client alert | explanatory memorandum

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CURRENCY:

This issue of **Client Alert** takes into account developments up to and including 27 May 2022.

What's next on the agenda for the government?

With the election campaign finally over and a new government sworn in, many Australians will be wondering what a Labor government is likely to tackle over the next term. A helpful starting point is Labor's election promises, which provide a useful indication of possible areas that will be targeted over the next few years. Two significant policies that Labor took to the election were child care changes (both in terms of the subsidy and structural changes) and dealing with multinational tax avoidance. In relation to the latter, it proposed a multifaceted approach by limiting debt-related deductions for multinationals, denying a tax deduction for intellectual property in some instances, and increasing transparency.

Multinational tax avoidance

One of the big tax policies that Labor took to the election was the party's commitment to ensuring that multinationals pay their fair share of tax in Australia. To do this, Labor proposes a multipronged approach which includes:

- Limiting debt-related deductions (ie interest payments) by multinationals at 30% of profits to put an end to the creation of artificial debts and repayment arrangements within related entities. Further deductions over 30% may be considered if firms can substantiate those under either the arm's length or the worldwide gearing ratio test.
- Limiting the ability of large multinationals to abuse Australia's tax treaties while holding intellectual property in tax havens from 1 July 2023. Essentially, this means that if a firm makes payments for the use of intellectual property to a jurisdiction where they do not pay "sufficient tax", a tax deduction in Australia will be denied for those payments.
- Increasing transparency by requiring large multinational firms to publicly release high-level data on how much tax they pay in the jurisdictions they operate in, along with the number of employees working in their business.
- Implementation of a public registry of beneficial ownership to show who ultimately owns, controls, or receives profits from a company or legal vehicle. This will stop individuals hiding behind complex corporate structures that avoid accountability and obscure their tax liabilities.
- Mandatory reporting to shareholders as a "material tax risk" where the company is doing business in a jurisdiction with a tax rate below the global minimum (15%).
- Requiring government tenderers for contracts worth more than $200,000 to disclose their country of tax domicile.

Child care subsidy

During the election campaign, Labor also promised to reduce the cost of child care by lifting the maximum child care subsidy rate to 90% for those with a first child in care. The following table summarises the current and Labor-proposed child care subsidy income thresholds and percentages.

Total family income	Current child care subsidy (first child)	Labor election promise child care subsidy (first child)
$0 to $70,015	85%	90%
More than $70,015 to below $175,015	Between 85% and 50%	Between 90% and 71%
$175,015 to below $254,305	50%	Between 71% and 56%
$254,305 to below $344,305	Between 50% and 20%	Between 56% and 37%
$344,305 to below $354,305	20%	37%
$354,305 to $500,000	0%	Between 37% and 7%

In addition, Labor will be seeking to retain the higher child care subsidy rates for second and additional children in care. For those with school-aged children, the promise of the increased child care subsidy will be extended to outside school hours care.

Over the longer term, it is also likely that Labor will be engaging with the Australian Competition and Consumer Commission (ACCC) to design a price regulation mechanism for child care and with the Productivity Commission to conduct a comprehensive review of the sector with the aim of implementing a universal 90% subsidy for all families.

Other areas to watch

During the election campaign Labor also made announcements which will affect individuals and businesses, both big and small. These include more security for gig economy workers, making wage theft illegal, and training more apprentices.

Tax time 2022: ATO focus areas

Tax time 2022 is fast approaching, and this financial year, the ATO will again be focusing on a few key areas to ensure that individuals are doing the right thing and paying the right amount of tax. These key areas are considered by the ATO to be problem areas where individuals make the most mistakes.

Like last year, the ATO recommends that people wait until the end of July to lodge their tax returns, rather than rushing to lodge at the beginning of July. This is because much of the pre-fill information will become available later in the month, making it easier to ensure all income and deductions are reported correctly the first time, avoiding the need for amendments which can delay processing and refunds. In the past, it has been noted that individuals who lodge early often forget to include information about interest from banks, dividend income and payments from government agencies and private health insurers.

The ATO also reminds taxpayers that while it receives and matches information on rental income, foreign sourced income and capital gains, not all of that information will be pre-filled for individuals. Taxpayers will therefore need to ensure that all that information is included to avoid being caught up in ATO data-matching programs later on.

Some of the traditional areas that the ATO will be focusing on this year include record-keeping, work-related expenses and rental property income and deductions, as well as capital gains from property and shares. In addition, this year the ATO will focus on capital gains from cryptocurrency assets. It should be noted, however, that with recent crashes in cryptocurrency values, individuals are more likely to have related capital losses.

