

L PERUCH & CO

Practice Update

Please read this update and contact this office if you have any queries

April 2019

Continued focus on the cash economy

ATO Assistant Commissioner Peter Holt has announced that, in the 2019/20 financial year, the ATO will be visiting a further 10,000 small businesses across the country, including up to 500 small businesses in Tasmania.

He further said that businesses that advertise as 'cash only' and businesses that are operating outside of the ATO's performance benchmarks for their industry will be especially targeted for a visit from the ATO.

"Businesses that pay cash in hand, or fail to lodge income tax or business activity statements, get an unfair advantage and make it harder for other businesses who are doing the right thing. By detecting and addressing this behaviour, we're helping ensure a level playing field for honest small businesses."

Businesses in the following industries are most likely to get a visit from the ATO:

- Restaurants and cafes;
- Vehicle repairers;
- Personal care businesses including hairdressers and nail salons;
- Pharmacies;
- Construction businesses;
- Clothing stores;
- Grocery stores / small supermarkets; and
- Butchers.

Whilst on the road, ATO officers will also be available to help those businesses that are trying to do the right thing.

Mr Holt said the ATO will not hesitate to take strong enforcement action against those deliberately avoiding their tax and super obligations and the visits may uncover this deliberate non-compliance.

"If businesses know they have made mistakes we encourage them to let us know and work with us or their tax professional."

Common errors with new GST withholding rules

The ATO has noticed some common errors made in activity statements since the introduction of "GST at settlement" on 1 July 2018.

Editor: These new laws require purchasers to withhold GST on settlement (and pay it to the ATO directly) generally when buying 'new residential premises' from developers.

In particular, the new "GST at settlement" law does not affect a supplier's obligation to lodge their activity statement and report their GST liabilities on taxable supplies in the activity statement period in which settlement occurred.

In addition, suppliers are advised **not** to report GST that has been withheld at settlement and paid to the ATO by the purchaser.

Instead, a credit for the amount the purchaser withheld and paid will appear on the supplier's activity statement account once the activity statement is processed.

Proposed Franking Credit Denial

Mr Shorten's proposed changes on this front are rightly described as a retirees' tax as over 900,000 retirees' will be affected in the negative because it denies them the refund for the unused franking credits from their share investments.

Their argument is based on the incorrect assumption that because you did not pay tax you should not be entitled to the refund.

In the first place, the tax was paid by the company you invested in and secondly, in arriving at your taxable income you must include the franking credits as part of your taxable income. The process effectively means that you are taxed twice on your share of

dividends, once at 30% company tax rate paid by the company and once at your marginal tax rate paid by yourself.

If your marginal tax rate is higher than 30%, it means you end up paying extra tax on those dividends but if it is lower, presently you would get a refund, later on you will not.

The analogy is PAYG wages, if you are taxed more than you should, the ATO would refund you the excess, if you did not pay enough, you would have to pay the ATO the difference at the time of lodging your return.

In both cases the franking credits and PAYG withholding are paid directly to the ATO so that in fact you only receive the net cash but you still have to include the grossed up figures in your tax return and your tax rate is that applicable to the grossed up taxable income. Therefore, to say that you have not paid tax is wrong in fact.

Additionally, you also pay Medicare levy at 2% of the grossed up taxable income not on the income without the franking credit and/or the PAYG withholding unless of course your total income is below \$21,980 threshold.

In essence the ALP policy would reduce your disposable income by approximately \$127 per week.

If you are in pension mode, chances are your earning ability is greatly reduced so to make up the shortfall in disposable income you would be forced to eat into your capital which leads to greater reliance on the old age pension. Is this the ultimate aim of the ALP/Green Coalition? To make us more dependent on the Government rather than less?

ATO warning regarding annual leave loading and OTE

The ATO has recently warned employers that it considers that annual leave loading should normally be part of ordinary time earnings ('OTE') for superannuation guarantee ('SG') purposes, unless it is referable to a "lost opportunity to work overtime".

Therefore, if employers have self-assessed on the basis that their annual leave loading is not OTE, and there is a lack of evidence to demonstrate the purpose of the entitlement, there is a risk that they may have historical SG shortfalls and be liable for the SG charge.

However, the ATO acknowledges the uncertainty around this topic, and the evidentiary difficulties in identifying the purpose

for annual leave loading entitlements, and will apply a concessional compliance approach where certain requirements are met.

Editor: If this is a concern for your business, please contact our office and we can help with your SG obligations and (if necessary) determine whether you will be eligible for the ATO's concessional compliance approach.

Taxpayer living in serviced apartments overseas not a resident

The Full Federal Court has found that a taxpayer had a "permanent place of abode" in Bahrain, even though he lived in temporary accommodation, and therefore allowed his appeal against a decision that he was a resident of Australia.

This decision confirms that the correct focus of the "permanent place of abode" residency test is whether there has been an abandonment of Australian residence (i.e., to live permanently outside of Australia), rather than whether a person actually lives in permanent accommodation overseas.

In particular, the Full Court considered that the phrase "place of abode" is not a reference to a person's house or flat or other dwelling but rather the town or country in which a person is physically residing permanently.

Mostly vacant property still an 'active' asset

The AAT has held that a block of land next door to a taxpayer's main residence, which they used to store materials, tools and other equipment for their business, was still an 'active asset' for the purpose of the small business CGT concessions.

Editor: The small business CGT concessions can reduce, or completely eliminate, the tax payable on the sale of an 'active asset' (basically, a business asset).