

# Tax Essentials **Tax Saving Tips** (incl. FBT Year End Considerations)

FEBRUARY

2021

## THE NEWSLETTER

Tax Legislation Update in an Easy-to-Read Format

## MICHAEL'S CORNER

Not for Profit and Human Resources Recruiting

*Article No.9*

## SPECIAL BONUS ISSUE

Over 160 Tax Saving Tips - (incl. FBT Year End Considerations)





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## WHAT'S NEW IN 2021?

# The Newsletter

## Tax Legislation Update in an Easy-to-Read Format

### REGISTRATIONS NOW OPEN FOR JOBMAKER HIRING CREDIT

Eligible employers are now able to register for the new JobMaker Hiring Credit scheme, being administered by the ATO on behalf of the Government.

The JobMaker Hiring Credit payment is a wage subsidy paid directly to employers that will help to accelerate growth in the employment of young people during the COVID-19 economic recovery. The scheme is an incentive for businesses to employ additional job seekers aged 16 to 35 years.

Eligible employers can access the payment for up to 12 months for each eligible additional employee they hire between 7 October 2020 and 6 October 2021. They will be able to claim up to \$200 a week for each additional eligible employee they hire aged 16 to 29 years, and up to \$100 a week for those aged 30 to 35 years.

This means that an employer will be eligible for up to a total of \$10,400 over the year for each eligible employee aged 16 to 29 years or \$5,200 if aged 30 to 35 years.

The ATO has encouraged businesses to check their eligibility and take this first step to register for the scheme from this week and then employers will be ready to move to quickly make a claim in February 2021. You cannot claim if you are not registered.

New employees must have received the Parenting Payment, Youth Allowance (Other) or JobSeeker Payment for at least 28 consecutive days (or 2 fortnights) within the 84 days (or 6 fortnights) of being hired to allow for a claim to be made by the employer.

- Employers and employees must meet eligibility requirements to receive the payment.
- Employees must be aged 16 to 35 years.
- Employees must have started employment between 7 October 2020 and 6 October 2021 (inclusive) and

- Employees need to have completed a minimum average of 20 hours (worked or paid) per week during the time they were employed in the JobMaker period.

#### Key dates to remember...

- The JobMaker Hiring Credit scheme started on 7 October 2020.
- You may be able to claim for employees hired between 7 October 2020 and 6 October 2021.
- You can register from 7 December 2020 through ATO online services, the Business Portal or your registered tax or BAS agent.
- Claims for the first quarterly payment will open on 1 February 2021.
- The last day you are able to claim for employees is 6 October 2021.
- If you hire an employee on 6 October 2021, you are able to claim for payment to 6 October 2022.
- The JobMaker Hiring Credit scheme will end on 6 October 2022.

### LEGITIMATE BUSINESS BAILOUT OR RISKY PHOENIXING?

On 26.11.2020, the ATO warned business advisers about inappropriate dealings with pre-insolvency advisers. The ATO is aware that in today's challenging economic conditions some advisers' business clients may seek advice on whether to pause, change or permanently close their business.

While the vast majority of advisers do the right thing, some untrustworthy or unqualified advisers may offer inappropriate pre-insolvency advice to their clients. This advice may include illegal phoenix activity, and recommendations to remove their client's assets before closing their business, for use in a copy of the original business.

Clients should check they are seeking or receiving advice from qualified professionals, such as an accountant, lawyer, registered liquidator, or a registered trustee.

They need to be wary of some of the common red flags of untrustworthy advisers, including:

- Cold calling with offers of advice.
- Unsolicited correspondence after court action by a creditor.

- Advice to transfer assets to a third party without payment.
- Refusal to provide advice in writing.
- Suggestions they have a sympathetic liquidator who will protect a client's personal interests/assets.
- Advising that certain records be withheld from the bankruptcy trustee or liquidator.
- Suggestions they deal with the liquidator/trustee on your client's behalf.

The ATO is firmly of the view that if a client needs to wind up their company, they should be referred to a registered liquidator or registered trustee.

## RETIREMENT INCOME REVIEW FINAL REPORT

On 20.11.2020, the Federal Government released the independent Retirement Income Review Final Report which confirms that "the Australian retirement income system is effective, sound and its costs are broadly sustainable."

The Review also finds that Australia's retirement income system is well placed to respond to the economic challenges posed by the COVID-19 pandemic.

The Review was recommended by the Productivity Commission in its report Superannuation: Assessing Efficiency and Competitiveness and comes 27 years after the establishment of compulsory superannuation.

The Review makes three over-arching observations about the system. Firstly, that the three pillars of the existing retirement income system, being the Age Pension, compulsory superannuation, and voluntary savings, continue to provide effective support to Australian retirees and are sustainable in the long term.

Secondly that there is a need to improve understanding of the system so that all Australians can make the most of their assets in retirement. Thirdly, that the system would benefit from a clear objective in order to guide future policy and provide a framework for assessing its performance.

The Final Report also makes a number of key observations with respect to each of the system's three pillars, including:

- The Age Pension, compulsory superannuation and voluntary savings results in most Australians achieving adequate retirement outcomes.

- The Age Pension provides a strong safety net to those who retire with small superannuation balances.
- The Age Pension reduces income inequality among retirees, as low-income retirees receive the largest Age Pension payments.
- Superannuation assists middle income earners to smooth their income over their lives. Without compulsory superannuation, middle income earners would not save enough for retirement.
- More efficient use of savings in retirement can have a bigger impact on improving retirement income than increasing the Superannuation Guarantee (SG).
- The weight of evidence suggests an increase in the SG rate will result in lower wages growth, impacting standards of living.
- There are a number of ways that individuals can significantly boost their retirement incomes without having to increase their superannuation contributions, including more effectively drawing on superannuation assets, achieving better-after-fee returns and accessing equity in their home.
- Voluntary contributions provide flexibility for those outside the compulsory system to contribute to superannuation, such as the self-employed and those who have had interrupted working careers.
- The Government's early release policy, enabling Australians to access up to \$20,000 of their superannuation across two years, has cushioned the economic impact of COVID-19.

Through its work, the review has established a fact base that will improve understanding of how the retirement income system operates, better informing public policy and the retirement outcomes delivered to Australians.

Importantly, the Review provides confirmation of the policy direction being pursued by the Morrison Government with respect to the importance of increasing the efficiency of the superannuation system and lifting home ownership rates – both identified as key drivers of an adequate retirement income.

Specifically, the Government's 'Your Future, Your Super' reforms will simplify and enhance member engagement with their superannuation and increase the efficiency of the superannuation system through lowering fees and improving returns, benefiting Australians by \$17.9 billion over the next 10 years.

Additionally, given the importance of home ownership to the financial security and wellbeing of Australians in retirement, the Government will continue to support measures to allow more Australians to buy their first home sooner, including through our First Home Loan Deposit Scheme, First Home Super Saver Scheme and HomeBuilder.

The Government will continue to carefully consider the observations made in the Review together with the findings of related reviews including the Aged Care Royal Commission and remaining recommendations of the Productivity Commission's report into Superannuation.

The focus of the media coverage on the report was on whether the staggered legislated increases to the superannuation guarantee to 12% would now take place. While the economic and fiscal arguments will play out in 2021, it is considered likely the proposed increases will now be scrapped and that the superannuation guarantee will remain at 9.5%.

## **HOMEBUILDER SUCCESS SEES PROGRAMME EXTENDED**

The Federal Government has extended the HomeBuilder programme which is driving demand in the construction sector by supporting the construction of new homes and home renovations.

HomeBuilder will remain demand driven and will be extended from 1 January 2021 to 31 March 2021 which is expected to support the construction or major rebuild of around 15,000 homes. This is in addition to the 27,000 homes the scheme is already expected to support, bringing it to a total of around 42,000 homes across Australia.

According to Prime Minister Scott Morrison and Treasurer Josh Frydenberg:

- HomeBuilder is a key part of my government's Economic Recovery Plan for Australia and is keeping people in jobs and putting Australians' dream homes within reach.
- It is critical we keep the momentum up for Australia's economic recovery.
- Extending HomeBuilder will mean a steady pipeline of construction activity to keep tradies on the tools.
- The Homebuilder program has delivered the stimulus the housing sector needed.

- The sector is worth \$100 billion dollars a year to the Australian economy or around 5 per cent of GDP and more than a million people are employed in the sector across Australia.
- The success of this program has not only meant an increase in work on the ground to keep the pipeline of construction flowing but it has also protected jobs in the construction sector as well as across the economy.

HomeBuilder has been adjusted for the building and housing market's conditions, and after consultation with the construction sector.

For all new build contracts signed between 1 January 2021 and 31 March 2021:

- Eligible owner-occupier purchasers will receive a \$15,000 HomeBuilder: and
- The property price caps for new builds in New South Wales and Victoria will be increased to \$950,000 and \$850,000, respectively.

In addition, the construction commencement deadline will be extended from three months to six months for all eligible contracts signed on or after 4 June 2020.

Up until 29.11.2020, data showed HomeBuilder had already had around 24,000 applications, on track to exceed expected take up levels.

This announcement also builds upon the extension of the First Home Loan Deposit Scheme announced in the Budget, which delivered 10,000 guaranteed loans to allow first home buyers to obtain a loan to build a new home, or purchase a newly built home, with a deposit of as little as five per cent.

## **PROPOSED CHANGES TO FRINGE BENEFITS TAX RECORD-KEEPING**

The government has proposed that it will provide the Commissioner of Taxation with the power to allow employers to rely on alternative records, such as existing corporate records where adequate to finalise their fringe benefits tax (FBT) returns. This would be an alternative to employee declarations and other prescribed records.

If enacted the change will have effect from the start of the first FBT year (1 April) after the date of royal assent of the legislation, which cannot be earlier than 1 April 2021.

## DOCUMENTATION IS ESSENTIAL FOR SUCCESSFUL R&D CLAIMS

### Royal Wins Pty Ltd and Innovation and Science Australia (ISA) [2020] AATA 4320

This recent Administrative Appeals Tribunal's (AAT) decision demonstrates the importance of taxpayers appropriately documenting a hypothesis prior to the commencement of research and development (R&D) activities. The hypothesis must have an element of uncertainty that is formulated for the purposes of being validated or invalidated through the process of experiments. Clearly documentation for R&D must be contemporaneous, following a systematic progression of work in order to satisfy the legislative criteria. Relevant expert evidence should also be obtained in order to argue the case. If the AAT is only presented with evidence from one expert, that unopposed evidence, is likely to be accepted.

This case involved the taxpayer's entitlement to have certain activities registered as core or supporting R&D activities for the purposes of the Tax Act. Deputy President Molloy found in favour of Innovation and Science Australia (ISA) on the basis that due to the lack of adequate documentation, he was unable to determine what work was done, when it was done, that Royal Wins had started with a hypothesis or that it had undertaken a systematic progression of work based on the principles of established science.

For those contemplating R&D activities, reading the judgement online will confirm the importance of complying with the requirements of legislation and properly documenting the research activities each step of the way.

This of course all needs to be carefully planned prior to the commencement of activities.

All too often either advisers or participants decide it is a good idea to access the R&D tax incentives well after activities have commenced. This can be problematic.

## R&D TAX INCENTIVE: UPDATED GUIDE TO INTERPRETATION

AusIndustry has released an updated Guide to Interpretation to assist companies in determining whether their research and development (R&D) activities are eligible for R&D tax incentive.

The updated Guide seeks to incorporate recent judicial

guidance and use clearer language, including by updating key terms such as the definition of "hypothesis" and "new knowledge".

## NEW RULES TO DETECT, TRACE AND BLOCK SCAM CALLS

Most of us have had to deal with scam calls. On 2.12.2020, the Australian Communications and Media Authority (ACMA) registered new rules that require Telcos to detect, trace and block scam calls. The Reducing Scam Calls Code, developed by the Telco industry, was a direct recommendation of the ACMA's Combating Scams Action Plan.

The new initiative come as the Australian Competition and Consumer Commission's (ACCC) Scamwatch found that Australians lost at least \$36 million to scam calls in 2020, with scam calls accounting for 46 per cent of all scams reported.

Scam calls impersonating the ATO form a significant portion of all scams, with the ACMA completing a three-month trial with Telcos earlier this year to block spoofed calls that appear to originate from legitimate ATO phone numbers.

In 2019, the ATO received over 107,000 reports of such spoofed calls from the community.

The ACMA has worked closely with Telcos and peak body Communications Alliance to develop the new rules and successfully pilot initiatives to reduce the scale and impact on Australians of scam calls. Major Telcos report blocking over 30 million scam calls across the last 12 months as they undertook work to trial the identification and reduction of scam calls.

According to Chair of the ACMA's Scam Telecommunications Action Taskforce Fiona Cameron

- The code is a significant step toward providing better protections for consumers and making Australia a 'hard target' for scammers.
- The code is a unique and ground-breaking contribution to global regulatory efforts to prevent the harms caused by scammers. It is a holistic, end-to-end framework for effective scam reduction activity.
- There is no silver bullet to reduce scams, but these new rules place clear obligations on industry to do more to protect their customers and build confidence that it is safe to answer a ringing phone.



ACCC Scamwatch data reveals Australians lost over \$35.6 million to scam calls in 2020. Scam calls accounted for 46 per cent of all scams reported.

- Scams have a devastating impact on their victims and scammers are unscrupulous in taking advantage of people. They quickly adapt to changing circumstances, as we have seen, for example, in scam activity targeting Australians during the COVID-19 pandemic.
- Industry's initial efforts to block scams are an encouraging step towards the substantial and sustained work required before consumers will see a real reduction in scam calls.
- The end game is to stop scammers in their tracks wherever possible and the ACMA will enforce this code to make sure Telcos are meeting their obligations to their customers.
- Under the new rules, Telcos must also publish information to assist their customers to proactively manage and report scam calls, share information about scam calls with other Telcos, and report identified scam calls to authorities.
- The new rules build on recent scam reduction and awareness-raising activities by the ACMA, including the introduction of new measures to fight mobile number fraud earlier this year and the recent release of comprehensive consumer awareness resources.
- Reports of mobile porting fraud have markedly decreased since new rules were introduced in April 2020, however ACMA are still closely monitoring industry compliance with the new obligations.
- Phone scams are a current ACMA compliance priority, and Telcos will face penalties of up to \$250,000 for breaching ACMA directions to comply with the code.

If you think you have been scammed, contact your bank and phone company immediately and report it to Scamwatch.

For information on how to spot – and stop – phone scams visit: [acma.gov.au/scams](https://acma.gov.au/scams)

## THE ATO – A STEP AHEAD?

The ATO's data matching capacities continues to expand with well over one billion transactions between checked each year.

The main focus is on the issue of understatement of income in tax returns. Income may be understated by excluding the business sales, investment income, capital gains or foreign income.

The ATO collects data from employers, banks, share and trust registries and health insurance funds. Below are some additional third-party sources, outlining information provided to the ATO, and the ATO responses to that information.

