client alert | explanatory memorandum

September 2021

CURRENCY:

This issue of **Client Alert** takes into account developments up to and including 20 August 2021.

Single Touch Payroll update

Phase 2 coming soon

The ATO is expanding the information that businesses send through Single Touch Payroll (STP). From 1 January 2022, most employers will be required to send additional information such as the commencement date of employment and cessation date of employment for employees, their reasons for leaving employment and work type (eg full-time, part-time). The basic information about salary and wages and super liability information in Phase 1 of the STP rollout will also be further drilled down in Phase 2, moving away from just reporting the gross amounts.

STP was originally introduced in 2016 as a way for employers to report their employees' tax and super information to the ATO in real time. Most employers, regardless of the number of their employees, were required to start reporting from 1 July 2021 – this included small employers with closely held/related payees. However, employers with a withholding payer number (WPN) have until 1 July 2022 to start reporting payments through STP.

In Phase 1, the information sent to the ATO through STP included basic salaries and wages, PAYG withholding and super liability information. The amount of information sent to the ATO is being expanded in Phase 2, which has a mandatory starting date of 1 January 2022. From that date, each employee included in the STP report will need to have either a TFN or an ABN attached, as well as an employment commencement date.

Additional information will also need to be provided on the employment basis of employees according to their work type. Types include, for example, full-time, part-time, casual, labour hire, voluntary agreement (ie a contractor to bring work payments into the PAYG withholding system), death beneficiary or non-employee (ie a contractor who is included for voluntary reporting of super liabilities only).

According to the ATO, the Phase 2 report will also include a six-character tax treatment code for each employee. The code will be automatically generated by the STP software and is an abbreviated way of outlining the factors that can influence amounts withheld from payments. For example, it'll let the ATO know whether they are regular employees that have the tax-free threshold applied or not. It will also let the ATO know if they are in special categories of employee, such as actors, horticulturists/shearers, working holiday makers, seasonal workers, foreign residents or seniors.

The basic information about salary and wages and super liability information will also be further drilled down. Instead of reporting the gross amount, employers will need to report the following separately:

- gross salary and wages;
- paid leave – including annual, long service, personal/carer, rostered days off (RDOs), study leave, compassionate leave, family and domestic leave, paid parental leave, workers' compensation, ancillary and defence leave, and cash-out of leave in service;
- allowances – including cents-per-kilometre, award transport payments, laundry, overtime meal allowance, domestic or overseas travel, tool allowances, qualification and certification allowances, task allowances and other allowances;
- overtime – including on-call, stand-by or availability allowances, call-back payments, excess travel etc;
- bonuses and commissions;
- directors' fees – including remuneration paid to both working and non-working directors;
- lump sum W – return to work payment; and
- salary sacrifice – including reporting pre-sacrifice amounts as well as separate reporting of salary sacrifice.

While most of this increase in information will be automatically taken care of in most employers' software solutions, the increased stratification of reporting requires more attention to be paid to payroll to ensure all the information entered into the system is correct.

Source: www.ato.gov.au/Business/Single-Touch-Payroll/Expanding-Single-Touch-Payroll-(Phase-2).

Closely held employees reporting exemption through STP

The ATO registered legislative instrument *Taxation Administration – Single Touch Payroll – 2019-20 and 2020-21 Income Years Closely Held Payees Exemption 2021* on 28 July 2021. This instrument exempts certain entities from the requirement to report through STP on payments made to closely held payees. The exemption applies in the 2019–2020 and 2020–2021 income years, and the instrument is taken to have commenced on 1 July 2019. It had earlier been issued in draft form.

Small employers with closely held payees have already been exempt from reporting these payees through STP for the 2019–2020 and 2020–2021 financial years via ATO administration, and this is what the instrument now formally implements.

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.

The ATO offers the following three options for reporting payments made to closely held payees 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 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 payday.

This quarterly option does not change the due date for:

- notifying and paying PAYG withholding on activity statements;
- making super guarantee 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;
- report and pay the tax withheld on time.

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

- be liable for super guarantee charge (SGC) and have to lodge SGC 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.

Tax time 2021: rental property pitfalls

This tax time, the ATO is again closely monitoring claims in relation to rental properties. As with previous years, it's on the lookout for rental property owners who do not declare all their income and capital gains from selling property. Other areas of concern include claims for interest charges on personal loans, and deductions for capital works.

The ATO has data-matching programs in place that collect detailed information about properties and owners for income years all the way from 2018–2019 to the 2022–2023. These programs expand the rental income data collected directly from third-party sources, including sharing economy platforms, rental bond authorities and property managers.

