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Practice Update

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and contact this office
if you have any queries

SEPTEMBER 2024

Taxpayers can start lodging their tax returns

With millions of pieces of information now pre-filled (including information from most banks, employers, government agencies and private health insurers), the ATO is giving taxpayers with simple affairs the 'green light' to lodge their tax returns.

Taxpayers who plan to claim deductions this year should make sure they have the correct records, and, in most cases, *"a bank or credit card statement (on its own) isn't enough evidence to support a work-related deduction claim – you'll need your receipts"*.

The ATO reminds taxpayers that the rules regarding how and when they can claim a deduction can change, including in relation to car expenses and working from home costs. Therefore, they should not just 'copy and paste' their deductions from last year, and they may require assistance from their accountant in this regard.

The ATO notes that taxpayers using a registered tax agent normally have more time to lodge.

Importance of good record keeping when claiming work-related expenses

The ATO is advising taxpayers that having records to substantiate claims is essential to prove deductions can be claimed, having regard to the following in particular:

- A bank or credit card statement on its own will generally not be enough evidence to support a work-related expense claim. Taxpayers instead need detailed written evidence such as a receipt.

- If a taxpayer's total claim for deductible work expenses is $300 or less, they can claim a deduction without written evidence, but they must still be able to show that they spent the money and how they calculated the amount being claimed.

- While some deduction types do not require receipts (e.g., laundry expenses), some kind of record may still be necessary. Taxpayers may also need a record that shows their private and work-related use (e.g., a diary), and how the amount claimed as a deduction was calculated.

Small business energy incentive available for the 2024 income year

Businesses with an aggregated annual turnover of less than $50 million that had upgraded or purchased a new asset that helps improve energy efficiency during the 2024 income year should consider the small business energy incentive.

This new measure gives them the opportunity to claim a bonus deduction equal to 20% of the cost of eligible assets or improvements to existing assets that support more efficient use of energy.

This incentive applies to eligible assets that were first used or installed ready for use for a taxable purpose between 1 July 2023 and 30 June 2024.

Eligible improvement costs must have been incurred during this period to be eligible for the bonus deduction.

Up to $100,000 of total expenditure is eligible under this incentive, with the maximum bonus deduction being $20,000 per business.

This 20% bonus deduction is on top of other existing ones. Businesses can claim both the ordinary deduction for the expense as well as the bonus deduction.

Please make sure to let us know if you made any purchases that may be eligible for this bonus.

Penalties imposed on taxpayer who falsely amended tax returns

The Administrative Appeals Tribunal ('AAT') recently affirmed the ATO's decision to impose shortfall penalties on a taxpayer who had lodged false amended income tax returns.

The taxpayer had lodged income tax returns for the 2020 and 2021 income years through her tax agent. The taxpayer subsequently lodged amended returns to claim deductions regarding a non-existent family trust for those years.

She did not consult her tax agent before doing so.

Following an audit, the ATO advised the taxpayer that she had no entitlement to the deductions claimed, and it imposed shortfall and administrative penalties.

The AAT concluded that the conduct of the taxpayer was reckless, and in lodging her amended tax returns without the knowledge of her tax agent, the taxpayer had not taken reasonable care. The AAT accordingly affirmed the ATO's decision to impose shortfall and administrative penalties on the taxpayer.

ATO's tips for correctly claiming deductions for rental properties

Taxpayers who have work done on their rental property should consider the following factors in determining claims for expenses.

Repairs and general maintenance are expenses for work done to remedy or prevent defects, damage or deterioration from using the property to earn income. These expenses can be claimed in the year the expense occurred.

Initial repairs include any work done to fix defects, damage or deterioration existing at the time of purchase. These are capital repair expenses and **cannot** be claimed as a deduction.

Capital works are structural improvements, alterations and extensions to the property, claimed at 2.5% over 40 years (with some exceptions). Deductions for capital works can only be claimed **after** the work has been completed.

Improvements or renovations that are structural are also capital works. Work going beyond remedying defects, damage or deterioration which improves the function of the property are improvements.

Repairs to an 'entirety' are also capital and cannot be claimed as repairs. Repairs to an entirety generally involve the replacement or reconstruction of something separately identifiable as a capital item (for example, a depreciating asset).

Depreciating assets must be claimed over time (as 'capital allowances') according to their 'effective life'.

SMSFs acquiring assets from related parties

SMSFs **cannot** acquire an asset from a 'related party' (such as a member or their spouse or relative) **unless** it is acquired at market value **and** is:

- a listed security (e.g., shares, units or bonds listed on an approved stock exchange);
- 'business real property' (broadly, land and buildings used wholly and exclusively in a business);
- an 'in-house asset' as defined, provided the market value of the SMSF's in-house assets does not exceed 5% of the total market value of the SMSF's assets; and/or

- an asset specifically excluded from being an in-house asset.

