client alert | explanatory memorandum

June 2021

CURRENCY:
This issue of **Client Alert** takes into account developments up to and including 26 May 2021.

Are you ready for Tax Time 2021?

Don't jump the gun and lodge too early

Tax time 2021 is almost here, but it's likely to be anything but routine. Many individuals on reduced incomes or who have increased deductions may be eager to lodge their income tax returns early to get their hands on a refund. However, as always the ATO is warning against lodging too early, before all your income information becomes available. It's important to remember that employers have until the end of July to electronically finalise their employees' income statements, and the same timeframe applies for other information from banks, health funds and government agencies.

With so many different types of incomes and expenses affecting tax obligations this income year, the ATO is taking a range of different approaches to support taxpayers and the community through tax time. In addition to updating published information on its website, the ATO encourages taxpayers to search its online "ATO community" forum, which operates 24 hours a day and contains "ATO-endorsed" responses.

For most people, income statements have replaced payment summaries. So, instead of receiving a payment summary from each employer, the income statements will be finalised electronically and the information provided directly to the ATO. The income statement can be accessed through myGov and the information is automatically included in the tax return for people who use myTax. Tax agents also have access to this information.

According to the ATO, it is important to wait until the income statement is finalised before lodging a tax return to avoid either delays in processing or a tax bill later on. The income statement will be marked "tax ready" on myGov if it is finalised. Other information from banks, health funds and government agencies is also expected to be ready by the end of July and will be automatically inserted into the tax return.

If you still choose to lodge early, the ATO advises carefully reviewing any information that is pre-filled so that you can confirm it is correct and that you wish to use it. Early lodgers will also be required to acknowledge that their employers may finalise their income statement with different amounts, meaning that the lodger may need to amend the tax return and additional tax may be payable.

The ATO will start full processing of 2020–2021 tax returns on 7 July 2021, and expects to start paying refunds from 16 July 2021.

How COVID-19 has changed work-related expenses

COVID-19 has changed many people's work situations, and the ATO expects their work-related expenses will reflect this during tax time in 2021. In 2020 tax returns, around 8.5 million Australians claimed nearly $19.4 billion in work-related expenses.

Last year, the value of car and travel expenses decreased by nearly 5.5%, but there was a slight increase (around 2.6%) in clothing expenses. This increase was driven by front-line workers' first-time need for things like hand sanitiser and face masks.

"Our data analytics will be on the lookout for unusually high claims this tax time", Assistant Commissioner Tim Loh has said. "We will look closely at anyone with significant working from home expenses, that maintains or increases their claims for things like car, travel or clothing expenses. You can't simply copy and paste previous year's claims without evidence."

The ATO does know that some of these "unusual" claims may be legitimate, and wants to reassure people who have evidence to explain their claims that they have nothing to fear. It also recognises that tax rules can be confusing and sometimes people make mistakes on their returns while acting in good faith.

During 2020, the ATO had to shift its focus to getting stimulus benefits out the door as quickly as possible to support the many Australian businesses in need. In 2021 it will continue supporting individuals and businesses through this challenging time, while recommencing its focus on addressing unreasonable work-related expenses claims.

Working from home expenses

The temporary shortcut method for working from home expenses is available for the full 2020–2021 financial year. This allows an all-inclusive rate of 80 cents per hour for every hour people work from home between 1 July 2020 and 31 June 2021, rather than needing to separately calculate costs for specific expenses.

All employees need to do is multiply the hours they worked at home by 80 cents, keeping a record such as a timesheet, roster or diary entry that shows the hours worked at home.

Remember – the shortcut method is temporary. To claim part of an expense over $300 (such as a desk or computer) in future years, people still need to keep their receipts.

The temporary shortcut method can be claimed by multiple people living under the same roof and (unlike the existing methods) doesn't require people to have a dedicated work area at home.

The shortcut is all-inclusive. A person can't claim the shortcut and then claim for individual expenses such as telephone and internet costs and the decline in value of new office furniture or a laptop.

People who choose not to use the shortcut method for working from home expenses can instead:

- claim 52 cents per work hour at home for the heating, cooling, lighting and cleaning of a dedicated work area and the decline in value of office furniture and furnishings, then calculate the work-related portion of telephone and internet expenses, computer consumables, stationery and the decline in value of a computer, laptop or similar device; or
- claim the actual work-related portion of all home running expenses, which needs to be calculated on a reasonable basis.

Remember, to claim any work-related expense, the employee must have spent the money themselves and not been reimbursed by their employer. The expense must be directly related to earning income (not a private expense), and the employee must have kept any necessary records (a receipt is best).

