MTS

MY TAX SAVERS

JULY/AUGUST
2015

Federal Budget

What's in it for you and your business?

NEW YEAR CHECKLIST

+more!

Index

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MyTaxSavers

KEY DATES

01

Many key dates are looming for business including those relating to Activity Statements, and FBT.

JULY 2015

1 JULY
First day of the 2015/2016 financial year

14 JULY
2014/2015 Payment Summaries to be issued to employees

21 JULY
Monthly Activity Statements (June 2015) – due for lodgement and payment

28 JULY
Superannuation Guarantee Contributions (April-June) – due for payment to superannuation funds or Clearing Houses

Where one of these dates falls on a weekend or a public holiday, the due date is extended to the next business day.

AUGUST 2015

11 AUGUST
Quarterly Activity Statements (April-June) - due for lodgement and payment (if lodging electronically)

14 AUGUST
PAYG Withholding Payment Summary Annual Reports – due for lodgement

21 AUGUST
Monthly Activity Statements (July 2015) – due for lodgement and payment

21 AUGUST
Final day for eligible monthly GST reporters to elect to report annually

28 AUGUST
Contractor Taxable Payments Annual Report – due for lodgement

GET INTERESTED

At its May meeting, the Reserve Bank of Australia decided to lower the cash rate by 0.25% to 2%. With interest rates now at record lows, it's an ideal time to review your affairs. In this piece, we examine some actions that you may wish to consider with your advisors in light of this current low interest rate environment.

Record Lows

Whether you're a homeowner, business owner, or investor, there has rarely in Australia's history been a better time to borrow. Finance is now less expensive than ever; making it a perfect time to perhaps borrow to invest in your business, purchase a rental property or make any other big-ticket acquisition that requires significant borrowing. A word of caution though: when taking out a variable rate loan in the present climate, you need to factor in the possibility that interest rates may increase in the future and whether you could afford repayments should this occur.

With interest rates unable to fall much lower, existing borrowers may wish to consider fixing their rates. Of course, the choice of whether to fix your rates is not necessarily either or - many choose to fix just a portion of their loan, and on the remaining balance enjoy the flexibility and benefits of a variable product. In deciding which option is best for you, consult with your financial advisor.

Cash Investments?

While homeowners with outstanding mortgages will no doubt rejoice at the recent reductions in rates, their joy is not shared by those who rely in whole or in part on cash investments (such as term deposits) as an income stream.

Term deposits at Australia's big four banks are currently offering on average a rate of 2.6% (for a one-year investment), maxing out on average at 3.1% per year for a five-year deposit (i.e. your money stays locked-up for five years). With the low interest rate environment reducing the returns on cash, investors may wish to look to the stock-market and in particular higher yielding stocks (those paying greater dividends) as a more profitable revenue stream than cash investments such as term deposits. Leaving aside the revenue stream provided by regular dividends, shares also have the potential for capital growth (and of course, if the share price decreases, capital loss).

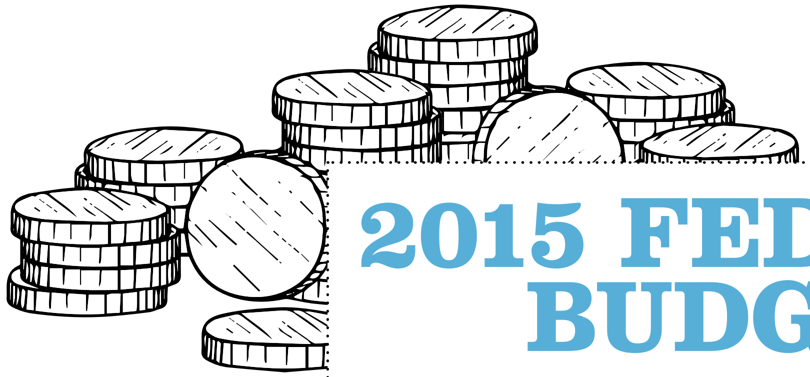
From a taxation perspective, any dividends will be assessed to the owner of the shares. Therefore, if contemplating a share purchase, consideration should be given to a low-income earner in your family (such as a non-working spouse) making the acquisition in their name. By doing so, the tax on the dividends (and any eventual capital gain) is minimised.

Consolidation

If you're juggling multiple debts, consolidating your debts into a single loan could be the right option for you – particularly if you have credit card debts.

Taking out a personal loan or rolling your debts into your home loan is usually the most common way to consolidate. Personal loans, and home loans even more so, can be more affordable and easier to manage and they generally have a much lower interest rate compared to credit cards. As well as paying less interest, you may also save on monthly fees.

Before consolidating, you should sit down and do the sums with your advisor.



2015 FEDERAL BUDGET

WHAT'S IN IT FOR BUSINESS?

The 2015 Federal Budget was handed down on 12 May. This article examines some of the headline announcements that impact business. Massively accelerated depreciation, tax cuts, assistance for start-ups, CGT relief for restructures, and more generous concessions for employee share schemes are just some of the measures which will assist business.

General Economic Conditions

In good news for business owners and the wider public, the Budget forecasts that economic conditions will improve in the coming years.

ECONOMIC GROWTH

According to the Budget, economic growth is forecast to increase from 2.5% this year to 2.75% in 2015/2016. This is one quarter of a percentage point slower than expected 12 months ago in the 2014 Budget. However, stronger non mining business investment is expected to drive an increase in growth to 3.25% per cent in 2016/2017 before increasing to a robust 3.75% in 2017/2018 which would be the strongest growth rate since the Global Financial Crisis. To provide some context, average annual economic growth in Australia has been 3.47% from 1960 to 2014.

