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JULY / AUGUST
2016

New Year, New Laws

FEDERAL BUDGET
– What's In It For You?

+more!

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2016 FEDERAL BUDGET
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Significant tax cuts, and wider access to many small business concessions were just two of the measures announced just recently in the Federal Budget. **How does Budget 2016 impact your business?**

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This age-old question has been given a new lease of life recently by the ATO. This article examines this very important distinction employers must make, and provides them with a way forward.

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In this edition, we reveal the types of businesses that are under currently under the ATO microscope, look at the latest tax scams doing the rounds, detail a new tool to assist you when hiring new employees, and much more!

KEY DATES
FOR BUSINESS

Many key dates are looming for business including those relating to Activity Statements, and FBT.

JULY 2016

01 JULY
First day of the 2016/2017 financial year

02 JULY
2016 Federal Election

14 JULY
2015/2016 Payment Summaries to be issued to employees

21 JULY
Monthly Activity Statements (June 2016) – due for lodgement and payment

28 JULY
Quarterly Activity Statements (April-June) - due for lodgement and payment (if lodging by paper)

28 JULY
Superannuation Guarantee Contributions (April-June) – due for payment to superannuation funds or Clearing Houses

Where a due date falls on a weekend, it is deferred to the next business day

AUGUST 2016

11 AUGUST
Quarterly Activity Statements (April-June) - due for lodgement and payment (if lodging electronically)

14 AUGUST
PAYG Withholding Payment Summary Annual Reports – due for lodgement

21 AUGUST
Monthly Activity Statements (July 2016) – due for lodgement and payment

21 AUGUST
Final day for eligible monthly GST reporters to elect to report annually

28 AUGUST
Contractor Taxable Payments Annual Report – due for lodgement

READY, SET, GO

The new financial year heralds a number of important changes and deadlines that individuals and business need to be aware of. These include compulsory SuperStream, withholding on property sales by non-residents, the provision of payment summaries to employees, the commencement of rollover relief for small business restructures, and more.

SuperStream

From 1 July 2016, *SuperStream* is now compulsory for all employers, irrespective of their size.

If this deadline has not been met penalties may be imposed (including fines of up to $8,500) where the employer has not made a genuine attempt to be compliant by their deadline. If you as an employer are still not *SuperStream* compliant, you must take immediate action which may involve adopting any of the following *SuperStream* solutions:

- ***Clearing House*** – your default fund may have its own clearing house. Alternatively, if your business has a turnover of less than $2 million you can use the ATO's free Small Business Clearing House.
- ***Outsource*** – If you outsource your payroll (including superannuation) to your accountant, bookkeeper or other third-party such as a payroll bureau, they will typically provide the *SuperStream* solution for you as part of their engagement. You should confirm with them that they have systems in place that are *SuperStream* compliant.
- ***Software*** - Upgrade your payroll software (most of the major software brands are now *SuperStream* compliant. Ensure you have the latest versions).
- ***Online Systems*** – Large superannuation funds have online payment systems that you can use. Check with your fund.

Although virtually all employers will need to be compliant there are limited exceptions. Employers do not need to use *SuperStream* for:

- o Contributions to their own SMSF e.g. if you're a related-party employer and an employee of your family business and your Super Guarantee contributions go to your SMSF)
- o Personal contributions – for example, if you're a sole trader and you contribute to a superannuation fund for yourself.

For these types of contributions, the contributor can continue to use their previous processes.

Payment Summaries

2015/2016 Payment Summaries must be issued to employees by 14 July 2016. This deadline is stipulated by law (Section 16-155 of the Tax Administration Act). The following types of Payment Summaries must be issued:

INDIVIDUAL NON-BUSINESS PAYMENT SUMMARIES

Due to employees, company directors and officeholders to whom you paid salary and wages, pension payments compensation allowances or other withholding payments during the financial year.

FOREIGN EMPLOYMENT PAYMENT SUMMARIES

Due to Australian resident employees, company directors and office holders working overseas that have received assessable foreign employment income for Australian tax purposes or income earned for work in the Joint Petroleum Development Area (JPDA).

BUSINESS AND PERSONAL SERVICES INCOME PAYMENT SUMMARIES

Must be provided to:

- Workers, other than employees (e.g. independent contractors) who have a PAYG Voluntary Agreement with you to withhold amounts from payments made to them
- Workers engaged under a labour-hire arrangement, or other payments such as those to performing artists, and
- Individuals who have had tax amounts withheld from Personal Services Income (PSI) attributed to them.

Tax Tables

In the Federal Budget handed down recently, the income threshold for liability for the 37% tax bracket is proposed to be increased from $80,000 to $87,000. Despite being announced in the Budget, being supported by the Opposition, and coming into force from 1 July 2016, under existing law there has been NO change to the PAYG withholding rates and thresholds for 2016/2017. Therefore, everyone earning more than $80,000 per annum will have to wait for legislation to pass in the new Federal Parliament before they receive their tax cut of up to $6 per week in their pays.

The only PAYG withholding formulas that will change from 1 July 2016 are those relating to HELP and SFSS repayments. You can access updated tables taking account of these liabilities at www.ato.gov.au for payments made from 1 July 2016.

Restructure Go-Ahead

Small Business Entities (SBEs) are now permitted to restructure without incurring income tax or CGT liabilities, subject to various conditions. The income tax and CGT consequences will be rolled over for SBE restructures that occur on or after 1 July 2016. This is a welcome reform as small businesses often desire a restructure as they grow and evolve. For the finer details of this measure, see our May/June 2016 edition of this publication which you can download from our website www.mytaxsavers.com.au

While the rollover relief for income tax and CGT is welcome, in changing structures other costs (such as Stamp Duty, for example) should be considered.

Withholding from Land Sold by Foreigners

From 1 July 2016, for all property sales of $2 million or more the buyer is required to withhold 10% of the sale proceeds and remit that amount to the ATO without delay – unless the seller obtains a *Clearance Certificate* from the ATO before settlement. Failure to withhold an amount when required to do so will result in the buyer paying a penalty equal to the amount that was required to be withheld.

To comply, the ATO has advised that the following webpages for this new withholding measure are now available:

- Foreign resident capital gains withholding and explanation
- Clearance certificate application form and instructions
- Variation application form and instructions
- Purchaser payment notification form and instructions
- Common questions.

(Simply type these terms into the search box on the ATO website www.ato.gov.au). For more details, see our bimonthly May/June 2016 edition of this publication which you can download from our website www.mytaxsavers.com.au

SMSF Advice

From 1 July 2016, only appropriately licensed advisors will be permitted to provide certain advice to taxpayers about their SMSF needs.

Previously Regulation 7.1.29A (otherwise known as the 'Accountant's Exemption') permitted recognised accountants to recommend a client should establish or wind-up an SMSF without being licensed under the Australian Financial Services (AFS) licensing regime. If a person or entity wishes to provide SMSF advice from 1 July 2016 they will need to be appropriately licensed in some capacity with ASIC. Examples of advice for which a person or entity will need a licence include:

- ✓ Recommending that a person (e.g. your client) establish an SMSF
- ✓ Advising about the performance of different types of superannuation choices or different types of funds, or recommending one structure over another
- ✓ Recommending that a person consolidate their superannuation into a single account
- ✓ Recommending that a person make additional contributions over and above Superannuation Guarantee
- ✓ Recommending that a person redirects their existing contributions to another fund
- ✓ Recommending that a person commence any form of pension including a Transition to Retirement pension
- ✓ Recommending that a person purchase any form of property through their SMSF
- ✓ Preparing an investment strategy for the SMSF
- ✓ Recommending the type of investments an SMSF should acquire as part of your advice to set up an SMSF
- ✓ Recommending that a person make a binding death benefit nomination, including who should be nominated.