If claiming working from home expenses using the fixed rate or actual cost methods (rather than the shortcut method), employees cannot claim:

- personal expenses like coffee, tea and toilet paper – while they might usually be supplied by an employer at the office, they aren't directly related to earning the employee's income;
- expenses related to children's education, such as online learning courses or laptops;
- large expenses up-front – any asset that costs over $300 (either in total or per item), such as a computer, can't be claimed immediately but should be spread out over a number of years.

Employees also generally can't claim occupancy expenses such as rent, mortgage interest, property insurance, land taxes and rates. Working from home doesn't mean the home is a place of business for tax purposes. Claiming occupancy expenses may mean having to pay capital gains tax when selling the home, even if it is the main residence.

Personal protective equipment

If a person's specific work duties require physical contact or close proximity to customers or clients, or their job involves cleaning premises, they may be able to claim personal protective equipment (PPE) items such as gloves, face masks, sanitiser or anti-bacterial spray.

This includes industries like healthcare, cleaning, aviation, hair and beauty, retail and hospitality.

To claim PPE, the employee needs to have bought the item for use at work, paid for it themselves, kept a record (such as a receipt) and not been reimbursed by their employer.

Car and travel expenses

If an employee is working from home due to COVID-19 but needs to travel to their regular office sometimes, they cannot claim the cost of travel from home to work, because these are still private expenses.

Source: www.ato.gov.au/Media-centre/Media-releases/ATO-warns-on-copy-pasting-claims/; www.ato.gov.au/Media-centre/Media-releases/Working-from-the-kitchen-bench---Here-s-how-you-sort-your-tax/; www.ato.gov.au/Tax-professionals/Prepare-and-lodge/Tax-Time-2021/Overview-of-key-changes/.

ATO data-matching targets rental property owners

The ATO has announced that it will run a new data-matching program to collect property management data for the 2018–2019 to 2022–2023 financial years, and will also extend the existing rental bond data-matching program through to 30 June 2023.

Each year the ATO conducts reviews of a random sample of tax returns to calculate the difference between the amount of tax it has collected and the amount that should have been collected – this is known as a "tax gap". For the 2017–2018 year the ATO estimated a net tax gap of 5.6% ($8.3 billion) for individual taxpayers, with rentals making up 18% of the gap amount. The new and extended data-matching programs are intended to address this gap, making sure that property owners are reporting their rental income correctly and meeting their related tax obligations.

In comparison, the net tax gap in 2018–2019 for high wealth groups was 7.4%, for medium businesses it was 6.2% and for medium businesses it was 11.5%.

The information obtained under the two data-matching programs will include property owner identification details such as unique IDs, individual/non-individual names, addresses (residential and postal), email addresses, contact numbers, BSB numbers, bank account numbers, bank account names, and business contact names and ABNs (if applicable).

Rental property details will include addresses, dates that properties were first available for rent, periods of leases, commencement and expiration dates of leases, amounts of rental bond held, numbers of weeks each rental bond represents, amounts of rent payable for each period, periods of rental payments (weekly, fortnightly or monthly), types of dwellings, numbers of bedrooms, rental income categories, rental income amounts, rental expense categories, rental expense amounts and net rent amounts.

The programs will also obtain details of the property managers involved, including business names, managing agents' full names, business addresses (including internet addresses), email addresses, contact numbers, ABNs and licence numbers.

Rental bond data will be acquired biannually from state and territory rental bond regulators, and property management data will be acquired from property management software providers.

It is expected that records relating to around 1.6 million individuals will be obtained each financial year as part of the property management program, and records of an estimated 350,000 individuals will be obtained under the rental bond program. Due to the nature of the data collected, the ATO expects some overlap.

The ATO will use the vast amount of data collected to perform detailed analytics for its compliance programs, ensuring that taxpayers who own income-producing property are meeting their obligations to report the correct amount of income in their tax returns. It will also identify taxpayers disposing of income-producing properties, which will trigger a CGT event. The ATO notes that it will use historical rental bond data to support CGT cost base calculations if necessary.

While the data collected from the programs will be retained for seven years from receipt of the final instalment of verified data from data providers, the ATO's general compliance approach will align with the standard periods for review (commonly two years for individuals and small businesses) and recordkeeping (usually five years). In cases of fraud or evasion, however, there is no time limit for amending an assessment.

Source: www.ato.gov.au/General/Gen/Property-management---2018-19-to-2022-23-financial-years/.

Can I be released from my tax debts?