All told, economic growth, while far short of the "boom times" of the early 2000's is at least, according to the Budget, on the upswing.

BUSINESS INVESTMENT

The most significant revision to economic growth in 2015/2016 since the 2014 Budget is business investment. Non mining business investment grew solidly in 2014, particularly in the services sector. According to the Budget papers, economic conditions are expected to support a lift in non mining business investment. Healthy corporate balance sheets along with the lower interest rates, the lower Australian dollar and lower fuel costs are expected to encourage investment plans going forward as firms rebuild and modernise their capital stocks. Reflecting this, real non mining business investment is expected to grow by 4% in 2015/2016 and strengthen further to 7.5% in 2016/2017.

UNEMPLOYMENT

Another key economic indicator, unemployment, is also expected to improve. Although unemployment is expected to edge slightly higher to 6.5% in 2015/2016, it is forecast to fall to 5.75% by 2018/2019.

Company Tax Cut

In welcome news, the company tax cut that the Government has for long flagged will be delivered from 1 July 2015. From this date, the corporate tax rate will be cut by 1.5% from 30% down to 28.5% for small business entities (SBEs) i.e. those businesses with a current or prior year turnover of less than $2 million, including the turnover of any connected or affiliated entities. This is expected to benefit approximately 780,000 incorporated small businesses. As the tax cut will apply from 1 July 2015, companies with PAYG instalments can benefit from their first payment after 1 July 2015. Despite this change, the maximum franking credit rate will remain at 30%. This is a double edged sword for shareholders.

Despite enjoying a franking credit that is higher than their company tax rate, the downside is that at some point the company will have retained earnings but will have no balance in the franking account to use which may result in an unfranked dividend having to be paid out as the following example illustrates:

EXAMPLE

TAX REDUCTION CREATES UNFRANKED RETAINED EARNINGS

	New Law	Old Law
Profit	$100	$100
Tax	$28.50	$30
Cash remaining	$71.50	$70
Franked Dividend	$66.50	$70
Unfranked Dividend	$5.00	$0

Companies with an annual aggregated turnover of $2 million or more will continue to pay tax at 30%.

EXAMPLE

Company Tax Cut Impact

A company has a turnover of $1.6 million, with taxable income of $400,000.

2014/2015

Under the pre-Budget law, the company would have a tax bill of $120,000 ($400,000 x 30%).

2015/2016

Under the proposed law, the company would have a tax bill of $114,000 ($6,000 less than under the old law).

With Australia now having a two-tiered company tax rate, if your company's turnover is around $2 million it's worth keeping a close eye on it at year-end from 2015/2016. While we do not suggest that you avoid growing your business just to stay under the $2 million threshold and attract the lower company tax rate, if your turnover is nearing that mark at year-end, it certainly pays to stay under that mark from a tax perspective – perhaps by deferring invoicing where practical as illustrated in the following example:

EXAMPLE

In 2015/2016, Tony's company has a projected turnover of $2,002,000, with taxable income of $1.2 million. As his turnover exceeds $2 million, the 30% tax rate will apply. This will result in a tax bill of $360,000.

If leading up to year-end, Tony and his advisors are keeping a close eye on his turnover, Tony has the opportunity to implement strategies to stay under the $2 million threshold. Assume for example that he has the discretion in issuing a year-end $4,000 invoice after 30 June 2016. By doing so, he reduces the company's turnover to $1,998,000 and thereby attracts the lower company tax rate of 28.5%.

With the company's taxable income now at $1,196,000, the tax payable at the lower company tax rate is now $340,860. Therefore, by keeping a close eye on his turnover and deferring the issuing of the $4,000 invoice until after 30 June, Tony has achieved a tax saving of $19,140 ($360,000 - $340,860).

Tax Cut for Unincorporated Small Businesses

A new 5% tax discount will be given to individuals with business income from an unincorporated business (i.e. sole trader, trust or partnership structure) that is an SBE (see earlier for the definition of an SBE). The discount, to be provided by way of a tax offset in a business owner's individual year-end tax return, will apply to the income tax payable on the business income received and will be capped at $1,000 per individual, per year. This will take effect at the same time as the small business corporate tax cut (2015/2016).

This is a welcome measure as many small businesses are not incorporated and thus would not derive any benefit from the above-mentioned corporate tax reduction.

EXAMPLE

Jeff operates a courier business as a sole trader and has a turnover of $110,000, with taxable income of $40,000.

2014/2015

Under the pre-Budget law, Jeff would pay tax at his marginal tax rate and would have a tax bill of $4,547 (excluding Medicare).

2015/2016

Under the proposed law, the $4,547 would be reduced by 5% ($227) down to $4,320.

Accelerated Depreciation

The threshold at which SBEs can claim an immediate deduction for a depreciating asset (i.e. totally write it off in the year it is first installed ready for use) will be increased from $1,000 to $20,000. This will apply for assets that are installed ready for use between 7.30pm on 12 May 2015 and 30 June 2017. To be clear, this will not result in any extra cash for eligible businesses, but it will provide cashflow relief in the sense that your deductions in respect of these assets will be brought forward.

This new instant write-off threshold applies to all types of depreciable assets such as tools, machinery, vehicles, furniture etc. except for items which have their own specific depreciation rules (such as horticultural plants).