"People should remember that there's no such thing as free real estate when it comes to their tax returns", Assistant Commissioner Tim Loh has said. "Our data analytics scrutinise returns for rental deductions that seem unusually high. We will ask questions, and this may lead to a delay in processing your return."

According to the ATO, in the 2019–2020 financial year over 1.8 million taxpayers owned rental properties and claimed $38 billion in deductions. While the ATO acknowledges that most taxpayers do the right thing and are able to justify their claims, it notes that over 70% of the 2019–2020 returns selected for review of rental information have subsequently had adjustments made.

The most common mistake that rental property owners and holiday homeowners make is not declaring all their income and capital gains from selling the property. This shortfall will obviously be tackled with information obtained from data-matching programs, but also sophisticated data analytics which will single out tax returns with unusually high rental deductions.

Another area of concern this tax time includes claims for interest charges on personal loans. For example, if you take out a loan to buy a rental property and rent it out at market rates, the interest on the loan is deductible. However, if you redraw money from that mortgage for personal use (eg to buy a car, pay off the mortgage of the house you're living in etc), then you cannot claim interest on that part of the loan.

Taxpayers should also be careful when claiming deductions for capital works. While the cost of repairs for wear and tear to the property are immediately deductible if they're replacing or fixing an existing item (eg a broken toilet or showerhead), the cost of upgrading the property or areas of the property (eg a kitchen or bathroom renovation) would be considered capital works and any deduction needs to be spread over a number of years.

For short-term stay property owners who have been affected by COVID-19 and travel restrictions, the ATO notes that if your plans to rent out the property in 2020–2021 were the same as in previous years, you will be able to claim the same proportion of expenses, although taxpayers can only do this if the property was not used privately. For example, if you, your family members, or friends have stayed at the property for free or at a reduced rate, you will not be able to claim some or all of the expenses relating to that period.

Rental property owners who have provided rental concessions to their tenants in the form of either reduced or deferred rent due to COVID-19 impacts will only need to declare the rent that has been received. Normal expenses can still be claimed on the property as long as the reduced rent was determined at arms' length and in line with current market conditions.

Source: www.ato.gov.au/Media-centre/Media-releases/Don-t-bet-against-the-house-this-tax-time.

New sharing economy reporting regime proposed

The government is seeking to legislate compulsory reporting of information for sharing economy platforms in order to more easily monitor the compliance of participants, while at the same time reducing the need for ATO resources. This would encompass any platforms that allow sellers and buyers to transact in a variety of sectors, although the reporting requirement would not apply if the transaction only relates to supply of goods where ownership of the goods is permanently changed, title of real property is transferred, or the supply is a financial supply.

As the sharing economy becomes more prevalent and fundamentally reshapes many sectors of the economy, the government is scrambling to contain the fall-out. While there no standard definition of the term "sharing economy", it is usually taken to involve two parties entering into an agreement for one to provide services, or loan personal assets, to the other in exchange for payment. Examples of platforms in a wide variety of sectors include Uber, Airbnb, Car Next Door, Menulog, Airtasker and Freelancer, to name a few.

With the rapid expansion of various sharing economy platforms, the government's Black Economy Taskforce has noted that without compulsory reporting, it would be difficult for the ATO to gain information on compliance of sharing economy participants without the use of targeted audits. Putting formal reporting requirements in place would align Australia with international best practice.

On the back of the Taskforce's report, the government has now released draft legislation for consultation to define the scope of compulsory reporting requirements in order to ensure integrity of the tax system and reduce the compliance burden on the ATO.

This new compulsory reporting regime would apply to all operators of an electronic service, including websites, internet portals, apps, gateways, stores and marketplaces. Any platforms that allow sellers and buyers to transact will be required to report information on certain transactions. However, the reporting requirement will generally not apply if the transaction only relates to supply of goods where ownership of the goods is permanently changed, where title of real property is transferred, or the supply is a financial supply.

Based on the draft legislation, platform operators will be required to report transactions that occur on or after 1 July 2022 if they relate to a ride-sourcing or a short-term accommodation service, unless an exemption applies. From 1 July 2023 all other categories of sharing economy platforms will be required to report, unless an exemption applies.

While the ATO will ultimately be responsible for determining the exact information to be reported, at a minimum, the following information is expected to be required once reporting commences:

- seller's identification information, including full legal name, date of birth, primary address, bank account details, ABN, TFN, telephone and email details; and
- consideration and transaction information, including total gross and net payments to seller, GST attributable to gross payments, total fees/commissions withheld, GST attributable to total fees/commissions, property address (if a transaction relates to rental of real property), and period for which property is booked during the reporting period.

