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Businesses with aggregated annual turnover between $50 million and $500 million can still deduct the full

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About this newsletter

Welcome to our monthly tax and superannuation update. We hope you find the content informative. Should you require further information on how any of the content could affect you, please do not hesitate to contact John or Bill on (xx) xxxx xxxx or

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Businesses with aggregated annual turnover between $50 million and $500 million can still deduct the full cost of eligible second-hand assets costing less than $150,000 that are purchased by 31 December 2020 under the existing instant asset write-off. Also businesses that hold assets eligible for the existing $150,000 instant asset write-off will have an extra six months, until 30 June 2021, to first use or install those assets.

Small businesses (with aggregated annual turnover of less than $10 million) can deduct the balance of their simplified depreciation pool at the end of the income year while full expensing applies. The rules that prevent small businesses from re-entering the simplified depreciation regime for five years if they opt out will continue to be suspended.

Some existing conditions remain

The small business entities capital allowance provisions has always contained a section that permits assets that cost below a certain value to be written off 100% in the year the asset is first used or is installed ready for use for a taxable purpose. Initially, this amount was $1,000 but it has been subject to significant change in recent years.

On 12 March 2020, the Federal Government made announcements about stimulus packages intended to ameliorate the impending economic impact of COVID-19. If, in the period beginning on 12 March 2020 and ending on 30 June 2021, a small business taxpayer started to hold an asset and started to use it or have it installed ready for use for a taxable purpose, and the asset cost $150,000 or more, the decline in value deduction in relation to the asset for the year is 57.5% with the remaining amount being added to the general small business pool.

The new full expensing rules, applicable from Budget time on 6 October 2020, means that there is no limit on the cost of an eligible asset that can be written off by 100%. The backing business investment initiative will still be applicable to assets costing $150,000 or more and that were held and installed ready for use in the period 12 March 2020 to 6 October 2020.

The general small business pool is, broadly, a running total of the costs of fixed assets acquired by a small business entity that have not yet been depreciated and deducted for tax purposes. The pool, due to its method of operation, spreads the cost of assets over a number of years for tax purposes. The pool balance is added to when new assets are acquired and reduced when depreciation tax deductions are claimed, and balancing

continued page 4 ⇨

Both tax and SMSF audits on still on ATO's radar, but some leniency given

While the ATO has lately been focusing on the rollout of stimulus measures, it has also flagged that audit work is not off the table completely.

In late July, when the ATO fronted a parliamentary Senate Select Committee on COVID-19, its representative said plans were to start tax audits sometime between September and October 2020. Time and efforts however were diverted to the rollout of the JobKeeper scheme and other stimulus measures, with the ATO sourcing staff for this work by redeploying people from initiating audits, saying it had been a "conscious choice" not to initiate new audits during the peak of the pandemic.

But that, as they say in the classics, was then — and this is now. The takeaway for everyone is that audits will not go away, and will come at some point, so taxpayers and SMSF trustees need to have their affairs in order.

It may therefore be worth recapping some of the main triggers for tax audits, which includes:

- falling outside the ATO's small business benchmarks
- discrepancies between tax return income, and the income declared throughout the year on activity statements
- failing to lodge activity statements or returns on time
- underpayment of superannuation guarantee
- lifestyle assets not matching income
- business vehicles, but no FBT return is lodged, and
- consistently showing operating losses.

For the SMSF sector, "reciprocal" SMSF auditing (where two auditors agree to audit each other's funds) are expected to be an ATO focus when auditing gets back into full swing.

In January 2020, the Australian Professional Ethical Standards Board (the body that oversees and issues standards that SMSF professionals should comply with) released guidelines regarding independence. These guidelines specifically spelled out a potential new direction regarding the independence standards expected for SMSF auditing practices. The guidelines state that an auditor cannot audit an SMSF where the auditor, their staff or firm has prepared its financial statements, unless it is a "routine or mechanical service".

For firms that provide both accounting and auditing services, it may come down to many firms making a choice between providing one service or the other. The thing to be aware of is that the ATO has already flagged that the issue is already on its radar. It has however said it is not going to "commit compliance resources" until at least 2021.

