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TAX OFFICE COMMISSIONER WINS ACCESS TO SECRET TAX DOCUMENTS

In October the Commissioner of Taxation, Chris Jordan won a court case against his own department and employer the ATO to access secret documents protected under the Tax Act that he needs as part of his legal defence to fight a long running defamation battle against a former tax agent.

Mr Jordan had sought the documents to defend the claim brought by Vanda Gould, whose registration to practice was terminated after a Federal Court judgment which found his conduct “disgraceful”.

Mr Gould brought a defamation case against Mr Jordan over remarks made by the Commissioner at the National Press Club in 2017 about Project Wickenby, the now-defunct ATO’s offshore tax avoidance probe which finished on 30.6.2015 when the Serious Financial Crime taskforce was established.

In his speech, Mr Jordan gave the example of “this Hua Wang Bank case” as among those tackled by the project.

“It involved one promoter with over \$350 million we’ve collected,” Mr Jordan said. “They formed this Samoan bank and did all these transactions to hide profits. And you have the principal of that scheme appearing before the House of Reps committee on tax disputes, giving evidence and being cited, saying how difficult and awful ...

“They are actually going to have the gall to appear before an inquiry to say how bad we are in terms of the way we handle disputes. The other side is the court found it was the most disgraceful behaviour

they’ve ever seen involving money-laundering, tax fraud and insider trading of Australian shares.”

Hua Wang Bank was a Samoan company the Federal Court found was controlled by Mr Gould in a judgment later upheld by the High Court.

Currently the defamation case is on hold, but Mr Jordan requested protected ATO information, which the organisation normally keeps secret, to prepare his defence.

The ATO is permitted to release protected information for the purpose of “administering a taxation law”.

However, when Mr Jordan asked the ATO for the documents, there was doubt over whether fighting a defamation case fitted that definition.

As a result, access was refused. Finding in favour of Mr Jordan, Federal Court Justice Richard White, cited the close connection between Mr Jordan’s statements and the tax laws he is charged with enforcing.

As this is still an ongoing proceeding before the Federal Court, both Mr Jordan and the ATO declined to comment on the matter.

ATO REVEALS ALMOST 90% OF INCOME TAX PAID BY SMALL BUSINESS IS PAID VOLUNTARILY

New figures released by the Australian Taxation Office (ATO) estimate that almost 90% of income tax from small businesses is paid voluntarily or with little intervention from the ATO.

The ATO maintains “this shows that the vast majority of small businesses in the tax system are trying to do the right thing”.

The ATO estimates the 2015-16 income tax gap for the small business sector to be approximately 12.5%, or \$11.1 billion, with over \$7 billion (or over 64% of the total value of the gap) being attributed to black economy behaviour.

Small business tax gaps that have been released overseas range from 9% to 30%.

Around 90% of small businesses use a registered tax professional to help them comply with their income tax obligations.

“In addition to seeking qualified advice from a registered tax professional, the ATO has found small businesses who keep good records and have invested in record keeping software are more likely to get their tax right”.

According to Deputy commissioner Deborah Jenkins:

- The ATO found that some small businesses are making mistakes with their tax, but these are often unintentional errors which are easily fixed. The aim is to support these honest small businesses to better understand their obligations and to help them get it right the first time.
- The ATO has a research program that measures tax performance across all market segments. This work helps measure the effectiveness of the tax system. As part of this program, the ATO measures tax gaps – estimates of the difference between the tax collected and the amount that would have been collected if everyone was fully compliant with the law.
- Internationally, tax gaps are difficult to compare, Australia is performing well in terms of small business compliance.
- The ATO’s research shows a small percentage of businesses are deliberately avoiding their tax obligations, but by dollar value this adds up to a significant portion of the gap. This behaviour could be motivated by a desire to avoid tax, limit impacts on welfare payments, or to avoid law enforcement.
- Hiding income, exaggerating expenses and operating outside the system are all considered to be black economy behaviours. Businesses doing the wrong thing are about to attract full ATO attention.

- The Black Economy Taskforce estimates that the black economy costs community as much as \$50 billion, approximately 3% of Gross Domestic Product (GDP).
- The ATO is implementing a number of initiatives to tackle the black economy. Changes like a ban on sales suppression software and a new tipoff line where people can report suspected black economy behaviour to us.”
- The ATO is also expanding their sophisticated data analytical tool that spots red flags indicating omitted income or other black economy conduct.
- The ATO has stepped up enforcement activities, including highly visible mobile strike teams and visited close to 10,000 businesses around the country last year and the plan is to visit another 30,000 over the next three years.

Comment:

Our experience with these strike teams is that they are generally fair and reasonable in their approach, some officers seem to place total faith in their benchmark data, viewing financial outside the parameters as performance evidence of wrongdoing by the taxpayer. Often this can be explained by unique factors and that is why all small business should keep good records.

DPP CRITICISED FOR DELAYS IN TAX CASE

In October Supreme Court Judge Elizabeth Fullerton was highly critical of the Commonwealth Director of Public Prosecutions over the disarray of its case prosecuting a veteran crime journalist for his alleged role in a blackmail conspiracy linked to Australia’s biggest tax fraud sting.

CDPP prosecutor Sam Duggan was told in no uncertain terms the crown case against journalist Steven Barrett was in a state of “disgraceful unpreparedness”. This came after the court was informed that statements by the Australian Federal Police’s chief co-operation witness against the former 60 Minutes producer would no longer be relied on.

Mr. Duggan was asked “Are you serious?” when told official charge documents against Mr Barrett still had not been prepared over 14 months after he was charged and would not be available for another month. Judge Fullerton told the DPP to file within five days.

Mr Barrett was subject to a raid by AFP over more than two years ago as part of their investigations into the \$100 million Plutus tax fraud case.

