bO2 Corporate Essentials

Tax Smart Australia

Tax Essentials

Annual Taxation Summary Manual 2018

12th Edition

A simplified summary of the Australian taxation system

1 The Australian Tax System
2 Assessable Income
3 Tax Deductions
4 Exempt Income
5 Tax Offsets
6 Goods & Services Tax (GST)
7 Capital Gains Tax (CGT)
8 Depreciation and Capital Allowances
9 Superannuation
10 Primary Production
11 Business Structures
12 Residency and International Tax Issues
13 Small Business Entities (SBE)
14 Fringe Benefits Tax (FBT)
15 Pay As You Go (PAYG)
16 Accounting for Tax and Accounting Methods
17 Consolidation
18 Tax Audits and Taxpayer Rights
19 State Government Taxes
20 Tax Reform
2018 Effective Lives Tables

www.bo2.com.au

1300 55 55 33

Contents

Chapter	Page
1. **The Australian Tax System**	**2**
2. **Assessable Income**	**9**
3. **Tax Deductions**	**15**
4. **Exempt Income**	**23**
5. **Tax Offsets**	**26**
6. **Goods & Services Tax (GST)**	**29**
7. **Capital Gains Tax (CGT)**	**39**
8. **Depreciation and Capital Allowances**	**48**
9. **Superannuation**	**53**
10. **Primary Production**	**66**
11, **Business Structures**	**73**
12. **Residency and International Tax Issues**	**84**
13. **Small Business Entities (SBE)**	**90**
14. **Fringe Benefits Tax (FBT)**	**93**
15. **Pay As You Go (PAYG)**	**103**
16. **Accounting for Tax and Accounting Methods**	**111**
17. **Consolidation**	**117**
18. **Tax Audits and Taxpayer Rights**	**121**
19. **State Government Taxes**	**130**
20. **Tax Reform**	**133**
21. **2018 Effective Lives Tables**	**136**
Index	**150**

Editor's letter

Welcome to the 12th edition of *bO2 Corporate Essentials* simplified summary of the Australia Taxation System, our *Annual Taxation Summary Manual 2018* is designed especially for people who might never normally consider picking up reference material on tax minimisation or compliance..

The purpose of this manual is to provide you with brief explanations of a wide variety of Taxation Issues, offer practical solutions and is arranged to make information easy to retrieve. This is for readers who want to know how to optimise their position, and what they should be doing to help their business stay fit, healthy and compliant.. But it's not always easy to know what you ***should*** and shouldn't be doing. We are bombarded by professionals giving us contradictory advice —so it's difficult to know what to believe and what to ignore.

This is neither a survival manual nor an encyclopaedia, rather is meant to be used as a ready reference for a layperson who needs to make smart business decisions.

We aim to cut through the confusion and give you clear, sensible and reliable information from writers and experts that you can trust. We want it to be entertaining and informative, at times contrary, but above all useful.

Thus explanations are brief and to the point… we include information that is necessary to make simple, accurate diagnoses and analysis and how to act on them.. Inside you'll find a mixture of news, features and regular columns on a wide range of tax-related topics.

We hope you enjoy this 12th Edition and do let us know if there are any topics you'd like to see covered in the future.

CHAPTER 1

The Australian Taxation System

HISTORY

Throughout Australia's post-Federation period, income tax collections have been affected by the funding requirements of major World Wars and have certainly played a role in the thorny issue of Commonwealth/State relations.

Prior to Federation in 1901, income tax was first imposed by the States starting with South Australia in 1884, closely followed by Victoria and NSW in 1895.

The Federal Government introduced an income tax in 1916 largely to fund Australia's involvement in the First World War, but it was still the States that collected income taxes, both for themselves and on behalf of the Federal Government. In 1932, at the time of the Great Depression, the Lyons Federal Government briefly took over collection of income tax from the Lang Labor NSW Government. This constitutional crisis was soon resolved however, and the states retained responsibility for tax collection when a new consolidated act (the *Income Tax Assessment Act 1936*) was passed in 1936.

However, in 1942, at the height of World War II, the Commonwealth took over all income tax collection. This position remains unchanged to the present day. The States received annual grants from the Commonwealth to fund their revenue needs until 1 July 2000, when the Goods and Services Tax (GST) was introduced with proceeds going directly to the States, replacing the grants system.

Over the years there were many changes and insertions into ITAA 1936, rendering the act incomprehensible even to many professionals.

In the mid 1990's the Government decided to "simplify" matters by re-writing the complete act. This process commenced in 1997 with the introduction of the *Income Tax Assessment Act 1997* (ITAA 1997).

Eventually ITAA 1997 will supersede the prior 1936 Act. In 1998 the Howard Government began a comprehensive programme of tax reform and suspended further activity on updating the 1997 Act. This will further delay completion of the 1997 Act. Until ITAA 1936 is completely re-written, tax professionals need to be familiar with both Acts.

Over the years numerous taxpayers have argued, some at High Court level, that collection of taxes is unconstitutional. These attempts have proved fruitless with Courts finding that the Commonwealth Government has full power to impose taxes provided it does not discriminate between the States and does not impose taxes on property belonging to a State.

The Australian Taxation Office – A brief history

When the ATO announced 100 years of service to the Australian community, they outlined some key dates which we have further augmented:

1910 – Federal Land Tax Branch established with 105 staff – 15,000 returns assessed in first year.

1915 – Income Tax Assessment Act introduced.

1917 – Female employment introduced due to men away at war.

1924 – State Tax Office branches amalgamated.

1930 – The sales tax introduced.

1933 – Flour tax introduced for one year, at a time when flour production exceeded sale price.

1944 – The Pay-As-You-Earn (PAYE) tax system introduced.

1952 – Federal Land Tax abolished.

1966 – The decimal currency introduced in Australia.

1975 – The first tax computer system-the Central Taxpayer System – commenced operation.

1978 – A surge in tax avoidance schemes (known as bottom-of-the-harbour) resulted from soaring inflation and threatened the integrity of the tax system.

1986 – Self-assessment introduced.

1987 – Electronic Lodgement System (ELS) for tax agent's trialled.

1988 – The first 'Tax Help' volunteer program was introduced to help people in need prepare their tax returns.

1997 – The Taxpayers' Charter introduced, setting out taxpayers' rights and standards of service.

1999 – e-tax launched resulting in 27,000 lodgements.

2000 – Introduction of 'The New Tax System' – the ATO delivered the largest range of tax reforms in its history including the introduction of the GST and Pay As You Go system as part of broader business tax reform.

2007 – Implementation of 'Better Super' – the biggest reform to superannuation ever.

2009 – A one-off tax bonus payment worth $7.7 billion was distributed to 8.7 million people. It was the largest payment ever made through the tax system and one of the most significant in Australia's history.

2010 – Over 2.3 million taxpayers lodged online using e-tax, which has evolved to include pre-filling, online help and automatic calculations. The number of people using e-tax continued to rise until it was replaced by myTax in 2016.

2014 – In the wake of Operation Wickenby, the amnesty for Australians with offshore, tax avoidance funds closed in December of that year. The ATO along with other G20 revenue authorities formed a pact to tackle base erosion and profit shifting (BEPS).

2015 – Unprecedented clashes between States and the Commonwealth Government over the allocation of GST revenue.

2016 – The Government's White Paper on tax reform abandoned in the heat of an Election year.

ATO AND TREASURY ROLES

The Treasury and the ATO are joint stewards of Australia's tax system and aspects of Australia's superannuation system. The ATO's role is to effectively manage and shape the tax and superannuation systems to support and fund services for Australians.

In this role, the ATO administer the tax law and key elements of the superannuation law, and provide advice to Treasury to support the development of tax legislative measures. The Treasury is responsible for the design of the tax system and its components, and retirement income policy, in relation to economic efficiency, equity, income distribution, budgetary requirements and economic feasibility.

The ATO's working arrangements with Treasury are governed by a Tax and Superannuation Protocol, which encourages collaboration and early engagement, assurance on the quality of new tax and superannuation law, and the earliest possible identification and communication of issues.

HOW LAWS ARE MADE

The legislation administered by the ATO is created by parliament.

A proposed law, or amendment to an existing law, is introduced into parliament in the form of a Bill. A Bill must be passed in identical form by both houses of the parliament and then presented to the Governor-General for royal assent. If no date is specified, the law is enacted 28 days after the Bill receives royal assent.

Legislative instruments are made under the authority of an Act. An Act may delegate or give power to make laws in the form of regulations, orders, by-laws or other instruments to a particular person, or body of people.

LODGEMENT AND PAYMENT OF TAX

The Australian income tax year starts on 1 July and ends on 30 June each year.

Income taxes are determined from taxable income disclosed in income tax returns which are required to be prepared and lodged each year by individuals, trusts, partnerships, companies and other entities.

Each year required lodgement dates are gazetted; however, if a taxpayer is using a tax agent, extra time is normally granted in accordance with the tax agent's lodgement programme. Tax returns are lodged and assessed on an annual basis.

Individual taxpayers usually pay their taxes throughout the year under the Pay As You Go (PAYG) System which involves deductions from salaries and wages or quarterly instalment tax payments.

Most individual business taxpayers are required to meet their tax obligations quarterly.

Income tax rates were reduced when the Goods and Services Tax (GST) was introduced on 1 July 2000, and some taxes such as sales tax were abolished. However, some State taxes such as payroll tax still exist despite the Federal Government's intention that they be abolished. The GST initially turned into a cash windfall for the States.

Further obligations some taxpayers have are Business Activity Statements (BAS) and Instalment Activity Statements (IAS).

Partnerships and Trusts do not normally pay tax. The income flows down to individual partners or beneficiaries who are assessed on the amounts distributed to them.

In order to prevent double taxation of dividends, companies can frank their dividends (to reflect company tax paid) and these franking credits are refundable to taxpayers if the amount of tax paid is less than the amount of the franking credit.

Franked dividends paid to discretionary trusts flow through to nominated beneficiaries who are able to claim the franking credits.

Taxable income is calculated by adding all assessable income, then deducting all allowable deductions from the total. To determine the actual tax payable from the table below, multiply the taxable income by the marginal tax rate and deduct any tax offsets and credits.

2016/17 Income Tax Rates For Resident Individuals

Taxable Income $	Tax Payable
0 – $18,200	0%
$18,201 – $37,000	19% over $18,200
$37,001 – $87,000	$3,572 + 32.5% over $37,000
$87,001 – $180,000	$19,822 + 37% over $87,000
$180,001 +	$54,232 + 47% over $180,000

**The above rates do not include the Medicare Levy of 2.0%.*

2017/18 Income Tax Rates For Resident Individuals

Taxable Income $	Tax Payable
0 – $18,200	0%
$18,201 – $37,000	19% over $18,200
$37,001 – $87,000	$3,572 + 32.5% over $37,000
$87,001 – $180,000	$19,822 + 37% over $87,000
$180,001 +	$54,232 + 45% over $180,000

**The above rates do not include the Medicare Levy of 2.0%.*

Note the temporary Budget Repair Levy is set to cease from 1 July 2017, Labor have indicated they will oppose its removal.

Payments to Working Holiday Makers from 1 January 2017

Taxable Income $	Tax Payable
0 – $37,000	15%
$37,001 – $87,000	$5,550 + 32.5% over $37,000
$87,001 – $180,000	$21,800 + 37% over $87,000
$180,001 +	$56,210 + 45% over $180,000

Note that Medicare Levy is not payable by Working Holiday Makers who are non-residents for tax purposes. Also the Temporary Budget Repair Levy will apply to payments in excess of $180,000 made between 1 January & 30 June 2017.

2016/2017 Resident Minors – Unearned (Division 6AA) Income

The following rates apply to the income of certain minors (e.g. persons under 18 years of age on the last day of the income year who are not classed as being in a full-time occupation) that is not excepted income (e.g. employment income). Note that Medicare Levy may also be payable and resident minors are not entitled to the low-income tax offset in respect of 'unearned income.'

Division 6AA Income $	Tax Payable*
0 – $416	Nil
$417 – $1,307	68% of excess over $416
$1,308+	47% of the entire amount

**The above rates do not include the Medicare Levy of 2.0%.*

Note from 1 July 2017 the respective tax rates are 66% and 45% due to the removal of the Temporary Budget Levy.

2016/2017 Assessment – Resident Deceased Estate

The following rates apply where a trustee is assessed under S.99 ITAA 1936 in respect of a resident deceased estate. Where the date of death is less than 3 years before the end of the income year, the trustee is assessed as a resident individual, with no Medicare Levy.

Taxable Income $	Rate*
Less than 3 years since death	
0 – $18,200	Nil
$18,201 - $37,000	19% of excess over $18,200
$37,001 - $87,000	$3,572 + 32.5% of excess over $37,000
$87,001 - $180,000	$19,822 +37% of excess over $87,000
$180,001+	$54,232 + 47% of excess over $180,000

Taxable Income $	Rate*
3 Years or more since death	
0 - $416	Nil
$417 - $670	50% of excess over $416
$671 – $37,000	$127.30 +19% excess over$670
$37,001 - $87,000	$7,030 + 32.5% of excess over $37,000
$87,001 - $180,000	$23,280 +37% of excess over $87,000
$180,000+	$57,690 + 47% of excess over $180,000

MEDICARE LEVY

In addition to income tax, a Medicare levy of 2.0 per cent is charged on a resident taxpayer's taxable income. Note that from 1 July 2019, the Medicare Levy is proposed to increase to 2.5% to ensure the National Disability Insurance Scheme is fully funded.

Note that some taxpayers are exempt from the Medicare levy because of their foreign earnings status, or the type of health care which is provided to them.

The below figures are for the year ended 30 June 2017.

Category of taxpayer	No levy payable if taxable income or family income does not exceed (figure for 2015-16)	Reduced levy if taxable income or family income is within range (inclusive)	Ordinary rate of levy payable where taxable income or family income is equal to or exceeds (figure for 2015-16)
Individual taxpayer	21,655 (21,335)	21,656 – 27,068	27,069 (26,669)
Single taxpayers eligible for SAPTO	34,244 (33,738)	34,245 – 42,805	42,806 (42,173)
Families eligible for SAPTO	47,670 (46,966)	47,671 – 59,587	59,588 (58,708)
Families with the following children and/or students	(family income) 36,541 (36,001)	(family income) 36,542 - 45,676	(family income) 45,677 (45,022)

Low-income earners are exempt, so that in 2016/17, if taxable income is $21,655 or less, no Medicare levy is payable.

MEDICARE LEVY SURCHARGE

The Medicare Levy surcharge is currently (2016-2017 financial year) paid by people who earn more than $90,000 (single) or $180,000 (family) and don't have private health insurance hospital cover. Note, the thresholds go up by $1,500 per dependent after the second child or student.

From 1 July, 2012 changes applied to the Medicare Levy surcharge income test.

If you or your family don't have hospital cover, or you do not maintain your cover, you may have to pay the Medicare Levy surcharge based on the new income test. Using the below table you can work out your tier to see if the changes will affect you.

Income thresholds for 2016–17

	Unchanged	Tier 1	Tier 2	Tier 3
Singles	$90,000 or less	$90,001 – 105,000	$105,001 – 140,000	$140,001 or more
Families*	$180,000 or less	$180,001 – 210,000	$210,001 – 280,000	$280,001 or more
Rates	0.0%	1.0%	1.25%	1.5%

* The family income threshold is increased by $1,500 for each Medicare levy surcharge dependent child after the first child.

In the May 2016 Federal Budget the Government announced it would continue to pause on indexation of the Medicare Levy Surcharge and Private Health Insurance till 30 June 2021.

TAXATION RULINGS

A system of public and private rulings was introduced on 1 July 1992. A public ruling or determination essentially sets out the ATOs interpretation of the legislation applied to certain situations. Public Rulings may be relied upon as they are binding on the ATO. If a taxpayer takes a matter to court, it is possible for an unfavourable ruling to be overruled.

If a taxpayer requires guidance before making a claim or entering a transaction, a private ruling may be applied for. Once issued, private rulings are binding on the ATO for that particular taxpayer only. Individuals are able to apply for binding oral rulings for simple tax matters. The application must be made orally and generally by the person concerned.

FAMILY PAYMENTS – KEY ASPECTS

Eligibility Basics

- have a dependent child or full time secondary student younger than 20 years of age who is not receiving a pension, payment or benefit such as Youth Allowance
- provide care for the child for at least 35% of the time
- meet an income test

Eligibility for FTB Part A

Family Tax Benefit (FTB) Part A is paid per child. The amount paid depends on your family's circumstances.

You may be eligible for FTB Part A if you care for a dependent child who is:

- 0 to 15 years of age, or
- 16 to 19 years of age, and
    - is in full time secondary study in an approved course leading towards a year 12 or equivalent qualification
    - has an acceptable study load, or
    - has been granted an exemption

If your child is 16 to 19 years of age and is in full time secondary study, you will receive payments until the end of the calendar year they turn 19 years of age.

Children that are 16 to 19 years of age who are in home school must be in an approved course leading towards a year 12 or equivalent qualification to meet the study requirements.

You must also meet an income test and residence requirements and care for the child at least 35% of the time.

You'll need to take reasonable steps to obtain child support if you're separated from the child's other parent.

You will also receive the **Newborn Upfront Payment and Newborn Supplement** if you:

- are eligible for FTB Part A
- recently become a parent through birth or adoption

Newborn Supplement is paid for up to 13 weeks with your regular fortnightly FTB Part A payment.

Eligibility for FTB Part B

Family Tax Benefit (FTB) Part B gives extra assistance to:

- single parents
- non parent carers such as grandparents, great grandparents, and
- couples with one main income

An example of this may be where one parent stays at home to care for a child full time or balances some paid work with caring for a child. This payment is income tested.

If you are a member of a couple, you may be eligible for FTB Part B if you care for a dependent child 12 years of age or younger at least 35% of the time.

If you are a single parent, grandparent or great grandparent carer, you may be eligible for FTB Part B if you care for a child at least 35% of the time and the child is:

- younger than 16 years of age, or
- a full time secondary student, up until the end of the calendar year in which they turn 18 years of age

Home schooling for children 16 to 19 years of age does not satisfy study requirements for FTB.

The rate of FTB Part B is based on an income test. You also need to meet residence requirements.

You may be eligible for FTB Part B if you are a:

- parent
- guardian
- foster carer
- grandparent
- great grandparent, or
- another non parent carer

Immunisation Requirements

To get Family Tax Benefit (FTB) Part A supplement and Child Care Benefit your child must meet immunisation requirements.

Income Tests FTB Part A

If you or your partner receives an income support payment or your family's adjusted taxable income is $52,706 or less, you may receive the maximum rate of FTB Part A. Shading provisions apply on income over this level depending on family circumstances and number of dependents.

Income Test FTB Part B

Family Tax Benefit (FTB) Part B is for single parents and couples where the primary earner has an adjusted taxable income of $100,000 or less per year.

We note there are many variables impacting eligibility, we urge carers to seek further information from the Department of Human Services.

NON-RESIDENT INDIVIDUALS

Non-residents are usually only required to pay Australian tax on income derived in Australia. They are not taxed on fully franked dividends and a withholding tax system (15%) applies to unfranked dividends.

As non-residents are not eligible for the tax-free threshold, it is necessary for them to lodge an Australian tax return.

2017/18 INCOME TAX RATES FOR NON-RESIDENT INDIVIDUALS

Taxable Income $	Tax Payable *
0 – $87,000	32.5%
$87,001 – $180,000	$28,275 + 37% over $87,000
$180,001 +	$62,685 + 45% over $180,000

The following table sets out the income tax rates that apply to non-resident individuals for **2016/17:**

Taxable Income $	Tax Payable *
0 – $87,000	32.5%
$87,001 – $180,000	$28,275 + 37% over $87,000
$180,001 +	$62,685 + 47% over $180,000

**The Medicare Levy is not payable by non-residents*

HECS-HELP REPAYMENT THRESHOLDS

The Higher Education Loan Programme (HELP) offers Commonwealth loans to eligible students to assist them with paying their higher education fees and to study overseas. A HELP debt is repaid through the taxation system on a taxpayer's 'repayment income'.

Repayment income is the sum of the taxpayer's:

- taxable income;
- total net investment loss;
- reportable fringe benefits;
- exempt foreign employment income; and
- reportable superannuation contributions.

HELP Repayment Thresholds (including accumulated HECS debt)

Rate of Repayment %	2016-17 HELP Repayment Income (HRI*)	2017-18 HELP Repayment Income (HRI*)
Nil	Below $54,869	Below $55,874
4.0% of HRI	$54,869 - $61,119	$55,874 - $62,238
4.5% of HRI	$61,120 - $67,368	$62,239 - $68,602
5.0% of HRI	$67,369 - $70,909	$68,603 - $72,207
5.5% of HRI	$70,910 - $76,222	$72,208 - $77,618
6.0% of HRI	$76,223 - $82,550	$77,619 - $84,062
6.5% of HRI	$82,551 - $86,894	$84,063 - $88,486
7.0% of HRI	$86,895 - $95,626	$88,487 - $97,377
7.5% of HRI	$95,627 - $101,899	$97,378 - $103,765
8.0% of HRI	$101,900 and above	$103,766 and above

**HRI = Taxable income plus any total net investment loss (which includes net rental losses), total reportable fringe benefits amounts, reportable superannuation contributions and exempt foreign employment income.*

From 1 July 2016, Higher Education Loan Program (HELP) debtors residing overseas for six months or more are required to make repayments of their debt, where their worldwide income exceeds the same minimum repayment threshold. It is proposed from 1 July 2018 that the repayment threshold will be lowered to $42,000, with a 1% repayment, with the upper repayment percentage increasing to 10% on HRI's over $119,182.

COMPANY RATES OF TAX – 2017/18

General Company Tax Rate

Description of Taxpayer	Rate %
Base Rate Entities (see turnover thresholds below)	27.5
Private companies (except life insurance companies RSAs +PDFs)	30
Public companies (except life insurance companies RSAs +PDFs)	30
Corporate Unit Trusts	30
Corporate Limited Partnerships	30
Public Trading Trusts	30
Strata Title Bodies Corporate	30

The Government is aiming to reduce the Company Tax rate to 25 per cent over 10 years.

Year	Annual Aggregated Turnover Less Than	Company Tax Rate
2016/17	$10m	27.5%
2017/18	$25m	27.5%
2018/19	$50m	27.5%
2019/20	$50m	27.5%
2020/21	$50m	27.5%
2021/22	$50m	27.5%
2022/23	$50m	27.5%
2023/24	$50m	27.5%
2024/25	$50m	27.0%
2025/26	$50m	26.0%
2026/27	$50m	25.0%

Franking credits will be able to be distributed in line with the rate of tax paid by the company making the distribution.

PROPOSED INCREASES TO THE UNINCORPORATED SMALL BUSINESS TAX DISCOUNT

In the May 2016 Federal Budget it was announced the tax discount for unincorporated small businesses will increase incrementally over 10 years from 5 per cent to 16 per cent.

The tax discount will increase to 8 per cent on 1 July 2016, remain constant at 8 per cent for eight years, then increase to 10 per cent in 2024-25, 13 per cent in 2025-26 and reach a new permanent discount of 16 per cent in 2026-27. This will coincide with staggered cuts in the corporate tax rate to 25 per cent *(see the related measure Ten Year Enterprise Tax Plan – reducing the company tax rate to 25 per cent).* The current cap of $1,000 per individual for each income year will be retained.

The tax discount applies to the income tax payable on the business income received from an unincorporated small business entity. Access to the discount will be extended to individual taxpayers with business income from an unincorporated business that has an aggregated annual turnover of less than $5.0 million.

These measures coincide with the staggered cuts in the corporate tax rates.

OTHER TRUSTS

In situations where the trustee chooses not to allocate income to a beneficiary, the income is accumulated. In such instances the tax is assessed at the highest marginal tax rate (47%) plus Medicare.

AUSTRALIAN BUSINESS NUMBER

The Australian Business Number (ABN) is a single identifier for all business dealings with the ATO and for dealings with other government departments and agencies.

An ABN is required if:

- You carry on a business
- You establish a self managed superannuation fund
- You request endorsement of an income exempt charity or as a deductible gift recipient.

If a supplier does not have an ABN and if you are making a total payment of more than $75 (excluding GST) you will have to withhold 47 per cent (from 1 July 2017) of that payment and remit that amount to the ATO. If the supplier has an ABN, make sure that they quote it on their invoice to you.

If you are a Family Trust, you must show both the ACN (Australian Company Number) of the Corporate Trustee and the ABN of the Trust on your tax invoices. If you are a company, you must display your ABN on all tax invoices. The ABN can be used instead of the ACN on other public documents, provided the ACN represents part of your ABN.

TAX FILE NUMBERS

Whether individual or entity, all taxpayers must have a Tax File Number (TFN).

As the ATO uses the TFN to identify you, it must be used on all documents lodged with the ATO including taxation returns.

CHAPTER 2
Assessable Income

Tax is levied on the taxable income of the taxpayer derived during the income year. Assessable income minus allowable deductions equals taxable income.

Assessable income as defined in ITAA 1997 consists of ordinary income and statutory income.

If specially excluded or made exempt, certain types of ordinary and statutory income that will not be subject to tax.

DEFINITIONS

Ordinary Income is defined to mean income according to ordinary concepts. However, no specific guidance on what is meant by "income according to ordinary concepts" is contained in the legislation.

It is the courts that have identified a number of factors to provide guidance as to whether an amount has the character of income according to normal concepts.

These include: recurrence and regularity, provision of a service or work, as well as the carrying on of a business or profit-making undertaking or scheme.

Statutory Income applies if the amount is not ordinary income and is included by a specific provision of the Tax Act.

Examples include royalties, some capital gains, lump sum retirement payments, dividend imputation credits and allowances.

Exempt Income is any ordinary or statutory income which the Tax Act specifically exempts from taxation.

CAPITAL -V- REVENUE

The distinction between capital and revenue is a principle established in the Tax Act and extensively dealt with by numerous court findings. It applies to both receipts and payments.

Prior to 1985, income receipts were assessable to tax and payments were deductible if they were connected with the earnings of income; however, capital receipts were not. If no such connection existed, usually such payments were only then based on capital account and were non-deductible. The capital gains tax regime ensured that from 20 September 1985, that many formerly non-assessable capital receipts would be subject to some form of tax.

Generally, taxpayers prefer receipts to be on capital account and payments to be on revenue (income) account. This is because:

- Prior to calculation of tax, capital gains may be subject to various discounts and exemptions
- Outgoings are deductible if they relate to the earning of income
- Outgoings related to capital assets are usually not deductible, but may be added to the cost base of the asset. There is also provision for some building capital allowances
- Capital losses can be carried forward to be offset against future capital gains and cannot be claimed against income on revenue account.

BUSINESS INCOME

Assessable income includes all proceeds from transactions carried out in the ordinary course of business. Where a business enters isolated transactions outside normal activities, if there is a profit making undertaking or scheme, then these receipts are also assessable.

DIRECT COMPENSATION FOR SERVICES

All remuneration for personal services, whether in the capacity of an employee or in connection with employment or personal services is assessable income. Exceptions to this include some initial living away from home allowances and fringe benefits.

Voluntary payments or gifts received, resulting from services provided, are also assessable income.

NON-CASH BUSINESS BENEFITS

These are widely defined as benefits received as property or services.

Services include any right, privilege or benefit and may be provided either partly or wholly, or directly or indirectly in a business relationship. If the annual total received is less than $300 then such payments are exempt from tax. However, should the annual benefit exceed $300 then the total amount will be assessable.

EMPLOYMENT TERMINATION PAYMENTS (ETPs)

It is no longer possible to roll-over an ETP to superannuation.

The tax treatment of an ETP will depend on whether it is a life benefit ETP or death benefit ETP.

A life benefit ETP is only taxed on the taxable component. The tax-free component compromises the 'pre-July 1983 segment', the 'concessional segment' and the 'post-June 1994 invalidity segment.' The tax-free component is not assessable income and is not exempt income – that is you do not pay tax on this part.

Income component derived by the payee in the income year	Age of person at the end of the income year in which the payment is received	Component subject to PAYG withholding	Rate of withholding (including the Medicare levy)	Cap to apply
Life benefit ETP - taxable component Payment is because of: • early retirement scheme • genuine redundancy • invalidity • compensation for personal injury, unfair dismissal, harassment of discrimination.	Under preservation age	Up to the ETP cap amount	32%	ETP cap
	Preservation age or older	Up to the ETP cap amount	17%	ETP cap
	All ages	Amount above the ETP cap amount	47%	ETP cap
Life benefit ETP - taxable component Payment is because of: • golden handshakes • gratuities • payment in lieu of notice • a payment for unused sick leave • a payment for unused rostered days off.	Under preservation age	Up to the relevant cap amount	32%	Lesser of ETP cap and whole-of-income cap (see note 2)
	Preservation age or older	Up to the relevant cap amount	17%	Lesser of ETP cap and whole-of-income cap (see note 2)
		Amount above the cap amount	47%	Lesser of ETP cap and whole-of-income cap (see note 2)
Death benefit ETP paid to non-dependants - taxable component	All ages	Up to the ETP cap amount	32%	ETP cap
	All ages	Amount above the ETP cap amount	47%	ETP cap
Death benefit ETP paid to dependants - taxable component	All ages	Up to the ETP cap amount	Nil	ETP cap
		Amount above the ETP cap amount	47%	ETP cap

1. Note the whole-of-income cap amount for the 2017-18 income year and future years is $180,000. This amount is not indexed.
2. The ETP cap amount for 2017-18 income year is $200,000 (indexed).

EMPLOYMENT TERMINATION PAYMENTS TAX OFFSET

From 1 July 2012 there has been an additional $180,000 non-indexed whole of income cap based on an individual's yearly taxable income that will work in addition to the existing ETP cap rules on some employment termination payments.

An individual will receive an ETP cap, being the lesser of either:

- the existing lifetime benefit ETP cap
- the $180,000 'whole of income' cap.

The $180,000 will be reduced by other taxable income (excluding the employment termination payment in question) that the individual may receive in that income year.

The $180,000 whole of income cap will not apply to:

- genuine redundancy payments
- early retirement scheme payments
- invalidity payments
- compensation received due to a genuine employment related dispute relating to personal injury, harassment, discrimination or unfair dismissal
- death benefit payments.

Taxation arrangements for unused annual leave and long service leave payments were not changed.

SUPERANNUATION LUMP SUMS

Superannuation lump sums paid from a taxed source to those aged 60 and over are tax-free (i.e. non-assessable non-exempt income).

Tax is still payable on superannuation lump sums paid to someone aged less than 60. The superannuation lump sum is split into the tax-free component and taxable component. The tax-free component comprises the 'crystallised segment' and the 'contributions segment'. The taxable component is determined by subtracting the tax-free component from the total value of the superannuation interest. The taxable component may consist of an element taxed in the fund or an element untaxed in the fund (e.g. paid from an untaxed fund).

Age of Recipient	Superannuation Lump Sum		
	Tax-free Component	Taxable Component 2017-18	
		Element taxed in fund	Element untaxed in fund (excluding levies)
60+	Tax-free	Tax-free	15%: $0 - $1,445,000 45%: $1,445,000+
55 - 59	Tax-free	0%: $0 - $200,000[2] 15%: $200,000+	15%: $0 - $200,000[2] 30%: $200,000 - $1,445,000 45% $1,445,000+
0 - 54	Tax-free	20% of entire taxable component	30%: $0 - $1,445,000 45%: $1,445,000

1. Medicare levy of 2% is also payable.
2. The low rate cap amount of $200,000 is indexed annually.
3. The untaxed plan cap amount of $1,445,000 is indexed annually.

End benefits tax may still apply for certain untaxed superannuation funds (e.g. some public sector schemes) in respect of an element untaxed in a fund (i.e. no contributions or earnings tax has been paid on this element).

FREQUENT FLYER AND CLUB BENEFITS

The ATO accepts as a result of Payne's case that flight rewards received by employees from an employer paid expenditure are not assessable income.

Any customer loyalty programme benefits earned as a result of private expenditure are not assessable.

The ATO has indicated that it will closely scrutinise situations where the number of points accumulated in a year exceed 250,000 and arise from a business relationship or business expenditure, whereby the arrangement has no commercial purpose other than to allow the recipient to receive reward points.

In such cases the ATO will treat such rewards as assessable income or as a fringe benefit.

BARTER EXCHANGES AND TRANSACTIONS

The ATO's view is that barter transactions are assessable and deductible to the same extent as other cash or credit transactions.

For tax purposes the ATO considers one trade dollar (T$1) to be equal to one Australian dollar, unless it can be shown that the T$1 is being traded consistently at a different value. Barter Exchanges and transactions are coming under increased ATO scrutiny as it is considered that income is not being properly accounted for.

COMPENSATION PAYMENTS

Such payments take many forms and depending on their nature can be treated as assessable income, as a capital gain, as an adjustment to the cost base of an asset, or tax exempt.

- Periodical amounts of workers compensation are taxable
- Lump sum amounts received for personal injury or wrong doing are not taxable as these are private or capital recipients
- Personal injury cases now allow for structured settlements or orders which allow for such cases that formerly would have been settled for a lump sum to be delivered as tax-free periodic payments to an injured person.

This complex issue is dealt with at length in Taxation Ruling TR 95/35.

REDUNDANCY AND EARLY RETIREMENT PAYMENTS

Tax planning opportunities exist as employees can receive limited bona fide redundancy and approved early retirement payments tax-free. Such payments are not classified as Eligible Termination Payments.

Bona fide redundancy and approved early retirement payments in 2017/18 of up to $10,155 plus $5,078 for each completed year of service with the employer are tax-free prior to turning 65.

The ATO's view on what qualifies as genuine redundancy payments is contained in Taxation Ruling TR2009/2.

LEASE INCENTIVES

Usually a cash incentive paid to a business taxpayer to enter into a lease of premises will be assessable income.

Some non-cash incentives are tax-free as outlined in Tax Ruling IT 2631.

- Rent free period
- Interest free loan – provided it is a genuine business loan
- Free holiday (this is not deductible to landlord)
- Free fit out (if owned by landlord).

In cases where the free fit out is owned by the tenant the cash incentive will be assessable, but a deduction will normally be allowed for depreciation.

SALE OF FORMERLY LEASED EQUIPMENT

Where you or an associate make a profit on the sale of a motor vehicle informerly leased, an amount will have to be included in assessable income. There are three choices available in determining the income (Tax Act Subdivision 20B).

If other formerly leased equipment is sold, the isolated transactions provisions may apply to make such a transaction assessable. If not the profit would be taxed as a capital gain.

BALANCING ADJUSTMENTS

Where plant and equipment subject to depreciation is disposed of for an amount exceeding its written down value, the surplus is known as a "balancing adjustment" and is assessable income.

Low value pooled assets do not have a balancing adjustment. The value of the sale is used to reduce the value of the pool. If the pool value becomes zero, a balancing adjustment will then occur.

CHECKLIST OF ASSESSABLE ITEMS

Items

- Accrued leave entitlements, payments received for transferring employee
- Advance rent, royalties
- Agency cancellation payments
- Allowances connected with employment
- Allowances paid to visiting fellow
- Australian Defence Force (ADF) income
- Austudy or ABSTUDY scheme payments
- Back pay
- Bad debt recoveries where deduction previously allowed
- Balancing adjustments (unless roll-over relief available): Depreciating assets
- Barter exchange (business) transactions
- Benefits (non-cash) provided to business taxpayers
- Betting or gambling wins of a taxpayer who is carrying on a business of betting, etc
- Bitcoin (business) transactions
- Bonus Shares
- Bonuses including cash bonuses on insurance policies
- Books debts, sale of
- Bounty in carrying on business
- Business proceeds
- Cancellation of contract of service
- Capital gains (net)
- Clothing allowance from employer
- Clubs, receipts from non-members
- Commissions
- Commonwealth securities: Accrued interest on Special Bonds, Profit on sale or redemption of securities acquired at a discount after 30 June 1982, Surplus on redemption, sale of non-interest bearing Treasury Notes
- Compensation: Accident or disability policy payments, Cancellation, etc, ordinary contracts, Defamation, Interruption to business, Live stock loss, death, etc, Reduction in salary (compensation), Standing timber, Tax liability, Trading stock losses, Workers Compensation
- Contract adjustments for rates, land tax, etc
- Crypto currencies
- Damages: Compensation for loss of income
- Debt defeasance arrangements
- Defence Force members' pay and allowances
- Depreciable plant: broadly excess of sale price over written down value
- Diesel Fuel Rebate Scheme payments
- Discount employee share scheme shares
- Electoral expenses reimbursed
- Entertainment allowance from employer
- Exceptional circumstances relief payments
- Exchange gains
- Film, disposal of copyright
- Financial arrangements, First Home Save Accounts: Holder's earnings, Government contributions, withdrawals from account
- Foreign income of residents: CFC income
- Friendly society education fund payments
- Grants for research
- Gratuities
- Hire charges
- Holiday pay
- Housing allowance
- Illegal transactions
- Incentive payments
- Income: Arrears, subject to possible tax offset, Capital asset sold for income, Interest in income under will, settlement, Periodical payments
- Industrial dispute settlement payments
- Industrial property (copyright, patent, etc) profit on exploitation
- Interest on early payments on tax
- Interest on overpayments of tax
- Interest paid to non-residents
- Interest: Non-accrual loans, Interest derived by body corporate
- Investment income
- Investment income from life policy

- Investments profits, where acquired for profit-making by sale or in course of business
- Jury attendance fees
- Know-how, payments for sale or supply of
- Land sale or exchange profits
- Lay-by sales
- Lease incentives
- Lease income from “sale and leaseback”
- Leased cars and other equipment, profit on disposal
- Licence in patents, copyrights, designs, etc: Payment for grant of, Payment for use of
- Liquidation distributions out of “income”
- Loans to private company shareholders
- Location allowance to employee
- Long service leave payment
- Lump sum damages or out-of-court settlement for loss of income
- Lump sum for lost earnings
- Luxury car lease notional finance charges
- Meal allowances
- Motor vehicle allowance
- Natural resource payments to non-residents
- Net capital gain
- Newstart allowance
- No-TFN contributions income
- Non-cash benefits
- Non-residents trust estate income
- Overtime pay
- Paid parental leave
- Partnership, share of net income
- Pensions, social security
- Periodical receipts
- Premium, non-refundable, received on issue of debt securities
- Prizes or awards (business connection)
- Procurement fees
- Profit from business of trading in futures
- Profit on disposal of car which taxpayer or an associate has previously leased
- Profit on sale of other leased equipment
- Profit on sale, exchange or other realisation of shares, land, houses, and businesses
- Profits from isolated business or commercial transaction where profit-making purpose
- Racehorse winnings including betting wins and prize money, where racing activities part of business Research grants
- Rates, adjustment to vendor on sale
- Refunds of rates, taxes and other items
- Rents, including hire charges for plant, etc
- Repayments of FMD amounts
- Return to work payments
- Rewards for services rendered
- Royalties
- Royalties paid to non-residents
- Salaries
- Securities gains on disposal or
- Shares, profits on disposal
- Sickness payments under disability policy, workers compensation
- Social security payments
- Subsidies (for inflation on pensions)
- Subsidies for carrying on business
- Superannuation contributions deducted from salary or wages
- Superannuation fund income
- Superannuation fund payments to employer-sponsor if contributions deductible
- Tips
- Travel allowance to employee
- Trust income, adult beneficiary’s share
- Tuition allowance received from employer
- Unemployment benefits
- Uniform allowance to employee
- Wages
- Wheat Industry Fund, refunded levies
- Wine producer rebate
- Work in progress payments; Generally, Retiring partner
- Workers compensation
- Youth allowance

CHAPTER 3
Tax Deductions

3

BUSINESS AND EMPLOYMENT DEDUCTIONS

Income tax is calculated based on a taxpayer's taxable income. The fundamental equation is: assessable income less allowable deductions equals taxable income.

In claiming income tax deductions there are "general" and "specific" deductions.

The general provision for claiming allowable deductions is section 8(1) of the Tax Act, which states that any loss or outgoing is a tax deduction to the extent that:

- It is incurred in gaining or producing assessable income; or
- It is necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income.

It should be noted, however, under the second limb of section 8(1) that you cannot claim a deduction if the outgoing is of a capital, private or domestic nature.

There are also provisions in the Tax Act that prevent you from claiming certain deductions, for example fines and most entertainment expenses.

SUBSTANTIATION

The key principle underlying substantiation is that to deduct work expenses, a taxpayer needs to have written evidence of the expense.

(Division 900 of ITAA 1997) Note that substantiation applies only to individual taxpayers and partnerships that include at least one individual. Normally the written evidence must be kept for a minimum of five years from the date of lodgement of the return in which the claims are made.

Once you have established that the relevant expenses were incurred in earning assessable income or in carrying on a business, the substantiation rules must be considered before the expense is claimed.

There are exceptions where substantiation is **not** required:

- The total claimed for all employment related expenses is less than $300.
- Laundry expenses up to a maximum of $150.
- Travel claims less than the amounts stipulated in TD 2017/19, provided that a bona fide allowance has been paid to you as an employee.
- Car expenses under the cents per kilometre method.
- Overtime meal allowances up to $30.05 per day (TD 2017/19).

Under the substantiation requirements, you must have documentation that contains the following:

- The name of the supplier
- The amount of the expense
- The nature of the 'goods' or services
- The date the expense was incurred
- The date the document was made out.

Small expenses of $10 or less that total less than $200 per annum do not require substantiation if you record the details in a book or a diary.

MOTOR VEHICLE EXPENSES

Whilst business travel expenses or employee work-related expenses are deductible, travel expenses incurred travelling between home and work are not generally deductible.

However, if you have a detour for work-related expenses on the journey to see a client, a tax deduction may be claimed.

Taxpayers who have to carry heavy or bulky equipment to their place of work may also claim a deduction.

Examples:

- A self employed tradesman will be able to claim a deduction if he uses his home as his base and when he travels to sites is obliged to take his own tools of trade and equipment. In 2016 the ATO made it very clear that where there is a secure place to store the tools or where any employer provides suitable tools onsite then this then this deduction is not allowable. The ATO continues to focus on these cents per kilometre claims in 2017/18.
- Musicians who carry bulky equipment e.g. amplifiers to their place of performance may be able to claim a tax deduction.

- Trips to town by primary producers will be deductible if it can be shown that the principal purpose of the journey was business in nature. Examples could include purchasing equipment and supplies or visiting the bank.

When claiming motor vehicle expenses there are two choices open to the taxpayer. You may alter your choice from year to year and make a fresh choice when replacing a vehicle. If you are choosing the actual cost method it may be necessary to keep a replacement logbook.

If you own more than one vehicle, a claim may be made for each vehicle if it can be demonstrated each vehicle has a business use.

Please note the "one third of actual expense method" and "the 12% depreciation method" were abolished from 1 July 2015.

CENTS PER KILOMETRE METHOD

This method is available for motor vehicle usage up to 5,000 kilometres of business use.

In cases where the vehicle has been used for more than 5,000 kilometres in a tax year, this method is still available as long as the claim is reduced to 5,000 kilometres.

Significant changes have applied since 1.07.2015 with a flat rate of 66 cents per kilometre now applying to relevant motor vehicles.

This method does not have to be substantiated by logbook; however, on occasion the ATO may enquire (particularly in the case of employees) as to how the motor vehicle has been used for business purposes, and may seek verification from the employer.

Couples engaged in small business may jointly own and use a car for business purposes. In such cases where the vehicle is used separately by each person, it is possible for both to claim a deduction up to the 5,000 kilometre limit using the set rate per kilometre method.

This method is popular for small business persons and employees who own older vehicles and as such cannot access high depreciation claims.

ACTUAL COST METHOD

Using this method the total operating cost of the vehicle is determined with an apportionment made between private and business use.

A logbook that is kept in the "prescribed format" determines the apportionment. Logbooks may be purchased at stationers and normally state that they comply with ATO requirements. A logbook must be kept for at least 12 consecutive weeks and remains valid for five years as long as there are no substantial changes in patterns of usage. An existing logbook may also be used for a replacement vehicle if patterns of usage remain consistent.

Motor vehicle expenses include all costs and outgoings incurred in operating and maintaining the vehicle. These include, but are not limited to, fuel, tyres, servicing, repairs, maintenance, registration, financing costs (interest), depreciation and/or lease payments. All relevant records to substantiate the amounts claimed must be kept. A depreciation cost limit (maximum amount) applies and is $57,581 for 2016/17 and 2017/18. Cars that cost more than this can only be depreciated from a value of $57,581.

Be certain to keep change-over details when purchasing new vehicles. The relevant details are make, model and registration number and odometer records of both cars and the date of change-over.

Always be able to demonstrate that your business percentage is based on a reasonable estimate. Although logbooks will be the primary source, changes in patterns of usage or the number of cars you use are also relevant.

EXCEPTIONS TO MOTOR VEHICLE SUBSTANTIATION RULES

The above rules do not apply to:

- Panel vans, utilities or other vehicles designed to carry weights exceeding one tonne
- Taxis
- Motorcycles and similar vehicles
- A car only used for lease or hire in a business of leasing or hiring
- Panel vans, utility trucks or other vehicles designed to carry less than one tonne, (not being vehicles mainly designed for passengers) where no private use is indicated. This usually means that the only private use is travel between home and work. If a second vehicle is owned, it is suggested this contention of incidental private use can reasonably be made.

Although substantiation may not apply, reasonable documentation should still be kept to justify all claims as the ATO has indicated this is now an area of focus.

CHANGES TO THE INCOME TAX DEDUCTION RULES FOR CAR EXPENSES

The following changes in relation to the available income tax deduction methods for car expenses apply from 1 July 2015:

- The removal of two calculation methods for work-related deductions for car expenses; and

- The introduction of a flat rate when applying the 'cents per kilometre method.'

The measures remove the availability of the '12 per cent of original value method' and the 'one-third of actual expenses method' for calculating deductions, leaving the 'logbook method' and 'cents per kilometre method' as the only available options.

In addition, the 'cents per kilometre method' will be amended to a flat 66 cents per kilometre rate for all cars, regardless of engine size. The ATO will be responsible for updating this rate in future years.

This streamlines the process of calculating deductions, reduces compliance costs and brings the car expense deductions more in line with the average cost of operating a car.

TRAVELLING EXPENSES

Substantiation is required for all domestic and overseas travel expenses.

Written evidence must be retained regardless of the length of absence from home. The only exception is expenses incurred by employees that are not in excess of reasonable travel allowances received from employers.

Travel records, being a travel diary or similar document must be kept if you are away from home for more than five nights. The diary must set out:

- The nature of the activity,
- The day and approximate time it began,
- How long it lasted, and
- The location where the activity took place.

The travel records required are for business activities only and it will be necessary to establish that the principal purpose of the trip was for business purposes.

PREPAYMENT OF EXPENSES

Carefully note the tax treatment of prepayments depends on the status of the taxpayer and the amount and nature of the expense. The tax treatment also depends on whether the taxpayer has elected to access the small business entity (SBE) concessions (if eligible).

In general, prepaid expenditure must be apportioned over the period in which the relevant service is provided.

The following expenses are excluded:

- Amounts less than $1000 (net of GST)
- Amounts paid pursuant to Court Order or government legislation
- Salaries and wages
- Payments by taxpayers using the SBE as long as the period of service does not exceed 12 months.

Individuals and SBE taxpayers are still able to participate in "tax effective" investments such as forestry plantations by making a prepayment of management fees.

Individuals with negatively geared investments can still make prepayments of interest.

TRAVEL CLAIMS WITHIN AUSTRALIA

The substantiation requirements do not apply to 'travel expenses' incurred by an employee who receives a travel allowance for travel within Australia and the claim for costs of accommodation, food, drink and other incidentals do not exceed reasonable amounts as determined by the ATO.

These are the 2017/18 daily rates for accommodation, meals and incidentals as outlined in TD 2017/19.

Place	Salary below $119,650	Salary $119,651 -$212,950	Salary above $212,951
Adelaide	$285.70	$365.15	$389.45
Brisbane	$333.70	$414.15	$437.45
Canberra	$296.70	$403.15	$426.45
Darwin	$344.70	$444.15	$467.45
Hobart	$266.70	$341.15	$375.45
Melbourne	$301.70	$385.15	$445.45
Perth	$331.70	$402.15	$445.45
Sydney	$313.70	$404.15	$444.45

Rates for country centres are also set out in the determination.

LONG DISTANCE TRUCK DRIVERS

If in receipt of a travel allowance, employee truck drivers who are required to sleep overnight away from home can claim food and drink expenses up to stipulated daily rates without substantiation.

Expenses must be substantiated if no allowances are paid or if amounts paid are in excess of stipulated amounts.

Acceptable daily rates for 2017/18 are:

All Salaries	$55.30 per day

NON-COMPULSORY UNIFORMS

Deductions are not allowed for non-compulsory uniforms unless the design of the uniform is entered on the Register for Approved Occupational Clothing at the time the expense is incurred. This register will cease on 1 April, 2017 due to a sunset clause.

CONVENTIONAL CLOTHING

This is generally disallowed, but there are some interesting exceptions:

- A professional actor who buys stage clothing specific to a production.
- A police officer doing surveillance or undercover work who incurs costs to buy clothing he would not normally wear.
- A television game show host who purchases evening and formal wear to complement the prizes and sets.

OCCUPATIONAL CLOTHING AND PROTECTIVE GEAR

Clothing expenditure is generally private expenditure and not deductible.

However, there are circumstances where expenditure on certain types of occupational clothing gives rise to a deduction listed below:

Occupation Specific

Generally, a deduction will be allowed for occupational specific clothing, which clearly identifies a person as a member of a specific profession, vocation, trade, occupation, or calling. Examples may include a barrister's robes; a chef's checked pants or a nurse's uniform. A business suit is not occupation specific and therefore not tax deductible.

Protective Clothing and Footwear

Such costs are deductible where the clothing is specially designed to protect the taxpayer from personal work injury, disease or death.

Compulsory Uniform

For expenditure to be deductible the work uniform must be distinctive. The wearing of the uniform must be an express policy of the employer, consistently enforced and applicable to all employees at the same class.

Glasses, Sunhats and Sunscreen

Since the Morris case (2002), expenditure on sunglasses, sunscreen, and sunhats are deductible for taxpayers who are required as part of their duties to work outside and be exposed to sunlight while performing their duties.

Examples of such taxpayers include those involved in farming, outdoor sports, the construction industry, courier services and other outdoor services.

HOME OFFICE EXPENSES

A taxpayer can make expenditure claims for home office expenses if it can be shown that part of the home is used for income earning purposes and has the character of a place of business, or is used in connection with income earning activities, but is not a place of business.

Where additional running costs are incurred because of income producing activities, an individual taxpayer may make a claim for home office expenses based on:

- Actual expenses
- Diary records for a typical four week period in each year. This will establish a pattern for the entire year.

In broad terms the following types of expenses are normally incurred:

- Telephone and internet expenses
- Heating and lighting expenses
- Equipment depreciation
- Occupancy expenses where the home is a place of business. These include rent, interest, etc.

Occupancy expenses are deductible only if a particular or part of the dwelling is set aside and is clearly identifiable as a place of business and used exclusively for business purposes. Having a computer alcove at home will not meet this test.

Note: If you elect to claim occupancy expenses there are Capital Gains Tax implications. Having accepted that your home is a place of business the main residence exemption will be affected.

Alternatively the ATO allows a claim of $0.45c per hour to cover heating, cooling and lighting costs.

INTEREST

The fundamental test in determining the deductibility of interest is the "use test", being the use to which the finances have been put.

Security is irrelevant and under section 8(1) of the Tax Act you can only claim a deduction for interest expenses if the funds have been used in gaining or producing assessable income or in carrying on a business for that purpose.

Examples:

1. A business owner has a business overdraft limit, which is secured on business assets. The owner decides to use funds of $15,000 to finance an overseas holiday. The interest cost on this $15,000 of the overdraft is not deductible because the borrowings have not been used for business purposes.
2. A business borrows $30,000 to purchase a new computer system. The loan is secured on the owner's home. Interest on the loan is deductible because the monies have been borrowed for business purposes and the interest expense has been incurred in carrying on the business.

As long as existing loan arrangements remain unchanged, interest on borrowings that remain after ceasing business are deductible. Interest in connection with borrowings necessarily incurred prior to commencement of business may also be deductible if there is a sufficient connection with the expense and future income derived.

TELEPHONE

If you are required to contact clients or your employer on a regular basis, or if you are required to be on call, home telephone rental expenses may be partly deductible.

Claims can be made in either of the following ways:

- A diary or log is kept for 28 days, establishing a pattern of usage for the whole year; or
- Actual expenses based on a completely itemised account.

It is suggested that the itemised account method is too onerous and the 28 day diary method is recommended.

REPAIRS

Deciding whether a claim should be made should be relatively simple; however, items of expenditure may be capital in nature and this issue has been tested in the Courts on numerous occasions.

The dictionary definition of repairs is "the restoration of some material thing by the removal of some decayed or worn out parts".

Before making a claim, carefully consider whether the expense is:

- A capital expense in respect of recently acquired property
- An improvement
- The replacement of a subsidiary part or of an entirety.

