client alert | explanatory memorandum

March 2019

CURRENCY:

This issue of **Client Alert** takes into account developments up to and including 15 February 2019.

Single Touch Payroll reporting for small businesses: get ready!

Parliament has now passed legislation – the *Treasury Laws Amendment (2018 Measures No 4) Bill 2018* – to bring in Single Touch Payroll (STP) reporting for all small employers (that is, employers with fewer than 20 employees) from 1 July 2019. STP is a payday reporting arrangement where employers need to send tax and superannuation information to the ATO from their payroll or accounting software each time they pay their employees. For large employers (with 20 or more employees), STP reporting started gradually from 1 July 2018, and until now it has been optional for small employers.

The basics of STP reporting

- Each employer needs to report their employees' tax and super information to the ATO on or before each payday, or authorise a third party such as a registered agent or payroll service provider to report on their behalf. They need to send the information from STP-enabled payroll software.
- When STP reporting is in place, employers no longer need to provide payment summaries to their employees for the payments reported and finalised through STP. Payments not reported through STP, such as employee share scheme (ESS) amounts, still need to be reported on a payment summary.
- Employers no longer need to provide payment summary annual report (PSARs) to the ATO at the end of the financial year for payments reported through STP.
- Employees can view their year-to-date payment information using the ATO's online services, accessible through their myGov account. They can also request a copy of this information from the ATO.
- Employers need to complete a finalisation declaration at the end of each financial year. The information reported through STP will not be tax-ready for employees or their tax agents until the employer makes this declaration.
- Employers need to report employees' superannuation liability information – as usually provided to the employees on their payslips – for the first time through STP. Super funds will then report to the ATO when the employer pays the super amounts to employees' funds.
- From 2020, the ATO will pre-fill activity statement labels W1 and W2 for small to medium withholders with the information reported through STP. Employers that currently lodge an activity statement will continue to do so.

ATO offers support during the transition

ATO Commissioner Chris Gordon has said he wants to "reassure small business and give my personal guarantee that our approach to extending Single Touch Payroll will be flexible, reasonable and pragmatic". The ATO understands that many small businesses and other small employers don't currently use commercial payroll software and "they will not be required to purchase such software to report under STP". The ATO is working with software providers to develop low- and no-cost reporting solutions including simple payroll solutions, portals and mobile apps, and will publish a list of providers at www.ato.gov.au/stpsolutions.

In particular, the ATO understands there will be circumstances where small businesses need more time to implement STP or lodge reports. Small employers can start reporting any time from the 1 July start date to 30 September 2019. The ATO will grant deferrals to any small employer who requests additional time to start STP reporting.

There will be help available for micro employers (with one to four employees) transitioning to STP, and the ATO will offer a number of alternative options – such as allowing those who rely on a registered tax or BAS agent to report quarterly for the first two years, rather than each time payroll is run.

There will be no penalties for mistakes, or missed or late reports, for the first year, and employers experiencing hardship or who are in areas with intermittent or no internet connection will be able to access exemptions.

Source: www.ato.gov.au/Media-centre/Articles/Transition-to-Single-Touch-Payroll-for-small-employers/; www.ato.gov.au/stpsolutions.

Super guarantee compliance: time to take action

The government's latest initiatives targeting non-compliance with superannuation guarantee obligations give businesses plenty to think about. With Single Touch Payroll (STP) on the way for small businesses and a proposed 12-month "amnesty" for disclosing underpayment of contributions, all employers should take time to review their arrangements – both historical and prospective.

The government is getting tough on employers who fail to make compulsory superannuation guarantee (SG) contributions. A host of measures are being implemented, ranging from improved reporting systems through to proposed employer penalties of up to 12 months' imprisonment.

New reporting standard

On 1 July 2018, Single Touch Payroll (STP) reporting became mandatory for employers with 20 or more employees. STP is a real-time electronic reporting system that requires employers to submit payroll information such as salaries, wages, allowances, PAYG withholding and superannuation contributions to the ATO directly through their payroll software (or third-party service provider) at the time they pay their employees.

