now be introduced by 30 June 2021.

In relation to commencement dates contained in Royal Commission related exposure draft legislation issued prior to the Coronavirus pandemic, the Government will also extend these dates by an additional six months.

This announcement today balances the need to implement the recommendations of the Royal Commission with the need to ensure our financial institutions are in a position to devote their resources to responding to the significant challenges posed by the Coronavirus.

The changes will also provide certainty and clarity to all stakeholders about the Government's commitment to implementing the recommendations arising out of the Royal Commission.

Importantly, through their actions since Commissioner Hayne's Final Report was released, the Government has now implemented 24 commitments and has substantially progressed a further 35 through consultation and the preparation of draft legislation.

MAKING IT EASIER FOR BUSINESSES TO OPERATE DURING COVID-19

On 5.5.2020, the Morrison Government provided certainty to companies and boards about how they can meet their legal obligations over the next six months.

The changes will allow companies to convene annual general meetings, and other meetings prescribed under the Corporations Act, entirely online rather than face-to-face. The changes will also give businesses certainty that when company officers sign a document electronically, the document has been validly executed.

These changes will be made under the instrument-making power that has been inserted into the Corporations Act 2001 as part of the response to the Coronavirus crisis.

Under the social distancing measures that are currently in place, it is difficult for shareholders to physically gather with members of the board at annual general meetings.

Under the changes, company boards will be able to:

- provide notice of annual general meetings to shareholders using email
- achieve a quorum with shareholders attending online; and
- hold annual general meetings online.

Meetings must continue to provide shareholders with a reasonable opportunity to participate. As a result, shareholders will be able to put questions to board members online and vote online.

Further changes will also allow company officers to sign a document electronically. Previously, in a number of cases, signatories were required to sign the same physical document. This will ensure that documents are able to be properly executed at a time when ordinary business operations have been disrupted.

These changes will be in effect for six months from 6 May 2020.

DIRECTORS DUTIES IN THE CONTEXT OF COVID-19

This advice has been provided by the Australian Securities & Investments Commission.

The current evolving circumstances surrounding COVID-19 present many challenges to companies, boards, management, and their stakeholders.

In a short space of time, companies will be required to focus on and, most likely, recalibrate aspects of their corporate strategy, risk-management framework, and funding and capital management strategy – among other things.

Given the possible impact of decisions taken during this time on the long-term sustainability of the companies, directors and officers will need to carefully reflect on their fundamental duties to act with due care, skill and diligence and to act in the best interests of the company. This will include reflection on which stakeholders' interests need to be factored into decisions – including employees, investors, and creditors. This continues to be the case in areas where temporary relief has been provided from specific obligations under the law as illustrated below.

Insolvency and 'COVID-19 Safe Harbour' Provisions

On 24 March 2020, the Coronavirus Economic Response Package Omnibus Bill 2020 received Royal Assent. Among other measures, the bill inserted a new section 588GAAA into the Corporations Act 2001 granting temporary relief for financially distressed businesses. From a corporate view, the temporary amendments provide relief for directors from potential personal liability for insolvent trading.

The Explanatory Memorandum states that this relief is provided as a 'new safe harbour from the directors' duty to prevent insolvent trading'. To be able to rely on these measures, the debt incurred must be incurred:

- in the ordinary course of the company's business
- during the six-month period commencing from 25 March 2020 (or a longer period as prescribed by the regulations)
- before any appointment of an administrator or liquidator during the temporary safe harbour application period.

The Explanatory Memorandum to the Bill explains that a director is taken to have incurred a debt in the ordinary course of business if it is necessary to facilitate the continuation of the business during the six-month period commencing on 25 March 2020.

A director wishing to rely on the temporary safe harbour measure 'bears an evidential burden' to prove that the requirements of the temporary safe harbour provisions are met. It may need to be shown that the debt was not effectively incurred before 25 March 2020. If certain conditions are met, the temporary safe harbour relief also extends to a holding company in respect of debts incurred by a subsidiary.

These temporary measures do not replace the existing 'safe harbour' provisions in the Corporations Act but add to them.

Even though temporary relief is provided from the insolvent trading provisions, that relief does not extend to relief from statutory and common law directors duties. These include the duty to act in the best interests of the company as a whole (which can involve directors taking into account the interests of stakeholders beyond shareholders including creditors when the company is in financial distress). These duties also involve the duty to act with care, diligence, and good faith and not to use a director's position or information obtained as a director to gain an advantage or cause detriment to the company.

A recent High Court decision has confirmed that these duties extend beyond those named as directors to officers of the company to those who have the capacity to significantly affect the financial standing of the company.

The response to the COVID-19 pandemic is constantly evolving.

Directors are encouraged to seek advice early from a suitably qualified and independent advisor about the company's financial affairs and the options available to manage the disruption caused by COVID-19. Directors should be wary of approaches by unqualified advisors offering unsolicited assistance in dealing with the challenges COVID-19 presents.

ASIC's Approach to Enforcement

On 23 March 2020, ASIC announced a recalibration of its regulatory priorities to focus on COVID-19 challenges. ASIC will maintain enforcement activities and continue to investigate and take action where the public interest warrants us to do so, against any person or entity that breaks the law.