If you replace or reconstruct entire premises or plant, this is not a repair. Essentially a repair involves the restoration of an object to the condition it formerly had, without changing its character. Tax Ruling TR97/23 provides guidance on this issue.

DEDUCTION FOR PROFESSIONAL COSTS RE-STARTING BUSINESS

From 1 July 2015, new start-ups are able to immediately deduct professional costs associated with starting a business rather than writing them off over 5 years.

SELF EDUCATION EXPENSES

The expenses for self-education can be deducted provided there is a direct and provable link between the course undertaken and how you derive your income.

Generally you will need to satisfy any of the following tests to be entitled to a tax deduction:

- The expense has a relevant connection to your current income earning activities (i.e. the course must be relevant or incidental to how you derive your assessable income);
- The self-education program being undertaken enables you to maintain or improve the skills or knowledge necessary to carry out your income earning activities;
- The self-education leads to, or is likely to lead to, an increase in your income from your current income earning activities in the future.

Deductions for self-education expenses are **not** allowed if the course of study is designed to:

- Get employment in a new field of endeavour (e.g. a teacher studying law to become a lawyer);
- Get employment or obtain a qualification to enable you to enter a restricted field of endeavour (e.g. obtaining a degree to be able to practice as a surveyor); or
- Open up new income earning opportunities in the future (whether in business or in your current employment) because they are incurred at a point too soon to be regarded as being incurred in gaining or producing your assessable income.

Expenses that **may be** tax-deductible:

- Accommodation and meals (if away from home overnight)
- Computer consumables
- Course fees
- Decline in value for depreciating assets (cost exceeds $300)
- Purchase of equipment or technical instruments costing less than $300
- Equipment repairs
- Fares
- Home office running costs
- Interest
- Internet usage (excluding connection fees)
- Parking fees (only for work-related claims)
- Phone calls

Section 82A applies limits to the deductibility of self-education expenses.

The amount of self-education expenses allowable under section 8-1 must not be greater than the excess of the net amount of 'expenses of self-education' over $250.

Section 82A applies if:

- The expenses of self-education are necessarily by the taxpayer for or in connection with a course of education provided by a school, college, university or other place of education; and
- The course is undertaken by the taxpayer for the purpose of gaining qualifications for use in the carrying on of a profession, business or trade, or in the course of any employment.

Subsection 82A(2) specifies that the net amount of expenses of self-education is calculated by reducing the total amount of expenses of self-education by:

- The amount of Commonwealth educational assistance for secondary education, technical or tertiary education or post-graduate study that was capable of being claimed by the taxpayer or by another person in respect of the taxpayer, but excluding amounts that have been or will be included in the taxpayer's assessable income; and
- Any non-assessable payments received or receivable from the taxpayer's employer or other person in the year of income in respect of the self-education expenses.

CHECKLIST OF DEDUCTIBLE ITEMS

Note these expenses must be income related. Meaning, the expenditure must have the necessary nexus with you or your business earning assessable income.

Item		
• Accident insurance premiums • Accountant's fees • Accrued leave entitlements, transferred employee payments Advertising expenses • Agistment fees • Appeal costs relating to tax disputes • Audit costs, including ATO audit • Bad debts	• Bank charges, business • Bills of exchange, discount factor • "Blackhole" (business capital) expenses • Borrowing expenses • Breeding service fees • Briefcases • Broker's commission on borrowed moneys	• Buildings and structural improvements • Business operating expenses • Business subscriptions • Business trips, expenses of • Car expenses (business) • Carbon pricing • Clothing (corporate wardrobes and uniforms, occupation-specific clothing, protective clothing)

Item		
• Commission • Computer software • Consolidation valuation expenses • Convention expenses • Copyrights, patents and registered designs: registration fees and amortisation of development cost or purchase price • Corporate wardrobes and uniforms • Credit card (personal) used for work-related purposes • Death or disability benefits provided by superannuation fund • Debt/equity swaps resulting in a loss • Depreciation • Depreciation of business assets • Discounts or rebates on sales income • Distributions by co-operative to members • Droving expenses • Dues: union, professional or business associations • Education expenses • Election expenses: parliamentary • Election expenses: local government • Electricity connection costs • Employee's expenses: self-education, special clothing, purchase and laundering, Technical and trade journals • Employer's costs of shares scheme • Employment agreement expenses of: employer, employee • Entertainment expenses related to business (limited) • Environmental impact study expenses: general, mining • Environmental protection expenditure: general, mining • Equipment (work-related) • Exchange loss	• Farm management deposits • Farmers – see Primary producers • FBT Payments • Feasibility study expenses for new project • Fencing assets (primary production) • Fertiliser • Film (Australian) investment • Financial arrangements losses • Fitness expenses • Food for employees • Forestry expenses • Geosequestration expenditure • GIC • Gift valuation fees under the Cultural Program • Gifts of $2 or more to prescribed donees • Gifts of works of art and heritage items • Gifts: advertising or public relations • Glasses (anti-glare) • Grapevine establishment costs • Gratuities to employees • Higher qualification expenses • Hire of farm implements Fodder storage • Home office expenses where home is used as business premises • Horticultural plantation establishment • Insecticides, weedkillers, rabbit fumigant • Insurance company, unreported claims • Insurance premiums • Insurance premiums (business related) • Intellectual property • Interest on borrowings for employer superannuation contributions	• Interest on borrowings to pay income tax • Interest on late lodgements • Interest on late payments of tax • Interest on money used for assessable income production or purchase of income-producing assets • Interest on money used to pay HELP • Interest on underpaid tax where assessment amended • Interest referable to home office where home used as business premises • Interest withholding tax • Investment losses • Investment portfolio, expenses of servicing • Land tax on business premises • Landcare expenditure • Late payment penalty interest • Lease incentive payment Lease preparation expenses • Lease preparation expenses • Lease termination payments (business) • Leave payments made by employer • Legal expenses: Proceedings affecting future income-earning Relating to borrowing or mortgage discharge • Lessor's or lessee's payment to secure early termination of business lease • Living-away-from-home allowance expenses • Loss on sale of property acquired before 20.9.85 • Losses (company) of current year • Losses (trust) of current year • Losses (trust) of previous years • Losses on isolated business transactions

Item		
• Losses through theft or misappropriation • Losses, transferred from group company • Losses: previous years • Luxury car lease expenses • Mains electricity connection • Mains electricity connections • Management expenses, investor • Marketing and delivery expenses • Mining expenditure • Mortgage discharge expenses • Motor vehicle dealers: warranty repair costs • Motor vehicle expenses • Municipal rates on business premises • Natural disasters recovery expenses • Newspaper (rural) expenses • Newspapers and magazines • Overtime meal allowance expenses Parking fees • Partnership, share of net losses • Patent, design, copyright registration costs • Payment to co-ops for business services • Payroll tax • Petroleum resource rent tax • Plant (installed), cost of bringing to full operation • Political parties, contributions and gifts by non-business individuals • Power, fuel, light • Printing, stationary • Professional journals: subscriptions • Professional qualifications • Project infrastructure costs • Promissory notes, discount factor • Protective clothing	• Rates and land taxes • Regional headquarters set-up costs • Relocation expenses incurred by employer • Rent collection, commission on • Rent for business premises • Rent on farm property • Rent on residence used by employees • Rent referable to home office (business) • Repair costs under warranty • Repairs • Repairs to income-producing property • Repayments of travel agents' commission • Retiring allowances • Salaries and wages • Salaries paid in business • Seeds • Self-education expenses • Self-insurers' provisions for workers compensation • Service fees • Shearing expenses • Shortfall interest charge • Sickness/accident premiums • Software expenses • Solicitor disbursements • Spare parts • Sponsorship fees • Structural improvements (post 26.2.92) • Subscriptions to producers' organisations • Superannuation contributions by: employer, Self-employed persons and unsupported employees Superannuation funds expenses • Superannuation supervisory levy	• Takeover defence costs • Tax advice costs • Tax agents' fees • Tax return lodgement costs • Technical qualifications • Telephone expenses if work-related • Telephone expenses in business • Telephone line expenses • Telephone lines on primary production land • Tender costs • Timber depletion • Timber felling deduction • Tools of trade • Tools, depreciation and cost of transporting and insuring • Trade union dues • Trading stock • Trading stock taken to new premises • Travel (relocation) costs paid by employer • Travel expense related to business • Traveller accommodation buildings, Trees, carbon sink forests • Travel, but generally excluding to and from work • Trees, purchased in immature forest or plantation and sold standing • Uniforms, special clothing for employees • Vaccination against Q fever • Veterinary fees • Water facility expenditure • Water rates on business premises • Wool levy • Work in progress payment • Workers compensation premiums

CHAPTER 4
Exempt Income

The Tax Act deals with a wide category of exempt income on which income tax is not payable.

However, such exemptions still should be declared in income tax returns. Although income tax is not payable on exempt income itself, its inclusion in tax returns does alter the rate of tax payable on other income.

Note, that any tax losses carried forward are first applied against exempt income.

ITEMS OF EXEMPT INCOME

Exempt income includes:

- Bona fide redundancy payments (subject to limits)
- Certain pensions and allowances
- Child care payments
- Commonwealth education payments to assist in the cost of rent, commencing employment, travelling, special equipment etc.
- Demerger dividends
- Employment security scheme payments
- Exceptional circumstances relief payments
- Foreign dividends received by an Australian company (where > 10% ownership)
- Foreign earnings of companies operating active businesses through branches
- Frequent Flyer benefits for employees
- Fringe benefits
- International scholarships
- Mutual income
- Open employment incentive bonus
- Pay and allowances for part-time members of the Defence Force Reserves
- Pay and allowances to ADF personnel whilst on operational service
- Periodic maintenance payments received by a spouse, former spouse or child
- Private health insurance payments
- Rent subsidy payments
- Scholarships, bursaries etc, derived by a student receiving full-time education at the school, college or university
- Secondary education and isolated children's education assistance
- Some allowances paid and the value of rations and quarters for members of the Defence Force
- Some Veteran's entitlement pensions and similar benefits
- Wartime persecution pensions
- Income support bonus payments
- Interest paid by the Commonwealth on unclaimed moneys and property from 1 July 2013 is exempt
- Payments made under the Defence Abuse Reparation Payment Scheme are exempt from 1 July 2013
- Payments under the National Disability Insurance Scheme are exempt with effect from 1 July 2013

EXEMPT VETERANS' ENTITLEMENTS

Exempt payments made under the Veterans' Entitlements Act include:

- Attendant allowances
- Bereavement payments
- Carer service pensions in certain circumstances
- Clothing allowances
- Decoration allowances
- Funeral benefits
- Income support supplements in certain circumstances
- Invalidity service pension where under pension age
- Loss of earnings allowance
- Partner service pension when under pension age
- Pension bonus
- Pension for defence or war caused death or incapacity
- Pharmaceutical allowance
- Recreation transport allowance
- Rental assistance etc, paid with Aged Service Pension
- Special assistance
- Telephone allowance
- Temporary incapacity allowance
- Travelling expenses for health treatment
- Vehicle assistance scheme payments
- Victoria Cross allowance.

EXEMPT CENTRELINK PAYMENTS

Exempt payments under Social Security legislation include:

- Advance pharmaceutical supplements
- Carer allowances, carer payments in certain circumstances
- Disability wage supplements when under pension age
- Disaster relief payments
- Double orphan pension
- Employment entry payment
- Family assistance
- Fares allowance
- Maternity payment
- Mobility allowance
- Parenting payments (under certain circumstances)
- Pensioner bonus
- Pensioner education supplements
- Remote area allowance, etc. paid with AUSTUDY
- Rental assistance and allowances paid with aged pensions
- Rental assistance etc, paid with bereavement allowances
- Rental assistance etc, paid with mature age allowances and mature age partner allowances
- Rental assistance etc, paid with Newstart allowances
- Rental assistance etc, paid with special needs
- Rental assistance etc, paid with partner allowances
- Rental assistance etc, paid with sickness allowances and special benefits
- Rental assistance etc, paid with widow allowance and widow B pension
- Rental assistance etc, paid with youth allowances
- Senior's concession allowance
- Senior's utilities allowance
- Telephone allowance
- Wife pension when under pension age.

HOBBIES

Occasional receipts that involve nothing more than vigorous pursuit of a hobby should not be assessable. It can be a fine line and if you are consistently making profits the ATO will take the view that you are conducting a business.

Other factors the ATO will consider include:

- Size and scale of operations
- Activity levels
- Details of business records kept.

WINDFALL GAINS

Gambling, betting or lottery wins are considered windfall gains and are not assessable unless it is considered that you are in the business of gambling. Examples of professional gamblers include bookmakers, casino proprietors and professional punters.

A professional punter gambling in a systematic way and making profits may be considered to be operating a business and hence, would be assessable on such income. Sadly such people may consistently make losses and professional punters who have tried to offset gambling losses against other income have had little success in the courts!

Conversely those who only occasionally gamble must keep adequate records of any significant win to prove that the payout is from a gambling source and not from other undeclared income.

In the event of an audit, the onus of proof is on the taxpayer and the ATO will deem unexplained increases in cash or assets to be assessable income unless you can prove otherwise.

AUSTRALIANS WORKING OVERSEAS

Up to 30 June 2009, given the global nature of the labour market, many Australians were aware that overseas employment income could be exempt from tax if certain conditions regarding "continuous employment" were met.

Here we are dealing with a situation where the taxpayer is still a resident of Australia. However, this overseas income still had to be disclosed in the tax return possibly resulting in Australian sourced salary and investment income being placed in higher marginal tax brackets.

Since 1 July 2009, this exemption has only been available to income earned from:

- As an aid or charitable worker employed by a recognised non-government organisation; or
- As a government aid worker; or
- As a specified government employee (for example, defence and police force personnel deployed overseas).
- Note, under Taxation Determination TD2013/18, for foreign employment income exemption purposes, a defence force member is deployed if they have been directed to perform duties overseas by the Commonwealth, a State or a Territory or authority thereof.

Further, income earned by an individual employed on an overseas project approved by the Minister for Trade as being in the national interest will remain exempt, as provided for by existing rules.

To avoid Australians paying double-taxation, a tax offset will be available for any foreign tax paid on their foreign employment income.

MUTUAL INCOME

The principle of mutuality means that a taxpayer's income can only consist of amounts derived from outside the individual or entity. This means that membership subscriptions and profits on sales to club members are not income.

Apportionment rules apply for clubs that are used by both members and non-members and appropriate records must be kept.

A High Court decision demolished this long-held principle by holding the mutuality principle did not apply where the members were prevented from obtaining the value of the net assets when the organisation was wound up.

Legislation has now been passed to restore the principle of mutuality to non-profit organisations.

GIFTS

Genuine gifts are not considered income. This most commonly occurs between family members. Note that if there is a link between the recipients's work-related activities and the gifts received, this will not be the case.

Tips received by waiters, for example, are assessable because they directly relate to the work they are doing.

Gifts made by an employer to an employee are exempt to the employee, but may be subject to FBT.

NON-ASSESSABLE, NON-EXEMPT INCOME

Non-assessable, non-exempt income is income you don't need to pay tax on. It doesn't affect your tax losses, but may be taken into account when calculating your liability for the Medicare levy surcharge and the adjustable taxable income of your dependants.

Non-assessable, non-exempt income includes:

- The tax-free component of an employment termination payment (ETP)
- Genuine redundancy payments and early retirement scheme payments shown as 'Lump sum D' amounts on your payment summary
- Super co-contributions
- GST payable on a taxable supply

Other amounts that are NOT taxable

Generally, you **DO NOT** have to declare:

- Rewards or small gifts such as cash birthday presents (however, gifts may be taxable if they are large amounts or you receive them as part of a business-like activity or in relation to your income-earning activities as an employee or contractor)
- Prizes you won in ordinary lotteries, such as lotto draws and raffles
- Prizes you won in game shows, unless you regularly receive appearance fees or game-show winnings
- Child support and spouse maintenance payments you receive, however such payments may impact welfare entitlements.

5

CHAPTER 5
Tax Offsets

TAX OFFSETS DIFFERENT TO DEDUCTIONS

Tax offsets – which are different to tax deductions – allow some individual and business taxpayers to reduce the amount of tax they pay when they lodge their tax return. Pensioners, small business, low-income earners and parents are among those who may be entitled to this concession.

Tax offsets are slightly different to a tax deduction, which is taken off a person's income before the tax is calculated. With tax offsets, the Tax Office works out how much tax a person should pay then reduces that amount by the tax offsets available.

Generally, there are three types of tax offsets – those that:

- Provide tax relief for personal circumstances – for example, offsets for senior Australians and people living in remote areas;
- Give you a credit for an amount of tax that has effectively already been paid – such as credits for franked dividends and foreign tax; and
- Provide an incentive – for example, the tax offset for mature age workers and the private health insurance rebate.

In most cases, tax offsets can only reduce the amount of tax you pay to zero. In other words, you generally don't get a refund if the offsets are greater than the tax that is payable.

The only tax offsets which do provide a refund are the private health insurance rebate and franking tax offset.

Tax offsets, in general, do not reduce your Medicare levy. However, if you have excess refundable tax offsets available – such as those mentioned above – these can reduce your tax, including the Medicare levy.

DEPENDANT OFFSETS ABOLISHED

The Government abolished nearly all of the dependant tax offsets, including the dependent spouse tax offset (DSTO), for all taxpayers from 1 July 2014.

A new dependant offset was introduced with effect from the 2012-13 income year – the dependant (invalid and carer) tax offset (DICTO). As a result, access to the DSTO was restricted to those taxpayers whose spouse was born before 1 July 1952 and to taxpayers who qualify for the zone tax offset (ZTO), overseas civilians tax offset (OCTO) or overseas forces tax offset (OFTO), regardless of the age of their dependent spouse. In addition, access to the other dependant tax offsets – namely the invalid spouse, carer spouse, child-housekeeper, invalid relative, parent and parent-in-law offsets and the housekeeper tax offset was limited to those taxpayers who qualify for ZTO, OCTO or OFTO.

The Government then announced that the DSTO and the other dependency offsets will be abolished from 1 July 2014. The housekeeper offset was also abolished from 1 July 2014.

From 1 July 2014, taxpayers who qualify for ZTO, OCTO and OFTO may qualify for the DICTO. Further, taxpayers with a dependant who is genuinely unable to work due to a carer obligation or a disability may be eligible for the DICTO.

LOW-INCOME TAX OFFSET (LITO)

Tax Offsets (Rebates)

Low Income Tax Offset (LITO)

Taxable Income (TI)	Reduction in Offset (RI)	Maximum Offset
$0 - $37,000	Nil	$445
$37,001 - $66,666	(TI - $37,000) x 0.015	$445 –RI
$66,667 +	$445	Nil

INCOME MEANS TESTING FOR OFFSETS

There is an income threshold to determine whether a taxpayer is eligible for the following offsets:

- Seniors and pensioners tax offset
- Invalid and invalid carer offset
- Spouse super contribution offset
- Net medical expenses tax offset

BENEFICIARY TAX OFFSET

If you received one or more of the payments listed below, you may be entitled to a beneficiary tax offset.

Beneficiary offsets are calculated to reduce tax which would be otherwise payable on beneficiary allowances.

The following list shows the payments and allowances that qualify for the beneficiary tax offset:

- Parenting payment (partnered);
- Newstart allowance;
- Youth allowance ;
- Mature age allowance;
- Partner allowance;
- Sickness allowance;
- Special benefit;
- Widow allowance;
- Austudy payment;
- Exceptional circumstances relief payment or farm help income support;
- Education payment of any of the following, at 16 years or older:
  - ABSTUDY living allowance;
  - Payment under the veterans' children education scheme;
  - Payment under the assistance for isolated children scheme;
  - Payment under the *Military Rehabilitation and Compensation Act* education and training scheme 2004 – shown as 'MRCA education allowance' on your PAYG payment summary – individual non-business.
- Training for employment programme allowance; new enterprise incentive scheme allowance; textile, clothing and footwear special allowance; green corps training allowance; or other taxable Commonwealth education or training payments.
- Income support component from a community development employment project (CDEP) – shown as 'CDEP salary or wages' on your PAYG payment summary – individual non-business.
- CDEP scheme participant supplement.

ZONE TAX OFFSET

Taxpayers who live in remote areas of Australia may be entitled to a Zone Tax Offset depending on the amount of time spent in the relevant zones.

In general, taxpayers qualify as residents of a zone where they reside in the zone (not necessarily continuously) for 183 days or more. Remote areas do not include offshore rigs. To find out whether a location is currently in a zone or special area, refer to the 'Australian Zone list' available on the ATO website. The 2016/17 rates are set out below:

Description	Maximum Offset $
Special Area in Zone A	$1,173 + 50% of the relevant rebate amount
Special Area in Zone B	$1,173 + 50% of the relevant rebate amount
Zone A	$338 + 50% of the relevant rebate amount
Zone B	$57 + 20% of the relevant rebate amount

From 1 July 2015, you can claim the zone tax offset if your usual place of residence was in a remote or isolated area (known as a zone) during the income year.

If your usual place of residence was in a zone for less than 183 days in the income year, you may still be able to claim the tax offset, as long as your usual place of residence was in a zone for a continuous period of less than five years and:

- you were unable to claim in the first year because you lived there less than 183 days
- the total of the days you lived there in the first year and the current income year is 183 or more. The period you lived in a zone in the current income year must include the first day of the income year.

Any discretion exercised by the Commissioner for the zone tax offset will be made with reference to your usual place of residence.

Fly-in Fly-out "FIFO" and Drive-in drive-out "DIDO" workers lose zone rebate

From 1 July 2015 the zone rebate entitlement is no longer available to FIFO and DIDO workers where such workers do not have their usual residence in an identified geographic zone currently classified as eligible for the ZTO.

NET MEDICAL EXPENSES TAX OFFSET

In the May 2013 Federal Budget, the then Gillard Government announced the phase out of the Net Medical Expenses Tax Offset ('NMETO') by the end of the 2019 income year.

Legislation amendments to give effect to this measure were enacted by the Tax and Superannuation Laws Amendment (2014 Measures No. 1) Act 2014. There are transitional arrangements that allow claims for the NMETO can only be made as follows, subject to satisfying the income test set out below:

- For the 2014 income year, the NMETO can be claimed in respect of the full range of eligible out-of-pocket medical expenses if the offset was claimed in the 2013 year;
- For the 2015 income year, the NMETO can be claimed in respect of the full range of eligible out-of-pocket medical expenses if the offset was claimed in both the 2013 and 2014 income years;
- From 1 July 2015, the NMETO can only be claimed in respect of out-of-pocket medical expenses relating to disability aids, attendant care or aged care, up to and including the 2019 income year; and
- From 1 July 2019 (i.e. from the 2020 income year), the NMETO is abolished for all taxpayers.

The medical expenses tax offset may be available if you have out-of-pocket medical expenses over a specified limit in an income year.

For the 2016/17 income year, the maximum tax offset is 20 per cent - 20 cents in the dollar of your net medical expenses over the $2,299 threshold amount. There is no upper limit to the amount you can claim.

Note, the offset applies to net expenses after Medicare refunds or reimbursements from your private health fund.

Due to the $2,299 threshold it is important that only one family member claim the offset in order to maximise benefits.

From 1 July 2012 the net medical expenses tax offset is means tested and varies depending on whether a person's income exceeds the Medicare Levy Surcharge thresholds in the table below. When net medical expenses exceed the lower threshold a tax offset equal to the reimbursement rate is available to resident taxpayers on the excess amount. Expenses can be incurred on behalf of the taxpayer or their dependants. There is no upper limit on the amount that can be claimed.

Net Medical Expenses Tax Offset 2016-17

Status	Adjustable taxable income for	Medical expenses	Rate of Offset
Single	$90,000 or less	$2,299 or less	0
		Greater than $2,299	20%
	Greater than $90,000	$5,423 or less	0
		Greater than $5,423	10%
Family (3,4)	$180,000 or less	$2,299 or less	0
		Greater than $2,299	20%
	Greater than $180,000	$5,423 or less	0
		Greater than $5,423	10%

1. 'Adjusted taxable income for rebates' is calculated as the taxpayer's taxable income + adjusted fringe benefits total + reportable super contributions + target foreign income + total net investment loss + any tax free pension or benefit – deductible child maintenance expenditure.
2. A taxpayer will be eligible for the family threshold if they are married on the last day of the income year or have a dependant on any day of the income year.
3. Single parents and couples (including de factor couples) are subject to the family tiers. Thresholds are increased by $1,500 for each child after the first.
4. Where the taxpayer is married it is the combined total of theirs and their spouse's 'adjusted taxable income for rebates' that is compared to the threshold.

CHAPTER 6
Goods & Services Tax (GST)

Goods and Services Tax (GST) was introduced on 1 July 2000, as a 10 per cent broad range indirect tax that replaced several other taxes such as wholesale sales tax.

In addition to GST being introduced two other indirect taxes were introduced, being: Wine Equalisation Tax and Luxury Car Tax. It was thought that removing the wholesale sales tax and replacing it with the much lower GST rate of 10 per cent would unfairly advantage these industries, so these taxes maintain equity.

GST is a tax on final consumption and is collected in a step process so it is levied on each stage of production. The supplier of the goods and services may be able to claim credits for the GST they have paid on their business inputs, thus leaving the end user paying the GST.

CALCULATING GST

GST is calculated at 10 per cent of the taxable supply, or by taking 1/11th of the total cost including GST.

For example: The GST on a shirt (taxable supply) costing $20 (ex. GST) would be 10% of $20, being $2. So the total cost of the shirt including GST would be $22. Conversely, to work out the GST from the total cost of the item, you would take 1/11th of $22, which is $2.

SUPPLIES AND GST

There are three different types of supply for GST purposes:

- Taxable supply;
- Input taxed supply; and
- GST-free supply.

A supply for GST purposes is a very broad term, it can be:

- A supply of goods;
- A supply of services;
- A provision of advice or information;
- A grant, assignment or surrender of real property;
- A creation, grant, transfer, assignment or surrender of any right;
- A financial supply;
- An entry into or release from, an obligation to do anything, to refrain from an act, or to tolerate an act or situation.

A supply occurs if:

- A supply is made for consideration;
- The supply is made in the course of an enterprise (i.e. the business);
- The supply is connected with Australia; and
- The supply is made by an entity that is registered for GST, or required to be registered for GST.

Supplies made for consideration

Consideration means any payment that is connected to a supply of anything. This is intended to be very broad and includes, but is not limited to:

- Money;
- Inducements to act or not act;
- Barter payments;
- Forgiving a debt in exchange for a supply of something else; and
- Payment for a supply, even if it is paid by the person who did not directly receive the supply.

Enterprise

An enterprise is defined as an activity or series of activities done in the form of a business or in the nature of trade.

Specifically excluded from the definition of ‘enterprise’ are activities, or services of activities done:

- As an employee or other PAYG earner;
- As a private recreational pursuit or hobby;
- By an individual or partnership without a reasonable expectation of profit or gain; or
- As a member of a local governing body established by or under a State or Territory law.

6

Supplies connected with Australia

Goods are connected with Australia if the goods are:

- Delivered in Australia;
- Made available in Australia;
- Removed from Australia;
- Imported into Australia; or
- Installed or assembled in Australia.

Anything other than goods or real property is connected with Australia if:

- The thing is done in Australia; or
- The supplier makes the supply through an enterprise the supplier carries on in Australia.

Required to be registered

An entity must be registered for GST if:

- It is carrying on an enterprise; and
- Its annual turnover is at or above the registration turnover threshold of $75,000 (or $150,000 for non-profit bodies).

An entity that is carrying on an enterprise, but does not meet the turnover registration threshold can choose to be registered for GST.

The broadness of the definition of a supply is deliberate so as many items are caught in the GST net as possible. Exemptions to certain supplies are then made to remove supplies of a specific nature. They are input taxed supplies and GST-free supplies.

TAXABLE SUPPLIES

Many GST registered businesses in Australia will make their supplies under this category. These businesses are payers and collectors of GST, for example:

Taxable Supply: Television

Step One: Electronic Component Supplier

Sells components to television manufacturer for $300 plus $30 GST, ATO receives $30.

Step Two: Manufacturer

Buys components for $330 from supplier and then sells manufactured television to the retailer for $600 plus $60 GST. ATO receives $30 (being $60 charged to retailer, less $30 paid to component supplier).

Step Three: Retailer

Buys television from manufacturer for $660 and sells to consumer for $1200 plus $120 GST. ATO receives $60 (being $120 charged to consumer, less $60 paid to the manufacturer).

Step Four: Consumer has paid $1320 for television (including $120 GST).

At the end of the supply chain the ATO has only received a net GST amount of $120 being the final amount paid by the consumer on the finished product. This is because all along the supply chain each business claims an input tax credit on the supplies they have purchased.

INPUT TAXED SUPPLY

Input taxed supplies are not subject to GST as they are specifically excluded from the definition of a taxable supply.

Importantly no input tax credits can be claimed on any items used to produce such supplies. Ultimately the pricing of an entity making input taxed supplies will pass on the cost of not being able to claim input credits to its clients and customers.

There are three main types of input taxed supplies:

- Financial supplies;
- Supplies of residential rent;
- Supplies of residential premises.

Financial supplies

Financial supplies mainly include:

- Lending or borrowing of money;
- Granting credit on which interest is due;
- Activities associated with clients' bank accounts;
- Conducting life insurance business;
- Making certain dealings that relate to debt securities, equity securities, unit trusts or future contracts.

There is relief for businesses that are inadvertently caught under input taxed financial supplies.

For example: A furniture retailer offers finance terms for which it charges interest.

Ordinarily this would form an input taxed financial supply; however, if input credits relating to those supplies are less than $50,000 and those credits are less than 10 per cent of the entities total input credit entitlement, then the entity can claim 100 per cent of the input tax credits.

This assessment of input tax credits must be done on a rolling monthly or quarterly basis and you should also be assessing whether the business will stay compliant in future quarters.

If a business does not pass these tests, input credits must be apportioned according to the type of supply they are for.

For some businesses a reduced input tax credit of 75 per cent is available where the financial supplies are outsourced, for example debt collection.

Supplies of Residential Rent and Residential Premises

The lease of premises that are to be used for residential purposes is input taxed. Also the sale of residential premises is input taxed, unless it is a new premise which will then be subject to GST.

The main characteristics of commercial premises are:

- Commercial intention;
- Multiple occupants;
- Available to general public at large;
- Accommodation is main purpose;
- Guest services available;
- Centralised management and/or booking facility.

GST-FREE SUPPLIES

A GST-free supply is a supply that is deemed to be GST-free by the Act.

However, input tax credits can be claimed on the purchases used to generate the GST-free supply. It is important to note that it is the supply that is GST-free and not the supplier. For example a bakery may sell GST-free items such as bread, but also sell soft drinks that are taxable supplies.

Food

The broad approach of the Act is to make all food and beverages fit for consumption by humans GST-free, and then remove specific items from the definition.

Most staple items of food are GST-free, including: meat, bread, vegetables, fruit, eggs, cheese, flour sugar, plain milk, cereals and canned foods.

Other items of food that are specifically a Taxable Supply include: restaurant food, takeaway food, most food that has been prepared and frozen meals.

Other examples of food that attracts GST are:

- Chocolate and other confectionary;
- Cakes, muffins & puddings;
- Pies & sausage rolls;
- Bread and buns with sweet filling or coating;
- Biscuits;
- Soft drinks and alcohol.

Health

The provision of medical services is GST-free. In general the service must be provided by an approved medical practitioner and be a recognised health service. Hospital care, medical aids, prescription drugs, and private health insurance are also all GST-free when provided in accordance with the Act.

Cars used by disabled people

Cars used for personal transport by disabled people are GST-free, as long as they are used for that purpose for at least two years.

Education

The supply of pre-school, primary education, secondary education & tertiary education are GST-free. Some trade and professional courses are also GST-free. The exemption extends to excursions that are related to the curriculum and some other supplies that are related to education.

Child care

The supply of child care is GST-free where it is supplied by a registered provider or government funded.

Exports

Exports are generally GST-free, provided they are not re-imported or where the export is not made with a set time from invoice.

Duty free

Supplies through an inward bound Duty Free shop are GST-free. Care needs to be taken as specific limits apply to each traveller over all, but especially to alcohol and cigarettes. Amounts brought in excess of these limits will attract customs duty and GST.

Tourist refund scheme

A refund may be sought by tourists on items they take with them when departing Australia. The minimum value of the purchase from any single business total is $300 and not made more than 60 days prior to exit.

Travel

Travel from overseas to Australia and vice versa is GST-free. Also internal travel by overseas people is GST-free when arranged as part of their international travel.

Religious services

Services provided in the practice of religion are GST-free provided they are done so by a religious institution.

Charitable institutions

Non commercial activities will be GST-free, commercial activities will fall under the normal GST provisions.

Supply of a going concern

The supply of an enterprise as a going concern is GST-free under the Act, provided:

- It is for consideration;
- The purchaser is registered for GST;
- Both parties agree in writing;
- The supply is for all the items that the purchaser will need to continue to run the business;
- The supplier carries on the business until the purchaser buys it.

Note: That by just selling parts of a going concern does not mean that you will be eligible for this exemption.

For example: A trucking company cannot sell one of its trucks (from a fleet) and call it a going concern.

If the supply was a truck and other elements that enabled it to be a going concern in its own right – for example a given right over an area to move freight and earn income – then that may qualify as a going concern.

The determination of whether a supply is a going concern is a complex area and an issue that has come under the ATO's scrutiny. It is recommended that professional advice always be sought in making this determination.

Farming land

The supply of farming land either through freehold or long-term lease is GST-free, provided that the land is intended to be used for farming purposes and the land has been used for farming for a minimum of five years prior to sale.

Exclusions exist where the land is to be subdivided into residential blocks.

INPUT TAX CREDITS

When an entity makes a purchase and is registered for GST it will be able to claim a credit for the GST included in the price where it was for a creditable purpose.

An acquisition is for a creditable purpose if it is a purchase that is made in carrying on an enterprise. If something is acquired for making an input taxed supply or for a private purpose, then it is deemed to not be a creditable acquisition and you cannot claim any input credits.

As previously discussed (under input taxed supplies) there may be circumstances where an input taxed financial supply may be below the thresholds for input credits and those credits can be claimed as if they were a creditable acquisition.

When claiming an input tax credit and the purchase has been for a partly private purpose you will need to apportion your claim accordingly. For small businesses most of these adjustments can be done on an annual basis.

Small food retailers that have a combination of GST-free purchases and sales have simplified accounting options made to them by the ATO aimed at reducing GST compliance costs. These methods are only available for valuing trading stock; all other sales and purchases must be treated normally. The options are:

- Business norms method
- Snapshot method
- Stock purchases method

Business norms method

Certain food retailers with an annual turnover of less than $2 million can elect to use the ATO standard percentages for calculating GST-free sales and purchases. These are:

TYPE OF RETAILER	GST-FREE SALES %	GST-FREE PURCHASES %
Delis that do not sell hot food or prepared meals	85	90
Convenience stores that prepare takeaways	22.5	30
Convenience stores that do not prepare takeaways	30	30
Cake shops	2	95
Hot bread shops	50	75
Health food shops that do not prepare food	35	35
Fish shops that sell fresh & some cooked food	35	98
Pharmacies with both taxable & GST-free food sales		
Dispensary: non claimable sales	98	Nil
Dispensary: over counter sales	47.5	2
Rural convenience stores that may sell fuel or have an Aust. Post agency		
Converter sales	22.5	30
Non-converter sales	30	30

Snapshot method

The retailers can take a snapshot of two two-weekly periods and estimate the GST-free purchases and sales over those periods. Alternatively retailers can work out their GST-free purchases from invoices and estimate the GST-free sales.

Care must be taken to ensure that there is a reasonable basis for the estimation, especially if the percentage differs greatly from the ATO estimated figures as listed above. This option is available to retailers with a turnover of less than $2 million.

Stock purchases method

Where a retailer is only a reseller of products (for example small convenience store that does not prepare takeaways) the stock purchases method is available.

Under this method over two four-weekly periods retailers take a snapshot of purchases only. From this they can estimate GST purchases and sales which should have the same percentages, as they are only resellers. This option is available to retailers with a turnover of less than $2 million.

MORE SIMPLIFIED ACCOUNTING METHODS

In the May 2007 Budget it was announced that more simplified accounting methods would be allowed for small businesses (annual turnover less than $2 million).

This will give more small businesses the option of using a simplified method to calculate their GST obligations if it suits their requirements. From 1 July 2007, any small business that makes mixed (taxable and GST-free) supplies or mixed purchases will be able to approach the Australian Tax Office (ATO) to discuss the development of a simplified accounting method for their use.

SPECIAL INPUT TAX CREDIT RULES

There are a number of circumstances where input credits are able to be claimed in full, at a reduced rate or not at all depending on the scenario.

Non-deductible expenditure

Specifically under the Act if a non-deductible (for income tax) purchase is made in the following circumstances no input tax credit is available:

- Fines & penalties;
- Travel expenses for a relative;
- Costs associated with maintaining your family;
- Health club memberships;
- Leisure facilities or boats;
- Entertainment expenses;
- Non-compulsory uniform expenses;
- Non-deductible non-cash business benefits; and
- Some car parking expenses.

Pre-establishment costs

In general where a company has not yet commenced business, an input tax credit can still be claimed for the costs of setting up the entity and acquiring trading stock. The requirements are:

- The expense is not private in nature;
- The company is created and registered within six months of the expense being incurred;
- The entity that first incurred the expense is reimbursed by the new company and becomes a member, officer or employee of the new company.

6

Motor vehicles

If you purchase a car in an entity that is registered for GST and it is used to for business purposes you will be able to claim input credits on its purchase and for running expenses.

The current depreciation cost limit is $57,581 and where your vehicle costs more than that, your input tax credit will be calculated at the depreciation cost limit amount and not the purchase price.

If you use the vehicle for part private use, an apportionment for private use will need to be made on input credits claimed. The ATO sets out four methods for individuals and certain partnerships:

Logbook method: A logbook of business trips is made for 12 weeks and a business percentage usage is ascertained. Unless business use drops significantly the logbook is valid for five years.

One-third method: Where the vehicle travels more than 5,000km you may claim input credits up to one-third of the expenses incurred.

Set rate method: Where usage is below 5,000km you can estimate your kilometres travelled and use the following rates:

ESTIMATED BUSINESS KILOMETRES	ASSUMED ANNUAL INCOME CREDIT CLAIM
0-1,250	5%
1,251-2,500	10%
2,501-3,750	15%
3,751-5,000	20%

Formula method: You can make an estimate of business kilometres and apply this as a fraction over your total kilometres for the taxation year. This percentage is used to calculate business portion of input credits.

For example: Julie estimates that of the 20,000km travelled during the year that 13,000km were work-related. Her percentage would be 13,000/20,000 X 100 = 65% business usage.

It should be noted that both the 12% of original value method and the one-third method have been repealed for income tax purposes.

Insurance

If you are registered for GST you are able to claim an input tax credit on your insurance payments that are made for business purposes.

You should inform your insurer of the amount of input credit you are claiming, as if a claim is made you will receive the payment net of GST (i.e. it will not require GST to be remitted to the ATO – it will still be assessable income).

You are able to claim input credits on the purchase of replacement items or on the repair of an item damaged.

Second-hand goods

So that second-hand dealers are not unfairly disadvantaged when competing with private individuals not registered for GST, special rules apply. Even though a second-hand dealer may purchase an item from someone that is not registered for GST, they can claim an input tax credit on that purchase when they sell the item.

In this way the second-hand dealer is only remitting to the ATO the GST that they have made on the mark-up.

Fringe benefits

GST does not apply to a fringe benefit made to an employee where fringe benefits tax has been applied. The FBT gross up factor has taken the GST into account when calculating the taxable value of the benefit.

Where an employee does make a contribution towards the benefit and the employer is registered for GST that contribution will be deemed to include GST.

For example: Fred's employer manufactures beds and sells a bed to Fred for $1,200 that usually retails for $2,500. The contribution by Fred to his employer is GST inclusive and his employer would have to remit 1/11th or $109 to the ATO.

For detailed examples of how FBT is calculated refer to the Fringe Benefits Tax chapter.

Real Property and the Margin Scheme

The margin scheme is one method used to calculate GST on the sale of real property no matter whether it was acquired before or after the introduction of GST on 1 July 2000.

For example: A developer purchased a block of land in 1998 for $200,000 and its value at 30 June 2000, was $400,000. On 31 December 2000, the developer sold the block for $440,000. Using the margin scheme the developer could only pay GST on the margin of $40,000 – being the difference between the valuation at 30 June 2000 and the sale price at 31 December 2000.

Importantly, under the margin system the new purchaser would not be able to claim an input tax credit on the amount of GST included in the $440,000 purchase price, even if they were registered for GST. However, when the new owners sell the margin would be the difference between $440,000 and the selling price.

The margin system is a complex and crucial area, so get professional advice from an accountant or lawyer as its application can vary greatly with significant consequences.

In the May 2008 Budget, changes to the margin scheme were announced. The changes relate to the application of the margin scheme where the land being sold was acquired through a GST-free or non-taxable supply, such as the farm land or going concern exemptions.

REGISTERING FOR GST

Businesses with an annual turnover of more than $75,000 are required to register for GST, while those with a turnover less then $75,000 per annum have the option to register. The registration threshold for non-profit entities is $150,000.

To avoid having 47% withheld from payments it is in the best interests for businesses to apply for an ABN. At the same time entities can register for a Tax File Number, GST, and Pay As You Go Withholding.

You are not eligible to register for GST unless you are genuinely in business with an expectation to profit. This excludes activities undertaken as a hobby, and salary & wage earners.

When registering for an ABN or for GST it is important to consider:

- The type of business you will be operating and your turnover;
- Accounting systems you will employ;
- Cash flow;
- Whether you will be employing others;
- Type of supplies you will be making, being: taxable, GST-free, and input taxed;
- The extent to which you will be able to claim input tax credits.

These are all important issues as it will help you determine the following:

- Should I register on the cash or accruals basis? (Businesses with a turnover less than $10 million have an option).
- Should I lodge my BAS/IAS monthly or quarterly? (Businesses with a turnover less than $20 million have an option).
- Do I have adequate systems in place to calculate and budget for my monthly or quarterly tax office remittances?

Many businesses will find that registering on the cash basis will be the best option for them. Under this option GST is recorded when you physically pay or get paid for a service or item.

Under the accruals method all debtors and creditors are included for GST purposes. This means that if you're carrying a large amount of debtors (accounts receivable) you will be remitting GST to the ATO that you have not physically received yet.

Conversely those on the accruals method with high creditors (accounts payable) may benefit from this option.

The decision on whether to lodge monthly or quarterly depends on the taxpayer. Many find it easier to budget for GST payments when they lodge monthly, others can manage with quarterly and see savings in reduced compliance costs.

Many businesses that make mostly GST-free supplies (for example a doctor's surgery) lodge monthly to improve cash flow as they are often refundable.

TAX INVOICES

In order to claim an input tax credit for an item costing more than $75 (from 1 July 2007), a tax invoice is required.

To be a tax invoice it must:

- State that it is a tax invoice;
- Contain the name and ABN of the supplier;
- Have a description of the items supplied;
- Note the total price including GST, or the GST amount and the total price.

If the tax invoice is for over $1,000 it must also include the name and ABN of the recipient and the quantity of each thing supplied.

From 1 July, 2010 the change to what can be accepted as a tax invoice allows the ATO greater discretion to accept documents/invoices for the purposes of claiming input tax which previously would not have satisfied the strict criteria for 'valid tax invoices'. In addition, where a taxpayer makes all reasonable efforts to obtain a tax invoice, but cannot, they can treat another suitable document as a tax invoice, provided they notify the Commissioner, and meet any other requirements as determined by the Commissioner.

The law has been clarified in respect of claiming input tax. Businesses may now claim input tax in a period after the period in which a tax invoice is received. This is not a GST mistake requiring notification to the ATO.

ADJUSTMENTS AND BAS

From time to time situations will arise where an adjustment will need to be made on a BAS that has already been lodged.

This may occur:

- Due to a discount allowed or received;
- Due to a return of goods;
- Due to a bad debt being written off.

This is not an exhaustive list; however, there is no need to amend the BAS that has already been lodged. An adjustment may be made on your next BAS lodged.

Adjustment notes

The threshold at which an adjustment note must be held has been increased from $50 to $75. For business to business transactions, there is an option to treat as fully taxable. Where a supply is made which is partly taxable and partly GST-free between two registered businesses, both parties can opt to treat the supply as fully taxable for convenience. This may be most applicable where the extent of the GST-free treatment is unclear. This does not apply to a supply where part or all of it is an input taxed supply.

MISTAKES AND BAS

Where there is an error and business turnover is less than $20 million the ATO will allow the following:

- If an administration error leads you to paying too much GST (credit error) you can correct the error on a later BAS that starts within the four year period review of the assessed BAS which contains the GST error;
- If an administration error leads you to paying too little GST (debit error) and the total is less than $10,000 and the debit error is within the debit error time limit, you can correct the error on a later BAS.

For turnovers greater than $20 million the following correction limits apply:

TURNOVER	CORRECTION LIMIT
Up to $100 million	$20,000
Up to $500 million	$40,000
Up to $1 billion	$80,000
Over $1 billion	$450,000

If the correction falls outside these parameters a request to amend the original BAS must be made. The ATO may impose fines and interest on outstanding amounts owing to them.

Fom 11 May, 2010 the law has been amended to limit claims for input tax credits to a four year period in line with the time limit on refunds and credits in the Tax Administration Act. Previously there was no cap.

The GST has been amended to provide higher thresholds, together with fewer and shorter adjustment periods. The new law will apply for adjustments. For example, two years for acquisitions less than $100,000, five years for those over $100,000 and ten years for real property. Where possible, the existing provisions will be consolidated within the GST law and aligned with other relevant rules elsewhere in the tax system (i.e. the private use percentage will be the same as the direct tax calculation).

OMITTANCE BAS

Claiming an input tax credit on a later BAS because you failed to claim it in an earlier activity statement is not a GST error.

If you did not claim a GST credit for a purchase that you were entitled to claim on in an earlier BAS, you are entitled to claim it on a later BAS. Generally, a four year time limit applies to input tax credit claims.

SELF ASSESSMENT

From 1 July, 2010 greater harmonisation has been introduced between the current self actuating system for GST, wine equalisation tax, luxury car tax and fuel tax credits and the income tax system of self assessment.

This should benefit every business due to lower compliance costs and harmonisation across the taxes. Time limits will run from the date of assessment as opposed to the end of a BAS period.

GST GROUPING

The GST Act allows for certain groups of entities to register as a GST group. This means that intra group transactions are ignored for GST purposes.

Also grouping can lessen the compliance costs as only one BAS is prepared. Furthermore, if some entities are payable and some refundable you only make one ‘net’ payment / refund to the ATO. Members of the group still need to account for GST in their financial accounts individually.

GST groups can consist of two or more companies, trusts, partnerships and individuals; and can register as a group if:

- They are registered for GST;
- They have the same tax periods (i.e. quarterly or monthly);
- They account for GST on the same basis (cash or accruals);
- They are not members of another GST group; and
- There is like ownership.

Like ownership for trusts and partnerships usually requires a 90 per cent common ownership.

GST Grouping and Joint Ventures

From 1st July, 2010 there has been numerous changes to the membership rules, and the entry and exit rules for grouping and joint ventures (JVs). Holding companies with no enterprise are able to be included in a group when this change is implemented. Furthermore, eligibility for grouping and forming a JV may be determined on a self assessment basis.

GST liabilities on insolvency

In response to the Federal Court of Australia's decision in a GST test case, *DCT v PM Developments Pty Ltd* (2008) FCA 1886, the Government has amended the GST law (with retrospective effect to 1 July 2000) to ensure that representatives of incapacitated entities (e.g. administrators and liquidators) remain liable for GST when selling the assets of those insolvent entities.

In other words, the representative will stand in the shoes of the insolvent entity and the sale will attract the same GST consequences that would have applied had the insolvent entity made the sale. The amendment is intended to restore the original policy intent underlying Division 147 of the GST Act.

OTHER DEVELOPMENTS

GST changes to Hire Purchase (HP) contracts effective 1 July 2012

Significant changes have applied since 1 July 2012.

Formerly, under the Hire Purchase contract, only the upfront sale of the asset to the customer by the financier is considered taxable. Term charges imposed on the amount financed and all related fees and charges are considered input taxed, with no GST being levied.

From 1 July 2012, this distinction has been removed and all Hire Purchase contracts are treated as fully taxable.

This means that term charges imposed on the Hire Purchase product including all fees and charges related to a Hire Purchase are subject to GST and payable upon settlement of the contract.

This new GST treatment is different to the GST treatment of a Lease agreement, where the GST is charged progressively on the rentals and residual.

The finance company is now liable for all of the GST on the terms, charges and fees up front and will pass the liability onto the hirer by issuing a tax invoice.

The Customer then has two options:

- Pay the GST directly to the Financier from their own funds, at settlement, or
- Elect to have the GST liability in the amount financed under the Hire Purchase contract.

GST Measures

In the May 2015 Federal Budget it was announced:

- The Government will provide $265.5 million to the ATO over three years from 2016-17 to promote GST compliance.
- The previously announced measure to implement reverse charge rules for going concerns and farmland sales will not proceed.

GST on Netflix and more on the way

The Federal Government has moved to impose the goods and services tax on services such as Netflix.

This change will apply GST to imports of "intangibles" such as downloaded books, music, videos and software. The GST already applies to imported parcels worth more than $1,000.

This will increase the price of a Netflix subscription by 10 per cent.

This change is easily accomplished, requiring little redrafting of the Tax Act.

This change was confirmed in the May 2016 Federal Budget and applies from 1 July 2017.

"Netflix" Measures

At time of going to publication the Netflix tax measures announced in the 2015 Budget were still before Parliament. The Government will now impose GST on goods imported by consumers regardless of value. The new rules will commence on 1 July 2018 after considerable review by the Senate.

The liability for the GST will be imposed on overseas suppliers, using a vendor registration model. This means that those suppliers which have Australian turnover of $75,000 or more will be required to register for, collect and remit GST for all goods supplied to consumers in Australia, i.e. regardless of value.

Currently, there is a GST threshold exemption of $1,000 that applies to purchases of imported goods (relevant for online purchases).

Rather than lower the threshold, the Government now proposes to reduce the threshold to zero. This means that all goods supplied by registered foreign vendors will be subject to GST from 1 July 2018.

Taxable supplies of residential premises under development leases

Following a decision in the Federal Court in the Gloxinia Investments case from 3.10.2007, the GST law was amended in 2011 to confirm that the sale of new residential premises constructed under a development lease will be treated as a taxable supply.

Granting of individual strata lot leases over newly constructed residential premises is not sufficient to make future supplies of the premises input taxed. Change in property title arrangements will not result in the premises once again becoming new residential premises. This applies from 1 July, 2000.

COMPLIANCE IN FOCUS 2017/18

As the ATO continued to target GST in its 2017 compliance program it became clear that errors were being made in the preparation of Business Activity Statements.

Below is a list (by no means exhaustive) of some common errors.

- Are you conducting an enterprise? If you are in any doubt refer to Miscellaneous Taxation Ruling MT2006/1. If it's still not clear, take professional advice.
- For "one-off" large transactions always take professional advice.
- Be very careful when claiming motor vehicle input tax credits either on purchase of the vehicle (G10) or vehicle expenses (G11). Refer to our comments earlier in this Chapter.

We have put the ATO factsheet "Common BAS errors – Business Portal general problems and solutions" on our website for easy reference.

Always take care when preparing your BAS. A failure to do so will result in a penalty of 50%.

GST AND DIGITAL CURRENCIES

The Government has been grappling the treatment of digital (or crypto) currency for GST purposes including bitcoin, with over 600 other currencies available.

ATO rulings released in December 2014 (GSTR 2014/3; TD 2014/25; TD 2014/26; TD 2014/27 and TD 2014/28) set out their view that bitcoin is neither money nor a foreign currency and the supply of bitcoin is not a financial supply for GST purposes. It likens bitcoin transactions to a barter arrangement, with similar GST consequences.

The result is that trading with bitcoin can give rise to double taxation for GST purposes.

The Government has recently addressed this issue in its "Backing Australian FinTech" statement: 2016 WTB 12. We will keep you informed on developments.

GST REPORTING REQUIREMENTS SIMPLIFIED FOR SMALL BUSINESSES

From 1 July 2017, all small businesses with less than $10 million turnover have more easily been able to classify transactions, and prepare and lodge their business activity statements.

A trial of the new simpler reporting arrangements commenced on 1 July 2016.

GST MAY 2017 FEDERAL BUDGET CHANGES

GST on new property transactions is now to be collected by purchasers.

From 1 July 2018, purchasers of new residential premises will remit the GST amount directly to the ATO as part of the settlement process.

This measure will require developers to change the way they disclose the price of newly constructed residential premises to ensure the GST liability is disclosed as a separate line item to enable the purchaser to remit the appropriate amount of GST to the ATO.

Those involved in the settlement process (e.g. financiers, lawyers and conveyancers) will also need to be mindful of their obligations in terms of ensuring the purchaser meets their obligations.

