

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

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THE NEWSLETTER

Tax Legislation Update in an Easy-to-Read Format

MICHAEL'S CORNER

Article No. 015

Ways To Transform Your Onboarding or Re-Induction Process

SPECIAL BONUS ISSUE

Over 150 Tax Saving Tips - (incl. FBT Year End Considerations)





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WHAT'S NEW IN 2022?

The Newsletter

TAX LEGISLATION UPDATE IN AN EASY-TO-READ FORMAT

BRITISH WAITRESS WINS HIGH COURT DISCRIMINATION BATTLE OVER AUSTRALIA'S 'BACKPACKER TAX'

On 3.11.2021, an English backpacker who worked as a waitress in Sydney has won her battle over the so-called backpacker tax in the High Court.

British national Catherine Addy argued a tax imposed on her as a backpacker discriminated against her on the basis of her nationality when she was made to pay tax at a different rate to Australian residents.

Under an agreement between Britain and Australia, backpackers paid a flat rate. Foreign nationals in Australia on 417 and 462 visas are subject to a 15 per cent tax on income and are not eligible for the tax-free threshold.

The tax was introduced in 2017 and applies to 417 and 462 visas holders, which allows travellers between 18 and 31 to travel to Australia for a working holiday.

Ms Addy worked as a waitress in two Sydney hotels earning \$26,576 between January 2017 and May 2017, when she left Australia.

Ms Addy challenged the decision to tax her a flat rate of 15 per cent under the backpacker tax, instead of as a resident of Australia, who would have access to the tax-free threshold.

Ms Addy argued this was contrary to the international "double tax" agreement Australia has with Britain and a number of other nations.

That agreement prohibits discrimination on the basis of nationality by stating foreign nationals should not be taxed in a more "burdensome" way than locals in a similar position.

The High Court agreed, saying:

"In the present case, the application of the ordinary taxation laws – the basis of the charge and the method of

assessment in relation to the taxable income of Australian nationals and nationals of the United Kingdom in the same circumstances – was the same, but the tax rate was not," the unanimous judgement said.

"The tax rate was more onerous for Ms Addy, a national of the United Kingdom, than it was for an Australian national in the same circumstances – doing the same work, earning the same income, under the same ordinary taxation laws."

The ruling effectively clears the way for thousands of other foreign workers who were similarly taxed to request a review.

In noting the decision, the ATO maintains this decision is only relevant where the working holidaymaker is both an Australian resident for tax purposes and from Chile, Finland, Japan, Norway, Turkey, the United Kingdom, Germany, or Israel.

Working holidaymakers who may potentially be affected by this decision are encouraged to check the ATO website for updated guidance prior to lodging or amending a return or lodging an objection.

Employers should continue to follow rates in the published withholding tables for working holidaymakers until the ATO provides further guidance.

The taxpayer's individual circumstances determine a working holidaymaker's residency status for tax purposes. Most working holidaymakers will be non-residents consistent with their purpose of being in Australia to have a holiday and working to support that holiday.

SUPERANNUATION PORTFOLIO HOLDINGS DISCLOSURE

In a major boost to superannuation transparency, Australians will have access to information about how superannuation funds invest their money following the finalisation of new regulations dealing with portfolio holdings disclosure by superannuation funds.

Under the requirements, superannuation funds must disclose information about their investments' identity, value, and weightings. Members will be able to clearly see how much of their retirement savings are being invested by superannuation funds across a range of asset classes and derivatives.

This information will make it easier for members to compare products and identify the most suitable fund.

Reviews of the superannuation system have found that superannuation portfolio disclosure is unduly opaque and does not meet global best practices. Requiring the disclosure of portfolio holdings would provide greater transparency and allow members to understand where their superannuation is invested.

Under the regulations, superannuation funds will be required to first report their holdings by 31 March 2022, with portfolio holdings disclosure to occur every six months thereafter. The Government will closely monitor these disclosures and consider further refinements where necessary.

While undertaking consultation on this measure, it has become apparent that some superannuation funds have large exposures to derivatives.

Given Australia's superannuation funds have now become a systemically important part of our financial system. It is timely to ensure policymakers and regulators have a sound understanding of the extent and nature of the use of derivatives and any implications for the operation of our financial system that could arise from these exposures.

Therefore, the Treasurer has asked the Council of Financial Regulators (CFR) to prepare a report on this matter, drawing upon the information-gathering powers of the Australian Prudential Regulation Authority and the input of relevant experts from across the CFR, including the Reserve Bank of Australia.

WORKING FROM HOME TEMPORARY SHORTCUT METHOD EXTENDED

Due to the continued extenuating circumstances of COVID-19 and lockdowns since 1 July, the 80 cents per hour temporary shortcut method to calculate working from home deductions has been extended to 30 June 2022. The existing fixed-rate method (52 cents per hour) and the actual cost method are still available options for taxpayers to use.

INCOME TAX: VALUE OF GOODS TAKEN FROM STOCK FOR PRIVATE USE FOR THE 2021-22 INCOME YEAR

The Commissioner has released Taxation Determination TD 2021/8. This Determination provides an update of amounts that the Commissioner will accept as estimates of the

value of goods taken from trading stock for private use by taxpayers in named industries.

Schedule for the value of goods taken from trading stock

The Schedule for the value of goods taken from trading stock for private use in the 2021-22 income year is:

TYPE OF BUSINESS	AMOUNT (EXCLUDING GST) FOR ADULT/ CHILD OVER 16 YEARS	AMOUNT (EXCLUDING GST) FOR CHILD 4 to 16 YEARS OLD
Bakery	\$1,350	\$675
Butcher	\$920	\$460
Restaurant/café (licensed)	\$4,640	\$1,830
Restaurant/café (unlicensed)	\$3,660	\$1,830
Caterer	\$3,870	\$1,935
Delicatessen	\$3,660	\$1,830
Fruiterer/greengrocer	\$960	\$480
Takeaway food shop	\$3,790	\$1,895
Mixed business (includes milk bar, general store and convenience store)	\$4,590	\$2,295

RE-CONTRIBUTION OF COVID-19 EARLY RELEASE SUPER AMOUNTS

Individuals can now re-contribute amounts they withdrew under the program without them counting towards their non-concessional contributions cap. These contributions can be made between 1 July 2021 and 30 June 2030.

COVID-19 re-contribution amounts are not a new type of contribution. They are a personal contribution that will be excluded from an individual's non-concessional contribution cap.

Individuals can make COVID-19 re-contribution amounts to any fund of their choice where the fund rules allow.

Individuals can use the approved form to make a COVID-19 re-contribution. You can choose to design your own *Notice of re-contribution of COVID-19 early release amounts* approved form for your members, as outlined in the CRT Alert 008/2021.

Further details are available on the ATO's webpage.

AIRPORTS AND CAR PARKING BENEFITS – THE SAGA CONTINUES

Commissioner of Taxation vs Virgin Australia Regional Airlines Pty Limited [2021 FCAFC 209]

The Full Federal Court has upheld the Commissioner's appeal in relation to the existence of taxable car parking fringe benefits in situations where the taxpayer-provided car parking spaces to aircrew employees at their "Home Base" airport.

The key elements of the definition of car parking fringe benefits in section 39A FBT Act that were relevant were:

- did the employee have a primary place of employment on the day that the employer-provided the benefit?
- If so, where was the primary place of employment on that day?
- Was the car parked in the vicinity of that primary place of employment?

Subsection 136(1) of the FBT Act defines the "primary place of employment" to include:

"Business premises of the employer...where those premises are".

(c) the sole or primary place of employment of the employee: or (d) otherwise the sole or primary place from which the employee performs duties of their employment".

The FBT Act states that business premises can include an aeroplane.

Paragraph 39A(1)(g) of the FBT Act provides that a car parking fringe benefit can only arise on a day where the employee has used the car to travel between the place of residence and the primary place of employment.

Therefore, days in the middle of the employee's Tour of Duty would not give rise to car parking fringe benefits.

This decision has implications for entities that have employees travel on work.

THE TAXATION IMPLICATIONS OF OVERSEAS RECEIPTS

If you receive money (or assets) from overseas, it's important to understand your tax obligations.

There are a number of payments made from overseas that may need to be included in your assessable income,

such as distributions from foreign trusts and, in some cases, overseas pensions; it is possible you may not identify the amount (or asset) you've received as a trust distribution but see it as a gift or loan from a family member.

Questions you need to ask and understand include:

- Who paid the money or transferred the asset? For example, is the amount (or asset) from a foreign trust directly or has it been received indirectly from a foreign trust through another entity or person.
- Are you a beneficiary of the foreign trust?
- What the money represents. For example, is it payment for services, a gift, a distribution, or a loan?

Any amount (or value of an asset) received by an Australian beneficiary from a foreign trust, either directly or indirectly, may need to be included as assessable income in the income year that it is received.

If you are not sure of the source or precise nature of the receipt, you should discuss this with your professional advisor.

This is now an area of ATO focus. Of course, genuine gifts or inheritances are not assessable. The ATO is now taking note of large overseas transfers, and further on down the line, you may be asked to provide documentary evidence of the source of the payments made to you.

REPORTED TRANSACTIONS IN ATO ONLINE

It is possible the ATO holds more information on you than you may think.

The Reported transactions service in ATO online platforms allows you and your tax agent to view third party data that they hold on taxable payments, government grants and business transactions received through payment systems.

Accessing reported transactions

These records give you transparency about the data that has been provided to the ATO about your business transactions and can help you meet your tax obligations.

While most businesses do the right thing, some businesses are deliberately not reporting or under-reporting business income to the ATO. This contributes to the shadow economy. It is estimated that small businesses operating in the shadow economy cost the community more than \$6.7 billion in unpaid tax every year.

After the ATO receives and processes the information, the data is available to view. You and your tax agent will be able to view and filter on the current year plus the previous three years of data and download it in either CSV or HTML format.

You can access the Reported Transactions service through ATO Online platforms, such as Online services for business. If you are a sole trader, you have a choice of using Online services for individuals or Online services for business. The ATO is also making the data available for tax agents of small businesses through Online services for tax agents (OFSA).

