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MY TAX SAVERS

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JAN/FEB
2018

TAX TIPS
MONEY SAVERS

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OPPORTUNITIES

BUSINESS FINANCE
WORKING CAPITAL LOANS

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MyTaxSavers

KEY DATES

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

JANUARY 2018

15 JANUARY
Due date for lodgement of income tax returns for companies and trusts that were taxable medium to large businesses in the prior year and are not required to lodge earlier. If you fail to lodge by the due date, your 2017/2018 income tax return will be due on 31 October 2018.

21 JANUARY
Due date for lodgement and payment of December 2017 monthly Activity Statements

28 JANUARY
Due date for October-December 2017 Superannuation Guarantee contributions to be made to a complying fund on behalf of your employees

31 JANUARY
Final date for lodgement of October-December 2017 TFN report for closely held trusts for TFNs quoted to a trustee by beneficiaries

FEBRUARY 2018

21 FEBRUARY
Due date for lodgement and payment of January monthly Activity Statements

28 FEBRUARY
Due date for lodgement and payment of October-December 2017 quarterly Activity Statements, including electronic lodgments

28 FEBRUARY
Due date for lodgement and payment of Annual GST returns or *Annual GST information reports* - if you do not have an income tax return lodgment obligation

28 FEBRUARY
Due date for lodgement and payment of income tax return for self-preparing entities that were not due at an earlier date. If you fail to lodge by this date, your 2017/2018 return will be due by 31 October 2018

28 FEBRUARY
Due date for lodgement and payment of income tax returns for medium to large businesses (taxable and non-taxable that are new registrants)

28 FEBRUARY
Due date for lodgement and payment *Superannuation Guarantee Charge Statement* if you failed to pay Superannuation Guarantee Charge on time for the October-December 2017 quarter. Superannuation Guarantee Charge is not deductible.

Where one of these dates falls on a weekend or a public holiday, the due date is extended to the next business day except in the case of October-December 2017 Superannuation Guarantee contributions – these are due on Sunday 28 January

FURTHER CLARITY ON COMPANY TAX CUTS

This article updates readers on some important new developments regarding eligibility for the already-legislated company tax cuts.

BACKGROUND

On pages 7-8 of the previous edition of this publication (available on our website www.mytaxsavers.com.au), we informed readers that the Government released an exposure draft Bill for comment on 18 September 2017 to clarify exactly which companies are eligible for the legislated tax cuts which commenced in 2015/2016 as follows:

FINANCIAL YEAR	AGGREGATED TURNOVER LESS THAN	COMPANY TAX RATE FOR ENTITES UNDER THE THRESHOLD	COMPANY TAX RATE FOR ENTITES UNDER THE THRESHOLD
2015/2016	$2 million	28.5%	30%
2016/2017	$10 million	27.5%	30%
2017/2018	$25 million	27.5%	30%
2018/2019 to 2023/2024	$50 million	27.5%	30%
2024/2025	$50 million	27%	30%
2025/2026	$50 million	26%	30%
2026/2027 onwards	$50 million	25%	30%

Since then there have been two important new developments – the introduction of an amending Bill into Parliament, and also the issuing by the ATO of a draft public ruling and administrative guidance. We now examine how these developments impact the company tax and franking credit rates going forward.

2016/2017 COMPANY TAX RATE

The Government has already legislated that eligible companies with a turnover of less than $10 million will enjoy a tax rate of 27.5% in 2016/2017. Under the current law, eligibility depends entirely on a company being a Small Business Entity (i.e. carrying on a business with an aggregated turnover of less than $10 million).

While the original exposure draft Bill sought to introduce the eligibility criteria/concept of a "Base Rate Entity" (BRE), and of "passive income", the amending Bill does not. Therefore, even if the amending Bill is passed, the current eligibility criteria (as detailed in the paragraph above) will apply for 2016/2017.

2017/2018 COMPANY TAX RATE

Under the law as it currently stands, any company that is a "Base Rate Entity" in 2017/2018, will be eligible for the company tax rate of 27.5%. "Base Rate Entity" is currently defined as a company that carries on a business and has an aggregated 2017/2018 turnover of less than $25 million.

The amending Bill removes the requirement to carry on a business and replaces it with a requirement that the company's 'passive income' must not exceed 80% of its assessable income. If it does exceed this, then the company will not qualify for the 27.5% tax rate. The amending Bill also alters the definition of passive income to include franking credits on non-portfolio dividends, and to limit the inclusion of capital gains to the extent of the net capital gain. Therefore, 'passive income' now consists of the following:

- Portfolio dividends (dividends on shares with less than 10% voting interest)
- Franking credits
- Net capital gains
- Rent
- Interest
- Royalties, and
- To the extent attributable to any of the above, amounts included in assessable income from a partnership or trust.

2016/2017 FRANKING CREDIT RATE

The amending Bill does not alter the current law which is that if a company's 2016/2017 aggregated turnover was less than $10 million, dividends paid in 2016/2017 by a company that is "carrying on a business" (see later for the ATO's draft ruling as to whether a business is being carried on) is subject to a maximum franking credit rate of 27.5%.

2017/2018 FRANKING CREDIT RATE

Currently, if a company's 2016/2017 aggregated turnover was less than $25 million, dividends paid in 2017/2018 by a company that is 'carrying on a business' (see later for the ATO's draft ruling as to whether a business is being carried on) are subject to a maximum franking credit of 27.5%.

The amending Bill removes the 'carrying on a business' requirement and instead requires that the company's passive income does not exceed 80% of its assessable income (to qualify for the 27.5% franking credit rate).

ATO'S VIEW ON CARRYING ON A BUSINESS

DRAFT RULING

At approximately the same time that the amending Bill was introduced to Parliament, the ATO released draft Taxation Ruling ***TR 2017/D7*** setting out its view on exactly when a company is "carrying on a business". While this is not relevant for the eligibility of the lower company tax rate for 2017/2018 onwards (as this depends on the passive income test), it is relevant for the lower company tax rate in 2015/2016 and 2016/2017. The draft ruling provides the following examples, whether they constitute 'carrying on a business':

	CARRYING ON A BUSINESS?	
	YES	NO
Dormant companies with retained profits and a bank account in which it earns small amounts of interest sufficient only to cover its ASIC fees		✓
Companies engaged in the preliminary activity of investigating the viability of carrying on a particular business		✓
Family companies with an unpaid present entitlement (UPE) from a family trust that have not demanded payment from the trust and also not entered into any arrangement with the trust to receive any profit from the UPE		✓
Family companies whose only income is trust distributions from a discretionary trust which it distributes partly in cash to the shareholders with the balance held in a non-interest bearing bank account pending distribution to other shareholders. The company also has no other assets		✓
Bucket companies who invest their distributions (e.g. enter into complying Division 7A agreements)	✓	
Passive investment companies either those just holding rental properties or share portfolios	✓	

ADMINISTRATIVE GUIDANCE

Further to this ruling, administrative treatment has been released by the ATO which clarifies which companies have access to the lower company tax rates. For the 2015/16 and 2016/17 income years, a company which is under the aggregated turnover threshold ($2m and $10m) and is carrying on a business will have lower than general tax rates. Importantly, in the administrative treatment, the ATO has confirmed that carrying on a business will be finalised in TR 2017/D7 to include small business entities. This is relevant for whether business can access the Small Business Concessions (which include a range of GST, FBT, CGT, and Income Tax concessions).

In the administrative treatment, the ATO also states that companies which have the intention of making a profit are considered to be carrying on a business.

MOVING FORWARD

The above information is based on a Bill currently before Parliament, and a draft Ruling. As such, the law is not yet settled. However, depending on the final law, many more companies may now be eligible for both the lower company tax rate and – because the ATO's wide interpretation of 'carrying on a business – the Small Business Entity concessions. This may in turn require amendments to previous year tax returns to claim these concessions and lower tax rates.

HOUSING SOLUTION

A recent ATO private ruling indicates that family members may be able to transfer residences to each other with no CGT implications. This potentially makes it easier for individuals to enter the property market.

