client alert | explanatory memorandum

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CURRENCY:

This issue of **Client Alert** takes into account developments up to and including 29 November 2023.

ASIC's new alert list offers guidance on suspicious investment "opportunities"

The Australian Securities and Investments Commission (ASIC) has published an investor alert list which may help consumers to identify whether entities they are considering investing with could be fraudulent, unlicensed or running a scam. This new investor alert list replaces the previous list of "companies you should not deal with" issued by ASIC, and has the advantage of including both Australian and international entities that the regulators are concerned about. The alert list also includes imposter entities.

As a part of the government strategy to target investment scams, ASIC and the Australian Competition and Consumer Commission (ACCC) – through the newly formed National Anti-Scam Centre – have published an investor alert list which may help consumers to identify whether entities they are considering investing with could be fraudulent, running a scam or unlicensed. While the list is not exhaustive, as new scams are appearing every day, any reduction of consumer harm, financially and non-financially, is surely a positive step.

According to the National Anti-Scam Centre, which commenced operation on 1 July 2023, Australians reported a record $3.1 billion of losses to scams the previous year, which was 80% more than the year before. While the Centre is still building its capabilities over the next three years by working on a new system to improve scam data sharing across government and the private sector, it is already making inroads by highlighting the most harmful scams and making it easier for Australians to report scammers.

The new investor alert list replaces the previous list of "companies you should not deal with" issued by ASIC, but has the advantage of including both domestic and international entities that regulators are concerned about. These concerns largely relate to entities operating and offering services to Australians without appropriate licenses, exemptions, authorisation or permission. The alert list also includes imposter entities which run impersonation scams that falsely claim to be associated with legitimate and often well-known businesses.

For consumers looking to invest, ASIC recommends conducting the following checks before handing over any money:

- *Check whether the company or person is licensed or authorised:* generally, a company or finance professional must hold an Australian financial services (AFS) licence in order to issue or sell investments in Australia, or they must be an authorised representative of an AFS licence holder. Checks can be made through the ASIC website on professional registers, the financial advisers register, or Australian registered scheme number in relation to a managed investment scheme to ensure appropriate licences are valid.
- *Understand how the investment works*: ASIC recommends obtaining a product disclosure statement (PDS) or prospectus from the public website for the company, speaking to a financial adviser and/or searching ASIC's Offer Noticeboard. In addition, ASIC reminds consumers that investments including cryptocurrency, direct investment in real estate or precious metals, and international investments not offered by licensed Australian providers are not regulated by ASIC and are higher risk. Consumers are not protected if things go wrong.
- *Check for common signs of an investment scam:* consumers should check the company's details through open-source searches and consider calling the number on the public website. Be wary of any offer documents sent by email. Consult the investor alerts list.

Even if you invest in a legitimate financial service or product from a licensed company/individual, there may be instances where things can go wrong. However, those entities are obliged by law to take steps to resolve any complaints from consumers. For consumers that invest in unlicensed or unregulated products in Australia, there is very limited assistance should things go wrong.

Going forward, ASIC will continue to add to the investor alerts list and has urged both industry and consumers to assist in identifying suspicious websites or investments scams by reporting them to the appropriate authorities.

Source: https://moneysmart.gov.au/check-and-report-scams/investor-alert-list https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-296mr-asic-releases-new-alert-list-highlighting-suspicious-investment-opportunities/

ATO pauses "debts on hold" awareness campaign

The ATO has apologised for any "unnecessary distress" caused to taxpayers with its recent awareness campaign around tax debts that were previously put on hold. Recently, the ATO had written to some small businesses with debts of more than $50 on hold to inform them that offsetting of debts will apply. It notes that the purpose of the letters was to ensure that taxpayers had full visibility of their existing debts with the ATO; however, it will pause the campaign to allow a review into its overall approach to debts on hold before progressing any further.

In response to community feedback and perhaps to negative commentary in the media, the ATO has announced it is pausing its "awareness campaign around tax debts on hold". As foreshadowed in an earlier speech by an Assistant Commissioner, the ATO had recommenced pursuing small business debts that were previously placed on hold. Small businesses that have not received a letter thus far from the ATO should therefore keep in mind that they may still have a debt on hold.

Many small business debts were put on hold entirely by the ATO (meaning debt amounts were not deducted from tax refunds or credits) during the COVID-19 pandemic's rapidly changing business conditions, with the intention of giving these businesses a chance to recover and rebuild. The Australian National Audit Office reviewed this approach and found it to be inconsistent with the law, and the ATO then received clear advice that by law, any credits or refunds that a small business becomes entitled to must be used to pay off (offset) its tax debt. This action is generally automatic, and should apply even where the ATO is not actively pursuing the debt (such as was the case during the height of the pandemic).

