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Budget personal tax cuts and business concessions now law

Several tax announcements from the 2020 Federal Budget have now been passed into law.

These include bringing forward changes to the personal income tax thresholds so that they apply from 1 July 2020. From that date, the top threshold of the 19% personal income tax bracket is increased from $37,000 to $45,000. The top threshold of the 32.5% tax bracket is increased from $90,000 to $120,000. The low income tax offset increases to $700 and the low and middle income tax offset (up to $1,080) is retained for 2020–2021.

A range of tax concessions already available to small businesses have been extended to medium sized businesses as well, and businesses with turnover less than $5 billion can deduct the full cost of eligible depreciating assets that are installed ready for use between 6 October 2020 and 30 June 2022.

Implement new PAYG withholding rates by 16 November

The ATO has issued updated tax withholding schedules to reflect the 2020–2021 income year personal tax cuts. Employers must now make sure they are withholding the correct amounts for pay runs processed in their systems from no later than 16 November onwards.

With these changes coming partway through the income year, employees and other payees will receive their entitlement to the reduced tax payable for the entire 2020–2021 year when they lodge their income tax returns for that period.

Working from home "shortcut" deduction extended

The ATO advises that the "shortcut" rate for claiming work-from-home running expenses has been extended, in recognition that many employees and business owners are still required to work from home due to COVID-19 This shortcut deduction rate was previously extended to 30 September 2020, but will now be available until at least 31 December 2020.

Eligible employees and business owners, therefore, can choose to claim additional running expenses incurred between 1 March 2020 and 31 December 2020 at the rate of 80 cents per work hour, provided they keep a record (such as a timesheet or work logbook) of the number of hours worked from home during the period.

JobKeeper decline in turnover tests: temporary trading cessation

An additional category for alternative "decline in turnover" tests is now available for the purposes of the revised JobKeeper payment system (which commenced on 28 September 2020) for entities that temporarily ceased trading for some or all of the relevant comparative period.

Under the revised system, an entity must have had an actual decline in its turnover for the applicable quarter relative to the same quarter in 2019. This generally involves making a one-to-one comparison of the 2020 numbers to those in the corresponding period in 2019, to see if it exceeds the 15%, 30% or 50% decline threshold (depending the type of entity).

Alternative tests can only be used if there is not an "appropriate relevant comparison period" in 2019, and four requirements must be satisfied for an entity to use the alternative tests for the new "temporary cessation of business" category. That is, in the comparison period:

- the entity's business had temporarily ceased trading due to an event or circumstance outside the ordinary course of the entity's business;
- trading temporarily ceased for a week or more;
- some or all of the relevant comparison period occurred during the time in which the entity's business had temporarily ceased trading; and
- the entity's business resumed trading before 28 September 2020.

TIP: If your business doesn't meet the requirements for the temporary cessation category, you may still be eligible to apply alternative tests under other categories. Contact us to find out more.

Data-matching program: apprentices and trainees

The Department of Education, Skills and Employment (DESE) has commenced a new ongoing data-matching program with the ATO in relation to the Supporting Apprentices and Trainees (SAT) measure. The program seeks to confirm the eligibility of employers receiving the subsidy, as well as stamp out any potential double-dipping of government assistance (for example, claiming both SAT and JobKeeper support at the same time for the same employee).

Under SAT, employers can apply for a wage subsidy of 50% of the apprentice's or trainee's wage paid until 31 March 2021. To be eligible, an apprentice must have been in an Australian apprenticeship with a small business as at 1 March 2020. SAT has since been expanded to include medium sized businesses that had an apprentice in place on 1 July 2020. Employers of any size who re-engage an eligible out-of-trade apprentice are also eligible to claim the SAT wage subsidy. However, there are restrictions on when an employer can claim SAT for an eligible apprentice.

Data relating to around 117,000 apprentices and trainees and more than 70,000 employers will be transferred between DESE and the ATO. The program will be ongoing, with data transfer to occur at regular intervals as required over the life of the SAT measure.

Where the data-matching program detects a discrepancy or an anomaly that requires verification, DESE will contact the business and provide them with an opportunity to verify the accuracy of the information on which the eligibility was based. Businesses will be given at least 28 days to respond and any relevant individual circumstances will be taken into consideration.

