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UPDATE

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Edition #097-May 2019

THE $30,000 SMALL BUSINESS TAX BREAK TRICKS AND TRAPS

This initiative started in 2015 granting small business owners an immediate tax deduction for assets purchased under $20,000. Successive budgets have extended the end date (currently 30.06.2020) and on 19.1.2019 the Government announced the threshold had been increased to $25,000 for purchases after that date.

In the Federal Budget handed down on 2.4.2019 the Government announced that from the 2.4.2019, the headline threshold for the instant asset write-off increases from $25,000 to $30,000 while the eligibility criteria would be expanded from businesses with less than $10 million in annual revenue to those with less than $50 million.

Businesses will be able to claim the write-off every time an asset under the cap is purchased through to the June 30, 2020 cut-off.

Note that deductions may only be claimed against the business portion of an asset – items with shared business and personal use get partial tax relief. Business owners may also claim deductions by using the simplified depreciation rules, which apply to second – hand items or a pool of depreciating assets purchased for $20,000 or higher.

Note that the $30k limit is net of GST and that we are dealing with the list price of an asset – trade-ins cannot be used to get a vehicle costing, say $38,000 under the threshold. Stamp duty is taken into account when testing threshold eligibility.

The A.L.P did not oppose this significant concession with the relevant legislation rapidly passing both houses of parliament and now awaiting royal assent.

Before making a purchase carefully assess the eligibility rules and whether you actually need the tax deduction.

Eligible purchases

Equipment, hardware and vehicles, whether brand-new or second-hand, are eligible for the tax relief if it is for business use.

Most software and programs required to run the business are also included, except for in-house developed software.

The above-mentioned items must be purchased for below $30,000, otherwise the owner may have to place the item in an asset pool and apply the simplified depreciation rules for small businesses. An item added to the asset pool may not claim a tax break unless its value depreciates to under $30,000.

Simplified asset depreciation rules

Small business entities benefit from a very generous and very simplified depreciation rules for the tax break. 15 per cent deduction is allowed on the year the asset was purchased, and 30 per cent may be claimed for each year afterwards.

If the asset's remaining value falls below $30,000 after the deduction, then the business may claim a write-off for the full remaining value in the next tax return. If the remaining value still exceeds the threshold, they must claim only 30 per cent of the remaining value in the succeeding years until it crosses the threshold.

TAXATION DETERMINATION

TD 2019/6

The benchmark interest rate for the fringe benefits tax (FBT) year commencing on 1 April 2019 is 5.37% per annum.

This rate replaces the rate of 5.20% that has applied for the previous FBT year commencing on 1 April 2018.

The rate of 5.37% is used to calculate the taxable value of:

- A fringe benefit provided by way of a loan, and
- A car fringe benefit where an employer chooses to value the benefit using the operating cost method.

Example

On 1 April 2019 an employer lends an employee $50,000 for five years at an interest rate of 5% per annum. Interest is charged and paid six-monthly and no principal is repaid

until the end of the loan. The actual interest payable by the employee for the current year is $2,500 ($50,000 * 5%).

The notional interest, with a 5.37% benchmark rate, is $2,685. The taxable value is $185 ($2,685 - $2,500).

Note: FBT does not apply to a loan in relation to a shareholder in a private company, or an associate of such a shareholder, that causes (or will cause), the private company to be taken under Division 7A of Part III of the *Income Tax Assessment Act 1936* to pay the shareholder or associate a dividend.

ATO GUIDANCE ON TRANSITION-TO-RETIREMENT INCOME STREAMS

The ATO has released *Super Guidance Note GN 2019/1* which provides guidance for individuals who are receiving or considering starting a transition-to-retirement income steams (TRIS) which commenced from 1.7.2017.

SETTLEMENT PAYMENT TREATED AS CAPITAL

JSJG v Commissioner of Taxation [2019] AATA 336

The administrative appeals Tribunal (A.A.T.) has sent aside the Commissioner of Taxation's decision and held that a lump sum payment made to a taxpayer to settle claims made against insurers was not assessable income. It was found that the payment constituted a single undissected sum that was characterised as being capital in nature.

The A.A.T. also found that although part of the lump sum payment might amount to a capital gain relating directly to compensation or damages for a wrong or injury that the taxpayer suffered personally, it is not possible to dissect which portion is attributable to that part of the claim and section 118-37 (1)(a) of the ITAA 1997 could not apply to exempt the amount from capital gains tax.

