

Practice Update

September 2016

Pre-retirees: Avoid 'too good to be true' tax schemes

The ATO has launched a new project called 'Super Scheme Smart', an initiative aimed at educating individuals about the potential pitfalls of 'retirement planning schemes', to keep them safe from risking their retirement nest egg.

According to the ATO, individuals most at risk are those approaching retirement, including anyone aged 50 or over, looking to put significant amounts of money into retirement, particularly SMSF trustees, self-funded retirees, small business owners, company directors, and individuals involved in property investment.

While retirement planning schemes can vary, there are some common features that people should be aware of.

Usually these schemes:

- ◆ are artificially contrived and complex, usually connected with a SMSF;
- ◆ involve a lot of paper shuffling;
- ◆ are designed to leave the taxpayer with minimal or zero tax, or even a tax refund; and/or
- ◆ aim to give a present day tax benefit by adopting the arrangement.

Individuals caught using an illegal scheme identified by the ATO may incur severe penalties under tax laws, which includes risking the loss of their retirement nest egg and also their rights as a trustee to manage and operate a SMSF:

"Retirement planning makes good sense provided it is carried out within the tax and superannuation laws. Make sure you are receiving ethical professional advice when undertaking retirement planning, and if in doubt, seek a second opinion from an independent, trusted and reputable expert".

For more information about the specific schemes, they can visit their website at www.ato.gov.au/superschemesmart

ATO assistance with the pending \$500,000 lifetime super cap

In the 2016/2017 Federal Budget, it was announced that, from 7:30pm (AEST) on 3 May 2016, there will be a lifetime cap of \$500,000 on non-concessional (i.e.,

non-deductible) superannuation contributions.

This new lifetime cap is proposed to take into account **all** non-concessional contributions an individual has made **on or after 1 July 2007**.

Therefore, taxpayers **currently** planning to make non-concessional contributions may need to check their **historical** non-concessional contributions, back to 1 July 2007. Fortunately, the ATO has stated that, where individuals and funds have met their lodgement obligations, the ATO will be able to calculate and report these amounts for the period from 1 July 2007 to 30 June 2015.

Editor: If you are considering making such contributions but are unsure of your past non-concessional contributions, let us know, as we can expedite getting the ATO to make these calculations.

Deductibility of gifts provided to clients

The ATO has confirmed that a taxpayer carrying on business is generally entitled to a deduction for expenses incurred on a gift made to a former or current client, if the gift is characterised as being made for the purpose of producing future assessable income.

However, the expense may not always be deductible (e.g., if the gift constitutes the provision of entertainment that is not deductible).

The ATO's recent determination also highlights that a deduction will be denied where expenditure on gifts is more accurately described as being 'private' in nature (for example, where a gift is provided to a relative outside a business' usual practice of providing client gifts).

Deductibility of airport lounge memberships

The ATO has also confirmed that the cost to a business taxpayer of a yearly airport lounge membership (e.g., Qantas Club, Virgin Lounge) that will be used by its employees is ordinarily deductible, and should not give rise to any FBT liability for the employer (even if the majority of (or indeed *only*) use of the airport lounge membership is for private purposes).

Phoenix Taskforce swoops on dodgy businesses

The ATO's stance against phoenix activity has continued with multiple search warrants issued, and many business and residential sites accessed without notice across Victoria and Queensland, as part of a criminal investigation into unpaid superannuation, employee withholding, GST, and income tax.

Editor: 'Phoenix activity' refers to a business that shuts down whilst still owing creditors, employees and the ATO lots of money, and then starts up again perhaps somewhere else or under a new name.

Deputy Commissioner Michael Cranston said "By showing up unannounced we're able to access records that we might otherwise never have seen. This information is then used to take further compliance action, and shared among our partner agencies to better inform our strategies targeting the 50 highest-risk phoenix operators."

What employees of these companies should be looking out for

Mr Cranston stated that there are a number of signs that a business someone is working for may be involved in phoenix behaviour:

"Employees may be pressured to take leave or have their employment status changed from permanent to casual. They may also notice that there are frequent changes in the identity of the company that is paying their wages, or that their superannuation entitlements are not paid."

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.

Employees who suspect that a company they are dealing with is exhibiting any of these signs should get in touch with the ATO by reporting it online or by calling 1800 060 062. *Editor: Or contact us!*

ATO exposes dodgy deductions

With over eight million Australians claiming work-related expenses each year, the ATO is reminding people to make sure they get their deductions right this tax time.

Assistant Commissioner Graham Whyte said that, in 2014/15, the ATO conducted around 450,000 reviews and audits of individual taxpayers, leading to revenue adjustments of over \$1.1 billion in income tax.

"Every tax return is scrutinised using increasingly sophisticated tools and data analytics developed (by) the ATO. This means we can identify and review income tax returns that may omit information or contain unreasonable deductions," Mr Whyte said.

The ATO also set out some case studies, which provide a fascinating insight into the ATO's methods, including:

- ❑ A medical professional who made a claim for attending a conference in America, and provided an invoice for the expense, but when the ATO checked, it found that the taxpayer was *still in Australia* at the time of the conference (the claims were disallowed and the taxpayer received a substantial penalty); and
- ❑ A taxpayer who claimed deductions for car expenses, but the ATO found they had recorded kilometres in their log book on days where there was *no record of the car travelling on the toll roads*, and further inquiries identified that the taxpayer was out of the country. Their claims were also disallowed.