EXAMPLE

Assume Mike is a sole trader with a turnover < $2 million but is on the top marginal tax rate of 47%. Mike purchases a small vehicle for $19,000 solely for use in his business.

PRE-BUDGET LAW

As the vehicle exceeds the $1,000 instant write-off threshold, it would be placed in the small business pool, whereby it would be depreciated at 15% in the first year, and 30% in subsequent years. This would mean that in the first year Mike's taxable income would reduce by $2,850 ($19,000 x 15% resulting in a tax saving of $1,339 ($2,850 x 47% tax rate, excluding Medicare).

POST-BUDGET LAW

If Mike purchases this vehicle and has it installed ready for use on or after 12 May 2015, as it does not exceed the instant write-off threshold of $20,000, he will receive a tax deduction for the entire $19,000 cost of the vehicle. This will reduce his taxable income by this amount, resulting in a tax saving of $8,930 in the year of purchase ($7,591 more than under the old law).

With the increase of the threshold for the instant write-off, assets valued at $20,000 or more that cannot be immediately written-off will be included in the business's small business pool and depreciated at 15% in the year that it is first installed ready for use in your business, and 30% in each subsequent year (in other words, in the same way as the old rules for assets costing $1,000 or more).

Similarly, during the period from 12 May 2015 to 30 June 2017, the balance of your small business pool can be written-off once it falls below $20,000 (including an existing pool). From 1 July 2017, the $20,000 instant write-off threshold will revert back to its former value of $1,000.

BUY UP!

As illustrated in the above example, the new $20,000 threshold (a massive 20 times larger than the old threshold) can provide very significant cashflow relief to small businesses. Add this to the current low interest rate environment, it may be the perfect time for you to invest in your business by purchasing depreciable equipment below the $20,000 threshold.

LOCK-OUT UNLOCKED

Also announced on Budget Night, the current rules preventing an SBE from using the simplified depreciation regime for five years if it opts out of the regime will be suspended until 30 June 2017. Therefore if in the last few years your business has opted out of the simplified depreciation regime but wishes to re-join and thus take advantage of this generous new $20,000 instant write-off threshold, it is free to do so.

Relief for Start-Ups

In good news for those starting up a business, the Government announced that it will allow businesses to immediately deduct (in the year of expenditure) professional expenses incurred in starting up a new business. This will include professional legal and accounting advice or legal expenses to establish a company, trust or partnership. Under the previous law, such expenses were only deductible over a five year period under the Blackhole Expenditure provisions of the Tax Act.

Again this measure provides cashflow relief by bringing forward deductions. With cashflow being one of the biggest killers of start-up businesses, this is a welcome reform to the law. This change will be effective from 2015/2016 (i.e. for expenditure incurred from 1 July 2015 onwards).

Restructure Relief

Small businesses will be permitted to change their legal structure (e.g. from a sole trader to a trust) without attracting a CGT liability. Currently CGT relief is only available where sole traders, trustees or partners in a partnership incorporate as a company. This measure will apply for small businesses who change entity type from 2016/2017. This is a welcome reform as small businesses often desire a change of structure (for example, for reasons of simplicity and ease of understanding, a number of small businesses start out as sole traders but, as their business grows, this structure no longer meets their needs).

TAX TIP

Business owners should periodically review their structure to ensure it continues to serve your needs. Be mindful however that while thanks to these new laws, changing structures may no longer have CGT costs, stamp duty may still apply. Ultimately, your choice of structure should be guided by a range of factors such as asset protection, tax minimisation, establishment and ongoing compliance costs, succession planning, your understanding of each structure etc. The following table offers a simplified, comparative snapshot of the merits of each structure:

FACTORS TO CONSIDER	SOLE TRADER	COMPANY	TRUST	PARTNERSHIP
Cheap to set up and administer	Yes	No	No	Yes
Limited record keeping and reporting	Yes	No	No	Yes
Minimal legal requirements	Yes	No	No	Yes
Protection from personal liability	No	Yes	Yes	No
Profits are added to your personal income	Yes	No*	No*	Yes
Easy to understand	Yes	No	No	Yes
Ability to admit business partners/succession planning friendly	No	Yes	No	Yes
Capital gains tax friendly	Yes	No	Yes	Yes

**Subject to the PSI rules.*

FBT

There were two FBT-related measures announced in the Budget as follows:

MORE WORK-RELATED ELECTRONIC DEVICES

Businesses with a turnover of less than $2 million will now be permitted to provide employees with more than one eligible work-related 'portable electronic device' during the year, without attracting FBT. 'Portable electronic devices' are devices that have the following characteristics:

- Easily portable and designed for use away from an office environment
- Small and light
- Can operate without an external power supply, and
- Designed as a complete unit.

Therefore, they include personal digital assistants (PDAs), blackberries, Smartphones, portable printers, tablets, electronic diaries, laptops, phablets, notebook computers etc. Currently, only one such device can be provided each year per worker, unless the second or subsequent device performs substantially different functions or is a replacement for the original device. This new law will allow employers to provide, for example, a laptop and a tablet to an employee during the same year without attracting FBT. Effective 1 April 2016.

BITING NOT-FOR-PROFITS

A separate, single grossed-up cap of $5,000 will apply for salary sacrificed meal entertainment and entertainment facility leasing expenses (meal entertainment benefits) for employees of not-for-profits such as public and not-for-profit hospitals, public ambulance services, public benevolent institutions (except hospitals) and health promotion charities.