If the asset is acquired at less than market value, the difference between the market value and the amount actually paid is not considered to be a contribution. Instead, income generated by the asset will be considered 'non-arm's length income' and will be taxed at the highest marginal rate.

ATO's 'main residence exemption tips'

The main residence exemption needs to be considered in a variety of situations when a taxpayer sells a property they have lived in. The ATO hopes that the following tips will help in this regard:

- Taxpayers should consider if they have started earning income from their home (in which case they may need to get a market valuation for CGT purposes).
- When renting out a property that was their main residence, taxpayers need to consider whether to use the 6-year absence rule when they sell their property.
- Taxpayers can only have one property as their main residence at a time. The only exception is the 6-month period when they move from one home to another.
- Has the taxpayer's residency changed? If so, this may affect eligibility for the exemption.

Reminder of September 2024 Quarter Superannuation Guarantee ('SG')

Employers are reminded that employee superannuation contributions for the 1 July 2024 to 30 September 2024 quarter must be received by the relevant super funds by 28 October 2024, in order to avoid being liable to pay the SG charge.

Notice of Medicare levy exemption data-matching program

The ATO will acquire Medicare Exemption Statement data from Services Australia for the 2024 to 2026 income years, including individuals' full names, dates of birth, residential addresses, entitlement status, and approved entitlement details.

The objectives of this program are to (among other things) ensure individuals are correctly claiming an exemption from payment of the Medicare levy and Medicare levy surcharge.

Divorce, you, and your business

Breaking up is hard to do. Beyond the emotional and financial turmoil divorce creates, there are a number of issues that need to be resolved.

What happens when there is a family company?

For couples that have assets tied up in a company, the tax consequences of any settlements paid from the company will need to be assessed. Settlements paid out by a corporate entity can sometimes be treated as taxable dividends and taxed at the relevant spouse's marginal tax rate.

If you are receiving assets from a corporate entity as part of a property settlement, it's essential that you understand the tax implications prior to settlement or a sizeable portion of the settlement could go to the ATO.

For business owners, outside of the tax and financial issues, it's important to not lose focus on what's important to keep the business running efficiently.

What happens to your superannuation in a divorce?

A spouse's interest in superannuation is a marital asset and can be split as part of the breakdown agreement. It's important to be aware however that superannuation cannot be paid directly to a spouse unless the spouse is eligible to receive superannuation (they have met a condition of release) but it can be rolled over into the spouse's fund until they are eligible to receive it. Laws exist to prevent taxes such as CGT being triggered when superannuation assets are transferred. This is particularly important where your superannuation fund holds property.

A Court order or Superannuation Agreement is required to give effect to the agreed split in the SMSF assets or to execute a rollover eligible for the CGT rollover concession.

If you have an SMSF and both spouses are members, it's important to get advice to make sure that all of the appropriate administrative issues are taken care of. Where a divorce is not amicable, it's important to keep in mind that the SMSF trustee is required under law to act in the best interests of the fund and its beneficiaries. Anything less and the fund members may seek compensation for loss or damage.

Can you protect both parties from divorce?

In a divorce, assets are split based on a multitude of factors such as earning capacity, maintenance of children, and the assets held pre-marriage. Many couples don’t go through their marriage with an equal view of how assets and income should be attributed until something goes wrong. If there is a disparity between the income levels of each spouse, there are a lot of benefits to the household in general of evening out how income flows through to the family. If your partner earns less than you, there is a very real financial benefit to topping up their super as superannuation has preferential tax rates. The same goes for taxable income. If you can even out income coming into the household, it spreads the tax burden. Good planning can make a difference.

ATO may cancel inactive ABNs

The ATO regularly reviews, and sometimes cancels, inactive Australian Business Numbers ('ABNs'). The ATO may review a taxpayer's ABN if the taxpayer has not reported business activity in their tax return, or there are no signs of business activity in other lodgments or third-party information.

If the ATO thinks a taxpayer is no longer using their ABN, it will contact them by email, letter or SMS.

If the taxpayer is still running a business, the ATO will tell them what they need to do to keep their ABN. If they are no longer in business, they do not need to do anything -— the ATO will cancel their ABN.

Taxpayers who think they are still entitled to an ABN that has been cancelled need to reapply for it. If they restart their business activities, they should be able to reapply for the same ABN, provided that their business structure is not changing.