This information may help you meet your tax obligations. However, you should cross-check the information against your business records to ensure it is complete and correct.

ATO information may be incomplete because:

- an organisation has not supplied data yet
- ATO processing has not been completed
- the ATO has received data that could not be matched to you with high confidence
- the data did not pass all validation processing checks
- the transaction date is the date the payer made the payment. If you report on an accrual basis, you'll need to consider when the work was done rather than when the payment was received.

If you or your tax agent need to dispute the data, you can send the ATO a message with the details by accessing the 'contact us' link on ATO the page.

Reported transaction payment types

Use the information below to understand the different payment types available in the Reported Transactions service and the description of data fields in your data download report.

The main categories the ATO holds information are:

- Taxable payments
- Government grants and payments
- Business transaction through payment systems

This is all part of ATO data matching, and more detailed information is on the ATO website.

FRINGE BENEFITS TAX AND CHRISTMAS PARTIES

The FBT year ends on 31.3.2022, and in its focus on the "tax gap", the ATO will be giving FBT compliance special attention. ATO guidance below will help you correctly complete the 2022 FBT annual return.

Christmas parties

There is no separate fringe benefits tax (FBT) category for Christmas parties, and you may encounter many different circumstances when providing these events to your staff. Fringe benefits provided by you, an associate, or under an arrangement with a third party to any current employees, past and future employees, and their associates (spouses and children) may attract FBT.

Implications for taxpaying body

If you are not a tax-exempt organisation and do not use the 50-50 split method for meal entertainment, the following explanations may help you determine whether FBT implications are arising from a Christmas party.

Exempt property benefits

The costs (such as food and drink) associated with Christmas parties are exempt from FBT if they are provided on a working day on your business premises and consumed by current employees. The property benefits exemption is only available for employees, not associates.

Exempt benefits – minor benefits

The provision of a Christmas party to an employee may be a minor benefit and exempt if the cost of the party is less than \$300 per employee and certain conditions are met. The benefit provided to an associate of the employee may also be minor and exempt if the party cost for each associate is less than \$300. The threshold of less than \$300 applies to each benefit provided, not to the total value of all associated benefits.

Gifts provided to employees at a Christmas party

The provision of a gift to an employee at Christmas time may be a minor benefit that is an exempt benefit where the value of the gift is less than \$300.

Where a Christmas gift is provided to an employee at a Christmas party that the employer also provides, the benefits are associated benefits. Still, each benefit needs to be considered separately to determine if they are less than \$300 in value. If both the Christmas party and the gift are less than \$300 in value and the other conditions of a minor benefit are met, they will both be exempt benefits.

Tax deductibility of a Christmas party

The cost of providing a Christmas party is income tax deductible only to the extent that it is subject to FBT. Therefore, any costs that are exempt from FBT (that is, exempt minor benefits and exempt property benefits) cannot be claimed as an income tax deduction.

The costs of entertaining clients are not subject to FBT and are not income tax-deductible.

Christmas party held on the business premises

A Christmas party provided to current employees on your business premises or worksite on a working day may be an exempt benefit. The cost of associates attending the Christmas party is not exempt unless it is a minor benefit.

Example

A small manufacturing company decides to have a party on its business premises on a working day before Christmas. The company provides food, beer, and wine.

Employer implications

The implications for the employer in this situation would be as follows.	
If...	Then...
current employees only attend	<ul style="list-style-type: none"> there are no FBT implications as it is an exempt property benefit.
current employees and their associates attend at a cost of \$180 per head	<ul style="list-style-type: none"> for employees – there are no FBT implications as it is an exempt property benefit, and the minor benefits exemption could also apply* for associates – there are no FBT implications as the minor benefits exemption applies.*
current employees, their associates and some clients attend at a cost of \$365 per head	<ul style="list-style-type: none"> for employees – there are no FBT implications as it is an exempt property benefit for associates – a taxable fringe benefit will arise as the value is equal to or more than \$300 for clients – there is no FBT payable and no income tax deduction.

* Where the benefits are indicated as qualifying for the minor benefits exemption, it is on the basis that the necessary conditions have been satisfied.

Christmas party held off business premises

The costs associated with Christmas parties held off your business premises (for example, a restaurant) will give rise to a taxable fringe benefit for employees and their associates unless the benefits are exempt minor benefits.

Example

Another company decides to hold its Christmas function at a restaurant on a working day before Christmas and provides meals, drinks, and entertainment.

Employer implications

The implications for the employer in this situation would be as follows.	
If...	Then...
current employees only attend at a cost of \$195 per head	<ul style="list-style-type: none"> there are no FBT implications as the minor benefits exemption applies.*
current employees and their associates attend at a cost of \$180 per head	<ul style="list-style-type: none"> there are no FBT implications as the minor benefits exemption applies.*
current employees, their associates and clients attend at a cost of \$365 per head	<ul style="list-style-type: none"> for employees – a taxable fringe benefit will arise for associates – a taxable fringe benefit will arise, and for clients – there is no FBT payable and the cost of providing the entertainment is not income tax-deductible.

* Where the benefits are indicated as qualifying for the minor benefits exemption, it is on the basis that the necessary conditions have been satisfied.

Implications for tax-exempt body

If you are a tax-exempt body, the following explanations may help determine the FBT implications arising from a Christmas party.

Gifts provided to employees at a Christmas party

A Christmas gift or hamper provided to an employee that meets the minor benefits exemption rule conditions and is less than \$300 will not attract any FBT.

Christmas party held on business premises

The exempt property benefits (property benefits provided on your business premises) would not apply as the tax-exempt body entertainment provisions would apply.

The minor benefits exemption rule is unlikely to apply to any staff Christmas party provided by a tax-exempt body unless very limited circumstances apply.

For tax-exempt body entertainment fringe benefits, the minor benefits exemption is only available in the following circumstances:

- Where the provision of entertainment is incidental to the provision of entertainment to outsiders and does not consist of a meal other than light refreshments; or
- A function is held on your business premises solely to recognise your employee's special achievements in a matter relating to their employment.

Example

A tax-exempt organisation decides to run a Christmas morning tea for its sponsors. Employees attend as well. There would be no FBT implications as the minor entertainment benefit provided to the employees is incidental to entertaining the sponsors, and only light refreshments are provided.

Christmas party held off business premises

The minor benefits exemption rule is unlikely to apply to any staff Christmas party provided by a tax-exempt body unless very limited circumstances apply. The example immediately above will apply in these circumstances.

Further guidance

Taxation ruling TR 97/17 sets out the ATO view on parties with examples. Paras 27 and 43-56 cover parties on your business premises, and Paras 57-62 are specific to parties held at a restaurant, function centre, or similar venue.

Taxation Determination 94/55 sets out the ATO view in relation to gifts.

TAX TIP – MAKE THE MOST OF THE MINOR AND INFREQUENT BENEFIT EXEMPTION

The \$300 minor and infrequent benefit exemption applies separately on a per-benefit basis (e.g., the minor benefits exemption can apply if a present worth \$270 is provided to an employee and another present worth \$280 is provided to the employee's spouse). The annual Christmas party held outside of the employer's premises, such as at a restaurant, often amounts to less than \$300 per person.

As outlined above, the amount of FBT payable can be influenced by:

- When the party will be held (i.e., for the minor and infrequent benefit exemption, the cost of the benefit provided must be less than \$300 per head and not provided regularly or frequently).
- Where the party will be held (i.e., for the property fringe benefit exemption to apply, the food and drink must be provided and consumed by current employees on the employer's premises on a business day).
- For whom the party will be held (i.e., the tax consequences are different depending on whether the benefits are provided to employees, their associates, or clients).

COMMON ENTERTAINMENT SCENARIOS

Example 1 – Christmas party on the business premises – cost is less than \$300

- A company holds a Christmas lunch on its business premises on a working day. Employees, their partners, and clients attend. Food and drink are provided at the party, and the company provides taxi travel home. The cost per head is \$125.

Entertainment is being provided

- A party for employees, associates and clients is entertainment because the function's purpose is for people attending to enjoy themselves.

Employees – exemption applies

- Food and drink – the food or drink provided to employees are exempt from FBT because it's provided and consumed on a working day on the business premises.
- Taxi travel is exempt from FBT because there is a specific FBT exemption for taxi travel provided to an employee directly to or from the workplace.

Associates – exemption applies

- Food, drink, and taxi travel: The food, drink and taxi travel provided to the employees' partners (associates) is exempt from FBT because of the minor benefits exemption.

Clients – no FBT

- Clients' food, drink, and taxi travel: There is no FBT on benefits provided to clients.

Income tax and GST credits

- The employer can't claim an income tax deduction or GST credits for the food, drink or taxi travel provided for employees, associates, or clients.

Example 2 – Gym membership

- A conveyancing firm pays a one-year gym membership costing \$480 per person for the company's director and each employee.

Entertainment is being provided

- Paying for employees to have membership of a gym provides recreation entertainment.

Director – no exemption

- The company will have to pay FBT on the gym membership provided to the director because they're an employee of the company. The minor benefits exemption doesn't apply because the gym membership cost is \$480 per employee.

Other employees – no exemption

- The company would have to pay FBT on the gym membership provided to its other employees. The minor benefits exemption doesn't apply because the gym membership cost is \$480 per employee.

Income tax and GST credits

- The employer can claim an income tax deduction and GST credits for the gym membership cost for its employees and the FBT paid.

Example 3 – Holiday given as reward – cost is \$300 or more

- A computer manufacturer offers a reward to employees of Home Office, a retail computer store.
- The retailer agrees that the manufacturer can offer a reward to its employees.
- If an employee sells 200 computers in a month, they will receive a holiday consisting of two nights' accommodation at the coast and two tickets to the aquarium, including a swimming-with-sharks experience.
- The total value of each holiday package is \$600.

Entertainment is being provided

- Providing employees with a holiday and tickets to the aquarium is recreation entertainment.