Small business tax options during COVID-19: ATO reminder

The ATO has reminded businesses impacted by COVID-19 that they have a range of tax options to consider, including claiming a deduction for any losses. And for businesses finding it difficult to estimate income for the purposes of PAYG instalments, the ATO will not apply penalties or interest for excessive variations where businesses make a "best attempt" to estimate their end-of-year tax.

TIP: If you need additional time or support to get your tax return in order or work out what's next for your business, we can help. Contact us, or phone the ATO on 1800 806 218.

Tax losses

Sole traders and individual partners in a partnership who meet certain conditions can offset current year losses against other assessable income (such as salary or investment income) in the same income year. Otherwise, the loss can be deferred or carried forward and offset in a future year when the business next makes a profit. Businesses set up under a company structure that have made a tax loss in a current year can generally carry forward that loss for as long as they want. Of course, it's crucial to keep proper records when claiming a deduction for losses.

Closing a small business

The ATO has acknowledged that some businesses may need to close their doors – either temporarily or permanently – due to COVID-19, particularly in Victoria. It calls on such businesses to "do their best to keep up with tax and super obligations".

If a business is forced to close permanently as a result of COVID-19, or for any other reason, it must still lodge any outstanding activity statements and instalment notices, make GST adjustments on the final activity statement and lodge final tax returns. This will enable the ATO to finalise the tax account and issue any refunds that might be owed.

Insolvency reforms announced for small businesses

The Government has announced that it will introduce insolvency reforms to help small businesses restructure in response to COVID-19, including:

- the introduction of a new debt restructuring process for incorporated businesses with liabilities of less than $1 million, drawing on key features from Chapter 11 of the US Bankruptcy Code;
- moving from a one-size-fits-all "creditor in possession" model to a more flexible "debtor in possession" model;
- providing a rapid 20-business day period for the development of a restructuring plan by a small business restructuring practitioner, followed by 15 business days for creditors to vote on the plan; and
- creating a new, simplified liquidation pathway for small businesses to allow faster and lower cost liquidation.

Safeguards will be included to prevent companies from using the new processes to undertake corporate misconduct, including firms seeking to carry out illegal phoenix activity.

The new insolvency processes are proposed to be available from 1 January 2021.

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.

JobKeeper payments satisfy "work test" for super contributions

The Australian Prudential Regulation Authority (APRA) has published new guidance on the interaction between JobKeeper payments and satisfying the "work test" for the purpose of voluntary superannuation contributions.

Where an individual is aged 67–74 and is stood down from their employment due to the impacts of COVID-19 but is in receipt of the JobKeeper payment, APRA says a super fund trustee can accept a personal contribution from that individual under the super "work test" rules. APRA's view is that where an employer is receiving the JobKeeper wage subsidy for an individual, registrable superannuation entity (RSE) licensees should consider the individual to be "gainfully employed" for the purposes of the "work test", even if that individual has been fully stood down and is not actually performing work. In APRA's view, this is appropriate because the individual is still employed and is obtaining a valuable benefit from their employer.

SMSF asset valuations: concession during COVID-19

The ATO has advised that it will not apply a penalty for self managed super fund (SMSF) trustees that have difficulty obtaining evidence to support market valuations of assets due to COVID-19.

SMSF trustees are required to provide objective and supportable evidence to their auditor each year to establish that assets of the fund are valued at market value.

During the 2020 and 2021 financial years, the ATO will not apply a penalty if it is satisfied that the difficulty in obtaining valuation evidence is due to COVID-19. Instead, the ATO will send the SMSF trustee a letter advising them to ensure they comply with the ATO's valuation guidelines and have supporting valuation evidence by the time of their next audit if possible. However, the ATO warns that repeated contraventions of the valuation evidence requirements could lead to future penalties.

Digital AGMs and signatures: legislative determination

The Government has formally extended the ability for companies to convene annual general meetings (AGMs) and other prescribed meetings entirely online until March 2021.

This extension allows company boards to:

- provide notice of AGMs to shareholders using email;
- achieve a quorum with shareholders attending online; and
- hold AGMs meetings online, with shareholders able to put questions to board members online and vote online.

Company officers are also permitted to use electronic signatures to meet the relevant legal requirements.

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