



# BUSINESS BULLETIN

SPRING 2018

## TAX – Burning Issues

### 1. Superannuation Amnesty!

While the ATO continues to promote its Superannuation Guarantee Amnesty, employers contemplating taking advantage of this once-off opportunity should beware!

By way of background, on 23 May 2018 the Government announced that employers who disclose quarterly superannuation shortfalls (i.e. where they have not paid sufficient superannuation for eligible workers) dating as far back as the introduction of superannuation in 1992 will benefit from:

- Penalties of up to 200% of the shortfall being waived
- Administration charges waived
- Deductions for late contributions (no deduction is normally available for late contributions)

Employers contemplating disclosing past shortfalls should be mindful that the Amnesty is not yet law. If an employer was looking to disclose past shortfalls specifically to get the benefits of the Amnesty (including claiming a deduction for their late contributions) then it may be prudent to hold off until such time that the Amnesty actually becomes law (the legislation is currently held up in the Senate). Interestingly, the Labor opposition has made adverse remarks about the Amnesty – stating that it lets non-complying employers off lightly. Therefore, given this opposition, it is no certainty that the Amnesty will be passed into law...especially given the composition of the Parliament whereby the Government does not have the numbers in its own right.

By disclosing past shortfalls, you are bringing them to the attention of the ATO – who would otherwise be unaware of them (unless an employee makes a complaint about being owed superannuation, or unless they are picked up in a later ATO audit).

If the Amnesty legislation fails to pass and shortfalls are disclosed, then it's a "double-whammy" for employers – they've disclosed previously undetected shortfalls and therefore must pay them as they've been brought to the attention of the ATO, yet they have missed out on the benefits of the Amnesty (i.e. deductions for late contributions etc.).

## KEY DATES

### 21 SEPTEMBER

Lodge August monthly BAS

### 21 OCTOBER

Lodge September monthly BAS

### 28 OCTOBER

Pay Superannuation Guarantee contributions for July- September

### 31 OCTOBER

Lodge personal income tax returns if you are not using a tax agent

### 21 NOVEMBER

Lodge October monthly BAS

# TAX – Burning Issues Continued...

## 2. Company Tax Rate Clarity

After months of uncertainty, eligibility for the lower company tax rate (currently 27.5% for companies with a turnover of less than \$50 million) has finally been given clarity. The new law provides that corporate tax entities that receive more than 80% of their assessable income in passive forms (broadly interest, rent, royalties, dividends and capital gains) will not be eligible for the lower tax rate irrespective of their level of turnover.

In simple terms, this test requires a comparison of a company's total passive income for the financial year against its assessable income for that same financial year. This new test can throw up some anomalous outcomes. For instance, a corporate beneficiary that is set up solely to receive distributions from a trust that carries on a business would under this test be eligible for the lower company tax rate, however a software development company that has 30 employees, but derives its income from licence fees/subscriptions (royalties) would not be.

Companies that are not eligible (either because they fail the 80% passive income test, or because turnover exceeds \$50 million) will have a tax rate of 30%.

## 3. Single Touch Payroll

The measure to extend the Single Touch Payroll (STP) regime to small employers (with 19 or less employees) has yet to be passed by Parliament, leaving small business owners with less time to prepare, should it go through. With a start date of 1 July 2019, smaller employers should have an eye to ensuring their business is positioned to adopt an STP solution by this date. For most employers this will involve using STP-compliant software. The main players in the small-to-medium business space (Xero, MYOB, Reckon, Intuit), are all currently STP-enabled. You should consult your bookkeeper or accountant on how you can position your business to be STP-compliant by the anticipated 1 July 2019 start date.



# SUPERANNUATION – Extra Capacity for Small Business Owners

With the superannuation contribution caps dramatically reduced in recent years, there has been no reduction or change to the CGT Lifetime Cap Amount. This is good news for business owners!

By way of background, in addition to the standard Concessional and Non-Concessional caps, there is an additional Lifetime CGT Cap Amount. Because of the generous concessional tax rates that apply inside superannuation (15% on earnings, and 10% discount capital gains) many exiting business owners are keen to invest the capital proceeds from selling their business or business assets into superannuation. However, the non-concessional contribution cap (particularly after the 1 July 2017 reduction) severely restricts the amount that can be contributed to your superannuation fund. Even where you elect to use the 3-year bring forward cap, \$300,000 can for many business owners fall short of the proceeds they receive from a business sale. To assist in this regard, business owners may wish to consider utilising the Lifetime CGT Cap. This cap allows non-concessional contributions to be made in excess of the standard non-concessional limit. The Lifetime Cap is currently \$1.480 million in 2018/2019. The cap is only available for Small Business Entities (SBEs) when the amounts contributed to superannuation are:

- Capital proceeds from the sale of an asset that qualifies for the 15-Year Exemption, or
- Capital gains from the sale of an asset that qualifies for the \$500,000 Retirement Exemption.

The advantages of this cap are:

- It is exempt from the \$1.6 million 'Total Superannuation Balance' contribution restriction, and
- It is in addition to the recently-reduced \$100,000 non-concessional contribution cap (and the \$300,000 bring-forward cap)
- It can be accessed by over 65s (unlike the bring-forward non-concessional cap – see earlier).

Talk to your Accountant or financial advisor for more details on how you can take advantage.

## HR – Key-Man Insurance

While most business owners won't think twice about insuring their buildings, vehicles, machinery, and stock, many neglect to consider insuring arguably their most important asset – their employees! Like most businesses, you likely have long-term, experienced, gifted staff with unique skill sets who are vital to the operation of your business. Without them, profitability and productivity would be heavily affected. If you are concerned about the business losses that would result if one of your key staff could no longer work for you, you should consider taking out key-man insurance.

Key-man insurance guards against the death or permanent incapacity of a key employee. Such insurance also underpins buy-sell agreements (which are taken out to fund the buy-out of a departing business owner's share of the business, in the event of their death/permanent incapacity). The benefits provided by a key-man policy are much the same as policies held by an individual under a life insurance, trauma insurance, or a total permanent disability policy; with the main difference being that the key-man policy is held by the business and any payout is to protect the business, not compensate the individual. Whilst policy terms and business requirements will vary, broadly speaking key-man insurance can provide the following compensation to your business.

- Lump sum benefit when an insured key person dies, is critically ill or permanently incapacitated
- Coverage for the cost of hiring temporary personnel, including recruitment and training

Talk to your broker if you are interested.

