bO2 Corporate Essentials

Tax Smart Australia

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Tax Essentials
Superannuation
(Wealth Accumulation Tips)

DECEMBER	2021

THE NEWSLETTER
Tax Planning Opportunities for Everyday Business

MICHAEL'S CORNER
Article 014

Gig Workers Under the Health and Safety Spotlight

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2021 Superannuation - (Wealth Accumulation Tips)

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Contents

The Newsletter

TAX PLANNING OPPORTUNITIES FOR EVERYDAY BUSINESS

DGRS NEED TO REGISTER AS A CHARITY

Tax law has been amended so that from 14 December 2021, all non-government deductible gift recipients (DGRs) will need to register as a charity. This amendment does not apply to ancillary funds or DGRs specifically listed in tax law.

If your DGR is not already a registered charity. You will need to take steps to register with the Australian Charities and Not-for-profits Commission (ACNC).

Transitional arrangements are available to provide you with additional time to meet the new requirements. Check on the ATO website if your organisation is eligible for the following transitional periods:

- a 12-month transitional period to become a registered charity
- an additional three-year extension by application.

The ATO is willing to provide further guidance if you have questions about DGR endorsement, the transitional arrangements or what steps you need to take. You can phone the ATO on 1300 130 248 between 8.00 am and 6.00 pm, Monday to Friday.

MODERNISING BUSINESS REGISTERS

As part of its Digital Business Plan, the government has announced the full implementation of the Modernising Business Registers (MBR) program.

This program will:

- establish the new Australian Business Registry Services (ABRS)
- streamline how you register, view and maintain your business information with the government.

About the MBR program

The MBR program will establish a new and modern registry service, the ABRS.

The ABRS will:

- progressively roll out between 2021 and 2024
- bring together the Australian Business Register (ABR) and more than 30 Australian Securities and Investments Commission (ASIC) registers in one place
- introduce the director identification number (director ID) initiative.

The program aims to:

- make it easier for businesses to meet their registration obligations – giving them more time to focus on their customers and business operations
- make business information more trusted and valuable
- improve the efficiency of registry service transactions.

The ABRS high-level milestones are to:

- establish the foundations for the new registry service
- introduce director identification numbers
- transition the companies register to the new registry service
- transition the business names register to the new registry service
- transition Australian business numbers (ABN) to the new registry service
- transition the professional and historical registers to the new registry service.

What's changing

The new ABRS is now live and has information on the director ID requirement. From November 2021, you can use the ABRS to apply for your director ID.

To find out more, see Director identification number.

As the program rolls out, we'll keep you up-to-date with any changes that may affect you.

What's already changed

On 15 April 2021, ASIC registry staff moved to the ATO in a Machinery of Government (MoG) administrative change to help the Registrar.

This move was a staffing change only. It doesn't change your registry obligations, how you interact with the ASIC registers or the ABR at this time.

What's not changing

Registry data will continue only to be provided to other parties, including other areas of ASIC and the ATO:

- to maintain the registers
- if authorised by law.

The existing requirements for the collection, storage, integration and management of data will be upheld.

For now, how you register, search and get extracts of the registers and interact with the ABR and ASIC remains the same.

There will be a clear separation between registry functions and other functions of the ATO.

Director identification number

Director identification number (director ID) is a unique identifier you need to apply for once and keep forever.

You must apply for your director ID yourself so that your identity can be verified. No one can apply on your behalf.

Your authorised agent can't apply for a director ID for you. They can help you understand the new requirement and if you need to apply, and when.

The director ID application will be available from November 2021 at abrs.gov.au.

To log in to ABRS online, you'll need to use the myGovID app, set it to a Standard or Strong identity strength. If you haven't already, you can set up your myGovID now.

To find out more, see How to set up myGovID.

Administering the MBR program

On 4 April 2021, the Commissioner of Taxation was appointed as Registrar under the following:

- *Business Names Registration Act 2011*
- *Commonwealth Registers Act 2020*
- *Corporations Act 2001*
- *National Consumer Credit Protection Act 2009.*

The Registrar's role is to:

- lead and implement the MBR program
- perform statutory registry functions
- exercise powers under the relevant laws.