Currently, the FBT cap on exempt benefits paid by these organisations is $17,667 for public and not-for-profit hospitals and public ambulance services and $31,667 for public benevolent institutions (except hospitals) and health promotion charities. Additionally, under current law, employees of these organisations can salary sacrifice meal entertainment benefits and no FBT will be payable by the employer. Under the change announced in the Budget, the above-mentioned benefits from 1 April 2016 will be subject to a grossed-up cap of $5,000 per year, per employee.

In addition to this and from the same date, all meal entertainment benefits provided by not-for-profit organisations will become reportable benefits and consequently count towards an employee's "reportable fringe benefits amount". To recap, an employee has a "reportable fringe benefits amount" recorded on their payment summary if for the FBT year the total value of their individual fringe benefits exceeds $2,000. Although reportable fringe benefits are not subject to income tax for the employee, they are included in a number of income tests such as Medicare levy surcharge, superannuation co-contribution, Higher Education Loan Programme (HELP), and your entitlement to certain income-tested Government benefits.

Accelerated Depreciation for Primary Producers

From 7.30pm on 12 May 2015, primary producers are able to immediately deduct (totally write-off in the year of expenditure) capital expenditure on fencing and water facilities such as dams, tanks, bores, irrigation channels, pumps, water towers, and windmills. Additionally, primary producers will be able to depreciate over three years all capital expenditure on fodder storage assets such as silos and tanks used to store grain and other animal feed.

These measures are significant because under the current law fences are to be depreciated over a period of up to 30 years, water facilities three years, and fodder storage assets up to 50 years.

More Concessions for Employee Share Schemes

To complement the generous concessions it has already announced to the tax treatment of employee share schemes (see page 12), the following further concessions were announced in the Budget and will commence from 1 July 2015:

- Exclude eligible venture capital investments from the aggregated turnover test and grouping rules (for the start-up concession)
- Provide the CGT discount to employee share scheme interests that are subject to the start-up concession, where options are converted into shares and the resulting shares are sold within 12 months of exercise.

Further Information

Although we've covered the headline announcements, the Budget papers contain hundreds of pages. For full access to the Budget papers visit ***www.budget.gov.au***

MYTH BUSTERS

This article addresses some widely held misconceptions about the tax system. We tackle various myths surrounding the effect of bracket-creep, the deductibility of car expenses on vehicles bearing advertising, the interaction between allowances and deductions, and more.

'Bracket-Creep' is Out of Control

Leading up to the recent Federal Budget there was much talk about the negative impact that bracket-creep is having on the average Australian taxpayer, and the need to index the tax scales to eliminate it. Broadly speaking, bracket-creep is where inflation pushes your income into higher tax-brackets. The result is an increase in taxes but no real increase in purchasing power.

EXAMPLE

Thomas is an accountant whose salary is $79,000 for 2014/2015. His employer (like many employers) has a policy of increasing salary in line with inflation. Assuming for example purposes that inflation for 2014/2015 was 2% (at the time of writing, the rate had not yet been released) then Thomas's would receive a pay rise of $1,580, increasing his salary to $80,580. Leaving aside deductions, this would take Thomas's income into a higher marginal tax bracket (from 32.5 cents per dollar for income between $37,001 and$80,000, to 37 cents for income between $80,001 and $180,000).

However, in assessing the effect of bracket-creep, it's important to understand that the higher marginal tax rate of 37 cents that inflation has pushed Thomas into, only applies to his income above the higher tax bracket of $80,000 (that is, it only applies to the $580 not his entire income of $80,580). Bracket-creep has no effect on the income that he was already earning before his inflation-based pay rise.

Australia's individual income tax rates are incremental. Higher rates only apply to your income above the respective thresholds. Therefore, if you're ever offered some extra overtime, or a small bonus for example, don't knock it back on the basis that it may take you into a higher tax bracket. This higher tax bracket will only apply to your taxable income which exceeds that higher threshold.

The take-home message is that bracket-creep only has a small impact on individual taxpayers. It only impacts you when your taxable income crosses one of the income thresholds (in Thomas's case, $80,000) and it only applies to the amount of your income above the higher threshold.

If I advertise on my car, I can claim my car expenses

It's become increasingly common for business owners to advertise on their vehicles. This is one of the only forms of advertising that people can't escape – they're trapped in traffic and your signage is right in front of them. (As an aside, where you do decide to advertise in this way, vehicle wraps have been found to be the most effective design).

For those who do advertise in this way, there is a common misconception that you can then claim all the vehicle's running costs – even where the travel is not work-related. This is false. The mere carriage of signage does not of itself change the application of the deductibility rules regarding car use. As per ***Taxation Determination TD 92/162*** the mere fact that an item (in that case, a corporate box) carries the company name is not sufficient to make the whole of the item deductible as an advertising expense.

The deductibility of motor vehicle expenses, irrespective of whether the vehicle carries signage, comes back to the underlying use of the vehicle – is the travel work-related? As per the following excerpt from a recent ATO Private Ruling, it would be a very rare case for the advertising of itself to make the running and maintenance costs of a vehicle deductible:

If the vehicle was driven for no other reason other than to promote advertisers' goods and services it may be argued that the expenses associated with using the vehicle for that purpose would be deductible. However where the vehicle is used for other purposes such that the expenses will have been incurred for reasons other than to advertise products and to derive assessable income, then no deduction will be available. In that case the advertising is incidental to the normal use of the motor vehicle rather than the vehicle being used for the dominant purpose of advertising.

