News Bulletin

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Accountants &
Business Advisors

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ATO RAMPS UP DATA MATCHING & AUDIT REVIEWS

Armed with funding boosts and increasingly sophisticated data matching methods, the ATO is increasing its scrutiny on business through its tax gap random audit program and its wider efforts to catch those who seek to hide or extract income tax-free.

Business Audit Reviews

The ATO under the tax avoidance taskforce banner, is targeting businesses in the top 500, the Next 5,000 and the Medium and Emerging Private Groups.

These reviews are aimed at identifying tax issues and tax risks to the revenue and to promote a "compliance hygiene" and increased transparency.

These reviews are different to a traditional audit as a big focus is on tax risk governance, which was a concept that was largely developed in the public group space in recent years, but is now trickling down into private group who may never have considered a formal tax risk governance framework for their private group

Businesses that fall into the Top 500, Next 5,000, and medium and emerging private groups programs should be on guard, prepare early and expect engagement with the Tax Office that they mightn't have before.

Rental Properties

The ATO will acquire property management data from property management software providers for the 2018-19 to 2022-23 financial years. The data items include property owner identification details, rental property and property manager details.

The ATO will also acquire rental bond data from state and territory rental bond regulators bi-annually from 20 September 1985 through to 30 June 2023. The data items include landlord and managing agent identification details and rental bond transaction details.

The data will be acquired and matched against ATO records to identify and address taxation risks where: (i) taxpayers owning income producing property have obligations to report the income generated in their tax returns; and (ii) taxpayers disposing of a property may trigger a CGT event.

The ATO estimates records relating to approximately 350,000 individuals will be obtained each financial year.

Flashy cars, low income

Black economy participants and tax dodgers driving luxury cars will continue to come under ATO scrutiny as it looks to extend its motor vehicle data-matching program for a further three years.

As part of its data-matching program the ATO will collect records from eight state and territory motor vehicle registries for the 2019–20, 2020–21 and 2021–22 financial years.

According to the ATO, the records will help it "identify higher-risk taxpayers with outstanding lodgements and those with undeclared income whose asset holdings may not be proportionate to their declared financial position".

To support its focus on the black economy, the Tax Office will also use the data as "an indicator of risk, along with other data holdings, to identify taxpayers that have purchased vehicles with values that are not commensurate with their reported income.

Increase to the SG from 1 July

Employers should be aware that as from 1 July, the rate of Super Guarantee will increase from 9.5% to 10.0% of "Ordinary Time Earnings".

This rate is legislated to increase each year by 0.5% until it reaches 12% on 1 July 2025.

EXTENSION OF DIRECTOR PENALTY RULES

Directors of companies should be aware of extensions made to the director penalty notice regime, which increases the level of personal risk associated with being a director of a company.

In addition to empowering the ATO to recover unpaid PAYGW and SGC liabilities from directors of a company in certain situations, the regime has been extended to include GST, luxury car tax (LCT) and wine equalisation tax (WET) amounts as from 1 April 2020.

In broad terms, the director penalty notice regime now also allows the Commissioner to make and collect estimates of anticipated GST liabilities and make company directors personally liable for a company's GST, LCT and WET liabilities in certain circumstances.

The *Corporations Act 2001* has also been amended to introduce new criminal offences and civil penalty provisions for company officers who fail to prevent a company from making creditor-defeating disposals of property, as well as allowing liquidators to apply for a court order in relation to these disposals.

The amendments also prevent directors from improperly backdating resignations or ceasing to be a director when this would leave a company with no directors.

Clients who are directors of a company should be made aware of these changes and the need to ensure that companies are up to date with reporting indirect tax amounts to the ATO.

For those considering taking on a role as director of a company it is important to undertake a due diligence process prior to being appointed as director to ensure that the company is up to date with its tax and other obligations as newly appointed directors can become personally liable for historical outstanding amounts.

DIRECTOR IDENTIFICATION NUMBERS (DIN'S)

The Commonwealth has recently passed the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020*

The Act introduces a requirement for all current and future directors of Companies to register for a unique Director Identification Number (DIN) that they will keep for life, much like a tax file number under a rewrite of Australia's business registers.

Under this legislation, each person who holds the position of director for an Australian or registered foreign corporation, will be required to confirm their identity by obtaining a personal DIN, which they will use for all director appointments.