CHAPTER 7
Capital Gains Tax (CGT)

Capital gains tax (CGT) is a tax on the realisation of an asset acquired after 19 September 1985.

Capital gains apply when the realisation of the asset is not in the ordinary course of the taxpayer's business. For example: the sale of a parcel of land by a property developer would be in the ordinary course of business and would be taxed under normal rates applicable to the taxpayer. The same sale by an individual not in the business of property development may be subject to capital gains tax.

HAS A CAPITAL GAIN OR LOSS OCCURRED?

Deciding whether a CGT event has taken place is a five step process:

- Does the act or transaction involve a CGT event?
- Does the CGT event involve a CGT asset?
- Does an exemption or concession apply to the CGT event?
- Does a roll-over provision apply?
- Does a capital gain or loss arise from the CGT event?

CGT events can be sub-categorised into the following main categories:

- Event A1 Disposal of a CGT Asset;
- Event B1 Use and enjoyment of an asset before title passes;
- Events C Circumstances when a CGT asset ends;
- Events D Creation of a CGT asset;
- Events E Trusts;
- Events F Leases;
- Events G Shares;
- Events H Special Capital Receipts;
- Events I Australian Residency Ends;
- Events J Roll-over reversals;
- Events K Other CGT Events;
- Events L Consolidated & MEC Groups.

Determining which CGT category (and sub category) a given event relates to is a complex and very important matter. Each CGT event has different specifications on the timing, calculation, and possible exemptions and concessions available.

CGT ASSETS

The definition of a CGT asset is very broad and includes any type of property and legal or equitable rights.

Some examples are:

- Shares in a company;
- Land and buildings;
- Options;
- Interest in a partnership;
- Goodwill;
- Patents and trademarks.

TYPES OF CGT ASSETS

CGT assets are divided into three categories: collectables; personal use assets; and other assets.

Collectables

Are mainly kept for personal use or enjoyment, and are defined as:

- Artwork, jewellery, antiques, coins & medallions;
- A rare folio, manuscript or book;
- A postage stamp or first day cover.

Any capital gain or loss is ignored if the collectable was acquired for less than $500 (ex. GST). A capital gain from a collectable asset is assessable income; however, capital losses from a collectable can only be offset against capital gains from a collectable.

Personal Use Assets

A personal use asset is an asset other than a collectable that is used for personal use or enjoyment. Assets acquired for under $10,000 (ex. GST) are ignored. If the asset was acquired for more than $10,000 then capital gains are assessable, however capital losses are ignored.

Other Assets

For assets that are not collectables or personal use assets, the normal CGT rules apply.

SEPARATE CGT ASSETS

Adjacent Land

Where land is acquired adjacent to pre-CGT land or where post-CGT land and pre-CGT land are combined into one title, they will be treated as separate assets for CGT purposes.

Buildings

If you construct a building on pre-CGT land, that building will be deemed to be a separate CGT asset. A building will also be treated as a separate CGT asset when built on post-CGT land where special building allowances have been claimed for tax purposes.

Improvements

An improvement to a pre-CGT asset will also be treated as a separate asset for CGT purposes where the improvement exceeds the threshold limit for that year and also is greater than 5 per cent of the sale price of the improved asset.

The threshold figures for each year are:

1985-86	$50,000	1986-87	$53,950
1987-88	$58,859	1988-89	$63,450
1989-90	$68,018	1990-91	$73,459
1991-92	$78,160	1992-93	$80,036
1993-94	$80,756	1994-95	$82,290
1995-96	$84,347	1996-97	$88,227
1997-98	$89,992	1998-99	$89,992
1999-00	$91,072	2000-01	$92,802
2001-02	$97,721	2002-03	$101,239
2003-04	$104,377	2004-05	$106,882
2005-06	$109,447	2006-07	$112,512
2007-08	$116,337	2008-09	$119,594
2009-10	$124,258	2010-11	$126,619
2011-12	$130,418	2012-13	$134,200
2013-14	$136,884	2014-15	$140,443
2015-16	$143,392	2016-17	$145,401
2017-18	$147,582		

EXEMPTIONS FROM CGT

Only assets acquired on or after 20 September 1985 are subject to CGT. Assets acquired prior to that are not subject to the CGT provisions.

Below is a list of some of the items that are exempt from CGT:

- A car, motorcycle or similar vehicle that is designed to carry less than one tonne or fewer than nine passengers;
- A decoration that is awarded for valour or brave conduct, unless purchased by the taxpayer;
- A collectable item acquired for less than $500;
- A personal use item acquired for less than $10,000;
- A CGT asset used solely to produce exempt income not subject to withholding tax;
- Gambling winnings or prizes;
- An individual's main residence;
- Compensation for personal injuries or libel, slander and defamation. Insurance proceeds for personal accident claims are also exempt.

BUSINESS VEHICLES

Although as listed above vehicles are exempt from CGT, it is worth remembering that if the vehicle has been used for business purposes there will be a difference in the written down book value at the time of sale and the sale price received.

Often the written down value is less than the amount received at trade in and the subsequent profit on sale is assessable.

MAIN RESIDENCE EXEMPTION

As noted above, generally an individual's main residence is exempt from CGT. There are a number of facets of this exemption that justify further review.

A full exemption is not available where the residence was only a main residence for part of the ownership period and where the premises were used for the purposes of producing assessable income.

Where an individual owns more than one residence a choice must be made as to which residence is the main residence for CGT purposes. This choice must be made when the taxpayer's income tax return is prepared for the year in which the CGT event occurred.

Where a taxpayer has a main residence and purchases another residence which is to become a main residence, the taxpayer has up to six months where both may be claimed as their main residence. The exemption only applies where the property was not used for income producing purposes and it was your main residence at least three months in the preceding 12-month period.

Make sure you are eligible for the concession before claiming it. There have been a number of cases where the taxpayer lost out and suffered amended assessments with penalties. These cases have involved taxpayers buying property and not initially moving into it.

ABSENCE FROM MAIN RESIDENCE

Where a taxpayer initially occupies a residence then vacates it and uses it to produce assessable income the main residence exemption can continue to be claimed for a period of up to six years.

The taxpayer is eligible for another six-year period each time the residence becomes and ceases to be their main residence.

Where a taxpayer vacates their main residence and does not use it to produce assessable income, the main residence exemption will apply indefinitely.

These concessions do not enable the taxpayer to nominate another residence to be their main residence at the same time.

DIFFERENT MAIN RESIDENCES

Where spouses have a different main residence a choice must be made as to which residence will be claimed as their main residence.

If they nominated different addresses and they owned both properties 50/50 share, then 50 per cent of each residence would be entitled to the main residence exemption.

CAPITAL GAINS TAX RELIEF FOR COMPULSORY ACQUISITIONS OF PART OF A MAIN RESIDENCE

On 19 March 2009, the Assistant Treasurer and Minister of Competition Policy and Consumer Affairs announced that the government will extend the capital gains tax (CGT) main residence exemption for compulsory acquisitions (and certain other involuntary events) relating to part of a taxpayer's main residence.

The amendments ensure taxpayers do not pay CGT on the compulsory acquisition of part of their main residence. It is also intended to ensure that as a result of this compulsory acquisition they are neither better nor worse off than if the compulsory event had not occurred.

The amendments became law on 29 June 2011.

COMPULSORY ACQUISITIONS

The main residence exemption applies to a replacement dwelling acquired due to the original dwelling being destroyed or compulsorily acquired while the property was the only main residence pursuant to the temporary absence provision.

FOREIGN AND TEMPORARY TAX RESIDENTS

Foreign and temporary tax residents will no longer have access to the CGT main residence exemption from 9 May 2017. Existing properties held prior to this date will be grandfathered until 30 June 2019.

This could impact Australians intending to sell an Australian main residence when living overseas.

Previously withholding tax of 10% applied to foreign tax residents with real property sales proceeds of over $2 million. As a result of announcements in the 2017 budget, the threshold has been reduced to $750,000, and the withholding rate increased to 12.5%

SMALL BUSINESSES CONCESSIONS

The Government announced in the 2017 Budget that it would be amending the small business CGT concessions to ensure they can only be accessed in relation to assets used in a small business or ownership interests in a small business.

The concessions assist owners of small businesses by providing relief from CGT on assets related to their business, as well as contribute to their retirement savings through the sale of a business. However, some taxpayers are able to access these concessions for assets which are unrelated to their small business, for instance through arranging their affairs so that their ownership interests in larger businesses do not count towards the tests for determining eligibility for the concessions.

The small business CGT concessions will continue to be available to small business taxpayers with aggregated turnover of less than $2 million or business assets less than $6 million. These measures apply from 1 July 2017.

In order to assist small businesses, a number of concessions are available for CGT purposes.

The main criteria for eligibility:

- A capital gain would have resulted from a CGT event in regards to an asset owned by the entity;
- Just prior to the CGT event the net assets of the business and its related entities did not exceed $6 million;
- The CGT asset must be an active asset;
- There must be a "significant individual" with the right to at least 20% of the distributions of income from the entity, or having 20% of the voting power.

The concept of an active asset is very important. An active asset is an asset that is used by the taxpayer in carrying on the business (e.g. plant, goodwill). The asset must be active at the time of disposal or sold within 12 months after the cessation of the use of that asset in the business. The asset must also be an active asset for the lesser of half of the period of ownership, or 7.5 years.

The four available small business concessions are:

- 15-year exemption;
- 50% active asset reduction
- Retirement concession;
- Roll-over.

15-YEAR EXEMPTION

A small business can disregard a capital gain rising from a CGT event in relation to a CGT asset that it has owned for periods totalling 15 years or more, provided:

- If the entity is an individual, the individual is over the age of 55 and permanently retires or is incapacitated;
- If the entity is a trust or company, the significant individual permanently retires or is incapacitated;
- The asset was an active asset at the time of the disposal;
- The active asset was active for at least half the period of ownership or 7.5 years.

Where the 15-year exemption applies, none of the other small business concessions can apply.

50% ACTIVE ASSET REDUCTION

A 50 per cent active asset exemption is available to active assets of a small business with net assets up to $6 million.

This 50 per cent exemption is applied to the net capital gain after having made adjustments for any capital losses.

RETIREMENT CONCESSION

A full CGT exemption may be able to be claimed by a taxpayer up to a lifetime maximum of $500,000 where those proceeds are used for retirement.

If the significant individual is over 55, the gain can be disregarded. If the significant individual is under 55, then the capital proceeds must be rolled into a complying superannuation fund until their preservation age.

The CGT exempt amount becomes an Employment Termination Payment (ETP) and if deposited into a superannuation fund will not be treated as taxable contributions and will not be subject to tax on withdrawal in retirement.

The capital proceeds must be received by the superannuation fund within the period beginning one year prior and ending two years after the sale.

ROLL-OVER RELIEF – SMALL BUSINESS

The capital gain made on the disposal of a small business can be rolled over into a new business provided the new active assets are acquired within the period commencing one year before or two years after the CGT event occurred.

USING MORE THAN ONE CONCESSION

One of the most important aspects of the concessional treatment of CGT for small businesses is that multiple concessions can be used to obtain the optimal outcome for the taxpayer.

An individual operating a small business could be eligible for:

1. The 50% CGT discount for individuals;
2. The 50% active asset exemption on the balance of the capital gain;
3. The remaining 25% of the gain could be rolled over into replacement assets, or it could be applied to the $500,000 CGT retirement exemption.

Common Errors when applying the CGT Concessions

The ATO has outlined some common errors occurring when taxpayers apply the small business CGT concessions and has offered tips to help avoid those errors.

Satisfy the maximum net asset value test

Just prior to the CGT event, the total net value of the taxpayer's CGT assets cannot exceed $6 million.

This includes the net value of the CGT assets of any entity that is 'connected with' the taxpayer, is an 'affiliate' of the taxpayer, or who is connected with the taxpayer's affiliates.

Determine the market value of a business or asset

Where the market value is required, accepted valuation principles should be applied.

Use the contract date, not settlement date

The CGT event occurs at the time the contact is entered into, not at the settlement date. For disposals of assets, the time of the CGT event is when the disposal contract is signed.

Where contract and settlement dates cross over financial years, the capital gain or loss should be declared in the financial year in which the contract was signed.

Record Keeping for Small Business CGT Concessions

The ATO also stressed that taxpayers should keep good records to help them determine if they are eligible to claim the small business CGT concessions, including evidence of:

- Carrying on a business, including calculations of turnover (to determine eligibility for the 'small business entity' (SBE) test);
- The market value of relevant assets just before the CGT event (to demonstrate eligibility for the $6 million maximum net asset value test);
- How capital losses have been calculated and carried forward to later years; and
- Relevant trust deeds, trust minutes, company constitution and any other relevant documents.

OTHER ROLL-OVER RELIEF

Roll-over relief allows a taxpayer to preserve pre-CGT status of some assets or defer CGT payable on assets in certain circumstances.

The main areas of roll-over relief are:

- Roll-over to a company;
- Replacement asset roll-overs;
- Same asset roll-overs;
- Small business disposal.

ROLL-OVER TO A COMPANY

7

Roll-over relief is available when a CGT asset is transferred into a wholly owned company and the consideration is non-redeemable shares are that of a comparable value of the net assets transferred. After the event the transferor must own all the shares in the company.

For example: The GPR Partnership has two partners, Steve and Jane – each with a 50 per cent share in the partnership. The partnership (excluding trading stock) has net assets of $20,000 and the partners wish to roll the assets into a company and continue trading in the corporate entity GPR Pty Ltd. For roll-over relief to be available, Steve and Jane should each be issued with 10,000 $1 shares each in the company.

REPLACEMENT ASSET ROLL-OVERS

Roll-over relief is generally available in the following circumstances:

- Involuntary disposal (and subsequent replacement) of a CGT asset. For example: if the asset was lost or destroyed or became part of a compulsory acquisition by the Government;
- Renewal or extension of a statutory licence or Crown lease;
- Exchange of shares, rights or options;
- Strata title conversions;
- Replacement of a mining or prospecting licence after its expiry or surrender;
- Scrip-for-scrip roll-over where an interest in an entity is replaced by shares or an interest in the acquiring entity. The acquiring entity must hold 80% of the voting rights in the original (target) entity.

SAME ASSET ROLL-OVERS

Roll-over relief is available for the following same asset roll-overs:

- A CGT asset is transferred to a spouse as a result of a court order after a marriage break down;
- A CGT asset is transferred to a spouse under a binding financial agreement;
- A CGT asset is transferred between companies with 100% common ownership at the time of the CGT event.

Under similar conditions this has been extended to apply to assets transferred from 1 March 2009, to a former partner in a de facto relationship, including same sex relationships.

DISPOSAL OF SMALL BUSINESS ROLL-OVER RELIEF

This is discussed previously, under “Small Business Concessions”.

EFFECT OF ROLL-OVER

Where roll-over relief is available to the taxpayer, any capital gain that would have resulted from the transfer is disregarded and the CGT asset retains its original cost base.

Once the asset is sold to a third party the taxpayer’s capital gain would be based on the difference between the selling price and the original cost base of that asset. If the original asset had been purchased pre-CGT, then no assessable gain would arise.

CALCULATING A CAPITAL GAIN OR LOSS

Once it has been determined that a CGT event has occurred and it is not exempt, a capital gain or loss can be calculated for most events by:

- Calculating the capital proceeds from the CGT event;
- Calculating the cost base of the CGT asset;
- Taking the cost from the proceeds, giving a capital gain or loss.

COST BASE

An asset’s cost base is made up of the following:

- The purchase price of the asset;
- Costs incurred in acquiring that asset, for example: stamp duty and legal fees;
- Capital expenditure incurred to increase the assets value, for example extensions to a building;
- Non capital costs of ownership of the CGT asset where the asset was acquired after 20 August 1991 and no deduction has been made for these costs. These costs include: interest on funds borrowed to acquire the asset or make capital improvements, costs of maintaining the asset, insurance, rates and land tax. An example of this asset would be a holiday home that had been used exclusively for private use;
- Capital expenditure incurred to establish, preserve or defend title to the asset or a right over the asset.

If an asset was acquired before 21 September 1999, two methods of calculating are available: the discount method and the indexation method.

DISCOUNT METHOD

If you are a resident, individual, trust or complying superannuation fund you are eligible for a 50 per cent (33 1/3% for superannuation funds) discount on the capital gain.

For assets held longer than 12 months this discount is not available to companies. CGT assets acquired post 21 September 1999 can only use the discount method for calculating the capital gain.

Until 8 May 2012, non residents were also entitled to claim 50% discount but this entitlement was removed in the 2012 budget and gains accrued after 8 May 2012 are not allowed the discount.

INDEXATION METHOD

The cost base of the asset is indexed for inflation up to 30 September 1999.

The difference between the indexed cost base and the consideration received is the capital gain. Indexation cannot be used to create a capital loss or increase a capital loss.

Importantly neither the discount method nor indexation method is available unless the asset is held for more than 12 months.

CGT INDEXATION FACTORS

The CGT indexation factors aim to account for the impact of inflation over the period of holding the CGT asset. These rates can only be used for assets that were purchased prior to 21 September 1999.

This method is of particular importance for companies holding assets acquired prior to this date as the 50 per cent discount method is not available to them.

CGT INDEX NUMBERS

Index Numbers for Capital Gains Tax

Year	March	June	Sept	Dec
1985	N/A	N/A	71.3	72.7
1986	74.4	75.6	77.6	79.8
1987	81.4	82.6	84.0	85.5
1988	87.0	88.5	90.2	92.0
1989	92.9	95.2	97.4	99.2
1990	100.9	102.5	103.3	106.0
1991	105.8	106.0	106.6	107.6
1992	107.6	107.3	107.4	107.9
1993	108.9	109.3	109.8	110.0
1994	110.4	111.2	111.9	112.8
1995	114.7	116.2	117.6	118.5
1996	119.0	119.8	120.1	120.3
1997	120.5	120.2	119.7	120.0
1998	120.3	121.0	121.3	121.9
1999	121.8	122.3	123.4	N/A

Example: Fred purchased a holiday home for $200,000 in July 1998. The stamp duty and legal fees were $15,000. Six months after purchase he added a swimming pool which cost $15,000.

After three years he sold the house for $300,000. During the period of ownership he did not rent out the house, but incurred rates, electricity and mortgage interest, amounting to $20,000 and incurred legal cost and agent commission of $5,000.

The cost base and indexed cost base is worked out as follows:

COST DETAIL	COST BASE	INDEX	INDEXED FACTOR COST BASE
Cost price	$200,000	1.017	$203,400
Stamp duty, legal fees	$15,000	1.017	$15,255
Swimming pool	$15,000	1.013	$15,195
Holding costs	$20,000		$20,000
Selling costs	$5,000		$5,000
TOTAL	$255,000		$258,850

As the item was acquired before 21 September 1999, Fred has alternative methods of calculating his taxable capital gain.

He can use the Indexation Method which is frozen at 30 September 1999.

This is calculated as follows:

Selling price	$300,000
Less indexed cost base	$258,850
Taxable capital gain	$ 41,150

Alternatively he may use the actual cost base and claim the 50 per cent discount available to individuals.

This is calculated as follows:

Selling price	$300,000
Less actual cost base	$255,000
Capital gain	$ 45,000
Less 50% discount	$ 22,500
Taxable capital gain	$ 22,500

In this circumstance Fred would be far better off using the discount method for calculating his capital gain on sale.

APPLYING THE CGT SMALL BUSINESS CONCESSIONS

A review of case law reveals a number that centre on these concessions and in particular the $6 million net asset threshold issue.

In these cases, some "creative accounting" has come to grief with some assets omitted and some contingent (but not actual) liabilities included by Accountants.

See: *White and Anor v FC of T 2012 FCA109*
Bell v FC of T 2012

Be very clear that the ATO is likely to investigate eligibility due to the amount of revenue involved and when claiming the concession, exercise caution and good sense.

CAPITAL LOSSES

Capital losses can be offset against capital gains in the current or future years.

Capital losses that relate to a collectable are quarantined and can only be offset against capital gains on collectables, as previously discussed.

When offsetting a capital loss against a capital gain it is important to remember that the loss reduces the gain before any discount is applied.

For Example: James makes a capital gain of $20,000 on the sale of a parcel of shares he has held for many years. He has capital losses from prior years carried

7

forward of $5,000. As he has held the shares for more than 12 months, James is entitled to the 50 per cent discount, but only after the capital losses have been applied. So the taxable gain would be $20,000-$5,000 = $15,000 less 50% discount of $7,500 (50% of $15,000) = a gain of $7,500. James would pay tax on the discounted gain of $7,500 at his marginal rate.

Note: When offsetting capital losses against capital gains consider the Taxpayer Alert 2008/7 regarding "wash sales".

RECORD KEEPING

Taxpayers are required to keep records relating to their capital assets for five years after the last CGT event for that asset (usually the sale of the asset).

This is particularly important as some CGT assets are held for long periods by taxpayers before they consider a sale. Over time without detailed records it becomes easy to forget about items that may substantially contribute to the cost base of an asset and therefore reduce future capital gains tax. For example: improvements made to the asset, such as an investment property.

DECEASED ESTATES

When a person dies generally a capital gain or loss involving a CGT asset is disregarded.

Exceptions to this are when the asset passes onto a beneficiary that:

- Is a tax exempt entity;
- Is the trustee of a complying superannuation fund, a complying approved deposit fund or a pooled superannuation trust;
- Is a non-resident and the asset does not have the necessary connection with Australia.

If the asset is a pre-CGT asset, then there will be no CGT paid on death by the beneficiary; however, the beneficiary will be deemed to have acquired the asset on the date of death for market value. This value will be used as the cost base for any future capital gains or losses.

Where the asset was acquired post 20 September 1985 by the deceased, the beneficiary is deemed to have acquired that asset on the date of death at the same cost base of the deceased. This cost is eligible for indexation frozen at 30 September 1999.

A capital gain or loss on the principal place of residence of the deceased is ignored so long as:

- The property is passed onto the taxpayer in their capacity as beneficiary or trustee of the estate; and
- The taxpayer's ownership ceases within two years of the deceased passing.

Legal structure change without CGT liability

From 1 July 2015, small business owners are also able to change the legal structure of their business without incurring a CGT liability. This will reduce some of the complexity of starting a new business and provide business owners with more flexibility to determine how they grow.

CAPITAL GAINS CHECKLIST

In the event you answer YES to any of the following questions keep records including details of acquisitions, disposals, deferred capital amounts, additions, improvements and other expenditure.

For main residence acquired after 19.09.1985:

Has it been used to produce income? (e.g. carried on a business from it or rented part or all of it? .... Y/N

Is it on land exceeding two hectares (5acres)? .... Y/N
or
Have you or your spouse had another main residence for a period exceeding six months since acquisition of your current main residence? .... Y/N

Do you own any shares in a company or units in a unit trust that you acquired after 19.09.1985? .... Y/N

Do you own any other land or property you acquired after 19.09.1985? (e.g. rental property, holiday home, offices) .... Y/N

Have you made any improvements after 19.09.1985:

- To buildings or parts of buildings that are treated as separate assets under the Act .... Y/N
- To land acquired prior to 20.09.1985, including: demolishing and then erecting a new building, constructing a building, acquiring adjacent land, other improvements where the cost exceeded the indexed threshold .... Y/N

Other post 19.09.1985 improvements to property acquired prior to 20.09.1985, where the cost of the improvement exceeded the indexed threshold. .... Y/N

Since 19.09.1985, have you acquired any motor vehicles designed to carry more than eight passengers or loads exceeding one tonne? .... Y/N

Have you acquired, or acquired an interest in, any of the following collectables after 19.09.1985 for more than $500:

- Jewellery, a coin or medallion, an antique
- A rare folio, manuscript or book
- A postage stamp or first day cover
- A painting, sculpture, drawing, engraving, photograph, reproduction or similar work of art
- An interest debt, or right or option in respect of any of the above? .... Y/N

Have you acquired any rights, options or other assets (but see assets specifically excluded) since 19.09.1985? .... Y/N

Have you received a capital amount after 19.09.1985 including:

- A forfeited deposit (other than one payable on exchange of contracts)
- A restrictive convenant or compensation payment
- A payment for giving up amateur status .... Y/N

Have you received a capital distribution or a distribution that includes a non-assessable payment from a trust? .... Y/N

Have you received an asset from a deceased estate? .... Y/N

Have you acquired any assets as a result of a marriage breakdown? .... Y/N

Have you acquired any business assets? .... Y/N

Have you acquired any assets used primarily for personal use and enjoyment that you acquired for more than $10,000? .... Y/N

CGT WITHHOLDING REGIME

New CGT withholding provisions commenced on 1 July 2016 and we urge caution because the scope of the provisions appears much wider than suggested by the government and the ATO.

It should be noted:

The measures do not just apply to sale transactions

Any event that is an actual or deemed 'acquisition' under Division 109 of the 1997 Tax Act may trigger a withholding obligation. For example, if a person dies, the transfer of title of land to their executors may be caught by the withholding provisions and the executors will either have to obtain a clearance or variation certificate or be liable for withholding tax.

The ATO position is that the measures only apply to changes of legal ownership of assets

It is questionable whether the ATO position on this issue is consistent with the legislation. If it is correct, transactions that involve a change in beneficial ownership without a transfer of title will not trigger any withholding obligation (e.g. a declaration of trust).

A transfer of title of real property from a retiring trustee to a new trustee could require the outgoing trustee to obtain a clearance certificate.

If a property holds land as trustee and a clearance certificate is required, the ATO have advised that the application for the clearance certificate must be in the name of the trustee – not the trust

This could mean confusion and possible delays in getting clearance certificates in these cases because of the propensity for parties and regulators to confuse the ABN/TFN identifiers for a trustee as opposed to the trust estate.

In cases where a company only acts as trustee, it may never have lodged a tax return so the ATO will have no history to assess the residency credentials of the applicant.

A withholding obligation will arise even when there are no CGT consequences because of a mandatory rollover (e.g. a matrimonial rollover).

The $750,000 'safe harbour' threshold does not apply to transactions involving options, shares or units.

Trustee of discretionary trust will often need to answer 'yes' to question 3 in section D of the clearance certificate application

This question asks if the applicant holds the land 'on behalf of other entities that include a foreign resident.'

Because the eligible beneficiaries of most discretionary trusts include a wide range of relatives and connected entities, it will be common to find that some of those eligible beneficiaries are foreign residents (at least for tax purposes).

The ATO view is that the obligation to make a withholding payment will arise on the date of completion of a sale transaction but they will allow a period of grace.

Normally lawyers will cross these issues when drafting contracts – however some transactions occur without legal advice and all participants should be aware of these changes.

CHAPTER 8
Depreciation And Capital Allowances

Capital expenditure incurred on a fixed or intangible asset will not be deductible under the general deduction provisions (section 8(1)).

However, a tax deduction (usually over a number of years) may be allowed under the capital allowance rules. Most capital items decline in value over time and the tax law recognises that this decline in value represents a legitimate cost that is deductible against business or other income.

DECLINE IN VALUE

Division 40 of the Act contains the capital allowance provisions which allow tax deductions for the decline in value of depreciating assets.

The amount claimed in any given tax year is an estimation of the amount by which the asset's value has fallen or depreciated. For tax deductions to be claimed, the item of plant must be used to produce assessable income.

EFFECTIVE LIFE

Depreciation rates are determined by the estimated effective life of an asset.

Most taxpayers opt to follow the ATO's estimates of effective life contained in TR 2017/2 An "Effective Life" tax ruling is issued on an annual basis.

As the term suggests, effective life means the total estimated income-producing life of the asset, whether the asset is retained or sold at some point. When determining effective life, make the assumption that the item will be retained by the taxpayer until it can no longer be used economically to produce income by any taxpayer in that particular industry.

It is possible to self-assess effective lives of capital items; however, you should have specific reasons for self assessing a shorter effective life.

TR 2017/2 only deals with the effective life of new plant so it is permissible to self-assess for second-hand plant which may justify a shorter effective life than determined under the ruling.

Taxpayers are able to re-estimate the effective life of plant acquired subsequent to 21 September 1999, where a change in circumstance means the original estimate is no longer accurate (section 40-110).

Note that effective life cannot be recalculated if the plant has been subject to accelerated depreciation rates.

CHOICE OF DEPRECIATION METHOD

A taxpayer has two choices for calculating the depreciation method to be claimed, namely the prime cost method or the diminishing value method.

Under the prime cost method, a percentage rate is applied to the acquisition cost of the plant each year until the cost is fully written off.

Under the diminishing value method, depreciation is calculated on the written down value of the plant at the start of the year. In the first year this will be equal to the cost, but in subsequent years the written down value will decrease. The percentage applied is higher than that used under the prime cost method.

CALCULATING DEPRECIATION

For assets acquired prior to 1 July 2001, general and special depreciation rates determined by the Commissioner are used. For assets acquired after 1 July 2001, the Uniform Capital Allowance system applies and the effective life of the asset is used.

The depreciation percentage to be used is calculated from the effective life of the asset as follows:

Prime Cost

- 100% divided by effective life (in years)

Diminishing Value

- For assets acquired prior to 10 May 2006 150% divided by effective life (in years)
- For assets acquired after 10 May 2006 200% divided by effective life (in years)

LOW VALUE ITEMS

Taxpayers such as investors or employees who derive non-business income are still able to immediately write off plant items costing less than $300.

Taxpayers who are not a Small Business Entity (SBE) may elect to write off items costing less than $1,000 through a low value pool.

Items that may be allocated include:

- New items of plant (costing less than $1000).
- Existing items of plant subject to the diminishing value method with a written down value of less than $1,000 at the start of the tax year.

The low value pool depreciation rates are:

- 18.75% of the total cost of low value items purchased in the current year.
- 37.5% of the prior year's closing balance of the low value pool, plus the opening written down value of existing plant newly allocated to the low value pool in commencement of the current year.

You may allocate items used partly for private purposes to the low value pool, but first be sure to deduct the private use percentage from the cost of the item.

SBE POOLING ARRANGEMENTS

These are discussed in Chapter 13.

SALE OF DEPRECIATED PLANT

If an item of plant is sold for an amount less than the written down value, the shortfall can be claimed as a full deduction in the year of sale (assuming the item has been used entirely for business purposes).

Similarly, if an item of plant is sold for an amount exceeding it's written down value, the difference must be included in assessable income as a balancing adjustment.

Note that this does not apply to items included in a low value pool or SBE pool.

REPLACEMENTS AND LOOSE TOOLS

Formerly, it was ATO practice to allow taxpayers to treat the initial purchase of low cost items subject to frequent replacement as non depreciable and to claim an immediate tax deduction for the expense.

As this practice has ceased, such purchases should now be allocated to the low value pool. In summary:

- Formerly, SBE taxpayers could claim an outright deduction for items costing $6,500 or less (see Chapter 13).The Government then reduced the immediate write off to $1,000 from 1 January 2014. In the 2015 Federal Budget the government expanded the threshold significantly for small business. SBE's can immediately deduct depreciating assets costing less than $20,000 for depreciable assets acquired and ready for use between 7.30pm (AEST) 12 May 2015 and 30 June 2018.
- Non-business taxpayers claim an immediate deduction for items up to $300.
- Items costing $100 or less can generally be claimed in full.

COMPUTER SOFTWARE

Since 1 July 2001, taxpayers have been able to pool expenditure on commissioning or developing software to be used solely for business purposes. Software directly acquired cannot be pooled.

Alternatively a claim for depreciation may be made based on the effective life, which is determined to be four years. This was extended to 5 years from 1 July 2015. The decline in value of in-house software must be calculated using the prime cost method. If the in-house software costs $300 or less and it is used mainly for producing non-business assessable income, an immediate deduction may be claimable. The SBE simplified depreciation rules do not apply to computer software.

If in-house software becomes obsolete the written down value may be claimed in full. Expenditure incurred in website maintenance is fully deductible; such expenses include content updating, ISP fees, regular domain registration costs and the annual registration costs.

Website setup costs are capital in nature if incurred prior to the commencement of business or in establishing, replacing or extending a profit yielding structure in an existing business. We also draw your attention to Taxation Ruling TR 2016/3 which discusses the ATO view on deductibility of expenditure on a commercial website.

BUSINESS 'BLACK HOLE' EXPENDITURE

Since 2005 the Income Tax Assessment Act 1997 has provided tax for treatment for legitimate business expenses, known as 'black hole' expenditures, for income tax purposes.

Black holes occur when business expenses are not recognised under the income tax laws. The need for an appropriate treatment for black hole expenditures was identified in the Review of Business Taxation. The systematic treatment comprises:

- Permitting deductions for capital expenditures incurred by businesses that are carried on for a taxable purpose;
- Providing deductions for certain pre-business expenditures incurred by existing businesses; and
- Recognising these expenditures in a new provision that will only apply where the expenditures do not have tax treatment, or are denied a deduction, elsewhere in the tax laws. Therefore, the new provision will be a provision of last resort.

Consistent with the systematic treatment, some black hole expenditures will be recognised by increasing the range of expenditures that form the cost base of an asset for capital gains tax purposes.

The provisions apply to expenditures incurred on or after 1 July 2005. Expenditure can be written off on a straight line basis over five years for the purposes of the uniform capital allowance regime.

Examples include:

- Business set-up costs, incorporation costs, costs to establish a partnership or trust. Search fees and other relevant costs used to obtain information,
- Costs of equity raising,
- Takeover defence costs, and
- Costs to restructure an existing business.

If expenditure is not eligible for depreciation or otherwise deductible, you should check if it is eligible under this provision of the uniform capital allowance scheme.

From 1 July 2015, small businesses have been allowed to claim an immediate write-off for a range of professional expenses associated with starting a new business, such as professional, legal and accounting service.

LUXURY CAR DEPRECIATION LIMIT

The limit on the depreciable cost of motor vehicle is $57,581 (TD 2017/18) and this figure has hardly changed since the 2002/03 tax year when it was $57,009.

There appears to be consensus that $57,581 is too low and that the luxury car limit should be revised upwards.

If you pay say $95,000 for car, depreciation can only be claimed up to the depreciation cost limit of $57,581.

In cases where luxury vehicles are leased, the luxury car limit will be deemed to be a hire purchase agreement with depreciation allowed up to the depreciation cost limit. This restricted depreciation claim along with interest (implicit in the lease) will be claimed in lieu of lease rentals.

The luxury car tax (LCT) was increased from 25 per cent to 33 per cent from 1 July 2008. Note that the luxury car threshold for general cars for 2016/17 is $64,132 and $65,094 for 2017/18. The fuel efficient car limit is $75,526 for 2016/17 and 2017/18. Refer to Luxury Car Tax Determination LCTD 2017/1 for further details.

PRIMARY PRODUCTION

There are a number of concessions:

- Land care operations – deductible in full in the first year claimed.
- Water facilities – immediate write off
- Telephone lines and mains electricity – may be written off in equal instalments over a period of 10 years.
- Forestry roads and timber mill buildings – deductible over 25 years or the effective life, whichever is shorter.
- Horticultural plants and grapevines – accelerated write-off. Refer to Section 40/545 of ITAA 1997 and TR2016/1

It is recommended that further investigation regarding eligibility be undertaken before claiming any deductions for the above.

From 7.30pm (AEST) 12 May 2015, the government has allowed all primary producers to:

- Immediately deduct capital expenditure on fencing and water facilities; and
- Depreciate all capital expenditure on fodder storage assets over 3 years.

DEDUCTIONS FOR CAPITAL WORKS EXPENDITURE

A taxpayer can claim a deduction for capital expenditure incurred in constructing eligible buildings and structural improvements.

Note that the deduction is not based on the cost to the taxpayer, but on the original construction cost. Therefore on change of ownership the new owner is entitled to the same claims on the original cost base.

Included in the definition of construction costs are preliminary expenses such as architects fees, engineering fees and development approval costs as well as the cost of foundation excavations, but not the cost of the land, clearing or demolition.

PLANT IN RENTAL PROPERTIES

The extent to which there is plant in a residential property is outlined in Taxation Ruling TR 2004/16.

The outcome determines whether a deduction is available under Div 40 for depreciable assets or Div 43 for capital works.

Significantly the ATO considers that an item that forms part of the setting of the residential property is not within the ordinary meaning of plant.

Key considerations are:

- Whether the item appears visually to retain a separate identity
- The degree of permanence with which it has been attached
- The incompleteness of the structure without it, and
- The extent to which it was intended to be permanent or whether it was likely to be replaced within a relatively short period.

The applicable rates are:

Income producing residential

Used wholly or principally for residential accommodation, e.g. guesthouses, apartments, units, flats, rented houses.

Construction Commenced	Per Annum
18.07.85 – 15.09.87	4%
From 16.09.87	2.5%

Income producing non-residential

All income producing buildings except residential buildings, including shops, offices, casinos, convention centres, shopping centres etc.

Construction Commenced	Per Annum
20.07.82 – 21.08.84	2.5%
22.08.84 – 15.09.87	4%
From 16.09.87	2.5%

Short-term traveller accommodation

Hotels, motels, resorts etc, with at least 10 bedrooms.

Construction Commenced	Per Annum
22.08.79 – 21.08.84	2.5%
22.08.84 – 15.09.87	4%
16.09.87 – 26.02.92	2.5%
From 27.02.92	4%

8

Manufacturing

Used wholly or principally for manufacturing, processing of primary products, printing, energy production etc.

Construction Commenced	Per Annum
From 27.02.92	4%

Research and Development buildings

Research and Development carried on for the purpose of producing assessable income.

Construction Commenced	Per Annum
From 20.11.87	2.5%

Any capital expenditure claimed after 13 May 1997, must be deducted from the cost base of the asset when calculating the capital gain on sale. Subject to this requirement, there is no other balancing adjustment on sale. When purchasing a building, establish the date of construction to determine your eligibility to make a claim.

If you are unable to ascertain the construction costs, engage a qualified quantity surveyor to make an estimate. This is acceptable to the ATO. Other suitably qualified persons include a supervising architect or a clerk of works of a major building project. Estimates from valuers, accountants, solicitors and real estate agents are not acceptable.

Expenditure is deductible from the date the building is first used for income producing purposes after completion of construction. For a deduction to be claimed, the building must be used or maintained ready for use for income producing or research and development purposes.

Be careful to exclude from claims depreciable plant and equipment such as air conditioning. This should be separately identified as normally much higher depreciation rates can be claimed.

EXPANDING ACCELERATED DEPRECIATION FOR SMALL BUSINESS

In the May 2015 Federal Budget, in a major boost to small business, it was announced there would be an immediate deduction for most depreciating assets that cost less than $20,000.

The measure was due to finish on 30 June 2017, but has been extended to 30 June 2018 as announced in the May 2017 Budget. This applies to assets acquired and installed ready for use from 7.30pm (AEST) 12 May 2015 to 30 June 2018.

In line with this incentive, the Government has also suspended the current 'lock out' laws for the simplified depreciation rules (these prevent small businesses from re-entering the simplified depreciation regime for five years if they opt out) until 30 June 2017.

In general, you can pool most depreciated assets costing more than $20,000 in the general SBP and depreciate at the diminishing value rate of 15% in the first year and 30% thereafter.

The balance of the SBP is also immediately deductible if the closing balance is less than $20,000 at the end of an income year that ends on or after 12 May 2015 and on or before 30 June 2018.

RENTAL PROPERTIES & THE 2017 BUDGET

From 1 July 2017 deductions against rental income for travel will no longer be available in relation to travel costs to inspect or maintain the property, or collect rent.

In addition, depreciation deductions for plant and equipment in residential rental properties will be limited to outlays actually incurred by the investor.

As a consequence depreciation can no longer be claimed against items in situ at the time of purchase (e.g. dishwashers, ceiling fans etc. installed by a previous owner). Grandfathering arrangements apply to existing investments as at 9 May 2017.

PROPERTY INVESTORS TO LOSE OUT FROM BUDGET CHANGES

The ATO allows owners of income producing property to claim depreciation deductions for the wear and tear that occurs to a building's structure and the plant and equipment assets within.

The changes relate to the depreciation of plant and equipment assets and the eligibility to claim this deduction.

Until 30.6.2017, investors were able to claim qualifying plant and equipment depreciation on assets found in an investment property they purchase, even if they were installed by a previous owner.

Under the new rules investors will be able to depreciate new plant and equipment assets and items they add to their property, however subsequent owners will not be able to claim depreciation on existing plant and equipment assets.

This change could lead to investors being in a tighter financial position and may discourage future investors from purchasing a second hand residential property.

Note that if the property is new, investors will be able to continue to depreciate plant and equipment as they had previously.

Investors will still be able to claim capital works deductions also known as building write off, including any additional capital works carried out by a previous owner.

CHAPTER 9
Superannuation

REGULATION

Superannuation funds are subject to regulation by the Australian Prudential Regulatory Authority (APRA), the ATO and the Australian Securities and Investment Commission (ASIC).

Superannuation funds operate in a regulatory framework governed by the Superannuation Industry (Supervision) Act and Regulations (SIS). To qualify for concessional tax treatment, the trustees must elect to become regulated soon after fund formation. To fall within Commonwealth regulation this is done by either the fund declaring it's self to be primarily a pension fund or by appointing a company to be trustee, thus falling within the Federal Government's Corporation Laws.

Trustees who breach requirements may be subject to civil and criminal penalties and this is central to SIS. Under prior legislation, it was the members who suffered through loss of tax concessions, whilst trustees were usually not held to account.

APRA is empowered to ensure that superannuation funds comply with legislation. With the exception of Self Managed Superannuation Funds (SMSFs), all superannuation funds must lodge annual returns and audit reports to APRA.

The ATO is responsible for the regulation of Self Managed Superannuation Funds and the number of SMSFs has continued to increase to over 590,000 in recent years. These funds must be audited and lodge Income Tax and Regulatory returns to the ATO and pay an annual levy of $259 in advance from 2014-15 onwards. The first year levy for a newly registered fund is $518.

TAXATION OF SUPERANNUATION FUND INCOME

- A concessional tax rate of 15 per cent applies to all taxable contributions made to superannuation funds, provided that the funds are complying superannuation funds. Non-complying funds are taxed at the rate of 45 per cent. Note however, the 15% surcharge on very high income earners discussed at the end of the chapter.
- The net investment income of complying funds is also taxed at 15 per cent (except any 'special income' such as distributions from non-arm's length transactions which may be taxed at 45 per cent). The effect of the deficit levy is that rate of tax for non complying funds and special income increased to 47% for the three years from 1 July 2014 to 30 June 2017.
- CGT applies to disposals of assets by all superannuation funds, approved deposit funds and pooled superannuation trusts.
- Indexation of CGT assets is frozen as of 30 September 1999. Complying superannuation funds can be taxed on either two-thirds (i.e. at an effective rate of 10% rather than 15%) of the nominal capital gain (for assets held for at least one year) or, where the asset was acquired on or before 21 September 1999, the whole gain calculated using indexation to 30 September 1999.
- A category of 'no-TFN contributions income' (taxed at 45%) applies to superannuation entities where a member's TFN has not been quoted in respect of a contribution.

WHAT IS A SELF MANAGED SUPERANNUATION FUND (SMSF)?

The following must apply:

A self managed superannuation fund is defined as a fund with:

- Less than five members,
- Each trustee (or each director of a corporate trustee) is a fund member (except for single member funds with individual trustees)
- Each fund member is a trustee (or director of the corporate trustee),
- No member to be an employee of another member (unless related),
- Trustees do not receive remuneration for their services.

In the case of single member funds:

- The member is a sole director of the trustee company; or
- Is related to the only other director; or
- If not a corporate trustee, the member and a relative are trustees (or if not a relative, the member is not an employee of the other trustee).

In the event that these requirements are not met, a SMSF will be regulated by APRA and will have to appoint an approved, independent trustee. This can prove to be an expensive exercise and is not recommended.

OTHER SUPERANNUATION FUNDS

A standard employer sponsored fund that has in excess of 49 members and is not a public fund has to comply with the "equal representation" rules.

This means the trustees or directors (if a trustee company) should consist of an equal number of employer and member representatives. If either the employer representatives or the members' request it, an additional independent trustee may be appointed providing the governing rules (trust deed) allows for this.

Decisions by trustees or directors require a two-thirds vote of the total number (not just those present).

Those funds with between five and 49 members must comply with:

- The above equal representation rules;
- An alternative agreed representation rule;
- An appointed trustee appointed by mutual agreement by a majority of employers and members;
- An APRA approved management agreement – this requires agreement by a majority of fund members and employers, then approval by APRA.

Public offer funds may only appoint trustees who have been approved by APRA.

DUTIES OF TRUSTEES

Trustees are required to:

- Apply ordinary prudent care, skill and diligence;
- Always act in the best interests of fund members;
- Act honestly at all times;
- Not enter into any contract or arrangement which would prevent or hinder them from properly performing or exercising their functions and powers;
- Keep the fund assets separate from any assets held by the trustees personally and also separate from any assets held by the employer;
- Formulate and implement an investment strategy for the fund which has regard to liabilities, risk and return, diversification, liquidity;
- Allow members access to relevant information and documents;
- Prudently manage any reserves in line with the investment strategy;
- Notify APRA of any significant adverse event affecting the fund's financial position;
- Provide information to members and provide annually a report on the fund's performance and statements showing members' balances;
- Establish an internal mechanism for handling enquiries and complaints and advise members when they join the fund and at each year after that; and
- Give each member a final member statement on termination.

SOLE PURPOSE TEST

A superannuation fund must be maintained for the sole purpose of providing retirement benefits to members:

- On their retirement, or later on reaching the age for payment of preserved benefits; or
- For beneficiaries if a member dies

The following ancillary purposes may be allowed in certain circumstances:

- Benefits on termination of employment;
- Benefits to a member suffering permanent disability;
- Benefits to a member's dependants or estate upon the member's death.

Trustees should carefully consider this requirement when making investment decisions. The sole purpose test may be contravened if the nature of investments suggests a non-retirement purpose behind the decision. The provision of retirement benefits to members must be the overriding consideration behind all investment decisions.

INVESTMENT STRATEGY

Trustees are required to formulate and implement an investment strategy. The following key factors must be considered:

- Investment risk relative to the fund's objectives and cash flow requirements;
- The composition of investments and diversification;
- Liquidity of investments relative to cash flow requirements; and
- Ability to meet current and prospective liabilities.

In managing the fund, trustees should consider that superannuation is by its nature a long-term investment which generally requires a balanced portfolio. This may involve acceptance of some volatility in short-term investment returns. The investment objectives and investment strategy should be stated to members in the trustee's annual report. There is scope for members to direct the trustee's strategy from a menu of strategies that have been vetted by them.

RECORD KEEPING OBLIGATIONS

Trustees are required to:

- Retain copies of the trust deeds and any amendments;
- Keep minutes of trustee meetings and a record of all changes of trustees for at least 10 years;
- Maintain accurate and accessible accounting records;
- Prepare annual financial statements which show the financial position of the fund, together with an operating statement showing the profit or loss of the fund and details of all members' accounts with the fund; and
- Ensure the accounts are audited by an approved auditor in the approved format.

PROHIBITED INVESTMENTS AND BORROWINGS

- Trustees must not lend money or give any financial assistance to a member of the fund or a relative of a member.
- Trustees must not acquire an asset (apart from "real property" or listed securities) from a member or relative of a member. Business real property means commercial property being actively used in a business.
- Self managed superannuation funds (with less than five members) may, however, acquire business real property from a member or relative provided it is acquired at market value. As long as the investment strategy allows, the value of the property can be up to 100% of the value of all assets of the fund.
- Trustees are not allowed to borrow money on the funds behalf (except for limited recourse borrowing arrangements are allowed).
- All investments must be made on a commercial arm's length basis.
- Each time a major investment is made, trustees should consider the fund's investment strategy as a reference point.
- Trustees are restricted from making loans to or investments in assets owned by employer-sponsors or associates. These are called in-house assets. From 1 July 2000, there must be no more than 5% of assets held in-house based on market values.

The Superannuation Legislation Amendment Act (No. 4) widened the definition of in-house assets to include:

- Loans to, or investments in a related party;
- An investment in a related trust of the fund; and
- An asset of the fund subject to a lease between the fund and a related party.

Superannuation funds cannot invest in a related unit trust in order to acquire a geared investment, nor can they acquire plant or motor vehicles and lease them to members or employer-sponsors (unless the market value of the leased item is less than 5 per cent of the total value of all assets).

INVESTMENT MANAGER

Although trustees usually cannot delegate their duties, trust deeds often allow for the delegation and appointment of investment managers.

If an investment manager is appointed, there must be a written agreement specifying the precise roles of each party and the trustees' expectations of the manager should be supplied to the manager.

TAX CONCESSIONS

Employer contributions made to a complying superannuation fund are tax deductible to the employer.

Complying superannuation funds pay a concessional tax rate of 15 per cent of employer contributions and fund earnings. If the fund invests in shares, it is possible that the excess imputation credits (at 30%) will further reduce the total tax payable.

Non tax deductible contributions are received by the fund tax-free. Providing an asset has been held longer than 12 months, complying funds are able to claim a discount of one-third on a taxable capital gain, meaning the fund will pay an effective CGT rate of 10 per cent.

Superannuation funds become eligible for these tax concessions by making an election with the ATO, within 60 days of formation, to become a SIS complying fund. The fund will then receive written confirmation from the ATO that it is a complying fund.

TAX DEDUCTIONS FOR PERSONAL CONTRIBUTIONS

Providing the below criteria is met, a person may claim a tax deduction for 100% of personal contributions made to super.

Personal contributions, where a tax deduction is claimed, are concessional contributions, which are subject to a person's concessional contributions cap. Excess concessional contributions are effectively taxed at individual marginal tax rate.

Conditions for claiming a tax deduction for personal super contributions

The following primary conditions must be met to claim a tax deduction for a personal super contribution:

- The taxpayer makes a personal contribution to a complying super fund or RSA for themselves, for the purpose of providing super benefits.
- The taxpayer may only deduct the contribution for the income year in which the contribution is made.
- The taxpayer must submit a valid notice to the fund trustee.
- The fund trustee must have given the taxpayer an acknowledgement of receipt of the valid notice.

Additional conditions must be met only if:

- The taxpayer is an employee, at any time during the income year (only to 30 June 2017),
- The taxpayer is under age 18, or
- The contribution is sourced from the sale of an active asset, where the small business CGT concessions apply.

Taxpayer's Valid Notice

To deduct the contribution, or a part of the contribution, a taxpayer must have given the trustee of the fund a valid notice of their intention to claim the deduction, and the trustee must have given the taxpayer an acknowledgement of receipt of the notice.

It is not compulsory to use the ATO version of this form. These notifications can be made to the super fund in various ways and funds may create their own form for their members to use. The ATO form sets out the minimum data requirements.

Timing

The notice must be given to the fund provider before the earlier of:

- The day the taxpayer lodges their income tax return for the income year in which the contribution was made, or
- The end of the next income year following the year of the contribution.

The 10% Rule for employees

The 10% rule only applies to an employee up to and including 30 June 2017.

If a person is an employee at any time during the income year, the 10% rule must be met for the person to be eligible to claim a tax deduction for personal super contributions.

The 10% rule is no more than 10% of:

- the total of assessable income for the income year, plus
- reportable fringe benefits (RFB) for the income year, plus
- reportable employer superannuation contributions (RESC) for the income year must be attributable to employment.

$$\frac{\text{Assessable income (from employment) +RFB + RESC}}{\text{Assessable income (from all sources) + RFB + RESC}} < 10\%$$

Note: Employment is where the person is treated as an employee for SG purposes. A person may be treated as an employee for SG purposes even when they do not receive any SG support (e.g. employee earning less than $450 per month).

- The 10% rule only has to be met if, in the income year in which the contribution is made, the taxpayer is treated as an employee for SG purposes.
- For example, someone who is totally self-employed, unemployed or living off investment earnings only would not have to meet the 10% rule.

EMPLOYER CONTRIBUTION VS PERSONAL CONCESSIONAL CONTRIBUTION

	Employer Contribution	Personal Concessional Contribution
Treatment of contribution for tax purposes (2017/18)	An employer contribution is a concessional contribution (irrespective of whether it is tax deductible) and counts towards the member's concessional contributions cap. The contribution is included in the assessable income of the fund and is taxed at 15%. If the contribution exceeds the member's annual concessional contributions cap of $25,000, the excess is included in the member's individual income tax return and taxed at marginal tax rate.	A personal member contribution covered by a valid notice to claim a tax deduction is a concessional contribution and counts towards the member's concessional contributions cap. If a tax deduction is not claimed or is subsequently denied by the tax office or the amount is reduced under a notice, that contribution is non-concessional unless it is an employment termination payment that is a directed termination payment. A contribution covered by a valid notice is included in the assessable income of the fund (unless the amount is subsequently varied) and taxed at 15%. If the contribution exceeds the member's annual concessional contributions cap of $25,000, the excess is included in the member's individual income tax return and taxed at marginal tax rate.
Ability to make an in specie contribution	Yes Fringe Benefits Tax (FBT) is not payable on *in specie* contributions made to an employee on or after 1 July 2007. **Caution:** CGT and stamp duty may apply (but any assessable capital gains may be offset by deductibility of the contribution). Trustees must also ensure that they do not breach the related party acquisition and/or in-house asset rules.	Yes **Caution:** CGT and stamp duty may apply (but assessable capital gains may be offset by deductibility of the contribution). Trustees must also ensure that they do not breach the related party acquisition and/or in-house asset rules.