Importantly, Regulation 7.1.29A will continue to permit unlicensed advisors (such as accountants) to advise on administration, compliance, audit or tax advice in respect of SMSFs and other financial products. Breaching these new licensing laws can result in heavy fines including:

- Individuals – up to $34,000 and/or 2 years imprisonment
- Companies – $340,000 and/or 2 years imprisonment for each director.

ASIC advises that it is already scrutinising the market for those individuals and organisations providing advice on the merits of SMSFs purchasing property. If a person or entity is uncertain about their registration obligations from 1 July 2016, they should contact ASIC directly.

'Backpacker Tax' Now Delayed

The so-called "Backpacker Tax" will not commence on 1 July 2016 as previously planned.

By way of background, in the 2015 Federal Budget on 12 May 2015 it was announced that the tax residency rules would change to treat most people who are temporarily in Australia for a working holiday as non-residents for tax purposes, irrespective of how long they are here. This would mean that such individuals would be taxed at 32.5% from the first dollar that they earn.

Currently, a working holiday maker can be treated as a resident for tax purposes if they satisfy the tax residency rules, typically, that that are present in Australia for more than 6 months. Where this is the case, they are able to enjoy resident tax treatment including the $18,200 tax-free threshold, the low income tax offset, and also the lower tax rate of 19% tax which applies to amounts between $18,200 and $37,000.

On 17 May 2016, Assistant Treasurer and Small Business Minister Kelly O'Dwyer announced that the changes which were slated to commence on 1 July 2016, will now be delayed pending the outcome of a review. She was quoted as saying:

> *It is a review that will be conducted by Barnaby Joyce and it is a review that will be supplemented by the Minister for Immigration, the Minister for Employment, the Minister for Tourism and also the PM's department and, of course, the Treasury. This means, by necessity, that there will be a deferral of the commencement of the measures that were announced two Budgets ago"*
>
> *It will mean that that commencement date does not begin on 1 July this year but will be deferred until the 6-month period goes past and that there is the full review and the outcomes of that review are known. The outcomes of the review, of course, will be considered by cabinet in October or November of this year and any outcomes following on from that review will commence from 1 January 2017.*

For its part, the Labor Opposition opposes this tax and will not proceed with it should it win the Federal Election on 2 July

With the tax now delayed, employers will not be required to alter their existing withholding practices in relation to these workers when the new financial year commences on 1 July 2016.

2016 FEDERAL BUDGET WHAT'S IN IT FOR BUSINESS?

The 2016 Federal Budget was handed down on 3 May. This article examines the effect of the Budget on business. Tax cuts, and GST simplification are just two of the new measures announced.

Small Business

DEFINITION EXPANDED

If the Government is re-elected, then from 1 July 2016 the Small Business Entity (SBE) turnover threshold will increase from $2 million to $10 million (including the turnover of connected entities and affiliates). To be clear, this will apply from 2016/2017. If legislated, this will be the first increase to the SBE threshold since the concept of SBE was introduced in 2006. This reform will pave the way for an additional estimated 90,000 to 100,000 businesses to access the following SBE concessions:

- The 27.5% tax rate as at 1 July 2016 (see later)
- The simplified depreciation rules, including immediate tax deductibility for asset purchases costing less than $20,000 until 30 June 2017
- The simplified trading stock rules, which give businesses the option to avoid a financial year-end stocktake if the value of their stock has changed by less than $5,000 during the year
- A simplified method of paying PAYG instalments which will be calculated for SBE's by the ATO
- The option to account for GST on a cash basis and pay GST instalments as calculated by the ATO
- Immediate deductibility for various start-up costs (e.g. professional fees and government charges)
- A 12-month prepayment rule, and
- The more generous FBT exemption for work-related portable electronic devices (e.g. mobile phones, laptops and tablets).

The increased turnover threshold will not however apply for the purposes of accessing the CGT Small Business Concessions. To access these CGT concessions, a business's aggregated turnover must be $2 million or less or, alternatively, the SBE and related entities must have net assets to the value of less than $6 million just before the relevant CGT event (e.g. sale).

FEDERAL OPPOSITION

For its part, the Federal Opposition opposes the change in definition of SBE. Should it be elected it intends on retaining the $2 million aggregated turnover threshold and therefore not increasing it.

COMPANY TAX CUT

From 1 July 2016, the tax rate for SBEs will be reduced to 27.5% (from 28.5%). The rate will gradually reduce to 25% by 2026/27 (these decreases are outlined later). In keeping with the new definition, SBEs are those businesses with an aggregated annual turnover of less than $10 million, including connected entities and affiliates. By way of example, an SBE with 2016/2017 taxable income of $3 million would receive a tax cut of $75,000 compared to 2015/2016.

FEDERAL OPPOSITION

For its part, the Federal Opposition supports the reduction in company tax to 27.5% from 2016/2017 but only for businesses with an aggregated turnover of under $2 million.

WHAT ABOUT THE FRANKING CREDIT?

You may recall in last year's Budget when the SBE company tax rate was cut to 28.5% the franking credit to be passed onto shareholders remained at 30%. In this year's Budget with the reduction to 27.5% and eventually to 25%, there seems to have been a change whereby the franking credit to be passed on will be equal to the amount of tax paid by the company (for confirmation of this change, we'll need to see the Explanatory Memorandum to the new legislation as the Budget Papers are somewhat vague on this issue).

This is potentially bad news for investors who will receive a reduced franking credit, and also for smaller business owners who are more likely to 'strip' the profits from their company each year. This could also lead to excess franking credits in your franking account (i.e. you can only frank a dividend to 27.5% but may have paid company tax in an earlier year of greater than 27.5%).

TAX CUT FOR UNINCORPORATED BUSINESSES

To complement the company tax cuts, the more than 70% of businesses who are not incorporated (e.g. sole traders and partners in partnerships) will receive a tax discount/offset. Currently the offset for 2015/2016 is set at 5%. This will, if the Government is re-elected, increase over a ten year period to 10%. The tax discount will increase to 8% on 1 July 2016, then to 10% in 2024/2025, then to 13% in 2025/2026, before reaching a permanent level of 16% in 2026/2027. Throughout all years, the maximum value of the discount will remain at $1,000 per person per financial year.

The Government also announced that more taxpayers will be able to access this tax discount. If the Government is re-elected, from 1 July 2016, access to the discount will be extended to individual taxpayers with business and investment income from an unincorporated business that has an aggregated turnover of less than $5 million (up from the current $2 million threshold in 2015/2016).

EXAMPLE

Jeff operates a business as a sole trader and has a turnover of $110,000, with taxable income of $70,000. Jeff would pay tax at his marginal tax rate and have a tax bill of $15,697.

2015/2016
The 5% tax discount will reduce the $15,697 tax bill by $784 to $14,913

2016/2017
The increased 8% tax discount will reduce the tax bill by $1,255. As this amount exceeds the maximum tax discount of $1,000, Jeff's tax discount will be capped at $1,000, reducing his overall tax bill to $14,697 (a $216 improvement from the previous year as a result of the increased discount).

Broader Business Taxation

COMPANY TAX CUT

In the Budget's centrepiece, the Government plans to cut income tax for all companies down to 25% over the next 11 income years. As per the following table, the company tax rate will remain at 30% until annual turnover qualifies your company for a reduction:

Income Year	Applicable Turnover Threshold	Company Tax Rate (%)
2015/2016	$2 million	28.5
2016/2017	$10 million	27.5
2017/2018	$25 million	27.5
2018/2019	$50 million	27.5
2019/2020	$100 million	27.5
2020/2021	$250 million	27.5
2021/2022	$500 million	27.5
2022/2023	$1 billion	27.5
2023/2024	All companies	27.5
2024/2025	All companies	27
2025/2026	All companies	26
2026/2027	All companies	25

As stated earlier, the only aspect of these reductions that the Opposition supports if it were to win the Election is the reduction to 27.5% and only for companies with an aggregated annual turnover of less $2 million.

