

Welcome to the September issue of Pearce Norris Tax News. This issue focuses on:

- Your employee obligations
- Time to review service arrangements
- Low document loan alert
- When the ATO auditor calls

We would be pleased to discuss the tax issues set out in this issue of Tax News. Please contact Michelle Pearce on (02) 9555 1309 or Kathryn Norris on (02) 9555 7739 to discuss how Pearce Norris can assist you and your business.

## **YOUR EMPLOYEE OBLIGATIONS**

While tax topics are generally a major focus of this newsletter, if you employ contractors or staff in your business, your obligations to your personnel extend beyond your day-to-day tax and superannuation responsibilities.

You need to be familiar with these wider responsibilities to ensure you are looking after your legal obligations towards your workers.

These responsibilities can arise from a variety of sources such as federal and state laws, contracts of employment (written or verbal), industrial agreements and awards.

Your obligations in the following areas are outlined briefly below:

- wages and record keeping;
- employee health and safety;
- insurance; and
- federal and state taxes.

You will need to check your own state or territory laws for details on things like state taxes (e.g., payroll tax) and employment laws and regulations.

### **WAGES AND RECORD KEEPING**

Make sure you pay your employees their correct wages, particularly if they are employed under an award or industrial agreement.

#### **TIP**

It is also a good idea to have a clear policy about whether and how you reimburse your employees for any work related expenses.

Whilst you are no doubt aware of the range of records you are required to keep for tax purposes, you should also be aware that employee awards or agreements usually also require you to keep specific employment records (e.g., for salary and wages).

#### **USE CENTRELINK EMPLOYEES?**

If you employ staff through Centrelink, you will be asked to provide wage and employment details for these employees.

### **EMPLOYEE HEALTH AND SAFETY**

As a business owner you have certain rights and responsibilities regarding your staff's health and safety in your workplace. Generally, you are required to provide:

- safe premises;
- safe systems of work (e.g., safe machinery and other equipment);
- a suitable working environment and facilities; and
- information, instruction, training and supervision where appropriate.

The way in which these obligations apply may vary depending on your circumstances, so it is best to get advice about what is applicable to you.

### **INSURANCE**

You are liable for compensation payable to any of your employees suffering work-related injury or disease.

To cover this, it is compulsory for employers in all states and territories to have workers compensation insurance through an approved insurer. Your insurer indemnifies you for costs of any claims.

As your obligations in this area vary across states and territories, you need to get advice relevant for your locality.

### **SELF EMPLOYED?**

Workers compensation does not cover the self employed, so you will need to consider taking out private insurance for yourself, e.g., income protection, trauma and disability insurance. You may be entitled to a tax deduction for the cost of this insurance.

### **TAXES**

Working out your responsibilities in respect of your staff that can have tax consequences is a bit of a minefield. Here is a checklist of some employee responsibilities:

- remit PAYG withholding tax;
- pay fringe benefits tax if applicable;
- make compulsory superannuation contributions; and
- pay payroll tax if required to do so (this is a state or territory tax).

### **PAYG withholding**

If your business has employees, you will need to register for Pay As You Go (PAYG) withholding tax, withhold the appropriate amounts of tax from salary and wages and then pay these amounts to the Tax Office.

Here are some pointers to keep in mind:

- You must report and pay the withheld amounts to the Tax Office monthly or quarterly when you lodge your activity statements (BAS).
- You need to provide each employee with an annual payment summary of tax withheld (a "group certificate" in the old language) and provide an annual report on these amounts to the Tax Office.
- The ATO will send you a stationery package if you are registered for PAYG withholding tax (except if you report electronically) that includes copies of payment summaries and guidelines for completing payment summaries.

### **WHAT ABOUT CONTRACTORS?**

Contractors are generally responsible for their own PAYG obligations. However, you can enter into a **voluntary agreement** with a contractor to withhold PAYG on their behalf.

### **Company or trust**

If you run your business through a company or trust, keep in mind that directors can be treated similarly to employees for PAYG purposes.