INTRODUCTION

For a number of people, especially young people starting out, the price of property in Australia is becoming increasingly unaffordable. As a result, many young people have difficulties obtaining finance – particularly post-GFC where financial institutions are now much more cautious when lending.

A common solution to this problem is for a parent to purchase the property on behalf of their child, and then later transfer the property back to the child when they are in a position to obtain finance themselves.

However, buyer beware! Upon transferring the property to the child, capital gains tax (CGT) will apply. The CGT payable by the parent will in simple terms be the market value of the property at the time of transfer minus the purchase price plus associated costs on purchase (such as conveyancing, Stamp duty, legals etc.). This capital gain could then be reduced by 50% if the property was owned for 12 months or more.

TAX TIP

In normal circumstances, the main residence exemption from CGT would only apply if the parent was occupying the property and treating it as their main residence for the entire ownership period. Where it was only their main residence for part of the ownership period, a partial exemption would apply. For instance, if the parent moved into the property just before the sale and treated it as their main residence, then only a partial exemption would apply for the number of days they were in there.

A recent ATO ruling however may provide a way free of CGT!

FACTS

In a recent ATO Private Binding Ruling, a parent purchased a property on behalf of their adult child as the child was unable to obtain finance at that particular time.

The child paid the deposit for the property and made the mortgage repayments.

The child lived in the property as their main residence since it was acquired. The parent did not live in the property.

The child is now in a position to obtain finance and, as such, the parent intends to transfer their legal interest in the property, and the mortgage to the child.

DECISION

Normally CGT would apply in this situation (to be calculated using the earlier-mentioned formula) even though no money has changed hands.

However, given the facts of this case, it was ruled that CGT will not apply as the child has beneficial ownership of the asset before it was legally transferred to them. Beneficial ownership is defined in various Taxation Rulings to be the party who is beneficially entitled to the proceeds and income from the asset. On the other hand, the legal owner is the party who has their name on the legal documents associated with the CGT asset, in this case the Title Deeds to the property. It is the beneficial owner – not the legal owner – who is liable for CGT on the disposal of the asset.

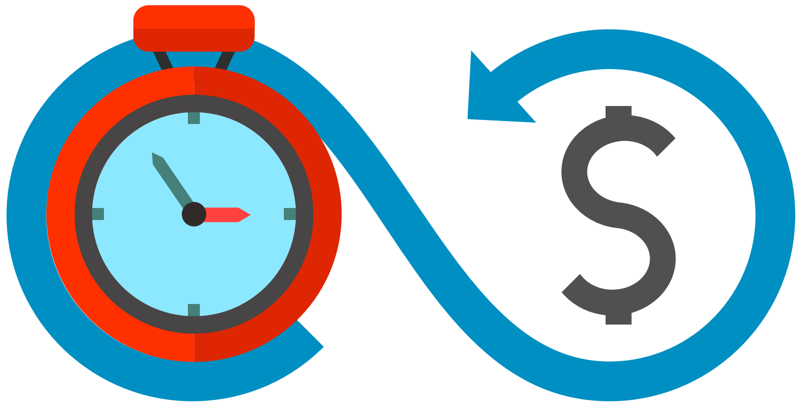
However, in some cases such as this, a party may hold a legal ownership interest in property for another person in trust. This was the case here. Although no formal trust arrangement was in place, a constructive trust existed because of the circumstances. Although the property was purchased in the parent's name:

- It was lived in by the child
- The deposit was paid by the child
- The mortgage repayments were paid by the child.

As such when the property is transferred there will be no change in the beneficial ownership of the asset and therefore no CGT will be payable.

TAKE AWAY POINTS

While beneficial ownership has long been recognised in respect of shares in a company, or with the beneficiaries of a formal trust, the ATO here are conferring it on property ownership. The ruling however turns very much on the facts, and for taxpayers to demonstrate beneficial ownership all of the facts in this case would need to be present (i.e. the child living in the property and not the parent, and the child paying the deposit and making the repayments). Where this is the case, the way may be clear for parents to assist their children to enter the property market, and avoid any CGT consequences when legal ownership of the property is eventually changed.



CAPITAL GAINS TAX... IT'S ALL IN THE TIMING!

A number of CGT concessions/exemptions/rollovers etc. are contingent on time requirements. Satisfying these requirements can in some cases mean the difference between paying tax on 100% of the gain or eliminating tax on the gain altogether. This section lists these many concessions, and the exact time requirements that must be met. Meeting these requirements may mean bringing forward or delaying action on your part.

RULE	IDEAL FOR	WHAT IF YOU EXCEED THE LIMIT?
Six Year Absence Rule: Allows you to rent out your home and retain the main residence exemption for up to six years, provided you treated no other house as your main residence while away. For full details see Section 118-145 of the Income Tax Assessment Act (1997)	People who have relocated temporarily (e.g. for work or an extended overseas holiday) but have retained their home	Where exceeded, you only obtain a CGT exemption for the six year period, and CGT is payable on the excess time
Six Month Moving to Another Main Residence Rule: Treat both your current and newly acquired dwelling as your main residence for up to six months. For full details, see section 118-140	You are moving house and have acquired your new house before you dispose of your old house	Where exceeded, you only obtain an exemption for the six month period, and CGT is payable on the excess months until you sell the old home
Four Year Building Rule: Treat your land as main residence-exempt if your house is built or renovated within four years and you move in upon completion. For full details, see Section 118-150	Individuals either having their main residence constructed or renovated	Where exceeded, you only obtain a partial exemption for the four-year period. CGT is payable from the four-year deadline until you move in. Extensions to the four-year deadline can be granted for factors outside your control

RULE	IDEAL FOR	WHAT IF YOU EXCEED THE LIMIT?
Small Business 15 year Retirement Exemption Total exemption for individuals from CGT on business sales or business asset sales where the business/asset is owned for 15-years or more and you are over 55 years and retiring or are permanently incapacitated. For full details, see Section 152-105	Long-time business owners who are retiring or are permanently incapacitated	Meeting the 15-year requirement is important– if you are even one day short of the 15-years, no exemption applies, as opposed to a 100% exemption if the timeframe is met. Consider deferring the sale where the 15-year mark is looming
Small Business Two-Year Replacement Asset Rollover Allows you to defer a capital gain if you acquire a replacement business asset or incur expenditure on making capital improvements to an existing CGT business asset, within the three-year period commencing 12 months prior to a capital gain on the sale of a business asset. For full details, see Section 112-105.	Ideal for business owners who are continuing in business and who wish to defer their CGT liability. Even where you have no intention of acquiring a replacement asset, you can enjoy a two-year 'CGT holiday', giving you significant cash-flow relief	Where the two-years expires and you have not acquired a replacement asset or improved an existing asset to the same value as the sold asset, you still enjoy your two-year CGT deferral, but must declare the gain in your next tax return
Two-Year Small Business Beneficiary Disposal Rule Where a business owner dies, beneficiaries and LPRs will have the same access to the small business CGT concessions that the deceased had just before their death, provided they dispose of the asset within two years of the deceased's death. For full details, see section 152-80	For beneficiaries of deceased estates where the deceased was eligible for the small business CGT concessions – and the beneficiary does not wish to continue to operate the business long-term	Access to the concessions based on the deceased's use of those assets may be lost altogether
12 Month 50% General Discount Allows a 50% discount for assets that you hold for 12 months or more. For full details, see section 115-5	For all types of taxpayers and structures (except companies) - whether you are in business or not	Meeting the 12 month timeframe is vitally important. If you are even one day short of this timeframe, no discount is available. Consider deferring the sale where the 12 month mark is looming
Two-Year Inherited Main Residence Rule A full exemption where a dwelling acquired from a deceased estate is disposed of: (i) within two years of the deceased's death, or (ii) after occupation by a surviving spouse, a beneficiary or a person with a right to occupy. For full details, see section 118-195	Beneficiaries of deceased estates who inherit houses and don't wish to live in those houses long-term	The CGT main residence exemption may be lost for the period post-death
Small Business Active Asset Concession Allows a 50% CGT reduction where a business asset (including the business itself) was an active asset and owned for at least half the period of ownership or for at least $7^{1/2}$ years where the asset has been owned for more than 15 years. For full details, see section 152-35	Business owners who are selling their business or business assets	Failure to satisfy the timeframe in the active asset test means that you cannot access any of the small business CGT concessions. The active asset test is a basic condition for access to these concessions

This article contains a range of tax tips for small business and individuals.

