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ATO PROTECTING HONEST BUSINESSES FROM UNFAIR COMPETITION

Officers from the Australian Taxation Office (ATO) have visited sites linked to labour hire agencies supplying workers in the fruit industry in Queensland as part of the ATO's efforts to protect honest businesses from unfair competition.

The ATO aims to ensure a level playing field for all businesses by tackling illegal phoenix activity, tax evasion and the operation of the black economy.

According to ATO Assistant Commissioner Justin Untersteiner:

- Labour hire businesses are a focus of the government's efforts to deter and disrupt illegal phoenix behaviour and black economy operators.
- The ATO follows up on all sources of intelligence and takes complaints and tip-offs seriously. The ATO seeks to protect and affirm the contribution of the majority of honest businesses within agricultural supply chains, while ensuring that workers.
- ATO action demonstrates the commitment to protect honest businesses, their employees and suppliers.
- Businesses engaging in illegal phoenix activity cyclically create and liquidate companies in order to avoid paying taxes, creditors and employee entitlements. Illegal phoenix activity can occur in any industry or location. But it is prevalent in the labour hire industry and is a major focus in ATO efforts to deter and disrupt illegal phoenix activity.
- Through the ATO-led Phoenix Taskforce the ATO works closely with partner agencies including Queensland Labour Hire Licensing and AUSTRAC's Fintel Alliance to identify, manage and monitor suspected illegal phoenix operators.
- The ATO encourages everyone to report all known or suspect phoenix, tax evasion or black economy activity

to their new Tax Integrity Centre by completing the [tip-off form](#) or by calling the Black Economy hotline on **1800 060 062**. Reporting is strictly confidential and can be anonymous.

FRINGE BENEFITS TAX AND ROAD TOLLS

When you, as an employer, pay for an employee's road tolls or allow the employee to use your electronic toll tag, you are providing them with a benefit. You need to determine whether you have to pay fringe benefits tax (FBT) on these benefits and how to record and value road tolls for FBT purposes. Road tolls mean road or bridge tolls.

There is no separate FBT category for road tolls. The types of fringe benefits that may arise are either:

- expense payment fringe benefits – where you pay for, or reimburse, an employee's expenditure on road tolls
- residual fringe benefits – where you allow an employee to use your electronic toll tag.

Fringe benefits may also arise when a road toll benefit is provided to an associate of your employee.

Road tolls incurred solely for your business purposes are otherwise deductible and are not subject to FBT. You do not need to have employee declarations where the road tolls are incurred solely for business purposes and you own or lease the vehicle.

Where you have a policy, which you enforce, that restricts the private use of cars, you can take those restrictions into account when determining whether road tolls are incurred for your business purposes. You must keep records, such as a logbook or diary records as referred to below, that substantiate the extent to which the benefit provided would have been 'otherwise deductible' to the employee.

Exemptions which may apply

An exemption may apply where an expense payment or residual fringe benefit arises as a result of road tolls provided to your employee. If an exemption applies, you do not have to pay FBT on the benefit, nor do you have to

report the benefit on your employee's payment summary or through Single Touch Payroll. You are required to obtain records if you want to take advantage of the exemptions that reduce your FBT liability, even if an employee declaration is not required.

Minor benefits exemption

If the value of the road toll is less than \$300 and it would be unreasonable to treat the benefit as a fringe benefit, the minor benefits exemption will apply.

Example 1: Minor benefits exemption applies to road tolls

You let your employee use a pool car to travel to and from work on an ad-hoc basis during the FBT year. Your employee travels on a toll road on the way to and from work. An electronic toll tag (where the account is held in your name) is attached to the car and records all road toll expenditure for that car. Your employee takes the car home overnight 10 times during the FBT year (which is 20 tolls). The cost of each toll is \$5.40 including GST.

Each road toll recorded when your employee used the car for a private purpose is a residual benefit. However, the minor benefits exemption would apply to each residual benefit provided to the employee.

If your employee started using the pool car to travel more frequently on the toll roads, the minor benefits exemption may no longer apply, and the road tolls would be a residual fringe benefit with a taxable value that would not be reduced by the otherwise deductible rule.

Exempt motor vehicles

An employee's use of a vehicle may be exempt from FBT. There are several requirements to be satisfied under the FBT legislation in order for the vehicle to be exempt including that non-work-related use is minor, infrequent and irregular.

When an exempt vehicle (for example, a panel van or a utility truck) is not salary packaged, the Commissioner will accept that any road toll benefits you provide will not be subject to FBT. This is because exempt vehicles are generally provided for work travel of the employee and any private use is minor, infrequent and irregular. Any associated benefits such as road tolls would be considered to be for business purposes and otherwise deductible.

