Tax News and Updates October 2021

Proposed new reporting obligations for the share economy

The share economy has opened up opportunities for people to earn additional income with little capital investment required. Examples include working as an Uber driver (using the car you already own), or letting out your home through Airbnb for the occasional period of time.

The income is subject to income tax, but not everyone participating in the share economy is declaring that income on their tax returns.

This latest measure, aimed squarely at the share economy, is to compel “electronic distribution platform” (EDP) operators such as Uber, Airbnb and Deliveroo to report information about their platform users to the ATO.

Draft legislation has been released which if enacted, will be the latest addition to a number of existing payment reporting systems. It is proposed the reporting regime will apply as follows:

- From 1 July 2022 for taxi and ride-sourcing travel, and short-term accommodation.
- From 1 July 2023 for asset sharing, food delivery, tasking-based services and other services.

The nature of the share economy is such that it does not use cash, and so records of earnings, bank account deposits, etc are simply there to be seen. However, it is costly and cumbersome to administer tax compliance by the traditional way of investigating individual taxpayers. Instead, it is far more effective to receive standardised reported data from EDP operators, and then data-match to disclosures on tax returns. This efficiently identifies discrepancies, which can then be investigated further.

The reported information will include an individual’s name, ABN and total payments received. EDP operators will be required to report the data to the ATO annually, although the ATO has the power to require more frequent reporting.

Deductions for vacant land

The law has changed since 1 July 2019 to limit deduction that can be claimed (e.g. interest, rates, land tax and maintenance) for vacant land. Importantly this change applies to land held before and after this date.

Land will be considered vacant during the period the entity held the land if:

- it did not contain a substantial and permanent structure
- it contains a substantial and permanent structure and the structure is a residential premises which was constructed or substantially renovated while the entity held the land and the premises are either:
    - not yet lawfully able to be occupied.
    - lawfully able to be occupied but not yet rented or made available for rent.

Therefore deductions can be denied for residential premises not available for rent (e.g. due to substantial renovations).

To claim deductions for vacant land, the land must also meet one of the following:

- be held by a type of entity not affected by the change (e.g. a company).
- be used in a business.
- be held by a primary producer and leased by other entities.

There is a 3 year "exceptional circumstances" exemption from the rules if the property has not been rented due to COVID-19.

Example - Vacant land no substantial and permanent structure

Jess purchased a block of land in Brisbane in July 2020 and intends to build a rental property on it. Jess engaged an architect to develop plans and erected some temporary fencing to stop illegal dumping. As the land doesn't yet contain a substantial and permanent structure Jess can't claim deductions for the costs of holding the land.

Click here and draft tax ruling TR 2021/D5 for further information.

Disguising undeclared foreign income as gifts or loans from related overseas entities

The ATO has released Taxpayer Alert TA 2021/2 in relation to situations concerning the disguising undeclared foreign income as gifts or loans from related overseas entities.

The ATO are currently undertaking reviews and audits and are actively engaging with taxpayers who have entered into these arrangements.

As part of that process they use data provided by foreign countries, AUSTRAC, as well as the data they receive via the Common Reporting Standard and the Foreign Account Tax Compliance Act.

Taxpayers and their advisers who enter into these arrangements will be subject to increased scrutiny and may be at risk of potential sanctions under criminal law.

The ATO has also published guidance on the types of documentation that they would expect to see to verify that the amount received is a genuine gift or loan.

Click here for further information

Superannuation rollovers using superstream

SuperStream requires employers to pay superannuation and send employee information electronically in a standard format. This links the data to the payment by a unique payment reference number.

Many SMSFs will already be SuperStream-ready because SMSF trustees are required to receive employer contributions electronically (including both the amount of the contribution and the contribution information).

From 1 October 2021, SMSF trustees must use SuperStream Rollover for any rollovers (other than in-specie rollovers) into or out of the SMSF. Requests to rollover member benefits into or out of your SMSF cannot be processed unless you are SuperStream Rollover ready.

To rollover your member's superannuation benefits out of your SMSF, you will need to use the SMSF member TFN Identity Check Service (SMSFmemberTICK) to validate the TFN prior to processing the rollover.

If you are rolling over the benefits to another SMSF, you are also required to use the SMSF verification service (SVS) to verify the receiving SMSF details before making the rollover.

SMSF trustees contemplating a rollover need to start planning for the changeover now so that you are ready to use SuperStream Rollover from 1 October 2021**.**

SMSF annual return enforcement action for non-lodgers

The ATO has said that an alarming 25% of new SMSF's established in the 2019/20 year have failed to meet their first lodgement obligation.

Of particular concern to the ATO is where there has been a rollover into those SMSFs as this is a strong indicator that illegal early release of benefits may have occurred.

The ATO has now implemented new enforcement procedures to reduce the number of SMSF trustees who are failing to meet their statutory obligation of lodging their fund's annual return – this involves three different pieces of correspondence with increasing seriousness:

- a blue branded nudge letter that encourages the trustee to take immediate action and lodge [the fund's return]. It also outlines a pathway if those trustees need ATO help and support.
- if no response is received to this letter, The ATO will issue an amber letter that advises the trustee of the potential consequences of not lodging their return. These enforcement actions include imposing failure-to-lodge penalties for all overdue years, raising the full assessments for each year of non-lodgement with penalties of up to 75 per cent, issuing a notice of non-compliance and/or disqualifying the trustees.
- If there is still not a response, the ATO will issue a final warning. It's a red letter confirming the next time the trustees hear from the ATO, they will have taken the enforcement action specified in the previous letter.

Tax loss carry back rules for companies

If your business is a corporate tax entity (company, corporate limited partnership or public trading trust), you may be eligible to claim the loss carry back tax offset in your 2021 company tax return.

If you’re eligible, you can carry back losses to the 2018-19 or 2019-20 years where there was an income tax liability.

To complete the company tax return, you need to know:

- your opening and closing franking balance – your offset is limited by your closing franking account balance, so review your franking account balance before lodging your return.
- your aggregated turnover.
- the amounts of tax losses you’re carrying back.
- your tax liability for the income year you’re carrying the losses back to.
- any amounts of unutilised net exempt income for the income years you’re carrying the losses back to.

Instead of carrying back a loss you may choose to carry it forward to use in a later income year. However, a loss can only be used once.