CLOUD RECORD-KEEPING

Business tax records are normally required to be retained for five years from the time the records are prepared or the transactions to which they relate, are completed - whichever is the later. Most businesses have progressively moved away from manual record-keeping (keeping records in hard copy, paper form), and embraced electronic record-keeping. Records kept in electronic form must be readily accessible and convertible into English. The full requirements are set out in ***Taxation Ruling TR 2005/9*** which you can access on the ATO website.

For the many of you who do store your records electronically, have you considered storing your records "in the cloud" rather than on your computer's internal hard drive? In simple terms cloud computing is simply using the internet to access software and storage, rather than physically installing it on your computer. Cloud accounting, also known as "online accounting", serves the same function as cloud computing. You might install the software on your computer but it runs on servers and you can access it anywhere that you have an internet connection – not just at your office as with desktop systems. In some instances, you won't need to install the software on your computer at all and can access it via web browsers.

By storing your records 'in the cloud' rather than on your desktop, not only are they more accessible, but there is no need to have external backups. The cloud provider (e.g. MYOB) backs up user data itself on its own various servers. Talk with your Accountant about storing your records "in the cloud" and the advantages of cloud accounting more generally.

CLIENT CHECKLISTS

Speaking of records, over the coming months many business owners and individual taxpayers will be providing their and their business's records to their Tax Agent for completion and lodgement of 2016/2017 tax returns. Ask your Tax Agent for a checklist of the exact records/documents/information they will require if they have not already provided you with this. This can save time, and result in a smoother and quicker lodgement process.

PAYING PRINCIPALS

As the owner of a small business, it's important to pay yourself (some say pay yourself first) because this puts pressure on your business to meet a fair rate of return for a principal's labour. In the longer-term if your business cannot do this, then you have to question why you are in business in the first place, and the very viability of your business.

So how much do you pay yourself? At least as much as you would pay an employee to do what you do. In the case of a Partnership or Sole Trader, such payments would be termed 'drawings'. This is not a wage and there is no requirement to withhold PAYG from it. Rather, you will need to make provision for your income tax liability on these drawings by paying PAYG instalments throughout the year, most likely quarterly. Drawings also do not attract superannuation. You will need to make your own superannuation contributions if you so choose. These contributions will generally be tax deductible.

In the case of a company or trust, the payment is likely to be in the form of a wage subject to PAYG Withholding and superannuation.

CAN'T PAY?
It may be the case on some occasions (particularly in the early days) that the business cannot afford to remunerate the principal. In these instances, process the payment anyway, and post the amount due to you as a loan and repay it at a later date when the business is generating sufficient cash.

DIFFERING INPUTS?
It will often happen that principals will put in different amounts of time or values for their time. To keep things absolutely equitable, you should not stress about paying different amounts to principals. Paying different amounts (reflective of input, for example an amount per hour worked) removes a 'de-motivator' i.e. your fellow principal drawing the same amount of return for a lesser input as well as any feelings of guilt a person may experience in drawing an equal profit where their input was less.

SALARY SACRIFICING SUPER VERSUS CONTRIBUTING TO SUPERANNUATION

As we've written about previously, from 1 July 2017 the rules surrounding claiming deductions for personal superannuation contributions have been severely relaxed. From this date, a great opportunity now exists for all individuals up to age 75 to claim an income tax deduction for personal superannuation contributions. Before this date, you could only claim a deduction for your personal contributions where less than 10% of your assessable income, your reportable fringe benefits and your reportable employer superannuation contributions (e.g. salary sacrifice contributions) for the year were from being an employee – this was known as the '10% Rule'. This rule prevented most employees from claiming a tax deduction for this type of contribution.

This reform will benefit the many employees whose employers do not offer them the ability to salary sacrifice into superannuation. It will put you in the same tax position as those who are able to sacrifice. However, individuals who salary sacrifice will enjoy a cashflow advantage in that the tax benefit (i.e. not having your sacrificed amounts subject to income tax) will be enjoyed progressively throughout the year…rather than having to wait until year-end to claim a tax deduction.

Therefore, the take-away message is that whilst the 1 July 2017 reforms put all employees on an equal footing, those who are sacrificing their pay into superannuation may wish to keep their arrangements on foot rather than cancelling them and making after-tax contributions. By doing so, you can enjoy a cashflow benefit.

SACRIFICING LEAVE ON TERMINATION

We've had a number of questions come to us from subscribers via our free Tax Advice email service info@mytaxsavers.com.au around whether annual leave or long service leave owing on termination of employment (whether by resignation or being fired) can be salary sacrificed to superannuation.

To salary sacrifice annual leave or long service leave during employment, you can only salary sacrifice future leave entitlements. That is, a salary sacrifice agreement must be in place before the leave that you are sacrificing has been accrued (you cannot salary sacrifice leave that has already accrued). However, on termination, even where a salary sacrifice agreement was in place, annual leave and long service leave that is owing can never be salary sacrificed into superannuation. These amounts are assessable to the employee and cannot be sacrificed.

RENTAL PROPERTY BUSINESSES

If you are deemed to be "carrying on a business" and that business has a turnover of less than $10 million (including connected entities and affiliates) then you may be able to access the Small Business Entity tax concessions which provide for a range of FBT, income tax, and GST concessions. If you are "carrying on a business" this may also enable you to access the Small Business CGT concessions, however the turnover threshold for those concessions is $2 million (or, alternatively, less than $6 million in net assets).

In the residential rental property context, it is relatively rare that owners of these properties will be deemed to be "carrying on a business". This is because of the limited scope of rental property activities and the degree to which an owner participates in these activities. In its 2017 ***Rental Properties Guide*** the ATO attempts to draw a line between when a business is being carried on, and when it isn't. It does this by providing two hypothetical scenarios. The first of these is an example of not carrying on a business. This example involves a husband and wife who co-own, as joint tenants, two units and a house from which they derive rental income. They also:

- Perform repairs and maintenance personally
- Personally clean the properties when tenants move out
- Receive weekly rent paid directly into their bank account
- Have other full-time jobs which are their main sources of income.

The second example illustrates when, according to the ATO, a rental property business will be deemed to be carried on, and is reproduced below:

EXAMPLE

The D'Souzas, own a number of rental properties, either as joint tenants or tenants in common. They own eight houses and three apartment blocks (each apartment block comprising six residential units) making a total of 26 properties.

The D'Souzas actively manage all of the properties. They devote a significant amount of time, an average of 25 hours per week each, to these activities. They undertake all financial planning and decision making in relation to the properties. They interview all prospective tenants and collect all the rents. They carry out regular property inspections and attend to all of the everyday maintenance and repairs themselves or organise for them to be done on their behalf. Apart from income Mr. D'Souza earns from shares, they have no other sources of income.

The D'Souzas are carrying on a rental property business. This is demonstrated by:

- The significant size and scale of the rental property activities
- The number of hours the D'Souzas spend on the activities
- The D'Souzas' extensive personal involvement in the activities, and
- The business-like manner in which the activities are planned, organised and carried on.

Mr. and Mrs. D'Souza have a written partnership agreement in which they agreed to carry on a rental property business. They have agreed that Mrs. D'Souza is entitled to a 75% share of the partnership profits or losses and Mr. D'Souza is entitled to a 25% share of the partnership profits or losses.

Because the D'Souzas are carrying on a rental property business, the net profit or loss it generates is divided between them according to their partnership agreement (in proportions of 75% and 25%), even if their legal interests in the rental properties are equal, that is, they each own 50%.

