

Practice Update

December 2019

PAYG and deductions for payments to workers

The ATO has reminded business taxpayers they can no longer claim deductions for certain payments to workers if they have not met their PAYG withholding obligations from 1 July 2019.

If the PAYG withholding rules require an amount to be withheld, to claim a deduction for most payments to a worker, a business taxpayer must:

- withhold the amount from the payment before they pay their worker; and
- report that amount to the ATO.

Importantly, where a taxpayer simply makes a mistake and withholds or reports an incorrect amount, they will **not** lose their deduction, although any such errors should be corrected as soon as possible so as to minimise penalties.

Additionally, a deduction is still available if they voluntarily disclose to the ATO prior to the commencement of an audit or other ATO compliance activity involving their PAYG withholding obligations or deduction claims.

Ref: ATO website, 18 November 2019

STP and superannuation guarantee

In a presentation at the Australian Institute of Superannuation Trustees Chairs Forum, the ATO's Deputy Commissioner confirmed that as a result of STP, the ATO now has an "unprecedented level of visibility" of super information.

In particular, the ATO's examination of Super Guarantee ('SG') contributions of some 75 million payment transactions for the first three quarters of 2019 (for approximately 400,000 employers) has shown that 90 - 92% of contribution transactions by volume and 85 - 90% of transactions by dollar value were paid on time.

The ATO is now starting to actively use this data to warn employers who appear not to be paying the required SG on time (or at all).

As a result, it has notified 2,500 employers that they have paid their SG contributions late during 2019. Due-date reminders were also sent to a further 4,000 employers.

Ref: ATO Presentation, ATO insights and actions across superannuation, 14 October 2019

No CGT main residence exemption for non-residents

The Government recently tabled legislation, making its second attempt to deny access to the CGT main residence exemption for individuals who are foreign residents (i.e., non-resident taxpayers for Australian tax purposes).

The restrictions to this CGT exemption will apply to taxpayers who are a non-resident at the time of the relevant CGT event (i.e., generally as at the contract date).

If enacted, the proposed changes will potentially impact foreign residents in the two ways outlined below.

1. Transitional rules for properties held before 7:30pm (AEST) on 9 May 2017

Firstly, for properties held prior to the 2017 Federal Budget (i.e., before 7:30pm AEST on 9 May 2017), the CGT main residence exemption will only be able to be claimed, for a non-resident, for disposals that occur up until **30 June 2020**.

For disposals of properties occurring on or after 1 July 2020, foreign residents will have **no** access to the CGT main residence exemption, unless specified 'life events' occur within a continuous period of six years of the taxpayer becoming a foreign resident. These 'life events' include:

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- The terminal illness of the taxpayer, their spouse or a child under the age of 18 years.
- The death of a spouse or child under the age of 18.
- A transfer of the relevant asset as a result of a divorce, separation or similar maintenance agreement.

2. Properties acquired at or after 7:30pm (AEST) 9 May 2017

Secondly, for properties acquired at or after the 2017 Budget night, the CGT main residence exemption will no longer be available for non-resident taxpayers, unless the same specified 'life events' (as outlined above) occur within a continuous period of six years of the taxpayer becoming a foreign resident.

Ref: ATO Website, 29 October 2019

ATO November 2019 bushfire assistance

Following the devastating bushfires across large parts of NSW and Queensland in November, the ATO has offered ongoing support.

In particular, a specific helpline (**1800 806 218**) has been established that can be used by those impacted to seek assistance, such as to:

- obtain extra time to pay tax debt or lodge tax forms;
- obtain assistance in finding lost TFNs;
- obtain re-issued income tax returns, activity statements and notices of assessment;
- obtain assistance in re-constructing tax records that are lost or damaged;
- have any refunds owed fast tracked;
- negotiate payment plans tailored to individual circumstances (including interest-free periods); and

- negotiate the remission of penalties or interest charged during the time a taxpayer has been affected.

Ref: ATO website, 21 November 2019

SMSs for SMSFs

In the interests of protecting SMSF members and their retirement savings from fraud and misconduct, the ATO has announced it will send out an email and/or a text message via an SMS when changes (including updates to the SMSF financial details or member information) are made.

Accordingly, the ATO has urged all SMSF members to ensure they update their contact details either:

- online at abr.gov.au (with an AUSkey or an ABN linked to their myGov account);
- through their registered tax agent;
- by phoning 13 10 20 (for authorised contacts of the relevant SMSF); or
- by lodging the paper form (NAT 3036).

The ATO has urged SMSF members who are concerned about notified changes to first speak with the other trustees of the SMSF or the authorised agent of their SMSF, before contacting the ATO.

Editor: As the ATO develops its digital infrastructure at an increasing pace, it has also reminded SMSF members that any ATO sanctioned emails and text messages would never ask for the recipient to reply by text or email, or to provide otherwise personal information.

Importantly, where an SMSF member is concerned about the authenticity of an email or text purportedly from the ATO, the ATO's current SMS and email activities can be viewed on its website by searching for QC 40936.

Ref: ATO website, 22 November 2019

<p>Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.</p>
