

client alert | explanatory memorandum

September 2022

CURRENCY:

This issue of **Client Alert** takes into account developments up to and including 19 August 2022.

Keeping you informed about the Federal Budget

We expect to see formal confirmation from Treasury soon about when the new Australian Government will hand down its Federal Budget for 2022–2023. Tuesday 25 October is likely for this Labor Budget.

The Client Alert team will, as usual, work to bring you a special **Budget Extra** edition that outlines the key announcements to assist you in dealing with your clients' queries. You can expect to receive it by the morning after the Budget is handed down.

Beware of payment redirection scams

The Australian Securities and Investment Commission (ASIC) has warned small and micro businesses to be alert for payment redirection scams. These scams have caused some of the highest losses to businesses in 2021 to the tune of \$13.4 million. This figure is likely much higher as, according to research, a third of scam victims do not report their loss. These scams typically involve scammers impersonating legitimate businesses or their employees and redirecting upcoming payments to a fraudulent bank account.

In some cases, this may involve the actual hacking of legitimate business email accounts to send scam emails. Other methods fraudsters use to carry out payment redirection scams include intercepting legitimate invoices and amending bank details before releasing the email to the unsuspecting business customer, and registering email addresses that are very similar to ones from a legitimate business.

According to the most recent scams activity report from the Australian Competition and Consumer Commission (ACCC), redirection scams came only second to investment scams in terms of financial losses at \$227 million in 2021. This figure includes data from both individuals and businesses. Research also indicates that a third of scam victims do not make any reports, so the true cost of these scams is likely to be much higher.

However, just looking at the business population, payment redirection scams take the top spot as the type of scam that caused the highest losses. Small businesses had the highest median loss (\$3,812 per business) and overall lost a total of \$3.5 million. ACCC data also points to false billing scams, which includes payment redirection reports, as a concern.

Overall, for the 2021 income year, 3,624 reports were received by the ACCC Scamwatch program from businesses. Of the total \$13.4 million lost by businesses, \$7 million can be attributed to micro (0 to 4 staff) and small (5 to 19 staff) businesses.

The most common contact method reported to ACCC for scams was phone or text message, and bank transfers continued to be the most common payment method for scams.

Small businesses should take immediate action if they have inadvertently fallen prey to a scam by contacting their financial institution to see if anything can be done to recover the money, and then reporting the scam to either Scamwatch or the Australian Cyber Security Centre. Financial institutions may be able to find out where the money was sent and block scam accounts. ASIC notes that businesses should also be aware of falling victim to a follow-up scam which may offer to recover your lost money for a fee (ie money recovery scams).

Money recovery scammers will usually target victims of previous scams with the promise of recovering lost money for an up-front payment and/or retrieving detailed personal information. They often contact previous victims uninvited and pose as trusted organisations such as a law firm, the fraud taskforce or a government agency. Some more sophisticated scams will have official-looking websites with fake testimonials.

Once the previous victims are convinced of the follow-up scam's authenticity, the scammers will ask them to fill out false paperwork or provide identity documents, as well as make a payment. In some cases they may also request remote access to computers and smartphones. Another tactic that these money recovery scammers may use is to make contact and attempt to convince a target that they have unknowingly been involved in a scam and are entitled to compensation or a settlement refund.

Source: <https://asic.gov.au/about-asic/news-centre/news-items/asic-warns-small-businesses-to-be-vigilant-about-payment-redirectation-scams/>

www.accc.gov.au/media-release/payment-redirectation-scams-cost-australian-businesses-227-million-last-year

www.scamwatch.gov.au/news-alerts/payment-redirectation-scams-cost-australian-businesses-227-million-last-year

TPAR due soon: is your business ready?

The taxable payments annual report (TPAR) is a report that is required to be lodged every year by businesses that have made payments to contractors for building and construction services, cleaning services, courier services, road freight services, IT services and security, investigation or surveillance services. This information is used by the ATO in data analytics to identify non-compliance with a range of tax obligations and used to pre-fill data to assist contractors to lodge correctly the first time. The TPAR for 2021–2022 is due by 28 August 2022.

Contactors or subcontractors, in the context of TPAR, also include consultants and independent contractors, who can operate in a variety of structures such as sole traders (individuals), companies, partnerships or trusts. Where the contractor has issued a business an invoice that includes both labour and materials, the total amount will need to be included in the business's report.

However, certain payments (such as the following) will not need to be reported in the TPAR:

- payments for materials only;
- payments for incidental labour (ie labour was incidental to the supply of materials);
- unpaid invoices after 30 June each year;
- payments to workers engaged under labour hire or on-fire arrangements;
- PAYG withholding payments;
- payments to foreign residents for work performed in Australia which are subject to PAYG foreign resident withholding (if the payments are not subject to PAYG withholding, they will need to be reported in the TPAR);
- payments to foreign residents for work performed overseas;
- payments to contractors who do not quote an ABN – if an ABN is not provided, the business may be required to withhold an amount from payments and the withheld amount will then need to be reported either on the TPAR or the PAYG payment summary – withholding where ABN not quoted form, not both;
- payments in consolidated groups; and
- payments for private and domestic projects – if you are a homeowner building or renovating your main residence, or a business making payments to contractors for services for private purposes (eg the owner of a cleaning business asking a contractor to clean their main residence).