If you are in about to receive a lump sum in compensation, always get taxation advice.

LEAVE LOADING AND SUPERANNUATION GUARANTEE

The ATO has provided further insight into its compliance approach to dealing with Superannuation Guarantee (SG) and when it should apply to leave loading payments.

Employers who do not apply these guidelines risk the imposition of historic SG charge liabilities, lost deductibility of SG Charge payments, and material penalties. The ATO guidelines offer several practical steps which can be undertaken to limit any such risk.

Superannuation is payable on employees' 'ordinary time earnings' (OTE), which broadly includes salary and wages paid to an employee in relation to their ordinary hours of work. In most cases, this means that employers are not required to pay SG on payments which relate to overtime worked by employees. We have observed that many employers do not pay SG on leave loading on this understanding.

In 2018 year, the ATO updated its website to state the annual leave loading will not be ordinary time earnings only if it is demonstrably referable to a notional loss of

opportunity to work overtime, and that all other annual leave loading will be subject to SG. This accords with the view expressed by the Commissioner in *Superannuation Guarantee Ruling SGR 2009/2*.

GIC AND SIC RATES FOR THE 2019 JUNE QUARTER

The ATO has published the 2019 June quarter rates for the General Interest Charge ('GIC') and the Shortfall Interest Charge ('SIC'):

GIC annual rate	8.96%
GIC daily rate	0.02454794%
SIC annual rate	4.96%
SIC daily rate	0.01358904%

2020 SUPERANNUATION RATES AND THRESHOLDS RELEASED

The ATO has published the key 2020 superannuation rates and thresholds, the most important of which are summarised below.

1. The **Concessional Contributions cap** is **$25,000** for the 2020 income year. As the term suggests, these are amounts for which you or your employer can claim a tax deduction. From 2019, certain taxpayers will be allowed to carry forward unused amounts of their concessional cap and from the 2020 Financial year make additional concessional contributions.

2. The **Non-Concessional Contributions cap** is **$100,000** for the 2020 income year. There are after tax contributions an individual makes to a complying Superannuation Fund. If at 30.06.2019 you have a Superannuation Fund balance in excess of $1.6 million then no contribution may be made. It is A.L.P. policy to lower this cap to $75,000.

3. The **CGT cap amount** for the 2020 income year is **$1,515,000**. This an often-overlooked tax concession involves eligible proceeds from the sale of a business and is in addition to capital gains tax small business retirement concession.

4. The **Division 293 tax threshold** for the 2020 income year is **$250,000.** If a taxpayer has a taxable income in excess of $250,000, then this tax imposes an additional tax of 15% on concessional Superannuation Contributions. In assessing this "taxable income" includes reportable fringe benefits, with net rental property losses and financial investment losses added back. It is A.L.P. policy to lower this amount to $200,000. If they win the forthcoming Federal Election.

5. The maximum super contribution base for SG purposes for the 2020 income year is **$55,270** per quarter.

6. The **maximum superannuation co-contribution entitlement** for the 2020 income year remains at

   $500 (with the lower income threshold increasing to $38,564 and the higher income threshold increasing to $53,564).

The superannuation benefit caps for the 2020 income year include:

1. A **low rate cap amount** of **$210,000;**
2. An **untaxed plan cap amount** of **$1,515,000;**
3. A **general transfer balance cap** of **$1,600,000;**
4. A **defined benefit income cap** of **$100,000;**
5. An **ETP cap amount** for life benefit termination payments and death benefit termination payments of **$210,000;** and
6. The **tax-free part of genuine redundancy payments** and **early retirement scheme payments** comprising a **base limit of $10,638** and for each complete year of service an additional **$5,320.**

TD 2019/2 – VALUE OF GOODS TAKEN FROM STOCK FOR 2018/19

This Determination provides the amounts the Commissioner will accept for 2018/19 as estimates of the value of goods taken form trading stock for private use by taxpayers in certain specified industries these amounts are unchanged from the 2017/18 year.