While we appreciate that the ATO is attempting to illustrate the two extremes – of carrying on and not carrying on a business – you need not own 26 properties as in the case of the D'Souzas in order to be carrying on a business. In *YPFD and Commissioner of Taxation [2014] AATA 9*, a decision of the Administrative Appeals Tribunal of Australia, a taxpayer who owned 9 residential rental properties was deemed to be carrying on a business. She also:

- Worked full-time as an industrial chemist
- Used real estate agents to manage the properties and collect the rents
- Inspected each property quarterly which would take at least half an hour per property, and involved additional time, being travel time, depending on the location of the property. All up she estimated that she spent nine hours every three months inspecting properties
- Checked accounts and carried out other tasks such as advertising for tenants in order to lease the properties.

In finding that a business was being carried on, the AAT noted that:

In coming to a decision, I have taken into account the 'ATO - Guide for rental property owners' which assists decision makers and taxpayers. I have considered the role of estate agents in services provided to owners of real estate, and in particular to the Applicant in this case. I am satisfied that certain reliance on estate agents to manage real property does not preclude the Applicant from being characterised as carrying on a business of letting rental properties.

The take-away point is that for taxpayers who do have a portfolio of residential rental properties, the bar set by the ATO in order to be carrying on a business in its ***Rental Property Guide*** may be a little overstated. According to the AAT, far less properties can be owned, and you may even engage a real estate agent to part manage the properties on your behalf. If in doubt, seek an ATO Ruling.

ABN LOOKUP

Are you aware of ***ABN Lookup?***

This site is the public view of the Australian Business Register (ABR). It provides access to publicly available information supplied by businesses when they register for an Australian Business Number (ABN). By simply searching by the name of the business, you can use ***ABN Lookup*** to:

- Verify ABN's (this is recommended when you are dealing with a new supplier/customer)
- Check whether a business is GST-registered. (There have been a number of recent incidences of GST fraud whereby businesses are charging GST on their invoices, but are not actually registered. They then pocket this GST amount. Where this occurs, you may not be able to claim a GST credit, and therefore would be out of pocket).
- To check whether an organisation is a Deductible Gift Recipient (DGR). (You can only claim a deduction for a donation if the recipient is a DGR. If you are planning on making a donation to an organisation, you should check its DGR status before you do so).

For your part, it is essential that you keep your ABN details up to date. This includes the legal name of your entity, addresses (postal, business location, email), ANZIC (main business activity and industry code), entity type (e.g. company, trust etc.), contact details. You have 28 days to update this information at www.abr.gov.au if it changes

Also, be aware that from November 2018, ***ABN Lookup*** will cease displaying all trading names and only display registered business names. If you wish to operate under a different name to your legal/entity name, you will need to register your business name with the Australian Securities and Investments Commission (ASIC).

DEDUCTIONS AGAINST INTEREST AND DIVIDENDS

Wealth creation and financial planning is becoming more popular for investors. The fees paid to a financial planner are deductible when it is paid for ongoing monitoring of a portfolio earning interest or dividends. However, the ATO considers the initial fee paid to a financial planner for drawing up an investment plan is not deductible. This is the case even if that investment plan includes some existing investments that you own. They consider the fees to be capital in nature, they are a precursor to the event of earning any investment income, ie. the too soon rule!

A further word of caution on the deductibility of fees is amounts paid to investment intermediaries. Some of these intermediaries provide a complete service and charge a brokerage fee, for want of a better word, to investors. For this fee they will organise a rental property which not only includes sourcing the property, but also new blocks of land and the builder. They also source the finance, the Quantity Surveyor's report to calculate the Capital Allowance claim, and the accountants to prepare the PAYG Withholding Variation Application with the ATO.

Usually the fee is a lump sum fee. As the fee represents different work and is sometimes contracted to outside parties, the entire fee is not an outright deduction. This may mean the investor needs to obtain a breakdown of the fee from the "broker". The fee to organise/source the rental property is capital and would form part of the second element cost base of the asset, as it is an incidental cost to acquiring the asset. The fee paid for organising the finance could be deductible as a mortgage brokerage cost. If the total mortgage broker's cost for the year is less than $100 then it is deductible in the year incurred but, if more than $100, then it is deductible over the term of the loan or five years, whichever is the shorter. The fees paid directly to the Quantity Surveyor should be deductible as this is a cost to assist in calculating the investment deductions. The PAYG Variation Application fees should also be deductible.

THE MAIN RESIDENCE 2 HECTARES RULE

With the recent property boom, the ATO is taking a big interest in house and land sales. Most people believe that the CGT provisions allow a blanket exemption from Capital Gains Tax when they dispose of their Main Residence. It is subject to several conditions. One that is often overlooked is the "2 Hectares Rule".

This basically means if the house is situated on a block of land that is equal to or less then 2 hectares (or 4.94 acres), then the house and land could qualify for the exemption. If the land is greater then 2 hectares, then the land portion over the 2 hectares is subject to the Capital Gains Tax provisions.

EXAMPLE

David buys a house on a block of land that is 2.5 hectares for $250 000 in 2010. The house is worth $150 000 and the land $100 000. He sells the property 5 years later for $1.1 million. A fair apportionment of the selling price is that the house is worth $250 000 and the land $850 000. The profit on the house is still CGT free (assuming the other CGT conditions are met). However, the land is caught and has to be apportioned. A simple apportionment of the taxable land component would be:

COST
= $100 000 x 0.5 hectares /2.5 hectares = $20 000
SELLING PRICE
=$850 000 x 0.5 hectares /2.5 hectares = $170 000
PROFIT
= $150 000 ($170 000 - $20 000)

A 50% discount for holding the property for greater than 12 months will reduce the taxable gain to$75 000.

WORKING **CAPITAL LOANS**

We have seen a number of Working Capital Loan providers enter the Australian market in recent times having already proved popular overseas. These lenders are growing in number and are filling a valuable void in the lending market for small business. How can they help your business?

WHAT?

Essentially these are loans taken out by small business owners for working capital purposes. For example, they could be used to purchase a piece of equipment, effect a repair to a critical piece of equipment, finance an abnormal stock purchase, creditor payment or even to pay the Taxman. Essentially the full gamut of working capital usage is in scope. These types of loans have the following features:

- Smaller in amount
- Unsecured
- Able to fund purposes that would be outside the norm for mainstream lenders
- Quick to approve
- Quick to draw down
- Low documentation to establish and a more informal process
- More lenient approvals than conventional lenders
- Have more flexible repayment structures
- Higher interest rates than conventional products.

ADVANTAGES

This style of loan has advantages over conventional bank loans in that they are quick, easy to establish, allow leniencies on the purpose of the loan and the borrower, and do not use security such as property. The downside of course. is the higher credit charge so you would not normally use such a facility for a conventional borrowing such as an investment property purchase. On the other hand, if you are a relatively new business and want to commit to importing a line of inventory quickly to take advantage of a price discount then it may be ideal, as you can do it quickly, without security, without documentation and without justifying the serviceability of your new business.

WHO DOES THE FACILITY SUIT?

- Businesses who have to move quickly
- Businesses with less than perfect credit scores
- Businesses that have insufficient conventional loan security
- Businesses that can justify the higher than conventional loan interest rates.

Please note that these facilities will not generally suit businesses with ample, low-cost credit lines at their disposal or where the purpose is outside business working capital purposes such as personal loans and property loan.

TAX TREATMENT

General tax law principles apply. That is, the interest component of the loan will be deductible provided that the borrowed funds are used for an income-producing purpose such as to purchase a piece of business equipment. Interest will be deductible in the financial year in which it is paid.

LENDERS

There are a number of lenders in the marketplace including MYOB Loans (powered by OnDeck); Finstro; Capify; and First Class Capital. There are many more who you can source online or through a broker. Each of the providers will have their own unique way of dealing and variances in terms, rates and features. Some offer some wonderful add-on tools and additional resources. If you want to find out more you should start with their website and follow-up with a call.

FIRST HOME
SUPER SAVER SCHEME

With the introduction of the proposed legislation into Parliament, we now have an idea of how the First Home Super Saver Scheme (FHSS Scheme) will operate – helping those who have never owned a home into the property market.