Importantly for small businesses, the government wants to extend STP reporting to all employers from 1 July 2019. It says that mandatory STP reporting for all businesses, regardless of their size, will improve the ATO's ability to monitor compliance and take action when required.

Although the legislation to implement this measure is still before Parliament, we should assume the changes will proceed and plan early. Businesses should ask their current payroll solution provider what software updates (or new products) are required in order to become STP-compliant.

Small businesses without any current payroll software should not panic. The ATO says that over 30 software providers propose to release a low-cost STP solution (costing less than $10 per month) from early 2019, which may include simple solutions such as mobile apps or portals.

Amnesty for underpayments

The government is proposing a 12-month "amnesty" to allow employers to voluntarily disclose and correct any historical underpayments of SG contributions for any period up to 31 March 2018 without incurring penalties or the usual administration fee ($20 per employee per quarter). This is provided the ATO has not already commenced (or given notice of) a compliance audit of that employer. Additionally, employers will be entitled to claim deductions for the catch-up payments they make under the amnesty. (Under the usual rules, such payments are not deductible.) Employers will, however, still need to pay the usual interest charges.

While these are welcome incentives for employers to make a disclosure, there is one problem: legislation to enable the amnesty is still before Parliament, with the amnesty slated to apply from 24 May 2018 to 23 May 2019. There is no guarantee the legislation will pass, so what does this mean for employers wishing to take advantage of the amnesty?

If an employer discloses now and the amnesty legislation is not passed, the ATO will be required to administer the usual laws. This means catch-up payments will be non-deductible and penalties and administration fees will apply. However, the ATO may view the employer's prompt disclosure favourably when deciding whether to use its discretion to reduce the penalties.

TIP: On the other hand, taking a "wait and see" approach carries considerable risks. The ATO says "employers who do not disclose their SG shortfalls during the amnesty period may face harsher penalties if they are audited in the future". There is also a risk the ATO could commence an audit while the employer waits, particularly if an employee contacts the ATO about outstanding SG contributions owed to them. This would disqualify the employer from the amnesty (if it became law).

Proposed increase for small business instant asset write-off

In a speech on 29 January 2019, Prime Minister Scott Morrison announced the government's intention to increase the instant asset write-off already available for small businesses from $20,000 to $25,000. Mr Morrison also said that the instant write-off, due to revert to $1,000 on 1 July 2019, would be extended by another 12 months to 30 June 2020.

Mr Morrison said these measures are expected to benefit more than three million eligible small businesses (with turnover of up to $10 million a year) to access the expanded accelerated depreciation rules for assets costing less than $25,000. The government's intention is that, from 29 January 2019, small businesses will be able to instantly deduct each and every business asset costing under $25,000.

The government introduced the *Treasury Laws Amendment (Increasing the Instant Asset Write-Off for Small Business Entities) Bill 2019* in Parliament on 13 February to implement the higher $25,000 threshold. At the time of writing, the Bill was still before the House of Representatives.

Labor’s proposal

In contrast, Labor has previously proposed an “investment guarantee” that would provide all businesses with an immediate 20% tax deduction from 1 July 2020 for any new eligible asset worth more than $20,000. Under this measure, the balance of the asset would be depreciated in line with normal depreciation schedules from the first year. Labor’s investment guarantee would be a permanent accelerated depreciation measure so that businesses could continue to take advantage of an immediate 20% tax deduction whenever they made a new investment in an eligible asset.

Source: www.liberal.org.au/latest-news/2019/01/29/stronger-economy-its-about-people; www.chrisbowen.net/media-releases/australian-investment-guarantee-to-deliver-jobs-tax-relief/.

ATO warns about new scams in 2019

The ATO is warning taxpayers to be alert for scammers impersonating the ATO, as they may change tactics in 2019.

Assistant Commissioner Karen Foat says scammers have been developing new ways to get taxpayers’ money and personal information over the summer break. “We are seeing the emergence of a new tactic, where scammers are using an ATO number to send fraudulent SMS messages to taxpayers asking them to click on a link and hand over their personal details in order to obtain a refund”, she said. “Taxpayers should be wary of any phone call, text message or email asking you to provide login, personal or financial information, especially if you weren’t expecting it.”