According to the ATO, around \$11 billion a year goes missing in taxes and the TPAR system is just one of the tools used to identify non-compliance and keep things fair for all businesses. In the previous financial year, around \$350 billion in payments made to 950,000 contractors was reported through the TPAR. This year, the ATO expects more than 270,000 businesses to complete the report.

TPAR information reported is used by the ATO in data analytics to identify non-compliance with a range of tax obligations, such as lodging income tax returns, reporting the correct amount of income, lodging BASs, being registered for GST when required, and using valid ABNs. This information will also flow through to pre-filling information for sole traders with contracting income, making it easier to lodge correctly the first time. Although businesses will have until 28 August to lodge their TPARs, contractors should ensure that the pre-filled information is complete and finalised before lodging, especially in cases where contracting income from a business or in general has not been reported previously.

Source: www.ato.gov.au/Business/Reports-and-returns/Taxable-payments-annual-report/

www.ato.gov.au/General/Online-services/In-detail/Reported-transactions-in-ATO-online/

www.ato.gov.au/general/gen/removing-tax-deductibility-of-non-compliant-payments/

Tax time focus on rental properties

Rental property income and deduction mistakes continue to be one of the main focus areas for the ATO this tax time. Along with the usual emphasis on including all rental income in the tax return, with all the natural disasters Australians have been experiencing the ATO has issued a reminder that insurance pay-outs may also need to be included. On the expenses side, the ATO warns against including interest related to redraw to purchase a private asset, and immediately deducting the cost of capital works or depreciating assets costing more than \$300.

This area of focus for the ATO is no surprise, considering that a recent ATO Random Enquiry Program found that nine out of 10 tax returns that report rental income and deductions contain at least one error.

The ATO warns taxpayers that it receives rental income data from a wide range of sources, including share economy platforms, rental bond authorities of various states, property management software providers and state and territory revenue and land title authorities. This information will then be matched to the information provided by taxpayers on their tax returns, meaning that there is no hiding income from the all-seeing eye of the ATO.

One of the income categories for rental properties that may be important for this year, but that many landlords may not know to include, is insurance payouts. With the La Nina weather event causing flooding along large parts of the country, if you obtained insurance payments in relation to loss of rental income or repairs, that would need to be included.

For those renting out their investment property, their home, or part of their home on a short-term basis on digital sharing platforms such as AirBnB, that income will need to be included, and any expenses will need to be apportioned according to the space rented out. There may also be CGT consequences upon selling the property, so taxpayers will need to be careful.

Joint owners of properties will need to ensure that their income and deductions are in line with the rental property's ownership interest, which generally depends on legal documents at the time of purchase.

As for expenses, the ATO notes that while some expenses such as rental management fees, council rates, repairs, interest on loans, and insurance premiums can be deducted in the year they are incurred, other expenses, such as borrowing costs, capital works and some depreciating assets can only be claimed over a number of years. Capital works include replacing a roof or a new kitchen or bathroom. Depreciating assets such as dishwashers or ovens valued at over \$300 will need to be claimed over their effective life.

In addition, taxpayers should also be aware that if they redraw on a rental property loan for private expenses or to purchase a private asset, the amount of interest relating to the loan for the private expense or asset cannot be claimed as a deduction. There may also be other instances where a deduction in relation to a rental property will be denied, such as when a property is advertised at significantly above reasonable market rate, or where unreasonable restrictions are imposed on potential tenants.

Taxpayers who have sold a property during the 2021–2022 income year will need to be extra cautious, as capital gains is also one of ATO's focus areas for this year. Those that have rented out a part of their property may only be entitled to a partial main residence exemption, depending on the amount of space rented out.

*Source: www.ato.gov.au/Media-centre/Media-releases/Tax-time-focus-on-rental-property-income-and-deductions/
www.ato.gov.au/Tax-professionals/Newsroom/Lodgment-and-payment/Rental-deductions-tips/*

SMSF COVID-19 relief measures have now ceased

The ATO has reminded trustees of self managed superannuation funds (SMSFs) that COVID-19 relief measures that previously applied for the 2019–2020, 2020–2021 and 2021–2022 income years no longer apply from 1 July 2022. The relief measures covered a wide range of areas, including residency requirements, rental reductions and waivers, rental deferrals, in-house assets, loan repayments, limit recourse borrowing arrangements, and related party transactions. According to the ATO, SMSF trustees are now expected to comply with all their obligations under tax and super laws, and breaches should be disclosed.

Prior to 30 June 2022, individuals who became stranded overseas due to COVID-19 which caused them to be out of Australia for more than two years could rely on the SMSF residency relief. This consisted of the

ATO not taking any compliance action to determine whether a particular SMSF met the residency test, provided there were no other changes in the SMSF's circumstances or in the circumstances of a member/trustee.

Since this relief no longer applies, members and trustees of SMSFs who spend an extended period of time overseas may now be affected by the "active member" test and "central management and control" test, respectively. This could cause an SMSF to fail to meet some of the residency conditions to be an Australian super fund for tax purposes, which in turn may see the SMSF lose its complying super fund status and associated tax concessions.