DIVISION 7A SIMPLIFICATION

From 1 July 2018, the Division 7A compliance burden will be eased. These changes will provide clearer rules for taxpayers while maintaining the overall integrity and policy intent of Division 7A. The amendments will include:

- A self-correction mechanism for inadvertent breaches of Division 7A
- Appropriate safe-harbour rules to provide certainty
- Simplified Division 7A loan arrangements, and
- A number of technical adjustments to improve the operation of Division 7A and provide increased certainty for taxpayers.

GST COMPLIANCE EASED

In a bid to ease the GST compliance burden on business, simplified reporting requirements were proposed in the Budget as follows:

- Extending the option to account on a cash basis to businesses with an annual turnover of less than $10 million from 1 July 2016
- Allowing businesses with an annual turnover of less than $10 million to pay 'GST instalments' as determined by the ATO from 1 July 2016
- Allowing businesses with an annual turnover of less than $10 million to use simplified BAS reporting from 1 July 2017 (following a trial in 2016/2017). Under simplified reporting, several labels will be removed from the BAS with small businesses only required to report GST on Sales (1A), GST on Purchases (1B), and Total Sales (G1). User testing commences 1 July 2016.

ASSET BACKED FINANCING ARRANGEMENTS

Applying from 1 July 2018, the Government announced that it will remove key barriers to the use of asset backed financing arrangements such as deferred payment arrangements and hire purchase arrangements. Asset backed financing arrangements can be used to support infrastructure investment as they are ideally suited to large and longer-term projects.

The reforms will ensure that asset backed financing arrangements are treated in the same way as financing arrangements based on interest bearing loans or investments. The Government claims that this in turn will improve access to more diverse sources of capital in Australia.

COLLECTIVE INVESTMENT VEHICLES

The Government announced that it will introduce new tax and regulatory frameworks for two new types of collective investment vehicles (CIVs) – corporate CIVs and limited partnership CIVs. In simple terms, CIVs allow investors to pool their funds and have them managed by a professional fund's manager.

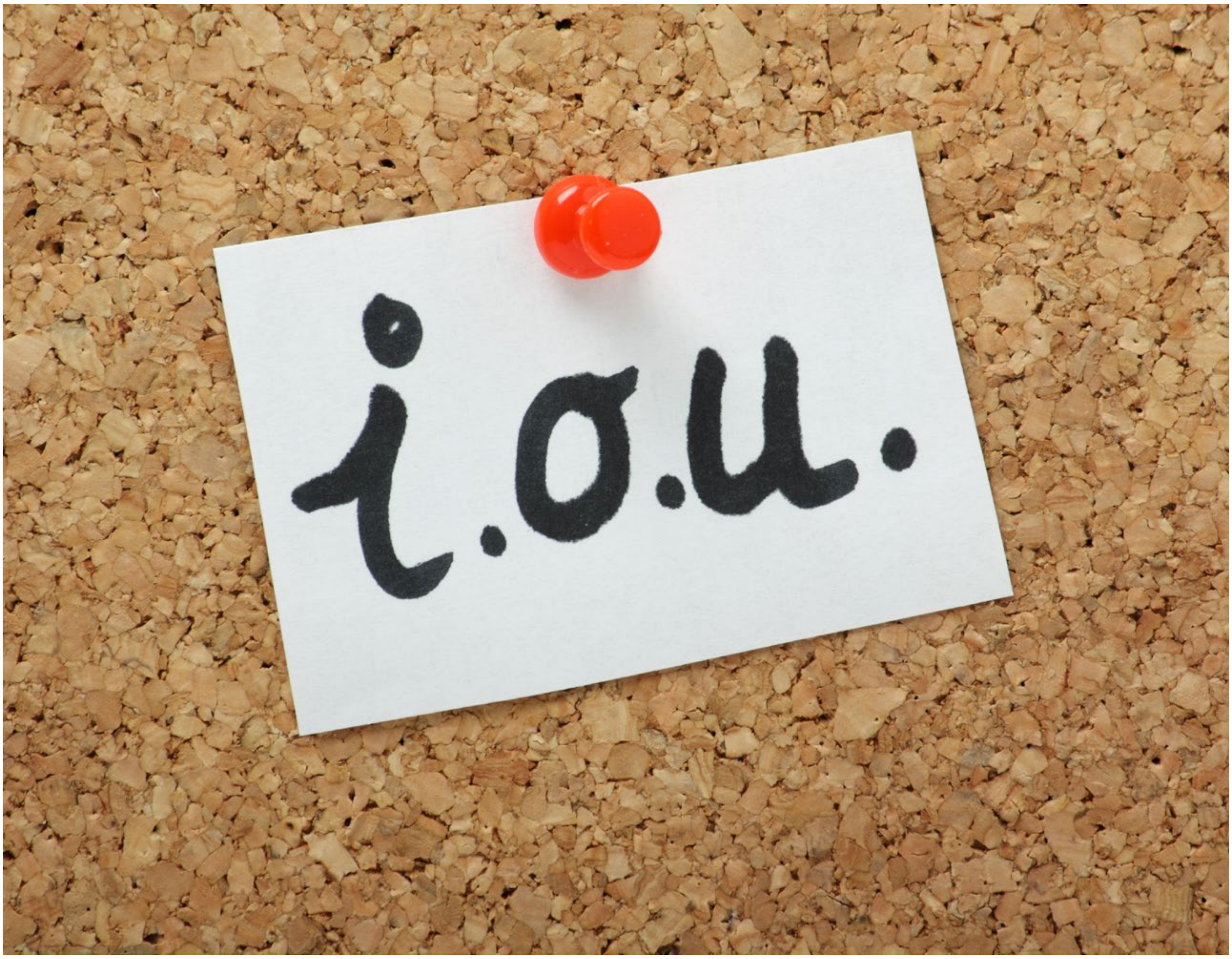
Corporate CIVs, to be introduced from 1 July 2017, will allow Australian fund managers to offer investments through a company structure which the Government claims is well suited for offering retail investment products. Limited partnership CIVs, to be introduced from 1 July 2018, are commonly used overseas to facilitate wholesale investment by large investors such as pension funds.

More Information

Although we've covered the headline measures for business, the Budget runs into hundreds of pages. To view the full Budget papers visit **www.budget.gov.au**

FEE FUNDING

In today's cash-flow sensitive business environment, Fee Funding (also known as Debtor Financing or Premium Funding) is being increasingly offered by Professional Firms (such as accountancy, legal etc.) to clients who are unable to pay fees on time. This article examines these arrangements, and the GST and income tax consequences.



Background

In simple terms Fee Funding involves a third-party financier (the "Fee Funder") paying the Professional Firm the fees that are payable by clients who have agreed to avail themselves of the Fee Funding offering. This assists the Professional Firm's cash-flow as the fee that would otherwise be paid late by their client is paid upfront by the Fee Funder directly to the Professional Firm. The Fee Funder then effectively takes on the debt, which is repaid to them by the client usually in monthly instalments, plus interest (and a small upfront administration fee). For its part, the Professional Firm in some cases agrees to remit any unpaid fee balance to the Fee Funder should its client default on their repayments.

For those of you operating a professional services business and who have slow-paying clients, you may wish to consider in consultation with your advisor Fee Funding to assist with your cash-flow.

Aside from use by Professional Firms to cover their fees, Fee Funding is also used to fund consulting fees on one-off or special projects including:

- Feasibility studies
- Business plans
- Due diligence on business sales and purchases
- Funding for work in progress, and
- Strategic planning and business development work.

Advantages

Fee funding has several obvious advantages for professional practices:

- Improves cash-flow – the payment of fees is immediate. You are not forced to wait. This cash can them be deployed in your business
- Guarantees payment, and thereby reduces outstanding debtors
- Outsources debt management which can be particularly draining on small business.