Whether action is taken depends on the assessment of all relevant circumstances, including what a director or officer could reasonably have foreseen at the time of taking relevant decisions or incurring debts.

bO2 READERS' QUESTIONS AND ANSWERS.......

Question 1

I have a question regarding employee entitlements with a genuine redundancy.

This employee has served 8 years full time and given the genuine redundancy situation we are obliged to pay 8/10 years pro rata long service leave.

What I do not understand is the redundancy payment goes from 14 weeks after 8 years of service, to 12 weeks after 10 years to allow for the fact the employee has received long service entitlements.

This means that if we have to pay pro-rata long service leave, and redundancy based on 8 years, the employee is better off being made redundant after 8 or 9 years than they are after serving 10+.

8 years	9 years	10 years
14 weeks redundancy	16 weeks redundancy	12 weeks redundancy
6.93 weeks long service	7.8 weeks long service	8.67 weeks redundanc
= 20.93 weeks	= 23.8 weeks	= 20.67 weeks

Can you clarify that we do have to pay BOTH the pro rata long service leave AND the redundancy entitlement based on 8 years?

Answer

The answer to the question is Yes you pay redundancy on the 8 years and pay pro rata LSL.

Question 2

Following are the facts of a client's SMSF account.

- they are on an account-based pension for almost ten years,
- their fund has a few properties, (both commercial and residential),
- these properties are rented out and they are managing the properties themselves.

My Questions are:

1. Is this arrangement considered as running a business?
2. Can SMSF in pension phase like this run a business?
3. In general, can a SMSF in pension phase run a business or not?
4. If a SMSF in pension phase can run a business what are the terms and conditions?
5. Is there a link where I can read more about this?

Answer

This would not be considered to be a business – the SMSF has made investments and these are being diligently managed by the Trustees.

Given the SMSF is not running a business, the second question is not a concern.

There is nothing specific in the SISA legislation to say a SMSF cannot run a business.

However, it is highly likely that doing so will contravene the sole purpose test and the investment standards along with the in-house asset rules.

It is for these reasons that expert advisors invariably tell trustees they should not run a business within their SMSF.

The ATO says......

Carrying on a business in a SMSF

Self-managed super funds (SMSFs) are not prohibited from carrying on a business, but the business must be:

- allowed under the trust deed
- operated for the sole purpose of providing retirement benefits for fund members.

The rules governing SMSFs prohibit or limit some activities available to other businesses, such as entering into credit arrangements or having overdrafts. You should get professional advice before carrying on a business through your SMSF.

Sole purpose test

If the trustee of an SMSF carries on a business, the ATO examine the activities closely to ensure the sole purpose test is not breached. Cases that attract ATO attention include those where:

- the trustee employs a family member (the ATO look at things such as, the stated rationale for employing the family member and the salary or wages paid)
- the 'business' is an activity commonly carried out as a hobby or pastime
- the business carried on by the fund has links to associated trading entities
- there are indications the fund's business assets are available for the private use and benefit of the trustee or related parties.

Other regulatory provisions

As a trustee, ensure a business conducted through your SMSF complies with investment rules and restrictions applying to SMSFs.

Your investment strategy – the nature of the business activities and the way they are conducted must be in accordance with the SMSF's investment strategy.

Restrictions on investments – all investments by your SMSF must be made on a commercial 'arm's length' basis. If you do not comply with the investment restrictions, penalties could apply.

Loans and financial assistance – the business activities must not involve:

- selling an SMSF asset for less than its market value to a member or relative of a member
- purchasing an asset for greater than its market value from a member or relative of a member
- acquiring services in excess of what the SMSF requires from a member or relative of a member
- paying an inflated price for services acquired from a member or relative of a member.

Acquiring assets from related parties – purchasing assets (such as plant and equipment) for use in business activities from a member or other related party could contravene the related party acquisition rules.

Borrowing – drawing on a bank overdraft or margin lending account to fund the business activities could contravene the borrowing restrictions. Borrowing money and placing a mortgage on an asset would contravene the borrowing and charge-over assets restrictions.

Arm's length dealings – employing a member, or relative of a member, in the business at a salary higher than an arm's length rate could contravene the arm's length provisions.

Collectables and personal use assets – these types of assets owned by the SMSF cannot be displayed at the business premises.

Question 3

A couple of quick questions please:

- If our customer purchases a piece of equipment above $150k, say its $220k+GST, is this disqualified entirely from the one-off deduction or can $150k/$220k be written off?
- If one of our customers is currently in a tax loss situation or the purchase of equipment puts them in a tax loss situation, will the $150k be of any benefit, can they carry forward the loss?
- Does the customer have to fully pay our company for the equipment to take advantage of the $150k write-off?

Please see my understanding below, is it accurate?

1. The $150,000 write-off, only available for purchases between 12th March and 30th June 2020, means that a customer can purchase equipment up to $150,000 ex GST and claim this amount in one hit, rather than claiming it monthly over the life of the asset.
2. As long as their business has been profitable this financial year and earns over $150,000 (which most will achieve) this means that they will get a refund from this transaction equal to 30% of the ex GST price of the equipment.

3. For example - if they buy a piece of equipment for $100,000 + GST then as long as the business exceeds $100,000 in taxable income for the year, they will get back $30,000 for this transaction.