That said, the cost of the advertising (i.e. the actual expenses to paint/wrap your car) will generally be deductible in the same way that other traditional forms of advertising such as in the newspaper are deductible.

If I receive an allowance, I can claim a deduction

It's quite common for employees to receive an allowance from their employer as compensation for work-related expenses that they may incur such as travel, uniforms etc. The mere receipt of an allowance however does not automatically entitle you to a deduction. Deductions must still be calculated on the amount of work-related expenditure incurred (the amount you have actually spent) rather than the amount of the allowance received.

A recent Decision Impact Statement indicates that the ATO is prepared to take a hard-line in this area, specifically where the deductions relate to travel expense claims in relation to overnight domestic travel allowances. As these claims are often quite large, they have become prime a target for the ATO.

By way of background, under Subdivision 900B of the Income Tax Act the requirement to substantiate your deductions claimed on your tax return (e.g. with receipts) does not apply to employees (including directors) for expenses covered by:

- An overtime meal allowance paid under an industrial instrument, *or*
- A domestic travel allowance or overseas travel allowance,

…if the amount of the deduction claimed does not exceed the reasonable amounts set out in the annual ATO Determination (currently Taxation Determination TD 2014/19).

FACTS

In the case covered by the Decision Impact Statement, the taxpayer Mr Gleeson, was an employee truck driver who during 2010/2011 worked for three related companies - all of whom paid him an allowance which was calculated on a cents-per-kilometre basis. Mr Gleeson consumed various food and drink at service stations while driving interstate on overnight long hauls. He did not keep any records/receipts of these expenses, instead relying on the above-mentioned relief provisions in Subdivision 900B on the basis that he was in receipt of a travel allowance. On his tax return, he claimed amounts for food and drink, calculated on the daily rates set out in the annual Tax Determination (which was at that time TD 2010/19).

ATO AUDIT

The ATO ruled that the allowance received was not a travel allowance which relieved Mr Gleeson from substantiating his expenses under Subdivision 900B. Without this relief and without documentary evidence by way of receipts, his deductions were denied.

AAT APPEAL

On appeal to the Administrative Appeal Tribunal, Mr Gleeson provided letters from his employer's payroll manager stating that the amounts paid were "solely for travel allowances". The letters also stated that Mr Gleeson lived away from home for work purposes for a substantial time during the year (on average, 11 out of every 14 nights).

The AAT ruled the amounts were a travel allowance and, as he incurred expenses on food and meals while away from home, he was entitled to the relief provisions in Subdivision 900B – allowing him to claim deductions without receipts.

ATO RESPONSE

In its Decision Impact Statement responding to the AAT ruling, the ATO made the following remarks on the case and its approach going forward:

This decision is not authority for the view that individuals are entitled to claim the Commissioner's reasonable amount without considering what expenses were actually incurred.

Individuals should be mindful that they may be asked for information to support that an amount was expended even if they do receive a travel allowance, for example, where they stayed, and where and what they ate.

Individuals need to be able to show how they calculated the amount claimed.

Care should be taken using secondary documents to calculate nights away from home. This is because while such documents may reflect the number of trips taken, distance travelled, or how often an allowance was paid, they may not show other relevant information such as the number of nights the person was required to spend away from home, or the expenses they incurred as a result.

Most self-education while I am working is deductible

In this increasingly flexible workforce, many people are undertaking some form of study while they work – whether it be University students working part-time, current employees seeking career advancement, or those looking for a career change etc. Contrary to popular belief, in more cases than not, your self-education expenses e.g. course fees, textbooks etc. will not be deductible even when you are working.

The ATO's views on the deductibility of self-education expenses are contained in Taxation Ruling TR 98/9. These guidelines have been established through the views taken by the Courts, Boards of Review and the AAT. As stated in paragraph 15 of that Ruling, self-education expenses will not be deductible if the study is intended to:

- Enable you to get employment
- Enable you to obtain new employment, or
- Open up a new income-earning activity (whether in business or in your current employment).

This includes studies relating to a particular profession, occupation or field of employment in which you are not yet engaged. The expense is considered to be incurred at a point too soon to be regarded as incurred in gaining or producing assessable income.

In the recent case of *Assefa v Commissioner of Taxation [2009] AATA 2* it was considered whether studying a course of education in order to advance to a higher classification of nursing was opening up a new income earning activity (and therefore not deductible). The taxpayer in this case was employed as an assistant in nursing and a care service employee while studying a Bachelor of Nursing degree. Accordingly, she sought to claim her education expenses on the basis that they were connected with the earning of assessable income.

The AAT held that no deduction was allowable for the self-education expenses. It was determined that there was a significant difference between the position of an enrolled nurse and registered nurse on the one hand, and personal care assistant/nursing assistant on the other. Consequently, the taxpayer was not considered to be incurring the expenditure in gaining or producing her assessable income, but was studying towards her initial qualifications. This is despite the fact that she was already working in the same broad field.

In short, to claim your self-education expenses you need to be improving your knowledge and skills as they relate to your existing duties/position. This can include keeping up to date in your current role.

Applying the above principles to real-life scenarios will generally mean:

- If you are studying to re-enter the workforce, no deduction will be available
- Most university students (even many of those working at a lower level in their future field – see the above Assefa case) will not be able to claim deductions
- Many people looking to obtain qualifications for a promotion in their existing field where the job description and activities are different, will generally not be entitled to a deduction.

