

Client Newsletter

Year End Employer Obligations and Employment Update For the year ending 30 June 2017

This special edition of our newsletter is to remind you of your 2017 financial year employer obligations and provide you with an update on employment matters:-

IMPORTANT CONSIDERATIONS

1. DIRECTOR'S PERSONAL LIABILITY

Directors of a company will be personally liable for unpaid PAYG withholding and Superannuation Guarantee Charge if the company fails to pay the amounts due within 90 days of the due date and the debt was not reported to the ATO within three months of the lodgement date. We also note that these expanded director liability provisions can have retrospective effect on existing PAYG withholding debts that were unreported for three months. The previous option of placing a company into administration within 21 days of issue of a notice from the ATO is no longer available. All Directors must ensure that companies for which they are acting as directors pay their PAYG withholding and Superannuation Guarantee Charge obligations in a timely manner but more importantly lodge the required documents no later than three months after the due date. There are very limited grounds for exemption from liability and in some circumstances the debts can become your personal non tax-deductible liability.

2. PAYROLL OBLIGATIONS - LODGEMENT DEADLINES

PAYG Payment Summaries are to be provided to each employee by **14 July 2017**.

PAYG Payment Summaries and the Annual Statement are required to be lodged with the ATO by **14 August 2017**.

3. TAXABLE PAYMENTS REPORTING

Businesses in the building and construction industry need to report the total payments they make to each contractor for building and construction services each year. The "Taxable Payments Annual Report" needs to be lodged with the ATO by **28 August 2017**. The definition of "building and construction industry" will be widened to include contractors in the courier and cleaning industries from 1 July, 2018.

4. REPORTABLE EMPLOYER SUPERANNUATION CONTRIBUTIONS

If you make super contributions for an employee under a salary sacrifice arrangement (or make extra super contributions to a super fund for an employee where the extra super contributions have been influenced by the employee), you must report those contributions on your employees Payment Summary. These contributions are called "Reportable Employer Super Contributions". Generally contributions in excess of the Superannuation Guarantee Charge will be reportable (i.e. greater than 9.5%).

Reportable employer super contributions are not included in your employee's assessable income, however:-

- You must report them to the ATO as part of your Payment Summary reporting
- Your employees must report them to the ATO in their income tax returns
- Reportable employer super contributions affect a range of government entitlements and obligations for individuals

5. [SUPERANNUATION CHOICE](#)

Since 1 July 2005 the majority of employers have been required by law to provide their employees with a choice of superannuation funds for their superannuation contributions. New employees must be provided with a standard choice form within 28 days of commencement of employment.

From 1 October 2013, employers must make contributions for employees who have not made a choice of fund to a fund that offers a MySuper product in order to satisfy superannuation guarantee requirements. These superannuation products have stricter regulations by the Government for lower fees and documentation.

6. [SUPERSTREAM](#)

SuperStream is the mandatory electronic system of reporting, paying and receiving superannuation contributions.

All superannuation funds receiving SuperStream contributions must also comply with the standard. Both employers and Self Managed Super Funds (“SMSF’s”) need to ensure they are familiar with the requirements and are compliant.

To reduce the administrative burden and meet your superannuation payment obligations more easily, the Small Business Superannuation Clearing House is a free Government service that is available for businesses with 19 or less employees. The Clearing House lets you pay your superannuation contributions in one transaction to the Clearing House who will then distribute the contributions to the appropriate fund on your behalf. Further information and registration details can be obtained from the following link:

<http://www.humanservices.gov.au/smallbusinesssuper>

7. [SUPERANNUATION CHANGES](#)

For the 2017-18 financial year the concessional contributions cap changes to \$25,000 (this is a reduction for all employees-see below). This cap includes employer contributions (including contributions made under a salary sacrifice arrangement) and personal contributions claimed as a tax deduction by a self-employed person.

The superannuation concessional contribution caps are as follows:-

Age	Year Ending 30 June 2017	Year Ending 30 June 2018
	Concessional (i.e. deductible) caps	
Aged 49 or over	\$35,000	\$25,000
Under age 49	\$30,000	\$25,000

8. [SUPERANNUATION GUARANTEE CONTRIBUTIONS \(SGC\)](#)

The minimum superannuation contribution for the quarter ended 30 June 2017 should be remitted to a complying superannuation fund by **28 July 2017** for each employee and/or individual contractor. The contribution rate is 9.5% of gross wages up to a maximum salary of \$51,620 per quarter per individual (\$52,760 from 1 July 2017). Failure to remit the minimum amount by **28 July 2017** will result in a loss of a tax deduction plus penalties and interest. This compulsory 9.5% superannuation contribution will be required to be paid by the employer even if it means that the concessional cap will be exceeded.