Answer

The answer to your first question is NO – there is no proportionate deduction for assets costing over $150k under the instant asset write off provisions.

If there is tax loss due to the expenditure, they can carry forward this loss.

However, we draw your attention to the new 15-month investment incentive which applies until 30.6.2021.

This is available to entities with an aggregated turnover of less than $500 million when purchasing eligible depreciating assets which have a business use.

The amount deductible is as follows:

- 50% of the cost (or adjustable value where applicable) of the asset and
- The amount of the usual depreciation deduction on the remaining 50% cost of the asset

For SBEs with small business pools, it is slightly different – for assets that do not qualify for the $150k instant asset write -off, they get a tax deduction of 50% plus 7.5% of the cost of the asset (rather than 15%) meaning in the first year their amount deducted is equal to 57.5%.

Your first statement is correct, and our second statement is broadly correct – I would use the term "potential tax saving" rather than refund as this implies, they directly receive money back on the specific transaction. Also, base rate entities with a turnover of less than $50 million only pay tax at 27.5%.

You may wish to reconsider your third statement on this basis.

Question 4

A client who is a house painter invoiced every client for the cost of labour and materials. He buys the paint and tools e.g. brush, cloth, and other disposables for the job. However, lost or did not keep the receipts/invoices for the purchase of the materials and supplies. In the invoice issued to the clients, specifies that it is for labour and materials.

Will he be able to claim for the cost of materials/supplies without the receipts by using the Gross Profit Method?

Answer

As you would be aware the gross profit method estimates the amount of ending inventory in a reporting period.

In the event the purchases can be identified by way of direct bank or card payment, then applying the gross profit method may have merit.

Depending on the size of the business it may be quite possible for the client to marry specific bank or credit card debits to specific jobs.

You may wish to get him to undertake this exercise.

We would expect there to be very little closing stock in any case as usually the purchases are job specific.

In the event you are dealing with a sole trader or partnership, then you will need to get the client to sign off on the fact he is fully aware of the substantiation provisions.

If the ATO were to strictly apply the substantiation provisions, then the claims may be denied.

In the event he is talking about cash purchases then I would be very cautious about making any claims at all.

You may wish to check if he retained quotes which may specify materials used.

You need to warn your client to be more careful in future – record protection and retention is essential.

Question 5

Could you please clarify what costs are included under NMETO up to 2019 year?

Does it include aged care accommodation costs paid by a resident?

We take it that a person who goes into aged care accommodation who is unable to properly manage but does not have any other underlying medical condition would not qualify to claim the tax offset.

What evidence if any is then required to make the necessary determination. Your further clarification would be appreciated.

Answer

Yes, it does include aged care accommodation costs paid by a resident, as long as that person has a disability and is unable to care for themselves.

People will not be eligible if:

- they have been assessed as requiring level 8 care or
- They have not received an ACAT assessment showing they require either low- or high-level care.

Question 6

The ATO have denied a deduction for payments made to my employees of $300. Not part of their wages.

I also require references to tax law where an employer is required to put on payment summaries all allowances paid to employees.

Answer

The amount of $300 is interesting as this is the threshold for the "minor and infrequent" fringe benefits tax exemption.

The ATO may have accepted that no FBT is payable but then denied you a tax deduction on the basis that this is not expenditure incurred in earning assessable income.

This means that the payment is a gift not an allowance.

An allowance is normally paid in anticipation of an employee having to incur work related expenses and has PAYG deducted.

This differs from a reimbursement which is payment to an employee for a work-related expense they have incurred.

Payment Summaries are becoming obsolete with single touch payroll, but all allowances as outlined above should be declared on single touch payroll.

Refer to section 12-35 of the Taxation Administration Act 1953.

Question 7

I own my Work premises within my Self-managed Superannuation Fund.

I bought it in 2012 for 460K + whatever the stamp duty and other fees amounted to.

I was wondering ....

If I sell it then how do I calculate what amounts I would have to pay in Taxes...

Also, I would like to know if I am able to negotiate a value to pay out the tenant to get them out of the contract/lease so I can sell it. e.g. a pay-out for moving costs and their rent etc... I was thinking that I could use a part of the profit to do that.

Answer

If your SMSF is in pension mode and the premises are part of the assets that fund the pension, then there should not be capital gains tax (CGT) on the sale.

Otherwise CGT in a SMSF is normally payable at 10% providing the asset has been held longer than 12 months - if not then the standard rate of 15% applies.

If you are able to get the tenant to leave by financial inducement, then this is a capital expense which may added to the cost base of the asset to reduce any CGT which would have been otherwise payable.

Question 8

Our SMSF has a corporate trustee and is registered for GST. It derives income from commercial properties leases.

Our new accountant gave us a tax invoice for the preparation of the 2019 tax return for our superfund. The invoice has GST added but he tells us that we cannot claim it. He says it is a special rule with superfunds.

When his invoice relates to advices (not tax return preparation) we can only claim 75% of the GST and forfeit 25%. He will forward the GST to ATO, but we cannot claim it on our BAS.

Can this be correct?

Answer

Your new accountant is correct – these taxation fees are classified as input taxed supplies.

Question 9

My client has a farmland rented out. He reports his rental income less expenses just like a normal rental property.