- **Sharing Economy Providers (e.g., Uber, Ola, Airbnb)**

Information on payments to participants is provided to the ATO to ensure that income is correctly included in income tax returns and that participants have an ABN and are registered GST where required.

- **Online Selling platforms (e.g., eBay, Gumtree)**

The ATO reviews the quantity and value of on-line sales to ensure taxpayers are compliant with GST and ABN registrations, reporting income and lodgements, and up to date with payment of tax liabilities.

- **Merchant Facilitators (e.g., banks) and Specialised Payment Systems (e.g., PayPal)**

The ATO receives electronic payments processed for business, including total debit and credit card payments received by the entity. This information is used to ensure compliance with all tax obligations.

- **AUSTRAC and International Treaty partners**

The ATO receives information about foreign source income and ensures this has been declared in the taxpayers' income tax return.

- **Australian Crypto Currency Designated Service Providers**

Purchase and sale information is provided to the ATO. The ATO uses this data to confirm that taxpayers including crypto currency transactions in income tax returns.

- **State motor vehicle registering bodies**

The ATO receives information about motor vehicles sold, newly registered, or transferred. The ATO focus is on GST compliance, Fringe Benefits tax compliance and expensive motor vehicles purchased, not commensurate with income reported.

- **State Title offices**

Property details, transfer price and buyer and seller information on the sales and transfer of real property are provided to the ATO via appropriate channels. The ATO uses this information to ensure compliance with capital gains tax (CGT) and GST compliance.

Taxpayers need to be aware that significant penalties may apply where income is not properly disclosed. In yesteryear, some taxpayers used to "run the gauntlet" and tax a chance. This is not recommended.



## TAX AVOIDANCE TASKFORCE HIGHLIGHTS 2019–20

The Tax Avoidance Taskforce ensures tax is paid in Australia. The ATO audits some of the biggest taxpayers operating in Australia, including multinational enterprises, large public and large private businesses (and associated individuals).

Through the taskforce, the ATO raised \$4.3 billion in liabilities and collected nearly \$2.5 billion in cash from audits in the 2019–20 financial year. The taskforce has surpassed its commitment to government in each year since it began.

Over the first four years of the taskforce, the ATO has:

- raised \$18.2 billion in liabilities against public groups, multinationals, wealthy individuals and associated private groups (including trusts and promoters)
- collected over \$10.8 billion.

The ATO believes the response from the large business market has been encouraging. Taxpayers are now seeking to manage and prevent tax risks in their business by adopting robust tax governance arrangements, including proactive and open engagement with the ATO.

The ATO continues to encourage and support private, public, and multinational entities to engage with them early and to effectively manage tax risk.

### Highlights for 2019–20.

Highlights of the Tax Avoidance Taskforce contribution for 2019–20 include:

- Compliance activities generated \$2.7 billion in tax liabilities and \$1.6 billion in audit yield from large public groups and multinational corporations, wealthy individuals, and private groups.
- The multinational anti-avoidance law (MAAL) has been successfully implemented, with the restructures resulting in:
  - more than \$8 billion additional taxable sales being booked in Australia
  - an estimated additional \$850 million of GST paid
  - an estimated \$80 million in business-to-consumer net GST since July 2016.
- To date the ATO has engaged with over 600 of the largest private groups. Of these, 262 engagements

were completed with taxpayers who willingly adopt robust tax governance practices to manage and prevent tax risks. There were 54 Top 500 groups with \$7.35 billion tax assured across multiple years.

- The ATO engaged with over 900 of the Top 1,000 large public groups, with 790 reviews finalised and over 130 reviews in progress.

### ATO focus in 2020–21.

During 2020–21, the focus is on specialist large market advisors that promote and implement tax avoidance schemes, and engage in uncooperative, misleading, and obstructive behaviour, including the misuse of legal professional privilege (LPP) during reviews and audits.

- The ATO is developing new best practice guidance for LPP claims and principles for large market advisors, supporting more robust self-governance. Where tax avoidance arrangements are identified, the ATO will issue Taxpayer Alerts to advise taxpayers of their concerns.
- Continually improving data, analytics, risk, and intelligence capabilities to identify and manage tax avoidance risk. The significant progress on data accessibility and risk detection services has improved the ATO's ability to target compliance work and deliver on taskforce objectives. This work will be expanded over the next three years to deliver cutting edge technology and advanced analytics capabilities to manage and interrogate their extensive data resources.

## LAMBOURNE AND COMMISSIONER OF TAXATION (TAXATION) [2020] AATA 4562 (12.11.2020)

In November, The Administrative Appeals Tribunal (AAT) found that the expenses claimed by a taxpayer were not incurred in gaining or producing his assessable income meaning a taxation deduction was denied.

The taxpayer employed as an electronics technician within the Navy, had claimed work expenses deductions for work-related clothing (i.e., Navy uniform) and other work-related expenses for items for use on-board the naval ship (e.g., electronic items, fitness equipment, polarised glasses). According to the Commissioner these items were purchased at the taxpayer's discretion and had no nexus with the gaining or producing of the taxpayer's income.

The AAT found that there was no evidence that the taxpayer would not have continued to be paid in relation to his duties if he had not purchased and supplied these

items. The AAT considered the taxpayer's expenditure in relation to these items, simply provided a benefit to the Navy and his fellow sailors rather than being incurred in the course of producing his assessable income.

If the ATO prevails its view, then the takeout from this is that a clear distinction needs to be drawn between "discretionary" and necessary expenditure.

The decision has created some controversy with the Tax Institute's General Manager Of Tax Policy And Advocacy, Scott Treatt, contending the Commissioner's arguments suggested that there was a new principle at play, requiring employers to direct employees to purchase items before they could be deductible and that the AAT's comments suggested that there was a new test in that entitlement to work-related deductions being dependent on whether or not taxpayers would continue to be paid if they had not purchased the items.

According to the former ATO assistant Commissioner, Mr Treatt:

- It would appear the argument put forward by the ATO and the comments by the tribunal are not only inconsistent with established case law, but they are also inconsistent with the guidance material otherwise set out by the ATO.
- Cases such as Lambourne are worked on for some time within the ATO. They progress through audit and the objection team as well.
- While a taxpayer has a right to their day in court, the ATO, in reaching their decisions, must have had internal technical support for these principles to find their way to a court of law to test.
- Minds within the ATO must have been turned to consider what would happen to the administration of the system should the ATO win or lose.
- The Tax Institute had approached the ATO for clarification to seeking out its intention on work-related expenses.

However, in response to the National Tax Liaison Group, the ATO denied that the ATO's view of s8-1 or Taxation Ruling TR 2020/1 had changed noting that employer requirements do not determine deductibility.

It remains to be seen whether the taxpayer appeals, and we will keep you informed.

## **JOBKEEPER UPDATE**

On 30.11.2020, the Federal Government released preliminary data on JobKeeper 2.

Announced in March 2020, the first phase of JobKeeper supported more than 3.6 million workers and around 1 million businesses, with payments totalling nearly \$70 billion for the 13 JobKeeper fortnights to 27 September 2020.

Following a re-test of business eligibility for the second phase of JobKeeper, for the two JobKeeper fortnights in October, around 500,000 entities have had applications processed covering more than 1.5 million employees/eligible business participants (ATO data, current as at 26 November 2020).

The preliminary data indicates that around 450,000 fewer businesses and around 2 million fewer employees qualified for JobKeeper in October than in September.

Around 86 per cent of workers qualified for the Tier 1 payment of \$1,200 per fortnight, with around 14 per cent on the Tier 2 payment of \$750 per fortnight.

These preliminary October JobKeeper figures suggest an improvement on the 2020-21 Budget assumption of 2.2 million recipients for the December quarter, with around 700,000 fewer employees/eligible business participants covered by the Payment in October due to their employer no longer meeting the required decline in turnover test.

The lower-than-forecast take-up of the JobKeeper Payment extension in October is further evidence that Australia's recovery from this once-in-a-century pandemic is well underway.

Recent economic data shows that outside Victoria, employment has recovered to be less than one per cent below March levels with some 650,000 jobs created in the past five months nationwide.

These are encouraging numbers.

## **\$10K CASH BAN BILL KILLED IN THE SENATE**

On 3.12.2020, the Senate unanimously agreed to discharge the Currency (Restrictions on the Use of Cash) Bill 2019 designated to tackle the black economy and tax evasion by banning businesses from engaging in large cash transactions.

On 3.12.2020, One Nation senator Malcolm Roberts moved that the bill be discharged.

Assistant Treasurer Michael Sukkar acknowledged the impact of COVID-19 on small businesses and the broader economy.

According to Mr Sukkar:

- As we progress through to the recovery stage, we recognise now is not the time to impose an additional burden on small business.
- The government is implementing a number of measures to tackle serious organised crime, as well as increasing the resources of the serious and organised crime program, a cross-agency program of work comprising the ATO, Commonwealth, state and territory policing, and other law enforcement agencies, working to disrupt serious organised crime in Australia.

In our view, it is very unlikely this legislation will be revived in 2021.

## AAT DECISION ON BACKDATED ABNS

On 21 December 2020, the Administrative Appeals Tribunal (AAT) handed down its decision in APTD and Federal Commissioner of Taxation (Tribunal reference 2020/4562).

This case involves eligibility for the JobKeeper Allowance.

### AAT decision

The AAT held that the applicant did meet the requirement to have an ABN on 12 March 2020, in circumstances where the ABR Registrar decided to reactivate a previously cancelled Australian business number (ABN) after 12 March 2020 and backdated the reactivation to have effect on or before 12 March 2020.

The ATO, having considered the decision and its implications decided on 18.1.2021 to appeal the decision in the Federal Court.

The AAT's decision has not changed the need to satisfy all the other eligibility conditions. If your JobKeeper application was declined because you did not meet the requirement to have an ABN on 12 March 2020, and you are satisfied that you meet all other eligibility requirements, the ATO will be providing updates over the coming weeks.

The ATO will provide further information on your next steps once we have considered the AAT decision and its implications.

## BO2 READERS QUESTIONS AND ANSWERS.....

### Question 1

#### Subject: Closing of super fund.

Facts of the matter.

1. We have 2 super funds; both have 2 members myself and my wife. We both are in pension mode.
2. Super fund 1 has cash only and has concessional contribution part.
3. Super fund (2) is made of non-concessional contribution only. It has property, cash, and some small number of shares. This is the fund we draw pension for ourselves.
4. I am employee of my company but thinking of terminating it soon and may work part time as sole trader after 3-6 months later.
5. We both have decided to draw the whole amount out from fund one (1) which has cash only to use for our personal needs now.
6. Our pension will continue from 2nd fund.

*My questions are:*

- a. What will be the correct procedure?
- b. The cash is needed at this moment, so can we withdraw all the cash and paperwork can be done as continuation?

### Answer

Once you reach 65, you can access your super benefit at any time whether you have retired or not.

You may access your super benefit when you reach 65 as a lump sum withdrawal. A lump sum withdrawal is simply an amount accessed from your SMSF that is not a pension payment.

You can make lump sum withdrawals whenever you like from your super fund once you have turned 65.

There is no maximum lump sum amount if you are aged over 65 and you are free to access all your super benefit as desired.

Not tax is payable on lump sum withdrawals made after 65.

## Question 2

### Subject: Forced closure for South Australian Businesses

I have clients that have had to close their business for 6 days due to SA COVID restrictions.

Our question is do they still have to pay their staff under Fairwork, or can they force them to take leave?

Most are no longer on JobKeeper payments, therefore Fairwork changes can not apply?

### Answer

Firstly, they need to see if the employees can work from home if they can then they should allow them, second is there any alternative work they can do, if not they can then stand them down under the provisions of the Fair Work Act 2009.

If they stand them down, they then have an obligation to offer them annual leave or any other time in lieu they may have.

## Question 3

### Subject : Cash Flow Boost.

My client is on accruals. Do I account for the Cash Flow Boost via Journal Entry at 30 June or do I only account for the Cash Flow Boost NANE when received which is in the next Financial Year?

The way I see it the CFB is an addition to the BAS & does not form part of the BAS so it should not be accrued. Is my logic correct?

### Answer

We certainly agree with your logic – it is not an accrual arising from the business activities of the entity.

In the event these are “Special Purpose” financial reports (with little anticipated review by third parties), I would not accrue.

The entitlement to the second cash flow boost payment was crystallised after lodgement of the June 2020 BAS which of course occurred after year end.

While it is not mandatory to accrue, some Practitioners may validly choose to do so on the basis the lodgement of the BAS was a mere formality.

Of course, the second cash flow payment involves a portion of the payment being attributed to tax period ended 30.6.2020.

This will be either 50% of half the amount of the second cash flow boost payment where the entity lodges its BAS on a quarterly basis, or 25% where the entity lodges its BAS on a monthly basis.

Effectively you have a choice.

## Question 4

### Subject: Unfranked or Franked Dividend on DIV7A Loans?

Company has franking credit balances of \$145,705.68.

Div 7A loan agreement in place for :	In FY2020:		
	Principal	Interest	Minimum repayment
	1. Div7A 2018		
Div7A 18 balances \$71,247.04	\$12,150.02	\$4,475.98	\$16,626.00
	2. Div7A 2019		
Div7A 19 balances \$82,865.53	\$11,457.27	\$5,062.73	\$16,520.00
Div7A 20 balances \$148,081.37			

My Questions are:

- Client wants to pay off the loan balances from dividend, whether the repayment amounts each year are Unfranked dividend or franked dividend?
- What will be the journal entry for above?
- What will be the amounts of dividend?
- Director/shareholder is taking out \$90k gross wages annually, what will be the treatment of dividend in his personal tax return?
- If the 2018 loan became been partially paid , can he pay it off earlier out of his pocket? What happened if he does this?
- When can he pay himself, franked dividend keeping in mind he has 90k wages?
- Can he pay himself franked dividend, even if DIV7A loans are in place?
- Can the repayments be made by way of journal entry, i.e., by capitalising the repayment onto the loan balance?

**Answer**

1. The repayment amounts are the net dividend without the franking credits attached.
2. Dr dividend paid (P&L appropriation accounts) and Cr Loan account.
3. It is up to the client, but the marginal tax rates should be pointed out to client i.e., over \$180k = 47%.
4. In our view the minimum dividend should be \$65,250 with a franking credit of \$24,750 to reflect the company tax rate for FY2020 of 27.5%. In our example above and assuming no other income or tax deductions – the taxable income becomes \$180k (90k + \$65,250 + \$24,750) with a franking tax credit of \$24,750.
5. If the client has funds to pay down some of this loan account, he/she should be actively encouraged to do so.
6. If the 2020 tax return has not been lodged, in practice this can be done by journal. Urgent action is required to deal with these loans.
7. Yes, having a Div 7A loan does not preclude a dividend as long as minimum payments have been made.

**Question 5****Subject: Budget 2020 - Request for Confirmation on Information**

I have received a booklet titled “Budget 2020” from the Liberal Party of Australia recently, and I would like confirmation on an item stating Asset Write Off:

“Over 99% of businesses will be able to write off the full value of any eligible asset they purchase for their business. This will be available for small, medium and larger businesses with a turnover of up to \$5 billion until June 2022.”

