client alert | explanatory memorandum

July 2019

CURRENCY:

This issue of **Client Alert** takes into account developments up to and including 13 June 2019.

Tax planning

With the end of the 2019 income tax year upon us, this issue of Client Alert draws attention to year-end tax planning strategies and compliance issues that taxpayers need to consider to ensure they are in good tax health. It focuses on the most important issues for small to medium businesses and individuals to consider so as to increase their tax refund or minimise their tax liability in respect of the 2019 income tax year.

One interesting procedural matter this year is that 30 June 2019 falls on a Sunday, meaning that ATO payments or lodgments due on that day can be made on Monday 1 July 2019 without incurring a general interest charge. However, where practically possible, all actions, payments or lodgments should be undertaken before Friday 28 June 2019.

This "date shuffling" conundrum should be kept in mind when reference is made to actions to be undertaken by 30 June 2019.

Common tax planning techniques include deferring the derivation of assessable income and bringing forward deductions. It is equally important to consider any pending changes to the tax legislation, and to specifically take note of any commencement dates and transitional provisions.

TIP: This issue of Client Alert contains general information only, and should not be relied on as advice – it may not be applicable to taxpayers' specific circumstances.

Deferring derivation of income

Businesses that recognise income on an accruals basis (ie when an invoice is raised) may consider delaying the raising of invoices for services rendered until after 30 June and thereby delay deriving assessable income until after the 2019 income tax year.

For example, if cash flow permits, businesses could delay raising some invoices in respect of work in progress (WIP). Also note that service income received in advance (eg where amounts are received before 30 June 2019 but services are only provided after 30 June 2019) may only be assessable income in the 2020 income tax year.

If income is derived on the cash basis (eg interest, royalties, rent and dividends), businesses may consider deferring the receipt of certain payments until after 30 June 2019 (eg set term deposits to mature after 30 June 2019 rather than before 30 June 2019).

Bringing forward tax-deductible expenses through prepayments

To qualify for deductions in the 2019 income tax year, taxpayers may bring forward upcoming expenses (ie incur the expenses before 30 June 2019) or small businesses and individual non-business taxpayers may prepay expenses up to 12 months ahead (ie pay tax-deductible expenses relating to the 2020 income year before 30 June 2019). This should only be done subject to available cash flow and where there is a commercial basis for the prepayment.

Business expenses that may be prepaid include:

- short-term consumables such as office supplies and stationery;
- unpaid workers' compensation insurance premium instalments; and
- superannuation guarantee payments (only due in July).

Also note that bonuses and directors' fees that are confirmed and committed to by 30 June (as evidenced in Board minutes) may be deductible in 2019, even if these payments are only made after 30 June 2019.

Expenses that individuals may prepay include:

- investment property expenses such as insurance, rates, repairs and maintenance and strata fees;
- subscriptions to professional journals and memberships to professional associations;

- interest on investment loans (eg for share portfolios and investment properties); and
- income protection insurance.

Tax relief for individuals and small businesses

In the 2019 Federal Budget, the government announced the following tax relief measures for low and middle-income earners and small businesses.

Instant asset write-off

There are a number of changes to the instant asset write-off, to both the maximum asset value that qualifies for the immediate write off and to the turnover threshold for qualifying taxpayers.

From 1 July 2018, small businesses with a turnover less than $10 million can write off assets costing less than $20,000. From 29 January 2019, small businesses with a turnover less than $10 million can write off assets costing less than $25,000. From 2 April 2019 (7.30pm), small businesses with a turnover less than $50 million can write off assets costing less than $30,000 (to 30 June 2020).

TIP: The increase of the turnover threshold to $50 million greatly expands the number of taxpayers who will be eligible for the instant asset write off. If a taxpayer needs to acquire an item of plant, car or other depreciable asset for less than $30,000, they should look at acquiring it and installing it ready for use before 30 June to claim the instant asset write off in the current year.