The amounts (which exclude GST) are:

Type of Business	Adult/Child over 16 years	Child 4 -16 years
Bakery	$1,350	$675
Butcher	$830	$415
Restaurant/Café (licensed)	$4,640	$1,750
Restaurant/Café (unlicensed)	$3,500	$1,750
Caterer	$3,790	$1,895
Delicatessen	$3,500	$1,750
Fruiterer/greengrocer	$800	$400
Takeaway food shop	$3,430	$1,715
Mixed business (includes milk bar, general store, and convenience store)	$4,260	$2,130

The ATO recognises that greater or lesser values may be appropriate in particular cases. The values are adjusted annually.

Editor: note that TD 2013/3, setting out the equivalent values for the 2013/14 income year, was withdrawn on 27 February 2019.

UNCERTAINTY OVER SUPERANNUATION GUARANTEE AMNESTY

On 24.5.2018, the government announced a 12-month superannuation guarantee (SG) amnesty (Amnesty) to give employers an opportunity to rectify past SG non-compliance without penalty. The Amnesty period will apply from 24 May 2018 and run for a 12-month period to 23 May 2019.

However, with the calling of the federal election, the legislation to make this law has lapsed.

This was the Treasury Laws Amendment (2018 Superannuation Measures No.1) Bill 2018 – this Bill included the 12-month superannuation guarantee amnesty for non-compliant employers, as well as other amendments to the superannuation guarantee contribution rules, the non-arm's length income rules and the total superannuation balance test.

It is understood the A.L.P. may not support the amnesty if they are elected.

This means the employers that have already made disclosures to the ATO based on the proposed Amnesty may have been misled.

However, we expect there will be some fairness for these employers and treated on the basis they have made voluntary disclosures.

DECISION IMPACT STATEMENT

Qian and Commissioner of Taxation

We cover this significant D.I.S. issued by the ATO.

Brief summary of facts

The taxpayer undertook, through an intermediary company, work as a courier on an exclusive basis for Mail Call Couriers and, subsequently, Direct Couriers (delivery companies). To undertake this work, the taxpayer purchased a van (subject to finance).

There was limited written evidence of the terms and conditions of the taxpayer's engagement with the respective companies. The delivery companies set the fee for each delivery. Evidence was provided that Mail Call issued daily 'payment summaries' and issued recipient – created tax invoices for the taxpayer.

Public liability insurance was organised on the taxpayer's behalf by either the delivery companies or the intermediary (the evidence was unclear on this point).

The taxpayer wore a uniform bearing the relevant delivery company's logo and affixed the relevant delivery company's logo on his vehicle. The taxpayer was notified of available deliveries through a device supplied by the delivery company.

There were no contracts directly between the taxpayer and the people to whom, and from, he delivered and collected goods.

Although the taxpayer was to be paid based on deliveries done, there was a minimum amount that he was to be paid per day. In practice, the taxpayer did not make enough deliveries to exceed that minimum amount.

ISSUE DECIDED BY THE COURT

Entitlement to GST registration – carrying on an enterprise

The parties conducted the matter on the basis that the taxpayer's work as a courier driver was capable of constituting carrying on an enterprise, unless his role was that of an employee. Consequently, the focus of the Tribunal was on whether the taxpayer was undertaking the work for the delivery companies as an employee or independent contractor.

The Tribunal highlighted (at [16]) the key indicators of the employee / independent contractor distinction outlined in Taxation Ruling TR 2005/16 *income tax: Pay As You Go – withholding from payments to employees* and Superannuation Guarantee Ruling SGR 2005/1 Superannuation guarantee: who is an employee?

The Tribunal noted that regard must be had to the totality and substance of the relationship, and that the comparative weight of relevant aspects of the relationship may vary according to the particular circumstances.

The Tribunal observed that the evidence in this matter was opaque and ambiguous in certain important aspects, and that a number of inferences had to be made from the evidence presented. [at 21-24, 29 and 37-38)

The Tribunal considered that the following facts pointed more towards the taxpayer being an employee.

- The taxpayer was liveried as a representative of the delivery company.
- The taxpayer did not outwardly appear to be working on his own behalf and worked exclusively for one delivery company at a time.
- The taxpayer was reliant on the delivery company to generate and allocate jobs to him.
- The taxpayer had no control over the rates paid or the total cost for each job.
- The taxpayer did not maintain an accounting system for the jobs.
- The taxpayer did not generate invoices or payment summaries.