As the economy adjusts to the removal of most COVID-19-related government support measures, coupled with the slow national vaccination rollout and mostly closed international borders, there is no doubt that many Australians are facing financial difficulties in the immediate short term. If your clients have a tax debt that is compounding their financial difficulties, there may be a solution – they may be able to apply to be permanently released from the debt, provided they meet certain criteria.

According to the ATO, to be released from a tax debt a taxpayer needs to be in a position where paying those debts would leave them not able to provide for themselves, their family or others that they're responsible for. This includes providing items such as food, accommodation, clothing, medical treatment and education.

Debts that the ATO can consider for release include income tax, PAYG instalments, FBT and FBT instalments, Medicare levy and surcharge amounts, certain withholding taxes, and some penalties and interest charges associated with these debts.

This type of debt release only applies to individuals and trustees of the estate of a deceased person. Other entities such as companies, trusts and partnerships are not eligible and would need to apply for other ATO support, such as negotiating a payment plan or extra time to lodge or pay the tax owed. In addition, only certain tax can be considered for release; for example, the ATO cannot release debts in relation to GST, PAYG withholding, excess contributions tax, Div 293 liabilities and director penalty notices.

When someone applies to be released from a tax debt, the ATO will look at their household fortnightly income and expenditure to determine if they have the ability to pay all or part of the debt, and will set up a payment plan if required. It will also look at the person's household assets and liabilities including their residential home, motor vehicle, household goods, tools of trade, savings for necessities, collections etc. and identify whether the sale of a particular asset could repay all or part of the tax debt.

Even when the ATO has established that the payment of a tax debt would cause the taxpayer serious hardship, it will nevertheless look at other factors within that person's control that may have contributed to this hardship. For example, it will consider how the tax debt arose and whether the person has disposed of funds or assets without providing for tax debts, as well as their compliance history. It will also check whether the person may have structured their affairs to place themselves in a position of hardship (eg by placing assets in trusts or related entities).

One important thing to note is that, in the ATO's view, if a person has other debts (either business or private) that they are not able to pay, then releasing them from a tax debt will not improve their financial hardship situation; therefore, the ATO will likely decide against granting a release from the tax debt.

Source: www.ato.gov.au/General/Support-to-lodge-and-pay/In-detail/Release-from-your-tax-debt/.

ATO's discretion to retain refunds extends to income tax

As a part of a suite of measures introduced by the government to combat phoenixing activities, the ATO now has the power to retain an income tax refund where a taxpayer (including both businesses and individuals) has outstanding notifications. The discretion to retain refunds previously only applied in relation to notifications under the business activity statement (BAS) or petroleum resources rent tax (PRRT) but has now been expanded.

This new extension of powers applies to all notifications that must be given to the Commissioner of Taxation under Australian tax law (eg income tax returns) but does not include outstanding single touch payroll (STP) or instances where the Commissioner requires verification of information contained in a notification.

The ATO notes that its new powers to retain refunds will not be taken lightly and will only be exercised where the taxpayer has been identified as engaged in "high-risk" behaviour and/or phoenixing activities.

Examples of high-risk behaviours include (but are not limited to):

- poor past and/or current compliance with tax and superannuation obligations (registration, lodgment, reporting, recordkeeping and on-time payments);
- poor behaviours and governance in managing tax and super risks;
- the number of, and the circumstances around, any bankruptcies or insolvencies;
- tax-related penalties and sanctions imposed including director penalty notices;
- connection with advisers who are subject to disciplinary actions or sanctions relating to tax and super laws;
- past information provided which reasonably indicated fraud or evasion, intentional disregard or recklessness; and
- the likelihood of participation in or promotion of aggressive tax planning arrangements, tax avoidance schemes, fraud or evasion or criminal activity.

Illegal phoenix activity is when a company shuts down to avoid paying its debts. A new company is then started to continue the same business activities, without the debt.

Indicators of phoenix behaviour by the taxpayer, and its associates or controllers, include (but are not limited to):

- cyclically establishing, abandoning or deregistering companies to avoid paying taxes, creditors or employee entitlements;
- assets being dissipated, stripped, transferred and/or other actions with the intention to defeat creditors ahead of abandonment, winding-up or deregistration;
- a director associated with prior liquidations and/or deregistrations or prior instances of insolvency;
- transfer of employees to a new company under the same effective control as the previous company to defeat tax obligations and employee entitlements;
- backdating of the resignation of a director, appointment of "straw" directors, or abandonment of a company without a resident director;
- the concealment of the role of a shadow or de facto director; and
- the concealment or destruction of company records.