Individual tax rates for 2018–2019

Threshold	Rate
$0–$18,200	0%
$18,201–$37,000	19.0%
$37,001–$90,000	32.5%
$90,001–$180,000	37.0%
$180,001 +	45.0%

In addition, the Medicare levy is 2% of taxable income. Therefore, the top marginal tax rate for resident individuals will be 47% (including Medicare levy).

Low and middle income tax offset

A new low and middle income tax offset (LMITO) will also be available, providing a benefit of up to $255 for individuals earning under $37,000 and up to $1,080 for individuals earning between $48,000 and $90,000. The offset reduces by 3 cents for every dollar in excess of $90,000. There is no offset for taxpayers earning in excess of $126,000.

Individual planning issues

Review salary packaging arrangements

Review any salary packaging arrangements (eg for motor vehicles) to ensure they were entered into before the services have been performed by employees or before salary review time, so that they will be effective.

With the concessional superannuation contributions cap set to $25,000 for everyone, it's important to ensure that salary sacrifice agreements are reviewed so there are no excess concessional contributions in 2019.

Manage exposure to CGT

Individuals may consider delaying the exchange of contracts to sell an appreciating capital asset until after 30 June 2019. That way, the capital gain will only be assessable in the 2020 income tax year.

If a capital gain has already been made this year, it may be possible to crystallise capital losses (eg by selling shares that have declined in value) to reduce the capital gain. However, when adopting this strategy, taxpayers must take care to ensure they are not engaging in "wash sales", where shares are sold shortly before 30 June solely to realise the capital loss and then bought back shortly after 30 June.

A capital gain realised in 2019 will be eligible for the 50% CGT general discount to the gross gain if the asset was held for at least 12 months before it was sold (ie before the CGT event occurred). However, this discount is not available to non-resident individuals.

Deduct work-related expenses

Although a myriad of tax law considerations are involved when claiming work-related expenses, there are three main rules:

- Only claim a deduction for money actually spent (and not reimbursed).
- The work-related expense must directly relate to the earning of income.
- An employee must have a record to prove the expense.

For example, a claim for work-related expenses will not be allowed if deductions are claimed for private expenses (eg travel from home to work and not required to transport bulky equipment), reimbursed expenses (eg an employee is reimbursed for the cost of meals, accommodation and travel) or if no records are kept.

Other practical issues to consider when claiming work-relates expenses include the following:

- When claiming work-related expenses relating to a vehicle, travel, internet, self-education or a mobile phone, taxpayers should ensure that the amount claimed for these expenses is reasonable and verifiable. The ATO is using real-time data to compare deductions claimed by taxpayers in similar occupations and income brackets, so it can identify higher-than-expected or unusual claims.
- When claiming deductions up to $300 (allowable without a receipt), taxpayers must still be able to substantiate the deductions claimed if they are questioned by the ATO.
- When claiming deductions for work uniforms, taxpayers should ensure they only claim for uniforms that are unique and distinctive (eg with the employer's logo and specific to the taxpayer's occupation) and not clothing for everyday use (eg plain suits worn by office workers).

Taxpayers working from home may be able to deduct a pro rata portion of water and electricity costs as well as depreciation for office equipment, provided they keep a diary of the hours worked at home to substantiate their claims.

An individual may claim the amount incurred on self-education expenses as a tax deduction, provided the expenses were incurred to maintain or improve the individual's skill or knowledge necessary to perform the individual's current job (as opposed to securing a new job). For example, an accountant attending an accounting seminar, conference or workshop to stay up to date with the latest accounting developments could claim the expenses as a deduction.

Don't forget sharing economy income

Money that individuals earn from "gig" jobs through platforms like Uber, Airtasker and Airbnb, such as transporting passengers or renting out a room or house, counts as assessable income. This means it must be declared on the individual's tax return. Depending on the activities and expenses, tax deductions may also be available in relation to this type of income, but it's important to substantiate any such claims.

Make donations count for tax

Donations of $2 or more to deductible gift recipients are tax deductible. Donations of property to such recipients may also be tax deductible. However, donations to overseas charities may not be tax deductible.

Use negative gearing where appropriate

An investment property is negatively geared if the rental income is less than interest and other costs of maintaining the property. In such a case, the loss on the investment property can be offset against other income to reduce taxable income.

