

# Tax Essentials Tax Saving Tips 2018 (incl. FBT Year End Considerations)

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2018

## THE NEWSLETTER

Tax Legislation Update in an Easy to Read Format

## LEIGH'S CORNER

Job Descriptions and Key Performance Indicators

*Article No.39*

## SPECIAL BONUS ISSUE

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





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# The Newsletter

## **Keris Pty Ltd (Trustee) v Deputy Commissioner of Taxation [2017] FCAFC 164 (13.10.2017)**

The Full Federal Court has upheld the constitutional validity of s.255-100 of Schedule 1 of the Taxation Administration Act 1953 (Cth). The taxpayer held a large tract of land with the intention of subdivision and sale.

Before this occurred, the Commissioner gave notice to the taxpayer under s.255-105 requiring it to give security to the Commissioner, by means of a mortgage over its real estate assets, “for the due payment of a tax related liability”, being the future GST liability the ATO expected to arise in relation to the sale of the lots. The Court upheld the validity of the notice under s.255-100, distinguishing the requirements in s.255-100 from the statutory contexts of the retention obligations in ss.254 and 255 of the Income Tax Assessment Act 1936 (Cth), as well as the constitutional validity of s.255-100.

On the GST issue we note in passing that from 1.7.2018, purchasers of new residential properties or new subdivisions will be required to remit the GST directly to the ATO on settlement. This was announced in the May 2017 Federal in Budget.

## **2017 – 18 BUDGET MEASURES CONSULTATION**

On 23.10.2017, The Minister for Revenue and Financial Services, the Hon Kelly O'Dwyer MP released draft legislation and explanatory materials for public consultation.

Announced in the 2017-18 Budget, the measures take action to address the growing economic and social problem of the black economy.

The package includes:

- Banning the manufacture, distribution, possession, use or sale of sales suppression technology. This technology allows businesses to understate

their income, and has been identified as a risk to the integrity of the tax system in Australia and internationally.

- Extending the Taxable Payment Reporting system (TPRS) to two high-risk industries – cleaning and couriers – to ensure payments made to contractors in these sectors are reported to the Australian Taxation Office (ATO). The TPRS has already improved tax compliance in the building and construction industry.

These Budget measures were included in recommendations from the Black Economy Taskforce's interim report.

They are an important step in assuring the integrity of our tax system.

The draft legislation and supporting materials is available on the Treasury website.

## **HIGH COURT SPECIAL LEAVE**

*Granted in Thomas + ANOR v FCT (2017) FCAFC 57*

This case dealt with trust franking credit issues and was covered in issue #87. The High Court has granted the commissioner special leave to appear the Full Federal Court decision.

## **COMPUTER ASSISTED VERIFICATION: E-AUDIT AND RISK ASSESSMENT**

If you maintain electronic financial records, the ATO will consider an e-Audit. This involves the use of computer assisted verification (CAV) techniques to analyse your records.

These techniques may not be appropriate in every compliance or client engagement activity. The ATO may use their information systems risk assessment (ISRA) tool to assess system risks and as part of assurance and trust activities.

### **Benefits of Computer Assisted Verification/e-Audit**

The use of CAV in audits and other compliance activities has a range of benefits, including:

- it is cheaper and more efficient to provide information electronically
- fewer requests to supply paper copies of transactions and reports

- providing electronic information reduces the time we spend on your premises, minimising disruption to your regular business activities.

A tax officer skilled in e-Audit will also be able to analyse your electronic information more efficiently, accurately and thoroughly than if they had used manual processes.

### **The e-Audit Process**

The following describes how we work with you when conducting an e-Audit.

#### **Accessing your records**

Using formal access powers, the ATO is permitted full and free access to documents required for the purposes of the Acts they administer. 'Documents' include electronically stored information.

The ATO will usually seek access to your information through a cooperative approach, and will consult with you on the records required.

#### **Supplying electronic information**

When they identify a need for electronic information to be provided, the ATO will schedule a meeting with you to understand the:

- (accounting and point of sale) systems you use if they have not already done so
- system architecture diagram
- format and extent of electronic records available
- electronic records required
- documentation available to assist in their analysis – for example, your chart of accounts, reference tables or data dictionary.

Your tax adviser and information technology specialists are welcome to attend this meeting.

The ATO will request that you download a copy of the mutually agreed electronic information from your system to any of the following:

- a tax officer's biometric thumb drive
- a secure drop box via SIGBOX
- any other agreed medium.

It's recommended you keep a copy of the electronic information you supply to the ATO for your own records.

#### **Data review and analysis**

The ATO use specialised software to verify that the electronic information you provide is accurate and complete. They then conduct a series of tests on your

data to ensure you comply with tax laws and conduct these tests in accordance with the nature of the compliance activity being undertaken.

Specialised software will read the electronic information provided but does not allow any changes to be made to the data you have supplied.

#### **There is no risk to your computer system**

The process involves you downloading a copy of the required electronic information. The ATO will not operate your computer system.

#### **When the compliance activity is completed**

The original electronic information will be stored as part of a case file kept as a record of the compliance activity.

#### **Information Systems Risk Assessment (ISRA)**

The integrity of information systems used to support your business affects the accuracy and completeness of the information you report to the ATO. They may use our information systems risk assessment (ISRA) tool to assess your system's risks regarding the correct reporting of your tax and super obligations.

ISRA is a process that provides a high-level overview of your information systems, using standard questions, enabling us to derive a risk rating for key elements.

An ISRA is normally undertaken as part of a larger review or audit. If you are a privately owned and wealthy group or a public group, the ATO will also use our ISRA tool as part of their governance assurance and justified trust models.

#### **Benefits of ISRA**

The use of ISRA in audits and other compliance activities has a range of benefits including:

- providing an efficient way to understand your business, it's systems and processes
- highlighting compliance risks, which reduces the scope of any subsequent compliance activity.

The ATO will prepare a final report detailing the findings and incorporating any of your feedback. This includes recommendations to address any issues identified that may impact on the accuracy and completeness of your reporting of your tax obligations.