TAX REFUND STIMULUS MAY NOT BE WORKING

The size of the Morrison government's first round of tax cuts has fallen well short of expectations, as workers shun accountants and fail to make deductions, casting doubt on their impact on Australia's sluggish economy.

It would appear that despite the new low and middle-income tax offset aimed at putting up to \$1080 into the pockets of cash-strapped households, there has only been a modest lift in refunds.

Recent ATO data reveals the average refund sent to more than 6.6 million Australians is now \$2638, just \$250 more than the average refund recorded through the first four months of the 2018-19 financial year.

In the September quarter there was a 13 per cent jump in tax returns lodged with the ATO, with a surge in the number of taxpayers lodging returns themselves in an attempt to get their hands on the low and middle-income tax offset.

While tax returns are up by 1 million over the same period last year, lodgements from accountants are up 5.6 per cent but those through do it yourself myTax – is 25% higher.

Usually 70 per cent of Australians traditionally lodge their tax via an accountant. So far this year however, the tax agent lodgement rate is 61 per cent.

Economic pundits and the Government had tipped the larger tax offset would give a major financial boost to households that would then flow into the retail sector and the broader economy.

With income data (wages, dividends, interest etc) now automatically pre-filled in the ATO software, the task would now appear to be easy. However, this is only one half of the equation. Deductions have to be remembered, catalogued and claimed by taxpayers.

Warnings from the ATO about over-claiming tax deductions were affecting the number of claims being made. The “pop up” warnings on the myTax software also affect the claims being made.

On the other hand, it's not good for the tax system if taxpayers aren't alerted to tax deductions they're entitled to.

TAX EXPERTS WARN ATO'S “NICE GUY” APPROACH TO PAYROLL WON'T LAST FOREVER

Recently data suggests that only half of Australian small businesses have started using digital payroll systems despite it now being a legal requirement, with tax experts warning it's only a matter of time before stronger action is taken against those not on board.

The ATO has indicated that while it will not be issuing penalties for incorrect use of single-touch payroll processes during the first year of the program, it knows which employers are engaging with the system.

Those who are not can expect contact from the ATO.

More than 450,000 Australian employers are now using the system to report payroll and superannuation information at the time they pay it, and the deadline for switching was 30.9.2019.

The program is set to give the ATO and other government agencies a “real time” view of payments and employee income.

Only 383,000 small businesses, or 51 per cent of companies of this size, have come online.

The numbers are lower among companies with between one and four employees, with 43 per cent using the system.

In September the ATO confirmed it would approach 3,500 businesses in October over superannuation payment issues.

The ATO will also be using the system to intervene early on late pay-as-you-go tax payments.

Given the information now available, if we can assist your business in this matter, please contact us.

REPORTING ASSET DISPOSALS FOR CGT

As ATO data-matching capabilities increase they are paying close attention to capital gains made on shares, property and cryptocurrency.

You need to advise your accountant of asset disposals, which can include an asset's sale, loss or

destruction. The type of capital gains tax (CGT) event that applies can affect:

- how a capital gain or loss is calculated
- when it is included in a net capital gain or loss.

Good records will help work out a capital gain or loss correctly on disposal of an asset. Generally, you need to keep records relating to any CGT event, including asset disposals, for at least five years after the year in which the event occurred.

You should also keep records for any net capital losses, which may be offset against capital gains in a later year. Once a loss is offset against a capital gain, you should keep records of the CGT event that resulted in the loss for:

- two years (for individuals and small businesses)
- four years (for other taxpayers).

WORKING OUT IF YOU HAVE TO PAY SUPER

Generally, if you pay an employee \$450 or more (before tax) in a calendar month, you have to pay them super guarantee (SG) on top of their wages.

If your employee is under 18 or is a [private or domestic worker](#), such as a nanny, they must also work for more than 30 hours per week to qualify.

For example, you will have to pay them super on top of their wages for each week that the employee has worked more than 30 hours.

You have to pay super for some [contractors](#), even if they quote an Australian business number (ABN).

Generally independent contractors who are paid for a result will not be included in your obligations.

However, those who primarily offer their labour and cannot delegate their tasks, then work set hours under your control and direction on an hourly rate will be eligible for SG. It can be a “fine line” and the ATO has a decision tree for this on their website.

You pay super regardless of whether the employee:

- is full-time, part-time or casual
- receives a super pension or annuity while still working – including those who qualify for the transition-to-retirement measure

- is a temporary resident, such as a backpacker or a working holiday maker – when they leave Australia, they can claim their super through the *Departing Australia superannuation payment* (DASP) program
- is a company director
- is a family member working in your business – provided they are eligible for SG.

Domestic workers

If you engage someone to do work of a domestic or private nature for 30 hours or more per week and pay them \$450 or more (before tax) in a calendar month, you have to pay super for them.

'Domestic or private' means work relating personally to you (not to a business of yours), or work relating to your home, household affairs or family – such as a nanny, housekeeper or carer.

If you use funds from the National Disability Insurance Scheme (NDIS) to engage a carer or other domestic help, you may have to pay super for them. This only affects people who choose to manage their NDIS plan themselves.

When you don't have to pay super

You don't have to pay super guarantee (SG) for:

- non-resident employees you pay for work they do outside Australia
- some foreign executives who hold certain visas or entry permits
- members of the army, naval or air force reserve for work carried out in that role
- employees who opt out of receiving super if you're covered by an *SG employer shortfall exemption certificate* in relation to the employee for the quarter
- employees temporarily working in Australia who are covered by a bilateral super agreement – you must keep a copy of the employee's certificate of coverage to verify the exemption.

If you're a non-resident employer, you don't have to pay super for resident employees for work they do outside Australia.