For their part, Fee Funding also has a number of advantages for clients who wish to avail themselves of it:

- Improves cash-flow – rather than paying a large lump sum fee to the Professional Firm, the payment of fees is spread out usually over several months
- The preserved cash can be deployed in the client's business
- The business relationship with the Professional Firm to whom the debt is owned is maintained. As there is no outstanding debt owed to them, the relationship can continue and the Firm's services can be engaged in the future
- Tax – the tax treatment of the arrangement is favourable for the client (see later).

Case Study

Fee Funding arrangements have unique income tax and GST treatments. The GST treatment in particular is often mishandled by business. The correct tax treatment is best explored via a case study:

CASE STUDY

Lexicon Architects offers fee funding to its clients who are unable to pay on time. Barry's Builders Pty Ltd has an outstanding fee to Lexicon of $550 (GST-inclusive).

Barry's takes out fee funding through Lexicon's provider Quick Cash Premium Funders who pay the outstanding fees to Lexicon on Barry's behalf.

As part of the arrangement, Barry's agrees to pay $700 to Quick Cash in 10 monthly instalments (representing $15 interest and $55 of principal).

Client

Confusion exists when recording both the take-up of the liability and the relevant repayments under these funding arrangements.

GST-registered clients who have entered into these types of arrangements are only entitled to claim the GST component upfront on the amount of the original professional fee itself – not on the whole amount they pay to the Fee Funder. Turning to the Case Study, Barry's bookkeeper should therefore be claiming the $50 GST upfront when it enters into the Fee Funding arrangement with Quick Cash (irrespective of whether Barry's accounts for GST on a cash or accruals basis). When Barry's makes the monthly repayments to Quick Cash they should be recorded using a non-reportable style tax code (e.g. N-T) as they represent a reduction in a liability. Thus, GST is claimed only on the $550 not on the $700.

From an income tax standpoint, the whole amount is however able to be deducted including the interest component. The $500 is claimable upfront when the arrangement is entered into. The interest component is then deducted as each payment is made.

Professional Firm

The outstanding fee of $500 is assessable income to the firm, representing a fee in lieu of their services. $50 GST must be remitted to ATO in the tax period in which the arrangement is entered into.

Fee Funder

The Fee Funder can claim the $50 GST paid to the Professional Firm. A supply has been made to the Fee Funder – being the surrender of right by the Professional Firm to recoup the debt from the client. $500 can be claimed as a tax deduction, with $650 declared as income (representing the non-GST component of the amount paid by the Client under the payment arrangement).

THE SUPER NEW LANDSCAPE

It seems that irrespective of the outcome of the upcoming Federal Election, there are significant superannuation changes afoot. This article previews the possible new landscape and how it may impact you.

Additional Tax on Concessional Super Contributions of High Income Earners

Both the Opposition and the Government if elected will reduce the income threshold above which the additional 15% "Division 293 tax" cuts in for concessional superannuation contributions. The threshold will be reduced from $300,000 to $250,000 from 1 July 2017. For those who earn below this amount, the tax on concessional contributions will remain at 15%. To recap, concessional contributions consist of employer Superannuation Guarantee contributions, salary sacrifice contributions, and after-tax contributions for which you can claim a deduction under the '10% Rule'. The $300,000 / $250,000 income threshold consists of:

- Taxable income
- Total reportable fringe benefit amounts
- Net financial investment losses
- Net rental property losses
- Net amount on which family trust distributions tax has been paid
- Concessional superannuation contributions made within the concessional contributions cap for the financial year.

Note that if an individual's income excluding their concessional contributions is less than the threshold but the inclusion of their concessional contributions pushes them over the threshold, the extra 15% tax will only apply to the part of the contributions that are in excess of the threshold.

EXAMPLE

Grace has Division 293 income of $240,000, and has made concessional contributions of $20,000.

2015/2016 and 2016/2017

As her Division 293 income plus concessional contributions is below $300,000, Grace's concessional contributions will be taxed at 15% (payable by her superannuation account in the year that the contributions are made).

2017/2018 Onwards

As her Division 293 income plus concessional contributions is above the new threshold of $250,000, Grace is liable for an additional 15% tax (30% in total). The 30% tax will be applied to the $10,000 concessional contributions above the $250,000 threshold. The total superannuation contributions tax will be $4,500:

- **$1,500** (15% x the $10,000 below the $250,000 threshold) plus
- **$3,000** (30% x $10,000 above the $250,000 threshold).

Although this policy has attracted significant attention in the media, the actual impact will not be widespread as only 4% of taxpayers earn above $250,000, and the lowering of the threshold will only affect an estimated 110,000 people (those who earn between $250,000 and $300,000). Even if this tax increase makes it into law, those who salary sacrifice will still enjoy a tax benefit of up to 19 cents in the dollar on amounts that they sacrifice into superannuation.

Capping the Amount of Tax-Free Income

Although they have gone about it differently, both the Government and the Opposition have announced policies to limit the amount of tax-free superannuation income that can be enjoyed in retirement.

GOVERNMENT

From 1 July 2017, the Government proposes to introduce a transfer balance cap of $1.6 million on the total amount of accumulated superannuation that an individual can transfer into a tax-free retirement account (retirement phase or pension phase). Earnings made when your account is in the retirement phase or pension phase are tax-free. Earnings on these balances will not be restricted. By limiting the amount of capital to $1.6 million, this will in effect limit the amount of earnings/income that can be received tax-free when your account is in the retirement/pension phase. This applies to existing pensions as well as future pensions.

To be clear, you will still be able to have amounts in excess of $1.6 million inside superannuation, however these excess amounts must be in an accumulation phase account (where earnings are taxed at the existing concessional rate of 15%). The $1.6 million cap will be indexed in $100,000 increments in line with the Consumer Price Index (CPI).

For those of you who have accounts in the retirement phase as at 1 July 2017, if you have amounts in excess of $1.6 million you will be required to either transfer the excess back into an accumulation account, or withdraw the amount from your superannuation fund (only if you are over 60 will the withdraw be tax free – if under 60, there will be tax on the taxable component). Regarding the total cap amount of $1.6 million, once amounts are transferred into the retirement account, subsequent fluctuations due to earnings growth or pension payments will not affect the amount of the cap used.

EXAMPLE

Brad is 64 and retires from work and therefore meets a Condition of Release in December 2017. He has $2.3 million in superannuation.

He can transfer $1.6 million into a retirement account; the earnings on which will be tax-free. The remaining $700,000 can sit in an accumulation account (the earnings on which will be taxed at the standard 15%). All pension amounts received will be tax-free in Brad's hands as he has turned 60.

Alternatively, Brad can withdraw the $700,000 tax-free as he has turned 60.

STRATEGY

This proposal may allow couples to have a combined pension balance of up to $3.2 million. However, where most of the superannuation savings are in one spouse's name, the Government's lifetime non-concessional superannuation cap (see later) may limit the ability to equalise account balances and maximise the combined transfer balance cap.

OPPOSITION

Along similar lines, the Opposition if elected will tax the superannuation pensions of high-income earners. Under their policy, from 1 July 2017 future earnings on assets supporting income streams will be tax free up to $75,000 per year for each individual. Earnings above the $75,000 threshold will attract the same tax rate of 15% that applies to earnings in the accumulation phase.

EXAMPLE

Susie is 63 years old, retired and she has $1.8 million in superannuation. Susie is drawing an account-based pension, thus her account is in pension mode where her earnings are tax-free. Last year, Susie's superannuation earned $90,000 (at a rate of 5%) which she has taken as income.

Under Labor's proposal, Susie will pay 15% tax on earnings over $75 000. This equates to $2,250 tax (payable out of her superannuation savings, not charged to her personally) which reduces her after-tax earnings to $87,750.

IMPACT

Both the Government's and Opposition's policy again will not have a widespread impact as only 60,000 people are estimated to be impacted under either policy (those who have account balances in excess of $1.6 million). Even for those who are impacted, the maximum rate on earnings (15%) is more attractive than the individual marginal tax rates that may apply to earnings on investments made outside of superannuation.