Employee declarations are not required where the road tolls provided in exempt vehicles are incurred solely for business purposes. You are required to obtain records to support that the use of the road tolls was limited.

Where an exempt vehicle is provided under a salary packaging arrangement, FBT would be payable on any road toll benefits that relate to private travel unless another exemption or concession applies. Salary packaged vehicles are generally used for private purposes in excess of the limitations on private use for an exempt vehicle.

The provision of road toll benefits will not be subject to FBT where provided in relation to salary packaged exempt vehicles that meet the limited private usage requirement or where another exemption or concession applies. This maintains equity with other salary packaged vehicles which are not exempt under the FBT law.

If the exempt vehicle is provided under a salary packaging arrangement, [Example 2](#), [Example 3](#) and [Example 4](#) below show you how you can calculate the taxable value of road toll benefits. [Example 1](#) above outlines where the minor benefits exemption would apply, and the road toll benefit would not be subject to FBT even if the exempt vehicle is salary packaged.

Valuation options

The following are practical options and examples of how you can determine the taxable value of fringe benefits relating to road tolls. For valuation purposes, road tolls are GST-inclusive, and you may need to report these fringe benefits on your employee's payment summary or through Single Touch Payroll.

Although there are some options indicated by the ATO you can use to value road tolls provided to each employee, you can use any approach that gives you a reasonably based measure of the taxable value of these benefits.

You must keep all records relating to the road toll benefits you provide, including how you calculated the taxable value of benefits. You must also keep records if you want to take advantage of various exemptions or concessions that reduce your FBT liability. The below examples show certain types of records you must obtain in order to substantiate your calculation of the taxable value based on the practical option you choose even if a declaration is not required.

Actual value

The taxable value of road toll benefits is the amount that you pay for each road toll. You can use evidence such as receipts, electronic tag records, running sheets and employee attendance records to support your calculation.

Example 2: Expense payment fringe benefits: employee's actual road toll expenditure

Your employee incurs road toll expenditure when using both their own car as well as your car for private travel. The employee travels on a toll road on the way to and from work throughout the FBT year. The employee incurs the road toll expenditure by both cash payments made at a toll booth and by using an electronic toll tag (the road toll account is in the employee's name).

You reimburse your employee's road toll expenditure on the production of receipts and electronic toll statements at the end of each month. The reimbursements of your employee's expenses will be expense payment fringe benefits and the taxable value is the amount you reimburse to your employee.

Example 3: Residual fringe benefit: employer's actual road toll expenditure

An employee has a salary packaged car and on a working day travels from home to work and back on a toll road. The car is available for the employee's private use while at home, on weekends and while on holidays during which road tolls may also be incurred. The car is not used for business purposes and is available and used by the employee during the whole of the FBT year.

An electronic toll tag (the account is held in your name) is attached to the car and records all road toll expenditure for that car. Each road toll recorded is a residual fringe benefit provided to the employee.

All road tolls incurred while undertaking private travel are subject to FBT and the electronic toll statements provide sufficient details to identify the tolls relating to that car. The total cost of the road tolls shown on the electronic toll statements is the FBT taxable value.

BILL PROPOSES SOLUTION TO EXCESS SUPER CONTRIBUTIONS

Employees who work for more than one employer such as medical specialists and company directors may exceed their annual concessional superannuation contributions cap of \$25,000 due to the compulsory superannuation employer contributions. Each employer is separately required to make these based on the individual's earnings from that company or employer.

These excess contributions can result in additional administration and tax payments for the individual and their superannuation fund. It is suggested many of these taxpayers would prefer to avoid the excess contributions arising in the first place, provided that they could receive the equivalent amount in some other form such as additional remuneration.

With a view to achieving this, the Federal Government has introduced legislation into Parliament as part of Treasury Laws Amendment (2018 Superannuation Measures No.1) Bill 2019

The quarterly maximum compulsory contribution base of \$55,270 applies separately to each directorship or employment. This could cause individuals providing services for more than one entity (particularly prevalent in the case of company directors) to exceed their concessional contributions cap.

Under the proposed new arrangements, a individual will submit an advance request to the Commissioner of Taxation for an employer to be exempt from making superannuation contributions in respect of the services that he or she provides to that employer.

An individual would submit a request to the Commissioner of Taxation for an "employer shortfall exemption certificate" in relation to a particular employer and a particular future period.

It would be necessary to satisfy the Commissioner that:

- But for the certificate, they would be likely to exceed the concessional contributions cap for the financial year;
- Once the certificate had taken effect the individual still has to have at least one other employer that is required to make superannuation contributions;
- It is appropriate to issue the certificate in the circumstances, having regards to the impact on the individual's overall concessional contributions.
- The application must be made at least 60 days before the first day of the quarter to which the application related. According the opportunity to make the application becomes available for the first quarter commencing more than 60 days after the legislation receives Royal Assent.

the Commissioner is required to provide a notice of decision to the individual within 60 days of the application and if this does not occur, the Commissioner is taken to have refused the application. If successful, the relevant employer(s) would also receive notification these is no need to make contributions in respect of the affected individual.