One of the other prominent relief measures provided during the COVID pandemic which has now ended relates to rental relief provided to related parties. The ATO had confirmed that no compliance action would be taken against an SMSF and no auditor contraventions needed to be reported for rental reductions and waivers to related parties provided they were on commercial terms, relief was due to COVID, and that the arrangement was properly documented.

Specific Taxation Determinations were also registered for the 2019–2020, 2020–2021, and 2021–2022 income years to ensure that rental deferral offered by SMSFs or a related party to a tenant would not cause a loan or investment to be an in-house asset of the fund provided certain conditions were met.

Again, now that the rental relief has ended, if an SMSF provides rental reductions or waivers to related parties, it may give rise to a reportable contravention of the super laws. For example, the arrangement may not comply with the sole purpose test and/or arm's length requirements and may also contravene the prohibition on providing financial assistance to a member or a member's relative. In cases where the SMSF or a related party provides a rental deferral, there may now be a real risk that the in-house asset rules may be breached.

Similarly, the relief measures relating to loan repayment relief provided by an SMSF and SMSF LRBA relief will also no longer apply. Therefore, from 1 July 2022, approved SMSF auditors must report contraventions via the auditor/actuary contravention report (ACR), if such a contravention occurs. Before that happens, trustees of SMSFs are encouraged to use the ATO's voluntary disclosure service to report any identified contraventions and plan to rectify the contravention as soon as possible. The ATO notes that any voluntary disclosures will be taken into account when determining what action it will take in relation to the contravention.

Source: www.ato.gov.au/General/COVID-19/Support-for-self-managed-super-funds/

Thinking of ditching your SMSF?

Are you having doubts about using a self managed superannuation fund (an SMSF) for your retirement? Whatever your age, if recent market conditions, cost or the amount of administration involved are getting to be too much and you would like to wind up the SMSF, there are several steps involved. Even if you are happy with your SMSF, it may be prudent to ensure that there are no impediments to winding up if something unforeseen happens. An exit plan should be in place as a matter of course.

Winding up an SMSF is not a simple process and requires the trustee to understand the terms set out in the trust deed, dispose of the fund's assets and finalise compliance obligations, among other things. In some complex cases it may be prudent to seek professional advice.

For most SMSFs, the first step in a winding up is to find out what the fund's trust deed requires in that event. For example, the trust deed may require that all the assets of the fund be sold, or all ownership transferred to members. Both call for different courses of action by the trustee and have different costs related to them.

Trustees are then required to organise a meeting to ensure that all trustees agree with the winding up decision. This should be documented in the form of meeting minutes and a record kept. Each trustee should also sign the winding up agreement to avoid any potential future disputes over the decision.

Whether the SMSF's trust deed requires the sale or transfer of assets, the ATO notes that liquidity of assets, including the time required to sell them, and capital gains tax and stamp duty implications should be considered by the trustees. In addition, decisions as to how, when, and how much assets should be sold for should be documented.

Once a sale or transfer has gone through, the trustee should document information such as the buyer or transferee, date, amount and how much the asset was valued at.

The next step in winding up the SMSF is to finalise outstanding tax and compliance obligations, including:

- lodging a transfer balance account report (TBAR) upon ceasing a member income stream (pension);
- issuing various PAYG summary, PAYG withholding payment summary and/or PAYG withholding payment summary annual reports; and
- meeting any PAYG instalment, GST, and BAS obligations.

Final invoices and expenses due to assets sales and outstanding tax liabilities will then need to be paid before the calculation and distribution of member benefits. In instances where a member meets a condition of release, their benefits can either be paid out in cash or rolled over into another complying super fund. Where a condition of release is not met, the member benefit must be rolled over into another complying super fund.

Finally, after member benefits have been distributed, the trustee will need to ensure the SMSF has been audited every year since its establishment and complete one final audit. Once that is complete, the final SMSF annual return can be lodged. The ATO will then confirm through a letter that the SMSF has been wound up, proceed to close the SMSF records on its system, and cancel any associated ABNs.

While loss incurring investments causing the SMSF to be unable to meet ongoing administrative costs could be one of the main driving factors in winding up an SMSF, that is by no means the only factor. Even if you are the trustee of a SMSF with top performing investments, an exit plan should still be a priority. This protects against a multitude of factors such as a change in personal circumstances of trustees (eg failing health or permanent incapacity), disputes between trustees, or where all members have left the SMSF (either through rollover or death).

*Source: www.ato.gov.au/Super/Self-managed-super-funds/Thinking-about-self-managed-super/
www.ato.gov.au/Super/Self-managed-super-funds/Winding-up/*

Thomson Reuters would like to hear from you

Subscribers are invited to submit topics for articles for future publication. Information should be sent to:

Publisher – **Client Alert**

Thomson Reuters (Professional) Australia Limited ABN 64 058 914 668
PO Box 3502, Rozelle NSW 2039

Tel: 1800 074 333

Email: SupportANZ@thomsonreuters.com

Website: www.thomsonreuters.com.au