Note: A contribution for tax purposes does not include a rollover super benefit or super lump sum paid from a foreign super fund.

SELF MANAGED SUPER FUNDS

Recently the ATO outlined SMSF specific compliance risks.

These are as follows:

Residency

In relation to residency there are strict rules which funds must meet. A self managed superannuation fund that is not a resident fund at all times during the income year is not a complying fund for tax purposes in that year. Initial analysis shows that there are some who may not meet the residency requirements for complying superannuation funds. The main concern is where trustees are absent from Australia for an extended period of time.

Trustees who will be temporarily going overseas for more than two years need to ensure, prior to going overseas, that the fund does not become a non-resident fund and as such, ineligible for concessional tax treatment. Steps that trustees should consider taking include:

- Appointing a legal personal representative who holds an enduring power of attorney to act on their behalf as a trustee for the period that they will be overseas; and
- Ensuring that, during their absence, the accumulated entitlements of the funds resident active members will be more than 50 per cent of the total accumulated entitlements of all active members. In some cases this might be achieved by ceasing contributions for the relevant period; or
- Resigning as the non-resident trustee and rolling the benefits into a public offer fund.

Recording keeping

The second area is record keeping. The ATO has identified poor and inadequate record keeping as a problem for self managed superannuation funds. Decisions made by trustees should be recorded properly.

Relevant records include minutes of meetings, investment decisions, changes of trustees, and so on. If a compliance team undertakes an audit and finds that proper records have not been kept, the ATO has immediate concerns about the fund.

Superannuation rulings and Practical Compliance Guidelines

The ATO has continued to prepare rulings relating to the above issues. The new series of rulings has improved clarity on the Commissioner's views about how the SIS Act applies to Self-Managed Superannuation Funds. At publication date there had been six SMSF Rulings issued in 2008/2009, two in 2010 and one in 2012. None have been issued for the last three years.

In 2016 the ATO began to issue Practical Compliance Guidelines which aim to provide clear and practical public advice and guidance.

EXISTING AND FUTURE SMSF RULINGS DEALING WITH THE FOLLOWING ISSUES:

Prohibited financial assistance

Financial assistance is not defined in the Superannuation Industry (Supervision) Act 1993. SMSFR 2008/01 expands on the ordinary meaning of the term and includes examples of financial assistance in instances where it may be allowed and prohibited.

Incidental Benefit – Identifying a breach in the Sole Purpose Test

The sole purpose test states that trustees must ensure that a fund is continuously maintained solely for one or more core purposes, or additionally one or more ancillary purposes provided for in the legislation.

In some cases, fund members or others may derive incidental benefits from the conduct of the fund's investment activities. SMSFR 2008/2 clarifies circumstances when such incidental benefits will not constitute a breach of the Act.

What constitutes Business Real Property for Self Managed Super Funds?

SMSFR 2009/1 explores the definition of 'business real property' and provides guidance on each of the tests that must be met when determining whether or not the definition is satisfied.

Acquisition of assets from related parties

SMSFR 2010/1 considers and provides guidance on, the general prohibition as well as each of the exceptions.

SMSFR 2012/1 deals with limited recourse borrowing announcements.

PCG 2016/5 deals with the arms' length terms for LBRAs.

Approved auditors

ASIC now registers SMSF auditors and commenced issuing SMSF audit annual statements from 31 January 2014. All approved and suspended SMSF auditors must now complete their annual statement within 30 days of their registration anniversary date each year.

TAXATION OF SUPERANNUATION BENEFITS

The Reasonable Benefit Limits were abolished on 1 July 2007. Below are the new tables.

Low Rate Cap Amount and Untaxed Plan Cap Amount

The application of the low rate threshold for superannuation lump sum payments is capped. The low rate cap amount is reduced by any amount previously applied to the low rate threshold.

The untaxed plan cap amount limits the concessional tax treatment of benefits that have not been subject to contributions tax in a super fund. The untaxed plan cap amount applies to each super plan from which a person receives super lump member benefits.

Income Year	Low Rate Cap Amount	Untaxed Plan Cap Amount
2017-18	$200,000	$1,445,000

Note: The low rate cap amount is indexed in increments of $5,000.

9

Super Lump Sum Tax Table

Income Component Derived In The Income Year	Age At The Date Payment Is Received	Amount Subject To Tax	Maximum Rate Of Tax (Including Medicare Levy)
Member benefit – taxable component – taxed element	Under preservation age	Whole amount	22%
	Preservation age to 59	Amount up to the low rate cap amount	Nil
		Amount above the low rate cap amount	17%
	Aged 60 and above	Whole amount	Nil
Member benefit – taxable component – untaxed element	Under preservation age	Amount up to untaxed plan cap amount	32%
		Amount above untaxed plan cap amount	47%
	Preservation age to 59	Amount up to the low rate cap amount	17%
		Amount above the low rate cap amount and up to the untaxed plan cap amount	32%
		Amount above the untaxed plan cap amount	47%
	Aged 60 and above	Amount up to the untaxed plan cap amount	17%
		Amount above the untaxed plan cap amount	47%
Death benefit lump sum benefit paid to non-dependants – taxable component – taxed element	Any	Whole Amount	17%
Death benefit lump sum benefit paid to non-dependants – taxable component – untaxed element	Any	Whole Amount	32%
Death benefit lump sum benefit paid to dependants – taxable component – taxed and untaxed elements	Any	None	Nil
Rollover superannuation benefits – taxable component – taxed element	Any	Whole Amount	Nil
Rollover superannuation benefits – taxable component – untaxed element	Any	Amount up to the untaxed plan cap amount	Nil
		Amount above the untaxed plan cap amount	47%
Superannuation lump sum benefits less than $200	Any	None	Nil

Element taxed in the fund of a Superannuation Income Stream

The table below summarises the taxation of a superannuation income stream paid with an element taxed in the fund

The tax-free component is not included. This component is **NOT** assessable income and **NOT** exempt income in all cases.

Age Of Recipient	Income Stream
Age 60 and over	Not assessable, not exempt income
At or above preservation age and under 60	Taxed at marginal tax rates. Tax offset of 15% is available
Under preservation age	Taxed at marginal tax rates, with no tax offset. Tax offset of 15% is available if a disability superannuation benefit

*Note: Medicare Levy (2%) is added to whichever rate of tax applies.

9

Element untaxed in the fund of a Superannuation Income Stream

The table below summarises the taxation of a superannuation member income stream paid with an element untaxed in the fund.

The tax-free component is not included. This component is NOT assessable income and NOT exempt income in all cases.

Age Of Recipient	Income Stream
Age 60 and over	Taxed at marginal rates, with a 10% tax offset
At or above preservation age and under 60	Taxed at marginal rates, with no tax offset
Under preservation age	Taxed at marginal rates, with no tax offset

*Note: Medicare Levy (2%) is added to whichever rate of tax applies.

9

PERSONAL SUPERANNUATION CONTRIBUTIONS INCLUDING SELF EMPLOYED PERSONS

These are personal contributions for which you do not receive a tax deduction.

Non-concessional contributions cap

- The non-concessional contributions cap decreased on 1 July 2017 to $100,000, down from $180,000.

Non-concessional contributions include personal contributions for which you do not claim an income tax deduction.

Non-concessional bring-forward cap

- The bring-forward non-concessional cap decreased on 1 July 2017 to $300,000, down from $540,000.

People aged less than 65 years on 1 July in a financial year may be able to make non-concessional contributions of up to three times their non-concessional contributions cap over a three year period – this is known as the "bring forward" rule.

The bring-forward cap is three times the non-concessional contributions cap of the first year. If you brought forward your contributions in 2017/18, it would be 3 x $100,000 = $300,000.

This consequential change to the non-concessional contributions cap means you can put less into super.

To maximise non-concessional contributions you may consider the strategy of making a $100,000 contribution. Care should be taken however, to ensure that the $100,000 cap in this financial year is not accidentally exceeded, triggering the 'bring forward' provisions.

Non-concessional contributions include contributions which are not included in the assessable income of the receiving superannuation fund, e.g. non-concessional personal contributions made from the member's after-tax income. These were formerly known as undeducted contributions.

The proposed $500,000 lifetime cap announced in the May 2016 Federal Budget will not be implemented.

Work Test

A work test applies to people aged 65 or older to determine whether they are entitled to contribute to superannuation, which broadly is at least 40 hours in any consecutive 30 day period. Plans for its proposed removal have been shelved.

SUPERANNUATION CO-CONTRIBUTIONS

The super co-contribution is an Australian Government initiative to assist eligible individuals to save for their retirement.

If you are eligible and make personal superannuation contributions, the Government will make a co-contribution up to $500 for 2013 year onwards.

Year of Entitlement	Maximum Entitlement	Matching Rate	Lower Threshold	Higher Threshold
2016 – 2017	$500	50%	$36,021	$51,021
2017 – 2018	$500	50%	$36,813	$51,813

You will be eligible for the co-contribution for an income year if:

- You make personal superannuation contributions by 30 June to a complying superannuation fund or retirement savings account (RSA);
- Your total income (assessable income plus reportable fringe benefits) is less than $51,813 (the higher income threshold in 2017-18 income year);
- You have not exceeded your non-concessional contributions cap for the income year;
- Your transfer balance cap had not been exceeded prior to the start of the income year;
- 10% or more of your total income is from eligible employment or carrying on a business;
- You are less than 71 years old at the end of the income year;
- You do not hold an eligible temporary resident visa at any time during the income year; and
- You lodge an income tax return for the relevant income year.

Self-employed persons are also eligible for the co-contribution.

LOW INCOME SUPER TAX OFFSET (LISTO)

Replacing the previous low income superannuation contribution (LISC), the low income superannuation tax offset (LISTO) came into effect on 1 July 2017.

The LISTO provides the same benefit as the previous LISC, providing up to $500 annually for eligible individuals on adjusted taxable incomes of up to $37,000. The LISC when created expired on 30 June 2017, the LISTO replaces moving forward.

The amount payable under this measure is calculated by applying a 15 per cent matching rate to concessional contributions made by, or for individuals on adjusted taxable incomes of up to $37,000, with an annual maximum amount payable of $500 (not indexed). The amount is paid into a superannuation account of the individual to directly boost their retirement savings.

Concessional superannuation contributions made from 1 July 2017 will be eligible for the LISTO.

CHOICE OF SUPERANNUATION FUND

Choice of superannuation fund gives many employees the right to choose which superannuation fund will receive their employer superannuation guarantee contributions.

This choice commenced on 1 July 2005. Employers are obliged to offer choice of superannuation fund in the prescribed format to eligible employees.

Eligible employees are all those who are currently receiving superannuation benefits except:

- Those receiving superannuation benefits under a State Award;
- Those receiving superannuation benefits under an Australian Workplace Agreement (AWA) or certified agreement;
- Those who are members of a Defined Benefit Fund and;
  - Have reached their maximum benefit in the scheme; or
  - Would be entitled to the same amount of benefit from the Defined Benefit Scheme whether or not they choose a new fund; or
  - The Defined Benefit Scheme is in surplus as certified by an actuary.

Employers must provide each eligible employee with a standard choice form with the employer's section of the form fully completed. This form must be supplied to new employees within 28 days of their start date.

If the employee does not wish to make a choice he or she may do nothing. The employee must complete Part B of the form if making a choice and provide all necessary details.

You should record the date you received and accepted the employee's choice and the date you actioned their choice in Part C.

You should keep the following records:

- Details of ineligible employees;
- Confirmation that the employer fund meets insurance requirements;
- Records showing the standard choice form has been provided to eligible employees;
- Written details of employee nominations, receipts or other documents issued by the fund evidencing payment.

SUPERANNUATION GUARANTEE (SG)

Employers are required to pay a minimum level of superannuation for employees. Currently this is 9.5%.

Payments must be made quarterly by the 28th day following the end of the quarter. If not paid by that date a non-tax deductible superannuation guarantee charge (SGC) including interest and penalties will be incurred.

Employees are defined as including those who receive salary or wages either on a full-time, part-time or casual basis and may include persons working under a contract wholly or principally for that person's labour. Also covered are members of parliament, directors, artists, musicians and sportspersons. Superannuation guarantee support does not have to be provided for:

- Employees paid less than $450 in a particular month;
- Employees under 18 working not more than 30 hours per week;
- Employees paid for domestic or private work for not more than 30 hours per week;
- Partnerships, companies or trusts;

In order to calculate the superannuation guarantee contribution you apply the prescribed percentage which is now 9.5 % to the employee's earnings base. The earnings base is determined either:

- By the superannuation fund's trustee, an industrial award or existing agreement; or
- As ordinary time earnings (OTE).

Ordinary time earnings include most payments to employees, including over award payments, loadings, sick leave, allowances etc, but do not include bonuses which do not relate to specific performance criteria, ex gratia payments, overtime payments, annual leave loadings, accrued annual leave and long service leave paid as a lump sum on termination.

From 1 July 2011 the directors' penalty regime has been extended to the SG. This means that in addition to PAYG, company directors can now also become personally liable for unpaid super.

From 1 July 2017 the maximum SG contributions base has increased to $52,760 per quarter.

Following the 2014 Federal Budget SG contributions were paused at 9.5% for four years from 1 July 2014.

Superannuation Guarantee Percentage

Year commencing	SG contributions
1 July 2015	9.5%
1 July 2016	9.5%
1 July 2017	9.5%
1 July 2018	9.5%
1 July 2019	9.5%
1 July 2020	9.5%
1 July 2021	10.00%
1 July 2022	10.50%
1 July 2023	11.00%
1 July 2024	11.50%
1 July 2025	12.00%

SUPERANNUATION EXCESS CONTRIBUTIONS TAX

For any excess contributions made after 1 July 2013, breaching the non-concessional cap, the Government will allow individuals to withdraw those excess contributions and associated earnings.

If an individual chooses this option, no excess contributions tax will be payable and any related earnings will be taxed at the individual's marginal tax rate.

Individuals who leave their excess contributions in the fund will continue to be taxed on these contributions at the top marginal rate.

SUPERANNUATION SPLITTING

Superannuation contributions made on or after 1 January 2006 can be split to your spouse's superannuation account.

There are a range of **before-tax contributions** which can be split. These contributions are made to your superannuation fund, and are taxable to the fund for income tax purposes. They include:

- Employer contributions;
- Personal contributions for which an income tax deduction is to be claimed;
- Superannuation holding accounts (SHA) special account-amounts transferred to your superannuation account by the Tax Office on or after 1 January 2006;

- Superannuation guarantee entitlements transferred to your superannuation account by the Tax Office on or after 1 January 2006; and
- Allocated surplus contribution amounts.

There are several **after-tax contributions** which can be split. These contributions to your superannuation account are not taxable to the fund for income tax purposes. These include:

- Personal contributions for which you have not claimed and do not intend to claim a tax deduction; and
- Superannuation co-contributions.

SPOUSE CONTRIBUTIONS

Taxpayers can claim an 18 per cent offset on superannuation contributions of up to $3,000 made on behalf of their low-income or non-working spouse. The maximum rebate allowed is $540.

From 1 July 2017, to be eligible to claim the maximum tax offset, your spouse must be earning in total $37,000 or less in a financial year. A reduced tax offset is payable for spouses earning up to a total of $40,000 in a financial year. Rates for prior years were $10,800 and $13,800 respectfully. The spouse must also not have exceeded their non-concessional contributions cap or their transfer balance cap.

A 'spouse' includes another person who, although not legally married to you, lives with you on a bona fide domestic basis as your husband or wife (including same sex couples), but does not include a person who lives separately and apart from you on a permanent basis.

The $3,000 limit on contributions is reduced by $1 for each $1 by which the total of the spouse's assessable income and reportable fringe benefits exceeds $37,000.

AGE LIMIT ABOLISHED

- From 1 July, 2013, the age limit for statutory employer contributions (Superannuation Guarantee) has been abolished. Employees age 70 or older will be entitled to super guarantee payments from their employer.

TRANSITION TO RETIREMENT

Under the transition to retirement rules, if you have reached preservation age, you may be able to reduce your working hours without reducing your income.

You can do this by topping up your part-time income with a regular 'income stream' from your super savings. The income from assets supporting a transition to retirement income stream is tax exempt for payments made till 30 June 2017.

SUPER SURCHARGE ON HIGH INCOME EARNERS

Division 293 tax was introduced from the 2012-13 year to reduce the tax concession on superannuation contributions for individuals with income greater than $250,000 for 2017/18 ($300,000 2016/17).

Division 293 tax will be charged at 15% of an individual's taxable concessional contributions above the $250,000 threshold (which are capped for 2017-18 at $25,000. For individuals who are members of a defined benefit fund, Division 293 tax may be calculated on notional contributions which are not capped.

LOST AND UNCLAIMED SUPERANNUATION – STREAMLINED ARRANGEMENTS

In the May 2015 Federal Budget, the Government announced a package of measures seeking to reduce red tape for superannuation funds and individuals by removing redundant reporting obligations and by streamlining lost and unclaimed superannuation administrative arrangements.

According to the Government, the changes will make it easier for individuals to be reunited with their lost and unclaimed superannuation. The cost of implementing the measures will be met from within the existing resources of the Tax Office.

SUPERSTREAM

Since 1 July 2016 SuperStream has been mandatory.

SuperStream is the way businesses must pay employee superannuation guarantee contributions to super funds. With SuperStream, money and data are sent electronically in a standard format.

It must be used by:

- Employers
- Self-managed super funds
- APRA-regulated funds

SuperStream transmits money and information consistently across the super system – between employers, funds, service providers and the ATO. The data is linked to the payment by a unique payment reference number.

This means:

- Employers can make all their contributions in a single transaction, even if they're going to multiple super funds
- Contributions and rollovers can be processed faster, more efficiently and with fewer errors
- People can be more reliably linked to their super, reducing lost accounts and unclaimed monies.

CHANGES TO SUPER EFFECTIVE 1 JULY 2017

Superannuation Reform Package:

Allow catch up concessional superannuation contributions

Individuals will be 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 2017 can be carried forward.

The measure will also apply to members of defined benefit schemes and consultation will be undertaken to minimise additional compliance impacts for these schemes.

Lowering of the concessional contributions cap

Since 1 July 2017 the annual cap on concessional contributions is $25,000 per annum for all individuals.

Lowering of the non-concessional contributions cap

Effective 1 July 2017, the annual cap on non-concessional contributions has been reduced to $100,000 per annum. Consequently, the "bring forward" cap has been reduced to $300,000.

Improve superannuation balances of low income spouses

The low income spouse superannuation tax offset has been increased from 1 July 2017 by raising the income threshold for the low income spouse to $37,000 from $10,800. The low income spouse tax offset provides up to $540 per annum for the contributing spouse and builds on the Government's co contribution and superannuation splitting policies to boost retirement savings, particularly for women.

Introduction of a $1.6 million superannuation transfer balance cap

The Government has introduced a $1.6 million transfer balance cap on the total amount of accumulated superannuation an individual can transfer into the retirement phase. Subsequent earnings on these balances will not be restricted. This will limit the extent to which the tax free benefits of retirement phase accounts can be used by high wealth individuals.

Introducing a transfer balance cap will improve sustainability and fairness in the superannuation system. Where an individual accumulates amounts in excess of $1.6 million, they will be able to maintain this excess amount in an accumulation phase account (where earnings will be taxed at the concessional rate of 15 per cent). Members already in the retirement phase with balances above $1.6 million were required to reduce their retirement balance to $1.6 million by 1 July 2017. Excess balances for these members may be converted to superannuation accumulation phase accounts.

A tax on amounts that are transferred in excess of the $1.6 million cap (including earnings on these excess transferred amounts) will be applied, similar to the tax treatment that applies to excess non concessional contributions.

The amount of cap space remaining for a member seeking to make more than one transfer into a retirement phase account will be determined by apportionment.

Commensurate treatment for members of defined benefit schemes will be achieved through changes to the tax arrangements for pension amounts over $100,000 from 1 July 2017.

Introducing a Low Income Superannuation Tax Offset (LISTO)

The Government has introduced a Low Income Superannuation Tax Offset (LISTO) to reduce tax on superannuation contributions for low income earners. The LISTO will provide a non refundable tax offset to superannuation funds, based on the tax paid on concessional contributions made on behalf of low income earners, up to a cap of $500. Provision will be made to ensure the measure can be implemented to achieve the outcomes as intended. The LISTO will apply to members with adjusted taxable income up to $37,000 that have had a concessional contribution made on their behalf.

Tax deductions for personal superannuation contributions

The Government has improved flexibility and choice in superannuation by allowing all individuals up to age 75 to claim an income tax deduction for personal superannuation contributions.

This effectively allows all individuals, regardless of their employment circumstances, to make concessional superannuation contributions up to the concessional cap. Individuals who are partially self employed and partially wage and salary earners, and individuals whose employers do not offer salary sacrifice arrangements will benefit from these changed arrangements.

Contributing the proceeds of downsizing the family home to superannuation

The May 2017 Federal Budget announced an additional superannuation proposal allowing individuals aged 65 years and older to contribute up to $300,000 from the sale of their home as a non-concessional contribution. This contribution will not count towards the existing non-concessional cap and could be made irrespective of satisfying the age, work, or $1.6m balance tests. If passed, the measure will apply from 1 July 2018 and will be restricted to homes owned as the primary residence for over 10 years.

First Home Super Saver Scheme

The May 2017 Federal Budget showed the Government's commitment to assisting in housing affordability by announcing the 'First Home Super Saver Scheme'. From 1 July 2017 first home buyers will be able to take advantage of the tax savings afforded in superannuation. The scheme allows for voluntary contributions of up to $15,000 per year ($30,000 in total) that can be taxed at a concessional rate of 15%. Withdrawals are taxed at marginal rates less a 30% offset available from 1 July 2018. The Government estimates that by using salary sacrifice under the scheme, most home buyers could boost their savings by 30% over a standard savings account.

It should be noted that concessional contributions towards the First Home Super Scheme count towards the individuals $25,000 concessional contributions cap.

Your Notes

CHAPTER 10
Primary Production

ARE YOU IN THE BUSINESS OF PRIMARY PRODUCTION?

Over the years many taxpayers have purported to be in the business of primary production in order to claim the tax losses against other income.

Primary production includes:

Plant and Animal Cultivation

- Cultivating or propagating plants, fungi or their products or parts (including seeds, spores, bulbs and similar things) in any physical environment.
- Maintaining animals for the purpose of selling them on their bodily produce, including natural increase.
- Manufacturing dairy produce from raw material that you produced.

Fishing and Pearling

- Conducting operations relating directly to taking or catching fish, crustaceans, aquatic molluscs, etc.
- Conducting operations relating directly to taking or culturing pearls or pearl shell.

Tree Farming and Felling

- Planting or tending trees in a plantation or forest that are intended to be felled.
- Felling trees in a plantation or forest.
- Transporting trees or parts of trees that you felled in a plantation or forest to the place:
  - Where they are first to be milled or processed, or
  - From which they are to be transported to the place where they are first to be milled and processed.

Although it is not possible to lay down any conclusive test of whether a business of primary production is or is not being carried on, the indicators outlined below provide general guidance:

- Whether the activity has significant commercial purpose or character;
- Whether the taxpayer has more than just an intention to engage in business;
- Whether the taxpayer has a “purpose of profit” as well as a “prospect of profit” from the activity;
- Whether there is repetition and regularity of the activity;
- Whether the activity is of the same kind and carried on in a similar manner to that of the ordinary trade in that line of business;
- Whether the activity is planned, organised and carried on in a businesslike manner such that it is directed at making profit;
- The size, scale and permanency of the activity; or
- Whether the activity is better described as a hobby, a form of recreation or sporting activity.

A taxpayer does not need to derive all his income from the primary production activity. The taxpayer may also be employed in some other occupation or profession. What is important is that the taxpayer’s primary production activity amounts to the carrying on of a business. This activity is considered separately from any other employment or business carried on by the taxpayer. The fact that another business is carried on does not necessarily mean that the primary production activity is also a business.

Whilst no one indicator is decisive, there is often a significant overlap. For example, an intention to make a profit will often motivate a person to carry out the activity in a systematic and organised way, so that the costs are kept down and the production and the price obtained for the produce are increased.

The indicators must be considered in combination and as whole. Whether a business is being carried on depends on the “large or general impression gained” from looking at all the indicators, and whether these factors provide the operations with a ‘commercial flavour’. However, the weighting to be given to each indicator may vary from case to case.

Subject to all the circumstances of a case, where an overall profit motive appears absent and the activity does not look like it will ever produce a profit, it is unlikely that the activity will amount to a business.

The following table provides a summary of the main indicators of carrying on a business.

INDICATOR	A BUSINESS IS BEING CARRIED ON	A BUSINESS IS NOT BEING CARRIED ON
The activity is commercially significant	Yes	No
The taxpayer has purpose and intention	Yes	No
There is an intention to make a profit	Yes	No
The activity is or will be profitable	Yes	No
There is repetition and regularity	Yes	No
The activity is carried on in a similar manner to that of the ordinary trade	Yes	No
The activity is organised and carried on in a businesslike manner and systematically	Yes	No
Records are kept	Yes	No
Size and scale of activity	Large	Small
A business plan exists	Yes	No
Commercial sales of product	Yes	No
Taxpayer has knowledge and skill	Yes	No

RECORD KEEPING IN THE PRIMARY PRODUCTION INDUSTRY

The following items should be considered:

Income records

- Use pre-numbered invoices. This helps keep track of all goods and services sold and monitor outstanding accounts.
- Keep Recipient Created Tax Invoices (RCTIs) issued to you in a systematic manner i.e. by date order or in alphabetical order.
- Regularly update and summarise income into cash receipts book.
- Maintain a filing system to keep track of paid and unpaid accounts.
- Perform bank reconciliations between bank statements, invoices issued, RCTIs received and cash receipt book at least monthly.
- Keep records of any elections or estimates made.

Expense records

- Make payment of expenses by cheque or bank transfer. This helps keep track of allowable deductions.
- Use separate bank accounts for business and personal use.
- Use a petty cash system to keep track of minor cash expenses.
- Record payments to contractors in a secondary record such as a cash payments book. You will need a valid tax invoice if the contractor is registered for goods or services tax (GST) and you wish to claim an input tax credit.
- If a supplier (including a contractor) does not provide you with an Australian Business Number (ABN) you must withhold 49% from the payment.
- Maintain a filing system to keep track of paid and unpaid accounts.
- Keep documentary evidence to substantiate business expenses. For example, you may need to show how you calculated the business use of your motor vehicle expenses by keeping a logbook or other types of documentation depending upon what method you choose.
- Update and summarise expenditure into a cash payments book.
- Perform bank reconciliations between payments, bank statements and cash payments book at least monthly.
- Keep records of any elections or estimates made; for example, private use of business assets.

Employee records

- Ensure a Tax File Number declaration is completed for each employee when they commence employment.
- Make payments of wages by cheque or bank transfer.
- Record payments to employees in a wages book on a regular basis.
- For superannuation purposes, records for each employee or contractor need to show:
  - Name of superannuation provider

  - Amount of superannuation contribution
  - How the contributions were reported
  - Dates when contributions were made, and
  - Earnings base used for calculating contributions.
- For fringe benefits tax purposes, records need to show:
  - The taxable value of each fringe benefit provided to each employee
  - The method of allocating the taxable value of a fringe benefit provided to two or more employees for reportable fringe benefits purposes, and
  - That 100% of the taxable value of the benefits (other than excluded fringe benefits) has been allocated to employees in their payment summaries.

What type of record keeping system should my business use?

- The types of records you need will depend upon the nature and size of your business. For example, if you have many transactions and source documents per day, it is beneficial to keep summary records such as cash receipts and cash payment books. This will help you to manage your business because you can monitor how much money your business is receiving and spending, and this will assist in identifying any cash flow problems. It will also help you to complete your activity statements and tax returns correctly and on time.
- Good record keeping is where you maintain a good filing system of invoices and purchase documents, record transactions or summary totals into a cash receipts and cash payments book and reconcile these amounts to bank statements on a regular basis.

OTHER CONSIDERATIONS

GST registered

If your business is registered for GST, the goods and services you sell may be taxable, GST-free or input taxed. It is important that you know the GST status of any sale that you make and account for it correctly in your records. This can be done by setting up specific columns in a manual cash book or specific account codes in an electronic accounting package.

You are entitled to claim an input tax credit for the GST you pay on your expenses provided you hold a valid tax invoice for purchases over $75 (GST exclusive) at the time you claim the input tax credit. However, you should keep records that support all claims for input tax credits.

Elections

There are many elections available to primary producers regarding the operations of their business. When and how these elections are made depends on the type of transaction.

The following elections must be made on or before the date of lodging your first return where the income is included in that return:

- Wool growers may elect to defer profits on the sale of a wool clip from an advanced shearing caused by drought, fire or flood;
- Insurance recoveries for livestock and timber losses may be included as assessable income in equal instalments over five years; and
- Profit from forced disposal or death of livestock may be spread over five years (10 years if the forced disposal was for the control of bovine tuberculosis).

You do not have to forward these elections to the Tax Office, but must retain a copy to show the Tax Office if needed.

- An election to withdraw from the averaging system must be lodged with the tax return for the income year in which the election is first to apply. From 1 July 2016, once you have elected to withdraw, averaging cannot be re-accessed for 10 years.

Recipient Created Tax Invoices

Primary producers fall within one of the three broad classes of Recipient Created Tax Invoices (RCTI) and therefore, you are not required to receive permission to issue RCTIs.

- RCTIs can only be issued if both parties are registered for GST.
- If you receive an RCTI this means that GST is payable by you and must be remitted to the Tax Office.
- A written RCTI agreement between the recipient and the supplier must be documented and held by both the supplier and recipient.
- You must retain the original or a copy of the RCTI.

Cash and non-cash accounting

How you report your income for GST and income tax purposes will depend on whether you account on a cash or non-cash (accruals) basis.

If you use the cash basis to report your income, you account for your income when you receive payment and similarly, you account for your expenses when they are paid.

10

If you use the non-cash basis, you account for your sales when you issue an invoice or when any of the payment is received, whichever is the earlier. Similarly, you account for any purchases when you receive an invoice for the purchase or when you provide any of the payment for the purchase, whichever is the earlier.

Pay As You Go (PAYG) voluntary agreement

Some contractors choose to have businesses withhold amounts by entering into a PAYG voluntary agreement. A voluntary agreement is a written agreement between the payee and the payer and the agreement must contain certain information. Both the withholder and contractor must keep a copy of the agreement.

Superannuation

Employers are obliged to make sufficient contributions for employees each quarter and provide superannuation reports to employees at least quarterly. The main point to note is:

- Sufficient superannuation contributions need to be made by each of the quarterly due dates.

SPECIAL CONSIDERATIONS

The following is a brief summary of some concessions for Primary Producers:

- Three-year write-off for expenditure on water facilities but note below changes from 1 July 2015
- Outright deduction for land care operations
- Accelerated write-off for new horticultural plants and grapevines
- Annual deductions over 10 years for the cost of telephone lines
- Tax deferral in relation to double wool clips and spreading of insurance recoveries for live stock and timber losses
- Special deduction for timber depletion and other timber industry concessions
- Income averaging for individual taxpayers
- Income equalisation benefits under a farm management deposits scheme.

Payments, provisions and services for farmers, irrigators and rural small business owners

There are a number of Centrelink payments, provisions and services available to farmers, primary producers and rural small business owners. These include:

- Drought Assistance including Exceptional Circumstances Relief Payment and interim drought income support for farmers and rural small business operators
- Professional Advice and Planting Grant
- Exceptional Circumstances Exit Grant
- Exceptional Circumstances Relocation Package
- Murray-Darling Basin Irrigation Management Grant
- Climate Change Adjustment Program
- Transitional Income Support
- Foregone Wages
- Drought Force
- Harvest Labour Services
- Aggregation
- Private Trusts and Companies
- Social Work Services
- Centrelink Rural Psychologists

Sustainable rural water use and infrastructure program

The sustainable rural water use and infrastructure program (SWUIP) is a national program investing in rural water use, management and efficiency projects, including improved knowledge, market reforms and water skills development. The program was delivered by the Department of Sustainability, Environment, Water, Population and Communities.

On 21 September 2015, responsibility for water policy and resources was transferred to the Department of Agriculture and Water Resources.

The law has changed to allow eligible taxpayers to choose how SRWUIP payments, matched expenditure and deductions are treated in the assessment of their income tax obligations. This change is retrospective and applies from 1 April 2010.

The below outlines the changes, eligibility criteria and the effect your choice of tax treatment will have on your payments.

You can choose to apply one of the following provisions:

- Ordinary income provisions
- Non-assessable non-exempt income (NANE) provisions.

Commercial fishing industry joint ventures

Some owners and skippers engaged in commercial fishing are eligible to form a joint venture for GST purposes. It is unlikely that crew members will meet the requirements for joint venture membership. You are required to obtain approval from the Tax Office to operate a GST joint venture.

It is important that income and expenses are recorded correctly to ensure that the GST joint venture operator remits GST and claims input tax credits accurately.

Farm management deposits scheme

You can claim a deduction for a farm management deposit in the year you make the deposit. A withdrawal of a farm management deposit is assessable income in the year it is withdrawn, to the extent it has previously been claimed as a tax deduction. You will need to keep records showing the amounts and when the deposits and withdrawals were made, and the amounts of tax deductions previously claimed.

Trading stock

You can choose to value trading stock at cost, market-selling value or replacement value. It is important to maintain up-to-date records showing how you value your stock. This is so you can report any profits or losses correctly because there are many concessions available to primary producers. These include:

- Wool growers may defer profits on the sale of a wool clip from an advanced shearing caused by drought, fire or flood;
- Insurance recoveries for loss of livestock may be included in assessable income in equal instalments over five years, and profit from forced disposal or death of livestock may be spread over five years (10 years if the forced disposal was for the control of bovine tuberculosis).

Stock killed for rations or exchanged for goods and services will be treated as if you disposed of the stock at cost. Natural increases of livestock can be valued at cost or the prescribed cost.

Wine Equalisation Tax (WET)

If you are a wine manufacturer you will usually have a WET liability and be required to collect and remit WET to either the Tax Office if you supply the Australian domestic market or customs if you import. Exports of wine are not subject to WET.

TAX AVERAGING AND PRIMARY PRODUCERS

Tax averaging enables you to even out your income and tax payable over a maximum of five 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 basic 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 are unsure of this calculation, ring the Australian Taxation Office.

If you wish, you may choose to withdraw 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. This means you will be taxed on the same basis as taxpayers not eligible for averaging provisions. From 1 July 2016, once you have elected to withdraw averaging cannot be re-accessed for 10 years.

DISASTERS AND PRIMARY PRODUCERS

In recent times we have seen cyclones, floods and devastating bushfires. If you are a primary producer, there are a number of special rules which apply to income you may receive, or expenses you incur, as a result of disasters such as bushfires and floods.

You can elect to spread profit from the forced disposal or death of livestock over a period of five years. Alternatively, you can elect to defer the profit and use it to reduce the cost of buying replacement stock or to maintain breeding stock for the purpose of replacing the livestock, in the disposal year or any of the next five income years. You need to include any unused part of the profit in your assessable income for the fifth income year.

Tax relief is available in respect of income from the sale of two wool clips arising in an income year because of an early shearing caused by drought, fire or flood. You can elect to defer the profit on the sale of the wool clip from the advanced shearing to the succeeding year.

As a general rule, where the cost of the insurance premium has been claimed as a deduction, payments received pursuant to a claim under the policy will be treated as assessable income.

You can make an election to include insurance pay-outs for loss of livestock or of trees that were assets of a primary production business in your assessable income in equal instalments over five years. If you do not elect to do this, the whole amount is taxed in the year of receipt. Elections can be made before or on the date of lodging the first return after receiving the insurance payment.

FARM MANAGEMENT DEPOSITS SCHEME

To retain the full tax benefits of an FMD, no part of the disposal can be withdrawn in the first 12 months after it is deposited, except if the owner:

- dies
- becomes bankrupt
- ceases to be a primary producer
- transfers the deposit to another financial institution
- is a person in an area the Minister for Agriculture, Fisheries and Forestry has declared an 'exceptional circumstances' area.

Regions affected by disasters may be included or considered for 'exceptional circumstances' declared areas by the Minister. In these circumstances, a partial or full withdrawal of an FMD within a 12 month term will not result in the loss of the FMD status for the amount deposited. To confirm their 'exceptional circumstances' status, the deposit holder will have until three months after the year of income of the withdrawal to obtain an 'exceptional circumstances' certificate from the relevant state authority. This will allow primary producers to take advantage of this concession before the certificate is issued.

TAX TIPS FOR PRIMARY PRODUCERS 2017/18

The cost of planting annual crops is deductible under the general deduction provisions in the year the expenditure is incurred, while expenditure on planting trees, shrubs and similar long-lived plants is generally capital and non-deductible.

As mentioned a special write-off is available for capital expenditure incurred in establishing horticultural plants, including grapevines.

Take care to record expenditure on annual crops separately from expenditure on other long-lived plants to ensure the correct write off is received.

Trading Stock

Primary producers do not get a deduction for the cost of trading stock until the stock is on hand.

High stock levels may lead to higher income. Properly record and count stock, including records of birth, deaths and provisions to ensure the correct income is calculated.

Valuing Livestock

You are required to value your livestock at the end of the each year as part of determining your net income from primary production.

You can choose to value livestock at cost, market selling value or replacement value. An additional option is available for certain horse breeding stock.

You may change the basis of valuation year by year. You may also use different valuation methods for different stock in the same year. However, the value of your opening livestock (at 1 July) each year must be the same as the value of your closing stock (at 30 June) for the previous year. That is, you must use the same valuation method at the beginning of the new income year as you used at the end of the previous income year.

Small businesses – simplified trading stock rules

You do not have to value each item of trading stock (including livestock) on hand at the end of the income year or account for changes in the value of your trading stock if:

- you are a small business
- the difference between the value of all your trading stock at the start of the income year and the value you reasonably estimate of all your trading stock at the end of the income year is $5,000 or less.

However if you prefer, you can still conduct a stock take and account for changes in the value of trading stock for the income year if the difference is $5,000 or less.

Goods taken from stock for private use

If you take goods from stock for your own use, or for the use of your family members, you are required to account for the goods as if the stock had been disposed of at its cost.

This includes the situation where a grazier kills livestock for personal consumption or for rations for employees.

Natural increase

The cost of an animal you hold as livestock that you acquired by natural increase is whichever of these you elect:

- Actual cost of the animal
- Cost prescribed by the regulations
- Cattle, horses and deer $20
- Pigs $12
- Emus $8

- Goats and sheep $4
- Poultry 35 cents

A horse's livestock cost will be the greater of the above or the insemination service fee.

Buildings

Non-residential buildings used in the primary production, forestry and pearling industries are treated as depreciating assets as are employee amenities. Improvements to or fixtures on land are treated as assets separate from the land.

Make sure your buildings have been correctly classified in order to receive the correct write off.

Conservation Covenants

There is a special deduction for entering into a permanent conservation covenant over land with certain deductible gift recipients.

Losses

Primary production losses may be carried forward indefinitely. The measures that prevent a loss from non-commercial business activities being offset against other assessable income in the year in which the loss is incurred do not apply to an individual carrying on a primary production business if the income from other sources is less than $40,000.

Discuss this with your accountant to ensure you are eligible to carry forward losses indefinitely

Bushfires and other Natural Disasters

Recently the ATO issued two fact sheets (Disasters and primary producers – farm management deposits scheme and Bushfires and small business owners) that cover concessions available for primary producers and small business owners affected by bushfires. Refer to the ATO website.

DEPRECIATION

Accelerated depreciation on certain drought preparedness assets will be available for primary producers for income years commencing on or after 1 July 2015.

Primary producers will be able to claim an immediate deduction for capital expenditure on fencing and water facilities (e.g. dams, tanks, bore, irrigation channels, pumps, water towers, windmills). Fodder storage assets will be depreciated over three years.

OTHER RECENT CHANGES

On 27 April 2013 the Government announced it would amend the FMD Scheme to increase the non-primary production threshold from $65,000 to $100,000 and allow primary producers to consolidate multiple FMD accounts that have been held for at least 12 months without triggering a withdrawal under the rules. These measures became effective from 1 July 2014.

The Federal Government Agriculture White Paper released on 4 July 2015 contained significant tax measures to apply from 1 July 2016, designed to benefit farming businesses, including:

- Enabling banks to allow Farm Management Deposits (FMDs) schemes to be used as a business loan offset, significantly reducing interest costs.
- Primary Producers will also be able to opt back into income tax averaging after 10 years from 1 July 2016 and double their FMDs to $800,000.

We refer primary producers to Chapter 13 for further concessions and in particular the proposed changes in the May 2016 Federal Budget for SMEs turning over less than $10 million a year. The recent depreciation changes as outlined in Chapter 8 may also be useful.

ACCELERATED DEPRECIATION FOR PRIMARY PRODUCERS

From 12 May 2015, primary producers can immediately deduct the costs of:

- Fencing – previously deducted over a period up to 30 years
- Water facilities – previously deducted over three years

They can also deduct the cost of fodder storage assets over three years, instead of over a period up to 50 years.

Primary producers who are small businesses can also use the simplified depreciation rules including instant asset write-off.

WORKING HOLIDAY MAKERS

Primary Producers should refer to Chapter 12 for changes

CHAPTER 11 Business Structures

All of us when commencing or acquiring a business will consider which type of structure best suits our circumstances.

The least complicated structure is the sole trader whereby you operate the business in your own name. In an increasingly litigious society this structure could only be recommended for those with low-incomes and little perceived commercial risk. If you hold non-business assets in your own name this could be a concern and this would have to be carefully considered.

You may decide to join with other persons or entities electing to share profits or losses in an agreed ratio in which case you will be operating as a partnership.

Other business structures worthy of consideration include companies and trusts. There are a number of forms a trust may take and these include discretionary trusts (often referred as "family trusts"), fixed trusts and unit trusts.

PARTNERSHIPS

Reduced to its simplest form of individual family members operating in a partnership, tax savings are possible because each partner is taxed separately on their share of partnership income.

The total tax paid by the family due to "income splitting" results in individuals enjoying lower marginal tax rates. It is recommended that such arrangements be documented to establish that all concerned are actually and legally in partnership.

The ATO look at a number of factors when deciding whether a partnership exists for tax purposes. These include:

Intention:

- Mutual assent and intention of parties.

Conduct:

- Has a partnership agreement been drawn up which provides for profit or loss sharing including payment of partners' salaries?
- Does a partnership bank account exist and are partners signatories?
- What are the capital contributions made by each partner?
- Is all trading in the name of the partnership (invoices etc)?

All business documentation and correspondence should contain the partnership name. ABN and GST registration should be in the name of the partnership.

It is necessary to annually prepare financial statements and lodge a taxation return in the name of the partnership. The taxable income is distributed to the partners and included in their individual taxation returns.

It should be noted that Partners can be "jointly and severally" liable, meaning that if the partnership gets into financial difficulties and Partner 1 has no assets, Partner 2 may have to meet the entire shortfall. This can have disastrous consequences for individuals. For this reason where more than one family are involved in a partnership it is not uncommon to see a partnership of companies and trusts. In such cases assets are not usually accumulated in these entities. Asset protection must be considered in tandem with tax benefits.

COMPANIES

Under the Tax Act the definition of a "company" includes all bodies or associations whether they are incorporated or not. Companies are subject to tax in their own right and unlike Partnerships are separate legal entities.

Companies pay a flat rate of tax of 30 per cent, thereafter dividends may be distributed to shareholders who are taxable on those dividends with a reduction for any franking rebates available. Note that a reduced corporate rate of 27.5% applies for the 2016/17 income year (28.5% for 2015/16) to a corporate tax entity that is a Small Business Entity (SBE). A corporate tax entity will be a SBE in the 2017 year if it carries on a business and has a turnover of less than $10 million.

Note changes from 1 July 2015 for companies that are SBEs (see Chapters 8 & 13) and the proposed staggered reductions in company tax announced in the May 2016 Federal Budget.

For taxation purposes the following entities are considered companies:

- Public Companies
- Private Companies
- Corporate Unit Trusts
- Co-Operative Companies
- Corporate Unit Trusts
- Clubs and Associations
- Limited Partnerships
- Non-profit Companies
- Public Trading Trusts
- Pooled Developed Funds
- Strata Title Body Corporates
- Registered Associations

Annual taxation returns must be lodged by every Australian company that derives assessable income. Every non-resident company with a permanent establishment in Australia must also lodge a tax return.

Usually companies pay their tax liability in instalments under the PAYG instalment system on a rate or amount based on the prior year's tax liability. Paid instalments are credited against the total tax liability payable when the annual tax return is lodged.

Since 1990, companies have been subject to the self assessment system meaning the onus is on the company to determine the correct taxable income and correct tax payable as no formal notice of assessment is issued.

No official assessment notice is issued by the ATO. In effect the lodged tax return becomes the tax assessment. It is important to pay any company tax owing by the due date.

Companies are regulated by the Australian Securities and Investment Commission (ASIC) under the Corporations Act 2001.

STARTING A COMPANY

The most convenient option is to buy a "shelf" company from an organisation that specialises in this practice as they will only charge a small fee for this service and provide you with all necessary constituent documents.

The other option which is to apply to ASIC yourself for registration of the company is not recommended.

FEATURES OF A COMPANY - SEPARATE LEGAL ENTITY

As mentioned, a company has a separate legal existence distinct and separate from its officers and shareholders.

Meaning it may operate a business, incur debts, own property and sue and be sued, in its own right. This status continues until the company ceases to exist by way of de-registration by ASIC.

LIMITED LIABILITY

Shareholders are not personally liable for debts of the company unless they have given personal guarantees.

In the event of the company getting into financial distress they may be obliged to pay the company any amount which may be unpaid on their shares (partly paid shares).

Directors oversee the operations of a company. Major decisions require resolutions to be signed. Sole Directors will simply document and sign their decisions as they too are accountable to the shareholders.

It should be noted that directors may be liable for debts incurred by insolvent trading (where the company is unable to pay its debts as and when they fall due). If a director has given a personal guarantee he has a potential liability to debts incurred by the company. If a director has been negligent or there has been a breach of duty then he may be sued for any losses sustained.

Subject to this if directors act honestly, in good faith and with due care and skill, and prevent insolvent trading, they generally will not be held personally liable in the event of company failure.

In this event, the liability of shareholders is generally limited to the unpaid capital on their shares. Normally this is not a consideration as in a small company shares are usually issued as "fully paid".

There is also potential for an individual exposure where the ATO issues Directors' Penalty Notices (DPNs) for a company's unreported, unpaid superannuation and PAYG Withheld from wages as these are not complied with. See our Asset Protection bonus issue.

From 1.7.2012 DPNs do not have to be issued in the event a company is three months late in reporting these liabilities in their B.A.S.

CONSTITUTION

The rules for operating a Company are set out in its Constitution which complies with the Corporations Law.

CONTINUOUS EXISTENCE

Even if shareholders have sold their shares or died, a company will continue to exist as it has a separate legal identity.

In the event of the death of a sole shareholder in a company, that shareholder's executor assumes responsibility.

SHAREHOLDERS

Although a company has a separate legal existence, shareholders usually own the company in proportions determined by the number of shares they hold.

This is the case if ordinary shares of the same class are issued. On occasion a company may issue shares of a special class which confers special rights and entitlements to these shareholders regarding voting and dividend entitlements. This will usually occur at company incorporation.

Shareholders make decisions about the company, particularly the election of directors. Ordinary resolutions are passed by a simple majority of votes while special resolutions require at least 75 per cent of the votes cast.

A sole shareholder records a resolution by way of appropriate minutes and signed minutes of shareholders' meetings and resolutions must be retained for seven years.

PROPRIETARY COMPANY

If a small business chooses a company structure, a Proprietary Company will almost always be the most suitable.

Features include:

- One or more directors
- At least one, but not more than 50 shareholders (excluding employees).

REGISTERED OFFICE

A requirement upon incorporation is that a company have a registered office in Australia and that ASIC be duly notified of the location.

This is the place where all official notices and communications are normally sent. Should the registered office change; ASIC must be notified within one month.

Due to recent case law and legislative changes, this should not be ignored. A Company director is in some circumstances deemed to have received a notice if it is sent to the last known address. This can have terrible consequences in relation to the ATO's directors' penalty regime for PAYG and Superannuation.

PRINCIPAL PLACE OF BUSINESS

Again this address must be notified to ASIC. The Principal Place of Business may or may not be the same location as the registered office.

REGISTERS AND RECORD KEEPING

Shelf company organisations provide a company register containing information relevant on inception and also providing a guide for future changes and transactions.

This includes a register of shareholders and a register of charges over company assets.

ANNUAL REVIEW

Each year ASIC will mail to a company's registered office a notice (Annual Review Statement), including the following details:

- Address of registered office
- Address of principal place of business
- Names of each director and company secretary
- Issued shares and options granted.

This statement should be perused and if any details are incorrect, the company must notify ASIC either in printed form or electronically.

An annual review fee (currently $254) is payable to ASIC ($48 for SMSF Trustee Companies).

DIRECTORS' DUTIES

Directors have an obligation to shareholders to:

- Act in the best interests of the company and avoid conflicts of interest between the directors' own personal interests and those of the company;
- Act in good faith;
- Act honestly;
- Exercise due care and diligence; and
- Prevent the company from trading whilst insolvent.

Directors may be subject to civil penalties or even be found guilty of a criminal offence in the event of failure to carry out the above duties.

COMPANY SECRETARY

As far as ASIC is concerned this is the person responsible for lodging all requisite documents and overseeing company compliance.

These include:

- Changes in the location of the company register;
- Changes to the address of the registered office;
- Share issues;
- Changes to directors or company secretaries;
- Change in principal place of business;
- Change in name or address of company officeholders;
- Creation of charges over company assets.

11

FINANCIAL REPORTS

Small Proprietary Companies with a turnover less than $10m must keep financial records to verify and explain their transactions and financial position, and which will allow true and fair financial statements to be prepared and audited.

Under the Corporations Act, annual financial reports are not necessary unless either ASIC or shareholders with at least 5 per cent of the vote so direct. However, under the self assessment provisions of the Tax Act, financial reports are necessary to enable companies to determine their taxable income.

In contrast large Proprietary Companies must prepare annual financial reports and a directors' report, both of which must be audited and be sent to the shareholders. This can prove to be an expensive exercise and it is possible to apply for an exemption to ASIC if all shareholders agree.

WHETHER TO INCORPORATE

It is important to review your own circumstances and weigh up the advantages and disadvantages.

Advantages

Flexibility

Multiple ownership is easily achieved by the issue of any number of shares. Be mindful, however, if the company has been in operation and there are retained earnings, care should be taken if you plan to issue more shares and advice should be sought (value shifting).

Different classes of shares allow further flexibility in streaming of dividends etc.

Lower tax rates

As mentioned, non SBE companies are taxed at a flat rate of 30% (SBE companies 27.5% for 2017/18) which compares well with the highest individual tax rate of 47 per cent, including Medicare levy.

A director can receive a salary of say $87,000 from the company resulting in a maximum marginal tax rate of 34 per cent and retain any further profits in the company, paying company tax of 30 per cent on them.

No further taxes will be payable until dividends are paid to shareholders. We mention in passing, however, Division 7A of the Tax Act and note that a situation where debit loan accounts build up, i.e. the shareholders owe the company money is a situation that should be carefully monitored.

In essence, retaining profits in a company may only result in a deferral of tax because eventually most shareholders will want to receive dividends.

This is an important issue because the ATO is currently ramping up audit activities around Division 7A issues. The ATO have issued a number of rulings and determinations notably on Unpaid Present Entitlements (UPEs) – see TR 2010/3.

Permanency

It is possible for companies to continue indefinitely as they are not dependent on the continued presence of one individual. Officeholders and shareholders may change over time; however, a company has a permanent existence unless there is a decision by the shareholders or creditors (if the company cannot pay its debts) to liquidate the company.

Disadvantages

Capital Gains Tax

Companies are not eligible for the 50 per cent discount on assets held longer than 12 months.

Whilst the company tax rate is only 30 per cent (27.5% for SBEs), companies are subject to CGT on the full gain of all assets sold, with indexation frozen at 30 September 1999.

When dividends are paid to shareholders, further tax is payable by them if their marginal tax rate exceeds 30 per cent.

For the changes that apply to company rates of tax from 1 July 2016, refer to Chapter 1.

Liquidation

Distributions to shareholders upon liquidation of a company normally must be declared as taxable dividends. An exception to this is gains on the sale of assets purchased prior to the CGT regime (20 September 1985), if the funds are properly and separately accounted for (Archer Bros principle).

Distributions

Companies pay tax at entity level and there is an issue with non taxable capital gains because of this. Such gains, when passed on to shareholders are unfranked dividends and are fully taxable. This compares unfavourably with "flow through" entities such as discretionary trusts and partnerships, where the recipients receive the distribution as non taxable profits.