NEW YEAR CHECK -LIST

1 July 2015 heralds the beginning of the 2015/2016 financial year. Apart from some of the Budget measures (which are examined elsewhere in this publication), the following is a checklist of changes and upcoming obligations to be aware of as we head into the New Year.

Payment Summaries

The following types of Payment Summaries must be issued by employers to payees by 14 July 2015 (for payments made in 2014/2015):

INDIVIDUAL NON-BUSINESS PAYMENT SUMMARIES

To be issued to employees, company directors and officeholders to whom you paid salary and wages, pension payments, compensation, allowances or other withholding payments during the financial year.

FOREIGN EMPLOYMENT PAYMENT SUMMARIES

To be issued to Australian resident employees, company directors and office holders working overseas that have received assessable foreign employment income for Australian tax purposes or income earned for work in the Joint Petroleum Development Area (JPDA).

BUSINESS AND PERSONAL SERVICES INCOME PAYMENT SUMMARIES

Must be provided to:

- Workers, other than employees (e.g. independent contractors) who have a PAYG Voluntary Agreement with their payer to withhold amounts from payments made to them,
- Workers engaged under a labour-hire arrangement, or other payments such as those to performing artists, and
- Individuals who have had tax amounts withheld from Personal Services Income (PSI) attributed to them.

OTHER COMMON PAYMENT SUMMARIES

The other of the most common types of Payment Summaries (those relating to ETPs and no ABN withholding) must be issued contemporaneously with the payment as follows:

EMPLOYMENT TERMINATION PAYMENT (ETP) PAYMENT SUMMARIES

These must be issued to employees receiving an ETP within 14 days of payment of the ETP.

WITHHOLDING WHERE ABN IS NOT QUOTED PAYMENT SUMMARIES

These must be issued at the time of the payment or as soon as practicable afterwards, to businesses / contractors that did not quote a valid ABN when required to do so.

Family Tax Benefit

Effective 1 July 2015, the following changes may reduce the amount you receive in Family Tax Benefits (FTB).

FTB – PART B

The primary earner income limit will be reduced from $150,000 down to $100,000. This will result in some families no longer receiving FTB – Part B. For families where the higher income earner earns $100,000 or less, they will continue to receive FTB – Part B.

SUPPLEMENTS

The Large Family Supplement will now only be paid to families receiving FTB – Part A for your 4th child and every child after that (down from 3 children and every child after that).

INCOME TEST FREE AREA

The higher income test free area for FTB – Part A will remain at $94,316. Families with more than 1 child will not receive an additional add-on amount per child.

Employee Share Schemes

Legislation making the taxation treatment of rights and shares issued under employee share schemes (ESS) more generous has recently passed the Parliament.

The changes, applying to ESS interests acquired on or after 1 July 2015, are as follows:

- Alter one of the taxing points for ESS interests that are rights, so that it applies not at the point at which a right can be exercised, but at the point at which it is exercised (subject to the share obtained by exercising the right not being further subject to a real risk of forfeiture or genuine restrictions on sale).
- Increase the maximum deferral period from 7 years to 15 years for ESS interests subject to deferred taxation.
- Introduce a further concession for employees of "start-up companies" so that the discount on issue is either:
  - o Exempt from income tax in the case of shares, if those shares are acquired with a discount of not more than 15% of the market value of the share when acquired or
  - o Deferred until exercise or sale under CGT law in the case of rights, if those rights have an exercise price or strike price that is greater than or equal to the market value of an ordinary share in the issuing company at the time the right is acquired.

"START-UP COMPANIES"

Under the legislation, 'start-up companies' is defined very broadly as:

- A company that was incorporated less than 10 years at the end of the most recent income year before the ESS interest was acquired
- A company that has a turnover (including connected and affiliated entities) not exceeding $50 million for the income year prior to the income year in which the ESS was acquired
- The employing company (which may or may not be the company issuing the ESS interest) must be an Australian resident taxpayer.

EXAMPLE

START-UP COMPANY CONCESSION

Tracey is issued with 10,000 shares in a company that has been operating 8 years and has a turnover of $15 million. The shares at issue have a market value of $1 per share. Tracey contributes 85 cents per share under the scheme.

On acquisition, Tracey receives a discount of $1,500. Under the start-up concession, this amount is not included in her assessable income (it is not subject to income tax). Her shares will then have a cost base for CGT purposes of $10,000.

This example illustrates the generosity of the start-up concessions - exempting from income tax the discount where shares are acquired at up to 15% less than market value, and defining start-up companies extremely widely (those less than 10 years of age with a turnover of up to $50 million).

Employee share schemes are a means to aligning the interests of employees and employers. By giving employees a stake in the business, their overall remuneration is in part inextricably tied with the performance of the business. This can result in more productive working relationships, higher productivity as well as reduced staff turnover. These changes, particularly the "start-up company" concessions, may prompt employers to look more favourably at ESS as an alternative means of remuneration.

Relief for Excess Non-Concessional Contributions

Over the coming months as superannuation funds lodge their returns, taxpayers may receive Excess Non-Concessional Contribution (NCC) Determinations where it is determined that you have exceeded your non-concessional contributions cap for 2014/2015 or 2013/2014. Where this is the case, a new law has just been passed that will provide you with significant tax relief.

By way of background, non-concessional contributions (often referred to as undeducted or after-tax contributions) include but are not limited to:

- Personal contributions for which you are not eligible to claim a tax deduction (most employees will be ineligible for such a deduction)
- Excess concessional contributions (though these amounts are refunded from 1 July 2013)
- Contributions in excess of a person's CGT Cap Amount (which is $1.355 million for 2014/2015 and only available to some small business owners), and
- Transfers from foreign superannuation funds.