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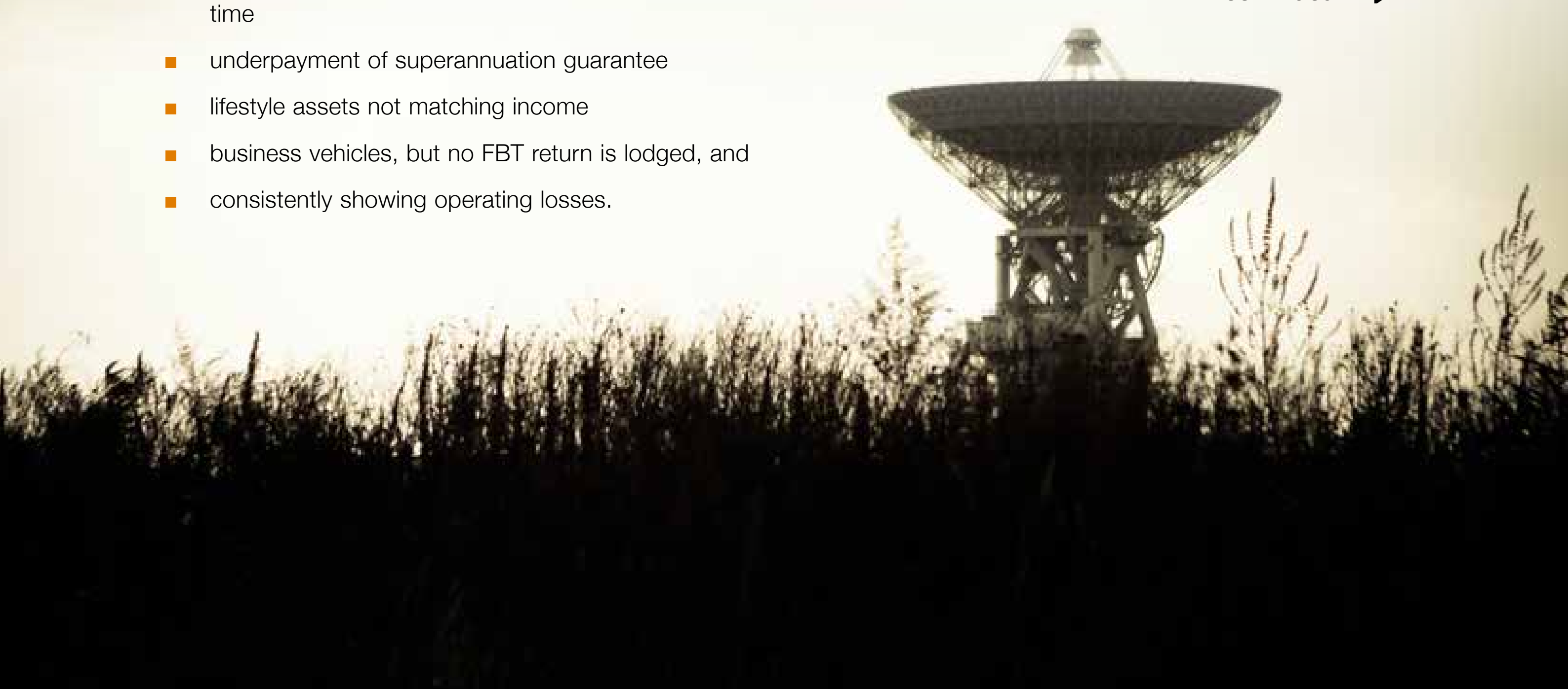

Both tax and SMSF audits on still on ATO's radar, but some leniency given *cont*

No penalties for asset valuations if insufficient evidence

In the meantime, the ATO has stated that that it will not impose penalties if it is satisfied that SMSF trustee finds it difficult to obtain the required valuation evidence for fund assets due to the impacts of COVID-19.

