BRAY
& ASSOCIATES
CHARTERED ACCOUNTANTS
A.B.N 65 612 294 069

Level 2, 23-25 O'Connell Street, Sydney 2000
PO Box R238 Royal Exchange, Sydney 1225
Telephone: (02) 9233 4833 Facsimile: (02) 9233 4844
Email: mail@bray.com.au

399-405 Bong Bong Street, Bowral 2576
PO Box 1883, Bowral 2576
Telephone: (02) 4862 4866 Facsimile: (02) 4861 2400
Email: mail@bray.com.au

Practice Update

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

March 2018

GST Withholding on New Residential Premises

On 9 May 2017, as part of its 2017-18 Budget, the Government announced that it will strengthen compliance with the GST law by requiring purchasers of newly constructed residential properties or new subdivisions to remit the GST directly to the ATO as part of settlement.

Under the current law (where the GST is included in the purchase price and the developer remits the GST to the ATO), some developers are failing to remit the GST to the ATO despite having claimed GST credits on their construction costs.

On 7 November 2017 the Government further announced that it will introduce a transitional arrangement to the 2017-18 Budget measure. This two-year transitional arrangement will exclude from the GST withholding requirements contracts signed before 1 July 2018 as long as the transaction settles before 1 July 2020.

The transitional provisions are intended to provide certainty for contracts that have already been signed.

These changes will take effect from 1 July 2018.

Editor: Contracts will need to reflect the requirement for the purchaser to remit GST to the ATO. Solicitors and conveyancers may need to change their work procedures to ensure that GST is correctly remitted.

This is in addition to the existing requirement for purchasers of real property to withhold 12.5% of the purchase price (and remit it to the ATO) unless the vendor has provided to the purchaser a clearance certificate from the ATO. From 1 July 2017, this applied to all real property transactions where the contract price was $750,000 or more. Clearance certificates may be applied for online at www.ato.gov.au/FRWT_Certificate.aspx

ATO's focus on work-related expenses

This year, the ATO is paying close attention to what people are claiming as 'other' work-related expense deductions, so it's important when taxpayers claim these expenses that they have records to show:

- they spent the money themselves and were not reimbursed;
- the expense was directly related to earning their income; and
- they have a record to prove it.

If the expense is for work *and* private use, the taxpayer can only claim a deduction for the work-related portion.

Importantly, taxpayers are not automatically entitled to claim standard deductions, but need to be able to show how they worked out their claims.

Editor: 'Other' work related expenses are expenses incurred by employees in relation to their work that are not for travel, clothing or self-education, such as home office expenses.

Taxpayer can't explain where she got the money to pay her expenses

The Administrative Appeals Tribunal has upheld amended assessments issued by the ATO to a beauty technician, based on the high volume of money passing through the taxpayer's various accounts when compared with the modest income she had included in her tax returns.

For example, in the 2015 income year, the taxpayer had declared income of $61,842, but the ATO's analysis of her bank accounts, records of international money transfers, and casino data suggested she had spent $107,328.

The Tribunal noted that, in cases like this, the ATO is effectively making an "informed guess" as to the taxpayer's income, but, provided there is a rational basis for the estimate, the ATO's assessment will stand, unless the taxpayer can:

- ❑ demonstrate the assessment was excessive; *and*
- ❑ establish what the correct (or more nearly correct) figure is.

After hearing from the taxpayer and witnesses at the hearing, and after reviewing the documents, the Tribunal was not persuaded that the taxpayer had demonstrated that the Commissioner's assessments were 'excessive'.

In particular, the taxpayer's explanation regarding her income was not supported by the objective facts in the hearing, being:

- the 'churn' through her bank accounts;
- the absence of contemporaneous records beyond the bank accounts (for example, she was always paid in cash without receiving pay slips); and
- the deficiency in corroborating evidence from other witnesses.

In addition to upholding the amended assessments, the Tribunal was also satisfied that the ATO's 75% administrative penalty on top of the tax payable was properly imposed.

Uber driver not an 'employee'

In a recent case, an Uber driver's access to the Uber app had been terminated as a result of failing to maintain an adequate overall rating, and he applied to the Fair Work Commission (FWC) for an unfair dismissal claim against Uber.

However, the FWC held that he was an independent contractor and not an 'employee', and therefore his application for unfair dismissal was dismissed.

Editor: Although this was not a tax case, it is obviously of interest to anyone involved in the 'gig economy', and it may have flow-on implications for other employment issues, such as super guarantee.

Government to fix a problem with reversionary TRISs

The government has released draft legislation to ensure that a reversionary Transition to Retirement Income Stream ('TRIS') will always be allowed to **automatically** transfer to eligible dependants (i.e., upon the death of the primary recipient).

Currently, a reversionary TRIS cannot transfer to a dependant if the dependant has not personally satisfied a condition of release.

If this positive measure is legislated, it will apply to reversionary TRISs **from 1 July 2017**.

New small business benchmarks are available

The ATO has updated its small business benchmarks with the latest data from the 2015/16 financial year.

In addition to helping businesses to see if they are performing within their industry average, the benchmarks are one of the tools the ATO uses to identify businesses that may be a higher risk.

Editor: That is, the ATO may use the benchmarks to pick their audit targets, so please contact us if you would like us to check whether your data is inside or outside the average benchmark range for your industry.

Guide to the new Small Business Super Clearing House

The Small Business Superannuation Clearing House (SBSCH) joined the ATO's online services on 26 February 2018.

This is intended to streamline how businesses use the SBSCH, and will also include extra functionality, such as the ability to sort employee listings and payment by credit card.

Editor: The SBSCH is a free service that businesses with 19 or fewer employees (or which are SBEs) can use to comply with their super obligations.