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Client Information Newsletter - Tax & Super

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# Director identification numbers… time is running out

All existing directors of a company, registered Australian body, registered foreign company, or a director of corporate trustees of an SMSF are required to apply for a director identification number (director ID) by 30 November 2022…so act now! If you are a director of an Aboriginal or Torres Strait Islander corporation (CATSI), you have an additional 12 months to apply to 30 November 2023.

## About this newsletter

Welcome to AJM Carter's client information newsletter, your monthly tax and super update keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics covered, please contact us via the details below.

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To be clear, if you are currently a director, or plan to become one in the next 12 months, you'll need a director ID.

Directors must apply for their director ID personally – we as your tax agent cannot apply on your behalf but we can help you understand the new requirement, if you need to apply, and by when. Beat the rush and get your director ID online today.

A director ID is a unique 15-digit identifier that all directors or people intending to become directors must

*continued on page 2*

## Director identification numbers ... cont

apply for. It's free to apply and you only need to apply once – you keep your director ID forever. A director must apply for their own director ID and verify their identity using their personal records.

The fastest way to apply for a director ID is online at Australian Business Registry Services (ABRS website – www.abrs.gov.au/directorID).

To access the online application, use the myGovID app with at least a standard identity strength to log in to ABRS Online.

Before you start your online application, make sure you have your personal identity documents at hand. Most applicants use the following documents:

- bank account details (where your tax refunds or payments are made and received)
- an ATO notice of assessment.

In addition, you can also use:

- APRA fund account details (SMSF details are not accepted)
- a dividend statement
- a Centrelink payment summary
- a PAYG payment summary (this is different to your income statement or your PAYG instalment activity statement).

When you receive your director ID, you must pass it on to the record-holder in your company or Aboriginal and Torres Strait Islander corporation. This might be your company secretary, another director, a contact person or an authorised agent of the company.

There is no requirement to provide your director ID to the Australian Securities and Investments Commission (ASIC) unless they request you to do so.

The government estimates that more than 500,000 directors are yet to apply with only a month before the deadline.

If you require further information around this new measure, please don't hesitate to reach out to us. ■

# Director ID Action Plan

**1 DETERMINE IF YOU ARE A DIRECTOR**

Are you a director or eligible officer of:

- a company, registered Australian body, or registered foreign company under the *Corporations Act 2001* (Corporations Act)
- an Aboriginal and Torres Strait Islander corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act)

**2 DETERMINE YOUR DUE DATE**

| *Date you first become a director* | *Date you must apply* |
|---|---|
| *On or before 31 October 2021* | *By 30 November 2022* |
| *Between 1 November 2021 and 4 April 2022* | *Within 28 days of appointment* |
| *From 5 April 2022* | *Before appointment* |

**3 APPLY**

Log into ABRS online using your myGovID

**4 SUPPLY**

Pass your Director ID onto the record-holder in your company or Aboriginal and Torres Strait Islander corporation.

This information has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation or needs.

# Bridging the super gender gap

Fresh statistics released by the ATO reveal that the superannuation gender cap is very real.

While the average super balance for a man is $161,834, for a woman it's $129,506 – a massive 25% difference. This gender gap begins in peoples' twenties, mostly caused by wage differences and time off for children, and by their early thirties it is already 20%. A man aged 30-to-34 has an average super balance of $48,603 and a woman $40,479, the ATO data shows. The compounding impact of this difference alone over time is significant.

There are at least three key strategies that can be implemented to help close this gap. Reach out to us if you have any questions around the following concessions:

## 1. CATCH-UP CONTRIBUTIONS

If you make or receive concessional contributions (CCs) of less than the annual concessional contributions cap of $27,500 (for the 2022/23 financial year), you may be able to accrue these unused amounts and carry them forward for use in subsequent financial years. This is known as catch-up concessional contributions.

Catch-up concessional contributions can accrue from 2018/19. Unused cap amounts can be carried forward for up to five years before they expire. To be eligible to make catch-up CCs, your total super balance must be below $500,000 at the prior 30 June.

The ATO will determine your total super balance based on information it receives from your super funds. You can find out your balance by logging into your myGov account www.my.gov.au

## 2. SPOUSE CONTRIBUTIONS

If you have a spouse, they can help top up your superannuation by making a contribution to your fund (spouse contribution).

In terms of the amount of the contribution, you cannot contribute more than your partner's non-concessional contributions cap, which is $110,000 per year.

However, if your partner is under 75 and eligible, they (or you) may be able to make up to three years of non-concessional contributions in a single income year, under the bring-forward rules, which would allow a maximum contribution of up to $330,000 (but no more for the following two years). However, non-concessional contributions can't be made once your spouse's super balance reaches $1.7 million or above as at 30 June of the previous financial year.

By making a spouse contribution, the contributing spouse may also be eligible for a tax offset if the receiving spouse has an income of less than $40,000.

## 3. SUPER SPLITTING

Another way to increase your partner's super is by splitting up to 85% of your concessional super contributions with them, which you either made or received in the previous financial year. Concessional super contributions can include employer and or salary-sacrifice contributions, as well as voluntary contributions you may have claimed a tax deduction for.

