PKF Canberra
An Australian Capital Territory Partnership

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ATO warning: watch out for tax avoidance schemes

Tax planning or tax avoidance – do you know the difference? Tax planning is a legitimate and legal way of arranging your financial affairs to keep your tax to a minimum, provided you make the arrangements within the intent of the law. Any tax minimisation schemes that are outside the spirit of the law are referred to as tax avoidance, and could attract the ATO's attention.

The ATO has outlined some common features of tax avoidance schemes, and we can help you to steer clear of them. While it's not always easy to identify these schemes, the old adage of "if it seems too good to be true, it probably is" is a good rule of thumb.

Tax avoidance schemes range from mass-marketed arrangements advertised to the public, to individualised arrangements offered directly to experienced investors. Other schemes exploit the social/environmental conscience of people or their generosity. As different as these schemes are, the common threads involve promises of reducing taxable income, increasing deductions, increasing rebates or entire avoidance of tax and other obligations.

Schemes may include complex transactions or distort the way funds are used in order to avoid tax or other obligations. They may also incorrectly classify revenue as capital, exploit concessional tax rates, or inappropriately move funds through several entities including trusts to avoid or minimise payable tax.

Currently, the ATO has its eyes on retirement planning schemes, private company profit extraction and certain problematic financial products.

TIP: If you've come across something that seems too good to be true, or you're considering an investment or arrangement, we can help you decipher whether it could constitute a tax avoidance scheme. Don't risk a penalty – contact us today.

COVID-19 Supplement extension to 31 March 2021

The Federal Minister for Families and Social Services has now registered the legal instrument that ensures the COVID-19 Supplement will continue to be paid until 31 March 2021 for recipients of:

- JobSeeker Payment;
- Parenting Payment;
- Youth Allowance;
- Austudy Payment;
- Special Benefit;
- Partner Allowance; and
- Widow Allowance.

It will be paid at the rate of $150 a fortnight (down from the previous $250 a fortnight) from 1 January 2021 to 31 March 2021.

The period for which people are considered as receiving a social security pension or benefit at nil rate, meaning they keep their access to benefits such as concession cards, has also been extended until 16 April 2021.

A number of other temporary social security measures will also remain until 31 March 2021, including waivers of waiting periods for certain payments, some requirement changes and exemptions, and more permissive income-free areas and payment taper rates.

Working from home deductions: "shortcut" rate until 30 June 2021

The ATO advises that the "shortcut" rate for claiming work-from-home running expenses has been extended again, in recognition that many employees and business owners are still required to work from home due to COVID-19. This shortcut deduction rate was previously extended to 31 December 2020, but will now be available until at least 30 June 2021.

Eligible employees and business owners therefore can choose to claim additional running expenses incurred between 1 March 2020 and 30 June 2021 at the rate of 80 cents per work hour, provided they keep a record (such as a timesheet or work logbook) of the number of hours worked from home during the period.

February 2021

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The expenses covered by the shortcut rate include lighting, heating, cooling and cleaning costs, electricity for electronic items used for work, the decline in value and repair of home office items such as furniture and furnishings in the area used for work, phone and internet expenses, computer consumables, stationery and the decline in value of a computer, laptop or similar device.

TIP: This shortcut rate will suit many people, but if you choose to use it for your additional work-from-home running expenses, you can't also claim any further deductions for the same items. We can help you decide whether the shortcut rate is the best option for your situation.

JobMaker Hiring Credit rules and reporting

With a range of government COVID-19 economic supports such as the JobKeeper and JobSeeker schemes winding down in the next few months, businesses that are seeking to employ additional workers but still need a bit of help can now apply for the JobMaker Hiring Credit Scheme. Unlike the JobKeeper Payment, where the money has to be passed onto your employees, the JobMaker Hiring Credit is a payment that your business gets to keep. Depending on new employees' ages, eligible businesses may be able to receive payments of up to $200 a week per new employee.

TIP: The scheme started on 7 October 2020, and employers will be able to claim payments relating to employees hired up until 6 October 2021. The first claim period for JobMaker starts on 1 February 2021 and businesses must first register with the ATO. To claim the payment in the first JobMaker period, your business must register by 30 April 2021.

