



# PINNACLE Newsletter

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Framed | Jenny Kitching



## VIEW FROM THE PEAK

with Damian Knoblanche

I've just returned from a short trip and was feeling refreshed and ready to get back into another busy year.

The break gave my wife and I time to reflect on the past 12 months, and especially the milestone that was our granddaughter's first birthday.

Events like this remind me how vital it is to protect what matters – our families, our health, our ability to earn an income.

It surprises me how many people still 'fly by the seat of their pants' when it comes to insuring the intangibles. All it takes is one instance of unexpected misfortune to have catastrophic events for you and the people around you.

Perhaps 2020 should be the year to review your personal insurance cover or to find out what insurance can do for you.

## Disclosing Business Tax Debts.

*Following the enactment of legislation in late 2019, ATO officers will be permitted to disclose business tax debt information to external credit reporting bureaus.*

This reporting will primarily be made by such bureaus in the process of issuing external creditworthiness reports in relation to the taxpayer, effectively treating tax debts in a similar manner to other business debts.

The Government has issued a Declaration to determine what class of entities may be subject to such disclosures, including entities that:

- are registered on the Australian Business Register and are not a complying super fund, a registered charity, DGR or government entity; and
- have one or more tax debts totalling at least \$100,000 that are overdue for more than 90 days, disregarding:
  - Tax debts where the entity has an arrangement to pay the ATO by instalments (ie. via a payment plan);

- Tax debts subject to an application for release on grounds of hardship; and/or
- Tax debts subject to dispute via an objection, AAT or Federal Court review that has not been finalised.

Additionally, the Declaration does not allow debt disclosure for taxpayers who have an active complaint concerning the disclosure of tax debt information that is, or could be, the subject of an Inspector-General of Taxation investigation.

Importantly, if there is such a complaint, the ATO can only proceed with a disclosure of the debt where it is not aware of it after taking reasonable steps to confirm whether the Inspector-General of Taxation has such a complaint.



# Thousands of Australian expats face a Capital Gains Tax slug.

*Australian property owners living overseas have until the end of June 2020 to sell their homes if they want to avoid big Capital Gains Tax bills.*

For decades, Australians living abroad have been able to claim the capital gains tax (CGT) exemption on the family home.

This exemption was available so long as the home was rented out for no more than six years at a time.

But in early December the Federal Government finally passed through the Senate its \$581 million plan to change CGT arrangements for people living overseas.

The law basically eliminates the CGT exemption for Australian expatriates that has been in place since 20 September 1985.

It means that potentially thousands of Australians (latest figures show there were 182,000 non-resident Australians registered with the ATO) will be hit with Capital Gains Tax if they sold their property while living overseas, losing the CGT Exemption in full.

For someone who purchased in the late 1980s, that could mean a hefty tax bill.

But under the law, foreign residents who already held property on 9 May 2017 will be able to claim the CGT main residence exemption, if they sell their property on or before 30 June 2020.

Anyone living overseas who bought their Australian home after 9 May 2017 and plan to sell will be subject to CGT at the time of sale, regardless of whether is before or after the 30 June 2020 deadline.

## EXCEPTIONS FOR 'LIFE EVENTS'

The Federal Government made some amendments to its original 2017 proposal that provide taxpayers with exceptions based on certain 'life events' such a terminal medical condition, death or divorce. For example, if you were a foreign resident for tax purposes for a continuous period of 6 years or less and during that time:

- you, your spouse, or your child under 18, had a terminal medical condition;
- your spouse, or your child under 18, died; or
- the CGT event (property sale) involved the distribution of assets between you and your spouse as a result of your divorce, separation or similar maintenance agreement,

an exemption from CGT would apply. An exemption would also apply if the home-owner moves back (from overseas) into their Australian home before putting it on the market.

## WHAT TO DO NOW?

Realistically, current foreign residents have a period of less than four months to take advantage of the main residence exemption.

So, if you're a foreign resident with plans to sell your main residence (or you know someone in that situation), now would be the time to start preparations to save thousands of dollars in tax. If the prospect of copping a sizeable CGT bill over the sale of your family home while living overseas concerns you, we can help you review your position and your options.



## Peak goes cause-ual pink.

At our February Casual Dress Friday, The Peak team was swimming in a sea of pink – and it was all for a great cause, with our staff donations going to National Breast Cancer Foundation.