Employers holding an "employer shortfall exemption certificate" will not have a superannuation contribution obligation in respect of applicable employees for the affected period.

This measure was initially proposed in the May 2018 Federal Budget.

JAIL TIME FOR TAX AGENT CAUGHT STEALING REFUNDS FROM CLIENTS

A Sydney man was today sentenced in the Parramatta Court to a one-year jail term for lodging fraudulent income tax returns on behalf of clients and stealing refunds.

In his role as a registered tax agent from 2011 to 2015, Nigel Bradshaw lodged a number of income tax returns in which he under reported his clients' income in order to gain larger refunds. The refunds were then funnelled through a bank account Mr Bradshaw controlled before being passed on to his unwitting clients, with Mr Bradshaw pocketing the inflated difference. On other occasions, Mr Bradshaw lodged correct income tax returns on behalf of his clients, but still siphoned off some refunds into his own accounts.

Mr Bradshaw's activities resulted in a loss to the Commonwealth of over \$80,000 and a loss to eight individual taxpayers of over \$10,000.

Mr Bradshaw has previously been investigated by the Tax Practitioners Board and his registration was terminated in July 2015.

Mr Bradshaw was also ordered by the court to pay full reparations to the Commonwealth.

Acting Assistant Commissioner David Mendoza welcomed the sentence handed down today.

“Taxpayers should be able to trust their registered tax professional to do the right thing when handling their tax affairs. Lodging fraudulent tax returns on behalf of clients and then stealing the tax refunds is not only a clear breach of trust, but also serious fraud.” said Mr Mendoza.

THE ATO's COMMERCIAL DEAL OFFERING

This program aims to provide certainty on the tax consequences of a proposed transaction before it is entered into.

ATO has advised taxpayers, it may be approached for an opinion prior to the taxpayer committing to a commercial deal. This offer targets privately owned and wealthy groups.

A commercial deal is defined as any significant business transaction that has the potential to impact the structure of the business. Examples given by the ATO includes the following:

- Demergers
- Divesting
- Financial and refinancing
- Initial public offerings
- Mergers and acquisitions
- Private equity
- Restructures
- Sale of business (partial or complete) or business assets
- Sale of commercial property
- Share buybacks
- Takeovers

Ideally the approach should be made pre-deal to work through the tax implications of the proposed transaction. Depending on timing factors it may be possible to provide practical certainty on the tax outcome prior to the proposed deal being completed.

The ATO may also be approached once a deal has been completed to determine how and when the transaction is reported for tax purposes. If an agreement is reached, the ATO will usually follow up the taxpayer to confirm that the transaction was reported as agreed. The aim is to eliminate penalties and interest that may have applied if the taxpayer had reported the tax consequences differently to the Commissioner's view.

Clearly the benefit of the program is the possibility of reaching mutual agreement concerning the tax consequences prior to lodgement of a tax return, thus enabling tax disputes, reviews and audits to be avoided post-lodgement.

However, a taxpayer should consider the possible consequences of engaging with the commercial deals program but failing to reach agreement on the tax treatment of the transaction.

According to the ATO, 90% of the taxpayers offered this program have taken up the opportunity and that agreement has been reached 80% of the time.

MORETON RESOURCES LTD V INNOVATION AND SCIENCE AUSTRALIA [2019] FCAFC 120

In July, the Full Federal Court ruled against a restricted interpretation of what constitutes “core R&D activities”.

This judgment is encouraging for mining and non-lab-based technology companies.

The definition of “core R&D activities” should now be read more broadly to include:

- a core R&D activity should be assessed as a whole, rather than on the basis of individual experiments. This was highlighted by the Federal Court due to the fact that the phrase “experimental activities” does not further narrow the definition of core R&D activities beyond the requirements that the activity:
 - has the outcome which cannot be known or determined in advance; and
 - is conducted for the purpose of generating new knowledge.
- “experimental activities” may include “activities having the purpose of generating new knowledge with respect to the application of an existing technology at a new site”
- Given the meaning of the statutory text is very clear the more specific wording of the explanatory memorandum cannot be treated as a substitute for the statutory text.
- The individual circumstances of the taxpayer must also be considered in applying the legislative definitions.

The judgement has affirmed the original purpose of the program which is to “encourage industry to conduct research and development activities that might otherwise not be conducted because of an uncertain return, in cases where the knowledge gained is likely to benefit the wider Australian economy”.

It is crucial that you maintain contemporaneous evidence to support R&D activities.