BACKGROUND

The FHSS Scheme was among a suite of measures announced by the Government in the May 2017 Federal Budget aimed at making housing more affordable. With high housing prices, many Australians have difficulty saving for a deposit. The FHSS Scheme aims to boost savings for these people towards their first home by allowing them to build a deposit inside superannuation.

Under the scheme, first home savers who make voluntary superannuation contributions can then withdraw those contributions (up to certain limits) and an amount of associated earnings to put towards purchasing their first home. Concessional tax treatment will then apply to amounts that are withdrawn under the scheme.

ELIGIBLE TAXPAYERS

To be eligible for the scheme you must:

- Be 18 years or older
- Have not used the FHSS previously, and
- Have never held a freehold interest in real property in Australia, a company title interest, or a long-term lease over land (renewals or extensions that are for at least 50 years and the terms of which apply to the lessee under substantially the same terms under which the lessor owned or held a lease of the land). This ensures that individuals who have an interest in a leasehold arrangement that is broadly equivalent to ownership will not be able to use the FHSS Scheme.

This third criterion means that if you have owned an investment property, commercial property or vacant land previously you would not be eligible to use the FHSS Scheme. These people may be able to leverage their existing property to help buy a home. Note that if you are eligible, you will not be disqualified on the basis that the person who you may be buying a home with (e.g. spouse) is not eligible. Eligibility is assessed on an individual basis. If you are both eligible, then you can both access the scheme, and then pool your withdrawn savings together to buy your first home.

ELIGIBLE CONTRIBUTIONS

The FHSS Scheme applies to voluntary contributions that are made into superannuation on or after 1 July 2017. Such contributions can be withdrawn under the Scheme from 1 July 2018. Generally, only the following contributions are eligible:

- Personal contributions for which you are claiming a tax deduction
- Personal contributions for which are not claiming a tax deduction, and
- Salary sacrifice contributions.

Mandated employer contributions, such as Superannuation Guarantee contributions, contributions to defined benefit interests and constitutionally protected funds, and contributions made prior to 1 July 2017 cannot be accessed. Additionally, any employer contributions or member contributions that are required to be made due to Commonwealth or State or Territory laws or due to the rules of a superannuation fund are not eligible to be released, to the extent that those contributions are required to be made.

There are no separate contribution caps under the scheme. Therefore, any voluntary contributions count towards your standard superannuation caps which are $25 000 per year for concessional contributions (including personal contributions for which you can claim a deduction, and also employer contributions such as Superannuation Guarantee and salary sacrifice), and $100 000 per year for non-concessional contributions (including personal contributions for which you cannot claim a tax deduction and spouse contributions).

RELEASE

Eligible contributions (plus associated earnings) made from 1 July 2017 will be accessible from 1 July 2018 if the scheme is legislated. Contributions can be accessed on a once-off basis and are limited to $15 000 per year and $30 000 in total, plus associated earnings in respect of contributions. To take account of the tax payable by your superannuation fund, only 85% of the contribution can be released. To initiate the release process, individuals must request a *First Home Saver Determination* from the ATO. In making a Determination, the ATO will identify a 'maximum release amount' based on your past contributions and associated earnings. Individuals who receive a Determination can then request that the ATO issue a release authority which you can then provide to your superannuation fund in order for them to release the amounts. When released:

- The ATO will include the withdrawn amount in your assessable income for the year. This will be subject to tax at your marginal tax rate (plus Medicare levy), less a 30% tax offset.
- The ATO must withhold an amount to assist in meeting the increased tax burden from the released amount. If they are unable to make an estimate of your assessable income for the year, they will withhold a maximum of 17% for the year.

PURCHASE OF PROPERTY

Once released, individuals will have 12 months (or 24 months if the ATO grants an extension) to enter into a contract to purchase or construct residential property. You must also move into the property and live in it for at least six of the first 12 months. Alternatively, you can recontribute the amount (less any tax withheld) to superannuation as a non-concessional contribution whereby no tax deduction will be allowed. The re-contribution also needs to be made within 12 months.

Failure to take either of these courses of action will result in tax of 20% being applied to your withdrawal.

TAX TREATMENT

What makes the scheme attractive is the concessional tax treatment. The 30% offset means that earnings made on your contributions are taxed concessionally, and this will largely be paid by your superannuation fund (not you personally). Additionally, when contributing you will likely be entitled to a tax deduction for the amount of your contribution. Or if you salary sacrifice the amount, the contribution is not subject to PAYG withholding tax by your employer (unlike the remainder of your salary).

By comparison, if the money was invested outside of superannuation, earnings would be taxed at your marginal tax rate which can be as high as 47%. In his Federal Budget speech, the Treasurer said that most individuals who use the scheme will accelerate their savings by 30%. He cited an example of an individual who earns $80 000 and makes additional superannuation contributions of $15 000 each year, would have a total of $25 603 after two years – making them almost $5 300 better off than under the highest interest-earning savings account of 3.05% now available.

The Government has designed a calculator for you to estimate the potential benefit of the scheme for you – depending on your income, and the amount you can contribute to superannuation. The calculator is available at **www.budget.gov.au/estimator/**

We will notify readers when this legislation (which is currently before the Senate) passes Parliament, after which time interested individuals may wish to consider opting into the scheme by making personal contributions to superannuation.

