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Requirement registered to lodge 2019 tax and other returns

The Notice of Requirement to Lodge a Return for Income Year Ended 30 June 2019 has been registered. This covers income tax returns and other lodgments for franking account returns, including special rules for late balancing corporate tax entities that elect to use 30 June as a basis for determining their franking deficit tax liability; venture capital deficit tax returns; ancillary fund returns; trustees of SMSFs; and member information statements by superannuation providers.

The Notice also covers use of approved forms for lodgment, lodgment deferrals, lodgment exemptions, and penalties for non-lodgment.

The Notice of Requirement for Parents with a Child Support Assessment to Lodge for the Income Year Ended 30 June 2019 has also been registered.

Payment summaries and STP this tax time – taxpayers may need a myGov account

While it is being reported that many businesses are not ready for Single Touch Payroll (STP), one report suggests that 70% of small and medium-sized entities (SMEs) are not ready, the employees of businesses that are operating STP face some changes.

As a result of the introduction of STP, taxpayers may need a myGov account in order to get the payment summary details they need to complete their 2019 tax returns. How taxpayers receive their payment summary or income statement from their employer depends on how their employer reports their income, tax and super information to the ATO.

Employers need to let employees know if they won't be giving them a payment summary this year.

Employees with more than one employer may receive both a payment summary and an income statement. In that situation, employees will need to check that income from their payment summaries is included in their tax return.

TIP

This major change for 2019 will see many taxpayers needing to set up a myGov account and link it to the ATO. This is not necessarily a straightforward process. If taxpayers have a myGov account already linked to other services such as Centrelink or Medicare, adding the ATO can be problematic. For example, the name on each account must match exactly – the ATO is likely to have a taxpayer's full name whereas a Centrelink account may only have first and last name. This may prevent the ATO from being added to a taxpayer's myGov account. The situation can be rectified but may require a trip to a Centrelink office.

STP exemptions and deferrals – ATO reminders

With reported unpreparedness for Single Touch Payroll (STP), mainly among small businesses, and with employers having less than 19 employees needing to report their employees' tax and super information through STP from 1 July 2019, the ATO has reminded businesses about the STP exemptions and deferrals that are available.

There are exemptions for reporting through STP for a particular financial year, for certain payments, or for certain employees.

TIP

Where there are extenuating circumstances that impact an employer's ability to regularly report on or before pay day (eg regular intermittent internet connectivity issues that result in the ATO receiving its report a couple of days after pay day), they can apply for a recurring deferral.

Ombudsman calls on ATO to cease small business recovery action where tax disputes are before AAT

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) has issued a report into the ATO's enforcement of debt recovery. In a press release, the ASBFEO called for the ATO to immediately cease debt recovery action where tax disputes were before the Administrative Appeals Tribunal (AAT).

The report contains three key conclusions and seven recommendations. The ASBFEO also reminds small business taxpayers in dispute with the ATO of its Small Business Concierge Service, which started on 1 March 2019. This service provides legal assistance for AAT appeals for a limited cost.

The ATO issued a press release outlining its response to the report stating its long standing policy on debt recovery for cases in dispute at the AAT is to only pursue disputed debt in "exceptional circumstances" and that there are only "very rare cases" (eg in 2017-18, it took garnishee action against small business in just four cases).

The ATO further stated that it will give consideration to the report's recommendations while it awaits the Australian National Audit Office's review of how the ATO manages tax debts for small business.

Cryptocurrency: record keeping requirements and data matching program

The Commissioner has published a gazette notice setting out the record keeping requirements for cryptocurrency owners and traders. The ATO advises that it is undertaking a data matching program for 2014-15 to 2019-20 for such entities.

The data obtained from cryptocurrency designated service providers (DSPs) is being (and will continue to be) used to identify the buyers and sellers of crypto-assets and quantify the related transactions. Data will be matched against ATO records to identify individuals who may not be meeting their registration, reporting, lodgment and/or payment obligations.

The ATO will be working with other regulators, in particular, the Australian Transaction Reports and Analysis Centre (AUSTRAC) and the Australian Securities and Investments Commission (ASIC) to ensure that tax law requirements align with a whole of system approach.

Super death benefit for de facto partner upheld

The Federal Court has dismissed an appeal against a decision to pay a superannuation death benefit pension to a fire fighter's de facto partner instead of a lump sum to his estate in *Howard v Batistich* [2019] FCA 525.

The trustee of the Crown Employees Superannuation Fund determined that the respondent, Ms Batistich, was a "de facto partner" of the deceased at the date of his death under the *Superannuation Act 1916* (NSW) and the *Interpretation Act 1987* (NSW). Accordingly, the trustee determined that Ms Batistich was entitled to a fortnightly pension. If there was no spouse (including a de facto), a lump sum death benefit of $350,000 would have been payable to the deceased estate.

The deceased's parents, as the administrators of his estate, complained to the Superannuation Complaints Tribunal that Ms Batistich did not meet the definition of de facto partner.

In dismissing the appeal, the Court said it was not satisfied that the SCT had misunderstood its task or failed to take into account all the circumstances of the relationship.

Protecting Your Super – how new law may affect SMSFs

The *Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019* introduces a number of reforms to protect individual's super savings from undue erosion by fees and unnecessary insurance. The ATO says it will now be able to proactively consolidate eligible unclaimed super money into eligible active super accounts, including SMSFs and small APRA funds, if an individual hasn't requested a direct payment of this money or for it to be rolled over to a fund of their choice. Under the *Protecting Your Super* package, the ATO says SMSFs may receive a rollover of consolidated unclaimed super money for members.

ATO reminds SMEs about paying super for backpackers

The ATO has reminded businesses that employ backpackers that they may need to pay superannuation guarantee (SG) for them.

Backpackers on working holidays are considered temporary residents, and are entitled to superannuation guarantee if they are paid $450 or more before tax in a calendar month. Once they leave Australia, they can claim the super paid to them as a Departing Australia superannuation payment (DASP) providing all requirements are met.

TIP

Determine if backpackers on working holidays are eligible for super by using the ATO's Super guarantee eligibility decision tool.

Important: 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.