It's important to be aware that there are very limited circumstances where the ATO has the discretion not to offset a debt and to instead issue a refund. These are: the amount owing is due but not yet payable; the amount owing is under a payment arrangement and the taxpayer is complying with that arrangement; the ATO has agreed to defer recovery action; and/or the amount is to be offset against a director penalty debt.

Due to the legal requirement for offsetting, small business with debts on hold may now find that any credits or refunds from their lodged tax returns or BASs may be less than expected, or may even be reduced to zero. After the offsetting, any balance payable relating to the business's debt on hold will continue to remain on hold until it is paid in full. Small businesses do not need to actively do anything in relation to offsetting of debts, and will only need to contact the ATO if they would like to make payments towards their debt on hold or make a request for the ATO not to offset.

The easiest way to check whether a debt on hold exists is through ATO online services. Small businesses may need to download a file with all transactions on the applicable account to check, as debts on hold will not show as an outstanding balance on the account (because of their "on hold" status). Debts on hold can be found by searching the file for "non-pursuit" and any offsetting of a credit or refund can be found by searching for "offset".

Small businesses should also be aware that debts on hold can be reactivated at any time where the ATO believes that there is capacity for the business to pay. However, businesses will be notified of such a move, usually in writing. Again, reactivation of a debt can be checked through ATO online services – a reactivated debt *will* show as an outstanding balance on the relevant account, with the transaction labelled either "re-raise of non-pursuit", "partial re-raise of non-pursuit", or "cancellation of non-pursuit".

While the ATO acknowledges that its approach to communicating about debts on hold caused "unnecessary distress", particularly to those taxpayers whose debts were incurred several years ago, it has verified that all debts exist and that all taxpayers were previously informed when the debt was originally incurred through their notice of assessment.

The ATO notes that the purpose of the letters it sent was to ensure that taxpayers had full visibility of their existing debts with the ATO. Nonetheless, it will now pause the campaign to allow a review into its overall approach to debts on hold before progressing any further. Presumably it is only referring to pausing the campaign of informing taxpayers and not pausing the offsetting itself, as that process is required by law, is automatic, and the debts have been confirmed to exist.

Source: www.ato.gov.au/media-centre/ato-pauses-debt-awareness-campaign www.ato.gov.au/individuals-and-families/paying-the-ato/how-much-you-owe/debts-on-hold www.ato.gov.au/law/view/document?docid=PSR/PS201121/NAT/ATO/00001

Simplified payroll reporting and STP Phase 2: employers take note

While Single Touch Payroll Phase 2 (STP Phase 2) started on 1 January 2022, many digital service providers have a deferral in place to enable them to transition their customers over time. Under STP Phase 2, businesses report certain information directly to the ATO through their payroll software, such as:

- details of the remuneration they pay (eg salary and wages to employees, directors' remuneration);
- details of PAYG withholding, including how the amounts are calculated; and
- superannuation liability information.

STP Phase 2 doesn't change which payments employers need to report through STP, but it does change how those amounts need to be reported.

Employers need to take note that STP Phase 2 changes require their input with two key actions:

- Employers need to ensure their payroll setup is accurate, specifically the reporting codes.
- They need to carefully review their payroll reporting codes to ensure accurate data submission to the ATO through STP. This will improve the accuracy of data submitted to the ATO via STP.

Employers will now start to see BAS data pre-filling by the ATO, and it's important they cross-check the pre-filled information with their payroll records to prove the correct data has been submitted to the ATO and ensure correct withholdings are remitted. This verification process is essential for identifying and rectifying payroll setup errors. Any anomalies an employer identifies may highlight errors in their system configuration.

Understanding salary sacrifice reporting

STP Phase 2 requirements of reporting employee year-to-date (YTD) amounts have evolved. In STP Phase 1, only post-sacrificed amounts were reported, but STP Phase 2 mandates the separate reporting of pre-sacrificed amounts:

- Type S: This denotes amounts sacrificed to superannuation. Type S amounts may also be considered reportable employer super contributions (RESC) and the ATO stresses that it is important to remember that salary sacrifice type S and RESC are different things and used for different purposes.
- Type O: This indicates amounts sacrificed towards other benefits. For example, this could be reportable fringe benefits amounts (RFBA). Note that if an amount is both salary sacrifice type O and an RFBA, the employer needs to report both the amount of salary or wages which was sacrificed as salary sacrifice type O, and the grossed up taxable value of the benefits as RFBA.

Different payroll solutions have different ways of setting up and displaying salary sacrifice amounts, so employers should refer to their product's guidance.

Unchanged activity statement requirements

While STP reporting has changed, activity statement requirements remain unchanged. Employers should report only post-tax sacrificed amounts under label W1 and avoid including pre-tax sacrificed amounts at this label.