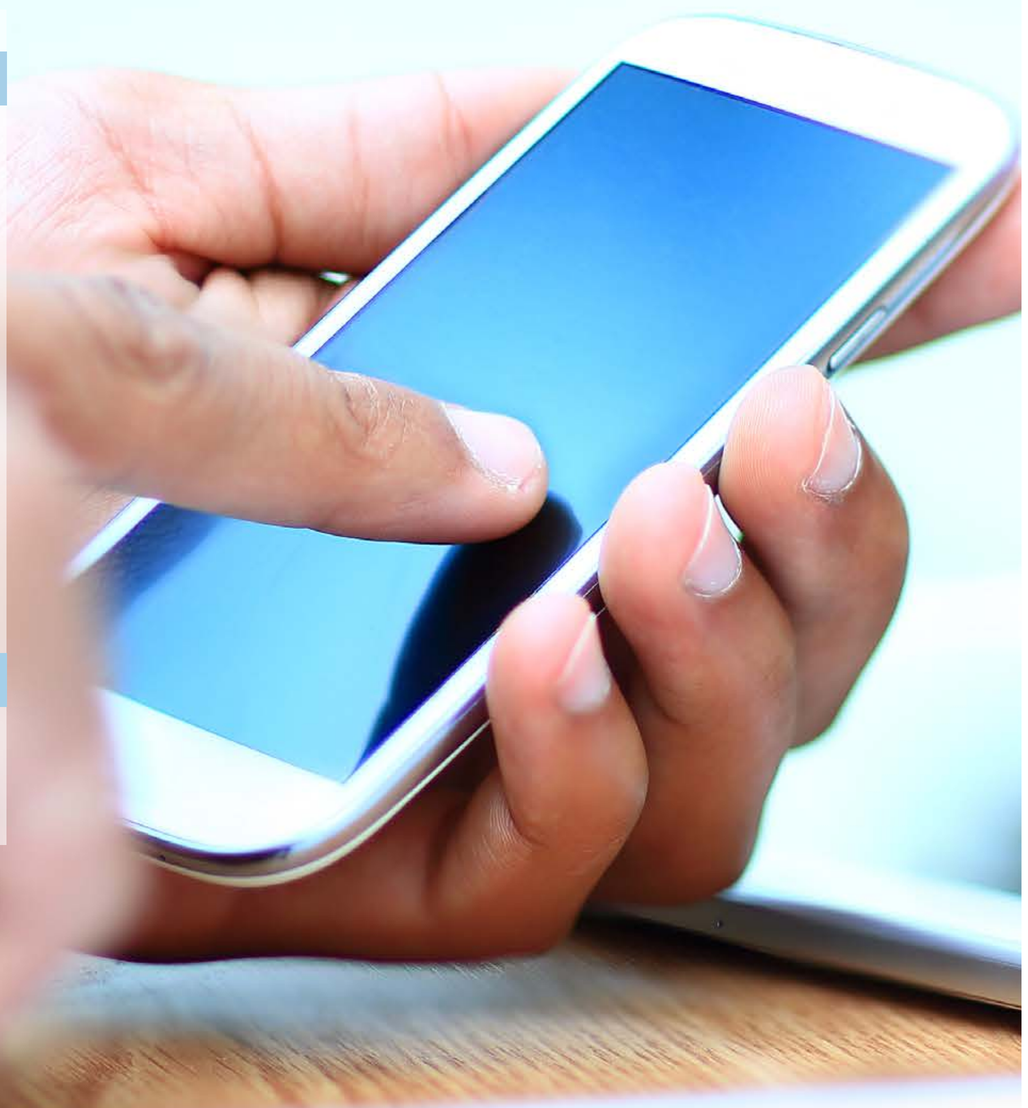
FURTHER MEASURES

As part of the same piece of legislation, is a measure known as *Downsizing Super Contributions*. This proposes to allow people aged 65 or over to make additional non-concessional superannuation contributions up to $300 000 from the proceeds of selling their home from 1 July 2018. The measure will apply to capital proceeds received from the disposal of an ownership interest in a dwelling in Australia that would qualify for the CGT main residence exemption either in whole or in part. Either the individual or their spouse must have owned the home for a minimum of 10 years up to the point of sale. If the person's spouse is not on the title with them, both people can still make a downsizer contribution. Caravans, houseboats and mobile homes are specifically excluded.

PAYROLL REVOLUTION!

SINGLE TOUCH PAYROLL – COMING SOON

Single Touch Payroll is soon to become mandatory for some employers and optional for others. The purpose of this article is to provide an overview to employers on how Single Touch Payroll works, and how they can position themselves for this change.

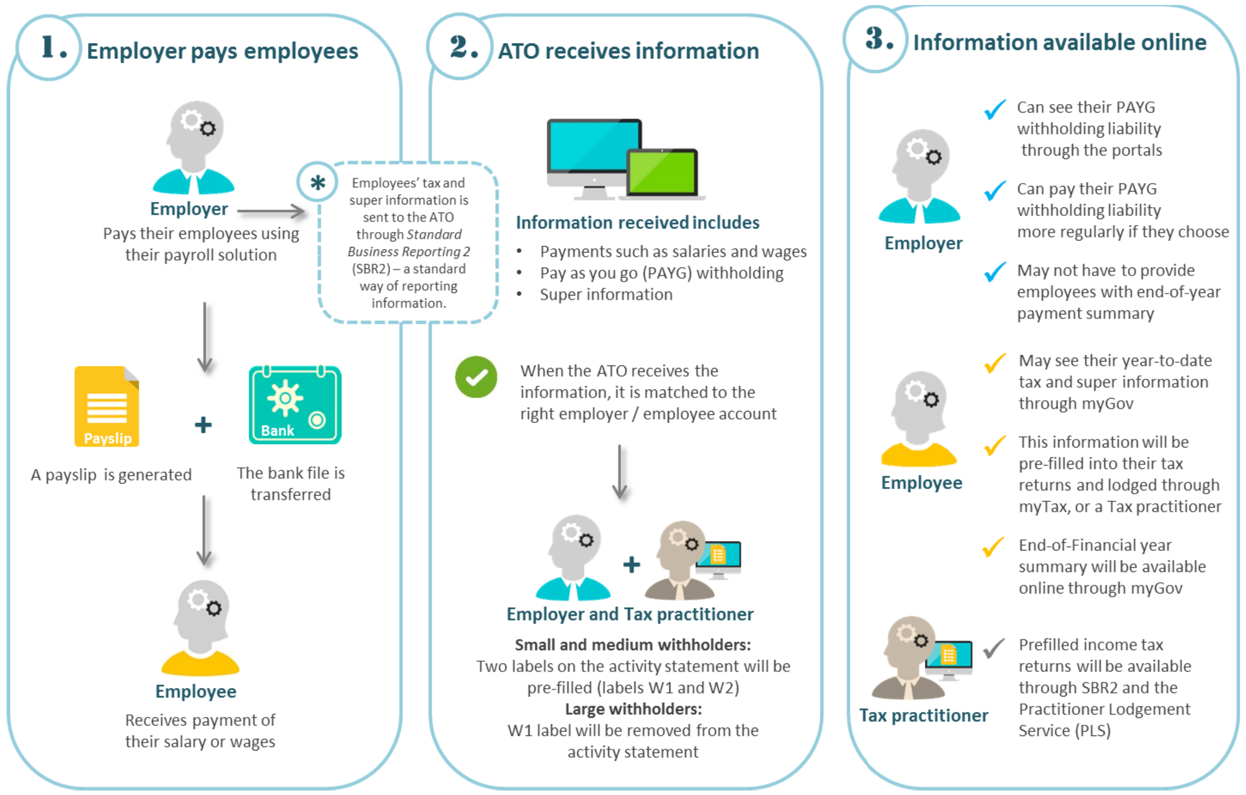


INTRODUCTION

Single Touch Payroll (STP) is new a Government initiative aimed at streamlining business payroll reporting obligations. It is now law and is legislated to commence for larger employers from 1 July 2018. The STP regime will revolutionise the way employers report payroll information to the ATO. In essence, STP is a new reporting mechanism whereby employers will report employee payments (such as salary and wages, allowances, superannuation) and PAYG withholding to the ATO directly through their STP solution (e.g. upgraded Standard Business Reporting-enabled software) at the same time they pay their employees. To be clear, no additional reporting is required – just a new method of reporting.

HOW IT WORKS

The following ATO diagram illustrates how STP works:



A typical STP-compliant process:

- ✓ Adopt upgraded Standard Business Reporting-enabled software (this is essential to reporting under STP) and also software that provides ATO and Fair Work-compliant payslips each pay period, and also calculates and processes termination payments
- ✓ Enter employee details accurately in the software
- ✓ Complete standard field details in all the fields requested by your software (STP does not require any additional information to be reported)
- ✓ Provide ATO and Fair Work-compliant payslips to employees at the time of payment
- ✓ Calculate Superannuation Guarantee entitlements
- ✓ Consider all workarounds that may exist in an employer's payroll processes and banking instructions to automate them within the employer's software programs.

WARNING! SUPER COMPLIANCE

In a measure designed to complement the transparency aspect of STP and boost employer Superannuation Guarantee compliance, the Government in mid-2017 announced changes to the way super funds report to the ATO. Super funds will soon be required to report contributions received from employers more frequently, at least monthly, to the ATO. This in turn will enable the ATO to identify and take prompt action against employers who are not meeting their Superannuation Guarantee obligations. Additionally, to aid Superannuation Guarantee compliance the Government will:

- Improve the effectiveness of the ATO's recovery powers including strengthening the Director Penalty Notice regime and the use of security bonds for high-risk employers. This is aimed at ensuring that unpaid Superannuation Guarantee is better collected by the ATO, and paid to employees' superannuation accounts
- Give the ATO the ability to seek court-ordered penalties in the worst cases of non-compliance.

In view of this, as a matter of some urgency, all employers should review their current Superannuation Guarantee compliance processes. For instance, are you correctly identifying Ordinary Time Earnings, calculating the correct Superannuation Guarantee amounts payable, and paying them on time?