The ATO will discuss the results detailed in the ISRA report with you in a final interview and you will have the opportunity to work through the findings and offer any comments.

## **Your rights**

It is important that you are aware of your rights and obligations when dealing with the ATO. If we advise you that they intend to undertake compliance activities in relation to your tax affairs, you will be told about your relevant rights and obligations as set out in the taxpayers' charter.

## **ATO STATEMENT REGARDING THE 'PARADISE PAPERS'**

The ATO was quick to release a detailed statement, regarding the Paradise Papers

The International Consortium of Investigative Journalists (ICIJ) has reported about information they have in relation to offshore law firm Appleby.

The ATO has been working closely for several months with partner agencies here and overseas in anticipation of a data release by the ICIJ. These relationships have enabled the ATO to commence analysis of the intelligence received to identify possible Australian links.

Deputy Commissioner International, Mark Konza said that the ATO is at the forefront of international co-operation and engagement and is regularly acquiring new sources of data and intelligence, which bolsters information we already have.

"ATO intelligence on tax avoidance comes from a variety of sources, including from concerned citizens, advisers, partner agencies and international bodies," Mr Konza said.

"The data we are receiving from our international and domestic sources is comprehensive and current. This robust intelligence coupled with our powerful analytics capabilities, assists us to continue to tackle tax avoidance head-on.

"We anticipate further data may be published by the ICIJ and the ATO will continue to work closely with other tax administrations to share intelligence on advisers operating globally.

"Domestically, we are working with the Australian Criminal Intelligence Commission, the Australian Federal Police, and AUSTRAC to further cross-check data and build our intelligence base, undertake audits, apply significant tax penalties where appropriate and refer cases to the Serious Financial Crime Taskforce for criminal investigation.

"Internationally, the Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC) is already collaborating within existing legal frameworks following

the statement by Appleby last month. JITSIC brings together 37 national tax administrations that have committed to more effective and efficient ways to deal with tax avoidance.

"As Chair of JITSIC the Commissioner brought member countries together last year to discuss global responses and formalise concrete actions in relation to the Panama Papers.

"JITSIC member countries will continue to leverage off the success of the Panama Papers and work together to pool resources and share intelligence to rapidly develop a more accurate picture of what the data is telling us.

"This highlights the ATO's ability to lead effective multilateral working groups and success in working with international partners to improve the way in which tax administrations exchange information and to develop a better shared understanding of the types of arrangements used to evade and avoid tax.

"Given our early analysis of the data and the ability of the JITSIC member countries to come together quickly to build on each other's intelligence holdings and insights, I am confident the ATO is in a position to respond decisively to this data release.

"We know and trust that most people do the right thing, and that many taxpayers identified as part of the leak will be meeting their Australian tax obligations. However, we investigate all leads and have the resources and expertise to take action against taxpayers or intermediaries found to be caught-up in the illegal use of offshore structures or providers."

The ATO encourages those who believe they may have undeclared offshore income to contact the ATO and come forward by making a voluntary disclosure.

## **SMSFs AND VALUATIONS**

Kasey Macfarlane, assistant commissioner Superannuation made a speech "SMSFs in the post Superannuation reform environment" on 19.2.2017 of particular interest were her comments on valuations.

### **Asset Valuation**

A cap on the value that an individual can transfer into the tax-free retirement phase and the consequences that flow if a member's TSB exceeds the limit brings asset valuations sharply into focus. The importance of asset valuations based on objective and supportable data cannot be underestimated.

The ATO's published valuation guidelines for SMSFs still apply in the context of the super changes.

As stated in the guidelines, an SMSF trustee must be able to demonstrate that the value attributed to a particular fund asset has been arrived at using a fair and reasonable process which:

- takes into account all relevant factors and considerations likely to affect the value of the asset
- has been undertaken in good faith
- uses rational and reasonable processes
- can be explained to a third party.

Clearly, allocating a value to listed shares and other listed securities, as well as cash is straight forward. But what about other classes of assets?

## Real Property

Relevant objective evidence of the market value of real property may include:

- **a valuation undertaken by an independent professional valuer**
- **the purchase price in a contract of sale** for a property that has been recently acquired by a fund, say in the last six months
- **kerb-side estimation of value by a real estate agent.** Often in these circumstances an estate agent will provide a range within which they consider the property's value sits. Ordinarily, provided the valuation attributed to the property by the SMSF trustee falls within that range then it's acceptable to the ATO. However, as a point of caution, we would expect the same value to be attributed to the property for all purposes. For example, we would be concerned if a value at the top end of the range was used for transitional CGT-relief purposes and a value at the bottom of the range was used for TBC purposes
- **comparable and recent sales results** for similar properties. Comparable sales data for recent sale of similar properties may be used as objective evidence to support the value attributed to real property held by a fund
- **rates notices.** The value of a property as stated on a recent rates notice may also provide further objective evidence of a property's value. However, as a word of caution, it's important to understand the basis of a rates notice valuation before you rely on it. For example, is it a value on an improved or unimproved basis? Similarly, rates valuations are often an estimate of a property's value in terms of its 'best use' and

may not always be reflective of the market value of a property for super regulatory and income tax purposes. Therefore, it may be prudent not to rely solely upon a rates notice valuation; albeit a rates notice might provide useful additional supporting evidence as to the reasonableness of a value attributed to real property held by an SMSF

- **property valuation website data.** Once again before relying on these types of services, it is important to understand the basis underlying the data provided through the relevant services. Often these services provide a statistical average of value and don't necessarily reflect an accurate estimate of a property's market value. Therefore, once again, whilst they may provide useful additional supporting evidence, it would be prudent not to rely solely on information about values provided by these services.

## Investments in Unlisted Entities

Often, it's suggested that the value of investments in unlisted entities can't be valued because there is no market for this type of investment. The reality is that these investments must have a value and if they don't then there is a real question as to why an SMSF would have invested in them in the first place and what was the purpose in doing so?