9. [SALARY SACRIFICE ARRANGEMENTS](#)

Salary sacrifice arrangements (also called salary packaging) are agreements between employers and employees, where the employee agrees to forgo part of their future entitlements to salary or wages in return for the employer providing them with benefits in future. If the arrangements are put in place **after** the work has been performed, the salary sacrifice arrangement will be ineffective. It is essential that the terms of such arrangements are clearly stated in a written agreement **before** the benefits are received. Common examples of salary sacrificed benefits are the provision of motor vehicles and superannuation contributions made on behalf of employees. The start of a new financial year is the perfect time to review that all documentation is in place for such arrangements.

10. [FUTURE INCREASES TO SUPERANNUATION GUARANTEE CHARGE RATES](#)

The superannuation guarantee rate was increased to 9.5% from 1 July, 2014. This rate will remain fixed until 30 June 2021 and will then increase by 0.5 percentage points each year until it reaches 12%.

11. [PAYROLL TAX](#)

The annual Payroll Tax return and final payment are due by **21 July 2017**.

NSW employers with an Australian payroll (including fringe benefits, superannuation contributions and some contractor payments) exceeding \$750,000 are liable for payroll tax. Remember that related and associated employers (including inter-state wages) are grouped to determine whether the threshold has been exceeded. Please contact us immediately if your taxable wages (including all grouped entities) exceed \$750,000 and you have not previously registered.

The NSW payroll tax rate for the year ended 30 June 2017 is 5.45% of taxable wages in excess of the threshold. The NSW payroll tax rate will remain at 5.45% and the annual threshold will remain at \$750,000 for the year ended 30 June 2018.

[Jobs Action Plan \("JAP"\)](#). The plan provides eligible NSW businesses (less than 51 FTE employees) with a payroll tax rebate when they employ new workers in new eligible employment. The rebate being offered is \$6,000 for each new job created. To be eligible for the scheme you must be registered as an employer and paying payroll tax in NSW. From 23 November 2015, late registrations for the Jobs Action Plan will only be accepted, without justification, if made within 90 days of the commencement of the new position. New jobs commencing on or after 31 July 2016 will receive a rebate of \$2,000 payable on the first anniversary and \$4,000 on the second anniversary. Registration for the JAP must be made within 90 days of the (new) employment commencing.

[Small Business Grant](#). An additional grant of \$2,000 per new employee is also available to NSW employers who do not pay payroll tax and create new jobs within their businesses. To receive the grant the employment must last for a minimum of 12 months and registration must take place within 60 days of the employment commencing.

12. [WORKPLACE HEALTH & SAFETY \(WHS\)](#)

New laws on OH&S came into effect on 1 January 2012 as a result of 'harmonising' all state legislation into a common federal position. The legislation is known as Workplace Health and Safety (WHS). The laws place a requirement on any person who conducts a business or undertaking (called a PCBU) to provide a safe working environment and to actively ensure that all employees, contractors, labour hire workers etc. know how to work safely.

Directors and managers can be held criminally liable for not satisfying their duty of care under the WHS Act. It is essential that employers understand their obligations under WHS. Further information can be obtained from the following link:

<http://www.safeworkaustralia.gov.au>

13. [EMPLOYEE SHARE SCHEMES](#)

From 1 July 2009, employers are subject to withholding and reporting obligations if under an employee share scheme (ESS) you provide shares, stapled securities or rights to acquire shares or stapled securities (ESS interests) to your employees or to their associates. Employers must also report certain information about ESS interests that your employees acquired before 1 July 2009 where a cessation time for those interests occurred during the year ended 30 June 2017.

Please contact us if you have issued shares or granted options to your employees during the year or if your employees have exercised previously granted options during the year.

14. [SGC – ORDINARY TIME EARNINGS \(OTE\)](#)

From 1 July 2009, employers have been required to calculate the contributions necessary to satisfy their superannuation obligations in respect of their eligible employees using "ordinary time earnings". The ATO has issued a Superannuation Guarantee Ruling (SGR 2009/02) which clarifies the meaning of "ordinary time earnings" for calculating superannuation contributions.