Employees – no exemption

- No exemption applies to the accommodation and tickets given to the employee who meets the sales target. The minor benefits exemption doesn't apply in this case because the value of the holiday package is \$600.

FBT liability – retailer

- The retailer, as the employer, would pay the FBT in this case as the benefits are being provided under an agreement with the manufacturer.

Income tax and GST credits

- The retailer can claim an income tax deduction for the FBT paid.
- The manufacturer can claim an income tax deduction and GST credits for the cost of purchasing the accommodation and tickets.

Example 4 – Golf Day for employees, associates and clients – cost is \$320 per person

Paul, an employee, takes several clients and his partner to a corporate golf day paid for by his employer. The event is not held on a working day, and Paul has been provided with taxi vouchers to escort his clients to and from the event. His taxi trips didn't start or end at the workplace.

Entertainment is being provided

Entertainment is being provided as attending a golf day is a social event, and therefore its purpose is entertainment related.

Employees – no exemption

The food, drink and taxi travel is not exempt from FBT. The minor benefits exemption doesn't apply because the cost per person is \$320. A taxi travel exemption doesn't apply as Paul's trip did not begin or end at the workplace.

Associates – no exemption

The food, drink and taxi travel is not exempt from FBT. The minor benefits exemption doesn't apply because the value of the benefit is \$320.

Income tax and GST credits

The employer is entitled to an income tax deduction and GST credit for the cost of providing the benefit to employees and their associates and the FBT paid.

Clients – no FBT payable

There is no FBT payable on the food or drink and taxi travel provided to clients.

Income tax and GST credits

The employer can't claim an income tax deduction or GST credits for food or drink provided to the clients.

Example 5 – Celebration afternoon tea on the business premises – cost is \$25 per head

Anjelica is getting married. To celebrate, her employer holds an afternoon tea on the business premises and invites Anjelica's associates, work colleagues and clients.

Entertainment is being provided

The afternoon tea provided to employees, associates and clients in this situation is a social event and is therefore entertainment.

Employees – exemption applies

The exemption for food and drink provided and consumed on business premises on a working day applies to the employees.

Associates – exemption applies

The food and drink provided to the employee's associates are exempt from FBT because of the minor benefits exemption. That is, the cost of the activity is less than \$300 per employee and, considering the five factors, it would be unreasonable to treat the benefit as a fringe benefit.

Clients – no FBT

There is no FBT on benefits provided to clients.

Income tax and GST credits

The employer can't claim an income tax deduction or GST credits for food or drink provided to the employees, their associates or clients.

Example 6 – Business planning day

An insurance company organises a planning day for their managers at a conference centre. Morning and afternoon tea and a three-course lunch (excluding alcohol) are provided at a cost of \$125 per head.

Entertainment is not being provided

Providing light meals is not considered entertainment. Although the lunch provided in this situation is work-related, the three-course meal would be elaborate and therefore considered to be entertainment.

Employees – exemption applies

The exemption for food and drink provided and consumed on the employer's premises on a workday doesn't apply. However, the minor benefits exemption applies as the cost of the activity is less than \$300 per employee and, considering the other factors, it would be unreasonable to treat the benefit as a fringe benefit.

Income tax and GST credits

As the minor benefits exemption applies, the employer can't claim an income tax deduction or GST credits for food or drink provided.

EXTENDING SUPPORT FOR SMALL AND MEDIUM-SIZED BUSINESSES

With a view to assisting Australia's small business-led recovery from the COVID-19 pandemic, the Federal Government has extended the SME Recovery Loan Scheme by a further six months to 30 June 2022.

Around 80,000 loans worth approximately \$7.3 billion have been written since the scheme commenced in March 2020.

As with the existing scheme, SMEs dealing with the economic impacts of COVID-19 with a turnover of less than \$250 million will be able to access loans of up to \$5 million over a term of up to 10 years.

With the economy showing signs of a strong rebound as restrictions ease, the Government has reduced its loan guarantee from 80 per cent to 50 per cent, helping drive a private sector-led recovery.

Other key features of the SME Recovery Loan Scheme include:

- Lenders can offer borrowers a repayment holiday of up to 24 months.
- Loans can be used for a broad range of business purposes, including to support investment.
- Loans may be used to refinance any pre-existing debt of an eligible borrower.
- Loans can be either unsecured or secured (excluding residential property).

Extension of the scheme will complement other investment incentives, which allow for the full and immediate expensing of the cost of eligible assets.

Further information can be found on the Treasury website.

COVID-19 VACCINATION INCENTIVES AND REWARDS – YOUR TAX AND SUPER OBLIGATIONS

If you give your employees incentives or rewards for getting their COVID-19

vaccination, you need to consider any tax and super obligations. These tax and super obligations also apply to incentives or rewards offered for a COVID-19 booster dose.

The tax and super consequences differ depending on whether you give your employees a cash payment, paid leave, transport to and from the vaccination, or other non-cash benefits.

The tax consequences are different depending on whether the incentive or reward is available exclusively to employees, or more generally, to clients or the public.

Cash payment for getting the vaccine

If you give your employees a cash payment for getting vaccinated (for example, a \$200 payment), you need to:

- report the payment via Single Touch Payroll (STP) as part of the employee's salary or wages
- withhold tax from the amount under pay as you go (PAYG) withholding, and
- include the amount in your employee's ordinary time earnings for the purpose of determining your super contributions for your employee.

If you have already made a cash payment and did not withhold tax, you should contact the ATO straight away so that they can consider the remission of any applicable failure-to-withhold penalties.

If you have not made super contributions, you need to ensure you make them no later than 28 days after the end of the quarter in which the cash payment was made; otherwise, you may be liable for the super guarantee charge.

Paid leave

If you give your employees paid leave to get their COVID-19 vaccination or additional paid leave to recover from any COVID-19 vaccination side effects, your employee earns salary or wages while they are on paid leave.

You should withhold tax under PAYG withholding and make super contributions on the amount as you usually would.

Transport to and from the vaccination

If you provide or pay for an employee's transport to get their COVID-19 vaccination, there is generally no fringe benefits tax (FBT) payable. The travel is associated with work-related preventative health care and is exempt from FBT.

Other non-cash benefits

Other non-cash benefits you provide to your employees may be subject to FBT. Non-cash benefits could include:

- goods and services
- vouchers and gift cards, or
- points in a reward scheme.

The FBT treatment of these benefits will depend on their specific terms and conditions, and the benefits may be subject to FBT unless an exemption or reduction applies.

The fringe benefits you provide may also need to be included in your employee's reportable fringe benefits amount and reported on your employee's income statement.

Benefits that you provide to the general public

You may be providing free or discounted goods, services, vouchers, gift cards or reward points to everyone that has had their COVID-19 vaccination. This could be offered to the public at large or to all members of a club (for example, if the employer is an automobile club).

If such benefits are provided to people who have been vaccinated (and not just to employees), no FBT will apply to benefits provided to employees as the benefit is not provided in respect of the employee's employment.

Exemption for minor benefits

You may provide a non-cash benefit that qualifies for the minor benefits exemption. A benefit that has a value of less than \$300 may be exempt from FBT as a minor benefit if it would be unreasonable to treat it as a fringe benefit after considering the following five criteria:

- the benefit is provided infrequently and irregularly
- the value of the minor benefit and other similar or identical benefits is low
- the total value of the minor benefit and other benefits provided in connection with it is low
- it is difficult to calculate the taxable value of the benefit and any associated benefits, and
- the benefit is provided as a result of an unexpected event.

There are exclusions where the minor benefits exemption does not apply, such as for in-house fringe benefits and minor entertainment benefits provided to employees of income tax-exempt organisations.

Reduction in taxable value for in-house fringe benefits

You may be entitled to a reduction in FBT where you provide a non-cash benefit that qualifies as an in-house fringe benefit. Broadly, in-house fringe benefits

are identical or similar to the benefits you provide to customers in the ordinary course of business. Giving one or more in-house fringe benefits to an employee during the FBT year can reduce the aggregate of the taxable values of the in-house fringe benefits by \$1,000 if the benefits are not provided under a salary packaging arrangement.

Entries in a draw to win prizes

If you offer a prize draw exclusively to your employees, there are no FBT consequences when the entry to the draw is given to the employee because you do not know which employee will receive a benefit. However, FBT may apply when the winner receives their prize unless an exemption (such as the minor benefits exemption) or a reduction (such as the in-house benefits reduction) applies.

No FBT applies if you make a prize draw, including the prize, available generally to the public or people who have been vaccinated and not just to employees.

Examples

The following are some examples of COVID-19 vaccination incentives and rewards given by employers to their employees and the tax treatment that arises.

Example 1 - employer gives employee goods

A shoe store gives each employee who receives both of their COVID-19 vaccinations shoes of their choice up to the value of \$300. An employee, Dominic receives both of his vaccinations and gets two pairs of shoes with a total retail value of \$300.

The shoes are in-house property benefits, and the store does not give their employees any other in-house benefits during the FBT year. The employer is within the \$1,000 aggregate threshold for in-house benefits provided to Dominic, and the other requirements relating to the concession are met. The taxable value of the fringe benefit is reduced to nil, and the store has no FBT obligation in respect of those benefits.

Example 2 - employee receives a cash payment

Miranda's employer is offering all of its employees a \$200 payment for getting both of their COVID-19 vaccinations. Miranda receives an extra \$200 in her fortnightly pay, and her employer reports this as salary and wages on her income statement at the end of the income year.

The amount is also included in Miranda's ordinary time earnings for super guarantee purposes.

Example 3 - free goods available to the public

Food Co offers customers who have received both of their COVID-19 vaccinations a free meal. This offer is available to the general public, including Food Co's employees.

No FBT arises if free meals are provided to Food Co employees under this promotion because they are not provided in respect of their employment with Food Co, as the promotion is available to all vaccinated customers.