Breast cancer claims the lives of eight women every day in Australia\*, so we hope our modest contribution helps support the National Breast Cancer Foundation in their work across early detection, prevention and new and improved treatments.

If you'd like to help out too, just go to [www.nbcf.org.au](http://www.nbcf.org.au)

\*Source: [www.nbcf.org.au](http://www.nbcf.org.au)

# Tax Office targeting 'lifestyle' assets

The ATO has requested insurance policy information from 30 insurers for lifestyle assets such as yachts, thoroughbred horses, and fine arts.

The review, expected to impact 350,000 taxpayers, reaches from the 2015-2016 to 2019-2020 financial years and aims to reveal assets that previously may not have been disclosed or underreporting of income. "If a taxpayer is reporting a taxable income of \$70,000 to us but we know they own a three million dollar yacht, then this is likely to raise some red flags," Deputy Commissioner Deborah Jenkins said.

The ATO is looking for:

- under-reporting of income and mis-matches between lifestyle assets and reported income,
- the purchase of assets in a company name, but where those assets are used for private purposes (incorrect claims or non-reporting of GST credits, FBT, Division 7A, Capital Gains Tax), and
- lifestyle assets purchased by self-managed super funds that might breach the sole purpose test.

Insurers are required to provide the ATO with detailed policy information where the value of the assets is equal to or exceeds the following limits:

- Marine vessels .....\$100,000.
- Motor vehicles.....\$65,000.
- Thoroughbred horses .....\$65,000.
- Fine art.....\$100,000 per item.
- Aircraft .....\$150,000.

The ATO has stated that the data matching will not result in automatic audits but will be reviewed by compliance officers to support the profiling of selected taxpayers.



# Directors to be personally liable for unpaid GST.

Federal Parliament has recently passed legislation to include GST in the Director Penalty Notice (DPN) regime, and it is expected to come into effect on 01 April 2020.

Currently, company directors are personally liable for unpaid superannuation guarantee and withholding tax.

The personal liability for directors is now heightened with the long-anticipated *Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019* being passed by the Senate in early February (awaiting Royal Assent at the time of writing).

The addition of GST to this list means the ATO will be able to pursue a company director personally for the majority of a company's tax debt.

The new legislation makes the ATO's powers to pursue GST forward reaching only – that is, the ATO can only chase GST debts incurred in the period starting 01 April 2020 or later with a Director Penalty Notice.

## WHAT THE BILL MEANS FOR ORDINARY BUSINESS

- Director Penalty Notices now extend to GST, Luxury Car Tax and Wine Equalisation Tax liabilities in certain circumstances. This will mean that directors can become personally liable for these taxes.
- The ATO can retain refunds where a taxpayer has failed to lodge a return or provide other information that may impact the amount of a refund.

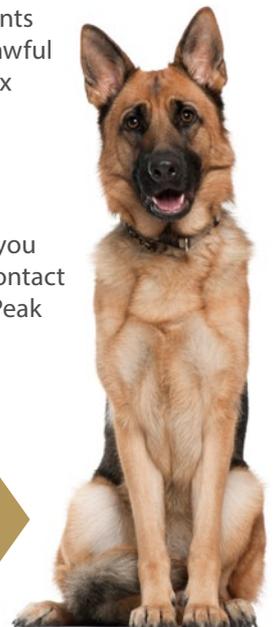
## OTHER IMPORTANT TAKEAWAYS FOR UNSCRUPULOUS DIRECTORS

- The Bill prevents directors from improperly backdating resignations or ceasing to be a director when this would leave a company with no directors.
- The Bill provides further powers to Liquidators and the Australian Securities and Investments Commission (ASIC) to prevent the unlawful transfer of assets during illegal phoenix operations.

## SEEKING PROFESSIONAL ADVICE EARLY IS THE KEY

If any of the above changes are causing you concern as a company director, please contact one of our Accounting Directors at The Peak for clarification and further advice.

THE CORPORATE WATCHDOG HAS EVEN GREATER POWER TO PURSUE OUTSTANDING COMPANY TAX DEBTS.



# Super guarantee timing trap for employers.

*How employers are being caught out by the timing of superannuation guarantee payments.*

Employers can generally only claim a deduction for superannuation contributions in the income year in which the contribution is made. Super contributions are deemed to be made when the payments are received by the trustee of a complying superannuation fund.