### **Sole trader or partner**

If you are a sole trader or partner in a partnership, the rules regarding payment of wages, withholding tax and superannuation, will not be directly applicable to you. You will generally pay tax on your share of your business' taxable income.

### **Fringe benefits**

If you provide taxable fringe benefits to your employees, you will have to report and pay fringe benefits tax (FBT).

The FBT year runs from 1 April to 31 March of the following year. If you have to lodge an FBT return, it is usually due by 21 May, unless you are on a tax agent's lodgment program.

### **Provide fringe benefits?**

If you provide taxable fringe benefits to your employees or to associates of your employees (typically family members), you may have an FBT liability.

Examples of common taxable fringe benefits include: use of a work car for private purposes, cheap loans, entertainment and the payment of private health insurance costs.

Some benefits are exempt from FBT. For example, laptop computers (one per FBT year per employee), mobile phones mainly used for work, benefits of less than \$100, some taxi travel and in-house health care facilities.

### **DO NOT OVERLOOK THIS...**

If you provide an employee with more than \$1000 (grossed-up) of reportable fringe benefits in an FBT year, you must report this amount on the employee's payment summary.

### **Superannuation**

Your key responsibility here is to provide a minimum level of compulsory superannuation support, e.g., the superannuation guarantee (SG) contribution for each employee, which is currently set at 9% of their wages or salary.

If you have super obligations under an industrial award, these count towards the minimum level of SG support, as do payments made under a salary sacrifice arrangement.

### **Who is covered by SG?**

Most employees, whether full-time, part-time or casual, are covered by the superannuation guarantee legislation.

However, be aware that the term 'employee' has a wider meaning for these purposes and may include other types of workers including company directors, some artists, sportspeople and certain contractors.

You do not have to make SG contributions for an employee who is:

- paid less than \$450 a calendar month;
- 70 years or older; or
- under 18 and works no more than 30 hrs per week.

**Tax deduction if paid on time**

SG contributions are tax deductible, provided they are paid on a quarterly basis to a complying superannuation fund or retirement savings account. Here is the payment schedule for the 2005-06 year:

<b>Period</b>	<b>Contributions due</b>
1 Jul 05 – 30 Sep 05	28 Oct 05
1 Oct 05 – 31 Dec 05	28 Jan 06
1 Jan 06 – 31 Mar 06	28 Apr 06
1 Apr 06 – 30 Jun 06	28 Jul 06

**OUCH!**

If you do not pay your SG contributions on time, you will need to lodge a Superannuation Guarantee statement and pay the superannuation guarantee charge (SGC), which is not tax deductible!

**Reporting to employees**

From 1 January 2005, you no longer have to provide written SG contribution reports to your employees.

If you want to continue to report to your employees, you can do so. Otherwise, your employees will be able to find about their superannuation contributions when their super fund issues annual member contributions' statements.

**Super Choice**

Of course, do not forget that from 1 July 2005, many of your employees have the right to choose the superannuation fund into which your compulsory SG contributions are paid. This topic was covered in an article on our website – [www.pearcenorris.com.au](http://www.pearcenorris.com.au).

**PAYROLL TAX**

If you employ people in a state or territory, you may need to consider payroll tax. This is a state and territory tax that is levied on wages paid or payable by you as an employer.

As each state and territory has its own legislation with differing provisions, rates of tax and levels of exemption, it is best to consider getting advice about whether you have to pay this tax.

As a general guide, if you pay wages to someone in any state or territory, you are liable for payroll tax in that state or territory if your Australia wide wages exceed that state's or territory's general annual exemption level for the year (1 July – 30 June).

If you are part of a group of related employers, your Australia wide wages are the total wages for your group and not just your entity.

The exemption levels and tax rates are as follows:

<b>State/territory</b>	<b>Exemption level</b>	<b>Rate</b>
ACT	\$1,250,000	6.85%
New South Wales	\$600,000	6.00%
Northern Territory	\$1,000,000	6.20%
Queensland	\$850,000	4.75%
South Australia	\$504,000	5.50%
Tasmania	\$1,010,000	6.10%
Victoria	\$550,000	5.25%
Western Australia	\$750,000	5.50%

(**Note:** These exemption levels and rates are subject to change - check with your state or territory revenue office for the latest figures.)