To be eligible for contributions splitting, your partner must be under their preservation age, or between their preservation age and 65 (and not retired).

In terms of limits on the contribution, amounts you split from your super into your partner's super will count toward your concessional contributions cap, which is $27,500 per year.

Unused cap amounts accrued since 1 July 2018 can also be contributed, contingent on eligibility. ■

# Optus data breach

Following a recent cyber-attack, Optus customers are advised they could be at risk of identity theft.

While Optus has not yet revealed how many of its 9.7million customers were impacted, they did confirm that the number was "significant". Importantly, the breach has affected past Optus customers back to 2017, as well as current customers. Customers who have been affected will have already been contacted by Optus, or will be in the coming days.

Customer information that was accessed included:

- Names
- Dates of birth
- Phone numbers
- Email addresses
- Street addresses
- Drivers licence details
- Passport numbers.

However, payment details and account passwords reportedly have not been compromised and Optus's phone services remain safe to operate. Thus, customer financial details were not directly compromised.

Of concern (not just for Optus customers but for any person whose above information has fallen into the wrong hands) is that the above details are easily enough to compromise a person's identity, warns the Office of the Australian Information Commissioner:

> *Your identity can be stolen if a thief accesses your personal information, including from any document that contains information about you, the OAIC website says. Even if a thief only accesses a small amount of your personal information, they may be able to steal your identity if they can find out more about you from public sources. This includes social media accounts which may include your date of birth, photos and information about your family.*

*Identity fraud can result in someone using another individual's identity to open a bank account, get a credit card, apply for a passport or conduct illegal activity.*

The government's Scamwatch website advises the following steps to protect your personal information:

- Secure your devices and monitor for unusual activity
- Change your online account passwords and enable multi factor authentication for banking
- Check your accounts for unusual activity such as items you haven't purchased
- Place limits on your accounts or ask your bank how you can secure your money
- If you suspect fraud you can request a ban on your credit report.

Moving forward, also be vigilant regarding future contact. Scammers may use your personal information they have obtained to contact you by phone, text or email. Never click on links or provide personal or financial information to someone who contacts you out of the blue.

If you are concerned that your identity has been compromised or you have been a victim of a scam, contact your bank immediately and call **IDCARE** on **1800 595 160.** IDCARE is Australia's national identity and cyber support service, to get expert advice from a specialist identity and cyber security service. You can also report scams to Scamwatch www.scamwatch.gov.au and check cyber.gov.au for information about cyber security.

Optus customers can also contact Optus directly via the My Optus app or call **133 937**. Businesses can ring **133 343.** ■

# Claiming business losses

You may be able to offset your business loss against other income (such as salary and wages) if you're a sole trader or in a partnership.

Firstly, however, your loss must not be non-commercial. A non-commercial business loss is a loss you incur, either as a sole trader or in partnership, from a business activity that is not related to your primary source of income. This type of business activity could be a hobby or lifestyle benefit.

Even if it has business-like characteristics, if it is unlikely to ever make a profit and doesn't have a significant commercial purpose or character, you can't offset this non-commercial business loss against your other income. In this case, you can defer the loss until you make a profit from the business activity. This applies whether your business loss is from an Australian or a foreign source.

**ATO Example**

**Bob is a sole trader who has a business operating machinery. His primary business income comes from helping others plough and prepare their land for growing crops.**

**Bob acquired a 5-acre block of land situated close to his residence with the intention that, in his spare time, he would upgrade the property from its present run-down condition and develop it into a small pumpkin farm to harvest and sell pumpkins.**

**The money he spent on developing the small pumpkin farm exceeded the income made from the pumpkins, as the pumpkins are not ready for sale yet. Bob has made a non-commercial loss but will need to work out if he can offset or defer the loss.**

If your loss is indeed commercial, then that is just the first step to potentially claiming your losses.

Generally, the following tests must also be met (though they differ slightly for partnerships).

## 1. ASSESSABLE INCOME TEST

To pass the assessable income test, assessable income from your business activity during the financial year must be at least $20,000.

## 2. PROFITS TEST

Your business will pass the profits tests if it has made a tax profit in three out of the past five years (including the current year).

## 3. REAL PROPERTY TEST

You will pass the real property test if real property of at least $500,000 in value is used in your business activity on a continuing basis.