ATO pre-filling

The ATO aims to simplify reporting by pre-filling labels W1 and W2 on activity statements. This data comes from employer-level totals reported through STP, streamlining the process and enhancing precision.

Don't forget that when an employee leaves, information must be provided in the employer's STP Phase 2 report – for example, the employment cessation date and the correct code indicating why the employee left. Details of termination payments must also be reported to the ATO.

Maintaining compliance and precision in payroll reporting is paramount for employers.

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$20,000 instant asset write-off for small business: beware timing

On 13 September 2023, the *Treasury Laws Amendment (Support for Small Business and Charities and other Measures) Bill 2023* was introduced in Federal Parliament to allow a deduction of $20,000 (up from $1,000) for the instant asset write-off of depreciating assets acquired by small business entities in the period from 1 July 2023.The rules are beneficial for small businesses but there can be some confusion around the timing aspects. This brief article explains what the proposed amendments will do.

These new rules were previously announced by the Federal Government in its May 2023 Federal Budget. At the time of writing, the legislation containing these measures was before the Senate.

In the period from March 2020, as part of tax relief measures arising out of the COVID-19 pandemic, temporary full expensing of certain depreciation assets allowed many businesses to write off the entire cost of certain assets. From 1 July 2023, under simplified depreciation rules, depreciating assets costing less than $20,000 (excluding GST), may be immediately deducted, where the asset is first used or ready for use in the year ending 30 June 2024. Note that depreciating assets that are first used or installed ready for use for a taxable purpose on or after 1 July 2024 will be subject to the $1,000 threshold.

The $20,000 threshold will apply on a per-asset basis, so small businesses will be able to instantly write off multiple assets.

The instant asset write-off rules are available to entities that meet the definition of "small business entity" and where the entity carries on a business with an aggregate turnover of less than $10 million. Connected entities to a small business taxpayer may also need to be considered to qualify for a deduction under the $20,000 instant asset write-off.

Depreciating assets that cost $20,000 or more are allocated to a small business entity general small business pool and deducted at the following rates:

- 15% in the year the depreciating asset are allocated to the pool; and
- 30% in subsequent years.

The following example illustrates the operation of the $20,000 instant asset write-off for small business that is proposed to apply in the period from 1 July 2023.

Example

Terri is a bricklayer who runs a small business entity and has elected to use the simplified depreciation rules.

Assets below the threshold

On 1 September 2023, Terri purchases a tablet for $4,000 to be used 100% for business purposes. Terri can use the instant asset write-off to immediately deduct the full cost of the device, as its cost is below the threshold of $20,000.

Assets exceeding the threshold

On 1 December 2023, Terri purchases a ute for $50,000. She estimates the vehicle will be used 50% for business, and 50% for her private purposes. Terri cannot use the instant asset write-off here, as the ute's total cost of $50,000 exceeds the per-asset threshold of $20,000.

The $25,000 taxable portion of the ute's cost (representing her 50% business use of the vehicle) is allocated to Terri's general small business pool. Terri can claim a deduction of $3,750 (15% × $25,000) in the year ended 30 June 2024. Deductions for subsequent income tax years will be calculated at the rate of 30%.

If the balance of a small business entity's general small business pool is less than $20,000 at the end of the income year ending 30 June 2024, the small business entity will be able to claim a deduction for the entire balance of the pool.

Certain so-called “lock-out” rules may also apply where a small business taxpayer has elected to enter the instant asset write-off rules, then in subsequent years opts out of the application of such rules. In these circumstances, the lock-out rules would apply so that the taxpayer will not be able to apply the simplified depreciation rules for a period of five income years. This restriction commences from the first of the later years for which the taxpayer could have made the choice to apply the rule.

The operation of the rule has been modified over recent years so that small business entities did not need to apply the lock-out rule to income years if any day in the year occurs on or after 12 May 2015 and on or before 30 June 2023. The amendments in the Bill currently before Parliament propose to suspend the operation of the lock-out rule for a further 12 months to 30 June 2024. As a result, small businesses will be able to choose to apply the small business simplified depreciation rules and take advantage of the $20,000 write-off threshold while it applies without being locked out.

Source: www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7081

JobKeeper assessment: Treasury report released

Treasury has released the *Independent Evaluation of the JobKeeper Payment Final Report*. The report considers both the impact and processes of JobKeeper. In line with its terms of reference, the evaluation assesses the effectiveness of JobKeeper in achieving its objectives. It also records lessons learned from the design and implementation of JobKeeper, with a view to informing future policy responses.

JobKeeper was a central pillar of the policy response in Australia to the COVID-19 pandemic. It was a wage subsidy and income support program announced on 30 March 2020, as the third instalment in a series of economic support packages introduced in the space of three weeks during March 2020 while the crisis was unfolding rapidly.

