

## CLIENT ALERT: TAX NEWS | VIEWS | CLUES

keeping you informed **APRIL 2019**

### TAX CONCIERGE SERVICE AVAILABLE TO SMALL BUSINESSES

The Small Business Ombudsman, Kate Carnell, has announced that taxpayers wanting an external review of an adverse tax decision by the ATO through the Administrative Appeals Tribunal (AAT) can now contact the office of the Australian Small Business and Family Enterprise Ombudsman for assistance.

From 1 March 2019, small business owners without legal representation can access an hour with an experienced small business tax lawyer at a significantly reduced cost, subsidised by the office of the Ombudsman. Lawyers can review relevant documents and provide advice on the viability of an appeal. And should an appeal progress, the Ombudsman's case managers will help the small business owner through the process.

Small business taxation decisions will be finalised within 28 days from the date of a hearing at the AAT.

### COMPENSATION FOR DEFECTIVE ATO ADMINISTRATION: REVIEW ANNOUNCED

Mr Robert Cornall, a former Secretary of the Attorney-General's Department, will lead a review of the Scheme for the Compensation for Detriment Caused by Defective Administration (the CDDA Scheme).

The CDDA Scheme allows Commonwealth Government agencies (including the ATO) to pay discretionary compensation when a person or an organisation suffers as a result of defective administration but there is no legal requirement to make a payment.

Mr Cornall's review will consider the consistency of the ATO's CDDA Scheme processes for small businesses, the timeliness of decisions, how effectively findings are communicated, how independent decision-making can be best achieved in future, and the adequacy of compensation for small businesses that have suffered an economic and/or personal loss as a consequence of the ATO's actions.

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## **THINGS TO GET RIGHT THIS FBT SEASON**

Fringe benefits tax (FBT) returns will soon be due and as always, it's vital to make sure you use the latest rates and rely on the correct information.

FBT rates have recently been updated for the year, and a range of other factors may be need to be considered, including using the best car parking valuations, correctly identifying which travel expenses are deductible, considering how FBT applies to your arrangements with employees and independent contractors, and making sure you keep within the entertainment benefits rules. Another issue to keep an eye on is employees' private use of work vehicles.

**TIP:** We can provide advice on these matters and more, and help get your FBT return lodged on time.

## **ATO SMALL BUSINESS BENCHMARKS UPDATED**

The ATO has released its latest small business benchmarks, providing over 100 different industries with average cost of sales and average total expenses. Businesses can see clearly what the relevant benchmarks are for their industry. The benchmark data is drawn from over 1.5 million small businesses around Australia.

Business owners can use the benchmarks to gauge the strength of their business and keep an eye on their competition.

The benchmarks also help the ATO identify small businesses that may be doing the wrong thing and not properly reporting some or all of their income.

**TIP:** Using the business performance check tool in the ATO app is the quickest and easiest way to work out how your small business compares to the benchmarks. Search for "Australian Taxation Office" on the App Store or Google Play.

## **EARLY RECOVERY OF SMALL BUSINESS TAX DEBTS: ATO TO BE SCRUTINISED**

Minister for Small and Family Business Michaelia Cash has asked Australian Small Business and Family Enterprise Ombudsman Kate Carnell to look into the ATO's practices in pursuing early recovery of tax debts from small businesses who are in dispute with the ATO.

The Minister said she was determined to make sure the ATO treats small businesses fairly.

"Early recovery can be devastating for a small business, and is particularly damaging when the small business disputes the recovery and then goes on to win the case," she said.

The Ombudsman will look into the extent of the problem to gather a holistic picture of how current systems impact people running small businesses.

The scrutiny will focus on historical cases and will not include live cases currently before the Administrative Appeals Tribunal.

## **SINGLE TOUCH PAYROLL: LOW-COST SOLUTIONS NOW AVAILABLE**

Single Touch Payroll (STP) is a payday reporting arrangement where employers need to send tax and superannuation information to the ATO from their payroll or accounting software each time they pay their employees.

STP reporting started gradually from 1 July 2018, and it will be required for all small employers (with fewer than 20 employees) from 1 July 2019.

A range of no-cost and low-cost STP solutions are now coming into the market. The solutions are required to be affordable (costing less than \$10 per month), take only minutes to complete each pay period and not require the employer to maintain the software.

They will best suit micro employers (with one to four employees) who need to report through STP but do not currently have payroll software.

## **SUPER GUARANTEE AMNESTY NOT YET LAW: ATO WILL APPLY EXISTING LAW**

The ATO reminds businesses to be aware that under the current law, if they have missed a superannuation payment or haven't paid employees' super on time, they are required to lodge a superannuation guarantee (SG) charge statement.

Until law giving effect to the proposed superannuation guarantee amnesty is enacted, the ATO says it will continue to apply the existing law, including applying the mandatory administration component (\$20 per employee per period) to SG charge statements lodged by employers.

The Bill containing the amnesty was still before the Senate when Parliament most recently concluded on 22 February 2019.

If it is eventually passed into law, the proposed amnesty will be a one-off opportunity for employers to self-correct their past SG non-compliance without penalty. It is intended to be available for 12 months from 24 May 2018 to 23 May 2019. The ATO will apply the new law (if it is passed) retrospectively to eligible voluntary disclosures made during this period.

**IMPORTANT:** Information contained in this newsletter is not advice. Clients should not act solely on the basis of the material contained in Client Alert. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. Client Alert is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.

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## **ATO FINDS 90% ERROR RATE IN SAMPLE OF RENTAL PROPERTY CLAIMS**

ATO Commissioner Chris Jordan has advised that as part of the ATO's broad random enquiry program, its auditors have recently completed over 300 audits on rental property tax deduction claims and "found errors in almost nine out of 10 returns reviewed".

The ATO is seeing incorrect interest claims for entire investment loans where the loan has been refinanced for private purposes, incorrect classification of capital works as repairs and maintenance, and taxpayers not apportioning deductions for holiday homes when they are not genuinely available for rent.

The ATO's next area of focus will be rental income and related deductions, to help taxpayers report the right information, claim only the amounts they are entitled to, and "close the tax gap".

## **PROPERTY USED FOR STORAGE AN ACTIVE ASSET FOR SMALL BUSINESS CGT CONCESSION PURPOSES**

The Administrative Appeals Tribunal (AAT) has decided that a property a small business owner used to store materials, tools and other equipment was an active asset for the purpose of the small business capital gains tax (CGT) concessions.

The taxpayer carried on a business of building, bricklaying and paving through a family trust. He owned a block of land used to store work tools, equipment and materials, and to park work vehicles and trailers. There was no business signage on the property.

After the property was sold in October 2016, the ATO issued a private ruling that the taxpayer was not entitled to apply the small business CGT concessions to the capital gain because the property was not an "active business asset".

However, the AAT concluded that the business use of the land was far from minimal, and more than incidental to carrying on the business. This meant the CGT concessions could be applied.

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