The Tribunal considered that the following facts did not meaningfully inform the character of the relationship:

- The taxpayer had some freedom to accept or reject individual jobs, but the basis on which he did so was really a matter of objective practical efficiency which served both his own interests and that of the delivery company.
- The conceivable, but unexpressed, contractual permissibility of delegation, because the objective circumstances tend to contradict its likely, or likely to be tolerated, occurrence.

The Tribunal also had regard to the fact that the taxpayer supplied, operated and maintained his own van, which was a commercial transport vehicle. The Tribunal noted that there was the (theoretical) possibility that the taxpayer's remuneration could be influenced by his own endeavours and efficiency. The Tribunal thought these factors, and the form of the regular accounting in the 'payment summary' documents, favoured the view that the taxpayer was an independent contractor.

Ultimately, the Tribunal found that the taxpayer was conducting an enterprise as an independent contractor.

Entitlement to input tax credits – June 2016 quarter

The Tribunal noted that the amended assessment for the June 2016 activity statement was based wholly on a determination that the taxpayer was not conducting an enterprise. It did not address, and could not meaningfully address, the accuracy of the contents of the contentious activity statement. The Tribunal observed that there were reasons to doubt the accuracy of the contents of the activity statement including:

- the discrepancy between the 'total sales' and the arithmetic total of all the payments made to the taxpayer;
- the use of the amounts paid to the taxpayer as the 'total sales' value, rather than the total invoice amount; and
- the unexplained/unexamined basis for the 'GST on purchases' value.

For the above reasons, the Tribunal set aside the amended assessment decision and remitted that aspect back to the Commissioner.

ATO View of Decision

The ATO observes that determining whether a worker is an employee or independent contractor is highly factually dependent and requires the consideration of many factors.

The decision of the Tribunal was open to it on the facts and evidence before it, which it observed was opaque in certain important respects.

However, the ATO does not accept that the Tribunal decision is authority for the proposition because whether a worker supplies his or her own vehicle is a matter that always or generally is given decisive or predominant weight in assessing if a worker is an independent contractor or employee.

The ATO is seeking an appropriate case to clarify the law concerning the significance of the fact that a worker supplies his or her own vehicle in assessing whether a worker is a contractor or an employee.

BAN ON ELECTRONIC SALES SUPPRESSION TOOLS

From 4 October 2018, the government has banned activities involving electronic sales suppression tools (ESSTs) for people and businesses that have Australian tax obligations. You may be liable for criminal and administrative penalties if you:

- produce, supply, possess or use an ESST
- knowingly assist others to produce, supply, possess or use an ESST
- promote the use of an ESST.

Characteristics of an ESST

ESSTs can come in different forms and are constantly evolving. For example, an ESST can be:

- an external device connected to a point of sale (POS) system
- additional software installed into otherwise-compliant software
- a feature or modification, like a script or code, that is a part of a POS system or software.

An ESST may allow income to be misrepresented and under-reported by:

- deleting transactions from electronic record-keeping systems
- changing transactions to reduce the amount of a sale
- misrepresenting a sales record, for example by allowing GST taxable sales to be re-categorised as GST non-taxable sales
- falsifying POS records.

Working out if a tool is considered an ESST

A reasonable person must consider that one of the principal functions of an ESST is to misrepresent transactions recorded on a POS system.

What isn't an ESST

A tool with the ability to change a record isn't an ESST if the principal function ensures records accurately reflect transactions. For example, standard POS systems often include a feature that allows transactions to be edited or modified to correct genuine mistakes.

Checking if there's an ESST on your POS system

Most point of sale (POS) systems won't include an ESST.

If you're concerned that your POS system may contain an ESST, contact your POS system provider and ask them if your POS version, or make and model, contains such a tool. If they advise:

- it doesn't, you have nothing to worry about. If they tell you your POS system doesn't have an ESST, but your POS system has electronic sales suppression functions, contact us and we can assist you
- it does, you need to ask them to remove the ESST and then follow the steps below.

What you need to do if you have an ESST

The six-month transitional period (from 4 October 2018 to 3 April 2019) has finished.

If your POS system provider tells you that your POS version, or make and model, has an ESST:

1. Ask them to remove the ESST from your POS system.
2. After you have removed the tool, make a voluntary disclosure to the ATO.