The ATO will consider the totality of the circumstances when it exercises the discretion to retain a refund. It will also weigh the seriousness of the behaviour identified against any potential adverse consequences for the taxpayer.

In general, the ATO advises its officers to consider exercising the discretion to retain a refund where there are reasonable grounds to believe that a taxpayer:

- has a running balance account (RBA) surplus or other credit that has not been applied against a tax debt of the taxpayer;

- has an outstanding notification that they are required to give under a tax law (other than the BAS or PRRT provisions) and the outstanding notification affects or may affect the amount of the refund; and/or
- is engaged in high-risk and/or phoenix behaviour.

Once the ATO decides to use its discretion to retain a refund, it will be retained until either the taxpayer has given the outstanding notification or an assessment of the amount is made, whichever event happens first. There are also circumstances where the taxpayer can apply to have the retained amount refunded and/or apply to have the decision reviewed.

2021 FBT returns are due

Businesses that have provided fringe benefits to their employees should be aware that the 2021 FBT return (for the period 1 April 2020 to 31 March 2021) is due, and payment of any associated FBT liability is required immediately.

For businesses that prepare their own returns, lodgment of the return can be made up until 25 June 2021 without incurring a failure to lodge on time penalty. However, the associated FBT liability must have been paid by 21 May 2021, and a general interest charge will apply to any payments made after that date.

Businesses that have not paid FBT before are required to make the payment in a lump sum for the year on 21 May. This also applies where a business paid FBT in the previous year, but the liability was less than $3,000. For those that paid $3,000 or more in the previous year, the FBT liability will be paid in quarterly instalments with the business's activity statements in the following year, with the balancing payment to be made on 21 May.

A business is required to lodge an FBT return if it had an FBT liability for the year, or if the business did not vary FBT instalments to nil for the year and did not have an FBT liability. Lodging the return will ensure that any FBT instalment credits the business paid during the year will be refunded. If the business is registered with the ATO as an FBT payer and its FBT taxable amount is nil with no instalments paid during the year, the business can lodge a *Notice of non-lodgment – fringe benefits tax* instead of the FBT return.

This non-lodgment form will not only notify the ATO that the business's FBT liability is nil, but also avoid the ATO seeking an FBT return from the business later on. In addition, the form can be used to notify the ATO that a business will not be required to lodge an FBT return for future years, and/or to cancel the business's FBT registration.

Businesses should be aware that while there have been a lot of recent announcements about changes to FBT, many of these proposed changes are not yet law. In those instances, businesses are required to apply the current legislation at the time, and make the appropriate amendments later when the changes do become law.

For example, the government recently announced an FBT exemption for retraining and reskilling benefits that employers provide to redundant (or soon to be redundant) employees where the benefits may not be related to their current employment. While this change is intended to apply from the date of the announcement once the legal change is enacted, the ATO notes that businesses are required to apply the current legislation to this latest FBT return and amend it later if necessary.

Similarly, businesses should be aware of the application dates of recently enacted law changes. The change to allow businesses with less than $50 million in turnover to access certain existing FBT small business concessions do not apply for the 2021 FBT year; rather, they apply to benefits provided to employees from 1 April 2021 onwards (ie the 2022 FBT year).

In addition, at the time of writing, the ATO has not yet finalised its ruling on car parking fringe benefits that deals with changes to contemporary commercial car parking arrangements and various decisions of the Federal Court. This means that the view from the withdrawn ruling will continue to apply until the new ruling is issued. The ATO estimates that a final ruling will be published by mid-June 2021, with the changes to apply from 1 April 2022.

Beware: phishing and investment scams on the rise

Emails impersonating myGov

The ATO and Services Australia have issued a warning about a new email phishing scam doing the rounds. The emails claim to be from "myGov" and include screenshots of the myGovID app. myGovID can be used to prove who you are when accessing Australian government online services.

The scam emails ask people to click a link to fill in a "secure form" on a fake myGov page. The form requests personal identifying information and banking details.

This new phishing scam contains classic warning signs that it is not legitimate, including spelling errors and the request to "verify your identity" by clicking a link. The ATO has confirmed this scam is all about collecting personal information rather than gaining access to live information via myGov or myGovID. ATO systems, myGov and myGovID have not been compromised.

The ATO and myGov do send emails and SMS messages, but they will never include clickable hyperlinks directing people to a login page for online services.

"In the lead up to tax time, we expect to see more of these malicious attempts to harvest identity details. So we encourage everyone to be on alert and take the time to remind family and friends to be on the lookout and stay safe online", said ATO Assistant Commissioner Ben Foster.

