BUSINESS BULLETIN AUTUMN 2018

TAX – Unpaid Superannuation

The ATO is cracking down on unpaid Superannuation Guarantee (SG). As a matter of urgency, employers need to ensure compliance in this area.

Exposure draft legislation was recently released which will require superannuation funds to more regularly report directly to the ATO (at least once per month) on SG amounts that have been paid. With increased reporting by the superannuation funds themselves, non-compliant employers will be detected more easily and more quickly by the ATO. The legislation will also introduce criminal penalties for failure to comply with an ATO direction to pay SG (including prison terms of up to 12 months in the most serious of cases).

To complement this crackdown, in April the ATO also released a Fact Sheet explaining its compliance and penalty approach in relation to employer SG obligations. This approach applies to employers who are unable or unwilling to meet their SG obligations, including non-payment, under-payment, or late payment of SG contributions to an eligible employee. The ATO states that in deciding what action to take against employers, it takes a differentiated approach depending on what category an employer falls into as follows:

(a) Employers who are not compliant but actively engage with the ATO to become compliant for past unpaid amounts

You will be deemed to have engaged with the ATO where you maintain regular contact with the ATO, provide all information requested and take corrective action when the ATO requests that you do so. Where this is the case, the ATO states that it is unlikely to impose additional penalties provided your business has a compliance history that demonstrates that you have been generally compliant with SG in the past.

(b) Employers experiencing difficulty meeting their obligations

Employers who fall into this category are encouraged by the ATO to contact them as soon as possible if you need assistance to lodge the required

KEY DATES

21 MARCH

Due date for February monthly Activity Statements

21 APRIL

Due date for March monthly Activity Statements

28 APRIL

Due date for quarterly Superannuation Guarantee contributions

28 APRIL

Due date for 3rd quarter Activity Statements (if lodging by paper)

21 MAY

Due date for April monthly Activity Statements

26 MAY

Due date for 3rd quarter Activity Statements (if using a BAS Agent or Tax Agent)

28 MAY

FBT annual Return - due for lodgement

28 MAY

Due date for Superannuation Guarantee Charge Statement if you failed to meet your 28 April contributions on time.

TAX – Unpaid Superannuation cont...

documentation (an *SG Charge Statement*) or to discuss your inability to pay the unpaid superannuation. The ATO does have the discretion to consider waiving – either in part or in full – certain penalties, but only where the employer has attempted to comply and has an otherwise good SG compliance history.

(c) Employers who are able but unwilling to meet their obligations

The ATO advises that it will take firm compliance action if this category of employer fails to engage by not promptly replying to the ATO's correspondence or not actively taking steps to pay the SG owing. Action taken by the ATO in this instance may include:

- Collecting amounts owed directly from an employer's bank or third-parties that owe the employer money - garnishee orders
- Collecting amounts owed directly from company directors (making them personally liable)
- Action that may result in bankruptcy or liquidation (such as a bankruptcy notice or wind-up action).

Take-Home Message

Armed with increased superannuation fund reporting and beefed up penalties (see earlier), the ATO is targeting non-complying employers. Ensure that you are complying and, where there is a shortfall of SG in past quarters, address this immediately by paying the shortfall and lodging *SG Charge Statements* where appropriate. In view of the ATO's recently-announced compliance approach, if your business is having difficulty meeting its obligations, contact the ATO as soon as possible. Failure to engage with the ATO may expose your business and possibly yourself to the ATO's harshest available sanctions outlined above.

BUSINESS RISK – Cyber Security

The Government's new information security laws are now operational and have the potential to impact many businesses!

From 22 February, businesses are now required to notify affected individuals (e.g. clients, employees etc.) and also the Office of the Australian Information Commissioner (OAIC) of a data breach. In a nutshell, the new regime requires certain organisations (many businesses and Government agencies) to notify individuals likely to be seriously impacted in the event of a data breach at that organisation. These organisations include:

(a) All entities subject to the Commonwealth Privacy Act (most Government agencies and private sector organisations with a turnover of $3 million or more)

(b) Certain credits providers

(c) Credit reporting bodies, and

(d) TFN recipients.