**Answer**

Yes, this is broadly correct.

“Eligible asset” includes second-hand assets if your aggregated turnover is less than \$50 million.

This is a temporary full expensing incentive which enhances the instant asset write-off.

**Question 6****Could you please explain what this means?**

This is from b02 newsletter issue #108.

1. There is temporary full expensing for the purchase of capital assets between 6.10.2020 and 30.6.2022. If

your business has a genuine need for new equipment, you could directly benefit from this. Business with aggregated annual turnover below the relevant threshold will be able to deduct the full cost eligible capital asset acquired from 7:30pm AEDT on 6.10.2020 and first used or installed by 30.6.2022.

2. Full expensing in the year of first use will apply to new depreciable assets and the cost of improvements to existing eligible assets for businesses with aggregated annual turnover of less than \$5 billion.

I own a small agricultural business with a turnover under \$5 million.

The instant asset write-off for eligible business is \$150,000 until Dec 2020 with the ATO.

Are the above 2 points referring to an instant write-off of assets that are directly connected to your source of income?

**Answer**

The confusion is understandable but there is no contradiction as such.

To clarify the \$150k instant asset write-off was the latest form of this incentive announced in March 2020 in response to the Covid 19 pandemic.

In the October 2020 Federal Budget the “temporary full expensing incentive” (outlined above) was announced with the aim of further stimulating the economy.

This should be viewed as an enhancement of the instant asset write-off which still exists.

Note second-hand assets are eligible if the turnover is less than \$50 million.

**Question 7****Subject: Cash Bonuses**

The business partners are considering handing out cash bonuses to all their staff. They would prefer not to go through wages, so employees are not taxed.

It is a one-off cash bonus, some employees \$1,000, others \$5,000.

They are happy to register for fringe benefits tax if required. Is this the best way to go?

**Answer**

If you want to pay them cash... that is fine but keep it as part of wages.



Make a cash withdrawal – then determine the PAYG circumstances.

For instance, if someone's marginal tax rate is 34.5% and they are receiving \$5,000 then the calculation becomes:

$\$5,000 \text{ divided by } (1 - .345) = \$7,633.59$

This means for them to receive \$5,000 net... the PAYG is \$7,633.59 less \$5,000 = \$2633.59.

If you register for FBT and make the payment as a fringe benefit, you will effectively cost in the highest marginal tax (47%) into the equation.

It is far better to keep it legitimate within the salaries/wages system and factor in the PAYG withholding tax.

### Question 8

#### Subject: Land Tax Enquiry

We seem to recall reading that an individual who owns two properties one of which is rented can nominate for land tax purposes which property is to be liable even though not occupied as their home.

If this is correct can an individual now living in a nursing home who only owns one property which is rented out, nominate the rental property as their home and thus exempt from land tax.

The enquiry relates to property situated in NSW.

#### Answer

Only under very limited circumstances.

There may be some hope under the living away from home exemption.

As suggested, this is limited...

To qualify you must:

- Have lived there for at least 6 months before moving away.
- Not own another principal place of residence.
- Only earn income from the property to cover basic expenses such as rates, water, and other amenities.
- Not lease the property out for more than 6 months in a calendar year.

From the above it is suggested that if there is a full-time tenant living there paying commercial rent, then land tax will be payable.

### Question 9

#### Subject: The JobKeeper Extension

1. If the business experienced a minor drop in turnover in the September 2020 quarter, (e.g., not a 30% drop) however then did experience a drop of 30% or more in the December 2020 quarter, is it still eligible for the JobKeeper extension?
2. Is the JobKeeper extension tier of 20 hours a week inclusive of unpaid lunch breaks?

We have employees working which does not include lunch breaks e.g., a 7.6 h day plus lunch and smoko breaks.

#### Answer

- 1) Yes, if the drop in Dec. quarter exceeds 30% – you can enrol at any time the JobKeeper program remains open. For guidance refer the ATO website: [www.ato.gov.au/general/jobkeeper-payment/in-detail/JobKeeper-guide---employers-reporting-through-STP/](http://www.ato.gov.au/general/jobkeeper-payment/in-detail/JobKeeper-guide---employers-reporting-through-STP/)
- 2) Unpaid lunch and smoko breaks do not form part of the hours of work for the 20 hour per week threshold definition.

### Question 10

#### Subject: Forex Investment Loss

Our client engaged in Forex Trading and incurred following expenses; (FY 2019)

- Training fee \$35,000 (borrowed from bank to pay).
- Interest on borrowings \$2,500.
- Travel expenses related to training \$1,500.
- Trading loss \$1,000.

Since she is not in a business of Forex Trading, we are aware the above expenses are not tax deductible, except for the trading loss as the ATO website suggests forex trading is accounted on revenue account.

*My questions are:*

1. Can the training fee, interest on loan and trading loss be carried forward as investment loss instead?
2. If not can she claim trading loss of \$1000 as instant tax deduction?

#### Answer

Most small traders are usually dealing with CFDs which are on revenue account.

Without full details it sounds as if this will be quarantined



as a non-commercial loss to be offset against future income.

The training course, interest and travel are not tax deductible.

In our view, there has been no capital gains tax event for there to be a capital loss to be carried forward.

There is the faint possibility the course, interest and travel represent “black hole” expenditure which is deductible over 5 years.

For this to happen, you need to demonstrate a business is being carried on and while this is doubtful, you may wish to apply for a ruling.

### Question 11

#### Subject: Pensioner - employee/contractor?

We are taking someone on as a contractor for one day a week to carry out, telephone liaison, organise weekly meetings and data entry only.

They are a pensioner and we have made them aware of their Centrelink/pension payments and how they can be affected if we pay them more than their assessable income will allow. They have told us that it is not an issue, they just want a fair hourly rate for their value to the business.

Can you please tell me what we would be paying them if we had to classify them as an employee as it will give us an idea as to what to pay them as a contractor?

### Answer

We will not give that advice as it is hiding an employment contract, the work is that of an employee and would be classified as sham contracting.

Sorry about that!

### Question 12

#### Subject: Instant asset write-off

When does the 150% investment allowance on machinery end? It is available on the purchase of second-hand machinery, tractors, 4-wheel drives for a primary producer?

### Answer

There is not a 150% investment allowance, but an instant asset write-off – also termed “full expensing” after the changes made in the October Federal Budget.

The incentive ends on 30 June 2022 and if your turnover is less than \$50 million, it applies for the purchases of the second-hand items, you suggest.

# Your Notes

# Michael's Corner

## ARTICLE NO. 9 –

### NOT-FOR-PROFIT AND HUMAN RESOURCES RECRUITING

Staffing decisions are amongst the most important decisions that not-for-profit (NFP) organisations make. Just as any business of any size or operation rely on their personnel to execute strategies and advance their goals, so too do not-for-profit groups. It follows, then, that not-for-profits need to attend to the same tasks as any for-profit company does when turning to the challenges of establishing and maintaining a solid work force.

To accomplish this, NFPs need to address the following six personnel issues:

- assessing personnel needs
- recruiting personnel
- screening personnel
- selecting and hiring personnel
- orienting new employees to the organisation
- deciding compensation issues.

An effective not-for-profit manager must try to get more out of the people he or she already has. The return from human resources really determines the business's performance.

Coupled with people decisions:

- who we hire and who we terminate?
- where do we place people?
- who we promote internally?

The quality of these HR decisions largely determines whether the business is being run seriously, whether its mission, its values, and its objectives are real and

meaningful to people rather than just public relations and rhetoric.

### Assessing the businesses needs

A key component of any business is to build a quality core of personnel, this will give an honest assessment of current and future internal needs and external influences. Leaders and managers of not-for-profit organisations should study workload history, trends in the larger community, pertinent changes in the environment in which they operate (redundancies, business closures, introduction of a new business with a similar mission, legislative developments, etc.), recruitment demands associated with current and planned initiatives, operating budget and costs, and the quality and quantity of the area worker pool, both for volunteer and staff positions.

Moreover, all these factors need to be studied within the framework of the organisation's overarching mission statement. As many not-for-profit leaders have noted, adherence to other general business principles (sound financial management, retention of good employees through good salary packages, etc.) is of little solace if they lose sight of their mission—its reason for being- in the process.

There are several fundamental business principles concerning assessment of personnel needs that apply to not-for-profits also.

These principles include:

- Filling positions with people who are willing and able to take on the job.
- Providing accurate and realistic job and skill specifications for each position helps ensure that it will be filled by someone capable of handling the responsibilities associated with that position.
- Written job descriptions are essential to communicating job expectations.
- Employees who are chosen because they are the best available candidates are far more likely to have a positive impact than those who are chosen on the basis of friendship or expediency.
- Performance appraisals, when coupled with specific job expectations, help boost performance.

The process of selecting a competent person for each position is best accomplished through a systematic definition of the requirements for each job, including the skills, knowledge, and other qualifications that employees must possess to perform each task.

To guarantee that personnel needs are adequately specified:

1. conduct a job analysis
2. develop a written job description; and
3. prepare a job specification.

## Recruiting

For many NFPs, publicising their very existence is the most important step they can take in their efforts to recruit staff. They tend to rely on two basic avenues to publicise their work and their staffing needs:

- local media (newspapers, newsletters, radio advertising, billboards, etc.) and
- other community organisations (governments, churches, civic groups and other NFP organisations).

Many not-for-profit groups have found that contact with some community organisations, particularly churches and civic groups, can be particularly rewarding since these organisations already have members that may be predisposed toward the needs of the business.

## Screening and Selection

The interviewing process is another essential component of successful staffing for not-for-profit groups. This holds true for officers, directors, and paid staff. An orderly and professional approach to management will pay off handsomely for your organisation.

What you do in the recruitment phase of your work will set the standard for employee performance. If you are disciplined and well organised, you will often attract more qualified employees.

Managers should ensure they do the following when engaged in the process of staffing, screening, and selection:

- Recognise that all employees, have an impact on the group's performance. Certainly, some positions are more important than others, but countless not-for-profit managers can attest to the fact that an under-performing, unethical, or unpleasant individuals can have an enormously negative impact on the organisation's morale and/or reputation in the community.
- Use an application form that covers all pertinent areas of the applicant's background.
- Ensure that your screening process provides information about an individual's skills, attitudes, and knowledge.

- Try to determine if the applicant is interested in the organisation for legitimate reasons (professional development and/or advancement, genuine interest in your group's mission) or primarily for reasons that may not advance your organisation's cause (loneliness, corporate burnout, etc.).
- Objectively evaluate prospective employees based on criteria established in the organisation's job specifications.
- Be realistic in putting together your work force. "Managers cause most of the problems with some employees by making unreasonable assumptions about their intentions and capabilities. An organisation that sets the bar too high in its expectations of employees may find itself with a severe shortage of this potentially valuable resource.
- Recognising that employees bring both assets and negative attributes to your organisation, not-for-profit groups should be flexible in accommodating those strengths and weaknesses. If you want people to perform in an organisation, you must use their strengths—not emphasise their weaknesses.

Organisations that pay attention to these guidelines will be far more likely to enjoy positive and lasting relationships with their staff than those who fill their human resource needs in a haphazard fashion. The time to begin evaluating the probable reliability of human resources is prior to their insertion into your internal structure.

**To rest assured that you are compliant with the Fair Work Act, all supporting documents for the recruitment process can be found in bO2's Smart Toolpack 1- Employee Policy and Procedure Manual, bO2 Smart Toolpack 2- A veritable HR/IR utility belt and full step by step scripting in the bO2 HR/IR Smart Guides.**

**\*\*\*\*Please note that this is general advice for information only and any application of HR legislation and/or Industrial Relations and/or contractual agreements may require professional advice to suit your individual circumstances.**

**Call our toll-free P 1300 555 533 or book a Buzz Session!**

# Bonus Issue

## TAX SAVING TIPS (2021) – OVER 160 IN ALPHABETICAL ORDER

### 1. Accounting on the Cash Basis?

Paying all creditors by 30 June will allow these expenses to be deducted this financial year. If you have the funds, making payments on 29 June instead of...say 8 July, will defer tax for another year.

### 2. Always Lodge on Time

In the event you have inadequate funds to pay a tax liability, always lodge BAS and Income Tax Returns on time!

The ATO will impose a penalty at \$222 a week for late lodgement and are now less willing to remit penalties. Directors can be held personally liable for unreported PAYG and superannuation guarantee payments in excess of 3 months.

The act of lodgement and crystallisation of tax debt forces a business owner to actually work out a payment plan and address the cashflow issues affecting the business.

### 3. ATO Data Matching the Cash Economy and the Sharing Economy

Be aware that the ATO's data matching capacities continually improve and that throughout 2020/21 the ATO will intensify its attack on the cash economy using industry benchmarks - also targeting cities and districts in the process. Those who have made a decision to not declare a significant percentage of tax income are about to be found out.

Also, be aware that the sharing economy – Airbnb, Uber, et al. is now firmly in the sights of the ATO.

### 4. Audits (Tax) - Disclose Early

There are many ways of legitimately reducing taxation, ATO fines and interest penalties. The penalties for recklessly or knowingly keeping incorrect records starts at \$4,440 for a natural person plus up to 200% of the tax avoided.

Most taxpayers fail to disclose in these circumstances out of carelessness rather than wilful intent. Nonetheless, penalties often are applied for failing to take reasonable care.

If you are aware that an error has occurred, making voluntary disclosure before the audit to minimise the penalties. Get advice beforehand as your tax agent may put a “reasonably arguable” case that can further reduce any penalties.

### 5. Avoid Making Frivolous Work Claims

Now more than ever work-related expense claims are under scrutiny. Ensure that you have written evidence that you have incurred the eligible claim and that you can clearly demonstrate how the expenditure relates to your employment and/or the derivation of assessable income.

The ATO's data doctors make extensive use of benchmarks so if your claims exceed the norm for your occupation, expect a “please explain” letter.

### 6. Bad Debts

To claim a tax deduction, bad debts must be written off prior to year end. A journal entry must be made in the books of account prior to 30 June.

Realistically, assess your debtors prior to 30 June – if there is a reasonable belief a debt is bad, write it off. Of course, if the cash method of tax accounting is being used, you cannot write off bad debts for tax purposes as no income has yet been taken into account.

### 7. Beneficiary Loan Accounts – Trusts

Over time it is possible for a trust to build up considerable liabilities due to income allocated (but not paid) to young beneficiaries. It is wise to keep the balance of these loans to a minimum by paying private expenses such as school fees from the trust. It is possible for a young adult to call up their loan account.

### 8. Benefits of Mobile Beneficiaries

The flexibility to stream different classes of income to beneficiaries with different tax attributes explains the popularity of discretionary trusts. Significant tax savings can often be achieved where a trustee can stream specific classes of income to non-resident beneficiaries as long as the trust deed provides for this.

Given the global labour market and the increasing mobility of younger people, this is becoming a topical issue.