KEY DATES

All employers, irrespective of size, should now be actively considering in consultation with their advisors how their current payroll systems can be upgraded or altered to be STP-compliant. Other key STP dates are:

- **September 2016** - *The Budget Savings (Omnibus)* Act 2016 was passed by Parliament requiring larger employers to comply with the STP payroll reporting regime by 1 July 2018
- **1 July 2017** - A limited release of STP began for a small number of employers. These employers were able to report payroll information through an STP-enabled solution (e.g. upgraded Standard Business Reporting-enabled software). STP operates with limited functionality for this select group of employers
- **September 2017** – The ATO began writing to all employers with 20 or more employees to inform them of their reporting obligations under STP
- **December 2017 to February 2018** – Most software providers are expected to finalise development of STP-compliant software and alert users to this
- **1 April 2018** – Employers to conduct a head count to determine whether they have 20 or more employees **

- **1 July 2018** – STP reporting becomes mandatory for employers with 20 or more employees as at 1 April 2018 (though it is anticipated that these employers will be able to transition to STP earlier…watch this space)

- **1 July 2018** – Smaller employers (those with less than 20 employees) can voluntarily report via STP (it is anticipated that these smaller employers will be able to voluntarily report via STP at an earlier date…watch this space)

- **1 July 2019** – STP reporting may become compulsory for smaller employers (not yet law).

** The employee head count on 1 April 2018 is important as it determines an employer's STP commencement date. Employers with 20 or more employees (part-time, full-time, or casual) will be required to be STP-compliant by 1 July 2018. Where this 20 employee threshold is met, even if the number of employees at a later date drops below this number, an employer will still be required to report via STP (however they may be able to apply to the ATO for an exemption if going forward employee numbers are expected to be permanently below 20). Employers with less than 20 employees (as on 1 April 2018) may be required to report via STP from 1 July 2019. However, this is not yet law. These smaller employers can though voluntarily report via STP (and in doing so enjoy the benefits outlined later) if they choose to do so.

'Employee' for STP head-count purposes is the common law definition of employee (which is narrower than the definition for Superannuation Guarantee purposes). Thus, workers for whom an employer does not withhold PAYG from will generally not count towards the 20 employee threshold. Although in most cases it will be clear-cut as to whether a worker is an employee, if you are uncertain, you should seek advice from your Accountant. Note that it appears that connected or related businesses are not required to include employees from those other businesses in their head count. Only wholly-owned groups are required to do so. Where a company owns 100% of any other company they would generally form a wholly owned group and if the employee headcount across all entities of the wholly owned group was 20 or more, then all entities in the wholly owned group would be larger employers and thus required to be STP-compliant by 1 July 2018.

BENEFITS

STP brings with it a number of benefits for employers as follows:

Streamlined Reporting – Employers can meet their ATO reporting obligations at the same time they process their weekly/ fortnightly payroll (rather than undertaking a separate reporting process). Indeed, the ATO anticipates that employers with 20 or more employees will together enjoy more than $65 million per year in savings. This largely is a result of the streamlining of *TFN Declarations and Superannuation Choice* forms, and automation of reporting obligations for PAYG. Employers with less than 20 employees who voluntarily opt in will together enjoy an overall saving of $70 million per year in efficiencies. However, these smaller employers will have proportionately larger implementation costs (such as acquiring or upgrading payroll software, or outsourcing payroll altogether).

Activity Statements Pre-Filling – The salary and wages (W1) and PAYG withholding labels (W2) – will be pre-filled. Corrections and adjustments can still be made later

Streamlined Employee Commencement Processes - Putting on a new employee will be made slightly less cumbersome with *TFN Declaration* forms and *Superannuation Choice* forms able to be completed electronically by new employees

Payment Summaries Abolished - Employers will generally no longer need to complete *Payment Summaries* for employees at year-end. Salary and wages as well as PAYG withholding figures will be available to employees through their *MyGov* account.

In view of these benefits, smaller employers who are not required to comply with STP from 1 July 2018 may nonetheless elect to voluntarily do so.

The Government too stands to benefit in a number of different ways including improved payroll and Superannuation Guarantee-related compliance, reduced costs through automation, stronger integrity of systems, reduced Centrelink fraud, and more money collected faster.

FIXING PAYROLL MISTAKES

When an employer under STP processes their weekly/fortnightly payroll, the payroll information sent to the ATO is called is an *STP Report*. If an employer later discovers they have made an error in a previous pay run, amendments to past pays can be updated in the employer's records and systems. Employers will then be able to correct any of those errors in a later *STP Report*. There is no requirement to go back and amend past STP Reports. The employer's software will always send 'Year To Date' totals to the ATO.

However, the employer will still have to finalise payroll at year-end by indicating to the ATO that the information being sent is final and can be used for income tax return purposes (see next section).

FINALISATION

At year-end, employers are required to make a declaration to the ATO that they have provided all the information for each employee for the financial year. This is done by providing the finalisation indicator as a part of an employee's *STP Report*.

This declaration then allows the ATO to make the employee information available for income tax return prefill for employees. It will also update the employee's *MyGov* payroll page, to show the STP-reported information is final for the financial year.

An employer may make the declaration at any time during the financial year, after the end of the financial year up to 14 July, or on any deferred due date.

However, so as to ease the transition into STP, extended due dates apply for employers during the initial years as follows:

- 14 August 2018 (for 2017/2018)
- 31 July 2019 (for 2018/2019).

STP SOLUTIONS

Standard business reporting-enabled software (SBR-enabled software) is essential to reporting under STP. Employers must adopt an STP solution by their due date set out earlier. Solutions will vary depending on an employer's current payroll processes.

- **Accountant or Bookkeeper** – Employers who use an Accountant or Bookkeeper to process their pays will simply rely on them to provide an STP solution (SBR-enabled software) by the deadline. Even where an Accountant or Bookkeeper does not process employer payroll, employers may turn to them for advice around how they can become STP-compliant.

- **Software Upgrades** – If an employer uses commercial payroll software (it would be

anticipated that this would be the case for a significant number of employers with 20 or more employees who are required to be STP-compliant by 1 July 2018), then they should contact their software provider as the deadline nears and ensure that they offer an updated Standard Business Reporting-enabled version of the software. It is anticipated that most major software houses will have this updated STP-compliant software in place by early 2018.

- **In-House Method** – If an employer uses an in-house method of payroll or manual method (such as paying employees by EFT and manually providing them with pay-slips and Payment Summaries)…then they will likely need to adopt STP-compliant payroll software. Such employers may lean heavily on their Bookkeeper or Accountant when installing this software, and may need upfront training. Alternatively, they may choose to outsource their payroll to a payroll service provider such as a payroll bureau, or an Accountant or Bookkeeper.

- **Not Computerised** – If an employer does not have access to the internet or computers, the ATO is actively considering compliance solutions such as via Australia Post or Agents. Alternatively, they may be eligible to apply for an exemption (see next Section).

EXEMPTIONS

Rather than sourcing an STP solution, employers can apply to the ATO for an STP exemption. Exemptions may be granted on a class basis. For instance, as SBR-enabled software is essential to reporting under STP, if an employer lives in a remote location with no reliable internet connection, an exemption may be granted. Other circumstances where a class exemption may be granted include for cultural or religious reasons, or where a natural disaster has occurred.

The ATO may also exempt particular employers. At this stage, the circumstances where a specific employer exemption may be granted are unclear. However, most employers with 20 or more employees would typically have significant resources at their disposal, and as such it is anticipated that an exemption would only be granted in very limited cases to these larger employers.

TAKE AWAY POINTS

1. **Keep Up-To-Date** – Given the scale of this reform, there is still much detail to be released by the ATO. And there may likely be further changes to the information that has already been released (for instance, the original start dates have already been delayed since STP was first announced a couple of years ago). We will keep you abreast of any changes and developments that impact employers. The ATO website also houses a range of up-to-date information.

2. **Software Providers** – Keep in close contact with software providers. They lie at the heart of STP compliance. Although a very small number of payroll software providers are already STP-enabled, most are at present in the process of updating their products to become STP-enabled. It is anticipated that most will be enabled by early 2018.

3. As well as checking in directly with providers, a software product catalogue is available on the Australian Business Software Industry Association's (ABSIA) website **www.absia.asn.au/.** The catalogue will be progressively updated as payroll software is STP-enabled.

4. **Compliance** – STP provides full visibility of employer Superannuation Guarantee compliance. Super funds will report directly to the ATO on employer Superannuation Guarantee payments at least monthly. Employers not meeting their obligations will be easily detected and subject to ATO enquiry. All employers should review their current Superannuation Guarantee compliance processes and their wider payroll processes more generally.