What to do

If you've opened an email that looks suspicious, don't click any links, open any attachments or reply to it.

The best way to check if the ATO or another government service has actually sent you a communication is to visit the myGov site, my.gov.au, directly (without clicking an emailed link) or to download the myGovID app. You can then log in securely and check your myGov inbox and linked services.

If you've received a suspicious email and mistakenly clicked a link, replied and/or provided your myGov login details or other information, you should take immediate action.

Change your myGov password and if you've provided your banking details, contact your bank.

Advice and support, such as identity recovery services, are available by phone on Services Australia's Scams and Identity Theft Helpdesk, 1800 941 126 (Monday to Friday, 8 am to 5 pm AEST).

Suspicious SMSs and emails that claim to be from myGov or government services can be reported to ScamWatch at www.scamwatch.gov.au/get-help/protect-yourself-from-scams.

Source: www.ato.gov.au/Media-centre/Media-releases/Warning-about-myGov-impersonation-email-scam/.

Cold calls and emails encouraging superannuation rollovers

The Australian Securities and Investments Commission (ASIC) has recently advised it is aware of scams that target Australians and encourage them to establish self managed superannuation funds (SMSFs).

People are cold-called or emailed, and scammers pretending to be financial advisers encourage the transfer of funds from an existing super account to a new SMSF, claiming it will lead to high returns of 8% to 20% (or more) per year.

In fact, people's super balances are instead transferred to bank accounts controlled by the scammers.

Scammers use company names, email addresses and websites that are similar to legitimate Australian companies that hold an Australian financial services licence. They even use a "legitimate" company to ensure the SMSF is properly established and compliant with Australian laws, including creating a separate SMSF bank account set up in the investor's name.

The scammers then transfer money from the existing super fund, either with or without the knowledge of the investor, and steal it by using the real identification documents the person has provided to set up the SMSF in an account fully controlled by the scammers.

What to look out for

If you're contacted by any person or company who encourages you to open an SMSF and move funds, you should always make independent enquiries to make sure the scheme is legitimate. This is especially true if you weren't expecting the phone call or email!

Always verify who you are dealing with before handing over your identification documents, personal details or money.

Be wary about providing your personal identification documents to people you don't know. Red flags include things like the website containing spelling errors, changing addresses or disappearing; processes that involve speaking to different people who sound the same; and email addresses and contact details that change. Some scammers copy legitimate websites and use names lifted from the internet.

For more information about investment scams and what to look out for, see Moneysmart's investment scams page at https://moneysmart.gov.au/investment-warnings/investment-scams.

Source: https://asic.gov.au/about-asic/news-centre/news-items/scam-alert-self-managed-super-fund-rollover/.

Fake news articles touting cryptocurrency investments

ASIC has also received an increased number of reports from people who have lost money after responding to advertisements promoting crypto-assets (or cryptocurrency) and contracts for difference (CFD) trading, disguised as fake news articles.

Some advertisements and websites falsely use ASIC logos or misleadingly say the investment is "approved" by ASIC.

A common scam tactic is promoting fake articles via social media. They look realistic and impersonate real news outlets like Forbes Business Magazine, ABC News, Sunrise and The Project.

Once someone clicks on these advertisements or fake articles, they're directed to a site that is not linked with the impersonated publication, and asked to provide their name and contact details. Scammers then get in contact, promising investments with unrealistically high returns.

Many of these scams originate overseas. Once money has left Australia it's extremely hard to recover, and banks and ASIC are unlikely to be able to get it back.

What to look out for

Crypto-assets are largely unregulated in Australia and are high-risk, volatile investments. Don't invest any money in digital currencies that you're not prepared to lose, and always seek professional advice when making investment decisions.

Remember that most reputable news outlets, and especially government-funded broadcasters like the ABC, don't offer specific investments as part of their news coverage.

ASIC does not endorse or advertise particular investments. Be wary of any website or ad that says the investment is approved by ASIC or contains ASIC's logo – it's a scam. ASIC does not authorise businesses to use its name and branding for promotion.

What to do

If you've transferred funds by bank transfer or credit card to someone you think may be a scammer, you should contact your financial institution immediately – they may be able to reverse the transaction. Unfortunately, however, your bank or credit union won't be able to help if you've paid scammers via crypto-assets.

To help ASIC disrupt scammers and warn others, you can use the regulator's website at https://asic.gov.au/about-asic/contact-us/how-to-complain/ to report any scams or suspicious investment offers you come into contact with.

Source: https://asic.gov.au/about-asic/news-centre/news-items/asic-warns-against-fake-news-articles-promoting-investment-scams/.

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