Carried forward losses

A company can only deduct a loss from a previous income year if it satisfies a continuity of ownership test, or failing that test, the same business test.

The continuity of ownership test requires that at all times during both the loss year and the income year; the same shareholders hold more than 50 per cent of the voting power, as well as dividend and capital distribution rights.

If shares are held by a discretionary trust, consider making a family trust election. Otherwise, the ATO will take the view that the continuity of ownership test is not satisfied where a company is majority owned by one or more discretionary trusts. This is because the shares are not beneficially owned by anyone.

In situations where the company fails the continuity of ownership test, it may still deduct a tax loss from an earlier year if it satisfies the same business test. To satisfy this test, the company must not derive assessable income from any new business source or transaction. The same business test was abolished on 1 July 2005 for companies with an annual turnover of over $100 million.

LOANS TO SHAREHOLDERS

Under Division 7A of the Tax Act, any loans to shareholders or associates which are outstanding at year end must be treated as unfranked dividends to shareholders unless a loan facility agreement exists and there is a genuine intention to repay the loan.

The loan must provide for an interest rate at least equal to a benchmark rate, with principal payments being made at least annually so that the term of the loan is no more than seven years for an unsecured loan or 25 years for a secured loan.

The benchmark rate of interest is 5.40% for 2016/17 and 5.3% for 2017/18.

In view of Taxation Ruling TR 2010/3 particular care needs to be taken when a trust makes a distribution to a company that is an eligible beneficiary of the trust. This is done because the 30% (27.5% for SBE's) company tax rate compares well to the highest marginal individual rate of 47%. Often the distribution is a paper entry with no actual payment made to the company. When this happens the company is said to have an unpaid present entitlement.

TR 2010/3 sets out the opinion of the Commissioner on the circumstances in which a private company having a present entitlement to an amount from an associated trust estate, makes a loan to that trust within the meaning of section 109D (3) of Division 7A.

IMPUTATION SYSTEM

Under the imputation system any income tax paid by a company is passed on to shareholders as an imputation credit which is available to be offset against their tax liability. This effectively eliminates the double taxation of company earnings.

Adequate franking account records of these transactions must be retained. At year end, the franking account balance will determine whether a franking account surplus is available to be carried forward, or franking deficit tax is payable.

Franking credits may include the following:

- Payment of company tax and tax instalments;
- Any franking surplus carried forward;
- Fully franked dividends received by the company (dividend x 30/70);
- Imputation credits attached to franked dividends received from a partnership or trust.

Note that the maximum credit that can be allocated to a frankable distribution paid by a SBE has been reduced to 27.5% from the 2016/17 income year. This is in line with the small business tax rate for the income year.

If there is a franking account surplus, franking credits up to the amount of the surplus can be attached to dividends paid. If the franking credit attached to the dividend exceeds the surplus available, then franking deficit tax may be payable by the company.

FRANKING CREDIT TRADING

In order to validly use franking account credits, it is necessary to hold ordinary shares for at least 45 days during which the share becomes ex-dividend.

If a shareholder is a discretionary trust, a family trust election must be made. Clearly the intention of this measure is to eliminate trading in shares to achieve benefits from franking credits and dividend streaming.

These rules do not apply to shareholders claiming less than $5,000 of franking credits in their tax return.

CHANGES TO ASSET PROTECTION

The Personal Property Security Act 2009 commenced on 1 February, 2012 and has had major ramifications for Asset Protection planning.

Make reference to our "Asset Protection Bonus Edition" for further details which include recent case studies.

TRUSTS

A trust is a relationship between a person or company (called the trustee) and another person (called the beneficiary), in which the trustee holds property (called the trust property or the trust fund) for the benefit of the beneficiary.

The ATO is reluctant to accept the existence of any trust which is not evidenced in writing (e.g. in a trust deed or will). However, the terms of a trust can be established by conduct, implication or a decision of the courts.

The four most common types of trusts are:

- "Family" trusts (trusts that have elected to be family trusts for tax purposes);
- Other discretionary trusts;
- Unit trusts;
- Hybrid trusts (partly fixed and partly discretionary).

"FAMILY" TRUSTS

The ATO requires family trust elections to be lodged for three primary purposes:

- Companies claiming prior year losses under (continuity of ownership) provisions where over 50 per cent of the shares are held by one or more discretionary trusts;
- If the trust is claiming a deduction for trust losses;
- Claiming franking credits on dividends.

A family trust election limits tax effective distributions to within a 'family group' defined by the choice of a primary individual. Some care and thought should be applied before proceeding because an election, once made, is irrevocable. From 1 July 2008, the definition of 'family' in the family trust election rules were changed to limit lineal descendents to children or grandchildren of the test individual or the test individual's spouse.

DISCRETIONARY TRUSTS

Discretionary trusts are usually created by having a settlor contribute a nominal sum to establish the trust and are commonly used as tax effective vehicles and in asset protection planning.

After a trust has been established, business or investment assets are then transferred into the trust. A trustee is appointed and his powers, responsibilities and obligations are normally defined in the trust deed and at trust law. Ultimate power usually rests in the hands of a principal or appointor who has the power to change the trustee.

From an asset protection perspective and in view of the "Richstar" case, when establishing a trust, particular care should be taken in deciding who the "Appointor" or "Principal" should be.

Further, in view of the Bamford decision handed down by the High Court on 30 March, 2010 existing trust deeds should be reviewed by a legal practitioner to ensure they:

- Define the trust income as being equal to section 95 net income, excluding "notional amounts", but
- Also provide that the trustee has a discretion to adopt alternative concepts of income in any year; and
- Allow the trustee a discretion to make distributions from gross income before deducting expenses.

Discretionary trusts can be created by the terms of a Will and are known as testamentary trusts. The trustee has discretion as to how the income and/or capital of the trust are to be allocated among the beneficiaries identified in the trust deed. Given this high degree of flexibility, the trustee is able to make tax effective distributions and vary allocations to suit family circumstances.

Having covered discretionary trusts we mention in passing the key features of a bloodline trust:

- It is a full discretionary trust;
- The rules of the bloodline trust categorically provide that the capital (assets) of the trust can never go outside the bloodline during the life of the trust;
- Income may be allocated to in-laws but the deed very strictly stipulates that capital must stay within the bloodline.

These trusts are sometimes used in succession planning in the rural sector to ensure land and assets are passed on to the next generations.

However we stress there can be a lack of flexibility and there can be real issues (stamp duty and capital gains tax) if you want to add a beneficiary at a later date.

TRUSTEE RESOLUTIONS

In February 2012, tax agents were advised that the ATO will undertake an educational campaign, including a mail-out of approximately 1,200 letters, to representatives of trustees of trust estates.

The purpose of the campaign was to make representatives of trustees aware that, from the 2012 income year, trustees who make beneficiaries entitled to trust income by way of resolution must do so by the end of an income year (30 June) for it to be effective in determining who is to be assessed on the trust's income.

Ruling IT 328 and IT 329 were withdrawn with effect from September, 2011. These former rulings reflected the Commissioner's administrative treatment of allowing certain trustees up until the 31st August that followed the income year, to appoint the income of the trust. The ATO now takes the view that following the decision in Colonial First State Investments v FC of T 2011 ATC 20-235, trustees must now resolve to distribute the current year's income on or before year end – which is usually 30 June.

It follows that in the absence of a default beneficiary clause, if a trustee fails to make a resolution to appoint the income of the trust before the end of an income year the trustee may be assessed on the trust income at the highest marginal tax rate, rather than the intended beneficiary(s).

We are now seeing some limited compliance activities by the ATO post 30 June each income year. This includes requests for a selected number of trustees to provide a copy of the trustees' income resolutions that evidence the fact that the trustee distributed the income of the trust for the relevant income year before 30 June. This activity is ongoing for the 2016-17 year.

With regard to streaming of trust income, we refer you to Taxation Determination TD2012/11.

UNIT TRUSTS

A unit trust is a trust in which the entitlement of the beneficiaries is divided into units.

The amount of a beneficiary's entitlement to income or capital of the unit trust is determined by the number of units held. The trustee distributes income and capital to the unit holders in proportion to the number of units each beneficiary holds. A unit trust in this respect is described as being "fixed" and is distinguished from a discretionary trust, in which a trustee may distribute income and capital in proportions as seen fit.

A unit trust is normally established by subscription for units. This involves the initial unit holders or subscribers paying funds to the trustee for the issue to them of units in a manner similar to shareholders subscribing for shares when a company is incorporated.

Income, including business income, franked dividends and capital gains retains its character as it flows through the trust and such distributions are accounted for in the unit holders' taxation returns.

HYBRID TRUSTS

The hybrid trust has the features of both a discretionary trust and a unit trust.

The hybrid trust is based on the standard discretionary trust with the added feature that it also offers a fixed (by unit) system of interest in the trust.

Hybrid trusts had become popular as vehicles for negatively gearing investment property with asset protection benefits. If a hybrid discretionary trust purchases a property, the taxpayer can gear the units thereby claiming a tax deduction.

However, in view of Taxpayer Alert 2008/03 and the Taxpayer and FC of T (2008) AATA 325, we recommend caution when making such tax claims. In the above case the taxpayer was denied a deduction for interest on loan funds used to acquire units in the hybrid trust.

A negatively geared investment will not work in a family trust that has no other income to offset the loss. In trusts and companies, losses are quarantined and carried forward to the next year.

The beneficiaries or shareholders cannot get the benefits of those losses to reduce their income. However, the hybrid discretionary trust can be administered as a normal discretionary trust for a couple of years until the investment funds are required and the trustee can then issue units. There is no need to issue units when the trust is set up. The flexibility is with the trustee and generally there are no stamp duties or capital gains tax implications.

IMMEDIATE DEDUCTIBILITY FOR PROFESSIONAL EXPENSES

The Government will allow businesses to immediately deduct a range of professional expenses associated with starting a new business, such as professional, legal and accounting advice. This measure will be available to businesses from the 2015-16 income year.

In the past, some professional costs associated with a new business start-up were deducted over a five year period.

CAPITAL GAINS TAX ROLL-OVER RELIEF FOR CHANGES TO ENTITY STRUCTURE

From 1 July 2016, the Government will allow small businesses with aggregated annual turnover of less than $2 million to change legal structure without attracting a capital gains tax (CGT) liability at that point.

This measure will be available for businesses that change entity type from the 2016-17 income year.

Formerly a major impediment to the restructure of a business is the tax liabilities associated with the transfer of ownership of CGT assets, plant & equipment and trading stock.

The roll-over will allow eligible small business to avoid those tax liabilities so that they can readily adapt their legal structures to meet the requirements of their business as they change over time.

This is achieved by the law applying as if the transfer takes place for the asset's "roll-over cost" such that the transaction does not result in a gain or loss. However, do keep in mind that there is some complexity in the detail that does not need to be addressed prior to applying the roll-over.

Broadly, a genuine restructure is one undertaken for the benefit of the business and that is not:

- Artificial or unduly tax driven; and/or
- A divestment, or a preliminary step to facilitate a divestment

The roll-over can only be applied to the transfer of "active" business assets, plant and equipment and trading stock used by a small business.

Note, that the ultimate economic ownership must not be changed by the restructure. However, it will be possible to transfer assets to discretionary trusts provided that they have a family trust election in place.

The transfer and transferee must both choose to apply the roll-over, must be tax residents and must not be tax exempt or a complying superannuation fund.

Such a rollover may move certain assets to a structure that offers enhanced asset protection and tax efficiency.

CGT roll-over relief is currently available for individuals who incorporate but all other entity type changes have the potential to trigger a CGT liability. This measure recognises that new small businesses might chose an initial legal structure that they later find does not suit them when the business is more established.

The Government has amended the Mid-year Economic and Fiscal Outlook 2015-16 measure National Innovation and Science Agenda – tax incentives for angel investors to:

- Reduce the holding period from three years to 12 months for investors to access the 10 year capital gains tax exemption;
- Include in the definition of eligible start-ups, a time limit on incorporation and criteria for determining if the start-up is an innovation company;
- Require that the investor and innovation company are non-affiliates; and
- Limit the investment amount for non-sophisticated investors to $50,000 or less per income year in order to receive a tax offset.

Expanding the new arrangements for venture capital limited partnerships

This initiative will:

- Add a transitional arrangement that allows conditionally registered funds that become unconditionally registered after 7 December 2015 to access the tax offset if the criteria are met:
- Relax the requirement for very small entities to provide an auditor's statement of assets;
- Extend the increase in fund size from $100 million to $200 million for new early-stage venture capital limited partnerships (ESVCLPs) to also apply to existing ESVCLPs; and
- Ensure that the venture capital tax concessions are available for FinTech, banking and insurance related activities.

PERSONAL SERVICES INCOME (PSI)

The PSI rules were introduced to effectively tax contractors who were earning their income from their own skills, expertise or personal services, on a similar basis to employees.

These rules apply regardless of whether the contractor operates as a sole trader, or through a partnership, trust, or company. The PSI provisions are designed to nullify the use of these entities to claim larger tax deductions, to split income or to take advantage of lower company tax rates.

If the PSI rules apply to you, your personal services income will be treated as your income and you must include it in your individual tax return. The changes to the tax law do not affect your legal, contractual or workplace arrangements with clients.

The changes do not apply to personal services income earned by employees, except where the individual is an employee of a personal services entity. The changes also do not apply to personal services income that is earned in the course of conducting a personal services business.

You qualify as a personal services business if:

- You meet the results test; or
- Less than 80 per cent of your personal services income in an income year comes from each client and you meet one of the other three personal services business tests (the unrelated clients test, employment test or business premises test); or
- You obtain a determination from the Tax Office confirming that you are a personal services business.

Even if your income is not affected by the changes, the general anti-avoidance provisions of Part IVA may still apply to schemes to reduce income tax by income splitting.

The PSI rules clarify what deductions can be claimed against affected personal services income and limit some deductions. In addition, a personal services entity may have an additional PAYG withholding obligation in relation to affected income that has not been paid out within a certain time as salary or wages to the individual service provider.

What is Personal Services Income?

This is income that is mainly a reward for an individual's personal efforts or skills. It does not include income that is mainly:

- For supplying or selling goods (for example, from retailing, wholesaling or manufacturing); or
- Generated by an income-producing asset (such as a bulldozer); or

- For granting a right to use property (for example, the copyright to a computer program); or
- Generated by a business structure (for example, an accountant working for a large accounting firm).

If personal services income is channelled through a company, partnership or trust (a personal services entity), it is still the individual's personal services income for income tax purposes. PSI rules only apply to personal services income.

Example: New ITP Pty Ltd provides computer programming services, but Ron does all the work involved in providing those services. Ron is the only employee of New ITP Pty Ltd. Ron uses the client's equipment and software to do the work. New ITP's income from providing the services is Ron's personal services income because it is a reward for his personal efforts and skills.

Example: Tom owns and drives a semi-trailer that he uses to transport goods. The income is not Tom's personal services income because it is produced mainly by the use of the semi-trailer and not by his personal efforts or skills.

11

What if you work under a contract?

Personal services income may be earned under a contract if the income is mainly for your personal efforts or skills. The terms and conditions of the contract as well as other evidence of your working arrangement, such as letters or invoices, are important in determining whether the income is personal services income.

What if your income is mainly from supplying or selling goods?

Income that is mainly for supplying or selling goods, including retailing, wholesaling or manufacturing, is not personal services income and therefore is not affected by changes to the tax law.

Example: Alan builds reproduction furniture, which he sells through a friend's shop. The income from the sale of the furniture is not Alan's personal services income because the buyers are mainly paying for the supply of furniture and not for the personal skills and effort of Alan in building the furniture.

Example: Joe is a tax expert who writes a book on the new PAYG measures. He approaches a number of publishing houses to get it printed and finally enters into a contract under which he sells the copyright to the book for $20,000, plus a royalty of 40 cents per book.

Income from the sale of the copyright is not personal services income. Rather, the income is consideration for the transfer of Joe's rights in the book to the publishing house.

However, if you are being paid to use your efforts or skills to produce something that becomes your client's asset, this income is regarded as being personal services income.

Example: Sam is a consulting engineer with a six-month contract to design a new production line. Under this contract, his client owns all rights to the design. The income earned under the contract is Sam's personal services income.

Example: Joe is commissioned by a publisher of taxation books to write a book on the new Pay As You Go measures. The contract specifies that when the book is finished and the copyright passes from Joe to the publisher, Joe will be paid a sum of $150,000.

The contract is not for the sale of property because the substance of the contract is the provision of Joe's efforts or skills. Therefore, Joe's income under the contract is personal services income.

What if your income is mainly from supplying or using assets?

If your income is mainly generated by income-producing assets, rather than your personal efforts or skills, it is not personal services income. This applies even if some personal efforts or skills are involved in operating the asset.

Where the asset:

- Is large-scale or high value; and
- Is essential to performing the work; and
- Is specified in the contract.

It is more likely that the income is being generated by the asset rather than by your efforts or skills and therefore is not personal services income.

If the income is mainly generated by your personal skills or effort, but you also supply some equipment to do the work, it will be personal services income, but you may meet one of the tests for a personal services business known as the results test.

Example: Ian's company, Ian Pty Ltd, has a contract to supply an excavator to level uneven surfaces. The income mainly comes from the supply and use of the income-producing equipment, namely the excavator. The income is not Ian's personal services income.

What if you supply some materials?

Supplying some materials on the job does not in itself prevent the income from being personal services income. Hence, there are no following examples if the use of materials is regarded as secondary to earning personal services income.

What if your income is generated from a business structure?

Where the income of an entity is generated by a business structure rather than the personal services of an individual, it is not personal services income. This depends on a number of factors, including:

- The extent to which the income depends upon the efforts, expertise or skills of an individual;
- The number of employees or contractors engaged by the entity to perform work;
- The nature of the activities being conducted by the entity that generate the income;
- The existence of goodwill or substantial income-producing assets; and
- The size of the business operation.

What is a personal services business determination?

This is a notice from the Tax Office stating that you are conducting a personal services business and that the changes to the tax law do not apply to your income.

You can apply for a determination if:

- You are not sure whether you meet one or more of the personal services business tests; or
- You do not meet the results test and 80% or more of your personal services income comes from one client; or
- Unusual circumstances prevent you from meeting one or more of the tests.

What are unusual circumstances?

Unusual circumstances are circumstances that are completely out of the ordinary and that prevent you from meeting a test. The circumstances must only be temporary, with the normal circumstances due to resume in the short-term. If you expect them to continue indefinitely, this suggests they are no longer unusual.

If you are not sure whether or not your income is personal services income, you can apply to the Tax Office for a determination.

You can also seek a private binding ruling from the Tax Office on any issue of law, including whether you receive personal services income, whether you meet any of the tests for conducting a personal services business, or whether the general anti-avoidance provisions of Part IVA apply to you.

Your Notes

CHAPTER 12 Residency and International Tax Issues

The two principal criteria for determining an entity's liability to Australian tax are residency and source of income.

A resident of Australia has to pay tax on their world wide income whether it is earned in or out of Australia.

A non-resident on the other hand is limited to Australian tax on income derived only from Australian sources. They are not entitled to any tax-free threshold and are taxed at a higher rate.

Those taxpayers resident for only part of the year pay tax at resident rates, but are only entitled to the tax-free threshold for the months they reside in Australia.

INDIVIDUAL RESIDENCY

The dictionary definition of reside is to have one's settled abode, to dwell permanently or for a considerable time or to live in or at a particular place.

Whether a person resides in Australia under this definition is a question of fact in view of the individual's unique circumstances.

It is suggested that the following factors are useful in determining whether the individual's behaviour over a considerable period of time has the degree of continuity, routine or habit that is consistent with Australian residence:

- the intention or purpose of the person's presence in Australia
- the extent of the person's family or business / employment ties with Australia
- the location and maintenance of the person's assets
- social and living arrangements.

THREE STATUTORY TESTS

1. The domicile / permanent place of abode test

Under this test a person whose domicile is in Australia is deemed to be a resident, unless the Commissioner is satisfied that the person's place of abode is outside Australia.

"Permanent" is not used in term of everlasting, but contrasts with temporary or transitory. Key factors the ATO will consider include intention, actual length of stay overseas and where the taxpayer maintains a home.

2. The 183 day test

Under this test constructive residence will be attributed to a person who is in Australia either continuously or intermittently for more than half of the year, unless it can be established that the person's usual place of abode is outside Australia and there is no intention of taking up residency here.

3. Commonwealth superannuation test

This applies to public servants and means that if an individual is contributing to a super fund of Commonwealth Government officers they will be an Australian resident.

RESIDENCE OF COMPANY

A company is resident in Australia if:

- It is incorporated in Australia; or
- If not incorporated in Australia it carries on business here and has either its central management or control in Australia, or its voting power controlled by shareholders who are residents of Australia.

SOURCE OF INCOME

The operation of rules that deal with the taxation of foreign source income for residents and the fact that non-residents are usually only assessable on Australian sourced income make the identification of the source of any item of income fundamentally important.

As business transactions become more complex, the following comments are general in nature:

- Income from personal exertion is derived in a country where the services are performed, regardless of how and where you were paid.

- The location of a contract may be relevant where creative knowledge or specialist skills are used to an extent that the place of use is irrelevant.
- The source of business or trading profits is generally the place where services are performed or trading takes place.
- In cases where income has multiple sources, it will be necessary to determine the dominant factor or factors. On occasion it may be necessary to apportion income among the various sources.
- The source of interest is in the country where the obligation to pay the interest arose e.g. for bank interest it is where the bank account is held.
- Dividend income is sourced in the country in which the company made its profits.
- A pension or annuity is sourced in the country in which the pension fund or annuity fund is located.
- TR 2013/1 states that when determining the source of income, a "substance over form" approach should be adopted and the actual behaviour of the parties may take precedence over the formal terms of the contract.

DOUBLE TAX AGREEMENTS

The clear intent of double tax agreements (DTA) is that taxpayers are not taxed twice on income earned in countries outside their own.

DTAs usually have a standard format, but it is vital that you refer to a specific agreement should any queries arise.

Income that is usually taxed according to the **source of the income** includes:

- business income derived through a permanent establishment
- directors' income and similar company offices
- entertainers and performing artists
- income from real property including mining royalties
- salary or wages where the employee is present in the other country for more than 183 days
- income derived from personal services or derived from a fixed base used by the person concerned.

The following income is generally taxed on a **country of residence** basis:

- income from independent activities or professional services (excluding public entertainers)
- income earned by an employee present in other countries for less than 183 days in the tax year. this applies where the employer is a resident of the same country where the employee is resident and the income earned is not an allowable deduction for the employer in that country
- remuneration for services rendered to government officials and bodies
- remuneration for academics or teachers present in other countries for two years or less
- profits from shipping or aircraft
- income derived by a resident from sources outside both countries
- payments made to students for their maintenance
- profits of an enterprise carried on in one country unless a permanent establishment exists in the other country.

BECOMING A RESIDENT

People immigrating to Australia find their assessability to income and capital gains widens when they become residents for tax purposes.

Australian residents are assessed on domestic and world wide income. New Australians will find that income from foreign investments including interest, dividends, pensions and capital gains or disposal of foreign assets will become subject to Australian tax.

Under the CGT regime, those commencing residency are deemed to have acquired their assets at market value on the given date. It is prudent to obtain valuations in such cases in order to accurately determine any future capital gains or losses.

CEASING TO BE A RESIDENT

The main issue here is CGT. On becoming a non-resident you are deemed to have disposed of all assets at market value, except those assets with a necessary connection with Australia.

This provision applies as non-residents are only subject to CGT on Australian assets. In such cases it is possible for a taxpayer to elect to defer any CGT arising from the change in residency until ultimate disposal of the asset. A tax planning issue arises here and careful decisions will need to be made when changing residency.

EMPLOYMENT INCOME EARNED OVERSEAS

Australians working overseas are able to claim a Foreign Income Tax Offset for the foreign income tax paid on those amounts now included in their assessable income.

These taxpayers are not required to lodge a foreign tax return to demonstrate and claim amounts of foreign tax paid.

All they are required to do is keep their normal pay slips, assuming they identify amounts withheld, and under the self-assessment regime these pay slips will only need to be provided if the Tax Office undertakes an audit.

The general application of FBT to overseas based Australian employees is appropriate as it ensures there is consistent treatment of employee remuneration regardless of whether it is received as cash or as a non-cash benefit.

Current judicial and Tax Office interpretative decisions have found having regard to the facts and circumstances of particular cases under review, that flights to and from home and domestic remote mining worksites are generally considered "otherwise deductible" (see chapter 14) for employers when determining FBT liabilities. This extends to similar arrangements overseas.

Iyengar and Commissioner of Taxation (2011) AATA 856

In a global labor market this case deserves close scrutiny. Do not assume that you are a non-resident for tax purposes because you have met the 183 day test.

In May 2007, the taxpayer, Mr Iyengar, left his family and his family home in Perth to move to Dubai, and later Doha, Qatar, to work as a site engineering manager for the company Maersk, pursuant to a two year contract which contained an option to extend the contract for two further periods of six months each.

Mr Iyengar's Australian income tax returns for the years ended 30 June 2008 and 2009 stated that he was a non-resident for Australian income tax purposes and did not include any assessable income. The Commissioner subsequently issued Mr Iyengar with notices of assessment for those years in accordance with his returns.

In November 2010, the Commissioner issued Mr Iyengar with notices of amended assessment for the relevant years, which included in his assessable income foreign source income (following a data-matching process). The taxpayer objected to those amended assessments and the Commissioner disallowed that objection. It was thus for the Tribunal to review the Commissioner's objection decision. Mr Iyengar's position is that he was not a 'resident' of Australia during the relevant income years such that none of the foreign source income he derived in the United Arab Emirates is subject to Australian tax. He also contended that one of the amended assessments was issued out of time and was therefore unauthorised.

The Tribunal said (at paragraph 80):

Despite the fact that Mr Iyengar spent almost 2 years and 7 months working in Dubai and later Doha for Maersk, his family ties with Australia were such that he remained a 'resident of Australia' in the relevant years of income. That is, after moving to Australia from India in 1998 he and his family took the step of becoming Australian citizens 2003 and acquired a home in about 2003. While he was overseas working on the contract for Maersk, his wife, daughter and son remained in Australia (except for three short visits to Dubai by his wife), his most substantial asset (the Winthrop home) was located in Australia, he used almost all of the money he earned abroad to make accelerated payments on his Australian mortgage on the Winthrop home (which he acknowledged he considered to be the 'family home') and he took his holidays (albeit short) in Australia at the Winthrop home with his family: Shand and Crockett.

That is, Mr Iyengar was, and remained, an Australian 'resident' according to ordinary concepts: Joachim; Shand and Crockett. It followed, therefore, that Mr Iyengar was also an 'Australian resident' for the purposes of the definition of that term in section 995-1 of the ITAA 1997 and as used in section 6-5(2) of the ITAA 1997.

Mayhew and Commissioner of Taxation (2013) AATA 130

By contrast this case went in favour of the taxpayer with the AAT concluding that the taxpayer handled his departure from Australia and his relocation to the Middle East in a manner consistent with a person who had resolved to permanently leave Australia. He had to make arrangements in relation to his children and the assets he was leaving behind and he did this in his own way and in his own time, according to the priorities confronting him. He established a home in Dubai as soon as practicable and furnished the home in a manner with an intention to remain in the location indefinitely.

Returning expatriates – residency issues

The ATO continues to target expatriates returning to Australia, sometimes after an extended time living and working overseas.

In a number of cases the ATO has suggested an expatriate was an Australian tax resident, and that the expatriate's income earned from overseas employment should be reported as taxable in their Australian income tax returns.

The case of *Pillay v Commissioner of Taxation* (2013) AATA 447 is a typical example. Dr Pillay was held to be a resident of Australia in the 2010, 2011 and 2012 income years, despite living and working in East Timor since 2006. The AAT accepted the ATO's submission that Dr Pillay had had a 'continuity of association' with Australia and was therefore a resident for tax purposes. Crucially Dr Pillay maintained a house and had bank accounts in Australia.

For expatriates living and working in countries with similar effective tax rates to Australia, any tax shortfall may not be significant, as taxpayers are generally entitled to foreign tax credits for tax paid overseas. However, for expatriates living and working in countries with low effective tax rates, the shortfall is often substantial. The ATO appears to be targeting expatriates from countries with low effective tax rates, often by tracking funds transferred from overseas into Australian bank accounts.

For those returning expatriates contacted by the ATO, it is essential to get professional advice. The same applies to those departing overseas – make sure you have settings in place.

We also refer you to the following cases:

- AAT Case (2012) AATA 799. Re Bezuidenhout and FCT, AAT, Ref Nos 2011/5525-28, McCabe SM, 15 November 2012
- Boer v Commissioner of Taxation 2012 AATA 574
- Sully v Commissioner of Taxation 2012 AATA 582
- Sneddon v Commissioner of Taxation 2012 AATA 516

Decision Impact Statement

We also refer you to Dempsey and Commissioner of Taxation published by the ATO on 1 August 2014, as it has excellent coverage on the above issues.

TRANSFER PRICING

These provisions deal with arrangements under which there are profits through the mechanism of inter company or intra company transfer pricing.

In recent years, significant resources have been put into transfer pricing enforcement by the ATO. The aim is to stop profits being arbitrarily shifted between tax jurisdictions in order to minimise tax. It is recommended that taxpayers adopt a pricing methodology prescribed by the ATO. Adequate documentation should be kept to verify a prescribed methodology has been followed – TR 98/11.

In situations where international related party transactions exceed $2 million, the ATO requires an "International Dealings Schedule" (formerly Schedule 25A) to be completed with the taxpayer's tax return.

The transfer pricing rules are contained mainly in:

- Subdivision 815-B: applicable to entities in general (22-610)
- Subdivision 815-C: special rules for permanent establishments (22-620), and
- Subdivision 815-D: special rules for trusts and partnerships (22-610; 22-630)

THIN CAPITALISATION

The current thin capitalisation rules have been in operation for seventeen years and apply to both foreign entities investing in Australia and to Australian entities carrying on a business or investment activities overseas.

Effectively these rules set limits on the amount of debt that can be used to finance the Australian operations of an entity and to set a minimum level for the amount of equity capital that is required to finance Australian operations.

The objective is to prevent multinational taxpayers highly gearing their Australian enterprises with a view to paying less tax in Australia.

Thin Capitalisation

Note: Significant thin capitalisation changes commenced on 1 July 2014.

Taxpayers subject to thin capitalisation need to forecast their expected debt levels from1 July 2014 and whether any interest expense would be denied under the proposed regime (the forecasts are largely based on accounting projections).

Effectively the changes will:

- Reduce the 'safe harbour' debt limit for 'general' entities from 75 per cent of adjusted Australian assets (from 3:1 to 1.5:1 on a debt to equity basis);

12

- Reduce the 'safe harbour' debt limit for non-bank financial entities from 20:1 to 15:1 on a debt to equity basis;
- Increase the 'safe harbour' minimum capital for banks from four per cent to six per cent of the risk weighted assets of their Australian operations;
- Reduce the 'worldwide gearing ratio' from 120 per cent to 100 per cent and make it available to inbound investors; and
- Increase the de minimis threshold from $250,000 to $2 million of debt deductions.

CHANGES FOR FOREIGN PROPERTY INVESTORS

The May 2017 Budget introduced numerous measures that impact the taxation of investment properties owned by foreign residents.

These measures are aimed at improving housing and rental affordability for Australian residents:

- It was announced that foreign and temporary residents will no longer have access to the capital gains tax main residence exemption on properties acquired after 7.30pm (AEST) on 9 May 2017. Properties held prior to this time will be grandfathered until 30 June 2019.
- Updated foreign resident capital gains withholding rates will see an increased tax withheld of 12.5% on properties sold for more than $750,000 (previously 10% and $2 million respectfully). This is to be withheld by the seller and passed on to the ATO. These rates came into effect from 1 July 2017.
- Also proposed is an additional charge for foreign investors who leave rental properties unavailable to rent for more than 6 months of the year. The annual charge will be equal to the investment application fee.
- Foreign residents will also find it harder to purchase properties as restrictions on New Dwelling Exemption Certificates prevent more than 50% foreign ownership in newly developed properties. This restriction only applies to multi-storey developments with more than 50 dwellings.

MULTINATIONAL TAX MEASURES

Diverted profits tax at 40%

In the May 2016 Federal Budget, the Treasurer announced the introduction of a 40% diverted profits tax (DPT).

The new tax is aimed at multinational corporations that artificially divert profits from Australia. The tax applies to income years commencing on or after 1 July 2017.

The new tax targets companies that shift profits offshore through arrangements involving relating parties:

- That result in less than 80% tax being paid overseas than would otherwise have been paid in Australia;
- Where it is reasonable to conclude that the arrangement is designed to secure a tax reduction; and
- That does not have sufficient economic substance.

Where such arrangements are entered into, the ATO will apply a 40% tax on diverted profits to ensure that large multinationals are paying sufficient tax in Australia.

This measure will apply to large companies with global revenue of $1 billion or more.

Companies with Australian revenue of less than $25 million will be exempt, unless they are artificially booking their revenue offshore.

Australia's DPT is based largely on the second limb of the UK's DPT which was introduced in 2015, otherwise known as the 'Google Tax'. It will:

- Impose a penalty tax rate of 40% on profits transferred offshore through related party transactions with insufficient economic substance that reduce the tax paid on the profits generated in Australia by more than 50%;
- Apply where it is reasonable to conclude based on the information available at the time of the ATO that the arrangement is designed to secure a tax reduction;
- Provide the ATO with more options to reconstruct the alternative arrangement on which to access the diverted profits where a related party transaction is assessed to be artificial or contrived;
- Impose a liability when an assessment is issued by the ATO (i.e. it will not operate on a self-assessable basis);
- Require upfront payment of any DPT liability, which can only be adjusted following a successful review of the assessment; and
- Put the onus on taxpayers to provide relevant and timely information on offshore related party transactions to the ATO to prove why the DPT should not apply.

Transfer Pricing Rules to be strengthened to implement 2015 OECD recommendations

The Government announced that it will amend Australia's transfer pricing law to give effect to the 2015 OECD transfer pricing recommendations.

Tax Integrity Package – Implementing the OECD hybrid mismatch arrangement rules

The Government will implement the Organisation for Economic Co-operation and Development's (OECD) rules to eliminate hybrid mismatch arrangements, taking into account he recommendations made by the Board of Taxation in its report on the Australian Implementation of the OECD hybrid mismatch rules. The Government has asked the Board of Taxation these rules in relation to regulatory capital as part of this measure.

This measure is aimed at multinational corporations that exploit differences in the tax treatment of an entity or instrument under the laws of two or more tax jurisdictions. This measure targets instances where tax is either deferred or not paid at all. It will apply broadly to related parties, members of a control group and structured arrangements.

Further announcements in the May 2017 Budget defined targeted rules to eliminate hybrid mismatches on regulatory capital known as Additional Tier 1 (AT1) capital:

- Prevent returns that are tax deductible in foreign jurisdictions from carrying franking credits;
- Where the AT1 capital is not wholly used in the offshore operations of the issuer; requiring the franking account of the user to be debited as if the returns were to be franked.

These measures will apply from the later of 1 January 2018 or six months following the date of Royal Assent of the enabling legislation and is estimated to have an unquantifiable gain to revenue over the forward estimates period.

Tax Integrity Package – increasing administrative penalties for significant global entities

The Government will increase administrative penalties imposed on companies with global revenue of $1 billion or more who fail to adhere to tax disclosure obligations. This measure applies from 1 July 2017.

TAX RATES FOR WORKING HOLIDAY MAKERS

A taxpayer is a working holiday maker if they earn income while working under a visa subclass 417 (Working Holiday) or 462 (Work and Holiday).

On 1 December 2016, the Treasurer announced a new flat rate of tax of 15% on earnings up to $37,000 for working holiday makers from 1 January 2017. In order to withhold the special rate of tax, employers need to register with the ATO. If a worker was employed before and after 1 January 2017, for the 2017 year they will need to be issued two payment summaries.

Working holiday makers who earn superannuation will also be subject to a 65% tax rate on both taxed and untaxed elements of any Departing Australia Superannuation Payments made after 1 July 2017.

YEAR END EXCHANGE RATES – 30 June 2017

Below are the exchange rates for the financial year ended 30 June 2017 for converting foreign income into Australian dollars.

The rates for selected countries and Europe are reproduced below (foreign currency equivalent to $1).

Country	Average for year ended 30 June 2017
Canada	1.0381
Denmark	5.3299
Europe (Euro)	0.7247
Fiji	1.6084
Hong Kong	6.0804
India	51.4136
Japan	85.9027
New Zealand	1.0919
Philippines	38.6501
Singapore	1.0970
South Africa	10.6435
Thailand	27.1034
UK	0.6199
USA	0.7891

CHAPTER 13
Small Business Entities (SBE)

SNAPSHOT OF BENEFITS

For some time now, a small business has been able to access a number of existing concessions covering the following areas of tax:

- Capital gains tax (CGT)
- Income tax
- Goods and services tax (GST)
- Pay as you go instalments (PAYGI), and
- Fringe benefits tax (FBT).

Until 30 June 2016, a business with turnover of less than $2 million was eligible for this range of concessions. On 1 July 2016, the SBE threshold was increased to $10 million.

The $10 million turnover threshold applies to most concessions, except for:

- the small business income tax offset, which has a $5 million turnover threshold
- the capital gains tax (CGT) concessions, which continue to have a $2 million turnover threshold.

Eligible businesses can pick and choose the concessions that best suit their needs, helping them to reduce red tape and compliance costs.

Small businesses may be eligible for the following concessions:

- Choice to account for GST on a cash basis
- Choice to pay GST by instalments
- Annual apportionment of GST input tax credits
- Simplified trading stock rules
- Simpler depreciation rules
- CGT 15-year asset exemption (subject to turnover / assets tests)
- CGT 50% active asset reduction (subject to turnover / assets tests)
- CGT retirement exemption (subject to turnover / assets tests)
- CGT roll-over provisions (subject to turnover / assets tests)
- PAYG instalments based on GDP – adjusted notional tax
- Two-year period for amending assessments (exceptions may apply)
- Immediate deductions for certain prepaid business expenses, and
- FBT car parking exemption

ELIGIBILITY FOR THE SBE

- The SBE applies to all business structures or entities;
- The entity must be carrying on a business in that year of income;
- The entity must have an aggregated SBE turnover (see below) for itself and any affiliate of less than $2 million.

AGGREGATED TURNOVER

An entity's aggregated turnover for an income year is the sum of its own "annual turnover" and the turnovers of other relevant entities; that is:

- Its affiliated entities and
- Its connected entities.

An entity is connected with another if:

- Either entity controls the other entity in a particular way
- Both entities are controlled by the same third party in a particular way.
- If your aggregated turnover for the previous income year was less than $10 million, you are a SBE for the current year.
- If your estimated aggregated turnover for the current year is less than $10 million, you will be a SBE for the current year. You can only use this method if your aggregated turnover was less than $10 million for one of the last two income years.
- If your actual aggregated turnover at the end of the current year is less than $10 million, you are a SBE for the current year.

CONNECTED ENTITIES

These provisions are similar to those that apply to the small business concessions for CGT.

"Effective control" applies when there is a legal or beneficial right to at least 40 per cent of income or capital or at least 40 per cent of the voting power. If between 40 per cent and 50 per cent, taxpayers will not be grouped if they can demonstrate to the ATO's satisfaction that a third party exercises effective control.

SBE DEPRECIATION

An immediate write off for depreciating assets costing less than $6,500 from 1 July, 2012 (formerly $1,000) was available to SBE taxpayers.

The Coalition government removed this concession for assets purchased from 1 January 2014 and the $1,000 limit again applied from this date.

The 2015 Federal Budget announced an immediate write-off up to $20,000 for assets acquired after 7.30pm 12 May 2015 and prior to 30 June 2017. The 2017 Federal Budget has extended this date to 30 June 2018.

Most other depreciating assets are pooled in the general small business pool, irrespective of their effective life. Newly acquired assets are depreciated at 15% in the first year, regardless of the date on which they were acquired. In subsequent years the assets are depreciated at 30% on the diminishing value basis.

The 2017 Federal Budget allows an immediate write off of the small business pool (including existing pools) if the balance is less than $20,000 at the end of a financial year, until 30 June 2018.

For assets used only partly for business purposes, only the business proportion is attributed to the pool. When an asset is sold, the entire sales proceeds are credited to the relevant pool which reduces the total amount on which depreciation is calculated. Using this method, no balancing adjustments are required.

PREPAYMENTS

SBE taxpayers and individual taxpayers incurring deductible non-business expenditure (e.g. rental property expenses and work-related expenses) can apply the 13 month prepayment rule.

Such taxpayers are eligible to claim prepaid expenses, provided the period covered by the prepayment does not exceed 12 months and concludes before the end of the following financial year.

All other business taxpayers, other than individuals who incur deductible non-business expenses, are required to apportion such prepaid expenses over the service period to which the prepayment relates.

ACCOUNTING FOR GST ON A CASH BASIS

Small business entities can choose to account for their GST using the cash accounting method.

This means you account for GST when income is received and when expenses are paid. The advantage of the cash accounting method is that the money flowing through the business is better aligned with your activity statement liabilities.

TRADING STOCK

If you are an SBE taxpayer you only need to conduct a stocktake and account for changes in the value of your trading stock if there is a difference of more than $5,000 between:

- The value of your stock on hand at the start of the income year, and
- A reasonable estimate of the value of your stock on hand at the end of the income year.

While in the SBE you can, if you wish, still conduct a stocktake and account for the change in the value of trading stock in any income year.

If the value of your trading stock varies by $5,000 or less and you choose not to do a stocktake and account for the change in value of trading stock, the value of your closing stock is deemed to be the same value as your opening stock.

If you conduct a stocktake for tax purposes, all trading stock on hand at the start and at the end of the income year is taken into account in working out your taxable income.

To work out the value of trading stock for tax purposes at the end of the income year, generally a stocktake is required. This involves working out the physical quantities of stock on hand and assigning a value to each item of stock. Each item of stock is valued at either, cost, market selling value or replacement value.

The sum of the total number of items of trading stock on hand multiplied by the value of each item produces the total value of trading stock on hand. The process of making a reasonable estimate of your closing stock, when using the simplified trading stock rules, may involve an estimate of both the quantity of stock on hand and the value of each item of stock.

The special valuation rules for trading stock can be used in making your reasonable estimate. For example, the specific rules for the cost of natural increase of livestock and rules in relation to obsolete stock may apply.

You may also take into account tax rulings on the valuation of trading stock for particular industries.

SMALL BUSINESS

Tax cuts for both incorporated and unincorporated small business entities from the 2015-16 income year were confirmed, providing much needed cash flow relief to stimulate business activity and growth.

From 1 July 2016 the company tax rate fell from 30% to 27.5% for small business companies.

Unincorporated small businesses will benefit from a 8% discount on income tax payable on income from business activity. The discount is capped at 1,000 per individual for each income year and is a tax offset.

The rate reduction does not affect the Company's franking ability as the current maximum franking credit rate for a distribution remains unchanged at 30% for all companies that are not SBE for 30 June 2016. SBE franked distributions be at their respective tax rate, for the 2016/17 year at 27.5%.

The package will also include the following measures available since 1 July 2015:

- Easier access for small businesses to crowd source equity funding by providing necessary funding to Australian Securities and Investment Commission (ASIC) to simplify reporting and disclosure requirements.
- Investment into software allowing business to deal with Government agencies such as ASIC and the ATO more efficiently.
- Immediate 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.

Since 1 July 2015 tax relief has been available for small businesses that change their legal structure by way of a capital gains tax rollover.

EXTENSION OF SBE BENEFITS

As mentioned above, since 1 July 2016 all businesses with annual turnover of less than $10 million will have access to:

- simplified depreciation rules, including immediate tax deductibility for asset purchases costing less than $20,000 until 30 June 2018
- simplified trading stock rules, giving them the option to avoid end of year stocktake if the value of their stock has changed by less than $5,000;
- a simplified method of paying PAYG instalments calculated by the ATO, which removes the risk of under or over estimating PAYG instalments and the resulting penalties that may be applied;
- the option to account for GST on a cash basis and pay GST instalments as calculated by the ATO;
- other tax concessions currently available to small businesses, such as fringe benefits tax (FBT) exemptions (from 1 April 2017 to align with the FBT year); and
- a trial of simpler business activity statements (BAS), reducing GST compliance costs, with a full roll-out from 1 July 2017.

These threshold changes will not affect eligibility for the small business capital gains tax concessions, which will remain available for businesses with annual turnover of less than $2 million or that satisfy the maximum net asset value test.

Also refer to Chapter 1 for increases in the Unincorporated Small Business Tax Discount and proposed reductions in company tax.

CHAPTER 14

Fringe Benefits Tax (FBT)

DEFINITION OF A FRINGE BENEFIT

A fringe benefit is a benefit that is provided by an employer to an employee or their associate in respect of their employment.

These benefits are not taxable to the employee; however, the employer may be liable to pay fringe benefits tax on the grossed up amount of the value of the benefit.

The Main Types Of Fringe Benefit Are:

- Car fringe benefits;
- Debt waiver fringe benefits;
- Loan fringe benefits;
- Expense payment fringe benefits;
- Housing fringe benefits;
- Living away from home allowance;
- Board fringe benefits;
- Meal / entertainment fringe benefits;
- Tax exempt body fringe benefit;
- Car parking fringe benefits;
- Property fringe benefits;
- Residual fringe benefits.

KEY FEATURES OF FBT

The FBT year runs from 1 April and finishes on 31 March and:

- FBT is currently levied at 47% of the grossed up value of a benefit
- The tax is paid by employers regardless of the type of entity
- FBT is paid quarterly with the FBT return lodged at year end
- FBT is calculated on a self-assessment basis
- FBT is tax deductible to the employer, along with the cost of the benefit paid
- As tax has already been paid on the benefit by the employer, employees do not pay tax on benefits
- The amount of benefits paid to an employee while not taxable to that employee may effect repayment of HECS debts, eligibility for welfare payments, and other items
- FBT is payable on benefits made by the employer no matter whether they are profitable or not for the year
- The taxable value of the benefit is grossed up using the following mark-ups: For entities registered for GST 2.0802 and 1.8868 for those not claiming input tax credits.

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 $31,177 for the 2016 & 2017 FBT years only.

<u>Example:</u> FBT calculation and taxable value gross up (2017-18)

Value of benefit provided (inc. GST)	$5,000
Taxable Value = $5,000 x 2.0802	$10,401
FBT payable = $10,401 x 47%	$4,888

The concept of calculating **taxable value** as demonstrated above is very important and will be referred to frequently in this chapter.

The main aim of FBT is, in effect, to tax the benefit so that it really makes very little difference whether the employer provides it to the employee or the employee pays for it out of their after tax dollars – assuming that the employee is on highest marginal rates (over $180,000 per annum). There may be savings through the provision of exempt benefits or concessionally taxed benefits which will be discussed later in this chapter.

Where an employee is on less than highest marginal rates a tax disadvantage arises (to the employer) as it would be cheaper to pay the employee the extra wages rather than pay the benefit and FBT at 47% on the grossed up amount.

The FBT exemption for work-related items only applies if the items are used primarily for work purposes and are limited to one item of each type per employee per FBT year, unless they are replacement items.

In the May 2015 budget, it was announced that from 1 April 2016, the government will allow an FBT exemption for small business that provide employees with more than one qualifying work-related portable electronic device, even where the items have substantially similar functions.

The list of FBT-exempt work-related items was extended to all work-related portable electronic devices, including those with multiple functions.

Employees will be denied depreciation for the work-related percentage of FBT-exempt items in their personal income tax returns.

COMMON FRINGE BENEFITS

Motor Vehicles

Where an employer provides an employee with a car and that car is used (even in part) for private purposes then a fringe benefit has been provided. A car will be deemed to be used for private purposes if:

- It is garaged or kept near the residence of the employee;
- The car is not at the employer's address and the employee may use the car for private purposes;
- Control of the vehicle resides with the employee outside business hours.

A motor vehicle is defined as being a motor car, station wagon, panel van, utility or other vehicle designed to carry less than one tonne or less than nine passengers. Motorbikes and taxis are specifically excluded from the definition.

A vehicle will be excluded if it is a vehicle not designed to mainly carry passengers and if used privately was only done so for the purposes of travelling from home to work which was incidental to the employee's normal travel for work.

The taxable value of a car for FBT can be calculated by the employer using two methods: the statutory formula and the operating costs basis. The employer is able to choose the method that best suits their circumstances; however, where a selection is not made the statutory method will be applied. Careful consideration needs to be given to the decision to provide a car to an employee and which method is used given the particular circumstances.

Statutory method

Under the statutory method, the following formula is used to calculate FBT:

Base value of car ***times*** Statutory Fraction ***times*** Percentage private use days ***less*** Employee's payment.

The base value of the vehicle is the cost price including all options, but not including registration and stamp duty. For a leased vehicle the base value is the market value of the vehicle and insurance. The base value is taken from when the employer first held the asset (i.e. from purchase).

The percentage applicable depends on the total number of kilometres the car travelled (for both business and private purposes) in the FBT year. Kilometre readings are taken at 31 March each year.

Current rates are: You will see from the below table that for new contracts entered into after 1 April 2014, there is uniformity at a flat 20%.

However, the old rates may be relevant for existing contracts.

If vehicle has been owned or leased for more than four years the cost of the car is reduced to two-thirds of its original cost. The reduction in cost base applies from the start of the FBT year following the fourth anniversary of when the car was acquired or leased.

Where a car was not held for a full 12 months, the kilometres were annualised using the formula:

The number of kilometres travelled X the number of days in the FBT year

The number of days the car is held by the provider

For example: a vehicle is held for four months and travels 4,000km, the annualised kilometres would be 12,000km. Of course given a flat 20% rate from 1 April 2014 this is now less relevant.

However, where a car is not available for private use the FBT benefit amount is reduced according to the portion of days not available for private use.

Commencing 1 April 2014 there is complete uniformity in the statutory formula rate – see table below. As this can result in high amounts of FBT payable, consideration should be given to all relevant staff having a complying logbook to establish business use if this is significant.

ANNUALISED DISTANCE TRAVELLED DURING THE FBT YEAR (1 APRIL – 31 MARCH)	STATUTORY RATE (MULTIPLIED BY THE FBT COST OF THE CAR TO DETERMINE THE TAXABLE VALUE OF A CAR FRINGE BENEFIT)				
	Existing Contracts %	New Contracts entered into after 7.30pm (AEST) on 10 May 2011			
		From 10 May 2011 %	From 1 April 2012 %	From 1 April 2013 %	From 1 April 2014 %
0 – 15,000km	0.26	**0.20**	0.20	0.20	0.20
15,000 – 25,000km	0.20	**0.20**	0.20	0.20	0.20
25,000 – 40,000km	0.11	**0.14**	**0.17**	**0.20**	0.20
More than 40,000km	0.07	**0.10**	**0.13**	**0.17**	**0.20**

Operating costs method

Under this method, the taxable value of the vehicle is calculated using the actual costs incurred in operating the car and the actual private usage percentage. In order to be eligible for this method a logbook must be kept for 12 weeks and replaced every five years. The diary must contain for each business trip:

- Date the trip started and finished;
- Odometer readings at the start and finish of the trip;
- Purpose of the trip;
- Number of kilometres travelled;
- The entries should be made as soon as practical after the journey;
- The logbook should be in English.

At the completion of the 12-week period a business portion can then be calculated which will be the basis for determining the taxable value. If the business usage of the vehicle falls by more than 10 per cent, the logbook must be redone.

Formula for calculation – Operating cost

Operating costs ***times*** (private kilometres ***divided by*** total kilometres) **minus** employee contribution.

Operating costs include repairs, fuel, and registration, insurance and (if the car is owned) a deemed depreciation based on the FBT deemed depreciate rate, (i.e. 25% of car purchased after 10 May 2006) and an interest component based on the FBT benchmark rate of 5.65% for 31 March 2017 and 5.25% for 31 March 2018. If the car is leased, the leasing costs would take the place of depreciation and interest.

Example: At 1 April 2017 the written down value of a car provided to an employee is $40,108. Registration and insurance cost $1,600 and the employee paid for half of these. Fuel and repairs cost $4,000.

The logbook showed that 85 per cent of total kilometres travelled in the 12-week period were for business purposes.

The calculation is as follows:

Operating costs

Registration and insurance	$1,600
Fuel and repairs	$4,000
Depreciation (25% of $40,108)	$10,027
Interest component 5.25% of $40,000	$ 2,100
Total operating costs	$17,727

The business use percentage is 85 per cent; hence the private use is 15 per cent. The value of the benefit provided and the FBT payable is calculated as follows:

15% of $17,727	$2,659
Less employee contributions	($800)
Value of benefit	$1,859
Grossed up value $1,859 x 2.0802	$3,867
FBT payable = $3,867 x 47%	**$1,817**

CAR PARKING FRINGE BENEFITS

Where an employer provides a car park to an employee a taxable benefit may be made. A car parking benefit will arise when:

- There is a commercial parking station (not a kerb side parking meter) which charges more than $8.66 per day for 2017/18 (and $8.48 for 2016/17) for car parking within one kilometre of the employers premises;
- The employee parks their car in the employers car park for more than four hours between 7am and 7pm;
- The car is used by the employee to travel from home to work.

