client alert | explanatory memorandum

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CURRENCY:

This issue of **Client Alert** takes into account developments up to and including 19 February 2021.

Tax implications of having more than one job

With insecure, contract and casual work becoming increasingly common, particularly in the current COVID-19 affected economy, it's no surprise that many young and not-so-young Australians may have income from more than one job. Where your clients are working two or more jobs casually or have overlapping contract work, they may seek your assistance in avoiding an unexpected end of financial year tax debt.

This type of debt usually arises in situations where individuals with more than one job claim the tax-free threshold in relation to multiple employers, resulting in too little tax being withheld overall. To avoid that, you need to help them look carefully at how much they will be making and adjust the PAYG withheld accordingly.

Currently, the tax-free threshold is $18,200, which means that if an employee is an Australian resident for tax purposes, the first $18,200 of their yearly income is not subject to tax. This roughly equates to $350 per week, $700 a fortnight, or $1,517 per month in pay. When an employee starts a job, their employer will give them a tax file number declaration form to complete which will allow them to claim the tax-free threshold on their job income, to reduce the amount of tax withheld from their pay during the year.

A problem arises, of course, when a person has two or more employers paying them a wage, and they claim the tax-free threshold for multiple employers/payers. The total tax withheld from their wages may then not be enough to cover their tax liability at the end of the income year. This also applies to individuals who have a regular part-time job and also receive a taxable pension or government allowance.

The ATO recommends that people who have more than one employer/payer at the same time should only claim the tax-free threshold from the payer who usually pays the highest salary or wage. The other employer/payer(s) will then be required to withhold tax from their payments at a higher rate (the "no tax-free threshold" rate).

If the total tax withheld from all an individual's employers or payers is more than needed to meet their year-end tax liability, the withheld amounts will be credited to the individual when their income tax return is lodged, resulting in a tax refund. However, where the tax withheld does not cover the tax they need to pay, they will have a tax debt and need to make a payment to the ATO.

The only situation in which an individual could comfortably claim the tax-free threshold for more than one employer/payer is if they're certain their total annual income from all payers will be $18,200 or less. If a person decides to claim the tax-free threshold for multiple payers but later realises that their total income will be above $18,200 for the year, they can provide one or more of their employers with a withholding declaration to stop claiming the tax-free threshold on that employer's payments, which may help to ensure that they won't have a large tax bill at the end of the year.

Conversely, if the income from a person's employers/payers was originally expected be more than $18,200 for the year, but a change in circumstances (whether it be the person's own circumstances or factors affecting their employers) means the income will in fact be less than $18,200, the employee can complete and lodge a PAYG withholding variation application to reduce the amount of tax withheld, helping to avoid them being disadvantaged by the higher withholding rates.

Closely held payees: STP options for small employers

Small employers with closely held payees have been exempt from reporting these payees through single touch payroll (STP) for the 2019–2020 and 2020–2021 financial years. However, they must commence from 1 July 2021.

For these purposes, small employers are those with 19 or fewer employees. A closely held payee is an individual who is directly related to the entity from which they receive a payment. For example:

- family members of a family business;
- directors or shareholders of a company; and
- beneficiaries of a trust.

Small employers must continue to report information about all of their other employees (known as “arm's length employees”) via STP on or before each pay day (the statutory due date). Those small employers which only have closely held employees are not required to start STP reporting until 1 July 2021, and there is no requirement to advise the ATO that a small employer only has closely held payees.

The ATO has now released details of the three options that small employers with closely held payees will have for STP reporting purposes from 1 July 2021.

Option 1: report actual payments for each pay event

Small employers can report actual payments to closely held payees through STP on or before the date of payment. In other words, whenever the small employer makes a payment to a closely held payee, they report the information on or before each pay event.

Option 2: report actual payments quarterly

Small employers can choose to report payments to any closely held payees on a quarterly basis. However, such employers must continue to report information about all of their other employees via STP on or before pay day.

This quarterly option does not change the due date for:

- notifying and paying PAYG withholding on activity statements; or
- making super guarantee (SG) contributions for any closely held payees.

Option 3: report a reasonable estimate quarterly

This reporting option allows small employers to report reasonable year-to-date amounts for their closely held payees quarterly. Not unexpectedly, there is more detail surrounding this option.

The ATO will remit any “failure to withhold” penalty a small employer may incur if it:

- reports year-to-date withholding amounts and tax withheld for a closely held payee that is equal to or greater than 25% of the payee’s total gross payments and tax withheld from the previous finalised payment summary annual report (PSAR) across each quarter of the current financial year in its quarterly STP reports; and
- reports and pays the tax withheld on time.