It is expected only the aggregate or total transactions relating to a seller over the reporting period will need to be provided; that is, information will not need to be provided on a transactional basis. Again, while the ATO will ultimately determine the frequency of reporting, the initial reporting is expected to be on a biannual basis (ie 1 July to 31 December, and 1 January to 30 June) with the relevant information to be reported by 31 January and 31 July respectively.

The government is hoping that with the introduction of this new reporting regime it is able to boost tax receipts, and by extension government coffers, by stamping out tax non-compliance (whether deliberate or unintentional) by those participants in the sharing economy.

Source: https://treasury.gov.au/consultation/c2021-176975.

Reminder: super changes for the 2021 financial year

The government's long-slated "flexibility in superannuation" legislation is finally law. This means from 1 July 2021, individuals aged 65 and 66 can now access the bring-forward arrangement in relation to non-concessional super contributions. The excess contributions charge will also be removed for anyone who exceeds their concessional contributions cap, and individuals who received a COVID-19 super early release amount can now recontribute up to the amount they released without it counting towards their non-concessional cap.

Previously, if you made super contributions above the annual non-concessional contributions cap, you were able to automatically gain access to future year caps if you were under 65 at any time in the financial year. The bring-forward arrangement allows you to make non-concessional contributions of up to three times the annual non-concessional contributions cap in that financial year.

With the passing of the flexibility in super legislation, individuals aged 65 and 66 who were previously unable to access the bring-forward arrangement in relation to non-concessional contributions are now permitted to do so.

For the 2021 income year, the non-concessional contributions cap is $110,000, which means that individuals aged 65 and 66 can access a cap of up to $330,000 under the bring forward arrangement.

From 1 July 2021, the excess contributions charge is also removed. Previously, any individual who exceeded their concessional contributions would have been liable to pay the excess concessional contributions charge as well as the additional tax due when the excess contributions were withdrawn and included in their assessable income. The charge was approximately 3%, and was calculated from the start of the income year in which the excess contributions were made up until the day before the tax was due to be paid.

Individuals who make concessional contributions exceeding their cap on or after 1 July 2021 will no longer be liable to pay the excess concessional contributions charge. They will, however, still be issued with a determination and be taxed at their marginal tax rate on any excess concessional contributions amount, less a 15% tax offset to account for the contributions tax already paid by their super fund.

Recontributions of COVID-19 early released super

With the fast-moving COVID-19 situation last year, many individuals lamenting a lack of financial support from the government early on opted to withdrawal money from their super as a lifeline. Under the COVID-19 early release measures, individuals could apply to have up to $10,000 of their super released during the 2019–2020 financial year and another $10,000 released between 1 July and 31 December 2020. Between 20 April 2020 and 31 December 2020, the ATO received 4.78 million applications for early release, totalling $39.2 billion worth of super.

Not all of the individuals who applied to have their super released ended up needing to use it once the government ramped up its financial support programs (including JobKeeper, JobSeeker and the cash flow boosts). From 1 July 2021, those individuals who received a COVID-19 super early release amount can recontribute to their super up to the amount they released, and those recontributions will not count towards their non-concessional contributions cap. The recontribution amounts must be made between 1 July 2021 and 30 June 2030 and super funds must be notified about the recontribution either before or at the time of making the recontribution.

COVID-19 recontribution amounts are not a new type of contribution; rather, they are a personal contribution that receives a treatment to exclude it from an individual's non-concessional contribution cap. Individuals can make COVID-19 recontributions to any fund of their choice where the fund rules allow. Each COVID-19 recontribution amount must be detailed on a separate approved form and cannot exceed $20,000 per approved form.

COVID-19 recontribution amounts will need to be reported by super funds to the ATO via MATS as a personal contribution. The ATO has requested that super funds record and hold the required information until it finalises the functionality to enable funds to use the Bulk Data Exchange facility via the Business Portal. The ATO is working through the process for self managed super funds (SMSFs) and will advise about that in due course.

Source: www.ato.gov.au/Individuals/Super/In-detail/Withdrawing-and-using-your-super/COVID-19-early-release-of-super; www.ato.gov.au/Super/APRA-regulated-funds/In-detail/News/CRT-Alerts/2021/CRT-Alert-009/2021---Administrative-arrangements-for-COVID-19-re-contribution-amounts.

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