The NCC cap for 2014/2015 is $180,000 (up from $150,000 in 2013/2014). Before this new law was passed on 5 March 2015, taxpayers who exceeded their NCC cap were liable to pay excess contributions tax on the excess amount. The rate of excess contributions tax for the 2014/2015 year to 2016/2017 year is 49% (inclusive of Medicare Levy and the Temporary Budget Repair Levy). Therefore, if an individual exceeded their cap by $10,000 for the financial year, they would be liable for a penalty of $4,900. To pay this amount an individual generally had to withdraw the amount payable from their superannuation fund after filling out a 'Release Authority' which was provided to them by the ATO at the same time they received their excess non-concessional contribution assessment.

The new law, which applies to excess NCCs made from 1 July 2013 onwards, quashes this penalty tax. The new law can be summarised as follows:

1. Where the ATO determines that you have made excess NCCs you will be issued with an Excess NCC Determination. This will state the amount of the excess contribution, the amount of the associated earnings on those contributions and the Total Release Amount (which will comprise the excess contributions plus 85% of the associated earnings).
2. Within 60 days you can make an election to, **(A)** release the Total Release Amount stated in the Determination, or **(B)** not release any amount.
3. Where you choose Option A, the ATO will issue a Release Authority to your superannuation fund, stating the amount of the NCC and any associated earnings. (The ATO advises that superannuation funds can expect to start receiving Release Authorities from July 2015 in relation to excess NCCs made in 2013/2014). Where Option A is exercised, no excess contributions tax of 49% will be charged. The full earnings amount is included in your assessable income, and is taxed at your marginal tax rate. In addition, you will be entitled to non-refundable tax offset equal to 15% of the associated earnings amount.
4. If you choose Option B, the ATO will issue you with an Excess NCC Tax Assessment. In other words, excess contributions tax will be applied at the top marginal tax rate (currently 49%) on the excess amount of the contribution. You will then need to pay this amount to the ATO out of your own pocket.

EXAMPLE

ADAPTED FROM THE EXPLANATORY MEMORANDUM

Belinda's non-concessional contributions for the 2014/2015 financial year exceed her non-concessional contributions cap by $100,000. The ATO issues Belinda an Excess NCC Determination on 1 November 2015. The amount of associated earnings stated on the Determination is calculated as follows:

0.02646575% × ($100,000 plus the sum of the earlier daily proxy amounts) for the 489 day period from 1 July 2014 until 1 November 2015.

For the purposes of this example, the proxy rate for the 2013/2014 financial year has been used as the rate for the 2014/2015 financial year is not yet available.

The result of this formula is that the associated earnings equal $13,814.

The total release amount stated in the determination for Belinda is $111,741, being the excess amount of $100,000 plus 85% of the $13,814 associated earnings. If Belinda elects to release the total release amount (Option A) her superannuation provider would pay her $111,741 in response to the release authority issued by the ATO.

The full earnings amount ($13,814) must then be included in her 2014/2015 tax return, for which she will be entitled to a 15% tax offset reflecting the amount of tax that has already been paid by her superannuation fund.

Alternatively, Belinda can elect to do nothing and therefore have the $100,000 excess taxed at 49% (a massive $49,000 penalty).

TO WITHDRAW OR NOT?

The new law gives taxpayers the choice to leave the excess NCC in their superannuation fund, or on the other hand release them. From a taxation standpoint, the choice is as follows:

- ***Option A - Release the excess contribution*** – you will pay tax only on the associated earnings at your marginal tax rate. Any income earned on the excess contribution will not receive concessional tax treatment and will be taxed at your marginal tax rate.
- ***Option B - Leave the excess amount inside your fund*** – you will pay Excess Contributions Tax of 49% on the excess contribution. However, concessional tax treatment will apply on the income earned on that excess amount (i.e. 15% when the fund is in accumulation mode, and 0% when the fund is in pension mode).

Option A removes the double taxation on the excess NCC itself. Therefore, for all but the smallest of breaches by top marginal tax rate taxpayers, Option A will generally provide the better tax outcome. You can then perhaps contribute the refunded excess NCC in the following financial year and then going forward enjoy the concessional tax treatment that applies to superannuation fund earnings.

SMSFs and *SuperStream*

In the May/June edition of this publication, we provided employers with a range of options to comply with *SuperStream*. For the many people with SMSFs, these will also need to be *SuperStream* compliant if they receive employer contributions. To recap, in simple terms *SuperStream* is a new way of making and receiving employer superannuation contributions. SMSFs now need to be ready to accept employer contributions. Essentially this will involve:

- Registering for an electronic service address. Without this, you will not be able to accept the payment information electronically. To register, visit www.ato.gov.au and type 'register of SMSF messaging providers' into the search box at the top of the page.
- Provide contributing employers with this address, as well as the SMSF's ABN, and bank details.

There is no requirement for the SMSF to be *SuperStream* compliant if it does not receive any employer contributions.

Out of time?

This article examines the amendment time limits for income tax assessments for all types of taxpayers. How long do you, your business and the ATO have to go back and amend your original tax return? When can you consider your assessment final?