Because individuals on higher tax rates will gain a greater tax benefit from the loss deduction compared to individuals on lower tax rates, a possible strategy (provided CGT consequences and other circumstances have been considered as well) with married couples is to have the negatively geared property in the name of the spouse who earns the highest income. Of course, the benefit of this strategy reverses when the property yields a net income. Therefore, investment properties that are positively geared (ie when rental income exceeds the costs associated with the investment property) may be held in the name of the spouse with the lower taxable income. This also applies for interest-bearing deposits such as term deposits.

Be careful with rental property deductions

A measure that is in only its second year of operation, and therefore should not be forgotten, is that from 1 July 2017, taxpayers can no longer claim travel expenses related to inspecting, maintaining or collecting rent for a residential rental property, unless they are an excluded entity.

Rental property deductions are a red flag area for the ATO and it has warned that it will double the number of audits scrutinising such deductions this year. The ATO says that a random sample of returns with rental deductions found that 90% contained an error.

The ATO expects to more than double the number of in-depth audits this year, with a specific focus on over-claimed interest, capital works claimed as repairs, incorrect apportionment of expenses for holiday homes let out to others, and omitted income from accommodation sharing.

If an income-producing asset such as an investment property is damaged or destroyed, the taxpayer will need to work out the correct tax treatment of insurance payouts they receive and their costs in rebuilding, repairing or replacing the assets.

Pay superannuation contributions before 30 June

Both employees and self-employed individuals can claim a tax deduction annually to a maximum of $25,000 for personal superannuation contributions, provided the superannuation fund has physically received the contribution by 30 June and the individual has provided their superannuation fund with a “notice of intention to claim” document.

Taxpayers must be aware of exactly how long a superannuation contribution takes to reach a superannuation fund – for example, if a superannuation contribution is made one day before 30 June, but the payment is received in the superannuation fund’s bank account two days later (ie after 30 June), no tax deduction will be allowed in the 2019 income tax year.

An easy way to prevent any late payment issues is to pay superannuation contributions at the beginning of June each year.

Take note of 1 July superannuation changes

New rules mean “inactive” superannuation accounts (those that have received no contributions or rollovers for 16 months) will lose their insurance coverage from 1 July 2019 – unless the fund member wants to keep their insurance and takes action now.

This year’s Productivity Commission inquiry into superannuation highlighted concerns that many Australians’ super benefits are being eroded by fees and inappropriate insurance premiums. The government has now passed laws to force superannuation funds to take action – in some cases by cancelling insurance policies or paying benefits over to the ATO for consolidation.

TIP: The new laws broadly take effect from 1 July 2019 and apply to MySuper and choice products (eg retail and industry fund accounts), but don’t apply to SMSF trustees or small APRA funds.

Fees reform

The new laws ban superannuation funds from charging exit fees when a member wants to leave the fund, making it easier for members to close and consolidate their super accounts. For member account balances below $6,000, funds are also prohibited from charging annual administration and investment fees totalling more than 3% of the member’s account balance.

Insurance changes

Currently, many funds offer insurance on a default “opt-out” basis. Under the new laws, funds may not provide insurance for members of accounts that have been “inactive” (ie have not received any contributions or rollovers) for at least 16 months, unless specifically directed by the member. This means many existing insurance policies will be cancelled from 1 July 2019.

Funds are supposed to contact affected members, but everyone should check the following:

- Do I have an “inactive” account? This commonly includes workers with one or more old accounts from a previous job, parents taking time out of the workforce to care for children and even SMSF members who also keep an old public offer account open just for the insurance coverage.
- What insurance am I signed up to? How much am I paying annually in premiums, and what is the insured amount? Do I hold multiple policies for the same insurance?
- Do I want to keep the insurance cover? Your needs are unique and depend on your own financial and personal circumstances. If in doubt, seek professional advice.

If a member wishes to keep the insurance policy, they must make an election in writing before 1 July 2019.

