

# TAX MATTERS

TAX STRATEGIES FOR YOU AND YOUR BUSINESS

EDITION  
30 – 2019

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## Tax implications for resettlement of trust

Tax consequences when resettling a trust arise on the transfer of property or following a loss of continuity.

The ATO defines that a trust will be resettled “where it might be concluded that there is not sufficient continuity between the trust as originally constituted and the trust in its current form.”

There can be significant tax consequences associated with a resettlement of a trust including income tax, stamp duty and triggering capital gains tax (CGT).

If a CGT event is triggered, CGT assets held in the original trust will effectively transfer to the new trust at market value. This poses problems as either pre-CGT assets will become post-CGT

assets or a capital gain will occur equal to the difference between market value and the cost base of post-CGT assets held in the trust.

Furthermore, any accumulated losses or gains from the original trust cannot be carried forward into the new trust.

One thing that trustees may want to determine is the potential CGT consequences for the trust if resettlement is deemed to have occurred. Once this is established, it may be appropriate to apply for a binding ruling from the ATO to gain certainty on whether resettlement has occurred prior to making any changes.

A trust deed cannot be amended without an express power to do so and trustees must

consider whether the amendments maintain the continuity in the trust estate. The ATO is clear that any amendments must be made in accordance with the terms of the original trust. The problem for trustees is that resettlement needs to be assessed on a case-by-case basis.

Before making an amendment to a trust deed, trustees are cautioned to read the trust deed and check that the power specifically authorises the proposed amendment and that amendments made pursuant to a power are done so in accordance with any process outlined in the deed.

Resettlement of a trust can be quite complicated; seeking professional legal advice is recommended, particularly where changes are unrelated to tax issues such as estate planning.

## HMM

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# Instant asset write-off for small businesses to be extended and increased

The Instant Asset Write-Off Scheme will be extended to 30 June 2020 for assets purchased under \$25,000.

The Instant Asset Write-Off affects small businesses with a turnover of up to \$10 million a year.



It allows business owners to immediately deduct assets costing up to \$25,000 which can then be claimed for tax return in that income year. The Prime Minister's announcement on 29 January stated that "businesses who go out and invest today, whether it's a vehicle, whether it's a piece of plant or equipment, all of it, up to \$25,000, immediate write down." However, there are certain assets that are excluded from the scheme so it is best to check with your accountant or financial advisor.

It is important to remember that the Instant Asset Write-Off Scheme reduces the tax your business has to pay, it is not a rebate. Your cash flow will still have to be sufficient enough to support the purchases.

With the ATO reporting that the average claimed amounts were at \$11,000 in 2016-2017, there are concerns that the scheme is underutilised. Fewer than 350,000 small businesses have taken advantage of the scheme in the 2016-2017 year.

There is no guarantee that the Federal government will extend this scheme beyond 30 June 2020.

## Scam warning from ATO

Scammers have developed a different tactic over the new year to impersonate the ATO.

Perpetrators are using an ATO number to send SMS messages to taxpayers, asking them to click on a link and hand over their personal details.

The ATO received many reports in 2018 of scammers manipulating call identification so the phone number that appears is different from the number from which they originally called, this is known as "spoofing". It is a common technique often used by scammers in an attempt to make their interactions seem legitimate.

You can identify a scam through a number of ways. The ATO will never send you an email or SMS asking you to click on a link, download a file or open an attachment. They will also never use aggressive or rude behaviour such as threatening you with arrest, jail or deportation. Payments of debt will never be through an iTunes or Google Play card, pre-paid Visa card, cryptocurrency, direct credit to a personal bank account nor will the ATO request a fee in order to release a refund owed to you.

## Tax traps the ATO is watching

The ATO often focuses on specific behaviours, characteristics and tax issues that are suspicious and can lead to investigations.

Due to enhancements in technology, the ATO has expanded its data matching capabilities which have improved the ability to identify incorrect reporting in tax returns.

The ATO has released a list of behaviours and characteristics that may attract their attention, which includes:

- Tax or economic performance substantially differing from similar businesses.
- Low transparency of tax affairs.
- Large, one-off or unusual transactions, including transfer or shifting of wealth.
- A history of aggressive tax planning.
- Tax outcomes inconsistent with the intent of tax law.
- Choosing not to comply or regularly taking controversial interpretations of the law.
- Lifestyle not supported by after-tax income.
- Treating private assets as business assets.
- Assessing business assets for tax-free private use.
- Poor governance and risk-management systems.

The ATO continues to concentrate on compliance issues associated with self-managed super funds. In particular, they are targeting:

- Significant management and administration expenses.
- Incorrect calculation of exempt current pension income.
- Non-arm's length transactions involving companies associated with members and SMSFs that may be intended to improperly redirect dividends to the SMSF.

Another area of focus is the incorrect claiming of franking credits or not applying appropriate governance to a franking credit balance

The ATO is also concerned where there is a substantial increase in franking credits as this may indicate the taxpayer has entered into an inappropriate arrangement to take advantage of the imputation dividend system. Using an entity that has a concessional tax rate, such as a super fund, is often incorporated into these arrangements.

Finally, an area that the ATO is keeping a close eye on is with wash sales. A wash sale occurs when a shareholder disposes of a share and repurchases a significantly similar parcel of the same share purely with the intention of claiming a capital loss.