This year he is converting this farmland into a primary production business. During the year, he received partly a rental income and partly from primary production.

How will he report this in his income tax return? A. Rental Property B. Primary Producer c. Both Rental property and Primary producer.

Another question… He intends to buy a second-hand tractor; can he avail of the current Asset Write-Off introduced by the government?

Answer

Option C as this is factually correct.

Yes, the tractor will be eligible for the instant asset write-off if it is less than $150k.

Question 10

I would like to know the correct formula for calculating LSL for a VIC employee who was full time then changed to casual.

Start date is 22/07/2002.

Request to take LSL 18/08/19 = weeks worked 890.86.

13 Weeks LSL already taken

Per the VIC LSL website employee is entitled to a further 1.8 weeks LSL

As the weekly hours is not 38. We have done the 3 calculations; the preceding 260 weeks is the highest of the 3 calculation options. This came to 29.02 hours per week.

Does this mean that the employees entitlement is either:

a) 1.8 weeks x 29.02 hours/week = 52.236 hours

b) 29.02 hours / week x 890.86 weeks worked = 25,856.45 hours worked

25,856.45 x .0167 hours accrued per hour = 431.80

Less 417.81 hours LSL already taken = 13.99 hours

Answer

This is the formula for calculating Long Service in Victoria.

LSL is calculated as the total number of weeks' employment divided by 60 and multiplied by the ordinary weekly rate of pay at the time the leave is taken, or when the employee ceases employment.

So there formula at A would be correct as it is 890.86/60 = 14.84 weeks LSL due less 13 weeks taken = 1.85 weeks for LSL and his ordinary working week averages out to 29.02 hours he is to be paid 1.85 weeks if terminated or takes 1.85 weeks if still employed.

Question 11

I do payroll and we came across the hot place's clause in the manufacturing award (see below) and I'm just looking for clarification. Our HR person indicated that this used to be called hot works and appeared more specific to industries such as founders and welders however the definition she had previously seen appears to longer be there.

We have a factory in Victoria where the outside temp is regularly over 40 in summer and we usually start work early to avoid some of the heat however we would likely go over the 46 degrees (we have large oven running constantly) despite having cooling in the factory.

The award indicates temperature rises by artificial means does that mean if the outside temp is over 46 and the inside temp the same we would not have to worry but if it was 45 outside and 47inside we would have to pay this? Or have I misinterpreted the award and it applies only to certain industries?

d) Hot places

(i) An employee who works for more than one hour in the shade in places where the temperature is raised by artificial means must be paid:

Temperature	Amount of the standard rate
Between 46 and 54 degrees Celsius	2.9% per hour extra
In excess of 54 degrees Celsius	3.8% per hour extra

Answer

The interpretation is correct, but it applies to all industries covered by the manufacturing award.

Question 12

We are looking for some advice around partial change of ownership.

Currently our organisation has two sites one in Victoria and one in QLD. One of the directors has chosen to sell out to the remaining director. The ownership was 2/3 -1/3 the Director selling out had 1/3.

We have some staffing concerns and wondered with the change in ownership what is legal and possible to do regarding reducing staffing and or pay rates.

We employ staff in two key areas:
Administration and Production

1. If the decision is made to have staff reapply under new ownership do both sites have to participate or can this be applied to only one site or is it possible to only have Admin re apply for jobs or does production staff also need to apply.
2. If staff are asked to reapply for their positions do all entitlements need to be paid out instantly or is it possible to state that if they are successful their existing leave entitlements will remain the same and only pay them out if they are unsuccessful?
3. Are we required to advertise externally?
4. Are we able to advertise externally? Can we advertise externally for some positions and not others?
5. We have a person in Victoria who oversaw the Vic site and now oversees Logistics and Sales. (With the addition of National Production Manager Position who has also taken on the role of Vic Site Manager.)

Are we able to adjust the pay rate of the person now working in sales / logistics due to the decreased responsibilities with the change of Ownership?

Can you please advise on the best way to proceed to manage this change and what we can legal do?

Answer

The change in company structure does not allow any of the process below to be done.

If there is a genuine change to roles, then consultation needs to occur, and the redundancy process properly followed.

All internal staff must be given suitable alternative roles first before you go externally

You can only advertise vacant roles externally after the internal process of consultation and finding suitable alternative work for existing employees

You cannot just adjust a pay rate, you need to consult and discuss the changes to the role and if the role has changed the person may not wish to take less money but take redundancy, the choice is up to the employee.

Question 13

I have a question regarding personal/carers leave.

They want to claim personal/carers leave for taking their father in law to hospital.

His father in law has cancer and is going into surgery. The father in law cannot drive.

My employee will be accompanying his wife on this trip, so my question is if he is accompanying his wife, does it qualify as carers leave?

Or would it be holidays?

Answer

Personal leave is for the primary care giver only and as per the email it seems the wife is the primary care giver to her father and the husband is driving the car then it would be annual leave or time in lieu not Personal/Carers leave.

Question 14

Can you please advise on setting up a Discretionary Family Trust, the following, the business is a Partnership of Husband & Wife at present, with Husband the owner of the Land.

Transferring of Primary Production Land, Plant and Trading Stock - Is there any GST Implications?

Transfer Duty – Is this payable on transfer?