The full ruling is located using the following link:

<http://law.ato.gov.au/atolaw/view.htm?locid='SGR/SGR20092/NAT/ATO'&PiT=99991231235958>

For your reference and to assist you with your calculations, we have included the following table from the ruling:

No	Payments to an employee in relation to...	Salary or wages?	OTE?
1	A simple overtime situation	Yes	No
2	Overtime hours - agreement prevailing over award	Yes	No
3	Agreement supplanting award removes distinction between ordinary hours and other hours	Yes	Yes
4	No ordinary hours of work stipulated	Yes	Yes
5	Casual employee - <i>shift-loadings</i> <i>overtime payment</i>	Yes Yes	Yes No
6	Casual employee whose hours are paid at overtime rates due to a 'bandwidth' clause	Yes	No
7	Piece-rates - no ordinary hours of work stipulated	Yes	Yes
8	Overtime component of earnings based on 'hourly driving rate' formula stipulated in award	Yes	No
9	Allowance by way of unconditional extra payment	Yes	Yes
10	Expense allowance expected to be fully expended	No	No
11	Danger allowance	Yes	Yes
12	Retention allowance	Yes	Yes
13	Hourly on-call allowance in relation to ordinary hours of work for doctors	Yes	Yes
14	Reimbursement	No	No
15	Petty cash	No	No
16	Reimbursement of travel costs	No	No
17	Payments for unfair dismissal	No	No
18	Workers' compensation - <i>Returned to work</i> <i>Not working</i>	Yes No	Yes No
19	Annual leave	Yes	Yes
20	Termination payments - <i>In lieu of notice</i> <i>Unused annual leave</i>	Yes Yes	Yes No
21	Performance bonus	Yes	Yes
22	Bonus labelled as ex-gratia but in respect of ordinary hours of work	Yes	Yes
23	Christmas bonus	Yes	Yes
24	Bonus in respect of overtime only	Yes	No

15. [CONTRACTOR OR EMPLOYEE?](#)

One major issue that affects many businesses is whether a person is an “employee” or a “contractor”. Getting this right is important for an employer to ensure they withhold the correct tax amounts from payments and comply with other tax obligations such as payments of superannuation guarantee, fringe benefits tax, workers compensation, payroll tax, etc.

According to the ATO some of the differences between employees and contractors are as follows:

Employee Characteristics of an employee include the following:-	Contractor Characteristics of a contractor include the following:-
Ability to sub-contract/delegate: The worker cannot sub-contract/delegate the work - they cannot pay someone else to do the work.	Ability to sub-contract/delegate: The worker is free to sub-contract/delegate the work - they can pay someone else to do the work.
Basis of payment: The worker is paid:- <ul style="list-style-type: none"> • for the time worked, or • a price per item or activity, or • a commission 	Basis of payment: The worker is paid for a result achieved based on the quote they provided.
Equipment, tools and other assets: Your business provides all or most of the equipment, tools and other assets required to complete the work, or the worker provides all or most of the equipment, tools and other assets required to complete the work, but your business provides them with an allowance or reimburses them for the cost of the equipment, tools and other assets.	Equipment, tools and other assets: The worker provides all or most of the equipment, tools and other assets required to complete the work The worker does not receive an allowance or reimbursement for the cost of this equipment, tools and other assets.
Commercial risks: The worker takes no commercial risks. Your business is legally responsible for the work performed by the worker and liable for the cost of rectifying any defect in the work.	Commercial risks: The worker takes commercial risks, with the worker being legally responsible for their work and liable for the cost of rectifying any defect in their work.
Control over the work: Your business has the right to direct the way in which the worker performs their work.	Control over the work: The worker has freedom in the way the work is done subject to the specific terms in any contract or agreement.
Independence: The worker is not operating independently from your business. They work within and are considered part of your business.	Independence: The worker is operating their own business independently from your business. The worker performs services as specified in their contract or agreement and is free to accept or refuse additional work.

16. [WORKERS COMPENSATION](#)

Employers with annual wages (including fringe benefits, superannuation contributions, etc) greater than \$7,500 are required to take out workers compensation insurance (or where an employer engages an apprentice/trainee or is a member of a Group for workers compensation purposes). Please ensure you have a current policy in place, the premium rating is appropriate for your business and the calculation on your premium notice is correct. We advise that WorkCover is increasing their audit of compliance in relation to workers compensation declarations.