The ATO says it is important that small employers do not underestimate amounts reported for their closely held payees. If a review identifies that a small employer made payments to closely held payees equalling more than 25% of the entity’s total gross payments for the last financial year and did not report this through STP, the entity may:

- be liable for super guarantee charge and have to lodge SG contribution statements (if it did not make sufficient contributions during a quarter);
- not be able to deduct the payment for income tax; and
- be liable for penalties and interest.

Correcting information

Quarterly reporters have until the due date of their next quarterly STP report to correct a closely held payee’s year-to-date information.

If a closely held payee will not be included in a following quarterly STP report, the small employer must either:

- include them in its current quarterly STP report with corrected year to date amounts; or
- lodge an Update event by the relevant due date for quarterly activity statement with the corrected year to date amount for the payee.

Finalisation declarations

Small employers with only closely held payees have up until the due date of the closely held payee’s individual income tax return to make a finalisation declaration for a closely held payee.

Small employers can make a finalisation declaration for a closely held payee at any time during the financial year (eg for closely held payees who have ceased employment). They must make a finalisation declaration for arm’s length employees by 14 July.

Source: www.ato.gov.au/Business/Single-Touch-Payroll/Concessional-reporting/Closely-held-payees/.

ATO data-matching: JobMaker and early access to super

The ATO is kicking into gear in 2021 with another two data-matching programs specifically related to the JobMaker Hiring Credit and early access to superannuation (COVID-19 condition). While the data collected will mostly be used to identify compliance issues and initiate compliance activities in relation to JobMaker and early access to super, it will also be used where applicable to identify compliance issues relating to other COVID-19 economic stimulus measures including JobKeeper and cash flow boosts.

As a refresher, the temporary early access to super measure allowed citizens or permanent residents of Australian or New Zealand to withdraw up to two amounts of $10,000 from their super in order to deal with adverse economic effects caused by the COVID-19 pandemic. The JobMaker Hiring Credit is a payment scheme for businesses that hire additional workers. Both measures require meeting particular eligibility conditions.

In relation to early access to super, the ATO will acquire confirmation from Services Australia (Centrelink) of government payments made to those who applied to access their super early for the period 19 April 2020 to 31 December 2020. The data acquired will include identification details including names, addresses and dates of birth, as well as transaction details including:

- the recipients' payment/benefit type (JobSeeker, Parenting Payment, Youth Allowance, Farm Household Allowance, etc);
- date access granted/claim for benefit made;
- any ceased government payments/benefits and their relevant cessation dates.

For JobMaker, the ATO will acquire data from Services Australia (Centrelink) about income support payments made to additional employees who were nominated by businesses seeking the JobMaker Hiring Credit for the period of 7 October 2020 to 6 October 2021. This is to confirm whether the additional employees satisfy the condition of having received income support payments for at least 28 consecutive days within the 84 days prior to commencing employment between 7 October 2020 to 6 October 2021. The data obtained will include:

- identification details, including names, dates of birth and request and response transaction IDs; and
- transaction details, including indicator of government income support payments received within the applicable period and the type of government support received (JobSeeker, Parenting Payment, Youth Allowance, etc).

To complement both programs, the ATO will also acquire details of incarcerated individuals for the period 1 March 2020 to 6 October 2021 from state and territory correctional facility regulators. The data will include basic identification details as well as dates of incarceration and expected release (if available).

This data will allow the ATO to identify identity theft and/or incorrect or misleading information included in applications for various COVID-19 economic stimulus measures including JobKeeper, JobMaker, temporary early access to super and the cash flow boost.

The ATO expects that data relating to more than three million individuals will be collected for the temporary early access to super program. It is expected that data collected for the JobMaker data-matching program will relate to around 450,000 positions, and approximately 100,000 individuals' data will be collected from the state and territory correctional facility regulators.

While the data collected will primarily be used to undertake verification of application, registration and lodgment obligations as well as identify compliance issues and initiate compliance activities, the ATO will also use it to implement treatment strategies to improve voluntary compliance, and to ensure that the COVID-19 economic response is providing timely support to affected workers, businesses and the broader community.

Source: www.ato.gov.au/General/Gen/COVID-19-economic-response-support---2019-20-to-2021-22-data-matching-program/?anchor=Dataprovidersandusers.

Super transfer balance cap increase from 1 July 2021

The superannuation general transfer balance cap is set to increase on 1 July 2021. This follows the release by the Australian Bureau of Statistics (ABS) of the All groups consumer price index (CPI) index number of 117.2 for the December 2020 quarter, which has triggered the indexation of the general transfer balance cap to $1.7 million (up from $1.6 million since 2017–2018).

General transfer balance cap

The ATO has confirmed that when the general transfer balance cap is indexed to $1.7 million from 1 July 2021, there won't be a single cap that applies to all individuals. Rather, every individual will have their own personal transfer balance cap of between $1.6 million and $1.7 million, depending on their circumstances.