Answer

With such limited information, we can only make general comments.

As there is a change in beneficial ownership, the transfer of the land has stamp duty implications which may be expensive.

There are also potential capital gains tax (CGT) implications but these may be eliminated or reduced by the CGT Small Business Concessions.

Our suggestion would be that a trading trust with a corporate trustee be established to run the farming business.

This should reduce the commercial risk.

An informed decision then needs to be made as to who will be the "at risk" individual as director of the corporate trustee.

As the husband is the owner of the land, consideration could be given to making the wife or another family member the director.

Your Notes

Michael's Corner

ARTICLE NO. 05

ARE YOUR CASUAL EMPLOYEES TRUE CASUALS?… IT'S TIME FOR EOFY HR/IR HOUSE KEEPING

If I pay 25% loading to my casuals why may I still be exposed to entitlements (annual leave, personal leave)?

WorkPac Pty Ltd v Rossato [2020] FCAFC 84 (20 May 2020)

In WorkPac Pty Ltd v Rossato on the 20th May 2020 the full bench of the Federal Court essentially redefined what constitutes a casual worker.

Those who have regular rostered shifts will no longer be classified casual, regardless of their employment contracts. It means they will be entitled to annual leave accruement, as well as carer's leave and paid compassionate leave.

Between 28 July 2014 and 9 April 2018, the applicant (WorkPac) employed the respondent (Mr Rossato) and supplied his labour to companies within the Glencore Group. Mr Rossato was employed under six consecutive contracts during this period.

In these proceedings, WorkPac sought declarations that Mr Rossato could not make claims with respect to paid annual leave, personal/carer's leave, and compassionate leave entitlements under the National Employment Standards because he was a casual employee within the meaning of ss 86, 95 and 106 of the Fair Work Act 2009 (Cth) (the FW Act) or, as a casual employee, claim payment for public holidays under s 116 of that Act.
It also sought declarations that Mr Rossato could not claim corresponding entitlements under the applicable enterprise agreement (the 2012 EA) because he was a "Casual Field Team Member" (casual FTM).

The bench made the following comments on what is a casual employee:

The meaning of casual employee as used in the expression "other than casual employees" in s 86 of the FW Act (dealing with entitlements to annual leave), s 95 of the FW Act (dealing with entitlements to personal/carer's leave) and s 106 of the FW Act (dealing with compassionate leave) was not in contest. It was accepted that in Skene, a Full Court of this Court (Tracey, Bromberg and Rangiah JJ) correctly determined that a casual employee is an employee who has no firm advance commitment from her or his employer to continuing and indefinite work according to an agreed pattern of work ("firm advance commitment").

When an employee has a firm advance commitment i.e. an agreed pattern of work which does not have to be regular or systematic, in some employments the periods of working time will be regular, in the sense that the periods of time will be repeating even if not entirely uniform – for instance, 9am to 5pm Monday to Friday or seven day shifts of 12 hours each followed by seven night shifts of 12 hours each (recognisable as a full-time pattern of work) or three hours every Tuesday and Thursday morning (recognisable as a part-time pattern of work).

There is a fundamental difference between regular employment and irregular employment. In terms of periods of working time, regular employment consists of predictable periods of working time and provides substantial certainty that the work will be both available to be performed and will be performed during the designated periods. Irregular work provides neither predictability nor certainty.

You will see that according to many employer groups that the court has allowed double dipping, i.e. casual loading was paid in lieu of the benefits but the full bench stated that WorkPac is not entitled to restitution; and is not entitled to "set off" (in the sense that the expression is used in the present context) the payments it made to Mr Rossato against its present liabilities.

What do I need to do?

You may need to evaluate the true nature of casual employment, the majority of Modern Awards have a casual conversion clause that is either enacted at 6 or 12 months in which they employee may go on to either part time or full time work.

Ensure casual employees are not used with firm advanced commitment, do not roll casual contracts over at the expiration of the first contract, if using fixed term.

Even in these trying business times we need to remember the Fair Work Act 2009; the relevant modern award and the national employment standards still apply.

What is the Government doing to support business?

Minister for industrial Relations Christian Porter said it was “fairly obvious” that the decision would have “immediate practical implications” for businesses’ bottom lines “at a time when so many have taken a huge hit from the Covid-19 pandemic”.

He noted the possibility of an appeal and said the government would consider intervening in the case.

“Given the potential for this decision to further weaken the economy at a time when so many Australians have lost their jobs, it may also be necessary to consider legislative options.”

When we are aware of the government’s firm decision, we will provide an alert to all bO2 members.

EOFY HR/IR House Keeping

It is important to review not only the rates of pay and conditions of award-based employees, but also employees who may be on an employment contract to ensure that the prescribed minimum basic wage is being paid, and their terms and conditions are not falling below the minimum rates or the National Employment Standards (NES).

If your workplace has an Enterprise Agreement, Employee Collective Agreement, and/or Individual Flexibility Agreements, they should be checked to see if there are any clauses which provide for increases in rates, and/or any links to increases in the national system to ensure that the minimum wages and conditions and terms of the agreement/s continue to be met.

Regardless of the conditions contained in these type of workplace agreements, it remains the responsibility of the employer to ensure that the rates contained in workplace agreements are at least equal to the adjusted federal minimum wage.