Australian tax can be minimised by streaming franked dividends tax free to non-resident beneficiaries. Unfranked dividends passing via a discretionary trust to a non-resident are subject to a 30% withholding tax, but most treaties reduce this to 15%. Interest income distributed to a non-resident attracts 10% withholding tax.

In the case of distributions to Australians studying or working abroad, it should be established they are non-resident for some or all the relevant tax year. For an Australian domiciled individual, this requires that the Commissioner be satisfied that the individual has a 'permanent place of abode' overseas. All relevant circumstances must be taken into account when considering residency issues. The 'rule of the thumb' suggested by the ATO is that an individual will be a non-resident of Australia if they have a settled lifestyle (i.e., a temporary home) abroad for at least two years. This often fits conveniently with undertaking an employment secondment or a master's degree. In addition, many young adults simply make the choice to work abroad as part of their life experience.

As always, the beneficiary should be able to receive or, (at least gain a present entitlement to), an Australian discretionary trust distribution without being subject to any material foreign tax. Whilst this will depend on where the beneficiary is based, it should be noted that many countries including the U.K. do not tax the foreign source of temporary resident expatriates.

As long as the person who receives the funds satisfies the criteria to be considered a non-resident of the relevant taxing years, funding their lifestyle through the discretionary trust is a tax effective means of funding Australians studying or working abroad.

## **9. Blinded by The Light – Tax Deductions That Mean Nothing**

We have covered this in part but would mention that first and foremost, it is vital to make sound commercial decisions. Tax deductions mean nothing if you are already below the tax threshold or already have tax offsets such as the low-income tax offset and/or the small business tax offset discount.

Sometimes expensive purchases including motor vehicles are justified by the tax deductions available. The tax saved is not the tax deduction – it is the marginal tax rate – (refer to page 4 of our annual publication) that is relevant.

For instance, if you are paying 21% marginal tax on a relatively low income there is an after-tax expense of 79% that is still incurred. Consider whether you have the cash flow to fund these additional expenses.

## **10. Borrowing to Fund Super Contributions for Employees**

Employers faced with limited funds, but major expenses of a non-deductible nature should consider borrowing to

fund super contributions on behalf of their employees, using the limited funds to pay non-deductible expenses.

Note if superannuation contributions are not made in time, later payments forced by the superannuation guarantee charge will not be tax deductible and a penalty may apply.

'One touch' payroll, means the ATO is now aware of small business compliance with super in 'real time'. It is essential to keep up to date with super payments. The severe cash flow challenges caused by COVID-19 are acknowledged.

## **11. Business Travel**

Ensure you keep accurate records for your work-related travel expenses, especially where your travel is for 6 consecutive nights or more, you must record in a travel diary:

- the nature of the activity
- the day and approximate time it began
- how long it lasted
- location of meeting.

## **12. Buying and Selling a Business**

Always consider that the buyer and seller will have conflicting agendas. As the other party will be taking professional advice, it is essential you receive expert advice on capital gains tax, income tax and GST. Another issue for negotiation between the parties will be the amounts apportioned between goodwill and depreciable assets.

## **13. Buying and Selling Intellectual Property**

Prior to acquisition IP must be clearly identified and careful consideration given to optimal treatment particularly when dealing with core technology. This is because a number of different treatments are outlined in the tax law – each with its own set of definitions.

## **14. Capital Gains Tax**

Get the timing right! A capital gains tax event occurs when the contracts are signed – not when settlement occurs. Many taxpayers have been caught out on this one. To defer a CGT event, defer the sale contract. Similarly, the 50% discount for assets held longer than 12 months for individuals and trusts is from contract to contract.



Further if you have made a capital gain this financial year – if at all possible, realise capital losses prior to 30 June on other assets held to offset the tax liability.

### **15. Capital Works Expenditure**

When purchasing an investment or commercial property check your eligibility for this deduction. A quantity surveyor can be engaged to assess the situation. The deductions which vary from 2.5% to 4% (depending on the type of building and date of construction) and relate to capital expenditure incurred in constructing income producing buildings – Structural improvements also qualify.

### **16. Catch Up Concessional Superannuation Contributions**

From 01.07.2018 individuals have been allowed to make additional concessional contributions where they have not reached their concessional contributions cap in previous years. Access to these unused cap amounts will be limited to those individuals with a superannuation balance less than \$500,000. Amounts are carried forward on a rolling basis for a period of five consecutive years, and only unused amounts accrued from 1 July 2018 can be carried forward.

This could be of benefit if you have had a large capital gain in the year and did not make maximum concessional contributions in prior years.

### **17. Cents per Kilometre Expenses Reimbursed**

Car expenses reimbursed on a cents per kilometre basis are not subject to FBT. Employees should declare the reimbursement as income. They should then claim the deduction under work related travel up to a limit of 5,000 kilometres. It is not uncommon for the deduction to exceed the employer reimbursement.

Note, also that where two or more taxpayers own or lease a car, and each uses that car separately for income producing purposes, each person is entitled to claim a deduction using the cents per kilometre method (see PS LA 1999/2).

### **18. Cessation of Business - Interest**

Interest on loans may be still deductible after cessation of business if:

- It is established the loans relate solely to the relevant business; and
- There is no legal entitlement to repay the principal and the consequent stream of interest outgoings is unavoidable. This may also have some application to investments.

### **19. CGT and Departing Overseas**

In a global job market, more taxpayers consider this option. If you cease to be an Australian resident for tax purposes it is possible to elect to pay CGT on a deemed disposal of these assets at the time of your departure. This may be because you expect the shares or property to increase substantially in value in your absence.

Upon your return you will be deemed to have acquired the relevant assets at market value meaning the increase in value in your absence is effectively exempt from tax. Note you may not only be furthering your career, but you may also be taking a “tax holiday” on the capital appreciation on your assets while you are away!

### **20. CGT Asset Register**

You may find that a simpler way to keep records of assets is to keep a CGT asset register. This is a register of information about your CGT assets that you have transferred from your CGT records (for example, invoices, receipts, and contracts).

For most assets, this information includes:

- the date the asset was acquired
- the cost of the asset
- a description, amount and date for each cost associated with purchasing the asset (for example, stamp duty and legal fees)
- the date the asset was disposed of
- the amount received on disposal of the asset; and
- any other information relevant to calculating your CGT obligation.

You can discard your CGT records five years after having an asset register entry certified if:

- you enter all the necessary information about an asset in your CGT asset register
- the entry is in English and is certified in writing by an approved person (for example, a registered tax agent); and
- the asset register entry is certified after 31 December 1997 (although the asset itself may have been acquired before this date).

If you do not keep an asset register, you generally must keep CGT records for at least five years after you dispose of an asset. For example, if you hold an asset for 10 years and then sell it, you will have to keep the records for 15 years.



To claim a capital loss, you also need the above data.

## 21. CGT Discount

You may be eligible to use the CGT discount to calculate your capital gain if:

- the CGT event giving rise to the capital gain happened after 11.45am on 21 September 1999; and
- you owned the asset involved for at least 12 months
- the CGT discount is not limited to capital gains from business assets.

The discount allows individuals (including partners in partnerships) and beneficiaries of trusts to reduce their capital gain by 50%. There are further rules for beneficiaries who are entitled to a share of a trust capital gain. Companies cannot use this CGT discount.

## 22. CGT Discount and Trusts

It is commonly accepted that CGT Assets are often best held by discretionary trusts. The capital gains can be distributed to an individual family member with the lowest marginal rate of tax. Furthermore, the CGT discount for assets held longer than 12 months can be passed on by the trust to the relevant individual.

## 23. CGT- Third Element Cost Base

This is often overlooked and applies to assets purchased after 20.08.1991. These costs of owning an asset include rates, land taxes, repairs, and insurance premiums. You can also include any non-deductible interest on loans used to finance:

- the acquisition of the CGT asset
- capital expenditure to increase an asset's value.

It is crucial to note that these are expenses for which a tax deduction has not been claimed. Record keeping is essential and an example of this could be a holiday home or a spare property that you allow family a member to live in.

## 24. Child Maintenance Trusts

Maintenance payments are not tax deductible. The establishment of a child maintenance trust will result in the payment of maintenance out of pre-tax income. If properly established and administered, trust income will be taxed at normal individual rates and should avoid the operation of Div 6AA penalty rates of tax.

## 25. Claiming the Spouse Superannuation Tax Offset

This offset allows 18% of your contribution to your spouse's complying super fund, up to a maximum contribution of \$3000 - resulting in a maximum possible offset of \$540. It should be noted that this maximum gradually decreases to nil if your spouse's income is between \$37,000 and \$40,000.

Note that your spouse must also have not exceeded their transfer balance cap or their yearly non-concessional contributions cap.

## 26. Client Gifts

An income tax deduction is available for gifts of alcohol or food hampers provided to clients provided they are taken away for private consumption. This means gifts made where there is immediate consumption such as in a restaurant are not deductible. Gifts of other items such as cosmetics and perfumes are also tax deductible and input tax credits may be claimed.

## 27. Company Losses

The Government has announced that it will allow companies with aggregated annual turnover less than \$5 billion to carry back tax losses from 2019-20, 2020-21- or 2021-22-income years to offset previously taxed profits in the 2018-19 or later income years.

Eligible corporate tax entities can elect to apply tax losses against taxed profit in a previous year, generating a refundable tax offset in the year in which the loss is made. The tax refund is limited by requiring that the amount carried back is not more than the earlier taxed profit and cannot result in a franking account deficit.

The tax refund will be available on election by eligible companies when they lodge their 2020-21 and 2021-22 tax returns.

Companies that do not elect to carry back losses under this measure can still carry losses forward as normal.

## 28. Company Tax Is Now 26% for SBEs

A Small Business Entity must be conducting a business. A share trading business may be an option for some high-net-worth families. Consider that highest marginal individual tax is now 47% and this may be a reasonable option. Such a company could also receive trust distributions.

We note that the company tax remains at 30% for recipients of passive income not conducting business.

### **29. Companies and the CGT Small Business Concessions**

The 50% CGT discount on assets held longer than 12 months is not available on company assets however the active asset exemption and the retirement exemption are available.

The active asset exemption enables a 50% exemption for the relevant “significant individuals” with net assets up to \$6 million.

The retirement exemption enables a full exemption from CGT (up to a lifetime limit of \$500,000) on the sale of the small business’s qualifying assets provided certain criteria are met. If being paid in cash the significant individual needs to be over 55, otherwise under 55’s can roll the amount into a complying super fund and retain the tax-free status.

Taking the retirement exemption instead of the active asset exemption can provide benefits when withdrawing the funds from the company.

### **30. Compensation Payments**

Take particular care when accepting lump sum settlements in cases that involves an action where there is no underlying asset.

If the lump sum compensation payment is not dissected, it is possible the entire amount could be caught for CGT.

Where the compensation payment has several factors, identify the components, but more importantly the nature of its source, ideally linking it to existing assets which may have a cost base.

### **31. Computer Software**

Any obsolete software should be reviewed and written off in full prior to year end. Software not forming an integral part of any computer hardware is depreciable at prime cost at 20%.

If the cost of the software is low enough to qualify for a prime cost pool, it may be completely written off in the year of acquisition.

### **32. Consumables**

Stocking up on consumables including stationery just prior to 30 June can help reduce profits resulting in a lower tax bill.

### **33. Contributions to Superannuation - Notice of Intention to Claim a Tax Deduction**

Be very careful with these notices of intent as the below case study shows.

Rachel makes a personal contribution to her super fund in May intending to claim it as a deduction when she does her tax.

Rachel does not submit a notice of intent at the time. Instead, she rolls her two existing super funds into a new fund that offers investment options more suited to her goals.

In early November, Rachel decides to do her tax return and she lodges a notice of intent to claim a deduction for personal super contributions with the fund that now holds the rollovers from her two previous funds.

However, that notice is invalid as she has not made any personal contributions to the new fund. The notice would also be invalid if she sent it to the old fund (where she made the contribution) for two reasons: first, when she gives the notice in early November, she is no longer a member of the fund and second, the fund no longer holds her contributions.

Rachel has lost her entire tax deduction for the contribution.

### **34. Control the Timing of Tax Deductions - Prepaid Expenses**

In addition, as an SBE taxpayer you can claim an immediate deduction for certain prepaid business expenses, such as subscriptions to professional associations, rent or insurance payments, that satisfy the 12-month rule.

In similar fashion, those on PAYG, should bring forward expenditure prior to 30.06.2021 particularly for tax deductible items they may have to pay early in the subsequent financial year.

### **35. Converting Non-Deductible Interest**

If you are a shareholder / director of your own company and have a home mortgage, consider converting non-tax-deductible interest payments on a private loan to deductible interest payments. For this to happen, the company needs to borrow the funds to pay dividends or eliminate a debt owed to you. With these funds you may reduce or eliminate the mortgage.

### 36. Crack Down on Income from Professional services

Taxpayer Alert TA 2013/3 outlines how the ATO will be reviewing certain arrangements used by professional services partnership firms operating through discretionary trusts.

There is also a follow up focus on the personal remuneration of Principals. You need to study and understand the ATO guideline released in 2014 which included a risk-based approach and stay within their guidelines. You will still achieve a reasonable tax outcome. Be aware the ATO is spoiling for a fight and will carefully pick its targets.

### 37. Creating Intellectual Property

The capital costs incurred in creating or purchasing Australian patents, registered designs, or copyrights, which are used to produce assessable income, are deductible. A claim is allowed in the income year when the property is first used to produce assessable income. The deduction is based on the effective life of the property.

Deductions terminate when the rights themselves cease to exist. Write off the residual value of the capital costs if the I.P. is no longer used to generate income.

### 38. Deceased Estates

Simply dividing an estate between children may overlook tax planning opportunities. Some beneficiaries may wish to receive ASX listed shares in specie – not cash and in so doing defer the CGT event. Testamentary Trusts should be considered for at risk or vulnerable beneficiaries.

### 39. Defer Income

It may be possible to defer a one-off payment such as bona fide redundancy packages, other ETPs and bonuses into the next tax year. This may be negotiated with your employer.

### 40. Depreciation

To maximise claims:

- If plant has fallen below book value and is surplus to needs bring forward this disposal at a loss prior to year end.
- Scrap obsolete plant prior to year end.
- Delay disposal of plant at a profit into the next tax year.

### 41. Directors' Fees

Directors' fees are deductible to a company when incurred. If prior to the year end a resolution is passed at a director's meeting to pay reasonable directors' fees and bonuses, then the company has a legal obligation to make the payments, and the amounts determined are tax deductible as at the date of the resolution. They are not assessable to the employee until paid, which usually takes place in the following year. At this time, PAYG should be deducted.

Effectively, a deferral of tax has occurred in the book of accounts. The liability should be shown as "Directors Fees Payable". If credited to a Director's personal loan account, then under constructive receipt the director is assessable on the income.

Refer to the ATO issued taxpayers alert 2011/4 on this subject. Make sure you are within their guidelines.

### 42. Discretionary Trusts– Streaming Income

Streaming income and capital gains to particular beneficiaries can significantly reduce your family tax burden.

