

client alert

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October 2015

1. Excessive deduction claims on holiday homes on ATO hit list

The ATO is increasing its focus on holiday home investors and, in particular, whether they are correctly claiming deductible expenses. A key concern is when people make claims for expenses when the property was not available for rent. The ATO has recently advised that it will be sending letters to taxpayers in approximately 500 postcodes across Australia, reminding them to only claim the deductions they are entitled to, for the periods the holiday home was rented out or was genuinely available for rent.

TIP: Holiday home investors should be aware that the ATO appears to be taking a broad approach in monitoring rental deductions. Where relevant, it may be prudent for holiday home investors to take this opportunity to review the rules surrounding holiday home tax deductions to ensure that any risks or issues are addressed in a timely manner. It may also be a good idea to review records now so that you are prepared should the taxman come knocking. If you have any questions about this issue, please contact our office.

2. Foreign property investors – reduced penalty period ending

The ATO has reminded foreign investors that the reduced penalty period for possible breaches of Australia's foreign investment rules for purchases of Australian real estate will close soon. The reduced penalty period is only available until 30 November 2015. From 1 December 2015, new criminal and civil penalties will apply. The ATO said if foreign investors disclose a breach of the rules for residential real estate purchases during the reduced penalty period, depending upon their circumstances, they may:

- be given a concessional period of 12 months to divest themselves of the property, rather than a shorter period;
- not be referred for criminal prosecution.

3. Payroll tax grouping – know the rules

For payroll tax purposes, businesses may be grouped with other businesses if there is a link between the companies. Businesses may be deemed linked in several ways. One of the most common ways is where two or more businesses are controlled by the same person or persons. However, there are specific exclusions under the payroll tax grouping rules which could apply for a business depending on the circumstances. This will require making an application to the relevant state or territory revenue authority.

When a group exists, only a single tax-free threshold will apply to the whole group. That is, the separate businesses themselves will not each have the benefit of the tax-free thresholds. Each member of the group will be liable for any outstanding payroll tax of the other group members. Therefore, it is important for businesses to identify whether they could be grouped for payroll tax purposes.

TIP: The potential eligibility for exclusion from the payroll tax grouping rules should be assessed. Furthermore, as business conditions may change and as part of the overall management of a business, it may be prudent to regularly examine your business's payroll tax obligations.

4. No GST credits for mining accommodation

The Full Federal Court has dismissed a taxpayer's appeal from an earlier decision which held it was not entitled to input tax credits for acquisitions relating to providing accommodation to employees and contractors working in the Pilbara.

The taxpayer, Rio Tinto Services Ltd, was the representative member of the Rio Tinto Ltd GST group, which carried on a large-scale mining enterprise in outback Australia. The group provided and maintained residential accommodation for its workforce in various locations, comprising some 2,300 houses and apartments. This was operated at a considerable loss, for example, in 2010 the taxpayer received \$6.1 million in rent but the associated costs exceeded \$38.8 million.

The case was conducted as a test case for GST paid in October 2010 on expenditure including construction and purchase of new housing, repairs, cleaning and landscaping. The taxpayer claimed it was entitled to input tax credits of nearly \$600,000 for acquisitions made in providing and maintaining residential accommodation for the group's workforce in the Pilbara region. It argued the housing for its workers were a necessary part of its mining operations.

The Full Federal Court said it was clear from the facts that all of the acquisitions related wholly to making supplies of rental residential accommodation. Although the supplies of accommodation were for the broader business purpose of carrying on the taxpayer's mining operations, it said this did not alter the fact that the acquisitions all related to supplying premises by way of lease, which were input taxed supplies.

5. ATO's proportionate compliance approach to SMSFs

From 1 July 2014 the ATO has three new regulatory compliance powers to deter and address contraventions of the superannuation law by trustees of self-managed super funds (SMSFs). These three new powers include the ability of the ATO to issue education directions, rectification directions and administrative penalties. The new laws were introduced to give the ATO more flexible and proportionate powers to deal with the various levels of noncompliant behaviour by trustees.

It is important for trustees to understand the ATO's compliance approach to administering the SMSF

sector. A key message that the ATO has been communicating to all trustees is for them to rectify a breach as soon as it is identified. According to ATO Assistant Commissioner, SMSF Segment, Superannuation, Kasey Macfarlane, in these circumstances, the ATO would be "unlikely to apply further sanctions unless other factors are identified, such as if the same or similar contraventions frequently arose".

Ms Macfarlane said the ATO uses "the new powers and penalties to drive compliance, not to increase revenue". "So while you can expect to see us actively using the directions powers, in a large percentage of cases our application of SMSF administrative penalties will be more judicious, via favourable remission requests, for first offences," she said.

6. Find your small lost superannuation accounts

The A Bill has been introduced into Parliament which contains legislative amendments to increase the account balance threshold below which small lost member accounts will be required to be transferred to the Commissioner of Taxation, ie from \$2,000 to \$4,000 from 31 December 2015, and from \$4,000 to \$6,000 from 31 December 2016.

TIP: Moving all your super from multiple accounts into one account (known as "consolidating your super") might help you to save on fees and make managing your super easier.

There may be sound reasons for maintaining a separate small superannuation account. It may be prudent to assess those reasons and, if those reasons are still valid, to take steps to ensure that you remain an active fund member.

Individuals are able to claim back their superannuation from the Commissioner at any time. Interest, calculated in accordance with the Consumer Price Index (CPI), has been payable on unclaimed superannuation money repaid since 1 July 2013.

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