Other Government Initiatives

While the Opposition has at the time of writing not proposed any further changes to superannuation, the Government by contrast announced a number of changes in the Federal Budget which it intends to implement if re-elected on 2 July. It is not yet known whether the Opposition supports these changes which are as follows:

REDUCTION IN CONCESSIONAL CONTRIBUTIONS CAP

From 1 July 2017, the annual cap on concessional contributions will be reduced to $25,000 for all taxpayers (down from the current $30,000 for taxpayers under 50, and $35,000 for older taxpayers). This change will limit the capacity to make deductible contributions to superannuation, as well as salary sacrificed contributions. Softening the blow however, individuals with a superannuation balance less than $500,000 will be allowed to make additional "catch-up" concessional contributions where they have not reached their concessional contributions cap in previous years, with effect from 1 July 2017. Unused cap amounts will be carried forward on a rolling basis for a period of 5 consecutive years. Only unused amounts accrued from 1 July 2017 will be available to be carried forward. The Government states that this measure will make it easier for people with varying capacity to save and for those with interrupted work patterns (such as women who leave the workforce to have children) to provide for retirement.

EXAMPLE

Jake is an employee accountant whose employer contributed $15,000 in Superannuation Guarantee contributions in 2017/2018. Jake also salary sacrificed $5,000 to superannuation.

In 2018/2019, Jake's concessional contribution cap will effectively be $30,000 (consisting of the standard $25,000 annual cap, plus the $5,000 unused cap from 2017/2018). This will provide Jake with a greater capacity to make concessional contributions such as salary sacrifice in 2018/2019 than would otherwise be the case.

If the concessional contributions cap is reduced, employees may need to review salary sacrifice arrangements that are in place at the end of 2016/2017 to ensure that you do not exceed the new, reduced cap from 1 July 2017.

LIFETIME NON-CONCESSIONAL CONTRIBUTIONS CAP

Effective 3 May 2016, if the Government is re-elected the non-concessional (after-tax) contributions cap will become a lifetime cap of $500,000 rather than the current annual cap of $180,000. This new cap will be retrospective by taking into account all non-concessional contributions made on or after 1 July 2007. Contributions made before the commencement date of 3 May 2016 cannot result in an excess over the lifetime cap. However, excess non-concessional contributions made after 3 May 2016 will need to be removed or will subject to penalty tax. Going forward, the lifetime cap will be indexed to average weekly ordinary time earnings.

To recap, non-concessional contributions (also commonly referred to as an after-tax contribution) include:

- Personal contributions for which an income tax deduction cannot be claimed as you fail the '10% rule'
- Contributions made for you by your spouse
- Contributions in excess of your CGT Cap Amount for small business owners
- Amounts transferred from foreign superannuation funds, excluding amounts included in the fund's assessable income, *and*
- Contributions made for the benefit of a person under 18 years of age that are not employer contributions for that person.

IMPACT

This change limits the amount of after-tax savings that can be contributed into the concessionally taxed superannuation environment, and is retrospective in that it takes into account non-concessional amounts that have been contributed since 1 July 2007. This reform will not only impact high income earners but also those who have significant one-off windfalls that they wish to contribute to superannuation such as the sale proceeds of capital assets, or inheritances.

This lifetime cap may also limit the ability of taxpayers to undertake recontribution strategies, whereby you convert a superannuation interest from a taxable component to a tax-free component.

DEDUCTIONS FOR ALL!

From 1 July 2017 all individuals up to age 75 will be allowed to claim an income tax deduction for personal superannuation contributions. Currently, only those who receive little or no employer superannuation contributions can claim a deduction such as if:

- You run your own business, but were not an employee of the business (e.g. you are a Sole Trader or a Partner in a Partnership)
- You are under the age of 65 (that is, you are eligible to contribute to superannuation) and receiving pension or investment income only
- You are a contractor who is not eligible for Superannuation Guarantee from the organisations that you contract to
- You only received workers' compensation payments during the year
- You are a non-working spouse/individual
- You are an employee for only a small part of the year

This change is good news for the many employees who wish to make contributions to superannuation but whose employers do not offer salary sacrifice. By making an after-tax superannuation contribution, employees (and all individuals under the age of 75) will be able to reduce their income tax liability while providing for their retirement.

'WORK TEST' ABOLISHED

The current restrictions on people aged 65 to 74 from making superannuation contributions will be removed from 1 July 2017.

Currently, if people in this age bracket wish to make personal contributions to superannuation they must meet a 'work-test' which requires them to have worked for at least 40 hours over 30 consecutive days in the financial year. This change is therefore good news for older taxpayers who do not meet the current 'work-test' but who wish to inject money into the concessionally taxed superannuation environment.

LOW INCOME SUPER TAX OFFSET

From 1 July 2017, the Government will introduce a Low Income Superannuation Tax Offset (LISTO). Its purpose is to reduce tax on the superannuation contributions made by or on behalf of low income earners. The LISTO is a non-refundable tax offset provided to your superannuation account (not you personally) based on the tax paid on the concessional contributions of low income earners up to a cap of $500.

The LISTO will apply to taxpayers with an adjusted taxable income of up to $37,000 that have had concessional contributions made on their behalf (i.e. Superannuation Guarantee contributions by their employer). The LISTO will replace the current Low Income Superannuation Contribution (LISC) which is a very similar regime. In effect, the LISTO will ensure that low income earners do not pay more tax on their superannuation contributions than on their take-home pay. In terms of administration, the ATO will determine your eligibility for the LISTO and will advise your superannuation fund annually.

EXAMPLE

Chase is a part-time university tutor. In 2017/2018 he earned $35,000 and his employer made contributions of $3,325 on his behalf.

Chase is eligible for the LISTO. He will receive $498.75 of LISTO in his account. Chase would have received the same amount under the LISC regime.

TRANSITION TO RETIREMENT CRACKDOWN

The Government intends to remove the tax exemption that currently applies on earnings on pension assets that support Transition to Retirement Income Streams/Pensions. Earnings from assets supporting these Income Streams/Pensions will be taxed at 15% (currently, they are tax-free). This change will apply from 1 July 2017, irrespective of when your Transition to Retirement Income Stream/Pension commenced. To be clear, for those under 60 if your pension is paid from a taxed source, you will still receive a tax offset equal to 15% of the taxable part of the income stream. Those 60 and over will still receive their income stream tax-free. It's just that earnings supporting the income stream for both under 60s and over 60s will be taxed at 15%.

EXAMPLE

Ken is 58 years of age, earns $100,000 and has $440,000 in his superannuation account. He pays income tax on his salary and his superannuation fund pays $3,750 at 15% on the superannuation earnings of $25,000.

Nearing retirement, Ken wishes to reduce his working hours by 15% and has a corresponding reduction in his salary down to $85,000. So as to have no reduction in his current lifestyle, he commences a Transition to Retirement Pension for $15,000 per year.

Currently, although Ken pays income tax at his current marginal rate on the pension (less a 15% tax offset) his superannuation fund pays no tax on the earnings on his superannuation account.

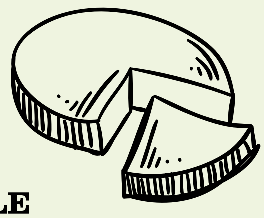
Under the new law from 1 July 2017, the earnings on his superannuation will be taxed at 15% as he is receiving a Transition to Retirement Pension.

While this measure makes the Transition to Retirement strategy less attractive, the concessional rate of 15% tax on earnings still compares favourably to the marginal tax rates that may apply on earnings outside of superannuation. Additionally, as stated, the 15% tax offset on Transition to Retirement amounts received by people under the age of 60 will remain, as will the tax-free treatment of those amounts for people 60 and over.

