

## Tax News and Updates February 2022

### Release From a Tax Debt

In certain circumstances, the ATO can permanently remove some or all of an individual's tax debt, which is referred to as a 'release' - companies, trusts and partnerships cannot apply to have tax debts released.

The ATO can only release a tax debt where paying the debt would mean that the taxpayers cannot provide for him/herself, their family or others for whom they are responsible.

The most common tax debts that can be considered for release are:

- income tax
- PAYG tax instalments
- Medicare levy
- Medicare levy surcharge
- withholding taxes on dividends, interest or royalties
- some penalties and interest charges associated with these debts.

Tax debts that cannot be released include:

- GST
- PAYG withholding
- excess contribution tax (ECT)
- super guarantee charge (SGC)
- director penalty notices.

Taxpayers need to apply to the ATO to have a debt released - before the application can be considered:

- all outstanding tax returns and activity statements need to be lodged so the total debt can be determined.
- the taxpayer must provide up-to-date contact information so they can be contacted by the ATO during the process.
- if there is an unresolved dispute with the ATO (e.g. an objection to an income tax assessment) it will need to be finalised first.

Click [here](#) for further information.

### ASIC Issues Warning to SMSFs on Cryptocurrencies

With consumers and SMSFs increasingly being targeted with marketing to invest in crypto-assets, ASIC has issued a warning urging SMSFs to consider the risks of these investments.

ASIC said it had noticed an increase in marketing recommending people switch from retail and industry superannuation funds to SMSFs so that they can “invest in a high return portfolio” which includes crypto-assets.

ASIC also said consumers should also be wary of people “cold calling”, text messaging, or emailing with a recommendation to transfer their super to an SMSF or invest in crypto-assets via their existing SMSF.

Before setting up a SMSF to invest in risky assets such as crypto, or making this type of investment in their existing SMSF, trustees should:

- seek professional advice to ensure the investment is appropriate for their circumstances.
- ensure the asset is permitted under the superannuation rules and the fund’s trust deed.
- ensure the investment is made in accordance with the investment strategy.
- be able to demonstrate that the fund owns the asset.

### **Sub-Contract Plumber Deemed an Employee for Superannuation Purposes**

The Administrative Appeal Tribunal (AAT) in the case of The Trustee For Viridis Family Trust t/a Rickard Heating Pty Ltd and Commissioner of Taxation (Taxation) [2022] AATA 3, has held that a plumber was an “employee” pursuant to the extended meaning of that term in s 12(3) of the Superannuation Guarantee (Administration) Act 1992 for a person working under a contract that is wholly or principally for labour.

The brief facts were these:

- the taxpayer conducted a business selling and installing cooling and heating systems.
- it engaged a Mr Pirie under a letter of engagement which described him as a “Sub-contract plumber” for which he was paid an hourly rate for work allocated each day.
- there was no capacity to delegate the work.

The AAT affirmed the Commissioner's decision that the 'independent contractor' was an 'employee' for the purposes of compulsory superannuation guarantee. The 'contract' was principally for the labour of the 'contract plumber' and the fact he was carrying on his own business was irrelevant for superannuation guarantee purposes.

The superannuation issue arose because the plumber was engaged in his personal capacity. The outcome would have been different if he had have been engaged via a private company.

### **Value of Goods Taken from Trading Stock for Private Use by Business Owners**

The ATO has published Taxation Determination [TD 2021/8](#) outlining amounts that it will accept as estimates of the value of goods taken from trading stock for private use by taxpayers carrying on a business personally or in partnership. Such amounts are deemed to be assessable income of the taxpayer.

The industries covered by the Determination include bakery, butcher, restaurant/café, caterer, delicatessen, fruiterer/greengrocer, takeaway food shop and mixed business (incorporating milk bars, general stores and convenience stores). The Commissioner notes in the Explanation that a lesser value for goods taken from stock may be used if it can be justified and conversely, where a value of goods would be significantly greater, that value should be used.

For businesses trading as companies and trusts, FBT and Division 7A would need to be taken into account.

### **ABN Cancellation Program**

The ATO is currently reviewing Australian Business Numbers (ABNs) to identify inactive ABNs that should be cancelled. The review includes an automated process allowing businesses or individuals to advise that an

ABN is still required. The ATO advises that ABNs may be selected where there is no business activity in an income tax return or no signs of business activity in other lodgements or third party information.

Note if the ATO has cancelled an ABN and the taxpayer is still entitled to one, they will need to contact the ATO to have it reactivated.

Click [here](#) for further information.

### **Single Touch Payroll Phase 2**

STP Phase 2 broadens the amounts that employers are required to report under the STP rules, including greater detail of salary and wage payments, and child support deductions and garnishee amounts made by employers. It becomes mandatory from 1 January 2022 if your solution is ready.

If your solution is ready and you can start Phase 2 reporting before 1 March 2022, you'll be considered to be reporting on time and you won't need to apply for more time. Deferrals are automatically available to clients of digital service providers who obtain deferrals. However, if you need more time to transition, you can apply for your own deferral.

Click [here](#) for further information.