The starting point is to obtain the financial statements of the relevant entity and to review the accountant's and auditor's report. Relevant factors to consider are whether or not relevant assets in the entity's financial statements are recorded at market value. If not, the trustee will need to obtain objective evidence of the market value of the underlying assets as objective evidence of the value attributed to its unlisted investment.

Any recent sales of the unlisted shares or unlisted units between unrelated parties is also another form of objective evidence that might be used to support the valuation of an SMSF's unlisted investments.

## Investments in Other Assets

Approaches that can be used to determine or evidence the market value of other SMSF investments such as art and collectables include:

- for artworks, an appraisal from the gallery from which the item was purchased is appropriate. If it the item was purchased recently then the purchase price is also likely to be a reasonable and reliable reflection of the item's market value
- in the case of items such as wine and other collectables, it may be necessary to obtain an appraisal or independent valuation. The insurance value



specified in an insurance contract can also be useful to evidence the value of such items.

The ATO's valuation guidelines for SMSFs do state that it's not necessary to obtain an external valuation of assets every year.

However, trustees do need to determine the value of their fund's assets every financial year. If a trustee is using a past valuation for these purposes they still need to objectively demonstrate why that past valuation remains appropriate and to provide evidence that supports the contention that the asset's value hasn't significantly changed. This is particularly critical in instances where members are approaching, or are very close to, relevant caps.

We will closely monitor changes in behaviours in relation to asset valuations in response to the recent super changes. Needless to say, sudden and significant reductions in SMSF asset valuations will attract our attention and scrutiny, as will the use of different valuations for TBC and TSB purposes compared to capital gains tax purposes.

## **bo2 READERS QUESTIONS AND ANSWERS.....**

### **Question 1**

Mr A has obtained a loan \$250k using his residential house as security. For example, he used \$100k for personal use and used \$150k for investment use.

Unfortunately, his loan statement does not distinguish the monthly interest and principal payment for personal use and investment use.

What's the best way to calculate the interest and principal payment of investment use for deductibility? Mr A wants to make sure to know the way of calculation to satisfy the ATO in case of enquiry.

### **Answer**

Retain detailed records of the disbursement of funds at the time the loan was taken out. The "use" test as consistently applied by the courts determines deductibility of interest. You demonstrate that loans have been used to acquire income producing assets by having the written evidence to justify such a claim in the event of an A.T.O. audit. If 60% of the funds have been applied to genuine investments, then 60% of the interest is tax deductible.

### **Question 2**

Two individual persons want to buy the commercial property together for investment. We would like to know the best business structure for this use regarding tax minimisation and asset protection.

### **Answer**

Here are some variables (not exhaustive)

- What is the gearing ratio, and will the property be negatively geared?
- What is the investment horizon and how long do they intend to hold the property?
- What is the commercial risk profile of the two individuals?
- Are the two individuals at arm's length? Meaning they are not family members.
- What trading, and investment structures do the two individuals have?

The following comments are general in nature...

Given the purchase of a commercial property can involve a substantial investment by the respective parties, a partnership of two individuals is not advisable. This is because partners can be jointly and severally liable for assets they hold together.

In the event one partner gets into financial difficulties, the investment in the commercial property by the other partner could be at risk. A partnership of two discretionary trusts with a clear understanding that the respective trusts only function is to invest in the commercial property, could be a better option.

If there are substantial negative geared losses a hybrid trust could be considered.

A hybrid unit trust is a mix between a discretionary trust and a unit trust. This means, the beneficiaries of a "hybrid unit trust" have some entitlements to benefit (generally as to income) that are fixed in their favour by the terms of the trust deed while other benefits (generally as to capital) will only come their way if the trustee of the trust exercises a discretion in their favour. The trustee has the discretion to distribute income to the discretionary beneficiaries, and the unit holders then have a right to receive income and capital that has not been distributed to a discretionary beneficiary. Alternatively, the unit holders may be entitled to all the income of the trust, but may have a right to redeem their units for face value,



at which point the trustee will have complete discretion when distributing income or capital.

Essentially an individual borrows money and buys units in the trust personally, the trust buys an investment property, the individual claims a tax deduction and when the property is sold any capital gain goes to discretionary beneficiaries.

However, the Australian Taxation Office (ATO) has expressed a concern with hybrid unit trusts. One of their concerns is where units are redeemed for their face value as the property becomes positively geared. However, their main concern is the possibility of tax avoidance. According to them the un-commercial use of certain Trusts will provide a scenario in which the distribution of possible income/capital gains to beneficiaries of the trust who may have a lower tax rate in relation to the expenditure those lower tax payers laid out when purchasing those units. A loss or outgoing is not deductible where it is incurred to gain or produce benefits for other persons.

A hybrid unit trust is set up to combine the best elements of a unit trust with the best elements of a discretionary trust in the one entity, and has both unit holders and discretionary beneficiaries. TD2009/17 confirms the ATO's view that an apportionment is required between interest paid for income producing purpose (deductible) and interest paid for other purposes (non-deductible).

### Question 3

Mr X is working as a contractor (commercial advertisement producer) for overseas clients. Mr X is an Australian and has an ABN (no GST registered).

One of overseas clients in France paid \$100k to Mr X to make sure he supports client's staff can shoot the commercial advertisement in NZ as scheduled.

Some of catering & trip expenses & other payments in France were paid by Mr X (part of contacting terms) as he received the fund from client for that purpose.

Since Mr X is a sole trader and he receives the fund in Australian business bank account, I believe he needs to include the incomes and expenses in his tax return although he worked in overseas. Is this correct?

Secondly, Mr X receives the fund from client and this fund is for the project that falls in FY17 and

FY18. Can he defer the part of income to next year's tax return if project is not finished (this means he had not paid some expenses yet in current financial year).

### Answer

As an Australian resident he is assessable on global income received, these payments must be properly disclosed in this tax return. It would appear the G.S.T. implications are that this is not "a supply in connection with Australia" but the precise arrangements would need to be examined.

It would also appear that this is an export of services for G.S.T. again meaning G.S.T. should not be charged on the transactions given Mr X would now appear to be exporting services.