Small businesses that are neither a government body, nor a listed public company with a turnover of less than $10 million that provide parking on their own premises are exempt from FBT on these benefits.

Where a car parking benefit arises and a fringe benefit occurs there are a number of options for employers in calculating the value of the benefit, being:

- Commercial parking station method;
- The market value method;
- The average cost method;
- Statutory formula – spaces method;
- 12-week register method.

The commercial parking station method: Uses the lowest cost commercial all day parking station within a one kilometre radius of the employer's premises. It must be the day rate and the value of the benefit is reduced by any contribution made by the employee.

The market value method: Calculates the value of the benefit supplied by the employer to the employee by using an "arm's length" comparison. In other words, if the employee and employer were unrelated, how much would a person normally expect to pay to park there?

The employer must meet certain rules regarding documentation of such a valuation, being:

- The description of the car park;
- The number of parks valued;
- The day rate per car in the car park;
- The name of the valuer and that it is an arm's length valuation.

The value of the benefit is reduced by any contribution made by the employee.

The average cost method: Is calculated by reference to an average of the lowest fees charged by a commercial operator within a one kilometre radius of the employer on the first and last day of the FBT year.

The statutory formula – spaces method: The taxable value for each car space for an employee is determined by multiplying the daily rate amount by the statutory number of days – being 228 days.

The 12-week register method: Under this method the employer keeps a register and a listing of employees it covers. If over a 12-week period an employer provided 50 spaces with a taxable value of $9 each, the total taxable value would be:

50 (spaces) x $9 (each) x 52/12 (gross up)``	$1,950

So FBT would be:

Value of benefit provided (Inc GST)	$1,950
Taxable Value = $1,950 x 2.0802	$4,056
FBT payable = $4,056 x 47%	$1,907

DEBT WAIVER FRINGE BENEFIT

Where an employee receives a loan from an employer and that loan is later waived, the employer has provided a taxable benefit to the employee for the amount of the loan plus any unpaid interest.

LOW INTEREST LOANS

Where an employer provides a loan to an employee at a rate lesser than the benchmark rate of 5.25% for the year ended 31 March 2018 (5.65% for year ending 31 March 2017), a loan fringe benefit arises.

The benefit will be the difference in the interest rate charged and the relevant statutory rate.

If the employee could have claimed a deduction for the interest then the benefit will be exempt under the otherwise deductible rule (discussed later in this Chapter).

If the funds were advanced for the purposes of the employee paying for expenses in relation to their duties then that payment will also be exempt, provided the expenses are incurred within six months of payment and the loan does not greatly exceed the projected expenditure. The employee should keep detailed records and repay any unused funds.

EXPENSE PAYMENT FRINGE BENEFIT

An expense payment fringe benefit occurs when an employer pays an expense on behalf of the employee, for example a telephone bill.

The taxable value of the benefit is the amount paid for or reimbursed and can be reduced by the otherwise deductible rule.

> **For Example:** Jane's employer pays a $300 mobile phone bill on her behalf. Jane has kept records and of that $300, $200 was for work purposes. The taxable value of the benefit will be $100, being the private portion of the reimbursement.

ENTERTAINMENT

Entertainment fringe benefits arise on the provision of food, drink or recreation to an employee or their associates.

The determination of meal entertainment is crucial, as:

- Meal entertainment provided in respect of employees is tax deductible, subject to FBT, and enables the employer to claim GST input tax credits on the expenditure; and
- Meal entertainment provided in respect of non-employees is not tax deductible, not subject to FBT, and the employer is unable to claim GST input tax credits on the expenditure.

As such, it is necessary for employers to allocate their expenditure between that for employees and for non-employees. There are three methods to choose from in determining taxable value of meal entertainment.

These are:

- Based on actual costs incurred by the employee - the FBT is based on the costs of the actual entertainment provided to employees.
- Twelve Week Register Method - FBT payable is based on the total entertainment expenditure incurred by the employer on all employees for the year, multiplied by the register percentage. The register percentage is based upon a detailed register of expenditure in the period covered.
- 50/50 Split Method - the FBT payable is based on 50 per cent of the entertainment expenses paid by the employer during the FBT year.

Changes for employees

From 1 April 2016, there are changes to the FBT treatment of salary packaged meal entertainment and entertainment facility leasing expense benefits (meal and other entertainment benefits). Some of the changes will affect all employees, while others will affect employees of not-for-profit organisations.

The following applies to all employees:

- All salary packaged meal and other entertainment benefits are reportable and will be included on the payment summary where the reporting exclusion threshold is exceeded.
- The 50-50 split method and 12-week register method cannot be used by the employer for valuing salary packaged meal and other entertainment benefits which may affect how much an employee can salary package.

For employees who work for a not-for-profit employer:

- A separate single grossed-up cap of $5,000 will apply for salary packaged meal and other entertainment benefits for employees of not-for-profit organisations able to access a general FBT exemption or rebate ($30,000 or $17,000 exemption; or $30,000 rebate)
- The amount of those benefits exceeding the separate grossed-up cap of $5,000 are included in calculating whether the value of all benefits an employee receives exceeds the general FBT exemption or rebate cap.

This means that from 1 April 2017 employees can receive such benefits worth between $2,403.61 and $2,649.99 (depending on whether the employer is entitled to GST credits) without exceeding the $5,000 cap.

PROPERTY FRINGE BENEFITS

Where a benefit is provided to an employee such as any good, animal, real estate, legal property, gas and electricity etc, a property fringe benefit may arise.

These benefits can be divided into two groups: those benefits that are provided in the normal course of the employers business (in-house benefits), and those benefits that the employer would not normally provide as part of their business.

Goods normally sold to the public (in-house benefits): These are goods supplied by the employer to the employee that would normally be available to the general public.

For example: A furniture manufacturer that provides an employee with a piece of furniture. The first $1000 of the taxable value of an in-house benefit provided to an employee is exempt from FBT.

Furthermore, the taxable value of those goods is reduced to 75 per cent of the lowest price charged in the ordinary course of business for identical goods less what the employee paid for them.

For example: The furniture manufacturer sells a setting to an employee for $400 that it would normally charge the public $2000. The taxable value would be:

Normal retail price of $2,000 x 75%	$1,500
Less: Amount paid by employee	($400)
Less: in-house benefits exemption	($1,000)
Taxable Value of fringe benefit	**$ 100**

Goods not normally supplied to the public: The taxable value of these goods provided by the employer to the employee is the lowest arm's length price of identical goods, less what the employer paid for them.

CHANGES TO IN-HOUSE PROPERTY FRINGE BENEFITS

Changes have been made to the FBT law since 22 October 2012.

The taxable value of an in-house property fringe benefit provided under a salary packaging arrangement no longer receives the concessional FBT treatment. The taxable value of the in-house property fringe benefit is the market value from 22 October 2012 onwards. However, transitional rules apply to salary sacrifice arrangements entered into prior to 22 October 2012.

HOUSING FRINGE BENEFITS

A housing fringe benefit arises when an employer provides to an employee and/or their associates a unit of accommodation that will be used as a normal place of residence.

The term unit of accommodation is broad and can refer to a house, flat, unit, hotel, motel, guesthouse, ship, caravan or mobile home.

The taxable value of the benefit is the market value of the accommodation, less any amount contributed by the employee.

If accommodation is provided in the normal course of business for the employer (for example: a motel operator) the taxable value of those goods is reduced to 75 per cent (see above for in-house benefits supplied to an employee as a worked example).

BOARD FRINGE BENEFITS

Board fringe benefits apply when an employee is provided with accommodation and they are entitled to two meals per day under an award or employment arrangement.

Normally this would apply to shearers, stock workers and employees that work in remote locations such as oil rigs and ships. These meals must be cooked, prepared and provided on the employer's premises.

The taxable value of each meal provided to a person 12 years or over is $2 and $1 for those under 12 years of age.

REMOTE AREA ACCOMMODATION

Benefits provided for remote area accommodation are exempt from FBT.

In order to be considered remote:

- The accommodation must be 40km or more from a town with a population of 14,000 or more;
- The accommodation must be 100km or more from a town with a population of 130,000 or more;
- For Zone A + B accommodation, the accommodation is considered remote if it is 40km or more from a town with a population of 28,000 or more; or 100km from a town that has a population of 130,000 or more.

LIVING AWAY FROM HOME ALLOWANCES (LAFHA)

Transitional rules that applied to Living Away From Home Allowance (LAFHA) benefits where agreements were entered into prior to 7.30pm on 8 May 2012 phased out on 1 July 2014.

If there were such agreements in place for employees required to live away from their usual place of residence, it is necessary to consider whether the new rules to alter the FBT exemption apply to the food and accommodation components of the allowance for the FBT year ending 31 March 2015 and future years.

The new rules only allow the exemption for employees who owned or leased a home in Australia personally, or whose spouse did, throughout the assignment period during which the employee was required to live away from home. The use of that residence must have continued to be available to them during the period of their assignment.

That residence must reasonably be expected to remain at their home at the assignment's conclusion.

Even where the above conditions are satisfied, the new rules only allow the exemption to apply for a 12 month period, commencing from the start of the assignment.

For employees subject to the transitional rules, the 12 month period was deemed to have commenced on 1 October 2012.

This will mean no exemption may apply for your employees who had already been on assignment during the transitional period.

LAFHA as defined by the ATO is:

"An allowance that must be in the nature of compensation to the employee for additional expenses incurred as a consequence of an employee being required to live away from their principle place of residence in order to perform the duties of that employment."

The key terms here are "Additional expense" and "Principal Place of Residence".

These are clear indications of the nature and intention of LAFHA being an allowance for inconveniencing an employee.

You must be considered an employee who is living away from your usual place of residence when:

- There is no change of job location (and the family may follow);
- The employee intends to return to their original location after time away; and
- The period away exceeds 21 days (ATO 'rule of thumb').

LAFHA is paid in two components, the Accommodation Component and Food Component.

The Accommodation Component

The Accommodation Component must pass the ATO test so that it is considered to be "reasonable" for you, e.g. a one bedroom apartment for a single person or multiple bedrooms for a family in a "middle of the range" dwelling. The key here is to apply "common sense", ensuring the ATO is never given cause to investigate you.

However, once an employee or a contractor starts to make their own decisions regarding lifestyle and employment changes such as selling their former place of residence or deciding to remain in the temporary place of residence indefinitely, LAFHA ceases to be payable. Further, if a contractor moves interstate to work for one recruitment company and then transfers to another recruitment company, LAFHA will cease.

Any overpayments will always have to be paid back to the ATO without exception.

Living Away From Home Allowance – Food guidelines

Under the Fringe Benefits Tax (FBT) rules, individuals who satisfy the living away from home criteria can be paid a Living Away From Home Allowance (LAFHA) which benefits from concessional tax treatment. Each year the ATO issues guidelines for the amount of the food component it will regard as reasonable.

The table below breaks down the reasonable food component amounts into the statutory and exempt components, and the maximum amounts that can be paid to employees on a tax-free basis for each family size of the FBT years ended 31 March 2017 (Tax Determination TD 2016/4) and 31 March 2016 (TD 2015/7)

Reasonable Food Components	31 March 2017	31 March 2018
1 adult	$242 per week	$247 per week
2 adults	$363 per week	$371 per week
3 adults	$484 per week	$495 per week
1 adult and 1 child	$303 per week	$309 per week
2 adults and 1 child	$424 per week	$433 per week
2 adults and 2 children	$485 per week	$495 per week
2 adults and 3 children	$546 per week	$557 per week
3 adults and 1 child	$545 per week	$557 per week
3 adults and 2 children	$606 per week	$619 per week
4 adults	$604 per week	$619 per week

AIRLINE FRINGE BENEFITS

Changes to airline transport fringe benefits

There is no longer a separate category of fringe benefit for airline transport fringe benefit. Airline transport fringe benefits are now taxed under in-house property or in-house resident fringe benefit.

The Government has updated the method of determining the taxable value of airline transport fringe benefits from stand-by value to market value. This measure applies to benefits provided after 7.30pm (AEST) on 8 May 2012.

An airline transport fringe benefit may arise when an employee of an airline or travel agent is provided with free or discounted travel on a stand-by basis. The taxable value of airline transport fringe benefits is currently the stand-by value of the benefit less the employee contribution. This method was developed when stand-by travel was a feature of commercial airline pricing and staff could be displaced from a flight up to the time of boarding. According to the Government the concept of standby travel, however, is no longer commercially relevant as airlines now use discounted pricing to optimise passenger levels.

This reform progresses recommendation 9(a) of the Australia's Future Tax System review, which stated that "market value should generally be used to value fringe benefits."

RESIDUAL FRINGE BENEFITS

Any other benefit provided to an employee who is not specifically covered by the FBT legislation may come under the realms of a residual fringe benefit.

Apart from the limits for in-house benefits, the taxable value will be the value an arm's length person would have paid for the same benefit, less any contribution made by the employee.

CHANGES TO IN-HOUSE RESIDUAL FRINGE BENEFITS

Changes have been made to the FBT law since 22 October 2012.

The taxable value of an in-house residual fringe benefit provided under a salary packaging arrangement no longer receives the concessional FBT treatment. The taxable value is the notional value at the comparison time, reduced by employee contribution. However, transitional rules apply to salary sacrifice arrangement entered into prior to 22 October 2012.

OTHERWISE DEDUCTIBLE RULE

The taxable value of a fringe benefit may be reduced or eliminated under the otherwise deductible rule.

This occurs where the employee would have been able to gain a tax deduction for the expense in their own return had the employer not paid the expense. Where there is a private portion involved that part only would be subject to FBT.

It is necessary for the employer to obtain a declaration from the employee that the benefit is being used for employment purposes.

> **For example:** Mike is an engineer with BHP Ltd. His employer pays his annual Institute of Engineers membership which is a professional association. The renewal costs $750. As an employee engineer Mike would have been able to claim that expense personally, so under the operation of the otherwise deductible rule the taxable value of the benefit would be zero.

As a result of the National Bank case where a benefit is provided jointly to an employee and an associate, the benefit is deemed to be received solely by the employee (section 138/C31). This case related to a low interest loan to a bank employee.

The otherwise deductible rule was amended (effective 13 May 2008) to ensure that the full value of a benefit that has been provided to both an employee and an associate is subject to FBT. An example would be a low interest loan related to an investment property.

The intention here is to overcome the decision in the National Bank case and reinstate the principle that deductions relating to the jointly held assets be allocated between owners according to their legal interests.

REPORTABLE FRINGE BENEFITS

Employers are required to include the grossed up amount of reportable fringe benefits on the payment summaries of their employees.

Whilst not subject to tax, these amounts are added to the employer's taxable income in order to:

- Assess income levels for the purposes of some welfare payments, including child support;
- Assess liability for the Medicare levy surcharge;

- Determine entitlement to a personal superannuation deduction where it is claimed that income from the employer is less than 10% of total income;
- Be added to taxable income to determine HECS repayment income.

If the total value of fringe benefits provided to the employee is less than $2,000 no amount needs to be reported.

Reportable fringe benefits are grossed up, so a fringe benefit with a taxable value of $2,000 becomes a reportable fringe benefits amount of $4,160.

EXEMPT BENEFITS

The following are some of the key items that are exempt from FBT:

- Minor and infrequent benefits of less than $300 ;
- Work-related items, including:
  - Tools of trade;
  - Laptops and portable printers;
  - Subscriptions to work-related journals;
  - Corporate credit cards;
  - Airport lounge memberships;
  - Mobile phones with minor private use;
  - Protective clothing;
  - Briefcase;
  - Calculator and electronic diaries – from 13 May 2008, the exemption is limited to one item of each type per employee per FBT year (unless it is a replacement item)
- Benefits provided to employees of public and non-profit hospitals are exempt to a maximum grossed up value of $17,000 per employee;
- Taxi travel required due to illness or injury, also any travel that begins or ends at the employee's place of work;
- Healthcare, food, clothing, accommodation and transport provided in cases of emergencies;
- Private telephone calls made on work phones;
- Food and drink consumed on business premises on a work day;
- Living Away From Home Benefits: If the employee is required to live away from their usual home to perform employment duties certain prescribed benefits, including food and accommodation allowances, may be provided FBT-free;
- Benefits provided to employees of public benevolent institutions. The exemption is limited to a grossed up value of $30,000 per employee.
- In-house Benefits: Recreational facilities, child care facilities located on the employer's business premises, health care facilities and car expense payments where the employee is reimbursed on a cents per kilometre basis, car parking on the employer's business premises if the employer has gross income of less than $10 million. From 1 April 2014, Concessional benefits were removed for in-house benefits if they are accessed through a salary sacrifice arrangement;
- Relocation Costs: Expenses incurred in moving an employee from one location to another for work purposes;
- Medical Treatment under Workers' compensation, Workers' Compensation Insurance and medical services provided on-site are exempt from FBT;
- Use of Business Property: Private use of plant and equipment on business premises and used principally for business purposes;
- Remote Area Housing: Provided by employers in remote areas; and
- Newspapers and periodicals used for business purposes.

FBT EXEMPTIONS FOR WORK-RELATED ELECTRONIC DEVICES

From 1 April 2016, small business employers are able to provide employees with multiple electronic devices to use for work without incurring a fringe benefits tax (FBT) liability.

Employers can provide to employees:

- Mobile phones
- Tablets
- Laptops
- Calculators
- GPS navigation receivers

If you need more than one device for work, your employer may be more receptive to your request given the FBT exemptions.

FBT REBATE

The FBT rebate is an entitlement to a rebate equal to 47% of the gross FBT payable, subject to a capping threshold.

Organisations that qualify for an FBT rebate are referred to as 'rebatable employers'.

Rebatable employers are entitled to have their liability reduced by a rebate equal to 47% of the gross FBT payable (subject to a $30,000 capping threshold). If the total grossed-up taxable value of fringe benefits provided to an employee is more than $30,000 a rebate cannot be claimed for the FBT liability on the excess amount.

Charities must be endorsed by the ATO in order to access the FBT rebate. Other non-profit organisations can self-assess their entitlement.

Rebatable employers are certain non-government, non-profit organisations. Organisations that qualify for the FBT rebate include:

- Certain religious, educational, charitable, scientific or public educational institutions;
- Trade unions and employer associations;
- Non-profit organisations established to encourage music, art, literature or science;
- Non-profit organisations established to encourage or promote a game, sport or animal races;
- Non-profit organisations established for community service purposes;
- Non-profit organisations established to promote the development of aviation or tourism;
- Non-profit organisations established to promote the development of Australian information and communications technology resources, and
- Non-profit organisations established to promote the development of the agricultural, pastoral, horticultural, viticultural, aquacultural, fishing, manufacturing or industrial resources of Australia.

Capping of concessional FBT treatment for certain employers

Employer	FBT Concession
Public benevolent institution (other than public hospitals) and health promotion charities	FBT exemption (capped at $30,000)
Public hospitals, non-profit hospitals and public ambulance services	FBT exemption (capped at $17,000)
Rebatable employers – certain non-government and non-profit organisations	FBT rebate (capped at $30,000)
Religious institutions	FBT rebate (capped at $30,000)

Your Notes

CHAPTER 15
Pay As You Go (PAYG)

PAYG is the method by which tax is collected at the source of the payment.

The main benefit of this system is that it allows people to pay tax progressively so they don't end up with a lump sum payable at year end. These payments normally form part of the recipient's taxable income.

PAYG is reported using activity statements either Business Activity Statements (BAS) or Instalment Activity Statements (IAS). A BAS is used when a taxpayer is registered for GST as well.

There are two types of PAYG withholding:

- PAYG Withholding System (PAYGW) – this is the system for paying tax that you have withheld from others;
- PAYG Instalments System (PAYGI) – this is the system by which you pay your own tax, and is applicable to a number of different types of taxpayers.

PAYG WITHHOLDING (PAYGW)

Common payments where PAYG is withheld are:

- Salaries, wages, allowances, commissions, and bonuses paid to an employee;
- Payments to a company director;
- Payments to an office holder;
- Return to work payments to individuals;
- Payments made under a voluntary agreement between the payer and payee;
- Payments made under a labour hire agreement;
- Social welfare payments;
- Payment of a pension or annuity;
- Compensation payments for injury or illness;
- Employment Termination Payments;
- Payment for unused annual leave;
- Payments to a business where no ABN has been quoted.

EMPLOYEE -V- CONTRACTOR

PAYG Withholdings cannot be circumvented by treating a person as if they were a contractor and have them quote an ABN.

The ATO outlines key areas to consider when deciding whether the nature of the arrangement is an employer / employee or contractor. These are listed below:

- **Control over work:** An employee works in the business of the employer and has an implied obligation to undertake duties as directed by his or her employer. A contractor on the other hand will be contracted to perform a specific duty or outcome and they are in control (subject to contract conditions) as to how that is done;
- **Independence:** An employee performs work in accordance with an employment contract, whereas a contractor provides the service as per the contract and further services are only by agreement;
- **Payment:** An employee is often paid on the amount of time worked, whereas a contractor is usually paid on performance of the contract services;
- **Commercial Risks:** An employee generally bears no commercial risk in undertaking their job. They work for an employer who is legally responsible for the work of the employee. A contractor assumes legal responsibility for their work. They can either profit or loss from a contract and are liable to fix defects at their own cost;
- **Ability to Delegate:** An employee usually performs the work personally and does not have the ability to delegate their duties to others. A contractor (unless specified in the contract) can delegate to others or subcontract the work;
- **Tools of Trade:** In most cases an employee will be provided with all the necessary tools of trade to complete their tasks. A contractor would normally provide their own tools of trade.

LABOUR HIRE ARRANGEMENTS

These are a three way agreement whereby a labour hire company pays a worker who carries out work for a client. The worker is not deemed to be an employee of either the labour hire company or the client.

Provided the labour hire company quotes an ABN, the client is not required to withhold PAYG; however, the labour hire firm is required to deduct PAYG from payments made to the worker.

VOLUNTARY AGREEMENTS

This covers arrangements between an entity and an individual where they are not otherwise covered by the PAYG system.

For this arrangement to exist the following is required:

- The worker must be an individual and have an ABN;
- Each party must complete the approved form from the ATO stating that payments made under the arrangement are subject to the voluntary agreement;
- Each party must keep a copy of the agreement for a period of five years after the final payment under which the agreement has been made;
- Either party may end the agreement by notifying the other party in writing.

The withholding rate is a flat 20 per cent or the rate notified by the ATO on the payee's instalment notice (whichever is the higher). If the rate on the payee's instalment notice is lower than 20 per cent, then that rate can be used provided the payer and payee agree.

ALLOWANCES

PAYG is withheld at normal rates from most allowances paid to employees.

Some common areas where it is not required to be withheld are:

- Cents per kilometre motor vehicle allowances to employees using the Tax Office rates of 66 cents per km up to 5,000 km of travel;
- Award transport payments for deductible transport expenses;
- Laundry allowance for deductible clothing up to threshold amount of $150;
- Award overtime meal allowances up to reasonable allowances amount; and
- Domestic or overseas travel allowances for overnight (can be more than one night) travel up to reasonable allowances amount.

HOW MUCH DO I WITHHOLD?

Amounts withheld from employees (and other similar payments as mentioned above under "Common payments where PAYG is withheld") are published by the ATO and available in a downloadable calculator or tables (www.ato.gov.au).

Care must be taken to ensure that additional amounts that may be needed to be withheld are taken into account given the employees' circumstances, for example: HECS-HELP debts, residency status, second job, family benefits.

These scales can only be used if the employee has filled out a Tax File Number Declaration on commencement of their employment. If no tax file number is quoted then an amount of 47 per cent is withheld. Also noted on the Tax File Number Declaration are other particulars which may affect the amount of tax withheld (as noted above, HECS-HELP etc.)

An employee may apply to have the amount of PAYG withheld varied if they believe their circumstances would allow for a lesser amount of tax being paid out of their regular pay packet (for example rental property losses). The ATO will notify the employer directly of the new rate for withholding.

ABN NOT QUOTED

Where a supplier fails to quote an ABN in respect to a supply made for over $75, the payer is required to withhold at 47 per cent.

PAYG withholding is not required where:

- The payer accepts the supplier's ABN in good faith and it later turns out the supplier's ABN was false;
- The payer is an individual and the supply is a domestic or private matter;
- The payee is an individual and makes a written statement to the payer that the supply was made in a private or domestic manner or in the pursuit of a recreational interest or hobby;
- The payee is exempt from income tax;
- Where the payee is performing contract work and is under 18 years of age and payment does not exceed $120 per week.

NON-CASH BENEFITS

Payers that use non-cash benefits such as goods and services as remuneration for services are required to deduct an amount of PAYG equal to that as if the goods and services were paid in cash.

PAYER OBLIGATIONS UNDER PAYG

Once a payment is deemed to be included under the PAYG system, the ATO places certain obligations on the payer, who must:

- Register as a PAYG withholding payer with the ATO;
- Withhold an amount from the payment at the required rate;
- Notify in the prescribed format to the ATO the amount withheld AND make payment by the due date;
- Report to the ATO and the recipient the amount of the payment and the amount withheld. In the case of an employee this would be the annual PAYG payment summary (non-business), previously known as a group certificate.

WITHHOLDING FROM CLOSELY HELD TRUSTS

The TFN withholding arrangement also extends to closely held trusts, including family trusts.

The withholding rules apply if the trustee of a resident trust estate that is a closely held trust makes a distribution to a beneficiary during the income year and some or all of the distribution is from the ordinary or statutory income of the trust. The beneficiary must be an Australian resident, not an exempt entity and not under a legal disability.

The trustee must withhold an amount from the distribution if the following conditions are met:

- The beneficiary did not quote a tax file number to the trustee before the distribution time
- The trustee is not liable to pay tax in connection with the distribution
- The trustee is not required to make a correct trustee beneficiary statement in connection with the distribution; and
- Family trust distribution tax is not payable in connection with the distribution.

Similar rules apply if the beneficiary becomes presently entitled to a share of the net income of the trust.

The TFN withholding rate on the distribution or present entitlement is usually 47%.

PAYG INSTALMENTS (PAYGI)

This includes:

- Individuals;
- Partners in a partnership;
- Beneficiaries of a trust;
- Trustees of trusts;
- Superannuation funds;
- Companies;
- Other entities that are taxed like companies.

ATO ADVISED INSTALMENT AMOUNT

Individuals, companies and superannuation funds with an annual turnover of less than $2 million are eligible to pay a quarterly instalment as advised by the ATO, instead of calculating the amount based on an instalment rate advised by the ATO.

This amount will be pre-printed on your statement for that period and the election to adopt this method is made on the first activity statement of the financial year. The instalment amount is calculated based on your prior year's tax (excluding capital gains).

If you consider your instalments are too high due to a change in income in the current year, they can be varied. Once you have estimated your benchmark tax for the current year (tax payable excluding capital gains) you can estimate your revised quarterly instalment amount. Care must be taken however, as if your estimation is less than 85 per cent of your actual tax for the year you will be liable for interest on the underpayment and may also be fined.

ATO ADVISED INSTALMENT RATES

If you are not eligible or elected not to pay an instalment amount, the ATO will advise you of an instalment rate on your BAS.

This rate is multiplied by your instalment income for the period to give your payment amount.

Instalment Income includes:

- Gross sales or fees received (ex. GST);
- Interest;
- Dividends (excluding imputation credits);
- Rental income;
- Distributions from trusts & partnerships;
- Royalties.

Instalment Income does not include:

- Salary and wages;
- Income where PAYG has otherwise been withheld;
- Exempt income;
- Capital gains (unless you are a superannuation fund);
- Imputation credits.

PARTNERSHIP INSTALMENT INCOME

A different method applies to the calculation of instalment income if you are a partner in a partnership.

Firstly you must calculate your share of gross income for the last year in which you received an assessment.

For example: The annual instalment income of a partnership for the previous year was $200,000 and your share of the profit was $50,000. To calculate your instalment rate you take $50,000 and divide it by $200,000 which gives 25 per cent. This rate is then multiplied by the current quarter instalment income for the partnership to calculate your individual instalment income for this quarter.

If in the prior year the partnership was in a loss situation and will be profitable this year, then you are expected to reasonably calculate your instalment income. If there is a restructuring of the partnership and a partner is added or leaves, similar reasonable estimates need to be made.

TRUST INSTALMENT INCOME

The type of trust you are receiving income from impacts on how instalment income is calculated.

DISCRETIONARY AND FAMILY TRUSTS

Calculation of instalment income uses the same method as for partnerships (see previous.)

BROADLY HELD RESIDENT INVESTMENT UNIT TRUSTS

These trusts are resident trusts that have central management control and are offered to the public and are publicly listed.

Typical examples of these are managed funds operated by large managers such as AMP. If you are the beneficiary of this type of trust, include ALL amounts (including capital amounts and items that may relate to a past or future year) that have been distributed to you as instalment income for the period.

CORPORATE UNIT TRUSTS AND PUBLIC TRADING TRUSTS

These trusts are taxed as though they were companies.

If you are the beneficiary of this trust you include only the cash distribution as your instalment income.

ABSOLUTELY ENTITLED TRUSTS

In these trusts the only duty of the trustee is to administer the trust property and income as the beneficiaries direct.

These beneficiaries include as instalment income their portion of income for the relevant period.

INSTALMENT INCOME – SUPERANNUATION FUNDS

Instalment income of a superannuation fund would include:

- Dividends;
- Interest;
- Taxable contributions;
- Distributions received;
- Net capital gains;
- Foreign income.

INSTALMENT INCOME – CASH OR ACCRUALS?

Generally a taxpayer is required to account for their instalment income on the same basis as which they lodge their income taxation returns.

CHANGES TO PAYG INSTALMENTS THRESHOLD

From 1 July 2014, PAYG instalment thresholds increased which may mean you no longer need to pay instalments.

The entry and exit thresholds for:

- Business or investment income increased from $2,000 to $4,000
- Adjusted balance of assessment increased from $500 to $1,000
- Notional tax increased from $250 to $500

If you no longer meet the entry and exit rules you will be automatically exited from the PAYG instalment system. However, you can continue to pay instalments towards your end of your tax liability if you voluntarily re-enter the PAYG instalment system.

ACTIVITY STATEMENTS

Activity Statements are used to report and remit payment for PAYG instalments and PAYG withholding (amongst other taxes as well).

These statements will take the form of a BAS (business activity statement) or IAS (instalment activity statement).

A BAS is used where an entity is registered for GST; an IAS is used for all other payers. If you registered for quarterly statements then your lodgement will be due on the 28th of October, February, April and July. Concessional lodgement dates apply if you use a registered Tax or BAS Agent who lodges your BAS electronically.

If you are registered for monthly statements (either by choice or due to turnover and amounts withheld) your statements will be due by the 21st of each month following the period of activity.

The amount that a business withholds from its employees determines when they will have to report and remit payment to the ATO. If you withheld less than $25,000 from your employees in the previous year, then you will be a quarterly payer with due dates as mentioned above. If your annual withholding is between $25,001 and $1 million then you will be a monthly PAYG payer with due dates as mentioned previously.

If you are a large withholder (more than $1 million) then you will be required to make payments electronically on a weekly basis to the ATO. Your date for payment depends upon the day withholding took place. Please refer to NAT3301 for a list of due dates.

For example: Daisy Pty Ltd is a manufacturing company with an annual turnover of $850,000 and elects to lodge its BAS quarterly. Last year Daisy Pty Ltd withheld $100,000 from payments to employees for PAYG. As Daisy Pty Ltd exceeds the threshold and is deemed to be a medium withholder, it will have to complete monthly IAS's. At the end of each quarter it will only receive one statement which will contain the GST and IAS details. Importantly, the GST amounts on this statement are for three months, whereas the PAYG withheld from wages is only for one month.

ANNUAL PAYERS

Some PAYG payers will be eligible to make annual payments, you qualify if:

- Your most recent notional tax as advised by the ATO was less than $8,000;
- You or your partnership (if you are in one) are registered for GST and you report and pay GST annually;
- As a company you are not part of any other instalment group or GST joint venture.

Payment for annual payers is due on 21 October.

LATE LODGEMENT AND/OR PAYMENT

The ATO enforces hefty fines and interest for statements and payments that are lodged late.

Fines for late or non lodgement range from $210 to $5,250 depending on the size of the entity, and can increase depending on how long the statement is overdue. These fines are not tax deductible and the penalty unit is currently $210.

Interest is usually charged where a payment is not paid on time. The General Interest Charge (GIC) is usually tax deductible for business taxpayers.

GIC is charged on a daily compounding basis. Rates since 2013 tax year are as follows:

General Interest Charge

Quarterly Period		Quarterly Period	
30 September 2012	10.66%	30 June 2015	9.36%
31 December 2012	10.62%	30 September 2015	9.15%
31 March 2013	10.24%	31 December 2015	9.14%
30 June 2013	9.95%	31 March 2016	9.22%
30 September 2013	9.82%	30 June 2016	9.28%
31 December 2013	9.60%	30 September 2016	9.01%
31 March 2014	9.59%	31 December 2016	8.76%
30 June 2014	9.63%	31 March 2017	8.76%
30 September 2014	9.69%	30 June 2017	8.78%
31 December 2014	9.63%	30 September 2017	8.73%
31 March 2015	9.75%		

It is important to lodge and remit payment on time wherever possible. If not possible for a given lodgement, advise the ATO immediately. Often they will not impose fines for late lodgement in genuine circumstances where a taxpayer has a good lodgement history.

PAYG TIMETABLE MONTHLY PAYMENTS

The May 2013 Budget extended the monthly PAYG Instalment regime to include all large entities subject to PAYG Instalments, including Trusts, Superannuation Funds, Sole Traders and large investors.

These measures are in addition to previously announced changes for companies. Monthly payments of PAYG Instalments will be phased in as follows:

1 January 2014 - Companies with Base Assessment Instalment Income (BAII) of $1 billion or more

1 January 2015 – Companies with Base Assessment Instalment Income (BAII) of $100 million or more

1 January 2016 – Companies with Base Assessment Instalment Income (BAII) of $20 million or more

– Other entities with Base Assessment Instalment Income (BAII) of $1 billion or more

1 January 2017 – Other entities with Base Assessment Instalment Income (BAII) of $20 million or more

ADDITIONAL METHOD FOR MONTHLY PAYG INSTALMENTS

If you pay your PAYG Instalments on a monthly basis, there is an additional simplified method for calculating your instalments that you may be entitled to use.

This method is designed to reduce the cost of calculating instalments on a monthly basis.

How to apply the additional method

If you choose to use the additional method you will not need to calculate your actual instalment income every month. For the first two months of each instalment quarter you can make a reasonable estimate of your instalment income and apply your instalment rate. In the third month of each quarter you calculate the total instalment income for the quarter and subtract the estimates used in the first two months. The payment in the third month will be the balance remaining for the quarter, multiplied by your instalment rate.

Eligibility to apply the additional method

Anyone who is paying their PAYG instalments on a monthly basis can use this method, provided they have not been told by the Commissioner that they must calculate their actual instalment income each month.

There are some rules about how you can start to apply this method which is explained below.

New monthly instalment payers

If you are a new monthly payer you can chose to use the additional method in either of the following months:

- The first month of the first instalment quarter in which you become a monthly payer;
- The first month of the second instalment quarter after you become a monthly payer.

This allows you to transition to the new measure and provides some flexibility, particularly if you begin paying monthly instalments part way through an instalment quarter.

Existing monthly payers

If you are already paying your instalments monthly, you will be able to make the choice to use the additional method at the start of each income year. The method must be applied from the first month of your income year.

If you choose to use the method in the first month of your income year, you must use the method for the remainder of the income year.

Electing to use the additional method

You do not need to formally notify the Commissioner. You should keep a record of your decision and how you applied the additional method to obtain your estimates from a particular reporting period.

What constitutes a reasonable estimate?

The Commissioner has not stipulated how you should calculate the estimate of your instalment income for a particular month.

However, if you use one third of the previous quarter's actual instalment income as your estimated instalment income for the first and second months of the next quarter, the Commissioner will accept this as reasonable, provided you use it consistently within an income year.

Special rule if the instalment for the third month is negative

If the instalment for the third month of a quarter is negative when using the additional method, you cannot apply for a refund. Instead you will need to revise your instalment income from the previous month(s), starting with the most recent month first. You can do this by lodging a revised activity statement for the applicable month(s).

Leaving a consolidated group

You can use the additional method if, after you leave a consolidated group, you become a monthly payer from the beginning of the first month in a quarter. However, if you become a monthly payer from the beginning of the second month in a quarter you must calculate your actual instalment income for the remainder of the quarter. In this case, you can start to use the additional method to calculate your instalment income from the beginning of the next quarter.

Varying your instalment rate

The additional method does not change the rules regarding variations. If you choose to use the additional method you can still vary your instalment rate in any month.

Incorrect application

If you fail to comply with the rules for applying the additional method, the Commissioner can require you to calculate your actual instalment income. Examples of incorrect application include failing to make a reasonable estimate or choosing to use the method when you are not eligible.

If you are using the additional method and are consistently reporting lower instalment income in the first two months of the instalment quarter you may become the subject of a review. In these circumstances the Commissioner may request information from you that will assist in determining if you have not complied with the rules of applying the additional method.

SBE CHANGE OF COMPANY TAX RATE

From June 2017 activity statements will incorporate the lower 27.5% tax rate for eligible companies.

If you think you are eligible, but your current activity statement does not reflect the reduction in corporate tax rate, you can vary your instalment rate or amount yourself.

Companies that choose to vary to reflect the rate reduction will not be subject to a variation penalty.

ATO CHANGES LODGEMENT REQUIREMENTS FOR ORGANISATIONS WITH OVER $20 MILLION GST TURNOVER

If your organisation turnover is more than $20 million annually there are changes to the New Tax System (Goods and Services Tax) Act 1999 (GST Act) that you need to be aware of.

The GST Act requires all entities with over $20 million GST turnover to report monthly and lodge activity statements electronically.

The ATO will continue to send paper activity statements irrespective of an entity's turnover. However, this does not remove the obligation to switch to electronic reporting for entities with over $20 million GST turnover.

If you have an AUSkey, you can log into the business portal at www.ato.gov.au to lodge the business statement, or if you do not have an AUSkey you can register at www.auskey.abr.gov.au.

Alternatively, if you use standard business reporting, you can automatically create and securely send the ATO selected forms online directly from your financial, accounting, or payroll software.

The amendments to the GST Act do not require organisations under $20 million turnover to change their reporting method.

Please note that if your organisation turns over $20 million but does not submit its returns electronically, or does not pay its GST liabilities, the organisation may be subject to a penalty of up to $850 per event.

PAYG WITHHOLDING VARIATION TAA 1953

The ATO from 1 July 2015, vary to nil the amount required to be withheld from withholding payments that are:

- Covered by sections 12-35, 12-40 and 12-45 of Schedule 1 to the Taxation Administration Act 1953;
- Within the class of cases described below.

This amount is required to be withheld under the power contained in section 15-15 of Schedule 1 to the Taxation Administration Act 1953 to meet the special circumstances of that class of cases.

Repeal of previous instrument

Taxation Administration Act 1953 – PAYG Withholding Variation: Allowances – F2013L00521, registered on 21/03/2013 is repealed on the commencement of this Instrument.

Class of cases

There is no requirement to withhold an amount of allowances as described below, provided:

- The payee is expected to incur expenses that may be able to be claimed as a tax deduction at least equal to the amount of the allowance;
- The amount and nature of the allowance is shown separately in the accounting records of the payer.

Allowances

- Cents per kilometre car expense payments up to amounts calculated using the approved cents per kilometre rate (to a maximum of 5,000 business kilometres).
- Award transport payments for deductible transport expenses. An award transport payment is a transport payment paid under an industrial instrument (i.e. an award, order, determination or industrial agreement) that was in force under Australian law on 29 October 1986.
- Laundry (not dry cleaning) allowance for deductible clothing up to the threshold amount. The income tax law specifies an amount of $150 as the threshold amount, but this can be increased from time to time by regulation.
- Award overtime meal allowances up to reasonable allowances amount published in the annual ATO Ruling. The allowance must be paid under an industrial instrument in connection with overtime worked.
- Domestic or overseas travel allowance (excluding overseas accommodation allowance) involving an overnight absence from the payee's ordinary place of residence up to reasonable allowances amount published in the annual ATO Ruling.

WITHHOLDING DECLARATIONS & VARIATIONS

Withholding Declaration

Complete this declaration if the following applies:

You have completed a Tax file number declaration (NAT 3092) with your current payer and you now want to:

- advise your payer that you have become, or ceased to be, an Australian resident for tax purposes
- claim or discontinue claiming the tax-free threshold
- advise your payer of your Higher Education Loan Program (HELP), Student Start-up Loan (SSL), Trade Support Loan (TSL) or Financial Supplement repayment obligations, or make changes to them
- claim your entitlement, or vary your entitlement to a tax offset (including the seniors and pensioners tax offset – SAPTO).

Withholding Variation

A PAYG Withholding Variation Application can be completed to vary (up or down) the amount of PAYG withheld by your employer.

The application is valid for one year only and can be lodged at any time in the application year up until 30 April.

The main purpose of varying the amount of withholding is to make sure that the amount withheld during the income year best meets your end-of-year tax liability. For example, if you are going to be due a large refund due to a rental property being negatively geared, you may want to lodge an application.

CHAPTER 16
Accounting Methods and Income Tax

INCOME RECEIVED IN ADVANCE

Monies that are received for goods or services to be rendered over a period of time are not required to be brought to account until they have been earned.

Examples of this would be where monies are paid in advance for the provision of fixed term service contracts such as computer services, the provision of magazine subscriptions, the provision of tennis lessons, etc. This principle also applies to deposits for goods or services to be manufactured and delivered at a later date – including lay-by sales. It is therefore essential in these instances that the accounting records of a business identify the advance payments as liabilities and not income.

PREPAID EXPENSES

Section 8(1) of ITAA 1997 allows a deduction for a loss or outgoing incurred in the relevant income or business activities provided that it is not of a capital, private or domestic nature.

Accordingly, a payment incurred for goods or services to be provided in the future appears to be deductible under this section.

However there are specific prepayment provisions (sections 82KZL to 82KZO of the ITAA36) that potentially apply to these types of expenditures. In effect, the ability to claim outright deductions for prepaid expenses of $1,000 or more for items such as services, interest and lease payments etc, is only available to businesses that are in the SBE. Alternatively, the prepaid amount is to be written off over the period to which it relates. At this stage the prepayment provisions do not apply to prepayments made under timber plantation managed investment schemes.

INCOME FROM LONG-TERM CONSTRUCTION CONTRACTS

In respect of long-term construction contracts that may apply to certain industries, the ATO has issued Tax Ruling IT 2450 in which it explains the two allowable methods available for the accounting of profits.

Some of the industries to which this applies include:

- Building industry
- Major refurbishment projects
- Civil engineering
- Ship building

It is imperative that the method chosen is applied consistently, both during the years for which the particular contract runs and also to all similar contracts that are entered into by the taxpayer.

The two allowable methods are:

- **Billings Method/Basic Method**

This requires all progress and final payments received in a year (including amounts billed or entitled to be billed in the year) to be included in assessable income. An income tax deduction is allowed for losses and outgoings as they are incurred; and

- **Estimated Profits Method**

The taxpayer is permitted to spread the ultimate profit or loss over the term taken to complete the contract, provided that the basis is reasonable and is in accordance with accepted accountancy principles.

The ultimate profit or loss is required to reflect the anticipated profit on the project. This profit or loss may be adjusted from year to year in order to reflect any changes that may have been caused by price increases in material, labour and other costs, industrial disputes and delays caused by other factors for example, weather.

The completed contract method, where profits or losses are deferred until the completion of the contract, is not accepted by the ATO.

TRADING STOCK

Trading stock is defined as including any item that is produced, manufactured or acquired, and which is held for the purpose of manufacture, sale or exchange in the ordinary course of a taxpayer's business.

This definition also specifically includes livestock used in primary production activities (section 70-10 ITAA 1997).

In addition, land that is owned by a developer or land trader may be considered to be trading stock depending upon the intention for that property.

Note that work in progress forms part of trading stock for a manufacturer, but are not considered as trading stock under a long-term construction project.

Materials obtained by service providers (tradesmen) for supply to customers as part of the provision of their services are considered to be trading stock unless they are considered to be of a minor or incidental aspect of the services (refer Taxation Ruling TR98/8).

Consumables stored, however, are not trading stock and generally are deductible upon purchase (Taxation Ruling IT 333). Note that the computer spare parts of a computer supplier are generally deemed to be trading stock (Taxation Ruling TR93/20).

Materials such as containers, packing materials, labels etc, that are sold with the goods are considered to be trading stock for manufacturers and not consumables, whereas returnable packaging items are not considered to be trading stock.

Trading stock on hand at the beginning and at the end of a financial year together with the costs of purchasing trading stock during the financial year are taken into account in the calculation of taxable income (section 70-35 ITAA 1997).

As previously stated an adjustment needs to be made for any stock taken for private purposes.

A physical stocktake should be undertaken at least once a year even if a perpetual inventory system is in operation. An exception to this is in respect of taxpayers in the SBE.

Trading stock is considered to be on hand if you have the power to dispose of it (Taxation Ruling IT2670). This can still be the case where you may not necessarily have physical possession of it, such as where the stock may be held on consignment by another party or it is in transit.

It is possible to convert an item from a capital asset to trading stock, or from trading stock to a capital or personal asset. There are specific provisions in ITAA 1997 that deal with these circumstances. In effect section 70-30 will deem that there has been a disposal of the item as a capital asset and a subsequent purchase of it as trading stock at either cost or market value.

The appropriate treatment of discounts, rebates and other trade incentives offered by sellers to buyers is outlined in TR 2009/5.

VALUE OF TRADING STOCK

Section 70-45 provides the alternatives available to be used in the valuation of each item of trading stock on hand.

These alternatives are:

- Cost;
- Marketing selling value; or
- Replacement value.

The valuation of trading stock at cost relates to the full absorption cost of each item. This includes costs such as freight, insurances, customs and excise duties, and delivery charges.

For any work in progress and manufactured goods the valuation also includes a component for the cost of labour and materials and an appropriate proportion of variable and fixed overheads. No GST is included unless it has not been claimed as an input tax credit. The cost of infrastructure land and expenses forming part of the cost of land is considered trading stock for a land developer.

The following methods are acceptable to the ATO for the valuation of closing stock on hand where the cost basis is used:

- **First In First Out (FIFO)** –The cost of trading stock on hand is deemed to be the cost of the items most recently acquired.
- **Average Cost** – The cost of a particular item is based on the weighted average cost of all those items, whether purchased during the year or on hand at the beginning of the year. This method is an alternative where you cannot ascertain the actual cost of stock.
- **Standard Cost** – A predetermined standard cost per unit is used. This is acceptable where standards are reviewed regularly to equate with current prices.
- **Retail Inventory** – Goods are priced at their retail selling price at the time of stocktake, but then are subsequently reduced by the amount of the mark-up to produce the cost of the goods on hand. This is only acceptable where old stock has not been previously marked down.

You may choose either cost, market selling value or replacement value for each item of trading stock. In addition, the method used for the valuation of closing stock can be varied from year to year.

The only requirement of the ATO is that the closing value for stock must be used as the opening value of stock in the following income year. No formal election is needed as the method used to value the trading stock must be shown on the taxpayer's income tax return. Documentary evidence should be retained to support the valuation method used for closing stock.

Where the market selling value or replacement value are chosen for valuing stock, a higher assessable income will result as closing stock will be higher in value. This should be considered in instances where a business has low profitability in a particular year. Alternatively, it may be prudent to revise the closing stock valuation methods where there are to be changes in the tax rates in the ensuing year.

In the event of obsolescence or other special circumstances, a trading stock valuation using either of the above methods may result in an unreasonable value (section 70-50, ITAA97). The taxpayer is allowed to provide his own valuation in these circumstances. Where a taxpayer wishes to avail himself of this option he must apply the general guidelines as provided for in Taxation Ruling TR93/23.

Full absorption costing must be used when opting for the cost method for valuation of closing trading stock. That is, the manufacturer needs to include the indirect costs of operating the manufacturing facility (including light and power, administrative expenses, wages, etc.) as part of the cost of goods.

Full absorption costing requires the following costs to be absorbed into the value of trading stock on hand at year end:

- The purchase price;
- All costs incurred to the extent they are directly related to the purchase of the trading stock;
- Operating distribution centres;
- Operating warehouses or storage areas not forming part of the selling location;
- Freight from the supplier's premises to the retailer's or wholesaler's selling outlet, warehouse or distribution centre; and
- Freight from the retailer's warehouse or distribution centre to the retail outlet.

The Tax Office has issued Practice Statement PSLA 2003/13 relating to taxpayers or consolidated groups with operating turnovers in excess of $10 million. The Practice Statement provides guidance as to the types of costs to be included in the valuation of closing trading stock. These costs include, but are not limited to, the following:

- Purchase costs;
- Costs of operating distribution centres;
- Costs of operating on or off-site warehouses or storage areas, including wages, electricity, cleaning, security etc;
- Inwards freight to the warehouse or distribution centres;
- Freight from the warehouse or distribution centre to the retail outlet.

For SBE taxpayers simplified trading stock rules apply. Generally where the difference between the value of trading stock at the beginning and the end of a year does not exceed $5,000, the taxpayer does not have to value each item or account for any change in the value of trading stock on hand. However, it is necessary that the estimate for the difference is based on reasonable assumptions or circumstances by the taxpayer.

LAY-BY SALES

Income from lay-by sales is derived and therefore assessable when the buyer pays the final instalment for the goods, and the goods are delivered to the buyer.

All amounts that are received while the goods are being held by the seller are not considered to have been earned by the seller and are therefore not considered assessable income for income tax purposes. However, where a non-refundable deposit is paid that amount is assessable (refer Taxation Ruling TR 95/7).

16

Note that goods that are in the possession of the seller at the end of the year of income are required to be taken up as trading stock on hand for tax purposes, even though they may not be available for resale at that point in time.

Where an early termination of the lay-by sale occurs, any refund to the buyer is not tax deductible as those amounts would not have initially been included as income of the seller - having been shown as a liability in the accounts of the seller. Any amount forfeited to the seller is considered to be taxable income.

PROFESSIONAL WORK IN PROGRESS

For many years a serious problem existed for professionals selling or retiring and disposing of Work In Progress (WIP).

In effect, an amount of WIP received by a partner upon retirement was assessable income to the partner, but was viewed as a capital payment by the partnership and therefore not tax deductible to the partnership. When the Work In Progress was subsequently invoiced by the partnership it became assessable income to the partnership. In effect the WIP amount was subject to double taxation.

This issue has since been resolved by the retiring partner receiving a WIP advance from the partnership and continuing to be entitled to his share of the WIP as it is received. The collection of the WIP is used in paying the advance.

The law has been amended to prevent this double taxation of professional WIP. The amendments allow a deduction for payments made to a retiring partner for WIP. If the work will be completed within 12 months the deduction is available at time of payment for the WIP. If the work will not be completed within 12 months the deduction will be available in the following year. The retiring partner must pay tax on the amount received for the WIP. These amendments have applied since 23 September 1998 (the date of withdrawal of Taxation Ruling IT 2551).

COMMERCIAL DEBT FORGIVENESS

Division 245 of the ITAA 1997 contains the commercial debt forgiveness provisions.

Commercial debts are defined as being debts upon which the interest payable is deductible under section 8-1 or, if no interest is payable, it would have been deductible if it had been charged. It is imperative that the amount forgiven is actually a debt and not an unenforceable disputed claim. Forgiveness entails the release, waiver or extinguishment of a debt and includes debts that are unable to be pursued due to the statute of limitations.

Where a creditor forgives all or part of a debt owing to it, the debtor would in effect have received a gain. However, as there is no asset involved there can be no triggering of a capital gains tax event and therefore no capital gains tax issues arise.

In order to avoid the duplication of deductions, the net forgiven amount of a debt is used to reduce the following amounts in the relevant debtors' accounts:

- Revenue losses;
- Any capital losses that have been carried forward from prior income years;
- The undeducted balances of other deductible expenditures that have been carried forward from prior years. This includes the reduction of the opening taxation written down value of depreciable assets; and
- The cost bases of capital gains tax assets.

PRIVATE USE OF TRADING STOCK

The value of trading stock that is used for private purposes must be included at its market value in the taxpayer's trading statement.

It is vital that an accurate record of the value of any goods taken for private use is kept.

The ATO releases annual rulings for the minimum amounts it considers reasonable for goods taken from stock for private purposes. The amounts (excluding GST) determined (TD 2017/9) for the 2016-17 income year by the ATO are shown below:

Business	Adult or child aged over 16 years	Child aged 4 – 16 years
Baker	$1,350	$675
Butcher	$800	$400
Café/Restaurant (licensed)	$4,640	$1,750
Café/Restaurant (unlicensed)	$3,500	$1,750
Caterer	$3,790	$1,895
Delicatessen	$3,500	$1,750
Fruiterer/ Greengrocer	$790	$395
Takeaway foods	$3,430	$1,715
Mixed businesses (includes milk bar, general store, convenience store)	$4,260	$2,130

16

TIMING OF INCOME AND DEDUCTIONS

The financial year for Australian income taxpayers is for the twelve month period ending on 30 June of each year.