Consolidating inactive low-balance accounts

Inactive accounts with balances below $6,000 will be paid over to the ATO, which will then consolidate the individual’s super into a single account. Even if a low-balance account has not received any contributions or rollovers for 16 months, the account will not be deemed “inactive” if the fund member has taken actions such as changing investment options or changing insurance coverage. Individuals can also elect not to be treated as an inactive account member by writing to the ATO.

Small business planning issues

From 1 July 2016, the small business turnover threshold has increased from $2 million to $10 million. However, thresholds for the small business CGT concessions remain at $2 million turnover or $6 million net asset test, and small business tax discount has a $5 million turnover threshold.

Small business company tax rate

From 1 July 2016, the income tax rate applicable to qualifying companies reduced to 27.5%. The reduction progressively applied to companies based on their aggregated turnover in the years in question.

The 27.5% tax rate will apply to companies as follows:

Year ended 30 June	Turnover
2017	$10 million
2018	$25 million
2019	$50 million

To qualify for the reduced income tax rate, companies must satisfy the passive income test (derive no more than 80% of their income from passive sources, as defined in the legislation).

In addition to prescribing the income tax rate applicable to companies, the turnover and base rate entity passive income test is also relevant to determining the rate at which companies can frank their dividends for an income year. It is important to note that, under the legislation, a company may have an income tax rate that is different from its franking rate.

TIP: Companies need to monitor their income tax rates as these may change from year to year. In particular, where rates are changing across years, companies may seek to time the derivation of income and/or the incurring of deductible expenses to take advantage of the changing rates (subject to prepayment rules and general anti avoidance rules).

Trapped franking credits

From a franking perspective, a company's maximum franking rate is determined according to its corporate franking tax rate. For 30 June 2019, the company will have a 27.5% corporate franking tax rate where its turnover for 30 June 2018 is less than $50 million and it satisfies the base rate entity passive income test based on its 30 June 2018 income.

If the company pays a franked dividend based on profits of a previous year where the company's tax rate was higher than the franking rate for the current year, there may be trapped franking credits eg previous year rate 30% and current year franking rate 27.5%, then 2.5% franking credits trapped in company.

TIP: Companies need to consider which franking rate they are subject to in the 30 June 2019 year, and which rate they will be subject to next year. Where the company may move from a 30% franking company in 2019 to a 27.5% franking company in 30 June 2020, there may be advantages in paying franked dividends prior to 30 June 2019 (subject to the position of the shareholders).

Small business restructure rollover relief

From 1 July 2016, small businesses (<$10 million turnover threshold) can use the small business restructure relief, which allows eligible taxpayers to transfer assets between related entities, including companies, trusts and individuals, without any income tax or CGT consequences. While this rollover can be very beneficial to a small business, care needs to be taken as the eligibility rules can be complex in some cases.

Superannuation guarantee contributions

The rate for superannuation contributions by employers on behalf of their employees under the superannuation guarantee for the year ended 30 June 2019 is 9.5%.

Employers must make superannuation guarantee contributions for their employees on a quarterly basis within 28 days after the end of each quarter (September, December, March and June).

TIP: Although the June 2019 quarter superannuation guarantee contribution does not have to be paid until 28 July 2018, tax deductions for the superannuation contributions will only be available in the 30 June 2019 tax year if the contribution is received by the superannuation fund by 30 June 2019.

Tax compliance and developments

Keep relevant documents and make timely elections

Taxpayers must keep all relevant documents, usually for five years, to show that they have incurred the expense for which they are claiming a tax deduction. If a taxpayer needs to make an election to have a specific concession apply (eg for the small business CGT concessions, or family trust and FBT elections), they should ensure such an election is made by the relevant deadline.

TIP: Generally, only a taxpayer who directly incurs an expense (and derives the related income) may claim the tax deduction.

Single touch payroll and group certificates

From 1 July 2018, employers with more than 20 employees are required to provide real time reports to the ATO of salary and wage payments, SGC contributions, ordinary time earnings of employees and PAYG withholding amounts.

From 1 July 2019, this system will extend to all employers.