Where a discretionary trust derives substantial income and capital profits, identifying the tax profiles of the beneficiaries and making distributions accordingly can result in significantly less tax. Where the individual beneficiaries are on marginal tax rates in excess of the corporate tax rate (currently 26%), distribution of income to a corporate beneficiary can produce a 'tax deferral' advantage. Alternatively, where a trustee makes capital gains, distributing them to individual beneficiaries may effectively reduce tax to 23.5% or less.

### 43. Dividends and Imputation Credits

In order to claim a credit for the tax a company has already paid on a dividend the shares must be held at least for 45 days or more. Credits are available to individuals via franking credits and companies via the inter-corporate dividend rebate.

Where a taxpayer's total franking credits do not exceed \$5,000 these rules do not apply. Where shares are held in a trust and the beneficiaries receive more than \$5,000 of credits the credits will be denied unless the trust has made a "family trust election".

### 44. Division 293 Tax Threshold

From 1.7.2017 this has been lowered to \$250k (formerly \$300k). This means many more taxpayers will be affected.

You are liable to pay Division 293 tax if you have taxable contributions for an income year.

If your income - for surcharge purposes, plus your low-tax contributions – is greater than \$250k, the taxable contributions will be the lesser of the low-tax contributions and the amount above the \$250k threshold.

Being aware of this changed threshold, allows a taxpayer to defer income, accelerate deductions or in a discretionary trust situation choose another beneficiary to absorb the income.

#### **45. Division 7A – Debt Forgiveness**

If you are a shareholder or an associate of a shareholder in a private company which directly or indirectly makes a payment or loan to you or forgives a debt that you owe the company, the company may be taken under Division 7A of the Tax Act to have paid you a dividend. You may need to include this amount in your tax return as an unfranked dividend.

Generally, the amount treated as a dividend will be equal to:

- the payment made
- the amount of the loan that has not been repaid at the end of the private company's income year; or
- the amount of the debt that has been forgiven.

#### **46. Division 7A- Loans**

Loans to company shareholders or associates should be reviewed prior to 30 June. Loan agreements should be in place, otherwise there is the danger that outstanding loans can be treated as an unfranked deemed dividend.

The soundest risk management practice that can be adopted by family companies is to enter into a Division 7A facility loan agreement as soon as practicable after formation. There must also be a binding agreement between shareholders or associates and the company to use setoffs as the method of repayment.

#### **47. Donations - Timing**

You may consider spreading large donations over 2 or more years making proper reference to your estimated taxable income. Do not donate more than it takes to get to the tax-free threshold.

#### **48. Donations v Purchases**

If you give to a charity but receive something for the money expended, this is considered to be a purchase and not a donation. The amount expended is non-tax deductible.

An example is raffle tickets. You may wish to simply make a donation and claim a tax deduction.

#### **49. Do not overlook Tax Offsets!**

Too often when allocating the taxable income of a discretionary trust the focus is on only the marginal tax rates of the beneficiaries.

Advisors should also consider entitlements to the Family Tax Benefit when these decisions are made. Consider also other Centrelink Benefits that may be lost if taxable income exceeds certain thresholds. The Superannuation Co-Contributions which is means tested should also be considered.

Reportable Fringe Benefits are also included in definition of taxable income to determine eligibility for these benefits.

#### **50. Eliminate Capital Gains**

If you have made a large capital gain, check if you are eligible to make a tax-deductible contribution into your super. If you are an employee receiving substantial employer support, consider salary sacrificing salary into super and spending down on the capital received from the CGT event.

#### **51. Estate Planning – Super Payments to Non-dependents**

If a superannuation fund member is in terminal decline and they have no dependents the trustee should consider paying the benefits to the member tax free prior to death.

Payments to non-dependents attract tax and this should be avoided.

#### **52. Franking Credits**

If you are an Australian resident who does not need to lodge a tax return but has a franking credit on dividends or managed funds, it is possible to phone the ATO requesting a "Refund of franking credits form" to organise a refund.

#### **53. Franking Credits – Trusts**

If your Trust has share investments that yield franked dividends, always try and ensure the trust has a net income. This is because franking credits cannot be distributed to beneficiaries if the trust has a loss. This means a potential tax refund could be lost.

#### **54. Get Organised**

You should keep all receipts and have these summarised in an organised and systematic manner. When you go to

see your Accountant, you should also have a checklist of items you wish to discuss with him/her. This enables you to plan for the future and get the most out of the meeting. Rather than your accountant sorting out your mess... you get some good advice!

In the event you have mislaid receipts, all is not lost – mine emails, your bank statements and diary for evidence of expenditure. You do need to substantiate expenditure, but receipts can often be recovered.

Are you fighting a paper war, concerned that you may be missing out on some taxation deductions? If so, then consider alternatives. These could include a designated business account to track expenditure or scanning receipts and electronically storing them.

### **55. Get the Structure Right**

When commencing a new venture, take professional advice to ensure you are properly structured. A simple company is not always the best way to go for capital gains purposes.

Trusts have become increasingly popular. Consider asset protection having one “at risk” spouse holding company directorships and the other “not at risk” spouse controlling private assets which may be placed in an asset protection trust.

### **56. Going Concern- Commercial Buildings**

Buying a commercial building under the going concern exemption enables the purchaser to reduce unnecessary stamp duty as the purchase price becomes the GST exclusive amount (not the GST inclusive price). For this to occur, a valid lease must be in place.

### **57. Going Concern - Exemption**

The sale of an enterprise as a going concern is GST-free if certain requirements are met. This means that if you sell an enterprise as a going concern, GST is not payable on the sale.

A sale of a going concern is a sale where:

- all the things necessary for the continued operation of the enterprise are supplied to the buyer; and
- the supplier carries on the enterprise until the day it is sold.

A sale of an enterprise as a going concern is GST-free where:

- the sale is for consideration

- the purchaser is registered or required to be registered for GST, and
- both parties agree in writing that the sale is of a going concern.

If all these requirements are met, GST is not payable on the sale.

### **58. Halving Tax on Shares**

Despite the turbulence in equity markets over the last 12 months, many share traders are still sitting on substantial accrued profits. Did you know that if you hold these shares long term you can legally halve your tax bill on not only future gains, but also the substantial gains already accrued?

The trading stock provisions of the Tax Act allow you to change the manner in which you hold your shares. This means you can cease to hold shares as your trading stock even though you continue to own them.

This ‘change of use’ has no tax implications as the original shares are treated as having been disposed and immediately ‘reacquired’ as a capital asset at their original tax cost. Effectively, an item that was originally trading stock then becomes a capital asset upon the change of use. No formal written election is required to evidence the change.

### **59. Home Office Expenses**

If carrying on a home-based business, you may claim office expenses as long as the work area is separate and distinct. Deductible items include heating, lighting, depreciation of furniture and equipment and cleaning.

The percentage apportionment is normally done on floor space. Think carefully before claiming council rates and mortgage interest as this could trigger Capital Gains Tax if the property is sold.

Avoid making ambit claims which cannot be justified in the event of a tax audit.

### **60. Income Averaging – Creative Persons**

Australian individual residents who derive “above average special professional income” being authors of dramatic, literary, artistic, or musical works, inventors, performing artists, production associates or sportspersons may access income averaging. Their whole taxable income is taxed, but at a rate of tax which would apply to a taxable income including only 20% of that income.



Tax determination TD 93/65 indicates computer programmers are authors and able to access income averaging if they have derived 'above average special professional income'.

### 61. Income for Surcharge Purposes

Division 293 tax is calculated based on your income for surcharge purposes, which is similar to the calculation for income for Medicare levy surcharge purposes. This information is collected from your income tax return.

For Division 293 tax purposes, the ATO disregards any reportable super contributions reported on your income tax return – these contributions are included in another part of the calculation.

#### *Low-tax contributions*

Division 293 tax uses contribution information reported on member contribution statements (MSC) and the self-managed super fund (SMSF) annual return, which are lodged to them via your super fund, to determine the total taxable super contributions.

The contributions counted for Division 293 tax purposes generally include:

- employer contributed amounts
- other family and friend contributions
- assessable foreign fund amounts
- assessable amounts transferred from reserves
- personal contributions for which you have been allowed a deduction
- defined benefit contributions.

These contributions are concessionally taxed at 15% within the super fund.

The total taxable super contributions amount is not the same as low-tax contributions. To calculate which contributions are the low-tax contributions, any contributions that attract certain additional tax are disregarded.

### 62. Income Splitting - Investments

This is so fundamental but so often overlooked.

If you have a spouse or child over 18 years on a lower marginal tax rate, consider placing investments in their name and ensure they have full entitlement and control of the investments.

The investment income will be taxed at their lower marginal tax rate. Of course, using a family discretionary trust allows even more flexibility.

### 63. Insurance Bonds

Insurance bonds can be a handy tax break for higher income earners because they are tax-paid investments, where earnings are taxed in the bond at 30 per cent and do not affect the investor's taxable income. These are regarded as the most tax-effective product after super.

If you are on a higher marginal tax rate than 30 per cent, it is tax effective. Insurance bonds are good for education savings or leaving money to grandchildren outside of a will. However, the 10-year time frame may be unsuitable for some.

### 64. Instant Asset Write-Off Changes – Temporary Full Expensing Incentive

Following the October Federal Budget, eligible businesses with an aggregated turnover of less than \$5 billion are able to deduct the full cost of new eligible depreciating assets that are first held, and first used or installed, between 7:30pm AEDT on 6 October 2020 and 30 June 2022. For small and medium sized businesses (with aggregated turnover of less than \$50 million), full expensing also applies to eligible second-hand assets.

**The 2020-21 Budget effectively removes any write-off thresholds** and allows for the full expensing in the first year of use to new depreciable assets and cost of improvements to existing eligible assets.

The instant asset write-off incentives below apply only for purchases between 12.3.2020 and 6.10.2020.

- Businesses with aggregated annual turnover between \$50 million and \$500 million can claim an immediate deduction for the full cost of eligible second-hand assets costing less than \$150 thousand if they are purchased by 31 December 2020 and installed ready for use by 30 June 2021.
- Small businesses with aggregated turnover of less than \$10 million can deduct the balance of their simplified depreciation pool at the end of the income year under the new measure.
- Businesses that hold assets eligible for the enhanced \$150,000 instant asset write-off now have an extra six months, until 30 June 2021, to first use or install those assets.



## 65. Interest – Partnership Capital

A tax deduction is available for interest on a loan used to pay out a partner's capital account. The individual receiving the funds could then pay out non-tax-deductible debt.

## 66. Interest Claims

In 1999 the High Court in Steeles' Case confirmed that interest is ordinarily a revenue item and not capital. The judgement in Steele's case confirmed that interest incurred before a business commences operations or derives assessable income can be deductible. This is particularly the case for developer's expenses incurred in the construction phase. However, read our tax tip limiting deductions on vacant land.

## 67. Invalidity Payments

Payments made as a result of the termination of employment due to the disability of the employee are tax deductible and exempt in the hands of the employee.

Disability can be physical or mental and although not limited to total incapacity covers incapacity for that particular employment.

## 68. JobMaker Credit

Consider taking advantage of the Jobmaker hiring credit. From 7.10.2020, the Government will pay a hiring credit for up to 12 months for each new position. This is available from 7 October to employers who hire eligible employees age 16 to 35. The credit will be paid quarterly in arrears at the rate of \$200 per week for those age 16 to 29, and \$100 per week for those age 30 to 35. Eligible employees are required to work a minimum of 20 hours per week and receive the JobSeeker Payment, Youth Allowance or Parenting Payment for a least one month out of three months prior to when they are hired.

To be eligible, employers will need to demonstrate an increase in overall employee headcount and payroll for each additional new position created.

## 69. Legal Expenses

Legal expenses incurred in gaining assessable income are deductible but only if they are not of a capital or private nature. However, there may be a deduction under 'black hole expenditure'.

## 70. Limiting deductions for vacant land

Recent changes apply to limit the deductions that can be claimed for holding vacant land incurred on or after 1 July 2019, even if the land began to be held before that date.

For the purposes of determining whether deductions for holding cost are denied, land is considered vacant if:

- at the time the expense was incurred, the land did not contain a substantial and permanent structure; or
- the land did contain a substantial and permanent structure that is residential premises, the premises is not lawfully able to be occupied, or it is not rented out or made available for rent.

Deductions for vacant land holding costs are not impacted by these changes if:

- the land is held by:
  - corporate tax entities, superannuation funds (other than self-managed superannuation funds), managed investment trusts or public unit trusts; or
  - unit trusts or partnerships of which all the members are entities listed above.
- the land is used in carrying on a business by:
  - you
  - your affiliates
  - an affiliate of you
  - your spouse or child (under 18) or
  - an entity connected with you.
- you or an entity listed above is carrying on a business of primary production and the land is leased or hired to another entity
- the land is made available at arm's length to a business for use in the business
- a substantial and permanent structure was on the land, but an exceptional circumstance occurred that resulted in the land becoming vacant.

So, the message here is clear if you are able to offset the holding costs for passively held land against other income, then do this in corporate tax entity (or similar) as outlined above.

## 71. Liquidations

The Archer Bros judgment has observed that 'By a proper system of bookkeeping, the liquidator in the same way as the accountant of a private company, which is a going concern, a distribution could be made out of .... particular profits or income...'

This has led to what is commonly referred to as the Archer Bros principle and there will be times when its application will give rise to favorable outcomes.

This will be particularly the case where there are pre-CGT companies (with capital profits) with pre-CGT shareholders, but may even be worthwhile in the case of post CGT companies.

## **72. Living Away from Home Allowance**

In limited circumstances a living away from home allowance paid to an employee required to live away from his home may be tax deductible to the employer and exempt from FBT.

## **73. Logbooks – Now More Important Than Ever...**

If you genuinely use your motor vehicle for business, go to the effort of filling out a complying logbook for 12 consecutive weeks – individuals owning MVs will save on tax (substantiation) or alternatively you may make your salary package with your employer more effective through lower amounts of FBT being costed to your package.

Taxpayers often come to grief with sham logbooks filled out when faced with an audit. The ATO check barcodes and can quickly spot anomalies. Make this your New Year resolution!

## **74. Losses by Theft**

These losses are deductible if incurred by theft or stealing by an employee unless committed by a person who is only employed for private or domestic purposes.

## **75. Medicare Levy Surcharge (MLS)**

Whilst the joint income may not exceed the threshold if one person's income is over the individual limit then they are liable for the surcharge unless exempt. The best way to avoid the surcharge is to obtain private family health cover. This must be for hospital cover not just ancillaries. You can reduce the premium with an excess and still be exempt from the surcharge.

For individuals, the 1% surcharge can apply from taxable incomes as low as \$90,000. You may wish to consider private health cover.

## **76. Medicare Levy Surcharge Private Health Cover: Make Sure You Maximise Your Tax Refund**

If you do not have private hospital insurance and your income is more than \$90,000 for singles or more

than \$180,000 for families, you will pay a minimum of 1% Medicare Levy Surcharge. That is on top of the compulsory 2% Medicare levy paid by most taxpayers.