Substituted accounting periods are available, but will need to be approved by the Tax Office. However, approval is only granted in exceptional circumstances.

METHODS OF TAX ACCOUNTING

Depending upon the taxpayer's circumstances there are three main tax accounting methods that can be used to determine the taxable income of a taxpayer.

These methods are:

- The cash or receipts basis of accounting;
- The accruals or earnings basis of accounting; or
- Small Business Entity (SBE)

Whichever of the first two alternatives is chosen must be strictly adhered to.

There may be circumstances where monies are received for goods or services that are not to be rendered until a future time. Under the matching principle these monies would not be income to the taxpayer and would therefore not be subject to tax until the goods or services are actually provided or performed. However, expenses associated with the derivation of this income would need to be reviewed in order to ensure they are taken up in the correct period. An example of this would be annual magazine subscriptions paid in advance to a business.

In addition there are situations where monies not yet received for goods or services already provided or performed may or may not be assessable. This depends upon the tax accounting method used by the taxpayer.

There are specific provisions and rulings relating to the valuing of work in progress (WIP). These provisions differ depending on the tax accounting method used. Work in progress held at the end of the financial year is required to be brought to account by manufacturers. However, this is not generally the case for service providers or professional partnerships.

Therefore there is an opportunity for service providers and professional partnerships to defer income tax by not billing for uncompleted work at year end.

Guidelines as to which particular method may be relevant to a taxpayer are set out in Taxation Ruling TR 98/1.

In particular the following factors are deemed to be relevant:

- The size of the business - the cash basis may be more appropriate for a small business taxpayer whereas the accruals basis may be more appropriate for a medium to large business taxpayer, or where a trading or manufacturing business is evident.
- The type of the business - generally small businesses will opt for the cash basis whereas larger businesses, where a trading or manufacturing activity is evident, will opt for the accruals basis.
- Capital items - businesses with heavy reliance on the use of plant and equipment may determine that the accruals basis is more appropriate for their needs.
- Policy for recovery of outstanding debts - the accruals basis may be more appropriate where there are formal procedures for the extending of credit and debt collection.
- Method of accounting – the type of accounting records maintained may indicate which basis of accounting for tax purposes is to be used.
- Trading stock – where a trading or manufacturing business is evident the accruals basis of accounting may be appropriate.

It is necessary to have an understanding of the taxpayer's business and to relate this to the alternative available accounting methods. The relative importance of any individual factor is dependent upon the specific circumstances of a business. It is generally accepted that the smaller the business the more likely it is that the cash basis should be used, whereas the accruals basis is appropriate where a trading or manufacturing business is conducted. There are certain requirements that may assist in determining the accounting method to be used in the situation of the medium to larger businesses.

CASH OR RECEIPTS BASIS

This method requires that income is brought to account only when it is physically received.

This receipt includes the situation where income is reinvested, accumulated or capitalised. However, expenses are deductible when they are incurred and not necessarily paid, provided that no further claim is made when they are actually paid. This use of this basis of income is usually attributable to individuals, including professionals, but excluding larger professional partnerships. In this instance, income such as wages, rent, dividends or interest is generally calculated on a receipts basis. An exception to this is income from public unit trusts or discretionary trusts that are assessable on a declared basis.

ACCRUALS OR EARNINGS BASIS

The accruals basis entails accounting for income as it is earned. Medium to large businesses are generally required to use this basis of accounting.

In effect, income is treated as earned when the entity has the right to receive it. This is when goods are delivered or jobs are completed and the relevant invoices mailed. Notwithstanding the income may not have been received, the conditions pertinent to the right to receive it have occurred. In effect, tax will be payable on the debts of the business.

The situation may arise where a debt has been taxed, but is subsequently deemed to be irrecoverable. In this case a deduction for it should be made in the period in which it is considered to be irrecoverable.

Under both the receipts and earnings basis, expenditure is claimable when incurred and therefore deductions are available on creditors at year end.

In summary, small businesses generally find that the cash basis of accounting is the most appropriate. However, there may be a time when as the business grows and increases its turnover, employs more staff, and invests in more capital assets that a change to the accruals basis is required.

Where the change of accounting method takes place at the end of a financial year, a tax benefit may be obtained in respect of income that has been accrued at the date (Henderson v FCT 70 - ATC 4016). This will not apply where the business has decided to be a Small Business Entity (SBE)

Your Notes

CHAPTER 17
Consolidation

CONSOLIDATION – TAXING WHOLLY OWNED GROUPS AS SINGLE ENTITIES

The income taxation of consolidated and MEC (Multiple Entry Consolidated) groups has been in force since 1 July 2002.

Eligible companies, partnerships and trusts that are wholly owned are taxed as if they are part of a single head company. Many small businesses use simple structures (a single company, partnership or trust) and will not be affected by the consolidation legislation. It is not relevant to the business activity of individuals (such as people operating as sole traders or in partnership).

However, consolidation may be an option for your business if the business structure includes a company that wholly owns one or more entities.

Some key elements of the Consolidation regime:

- To form a consolidated group, a group must consist of an Australian resident head company and at least one other Australian resident entity – a company, trust or partnership – wholly owned by the head company.
- The choice to consolidate is optional, but irrevocable.
- If a head company of a consolidated group chooses to consolidate on a specified date then, from that time, both the head company and all of its eligible wholly owned subsidiaries will be part of the consolidated group for income tax purposes.
- The head company of a consolidated group must notify the Tax Office of its decision to consolidate using the appropriate approved form by the earliest of either:
  - The end of the day on which it gives the Commissioner its income tax return for the year which contains its chosen date of consolidation; or
  - The end of the day on which it is required to lodge that income tax return. The period for making a choice to consolidate cannot be changed. If you cannot lodge your notification of choice with the Commissioner by this time you should contact the ATO to discuss extending the due date of your income tax return.

If the head company is not required to lodge an income tax return for the year that contains the chosen date of consolidation, the notification of choice must be given to the Commissioner on or before the date that a return would need to be lodged for that year if such a return were required.

- If notification of choice is not given to the Commissioner on or before the relevant time, the group cannot be treated as consolidated for that income year.
- If a foreign company, either directly or through its wholly owned foreign entities, has multiple entry points into Australia, special MEC group rules will apply where a MEC group is formed.
- A MEC group will have a provisional head company (PHC) during the course of the income year. The PHC at the end of the income year will be the head company for that particular income year.
- On consolidation, the head company of a consolidated or MEC group and its entire eligible wholly owned subsidiary members are treated as a single entity for their income tax purposes – that is, each subsidiary member is treated as a part of the head company.
- The tax costs of assets of an entity joining a consolidated or MEC group (other than eligible tier-1 companies) which become assets of the head company under the single rule are reset in accordance with special tax cost setting rules (see below).
- The consolidated or MEC group operates as a single entity for income tax purposes, with the head company lodging a single income tax return and then paying a single set of PAYG instalments for the group.
- A consequence of choosing to consolidate is that transactions that occur solely between members of the consolidated or MEC group will not result in income or deductions to the group's head company.
- If an entity becomes a subsidiary member of a consolidated or MEC group part-way through its income year or it has a period in the year that it is not a subsidiary member for any other reason (non-membership periods), it will also need to lodge a tax return for that income year. However, the tax return will be based only on amounts properly attributable to all of the periods that the company was not a subsidiary member of a consolidated or MEC group during the income year.
- The losses, franking credits, pre-commencement excess foreign income tax, and conduit foreign income and attribution accounts surpluses of each subsidiary member can generally be brought into, and used by, the Head Company of a consolidated or MEC group.

- Carry-forward losses, franking balances, pre-commencement excess foreign income tax and conduit foreign income transferred to the head company of the group remain with the head company when an entity leaves the group. Special rules apply regarding treatment of carry-forward losses transferred into the consolidated or MEC group.
- The consolidation regime does not affect a subsidiary member's obligations in relation to other taxes such as goods and services tax (GST), fringe benefits tax (FBT) and pay as you go (PAYG) withholding.
- Certain corporate unit trusts and public trading trusts may form a consolidated group and be treated like the head company of the group.
- Where a consolidated or MEC group includes one or more subsidiary members that are life insurance companies, special consolidation rules apply to take into account the particular taxation treatment of life insurance companies.

The head company of a consolidated or MEC group or an Australian Parent Company or (eligible tier-1 companies), where relevant must (among other things):

- Notify the ATO of the decision to consolidate,
- Pay the group's PAYG instalments when it is issued with a consolidated instalment rate after the lodgement by the head company of its first group tax return,
- Determine, report and make any balancing adjustments to meet the group's annual income tax liabilities,
- Manage any ongoing income tax liabilities and supply income tax information to the ATO when required, and
- Notify the ATO of any members that join or leave the group.

TAX COST SETTING RULES

When a consolidated group forms or a new member is added to that group the head company is deemed to have acquired those assets.

The amount that the head company paid for those assets may be different to the book value of those assets in the subsidiary company.

The cost of each incoming asset to the head company is determined using the allocable cost amount (ACA). Determining the ACA is an intricate calculation that involves a series of processes. The resulting ACA aims to allocate the actual cost of the incoming assets in an economic way.

Example: Big Bob Enterprises is an existing group of five wholly owned Australian companies which are consolidated for tax purposes. Big Bob Enterprises acquires all the shares in Little Bob Pty Ltd for $50,000. Little Bob Pty Ltd has liabilities of $100,000, no retained earnings or tax losses.

Little Bob Pty Ltd's assets consist of:

Existing Tax Cost	Base/ WDV	Market Value
Land	$30,000	$50,000
Plant & equipment	$25,000	$40,000
Trading stock	$10,000	$20,000
Cash/Receivables	$5,000	$5,000
Goodwill	$nil	$35,000
Total		$150,000

The ACA is calculated as $150,000 (i.e. cost of shares plus liabilities).

This ACA is then allocated to the assets based on relative market values as follows:

Existing Tax Cost	Base/ WDV	ACA Allocated	Market Value
Land	$30,000	$50,000	$50,000
Plant & equipment	$25,000	$40,000	$40,000
Trading stock	$10,000	$20,000	$20,000
Cash/Receivables	$5,000	$5,000	$5,000
Goodwill	$nil	$35,000	$35,000
Total		$150,000	$150,000

From the example above it can be seen that there can be opportunities to increase the cost base of CGT and depreciable assets on purchase of a subsidiary member.

In this example the following is of advantage to Big Bob:

- Big Bob will be able to depreciate plant and equipment based on a value of $40,000, instead of the $25,000 value that it was being held at in the books of Little Bob;
- The increase in the value of the trading stock held by Big Bob will result in a greater cost of goods sold (and tax deduction);
- Due to the higher cost base for the land and goodwill held by Big Bob, any subsequent sale will have a reduced capital gain.

17

TAX SHARING AGREEMENT (TSA)

Under consolidation the head company is liable for the taxation liabilities of the consolidated group.

In the event of the default of the head company all members are jointly and severally liable for the outstanding amount. A Tax Sharing Agreement (TSA) can be entered into to limit the liability of the subsidiary members.

A TSA is a legal document that requires a number of attributes to be valid. The most important is the calculation of how each member of the group calculates their taxation liability. The method used must be "reasonable" and if deemed by the Commissioner to inhibit his ability to recover taxation, then the TSA may be deemed invalid.

TSAs offer protection to subsidiary group members from other subsidiary group members who fail to meet their taxation liabilities.

PAYG INSTALMENTS AND THE CONSOLIDATED GROUP

Where the head company has not yet been assessed as the head of the consolidated group for PAYG purposes, instalments of all members of the group must still be paid.

When the head company lodges its first consolidated return it will receive a credit for amounts already remitted by its subsidiary members.

From this point on the head company will receive an instalment rate for the whole group.

RECENT CHANGES

The Government has announced three new measures designed to modify, broaden and defer certain previously announced integrity measures within the tax consolidation scheme.

Integrity measures for liabilities from securitised assets

The Government has announced an extension of measures concerning the recognition of liabilities for non-financial institutions arising from securitisation arrangements for the purposes of the entry and exit cost calculations.

When a company holds securitised assets, the accounting treatment requires the company to recognise the liability, but not the asset. This can create a tax benefit when joining or leaving a consolidated group. These measures address the mismatch by requiring the liability to be excluded when undertaking entry and exit calculations, unless the associated asset is included as well.

Removal of deferred tax liabilities

The tax consolidations regime's treatment of the deferred tax liability will be amended by removing adjustments to deferred tax liabilities from the consolidation entry and exit calculations, as including the liabilities creates a commercial/tax mismatch and gives rise to integrity risks and uncertainty.

Removing the double benefit of deductible liabilities

Previously a double tax benefit could be achieved when a consolidated group acquired a subsidiary with deductible liabilities. The modifications mean these deductible liabilities are no longer included in the consolidation entry tax cost setting calculation.

CONSOLIDATED GROUPS – INDICATIVE ANNUAL COMPLIANCE DEADLINES

15 January Lodgement Date

The head company of a consolidated group, including new registrant, must lodge by 15 January 2018 where the following applies:

- Any member of the consolidated group is deemed to be a large/medium taxpayer in their last year lodged;
- The consolidated group is deemed to be a large/medium taxpayer through the single entity rule;
- The 2017 tax return will be taxable;
- Payment of any tax due for these entities is required by 1 December 2017.

28 February Lodgement Date

The head company of a consolidated group, including new registrant, must lodge by 28 February 2018 where the following applies:

- Any member of the consolidated group is deemed to be a large/medium taxpayer in their last year lodged;
- The consolidated group is deemed to be a large/medium taxpayer through the single entity rule;

- The 2017 tax return will be non-taxable.

If a member exits the consolidated group during the financial year, their due date will be 28 February.

Due dates for other consolidated groups

The head company of a consolidated group must lodge and pay any tax due by 31 March 2018 if the following applies:

- They do not have a member who has been deemed a large/medium taxpayer in the latest year lodged;
- They do have a member who had total income of more than $2m in the latest year lodged.

All other head companies of consolidated groups must lodge by 15 May 2018.

When a head company lodges a consolidated tax return for the first time, the due date for lodgement of that tax return is the latest date on which the group's *Notification of formation of an income tax consolidated group* form can be lodged.

Consolidated groups that operate under an approved Substituted Accounting Period (SAP)

Head companies of consolidated groups that operate under an approved SAP must lodge and pay in accordance with the SAP rules.

Your Notes

CHAPTER 18
Tax Audits and Taxpayer Rights

TAX AUDITS – WHAT ARE THEY?

The ATO is responsible to the government and the community for collecting the revenue and ensuring that everyone pays the correct amount of tax.

A tax enquiry or audit is an examination of your tax affairs by the ATO to see if you have done what you are required to do under the tax laws, including whether you have declared all the assessable income you receive and are entitled to the deductions and tax offsets you have claimed on your tax return. The ATO assumes that you are trying to deal honestly with your tax.

Some ATO visits are just to provide assistance and information while others are routine checks of simple details you would normally have on hand, such as your Australian Business Number or GST registration. If a tax officer visits you, they will let you know the purpose of the visit at the outset.

The enquiries or audits conducted vary in their complexity. Sometimes they only involve a phone call or a letter asking you to provide further information or verification of your claims. In some cases a tax officer may visit you. In some cases you may be asked to bring all your records for examination.

The ATO sometimes decides to look more closely at tax returns making similar claims or from within the same industry and can request the records and paperwork you used to complete your tax return.

It is also possible that your tax return has been audited without you knowing about it. The ATO receives information from a number of sources as a matter or course. For example, banks are required to provide details of how much interest each account held with them has earned. Using this information, it is a simple check to see whether or not taxpayers have declared that interest in their return. The ATO also cross-reference Centrelink payments with tax returns.

The ATO will send you a letter if they detect that an amount is missing on your tax return. If you agree the amount should be on your return you don't need to do anything. The ATO will issue you with a Notice of Assessment telling you how much you need to pay. This may include interest penalties. If you disagree with the ATO, the letter will tell you what to do.

IF YOU ARE SUBJECT TO ENQUIRY OR AUDIT

If the ATO undertakes checks of your tax affairs it doesn't mean they think you are dishonest.

If you make an honest mistake, where allowed under the law, they will take this into account when considering any penalties that may be imposed.

In addition to honest mistakes, the law recognises that errors can be caused by a range of factors including carelessness, recklessness or intentional disregard of the law.

If the ATO discovers that a taxpayer has intentionally sought to avoid paying tax or has over-claimed payments, they take firmer action in considering penalties and possible prosecution action.

THE ENQUIRY OR AUDIT PROCESS

An enquiry or audit usually involves examining your tax affairs to make sure that the information is accurate and to confirm your taxation liability or entitlement.

The ATO may also contact other parties such as banks, employers, customers and suppliers to obtain information.

ATO OBLIGATIONS

The ATO must conduct enquiries and audits in an impartial, fair, reasonable, and professional manner.

Regardless of the type of enquiry or audit, the following principles apply:

- The ATO will treat all taxpayers in accordance with the law and the principles outlined in the Taxpayers Charter.

- The tax officer conducting the enquiry or audit will outline the audit process and, where appropriate, will endeavour to guide you through the process – particularly if you are experiencing an audit for the first time or are not represented by a professional adviser.
- Seek to minimise cost and inconvenience to you.

NOTIFICATION OF AN ENQUIRY OR AUDIT

In most circumstances, the ATO will notify you of their intention to make enquiries or conduct an audit of your tax affairs.

The notification will be in writing, normally be made to your address for service and may be preceded by a phone call.

This notification will tell you the name and telephone number of the tax officer conducting the enquiry or audit and explain the expected nature, scope and duration of the enquiry or audit and indicate the information and records that will be required.

The ATO will seek to complete the enquiry or audit in the shortest possible time, but the time it takes depends on several factors such as the type of enquiry, the adequacy of your records, the availability of information, the complexity of the matter and the level of your co-operation.

The ATO will advise you that you may have a representative present at the start or at any stage of the enquiry or audit. If you need to consult with your representative, you will be given reasonable time and opportunity to do so. They will also tell you about your rights and obligations in relation to the enquiry or audit.

There may be situations where the ATO decides that urgent access action is appropriate and prior warning may not be given. For example, there may be a reasonable belief that the existence or integrity of documents, information or goods is under threat. Urgent access requires the approval of a senior tax officer. In these cases the ATO will give you reasonable time and opportunity to consult your representative after the urgent access.

HOW TO PREPARE FOR AN ENQUIRY OR AUDIT

If you have been notified of an enquiry or audit, you should prepare for it by reviewing your relevant records, tax returns, and activity statements.

Any error should be immediately disclosed. If you do this, the level of penalty that may otherwise have been imposed may be reduced. If you notify the ATO of any error before they notify you of an audit, the level of penalty that may otherwise have been imposed will be reduced.

AT THE START OF THE ENQUIRY OR AUDIT

At the initial interview, the tax officer conducting the enquiry or audit will provide Tax Office identification and a telephone contact number when first meeting with you.

If you ask, he will tell you the name and telephone number of his manager, except in very limited circumstances.

You will have the opportunity to volunteer information about any possible irregularity or omission in relation to your tax affairs. If you do this, the penalty that may otherwise have been imposed may be reduced.

DURING AN AUDIT

The ATO will arrange any interviews or meetings at times and places that are mutually convenient, usually during normal business hours and will explain the purpose of any interview or visit.

They also undertake to ask clear and unambiguous questions and provide you with all reasonable assistance and explanations to clarify their meaning.

You may choose someone to act on your behalf or to attend interviews with you. The tax officer will inform you in advance when he will have a legal adviser present to assist him during an interview.

You will be given reasonable time to collect records, documents and papers for examination, and to gather information about any matter that arises, unless the ATO has reason to believe that the existence or integrity of the documents is at risk. You will receive a written receipt of any records that are collected at an interview and the ATO will return the records as soon as possible or as mutually agreed.

The ATO will answer any reasonable and relevant questions you ask relating to the enquiry or audit. You can take notes of any conversations or interviews and if you ask, or where the ATO consider it reasonable to do so, tape record interviews. A copy of the audio tape will be provided to you, free of charge, at the conclusion of the interview.

You can ask to be provided with a signed copy of the tax officer's written record of interview. If the tax officer asks you to sign the record of interview, he will explain the implications of doing this.

The ATO will respect your right to, and give you adequate opportunity to claim, legal professional privilege in relation to certain communications between you and your barrister or solicitor. In certain circumstances, they will allow for some advice to remain in confidence between you and your professional accounting adviser.

The ATO must use discretion if and when they make any enquiries of third parties and do so without any implication of wrongdoing by you. They must allow you the opportunity to give your views on any relevant issue, including any proposed adjustments and keep you informed of the progress of the enquiry or audit. How often this happens will vary according to the type of enquiry or audit being conducted.

ATO POWERS

Under the tax laws, the Commissioner can require a person to provide information, to attend and give evidence, or to produce any books, documents or other papers in the custody of or under the control of that person.

When you are required under the law to attend a formal interview, you are the person who must answer any questions asked in the interview.

You may still choose to have your representative or adviser present. In this situation, you will be given a reasonable opportunity to consult with your representative or adviser who can only advise you as to the meaning of a question, not what answer you should give.

In very limited circumstances, you will not be allowed to have your representative or advisor present, such as when your representative or adviser may have had a role in the transaction under review. In this situation, you will be given reasonable time to obtain alternative representation.

Should you be required under the law to attend a formal interview, the tax officer will provide you with an explanation, before the interview, that the law obliges you to answer questions put to you during the interview.

If you bring an interpreter to a formal interview because you don't speak English, you are allowed to answer through the interpreter.

ATO OBLIGATIONS ON AUDIT COMPLETION

The ATO must clearly explain the basis of any adjustments made as a result of the enquiry or audit and inform you if any error has been detected which has resulted in you paying too much tax or receiving less than your entitlement.

They will clearly explain the reasons for any penalty or interest and how this will be calculated, and give you the opportunity to explain any circumstances which you believe could justify a reduction of any penalty or interest.

Within seven days of making a decision the ATO will provide you with written notification of the outcome of the enquiry or audit. You will be advised of your review rights and the remedies that may be available to you.

The ATO will also draw to your attention any matters that will help you to understand and meet your taxation obligations in the future.

Settlement meetings are usually held for more involved or complex audits. If there is a settlement meeting the tax officer conducting the audit will be accompanied by at least one other officer, except in very straightforward matters.

Settlement agreements should be reached without any inducements or duress and the ATO undertakes to document the terms of any settlement agreement reached and provide you with a copy.

PENALTIES AND OFFENCES

In conducting audits and making enquiries, the ATO may determine that you have underpaid your tax or received more payment than you were entitled to.

Generally, the tax laws provide for penalties to be imposed where the requirements of the law have not been met. In both cases there are different rates of penalty based on the type of behaviour or the degree of culpability involved.

The law also provides for prosecution action to be undertaken for a range of taxation related offences. These offences include making a false or misleading statement in a tax return, making a false or misleading statement to a tax officer and keeping incorrect or false records with an intention to deceive or mislead a tax officer.

BOOKS, DOCUMENTS AND PAPERS

As discussed earlier a tax audit is a systematic examination of a taxpayer's affairs by the ATO in order to establish whether a taxpayer has complied with the Tax Act.

The ATO is constantly involved with a public relations and media program regarding its audit and compliance programmes in order to ensure higher levels of community awareness and compliance.

Section 262 A of the Tax Act places the onus on the taxpayer to retain certain records to enable the income tax liability to be assessed and then verified in the event of an audit.

The records must be in English or readily convertible to English. Adequate records can take many varying forms, but retention of records is essential. As a guide, records must be kept for five years if you are lodging your income tax returns on time. Lack of adequate records makes taxpayers particularly vulnerable to Asset Betterment Assessments.

RIGHT OF ACCESS

Before dealing with sections 263 and 264 we would stress that when faced with a full audit it is essential to seek professional advice.

Under section 263 an authorised ATO officer has full and free access to all buildings, places, books, documents for any of the purposes of the Act, and for that purpose to make extracts from or copies of any such books, documents or papers.

The following matters should be considered if you receive a request for access under section 263.

- The access must be "for the purposes of the Act" and the ATO officer must have proper authority.
- Under section 263 the auditor is not given the right to ask questions or remove records as this section does not contain the word "audit" or "investigation".
- The ATO officer will normally provide an identification card and this should be checked to ensure it contains the necessary authorisation under section 263.
- You may ask for a clear statement of purpose to establish that the request for access meets the requirement in section 263 that access is for the purposes of the Act. If this is not provided then correspond with the ATO, requesting a written statement, promising full co-operation upon receipt of a satisfactory reply.
- Remember that the ATO has no right to use force, but that you are obliged to provide the auditor with reasonable facilities and assistance. This would include a desk, a chair and a power point for a scanner. The photocopier may be necessary because the ATO may not seize documents. The auditor does not have authority to borrow or take away any of your documents or records.
- A taxpayer should take appropriate professional advice as to whether the auditor's questions should be answered. Perceived exposures should be balanced with the fact that penalties may be reduced if an early disclosure is made in an audit.
- It should be noted that a taxpayer is not under any obligation to answer questions and that it may be appropriate to request that written questions be submitted.
- On occasion the auditor suggests that a tape recording of the conversation be kept. Again seek professional advice. You should keep file notes of all discussions.

POWER TO OBTAIN INFORMATION

Section 264 is the only other section in the Act that authorises the ATO to conduct an Audit.

This section enables the ATO to ask questions, require answers and obtain documents and records. For such a request to be valid particular procedures must be followed and certain limitations imposed by the Court.

ASSET BETTERMENT ASSESSMENTS

The Commissioner's arbitrary power to issue Asset Betterment Assessments demonstrates how important it is for taxpayers to retain adequate accounting and financial records.

Essentially a default assessment is the Commissioner's estimate of your taxable income in a given year, taking into account your accumulation of assets and his estimate of your living expenses.

The default assessments may be issued where you have failed to lodge an income tax return or the Commissioner is not satisfied that the return lodged is complete or accurate. Once the ATO issues a default assessment the onus is on the taxpayer to prove why the amended assessment should be set aside.

Effectively, you may have to satisfy the ATO how you have accumulated assets over a specified period of time and that this accumulation is consistent with the taxable income you have disclosed in conjunction with your living expenses over the period.

In recent court cases the ATO has been successful in amending assessments on this basis. Taxpayers have failed in their onus of proof largely due to a lack of financial records and documentation to support their contentions.

ATO TARGETS

Most taxpayers want to know what issues are of interest to the ATO and the focus of their activity.

Risk assessment work in the property market has identified capital gains as a compliance issue for individual taxpayers. Taxpayers who disclosed rental income in prior years, but no longer do so are being asked to explain the cessation of rental income, whether they have sold the property and if so, whether there was a capital gain.

The ATOs focus will be on omitted or incorrectly calculated gains from rental properties, holiday homes and units, vacant land and residential property purchased off the plan; Australian property owned by non-residents, shares and distributions of capital gains from managed funds.

The ATO systematically matches data by increasingly working with state revenue offices and commercial providers to gather data on property sales to understand the overall market. They also conduct risk assessments on sales of properties in high capital growth areas and properties sold off a plan. They can examine the ASX share registry and public data sources for information on share sales, and match data reported by managed funds with tax return information.

DATA MATCHING

The ATOs automated system also allows matching of large volumes of internal and external data.

Sources of external date include:

- Interest and dividend income
- Government pensions, payments and allowances
- Health insurance premiums paid
- Salary and wages, allowances etc.

In recent years data matching has been, and will continue to be, performed on millions of taxpayers, resulting in hundreds of thousands being contacted with “please explain” letters.

The ATO’s data matching capacities keep on improving and around 780 million transactions a year are audited. Below are some recent initiatives.

Online Selling Data Matching Program

The ATO is requesting and collecting the user identification name and number, name, address, telephone numbers, date of birth, email address, registration date, number of monthly sales, value of monthly sales, the IP address and bank account details of approximately 11,000 sellers who have sales of $20,000 and greater, in the current year through various online selling websites.

Contractor payments 2016-17, 2017-18 and 2018-19 financial years data matching program protocol

The ATO routinely collects data on payments made to contractors by businesses as part of our employer obligations compliance activities.

Contractors can be either individuals, partnerships or other types of entities. Contractors earn income by providing services to other businesses and are generally paid upon production of an invoice by the contractor.

The data collected from businesses is used to identify contractors that may not be meeting their taxation through:

- not registering correctly with the ATO
- non-lodgement of returns
- failing to report payments received
- not paying amounts of tax due to the ATO.

The data is also analysed to detect trends and compliance issues enabling the ATO to develop and deliver educational products and tailored services. This is an ongoing data matching program and has been conducted for more than five years.

DATA MATCHING 2017

There is no doubt that these initiatives are becoming more sophisticated and widespread.

The message is simple and clear – disclose all assessable income.

During 2016–17, the ATO cross-referenced information reported in tax returns against over 850 million transactions provided by third parties to identify omitted income and gains, or incorrectly-claimed offsets or entitlements to exemption from surcharges.

The ATO also contacted nearly 300,000 taxpayers who had apparent discrepancies in the information they reported in their tax returns.

The majority of taxpayers who made errors on their return and had to repay money didn't wait for all pre-fill information to be available. Nine out of ten returns were adjusted as a result of our enquiries.

Traditionally the ATO has focused on areas such as omitted interest and employment income. However with better quality data now available from more sources, they continue to expand data matching capability to encompass a greater range of areas, such as:

- capital gains tax from the disposal of shares and property
- employment related foreign source income
- contractor income from payments made by government agencies.

FBT AUDITS

The ATO has started using auditors from other compliance areas to check on employers providing benefits that may be liable to FBT.

Employers outside the FBT system are being targeted. Where compliance work (an audit) is being undertaken primarily on other taxes, ATO staff have been told to look at FBT issues where information held by the ATO indicates an FBT risk.

The most common example is the employer that has motor vehicles registered in the business name, but no FBT return has been lodged or any employee contributions disclosed.

The ATO is providing additional FBT training to compliance staff in these areas. In 2016-17 the ATO has a particular focus on luxury vehicles.

HOW TO BE TAX SMART

When will extra ATO scrutiny occur?

Many taxpayers seem to ignore the obvious fact that the ATO scrutiny will be strongest whenever big money is made, and this is normally when the temptation to avoid tax is strongest. The ATO use the term "wealth crystallisation points" which include:

- The sale of family businesses whereby sale prices are understated to cheat on capital gains tax.
- Family companies making big loans to shareholders. In these cases dividends are sometimes disguised as loans to avoid tax.
- Illegal tax evasion schemes entered into to avoid a large "one-off" profit – an extremely profitable transaction may be scrutinised.
- Successful public listings of private companies.

Avoid shady tax schemes

Given the increasing sophistication of the ATOs data matching and detection processes, getting involved in tax evasion schemes is asking for trouble. The ATO also works closely with enforcement agencies such as the Australian Federal Police and the Australian Crime Commission and consequently the chances of being caught are now much greater.

Maximise legal tax breaks

Due to tax reform, tax can be minimised in legal and straightforward ways. For example:

- Maximise superannuation deductions – note the tax-free payouts after reaching age 60
- Negatively gear shares and property
- Maximise gains on family homes which are exempt from CGT
- Ownership of assets in discretionary trusts means distributions are paid to the lowest taxed beneficiaries.

SPECIFIC TARGETS IN 2017-2018

This is yet to be confirmed but it is unclear as to whether the ATO will continue to publish an annual "Compliance in Focus" document.

However, the following matters indicate where some ATO attention may be in 2017-18.

Occupations Targeted For Special Attention This Year

- Trades persons and labourers in the building and construction industry – for example plumbers, electricians, carpenters, tilers and concreters.
- Construction supervisors
- Construction project managers
- All sales and marketing managers
- Special attention related to the vehicles used by the construction industry – 1 ton utilities and above.

In the past taxpayers claimed 100% of the expenses related to those vehicles, especially if the taxpayer had the use of another vehicle for all the private travelling done by the taxpayer. The ATO assumed that the private portion relating to the utility would have been minimal and normally allowed the claim.

The ATO is now questioning the reason for the claim and how the percentage of work use was determined.

Log books for cars

Log books will be checked by the ATO to ensure the details have been recorded correctly

Self Education Expenses

Provided the course leads to an increase in the current skills of the taxpayer or to a promotion or to an increase in income and the taxpayer is currently employed in a position utilising those skills, all the expenses related to that course can be claimed.

Seminars and self-development course

The seminar or course can only be claimed if the seminar/course is directly related to the taxpayer's current income earning activity. In some instances only some of the subjects in a course would be related to the current occupation. A percentage of the total course fee can then be claimed.

Rental Properties

The main attention in 2018 will be on the loan interest, property repairs and property investment seminars/courses attended and claimed. Since 1 July 2017, travel to inspect or collect rent on residential investment properties are no longer tax deductible, so your 2016/17 tax return will be the last opportunity to make such claims.

Non-commercial (low) rental income from associates will also be closely scrutinised in 2018.

Repairs can't be claimed to get the property ready for tenants. Interest should be apportioned if a loan has both private and investment portions. Property investment seminars can usually only be claimed partially – the course content will have to be checked to determine what can be claimed.

Work related expenses (WRE)

This ATO focus is aimed at those who use MyTax. Users are encouraged to get their claims right by using the ATO website resources, particularly in relation to claims for:

- Mobile phones
- Self-education expenses
- Cents per kilometre vehicle claims
- Overnight accommodation

In July 2017 the ATO announced it was increasing scrutiny on WRE claims. Treasury is concerned that these have gone up by 20% in the last 5 years. An education program is underway and even those with relatively modest claims may be audited.

TAXPAYERS' CHARTER

Below is a very brief summary of the taxpayers' charter. You can expect the ATO to:

- treat you fairly and reasonably
- treat you as being honest in your tax affairs unless you act otherwise
- offer you professional service and assistance to help you understand and meet your tax obligations
- accept you can be represented by a person of your choice and get advice about your tax affairs
- respect your privacy
- keep the information they hold about you confidential in accordance with the law
- give you access to information they hold about you in accordance with the law
- give you advice and information you can rely on
- explain to you the decisions they make about your tax affairs
- respect your right to a review
- respect your right to make a complaint

- administer the tax system in a way that minimises your costs of compliance
- be accountable for what they do.

In return the ATO expects you to:

- be truthful and co-operative in your dealings with them
- keep records in accordance with the law
- take reasonable care in preparing your tax returns and other documents in keeping records
- lodge tax returns and other required documents or information by the due date
- pay your taxes and other amounts by the due date.

Taxpayer's Charter turns 21!

The taxpayer's charter has been with us now since 1997, and it is clear that the ATO considers the taxpayer's charter in its system development and internal procedures. The ATO maintains it has adhered to the principles embedded in the charter, and that independent surveys show the perception of the vast majority of Australians is that by and large the ATO has done a good service for the country. However, the charter has no force of law and is merely a statement of intention. As a result, taxpayers have no real redress in the event of breaches of the charter by the ATO. It is clear there have been numerous complaints about Tax Office breaches of the charter which have not been addressed or remedied by the ATO or the Government.

TAXPAYER ALERTS

In an "early warning" to taxpayers, the ATO issues taxpayer alerts to warn taxpayers about tax schemes and/ or arrangements that concern the ATO and are likely to attract close scrutiny.

TAXPAYERS WITH UNDISCLOSED OVERSEAS INCOME

The Operation Wickenby Tax amnesty for these taxpayers expired in December 2014.

The current situation is that such taxpayers who did not access the amnesty can expect to come under increasing scrutiny given the fact that G20 nations, along with a number of other tax jurisdictions have agreed to commence an exchange of information.

In the recent past there has also been a trend for disgruntled employees of financial institutions to download and send information to various revenue authorities.

In April 2016, this continued with the leaking of the "Panama Papers" when 11.5 million documents from one of the world's largest offshore firms, Mossack Fonseca, fell into the public domain. The ATO were able to identify over 800 Australians and a number of world leaders were embarrassed by the disclosures. Further audit activity is inevitable.

Another key issue is over 90 national revenue authorities agreeing to share tax data. Initially promoted by the OECD, much of this activity will commence in 2017.

MULTINATIONAL ANTI-AVOIDANCE LAW

In 2015/16 the activities of 30 identified multinational companies came under scrutiny.

These companies are diverting profits earned in Australia away from Australia to no or low tax jurisdictions.

After months of the Australian Taxation Office being embedded in these businesses they now have a better understanding of how these companies have used contrived or artificial tax arrangements such as the much publicised "Double Irish Dutch Sandwich."

These contrived and very complicated arrangements have been used to avoid paying Australian tax. We expect this scrutiny to continue – see below.

A new Tax Avoidance Taskforce

In the May 2016 Federal Budget, the Government announced it will establish a new Tax Avoidance Taskforce to crack-down on multinational tax avoidance and secure revenue for the Australian community.

The Government will provide the ATO with $679m for the Taskforce over four years to strengthen efforts to ensure that multinational companies, private companies and high wealth individuals pay the right amount of tax. The Taskforce shall be a single, targeted program accountable to Government.

The Taskforce will have around 1,300 jobs in the ATO, including 390 new specialised officers.

The Tax Avoidance Taskforce will be led directly by the ATO Commissioner of Taxation, Chris Jordan, and gives the Commissioner significant new resources to, secure more revenue for the Australian community and bring tax cheats to account.

The Commissioner will provide regular progress reports to Government to provide transparency to the community, with the first report to be provided before the end of the year.

The Government aims to crack down on multinational tax avoidance. The regular reports the ATO shall provide will give confidence to the public that the work underway in Australia is ensuring multinationals and high wealth individuals are paying the right amount of tax.

External experts will be appointed to play a critical role in supporting the Taskforce, including the formation of a panel of eminent former Judges. This panel will review any proposed settlement arrangements to ensure they are fair and appropriate.

Funding will be provided to increase the ATO's specialist audit and investigation teams dedicated to addressing international tax risks and focusing on high wealth individuals, trusts and tax scheme promoters.

The Taskforce is expected to raise more than $3.7 billion in tax liabilities between now and July 2020.

With the introduction of the Diverted Profits Tax from 1 July 2017, multi-national Corporations with Australian subsidiaries can expect close ATO scrutiny.

GST audits lead to sustained compliance

In March 2016, the ATO released data showing the flow on effects from GST audits.

They analysed the GST compliance behaviour of businesses in 2012–13, and found that businesses that had their business activity statement (BAS) amended showed improved compliance in subsequent GST returns for the next two years. This occurred with both monthly and quarterly BAS lodgers.

As part of their compliance activities, the ATO raised $2.3 billion in GST audit liabilities in 2012–13. To understand the impact of their audits and BAS amendments on those affected, they analysed the median net GST recorded by quarterly and monthly BAS lodgers who had their GST returns amended across an array of GST risks.

The ATO also compared taxpayers who had their BAS amended, to taxpayers reviewed but found to be compliant. The analysis shows that taxpayers who had their BAS amended as a result of compliance activity subsequently reported a higher level of net GST than those not directly affected by the compliance activity. This increase is typically sustained for subsequent lodgements.

As these audits have proved very cost effective we can expect further ATO focus in this area.

Tax Integrity Package — better protecting tax whistle blowers

In the May 2016 Federal Budget, it was announced that the Government will introduce new arrangements to better protect individuals who disclose information to the Australian Taxation Office (ATO) on tax avoidance behaviour and other tax issues. This measure will take effect from 1 July 2018 and is estimated to have an unquantifiable gain to revenue over the forward estimates period.

Under the new arrangements, individuals, including employees, former employees and advisers, disclosing information to the ATO will be better protected under the law.

While this is a measure that would have bi-partisan and broad community support, we mention in passing that the USA has a slightly different approach. Not only do they protect the whistle blower......the IRS actually pays the informer a percentage (10% to 30%) of the tax subsequently collected.

THE CASH ECONOMY

The ATO published a fact sheet in August 2017, outlining practical examples of how their use of Data Matching and Benchmarks resulted in significant default assessments.

The factsheet also outlined ways the general public can combat the cash economy including insisting on receipts and actively encouraging reporting of evasion.

Make no mistake with the Black Economy Taskforce due to give its final report in October 2017; this is an area of Government and ATO focus.

CHAPTER 19 State Government Taxes

Stamp duty and payroll tax are imposed by the various State and Territory Governments.

STAMP DUTY

Stamp duty is a State and Territory tax imposed at either a fixed or at an ad valorem rate on the value of the transaction involved.

Since 1997 New South Wales, Victoria, Tasmania, the ACT and Queensland have co-operated to rewrite their legislation in an attempt to achieve uniform legislation.

Stamp duty will in most cases apply to the GST inclusive amount of the consideration. Stamp duty imposes tax on certain transactions and documents. Duty is charged on a transfer of, and certain other dealings in, dutiable property. Dutiable property is broadly defined and includes land, goodwill, intellectual property, partnership interests, and certain dutiable shares, units in unit trusts and interests in dutiable property. Other transactions which may be dutiable include declarations of trust, agreements for sale or transfer, surrenders and foreclosures.

Stamp duty is levied at different rates depending on the nature of the property assessed to duty. Note that in the case of corporations and unit trusts which hold substantial land, the land conveyancing rates will apply on transfers of shares or units in what are termed "land-rich" corporations and unit trusts. The clear intent is to ensure that the higher duty on the transfer of land is not avoided by transferring shares or units in land-holding entities, rather than the land itself.

Stamp duty is also imposed on other commercial transactions such as mortgages, leases, rental or house agreements and insurance contracts. The rates and assessability will vary from state to state.

When making agreements for the transfer of property it is important to take into account the stamp duty costs that may be involved. Although there are various capital gains tax concessions for the transfer of property between related entities this does not mean that there will be no stamp duty payable on the transfer.

In their 2016-17 state budgets, Victoria, NSW and Queensland all introduced stamp duty surcharges of 3 to 4% on foreign residents purchasing residential property.

All state governments are committing more resources to combatting tax avoidance of stamp duty and payroll tax.

PAYROLL TAX

Payroll tax is a State or Territory based tax imposed on employers who pay wages in excess of certain tax-free thresholds.

There are considerable differences between the different States and Territories in the application of payroll tax. The rates of tax vary from 4.75 per cent in Queensland to 6.85 per cent in the ACT. The tax-free threshold varies from $625,000 in Victoria to $2,000,000 in the ACT.

Employers should be aware of various anti-avoidance measures, including those dealing with contractors and group related employers.

TAXABLE WAGES

The definition of 'wages' in Payroll Tax legislation is very broad and is not restricted to wages or salaries.

The term 'wages' includes:

- Wages
- Remuneration
- Salaries
- Allowances
- Commissions
- Bonuses
- Employer (pre-tax) superannuation contributions including superannuation guarantee payments, salary sacrifice contributions, from 1 July 2007 (1 July 2009 in WA), the value of non-monetary contributions and superannuation contributions to defined benefit funds;
- Appropriately grossed up value of fringe benefits, within the meaning of the Fringe Benefits Tax Assessment Act 1986 (Cwlth) (FBT Act);

- The value of shares and options granted to employees, directors, former directors and some contractors;
- Payments to some contractors;
- Payments by employment agencies arising from employment agency contracts;
- Remuneration paid by a company to or in relation to company directors and employment termination payments and accrued leave.

Note carefully that fringe benefits, superannuation and payments to contractors has some employers exceeding the thresholds without being aware of it.

STATE/ TERRITORY	RATE ON EXCESS OVER THRESHOLD	THRESHOLD
NSW	5.45%	$750,000
VIC	4.85% / 3.65% [2]	$625,000
QLD	4.75%	$1,100,000 [3]
SA	4.95% [4]	$600,000
ACT	6.85%	$2,000,000
NT	5.50%	$1,500,000 [6]
TAS	6.10%	$1,250,000
WA	5.50%	$850,000 [5]

From 1 July 2018 the Victorian threshold will be lifted from $625,000 to $650,000

1. The above thresholds may be reduced where the company is part of a group and/or pays interstate wages;
2. The lower 3.65% rate applies to businesses where at least 85% of their payroll goes to regional employees;
3. This threshold reduces by $1 for every $4 of Australian wages over $1,100,000. Businesses with an annual taxable wages of $5.5 million or more will be subject to payroll tax of 4.75% on their entire taxable wages;
4. A small business rate of 2.5% is proposed to apply to firms with payrolls between $600,000 and $1 million, then phase up to the general rate of 4.95% for payrolls above $1.5 million;
5. This threshold reduces gradually for employers with annual taxable wages between $850,000 and $7.5 million. Businesses with annual taxable wages of $7.5 million or more will be subject to payroll tax at 5.5% on their entire taxable wages;
6. This threshold reduces by $1 for every $4 of wages over $1,500,000. Businesses with annual taxable wages of $7.5 million or more will be subject to payroll tax of 5.5% on their entire taxable wages.

REGISTRATION

Employers who are not members of a group must register within seven days after the end of the month in which their average weekly payroll first exceeds 1/52 of the relevant annual exemption threshold.

GROUPING PROVISIONS

All States provide for the grouping of related or associated businesses, so that their wages are aggregated and one threshold only applied to the group.

Normally, one group member claims the exemption threshold and the remaining members must pay a flat rate of tax.

Grouping of employers

Under the grouping provisions, two or more employers may constitute a group if:

- They are related bodies corporate within the meaning of the Corporations Act 2001 (Cwth); or
- They use the same employees, or have an agreement for shared use of employees, or an employee is hired by one employer to work in another business; or
- The same persons have controlling interests in a number of businesses (whether conducted by persons, partnerships, corporations or trusts); or
- One has a controlling interest in the other (being a corporation) under the tracing provisions.

If an employer is a member of two or more groups, all the members of those groups will constitute one group.

CAUTION

As there are some border-line and definitional issues that vary between the States, use the above information as a guide only.

Areas of concern include what constitutes an employee and an independent contractor. As many businesses have been caught unawares, real care needs to be taken.

Although we make every reasonable effort to get the thresholds and payroll tax rates correct, some State Budgets come out subsequent to publication.

For more details refer to the websites listed below:

VIC: **www.sro.vic.gov.au**

QLD: **www.osr.qld.gov.au**

ACT: **www.revenue.act.gov.au**

SA: **www.revenuesa.sa.gov.au**

NSW: **www.osr.nsw.gov.au**

TAS: **www.sro.tas.gov.au**

NT: **www.revenue.nt.gov.au**

WA: **www.osr.wa.gov.au**

PAYROLL TAX AUSTRALIA

The Commissioners from Revenue Offices in each Australian state and territory launched the join Payroll Tax website www.payrolltax.gov.au in Adelaide on 25 July 2013.

The website will provide users with easy access to harmonised payroll tax documentation, legislation, state and territory contacts and education opportunities, comprising:

- A one-stop location for harmonised payroll tax information and payroll tax return lodgement/payment portals; and
- Information required by employer registered in multiple jurisdictions regarding harmonised payroll.

COMMENT ON RECENT DEVLEOPMENTS

Enhanced data matching techniques used at Federal and State level are catching out more employers who fall foul of the grouping provision or engage in sham contracting.

This means paying contracting fees to people (or their entities) who are essentially employees in all but name.

It is understandable that employers do not want to pay this tax which is effectively a disincentive to take on new staff and expand a business.

Having said this some states have a Payroll Tax Rebate Scheme to offer rebates to eligible employers who take on new staff. For example, the S.A. Government has recently extended their scheme for a further four years.

Check the relevant revenue website to see if you are eligible.

An alternative view is that payroll tax is an important part of State Revenue and should be just factored in as a cost of doing business.

For those close to the thresholds, working directors may instead elect to take dividends rather than salaries from companies. Also those employers (and their advisors) who think they are just beneath the threshold should carefully study the expanded definition of wages on the previous page.

Employers close to the threshold on normal basic wages can expect to come under increased scrutiny.

Your Notes

CHAPTER 20
Tax Reform

THE INTERGENERATIONAL REPORT

The 2015 Intergenerational Report made for some sobering reading.

It offered insights in Australia's future and its implications for the fiscal health of the Federal Government and the case for tax reform.

The Intergenerational Report explores where we will be in 2055, how will we be dealing with a rapidly ageing population and indeed how we will deal with substantial population growth.

Tax reform which impacts on revenue collection will play a crucial role in sustainable future Federal Budgets.

Make no mistake....nations who have failed to think strategically, properly considering taxation reforms and then responsibly deal with government expenditure, now face very challenging times.

TIME TO 'RE-THINK' OUR TAX SYSTEM

The tax discussion paper, released on 31 March 2015, began a dialogue on how we create a tax system that supports higher economic growth and living standards, improves our international competiveness and adjusts to a changing economy and new opportunities.

The Intergenerational Report does illustrate that Australia needs to take continued steps to boost productivity and encourage higher workforce participation to drive future economic growth.

Tax reform is a critical part of the Government's policy to create jobs, growth and opportunity.

The problem we face is that our current tax system, which was designed before the 1950s, is ill-suited to the 2050s.

As a result of changes driven by globalisation and the rise of the digital economy, Australia's heavy reliance on income taxes may be unsustainable. This over-reliance is projected to increase further, largely as a result of wages growth leading to individuals paying higher average rates of tax (bracket creep).

According to former Federal Treasurer Joe Hockey:

- Around 300,000 Australians are expected to move into the second highest tax bracket over the next two years.
- In just 10 years, nearly half of all taxpayers will be in the top two brackets – an increase from around 27 per cent today to 43 per cent in 10 years' time.
- In Australia about 70 per cent of Commonwealth tax revenue is collected from personal and company income taxes.
- A dozen companies pay around one third of Australia's company tax.
- The rise of the digital economy and globalisation presents significant challenges for the effectiveness of the tax system.
- Capital is more mobile and we need a competitive corporate tax regime to encourage investment. Multinational corporations operate across many jurisdictions and that means it can be difficult to determine where tax should be paid.
- The Intergenerational Report highlights the need for a tax system that can support a growing and ageing population while there is a decline in the number of traditional working age Australians to fund services.
- Australia can't risk falling behind. Many of Australia's international competitors are changing their tax systems to make them more competitive.
- The Government must build a tax system that delivers taxes that are lower, simpler and fairer.
- The Community's responses will inform the Government's tax options Green Paper, which was due to be released in the second half of 2015. The Government was to seek further feedback on those options before putting forward policy proposals for consideration by the Australian people in 2016.

A detailed analysis of the Discussion paper is beyond the scope of this publication. It is very clear that Treasury has put the issues out there without offering solutions – we suggest these are a matter for public debate, hopefully leading to some consensus.

This has been the successful model for taxation reform in New Zealand.

We note that bracket creep was addressed to a degree in the May 2016 Budget with the threshold for the second highest rate of individual tax (37%) increasing from $80,000 to $87,000 for the 2016/17 year.

TAX REFORM

The tax reform white paper was abandoned by the Government in the heat of the July 2016 Federal Election.

Many of the initiatives in the 2016-17 Federal Government budget have been received positively.

Indeed the superannuation reforms crack down on tax avoidance and tax relief for small to medium sized business have been covered in depth in earlier chapters.

However as Alex Malley then Chief Executive of CPA pointed out in his budget summary:

"However, the combined impact of these initiatives is a long way from presenting us with anything like the leadership Australia needs to ensure we can enhance our competitiveness against increasing global headwinds.

Tax change is not tax reform. The budget is about setting up an election campaign. It is yet another lost opportunity for real reform on top of a decade of lost opportunity."

Of course Mr Malley is 100% correct and in the interests of fairness we point out that both sides of politics have shared power in the last decade. The last time a candidate went to a federal election campaign with a comprehensive tax reform package was in 1993 when John Hewson lost the unlosable election!

The Business Council of Australia's (BCA) then President Mr Michael Chaney took a similar view to the CPAs when he said "The BCA welcomed the government's recognition that Australia needs a commitment to ongoing structural reform, and that it has adopted the BCA's recommendation of a reduction in personal tax rates, as well as changes to tax thresholds.

But the tax reform statement, while providing an excellent summary of past achievements, does little to lay out a strategic tax reform agenda beyond the forthcoming year.

There is no better time than now for Australia to make the strategic decisions and investment needed for future growth. Many of the initiatives are sound responses to immediate pressures on our economy and its competitiveness, but over the next 12 months, it will be imperative to achieve greater progress toward more permanent, structural changes to the economy."

Once again the BCA reiterated its call for a more strategic approach to tax policy rather than piecemeal changes aimed at catching up.

Once again both sides of politics would argue they are currently seeking a mandate from the Australian public to implement changes.

We have deliberately retained the discussion of the White Paper because even though it was abandoned by the Government, it properly addresses the issues Australia faces and will probably serve as the basis for further taxation reform when the time is right.

We note the key results from the BDO Australia's 2016 tax reform survey:

After getting so close to genuine tax reform through the Tax White Paper process many businesses felt cheated by its recent abandonment and were fearful the Federal Budget would present only piecemeal measures and a vague commitment to look closer at tax reform after the recent election.