Regarding a payment received for work not done at 30 June 2017, it is possible that this may be taken out of the P+L and transferred to the liability section of the Balance Sheet as 'unearned income' using the 'Arthur Murray' principle.

### Question 4

Client is running the business of media agency production, such as assisting the production of commercial advertisement for overseas client.

Client receives the lump sum fund from overseas client and this fund will be used for location fee, travels, accommodation and meal expenses. Meal expenses for overseas client's staff (not for client's employees) can be between 7%-20%.

Generally, meal expenses for clients cannot be deductible because nature of expenses are entertainment expenses. Are there any public ruling(s) that client can deduct these meal expenses (only for clients) in the media agency production industry? If not, how would you suggest treating these meal expenses (only for clients) in the media agency production industry?

### Answer

The fundamental question here is ... Are the overseas clients staff here on a work assignment? If the client's staff are involved in the production and the payments are in effect a reimbursement for the daily sustenance

of these staff, the food or drink provided is consumed because of work related travel, the food or drinks are not provided by you in order to confer entertainment on clients' staff. Then in our view, this is not entertainment, meaning the expenditure is tax deductible without there being any F.B.T. implications.

### **Question 5**

Small Business CGT Replacement Asset Relief J&JH rural partnership sold farming property Dec 2015 and "claimed" active asset replacement relief. Dec 2017 about to enter into contract for purchase of new farming property, however for asset protection purposes they're considering purchasing the replacement asset in a new (yet to be established) family discretionary trust with the J&JH rural partnership leasing the property from their family trust. Trustee of the family trust will be J&JH Company PL of which J&JH will be directors/ shareholders. Would this structure qualify for the replacement asset relief or will J&JH have to purchase the replacement asset in their own name.

### **Answer**

We assume you have applied the small business CGT concessions in the partners' income tax returns as the partnership itself is not a separate legal entity.

You may also wish to consider whether you have maximised the:

- 15-year exemption
- Active asset test
- Individual 50% deduction
- Retirement concession

J&JH must purchase the replacement asset in their own name since the CGT event happened in relation to a CGT asset of their individual name in an income year.

Section 104-198 states that CGT event J5 happens if you choose a small business roll-over under Subdivision 152-E for a CGT event that happens in relation to a CGT asset in an income year and, by the end of the replacement asset period:

- a) You have not acquired a replacement asset (the replacement asset), and have not incurred fourth element expenditure in relation to a CGT asset (also the replacement asset); or
- b) The replacement asset does not satisfy the conditions  
The conditions are:
  - i. The replacement asset must be your active asset; and
  - ii. If the replacement asset is a share in a company or an interest in a trust:
    - 1) You, or an entity connected with you, must be a CGT concession stakeholder in the company or trust; or
    - 2) CGT concession stakeholders in the company or trust must have a small business participation percentage in you of at least 90%

J&JH could use the discounted capital gain to purchase shares in the corporate trustee. However, this defeats the purpose of asset protection. A unit trust could be considered but again the units would need to be held in the individuals' names with only limited asset protection benefits.

# Leigh's Corner

## ARTICLE NO.39 –

### JOB DESCRIPTIONS AND KEY PERFORMANCE INDICATORS

It is important that employees understand what they are required to do when they come to work and what is expected of them by the employer and their work colleagues.

This can be achieved by having in place suitable job descriptions and Key Performance Indicators (KPI's).

This may seem like a basic part of the employment relationship; however, many workplace disputes are caused by issues related to the lack of suitable job descriptions which cause friction in the work environment daily, and these issues grow quite often into serious disputes.

In offices or work locations where roles are shared among a group of employees there may be differences in the qualifications and experience of employees and depending upon the duration of employment, there may be differences in rates of pay even though the duties are similar.

Where shared duties are a part of the daily tasks such as answering telephones or client services, past practices and individual client relationships and a lack of clear and definitive job descriptions and work flow documents can create friction between employees.

It is recommended that processes and procedures are documented in a workplace procedures manual so that if staff leave the organisation or are sick or injured somebody in the organisation can perform their duties.

This is particularly important where the employee handles invoicing, and accounting practices however it really applies to all roles.

Simple tasks like telephone answering and dealing with client/customer complaints should be uniform and all new staff should be trained in these techniques when inducted into the workforce.

All new employees should be provided with a letter of offer which sets out their classification, wage rates, award coverage (where applicable) and other Fair Work requirements as well as a detailed job description.

It is counter-productive to start a new employee without providing them with an induction into the workplace and an explanation of what their role is in the organisation and what duties they are required to perform.

There are extremes often adopted by employees in relation to job descriptions where they reject a request to perform a task when requested by their employer or supervisor on the basis that "is not in my job description".

However, a job description is a generic statement which defines the scope of work able to be performed by an employee dependent upon their qualifications, experience and training.

Most Modern Awards contain generic job descriptions that may assist this process.

It is not meant to be exclusive or inflexible, nor is it possible to put every possible task an employee may be required to perform during their employment.

An employee can be requested to be flexible and to perform any duties that they are qualified, trained or able to perform or could perform after limited instruction or training.

Now is a good time of the year to review employee job descriptions, contracts and agreements to ensure that they meet your current requirements and regulatory standards.

It is also important to keep job descriptions and KPI's updated where there has been organisational change or even if they just have not been reviewed for a long period of time.

Failure to do so may be interpreted as failure to follow a lawful instruction and may lead to disciplinary action up to and including dismissal where an employee fails to work as directed.

This is another reason why it is important to have employees understand their roles and responsibilities

and to have work procedures documented and accessible.

Many organisations rotate staff between roles where possible and swap some roles for holiday relief so that employees can learn and understand other roles in the organisation and apply multi-skilling and flexibility in the workplace.

KPI's are an integral part of the employment relationship and they need not be overly complex, but they can greatly assist employees to understand their role in the organisation and the contribution that they can make.

It is incongruous that most senior management positions will have an employment contract and quite specific KPI's often linked to a bonus or share scheme but below Manager level few organisations compile KPI's for other positions.