These reviews should include compliance with the Superannuation Guarantee Charge (SGC, currently at 9.5%) to ensure that the required superannuation payments are being made on behalf of employees, and bonus payments and incentive schemes should also be reviewed for their effectiveness and compliance.

Most employers at this time of the year are focussed on their financial responsibilities, but it can be useful to also examine the profit and loss status of the business, and to evaluate and assess where costs can be reduced, or efficiency improved.

A good place to start is to evaluate how many employees and contractors the business has, and how effective they are in contributing to the output and profit of the business.

Labour management has become more of a financial and planning task to ensure that the right number of staff and contractors are employed, and that they are providing a return to the business which more than offsets their costs.

Please note that this is general advice for information only and any application of legislation and/or Industrial Relations or contractual requirements may require professional advice to suit your individual circumstances.

Want to know more about our HR/IR Smart Guides, Smart ToolPacks, WHSmart Safety Essentials and other business-related online services……… Call bO2 toll-free P 1300 555 533

Any questions for Michaels team send an email to: info@bO2.com.au

Bonus Issue

YEAR END TAX PLANNING TIPS 2019-20

OVERVIEW

The fringe benefits tax (FBT) year ended on 31.3.2020. If you operate through a company or trust, carefully consider whether all FBT matters have been attended to and whether and FBT return needs to be lodged. The most common fringe benefit supplied to staff is a motor vehicle benefit. In a small business audit, the two main areas of ATO focus are fringe benefits and Division 7A loans – see below.

SMALL BUSINESS

Check Eligibility for Small Business Tax Regime

Small businesses (sole traders, partnerships, companies and/or trusts with a turnover of less than $2 million) may be eligible for a range of tax benefits including immediate write off of assets costing less than $150,000, a 27.5 per cent company tax rate, simplified depreciation, capital gains tax concessions and accounting on a cash basis.

In 2017 these measures were extended to business with a turnover of less than $10 million with notable exception of the CGT Small Business Concessions.

Maximise Depreciation Deductions

From 12.3.2020 to 30.6.2020, small businesses can get an immediate tax deduction for nearly all individual assets purchased costing less than $150,000, to the extent such assets are used for an income producing purpose and is installed ready for use by the end of the financial year.

This measure expires on 30 June 2021.

For businesses registered for GST, the $150,000 threshold is calculated on a GST-exclusive basis, but for businesses not registered for GST, the threshold is calculated on a GST-inclusive basis.

Review Salary Sacrifice Arrangements

Employees can consider salary sacrifice arrangements under which their gross salary may be foregone to obtain either a packaged car for fringe benefits tax (FBT) purposes, or they can make additional superannuation contributions.

We note that the option for employees to make tax deductible contributions themselves became law on 29.11.2016 and took effect from 1.7.2017.

Make Trust Resolutions By 30 June

Trustees of discretionary trusts are required to make and document resolutions on how trust income should be distributed to beneficiaries for the 2019-2020 financial year by 30 June.

In the event a valid distribution is not made then a default beneficiary may be assessable. If there are no default beneficiaries, then the trustee will be assessable at the highest marginal rate.

Seeking Professional Advice When Starting A Business

Professional expenses associated with starting a new business, such as legal and accounting fees, are deductible in the year those expenses are incurred rather than deducted over a five-year period as was the case prior to 1.7.2015.

Small Business Restructure Rollover Relief

Since 1.7.2016, small businesses have been able to change the legal structure of their business without incurring any income tax liability when active assets are transferred by one entity to another. This rollover applies to active assets that are CGT assets, trading stock, revenue assets and depreciating assets used or held ready for use, in the course of carrying on a business. Seek professional advice.

Stream Trust Capital Gains and Franked Dividends

Trustees of discretionary trusts may be able to stream capital gains and franked dividends to different beneficiaries if the trust deed allows the trustee to make a beneficiary “specifically entitled” to those amounts, the trustee must document this resolution before 30 June and the beneficiary receives or is entitled to receive an amount equal to the net financial benefit of that gain or dividend.

Private Company Loans

Income tax law can potentially treat a payment or a loan by a private company to a shareholder or an associate as an unfranked deemed dividend unless an exemption applies.

The most common exemption is to enter into a written loan agreement requiring minimum interest and principal repayments over a specified loan term, which may be seven or 25 years depending on whether or not the loan is secured.

Prior to 30 June you should carefully review such debit loans on the company’s balance sheet.

Prevent Deemed Dividends in Respect of Unpaid Trust Distributions

An unpaid distribution owed by a trust to a related private company beneficiary that arises from 1.7.2017 will be treated as a loan by the company, if the trustee and the company are controlled by the same family group. In these circumstances, the associated trust may be taken to have derived a deemed dividend for the amount of the unpaid trust distribution in 2019-2020 and prior.

However, a deemed dividend may be prevented if the unpaid distribution is paid out, or a complying loan agreement is entered into before the company's 2019-2020 income tax return needs to be lodged. Alternatively, a deemed dividend will not arise if the amount is held in an eligible sub-trust arrangement for the solve benefit of the private company, and other conditions are satisfied. These rules are complex and professional advice should be sought.