To be eligible for the scheme, you need to satisfy the basic conditions of operating a business in Australia, holding an ABN, and being registered for PAYG withholding. Your business will also need to be up to date with its income tax and GST obligations for two years up to the end of the JobMaker period you claim for, and satisfy conditions for payroll amount and headcount increases. Non-profit organisations and some deductible gift recipients (DGRs) may also be eligible.

Beware, however, that businesses receiving the JobKeeper Payment cannot claim the JobMaker Hiring Credit for the same fortnight.

For example, businesses that wish to claim the payment for the first JobMaker period must not have claimed any JobKeeper payments starting on or after 12 October 2020, and employers currently claiming other wage subsidies – including those related to apprentices, trainees, young people and long-term unemployed people – cannot receive the JobMaker subsidy for the same employee.

If you think your business may be eligible, the next step is to determine whether you are employing eligible additional employees.

Generally, the employee needs to:

- be aged 16–35 when their employment started (payment rates are $200 per week for 16 to 29 year-olds and $100 for 30 to 35 year-olds);
- be employed on or after 7 October 2020 and before 7 October 2021;
- have worked or been paid for an average of at least 20 hours per week during the JobMaker period;
- have not already provided a JobMaker Hiring Credit employee notice to another current employer; and
- received a JobSeeker Payment, Parenting Payment or Youth Allowance (except if they were receiving Youth Allowance due to full-time study or as a new apprentice) for at least 28 consecutive days in the 84 days before to starting employment.

Since the aim of JobMaker is to subsidise an increase in the number of employees a business hires – not to reduce the cost of replacing employees – businesses wishing to claim the payment must also demonstrate increases in both in headcount and employee payroll amount.

This is meant to reduce instances of rorting by businesses that might replace existing non-eligible employees with eligible employees. Employers will need to send information such as their baseline headcount and payroll amounts to the ATO for compliance purposes.

Small businesses: don't forget your FBT concessions

If you own a small business still recovering from the COVID-19 induced downturn, remember that you can take advantage of FBT concessions to lower the amount of FBT you may need to pay. The concessions include exemptions for car parking in some instances, and work-related portable electronic devices.

All this could mean more cash to invest in the revitalisation and ultimate success of your business.

TIP: Even if your business was not considered a "small business entity" a few years ago, it may be worth a reassessment, because the turnover threshold has recently changed, and will soon increase once more.

For small business employers, the car parking benefits provided to employees could be exempt if the parking is not provided in a commercial car park and the business satisfies the total income or the turnover test. This is the case if the business is not a government body, listed public company or a subsidiary of a listed public company.

The second exemption relates to work-related devices. Small businesses can to provide their employees with multiple work-related portable electronic devices that have substantially identical functions in the same FBT year, with all devices being exempt from FBT. Note, however, that this only applies to devices that are primarily used for work, such as laptops, tablets, calculators, GPS navigations receivers and mobile phones.

New insolvency rules commence

Important changes to Australia's insolvency laws commenced operation on 1 January 2021. The Federal Government has called these the most important changes to Australia's insolvency framework in 30 years.

The measures apply to incorporated businesses with liabilities less than $1 million. The intention is that the rules change from a rigid "one size fits all" model to a more flexible "debtor in possession" model, which will allow eligible small businesses to restructure their existing debts while remaining in control of their business. For those businesses that are "unable to survive", a new simplified "liquidation pathway" will apply for small businesses to allow faster and lower-cost liquidation.

The measures are expected to cover around 76% of businesses currently subject to insolvency, 98% of which have fewer than 20 employees. The new rules do not apply to partnerships or sole traders.

To be eligible to access this new process a company must:

- be incorporated under the Corporations Act 2001;
- have total liabilities which do not exceed $1 million on the day the company enters the process – this excludes employee entitlements;
- resolve that it is insolvent or likely to become insolvent at some future time and that a small business restructuring practitioner should be appointed; and
- appoint a small business restructuring practitioner to oversee the restructuring process, including working with the business to develop a debt restructuring plan and restructuring proposal statement.