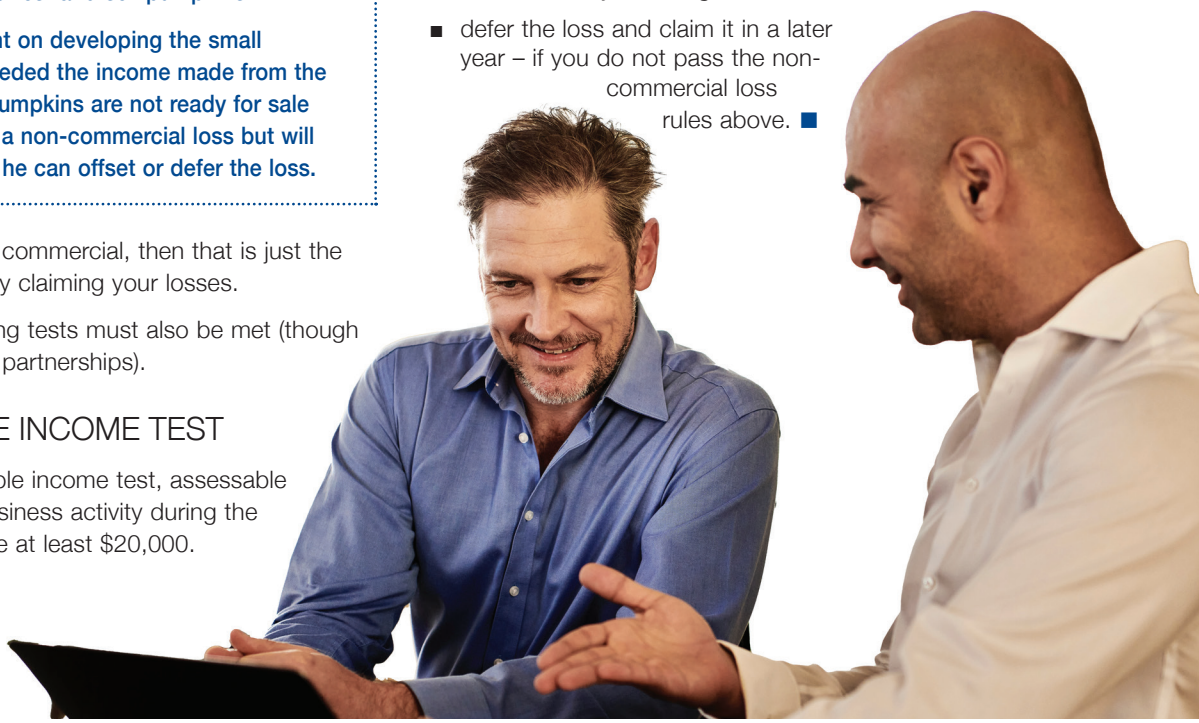
## 4. OTHER ASSETS TEST

You will pass the other assets test if the value of the "other assets" you use in your business on a continuing basis is at least $100,000. Only certain assets are included in this test and some are specifically excluded.

If you pass any of these tests, then generally you must also earn less than $250,000, otherwise your loss may be deferred until this test is met.

To sum up, if you're an individual in business, as either a sole trader or in a partnership, and your business activity makes a loss, we can help you work out if you need to:

- claim and offset the loss against your other income, such as salary and wages
- defer the loss and claim it in a later year – if you do not pass the non-commercial loss rules above. ■



# SMSF member obligations

A recent Administrative Appeals Tribunal decision reminds us all that SMSF trustees (members) can be disqualified where serious breaches, be they advertent or inadvertent, of the super rules are committed.

One of the ways the ATO deal with non-compliance is by disqualifying an individual as a trustee (or director of a corporate trustee) of a self-managed super fund (SMSF). This can occur if the trustee does not comply with super laws or if the ATO believe a trustee is not a "fit and proper person" to continue managing their SMSF. Between 1 April 2022 and 30 June 2022, the ATO disqualified 80 trustees, resulting in a total of 252 disqualified trustees during the 2021-2022 financial year.

Turning back to the Tribunal's decision, in *Goulopoulos and Commissioner of Taxation* [2022] AATA 2540 (9 August 2022) two directors of a corporate trustee of an SMSF were disqualified following serious contraventions that had occurred on multiple occasions.

One of the many contraventions included the illegal early access of super where no condition of release had been met. A total of $878,365.86 was withdrawn from the fund for personal use, including the purchase of a new house and luxury car. A small amount was repaid to the fund, however any amount taken out was illegally accessed and in breach of the payment standards.

In addition to the illegal early access, the trustee's actions also resulted in breaches of the borrowing provisions, the in-house asset provisions, acquisition of assets from a related party, and failure to lodge a return for a period of four years.

Having been disqualified by the Commissioner, the taxpayers appealed to the Tribunal. In doing so, they relied on the fact that the ATO, for the most part, did not impose penalties for the contraventions, which they said indicated the contraventions were not serious. This was rejected out of hand by the Tribunal which found:

- the taxpayers knew what they were doing was wrong
- the contraventions were numerous and sustained
- full responsibility was not taken by the taxpayers who blamed their accountant for planting the seed to make the withdrawals, and
- some of the contraventions were of the most serious nature (member loans, unauthorised withdrawals and failing to lodge returns).

All these factors combined to provide the Commissioner with ample grounds for disqualification. Thus, the decision to do so was upheld by the Tribunal.

The Tribunal also accepted the Commissioner's alternative submission that, in the circumstances, there should be disqualification on the basis that the "fit and proper person" test was not met.

Although this case is at the extreme end – involving a range of serious breaches of the SMSF rules – it does underscore the consequences that can flow from trustees breaching the rules, deliberately or accidentally.

If you have your own SMSF and are in any doubt around the rules that apply in relation to access to your funds, the borrowing provisions, the in-house asset provisions, the acquisition of assets from a related party or any other rules, seek expert advice before you act. ■