New lodgement obligation for income tax exempt organisations

Non-charitable not-for-profits ('NFPs') with an active ABN, including community service organisations, need to lodge an annual NFP self-review return to notify their eligibility for income tax exemption.

To be eligible to self-assess as income tax exempt, the organisation's main purpose must be a community service purpose. Any other purpose must be incidental, ancillary or secondary.

Community service purposes are altruistic, which means the organisation must be established and operated for the wellbeing and benefit of others, and not for political or lobbying purposes.

For example, a club or association that has been set up principally to improve the welfare of the community would be regarded as a community service organisation. This would not be the case, however, if its main purpose was to advance the professional interests of its members.

Taxpayers able to apply CGT small business concessions

The Administrative Appeals Tribunal ('AAT') recently held that a trust was entitled to apply the CGT small business concessions and, therefore, it could reduce a capital gain it made down to nil.

In March 2015, a family trust entered into an agreement for the sale of its shares in a company for $3,500,000. In June 2015, the trustees of the trust passed a resolution apportioning the trust's income for that year between the four taxpayers (two brothers and their wives), and also distributing the capital gain made on the sale equally between those four taxpayers.

The determination of the trust's net income for distribution to the beneficiaries took into account the 50% CGT discount and CGT small business concessions, relying on a valuation of the shares (and underlying business) being $3,500,000.

The ATO, however, deemed the shares sold by the trust to have been disposed of for a market value of $10,640,000, based on an updated valuation report. This also meant that the trust was not entitled to the CGT small business concessions, as this valuation meant that it did not satisfy the CGT maximum net asset value ('MNAV').

The ATO relied on the 'market value substitution' rule to substitute the value of $10,640,000 in place of the sale price of the shares. This meant that each taxpayer's share of the 2015 trust distribution was increased from $321,989 to $1,194,174.

In relation to the MNAV test, the AAT needed to determine whether the net value of the CGT assets of the trust (and its connected entities) exceeded $6,000,000.

The AAT preferred the approach taken by the valuers for the taxpayers, partly because they had given *"more attention and consideration to this particular business and the circumstances and location in which it operates."*

The AAT accordingly concluded that the total net value of the CGT assets of the trust (and connected entities) **was** below $6,000,000, and so the MNAV test was satisfied, and the taxpayers' objections to the amended assessments should be allowed.

It wasn't me: the tax fraud scam

You login to your myGov account to find that your activity statements for the last 12 months have been amended and GST credits of $100k issued. But it wasn't you. And you certainly didn't get a $100k refund in your bank account. What happens now?

In what is rapidly becoming the most common tax scam, myGov accounts are being accessed for their rich source of personal data, bank accounts changed, and personal data used to generate up to hundreds of thousands in fraudulent refunds. For all intents and purposes, it is you, or at least that's what it seems. And, the worst part is, you probably gave the scammers access to your account.

But it's not just activity statements. Any myGov linked service that has the capacity to issue refunds or payments is being targeted. Scammers are using the amendment periods available in the tax law to adjust existing data and trigger refunds on personal income tax, goods and services tax (GST), and through variations to pay as you go (PAYG) instalments. In some cases, the level of sophistication and knowledge of how Australia's tax and social security system operates is next level.

Once the scammers have access to your myGov account, there is a lot of damage they can do.

So, how does this happen and why is it so pervasive? Humans are often the weakest link.

Common scams utilise emails (78.9% of reported tax related scams in the last 12 months) or SMS (18.4% of reported scams) that mimic communication you might normally expect to see. The lines of attack used by tax related scammers are commonly:

Fake warnings about attempted attacks on your account (and requiring you to click on the link and confirm your details);

Opportunistic baiting where some form of reward is flagged, like a tax refund, that you need to click on the link to confirm and access; and

Mimicking common administrative notifications from the Australian Taxation Office (ATO) like a new message accessible from a link.

Approximately 75% of all email scams reported to the ATO to March 2024 were linked to a fake myGov sign in page.

How to spot a fake

Often the first sign that something is amiss is alerts about activity on your myGov account or a change in details - which might seem a little ironic if the way in which scammers got into your account in the first place is via these very same messages.

But, there are ways to spot a fake:

The ATO, Centrelink and MyGov don't use hyperlinks in messages. If you receive a message with a link, it's a fake.

The ATO will not use QR codes as a method for you to access your account.

The ATO will never ask for your tax file number (TFN), bank account details or your myGov login details over social media. Some scammers have used fake social media accounts mimicking the ATO and other Government agencies. When a query comes in, they respond by asking for information to verify it's you. The ATO will never slide into your DMs. ATO Assistant Commissioner Tim Loh said, "it's like giving your house keys to a stranger and watching them change your locks."