At the time an individual first commences a retirement phase superannuation income stream, the individual's "personal transfer balance cap" is set at the general transfer balance cap for that financial year. Therefore, individuals need to be aware that a decision to start their first ever retirement phase superannuation income stream before 1 July 2021 will activate a personal transfer balance cap and effectively set it at the general transfer balance cap of $1.6 million at that time. If their first income stream is started on or after 1 July 2021, their lifetime personal transfer balance cap will be set at $1.7 million instead.

The ATO says individuals can view all their transfer balance cap information via ATO online services. Before 1 July 2021, ATO online services will display a person's highest ever balance in their transfer balance account. It will also show if the person's personal transfer balance cap will be proportionally indexed. From July 2021, individuals will be able to see their personal transfer balance cap in ATO online services. The ATO says this will be the only place a person can see their personal transfer balance cap if they had a transfer balance account before 1 July 2021.

Proportional indexation of transfer balance cap

If an individual had a transfer balance account before 1 July 2021, but has not used the full amount of their transfer balance cap, their personal cap will be proportionally increased based on the highest ever balance of their transfer balance account. It is calculated by identifying the highest ever balance in the individual's transfer balance account, using that to work out the unused cap percentage of their transfer balance account, and then multiplying the unused cap percentage by $100,000. If a person has already used 100% of their available cap space, their personal transfer balance cap will not be subject to further indexation on 1 July 2021.

Example: proportional indexation

Leanne started an $800,000 retirement phase income stream on 1 October 2017. On 13 May 2019, Leanne commuted $200,000 from her pension. Leanne's transfer balance account was debited by $200,000.

Although the balance of her transfer balance account when indexation occurs is $600,000, the highest ever balance of her transfer balance account is $800,000. Leanne's unused cap percentage is therefore 50% of $1.6 million.

Leanne's personal transfer balance cap will be indexed by 50% of $100,000. Leanne's personal transfer balance cap after indexation on 1 July 2021 is therefore $1.65 million.

Example: no proportional indexation

Simon started a pension valued at $1.6 million on 1 July 2020 and has other assets in super. He commutes his pension in full on 30 June 2021 and gets a debit of $1.6 million in his transfer balance account on that day. The balance of Simon's transfer balance account at the end of the day on 30 June 2021 will be nil.

Simon plans to start a new pension valued at $1.7 million on 1 July 2021 to take advantage of the new indexation balance cap. As Simon isn't entitled to proportional indexation of his personal transfer balance cap, it will remain at $1.6 million. If Simon starts a new pension valued at $1.7 million, the ATO says he will have an excess transfer balance that he will need to commute. He will also have to pay excess transfer balance tax.

Defined benefit income cap

The indexation of the general transfer balance cap also means that the "defined benefit income cap" will increase from $100,000 per annum to $106,250 per annum from 1 July 2021 (being the general transfer balance cap divided by 16). Certain amounts of capped defined benefit income stream payments above the defined benefit income cap for a financial year are included in the recipient's assessable income and subject to additional income tax.

Non-concessional contributions

The "total superannuation balance" threshold for making non-concessional contributions will also increase from $1.6 million to $1.7 million from 2021–2022. This means that individuals with a total superannuation balance of $1.7 million or more on 30 June 2021 will have a non-concessional cap of nil from 1 July 2021. The total superannuation balance limit also determines if an individual is entitled to use the non-concessional bring forward arrangements. When the general transfer balance cap is indexed on 1 July 2021, individuals with a total superannuation balance of $1.7 million or more on 30 June 2021 won't be eligible for the bring-forward arrangements from 1 July 2021.

The increase in the general transfer balance cap to $1.7 million from 1 July 2021 will also increase the total superannuation balance limit for the purposes of claiming a co-contribution or spouse contribution tax offset.

Source: www.ato.gov.au/Individuals/Super/In-detail/Withdrawing-and-using-your-super/Indexation-of-Transfer-balance-cap/.

Your Future, Your Super legislative changes

The *Treasury Laws Amendment (Your Future, Your Super) Bill 2021* was introduced into the House of Representatives on 17 February 2021 to implement some of the measures announced in the 2020–2021 Federal Budget. It also incorporates the Productivity Commission's report *Superannuation: Assessing Efficiency and Competitiveness*.

Treasurer Josh Frydenberg states that the Bill will save $17.9 billion over 10 years by holding underperforming funds to account and strengthening protections around the retirement savings. There are three Schedules to the Bill.

Single default accounts

Schedule 1 to the Bill amends the *Superannuation Guarantee (Administration) Act 1992* (SGAA) to limit the creation of multiple superannuation accounts for employees who do not choose a superannuation fund when they start a new job. It applies in relation to an employee's employment where that employment starts on or after 1 July 2021.

