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

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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.