The ATO do not use pre-recorded messages to alert you to outstanding tax debt. The ATO will not cancel your TFN. Some scammers suggest that your TFN has been cancelled or suspended due to criminal activity or money laundering and then tell you to either pay a fee to correct it, or transfer your money to a 'safe' bank account to protect you against your corrupted TFN.

The ATO will not initiate a conference call between you and your tax agent and someone from a law enforcement agency. In one case, the taxpayer was told that the caller was from the ATO and a person from her accounting firm was on the call as well to represent her and work through a problem. The ATO caller and the tax agent were fake. Just hang up and call our office if you are ever concerned. The ATO will never initiate a conference call of this type.

The ATO will also not ask you to reconfirm your details because of security updates to myGov. The link, when activated, takes you to a fake myGov web page that can look very convincing.

In general, you should always log into your myGov account directly to check on any details alerted in messages rather than clicking on links. This way, you know that you are not being redirected to somewhere you should not be.

And, don't log into your myGov account on free wifi networks. Ever.

Who is getting scammed?

There is a pervasive view that older, technology challenged individuals are the most at risk. And while this might be the case generally, scamming is impacting all age groups.

The ATO says that the demographic who most reported providing personal information to scammers was 25 to 34 year olds. And, the younger generation are more likely to fall for investment scams. According to the AFP-led Joint Policing Cybercrime Coordination Centre (JPC3), people under the age of 50 are overtaking older Australians as the most reported victims of investment scams. Australians reported losing $382 million to investment scams in the 2023-24 financial year. Nearly half (47%) of the investment scam losses involved cryptocurrency.

Other scams

Scammers are in the business of scamming and they will use every trick and opportunity to part you from your money.

Investment scams

Pig butchering. Pig butchering is a tactic where scammers devote weeks or months to building a close relationship with their victims on social media or messaging apps, before encouraging them to invest in the share market, cryptocurrency, or foreign currency exchanges. Victims think they are trading on legitimate platforms, but the money is siphoned into an account owned by the scammers, who created fake platforms that look identical to well-known trading and cryptocurrency sites. Scammers will show fake returns on these platforms to convince victims to invest more money. Once they have extracted as much money as possible, the scammers disappear with all the invested funds.

Deepfakes

Deepfakes are lifelike impersonations of real people created by artificial intelligence technologies. Scammers create video ads, images and news articles of celebrities and other trusted public figures to promote fake investment schemes, which can appear on social media feeds or be sent by scammers through messaging apps. Unusual pauses, odd pitches, or facial movement not matching their speaking tone are often giveaways but increasingly, the fakes are difficult to spot.

Invoice scams

The names and details of legitimate businesses are used to issue fake invoices with the money transferred to the scammer's account. These scams are often tied to cyber breachers where hackers have accessed your systems and have identified your suppliers.

Bank scams

There has been a lot in the media of late about people receiving phone calls purporting to be from their bank, advising them there is a problem with their account, and then walking them through a resolution that involves transferring all their money into a 'safe' scammers account. Victims commonly state that they believed the scammer because of the level of personal information they relayed.

Your bank will never send an email or text message asking for any account or financial details, this includes updating your address or log in details for phone, mobile or internet banking.

A CHOICE survey found that four out of five of the victims of banking scams in their report said their banks did nothing to flag a scam before they transferred their money to the perpetrator.

The Australian Banking Association have stated that, if not already, banks will introduce warnings and payment delays by the end of 2024. And, in addition to other measures, they will limit payments to high-risk channels such as crypto platforms.

What to do if you have been scammed

myGov

If you have downloaded a fake myGov app, have given your details to a scammer, or clicked on a link from an email, text message or scanned a QR Code, contact Services Australia Scams and Identify Theft Helpdesk on 1800 941 126, or get help with a scam here.

Tax scams

Before acting on any instructions, please contact us and we will verify the information for you.

If you have already acted, contact the ATO to verify or report a scam on 1800 008 540.

The Government use external agency recoveriescorp for debt collection, but we will advise you if you have a tax debt outstanding.

Staff news

We would like to extend a very warm welcome to Sally Rizzi who joined the ML Team in July as our People & Culture Manager. Sally brings with her a wealth of experience across a range of industries in similar roles and holds a Master of Business in Human Resource Management and a Bachelor of Arts (Media). Sally has hit the ground running and has already proven to be an invaluable member of the ever-growing ML Team. Welcome Sally!

Quote of the Month

'*As long as you try your best, you are never a failure. That is, unless you blame others.'*

– John Wooden

Please note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.