DEANNE THOMAS & CO

client alert

tax news | views | clues

Independent resolution process for small businesses now permanent

Small businesses now have another pathway to resolve tax disputes, with the ATO making its independent review service a permanent option for eligible small businesses (those with a turnover of less than $10 million) after a successful multi-year pilot.

The service's original pilot commenced in 2018 and centered around income tax audits in Victoria and South Australia. It was expanded in 2020 to include income tax audits in all other Australian states and territories, along with other areas of tax including GST, excise, luxury car tax, wine equalisation tax and fuel tax credits.

"Small businesses who participated in our pilot told us they found the process to be fair and independent, irrespective of the independent review outcome, so this is a great result, and is a big part of why we are locking this service in permanently", ATO Deputy Commissioner Jeremy Geale has said.

If your small business is eligible for a review of the ATO's finalised audit findings, your ATO case officer will make contact and a written offer of independent review will be included in the audit finalisation letter.

TIP: An offer to use the independent review service won't be the first opportunity you get to respond to an ATO audit. Initial findings will be disclosed in an interim paper, so you'll have a chance to raise areas of disagreement before receiving the final audit letter.

If you wish to proceed with the review, you'll need to contact the ATO through the relevant email address within 14 days of the date of the audit finalisation letter, clearly specifying and outlining each area of your disagreement with the audit position.

You'll be asked to complete and return a consent form to extend the amendment period, which will allow the ATO to complete the review before the period of review for the relevant assessment ends.

Once your business obtains approval to use the review service, an independent reviewer will be allocated to the case and will contact you to discuss the process. This officer will be from a different part of the ATO to your audit case officer, and will not have been involved in the original audit.

It's important to note that superannuation, FBT, fraud and evasion finding, and interest are not covered by the independent review service. If your dispute with the ATO relates to those areas, or if you don't want to use the independent review service, your other options including lodging an objection or using an in-house facilitation service. You can also raise matters with the Inspector-General of Taxation and Tax Ombudsman or the Australian Small Business and Family Enterprise Ombudsman.

ATO focus in relation to JobKeeper

The ATO has recently announced it's keeping an eye out for areas of concern in relation to JobKeeper, including what may constitute "fraudulent behaviour".

It is paying special attention to situations where employers may have used the JobKeeper scheme in ways that avoided paying employees their full and rightful entitlements.

Businesses are being examined where the ATO is concerned they may have:

- made claims for employees without a nomination notice or have not paid their employees the correct JobKeeper amount (before tax);
- made claims for employees where there is no history of an employment relationship;
- amended their prior business activity statements to increase sales in order to meet the turnover test; or
- recorded an unexplained decline in turnover, followed by a significant increase.

Individuals are also being investigated where the ATO suspects they may have knowingly made multiple claims for themselves as employees or as eligible business participants, or made claims both as an employee and an eligible business participant.

ATO targets contractors who under-report income

More than 158,000 businesses have now reported all their payments made to contractors in the 2019–2020 year, and the ATO is using its Taxable Payments Reporting System (TPRS) to make sure the payments, totalling more than $172 billion, have been properly declared by both payers and recipients.

The TPRS captures data about contractors who have performed services including couriering (including food delivery), cleaning, building and construction, road freight, information technology, security, investigation and surveillance services.

The ATO is now using this data to contact contractors or their tax agents to ensure that they have declared all of their income, including any from part-time work, and is checking the GST registration status and Australian Business Numbers (ABNs) of contractors that are businesses to ensure their relevant obligations are met.

The ATO matches the contractor information provided by businesses in their taxable payments annual report (TPAR) to the figures in contractors' own tax returns. Where discrepancies between business reports and contractor returns are identified, the ATO will send the contractor a letter in the first instance, prompting them to explain.

TIP: If you've forgotten to include income from contracting services in your tax return, an amendment can still be lodged to correct the mistake. Where we lodged your initial return as your tax agent, we can also complete an amendment to the return on your behalf – contact us today to find out more.

While it appears that the ATO won't initially apply penalties or interest in relation to under-reported contracting income, contractors will still need to pay any additional tax owed, and it's likely that people who ignore a letter from the ATO and fail to lodge an amended tax return will face penalties at a future date.

Can your business claim a tax deduction for bad debts?

April 2021 has been a closely observed month financially, with many government COVID-19 economic supports coming away. There's no doubt that some businesses will find themselves owed debts that cannot be recovered from customers or other debtors.