GUIDANCE FOR ALLOCATION OF PROFESSIONAL FIRM PROFIT AND INCOME

In December, the ATO finalised Practical Compliance Guideline PCG 2021/4 Allocation of professional firm profits – ATO compliance approach, which applies from 1 July 2022. It sets out their compliance approach to the allocation of profits or income from professional firms in the assessable income of the individual professional practitioner (IPP).

This ATO summary outlines the key issues

The old guidelines were suspended after the ATO identified they were being misinterpreted. The ATO found that professional firm arrangements, where Part IVA applies, were precluded due to being low risk under the suspended guidelines.

Following this, the ATO engaged with the public, peak professional bodies, and an external working group to understand the commercial, structural, and operational issues affecting professional firms. The key changes resulting from this consultation include:

- additional examples featuring a wider variety of arrangements and structures used by IPPs
- confirming that being high risk doesn't automatically result in audit or application of the anti-avoidance provision Part IVA
- a change in the benchmark percentages used in the Risk Assessment Framework to determine whether an arrangement is low, medium, or high risk
- a revised application date of 1 July 2022
- a two-year transitional period until 1 July 2024 for arrangements that were low risk under the suspended guidelines but moderate or high risk under the new PCG.

There are two 'gateways' that need to be passed and a risk assessment framework the ATO uses to assess the compliance risks of an IPPs arrangement. IPPs need to

assess their eligibility to apply these guidelines annually. They can use this framework to:

- self-assess their level of risk, using a risk assessment framework and Schedule
- understand the level of engagement they can expect from the ATO
- decide whether to seek professional advice or contact the ATO to discuss their self-assessment of the arrangement if they determine its moderate or high risk
- support their application for binding advice if they wish to obtain certainty.

CRACKDOWN ON BLACK ECONOMY EXPECTED TO REAP \$1.2 BILLION IN EXTRA REVENUE

One significant item missed in the Mid-Year Economic and Fiscal Outlook (MYEFO) was the extension of funding of an additional \$111 million to take tax dodgers.

Since the 2018-19 federal budget, the Government allocated extra money for the ATO to tighten scrutiny around personal income tax returns and the shadow economy. ATO estimates indicate there is up to \$11 billion a year in missing taxes due to economic activity outside the law.

The ATO will continue to target the overclaiming of deductions, including work-related expenses. In 2018-19, the latest year for which data is available, almost 8.9 million Australians claimed work-related expenses at an average of \$2331 per person.

The following will attract ATO scrutiny:

- Investors who did not pay the right amount of capital gains or income tax on rental properties.
- Tax agents who encourage their clients towards illegal behaviour.
- Omitted income from overseas.
- Trust distributions not taken up in the individual tax returns.

Since 2018, the ATO has raised almost \$3 billion in tax liabilities by assessing undeclared income and targeting operations that have failed to lodge tax returns.

The ATO will continue to target the digital shadow economy, with the ATO willing to apply penalties where a business is found to use banned “electronic sales suppression tools”.

The ATO is unclear pressure collect more tax with the Budget Deficit expected to reach \$100 billion.

bo2 READERS QUESTIONS AND ANSWERS.....

Question 1
Subject: Benefits That Attract FBT?

We are a charity registered with ACNC and income tax-exempt. Would you advise which of the following benefits would attract FBT?

• Gym membership	• Community service day off or well-being day off	• Employer funded paid parental/ maternity leave
• Flu vaccinations	• Rostered days off	• Higher super contribution by employer
• Paid health cover or contribution to health cover	• Car parking	• Concessional leave
• Christmas lunch in a restaurant		

I believe seeking the above advice is a free service included in the annual membership subscription.

Answer

As you are a registered charity, you may be eligible for the FBT rebate up to \$30,000 of the taxable benefit of fringe benefits supplied to each employee.

This will be apparent from employee salary packages as in these situations, it is normal for employees to take full advantage of these concessions.

Please refer to our comments below regarding your questions.

BENEFIT	YES/NO
Gym membership	YES
Community service day off or well-being day off	NO
Flu vaccinations	NO
Rostered days off	NO
Higher super contribution by employer	NO
Paid health cover or contribution to health cover	YES
Car parking	NO
Concessional leave	NO
Christmas lunch in a restaurant	NO- if under \$300 per employee (minor and infrequent benefits)

Question 2**Subject: Trust Distribution of Discount Capital Gain**

Could you advise on the information to be provided in the Trust tax return for a non-resident individual who will receive a discount capital gain from property sold in Australia by a resident Trust?

And what forms, if any, are required to pay any Australian tax liability, how the tax calculation is determined and who is required to prepare, pay, and lodge to the ATO?

Answer

ATO view is that a capital gain of a discretionary trust to which a non-resident is specifically or presently entitled, whether from TAP or non-TAP, is subject to tax in Australia.

The acronym TAP stands for Taxable Australian Property.

Note that non-residents do not get the 50% discount on assets bought after 8.5.2012, and where a CGT event happens after 8.5.2012, the discount is apportioned.

Income retains its character as it flows through a trust.

Generally, it is the Trustee who is responsible for the payment of tax.

Refer to page 7 of our annual publication for tax scales.

Question 3**Subject: Costs as a Tax Deduction?**

We have a client who employed a new worker from Queensland to work in her Outback Hotel. The client paid the costs for the flight ticket and hotel isolation. Can our client claim these costs as a tax deduction?

Answer

The employee can't claim a deduction for removal or relocation costs incurred to transfer or relocate for work purposes.

This is the case even if relocating is a condition of employment the employee takes up in:

- A transfer in existing employment
- New employment with a different employer

Removal and relocation expenses never have a sufficient connection to earning employment income. They are expenses incurred to start earning employment income and are private or domestic expenses.

If the employee receives an allowance from the employer to cover some of the costs of relocating, they must declare the allowance as assessable income in their tax return.

Question 4**Subject: Private Company Ceasing Operation**

Australian private company is wholly owned by an overseas company (only shareholder is the overseas company - 100% ordinary shares).

This Australian private company will be ceasing the operation in December. The business got a loss, so there is no need to pay company tax.

This company wants to lodge the company tax return in January / February and deregister the business in ASIC by February or earlier.

Australian Company Pty Ltd was established with one shareholder (overseas company). For example, ordinary shares of 10,000 @ \$10 were accounted. This means that the overseas company paid \$100,000 to the Australian company.

Accounting entry for the above was:

DR bank CR Issued capital \$100,0000

A year later, the remaining balance was \$50,000 in the business bank account when the business is ceased. The Australian company will transfer \$50k to Shareholder (Overseas company).

My questions are:

- (1) Tax software for FY2022 company tax return is only available in late June 2022. Would you please advise how to lodge the FY2022 company tax return earlier before the end of the financial period in the above circumstance?
- (2) When can we deregister the business (Pty Ltd) in ASIC? Should we wait until the company tax return is lodged in our circumstance (no need to pay for company tax)?
- (3) Is there anything the business needs to do when ceasing in Australia? Please note that GST & PAYG will be cancelled earlier.
- (4) After the FY2022 financial accounts are finalised (before the company tax return is lodged), the remaining fund in the business bank account must be transferred back to the overseas company. The overseas company (only shareholder) provided the initial capital fund, and no income was ever incurred.

Would you please advise the accounting entry for this transfer? Example: Cr Bank Dr Capital Fund

Is there anything we need to be aware of about this transfer?

Answer

- (1) You can lodge a paper tax return (using 2021 stationery) to establish there is no company tax debt. Companies operate under self-assessment, so do not expect an “assessment” to issue.
- (2) To be able to fill out ASIC form 6010 to deregister the company, the following requirements must be fulfilled:
- All members of the company agree to deregister
 - The company is not conducting business
 - The company assets are worth less than \$1,000
 - The company has no outstanding liabilities (e.g. debts)
 - The company is not involved in any legal proceedings
 - The company has paid all fees and penalties payable to ASIC

The Director(s) signing form 6010 must clearly understand the above, as ASIC will take action against the Director if aggrieved creditors later emerge and the document was signed on the basis of falsehoods.

If there are assets to deal with, then a members’ voluntary liquidation is recommended.

We recommend that the tax return be lodged to establish no tax liability.

(3) In addition, cancel the ABN.

Also, if the company holds an Australian Financial Services Licence (AFSL) or an Australian Credit Licence (ACL), they should be cancelled first.

(4) Assuming there was only nominal share capital issued, then the entry will be:

Dr	Loan Holding Company	xxxx
Cr	Cash at bank	xxxx

Question 5

Subject: GST On Sale of Goodwill...

A query relating to GST on sale of goodwill...

Client A has a business of IT/Software consulting/licence sales...and currently owes software Supplier B \$180,000 for licences sold to customers.

Supplier B has decided to cease providing licences to Client A and has offered \$180,000 in compensation...and suggested that Client A keep the \$180,000 rather than pay Supplier B.

Is the \$180,000 “compensation” subject to GST?

My thoughts are:

Had Client A remitted the \$180,000 to Supplier B, they would have claimed a GST credit of \$16,363.

Conversely, if the \$180,000 compensation is subject to GST, this would be offset against the \$16,363 credit to be claimed on the amount payable to Supplier B...Thus, the transaction is potentially GST neutral.

Supplier B has also offered a further compensation amount of USD 13,000 (approx AUD 18,140)...which I assume may be subject to GST of \$1,649.

In summary, they’ve agreed to pay my client USD 134k... but are aware of an amount of USD 102k owing by my client for outstanding invoices...which they are not going to chase in lieu of part payment of the exit fee. In addition, there’s a further USD 18k that they’re going to “forgive”....and payment of USD 13k to my client...in total = USD 134k as compensation for terminating their contract.

Answer

Company B is simply not going to enforce payment of the debt.

It is an act of commercial goodwill – not a sale of goodwill.

You can’t claim input tax credits on transactions that don’t take place.

The same applies to the USD 13k.

The precise commercial relationship between Company A and Company B has not been properly explained.

This goes beyond the nature of our advice on tax technical matters.

When the term “pro forma invoices” is used.. it is concerning as the transactions may be contrived.

Question 6

Subject: UPE – Dividends

Further to my conversation about UPE’S, what is the time frame for these dividends to be paid?