KPI's can and should be part of the normal performance appraisal process and they allow both the employer and employee to understand what they are doing and how well they are performing.

These indicators can be varied depending on the organisational requirements and should form part of ongoing dialogue between the employer and employee.

KPI's also provide a framework for management to steer the organisation and/or specific tasks or operational requirements in the required direction with the cooperation of the employees, while also assisting with performance management and productivity enhancement.

New equipment, technological change and operational circumstances are all part of the business landscape, so it is important to ensure that your employees and their duties continue to meet the changes and maximise their contribution to the workplace.

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

**If you have question for Leigh's team send us an email ..... [info@bo2.com.au](mailto:info@bo2.com.au)**

# Bonus Issue

## TAX SAVING TIPS (2018) – 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, you will defer tax for another year.

### 2. Always Lodge on Time

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

The ATO will impose a penalty at \$185 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, crystallisation of tax debt forces a business owner to actually work out a payment plan and address the cashflow issues affecting the business.

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

Be aware that the ATO's data matching capacities continually improve and that throughout 2016/17 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 to not declare a significant percentage of tax income are about to be found out.

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

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

There are many ways of legitimately reducing taxation, ATO fines and interest penalties. The penalties for recklessly or knowingly keeping incorrect records starts at \$3300 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, voluntary disclosure before the audit will 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 books of account prior to 30 June.

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

## 6. Beneficiary Loan Accounts – Trusts

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

## 7. Benefits of Mobile Beneficiaries

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

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

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

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

secondment or a master’s degree. In addition, many young adults simply make the choice to work abroad as part of their life experience.

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

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

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

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 relevant marginal rate – refer to page 4 of our annual publication that is relevant.

For instance, if you are paying 21% marginal tax on a relatively low income there is an after-tax expense of 79% that is still incurred.

## 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.

## 10. Business Travel

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

- The nature of the activity;
- The day and approximate time it began;



- How long it lasted;
- Location of meeting.

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

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

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

### **16. 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.

### **17. 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. Not only may you be furthering your career, you may also be taking a “tax holiday” on the capital appreciation on your assets while you are away!

### **18. 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’ve 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 don't keep an asset register, you generally have to 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'd have to keep the records for 15 years.

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

## 19. CGT Discount

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

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

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

## 20. CGT Discount and Trusts

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

## 21. 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.

## 22. Claiming the Spouse Superannuation Tax Offset

From 01.07.2017, the thresholds for claiming a tax offset for super contributions on behalf of your spouse (married or de facto) have widened considerably. Under the existing rules, to qualify for an offset your spouse's assessable income, reportable fringe benefits and reportable employer super contributions would need to total under \$13,800. With the new thresholds this increases to \$40,000.

The offset claims 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 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.

## 23. Client Gifts

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

## 24. 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.

## 25. Compensation Payments

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

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

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



## **26. Computer Software**

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

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

## **27. Consumables**

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

## **28. Control the Timing of Tax Deductions – Prepaid Expenses**

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

In similar fashion, those on P.A.Y.G., should bring forward expenditure prior to 30.06.2018 particularly for tax deductible items they gave to pay early in the subsequent financial year.

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

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

## **30. Company Tax Is Now 27.5% for SBEs**

A Small Business Entity must be conducting a business. A share trading business may be an option for some high net worth families. Consider that highest marginal individual tax is now 49% and this may be a reasonable option. Such a company could also receive trust distributions.

## **31. Crack Down on Income from Professional Services**

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

There is also a follow up focus on the personal remuneration of Principals. You need to study and understand the ATO guidelines released in 2015 which included a risk based approach and stay within their guidelines. You will still achieve a reasonable tax outcome. Be aware the ATO is spoiling for a fight and will carefully pick its targets.

## **32. Creating Intellectual Property**

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

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

## **33. Deceased Estates**

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

## **34. Defer Income**

It may be possible to defer one off payments such as bonafide redundancy packages and bonuses into the next tax year. This may be negotiated with your employer.

## **35. 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.

## **36. Depreciation – Tax Write-Off**

The May 2015 budget outlined significant concessions for small business including an immediate tax deduction for most depreciating assets costing less than \$20,000.

This applies to assets acquired and ready for use from 13 May 2015 to 30 June 2017. In addition, if the value of a SBE's low value pool is less than \$20,000, then these can also be written off.

Take care when choosing to apply the concessions; don't forget the tax-free threshold!

### 37. Directors' Fees

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

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

Note that on 2nd June 2011 the ATO issued taxpayers alert 2011/4 on this subject. Make sure you are within the ATO's guidelines.

### 38. 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 30%), for investment companies 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 24.5% or less.

### 39. 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're liable to pay Division 293 tax if you have taxable contributions for an income year.

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

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

### 40. Dividends and Imputation Credits

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. Dividend Decisions Prior To 30 June 2018

Given the recent changes to corporate tax rates a company will be only be able to frank dividends at the 30% rate where its aggregated turnover in the 2017 year was at least \$25 million.

Paying fully franked dividends this financial year is vital this financial year for companies with an aggregated turnover of at least \$25 million in 2017 and 2018, but less than \$50 million, given that any dividends paid in 2019 will be subject to the lower 27.5% corporate tax rate for imputation purposes.

### 42. Division 7A – Debt Forgiveness

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

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

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

### 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 can be adopted by family companies is to enter into a Division 7A facility loan agreement as soon as practicable after formation. There must also be a binding agreement between shareholders or associates and the company to use set-off 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 to be a purchase and not a donation. The amount expended is non-tax deductible.

An example is raffle tickets. You may wish to simply donate 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.

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

#### **47. Eligible Intangible Assets**

Intangible assets include but are not limited to patents, copy rights (other than films), licences (relating to copyrights, spectrums etc.), and in-house software. Telecommunications site access rights and datacasting transmitter licences are also eligible.

#### **48. 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.

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

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

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

#### **50. 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.

#### **51. 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.

#### **52. Get Organised**

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

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

#### **53. 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.

#### **54. 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.

#### **55. 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.

## 56. GST – Motor Vehicles

Motor vehicle input tax credit claims are often adjusted in the event of a tax audit. Goods and Services Tax Bulletin GSTB 2006/1 gives comprehensive guidance on this matter.