If your business is facing this type of unrecoverable debt, commonly known as a "bad debt", you may be able to claim a tax deduction for the unrecoverable amount, depending on the accounting method you use.

If your business accounts for its income on an accruals basis – that is, you include all income earned for work done during the income year even if the business hasn't yet received the payment by the end of the income year – a tax deduction for a bad debt may be claimable.

To claim a deduction for a bad debt, the amount must have been included in your business's assessable income either in the current year tax return or an earlier income year. You'll also need to determine that the debt is genuinely bad, rather than merely doubtful, at the time the business writes it off. Whether or not a debt is genuinely bad depends on the circumstances of each case, with the guiding principle being how unlikely it is that the debt can be recovered through reasonable and/or commercial attempts.

TIP: According to the ATO, making such attempts doesn't always mean you need to have commenced formal proceedings to recover the debt. Evidence of communications seeking payment of debt, including reminder notices and attempts to contact the debtor by phone, mail and email, may be sufficient.

The next step in claiming a bad debt deduction is to write off the debt as bad. This usually means your business has to record (in writing) the decision to write off the debt before the end of the income year in which you intend to claim a deduction.

There may also be GST consequences for your business when writing off a bad debt. For example, if the business accounts for GST on a non-cash basis, a decreasing adjustment can be claimed where you have made the taxable sale and paid the GST to the ATO, but subsequently have not received the payment. However, the debt needs to have been written off as bad and have been overdue for 12 months or more.

Businesses that account for income on cash basis cannot claim a deduction for bad debts. This is because these businesses only include an amount in their assessable income when it's received, which means the bad debts have no direct income tax consequences.

ATO data-matching: residency for tax purposes

The ATO has announced a new data-matching program that will use information collected from the Department of Home Affairs. It is designed to determine whether business entities and individuals are Australian residents for tax purposes, and whether they've met their lodgment and registration obligations.

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.

This is in addition to the existing visa data-matching program, which has been operating for more than 10 years. The new program will include data from income years 2016–2017 to 2022–2023.

According to the ATO, the compliance activities from data obtained will largely be confined to verification of identity and tax residency status for registration purposes, as well as identifying ineligible claims for tax and superannuation entitlement. In addition to compliance activities, the data will be used to refine existing ATO risk detection models, improve knowledge of overall level of identity and residency compliance risks, and identify potentially new or emerging non-compliance and entities controlling or exploiting ATO methodologies.

The data collected will include full names, personal identifiers, dates of birth, genders, arrival dates, departure dates, passport information (including travel document IDs and country codes), and status types (eg visa status, residency, lawful, Australian citizen). It is expected that the personal information of approximately 670,000 individuals will be collected and matched each financial year.

NSW announces tougher penalties for payroll tax avoidance

The NSW Government has announced that it will introduce new legislation to increase penalties for payroll tax avoidance, as well as providing it with the ability to name taxpayers who have underpaid payroll tax on wages.

The changes are directed at those employers who underpay wages, which of course reduces the employers' payroll tax liabilities, but also deprives workers of their due wages. Modelling suggests that this amounts to $1.35 billion in wages per year Australia-wide, and affects some 13% of workers.

Revenue NSW will be able to reassess payroll tax more than five years after the initial tax assessment when wages have been underpaid.

The penalties will be increased five-fold in some instances. For example, penalties for making records known to contain false or misleading information and for knowingly give false or misleading information will both go up from $11,000 to $55,000.

ASIC extends deadlines for financial reports and AGMs

The Australian Securities and Investments Commission (ASIC) has announced that it will extend the deadline to lodge financial reports for listed and unlisted entities by one month for balance dates from 23 June to 7 July 2021 (inclusive). ASIC said the extension will help alleviate pressure on resources for the audits of smaller entities and provide adequate time for the completion of the audit process, taking into account the challenges presented by COVID-19 conditions. This relief will not apply to registered foreign companies.

ASIC will also extend its "no-action" position for public companies to hold their annual general meetings (AGMs) from within five months to within seven months after the end of financial years that end up to 7 July 2021.

The extensions don't apply for reporting for balance dates from 8 January 2021 to 22 June 2021, as ASIC doesn't consider there to be a general lack of resources to meet financial reporting and audit obligations. However, the regulator has said it will consider relief on a case-by-case basis.

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.