A basic private health cover plan can cost less than the 1% of your gross income – less than the Medicare levy that you will pay if you have no insurance – and that's why private cover may save you money. Private health cover may also have other advantages such as shorter waiting times.

## **77. Money Held in Trust**

People operate bank accounts in trust for a multitude of reasons. For instance, mum and dad in trust for child, or son in trust for frail parent. Usually, bank accounts such as these are titled "mum as trustee for child" or similar. Such a title clearly indicates the trustee nature of the relationship.

When you operate a bank account as trustee for someone else, the money is theirs, not yours. Also, the interest earned on the account is theirs, not yours, and is declared in their tax return, not yours. When opening the account, the bank will ask to be given a tax file number and what they want is the TFN of the person whose money is being held in trust, not yours.

The ATO conducts data matching on the basis of names and TFNs. If you give the bank your own TFN you will eventually have the ATO suggesting, you have not disclosed and paid tax on the interest earned by the account for which you are merely acting as trustee. Make sure you give the bank the TFN of the person whose money it is.

## **78. Mortgage Reduction**

This is not an uncommon situation. Husband and wife have a principal residence with a mortgage of \$250,000. They have a share portfolio of \$180,000 which is ungeared. It is possible they may even have carried forward capital losses. Also consider the use of mortgage offset accounts. After a careful consideration of the CGT issues, it may be possible to sell the shares to reduce the non-deductible loan.

Given the increased equity in the principal residence there should not be a problem in getting a tax-deductible margin loan to re-invest in the stock market, making interest on such a loan tax deductible.

## **79. Negative Gearing**

May be explained as paying more interest and other outgoings than you receive in income from your

investment. There are also other (non-cash outgoings) such as depreciation, which are also tax deductible.

Although negative gearing reduces the holding cost of an asset through tax savings, as a wealth accumulation technique, it is predicated on eventual capital gains. As such choose a quality asset to invest in, taking independent financial advice.

## 80. Non-Cash Super Contributions

Contributions to a superannuation fund need not necessarily be made in cash. Assets such as shares listed on an Australian Stock Exchange or Business Real Property can be transferred to a super fund by an employer and a deduction claimed for the value. Be aware that a residential property owned by a member or associate of a member cannot be transferred. Also, there will be CGT and stamp duty to consider. Limits apply to the value of deductible contributions for an employee.

## 81. Non-Commercial Rent

Landlords should be aware of the ATO's views on non-commercial rental arrangements – often arising in family situations.

Typically, one family member may rent a property to another family member at a nominal rental. The ATO view in these situations is that a deduction for rental property deductions can only be claimed up to the amount of rental income received from the arrangement.

## 82. Other CGT Rollovers

Rollover relief is available in many cases allowing the taxpayer to preserve the "Pre CGT-status" of some assets or defer a CGT liability in the case of a post CGT asset.

These include:

- **Replacement Asset:** where a taxpayer receives a replacement asset or compensation for the loss, destruction or compulsory acquisition of an asset.
- **Marriage Breakdown:** the transfer of assets between spouses on the breakdown of the marriage. This must be court approved.
- **Strata Title Conversions:** On conversion of a home or unit into a strata title arrangement.
- **Scrip for Scrip:** CGT rollover relief is available where equity in a company or fixed trust is exchanged for replacement equity interests. This is typically the result of a takeover or scheme of arrangement.
- **Sole Trader, Partnership or Trustee to Company**

**Transfer:** Relief is available where assets are transferred into a wholly owned company. This strategy is useful when restructuring entities.

- **From a Fixed Trust to a Company:** This is not available to discretionary trusts.
- **Renewal or Extension of a Statutory License:** These cover a wide range of industries including taxis, primary production & exporting.
- **Exchange of Shares in the Same Company:** This can be useful when reorganising capital to do the entry or exit of an equity holder.

## 83. Partnerships – Varying Entitlements

Merely changing percentage allocations of partnership income is ineffective for tax purposes. Of course, this may be desirable when one partner has other sources of income. However, any variation in the allocation of partnership income (or losses) should be documented and entered into before the start of the financial year reflecting:

1. The capital entitlements of the partners; and / or
2. Their personal exertion in generating partnership income.

## 84. Personal Use Assets and CGT

These assets are those that are kept mainly for your personal enjoyment and exclude collectables – such as artwork. When these assets are acquired for \$10,000 or less (ex. GST) any capital gain is exempt. Capital losses from the disposal of personal use assets cannot be claimed no matter what the original cost.

## 85. Prepayment of Interest

It is still possible for owners of an investment property to make a 12-month prepayment of interest prior to 30 June. This strategy may be worthy of consideration if you have an abnormally high taxable income in a given year.

## 86. Private Rulings

In situations of uncertainty and special circumstances obtaining a private ruling from the ATO gives personal guidance usually in relation to deductibility. Private rulings can provide you with exemptions or deductions not available to other taxpayers. The ATO may reverse a private ruling but you are protected from underpaid tax, penalties, and interest in relation to the item(s) covered by the ruling. Full disclosure of all relevant facts is critical to the effectiveness of a private ruling.

**87. Professional Expenses – Starting a New Business**

From 01.07.2015 there has been an immediate tax deduction for a range of professional expenses associated with starting a new business, such as professional, legal, and accounting advice, instead of spreading the deduction over five years.

**88. Rates and Land Taxes**

On purchase of a property, check the settlement statements for adjustments to make sure you maximise deductions if the property is used for income producing activities.

**89. Record Retention**

You need to keep your records for the last five years from 31 October or the date the return is lodged if that is later.

However, in the event of an audit the onus is on the taxpayer to explain how assets have accumulated over a number of years. The Commissioner sometimes makes what is known as an “Asset Betterment Assessment” based upon what is considered to be an unexplained increase in assets.

When there are disputes in the Courts, invariably the taxpayer loses because of inadequate record keeping explaining the increase in assets. In this context it may be prudent to retain records for more than five years.

**90. Redundancy and Early Retirement Payments**

Bona Fide redundancy and approved early retirement payments up to an indexed threshold (2021 \$10,989 plus \$5,496 for each completed year of service) are tax deductible to the employer and tax free to the employee.

Bona fide redundancy occurs where an employer no longer requires an employee to carry out a particular form of work. Note the termination must be initiated by the employer and it must be the job that becomes redundant and not the employee.

**91. Refunds of Tax paid Overseas**

Often the GST (or like mechanism) can be refunded on certain items when leaving a country and heading back to Australia. Generally, it is on items that are purchased in that country and are in effect being exported when you leave. Each country varies so it is best to check what is on offer for the country you are visiting.

**92. Rental Property - Repairs**

It may be possible to bring forward expenses for repairs and expenses on or before 30 June to maximise tax deductions.

Note that some repairs may be capital in nature and as a result subject to depreciation and not an outright deduction if they are:

- an improvement to an asset over and above its original working condition
- initial repairs to a recent capital purchase
- a substantial replacement of an asset.

**93. Rental Property – Restriction on Depreciation Deductions**

From 1.7.2017 ‘Plant and Equipment’ depreciation deductions have been limited to outlays actually incurred by investors in residential real estate properties. These are usually mechanical fixtures or those that can be easily removed from a property such as dishwashers, ceiling fans and includes carpets.

As it is made clear that someone purchasing a second-hand property will be denied these claims, it is an issue that purchasers and vendors alike need to be aware of. For instance, it may now be more tax effective for investors to purchase a property and do the renovations themselves.

This means they have incurred the depreciation on fixture and fittings. Note the 2.5% capital allowance tax deduction is not affected by these changes.

**94. Rental Property - Travel Expense**

From 1.7.2017 tax deductions are disallowed for travel expenses relating inspecting, maintaining, or collecting rent for a residential rental property. However, as travel expenses for seeing your accountant are still a tax deduction such expenses are claimable if they are in same location. In the event the trip is for an extended length of time (a holiday) and/or also for mixed or personal purposes than an apportionment may be necessary.

**95. Research and Development**

If you genuinely engage in research and development (R&D), take advantage of the enhanced R&D tax offset. The Government announced further enhancements to the Research and Development Tax Incentive. The changes will apply for income years starting on or after 1.7.2021.

- For companies with an aggregated turnover below \$20 million, the refundable R&D tax offset rate will be increased to a 18.5% premium to the company's corporate tax rate. Note the previously proposed cap on \$4 million annual cash refunds will not proceed.
- For companies with aggregated turnover of \$20 million or more, the number of R&D intensity tiers (which measures the company's R&D expenditure as a proportion of total expenses for the year) will be reduced from three to two, and the non-refundable R&D tax offset will be increased as follows:

R&D intensity	Non-refundable R&D tax offset
0-2%	Corporate tax rate + 8.5%
>2%	Corporate tax rate + 16.5%

Reforms from the 2019-20 MYEFO announcement will be retained, including the proposal to increase the limit for R&D expenditure which is eligible for the R&D tax incentive from \$100 million to \$150 million per annum.

## 96. Residency for Tax Purposes

Refer to Chapter 11 of our annual publication. In the past nine years, we have covered a number of cases.

The message is clear – if you intend working overseas take specialist advice. It does not follow that just because you spend more than 183 days overseas in any given tax year that you cease to be an Australian resident. For instance, do you still maintain a permanent home in Australia and where does your spouse and children live?

In recent years there have been a number of cases where Australians who have spent considerable time overseas have been still found to still be tax residents of Australia. It is essential that you establish a permanent place of abode outside Australia to have any prospect of being considered to be a non-resident.

## 97. Review your Structure

Whether you operate as a company, trust, partnership, or sole trader it is vital that you review your current business structure and not only from a taxation viewpoint. Risk Management and asset protection must also be carefully considered.

## 98. Salary Earners and Negative Gearing

It is possible to have your PAYG deductions lowered if you are a salary earner who has a negatively geared investment.

Apply for a "2021 PAYG Income Tax Withholding Variation Application" from the ATO; they will issue a variation certificate stipulating a lower percentage, which they will also send to your employer.

## 99. SBE – Leasing Plant

This can be an effective form of financing for SBE taxpayers because they are still able to prepay up to 12 months rental.

## 100. Self-Education Expenses

Self-education expenses are expenses related to a course of education provided by a school, college, university, or other place of education. You must have undertaken the course to gain a formal qualification for use in carrying on a profession, business, or trade or in the course of employment.

You can only claim self-education expenses that related to your work as an employee at the time you were studying. If your self-education was to help you get a new job, you **cannot claim** your expenses.

You generally **cannot claim** the cost of meals. However, you **can claim** the cost of meals during an absence from home if:

- you were participating in self-education directly connected to your current work, and
- that self-education required you to be temporarily away from your home for one or more nights.

You **can claim** other expenses such as:

- textbooks
- stationery
- student union fees, and
- the decline in value of your computer.

If you did not use your computer solely for self-education purposes, you will need to apportion your deduction. This means you divide the amount between private use and work-related use. For example, if you used your computer 40% of the time for deductible self-education purposes and 60% of the time for private purposes, then you can only claim 40% of the decline in value.

## 101. Seriously Consider Whether You Need to Lodge a FBT Return

This is directed at small employers who provide motor vehicles to working directors and arm's length employees. This is now an area of ATO focus.



## 102. Single Car Families and Motor Vehicles Expenses

Where a car is jointly owned a common error when claiming deductions is that couples assume because the car is already claimed by one person, expenses cannot be claimed by the second person. This is incorrect. This relates to the “cents per kilometre” claim for Motor Vehicle expenses.

## 103. Small Business CGT Concessions

The following four CGT concessions are available only for small business.

1. **The small business 15-year exemption** provides a total exemption for a capital gain on a CGT asset if you have continuously owned the asset for at least 15 years and the relevant individual is 55 or over and retiring or is permanently incapacitated.
2. **The small business 50% active asset reduction** provides a 50% reduction of a capital gain.
3. **The small business retirement exemption** provides an exemption for capital gains up to a lifetime limit of \$500,000. If the recipient is under 55, the amount must be paid into a superannuation (or similar) fund.
4. **The small business rollover** provides a deferral of a capital gain if a replacement asset is acquired. However, you may make a capital gain equal to the deferred gain if the replacement asset is disposed of or its use changes in particular ways. In this case, the deferred capital gain is in addition to any capital gain made when the replacement asset is disposed of.

It is important to note:

- More than one of the four concessions may apply to the same capital gain if the conditions for each are satisfied.
- They may apply in addition to the CGT discount if it also applies.
- If the small business 15-year exemption applies, you can disregard the entire capital gain and therefore do not need to apply any further concessions.
- With the exception of the small business 15-year exemption, you apply the small business concessions after reducing any capital gains by all available capital losses.
- If you have more than one capital gain, you can choose the order in which to reduce capital gains by capital losses; and

- The small business CGT concessions do not apply to gains from depreciating assets.

## 104. SMSF – Limited Recourse Borrowing Arrangements

Normally a SMSF is restricted from borrowing money to purchase assets to be held by the fund (S67 of the SIS Act). However, there is one exception to this ruling, which is a Limited Recourse Borrowing Arrangement (LRBA).

Under a LRBA a SMSF can borrow money as long as the lender uses only the asset being purchased as security, that is, the lender’s recourse is limited only to the purchased asset. However, Trustees should always consider the quality of the investments and whether the fund can meet all the future obligations under the arrangement.

A trustee can only enter into such an arrangement where the purchase of the asset is consistent with the investment strategy of the fund and the governing rules of the fund allow the trustee to enter into any borrowing arrangement.

ATO legislation states, if your SMSF chooses to use a LRBA, then the arrangement must satisfy the following conditions:

- The fund uses the borrowed monies to purchase a single asset, or a collection of identical assets that have the same market value (that together are treated as a single asset). For example, you can borrow to purchase shares in the one company, but you will need to take out another LRBA if you intend to purchase shares in another company.
- The borrowed money cannot be used to improve the purchased asset.
- The asset is held on trust so that the SMSF receives the beneficial interest in the purchased asset.
- The SMSF has the right to acquire the legal ownership of the asset by making one or more payments.
- Any recourse the lender or any other person has under the LRBA against the SMSF Trustee is limited to the single fund asset (including the rights to income).
- Replacing the asset subject to the LRBA is possible in very select circumstances, i.e., if a company undertakes a share split or if there is a company takeover or merger.

As there have been a number of recent changes, it is essential to get specialist advice.



### 105. SMSF – Purchase of Business Real Property

It is possible to obtain tax advantages on the purchase of a commercial property by a self-managed super fund. This could serve as the employer's business premises. A number of conditions need to be met and professional advice should be taken before proceeding.

### 106. SMSF – Segregating Assets

If superannuation fund assets are being set aside to pay retirement income streams these are termed "segregated assets". Tax is not paid by the fund on earnings generated by current segregated assets. This means earnings are added to the client's account tax free.

As some retirement income streams have considerable flexibility, your SMSF should go into pension phase as soon as possible. Note the \$1.6 million cap.