17. [WORKERS COMPENSATION – REFORMS FOR SMALL EMPLOYERS](#)

There are a number of recent changes to workers compensation legislation which are designed to provide incentives to employers and reduce red tape for all businesses classified as Small Employers. The definition of Small Employer has also been extended so that all businesses whose basic premium is below \$30,000 are now eligible for the concessions.

Some of the incentives introduced include:-

- Increase to the premium discount for payments made in full and on time from 3% to 5%.
- Employer Safety Incentive (ESI) providing a discount of 10% on the premium up-front at each policy renewal. This incentive is designed to help business spend funds on ensuring their workplaces are safe. If none of your workers are off injured from work for more than four weeks during the policy period, you are entitled to keep the 10% discount when it comes time for the hindsight premium adjustment.
- Return to Work Incentive is another initiative in place for those employers that may have lost out on their eligibility to the ESI due to an injured worker. If you can assist the injured employee return to suitable employment (with you or another employer) within 13 weeks, your business may still retain the 10% reduction on your hindsight premium adjustment.

Some of the changes to reduce administration cost include:-

- You find out your premiums before policy renewal. Your insurer now pre-sets your premium for the coming period and tells you what it is four to six weeks before your policy is due for renewal.
- You no longer have to estimate wages. Previously you were required to provide estimates for the upcoming year. Instead of relying on annual estimates, your insurer will calculate your premium using your prior years wage figures.
- You have more time to report actual wages. This has been extended from two to four months after your policy expires. For most businesses that have a policy expiring at the end of the financial year, this means you have until the 31 October to report actual wages.
- All policy renewal dates will be month end. Policies will now expire at the end of the month. This will assist employers calculate the actual wages at the end of policy period.

18. FAIR WORK SYSTEM

The Fair Work system, launched on 1 July 2009, is Australia's national workplace employment system. The system is created by the *Fair Work Act 2009* and covers the majority of workplaces in Australia. Employers covered by the national system should be aware of the following obligations:

National Employment Standards (NES)

From 1 January 2010, the following NES are the minimum employment standards which apply to all employees covered by the national system:

Maximum weekly hours of work – 38 hours per week, plus reasonable additional hours.

Requests for flexible working arrangements – allows parents or carers of a child under school age or of a child under 18 with a disability, to request a change in working arrangements to assist with the child's care.

Parental leave and related entitlements – up to 12 months unpaid leave for every employee, plus a right to request an additional 12 months unpaid leave, plus other forms of maternity, paternity and adoption related leave.

Annual leave – 4 weeks paid leave per year, plus an additional week for certain shift workers.

Personal / carer's leave and compassionate leave – 10 days paid personal / carer's leave, two days unpaid carer's leave as required, and two days compassionate leave (unpaid for casuals) as required.

Community service leave – unpaid leave for voluntary emergency activities and leave for jury service, with an entitlement to be paid for up to 10 days for jury service.

Long service leave – a transitional entitlement for certain employees who had certain LSL entitlements before 1 January 2010 pending the development of a uniform national long service leave standard.

Public holidays – a paid day off on a public holiday, except where reasonably requested to work.

Notice of termination and redundancy pay – up to 4 weeks notice of termination (5 weeks if the employee is over 45 and has at least 2 years of continuous service) and up to 16 weeks redundancy pay, both based on length of service.

Provision of a Fair Work Information Statement – employers must provide this statement to all new employees. It contains information about the NES, modern awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, rights of entry, transfer of business, and the respective roles of Fair Work Australia and the Fair Work Ombudsman. The statement is available using the following link:

<http://www.fairwork.gov.au/employment/national-employment-standards/pages/default.aspx>

[Modern awards](#)

From 1 January 2010, modern awards cover most workplaces. Modern awards establish one set of minimum conditions for employers and employees across Australia who work in the same industries and occupations. The commencement of modern awards means that there have been changes to minimum terms and conditions for many employees. The changes vary by State, industry and employer.

[Employee pay rates](#)

From 1 July 2017, there are new minimum pay rates applicable for employees earnings (including the new penalty rates). To keep updated with these and ensure your business is compliant we refer you to the following link:

<https://www.fairwork.gov.au/about-us/news-and-media-releases/website-news/2017-annual-wage-review-our-pay-tools-are-ready>

StewartBrown

Chartered Accountants

Chatswood, NSW office : Telephone: +61 2 9412 3033 Facsimile: +61 2 9411 3242

Adelaide, SA office : Telephone: +61 8 8229 2280 Facsimile: +61 8 8229 2289

Email: info@stewartbrown.com.au

www.stewartbrown.com.au

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