## 57. Halving Tax on Shares

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

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

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

## 58. 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 will trigger partial Capital Gains Tax if the property is sold.

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

## 59. Income for Surcharge Purpose

### *Income for surcharge purposes*

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

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

### *Low-tax contributions*

Division 293 tax uses contribution information reported on member contribution statements (MCS) and the self-managed super fund (SMSF) annual return, which are lodged to us 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 concessional tax 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, we disregard any contributions that attract certain additional tax.

For the 2012–13 year, we disregard contributions subject to excess concessional contributions tax, which equates to an additional 31.5% on top of the 15% tax paid by the super fund.

## 60. Income Averaging – Creative Persons

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

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

### **61. Income 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.

### **62. 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 tax rate than 34 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.

### **63. Intangible Assets – Decline in Value and Effective Life**

This legislation passed late in 2017 and applies from 1.7.2016

Taxpayers now have the choice to either:

- self-assess the effective life of eligible intangible depreciable assets; or
- apply the existing statutory effective life

These changes emanate from the national innovation and science agenda. Given the rate of technological changes, this is reasonable and can be tax effective for risk takers.

### **64. 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.

### **65. 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.

### **66. Invalidity Payments**

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

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

### **67. 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'. In 2017 the ATO will issue a comprehensive ruling on the deductibility of legal expenses. See also tax tip 78.

### **62. Liquidations**

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

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

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

### **63. 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.

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

The May 2015 budget contained some major changes for claiming motor vehicle expenses. The "one-third operating expenses" method was abolished along with the 12% depreciation claim. These claims did not require logbooks as long as the taxpayer travelled more than 5,000 kms on business.

The other change involved lowering the cents per kilometre claim down to 66 cents per kilometre. So, 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 quickly spot anomalies. Make this your New Year resolution!

### **65. 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.

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

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

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

### **67. Money Held in Trust**

People operate bank accounts in trust for a multitude of reasons.

For instance: Mum and Dad in trust for child, or Son in trust for frail parent. Usually, bank accounts such as these are titled "mum as trustee for child" or similar. Such a title clearly indicates the trustee nature of the relationship.

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

The ATO conducts data matching based on 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.

### **68. Mortgage Reduction**

After the G.F.C and with the ASX still way off historical peaks, this is not an uncommon situation. Husband and wife have a principal residence with a mortgage of \$250,000. They have a share portfolio of \$180,000 which is ungeared. It is possible they may even have carried forward capital losses. Also consider the use of mortgage offset accounts. Due to the decline in values there may be little in the way of CGT issues should the shares be liquidated. Sell the shares to reduce the non-deductible loan. Given the increased equity in the principal residence there will be no problem in getting a tax-deductible margin loan to re-invest in the stock market, making interest on such a loan tax deductible.

### **69. Negative Gearing**

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

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

### **70. 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 could not be transferred. Also, there will be CGT and stamp duty to consider. Limits apply to the value of deductible contributions for an employee.

### **71. 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.

### **72. Other CGT Rollovers**

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

These include:

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

### **73. Paperwork**

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.

### **74. 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.

### **75. Personal Use Assets and CGT**

These assets are those that are kept mainly for your personal enjoyment and exclude collectables – such as art work. When these assets are acquired for \$10,000 or

less (ex. GST) any capital gain is exempt. Capital losses from the disposal of personal use assets cannot be claimed no matter what the original cost.

### **76. Prepayment of Interest**

It is still possible for owners of 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.

### **77. Private Rulings**

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

### **78. 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.

### **79. 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.

You need to keep your records for the last five years from 31 October or the date the return is lodged, if that is later. However, in the event of an audit the onus is on the taxpayer to explain how assets have accumulated over a number of years. The Commissioner sometimes makes what is known as an “Asset Betterment Assessment” based upon what is considered to be an unexplained increase in assets. When there are disputes in the Courts, invariably the taxpayer loses because of inadequate record keeping explaining the increase in assets. In this context it may be prudent to retain records for more than five years.

### **81. Redundancy and Early Retirement Payments**

Bona Fide redundancy and approved early retirement payments up to an indexed threshold (2018 \$10,155 plus \$5,078 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.

## 82. Refunds of Tax paid Overseas

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

## 83. 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.

## 84. Research and Development

Access Government information and services by way of [www.australia.gov.au](http://www.australia.gov.au) then click on “Business and Industry”

The Government provides incentives to help Australian businesses:

- Conduct research and development
- Grow small business
- Take up new technology
- Undertake industry-specific manufacturing and production
- Commercialise a new technology or venture
- Apply for a tax or duty concession for research and development or to improve export competitiveness
- Gain access to science resources

You may be eligible for some of these incentives.

## 85. 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 view point. Risk

Management and asset protection must also be carefully considered.

## 86. 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 “2018 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.

## 87. SBE – Leasing Plant

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

## 88. Self- Education Expenses

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

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

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

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

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

- Textbooks
- Stationery
- Student union fees, and
- The decline in value of your computer.

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

## 89. Single Car Families and Motor Vehicles Expenses

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

## 90. Small Business CGT Concessions

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

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

### It's 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 don't 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 don't apply to gains from depreciating assets.

## 91. SMSF – Limited Recourse Borrowing Arrangements

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

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

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

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

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

## 92. SMSF – Making Loans

Consider gifting money to parents over 60 who can then contribute it to a family SMSF. Then in a major bonus draw it out as tax free pension, before passing it back to the child, who could then use it to pay down a mortgage.

The clear benefit here is that money grows faster in a tax-free environment. Also, the money could be direct debited from the fund's cash account into the mortgage to make the child a financial dependant, who is then entitled to receive the parent's super tax free on their death.

### 93. SMSF – Making Loans

It is important for funds to keep in mind that high returns in general equate with high risk and hence funds should obtain independent advice on investment decisions where possible. The fund's investment strategy should also be referenced and the reasons for making the loans clearly documented.