Some of the key survey findings include:

- 80% of respondents agreed a review of the GST is essential to any discussion of tax reform.
- 85% agreed state stamp duties are a significant impost on business and reduce the mobility of the population by discouraging the sale of residential and business real estate, and other business assets.
- 59% agreed that a reduction in the corporate tax rate would improve the Australian economy by encouraging companies to invest and employ more staff – up from 50% in 2015.
- 47% of respondents agreed the adoption of OECD's BEPS initiatives was an appropriate way of discouraging companies from avoiding taxation in Australia, although about the same number had a neutral view, potentially indicating a lack of knowledge about the issue.

DEVELOPMENTS THROUGH 2017

The May 2017 Federal Budget contained no meaningful tax reform.

It remains a looming issue as bracket creep takes more and more Australians into higher tax brackets. The release of Parliamentary Budget Office figures in July 2017 predicts:

- The average income tax rate on incomes will rise from 22.7% (2016) to 25.9% predicted by 2028;
- The share of individuals on the top marginal rate (47%) would rise from 3% to 7.3% in a decade.

Nothing changes at a state level as Treasurers from states such as NSW and WA continue to urge reform over the allocation of GST revenue. GST reform is essential and we would point out the average rate of comparable consumption taxes in OECD nations is 15%, compared to Australia's GST rate which is 10%.

Our near neighbour New Zealand has done much better than us on tax reform but is not hamstrung with a Senate (no upper house) and they do not have state governments to deal with.

Tax reform is inextricably linked to politics and the truth is that our political system makes meaningful change difficult.

It isn't all negative – Australia has stable tax bases and our Politicians have shown the will and vision to carefully consider the future global environment and demographic change when formulating revenue policy. We will keep you informed on developments as they occur.

Your Notes

2017/18 Effective Lives

The ATO has a dedicated team whose role is to update and expand the Commissioner's effective life schedule attached to Taxation Ruling TR 2017/2.

This is achieved by staff undertaking effective life reviews, either of a single asset (such as concrete truck mixers), or an industry (e.g. professional photographic services).

Broadly, these reviews involve:

- Identifying the assets currently used in the industry
- Consulting (including interviews and asset inspections) with major interest groups such as industry representative bodies, users and suppliers
- Completing a report with recommendations for new effective lives
- Removing redundant items currently in the commissioner's schedule.

New effective lives arising from these reviews are published twice yearly as addenda to the Taxation Ruling.

The objective of a review is to determine the effective life of the assets used by an industry, to reflect the circumstances of use for most users in that industry. The ATO seeks to identify the circumstances of use which is the industry norm, consistent with standard industry practice.

This represents a break with the past where most of the effective life determinations were based on an estimate of the average circumstances of use in an industry.

Clearly, taxpayers whose circumstances of use are different to the industry norm can self-assess their own effective life.

To date, the ATO has selected industries and/or assets for review where the old determinations were clearly anomalous and inconsistent with current industry norms.

Some reviews were initiated in response to requests from taxpayers. The effective life and capital allowances centre of expertise within the Tax Office has now initiated a risk management approach to identify assets or industries for review. They have identified the following three risk factors, each being of equal weight: The dollar amount of depreciation claimed annually, the number of taxpayers who own the asset(s) and whether or not the asset/industry is listed in the effective life schedule, and, if it is listed, whether or not that listing is inconsistent with current industry practice.

The ATO make periodic consolidations of Tables A and B to incorporate further effective life determinations made by the Commissioner as a result of reviews undertaken.

Industry bodies and interested taxpayers are consulted during the course of effective life reviews and, in some instances reports prepared by independent consultants are used. An independent review panel also checks each review process to confirm the level of industry consultation was appropriate. That panel typically comprises representatives from the Corporate Tax Association, The Institute of Chartered Accountants in Australia and the Australian Taxation Office.

In TR 2017/2, the Commissioner has made a determination of the effective life of certain depreciating assets in Tables A and B with effect from 1 July 2017.

Due to the level of detail contained in TR 2017/2, only the industries covered by Table A are listed below rather than particular assets. Please refer directly to the ruling if you are in any of these industries.

Schedule - ANZSIC categories in Table A

AGRICULTURE, FORESTRY AND FISHING (01110 to 05290)
Agriculture
Aquaculture
Beef cattle farming
Beef cattle feedlots
Coffee, olive and tree nut growing
Dairy cattle farming
Fishing
Forestry and logging
Fruit growing
Mushroom growing
Nursery and floriculture production
Other agriculture and fishing support services
Pig farming
Poultry farming for breeding, eggs and meat
Poultry hatcheries
Sheep farming
Vegetable growing (under cover)
Vegetable growing (outdoors) and sugar cane growing
MINING (06000 to 10900)
Coal mining
Construction material mining
Gold ore mining
Iron ore mining
Mineral sand mining
Mineral exploration services
Nickel ore mining
Oil and gas extraction
Other mining support services
Petroleum exploration services
MANUFACTURING (11110 to 25990)
Alumina production
Aluminium smelting
Bakery product manufacturing
Bakery product manufacturing (non-factory based)
Basic chemical and chemical product manufacturing
Beer manufacturing (except non-alcoholic beer)
Boiler, tank and other heavy gauge metal container manufacturing
Cement manufacturing
Ceramic product manufacturing
Cereal and pasta product manufacturing
Cleaning compound and toiletry preparation manufacturing
Concrete product manufacturing
Confectionery manufacturing
Cured meat and smallgoods manufacturing
Dairy product manufacturing
Fabricated metal product manufacturing
Fruit and vegetable processing
Furniture and other manufacturing
Glass and glass product manufacturing
Grain mill product manufacturing
Human pharmaceutical and medicinal product manufacturing
Industrial gas manufacturing
Iron smelting and steel manufacturing
Log sawmilling and timber dressing
Meat processing
Motor vehicle body and trailer manufacturing
Motor vehicle manufacturing
Non-ferrous metal casting
Non-metallic mineral product manufacturing
Oil and fat manufacturing
Other basic chemical product manufacturing
Other food product manufacturing n.e.c.
Other motor vehicle parts manufacturing
Other professional and scientific equipment manufacturing n.e.c.
Other transport equipment manufacturing n.e.c.
Other wood product manufacturing
Paint and coatings manufacturing
Paper stationery manufacturing
Petroleum refining
Photographic, optical and ophthalmic equipment manufacturing
Plaster product manufacturing
Plywood and veneer manufacturing
Polymer film and sheet packaging material manufacturing
Polymer product and rubber product manufacturing
Poultry processing
Prepared animal and bird feed manufacturing
Printing
Printing support services
Pulp, paper and converted paper product manufacturing
Railway rolling stock manufacturing and repair services
Ready-mixed concrete manufacturing
Reconstituted wood product manufacturing
Rigid and semi-rigid polymer product manufacturing
Sanitary paper product manufacturing
Soft drink, cordial and syrup manufacturing
Spirit manufacturing
Steel coil roll forming, slitting, blanking and sheet metal forming
Sugar manufacturing
Textile, leather, clothing and footwear manufacturing
Wine and other alcoholic beverage manufacturing

ELECTRICITY, GAS, WATER AND WASTE SERVICES (26110 to 29220)

Electricity supply
Gas supply
Irrigation water providers
Sewerage and drainage services
Solid waste collection services
Waste remediation and materials recovery services
Waste treatment and disposal services
Water supply

CONSTRUCTION (30110 to 32990)

Other heavy and civil engineering construction n.e.c.

WHOLESALE TRADE (33110 to 38000)

Commission-based wholesaling
Petroleum product wholesaling
Wool wholesaling

RETAIL TRADE (39110 to 43209)

Food retailing
Fuel retailing
Motor vehicle tyre or tube retailing
Other store-based retailing

ACCOMMODATION AND FOOD SERVICES (44000 to 45302)

Accommodation
Cafes, restaurants, takeaway food services, pubs, taverns bars and clubs (hospitality)

TRANSPORT POSTAL AND WAREHOUSING (46100 to 53090)

Airport operations and other air transport support services
Courier pick-up and delivery services
Other transport support services n.e.c.
Other warehousing and storage services
Postal services
Rail freight and passenger transport services
Road transport
Scenic and sightseeing transport
Tramway and light rail passenger transport services
Water transport and support services

INFORMATION MEDIA AND TELECOMMUNICATIONS (54110 to 60200)

Electronic information storage services
Internet publishing and broadcasting
Library and other information services
Motion picture and video activities
Motion picture exhibition
Radio broadcasting
Telecommunications services
Television broadcasting

FINANCIAL AND INSURANCE SERVICES (62100 to 64200)

RENTAL, HIRING AND REAL ESTATE SERVICES (66110 to 67200)

Non-residential property operators
Rental and hiring services (except real estate)
Residential property operators

PROFESSIONAL, SCIENTIFIC AND TECHNICAL SERVICES (69100 to 70000)

Advertising services
Professional photographic services
Scientific research services
Surveying and mapping services
Veterinary services

ADMINISTRATIVE AND SUPPORT SERVICES (72110 to 73200)

Building and other industrial cleaning services
Gardening services
Packaging services

EDUCATION AND TRAINING (80100 to 82200)

HEALTH CARE AND SOCIAL ASSISTANCE (84010 to 87900)

Dental services
Hospitals
Nursing home operation
Optometry and optical dispensing
Pathology and diagnostic imaging services
Podiatry services
Specialist medical services n.e.c.

ARTS AND RECREATION SERVICES (89100 to 92099)

Creative and performing arts activities
Gambling activities
Health and fitness centres and gymnasia operation
Heritage activities
Sport and recreation services

OTHER SERVICES (94110 to 96030)

Automotive body, paint and interior repair n.e.c.
Automotive repair and maintenance
Funeral, crematorium and cemetery services
Hairdressing and beauty services
Laundry and dry cleaning services
Other machinery and equipment repair and maintenance
Parking services
Photographic film processing

TR 2017/2 - Effective lives (Asset categories)

Table B as at 1 July 2017

ASSET	LIFE (YEARS)	DATE OF APPLICATION
A		
Accommodation units in caravan/tourist parks being articles, not fixtures, and used for a specified purpose 35 :		
Relocatable homes and tourist park cabins constructed with chassis	20	1 Jul 2015
Other accommodation units (eg manufactured homes)	30	1 Jul 2015
Additive manufacturing printers (including 3D printers)	3	1 Jul 2016
Advertising signs:		
Billboard assets:		
Billboard lighting:		
HID/Metal halide lighting systems	5	1 Jul 2015
LED lighting systems (including solar powered LED lighting systems)	10	1 Jul 2015
Solar power generating assets - see Table B Solar photovoltaic electricity generation system assets		
Billboard steel structures (incorporating electrical systems, footings, scaffolding and walking platforms and steel frame sign panels)	20	1 Jul 2015
Computer hardware - see Table B Computers		
Digital LED screens	6	1 Jul 2015
Electronic message centre (EMC) units	3	1 Jul 2015
Mobile billboard assets:		
Digital LED screens	4	1 Jul 2015
Mobile billboard trucks and trailers - see Table B Motor vehicles and trailers		
Floor mounted internal advertising panels (used in airports and shopping centres etc)	7	1 Jul 2015
Kiosks and other external standalone advertising panel structures	15	1 Jul 2015
LED advertising screens (used in office tower foyers etc)	5	1 Jul 2015
Wall mounted advertising panels (used in airports, rail concourses and platforms, shopping centres etc):		
Digital LED advertising panels	5	1 Jul 2015
Static advertising panels	10	1 Jul 2015
Air compression assets:		
Air compression assets generally (inc. air compressors, air dryers and air receivers)	15	1 Jul 2014
Air compressors (portable):		
Compressors - reciprocating	7	1 Jul 2014
Compressors - rotary screw	10	1 Jul 2014
Air-conditioning assets (excluding pipes, duct work and vents):		
Air handling units	20	1 Jul 2003
Cooling towers	15	1 Jul 2003
Condensing sets	15	1 Jul 2003
Chillers:		
Absorption	25	1 Jul 2003
Centrifugal	20	1 Jul 2003
Volumetrics (including reciprocating, rotary, screw, scroll):		
Air-cooled	15	1 Jul 2003
Water-cooled	20	1 Jul 2003
Damper motors (including variable air volume box controllers)	10	1 Jul 2003

ASSET	LIFE (YEARS)	DATE OF APPLICATION
Fan coil units (connected to a condensing set)	15	1 Jul 2003
Humidifiers (steam generator)	10	1 Jul 2003
Mini split systems up to 20KW (including ceiling, floor and high wall split systems)	10	1 Jul 2003
Packaged air conditioning units	15	1 Jul 2003
Pumps	20	1 Jul 2003
Room units	10	1 Jul 2003
Aircraft:		
Aeroplanes:		
General use	20	1 Jul 2002
Used predominantly for agricultural spraying or agricultural dusting	10	1 Jul 2002
Helicopters:		
General use	20	1 Jul 2002
Used predominantly for mustering, agricultural spraying or agricultural dusting	10	1 Jul 2002
Airless sprayers (used in painting, epoxy and polyurethane coating, priming etc):		
Electrically and petrol-driven units	7	1 Jul 2013
Pneumatically-driven units	15	1 Jul 2013
Artworks qualifying as depreciating assets (restricted to works of art and reproductions of artwork that are tangible in nature, such as paintings, sculptures, drawings, engravings and photographs, that are displayed in open viewing areas in premises used for taxable purposes including reception areas, waiting rooms and foyers)	100	1 Jul 2013
Automatic teller machines	8	1 Jul 2001
B		
Bending machines (bar, angle and rod)	10	1 Jul 2008
Block and brick elevators, portable	10	1 Jul 2008
Boilers	20	1 Jul 2005
Boom gates:		
Electromechanically operated boom gates	7	1 Jul 2013
Hydraulically operated boom gates	10	1 Jul 2013
C		
Car park assets:		
Automatic and semi-automatic parking systems (including platforms, stackers, turntables etc)	20	1 Jul 2016
Automatic payment machines/stations	10	1 Jul 2016
Barrier gates/boom gates - see Table B Boom gates		
Car park floodlighting	20	1 Jul 2016
Car park signage	7	1 Jul 2016
Entry and exit stations/columns (including RFID card readers, ticket dispensing machines, ticket readers etc)	10	1 Jul 2016
Licence plate recognition cameras and systems	5	1 Jul 2016
Parking guidance assets:		
Automatic vehicle counter systems (incorporating counter modules and signage)	7	1 Jul 2016
Parking guidance systems (incorporating controllers, detectors, dynamic signage, lighting etc)	7	1 Jul 2016
Pay and display machines/Pay and go machines	8	1 Jul 2016
Security and monitoring assets:		
Generally (including CCTV systems) - see Table B Security and monitoring assets		
Intercommunication (intercom) system assets	7	1 Jul 2016

ASSET	LIFE (YEARS)	DATE OF APPLICATION
Two-way radios - see Table B Two-way radios		
Ceiling fans	10	1 Jul 2016
Compaction assets:		
Compactors - flat plate	8	1 Jul 2008
Compactors - vertical rammer	6	1 Jul 2008
Computers and computer equipment:		
Computers and computer equipment (not specified elsewhere below)	4	1 Jul 2016
Computer monitors	4	1 Jul 2016
Desktop computers (including personal computers)	4	1 Jul 2016
Mainframe computers	5	1 Jul 2016
Mobile/portable computers (including laptops, tablets)	2	1 Jul 2016
Network equipment (including hubs, modems routers, switches, etc)	5	1 Jul 2016
Raised access floors in computer data rooms and server rooms	40	1 Jul 2014
Servers	4	1 Jul 2016
Concrete truck mixers (incorporating barrel, chutes, frame and hydraulic pumps)	5	1 Jul 2014
Concreting assets:		
Brick and paving saws	5	1 Jul 2008
Concrete demolition saws	3	1 Jul 2008
Concrete kibble buckets	15	1 Jul 2008
Concrete mixers	4	1 Jul 2008
Concrete surface preparation assets (including floor grinders, planers and scarifers)	5	1 Jul 2008
Concrete trowels:		
Walk behind	5	1 Jul 2008
Ride on	7	1 Jul 2008
Concrete vibrating screeders	5	1 Jul 2008
Concrete vibrators:		
Brushcutter style	5	1 Jul 2008
Drive units	6	1 Jul 2008
Flexible shaft pumps	6	1 Jul 2008
Vibrating shafts	3	1 Jul 2008
Concrete wheeled saws	6	1 Jul 2008
Control systems and control system assets (including control cabinets and panels, instruments, programmable logic controllers (PLCs), sensors, switchgear telemetry and variable speed drives VSDs))	10	1 Jul 2015
Cranes (gantry and overhead)	25	1 Jul 2014
Curtains and drapes	6	1 Jul 2004
D		
Digital cameras:		
Camera lenses	5	1 Jul 2015
Medium format single lens reflex (SLR) system (inc.camera bodies and digital backs)	4	1 Jul 2015
Others	3	1 Jul 2015
Door control and motor drive system for automatic sliding doors (incorporating chains, controls, motors and sensors, but excluding doors)	15	1 Jul 2005
Dozers/front end loaders	9	1 Jul 2002
Drink dispensing machines	10	1 Jul 2005
Drones/remotely piloted aircraft - see Table B Unmanned aerial vehicles		

ASSET	LIFE (YEARS)	DATE OF APPLICATION
E		
Employee time and attendance recorders (including bundy clocks, time clocks etc):		
Computerised time and attendance recorders (including fingerprint and face recognition systems and swipe card digital time clock systems)	10	1 Jul 2013
Standalone electronic time and attendance recorders (card based etc)	10	1 Jul 2013
Escalators (machinery and their moving parts)	20	1 Jan 2003
F		
Fences:		
Portable electric fences	20	1 Jul 2014
Wire mesh (demountable used for partitioning purposes, including portable	20	1 Jul 2014
electric fences)		
Fire control and alarm assets:		
Alarms:		
Heat	6	1 Jul 2004
Smoke	6	1 Jul 2004
Detection and alarm systems:		
Alarm bells	12	1 Jul 2004
Detectors:		
Aspirated smoke	12	1 Jul 2004
Heat	20	1 Jul 2004
Manual call point (addressable type only)	20	1 Jul 2004
Multi type	20	1 Jul 2004
Smoke	20	1 Jul 2004
Fire indicator panels	12	1 Jul 2004
Gas suppression cylinders	25	1 Jul 2004
Emergency warning and intercommunication systems:		
Master emergency control panels	12	1 Jul 2004
Speakers	12	1 Jul 2004
Strobe lights	12	1 Jul 2004
Warden intercom phones	12	1 Jul 2004
Extinguishers	15	1 Jul 2004
Hoses and nozzles	10	1 Jul 2004
Pumps (including diesel and electric)	25	1 Jul 2004
Stair pressurisation assets:		
AC variable speed drives (VSDs)	10	1 Jul 2004
Pressurisation and extraction fans	25	1 Jul 2004
Sensors	10	1 Jul 2004
Floor coverings (removable without damage):		
Carpets (excluding fixed carpet tiles)	8	1 Jul 2016
Floating timber	15	1 Jul 2016
Linoleum and vinyl	10	1 Jul 2016
Fogging machines (insecticide, including cold foggers and thermal foggers):		
Portable	6	1 Jul 2013
Vehicle mounted	10	1 Jul 2013
Forklifts	11	1 Jul 2002
Forklift battery chargers	11	1 Jul 2013
Formwork, beams and props, steel	10	1 Jul 2008

ASSET	LIFE (YEARS)	DATE OF APPLICATION
Foundations for plant and machinery (integral to the operation of such plant and machinery, but not incorporated into the plant and machinery itself)	40	1 Jul 2014
G		
Generators (see Table B Power supply assets)		
H		
Hand dryers (electrical)	10	1 Jul 2013
Hand tools (manually operated)	10	1 Jul 2014
J		
Judges' robes:		
Ceremonial robes	15	1 Jul 2013
Working robes	10	1 Jul 2013
L		
Laboratory assets used in quality control, sample checking etc:		
Automated and electronically based laboratory assets (including analysers, refractometers, spectrometry machines etc)	7	1 Jul 2014
Other laboratory assets (inc. autoclaves, centrifuges, microscopes, ovens etc)	10	1 Jul 2014
Laser cutting machines		
Levels:	10	1 Jul 2014
Automatic optical levels (dumpy levels)	7	1 Jul 2015
Laser levels:		
Grade laying (dial-in grade)	6	1 Jul 2015
Laser plummets	5	1 Jul 2015
Line and plumb/point and cross line	4	1 Jul 2015
Pipe laying	6	1 Jul 2015
Rotating	6	1 Jul 2015
Tunnelling and plumbing	6	1 Jul 2015
Libraries (professional)	10	1 Jul 2014
Lift slab assets (incorporating spreader bars, clutches, pulleys and cables)	5	1 Jul 2008
Lifts (including dumbwaiters, hydraulic lifts and traction lifts)	30	1 Jan 2003
Light fittings and freestanding lights (excluding hardwired light fittings)	10	1 Jul 2016
Light shades (removable)	5	1 Jul 2016
Lighting control systems (microprocessor based)	5	1 Jul 2014
Livestock, being working beasts and beasts of burden (including camels and horses) used in a business other than primary production	15	1 Jul 2014
Loading bay assets:		
Dock levellers	20	1 Jul 2005
Pallet jacks and pallet trucks	10	1 Jul 2005
Scissor lifts	15	1 Jul 2005
M		
Machine tools (grinding machines, lathes, milling machines etc):		
CNC and NC based machines	10	1 Jul 2014
Conventional or manual machines	20	1 Jul 2014
Mini-skid steer loaders (with a carrying capacity less than or equal to 1100 kg)	5	1 Jul 2005
Mini-skid steer loader attachments:		
Others (including auger and bucket)	5	1 Jan 2004
Stump grinders	2	1 Jan 2004
Motor graders	10	1 Jul 2002

ASSET	LIFE (YEARS)	DATE OF APPLICATION
Motor vehicles and trailers:		
Buses having a gross vehicle mass of more than 3.5 tonnes 40	15	1 Jan 2005
Cars (motor vehicles designed to carry a load of less than one tonne and fewer than 9 passengers):		
Generally	8	1 Jan 2006
Hire cars:		
Cars used to provide basic service ride-sourcing, ride-hailing or ride sharing services (e.g. UberX)	8	1 Jul 2016
Generally (including cars used to provide premium service ride sourcing, ride-hailing or ride-sharing services e.g. UberBLACK)	6	1 Jul 2016
Rental cars	5	1 Jul 2016
Taxis	4	1 Jul 2015
Garbage compactor trucks - see Table A Solid waste collection services		
Light commercial vehicles designed to carry a load of one tonne or greater and having a gross vehicle mass of 3.5 tonnes or less 43	12	1 Jan 2005
Limousines:		
Sedan limousines	6	1 Jul 2016
Stretch limousines	12	1 Jul 2016
Minibuses having a gross vehicle mass of 3.5 tonnes or less and designed to carry 9 or more passengers 44	12	1 Jan 2005
Motorcycles (including courier motorcycles and mailbox delivery motorcycles)	7	1 Jul 2015
Scooters	3	1 Jul 2015
Trailers having a gross vehicle mass greater than 4.5 tonnes 45	15	1 Jan 2005
Trailers having a gross vehicle mass of 4.5 tonnes or less:		
Aluminium, galvanised steel, galvanised hot dipped steel and powder coated trailers	10	1 Jul 2015
Mild steel trailers (painted and unpainted)	5	1 Jul 2015
Trucks having a gross vehicle mass greater than 3.5 tonnes (excluding off highway trucks used in mining operations)	15	1 Jan 2005
Moving walks	20	1 Jan 2003
Musical instruments and associated equipment:		
Associated portable equipment (including amplifiers, microphones, speakers, mixers and music stands)	6 2/3	1 Jan 2001
Brass instruments	10	1 Jan 2001
Keyboard instruments (acoustic)	10	1 Jan 2001
Keyboard instruments (electric)	5	1 Jan 2001
Percussion instruments	5	1 Jan 2001
Stringed instruments	10	1 Jan 2001
Woodwind instruments	10	1 Jan 2001
O		
Office furniture, freestanding:		
Bookcases:		
Metal	20	1 Jul 2005
Timber	15	1 Jul 2005
Cabinets (including credenzas, cupboards, filing, mapping, mobile, stationery and storage type):		
Metal	20	1 Jul 2005
Timber/laminated	15	1 Jul 2005

ASSET	LIFE (YEARS)	DATE OF APPLICATION
Chairs	10	1 Jul 2005
Desks	20	1 Jul 2005
Mobile storage units (compactus type)	25	1 Jul 2005
Reception assets (including lobby chairs, desks, lounges, sofas and tables)	10	1 Jul 2005
Screens	20	1 Jul 2005
Tables:		
Boardroom	20	1 Jul 2005
General	10	1 Jul 2005
Workstations (including desks and partitions)	20	1 Jul 2005
Office machines and equipment:		
Electronic whiteboards	6	1 Jan 2001
Enveloping machines	6	1 Jan 2001
Facsimile machines	5	1 Jan 2001
Letter folding and inserting machines (including envelope inserters and letter inserters - desktop/low volume units)	5	1 Jul 2013
Mailing machines	5	1 Jan 2001
Multi function machines (includes fax, copy, print and scan functions)	5	1 Jan 2001
Photo copying machines	5	1 Jan 2001
Projectors (including lenses)	5	1 Jul 2014
Shredders	15	1 Jul 2005
Trolleys	15	1 Jul 2005
Whiteboards	10	1 Jul 2005
P		
Packaging machines:		
Bagging machines (including flow wrappers, form fill and seal machines, and roll wrapping machines)	10	1 Jul 2009
Bag sewers	7	1 Jul 2017
Carton erecting, packing and closing machines (including cartoners)	10	1 Jul 2009
Case erecting, packing and closing machines (including casepackers)	10	1 Jul 2009
Inspection equipment (inc. checkweighers, metal detectors, counting machines etc)	10	1 Jul 2009
Multihead and singlehead weighers	10	1 Jul 2009
Palletisers and depalletisers	12	1 Jul 2009
Product identification labellers (inc. decorating, applicators and coding machines)	8	1 Jul 2009
Robotic pick and place packaging machines	10	1 Jul 2009
Wrapping machines (inc. shrink wrappers, stretch wrappers and strapping machines)	10	1 Jul 2017
Partitions (demountable)	20	1 Jul 2005
Platform scales	15	1 Jul 2014
Plumbing fixtures and fittings (including wall and floor tiles) provided mainly for employees and/or children of employees of an entity carrying on a business for the purpose of producing assessable income:		
Floor and wall tiles	20	1 Jul 2015
Generally (including basins, bidets, sinks, toilets, urinals etc)	20	1 Jul 2015
Tapware (including taps, mixers and shower heads and assemblies)	15	1 Jul 2015
Pneumatic air tube systems	10	1 Jul 2013
Point of sale assets:		
Cash registers, standalone type	10	1 Jul 2005

ASSET	LIFE (YEARS)	DATE OF APPLICATION
Cash transfer system assets, pneumatic type (including printer circuit board, transfer pipes and turbines)	10	1 Jul 2005
Generally (including barcode scanners, cash drawers, dedicated computers, electronic funds transfer point of sale (EFTPOS) machines, keyboards, monitors, printers and terminals)	6	1 Jul 2005
Weighing machines and scales (including weigh labelling machines)	10	1 Jul 2005
Portable structures (sheds, site office trailers, portable toilets and washrooms etc) used for a temporary period in offsite locations (e.g. construction sites)	15	1 Jul 2014
Powder coating machines and systems (automatic and manual)	10	1 Jul 2014
Power regulation systems (PRS)	5	1 Jul 2016
Power supply assets:		
Emergency or standby:		
Generator assets:		
Acoustic hoods and canopies	20	1 Jul 2005
Generators (incorporating attached engine management and generator monitoring instruments)	25	1 Jul 2005
Power management units	15	1 Jul 2005
Uninterruptible power supply (UPS) systems	15	1 Jul 2013
Generators, portable (incorporating attached engine management and generator monitoring instruments):		
Diesel	10	1 Jul 2008
Petrol	5	1 Jul 2008
Private electricity line assets (where used for a specified purpose):		
Distribution lines:		
Combination of overhead and underground	47 ½	1 Jul 2014
Overhead (incorporating poles - concrete, wood, steel or stobie - and electrical equipment the responsibility of the private landholder such as conductors, cross arms etc)	45	1 Jul 2014
Underground (incorporating cables, fittings and ground pad mounted transformers)	50	1 Jul 2014
Service cables, overhead	40	1 Jul 2014
Service cables, underground	50	1 Jul 2014
Storage batteries	15	1 Jul 2013
Power tools:		
Chain saws	3	1 Jul 2008
Hand tools:		
Air	5	1 Jul 2008
Battery	3	1 Jul 2008
Electric	5	1 Jul 2008
Jack hammers:		
Air	7	1 Jul 2008
Electric	3	1 Jul 2008
Nail guns - air	3	1 Jul 2008
Power transformers	45	1 Jan 2002
Public address and paging system assets (inc. amplifiers, audio speakers and microphones)	12	1 Jul 2005
R		
Refrigeration assets:		

ASSET	LIFE (YEARS)	DATE OF APPLICATION
Compressors, condensers, evaporators etc	15	1 Jul 2014
Insulation panels used in cool or freezer rooms	40	1 Jul 2014
Robots (industrial)	10	1 Jul 2014
S		
Saws, bench and mitre, portable	7	1 Jul 2008
Security and monitoring assets:		
Access control systems:		
Code pads	5	1 Jul 2004
Door controllers	5	1 Jul 2004
Readers:		
Proximity	7	1 Jul 2004
Swipe card	3	1 Jul 2004
Ballistic and blast resistant screens and barriers (including fixed and rising types) not forming part of the building	20	1 Jul 2014
CCTV systems:		
Cameras	4	1 Jul 2004
Monitors	4	1 Jul 2004
Recorders:		
Digital	4	1 Jul 2004
Time lapse	2	1 Jul 2004
Switching units (including multiplexers)	5	1 Jul 2004
Security systems:		
Code pads	5	1 Jul 2004
Control panels	5	1 Jul 2004
Detectors (including glass, passive infrared and vibration)	5	1 Jul 2004
Global system for mobiles (GSM) units	5	1 Jul 2004
Noise maker (including alarms and bells)	5	1 Jul 2004
Sewing machines	10	1 Jan 2014
Signage for business identification (including lighting for signs)	10	1 Jul 2005
Silos:		
Bulk handling:		
Ancillary mechanical assets (inc. augers, bucket elevators, conveyors etc)	15	1 Jul 2014
Concrete construction	50	1 Jan 2004
Galvanised construction	30	1 Jan 2004
Steel construction	40	1 Jan 2004
Solar photovoltaic electricity generation system assets	20	1 Jul 2011
Spas used as plant in a business (incorporating blowers, controls, filters, heaters and pumps)	17	1 Jul 2014
Spray booths	15	1 Jul 2014
Stacks (chimney stacks, exhaust stacks, flues etc):		
Concrete stacks (including concrete reinforced stacks)	30	1 Jul 2014
Flare stacks	25	1 Jul 2014
Reinforced plastic stacks	25	1 Jul 2014
Steel stacks (steel flues)	20	1 Jul 2014
Suitcases	10	1 Jul 2013
Swimming pool assets:		
Chlorinators	12	1 Jul 2004

ASSET	LIFE (YEARS)	DATE OF APPLICATION
Cleaning assets	7	1 Jul 2004
Filtration assets (including pumps)	12	1 Jul 2004
Heaters:		
Electric	15	1 Jul 2004
Gas	15	1 Jul 2004
Solar	20	1 Jul 2004
Swimming pools (used as plant in a business):		
Above-ground	10	1 Jul 2005
Concrete	50	1 Jul 2005
Fibreglass	20	1 Jul 2005
Switchboards	20	1 Jul 2014
Synthetic lawn surfaces	5	1 Jul 2014
T		
Tarpaulins	5	1 Jul 2014
Telephony:		
Mobile phones	3	1 Jul 2014
Telephone systems (including analogue and digital telephone systems, PABX/PBX systems, key/commander systems, VoIP systems and hybrid telephone systems such as IP-PBX systems etc)	7	1 Jul 2015
Television sets	10	1 Jul 2014
Tractors	12	1 Jul 2007
Trailers - see Table B Motor vehicles and trailers		
Two-way radios:		
Base stations	6	1 Jul 2014
Mobile units	6	1 Jul 2014
Portable units	3	1 Jul 2014
Repeaters	7	1 Jul 2014
U		
Unmanned aerial vehicles (drones/remotely piloted aircraft):		
Fixed wing	3	1 Jul 2015
Rotary wing	2	1 Jul 2015
V		
Vending machines	5	1 Jul 2001
Ventilation fans (excluding ducting, piping and vents)	20	1 Jan 2005
W		
Warehouse and distribution centre equipment and machines:		
Automated storage and retrieval machines	20	1 Jul 2011
Balers	15	1 Jul 2011
Battery assets for warehouse vehicles (including pallet trucks and forklifts):		
Batteries (detachable for recharging)	5	1 Jul 2011
Battery chargers:		
Forklifts	11	1 Jul 2011
Other	10	1 Jul 2011
Handling assets:		
Battery tuggers	10	1 Jul 2011
Racking roller beds	15	1 Jul 2011
Transfer carts	10	1 Jul 2011

ASSET	LIFE (YEARS)	DATE OF APPLICATION
Washers	10	1 Jul 2011
Carts/buggies	15	1 Jul 2011
Conveyors	15	1 Jul 2011
Dock levellers, pallet jacks, pallet trucks and scissor lifts - see Table B Loading bay assets		
Door control and motor drive systems (incorporating chains, controls, motor and sensors, but excluding doors):		
External	20	1 Jul 2011
Internal	10	1 Jul 2011
Floor sweepers/scrubbers	10	1 Jul 2011
Forklift attachments:		
Cages	10	1 Jul 2011
Push pull units	11	1 Jul 2011
Inflatable dock bags/seals/shelters	10	1 Jul 2011
Packaging machines and wrapping machines - see Table B Packaging machines		
Pallet assets:		
Dispensers	15	1 Jul 2011
Lift tables	10	1 Jul 2011
Racks	20	1 Jul 2011
Radio frequency terminal assets:		
Barcode readers/scanners	5	1 Jul 2011
Portable/handheld and vehicle mounted terminal devices	4	1 Jul 2011
Refrigeration assets - see Table B Refrigeration assets		
Roll cages	10	1 Jul 2011
Trolleys	10	1 Jul 2011
Voice picking assets:		
Battery chargers	4	1 Jul 2011
Headsets	4	1 Jul 2011
Terminals (on person)	4	1 Jul 2011
Waste compactors (used for cardboard and plastic):		
Electric	15	1 Jul 2011
Hydraulic	20	1 Jul 2011
Waste storage and disposal bins (including crane bins, hooklift bins, skip bins and other industrial use bins)	10	1 Jul 2016
Weighbridges	20	1 Jul 2014
Welders:		
Diesel	10	1 Jul 2008
Electric	5	1 Jul 2008
Oxygen welders and cutters	10	1 Jul 2014
Window blinds	15	1 Jul 2016

INDEX

A

15-YEAR EXEMPTION 42
2017/18 INCOME TAX RATES FOR NON-RESIDENT INDIVIDUALS 7
50% ACTIVE ASSET REDUCTION 42
ABN NOT QUOTED 104
ABSENCE FROM MAIN RESIDENCE 41
ABSOLUTELY ENTITLED TRUSTS 106
ACCELERATED DEPRECIATION FOR PRIMARY PRODUCERS 72
ACCOUNTING FOR GST ON A CASH BASIS 91
ACCRUALS OR EARNINGS BASIS 116
ACTIVITY STATEMENTS 107
ACTUAL COST METHOD 16
ADDITIONAL METHOD FOR MONTHLY PAYG INSTALMENTS 108
ADJUSTMENTS AND BAS 36
AGE LIMIT ABOLISHED 63
AGGREGATED TURNOVER 90
AIRLINE FRINGE BENEFITS 100
ALLOWANCES 104
ANNUAL PAYERS 107
ANNUAL REVIEW 75
APPLYING THE CGT SMALL BUSINESS CONCESSIONS 45
ARE YOU IN THE BUSINESS OF PRIMARY PRODUCTION? 66
ASSET BETTERMENT ASSESSMENTS 124
AT THE START OF THE ENQUIRY OR AUDIT 122
ATO ADVISED INSTALMENT AMOUNT 105
ATO ADVISED INSTALMENT RATES 105
ATO AND TREASURY ROLES 3
ATO CHANGES LODGEMENT REQUIREMENTS FOR ORGANISATIONS WITH OVER $20 MILLION GST TURNOVER 109
ATO OBLIGATIONS 121
ATO OBLIGATIONS ON AUDIT COMPLETION 123
ATO POWERS 123
ATO TARGETS 125
AUSTRALIANS WORKING OVERSEAS 24

B

BALANCING ADJUSTMENTS 12
BARTER EXCHANGES AND TRANSACTIONS 12
BECOMING A RESIDENT 85
BENEFICIARY TAX OFFSET 27
BOARD FRINGE BENEFITS 98
BOOKS, DOCUMENTS AND PAPERS 124
BROADLY HELD RESIDENT INVESTMENT UNIT TRUSTS 106
BUSINESS ‘BLACK HOLE’ EXPENDITURE 50
BUSINESS AND EMPLOYMENT DEDUCTIONS 15
BUSINESS INCOME 9
BUSINESS VEHICLES 40

C

CALCULATING A CAPITAL GAIN OR LOSS 44
CALCULATING DEPRECIATING 48
CALCULATING GST 29
CAPITAL –V- REVENUE 9
CAPITAL GAINS CHECKLIST 46
CAPITAL GAINS TAX RELIEF FOR COMPULSORY ACQUISITIONS OF PART OF A MAIN RESIDENCE 41
CAPITAL GAINS TAX ROLL-OVER RELIEF FOR CHANGES TO ENTITY STRUCTURE 80
CAPITAL LOSSES 45
CAR PARKING FRINGE BENEFITS 96
CASH OR RECEIPTS BASIS 115
CAUTION 131
CEASING TO BE A RESIDENT 85
CENTS PER KILOMETRE METHOD 16
CGT ASSETS 39
CGT INDEX NUMBERS 45
CGT INDEXATION FACTORS 44
CGT WITHHOLDING REGIME 47
CHANGES TO ASSET PROTECTION 78
CHANGES TO FOREIGN PROPERTY INVESTORS 88
CHANGES TO IN-HOUSE PROPERTY FRINGE BENEFITS 98
CHANGES TO IN-HOUSE RESIDUAL FRINGE BENEFITS 100
CHANGES TO PAYG INSTALMENTS THRESHOLD 107
CHANGES TO SUPER EFFECTIVE 1 JULY 2017 64
CHANGES TO THE INCOME TAX DEDUCTION RULES FOR CAR EXPENSES 16
CHECKLIST OF ASSESSABLE ITEMS 13
CHECKLIST OF DEDUCTIBLE ITEMS 20
CHOICE OF DEPRECIATION METHOD 48
CHOICE OF SUPERANNUATION FUND 61
COMMENT ON RECENT DEVELOPMENTS (STATE GOVERNMENT TAXES) 132
COMMERCIAL DEBT FORGIVENESS 114
COMMON FRINGE BENEFITS 94
COMPANIES 73
COMPANY RATES OF TAX – 2017/18 8
COMPANY SECRETARY 76
COMPENSATION PAYMENTS 12
COMPLIANCE IN FOCUS 38
COMPULSORY ACQUISITIONS 41
COMPUTER SOFTWARE 49
CONNECTED ENTITIES 91
CONSOLIDATED GROUPS – INDICATIVE ANNUAL COMPLIANCE DEADLINES 119
CONSOLIDATION – TAX WHOLLY OWNED GROUPS AS SINGLE ENTITIES 117
CONSTITUTION 75
CONTINUOUS EXISTENCE 75
CONVENTIONAL CLOTHING 18
CORPORATE UNIT TRUSTS AND PUBLIC TRADING TRUSTS 106
COST BASE 44

D

DATA MATCHING 125
DATA MATCHING 2017 126
DEBT WAIVER FRINGE BENEFITS 96
DECEASED ESTATES 46
DECLINE IN VALUE 48
DEDUCTION FOR PROFESSIONAL COSTS RE – STARTING BUSINESS 19
DEDUCTIONS FOR CAPITAL WORKS EXPENDITURE 51
DEFINITION OF A FRINGE BENEFIT 93
DEFINITIONS (ASSESSABLE INCOME) 9
DEPENDANT OFFSETS ABOLISHED 26
DEPRECIATION 72
DEVELOPMENTS THROUGH 2017 (TAX REFORM) 134
DIFFERENT MAIN RESIDENCES 41
DIRECT COMPENSATION FOR SERVICES 9
DIRECTORS’ DUTIES 76
DISASTERS AND PRIMARY PRODUCERS 70
DISCOUNT METHOD 44
DISCRETIONARY AND FAMILY TRUSTS 106
DISCRETIONARY TRUSTS 78
DISPOSAL OF SMALL BUSINESS ROLL-OVERS 44

DOUBLE TAX AGREEMENTS **85**
DURING AN ADUIT **122**
DUTIES OF TRUSTEES **54**

E

EFFECTIVE LIFE **48**
ELIGIBILITY FOR THE SBE **90**
EMPLOYEE –V- CONTRACTOR **103**
EMPLOYER CONTRIBUTION VS PERSONAL CONCESSIONAL CONTRIBUTION **57**
EMPLOYMENT INCOME EARNED OVERSEAS **86**
EMPLOYMENT TERMINATION PAYMENTS (ETPS) **10**
ENTERTAINMENT **97**
EXCEPTIONS TO MOTOR VEHICLE SUBSTANTIATION RULES **16**
EXEMPT BENEFITS **101**
EXEMPT CENTERLINK PAYMENTS **24**
EXEMPT VETERANS' INCOME **23**
EXEMPTIONS FROM CGT **40**
EXISTING AND FUTURE SMSF RULINGS **58**
EXPANDING ACCELERATED DEPRECIATION FOR SMALL BUSINESS **52**
EXPENSE PAYMENT FRINGE BENEFIT **97**
EXTENSION OF SBE BENEFITS **92**

F

FAMILY PAYMENTS – KEY ASPECTS **5**
FAMILY TRUSTS **78**
FARM MANAGEMENT DEPOSITS SCHEME **71**
FBT AUDITS **126**
FBT EXEMPTIONS FOR WORK-RELATED ELECTRONIC DEVICES **101**
FBT REBATE **102**
FEATURES OF A COMPANY – SEPARATE LEGAL ENTITY **74**
FINANCIAL REPORTS **76**
FOREIGN AND TEMPORARY TAX RESIDENTS **41**
FRANKING CREDIT TRADING **78**
FREQUENT FLYER AND CLUB BENEFITS **12**

G

GIFTS **25**
GROUPING PROVISIONS **131**
GST GROUPING **36**
GST MAY 2017 FEDERAL BUDGET CHANGES **38**
GST REPORTING REQUIREMENTS SIMPLIFIED FOR SMALL BUSINESS **38**
GST-FREE SUPPLIES **31**

H

HAS A CAPITAL GAIN OR LOSS OCCURRED? **39**
HECS-HELP REPAYMENT THRESHOLDS **7**
HISTORY (THE AUSTRALIAN TAXATION SYSTEM) **2**
HOBBIES **24**
HOME OFFICE EXPENSES **18**
HOUSING FRINGE BENEFITS **98**
HOW LAWS ARE MADE **3**
HOW MUCH DO I WITHOLD? **104**
HOW TO BE TAX SMART **126**
HOW TO PREPARE FOR AN ENQUIRY OR AUDIT **122**
HYBRID TRUTS **80**

I

IF YOU ARE SUBJECT TO ENQUIRY OR AUDIT **121**
IMMEDIATE DEDUCTIBILITY FOR PROFESSIONAL EXPENSES **80**
IMPUTATION SYSTEM **77**
INCOME FROM LONG-TERM CONSTRUCTION CONTRACTS **111**
INCOME MEANS TESTING FOR OFFSETS **26**
INCOME RECEIVED IN ADVANCE **111**
INDEXATION METHOD **44**
INDIVIDUAL RESIDENCY **84**
INPUT TAXED SUPPLY **30**
INSTALMENT INCOME – CASH OR ACCRUALS? **107**
INSTALMENT INCOME – SUPERANNUATION FUNDS **106**
INTEREST **19**
INVESTMENT MANAGER **55**
INVESTMENT STRATEGY **54**
ITEMS OF EXEMPT INCOME **23**

K

KEY FEATURES OF FBT **93**

L

LABOUR HIRE ARRANGEMENTS **103**
LATE LODGEMENT AND/OR PAYMENT **107**
LAY-BY SALES **113**
LEASE INCENTIVES **12**
LIMITED LIABILITY **74**
LIVING AWAY FROM HOME ALLOWANCES (LAFHA) **99**
LOANS TO SHAREHOLDERS **77**
LODGEMENT AND PAYMENT OF TAX **3**
LONG DISTRANCE TRUCK DRIVERS **18**
LOST AND UNCALIMED SUPERANNUATION – STREAMLINED ARRANGEMENTS **63**
LOW INCOME SUPER TAX OFFSET **61**
LOW INTEREST LOANS **96**
LOW VALUE ITEMS **49**
LOW-INCOME TAX OFFSET (LITO) **26**
LUXURY CAR DEPRECIATION LIMIT **50**

M

MAIN RESIDENCE EXEMPTION **40**
MEDICARE LEVY **5**
MEDICARE LEVY SURCHARGE **5**
METHODS OF TAX ACCOUNTING **115**
MISTAKES AND BAS **36**
MORE SIMPLIFIED ACCOUNTING METHODS **33**
MOTOR VEHICLE EXPENSES **15**
MULTINATIONAL ANTI-AVOIDANCE LAW **128**
MULTINATIONAL TAX MEASURES **88**
MUTUAL INCOME **25**

N

NET MEDICAL EXPENSES TAX OFFSET **28**
NON-ASSESSABLE, NON-EXEMPT INCOME **25**
NON-CASH BENEFITS **105**
NON-CASH BUSINESS BENEFITS **9**
NON-COMPULSORY UNIFORMS **18**
NON-RESIDENT INDIVIDUALS **7**
NOTIFICATION OF AN ENQUIRY OR AUDIT **122**

O

OCCUPATIONAL CLOTHING AND PROTECTIVE GEAR **18**
OMITTANCE BAS **36**
OTHER RECENT CHANGES (PRIMARY PRODUCTION) **72**
OTHER SUPERANNUATION FUNDS **54**
OTHER TRUSTS **8**
OTHERWISE DEDUCTIBLE RULE **100**

P

PARNTERSHIPS **73**
PARTNERSHIP INSTALMENT INCOME **106**
PAYER OBLIGATIONS UNDER PAYG **105**
PAYG INSTALMENTS (PAYGI) **105**
PAYG INSTALMENTS AND THE CONSOLIDATED GROUP **119**
PAYG TIMETABLE MONTHLY PAYMENTS **108**
PAYG WITHHOLDING (PAYGW) **103**
PAYG WITHOLDING VARIATION TAA 1953 **110**

PAYROLL TAX 130
PAYROLL TAX AUSTRALIA 132
PENALTIES AND OFFENCES 123
PERSONAL SERVICES INCOME (PSI) 81
PERSONAL SUPERANNUATION CONTRIBUTIONS INCLUDING SELF EMPLOYED PERSONS 60
PLANT IN RENTAL PROPERTIES 51
POWER TO OBTAIN INFORMATION 124
PREPAID EXPENSES 111
PREPAYMENT OF EXPENSES 17
PREPAYMENTS 91
PRIMARY PRODUCTION 50
PRINCIPAL PLACE OF BUSINESS 75
PRIVATE USE OF TRADING STOCK 114
PROFESSIONAL WORK IN PROGRESS 114
PROHIBITED INVESTMENTS AND BORROWINGS 55
PROPERTY FRINGE BENEFITS 98
PROPOSED INCREASES TO THE UNINCORPORATED SMALL BUSINESS TAX DISCOUNT 8
PROPERTY INVESTORS TO LOSE OUT FROM BUDGET CHANGES 53
PROPRIETARY COMPANY 75

R

RECENT CHANGES (CONSOLIDATION) 119
RECENT DEVELOPMENTS (GST) 37
RECORD KEEPING (CGT) 46
RECORD KEEPING IN THE PRIMARY PRODUCTION INDUSTRY 67
RECORD KEEPING OBLIGATIONS (SUPERANNUATION) 55
REDUNDANCY AND EARLY RETIREMENT PAYMENTS 12
REGISTERED OFFICE 75
REGISTERING FOR GST 35
REGISTERS AND RECORD KEEPING 75
REGISTRATION 131
REMOTE AREA ACCOMMODATION 98
RENTAL PROPERTIES AND THE 2017 BUDGET 52
REPAIRS 19
REPLACEMENT ASSET ROLL-OVERS 43
REPLACEMENTS AND LOOSE TOOLS 49
REPORTABLE FRINGE BENEFITS 100
RESIDENCE OF COMPANY 84
RESIDUAL FRINGE BENEFITS 100
RETIREMENT CONCESSION 42
REGULATION (SUPERANNUATION) 53
RIGHT OF ACCESS 124
ROLL-OVER RELIEF – SMALL BUSINESS 42
ROLL-OVER TO A COMPANY 43

S

SALE OF DEPRECIATED PLANT 49
SALE OF FORMERLY LEASED EQUIPMENT 12
SAME ASSET ROLL-OVERS 43
SBE DEPRECIATION 91
SBE POOLING ARRANGEMENTS 49
SELF ASSESSMENT 36
SELF MANAGED SUPER FUNDS 57
SELF-EDUCATION EXPENSES 19
SEPARATE CGT ASSETS 40
SHAREHOLDERS 75
SMALL BUSINESS 92
SMALL BUSINESS CONCESSIONS 41
SNAPSHOT OF BENEFITS (SBE) 90
SOLE PURPOSE TEST 54
SOURCE OF INCOME 84
SPECIAL CONSIDERATIONS (PRIMARY PRODUCTION) 69
SPECIAL INPUT TAX CREDIT RULES 33
SPOUSE CONTRIBUTIONS 63
STAMP DUTY 130
STARTING A COMPANY 74
SUBSTANTIATION 15
SUPER SURCHARGE ON HIGH INCOME EARNERS 63
SUPERANNUATION EXCESS CONTRIBUTIONS TAX 62
SUPERANNUATION GUARANTEE (SG) 62
SUPERANNUATION LUMP SUMS 11
SUPERANNUATION SPLITTING 62
SUPERSTREAM 63
SUPPLIES AND GST 29

T

TAX AUDITS – WHAT ARE THEY? 121
TAX AVERAGING AND PRIMARY PRODUCERS 70
TAX CONCESSIONS 55
TAX COST SETTING RULES 118
TAX DEDUCATIONS FOR PERSONAL CONTRIBUTIONS 56
TAX FILE NUMBERS 8
TAX INVOICES 35
TAX OFFSETS DIFFERENT TO DEDUCTIONS 26
TAX REFORM 134
TAX SHARING AGREEMENT (TSA) 119
TAX TIPS FOR PRIMARY PRODUCERS 2017/18 71
TAXABLE SUPPLIES 30
TAXABLE WAGES 130
TAXATION OF SUPERANNUATION BENEFITS 58
TAXATION OF SUPERANNUATION FUND INCOME 53
TAXATION RULINGS 6
TAXPAYER ALERTS 128
TAXPAYERS WITH UNDISCLOSED OVERSEAS INCOME 128
TAXPAYERS' CHARTER 127
TELEPHONE 19
THE CASH ECONOMY 129
THE ENQUIRY OR AUDIT PROCESS 121
THE INTERGENERATIONAL REPORT 133
THIN CAPITILSATION 87
THREE STATUTORY TESTS 84
TIME TO 'RE-THINK' OUR TAX SYSTEM 133
TIMING OF INCOME AND DEDUCTIONS 115
TRADING STOCK 111
TRADING STOCK 91
TRANSER PRICING 87
TRANSITION TO RETIREMENT 63
TRAVEL CLAIMS WITHIN AUSTRALIA 17
TRAVELLING EXPENSES 17
TRUSTEE RESOLUTIONS 79
TRUSTS 78
TYES OF CGT ASSETS 39

U

UNIT TRUITS 79
USING MORE THAN ONE CONCESSION 42
VALUE OF TRADING STOCK 112
VOLUNTARY AGREEMENTS 104

W

WHAT IS A SELF MANAGED SUPERANNUATION FUND (SMSF)? 53
WHETHER TO INCORPORATE 76
WINDFALL GAINS 24
WITHHOLDING FROM CLOSELY HELD TRUSTS 105
WITHOLDING DECLARATIONS & VARIATIONS 110
WORKING HOLIDAY MAKERS 72
YEAR END EXCHANGE RATES – 30 JUNE 89
ZONE TAX OFFSET 27

bO2™

Corporate Essentials

Tax Smart Australia

bo2 | Corporate Essentials Pty Ltd as Trustee for The TSA Unit Trust

ABN 70 377 440 020
ACN 119 058 310

Level 1, Suite 4, 128 Bundall Road,
Bundall QLD 4217

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

ANOTHER ESSENTIAL TAX SMART AUSTRALIA RESOURCE · CLARITY · CONVENIENCE · CONFIDENCE ·

www.bo2.com.au