The ATO reminds taxpayers that any deductions that are claimed require substantiation, and those individuals who deliberately attempt to increase their refunds by falsifying records or are unable to provide evidence to substantiate their claims will be subject to “firm action”. For taxpayers who are working from home or in hybrid working arrangements and claim related expenses, the ATO has said it will be expecting a corresponding reduction in other expenses claimed, such as car, clothing, parking and tolls expenses.

Currently, there are still three methods available for taxpayers to deduct working from home expenses. These are actual cost, fixed rate and the all-inclusive shortcut method (80 cents per hour). Taxpayers should check their eligibility and work out which one that suits their own situation the best.

With the intense flooding experienced earlier this year, the ATO notes that some rental property owners may have insurance payouts related to their property. Any insurance payouts, along with other income received such as retained bonds or short-term rental arrangement income, need to be reported.

Lastly, the ATO will be keeping a close eye on individuals disposing of property, shares, and cryptocurrency, including non-fungible tokens (NFTs). Those with a capital gain need to include the gain in their tax return and pay tax on the gain at their marginal tax rates. Individuals who have recently sold out of cryptocurrency assets may have experienced a capital loss, which the ATO warns cannot be offset against other income such as salary and wages, and only against other capital gains.

Tax return checklists

Last month’s edition of Client Alert (May 2022) included a handy set of checklists for individual tax returns, super fund tax returns and company, trust or partnership tax returns to assist your clients in compiling all of the necessary information before seeing you about their returns this tax time.

Source: www.ato.gov.au/Media-centre/Media-releases/Four-priorities-for-the-ATO-this-tax-time/

Single Touch Payroll: Phase 2

While Single Touch Payroll (STP) entered Phase 2 on 1 January 2022, many employers might not yet be reporting the additional information required under this phase because their digital service providers (DSPs) have obtained deferrals for time to get their software ready and help their customers transition. However, once these deferrals expire, employers will need to start reporting additional information in their payroll software such as tax file numbers (TFNs) or Australian business numbers (ABNs) for payees, employment start dates for employees and details about employees' basis of employment according to work type. Income and allowance information for individual employees will be further disaggregated and will also require reporting of more details.

Essentially, STP works by sending tax and super information from an STP-enabled payroll or accounting software solution directly to the ATO when the payroll is run. Entering STP Phase 2 means that additional information which may not be currently stored in some employers' payroll systems will need to be reported through the payroll software. A salient example is the start date of employees. While many newer businesses may have that information handy, older businesses may have trouble finding records of exact start dates, particularly for their long-serving employees. In those instances, the ATO notes that a default commencement date of 01/01/1800 can be reported for STP Phase 2 purposes.

Employers will also be required to report either a TFN or an ABN for each payee included in STP Phase 2 reports. Where a TFN is not available for an employee, a TFN exemption code must be used. If a payee is a contractor and an employee within the same financial year, both their ABN and their TFN must be reported.

In addition to reporting TFNs and commencement dates for employees, employers are now also required to report the basis of employment according to work type. That is, whether an individual is full-time, part-time, casual, labour hired, has a voluntary agreement (is a contractor with their own ABN but is in a voluntary agreement with the business to bring payments into the PAYG system), a death beneficiary, or a non-employee (ie not in the scope of STP but included for the voluntary reporting of superannuation liabilities).

The report generated for STP Phase 2 will include a six-character tax treatment code for each employee, which is a shortened way of indicating to the ATO how much should be withheld from payments to these employees. Most STP solutions will automatically report these codes, but employers should still understand what the codes are to ensure that they are correct. For example, RTSXXX refers to regular (R) employees with a tax-free threshold (T), who have study and training support loans (S) and who have not asked for a variation of amount withheld due to Medicare levy surcharge (X) or Medicare levy exemption (X), or Medicare levy reduction (X).

The income and allowance details attributed to employees will also be further drilled down in Phase 2. For example, instead of reporting a single gross amount of employees' income, employers need to separately report on gross income, paid leave, allowances, overtime, bonuses, directors' fees, return to work payments (lump sum W) and salary sacrifice amounts.

If your DSP has a deferral in place, you do not need to apply for your own deferral and will only need to start reporting STP Phase 2 information from your next pay run after your DSP's deferral expires. However, if your business needs more time in addition to your DSP's deferral, you can apply for your own deferral using ATO Online Services.