### 94. 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.

### 95. SMSF – Segregating Assets

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

As some retirement income streams have considerable flexibility, your SMSF should go into pension phase as soon as possible.

### 96. Sole and Principle 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.

### 97. Split or Linked Loans

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

### 98. Substantiation – Computer Expenses

When substantiating the usage of a home computer for work purposes.

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

### 99. Substantiation – Home Office Expenses

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

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

- Claiming 45 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.

## 100. 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.

## 101. Substantiation- Telephone Expenses

Establishing the work-related proportion for phone calls and rental costs.

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

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

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

## 102. Substantiated Superannuation Contributions from Age 65

If you are 65 years or older, you can make your own personal superannuation contributions to a superannuation fund (subject to the contribution caps) if:

- You are not yet 75 years old; and

- You have worked at least 40 hours in a period of no more than 30 consecutive days during the same financial year.

You cannot make personal superannuation contributions once you have reached 75 years of age.

Deductions for employer contributions are generally limited to those made in respect of employees who are less than 75 years old (s290-80).

An employer can claim a deduction for contributions made on behalf of an employee over age 75 where:

- Made for the eligible employee within 28 days after the end of the month in which the employee turned age 75 (s290-80(1)(a)), or
- Made to meet the actual amount of contribution required by law under an industrial award or determination (s290-80(1)(b) & (2)).

The upper age restriction in respect of Superannuation Guarantee contributions was removed on 1 July 2013.

Note that from 01.07.2017 the Government will allow all Australians under 75 who make personal contributions to claim an income tax deduction for any personal superannuation contribution into an eligible superannuation fund. The amounts will count towards the individual's concessional contributions cap and be subject to 15% contributions tax.

## 103. Sun Protection

Occupational categories that are generally likely to work outdoors may be eligible to claim costs incurred in relation to sun protection items.

## 104. Superannuation

Make sure superannuation contributions are 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.

## 105. Superannuation Obligations and Individual Contractors

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

An employee for superannuation guarantee purposes includes a person engaged under a contract that is wholly

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

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

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

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

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

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

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

### **106. Superannuation Co-Contributions**

If you are a lower income employee you may want to make personal after-tax (undeducted) contributions to a super fund. From 1 July 2007 this concession also applies to the self-employed.

By implementing this strategy, you can boost your retirement savings and possibly receive a Government co-contribution of up to \$500 each year. To qualify for the full contribution (\$500), you generally need to make a personal after-tax super contribution of \$1,000 and earn less than \$36,813 p.a.

However, a reduced amount may be paid if you contribute less than \$1,000 and / or you earn between

\$36,813 p.a. and \$51,813 p.a. (2017/2018)

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

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

### **107. Superannuation Contributions – Less Than 65**

If you haven't turned 65, you do not have to meet a work test to make tax deductible contributions to superannuation. If you do not have an employer who makes contributions on your behalf, personal contributions to superannuation is a tax deduction. This may apply to investors not in the workforce who have a substantial income.

### **108. Superannuation Non-Concessional Contributions**

The limit of \$180,000 still applies until 30.06.2017, and up to \$540,000 available under the three year bring forward provision. As such, it's important to consider your situation now, because from 01.07.2017 not only do limits decrease, in the event you have more \$1.6 million in total super you won't be able to make non-concessional contributions at all.

On this issue, the Government has advised that they'll assess all account types when measuring this cap, including accumulation, pension and defined benefit pensions (which will have a notional lump sum value applied).

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

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

From 01.07.2018 individuals with super balances of less than \$500k will be 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.



### 109. 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 94/92, the Tax Office states that the cost of travelling to a recognised professional tax adviser for the purpose of having an income tax return, a Business Activity Statement or an Income Activity Statement prepared is deductible. In addition, other incidental costs such as the cost of accommodation, meals, taxi fares and travel insurance are also deductible.

### 110. Tax Averaging for Primary Producers

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

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

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

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

### 111. Tax Effective Borrowing

Before undertaking any borrowings, consider the taxation implications and take professional advice. Income producing investments should be geared, if possible.

### 112. 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.

### 113. Tax Losses

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

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

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

### 114. Tax Offsets Applicable to Seniors

A retiree couple, depending on their age, can each earn up to almost \$29,000 a year tax-free from other income sources such as employment, interest and rents thanks to the Senior Australians and Pensioners Tax Offset rules.

Tax offsets are not the same as deductions. Each dollar of tax offset reduces your tax payable by a dollar regardless of your taxable income. Mature age workers, seniors and pensioners may be eligible for these offsets.

### 115. Tax Resident (or Not)

Refer to Chapter 7 of our annual publication. In the past six years, we have covered a number of cases.

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

### 116. 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.

### 117. Taxi Travel

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

## 118. 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 paid tax in a foreign country, you may be entitled to claim a foreign income tax offset when you lodge your tax return.
- If a capital gains tax event occurs on or after 12 December 2006, a temporary resident is not liable to capital gains tax (nor is treated as having made a capital loss) unless the asset is 'taxable Australian property.'
- Interest you pay to foreign residents (for example, foreign lenders) is not subject to withholding tax.
- Controlled foreign company record keeping obligations are partly removed.

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

## 119. 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 must also be considered.

## 120. Think Twice About Luxury Cars

In addition to the luxury car depreciation limit of \$57,581 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. \$5,235. The additional GST paid on a vehicle costing over \$57,581 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.

## 121. Thinking of Working Overseas?

If you are planning on working overseas for several years, do not automatically assume you will be a non-resident for taxation purposes. A recent case study 'Iyengar and Commissioner of Taxation (2011) AATA 856' clearly shows

that just because an individual is overseas for extended periods, it doesn't necessarily follow that the taxpayer becomes a non-resident. In this case the taxpayer's dominant economic interests and family remained in Australia. Further the taxpayer did not establish a permanent residence overseas.

## 122. Transition to Retirement Income Pension (TRIP)

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

Effectively you are substituting receipt of salary/wages for a TRIP. It should be noted that from 01.07.2017, the tax exemption on pension fund earnings financing a TRIP will be removed.