Reports will be provided to the ATO using an approved format. Most popular software packages are being upgraded to accommodate the new ATO requirements. There will be no change to the due dates for payments of SGC contributions and PAYG withholding remittances, although employers may elect to pay (early) using the new software when they report to the ATO.

STP reporting will also mean changes for employees. When an employer reports through STP their employees will see their year-to-date tax and super information in myGov. This information will be called an income statement, and will be updated each time the employer runs their payroll.

Employers are no longer required to give their employees payment summaries for the information they report through STP. Payment summary information will be available in myGov at the end of the financial year on the employee’s employment income statement (some people may still refer to it as a group certificate).

Third-party reporting

The government has introduced a system of reporting for third parties in addition to the existing income tax, BAS and PAYG withholding reporting systems and annual investment income reports by investment bodies.

The system requires reports be provided to the ATO for the following:

- state and territory revenue and land titles offices must report all land or leasehold transfers (from 1 July 2016);
- ASIC, market participants and trustees of trusts with an absolutely entitled beneficiary must report on transactions relating to shares and units of unit trusts (from 1 July 2016);
- government grant payments (from 1 July 2017); and
- administrators of payment systems must report on electronic business transactions (from 1 July 2017).

Automatic exchange of information

Since 1 July 2014, Australian financial institutions have had to report to the ATO details of the accounts and other investments held by US Citizens. The ATO then reports that information to the U.S. Internal Revenue under the Foreign Account Tax Compliance Act (FATCA).

From 1 July 2017, this has been extended to all non-resident account holders and investors in Australian financial institutions under the Common Reporting Standard developed by the OECD. Therefore, from 1 July 2017, financial institutions must report these details to the ATO, which will on-report to the relevant foreign country. The ATO will also receive such reports of Australian citizens with accounts and investments with foreign financial institutions.

The definition of financial institutions for this purpose is very wide and, in addition to banks, it can include: managed funds, private equity groups, investment advisers, brokers, spread-betters, custodians, certain insurance entities, personal investment companies and certain trusts.

Beware of ATO impersonation scams at tax time

The ATO has recently warned taxpayers to be alert to malicious scammers who are using increasingly sophisticated methods and technology to impersonate the ATO. A new tactic on the rise involves “spoofing”, whereby scammers mimic a legitimate ATO phone number visible on caller ID to call or send SMS messages to taxpayers, or mimic a legitimate email domain to send emails.

The SMSs and emails sometimes ask the recipient to click on a link and provide their personal details in order to obtain an alleged “refund” from the ATO. Alternatively, the scammers may ask the taxpayer to pay a fake tax debt. The ATO warns Australians that these scammers intend to steal not only your money, but also sometimes your identity via your personal information.

The risk of falling victim to a “spoofing” scam is even greater considering that some scammers hold enough personal information about the targeted taxpayer to appear genuine.

How to spot a scam

As the ATO legitimately contacts taxpayers by phone, SMS and email from time to time, it’s important to know how to spot the tell-tale signs of a scammer who is impersonating the ATO.

The ATO does not:

- send emails or SMSs asking taxpayers to click on a link to provide details such as login, personal or financial information, or to download a file, open an attachment or install software;
- behave aggressively or threaten taxpayers with arrest, jail or deportation;
- ask taxpayers to pay an ATO debt via iTunes, pre-paid Visa cards or cryptocurrency;
- ask for payment of a debt by direct credit to a personal bank account – the ATO will only ask taxpayers to transfer money into an account with the "Reserve Bank of Australia"; or
- use its social media accounts (eg Facebook, Twitter and LinkedIn) to ask individuals for personal information such as tax file numbers.

What to do if you're targeted

If you are unsure whether a communication is legitimate, do not respond or click on any links or open any attachments. You can call the ATO's scam hotline on 1800 008 540 and they can tell you whether the communication was legitimate.

If you have made a payment to someone you later suspect is a scammer, you should report this to the ATO; contact your bank or financial institution; make a formal police report; and report the scam to SCAMwatch or the Australian Cybercrime Online Reporting Network (ACORN).

If you have provided personal information such as your tax file number to a suspected scammer, you should also call the ATO scam hotline as soon as possible.

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