Source: www.ato.gov.au/Business/Single-Touch-Payroll/Expanding-Single-Touch-Payroll-(Phase-2)/
www.ato.gov.au/Business/Single-Touch-Payroll/Need-more-time/STP-expansion-(Phase-2)-delayed-transitions/

ATO resumes collecting aged debts

Taxpayers with aged debts that the ATO had paused collecting or put on hold should be aware that offsetting aged debts against tax refunds or credits has now resumed. The aged debts can be offset either from ATO accounts or credits from other government agencies, although a debt will not be offset if the only available credit relates to a Family Tax Benefit amount.

"Aged debts" is a collective term the ATO uses to refer to uneconomical non-pursued tax debts that it has placed on hold and has not undertaken any recent action to collect. These debts do not typically show up on the online accounts of the taxpayers as an outstanding balance as the ATO has made them "inactive".

Usually when a debt is put on hold, the ATO notifies the taxpayer via a letter that the debt collection has been paused, although any credits that the taxpayer is entitled to will be offset against the debt. In addition, the ATO will note that it reserves the right to re-raise the debt in the future, depending on the circumstances of the taxpayer. Letters were sent out in May 2022 to remind taxpayers that they have aged debts and June 2022 will see the recommencement of debt collection.

While most taxpayers (or their tax agents) should have received their aged debts letter by now, some may not have received anything, due to a change of address or patchiness in the postal service. The first clue for those taxpayers that they may have an aged debt may be when they notice that their refund is less than expected or that a credit on one account is less than it should be. To avoid surprises, taxpayers who are unsure whether they have aged debt can check their online services for a transaction with the description "non-pursuit" on their statement of account.

It's important to remember that those with multiple accounts need to check all relevant accounts for that description to ensure they do not have an aged debt.

Taxpayers with aged debts who are unable to or choose not to pay all or part of the debt may find that they end up paying more, as general interest charge (GIC) may be automatically applied even where the debt is "on hold". Where the ATO offsets aged debts either from ATO accounts or credits from other government agencies, taxpayers will be notified that the debt has been re-raised and offset. If it is offset against an ATO account, taxpayers will be able to find a transaction on online services with the description "offset".

By law, the ATO is required to offset credits against any tax debts owed – except in some very limited circumstances, such where the taxpayer already has a fully compliant payment plan for outstanding debts; where the tax debt is a future debt or is related to a director penalty liability; where a deferral has been granted for recovery action; or where the available credit is a Family Tax Benefit amount.

Taxpayers that do not meet these criteria and are unable to pay their aged debt may be able to apply for a review or a debt waiver depending on their circumstances. For example, a permanent release of a debt may be available to on the basis of serious hardship (ie where the payment of a tax liability would result in a person being left without the means to afford basics such as food, clothing, medical supplies, accommodation or reasonable education).

Source: www.ato.gov.au/Tax-professionals/Newsroom/Your-practice/Resuming-offsetting-of-debts-on-hold/
www.ato.gov.au/General/Paying-the-ATO/How-much-you-owe/Debts-on-hold/

Operation Protego: detecting GST fraud

The ATO has lifted the lid on its most recent operation to stamp out GST fraud, Operation Protego, in order to warn the business community to not engage with fraudulent behaviour and to encourage those who have fallen into the trap to voluntarily disclose, before the application of tougher penalties.

Recently, the ATO has seen a rise in the number of schemes where taxpayers invent fake businesses in order to submit fictitious Business Activity Statements (BASs) and obtain illegal refunds. Most of these schemes have been promoted through social media and it has become such an issue that the ATO has commenced Operation Protego to tackle the problem.

According to the ATO, Operation Protego was initiated when its risk models, coupled with intelligence received from the banks, AUSTRAC-led Fintel Alliance, and the Reserve Bank of Australia (RBA), identified escalation of suspicious refunds. The operation itself is specifically investigating people inventing fake businesses to obtain Australian business numbers (ABNs), which are then used to submit fictitious BASs and get GST refund payments these "business owners" are not actually entitled to receive.

The amounts involved in these schemes are significant, with $20,000 being the average amount in fraudulently obtained GST refund payments. The ATO is currently investigating around $850 million in potentially fraudulent payments made to around 40,000 individuals, and is working with financial institutions that have frozen suspected fraudulent amounts in bank accounts. The ATO notes that while $850 million in fraudulent payments is a substantial sum, the operation has been able to stop many more fraud attempts.

It may be the case that not all of the individuals involved in these refund schemes know they are doing something illegal. For example, schemes promoting loans from the ATO or obtaining government disaster payments from the ATO have been on the rise on various social media platforms. Ever-changing content about all sorts of pandemic and disaster related support has become commonplace online, and many people don't have detailed knowledge about all the requirements of Australian business and tax law. It's really not surprising that it can be difficult to distinguish scam promotions from genuine support measures.