LOW INCOME SPOUSE SUPER CONTRIBUTION EXTENDED

From 1 July 2017, if it is re-elected the Government will increase access to the low income spouse superannuation tax offset by raising the income threshold for the low income earning spouse to $37,000 (up from $10,800). The offset will gradually reduce for incomes above $37,000, before phasing out completely for incomes above $40,000.

To recap, this offset provides up to $540 each year for the contributing spouse.



EXAMPLE

David earns $38,000 per year. His wife Bobby wants to make a superannuation contribution on his behalf.

Under the current rules, Bobby would not be entitled to a tax offset as David's income exceeds $10,800. Therefore there is no tax incentive for Bobby to make a contribution on behalf of her spouse.

Under the new proposed law, Bobby would be eligible for a tax offset as David's income is below $40,000. However, as David earns more than $37,000, Bobby will not receive the maximum $540 tax offset. Rather, the offset will be 18% of the lesser of:

- $3,000 reduced by every dollar over $37,000 that David earns, or
- The value of the spouse contributions made by Bobby.

RETIREMENT INCOME PRODUCTS – TAX EXEMPTION EXTENDED

From 1 July 2017, if re-elected the Government will remove the tax barriers to the development of new retirement income products by extending the tax exemption on earnings in the retirement phase to products such as deferred lifetime annuities and group self-annuitisation products.

2016 FEDERAL BUDGET

WHAT'S IN IT FOR INDIVIDUALS?

Continuing our examination of Federal Budget 2016, this article examines the effect of the Budget at an individual level. Reductions in income tax and increases in tobacco excise are just two of the measures that were announced.

Income Tax Cuts

There will be an increase to taxable income threshold at which the 32.5% rate applies. The threshold will increase from $80,000 to $87,000. The Opposition supports this change, and therefore it is certain that the tax rate will be reduced. The Government expects that this measure will prevent more than 500,000 taxpayers from being impacted by the second-highest marginal tax rate of 37%. Only taxpayers with taxable incomes of over $80,000 will benefit from this change. The maximum annual tax reduction will be $315. The change in the tax rates is set out in the following table:

2015/2016 PRE-BUDGET		FROM 1 JULY 2016 %	
INCOME THRESHOLD ($)	%	INCOME THRESHOLD ($)	%
0 - 18,200	0	0 - 18,200	0
18,201 - 37,000	19	18,201 - 37, 000	19
37,001 - 80,000	32.5	37,001 - 87,000	32.5
80,001 - 180,000	37	87,001-180,000	37
180,001 - above	45	180,001 - above	45

Not including Medicare levy or the Deficit Levy

TAX TIP

If you earn between $80,000 and $87,000 and have deductible expenses that are due to be paid within the next few weeks, by paying them before 1 July you can maximise your tax deduction.

For example if you earn $85,000 and are needing to make repairs to your rental property worth $4,000, by bringing that expenditure forward to before 1 July you can increase your tax deduction by $180 as per the following example:

Scenario 1 (Total tax outcome if deduction claimed in 2016/2017)

	2015/2016	2016/2017	TOTAL TAX PAID OVER TWO YEARS
Taxable Income	$85,000	$81,000	
Tax Payable	$21,097	$19,492	$40,589

Scenario 2 (Total tax outcome if deduction brought forward and claimed in 2015/2016)

	2015/2016	2016/2017	TOTAL TAX PAID OVER TWO YEARS
Taxable Income	$81,000	$85,000	
Tax Payable	$19,537	$20,872	$40,409

DEFICIT LEVY

The Government also confirmed in the Budget that the 2% Deficit Levy will not be extended and will therefore expire on 30 June 2017 (therefore the final year of the Levy will be 2016/2017). Introduced in the 2014 Budget, the Deficit Levy is a the 2% tax which applies to any part of a person's taxable income that exceeds $180,000. For its part, the Federal Opposition opposes the expiration of the Deficit Levy and will retain it indefinitely if it wins the 2 July Federal Election.

NON-RESIDENTS

The personal income tax reduction for residents also applies to non-residents. The change in the tax rates is set out in the following table

2015/2016 PRE-BUDGET		FROM 1 JULY 2016 %	
INCOME THRESHOLD ($)	%	INCOME THRESHOLD ($)	%
0 - 80,000	32.5	0 - 87,000	0
80,001 - 180,000	19	87,001 - 180,000	19
180,001 - above	45	180,001 - above	45

**Not including the Deficit Levy*

Low Income Tax Offset Unchanged

The current low-income tax offset (LITO) settings will not change for 2015/2016 and therefore remain:

- Low income tax offset amount $445
- Lower withdrawal limit $37,000
- Upper limit $66,667
- Withdrawal rate of 1.5% (for every dollar that exceeds $37,000).

TAX TIP

For those of you who are eligible, the LITO does not need to be separately claimed. The ATO automatically calculates your entitlement for you upon you lodging your tax return.

Alternatively, rather than waiting until lodgement of your return, you can claim the LITO through your PAYG withholding from your salary. Individuals eligible for the LITO can claim 70% of their entitlement as a reduction in the amount of tax withheld by your employer from your pay. To take up this option, ask your employer for a Withholding Declaration and complete the relevant label.

The combination of the tax-free threshold and the LITO brings the effective tax-free threshold to $20,542 for 2015/2016. Those of you who earn below or around that figure that may wish to consider completing the Withholding Declaration and provide yourself with some cash-flow relief by bringing forward your LITO entitlement for 2016/2017.

TAX TIP

With the tax-free amount now set, Trustees can distribute this sum to beneficiaries with no other income in the knowledge the entire amount will be tax-free (except in the case of minors who may be subject to penalty tax on such distributions.

Medicare Thresholds

For 2015/2016 the Medicare levy low-income threshold for singles will be increased to $21,335 (up from $20,896 for 2014/2015) – those earning below that amount are generally exempt from the Medicare levy entirely. The individual phase-in limit is $26,668 for 2015/2016 (up from $26,120) – those earning above that amount are generally liable for the full 2% Medicare levy.

For couples with no children, the family income threshold will be increased to $36,001 for 2015/2016 (up from $35,261). The additional amount of threshold for each dependent child or student is $3,306 for 2015/2016 (up from $3,238).

For single pensioners eligible for the Senior Australian and Pensioner Tax Offset (SAPTO) the Medicare levy low-income threshold is $33,738 for 2015/2016 (up from $33,044). The phase-in limit for taxpayers eligible for SAPTO is $42,172 for 2015/2016 (up from $41,305). The threshold for families has increased to $46,966 for 2015/2016 (up from $46,000).

2015/2016 Medicare levy low-income threshold amounts and phasing-in ranges

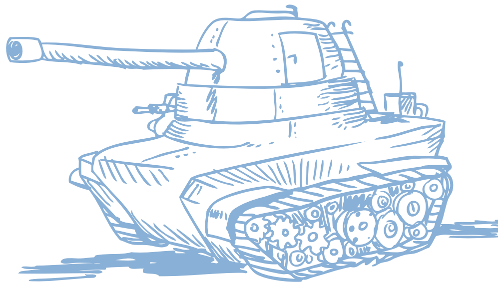
Category of taxpayer	No levy payable if taxable income or family income does not exceed	Reduced levy if taxable income or family income is within range (inclusive)	Ordinary rate of levy payable where taxable income or family income is equal to or exceeds
Individual taxpayer	$21,335	$21,336 - $26,668	$26,669
Single taxpayers eligible for SAPTO	$33,738	$33,739 - $42,172	$42,173
Families eligible for SAPTO	$46,966	$46,967 - $58,707	$58,708
Families with the following children and/ or students	**family income $**	**family income $**	**family income $**
0	36,001	36,002 – 45,001	45,002
1	39,307	39,308 – 49,133	49,134
2	42,613	42,614 – 53,266	53,267
3	45,919	45,920 – 57,398	57,399
4	49,225	49,226 – 61,531	61,532
5	52,531	52,532 – 65,663	65, 664
6	55,837	55,838 – 69,796	69,797

Indexation Pause for MLS and PHIR

The pause in the indexation of the income thresholds for the Medicare levy surcharge (MLS) and the private health insurance rebate (PHIR) will continue for a further three years from 1 July 2018. For higher income earners who don't have private health coverage, this may result in an increased MLS liability in coming years. For those who do have private coverage, the pause in the rebate thresholds may result in a possible reduction in the amount of the rebate you receive going forward.