## 123. Transport

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

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

## 124. Travel Allowance

Refer to TD 2016/13 – travel expenses incurred by an employee who receives an allowance for travel costs within Australia are not subject to the substantiation requirements. This is providing the claim for costs of accommodation, food; drink and incidental expenses do not exceed the reasonable amounts as set out in TD 2016/13. 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.

## 125. 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.

### 126. Using a Tax Agent

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.

### 127. Venture Capital

In December 2015, the Government announced significant tax concessions which will:

- Provide new tax breaks for early stage investors in innovative start-ups. Investors will receive 20% non-refundable tax offset based on the amount of their investment, as well as a capital gains tax exemption;
- Build on the recent momentum in venture capital investment in Australia, by introducing a 10% non-refundable tax offset for capital invested in new Early Stage Venture Capital Limited Partnerships (ESVCLPs), and increasing the cap on committed capital from \$100 million to \$200 million for new ESVCLPs;

We will keep you informed on developments.

### 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 on journal entries for unpaid wage entitlements.

### 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 if is a genuine claim the employer will normally pick up the tab. On occasion modest claims can be made but they need to be genuine.
- Cents per kilometre motor vehicle expenses when all the taxpayer does is commute to and from work. Often

the justification is transporting bulky tools due to no storage facilities being available at work but invariably when the employer is contacted this is not the case.

- Claiming overnight travel stays away from home using ATO figures which the taxpayer wrongly believes does not require substantiation. Here it is a requirement that the employer pays an allowance and there are other conditions that must be met.

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

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

### 130. Work Specific and Protective Clothing

Compulsory uniforms are generally deductible provided they identify you as an employee of that organisation. For non-compulsory uniforms, get your employer to register the designs. Don't forget to claim laundry and dry cleaning on uniforms and protective clothing.

## YEAR END FRINGE BENEFIT TAX (FBT) CONSIDERATIONS

### FRINGE BENEFITS TAX RATES

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

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

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

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

## 1. Car Fringe Benefits Change

The former Gillard Government changed the fringe benefit treatment of cars to remove the unintended incentive for people to drive their vehicle further than they need to, in order to obtain a larger tax concession.

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

This reform will only apply to new vehicle contracts entered into after 7.30pm (AEST) on 10th May, 2011 and will be phased in over four years as shown below:

### Statutory rate (multiplied by the cost of the car to determine a person's car fringe benefit)

#### New contracts entered into after 7.30pm (AEST) on 10 May 2011

#### Distance traveling during the FBT year

	Existing Contracts (1 April – 31 March)	From 10 May 2011	From 1 April 2012	From 1 April 2013	From 1 April 2014
0 – 15,000 km	0.26	<b>0.20</b>	0.20	0.20	0.20
15,000 – 25,000 km	0.20	<b>0.20</b>	0.20	0.20	0.20
25,000 – 40,000 km	0.11	<b>0.14</b>	<b>0.17</b>	<b>0.20</b>	0.20
More than 40,000 km	0.07	<b>0.10</b>	<b>0.13</b>	<b>0.17</b>	<b>0.20</b>

Compared to the current statutory rates, a single rate of 20 per cent will:

- Increase the tax concession provided for vehicles driven less than 15,000 kilometres a year;
- Maintain the current tax concession provided for vehicles driven between 15,000 and 25,000 kilometres a year; and
- Decrease the tax concession provided for vehicles driven more than 25,000 kilometres a year.

People who use their vehicle for a significant amount of work-related travel will still be able to use the 'operating cost' (or 'log book') method to ensure their car benefit excludes any business use of the vehicle.

These changes need to be carefully considered and factored into salary sacrifice decisions.

#### The table has been included because there still will be some vehicles on contracts entered into prior to 10.05.2011.

However, the impact of these changes has led to move away from the statutory formula to the logbook method of calculating motor vehicle fringe benefits particularly in private family business. Be warned the logbooks should exist and be real because the ATO has ramped up audit activity in this area in 2018, 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, in 2012/13 MYEFO, concessional treatment was removed for these benefits if they were accessed through a salary sacrifice arrangement. Effective dates: 22.10.2012 and from 1.04.2014 for salary sacrifice arrangements entered into prior to 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.

### **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 2018.

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

### **8. Novated Leases**

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

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

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

### **9. Overtime Meals**

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

### **10. Public Benevolent Institutions – F.B.T.**

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

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

### **11. Reduction in Cost Base Vehicle**

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

## 12. Removal and Storage of Household Effects

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

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

## 13. Remuneration Packaging

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

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

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

## 14. Reportable Fringe Benefits - Exemptions

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

## 15. Reportable Fringe Benefits

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

## 16. Salary Sacrifice - Superannuation

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

## 17. Salary Sacrificing

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

## 18. Sale or Acquisition of Dwelling

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

## 19. Staff Functions Including Christmas Parties

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

- Keeping expenditure below \$300 per person.
- Keep the Christmas Party as a "one off". The Christmas Party needs to be "minor, infrequent and irregular" to avoid Fringe Benefit Tax (FBT).

- \$300 not enough? If you want to spend more on the Christmas Party, then have it on a working day at your office. FBT is then not payable.

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

Consider the tax implications of the following:

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

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

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

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

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

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

A restaurant/pub meal and drink at the end of year break-up (value approximately \$70 per employee) – as this is “off site”, 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 F.B.T. Residual Benefits**

We cover this in detail as it affects many of our readers.

In December 2017, the ATO released draft Practical Compliance Guideline PCG 2017/D14 Exempt car and residual benefits: compliance approach to determining private use of vehicles (PCG 2017/D14).

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 2017/D14 provides three key, measurable criteria in determining whether the private use of an exempt vehicle is considered minor, infrequent and irregular.
- Employers should consider their eligibility to use the practical compliance approach in PCG 2017/D14 for the FBT year ended 31 March 2018.

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.

The draft 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.

We will inform you when the guideline is finalised.



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