"We are working with social media platforms to help remove content promoting this fraud, but if you see something that sounds too good to be true, it probably is", Will Day, ATO Deputy Commissioner and Chief of the Serious Financial Crime Taskforce, has said.

The ATO wants to make it clear that it does not offer loans or administer government disaster payments. Any advertisement indicating that the ATO does these things is a rort. Government disaster payments are administered through Services Australia if they are Federal Government payments (eg Australian Government Disaster Recovery Payments), or through various state and territory government bodies if they are state or territory government payments (eg Disaster Relief Grants from the NSW government administered by Resilience NSW).

Scheme promoters will also sometimes require individuals or businesses to hand over their myGov details as a prerequisite to obtaining a fictitious loan or government disaster payment. Taxpayers who may have shared myGov login details for themselves or their business with scheme operators are encouraged to contact the ATO for assistance.

Another red flag the ATO is on the look-out for as a part of Operation Protego is activity backdating when a business is set up. It notes that backdating in conjunction with seeking a GST refund will flag a business as high risk and will subject it to more scrutiny, as well as compliance action.

While Operation Protego is running, the ATO notes that people and businesses acting legitimately may be affected by the extra controls put in place to stop fraudulent refunds.

Source: www.ato.gov.au/Media-centre/Media-releases/ATO-warns-community--do-not-engage-in-GST-fraud/

More ATO action on super guarantee non-compliance

Employers should take note that the ATO is now back to its pre-COVID-19 setting in relation to late or unpaid superannuation guarantee (SG) amounts. Firmer SG-related related recovery actions that were suspended during the pandemic have now recommenced, and the ATO advises it will be prioritising engaging with taxpayers that have SG debts, irrespective of the debt value.

The Australian National Audit Office (ANAO) has recently issued a report on the results of an audit conducted on the effectiveness of ATO activities in addressing SG non-compliance. While the ANAO notes that the SG system operates largely without regulatory intervention, because employers make contributions directly to super funds or through clearing houses, the ATO does have a role as the regulator to encourage voluntary compliance and enforce penalties for non-compliance.

To measure the level of non-compliance in this area, the ATO uses a measure called the SG gap, which is an estimate of the difference between the amount the ATO collects and what would have been collected if every taxpayer was fully compliant. The most recent data from the ATO was published in 2021 and indicated that the Australian total net SG gap in 2018–2019 was around $2.5 billion.

Overall, the ANAO report found that ATO activities addressing SG non-compliance have been only partly effective. This also held true for the risk-based SG compliance framework in which the ATO operates. The report notes that while there was some evidence that the ATO's compliance activities were improving employer compliance, the extent of improvement could not be reliably assessed.

The report makes three recommendations to improve ATO compliance activities in relation to SG non-compliance. The first is that the ATO should implement a preventative approach to SG compliance. The second is that the ATO should assess its performance measures against the Public Governance Performance and Accountability Rule 2014 and enhance its public SG performance information. This includes setting targets for measures such as the SG gap and having explanations for performance results, as well as changes over time.

While the first two recommendations are likely to have a negligible practical impact on day-to-day operations for employers in general, the ANAO's third and final recommendation may be a different story. Among other things, the ANAO recommends that the ATO maximise the benefit to employees' super funds by making more use of its enforcement and debt recovery powers, and consider the merits of incorporating debtors that hold the majority of debt into its prioritisation of debt recovery actions.

In its reply to the ANAO report, the ATO agrees with this third recommendation and states that while it paused many of its firmer SG related recovery actions through the COVID-19 pandemic, those have now recommenced. With the recommencement of recovery actions, the ATO's focus will generally be on taxpayers with higher debts, although it will be prioritising taxpayers with SG debts overall, irrespective of the debt value.

The ATO's reply also agrees with the first two recommendations in whole or part. It says that it has already begun implementing a preventative compliance strategy using data sources such as Single Touch Payroll (STP) and regular reporting from super funds. The ATO expects to continuing prioritising a preventative approach while also strengthening its data capability.

In addition, the ATO has indicated it will continue to investigate every complaint received in relation to the non-payment of SG, and take action where non-payment is identified. The actions available include the imposition of tax and super penalties, as well as the recovery and back-payment of super to employees. It will also be increasing transparency of compliance activities and employer payment plans so that affected employees are aware of the expected timing of back payments of super.

Source: www.anao.gov.au/work/performance-audit/addressing-superannuation-guarantee-non-compliance
www.ato.gov.au/Media-centre/Media-releases/Statement-on-ANAO-performance-audit--Addressing-Superannuation-Guarantee-Non-compliance-audit/
www.ato.gov.au/Business/super-for-employers/missed-and-late-super-guarantee-payments/

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