Initially, this will also include assisting ASIC in performing statutory registry functions and exercising its powers as a delegate of ASIC. At a later stage, the Registrar will assume primary responsibility for those functions under the law.

The ATO is rolling out the MBR program in partnership with:

- Treasury
- ASIC
- Department of Industry, Science, Energy and Resources
- Digital Transformation Agency.

ATO STATEMENT REGARDING PANDORA PAPERS

The ATO issued a media release on 4.10.2021. They stated they were aware of the International Consortium of Investigative Journalists (ICIJ) reporting they have released data referred to as the 'Pandora Papers'.

ATO Deputy Commissioner and Serious Financial Crime Taskforce (SFCT) Chief Will Day said that the ATO regularly receives information from various sources in their efforts to fight tax evasion and crime.

"While the information in data leaks is interesting, we don't rely on data leaks to do our job. We detect, investigate and deal with offshore tax evasion year-round," Mr Day said.

The ATO will be analysing the information to identify any possible Australian links.

"We are well connected locally and globally in our efforts to fight financial crime. We will certainly look at this data set and compare it with the data we already have to identify any potential connections," Mr Day said.

Mr Day said the ATO has strong international partnerships, treaties and agreements that enable a collaborative approach to identify and address international tax evasion and crime.

The ATO intelligence on tax evasion comes from a variety of sources, including the community, advisers, partner agencies and international bodies. Mr Day said it was important to remember that being included in a data leak doesn't automatically mean that there has been tax evasion or crime.

"There is a range of legitimate reasons that someone may have for an offshore bank account or structure. We know most Australians do the right thing. However, some attempt to hide their ownership interests or financial misdoings through offshore arrangements," Mr Day said.

Mr Day said staff from the ATO and their partner agencies form an impressive intelligence capability that uncovers crime.

"We have some of the best auditors, investigators, analysts and data scientists in the world who work together to sort the good from the bad, ensuring no stone is left unturned," Mr Day said.

"The message is clear for those who try to cheat the system – your secrets are no longer safe, and you can expect to feel serious consequences for your actions. No complicated money trail is too difficult for us to unravel."

"From the very first data leak, we responded quickly through the Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC). JITSIC brings together 42 national tax administrations that have committed to more effective and efficient ways to deal with tax avoidance and evasion."

JITSIC member countries will continue to work together to pool resources and share intelligence to rapidly develop a more accurate picture of what the data is revealing.

This collaboration, coupled with the ATO's work through the Serious Financial Crime Taskforce and the Joint Chiefs of Global Tax Enforcement, means that the ATO will be able to respond to any so-called data leaks decisively.

The ATO encourages those who may have undeclared offshore income to contact them.

WORK-RELATED EXPENSES – ARE YOUR CLAIMS REASONABLE? OR ARE YOU PUTTING YOURSELF IN THE FIRING LINE?

When analysing deductions claimed by taxpayers in particular occupations and locations, the ATO uses a real-time comparison with what they term the taxpayer's 'nearest neighbour'.

From this real-time data comparison with other taxpayers in the same industry and location, the ATO actively prompts the taxpayer in real-time that their claims are out of the normal range, effectively allocating them the opportunity to consider, prior to final confirmation, whether their claim is valid.

When preparing their tax returns using MyTax in 2020, taxpayers were issued around 350,000 prompts, requesting them to check the figures they entered in MyTax. This being due to proposed deductions being significantly different to those of others in similar circumstances.

How did people deal with this warning?

1. Around a third immediately changed their deduction
2. Around a third made no change – this may be valid if they actually incurred the expenses and it related to them earning assessable income
3. **However, the final third progressively reduced their claim for a deduction to see when they dipped below the warning threshold. It really is putting you in the firing line for a tax audit!**

In reality, this may only involve the usual letter questioning the claim and requesting substantiation, but this is not smart. It is akin to saying, "I may not have incurred the expense… but what can I get away with?" It's far better, to be honest!