WHAT THE TAXMAN IS THINKING

In this edition, we detail a renewed ATO focus on rental property deductions, inform you of a new ATO tool allowing you to compare your business's performance to others in your industry, and much more.

RENTAL PROPERTY MEASURES

In the previous edition of this publication, we detailed two proposals put forward in draft legislation aimed at limiting deductions for rental property owners as follows:

- Denying deductions for travel expenses when inspecting, maintaining, collecting rent, repairing, or seeing your tax agent in regards to your residential property from which you derive rental income.
- Plant and depreciation claims will be limited to outlays actually incurred by investors. In other words, depreciation deductions will be denied if an asset has been previously used.

The legislation containing these measures has now been passed by both Houses of Parliament. With the travel deductions measure backdated to 1 July 2017, moving forward, the strategy of combining a weekend holiday with travel to your rental property and apportioning the deduction is no longer allowable. In this scenario, none of the travel expense will be deductible.

ATO BENCHMARK TOOL

Have you benchmarked your business recently? The ATO has designed a ***Business Performance Check*** tool which shows how your business compares to other of a similar size in your industry. Simply enter your details in the tool, and it will calculate and compare the data you entered against the ATO's own benchmarks to quickly show how your business compares to your competitors.

To use the tool, you will need records of:

- Gross business income (such as tax invoices, cash register tapes, credit card statements)
- Salary and wages paid to you or your employees, including superannuation
- Vehicle claims
- Interest earned
- Cost of sales (being the cost of anything you have produced, manufactured, acquired or purchased for the purpose of sale or exchange).

To start using the ***Business Performance Check*** tool:

1. Download the ***ATO app*** from Google Play, the Windows Phone Store or the Apple App Store
2. Go to ***Business***
3. Select ***Business performance check***
4. Have your information ready and enter it into the tool.

If your business is outside the benchmarks, you should ensure that you have included all your income in your Activity Statements and tax returns. Where this is the case, don't panic! There may be a number of legitimate reasons why your business falls outside the benchmarks such as having higher costs or lower selling prices than your competitors. Whatever the reason, ensure you understand why. This may not only assist you if the ATO were to make further inquiry, but it may also prompt you to make adjustments that benefit your business such as reducing wastage, adjusting your mark-ups, sourcing inputs from cheaper suppliers etc.

ATO REVIEW OF CASH-ONLY BUSINESSES

The ATO advises that it will be visiting businesses across Australia in the coming months as part of its ongoing focus on the cash and hidden economy. The ATO will focus on businesses that:

- Operate and advertise as "cash-only"
- Do not take electronic payments (according to the ATO's data matching)
- Are part of an industry where cash payments are common
- Indicate unrealistic income relative to the assets and lifestyle of the business and the owner
- Fail to register for GST or lodge Activity Statements or tax returns
- Under-report transactions and income according to third-party data
- Fail to meet superannuation or employer obligations
- Operate outside the normal Small Business Benchmarks for their industry, or
- Are reported to the ATO by the community for potential tax evasion.

The ATO goes on to say that businesses who are doing the right thing do not need to be concerned about these visits. However, where a business is doing the wrong thing from a tax standpoint, it may face a full audit which could lead to penalties and prosecutions.

UPDATED GST PROPERTY DECISION TOOL

The GST treatment of property – even for seasoned tax practitioners – can be extremely complex. Is the property residential or commercial?; can GST be reduced under the Margin Scheme?; can it be sold as part of a Going Concern? These are just some of the complex questions that can be in play.

To assist, the ATO has recently updated its ***GST Property Decision Tool***. In response to user feedback, the tool has been re-designed to make it simpler to use and easier to read on mobile devices. It now includes:

- A series of questions to help you determine the GST classification of your real property transaction
- Guidance and explanations to work through the tool
- Links to additional information, and
- A decision of how GST applies to your property transaction.

LIVE CHAT!

Have you taken advantage of the ATO's Small Business ***Live Chat*** facility? This allows you to get help and advice direct from the ATO at a time that suits you. You can get general guidance and information from an ATO customer service officer in relation to:

- ABN/AUSkey
- BAS
- GST
- Payment arrangements.

Live Chat is available from 3pm to 8pm (AEDT) Monday to Friday, and 10am to 2pm (AEDT) Saturday, except for national public holidays. The ATO advises that if you would like more specific advice and support, you can book an after-hours call back. The ***Small Business After-Hours Call Back Service*** is available from 6pm to 8pm (AEDT), Monday to Thursday, except for national public holidays. Also be mindful that your registered Tax Agent or BAS Agent can also be a great source of advice.

ATO FOCUS ON RENTAL PROPERTY OWNERS

With Tax Time now here, the ATO is encouraging rental property owners to ensure that their deduction claims are accurate. It will be paying close attention to:

EXCESSIVE INTEREST EXPENSE CLAIMS

Your interest claim must be limited to interest you have actually paid from 1 July to 30 June on borrowed funds used to purchase the rental property.

INCORRECT APPORTIONMENT OF RENTAL INCOME AND EXPENSES BETWEEN OWNERS

The way that rental income and expenses are divided between co-owners varies depending on whether the co owners are joint tenants or tenants in common or there is a partnership carrying on a rental property business.

Co-owners who are not carrying on a rental property business (generally, it is very unlikely that a business is being carried on) must divide the income and expenses for the rental property in line with their legal interest in the property. If they own the property as:

- Joint tenants, they each hold an equal interest in the property (therefore 50% of income, and 50% of expenses)
- Tenants in common, they may hold unequal interests in the property. For example, one person may hold a 20% interest and the other an 80% interest.

Rental income and expenses must be attributed to each co-owner according to their legal interest in the property, irrespective of any agreement between co-owners, either oral or in writing, stating otherwise.

REAL LIFE ATO CASE

A rental property was investigated by the ATO where the rental expenses had not been apportioned correctly. The property was jointly owned by a couple but the higher earner was claiming the larger portion of the expenses.
The expenses were adjusted to reflect the legal ownership interest in the property, and the higher earner had to pay back more than $8, 000 in tax.

HOMES THAT ARE GENUINELY NOT AVAILABLE FOR RENT

To claim rental property deductions, your property must either be being currently rented out, or be genuinely available for rent. In the case of the latter, the property must be habitable (for example, if you were carrying out major renovations this may render the property uninhabitable), and it would also be expected that you could produce evidence to show it being genuinely made available for rent (e.g. advertisements in newspapers, or listings with local real estate agents).

REAL LIFE ATO CASE

John had a newly purchased rental property that had not returned any rental income. He told the ATO that the property was occasionally advertised on community noticeboards and websites. John was unable to prove that there was a genuine arrangement in which he actively sought tenants, or that he had taken sufficient steps to genuinely advertise the property for rent. A rental loss of almost $60, 000 was disallowed and penalties were applied.

INCORRECT CLAIMS FOR NEWLY PURCHASED PROPERTIES

You cannot claim as a deduction acquisition costs such as Stamp Duty, conveyancing expenses, legal expenses. These costs form part of the property's cost base and can only be taken into account for capital gains tax (CGT) purposes when you dispose of the property.

The other common expense that is not claimable as a deduction is initial repairs made to the property.

If the repairs are performed just after the purchase of the property in preparation to rent it out, then they are considered to be initial repairs. These cannot be claimed as a rental property expense on your tax return. Instead they will form part of the cost base of the property and will reduce your capital gain (or increase your capital loss) when you sell the property.

REAL LIFE ATO CASE

Nancy purchased a rental property and had her tax return amended by the ATO to remove deductions for repairs, capital works and incorrectly apportioned borrowing expenses. Nancy had inappropriately claimed a deduction for repairs to defects present in a newly purchased property and the capital works, and borrowing expenses should have been spread over several years. Nancy also provided false receipts for property management fees undertaken by a family member. Nancy was required to pay more than $57, 000 back to the ATO as well as over $10, 000 in penalties for making a false statement in her tax return.