I was under the impression that the payment had to take place within five years. Maybe I am wrong?

Answer

There is no 5-year requirement for the dividends.

The real issue is the UPE between the discretionary trust and the company.

You have a year to convert the UPE into a Division 7A loan and ensure a complying loan agreement is in place.

Interest must be paid (currently 4.52%), and if unsecured, the loan must be paid out within 7 years.

At the relevant time, this may involve the company paying dividends.

Question 7**Subject: Testamentary Trust - Distributions****Details**

A client has passed away. Will states cash distributions to the client's two sisters and the balance to be left to the client's son as a testamentary trust.

Cash distributions to sisters have been paid. Trust has not been set up as yet per the Lawyer.

Assets of the estate include:

- 3 Motor Vehicles
 - o BMW
 - o Jaguar
 - o Aston Martin – this has been sold with proceeds being added to the estate
- Cash

The client's son would like an interim distribution paid to consist of Cash (\$20,000), and the BMW transferred to him before Christmas. The Executor has agreed to the distribution and will sign VicRoads transfer documents relating to the vehicle.

Our question relates to the tax treatment/implications of the above mentioned interim distribution? Is there tax consequences for the beneficiary given the Testamentary Trust has yet to be formally established? Or is there tax consequences for the estate itself?

Answer

We need to be clear on what a testamentary trust is... it is a trust created by the terms and conditions of the Will.

So the trust is already in existence, and its operations are as defined in the Will.

There may be some confusion here, but the Lawyer can clear things up for you.

If the Executor has agreed to the payment of \$20k and the transfer of the BMW, then it is probable he is also the Trustee of the Testamentary Trust and that the transfer of these assets complies with the terms and conditions set out in the Will.

We do not think there are tax implications as these are transfers of capital and not distributions of income.

Income earned by the Deceased Estate and the ongoing Testamentary Trust will be subject to income tax.

Question 8**Subject: Stamp duty concession**

My client received a \$7,000 first homeowners grant (FHOG) on his first principal place of resident property

purchase in 2010. This property was purchased for \$700,000, and full stamp duty was paid as there was no stamp duty concession at the time for first-time buyers (just the FHOG grant). Since this time, he has married, and his wife owns no property in her name and is looking to purchase a property for 600k solely in her own name. She is a permanent resident (not an Australian passport holder). Is she eligible to receive the first home buyer duty concession?

<https://www.sro.vic.gov.au/first-home-owner/apply-first-home-buyer-duty-reduction>

The SRO website outlines - "you will not be entitled to the first home buyer duty benefits if you or your partner has previously received the benefit of the exemption or concession."

As my client did not receive the stamp duty concession but did receive the FHOG in 2010, will his spouse still be eligible for the stamp duty concession?

The SRO website outlines the first home buyer duty exemption or concession may be available if:

You enter into a contract of sale to buy your first home on or after 1 July 2017.

Your home has a dutiable value of:

\$600,000 or less to receive the first home buyer duty exemption,

\$600,001 to \$750,000 to receive the first home buyer duty concession.

All the purchasers of the property meet the First Homeowner Grant eligibility criteria, and

at least one purchaser satisfies the residency requirement.

The exemption or concession is only available to you once. If you or your partner has received the benefit of this exemption or concession previously, you cannot receive it again.

All criteria above will be met, but we are looking for clarity on the final point.

Also, if my client's spouse was to purchase the property in her name but the loan to purchase the property is in my client's name, can interest be deducted as an expense?

Answer

The answer would appear to be no... more so as it would appear that there is no intention for the wife to live in the property given the enquiry about the deductibility of interest.

If there is any doubt, there is no harm in outlining the situation to SRO VIC to seek an answer.

In the event the husband's name goes on the loan, and the loan proceeds are used 100% to purchase an income-producing property, then under the "use" test... there shouldn't be an issue in claiming the interest.

Question 9**Subject: Franking Credits**

The company has excess franking credits accumulated from payment of tax at a 30% income tax rate and has not previously paid dividends.

What franking credit would be applied to a fully franked dividend paid in the 2022 financial year?

Answer

We assume your company is a base rate entity with a turnover of less than \$50 million.

As of 1 July 2021, the company tax rate for base rate entities is 25%, and this is the franking credit percentage you apply to dividends.

While it may not seem fair, the fact that higher rates of company tax have been paid in the past is irrelevant.

Question 10**Subject: Minimum ABP Drawdowns For 2021/2022 Year**

Your recent article suggests that the previous halving in the normal ABP pension drawdown by 50% has NOT been extended to apply for the 2021/ 2022 year.

Please confirm urgently as other practitioners, and I have been advising their superannuation clients that the previous reductions continued for the current year.

Answer

This certainly was not our intention – in May 2021, the concession of halving the normal ABP was definitely extended into the year ending 30 June 2022.

Please proceed as usual, and we will note this in our next issue.

Also, refer to pages 1 and 17 of our Superannuation Bonus Issue #0114, where we clearly state...

"The temporary reduction in minimum pension drawdown rates continues into 2021/22."

Question 11**Subject: Carry Back Losses**

I intend to "carry back" current year losses and apply them against a profit made by my client in his company in the year 2020.

I have detailed the steps in this process already or about to be taken and would be obliged if you would comment on your agreement or otherwise:

1. Company tax return for 2020 lodged

2. Company tax return for 2021 to be lodged

3. After the company tax return for year end 2021 is assessed, the loss for the year will be applied to an amendment for the year end 2020. This should complete the process.

Answer

The first two steps are correct. We assume the 2020 income tax liability has been paid.

Before you submit the 2021 income tax return, you should review label P & M at item 8, item 13 and the refundable tax offset in the calculation statement.

Your third step is incorrect. The refundable tax offset will be issued on your income tax account after the 2021 income tax return is assessed. No amendment is involved. The 'carrying back' of tax losses to reduce a prior year profit is notional and, therefore, does not alter the income tax liability for the year to which the loss is carried back.

Question 12**Subject: - Work Place Vaccination**

We have an employee that does not have Covid -19 Vaccination - by choice.

Also, an employee that does not have Covid-19 Vaccination - Doctor certificate.

They are required to go to sites where 'jabs' are necessary.

What do we do? Do you have letters to issue?

Are we able to terminate? What is the course of action?

Answer

Do you have access to or have already acquired a written policy on mandated vaccinations in your workplace?

A business should have a COVID 19 Policy along with a Covid safety plan.

A discussion needs to be had and recorded with the employee about the mandatory vaccination requirements.

Suppose the employee again refuses to get vaccinated as per the government guidelines. In that case, the business has an obligation to look for suitable alternative work, i.e., work from home or other duties that do not require them to be in contact with anyone.

If none of this is possible, the employee should be warned that they will be terminated as they cannot meet the inherent requirements of the role, which are to be double vaccinated or have an exemption.

Question 13**Subject: bO₂: Questions for DIV7A Loan**

Could you please look into the following scenario for a company?

Small private company client has franking credit balances of \$401,635.59 as at 30.06.2021.

Div 7A loan agreement in place as at 30.06.2020

Div7A 18 balances \$210,088.51

Div7A 19 balances \$75,382.40

Div 7A 20 balances \$7,044.89

In FY2021, we have calculated below minimum repayment and interest & principal

1) Div7A 2018:

- Principal \$3,8392.93
- Interest \$9,490.07
- Minimum repayment \$47,883.00

2) Div7A 2019:

- Principal \$11,218.53
- Interest \$3,405.47
- Minimum repayment \$14,624.00

3) Div7A 2020:

- Principal \$1,196.00
- Interest \$318.43
- Minimum repayment \$877.57

My questions are:

1. There are minimum repayments from DIV 7A loans FY18-FY20. The total is \$63,703.00. What will be the journal entry for recording these minimum repayments and dividends?
2. Is the above dividend an unfranked dividend or franked dividend?
3. If this is a franked dividend, what will be the formula for calculating franking credit out of the company franking account? Any worksheet for this?
4. Since the company tax rates were higher from previous years, e.g., 27.5% in FY2020, when we calculate the franking credit in FY2021 from the franking account, should we use 27.5% or 26%?

Answer

Please refer to the ATO's Division 7a calculation tool, as we cannot confirm your calculation. Answers to your questions are as follows:

1. Dr Dividends (Minimum Annual Repayment)
Cr 2018 or 2019 or 2020 loans
Cr Division 7a Interest
2. Can be either franked or unfranked dividends. Based on your franking account balance and amount of minimum repayments, it is best to frank the dividends.
3. Franking credits for 2021FY = Dividends x 2.6 ÷ 7.4
4. 26%

Michael's Corner

ARTICLE NUMBER 015

WAYS TO TRANSFORM YOUR ONBOARDING OR RE-INDUCTION PROCESS

As we all know, the new year is upon us, and this is a good time to re-induct staff into the business and perhaps update the induction process to ensure a great onboarding experience.

Before starting your induction training, you must have clear HR Policies and Manuals that are standardised for your company and make the induction process extremely easy.

Your employee induction process is often what makes or breaks an employee's experience at a company. A great induction or onboarding experience helps settle your new employee in and avoid workplace issues in the future.

Inductions represent the most teachable moment companies have with new starters. They are ideal for aligning staff and contractors with what your company stands for and how you like to do business.

A successful employee induction process sets up an employee for a great experience with your company. However, if this process does not go so well, it is more likely your new employee will have a difficult time at your company, perhaps even resigning down the track.

For this reason, employee onboarding should be taken quite seriously. Here are nine ways to make it great!

1. Give them a welcome gift

Statistics show that employees are more likely to stick around if given a good onboarding procedure. We all know how important first impressions are, and not making a good one could see a higher turnaround and a costly unnecessary expense to your business.

Who doesn't love being given a gift? Having a small token on every chair as the new or re-inducted employees walk in on the first morning will instantly excite them, setting the tone for their induction and time working in the company.

