



CONSULTING
ACCOUNTANTS

PRACTICE UPDATE

DECEMBER 2019

Welcome to the SP Consulting Accountants newsletter.
Please read this update and contact SP Consulting Accountants if you have any queries.



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 & 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:

- 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.

Editor: Should you find yourself impacted by a natural disaster, even an alternative disaster to the November 2019 bushfires, please contact our office so we can provide you with any additional assistance you may need at this difficult time.

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 moves over to the digital world at a rapidly 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

Christmas

PARTIES & GIFTS 2019

Please read this update and contact this office if you have any queries

Year-end and other staff parties

Editor: With the well earned December/January holiday season on the way, many employers will be planning to reward staff with a celebratory party or event. However, there are important issues to consider, including the possible FBT and income tax implications of providing 'entertainment' (including Christmas parties) to staff and clients.

FBT and 'entertainment'

Under the FBT Act, employers must choose how they calculate their FBT meal entertainment liability, and most use either the 'actual method' or the '50/50 method', rather than the '12-week method'.

Using the actual method

Under the actual method, entertainment costs are normally split up between employees (and their family) and non-employees (e.g., clients).

Such expenditure on employees is deductible and liable to FBT. Expenditure on non-employees is not liable to FBT and not tax deductible.

Using the 50/50 method

Rather than apportion meal entertainment expenditure on the basis of actual attendance by employees, etc., many employers choose to use the more simple 50/50 method.

Under this method (irrespective of where the party is held or who attends) 50% of the total expenditure is subject to FBT and 50% is tax deductible.

However, the following traps must be considered:

- even if the function is held on the employer's premises – food and drink provided to employees is not exempt from FBT;
- the minor benefit exemption* cannot apply; and
- the general taxi travel exemption (for travel to or from the employer's premises) also cannot apply.

(*) Minor benefit exemption

The minor benefit exemption provides an exemption from FBT for most benefits of 'less than \$300' that are provided to employees and their associates (e.g., family) on an infrequent and irregular basis.

The ATO accepts that different benefits provided at, or about, the same time (such as a Christmas party and a gift) are not added together when applying this \$300 threshold.

However, entertainment expenditure that is FBT-exempt is also not deductible.



Editor: 'Less than' \$300 means no more than \$299.99! A \$300 gift to an employee will be caught for FBT, whereas a \$299 gift may be exempt.

Example: Christmas party

An employer holds a Christmas party for its employees and their spouses – 40 attendees in all.

The cost of food and drink per person is \$250 and no other benefits are provided.

If the actual method is used:

- For all 40 employees and their spouses – no FBT is payable (i.e., by applying the minor benefit exemption), however, the party expenditure is not tax deductible.

If the 50/50 method is used:

- The total expenditure is \$10,000, so \$5,000 (i.e., 50%) is liable to FBT and tax deductible.



Christmas gifts

Editor: With the holiday season approaching, many employers and businesses want to reward their staff and loyal clients/customers/suppliers.

Again, it is important to understand how gifts to staff and clients, etc., are handled 'tax-wise'.

Gifts that are not considered to be entertainment

These generally include a Christmas hamper, a bottle of whisky or wine, gift vouchers, a bottle of perfume, flowers or a pen set, etc.

Briefly, the general FBT and income tax consequences for these gifts are as follows:

- gifts to employees and their family members – **are liable to FBT** (except where the 'less than \$300' minor benefit exemption applies) and **tax deductible**; and
- gifts to clients, suppliers, etc. – **no FBT**, and **tax deductible**.

Gifts that are considered to be entertainment

These generally include, for example, tickets to attend the theatre, a live play, sporting event, movie or the like, a holiday airline ticket, or an admission ticket to an amusement centre.

Briefly, the general FBT and income tax consequences for these gifts are as follows:

- gifts to employees and their family members – **are liable to FBT** (except where the 'less than \$300' minor benefit exemption applies) and **tax deductible** (unless they are exempt from FBT); and

- gifts to clients, suppliers, etc. – **no FBT** and **not tax deductible**.

Non-entertainment gifts at functions

Editor: What if a Christmas party is held at a restaurant at a cost of less than \$300 for each person attending, and employees are given a gift or a gift voucher (for their spouse) to the value of \$150?

Actual method used for meal entertainment

Under the actual method **no FBT** is payable, because the cost of each separate benefit (being the expenditure on the Christmas party and the gift respectively) is less than \$300 (i.e., the benefits are not aggregated).

No deduction is allowed for the food and drink expenditure, but the cost of each gift is **tax deductible**.

50/50 method used for meal entertainment

Where the 50/50 method is adopted:

- 50% of the total cost of food and drink is liable to FBT and tax deductible; and
- in relation to the gifts:
 - the total cost of all gifts is not liable to FBT because the individual cost of each gift is less than \$300; and
 - as the gifts are not entertainment, the cost is tax deductible.

Editor: We understand that this can all be somewhat bewildering, so if you would like a little help, just contact our office.