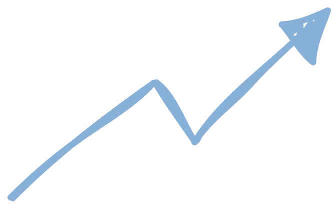
Medicare Levy Surcharge Thresholds 2014/2015 – 2020/2021

	BASE TIER $	TIER 1 $	TIER 2 $	TIER 3 $
Singles	90,000 or less	90,001 – 105,000	105,001 – 140,000	140,001+
Families and Couples				
0 dependants	180,000 or less	180,001 – 210,000	210,001 – 280,000	280,001+
1 dependant	180,000 or less	180,001 – 210,000	210,001 – 280,000	280,001+
2 dependants	181,500 or less	181,501 – 211,500	211,501 – 281,500	281,501+
3 dependants	183,000 or less	183 001 – 213 000	213,001 – 283,000	283,001+
4 dependants	184,500 or less	184 501 – 214 500	214,501 – 284 500	284,501+
5 dependants	186,000 or less	186 001 – 216,000	216,001 – 286,000	286,001+
Each extra child	1,500	1,500	1,500	1,500
Medicare levy surcharge rate				
Rate	0.0%	1.0%	1.25%	1.5%



ADF Exemptions Extended

The income tax exemption for Australian Defence Force personnel deployed in Operation PALATE II in Afghanistan will remain in place until 31 December 2016. It was due to end on 1 January 2016.



Tobacco Excise Increase

In bad news for smokers, tobacco excise and excise-equivalent customs duties will be subject to four annual increases of 12.5% from 1 September 2017. As a result, it is estimated a packet of cigarettes could cost as much as $40 by 2020.

EMPLOYEE OR CONTRACTOR?

This age-old business question seems to have a new lease of life with the revamping of the ATO website and the new "Employee/ contractor decision tool". There is so much hanging on a correct interpretation by business. Failure to get it right could result in ATO assessments for Super Guarantee Levy (SGL), PAYG Withholding and penalties. An incorrect interpretation could also result in Payroll tax and workers compensation penalties. This article explores the issues in this area, and offers employers a way forward.

Recent Case

A recent Administrative Appeals Tribunal (AAT) case - ***OEM Supplies Pty Ltd [2015] AATA 532*** ("OEM") – tested the employee/ contractor relationship. An ex-employee of a business returned as a contractor maintaining the business's website. The worker was paid a monthly retainer plus a percentage of gross profit from internet sales. The ATO deemed the worker to be an employee and assessed SGL. An objection was disallowed and the business sought review by the AAT. The AAT applied the principles of established case law and principally the ***On Call Interpreters & Translators Agency Pty Ltd v Commissioner of Taxation (No. 3) [2011] FCA 366*** ("On Call") Federal Court case to determine that the worker in this case was a contractor. There were some significant factors drawn from On Call in reaching the conclusion:

- The totality of the relationship must be considered
- Whether the worker is carrying on a commercial enterprise and, if so, whether the economic activity being carried on is that of the worker's business or the payers

Sub issues included:

- Whether the worker could employ other persons
- Was goodwill created by the worker?
- Promotion and advertising
- Use of tangible assets
- Existence of basic administrative systems such as invoicing
- The existence of sufficient skill to operate a business
- Opportunity for profit for the worker
- The level of control over the worker
- The level of integration of the worker into the payer's business
- Obligations for a result by the worker
- Whether the parties treat each other as employer/employee or owner/contractor

The case is well worth a read to understand the particular facts. What seems obvious from the OEM case is that interpretation is not always 'black and white'. In this case the AAT disagreed with the ATO. If interpretation of the relationship was easy, then the ATO would not have applied SGL in the first place. It also seems critical that better interpretations are made with all the facts and that the totality of the relationship must be considered in making an accurate assessment.

ATO Website

To assist is assessing the status of a worker, the ATO has done a makeover of their website in this area. The makeover includes a revamped "Employee/contractor decision tool". The website includes some useful information and exposes some of the myths some payers believe in in assessing a worker as a contractor.

The Employee/contractor tool has a number of positives in that it:

- Is mechanically easy to use
- Provides a quick answer
- Provides the correct answer in most of the basic cases, and
- Contains some useful resources when assessing the true nature of worker relationships.

There are however, in our view, a few shortcomings with the tool including:

- In the case of an individual worker the questions asked by the tool do not seem to be sufficiently comprehensive. Having identified that a business is dealing with an individual worker that is not an apprentice and has an ABN, you can get a conclusion with 6 questions: (2 exploring the worker's ability to employ; 1 the basis of payment; and 3 re equipment supplied). This is a long way short of the factors considered in OEM and in our view does not explore the totality of the relationship as required by OEM and the ATO's own rulings namely ***SGR 2005/1*** and ***TR 2005/16.***

Furthermore, the tool automatically classifies the worker as a contractor from the outset if they are operating through a company or trust structure. This is at odds with the Federal Court's current approach – see ***ACE Insurance Limited v Trifunovski [2013] FCAFC 3*** where this is just one factor to be considered among the many others listed above.

- It produces a black and white answer. Perhaps this is as a consequence of trying to produce a tool that can be relied on by the user. The difficulty here is that it is highly unlikely that a tool like this can readily test the totality of the relationship with a worker. Perhaps the tool would be more useful if it did attempt to more fully test the totality of the relationship even at the expense of taking more than 6 questions. Perhaps the tool should be prepared to yield 3 results: employee, contractor or inconclusive. An inconclusive result would be a prompt for the payer to seek advice from a professional or to seek a private binding ruling from the ATO.
- The tool and supporting resources does not prompt the seeking of professional guidance from a tax advisor. Arguably when dealing with what can be a tricky issue then the best guidance possible should be sought to ensure that breaches of SGL and PAYGW laws do not occur.

Case Study

FACTS

Julie is a bookkeeper and she has 15 clients who she regularly posts software, produces financial statements and BAS's for. She does a bit of consulting work including software support, payroll and management reporting. She employs a casual from time to time. She uses her own computer hardware and vehicle, and performs work at both client premises and at her own office. She charges a combination of hourly rate and monthly retainer for her services. She gets work from her website, networking and word of mouth.

Applying Julie's circumstances into the tool, the answers we keyed were:

- Who do you pay = individual
- Apprentice = no
- ABN = yes
- Do you allow the worker to pay someone = yes
- Is this specified in a written agreement = no
- Amount you pay = set amount per period
- Who is responsible for equipment = the worker
- Pay an allowance = no
- What your worker needs to provide = tools or equipment.

RESULT:
Julie is an employee! Really?
If the tool more fully explored the totality of the relationship other factors would have become evident that would (in our view) have yielded a contractor result such as the fact that Julie employed others, she had her own business premises, she is building a business, she has liability for her work, she has a number of clients, she advertises, she is not controlled by her clients, and nor is her business integrated into her clients'.
We are of the view that the tool needs work to be a comprehensive reference point, which is unfortunate.

Challenge

At a practical level, as an employer there are two parties who may be inclined to challenge your determination of a worker as either an employee or contractor. These parties are the worker themselves and/or the ATO.

ATO
The ATO have stated many times that in reviewing/auditing employers in this area, the first thing they do is to use their Employee/contractor decision tool and apply it to your workers. Where they find that the tool agrees with your treatment of the worker, the ATO would be satisfied and would be most unlikely to review further.
On the other hand, where the tool finds that you have been treating the worker incorrectly, the ATO may examine the issue more closely.