MJ AND IT PTY LTD v FEDERAL COMMISSIONER OF TAXATION [2021] AATA 3250 CASH FLOW BOOST SCHEME

A company was not entitled to the cash flow boost in respect of an amount paid to its sole director because it entered into a scheme to increase its entitlement to the cash flow boost.

In this AAT case, in agreeing with the ATO, it was held that the taxpayer company, in the final week of March 2020, had entered into a scheme for the sole or dominant purpose of accessing the cash flow boost stimulus measure by recording a single payment to its sole director for the March 2020 period.

Although the AAT accepted the taxpayer's argument that the director had constructively received the payment. But, after following the recording of the expense and the subsequent offset against the director's loan in the accounts, the AAT decided that various steps would not have occurred. Concluding that the March payment would not have happened if the parties were at arm's length or the cash flow boost did not exist.

It followed the taxpayer had the sole or dominant purpose of increasing the amount payable under the cash flow boost.

As a result, the company was only entitled to the cash flow boost in respect of PAYG amounts withheld from amounts paid to arm's-length employees.

PRIVATE COMPANY DIRECTORS: LODGE OR REVIEW YOUR RETURN

If you are a director of a private company and your tax returns aren't up to date, or you didn't report all your income, now is the time to speak to a trusted adviser and lodge a tax return or make a correction.

It is not uncommon in small businesses to clear out company profit to directors fees. While this may deal with company tax, the directors must disclose this income in their individual tax returns for this to be effective. We suspect that some discrepancies have come to light due to single touch payroll.

In fact, by matching data across a range of sources, the ATO has noticed that some directors of private companies received income but haven't lodged a tax return or disclosed all their income.

The ATO has commenced reviews on lodgment and correct reporting for these company directors and their connected entities.

When they find income that has not been disclosed, the ATO will work with taxpayers to get them back on track.

Suppose you make a voluntary disclosure to the ATO. You can generally expect a reduction in the penalties that would normally apply.

PERMANENT CHANGES TO ANNUAL GENERAL MEETINGS AND ELECTRONIC COMMUNICATIONS

On 20.10.2021, the Federal Government introduced into parliament a Bill to modernise the Corporations Act 2001 by permanently allowing companies to use technology to meet regulatory requirements under the legislation.

The Corporations Amendment (Meetings and Documents) Bill 2021 (the Bill) will allow companies and registered schemes to hold virtual meetings, distribute meeting-related materials and validly execute documents. These reforms build on recently renewed temporary relief, which will remain in place until 31 March 2022.

Specifically, the permanent reforms:

- ensure that meetings can be held physically, as a hybrid or, if expressly permitted by the entity's constitution, virtually, provided that members, as a whole, are given reasonable opportunity to participate in the meeting;
- ensure that companies and registered schemes can meet their obligations to send documents in hardcopy or softcopy and give members the flexibility to receive documents in their preferred format; and
- allow documents including deeds to be validly executed in technology-neutral and flexible manners, including by company agents.

These reforms will provide relief to around one million operating businesses and are estimated to deliver deregulatory savings of $450 million each year, averaged over 10 years. They will be reviewed two years after the legislation commences to ensure that they are operating as intended.

Importantly, the Bill ensures that companies can continue to meet their obligations amid the uncertainty of the COVID 19 pandemic.

TAX GAP HIT $34 BILLION JUST BEFORE PANDEMIC

The Commissioner of Taxation annual report for the year ended 30 June 2021 makes for some interesting reading. Almost $34 billion worth of tax was not paid in the year before the pandemic hit (30.6.2019), with a small business tax gap and individuals responsible for most of this.

ATO estimates reveal a 7.3 per cent gap between collected tax and what was expected to be brought in during 2018-19. About $33.5 billion, up by $32 billion from the prior year.

Most of this "tax gap" was attributed to small businesses ($12.5 billion) and individuals ($8.4 billion). A further $2.6 billion was missing from large corporate groups.

As yet, figures are not available for the tax gap during the