JANUARY 2020 QUARTER TAX HIGHLIGHTS

With the start of a new year, this newsletter highlights changes that may impact on your business and on you personally. Please contact us to discuss any of the measures.

Paying superannuation guarantee for your contractors

Employers' superannuation guarantee (SG) obligations are currently a big focus for the Australian Taxation Office (ATO). In two recent cases, the business owners were held liable to pay superannuation guarantee for their contractors.

In **Probin and FCT [2019] AATA 4597**, the contractor had been engaged by a property maintenance business to do property maintenance tasks for 12 years. He was paid a fixed hourly rate and was responsible for his own superannuation. He provided invoices, his own tools and used his own vehicle. He complained to the ATO that he had not been paid SG contributions.

In **Toowong Pastures Pty Ltd and FCT [2019] AATA 4897**, the contractor provided services as part of an asbestos removal/building renovations business.

Timing of deductions for superannuation payments to clearing houses

In a recent draft guideline, the ATO has said it will not apply compliance resources to determine the income year in which an employer can deduct superannuation contributions made through the Small Business Superannuation Clearing House (SBSCH) so long as the payment to the SBSCH was made before the close of business on the last business day of the income year.

This means eligible small business employers can claim a deduction in the income year a payment is made to the SBSCH, even if the superannuation fund receives the contribution in the following income year.

Unfortunately, the draft says this approach will <u>not</u> apply where the payment is made through a clearing house other than the SBSCH. This means the deduction will only be available to those employers in the year the super fund receives the monies.

Salary sacrifice cannot reduce SG

With effect 1 January 2020, an employer can no longer use individual's salary sacrifice contributions to reduce the employer's minimum SG contributions.

For example, two employees working for the same organisation each earn $200,000. One employee sacrifices $40,000 of annual earnings into his super fund. The employer is required to pay the same amount of super guarantee for both employees.

Special SG rule for high-income employees with more than one employer

If you are an employee with more than one employer and salary exceeding $263,157, your employers' contributions will result in you breaching the $25,000 concessional contributions cap. To avoid this you can now apply to the ATO for an "employer shortfall exemption certificate". An employer who receives this certificate will not have to pay SG for you.

If you apply for this certificate for your employer, we recommend you negotiate to receive additional cash or non-cash remuneration, instead of SG contributions.

Expansion of ATO Tax Avoidance Taskforce

The ATO Tax Avoidance Taskforce has expanded to include 3 programs specifically focused on gathering information to determine the tax risks and tax governance of private groups and high wealth individuals. The programs are:

- **the top 500 Australian private groups**
- **Australian high wealth individuals** who with their associates control net wealth of more than AUD 50 million.
- **Medium and emerging private groups** - individuals with their associates controlling net wealth between AUD 5 and AUD 50 million, or businesses with annual turnover of more than AUD 10 million.

Currency (Restrictions on the Use of Cash) Bill 2019

This Bill currently passing through Parliament makes it a criminal offence (and imposes penalties) where entities make or accept cash payments of $10,000 or more from 1 January 2020.

The $10,000 cash payment limit applies to transactions between businesses and individuals.

Disclosure by ATO of business tax debts to credit bureaus

The ATO now has power to disclose to credit reporting bureaus, the tax debt information of businesses that have owed the ATO at least $100,000 for more than 90 days and have not effectively engaged with the ATO to manage their debt.

Employers and backpackers

The ATO has lost a recent Federal Court case, **Addy v FCT [2019] FCA 1768**, where a backpacker determined to be an Australian resident was held not liable to pay the backpacker tax.

The ATO has appealed this case and has stated it will continue to administer the working holiday maker income tax rates in line with current practice until the appeals process is exhausted. It considers that employer obligations have not changed.

Don’t sell your home when you are a non-resident

The law now provides that if you sell your home in Australia, you will not get any exemption for the capital gain made if you are a non-resident of Australia at the time.

An exception is if you have been a foreign resident for a period of 6 years or less and certain life events have occurred ie. your death, or divorce (and equivalent) or terminal illness, or the death or terminal illness of your spouse, or child under 18 years old.

Transitional provisions provide an exemption if the dwelling was held before 9 May 2017 and sold on or before 30 June 2020.

If you have any questions about how anything you read here may impact you or your business, please get in touch with your accountant directly, or contact us on 07 5532 4555 or questions@lutzassoc.com.au