Write-Off Bad Debts

Businesses can only obtain income tax deductions for bad debts. If the debt still exists at the time it is written off. Thus, if the debt is forgiven or compromised before it is written off as a bad in the accounts no deduction will be available. The debt must also be uncoverable and written off in the accounts as bad prior to 30 June. The bad debt must have been previously brought to account as assessable income or lent in the ordinary course of carrying on a money-lending business.

Year End "Tax Effective" Investment Products

Proceed with caution and make sure you get independent professional advice.

INDIVIDUALS

In general, individual income is derived and deductions are incurred on a receipt's basis. The following suggestions may reduce your current year tax liability.

Prepayment of Deductible Expenses

An individual can claim a deduction for prepaid expenditure for a period not exceeding 12 months. The most common types for prepayment include:

- Income protection insurance
- Interest on investment loans
- Interest on share portfolios
- Investment properties
- Membership and subscriptions
- Investment property expenses
- Corporate Body levies
- Insurance
- Repairs and maintenance
- Rates

Prior to year-end an individual should review the gains and losses on each asset within their investment portfolio. There may be opportunities to:

- Make sure assets have been held greater than 12 months before sale so the 50% discount can be applied to the gross capital gain – remember this is from "contract" to "contract" ...not settlement.
- Realise capital losses to offset any capital gains that were made earlier in the income year.
- Defer realisation of capital gains until July.

Salary Packaging Arrangements

An effective salary sacrifice arrangement will reduce an individual's marginal rate of tax.

The contractual arrangements should be documented or amended before year end as an individual cannot make a retro perspective salary sacrifice arrangement for income already earned. A typical salary sacrifice arrangement may include following components:

- Motor vehicle expense
- Additional superannuation contributions
- School fees

The top marginal tax rate applies on income in excess of $180,000. With the "mark-up" factors, fringe benefits tax effectively applies the top marginal rate regardless of your income. However, for taxpayers not on the top marginal rate it is still possible to take advantage of FBT concessions.

Ongoing Tax Planning Issues

Kindly note, there is no tax deduction from non-concessional contributions.

2020 Contributions Caps from 1 July 2018:

- Concessional contributions (employer contributions) $25,000.
- Non-concessional contributions (personal contributions) $100,000 or 3-year limit of $300,000.
- Again, if you want to contribute more than $100,000 in non-concessional contributions contact your Accountant as this involves a 3-year average and you need to be certain you are eligible.

Salary Sacrifice Bonus into Superannuation

You may be able to optimise your tax position by salary sacrificing any prospective end of year bonus into super. Seek advice to ensure it is tax effective and that the contributions caps are not breached.

Superannuation – Income

Individuals aged over 60 and retired are generally not taxed on any payments from a superannuation fund. Individuals aged between 55 and 60 will generally be taxed concessionally.

Superannuation – Rebate

A rebate up to $540 is available for superannuation contributions made during the 2020 year for your spouse where you spouse's income is less than $37,000 p.a. (this rebate reduces for income amounts up to $40,000 p.a.).

Superannuation – Government Co-Contribution

The maximum co-contribution amount that you received is $500, based on an after-tax contribution of $1,000 (i.e. for every $1 contribution made, the government contributes $0.50). This is reduced by the 3.33 cents for each $1 of income over $38,564 p.a. up to$53,564 p.a. As there are also other qualifying criteria, you should contact your accountant if you wish to access this benefit in 2020.

Eligibility for Super Concessional Contributions

The 2019-20 financial year is the first year when carry forward provisions come into effect, where you can carry forward unused contributions for five consecutive years.

To be eligible, your Total Superannuation Balance (TSB) must be less than $500,000 at 30 June of the previous year. This is assessed at 30 June of the prior year for each year in the rolling five-year period in which you intend to use the unused cap.

This strategy can be used for taxpayers expecting to have higher taxable income in an income year and would like to reduce the tax liability they have to pay, whether it's for work bonuses, large capital gains, retirement payouts or large trust distributions.

Individuals aged 65 to 74 and who meet the work test (and TSB test) will also be eligible to access the catch-up concessional contributions.

Transition to Retirement Income Streams

If you are 55 or older at 30 June 2020, you may be eligible to commence a "Transition to retirement" pension. Benefits may include:

- Receiving pension income while still working.
- Ability to salary sacrifice to superannuation to access lower tax rates; and
- Concessional tax treatment within your super fund.

Note that up to 30.6.2017, the income from assets supporting a transition to retirement income stream was tax exempt. Since 1.7.2017 this exemption no longer applies.

Medicare Levy Surcharge (MLS) and Private Health Insurance Rebate (PHIR)

The thresholds for the imposition of the MLS (If not covered by private hospital insurance) are broadly as follows:

- Singles (no dependants) - $90,000 pa; and
- Families - $180,000 pa (plus $1,500 for each dependant child after the first)

There are a number of income amounts such as reportable fringe benefits, reportable superannuation contributions and investment losses counted in calculating these thresholds.

Further, there is a "tiered" system for calculating MLS in the 2020 income year. The rate of MLS will be between 1% and 1.5% depending on the extent to which income exceeds the relevant thresholds.