2. Go online

Interactive learning is the best way to engage employees and make induction interesting for them. A Learning Management System (LMS) is the best way to do this. The employee is given their own login and asked to click through various platform pages, learning and taking quizzes as a test of knowledge or especially as a competition between individuals or teams as a form of entertainment along the way.

An LMS is so effective because new starters and existing employees can learn the basics on the first day of their induction, and it is a refresher for existing employees. HR and their manager can see their process and help them with anything they might be struggling with.

The interface should be hassle-free, easy to use and multimedia compatible. Video, audio and lots of images should all feature, as should scenario training for things like health and safety. Fun ways to remember certain statistics that are important to the company, like the number of employees or the year it was founded, could also be incorporated.

Before, everyone would get the same induction training, regardless of their level or role. With an LMS, employees can be given extra modules that are most relevant to their field, ensuring no one's time is wasted and allowing them to feel catered for and supported.

3. Start them early

New starters are often very motivated to start their new role (they have wanted to leave their old job, after all).

Why not give the bright-eyed candidate the chance to start ticking off induction training in their own time before they even start?

You could use the LMS mentioned above for this. A protected portal with a login given soon after an offer of employment will make them feel instantly welcome (as opposed to a lack of communication over the candidate's notice period from the previous role).

This method gives them a head start with complete control over their learning. It also lets them approach it in their own way and at their own pace. So, once they've gone through all of the physical formalities, e.g., walking through the building for fire exits, they can hit the ground running and straight into role training with their team on the first day, having already gone through the rest online beforehand.

4. Make them into a shadow

After the employee has started and they understand their role, get them to shadow key members of different teams. This will teach them how each aspect of their role

fits into everyone else's. They'll see where they slot in and understand the purpose of everything they do.

Motivation is heightened when each task is given a description and basic purpose in the logistics of the whole company, instead of just thinking of it as a task for the sake of the exercise.

5. Visions and values

By introducing them to the CEO and talking about the core values, the scripted one-liners that they've read on websites and presentations come to life. All employees should feel inspired by the firm's history and be completely immersed in what they've done, what they're doing and what they've got to come. At the end, ask the employees to put the company's visions and values into their own words and ask them to describe how each one will not only affect their new or existing role but how they can live each one in their everyday activities. This will allow them to understand the business's standards and conduct everyone truly.

6. Introduce a checklist

On the employees first day, give them a checklist that outlines all the different stages of their training, almost like a timetable. This lets them know what to expect, making it all a little less scary.

See an example of an induction checklist below.

7. Keep it bite-sized

Long-winded inductions will force the new and existing employees to lose interest almost immediately. It's not their fault. Taking in large amounts of information for long periods just isn't how inductions should be held. Training should be delivered in short and manageable bursts. These little lessons should be easily digestible, not large chunks of text.

8. Make sure they're listening

During training, introduce quick-fire questions based on what they've just learnt. This will keep new and existing employees looking alive, as they don't know when the next question will arise.

9. Refresh the buddy system

It's so often seen that new starters are given a buddy, and that person is never seen or heard from again when the induction training is finished.

Whether you introduce one or all of these steps into your induction training, revolutionising the way you conduct it will significantly improve the employee's initial thoughts about the business, their expectations and give them the tools to make a great start at your company.

INDUCTION & TRAINING - Induction Checklist (found in our Toolpack 1)

The following checklist will be utilised for employees, labour-hire Employees, and contractors for inductions training:

Name of New Employee				I have been provided with a site-specific induction prior to beginning work and understand the hazards, risks, controls and safety rules that apply. I understand what is expected of me and agree to work in a safe manner in compliance with relevant OHS requirements.								
Start Date												
Position Title				Inductee (Print):	Signature:			Date:				
Name of Supervisor				Inducted by (Print):	Signature:			Date:				

General Workplace Information	Y	N	N/A	Personnel	Y	N	N/A	Policies and Procedures	Y	N	N/A
Access /				Manager/Supervisor				Company OHS Policy Manual issued			
Location of amenities				Health and Safety Representatives (HSR)				Emergency Procedures			
Location of break room/ kitchen				Deputy HSR				Hazard Reporting Procedures			
Location of drinking water				Contacts details for HSR				Incident/Injury Reporting Procedures			
Worker parking area				First Aid Officer				Consultative Arrangements			
Safe area for personal belongings				Fire Warden				SWMS			
Smoking area				Emergency/First Aid	Y	N	N/A	Risk Assessments			
Notice board				Emergency assembly areas				Task-specific risk controls			
No Go Zones for pedestrians				Emergency evacuation route				PPE requirements			
Security				Emergency contact details				Fit for Work requirements			
Site-specific rules/ procedures				Communications equipment				Disciplinary Procedures			
Site-specific hazards/ risks				Nearest medical facilities				Lockout tag out procedures			
Site-specific risk controls				Trained First Aid personnel				Working around mobile plant			
Position Duties and Responsibilities	Y	N	N/A	Contact details for First Aiders				Anti-bullying protocols			
Review performance standards & evaluation methods				Location of first aid kit/s				Location of administration forms			
Work schedules (days & hours)				Location of fire protection equip				Workplace Code of Conduct			
Overtime needs (if any)				****Please note that this is general advice for information only and any application of HR legislation and/or Industrial Relations and/or contractual agreements may require professional advice to suit your individual circumstances. Call our toll-free P 1300 555 533 or book a Buzz Session!							
Supervisory arrangements											
When & how to request assistance											

Bonus Issue

TAX SAVING TIPS (2022) – OVER 150 IN ALPHABETICAL ORDER

1. Accounting on the Cash Basis?

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

2. Always Lodge on Time

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

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

The act of lodgement and crystallisation of tax debt forces a business owner to work out a payment plan and address the business's cash flow issues.

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

Be aware that the ATO's data matching capacities continually improve. Throughout 2021/22, the ATO will intensify its attack on the cash economy using industry benchmarks - also targeting cities and districts in the process. Those who have decided not to declare a significant percentage of tax income are about to be found out.

Also, be aware that the sharing economy – Airbnb, Uber, et al. is now firmly in the sights of the ATO. In 2022 the ATO will also focus on “side hustles” such as multilevel marketing receipts.

4. Audits (Tax) - Disclose Early

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

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

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

5. Bad Debts

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

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

6. Beneficiary Loan Accounts – Trusts

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

7. Benefits of Mobile Beneficiaries

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

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

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

In the case of distributions to Australians studying or working abroad, it should be established they are non-resident for some or all the relevant tax year. For an Australian domiciled individual, this requires that the Commissioner be satisfied that the individual has a ‘permanent place of abode’ overseas. All relevant circumstances must be taken into account when

considering residency issues. The ‘rule of the thumb’ suggested by the ATO is that an individual will be a non-resident of Australia if they have a settled lifestyle (i.e., a temporary home) abroad for at least two years. This often fits conveniently with undertaking an employment secondment or a master’s degree. In addition, many young adults simply choose to work abroad as part of their life experience.

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

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

8. Blinded by The Light – Tax Deductions That Mean Nothing

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

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

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

9. Borrowing to Fund Super Contributions for Employees

Employers faced with limited funds, but major expenses of a non-deductible nature should consider borrowing to fund super contributions on behalf of their employees, using the limited funds to pay non-deductible expenses.

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

‘One touch’ payroll means the ATO is now aware of small business compliance with super in ‘real time’. It is

essential to keep up to date with super payments. The severe cash flow challenges caused by COVID-19 are acknowledged.

10. Business Travel

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

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

11. Buying and Selling a Business

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

12. Buying and Selling Intellectual Property

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

13. Capital Gains Tax

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

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

14. Capital Works Expenditure

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

15. Catch Up Concessional Superannuation Contributions

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

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

16. Cents per Kilometre Expenses Reimbursed

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

Note that where two or more taxpayers own or lease a car and each uses that car separately for income-producing purposes, each person is entitled to claim a deduction using the cents per kilometre method.

17. Cessation of Business - Interest

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

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

18. CGT and Departing Overseas

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

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

19. CGT Asset Register

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

For most assets, this information includes:

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

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

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

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

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

20. CGT Discount

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

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

The discount allows individuals (including partners in partnerships) and beneficiaries of trusts to reduce their capital gain by 50%. There are further rules for beneficiaries entitled to a share of a trust capital gain.

Companies cannot use this CGT discount.

21. CGT Discount and Trusts

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

22. CGT- Third Element Cost Base

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

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

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

23. Child Maintenance Trusts

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

24. Claiming the Spouse Superannuation Tax Offset

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

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

25. Client Gifts

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

26. Company Losses

The Government will allow companies with aggregated annual turnover less than \$5 billion to carry back tax losses from 2019-20, 2020-21, 2021-22- or 2022-23-income years to offset previously taxed profits in the 2018-19 or later income years.

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

The tax refund will be available on election by eligible companies when they lodge their 2020-21, 2021-22, 2022-23 tax returns. Note that the 2022-23-year extension was announced in the May 2021 Budget.

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

27. Company Tax Is Now 25% for SBEs

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

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

28. Companies and the CGT Small Business Concessions

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

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

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

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

29. Compensation Payments

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

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

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

30. Consumables

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

31. Contributions to Superannuation - Notice of Intention to Claim a Tax Deduction

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

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

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

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

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

Rachel has lost her entire tax deduction for the contribution.

32. Control the Timing of Tax Deductions - Prepaid Expenses

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

Similarly, those on PAYG should bring forward

expenditure prior to 30.06.2022, particularly for tax-deductible items they may have to pay early in the subsequent financial year.

33. Converting Non-deductible Interest

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

34. Creating Intellectual Property

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

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

35. Deceased Estates

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

36. Defer Income

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

37. Depreciation

To maximise claims:

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

38. Directors' Fees

Directors' fees are deductible to a company when incurred. If prior to the year end, a resolution is passed at a director's meeting to pay reasonable directors' fees and bonuses. The company has a legal obligation to make the payments, and the amounts determined are tax deductible as at the date of the resolution. They are not assessable to the employee until paid, which usually

takes place in the following year. At this time, PAYG should be deducted.