While the ATO regularly contacts people by phone, email and SMS, there are some tell-tale signs that you’re being contacted by someone who isn’t with the ATO. The ATO will never:

- send you an email or SMS asking you to click on a link to provide login, personal or financial information, or to download a file or open an attachment;
- use aggressive or rude behaviour, or threaten you with arrest, jail or deportation;
- request payment of a debt using iTunes or Google Play cards, pre-paid Visa cards, cryptocurrency or direct credit to a personal bank account; or
- ask you to pay a fee in order to release a refund owed to you.

Source: www.ato.gov.au/Media-centre/Media-releases/New-year,-new-scam/.

ATO refers overdue lodgments to external collection agencies

The ATO has recently started referring taxpayers with overdue lodgment obligations to an external collection agency to obtain lodgments on the ATO’s behalf. External collection agencies will focus on income tax and activity statement lodgments. Referral to an external collection agency doesn’t affect a taxpayer’s credit rating.

If a case is referred to an agency to obtain overdue lodgments, the ATO will notify the taxpayer in writing before phoning them or their authorised contact. Letters issued by an external collection agency will include:

- their company name and contact details; and
- details of lodgment obligations the taxpayer needs to give priority.

After the agency has notified the taxpayer in writing, they will phone the taxpayer (or their authorised contact) to negotiate lodgment of the overdue documents and request payment of any debt. When an agency contacts a taxpayer, they will work with them to reach agreement on how they can lodge and subsequently pay any debt.

The ATO assures taxpayers that when it works with agencies:

- the ATO doesn’t “sell” the lodgment and payment obligations – the lodgment and payment remain due and payable with the ATO; and
- the agencies aren’t paid commissions – they are paid on a fee-for-service basis.

Source: https://www.ato.gov.au/General/Gen/If-you-don-t-lodge/?page=1#External_collection_agencies.

Government consultation on sharing economy reporting

The Federal Government has released a consultation paper seeking views on the possible characteristics of a reporting regime to provide information on Australians who receive an income from sharing economy websites.

As part of the 2018–2019 Federal Budget, the government announced that it would consult stakeholders on how it could implement the Black Economy Taskforce recommendation for a sharing economy reporting regime. The Taskforce heard that as the sharing economy grows, there is an increasing risk that sellers (participants selling goods and services via sharing economy platforms) may not be paying the right amount of tax.

The consultation paper notes that the ATO has limited information about the income of sharing economy sellers. This transparency gap, where many sellers are not familiar with their tax obligations, is “not a desirable outcome”. In Australia’s self-assessment tax system, while education and guidance on tax obligations is important, “the absence of a comprehensive reporting framework for workers poses risks of non-compliance”.

Some of the questions posed in the paper include:

- Do there need to be changes to existing reporting requirements as they relate to sellers in the sharing economy? Is a separate reporting regime required?
- In what circumstances would it be appropriate to require sharing economy platforms to regularly report information about the activities of platform sellers to the ATO?
- Should marketplaces, including those for goods, be included in a reporting regime for the sharing economy?
- Are there reporting regimes or elements of reporting regimes from other countries that should be considered in the Australian context? If so, why?

The Taskforce’s report recommended that a compulsory reporting regime be established. “Operators of designated sharing (“gig”) economy websites should be required to report payments made to their users to the Australian Taxation Office (ATO), Department of Social Services (DSS) and other government agencies as appropriate”, the report said.

A reporting regime like this would require gig platforms like Uber, Airtasker and Menulog to provide sellers’ identification and transaction data in a standard format. The platforms would also need to ensure accuracy of the collected data. This may require infrastructure changes and impose other compliance costs on businesses, and data privacy issues will need to be carefully considered.

Under another option, the paper says an alternative model to requiring reporting by platform operators would be to place a requirement on financial institutions such as banks or payment processors to provide sharing economy platform transaction data to the ATO for data matching and pre-filling purposes. While this option might result in lower compliance costs for sharing economy platforms, costs would be incurred by financial institutions.

Source: https://treasury.gov.au/consultation/c2018-t350194/.