In addition, PHIR is also means tested in the 2020 income year under a "tiered" system. The rate of rebate will be between 0% and 30% depending on income levels. This means some taxpayers who have claimed a full 30% rebate from their health insurance provider on their premiums will have an additional liability upon lodgement of their return.

ATO Recovery from Higher Education Loan Program and Trade Support Loan Debt

The Higher Education Loan Program (HELP) and Trade Support Loan (TSL) repayment rules to debtors who reside overseas have been extended by assessing their repayment obligations on their worldwide income. Repayment obligations commenced from 1 July 2017.

Since January 2016, HELP and TSL debtors who are going overseas for more than 6 months were required to register with the ATO. Debtors already living overseas had until 1 July 2017 to register.

ATO Data Matching

The ATO's extensive data matching capabilities is based on information it receives from various sources including banks, share registries, employers, government agencies and via its network of global information exchange agreements.

In terms of focus areas for compliance activities, the ATO continues to closely monitor:

- Claims for work-related expenses that are unusually high relatively close to others across comparable industries and occupations.
- Excessive rental properties expenses.
- Non-commercial rental income received for holiday homes.

- Interest deductions claimed for the private proportions of loans; and
- People who have registered for GST but are not actively carrying on a business.

INCUR EXPENSES BEFORE YEAR END

Expenses that are incurred before year end can reduce taxable income. Consider forthcoming liabilities and the value in incurring them before year end.

If you have rental property, consider whether you are maximising claims for capital works deductions on the property. A report from a quantity survey or suitably qualified specialist will maximise your entitlements.

Pay income protection insurance premiums before year end.

Motor Vehicle Expenses

There are now only two methods which can be used to claim a deduction for motor vehicle expenses.

There are:

- The cents per km method (for up to 5,000 business kilometres travelled); and
- The logbook method (logbook kept over 12 weeks and updated every 5 years).

For the year ended 30 June 2020 the single rate of deduction determined by the Commissioner is 68 cents per kilometre.

Detailed records assist in maximising deductions.

Zone Tax Offset

Since 1 July 2015, the zone tax offset has been limited to those taxpayers whose usual place of residence is within the designated zones. The zone tax offset is a concessional tax offset available to individuals against their income tax liability in recognition of the isolation, extreme climate and high cost of living associated with living in designated zones.

This means “fly-in-fly-out” and “drive-in-drive-out” employees, whose usual place of residence is located outside of the zone, are ineligible to claim the zone tax offset for the 2016 income year and later income years.

Claiming Travel Allowance Deductions

An audit focus by the ATO continues on travel allowance expenses being claimed by individual taxpayers.

If you intend to use the exception for retaining substantiation for these claims the following must apply:

- You must be receiving a bona fide travel allowance from your employer.
- You must be working away from home (on overnight stays) in the course of performing employment duties.
- You must calculate the claim correctly for your salary level and location of work; and
- You must be able to show that you are incurring travel expenses.

OTHER BUSINESS CONSIDERATIONS

Defer Income

- Cash or accruals reporting – recognition of income on a receipt’s basis will generally defer the point of derivation.
- Review service contacts – do the terms of the contract mean income can be recognised periodically when the services are performed?

Bad debts

Write off bad debts in the books of accounts prior to 30 June 2020.

Bonuses

Ensure all bonuses are determined and properly documented before year end.

Depreciation

- Scrap obsolete items of plant and equipment.
- Utilise depreciation pools to their full extent; and
- For SBEs (see above) consider taking advantage of the immediate write-off up to $150,000 for each individual asset acquired after 12.3.2020 until 30.6.2020.

Note that from 12.3.2020, eligibility has been expanded to cover businesses with an aggregated turnover of less than $500 million (up from $50 million).

Trading Stocks

Consider these may be obsolete stock to write off and note closing stock can be valued at year end at the lesser of cost, market value or replacement value.

Generally, an entity must perform a stock take to determine the physical quantity and value of each item at year end.

Prepayment of Expenses

In some circumstances, small businesses (with turnover of less than $10 million) should consider prepaying expenses prior to 30 June 2020. A tax deduction can be brought forward into this financial year for expenses like insurance premiums, subscriptions and memberships, travel, advertising, and interest. A deduction for prepaid expenses will generally be allowed where the payment is made before 30 June 2020 for services to be rendered within a 12-month period.

DISCLAIMER

The information statement and opinions expressed in this publication are only intended as a guide to some of the important considerations to be taken into account relating to taxation matters. Although we believe that the statements are correct, and every effort has been made to ensure that they are correct, they should not be taken to represent taxation advice and you must obtain your own independent taxation advice. Neither the authors, nor the publisher or any people involved in the preparation of this publication give any guarantees about its contents or accept any liability for any loss, damage or other consequences which may arise as a result of any person acting on or using the information and opinions contained in this publication.

Readers seeking taxation advice should obtain their own independent advice and make their own enquiries about the correctness of the information set out in this publication and its accuracy in relation to their own particular circumstances.

Corporate Essentials

Tax Smart Australia

TSA Unit Trust
t/as bo2 Corporate Essentials Pty Ltd

ABN 70 377 440 020
ACN 119 058 310

PO Box 5179
Bundall QLD 4217

T 1300 55 55 33 | P (07) 5574 0555
F (07) 5574 2881 | E info@bo2.com.au

www.bo2.com.au