In practice, states and territories require you to register and pay payroll tax when your total Australian wages for that state or territory exceeds either a monthly or weekly exemption level. An annual reconciliation is performed at the end of the financial year.

For example, if you employ staff in New South Wales, you have to register and pay payroll tax if your Australia wide wages exceed \$50,000 (1/12<sup>th</sup> of \$600,000) in any month.

As you can see, unless you are a small business with a sizeable Australia wide payroll, you may not have to worry about payroll tax. But like all things in tax, it is best to keep an eye on it just in case.

## REVIEW SERVICE ARRANGEMENTS

It is common for professionals (like lawyers, accountants, doctors and dentists) to set up a separate entity (e.g., a service trust) to provide the business with staff, recruitment, clerical, administrative and other office services.

Generally, there is nothing wrong with this type of service arrangement, but if you have one, you should be aware that the ATO will be looking at it over the next 12 months.

### WHAT IS THE PROBLEM?

The Tax Office is concerned that some of these arrangements may be set up to transfer profits rather than pay for actual services and wants to be satisfied that the services are in fact delivered, and at a realistic fee.

#### IN THE ATO'S SIGHTS..

The ATO will target fees and charges that are:

- disproportionate or excessive;
- calculated using arbitrary or unrealistic fixed mark-ups; and/or
- charged without clear evidence that the service arrangement adds value or performs any necessary functions for your business.

### WHAT DO I NEED TO DO?

If you use a service arrangement, you need to get advice to make sure it comes within current ATO guidelines.

The ATO is allowing a period of 12 months for people to review these arrangements. At the end of this period, if your service arrangement is generally in line with ATO guidelines, it is unlikely that the ATO will audit your service arrangement.

Even if the Tax Office does audit you, it is best to be prepared. Here is a checklist of some of the things you should get advice on:

- Are the services provided connected with your income earning activities?
- Is all business with your service entity done on an arms length basis?
- Are the service fees and charges commercially realistic?
- Do you have all the required documentation in place (e.g., service agreement, minutes, tax invoices etc)?

## LOW DOCUMENT LOAN ALERT

The ATO has just announced that it has uncovered widespread tax avoidance with businesses using low document loans.

Low document loans are popular largely because you can get access to finance with minimal substantiation of your income and assets in return for paying a higher rate of interest.

Regardless of the pros and cons of these loans, you should be aware that the ATO is now actively checking borrowers' information with their tax return lodgment records.

### WHAT DO I HAVE TO DO?

If you have a low document loan, make sure you have lodged all your tax returns and that your income and other information in your returns matches what is disclosed in the loan documents.

## WHEN THE ATO AUDITOR CALLS

With the incidence of tax audits on the rise, it is a good idea to know in advance what to expect if you find an ATO auditor on your doorstep.

### THE GOLDEN RULES

- Take a co-operative approach and try to avoid unnecessary conflicts.
- Where possible, always request your adviser to be present at any meeting.
- Try to meet the ATO on neutral ground, like your adviser's office.

### A little preparation goes a long way...

- Discuss the possibility of an audit with your staff and your adviser.
- Designate one person to deal with an auditor so the ATO does not get different views from talking to different people.
- If an ATO auditor is on site, do not let them sit anywhere where they can access your files at will or wander around your office.
- Generally do not volunteer information unless asked – only provide information in response to a particular request.
- If the ATO is not clear about this, ask that the request be put in writing to avoid any misunderstanding.
- If a request seems unreasonable and you have to reallocate resources to meet the demand, you may need to consider offering to provide the information at a more convenient time.

## ON THE HORIZON

In the next edition of this newsletter, in addition to updating you on tax changes relevant to your business, we will also be having a look at some tax issues associated with **asset protection** and **succession planning** for your business. If you would like to subscribe to our newsletter please register at [www.pearcenorris.com.au](http://www.pearcenorris.com.au).

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