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

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

39. Discretionary Trusts– Streaming Income

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

Where a discretionary trust derives substantial income and capital profits, identifying the tax profiles of the beneficiaries and making distributions accordingly can result in significantly less tax. Where the individual beneficiaries are on marginal tax rates in excess of the corporate tax rate (currently 25%), distribution of income to a corporate beneficiary can produce a ‘tax deferral’ advantage. Alternatively, where a trustee makes capital gains, distributing them to individual beneficiaries may effectively reduce tax to 23.5% or less.

40. Dividends and Imputation Credits

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

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

41. Division 293 Tax Threshold

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

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

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

Being aware of this changed threshold allows a taxpayer to defer income, accelerate deductions or, in a

discretionary trust situation, choose another beneficiary to absorb the income.

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

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

Low-tax contributions

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

The contributions counted for Division 293 tax purposes generally include:

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

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

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

42. Division 7A – Debt Forgiveness

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

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

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

43. Division 7A- Loans

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

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

44. Donations - Timing

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

45. Donations v Purchases

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

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

46. Do not overlook Tax Offsets!

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

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

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

47. Eliminate Capital Gains

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

48. Estate Planning – Super Payments to Non-dependents

If a superannuation fund member is in terminal decline and they have no dependents, the trustee should

consider paying the benefits to the member tax-free prior to death.

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

49. Franking Credits

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

50. Franking Credits – Trusts

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

51. Get Organised

You should keep all receipts and have these summarised in an organised and systematic manner. When you see your Accountant, you should also have a checklist of items you wish to discuss with them. This enables you to plan for the future and get the most out of the meeting. Rather than your Accountant sorting out your mess... you get some good advice!

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

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

52. Get the Structure Right

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

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

53. Going Concern- Commercial Buildings

Buying a commercial building under the going concern exemption enables the purchaser to reduce unnecessary

stamp duty as the purchase price becomes the GST exclusive amount (not the GST inclusive price). For this to occur, a valid lease must be in place.

54. Going Concern - Exemption

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

A sale of a going concern is a sale where:

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

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

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

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

55. Halving Tax on Shares

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

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

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

56. Home Office Expenses

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

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

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

57. Income Averaging – Creative Persons

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

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

58. Income Splitting - Investments

This is so fundamental but so often overlooked.

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

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

59. Insurance Bonds

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

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

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

Eligible businesses with an aggregated turnover of less than \$5 billion are able to deduct the full cost of new eligible depreciating assets that are first held and first used or installed between 7:30 pm AEDT on 6 October 2020 and 30 June 2023. For small and medium sized businesses (with aggregated turnover of less than \$50 million), full expensing also applies to eligible second-hand assets.

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

The 2021-22 Budget extended this concession until 30 June 2023.

61. Interest – Partnership Capital

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

62. Interest Claims

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

63. Invalidity Payments

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

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

64. Legal Expenses

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

65. Limiting deductions for vacant land

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

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

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

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

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

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

66. Liquidations

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

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

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

67. Living Away from Home Allowance

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

68. Logbooks – Now More Important Than Ever...

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

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

69. Losses by Theft

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

70. Medicare Levy Surcharge (MLS)

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

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

71. Medicare Levy Surcharge Private Health Cover: Make Sure You Maximise Your Tax Refund

If you do not have private hospital insurance and your income is more than \$90,000 for singles or more than \$180,000 for families, you will pay a minimum of 1% Medicare Levy Surcharge. That is on top of the compulsory 2% Medicare levy paid by most taxpayers.

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

72. Money Held in Trust

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

When you operate a bank account as trustee for someone

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

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

73. Mortgage Reduction

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

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

74. Negative Gearing

It may be explained as paying more interest and other outgoings than you receive in income from your investment. There are also other (non-cash outgoings) such as depreciation, which are also tax deductible.

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

75. Non-Cash Super Contributions

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

76. Non-Commercial Rent

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

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

77. Other CGT Rollovers

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

These include:

- **Replacement Asset:** where a taxpayer receives a replacement asset or compensation for the loss, destruction, or compulsory acquisition of an asset.
- **Marriage Breakdown:** the transfer of assets between spouses on the breakdown of the marriage. This must be court approved.
- **Strata Title Conversions:** On conversion of a home or unit into a strata title arrangement.
- **Scrip for Scrip:** CGT rollover relief is available where equity in a company or fixed trust is exchanged for replacement equity interests. This is typically the result of a takeover or scheme of arrangement.
- **Sole Trader, Partnership or Trustee to Company Transfer:** Relief is available where assets are transferred into a wholly owned company. This strategy is useful when restructuring entities.
- **From a Fixed Trust to a Company:** This is not available to discretionary trusts.
- **Renewal or Extension of a Statutory License:** These cover a wide range of industries, including taxis, primary production & exporting.
- **Exchange of Shares in the Same Company:** This can be useful when reorganising capital to do with the entry or exit of an equity holder.

78. Partnerships – Varying Entitlements

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

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

79. Personal Use Assets and CGT

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

80. Prepayment of Interest

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

81. Private Rulings

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

82. Professional Expenses – Starting a New Business

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

83. Rates and Land Taxes

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

84. Record Retention

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

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

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

85. Redundancy and Early Retirement Payments

Bona Fide redundancy and approved early retirement payments up to an indexed threshold (2021-22) \$11,341 plus \$5,672 for each completed year of service are tax deductible to the employer and tax free to the employee.

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

86. Refunds of Tax paid Overseas

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

87. Rental Property - Repairs

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

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

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

88. Rental Property – Restriction on Depreciation Deductions

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

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

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

89. Rental Property - Travel Expense

From 1.7.2017, tax deductions are disallowed for travel

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

90. Research and Development

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

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

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

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

Ensure your claims are genuine and the funds extended meet the "at risk" requirement. In late 2021 the ATO published guidance on this.

91. Residency for Tax Purposes

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

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

In recent years there have been a number of cases where Australians who have spent considerable time overseas have still been found to be tax residents of Australia.

It is essential that you establish a permanent place of abode outside Australia to have any prospect of being considered to be a non-resident.

In the May 2021 Federal Budget, the Government announced it would replace the individual tax residency rules with a new modernised framework. If you are leaving or returning to Australia, you may need to take advice on these proposed changes to legislation.

92. Review your Structure

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

93. Salary Earners and Negative Gearing

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

Apply for a “2022 PAYG Income Tax Withholding Variation Application” from the ATO; they will issue a variation certificate stipulating a lower percentage, which they will also send to your employer.

94. SBE – Leasing Plant

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

95. Self-Education Expenses

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

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

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

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

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

- textbooks

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

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

96. Seriously Consider Whether You Need to Lodge a FBT Return

This is directed at small employers who provide motor vehicles to working directors and arm's length employees. This is now an area of ATO focus. Showing you are compliant with FBT decreases the risk of an audit.

97. Single Car Families and Motor Vehicles Expenses

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

98. Small Business CGT Concessions

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

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

It is important to note:

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

99. SMSF – Limited Recourse Borrowing Arrangements

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

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

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

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

- The fund uses the borrowed monies to purchase a single asset or a collection of identical assets with the same market value (that together are treated as a single asset). For example, you can borrow to purchase shares in the one company, but you will need to take out another LRBA if you intend to purchase shares in another company.
- The borrowed money cannot be used to improve the purchased asset.
- The asset is held on trust so that the SMSF receives the beneficial interest in the purchased asset.

- The SMSF has the right to acquire legal ownership of the asset by making one or more payments.
- Any recourse the lender or any other person has under the LRBA against the SMSF Trustee is limited to the single fund asset (including the rights to income).
- Replacing the asset subject to the LRBA is possible in very select circumstances, i.e., if a company undertakes a share split or a takeover or merger.

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

100. SMSF – Purchase of Business Real Property

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

101. SMSF – Segregating Assets

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

As some retirement income streams have considerable flexibility, your SMSF should go into pension phase as soon as possible. Note the \$1.7 million cap.

102. Sole and Principal Place of Residence (PPR)

Consider this scenario:

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

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

103. Split or Linked Loans

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

104. Substantiation – Computer Expenses

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

105. Substantiation – Home Office Expenses

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

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

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

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

We note in passing, the temporary 80 cents per hour all-inclusive rate for claims made during the COVID-19 has now been extended to 30.6.2022.

106. Substantiation – Part Day Travel Expenses

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

Taxpayers can claim deductible incidental expenses incurred during part-day travel – for example, taxi fares – provided their employer has not reimbursed their expense, and they have kept the necessary written evidence to support their claim. These expenses are covered under the normal written evidence rules and are not covered by any exception to the substantiation requirements.

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

107. Substantiation- Telephone Expenses

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

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

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

108. Superannuation

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

109. Superannuation Co-Contributions

If you are a lower income employee, you may want to make personal after-tax (undeducted) contributions to

a super fund. This concession also applies to the self-employed.

Implementing this strategy can boost your retirement savings and possibly receive a government co-contribution of up to \$500 each year. To qualify for the full contribution (\$500), you generally need to make a personal after-tax super contribution of \$1,000 and earn less than \$41,112 p.a.

However, a reduced amount may be paid if you contribute less than \$1,000 and/or earn between \$41,112 p.a. and \$56,112 p.a. (2021/2022)

There are some considerations. If you operate your business through a family trust, be certain that you pay family members (who wish to claim the co-contribution) a salary subject to the Superannuation Guarantee 10% statutory superannuation.

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

110. Superannuation Non-Concessional Contributions

From 01.07.2021, annual non-concessional contribution allowances have been capped at \$110,000, and if you're under 65, the three year bring forward provision falls to a maximum of \$330,000.

Note that if you have in excess of \$1.7 million in superannuation, you can no longer make non-concessional contributions.

Also, note that from 01.07.2017, the removal of the '10 per cent rule' has ensured a level playing field for access to super tax concessions irrespective of the employment situation. This helps contractors who also draw some salary from salary and wages. They are now able to make tax deductible contributions up to their contributions cap which will be \$27,500.

