SG Amnesty still pending

The proposed superannuation guarantee ('SG') amnesty is a one-off, 12-month opportunity to self-correct past non-compliance (i.e., from 24 May 2018 to 23 May 2019).

It will apply to previously undeclared SG shortfalls for any period from 1 July 1992 up to 31 March 2018.

The 'carrot' currently on the table is that employers who voluntarily disclose previously undeclared SG shortfalls during the amnesty (i.e., importantly, before the commencement of an ATO audit) will:

- **not be liable for the administration component and penalties** that may otherwise apply to late SG payments, and
- **be able to claim a deduction for catch-up payments** made during the relevant 12-month period.

This means that employers will still be required to pay all employee entitlements, including any unpaid SG amounts owed to employees and the nominal interest, as well as any associated general interest charge.

Employers who are not up-to-date with their SG payment obligations and who do not come forward during the proposed SG amnesty have been put on notice by the ATO that they may face higher penalties in the future.

Editor: While the SG amnesty is being actively promoted by the ATO, it is important to be aware that the proposed concessions currently on the table are not guaranteed until the relevant legislation becomes law.

Note that the Treasury Laws Amendment (2018 Superannuation Measures No.1) Bill 2018 will not be considered again at least until Parliament resumes on 10 September 2018.

The Company Tax Rate Saga

In the last week of the August Parliamentary sittings, the controversial corporate tax cut plan for the big end of town (i.e., companies with an aggregated turnover of over $50 million) was defeated.

In addition, long-awaited legislation impacting the company tax and franking rates for small to medium companies (i.e., introducing a new 'base rate entity passive income test' from the 2018 income year to qualify for the lower 27.5% tax rate) was passed.

This legislation was particularly relevant for company rates applicable to passive investment and 'bucket' companies, which may now need to reconsider earlier lodged 2018 company tax returns, as well as the amount of franking credits attached to dividends paid from 1 July 2017.

Additionally, consideration may also need to be given to the company tax rates (and in certain circumstances, the franking rates) previously applied with respect to the 2016 and 2017 income years.

This is in light of the recently issued ATO compliance and administrative approaches for the 2016, 2017 and 2018 income years.

Editor: Unfortunately, the recent Government delays have created much confusion in this area, and in certain cases, a review and possible amendments may be required for previously lodged returns.

Division 7A benchmark interest rate for 2019

The benchmark interest rate for 2019, for the purposes of the deemed dividend provisions of Division 7A and the associated complying Division 7A loan agreements, has been set at 5.20% (i.e., down from 5.30% for 2018).

Black economy recommendations will impact day-to-day business

Editor: Recently issued draft legislation has focused on introducing new measures to manage the growing cash economy (i.e., the 'black economy') in light of the Black Economy Taskforce recommendations and recent Federal Budget announcements.

Two of these key recommendations are outlined below.

Removing tax deductions for PAYG failure

The Government is currently considering removing tax deductions where businesses fail to comply with their PAYG withholding obligations for payments to employees and contractors from 1 July 2019.

Specifically, deductions are proposed to be denied for these types of payments where the payer has failed to either:

- comply with their obligations in relation to withholding from these payments; or
- notify the ATO of the withholding amount (i.e., via their BAS).

Interestingly, deductions will only be denied if **no** withholding took place or **no** notification has been made.

That is, incorrect amounts withheld or reported to the ATO will not impact a taxpayer's entitlement to deductions.

Further expansion of the taxable payments reporting system ('TPRS')

The TPRS was introduced for the first time in the 2013 income year with respect to businesses in the building and construction industry, requiring the reporting of total payments made to contractors for building and construction services each year.

The taxable payments annual report is due by 28 August each year.

Legislation is currently being considered by Parliament to extend the TPRS to the cleaning and courier industries from the 2019 income year.

Furthermore, draft legislation has now been released to further expand the TPRS to the following industries from the 2020 income year:

- security providers and investigation services;
- road freight transport; and
- computer system design and related services.

Crowdfunding donations to help drought-affected farmers

Editor: The ATO is currently offering various support measures to individuals and businesses from drought-affected communities to help with managing their tax and super obligations or who are struggling with their mental health.

It has also recently provided a summary of the potential tax impact of making donations to, or raising funds via a crowdfunding platform for drought relief (as outlined below).

For taxpayers wishing to make a contribution to a drought relief fund, it is important to be aware of the tax implications associated with making such donations.

For example, donations of $2 or more to an organisation that is a deductible gift recipient will be tax deductible.

To check to see if a particular appeal is a registered charity, the ATO has advised that taxpayers should use the 'ABN lookup' function on the Australian Business Register website before donating.

For those looking to raise funds through crowdfunding platforms to assist their farming business, payments received from the crowdfunding platforms may be assessable income, depending upon how the funds are used.

For example:

- Where the funds are used for emergency relief (i.e., such as food and clothing), then the amounts are not assessable.

- Where the funds are spent on deductible expenses (i.e., such as purchasing feed for livestock), the amount is assessable income, but will be offset by the relevant deductions obtained, ensuing there is no net taxable outcome.