### 107. Sole and Principal Place of Residence (PPR)

Consider this scenario:

- You buy one of your children a home unit.
- Your child is around 20 and very unlikely to enter the home market for some considerable time.
- The child plans to work overseas or interstate in the not-too-distant future.
- Your child initially moves into the unit but leaves to travel as above.
- The unit then derives rental income with the net income (after expense) assessable to your child.
- A six-year temporary absence is allowed and the CGT exemption for PPR is maintained. There is no requirement that the unit be re-occupied.
- The unit is sold after 5 years at a substantial CGT free gain due to the six-year temporary absence concession.

Under legislation enacted December 2019, this course of action would only be effective if the owner was an Australian tax resident at the time of sale.

### 108. Split or Linked Loans

When purchasing a rental property considerable care needs to be taken with the financing arrangements. Take advice from a competent tax practitioner (not the financial institution or the finance broker) to avoid being steered into arrangements which are not tax effective and difficult to unwind.

### 109. Substantiation – Computer Expenses

When substantiating the usage of a home computer for work purposes, a taxpayer must demonstrate how they calculated their claim for the expenses. If the computer is also used for private purposes, a basis of apportionment is required. This could be done by keeping a log for a representative month period recording hours of business use compared to private use. See Taxation Ruling TR 93/30, paragraphs 24 to 27.

### 110. Substantiation – Home Office Expenses

Evidence is needed to substantiate home office electricity, gas, and depreciation on office furniture.

When a taxpayer uses their home office for work, they should note it in their diary. They should do this for a representative four-week period as establishing a pattern of use for the entire year. A taxpayer can support their claim for heating, cooling, lighting, and depreciation of office furniture by either:

- Claiming 52 cents per hour in relation to the average weekly work-related use of the home office established by keeping a diary record of that use for a period of at least four weeks. A taxpayer will need to keep a new diary record if there is a substantial change in their work-related use of the home office; or
- Using the actual cost method by keeping appropriate records to show the amounts of the expenses incurred and the extent to which they are incurred in deriving assessable income.

To support claims for repairs, cleaning, and other home office expenses – including home office equipment such as a computer, printer, or photocopier – the taxpayer should keep a diary record for a representative four-week period recording the income and non-income related use of the area or equipment. They should keep documentary evidence to support the claim.

We note in passing the temporary 80 cents per hour all-inclusive rate for claims made during the COVID-19 is now extended to 30.6.21.

### 111. Substantiation – Part Day Travel Expenses

Food and drink are generally deductible only when the taxpayer sleeps away from home when travelling with work. The exception to this general rule is for overtime meal allowance expenses if they receive an award overtime meal allowance.

Taxpayers can claim deductible incidental expenses incurred during part-day travel – for example, taxi

fares – provided their employer has not reimbursed their expense and they have kept the necessary written evidence to support their claim. These expenses are covered under the normal written evidence rules and are not covered by any exception to the substantiation requirements.

If an employee receives an allowance to cover part-day travel expenses – for example, food and drink – the payment must be included as income in their tax return. Employers (payers) who pay part-day travel allowances are required to include the whole amount of the payment as part of salary and wages on the employee's payment summary and have tax withheld.

### **112. Substantiation- Telephone Expenses**

When establishing the work-related proportion for phone calls and rental costs, identify work related calls from an itemised phone account. If such an account is not provided, a reasonable estimate of call costs – based on diary entries of calls made over a representative one-month period – together with relevant phone accounts, will be acceptable for substantiation purposes.

Taxation Ruling TR 98/14 identifies situations where phone rental, especially for employees, is deductible. If the phone is not used 100% for work related purposes, a proportionate deduction will be allowable. The business proportion can be calculated by dividing the number of business calls (incoming and outgoing) by the number of total calls (incoming and outgoing).

If the employer reimburses the taxpayer for phone expenses, the amount received has to be deducted from the expenses claimed as a deduction.

### **113. Superannuation**

Make sure superannuation contributions are actually made prior to 30 June, to enable a tax deduction to be claimed. Avoid the imposition of the Superannuation Guarantee Charge as this will involve penalties and deny you a tax deduction.

### **114. Superannuation Co-Contributions**

If you are a lower income employee, you may want to make personal after-tax (undeducted) contributions to a super fund. This concession also applies to the self-employed.

By implementing this strategy, you can boost your retirement savings and possibly receive a Government co-contribution of up to \$500 each year. To qualify for the full contribution (\$500), you generally need to make a personal after-tax super contribution of \$1,000 and earn less than \$39,837 p.a.

However, a reduced amount may be paid if you contribute less than \$1,000 and / or earn between \$39,837 p.a. and \$54,837 p.a. (2020/2021)

There are some considerations. If you operate your business through a family trust, be certain that you pay family members (who wish to claim the co-contribution) a salary that is subject to the Superannuation Guarantee 9.5% statutory superannuation.

If you fail to do this and they merely receive a trust distribution, you will not be eligible for the co-contribution.

### **115. Superannuation Non Concessional Contributions**

From 01.07.2017 annual non-concessional contribution allowances have been capped at \$100,000, and if you're under 65, the three year bring forward provision falls to a maximum of \$300,000.

Note that if you have in excess of \$1.6 million in superannuation, you can no longer make non-concessional contributions.

Also note that from 01.07.2017, the removal of the '10 per cent rule' has ensured a level playing field for access to super tax concessions irrespective of employment situation. This helps contractors who also draw some salary from salary and wages. They are now able to make tax deductible contributions up to their contributions cap which will be \$25k.

From 01.07.2018 individuals with super balances of less than \$500k are able to carry forward the unused balance of their non-concessional contributions cap for up to five years, which will help those with broken work patterns (mainly women) save for their retirement.

### **116. Superannuation Obligations and Individual Contractors**

As an employer, the superannuation guarantee requires you to contribute towards the superannuation support of most employees, including contractors who you employ.

An employee for superannuation guarantee purposes includes a person engaged under a contract that is wholly or principally for the person's labour. Labour can include mental and artistic effort as well as physical work. This means that a contractor (the party to the contract) can be considered to be an employee under the superannuation guarantee.

Superannuation support is required for contractors where the terms of the contract and the subsequent conduct of the parties indicate that:

- The person is remunerated (either wholly or principally) for their personal labour and skills.
- The person must perform the contractual work personally (there is no right of delegation), and
- The person is not paid to achieve a result.

If the contract is, partly for labour and partly for something else, (for example, the supply of goods, materials or hire of plant or machinery) it will still be a contract for labour if it is principally (chiefly or mainly) for labour.

Contracts can be made either orally or in writing. To help determine whether a contract is a contract for labour, it should state clearly whether the work must be performed by the party to the contract. If you make a contract with someone other than the person who will actually be providing the labour, there is no employer-employee relationship between you and the person actually doing the labour.

This would happen:

- if you make a contract with a company, trust, or a partnership; or
- if the person you have the contract with is free to hire other people to perform the work, even if the person ends up performing the work themselves.

In either of these situations, the contract is **not** for the labour of the individual.

### 117. Tax Agent Fees

Expenses incurred for managing a taxpayer's income tax affairs or complying with an obligation imposed by Commonwealth Law are deductible in the year the expense is incurred.

However, what is often overlooked is that a visit to your tax agent may also be a tax deduction. Taxation Determination TD 2017/8, the Tax Office states that the cost of travelling to a recognised professional tax adviser for the purpose of having an income tax return, a Business Activity Statement or an Income Activity Statement prepared is deductible. In addition, other incidental costs such as the cost of accommodation, meals, taxi fares and travel insurance are also deductible. However, note that TD 2017/8 gives specific guidance on apportionment where the trip has a mixed purpose.

Income tax returns have to be lodged by 31 October, where a tax agent is not used. If a tax agent is used, the lodgement dates are extended considerably, meaning if you have a liability you do not have to pay tax until much later in the year.

### 118. Tax Averaging for Primary Producers

Tax averaging enables you to even out your income and tax payable over a maximum of 5 years, to allow for good and bad years. This ensures that you do not pay more tax over a number of years than taxpayers on comparable but steady incomes.

When your average income is **less** than your taxable income (excluding capital gains) you receive an **averaging tax offset**. When your average income is **more** than your taxable income (excluding any capital gains) you must pay extra income tax on the averaging component of your basis taxable income, in the form of a surcharge.

The amount of the averaging tax offset or extra income tax is calculated **automatically**, and your notice of assessment will show you the averaging details.

If you wish, you may choose to **withdraw permanently** from the averaging system and pay tax at ordinary rates. However, once you have made this choice, it will affect all your assessments for subsequent years and **cannot be revoked**. This means you will be taxed on the same basis as taxpayers not eligible for averaging provisions.

### 119. Tax Effective Borrowing

Before undertaking any borrowings, consider the taxation implications and take professional advice. Income producing investments should be geared, if possible. Focus on paying off your home mortgage as soon as possible.

### 120. Tax Effective Distributions from Trusts

As long as the trust deed allows for it in its clause of eligible beneficiaries, a distribution may be made to a tax-exempt body or institution. As this is in "before tax dollars" this can be highly tax effective.

### 121. Tax Losses

Be very wary when purchasing a company or other legal entity for its tax losses. You must ensure that the debt forgiveness provisions have not previously applied or may apply on purchase.

The entity may have less revenue or capital losses than you think.

There may also be less future tax benefits in the form of future deductions or hidden CGT exposures on the subsequent disposal of reducible assets for CGT purposes.

**122. Tax Schemes / Tax Dreams**

Has the ATO issued a product ruling? If it seems too good to be true it generally is and the ATO will catch up with you further on down the line. Keep it real and keep it legal.

Beware of scheme promoters talking about private rulings. These only apply to the ruling's individual recipient – not to you. This should serve as a warning.

**123. Taxi Travel**

This is increasingly popular with staff living in the inner city. Taxi travel provided to employees arriving at or leaving their workplace at any time during normal hours is tax deductible and exempt from FBT. Arranging for your employer to pay for your travel by way of salary sacrifice will produce a substantial tax benefit.

**124. Temporary Residents**

There are significant tax concessions for temporary residents of Australia and indeed this is a tax planning issue before attaining permanent status.

If you are an Australian resident for tax purposes and meet the requirements to be a temporary resident, the temporary resident rules mean:

- Most of your foreign income is not taxed in Australia except income earned from employment performed overseas for short periods while you are a temporary resident. This income is subject to income tax and would still be declared in your return for the year in which you earned it. Where you have paid tax in a foreign country, you may be entitled to claim a foreign income tax offset when you lodge your tax return.
- A temporary resident is not liable to capital gains tax (nor is treated as having made a capital loss) unless the asset is 'taxable Australian property.'
- Interest you pay to foreign residents (for example, foreign lenders) is not subject to withholding tax.
- Controlled foreign company record keeping obligations are partly removed.

This is something for advisors to consider particularly with a view to reducing capital gains tax.

**125. The Accidental Developer**

Before seeking council approvals, subdividing the family home, business premises or farm, take expert advice. Clearly the objective should be to fall under the CGT regime. The GST (if any), implications have to also be considered.

**126. Think Twice About Luxury Cars**

In addition to the luxury car depreciation limit of there is also a GST issue. The maximum input tax credit allowable on a business car is limited to 1/11th of the luxury car depreciation limit i.e., \$5,376. The additional GST paid on a vehicle costing over \$59,136 cannot be recovered.

Quite often SMEs want to purchase a motor vehicle to claim back the GST credits only to wind up with an unwelcome FBT issue. Make sure you do the sums and carefully assess the extent of your business use.

**127. Thinking of Working Overseas?**

If you are planning on working overseas for several years, do not automatically assume you will be a non-resident for taxation purposes. A recent case study Commissioner of Taxation v Pike [2020] clearly shows that just because an individual is overseas for extended periods, it does not necessarily follow that the taxpayer becomes a non-resident. In this case the taxpayer's dominant economic interests and family remained in Australia. It is essential to establish a permanent residence overseas and to seek specialist advice before moving overseas.

**128. Transition to Retirement Income Pension (TRIP)**

Recent reforms to superannuation make investing in superannuation extremely attractive over investments outside of a superannuation environment. Those approaching retirement can now look at a combination of strategies that will allow them to take a transition to retirement income pension (TRIP) stream from their superannuation fund and continue to contribute to superannuation through appropriately drafted salary sacrifice agreements.

Effectively you are substituting receipt of salary/wages for a TRIP. It should be noted that from 01.07.2017, the tax exemption on pension fund earnings financing a TRIP was removed. However, in some circumstances the arrangement may still be tax effective.

**129. Transport**

Where an employee is required to live away from home in order to perform employment duties or is similarly required to relocate their usual place of residence, the costs of providing relocation transport (and any meals and accommodation en route) to the employee (and family members) are exempt FBT benefits. The exemption also applies where the employee is returning to their usual place of residence after working at another location.

The exemption does not apply to a reimbursement of the employee's car expenses where the reimbursement is calculated according to the distance the car travels. However, the taxable value may be able to be reduced.

### **130. Travel Allowance**

Refer to Taxation Determination TD 2020/5 – travel expenses incurred by an employee who receives an allowance for travel costs within Australia are not subject to the substantiation requirements. This is providing the claim for costs of accommodation, food; drink and incidental expenses do not exceed the reasonable amounts as set out in TD 2020/5. Each year the ATO updates the reasonable amounts by way of a Taxation Determination and these limits can apply to employees who comply with the rules. Note to make a claim you need to have actually received an allowance which is subject to tax.

### **131. Travel – Home to Work**

Normally, commuting expenses are non-deductible. However, if it is necessary for you to transport bulky tools or equipment between your home and workplace each day, you may claim a tax deduction for this travel.

For this to occur, there must be no secure area at your workplace to store the tools or equipment and it must be necessary for you to take them home each night for safekeeping.

### **132. Trust Vesting Requirements**

What happens to a trust on vesting will depend on the requirements set out in your trust deed, broadly beneficiary interests in the property of the trust become fixed.

As each trust deed has its own vesting date and vesting terms, it is important to read your deed carefully to know when the trust will vest and what is required on vesting.

- you cannot change the vesting date after it has passed.
- if your trust's vesting date has passed, or if you have questions about the tax consequences of trust vesting, you can seek specialist advice.

### **133. Wages Paid to Family**

If paying wages to family members, ensure they are commercially realistic and paid up to date prior to 30 June. The ATO takes a dim view on journal entries for unpaid wage entitlements. Often overlooked is the fact that Statutory Superannuation (9.5%) must be paid on these wages.

### **134. Work Related Expenses (WRE) – Keep it Real!**

What are the fundamentals here? The expenditure must have incurred (and not been reimbursed) in the course of earning assessable income and not be precluded from being a deduction i.e., entertainment.

With more people doing their own tax returns via myTax, there are more frivolous and incorrect WRE claims being made and it is for this reason that such claims are increasingly an area of ATO focus.

