

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

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THE NEWSLETTER

Tax Legislation Update in an Easy-to-Read Format

MICHAEL'S CORNER

Article No. 015

Ways To Transform Your Onboarding or Re-Induction Process

SPECIAL BONUS ISSUE

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





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WHAT'S NEW IN 2022?

The Newsletter

TAX LEGISLATION UPDATE IN AN EASY-TO-READ FORMAT

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

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

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

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

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

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

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

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

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

The High Court agreed, saying:

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

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

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

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

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

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

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

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

SUPERANNUATION PORTFOLIO HOLDINGS DISCLOSURE

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

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

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

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

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

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

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

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

WORKING FROM HOME TEMPORARY SHORTCUT METHOD EXTENDED

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

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

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

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

Schedule for the value of goods taken from trading stock

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

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

RE-CONTRIBUTION OF COVID-19 EARLY RELEASE SUPER AMOUNTS

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

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

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

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

Further details are available on the ATO's webpage.

AIRPORTS AND CAR PARKING BENEFITS – THE SAGA CONTINUES

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

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

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

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

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

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

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

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

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

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

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

THE TAXATION IMPLICATIONS OF OVERSEAS RECEIPTS

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

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

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

Questions you need to ask and understand include:

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

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

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

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

REPORTED TRANSACTIONS IN ATO ONLINE

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

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

Accessing reported transactions

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

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

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

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

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

ATO information may be incomplete because:

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

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

Reported transaction payment types

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

The main categories the ATO holds information are:

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

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

FRINGE BENEFITS TAX AND CHRISTMAS PARTIES

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

Christmas parties

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

Implications for taxpaying body

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

Exempt property benefits

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

Exempt benefits – minor benefits

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

Gifts provided to employees at a Christmas party

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

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