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

111. Superannuation Obligations and Individual Contractors

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

An employee for superannuation guarantee purposes includes a person engaged under a contract that is wholly or principally for the person's labour. Labour can include

mental and artistic effort as well as physical work. This means that a contractor (the party to the contract) can be considered an employee under the superannuation guarantee.

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

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

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

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

This would happen:

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

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

112. Tax Agent Fees

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

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

However, note that TD 2017/8 gives specific guidance on apportionment where the trip has a mixed purpose.

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

113. Tax Averaging for Primary Producers

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

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

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

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

114. Tax Effective Borrowing

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

115. Tax Effective Distributions from Trusts

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

116. Tax Losses

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

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

There may also be fewer future tax benefits in the

form of future deductions or hidden CGT exposures on the subsequent disposal of reducible assets for CGT purposes.

117. Tax Schemes / Tax Dreams

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

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

118. Taxi Travel

This is increasingly popular with staff living in the inner city. Taxi travel provided to employees arriving at or leaving their workplace at any time during normal hours is tax deductible and exempt from FBT. From 1.4.2019, this exemption was extended to ride sharing such as Uber, Didi, Ola etc. Arranging for your employer to pay for your travel by way of salary sacrifice will produce a substantial tax benefit.

119. Temporary Residents

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

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

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

This is something for advisors to consider, particularly to reduce capital gains tax.

120. The Accidental Developer

Before seeking council approvals, subdividing the family

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

121. Think Twice About Luxury Cars

In addition to the luxury car depreciation limit, there is also a GST issue. The maximum input tax credit allowable on a business car is limited to 1/11th of the luxury car depreciation limit, i.e., \$5,521. The additional GST paid on a vehicle costing over 60,733 cannot be recovered.

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

122. Thinking of Working Overseas?

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

123. Transition to Retirement Income Pension (TRIP)

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

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

124. Transport

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

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

125. Travel Allowance

Refer to Taxation Determination TD 2021/6 – travel expenses incurred by an employee who receives an allowance for travel costs within Australia are not subject to the substantiation requirements. This is providing the claims for the cost of accommodation, food, drink, and incidental expenses does not exceed the reasonable amounts as set out in TD 2021/6. Each year the ATO updates the reasonable amounts by way of a Taxation Determination, and these limits can apply to employees who comply with the rules. Note to make a claim; you need to have actually received an allowance which is subject to tax.

126. Travel – Home to Work

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

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

127. Trust Vesting Requirements

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

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

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

128. Wages Paid to Family

If paying wages to family members, ensure they are commercially realistic and paid up to date prior to 30 June. The ATO takes a dim view of journal entries for unpaid wage entitlements. Often overlooked is the fact that Statutory Superannuation (10%) must be paid on these wages.

129. Work-related Expenses (WRE) – Keep it Real!

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

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

Examples include:

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

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

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

Above all... do not make “cut and paste” claims from prior years. Due to COVID-19, it is clear that activity may have changed, and this should be reflected in the claims made. For example, some people are working from home, using “Zoom”, etc. This should result in lower claims for Motor Vehicle and Travel expenses.

130. Work Specific and Protective Clothing

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

THE 2021-22 YEAR END FRINGE BENEFITS TAX (FBT) CONSIDERATIONS

FRINGE BENEFITS TAX RATES

The FBT rate aligns with the top marginal income tax rate for individuals.

- The Type 1 gross-up rate is 2.0802. This rate is used where the provider is entitled to a GST credit in respect of the benefit.
- The Type 2 gross-up rate is 1.8868. This rate is used if the benefit provider is not entitled to claim GST credits.
- The FBT rate is 47%.

FBT treatment for certain employers

Employer type	FBT concession for the years ending 31 March 2018, 2019, 2020, 2021 and 2022
Public benevolent institutions (other than public hospitals) and health promotion charities Salary packaged meal entertainment and entertainment facility leasing expense benefits capped at \$5,000.	FBT exemption capped at \$30,000.
Public hospitals, not-for-profit hospitals, and public ambulance services Salary packaged meal entertainment and entertainment facility leasing expense benefits capped at \$5,000.	FBT exemption capped at \$17,000.
Rebatable employers – certain registered charities, non-government, and not-for-profit organisations Salary packaged meal entertainment and entertainment facility leasing expense benefits capped at \$5,000.	FBT rebate of 47% capped at \$30,000.

1. Car Fringe Benefits Change

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

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

However, the impact of these changes has led to a move away from the statutory formula to the logbook method of calculating motor vehicle fringe benefits, particularly in a private family business. Be warned the logbooks should exist and be real because the ATO has ramped up audit activity in this area in 2022, using data matching with a particular focus on luxury vehicles.

2. Exempt Fringe Benefits

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

Examples include:

- Electronic diaries
- Briefcases
- Laptop computers (one per year)
- Mobile phones (where there is a predominate business use)
- Taxi travel to and from work very popular in the inner city
- Membership of airline flight lounges.

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

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

3. FBT In-house Benefits

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

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

4. Flu Vaccinations

The provision of a free flu vaccination to an employee will be an FBT exempt benefit if the employer has made free flu vaccinations available to all its employees and the vaccinations have been administered by a nurse or doctor. COVID-19 vaccinations are provided at no cost by the Government.

5. Late Lodgement Penalties

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

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

6. Make the Most of Minor FBT Benefits

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

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

7. Mature Workers Salary Sacrifice into Superannuation

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

8. Novated Leases

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

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

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

9. Overtime Meals

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

10. Public Benevolent Institutions – FBT

Employees of concessional tax entities, including PBIS, can receive up to \$30,000 per annum in fringe benefits without the employer being subject to FBT. The same applies to employees of public and private nonprofit hospitals. However, here the “grossed-up limit” is \$17,000 per employee.

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

11. Reduction in Cost Base Vehicle

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

12. Removal and Storage of Household Effects

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

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

13. Remuneration Packaging

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

items must be used primarily for work-related purposes.

For a salary sacrifice arrangement to be valid, an agreement (where an employer enters into an employment contract to provide a component of an employee’s remuneration package with benefits other than salary) must be entered into before the employee’s service is rendered. A salary sacrifice arrangement will be invalid if the employee has already earned the income. Although not required, it is always preferable to have the agreement in writing.

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

14. Reportable Fringe Benefits – Exemptions

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

15. Reportable Fringe Benefits

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

16. Salary Sacrifice – Superannuation

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

17. Salary Sacrificing

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

18. Sale or Acquisition of Dwelling

Where you provide relocation expenses incidental to an employee's sale and/or purchase of a home, the expenses may be exempt from FBT benefits. These incidental costs include stamp duty, advertising, legal fees, agent commission, discharge of a mortgage, borrowing expenses, or any similar capital expenses. Costs associated with the connection or reconnection of gas, electricity and telephone services to the new home are also exempt.

19. Staff Functions Including Christmas Parties

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

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

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

Consider the tax implications of the following:

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

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

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

The provision of entertainment gifts has different tax implications (examples include theatre tickets, passes to attend a musical, live play, movie, tickets to a sporting

event or providing a holiday). Where the cost for the employee and their associate is each less than \$300 GST inclusive, FBT is not payable, and no tax deduction or GST credit can be claimed.

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

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

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

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

21. Private Use of Exempt Vehicle and FBT Residual Benefits

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

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

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

It should be noted:

- Employers that apply the practical compliance approach in the draft PCG are eligible for reduced record-keeping requirements.
- PCG 2018/3 provides three key, measurable criteria for determining whether an exempt vehicle's private use is considered minor, infrequent, and irregular.
- Employers should consider their eligibility to use the practical compliance approach in PCG 2018/3 for the FBT year ended 31 March 2022.

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

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

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

22. Travel expenses – otherwise deductible rule

When an employer reimburses an employee for an expense, no FBT is payable if the expenses would have been a tax deduction for the employee. The majority of these expenses will be transport expenses. Taxation Ruling TR 2021/1 provides guidance in this area... “when are deductions allowed for employees’ transport expenses”?

23. Staff Retraining

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

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

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

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

24. COVID-19 and FBT

A range of potential fringe benefits tax (FBT) issues has arisen from changing work conditions and support provided by employers to employees in the current COVID-19 environment. Given this, the ATO has issued guidance that addresses the FBT consequences, which may apply if employers provide benefits relating to working from home arrangements or health-related support. Of course, this may also have other implications, such as calculating the taxable value of motor vehicle fringe benefits using the operating cost method.

25. FBT Benefits for Medium-Sized Business

If you are a medium sized business with a turnover between \$10 million and \$50 million, for the first time, you will have access to up to ten small business tax concessions. The changes are estimated to support an additional 20,000 businesses and their employees.

The expanded concessions, as part of the 2020-21 Budget, will apply in three phases:

- From 1 July 2020, eligible businesses are able to deduct certain start-up expenses and certain prepaid expenditures immediately.
- From 1 April 2021, eligible business is exempt from the 47 per cent fringe benefits tax on car parking and multiple work-related portable electronic devices, such as phones or laptops, provided to employees.

26. Future Changes

Note that from 1 April 2022, the ATO has broadened the definition of commercial car parking to include shopping centre car parks and other car parking facilities.

ATO Ruling TR 2021/2 outlines the new Car Parking and FBT rules applicable from 1 April 2022. This effectively results in a level playing field for all car parking, FBT and employers.

For the first time, many businesses will have to consider the FBT implications for employer-provided parking at locations outside large CBD areas and in smaller cities and towns. Note that these changes only apply to entities with a turnover in excess of \$50 million per annum.

DISCLAIMER

The information statement and opinions expressed in this publication are only intended as a guide to some of the important considerations to be taken into account relating to taxation matters. Although we believe that the statements are correct, and every effort has been made to ensure that they are correct, they should not be taken to represent taxation advice and you must obtain your own independent taxation advice. Neither the authors, nor the publisher or any people involved in the preparation of this publication give any guarantees about its contents or accept any liability for any loss, damage or other consequences which may arise as a result of any person acting on or using the information and opinions contained in this publication.

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