Examples include:

- Overseas travel claims that simply cannot be justified. Think about it — it is a genuine claim the employer will normally pick up the tab. On occasion modest claims can be made but they need to be genuine.
- Cents per kilometre motor vehicle expenses when all the taxpayer does is commute to and from work. Often the justification is transporting bulky tools due to no storage facilities being available at work but invariably when the employer is contacted this is not the case.
- Claiming overnight travel stays away from home using ATO figures which the taxpayer wrongly believes do not require substantiation. Here it is a requirement that the employer pays an allowance and there are other conditions that must be met.

These claims often result from “pub talk” and general misinformation and on occasion through recklessness. While the ATO has been reasonable when applying penalties, they are now taking a harder line.

As mentioned, employers are being increasingly contacted for verification, so making false and frivolous claims will hardly enhance your standing in the workplace particularly where the employer knows the claim is false or has been reimbursed.

### **135. Work Specific and Protective Clothing**

Compulsory uniforms are generally deductible provided they identify you as an employee of that organisation. For non-compulsory uniforms, get your employer to register the designs. Do not forget to claim laundry and dry cleaning on uniforms and protective clothing such as sunglasses and sun protection e.g., sunscreen.



## **2020-21 YEAR END FRINGE BENEFIT TAX (FBT) CONSIDERATIONS**

### **FRINGE BENEFITS TAX RATES**

The FBT rate aligns to the top marginal rate of income tax for individuals. The removal of the Temporary Budget Repair Levy therefore impacts the FBT rates (both tax rate and gross up rate) applicable from 1 April 2017 as follows:

- The Type 1 gross up rate has changed from 2.1463 to 2.0802.
- The Type 2 gross up rate has changed from 1.9608 to 1.8868.
- The FBT rate has decreased from 49% to 47%.

The cash value of benefits received by employees of public benevolent institutions and health promotion charities, public and not-for-profit hospitals, public ambulance services and certain other tax-exempt entities increased for the 2016 & 2017 FBT years due to the change in FBT rate.

Specifically, the \$17,000 cap was increased to \$17,667 and the \$30,000 cap was increased to \$21,177 for the 2016 & 2017 FBT years only.

#### **1. Car Fringe Benefits Change**

A statutory formula single flat rate of 20 per cent now applies regardless of the distance traveled.

**Refer to our annual publication for vehicles on contracts entered into prior to 10.05.2011.**

However, the impact of these changes has led to a move away from the statutory formula to the logbook method of calculating motor vehicle fringe benefits particularly in private family business. Be warned the logbooks should exist and be real because the ATO has ramped up audit activity in this area in 2021, using data matching with a particular focus on luxury vehicles.

#### **2. Exempt Fringe Benefits**

These are benefits specifically exempted from FBT and offer any business an opportunity to provide tax effective incentives to reward employees.

Examples include:

- Electronic diaries
- Briefcases
- Laptop computers (one per year)

- Mobile phones (where there is a predominate business use)
- Taxi travel to and from work, very popular in the inner city
- Membership of airline flight lounges.

Providing such tax effective benefits can play a vital role in staff retention.

Note, that from 01.04.2016, the Government extended the FBT exemption for SBEs that provide employees with more than one qualifying work related portable electronic device. This is the case where the items have substantially similar functions – note that the FBT exemption only applies if the relevant items are primarily for business use.

#### **3. FBT In-house Benefits**

An employer can also gift employee's \$1,000 worth of in-house benefits throughout the year tax free. These benefits are goods or supplies that the employer sells to third parties in the ordinary course of its business. For example, a clothing wholesaler or retailer could gift up to \$1,000 worth of clothes to an employee tax free. This would be a tax deduction for the employer with input tax credits fully claimable.

However, concessional treatment was removed for these benefits if they were accessed through a salary sacrifice arrangement from 22.10.2012.

#### **4. Flu Vaccinations**

The provision of a free flu vaccination to an employee will be an FBT exempt benefit if the employer has made free flu vaccinations available to all its employees and the vaccinations have been administered by a nurse or doctor. If applicable we expect this to be extended to COVID-19 vaccinations.

#### **5. Late Lodgement Penalties**

Meet lodgement deadlines to avoid penalties. Penalties can be imposed for non-lodgement or late lodgement of most statements including Income Tax, BAS, and annual investment reports even if no money is owed to the ATO. Keep regular contact with your tax agent.

With improvements in its data matching, the ATO is expected to take a more rigorous approach to lodgment enforcement in 2021.

## 6. Make the Most of Minor FBT Benefits

These are items not given frequently or regularly throughout the year and have a GST inclusive value of less than \$300. Examples include bottles of wine, hampers, tickets to sporting events and shopping vouchers.

These items and other gifts can be given to staff free of FBT. An employer would generally be able to claim a full tax deduction and input tax credits in regard to these gifts.

## 7. Mature Workers Salary Sacrifice into Superannuation

In some circumstances, workers who are over 60 years old may withdraw superannuation tax free from a taxed fund. To pay no more than 15% income tax they should salary sacrifice their income down to pay 15% contributions tax.

## 8. Novated Leases

A Novated Lease is a three-way agreement between the employee, the employer, and the financier. The basic principles of a Novated Lease are:

- The employee leases the vehicle directly from the financier.
- The employee, employer and financier sign a Novation Agreement.
- The employer undertakes to cover all agreed vehicle expenses deducted from pre-tax salary during the employee's term of employment.

A major benefit of the Novated Lease is that the total cost of the vehicle is allocated against the employee's package, with expenses deducted from pre-tax salary.

## 9. Overtime Meals

Costs are tax deductible for giving employees working overtime a meal allowance. A tax deduction is allowed for food and drink provided to employees while working overtime, if provided and consumed on the employer's business premises. No FBT applies and the ATO does not consider a meal to be entertainment merely because alcohol is served.

## 10. Public Benevolent Institutions – FBT

Employees of concessional tax entities including PBIS can receive up to \$30,000 per annum in fringe benefits without the employer being subject to FBT. The same

applies for employees of public and private nonprofit hospitals. However, here the "grossed up limit" is \$17,000 per employee.

Certain entertainment benefits are currently excluded from these caps i.e., restaurant meals, holiday accommodation and special events. However, note that from 01.04.2016 there has been a separate, single grossed up cap for salary sacrificed meal entertainment and other entertainment benefits. Where the \$5,000 cap grossed up is exceeded, they can also be counted in calculating whether an employee exceeds their existing relevant cap. From 01.04.2016, all meal entertainment benefits are now reportable fringe benefits.

## 11. Reduction in Cost Base Vehicle

If a vehicle has been held for more than four full FBT years, then the cost base can be reduced to two-thirds of the original cost. So, if a vehicle originally cost \$45,000 the cost for the taxable benefit calculation would reduce to \$30,000.

## 12. Removal and Storage of Household Effects

Where you pay for removal and storage of household effects of employees (both new and existing) who have to live away from home because of a change in their job location, the benefit is FBT exempt. The exemption includes the costs of removal, storage, packing, unpacking and insurance of household effects (including pets) kept primarily for the personal use of the employee or their family.

Similarly, the exemption also applies where the employee's usual place of residence changes to another location if the removal takes place or the storage commences, not more than 12 months after the employee begins employment duties at the new location.

## 13. Remuneration Packaging

This is where part of an employee's pre-tax salary is 'sacrificed' in return for employment related benefits which are not assessable in the employee's hands but are taxed concessional in the employer's hands as fringe benefits. Some benefits may include concessional FBT taxed cars (only for employees on the top marginal rate) FBT exempt superannuation contributions and FBT exempt laptops. Other FBT exempt items include a briefcase, calculator, and tools of trade, electronic diary, mobile phone or computer software. The key is such items must be used primarily for work related purposes.

For a salary sacrifice arrangement to be valid, an agreement (where an employer enters into an employment contract to provide a component of

an employee's remuneration package with benefits other than salary) must be entered into before the employee's service is rendered. That is, a salary sacrifice arrangement will be invalid if the employee has already earned the income. Although not required, it is always preferable to have the agreement in writing.

Employees can salary sacrifice superannuation contributions up to a concessional limit and business owners or directors can also make superannuation contributions on their own behalf up to the age-based limit.

#### **14. Reportable Fringe Benefits - Exemptions**

The value of benefits that are FBT exempt are also exempt from the reporting requirements. Try and maximise these benefits. There is a reportable fringe benefits amount where an employee's non-grossed up individual fringe benefits amount exceeds \$2,000.

#### **15. Reportable Fringe Benefits**

If your employer provides certain fringe benefits exceeding \$2,000 to you or your relatives, your employer is required to report the total grossed-up amount (the actual amount plus notional FBT payable on that amount) on your PAYG summary (group certificate). It is not included in your taxable income so there is no income tax or Medicare levy payable on it but is used in determining other tax issues including some tax offsets and Centrelink benefits.

#### **16. Salary Sacrifice - Superannuation**

Increase superannuation contributions beyond statutory levels (9.5%) by way of salary sacrifice. With contributions and normal fund income taxed at only 15% (less with franking credits), the long-term wealth accumulation potential is obvious. Furthermore, capital gains in a super fund are only taxed at 10% if the asset is held longer than 12 months.

#### **17. Salary Sacrificing**

This must be prospective relating to future income and the employment contract should always be documented. Note if an employment agreement containing non-cash benefits, breaches industrial awards, relevant law or the workplace agreement, a legal entitlement to salary and wages is retained by the employee.

#### **18. Sale or Acquisition of Dwelling**

Where you provide relocation expenses that are incidental to an employee's sale and/or purchase of a home, the expenses may be exempt FBT benefits. These incidental costs include stamp duty, advertising,

legal fees, agent commission, discharge of a mortgage, expenses of borrowing or any similar capital expenses. Costs associated with the connection or reconnection of gas, electricity and telephone services to the new home are also exempt.

#### **19. Staff Functions Including Christmas Parties**

A "fringe benefit" is a benefit to your staff by something other than a cash (salary) payment. Your employees get the "fringe benefit" tax free. However, the employers generally pay tax on that "benefit". Careful planning can stop this happening to your staff Christmas Party.

- Keeping expenditure below \$300 per person.
- Keep the Christmas Party as a "one off". The Christmas Party needs to be "minor, infrequent and irregular" to avoid Fringe Benefit Tax (FBT).
- \$300 not enough? If you want to spend more on the Christmas Party, then have it on a working day at your office. FBT is then not payable.

#### **20. Staff Functions and Gifts - FBT, Income Tax and GST**

Consider the tax implications of the following:

A \$200 gift to a client is deductible as Tax Determination TD 2016/14.

A \$40 gift to an employee is deductible as long as these are not "entertainment gifts" and exempt from FBT. Under minor and infrequent benefits exemption non-entertainment gifts provided to employees are usually exempt from FBT where the total value is less than \$300 inclusive of GST. A tax deduction and GST credit can also be claimed. These include skincare and beauty products, flowers, wine, perfumes, gift vouchers and hampers as mentioned above.

Non-entertainment gifts given to clients and suppliers do not fall within the FBT rules as they are not provided to employees. Generally, a tax deduction and GST credit can be claimed for these gifts, provided they are not excessive or overly valuable.

The provision of entertainment gifts has different tax implications (examples include theatre tickets, passes to attend a musical, live play, movie, tickets to a sporting event or providing a holiday). Where the cost for the employee and their associate is each less than \$300 GST inclusive, FBT is not payable and no tax deduction or GST credit can be claimed.

However, if the cost for the employee and their associate is each \$300 or more GST inclusive, a tax deduction and GST credit can be claimed, but FBT is payable. The cost of any entertainment gifts provided to clients is not subject to FBT, and no tax deduction or GST credit can be claimed.

It is important that your business maintain separate accounts in the general ledger for recording the above transactions to ensure that the correct income tax, GST and FBT treatment is applied.

A restaurant/pub meal and drink at the end of year break-up (value approximately \$70 per employee) – as this is “offsite”, there will be no tax deduction or GST credit claimable because this will constitute entertainment. However, no FBT will be payable under the minor and infrequent payments exemption.

The cost of clients attending the party are not subject to FBT and no tax deduction or GST credit can be claimed on their portion of the cost.

## **21. Private Use of Exempt Vehicle and FBT Residual Benefits**

We cover this in detail as it affects a number of our clients.

In July 2018, the ATO released Practical Compliance Guideline PCG 2018/3 Exempt car and residual benefits: compliance approach to determining private use of vehicles (PCG 2018/3).

This draft Practical Compliance Guideline (PCG) provides an optional practical compliance approach that employers can adopt to determine if private travel by employees in exempt vehicles is eligible for a fringe benefits tax (FBT) exemption.

It should be noted:

- Employers that apply the practical compliance approach in the draft PCG are eligible for reduced record keeping requirements.
- PCG 2018/3 provides three key, measureable criteria in determining whether the private use of an exempt vehicle is considered minor, infrequent, and irregular.
- Employers should consider their eligibility to use the practical compliance approach in PCG 2018/3 for the FBT year ended 31 March 2021.

Minor, infrequent, and irregular private travel by an employee in an exempt vehicle will be exempt from FBT. Exempt vehicles include some single cab and dual cab utes, panel vans and some four-wheel drive vehicles.

Business leaders and their advisers had expressed concern that claiming the FBT exemptions for exempt vehicles created a compliance burden as employers were required to assess whether employee travel was minor, infrequent, and irregular.

The PCG aims to provide increased certainty and transparency for employers that claim FBT exemptions for minor, infrequent, and irregular private use of exempt vehicles by employees.

## **22. Travel expenses – otherwise deductible rule**

The scope of the otherwise deductible rule is considered in draft rulings 2017/D6 and 2019/D7 – yet to be finalised. When an employer reimburses an employee for an expense no FBT is payable if the expenses would have been a tax deduction for the employee. Through over 20 worked examples, the ATO provides guidance in this area. Refer to 2017/D6 and 2019/D7, if you have doubts on any travel expense reimbursements.

## **23. Staff Retraining**

Give your staff retraining without having to pay fringe benefits tax (FBT). The Government will provide an exemption from Fringe Benefits Tax (FBT) for employer-provided retraining and reskilling, for employees who are redeployed to a different role in the business. The exemption applied from 2.10.2020.

Removing costly barriers to training as the economy rebuilds is essential to ensure Australian employees have the opportunity to reskill or retrain for jobs that will come back as the economy reopens.

Currently, FBT is payable if an employer provides training to its employees that is not sufficiently connected to their current employment. For example, a business that restrains their sales assistant in web design to redeploy them to an online marketing role in the business can get hit with FBT. By removing FBT, employers will be encouraged to help workers transition to new employment opportunities within or outside their business.

The exemption will not extend to retraining acquired by way of a salary packaging arrangement or training provided through Commonwealth supported places at universities, which already receive a benefit.





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Tax Smart Australia

TSA Unit Trust  
t/as bo2 Corporate Essentials Pty Ltd

ABN 70 377 440 020  
ACN 119 058 310

PO Box 5179  
Bundall QLD 4217

T 1300 55 55 33 | P (07) 5574 0555  
F (07) 5574 2881 | E [info@bo2.com.au](mailto:info@bo2.com.au)

[www.bo2.com.au](http://www.bo2.com.au)