"If we are satisfied this was due to the impacts of COVID-19, the contravention will not result in penalties," the ATO says. "Instead the trustee will receive a letter from us advising them to ensure they comply with our valuation guidelines and have supporting valuation evidence by the time of their next audit if possible, as repeated contraventions can lead to penalties."

The rules state that it is not the auditor's role to determine the market value of the fund's assets but that it is the trustee's responsibility to provide documents requested by their auditor which supports the market valuation for their assets. This is the area that is subject to ATO leniency for the COVID-19 conditions.

The ATO does advise however that auditors should consider the need to modify their audit report and lodge an auditor/actuary contravention report (ACR), if necessary, during the 2020 and 2021 financial years. The ACR should include the reasons why the trustee was unable to obtain the appropriate evidence. ■

What the "full expensing" write-off deduction means for business *cont*

adjustment events occur. The "termination value" of an asset to which a balancing adjustment event has occurred is subtracted from the pool.

The small business capital allowance provisions have always contained a de-minimus provision that permits the total value of the pool to be written off when it falls below a certain value.

Meeting the required conditions

A number of conditions must be satisfied for assets to be full expensed. First of all the asset must be used in a business. Accordingly the full expensing of assets does not apply to an employee who has purchased a work-related asset. Also no balancing adjustment event must occur to the asset in the current year.

Note also that some assets are excluded such as capital works and assets allocated to a software development pool.

In most circumstances, a depreciating asset is "held" when the taxpayer becomes the legal owner of the asset, which is frequently not at the time of purchase or order. The taxpayer must start to use the asset, or have it installed ready for use, for a taxable purpose in the year ("the current year") in which the taxpayer wants to write-off 100% of the cost of the asset.

Anti-avoidance provision

It must be the case that the entity did not have a pre-commitment to acquire the asset prior to Budget night on 6 October 2020. Further, the asset must not have been held prior to that time. If a business had already entered into a commitment or had, in fact, purchased such an asset prior to that time, there is an obvious tax planning technique that could be engaged in to enable the new full expensing rules to apply to the asset.

The strategy targeted is where an order is cancelled and the business enters into a new purchase contract after 6 October. If an asset had already been held, the asset can be sold and a new one purchased after that time. Due to this, the new rules contain an anti-avoidance provision that seeks to prevent this type of tax planning where the asset acquired after budget time on 6 October 2020 is "identical or substantially

ATO’s cyber safety checklist

Scammers never seem to rest, with even the lastest JobKeeper iteration coming in for some scam treatment. In a new update the ATO reports that it is receiving reports of email scams about JobKeeper and backing business investment claims. “The fake emails say we’re investigating your claims. They ask you to provide valuable personal information, including copies of your driver’s licence and Medicare card.”

During this time of heightened scam activity, the ATO is encouraging individuals and businesses to:

- Use multi-factor authentication where possible and don’t share your password with anyone
- Run the latest software updates to ensure operating systems security is current
- Secure your private wi-fi network with passwords (not the default password) and do not make financial transactions when using public wi-fi networks
- Exercise caution when clicking on links and providing personal identifying information
- Only access online government services via an independent search – not via emails or SMS
- If in doubt, call the ATO on an independently sourced number to verify an interaction
- Educate your staff on cyber safety and scams.

To report a data breach or scam visit ato.gov.au/onlinesecurity ■

The investment option that can hide unexpected GST

New residential property is a popular investment for many, and can be especially so for self-managed superannuation funds, however the ATO is concerned that not every investor in residential property is fully aware that it is an option that may bring with it unexpected GST obligations.

The ATO says that from 1 July 2018, most purchasers must withhold an amount from the contract price at the date of settlement and pay it directly to the ATO. The sale price is paid to the property supplier. This applies to:

- new residential premises
- land that could be used to build new residential property ('potential residential land').

Purchasers who engage a representative when buying new residential property will need to complete a signed declaration so the representative can lodge two required forms and pay GST on behalf of the purchaser.