WORKER
The worker may also challenge your position, particularly where you have determined that they are a contractor (and therefore not entitled to employee benefits such as superannuation, paid leave etc.). Indeed this was the case in the ACE Insurance Case referred to earlier.

WHAT THIS MEANS
In view of the above ATO approach, employers should use the ATO tool. Where the tool agrees with your classification of the worker, you should print it out and keep it on file. If you are ever the subject of ATO attention in this area, you can furnish them with the tool's determination supporting your position.

Where the tool disagrees with your classification, you may wish to consult your advisor or seek a private binding ruling from the ATO in order to secure certainty around your position. After all, as illustrated above, the tool can provide some anomalous results and has a slight bias towards classifying workers as employees.

Take-Away Messages

- **The incorrect classification of a worker as a contractor, can have significant ramifications by way penalties for employers**
- **Read more and understand more about the differences between an employee and a contractor**
- **Check contractor relationships by using the ATO tool, but be aware of the tool's shortcomings**
- **Alert your accountant to any relationship that may need further investigation**
- **Having sought professional advice, if the classification is still 'line-ball', seek a private binding ruling from the ATO.**

WHAT THE TAXMAN IS THINKING

In this edition, we reveal the types of businesses that are currently under the ATO microscope, look at the latest tax scams doing the rounds, detail a new tool to assist you when hiring new employees, and much more!

Gold Coast Businesses in the ATO's Sights

The ATO has advised that it will be visiting restaurants, cafes and take-away outlets along with hair and nail salons on the Gold Coast as part of its ongoing, national program of work with these industries. ATO Assistant Commissioner Matthew Bambrick says that the program is aimed at protecting honest businesses from unfair competition:

Honest businesses can face unfair tax competition when competitors don't lodge, don't report all of their income, pay cash wages without accounting for them or don't contribute super for their staff. In all, we will be visiting around 250 businesses on the Gold Coast to talk about a range of topics including business registration, record keeping, superannuation and lodgement.

So far we have met with over 650 businesses in local community activities in Sydney, Melbourne and Adelaide. The feedback we've gotten about the visits has been positive and in many cases we've been able to help businesses get back on track in meeting their tax and superannuation obligations.

Where taxpayers are unwilling to work with us or continue to cause us concern, we will undertake further investigation. In Sydney and Melbourne, for example, we have now moved to auditing businesses that didn't want to work with us.

New Tools for Small Business Owners with New Employees

Small business Minister and Assistant Treasurer Kelly O'Dwyer has issued a Media Release advising that a new online checklist is now available to help business owners with the Federal and State laws that apply when you decide to hire a new employee. She says:

The simple online checklist also links to an online pay tool to help calculate pay and conditions on the Fair Work Ombudsman's website. The website also links to an improved 'decision tool' to help businesses work out if their worker should be an 'employee' or 'contractor', and what that means for both tax and super. This includes assistance to determine if tax and super need to be calculated on employee entitlements.

These products have been developed based on recommendations from the ATO's 'Fix-It Squad' comprising the ATO, industry and tax practitioners. You can access the checklists through www.business.gov.au

Superannuation Guarantee – High Risk Industries

Every year the ATO identifies industries that it believes are at risk of failing to meet their Superannuation Guarantee obligations to workers. This year the ATO will be closely scrutinising businesses within the following industries:

- Bakeries
- Retailers
- Supermarkets, and
- Computer system designers.

The ATO further advises that accountants will receive a letter for their clients in these industries advising of planned audits from July 2016. The letters also remind businesses to:

- Pay the correct superannuation contributions for employees and eligible contractors
- Comply with the new SuperStream regime
- Offer employees a choice of superannuation fund (by providing them with the Superannuation Choice form when they commence employment)
- Provide employee TFNs to their superannuation fund within 14 days of receiving a Tax File Number declaration form back from the employee
- Meet the quarterly due dates for superannuation payments, and
- Keep up-to-date records of all superannuation payments.

We would advise businesses in the above industries to double check that you are complying with your superannuation obligations.

Tax Cut and PAYG Tax Tables

In the Federal Budget handed down recently, the income threshold for liability for the 37% tax bracket was increased from $80,000 to $87,000. Despite being announced in the Budget, being supported by the Opposition, and coming into force from 1 July 2016, under existing law there has been NO change to the PAYG withholding rates and thresholds for 2016/2017. The only PAYG withholding formulas that will change are those relating to HELP and SFSS repayments from 1 July 2016. Therefore, everyone earning more than $80,000 per annum will have to wait for legislation to pass in the new Federal Parliament before they receive their tax cut of up to $6 per week.

Four Year BAS Period of Review

The ATO is reminding taxpayers that for tax periods starting on or after 1 July 2012, there is a four year time limit ("period of review") to amend or revise your Activity Statements. The period of review begins the day you lodge your Activity Statement. During this time, there is no limit to the number of amendments you can make. However, in most cases, once the period of review expires you cannot make further amendments.

ATO Data Matching Programs

The ATO advises that it is continuing to undertake the following widespread data matching programs:

COMMONWEALTH ELECTORAL ROLL PROGRAM

The ATO will acquire from the Australian Electoral Commission the following information on registered voters:

- Name
- Residential address
- Sex
- Date of birth
- Occupation.

The ATO expects to obtain this information on 15 million individuals, to be refreshed each quarter. The objectives of the program are to:

- Locate taxpayers that may have outstanding tax and superannuation lodgement, correct reporting or payment obligations
- Identify taxpayers that are not registered with the ATO when they are required to be
- Identify potential instances of taxation or superannuation fraud
- Assist with the administration of the Australian Foreign Investment Framework.

CONTRACTOR PAYMENTS PROGRAM

The ATO is continuing to collect data on payments made to contractors (irrespective of the entity through which they operate) by businesses. This data is used to identify contractors who may not be meeting their taxation through:

- Not registering correctly with the ATO
- Non-lodgement of returns
- Failing to report payments received to the ATO, and
- Not paying amounts of tax due to the ATO.

This ongoing data matching program has been conducted for more than five years. It is estimated that the total number of records that will be obtained is approximately 25,000 each year, of which approximately 12,500 will relate to individuals. With such a comprehensive, ongoing program in place, contractors should ensure that they are properly meeting their taxation obligations.

Tax Scams

The Serious Organised Crime Division of the Tasmanian Police Force has confirmed that in one week, Tasmanians have paid nearly $100,000 to scammers pretending to be ATO officers. The ATO also reported a new scam, which involves seeking payment with iTunes cards. In this particular scam the fraudsters are impersonating the ATO demanding iTunes gift cards as a form of debt payment. Says ATO Commissioner Janine Clarke:

In the last month, 8,692 of the phone scams reports we received in April 2016 were in relation to the fake ATO tax debt scam; 58 reports mentioned the scammer demanding payment by iTunes and 26 people unfortunately payed $174,830 to fraudsters. In many cases, scammers request payments that are either non-existent or unexpected. By the time these scams are reported to us, the cards have already been on-sold or redeemed by the scammers. The scammers don't need the actual physical card. They just need the gift card number, which they get the victims to read over the phone to them.

We've also received reports of not only iTunes cards, but also pre-paid Visa gift cards purchased from supermarket and department stores. What we're most concerned about is that vulnerable Australians who have little interaction with us are not only being lead to believe this is a legitimate request for payment from the ATO but they are giving out personal information such as their tax file number. This opens up further opportunity for identity theft and fraud.

We will never request the payment of a tax debt via gift or pre-paid cards such as iTunes and Visa cards. Nor will we ask for direct credit to be paid to a personal bank account. And if the person calling you is rude and aggressive, threatening police or legal action if you don't do something immediately – it's not the ATO. If you do have a debt, we would have written to you first. If we do ring you, our staff will identity themselves and let you know how you can call us back. If you think you've been scammed or would like to confirm the legitimacy of an ATO call or letter, phone us on 1800 008 540.