Who will need a director ID?

The DIN is very broad and introduces the concept of an 'eligible officer'. An eligible officer is a director who:

- is appointed to the position of director, or is appointed to the position of an alternate director and is acting in that capacity (regardless of the name that is given to that position); or
- any other officer of the registered body who is an officer of a kind prescribed by the regulations.

It should be noted that the definition picks up the concept of '*shadow directors'* who act in the capacity of directors through influence and control but are not directors by title. That is, its feasible that someone who is not a director but is seen to be making decisions on behalf of the company can be held to account

Whilst there will be transitional provisions in place for the first twelve months of operation, criminal and civil penalties will apply for directors who do not apply for a DIN within the allowed time.

At this stage nothing needs to be done until further guidance is issued by the corporate regulator.

YEAR END TAX PLANNING CONSIDERATIONS

As the financial year draws to a close, businesses should look at their year-end tax and consider what year-end tax planning options that may be available.

Below are some tax planning strategies that may be considered to minimise the 2021 Tax. However, it should be noted this is not intended to be a comprehensive document covering all taxation issues that may require consideration.

If you have questions about anything in this newsletter or about your tax planning options, please do not hesitate to contact us.

Basic Income/Expense Considerations

Defer the derivation of income

Sometimes taxpayers will receive payments in advance of goods or services being provided. If the taxpayer accounts on an accruals basis then there might be an opportunity to defer the inclusion of this income in the taxpayer's tax return until a later income year by delaying raising invoices until after 30 June.

An example of this could be to delay raising invoices for accrued income such as Work in Progress. Also, it should be noted that service income received in advance (eg where amounts are received before 30 June but services are only provided after 30 June) may only be assessable in subsequent income tax years.

If income is derived on the cash basis (eg interest, royalties, rent and dividends), where possible, defer the receipt of the payment until 2022 (eg set term deposits to mature after 30 June rather than before 30 June).

Bring forward tax deductible expenses

To qualify for deductions in the 2021 income tax year, taxpayers may bring forward up-coming expenses (i.e. incur the expenses before 30 June 2021) or prepay expenses up to 12 months ahead (if cash flow allows).

Capital Gains Tax (CGT)

If you have derived any capital gains from the sale of your investments or business assets this year, consider whether you can offset them by crystallising any capital losses on the sale of other assets (where possible), or be able to use the CGT Small Business concessions.

Bad debts

Claiming Bad Debts as a tax deduction. A taxpayer can only claim a deduction for bad debts if the debts: (i) are written off as bad before year-end; and (ii) have previously been included in the taxpayer's assessable income.

Paying superannuation

In order to claim a deduction for employee superannuation contributions, those superannuation contributions must actually be *paid and cleared by 30 June*.

Stock Management

Review your trading stock as at 30 June, and:

- Consider the possibility of valuing trading stock at the lower of cost, market selling value, or replacement value. Reducing the value of stock at year-end also reduces the taxable income.
- identify and write off obsolete stock at year-end.

Directors' fees and employee bonuses

Any expected directors' fees and employee bonuses may be deductible for the 2021 tax year if the taxpayer/employer is 'definitely committed' to the payment of a quantified amount by 30 June 2021, even if the fee or bonus is paid to the employee or director after 30 June 2021.

Therefore, businesses considering paying Directors Fees or bonuses, should minute their intention and commit the busines to the payment by 30 June. By committing the business to the payment, the business can claim a deduction even though no physical payment is made by 30 June. This principle can also be applied to other payments (e.g. Management Fees etc,)

2021 Tax Changes that may impact EOFY Tax Planning

Full Expensing of Depreciating Assets

The Government has made changes to the depreciation rules (for eligible assets acquired from 7.30 pm 6 October 2020 and first used by 30 June 2022), allowing businesses with a turnover less than $5 billion to fully expense the cost of:

- New and second-hand assets for businesses with an aggregated turnover that is less than $50 million; or
- New assets for businesses with an aggregated turnover equal to or more than $50 million but less than $5 billion.

Company Loss Carry-Back

Eligible companies, to carry back tax losses incurred in the 2020, 2021 or 2022 financial years, to be used against profits taxed in a previous year, 2019 or later.

These companies will receive a refundable tax offset in the year they made a loss. Any tax losses that are not fully offset against previous taxed profits, or not elected to be used, will be carried forward as normal.