It's not uncommon for employers to be caught out by timing problems, many in the belief that the contribution has been made at the point the payment is initiated rather than when it is credited to the superannuation fund provider's account. Many forms of electronic transfer however are not guaranteed to be automatic or next day. BPay for example may take up to two days, a delay that is often not factored in.

A new practice statement from the ATO highlights the problem created by the use of clearing houses.

There is a specific element of the law that enables payments made to the Government's Small Business Superannuation Clearing House (SBSCH) to be accepted as contributions when the clearing house receives them, rather than when the trustee of the superannuation fund has received the contribution. The SBSCH is only available to small businesses with 19 or fewer employees, or with an annual turnover of less than \$10 million.

Private clearing houses are treated differently and as such, employers need to allow sufficient time for their superannuation contributions to be received, processed and paid by the clearing house to the superannuation fund before their SG obligation is considered to be discharged.

Take the example of an employer who brings forward superannuation contributions to before 30 June to be able to claim the tax deduction in that financial year. If a private clearing house was used, and time was not allowed for the clearing house to process the payment, and as a result the payment was not received by the trustees before 30 June, then the deduction cannot be claimed until the next financial year.

If you're planning to pay employee super guarantee for the April - June 2020 quarter before EOFY to claim a deduction, we recommend initiating payment a week before 30 June (cash flow permitting of course).

Feel free to chat with one of our advisers if you'd like to know more.



# Superannuation guarantee opt-out for workers.

*Employees with multiple employers can opt-out of super guarantee (SG) from all but one employer.*

Employers are required to pay 9.5% superannuation guarantee (SG) for all eligible workers. But what happens if you are an employee with multiple employers?

Until recently, these compulsory SG payments meant some employees risked unintentionally breaching their concessional contributions caps (and subsequently incurring financial penalties). New laws however provide a potential solution.

Legislation that passed Parliament late last year allows an employee to apply to the Commissioner of Taxation for an employer shortfall exemption certificate to opt-out of the superannuation guarantee (SG) system for specific employers.

This certificate prevents their employer from having a superannuation guarantee shortfall if they do not make superannuation contributions for the period covered by the certificate.

It's important to note that the exemption certificate does not require the employer to stop paying SG, it merely protects them if they fail to make SG payments. The employer may choose to continue paying SG – either because they could not reach an agreement with the employee on their total remuneration package once SG is removed, or the administration required to exclude an individual employee is too onerous on the business.

The Commissioner will only issue an employer shortfall exemption certificate where:

- the worker is likely to exceed their concessional contributions cap for the financial year (just because you have multiple employers does not mean you can opt out of SG); and
- at least one employer is paying SG for the employee.

The Commissioner might deny the certificate if it's not appropriate, the application would significantly reduce

the amount of SG by an amount larger than necessary (for example, opting out of SG from the largest of the multiple employers), or where there is a contrived arrangement to take advantage of the new rules.

The due date for the employer shortfall exemption certificate is 60 days before the first day of the quarter to which the application relates.

Before applying for a certificate, it's important to understand the impact of opting out of SG. You will need to negotiate your total remuneration package with your employer and the impact of this on your tax position, understand the tax outcomes if you did nothing and exceed your contributions cap, and the impact on your retirement savings over time.

If you have multiple employers and you'd like to look at your bigger superannuation picture, grab a chat with one of our Financial & Risk Insurance Advisers.

# ATO scrutiny on car parking fringe benefits.

*Do you provide car parking to your employees on your business premises? If the parking meets certain conditions you may have to pay Fringe Benefits Tax (FBT) on those and other benefits you provide to your employees.*

The ATO has started a compliance program to look at employers that use the market value method to calculate the taxable value of car fringe benefits.

Specifically, it is looking at employers that have engaged an arm's-length valuer to produce reports that may not reflect the true market value.

1. the commercial parking station method;
2. the average cost method; and
3. the market value method.

The method currently under ATO scrutiny is the market value method, which states that the taxable value of a car parking benefit is the amount that the recipient could reasonably be expected to have been required to pay if the provider and

- date of valuation;
- precise description of the location of the car parking facilities valued;
- the number of car parking spaces valued;
- the value of the car parking spaces based on a daily rate;
- the full name of the valuer and their qualifications;

“

**Under this method, the employer must obtain a valuation report from an independent valuer who has expertise in the valuation of car parking facilities and is at arm's-length.**

The ATO has started contacting certain employers that provide car parking fringe benefits to their employees, to ensure that all FBT obligations are being met.