Currently, if an employee does not choose a fund, their employer may comply with the "choice of fund" rules by making contributions on behalf of the employee into the employer's chosen default fund. However, this means that changing jobs can give rise to multiple accounts. Unintended multiple accounts were identified in the Productivity Commission's final report as a structural flaw in the system that erodes members' balances through unnecessary fees and insurance. The same issues were identified through the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

Under the amendments, an employer can comply with the choice of fund rules by making contributions to the existing "stapled" fund of an employee who:

- started their employment on or after 1 July 2021;
- has a stapled fund; and
- has not chosen a fund to receive superannuation contributions.

Additionally, if an employee has a stapled fund and started their employment on or after 1 July 2021, the employer cannot comply with the choice of fund rules relating to contributions made to:

- the default fund chosen by the employer; or
- a fund specified under a workplace determination or an enterprise agreement.

Employers can continue to make contributions of this kind in compliance with the choice of fund rules if the employee does not already have a stapled fund. Similarly, contributions to these funds could be covered by another of the existing choice of fund rules (eg contributions to a fund specified in a workplace determination would comply with the choice of fund rules in relation to an employee who selected that fund in exercising choice).

A fund is the stapled fund for an employee at a particular time if the requirements prescribed by the regulations are met in relation to the fund at that time. These will cover:

- basic requirements that must be satisfied for a fund to be a stapled fund, including the requirement that the fund is an existing fund of the employee;
- tie-breaker rules for selecting a single fund where an employee has multiple existing funds; and
- when a fund ceases to be the stapled fund for an employee.

For employees starting employment on or after 1 July 2021, an employer cannot comply with the choice of fund rule for contributions made to the employer's chosen default fund unless:

- the employer has requested that the ATO identify whether the employee has a stapled fund; and
- the ATO has notified the employer that there is no stapled fund for the employee.

Addressing underperformance in superannuation

Schedule 2 amends the *Superannuation Industry (Supervision) Act 1993* (SIS Act) to require the Australian Prudential Regulation Authority (APRA) to conduct an annual performance test for MySuper products and other products to be specified in regulations. A trustee providing such products will be required to give notice to its beneficiaries who hold a product that has failed the performance test. Where a product fails the performance test in two consecutive years, the trustee is prohibited from accepting new beneficiaries into that product. APRA may lift the prohibition if circumstances specified in the regulations are satisfied.

The amendments made by Sch 2 apply in relation to MySuper products on and after 1 July 2021 and apply in relation to other products specified in the regulations on and after 1 July 2022.

Specifically, the Bill inserts a new Pt 6A into the SIS Act, which will provide that:

- APRA must conduct an annual performance test, each financial year, on "Part 6A products";

- APRA must notify trustees of the superannuation products of the results of the annual performance test;
- trustees of superannuation products that fail the annual performance test must notify beneficiaries who hold the product that it has failed the annual performance test; and
- trustees of superannuation products that fail the annual performance test in two consecutive years are prohibited from accepting new beneficiaries into the superannuation product, unless APRA lifts the prohibition (if circumstances specified in the regulations are satisfied).

The Schedule inserts a definition of “Part 6A product”; that is, a MySuper product or a class of beneficial interest in a regulated superannuation fund, if that class is identified by regulations. For example, this could include “trustee directed products”, where the trustee has control over the design and implementation of the investment strategy.

Best financial interests duty

Schedule 3 contains a number of important changes, which apply from 1 July 2021. It amends the SIS Act to:

- require each trustee of a registrable superannuation entity and each trustee of a self managed superannuation fund (SMSF) to perform the trustee’s duties and exercise the trustee’s powers in the best financial interests of the beneficiaries;
- require each director of the corporate trustee of a registrable superannuation entity to perform the director’s duties and exercise the director’s powers in the best financial interests of the beneficiaries;
- allow regulations to be made that prescribe additional requirements on trustees and directors of trustee companies of registrable superannuation entities where failure to comply with these additional requirements would be a contravention of the best financial interests duty;
- allow regulations to be made to specify that certain payments made by trustees of registrable superannuation entities are prohibited, or prohibited unless certain conditions are met (regardless of whether the payment is considered by a trustee to be in the best financial interests of the beneficiaries);
- reverse the evidential burden of proof for the best financial interests duty so that the onus is on the trustee of a registrable superannuation entity. The reverse onus does not apply to additional best financial interest duty requirements prescribed by regulations; and
- allow contraventions of record keeping obligations specified in regulations to be subject to a strict liability offence to provide regulators with an additional option to respond to compliance issues relating to record-keeping requirements.

Schedule 3 also amends the *Corporations Act 2001* to remove an exemption from disclosing information about certain investments under the “portfolio holdings disclosure” rules.

Source:
https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr6672%22.