Modifications to policy design, including changes to eligibility criteria and the payment rate and structure, were made following a three-month review. JobKeeper remained in place until 28 March 2021.

Stabilised uncertainty

JobKeeper provided certainty during a crisis. The announcement of JobKeeper on 30 March 2020 had an immediate effect. Business and consumer sentiment partially reversed their “drastic” declines. Numbers of “job separations” fell sharply and within weeks were below pre-pandemic levels. Applications for income support peaked in the week that JobKeeper was announced.

Preserved employment and prevented large scale business failures

Take-up of JobKeeper was high. It provided support to around four million employees – almost one-third of Australia’s pre-pandemic employment population – and around one million businesses. Credible estimates suggest that JobKeeper preserved between roughly 300,000 and 800,000 jobs, or around 2.5% to 6% of pre-pandemic employment.

High cost

While there were important benefits associated with JobKeeper, there were also significant costs. The fiscal cost of JobKeeper was significantly frontloaded in the first six months. The economic cost, while relatively small, became more significant in the later stages of the program.

With a total cost of $88.8 billion, JobKeeper was the one of the largest fiscal and labour market interventions in Australia’s history. The initial six months of the program cost approximately $70 billion. The first and second three-month extensions cost around $13 billion and $6 billion respectively.

Effective roll-out, low fraud

JobKeeper was implemented with incredible speed and was well managed. In the circumstances, implementation struck an appropriate balance between rapidly deploying support and managing risks of error and fraud.

The incidence of fraud was low. The estimated payment gap for JobKeeper was 2.4% – smaller than for other ATO-administered programs and taxes such as the cashflow boost, GST tax receipts and large corporate groups income tax.

Effective cross-agency collaboration

Cross-agency collaboration and leveraging of pre existing relationships “was a strength of the design and delivery of JobKeeper”. The report goes on to state that “there would be benefit in establishing an emergency committee of key government agencies that could be activated to coordinate economic policy during an economic crisis”.

No more flat payments

The report states that a tiered payment structure, or one that is proportionate to previous earnings, is better targeted than a flat payment. Authorities should consider the investment required to enable a payment that is proportionate to earnings.

The flat payment of $1,500 per fortnight during the first phase of JobKeeper provided certainty, simplicity and clarity for both employees and employers. It also reduced risks associated with the speedy implementation of JobKeeper. Some stakeholders argued that the flat payment was unfair, in the sense that those who previously worked very few hours received the same payment as full-time workers.

The report states that the flat payment was also inefficient. It resulted in around 11% of recipients receiving higher payments through JobKeeper than their pre-pandemic earnings. This may have “disincentivised” returning to work or increasing work hours during the economic recovery.

A two-tiered payment was introduced in the extension phase of JobKeeper, such that those working fewer than 20 hours per week received a lower payment than others working more hours. The change recognised and partially addressed the issues with the flat payment. It also reflected improved confidence in the system and data used to administer JobKeeper.

Narrow focus and exclusions ineffective

Narrow recipient eligibility and exclusions reduced the effectiveness of JobKeeper and had negative economic consequences.

JobKeeper excluded some employees and employers. Exclusions included casuals who had been in their job for less than a year, temporary migrants, foreign governments and their agencies and local government entities.

Exclusions based on employee characteristics such as being a short-term casual or temporary migrant worker compromised the efficacy of JobKeeper and “led to worse outcomes”. In particular, the exclusion of short-term migrants from JobKeeper likely reduced the productive capacity of the Australian economy and constrained recovery in some sectors. The exclusion of entities owned by foreign governments resulted in some otherwise eligible Australian workers missing out on JobKeeper support, which was not in keeping with the objectives of the policy.

Transparency and accountability needed

The report states that transparency requirements should be built into policy design to “build public trust and enable appropriate scrutiny of public expenditures”.

JobKeeper did not include in its design a public registry or disclosure requirement for entities that received the payment. Some information became available over time, but disclosures were restricted to listed companies, which comprised a small proportion of total JobKeeper entities (around 593 out of about one million) and payments ($4.3 billion out of a total of $88.8 billion).

Qantas is not mentioned in this context.

Limited use of such schemes in the future

JobKeeper was a policy designed for an extraordinary situation. While it was justified during the pandemic, such a policy should be considered “only where there is an exogenous and temporary shock with substantial economy wide implications”.

A JobKeeper-type wage subsidy should be reserved for a macroeconomic crisis and is not appropriate for industry or region-specific shocks or downturns in Australia, the report says. Some of the key benefits of JobKeeper identified in this evaluation, including economy-wide stabilisation and reducing macroeconomic uncertainty, are not relevant in these circumstances.

Source: https://treasury.gov.au/publication/p2023-455038

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