DEANNE THOMAS & CO

client alert

tax news | views | clues

Small business income tax gap: ATO update

New figures released by the ATO estimate that almost 90% of income tax from small businesses is paid voluntarily or with little intervention from the ATO.

"This shows that the vast majority of small businesses in the tax system are trying to do the right thing", Deputy Commissioner Deborah Jenkins said. "Considering how much small businesses have on their plate, we're grateful for the level of work they put in to get their tax right."

The ATO estimates the 2015–2016 income tax gap for the small business sector to be approximately 12.5%, or $11.1 billion, with over $7 billion attributable to "black economy" behaviour.

TIP: Around 90% of small businesses use a registered tax professional to help them meet their obligations. Get in touch today to see how we can support you.

ATO sets its sights on undisclosed foreign income

Do you have any amounts of offshore income you haven't declared to the ATO – perhaps interest from a foreign bank account? Even if it seems like a small amount, you must declare it. International data-sharing arrangements are making your overseas financial affairs increasingly transparent, so don't get caught out.

The ATO is keen to emphasise that its techniques for detecting offshore amounts are becoming increasingly effective. Cross-border cooperation between different tax jurisdictions means your financial information is being shared more than ever before.

If you're an Australian resident for tax purposes, you're taxed on your worldwide income. This means you must declare all foreign income sources in your return.

If you're a non-resident, you generally only pay tax on your Australian-sourced income.

TIP: The main test for tax residency is whether you "reside" in Australia. There's no single factor that determines whether you meet this test.

What if you've already paid tax on the income overseas? You still need to declare it to the ATO. However, you may be able to claim an offset for the tax already paid in order to prevent double taxation.

Got any amounts you've overlooked? Now is a great time to get help from your tax adviser with making a voluntary disclosure. You'll often receive a reduction in ATO penalties and interest that would otherwise apply – and the outcome is generally much more favourable if you make a disclosure before the ATO commences an audit of your tax affairs.

ATO announces "Better as Usual" program to improve your experience

ATO Commissioner Chris Jordan has announced the launch of "Better as Usual", a new ATO program aimed at improving people's experience with the tax system. The program will include four parts:

- *Whole-of-system experience:* looking at the end-to-end experience to address people's frustration at sometimes feeling like they have to start all over again when dealing with a new ATO area or staff member.
- *Quality of feedback loops:* better understanding and documenting people's past experiences and actions (eg mistakes versus evasion) to make better ATO decisions in the future.
- *Complex cases team:* a dedicated team to work on the most complex cases, devoting the time and resources necessary to deal with complicated affairs that fall outside the ATO's normal processes.
- *Procedural and cultural safeguards:* established to reduce (and ultimately eliminate) any cases where ATO mistakes could have a severe impact on taxpayers.

Salary sacrificing loopholes: are you receiving your full benefits?

Most workers understand that their employer must make compulsory super guarantee (SG) contributions of 9.5% of their salary and wages. However, things can get a little tricky when you choose to salary sacrifice.

Under current laws, employees who sacrifice some of their salary in return for additional super contributions may end up receiving less than they expected because of two legal loopholes. Employers may:

- count the salary sacrifice contributions towards satisfying their obligation to make minimum SG contributions of 9.5%; or
- calculate their 9.5% contributions liability based on the employee's salary after deducting sacrificed amounts, rather than the pre-sacrifice salary.

Proposed new laws will close the loopholes by requiring employers to pay compulsory SG contributions at 9.5% of the pre-sacrifice amount of salary (that is, the salary actually paid to the employee plus any sacrificed salary). Further, any salary sacrifice contributions will not count towards the compulsory SG contributions. If passed, the new laws will apply to quarters beginning on or after 1 July 2020.

Claiming work trips for business owners

As a business owner, do you sometimes take work trips? When a trip is clearly for business purposes only, the rules for deducting your expenses are fairly straightforward. But what happens when you've planned a holiday or to catch up with family or friends while you're travelling?

Airfares

Assume you travel to London for a two-week trade show and stay a few extra days for sightseeing. If business is the primary purpose of the trip, you can claim the whole cost of the return airfares as a business deduction, because the sightseeing is just incidental. If you have a significantly longer holiday, so the primary purpose of the trip is not just business, you may need to apportion your airfares. And if the primary purpose is clearly private with some incidental work activities, you generally can't deduct airfares.

Accommodation

Accommodation deductions are limited to the nights that you're required for the business purpose. In our London example, you couldn't deduct your accommodation costs for the nights you stayed for sightseeing. This applies even though you could deduct the full airfares.

Record-keeping

Sole traders and partners must keep a diary if they travel for six or more consecutive nights, detailing each business activity, the location, the date and time it began and how long it lasted.

If your business runs through a company or trust structure, it's not compulsory to keep a diary, but it's strongly recommended.

TIP: For companies, be careful about your business paying for any private part of your travel, as this could have consequences under the "deemed dividend" rules about benefits for shareholders and their associates.

Thinking about setting up an SMSF?

SMSFs can be a great option for building retirement savings, but they may not be suitable for everyone. Before you jump in, make sure you understand the differences between SMSFs and other types of funds to help you make an informed decision. Here are a few issues to consider.

Management

While public offer funds are managed by professional licensed trustees, for SMSFs the management responsibility lies with the members. Every SMSF member must be a trustee of the fund (or, if the trustee is a company, a director of that company). This is an advantage if you want full control over how your super is invested and managed, but it means the members are responsible for complying with all superannuation laws and regulations – and administrative penalties can apply for non-compliance.

Costs

Fees charged by public offer funds vary, but they are generally charged as a percentage of the member's account balance. Therefore, the higher your balance, the more fees you'll pay.

SMSF costs tend to be more fixed. As well as paying establishment costs and an annual supervisory levy, SMSFs must hire an independent auditor annually. Most SMSFs also need professional assistance, such as accounting services, financial advice, administration services and asset valuations. An SMSF can sometimes be more expensive than a public offer fund.

Investment flexibility

A major benefit of SMSFs is that the member-trustees have full control over investment choices. This means you can invest in specific assets, including direct property, that wouldn't be possible in a public offer fund. SMSFs can also take advantage of gearing strategies by borrowing to buy property or even shares through a special "limited recourse" borrowing arrangement. However, with control comes responsibility. SMSF trustees must create and regularly update an "investment strategy" that specifically addresses things like risk, liquidity and diversification.

TIP: There are other important considerations for SMSFs, including decisions about insurance and arrangements for dealing with any disagreements between trustees. It's important to ensure you have the whole picture and good advice before getting an SMSF started.