Generally, car parking fringe benefits arise where the car is:

- parked on the business premises of the entity providing the benefit;
- used by the employee to travel between home and their primary place of work and is parked in the vicinity of that work place;
- parked for periods totalling more than four hours between 7:00am and 7:00pm; and
- a commercial parking station located within 1km of the premises charges more than the car parking threshold amount.

Employers that meet these conditions are providing parking benefits and have a choice of three methods to calculate the taxable value of the benefits:

the recipient were dealing with each other under arm's-length.

Specifically, the Tax Office is looking at employers that have engaged an arm's-length valuer as required under the market value method. According to the ATO, it has information that valuers in some instances have prepared reports using a daily rate that doesn't reflect the market value and, as such, the taxable value of the benefits is significantly discounted or even reduced to nil.

The ATO notes that simply engaging an arm's-length valuer does not mean you've met all the requirements for working out the taxable value of the car parking fringe benefits. It says that it is the employer's responsibility to confirm the basis on which the valuation is prepared and examine any valuation that is suspected to be incorrect or considerably reduces FBT liability.

At a minimum, the ATO requires that a valuation report must be in English and detail the following:

- the valuer's signature; and
- a declaration stating the valuer is at arm's-length from the valuation.

According to the ATO, in addition to the valuation report, you as an employer will also need a declaration relating to each FBT year that includes the number of car parking spaces available to be used by employees, the number of business days, and the daily value of the car parking spaces.

## NOT SURE?

If you're not sure if the benefits you provide to your employees are subject to FBT, you should talk to one of our Accounting Advisers. We can also help you determine whether your business qualifies for exemptions under various categories of FBT.

The current FBT year ends on 31 March, so it's important to contact us as soon as possible to find out more about Fringe Benefits Tax and how it could impact your business.

# Framed. Jenny Kitching.

After an absence of nine years running her own boutique financial advice business, Jenny Kitching has returned to The Peak Partnership in the role of Financial & Risk Insurance Adviser in our Wealth Design team.

Jenny was our Risk Insurance Specialist during her first stint at The Peak – she'll have a similar role this time around, as well as providing investment, superannuation strategy and retirement planning advice. Jenny says having this broader advisory responsibility will be an advantage for her clients, as she will be in the best position to assess their total wealth management and asset protection requirements.

With 35 years in the financial advice profession, Jenny is well-placed to strategically review each client's individual financial situation and goals, then recommend the most appropriate way forward to achieve the desired end result.

Through our own past experience, we know Jenny is a great team player, has a terrific client service approach, and understands The Peak Partnership's values and culture.



## Back to school. Record-keeping 101 course.

As part of the Mid-Year Economic and Fiscal Outlook (MYEFO), the Government announced a plan to tackle a lack of financial knowledge by providing the ATO with discretion to order taxpayers to undertake an approved record-keeping course instead of applying financial penalties.

Under the proposal the Tax Office Commissioner will be able to exercise discretion where he *"...reasonably believes there has been a failure by the taxpayer to comply with their reporting obligations."*

As this is another measure to combat the "cash" economy, this educational discretion will not extend to those people

who are found to be deliberately avoiding their tax compliance obligations. In these cases, the normal financial penalties (and prosecutions) will apply.

For anyone running a business, it would seem keeping good financial records will be increasingly important - unless sitting in a classroom sounds enticing.

For tips on Better Business Bookkeeping and Retaining Business Records, check out our free fact sheets. Just go to [peakpartnership.com.au](http://peakpartnership.com.au) and under the Learn page click to Financial Fact Sheets and the Business tab.

We'd also be happy to chat with you about how to streamline your record keeping processes.

## Almost a perfect Peak.

Late last year, we conducted our seventh annual client feedback survey to see how clients think we perform across a number of key measures. Asking our clients their opinions of our service is important in helping us evolve our business to meet the changing expectations and attitudes of our key stakeholders. After reviewing the feedback, we're pleased to say we're not perfect – but we're not far off. Here's a snapshot of what our clients told us.



**“ I love how The Peak is our go to for all our financial needs and questions. I have done and will continue to recommend Peak. ”**

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Learn more at [www.peakpartnership.com.au](http://www.peakpartnership.com.au)

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