The new legislation considers a breach to have occurred when data is accessed by an unauthorised entity, and that generates a real risk of serious harm to the individuals and businesses whose personal information has been disclosed. Data breaches need not involve malicious actions from third-parties (such as theft or hacking). Rather they can also result from internal errors or process failures that cause accidental loss or disclosure. Drilling down into the details of the legislation, the remedial action that an organisation must take is in the form of a notification. Specifically, the legislation requires the above-listed organisations to notify "eligible data breaches" - which are likely to result in serious harm to any individuals and businessnes to which the information relates - to the OAIC and also to the affected individuals themselves and businesses. Notification must be made as soon as possible after the organisation becomes aware that "there are reasonable grounds to believe that there has been an eligible data breach of the entity".

Examples of an "eligible data breach" are quite wide-ranging and include when:

- A device containing a client's personal information is lost or stolen and there is no way of managing it remotely or ensuring that it hasn't been accessed
- A database containing personal information is hacked
- Personal information is mistakenly provided to the wrong person (staff accidentally email personal information of a client to another individual).
- There is unauthorised access to a spreadsheet containing client financial information.

If your own systems/passwords were hacked you may in the worst cases be required to notify all your clients, employees/associates and other third parties depending on the severity of the breach. The requirement to notify may therefore have a crippling effect on the reputation of your business, not to mention be an onerous process to undertake. It may also open you to civil action by these parties. Failure to comply with the legislation itself (by not making notifications where breaches have occurred) may result in fines from the OAIC (maximum $1.8 million corporations, $60,000 individuals).

Ensure your information security controls are adequate and improve them where necessary (this may involve staff training or cyber security technology upgrades etc.). Even where your business is not captured by the new regime, data security breaches can cause immense damage to your and your customers, so ensure adequate controls are in place.

TIME MANAGEMENT – Automation

One of the modern day problems that most people – and especially business owners – identify is lack of time in the day! To this end, challenge yourself to take a look at your average work day and make a list of the things you do that are capable of being automated or better streamlined through the use of technology. There's an incredible range of resources available online, some free and some paid, that can automate your business processes and boost your productivity. The upshot is more time to focus on your business or you (or both). Try it for yourself. Keep a log of the individual tasks you do in an average week (much like writing down what you consume if you were on a diet). At the end of the week, ask the critical question of each task as to whether it could be improved with technology or even automated altogether. You'll be surprised at the outcome.

FINANCES – Cash Flow Forecast

Because cash is the cornerstone of business, planning your cash flow is vital. Studies suggest that the failure to plan cash flow is one of the leading causes of small business failure. To this end, a Cash Flow Forecast is a crucial cash management tool for operating your business effectively. Specifically, a Cash Flow Forecast tracks the sources and amounts of cash coming into and out of your business over a given period.

It enables you to foresee peaks and troughs of cash amounts held by your business, and therefore whether you have sufficient cash to fund your debts at a particular time. Moreover, it alerts you to when you may need to take action – by discounting stock or getting an overdraft, for example – to make sure your business has sufficient cash to meets its needs. On the other hand, it also allows you to see when you have large cash surpluses, which may indicate that you have borrowed too much, or you have money that ought to be invested. In practical terms, a Cash Flow Forecast can also:

- make your business less vulnerable to external events in the economy, such as interest rate rises
- reduce your reliance on external funding
- improve your credit rating
- assist in the planning and re-allocation of resources, and
- help you to recognise the factors that have a major impact on your profitability.

At this point, a distinction should be drawn between profit budgets and Cash Flow Forecasts. While budgets are designed to predict how viable a business will be over a given period, unlike Cash Flow Forecasts, they include non-cash items, such as depreciation and outstanding creditors. By contrast, as stated above, a Cash Flow Forecast focuses on the cash position of a business at a given period. Non-cash items do not feature. So while budgets will give you the profit position; Cash Flow Forecasts will give you the cash position. Cash flow forecasting can be used by, and be of great assistance to, the following entities:

- business owners
- start-up businesses
- borrowers
- creditors .

Talk with your Accountant or Bookkeeper today about developing a Cash Flow Forecast for your business.