

Practice Update

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if you have any queries

NOVEMBER 2015

Immediate deductibility of capital start-up expenses

From 1 July this year, new provisions apply to allow certain small businesses, or an entity that is not in business, to immediately claim some start-up costs, including business costs associated with raising capital.

Claimable business-related start-up costs

Expenses can be fully deductible in the year in which they are incurred if the expenditure relates to a small business that is proposed to be carried on and is either:

- ◆ incurred in obtaining advice or services relating to the proposed structure or the proposed operation of the business (e.g., advice from an accountant or lawyer); or
- ◆ a payment to an Australian government agency of a fee, tax or charge incurred in relation to setting up the business or establishing its operating structure (e.g., the ASIC fee for registering a company).

It does not include the cost of acquiring assets that may be used by the business.

Data matching program – on eBay online sales

The ATO has announced that it will acquire online selling data relating to between 15,000 and 25,000 individuals who sold goods and services of \$10,000 or more on eBay between 1 July 2014 to 30 June 2015.

Data will be sought from eBay Australia and New Zealand Pty Ltd, a subsidiary of eBay International AG which owns and operates www.ebay.com.au.

The data requested will include information that enables the ATO to match online selling accounts to a taxpayer, including name, address and contact information, as well as information on the number and value of transactions processed for each online selling account.

These records will be electronically matched with certain sections of ATO data holdings to identify non-compliance with registration, lodgment, reporting and payment obligations under taxation laws.

New multi-agency approach to fight serious financial crimes

Since 1 July this year, a new Serious Financial Crime Taskforce has been operating to ensure that Commonwealth financial crimes are disrupted and deterred.

The Taskforce is led by the Australian Federal Police, and also includes:

- ◆ the ATO;
- ◆ Australian Crime Commission;
- ◆ the Attorney-General's Department;
- ◆ AUSTRAC;
- ◆ ASIC;
- ◆ Commonwealth Director of Public Prosecutions; and
- ◆ the Australian Border Force.

The Taskforce will work closely with international partner agencies, governments and organisations around the world and will initially concentrate on international tax evasion and criminality related to trusts and 'phoenix activity' (when companies deliberately and repeatedly liquidate to avoid paying creditors, employee entitlements and taxes).

ATO and United States IRS share bank information

The ATO has announced that it has undertaken its first ever automatic sharing of bank information with the United States (US) Internal Revenue Service (IRS).

Details of over 30,000 financial accounts worth over \$5 billion are being provided to the US.

The information provided on US citizens and tax residents with Australian bank accounts is the first step in transparency measures being implemented globally by Governments and tax administrations.

Beginning in 2017, close to 100 countries will be sharing non-resident data under the OECD Common Reporting Standard.

In return, the ATO will receive data from the IRS about Australians with financial accounts in the US, and will use that data to detect cases of undeclared offshore income and tax evasion.

Small Business Protections from unfair contract terms

Editor: There are laws protecting consumers from unfair terms in 'standard form contracts' where the person has little or no opportunity to negotiate with the business concerned.

*Businesses use standard form contracts to more efficiently deal with their customers. However, because the business is often in a somewhat superior bargaining position, there are laws in place to protect consumers from **unfair terms** in a standard form consumer contract.*

The government has announced it will extend consumer unfair contract term protections to small businesses as well.

The changes will cover standard form contracts where at least one of the parties employs less than 20 people, and where the upfront price of the contract does not exceed \$300,000 or \$1 million for contracts longer than 12 months.

ATO moves on cafés & restaurants

The ATO has advised that it will be visiting restaurants, cafés and take-aways in Box Hill (Melbourne) over the coming months as part of its ongoing Australia-wide program involving the café and restaurant industry.

Assistant Commissioner Michael Hardy said similar visits in Sydney and Adelaide with over 500 cafés had been well-received, with businesses keen to meet with the ATO to better understand their obligations, as well as learn about available help and support.

"Where taxpayers are unwilling to work with us or continue to cause us concern, we will undertake further investigation. In Sydney, for example, we have now moved to auditing businesses that did not want to work with us."

The ATO and its regulation of SMSFs

Editor: In a recent speech, Kasey Macfarlane, Assistant Commissioner, SMSF Segment, Superannuation, discussed the issues facing SMSFs and their aging trustees. The following is an excerpt from her speech.

Planning ahead – cognitive decline

"I'd like to touch on the increasingly important topic of cognitive decline. Dementia is on the rise and currently affects one in ten people over 65, and three in ten over 85."

"Even mild dementia will affect a person's ability to make financial decisions. SMSF numbers continue to grow, and . . . require a high level of financial decision making."

"While many trustees remain perfectly capable of effectively managing their financial affairs well past retirement age, there is a risk that some with diminished capacity to effectively manage their fund may nevertheless continue to do so."

"As my colleague Matthew Bambrick said back in March, 'These issues are a time bomb waiting to go off if not addressed now'."

"It's essential to ensure that all trustees are genuinely involved in managing SMSF funds, to agree in advance about decision points and exit decisions, to have a will, and appoint an enduring guardian and power of attorney."

Editor: If you would like to discuss this important issue further, please contact our office.

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.