

NOVEMBER 2016 PRACTICE UPDATE

This practice update includes some articles that we thought you might find interesting. If you would like more information in relation to any of the articles in this update, please do not hesitate to contact our friendly and professional team. If you would like to receive an email in relation to these updates, or if you would prefer not to receive them, please email your request to hancocks@hancocks.com.au.

Survey for SMSFs using LRBA's

The ATO has announced that it will be contacting some SMSF trustees in November 2016 to participate in a survey about the use of 'limited recourse borrowing arrangements' ('LRBA's') to acquire assets for their SMSF.

The ATO will email a sample of SMSFs that reported LRBA assets on their 2015 SMSF annual return to invite them to participate in the survey.

Participation is voluntary, and they assure trustees that responses will remain anonymous and the information gathered from the survey will not be used for compliance purposes.

The ATO encourages any trustees contacted to participate (the survey should only take five to seven minutes), as their feedback will help it to gain a better understanding about the SMSF community's use of LRBA's.

*Editor: The ATO has also issued a new Practical Compliance Guideline and a new Taxation Determination regarding SMSFs that enter into **non-commercial LRBA's with related parties** (e.g., where a member lends money to their SMSF but does not charge interest).*

If you would like to discuss any of these SMSF issues, please contact our office.

ATO warning for the building and construction industry

The ATO has reported that the building and construction industry represents a disproportionate amount of its debt book, and has identified worrying trends that affect the industry.

Clients in the industry are encouraged to contact their tax agents regarding outstanding debts, as the ATO may be able to offer a range of payment options to help them get back on track sooner and reduce any interest they may be liable for.

Clients that fail to pay, or make arrangements to pay, may have their outstanding tax debts recovered through a garnishee notice.

Renting out a room is rental income

The ATO has issued an information sheet to let taxpayers know that money earned from renting out a room in a house is rental income.

This applies to rooms rented by traditional means or through a sharing economy website or app.

Also, taxpayers can only claim expenses related to the part of the house they rent out (so expenses will need to be apportioned accordingly).

The following example illustrates how the ATO would expect rental deductions to be calculated.

Example: renting out part of a unit or house

Jane has a two-bedroom unit with two bathrooms. She lives alone and only uses her spare room as an occasional home office, for storage and when she has guests.

Jane mainly uses the ensuite bathroom. The second bathroom is accessible from the main areas and mainly used by visitors.

Jane decides to rent out the spare room on a sharing economy website to earn extra income.

When paying guests come to stay, Jane removes all excess items from the room and does not access the area.

She also gives paying guests access to common areas including the second bathroom, kitchen, living area and balcony, and to her wi-fi. For the period guests are staying and have access to these, Jane can claim 50% of associated costs.

Jane had the room available and occupied 150 days in the year. When she is not renting out the room she uses it as storage and a home office.

Claiming Rental Deductions

Jane calculates what she can claim based on the following additional factors:

- The room is 10 square metres
- The house is 80 square metres
- The common areas are 50 square metres

She works out she can claim 17.97% of her **general expenses** (such as electricity, interest on her mortgage, internet expenses, rates and body corporate fees) after adding the following two calculations together:

- ❖ room occupancy:
 - $(10/80 \times 150/365) \times 100 = 5.13\%$
- ❖ common areas:
 - $((50/80 \times 150/365) \times 50\%) \times 100 = 12.84\%$

She can claim 100% of the expenses associated **solely** with renting out the room, such as the facilitator's commission or administration fee.

Editor: Note that CGT may also apply if a property used to generate rental income is sold.

Living overseas but still taxable here

In a recent case, the AAT confirmed that a taxpayer was a resident of Australia for taxation purposes while he was living in Oman.

The taxpayer had left Australia in January 2008 to work in Oman, and he ended up working 21 months in Oman before returning to Australia permanently in September 2009.

Before leaving Australia, the taxpayer sold an investment property in Queensland, cancelled his Medicare card, cancelled his Australian private health insurance, and had his name removed from the electoral roll.

When he left Australia in January 2008, he completed an outgoing passenger card indicating that he was permanently departing Australia.

However, the ATO was of the view that the taxpayer remained a resident of Australia. In particular, his wife remained in Australia at a jointly-owned dwelling in Mt Martha, he had returned to Australia for three holidays where he stayed at the Mt Martha home with his wife, he maintained an Australian bank account, and sent money to Australia to help pay his wife's living expenses and to assist with repaying the mortgage on the home.

The AAT concluded the taxpayer had not severed his connections with Australia and had not established enduring and lasting ties in Oman (and so was still a resident of, and his income was taxable in, Australia).

Crucial issue to consider when buying a company

Where a buyer commences to hold all of the shares in a company (including a company acting as trustee of a trust), they are highly likely to be appointed as a director of that company.

Although being a director in itself does not make the director personally liable for the debts of the company, there are two types of tax debts that are major exceptions to this rule, being PAYG withholding ('PAYGW') and compulsory employee superannuation guarantee ('SG').

That is, directors can be made personally liable for any outstanding PAYGW or SG, **even if** they were not a director at the time the debt was incurred.

Therefore, a key component of the due diligence process undertaken by a potential purchaser should be an assessment of whether the company is up-to-date with its PAYGW and SG obligations (as part of this, a potential buyer should also consider whether any 'contractors' to whom payments were made would be seen as 'employees' in the eyes of the ATO).

The buyer will also ordinarily want the vendor to provide some kind of indemnity in relation to the buyer's PAYGW and SG exposure.

Note also, however, that the 'old' directors do not cease to have exposure to unpaid PAYGW and SG. That is, **both** the 'old' and 'new' directors are all jointly and severally liable for these debts. This position does not alter even if a director resigns before the due date for payment of a relevant amount to the ATO.

Disclaimer: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.