Purchasers who have a GST withholding obligation must complete and lodge two forms:

- when they sign the contract, lodge Form one: ***GST property settlement withholding notification*** using information from the supplier notification (see below)
- when the property settles
    - lodge Form two: ***GST property settlement date confirmation***, and
    - pay the GST withheld amount.

Ask us if you require these forms.

If there were any mistakes on Form two, the ATO should be contacted to have it cancelled before lodging a new form. If multiple properties are bought, lodging a new form for each property transaction will be required.

SUPPLIER NOTIFICATION

To complete Form one, the supplier (seller/vendor) needs to give the buyer a "supplier notification" so the purchaser knows whether or not there is a GST withholding obligation.

If there's an obligation to withhold GST, the supplier notification must include:

- the name and ABN of all suppliers
- GST branch number (if applicable)
- the amount of GST to be withheld (rounded down to the nearest dollar)
- when the GST must be paid
- GST-inclusive contract price (plus the GST inclusive market value of non-monetary considerations).

A supplier's written notice can be relied on:

- when it states a purchaser isn't required to pay an amount to the ATO. In most states and territories the standard contract of sale clearly states if a purchaser is required to withhold GST or not
- if the purchaser is unaware of an error on the notice and the supplier doesn't tell them.

However, if the purchaser or their representative knows that a supplier is registered for GST and selling new residential premises, the ATO considers it unreasonable not to withhold and pay an amount to it at settlement.

The ATO has stated that it won't retrospectively penalise purchasers who acted reasonably if it's later found that a supplier hasn't met their obligations. ■

Rounding of GST where fractions of a cent result

The ATO has devised special rounding conventions where an amount of GST includes a fraction of a cent. Although it labels these conventions “rules”, there is no obligation for parties on either side of a transaction to follow them, as the ATO states: “You and your customer do not need to use the same rounding rules.”

Where there is only one taxable sale on a tax invoice, the amount of GST should be rounded to the nearest cent (rounding upwards from 0.5 cents).

Where there is more than one taxable sale on a tax invoice, there are two conventions, dubbed by the ATO as the “total invoice rule” and the “taxable supply rule”:

1. TOTAL INVOICE RULE

Under this rule, the unrounded amounts of GST for each taxable sale should be totalled and then rounded to the nearest cent (again rounding up from 0.5 cents).

Alternatively, if all the taxable sales on a tax invoice include an amount of GST that is exactly one 11th of the price, the business may choose to add up the GST-exclusive value of each taxable sale, calculate GST on that amount, and then round to the nearest cent.

2. TAXABLE SUPPLY RULE

This rule deems that the business needs to work out the amount of GST for each individual taxable sale. Where the unrounded amount of GST has more decimal places than a standard accounting system can record, the amount should be rounded up or down as appropriate. Then the individual amounts are added up, and this total is rounded to the nearest cent (again rounding up from 0.5 cents). ■

JobKeeper extension's alternative turnover tests

The extension of the JobKeeper scheme is now based on current GST turnover, not projected turnover. The basic test compares year-on-year turnover. If there were events or circumstances outside the usual business settings that resulted in your relevant comparison period in 2019 (September or December 2019 quarter) not being appropriate, then an alternative test may apply.

However, if an entity satisfies the basic test, it does not need to satisfy an alternative test. Also, you only need to satisfy one of the alternative tests listed below even if more than one could apply.

The alternative turnover tests can be used to determine whether an entity has satisfied the actual decline in turnover test for the September 2020 quarter or the December 2020 quarter.

The ATO has provided alternative turnover tests for those businesses that don't fit the usual parameters, which can then be applied to qualify for JobKeeper payments. The following are scenarios that may fit a number of situations. Ask us if these may help you business qualify.

- Business that started after the comparison period started but before 1 March 2020
- Business acquisition or disposal that changes the entity's turnover
- Business restructure that changed the entity's turnover
- Business that has had a substantial increase in turnover
- Business affected by drought or natural disaster
- Business that has an irregular turnover
- Sole trader or small partnership with sickness, injury or leave
- Business that temporarily ceased trading during the relevant comparison period ■