Extra 44,000 taxpayers face Div 293 superannuation tax

An extra 44,000 taxpayers have been hit with the additional 15% Division 293 tax for the first time on their superannuation contributions for 2017–2018.

Individuals with income and super contributions above $250,000 are subject to an additional 15% Div 293 tax on their “low tax contributions” (ie concessional contributions). Concessional contributions include all employer contributions, such as the 9.5% super guarantee (SG) and salary sacrifice contributions, and personal contributions for which a deduction has been claimed.

TIP: Where the Div 293 tax applies, the effective contributions tax is doubled from 15% to 30% for certain concessional contributions (up to the concessional cap).

The maximum Div 293 tax payable is $3,750 ($25,000 x 15%). Despite this extra 15% tax, there is still an effective tax concession of 15% (ie the top marginal rate – excluding the Medicare levy – less 30%) on concessional contributions.

Higher numbers of taxpayers are facing the additional tax because the Div 293 income threshold was reduced to $250,000 for 2017–2018 (it was previously $300,000). This income threshold has a broad tax definition and includes concessional super contributions (up to $25,000). This means that the Div 293 tax can be triggered for taxpayers with incomes below $250,000 (although the additional tax only applies to amounts above the $250,000 threshold).

Taxpayers have the option of paying the Div 293 tax liability using their own money, or by electing to release an amount from an existing super balance (which means completing a Div 293 election form). When someone makes such an election, the ATO will direct their nominated super fund to release the amount to the ATO. Although the election can be made within 60 days using the ATO approved form, taxpayers still need to pay the additional tax by the due date to avoid interest charges.

Negative gearing and many salary packaging arrangements generally will not assist in bringing your income under the $250,000 threshold. However, the following may be useful to know:

- If you expect to exceed the high-income threshold, you may wish to consider scaling back your super contributions to only the mandatory 9.5% super guarantee contributions.

- Reconsider making additional contributions for a financial year if you're also anticipating a large one-off amount of taxable income during an income year. For example, an employment termination payment or a large net capital gain will flow through into your taxable income and may push you above the high-income threshold, triggering the Div 293 tax for that income year.
- Laborhas proposed, if elected in the imminent Federal election, to further reduce the Div 293 income threshold to $200,000 and catch more taxpayers in the Div 293 net.

Source: https://www.ato.gov.au/Tax-professionals/Newsroom/Income-tax/Additional-tax-on-concessional-contributions-(Division-293)-notices/

Company losses "similar business test" Bill passes

The *Treasury Laws Amendment (2017 Enterprise Incentives No 1) Bill 2017* has finally been passed. The tax law changes under this Bill, which was originally introduced on 30 March 2017, will supplement the "same business test" with a "similar business test" for the purposes of working out whether a company's tax losses and net capital losses from previous income years can be used as a tax deduction in a current income year.

As with the same business test, the business continuity test applies to the deductibility of tax losses, capital losses and bad debts. It also is relevant to whether a company joining a consolidated group can transfer its losses to the head company of the consolidated group.

Like the same business test, the focus of the similar business test is on the identity of the business. It is not sufficient for the current business to be of a similar "kind" or "type" to the former business. For example, it is not enough to say that the former business was in the hospitality industry and the current business is also in the hospitality industry. Instead, the test looks at all of the commercial operations and activities of the former business and compares them with all of the commercial operations and activities of the current business to work out if the businesses are "similar".

As with the same business test, whether the current business is similar to the former business is a question of fact. The following four factors must be taken into account when considering the businesses' similarity:

- Same assets used to generate income – the extent to which the assets (including goodwill) used in the current business to generate assessable income were also used in the company's former business to generate assessable income.
- Assessable income from same activities – the extent to which the activities and operations that generate the current business's assessable income were also the activities and operations that generated the former business's assessable income.
- Identity of the business – a close comparison between the identities of the former and the current business.
- Development of former business – the extent to which any changes to the current business result from the development or commercialisation of assets, products, processes, services or marketing or organisational methods of the former business.

The changes will apply to income years starting on or after 1 July 2015. The proposal was previously announced on 7 December 2015 as part of the government's National Innovation and Science Agenda.

Source: https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr5850%22.

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