Overview

Section 170 of the Income Tax Act (1936) gives the ATO the power to amend income tax assessments. This power however is subject to time limits which apply irrespective of whether the taxpayer or the ATO is seeking the amendment, and irrespective of whether the proposed amendment seeks to increase or decrease the amount of tax payable. The time limits fall into the following three categories:

1. *Two-Year Amendment Period* – this applies to most individuals and Small Business Entities (SBEs).
2. *Four-Year Amendment Period* – this applies to non-SBEs, individuals with complex tax affairs, and high-risk taxpayers where the ATO is relying on an anti-avoidance provision.
3. *Unlimited Amendment Period* – this applies where the ATO concludes that there has been fraud or evasion.

We now examine these categories in detail.

Two-Year Period

A two-year amendment period applies to the following classes of taxpayer:

INDIVIDUALS

Under Subsection 170(1) assessments cannot be amended by beyond two-years after the day on which the ATO gives an individual a notice of assessment unless the individual:

(a) Carried on a business at any time and is not an SBE. (An SBE is generally an entity carrying on a business, and the annual turnover of the entity (including any connected or affiliated entities) is less than $2 million).
(b) Is a partner in a partnership that carries on a business at any time during the year unless the partnership is an SBE for that year
(c) Is acting in the capacity of a trustee of a trust estate at any time during that year
(d) Is a beneficiary of a trust estate at any time during that year unless the trust is an SBE or the trustee of the trust (in their capacity as trustee) is a full self-assessment taxpayer for that year
(e) Entered into or carried out a scheme (alone or with others) for the sole or dominant purpose of obtaining an income tax benefit, or
(f) Is excluded from the two-year period by special regulations.

EXAMPLE

TWO YEAR DEADLINE

Pam is a sole trader who receives a Notice of Assessment dated 10 December 2014. Pam's two year amendment period will commence on 11 December 2014 (the day after the date of her Notice of Assessment) and end two years later on 10 December 2016. She has until this day to lodge a request for an amendment. Likewise, the ATO has until this day to amend her assessment.

CATEGORY D – BENEFICIARY OF A TRUST ESTATE

The meaning of a 'beneficiary of a trust estate' was given a wide interpretation in the recent case of *Yazbek and Commissioner of Taxation [2012] AATA 477*. In this case, the Federal Court confirmed that the word 'beneficiary' includes a potential beneficiary (including those who have received no income and no benefit from a trust during the year).

For the many individual taxpayers who are beneficiaries of a trust, including many family trusts, this Federal Court decision appeared to open the door to a longer amendment period of 4 years (not 2 which was widely understood to be the case) – even where you have simple tax affairs, and even where you did not actually receive a distribution from a trust in the year that your initial return was lodged.

However, the ATO has since issued a Decision Impact Statement on 8 August 2013 where it stated that the Yazbek decision is expected to have little practical impact. The ATO advised that it does not expect to change its compliance practices and therefore a two year limit will generally still apply to individuals not excluded by Subsection 170(1) (see earlier list).

COMPANIES

Subsection 170(1) also provides that assessments cannot be amended beyond two-years after the day on which the ATO gives a Company a Notice of Assessment unless the Company:

(a) Is a partner in a partnership that carries on a business that is not an SBE for that year
(b) Is acting in the capacity of a trustee of a trust estate in that year
(c) Is a beneficiary of a trust estate in that year, except where the trust is an SBE or the trustee of the trust (in their capacity as trustee) is a full self-assessment taxpayer for that year
(d) Entered into or carried out a scheme (alone or with others) for the sole or dominant purpose of obtaining an income tax benefit, or
(e) Is excluded from the two-year period by special regulations.

TRUSTEES

Subsection 170(1) also provides that assessments cannot be amended beyond two-years after the day on which the ATO gives a trustee of a trust estate that is a SBE unless the trustee:

(a) Is a partner in a partnership that carries on a business that is not an SBE for that year
(b) Is a beneficiary of another trust estate in that year, except where the trust is an SBE or the trustee of the trust (in their capacity as trustee) is a full self-assessment taxpayer for that year
(c) Entered into or carried out a scheme (alone or with others) for the sole or dominant purpose of obtaining an income tax benefit, or
(d) Is excluded from the two-year period by special regulations.

Four-Year Period

If a taxpayer is excluded from the two-year period (see above listed exclusions) they will be subject to a four-year amendment period. As per the above list, this extended four-year period will generally apply to non-SBEs and those with complex tax affairs including:

- Taxpayers that carry on a business (including sole traders or partners in a partnership business) unless they are an SBE
- Taxpayers in the capacity of a trustee of a trust
- Taxpayers who are beneficiaries of a trust (i.e. they actually receive a distribution for the income year) unless the trust is an SBE or the trustee of the trust (in that capacity) is a full self-assessment taxpayer
- A taxpayer who (either alone or with others) entered into or carried out a scheme for the sole or dominant purpose of obtaining a tax benefit, and
- High-risk taxpayers or special case taxpayers prescribed by regulation.

Fraud or Evasion

Where the ATO determines that there has been an under-assessment of tax that is the result of fraud or evasion, it has an unlimited amendment period.

"Fraud" for this purpose involves the making of a false representation to the ATO. A false representation will be fraudulent if the evidence shows that the person/entity made the representation knowing it was false or with such a degree of indifference to, or lack of concern about its correctness, that it can be concluded that the taxpayer could not have held any real belief in its truth.

"Evasion" in the income tax context involves omitting income from a return or wrongly claiming a deduction without any credible or excusable explanation for such action. Unlike fraud, evasion does not rely heavily on your intention; even where an act or omission is unintentional, it may still constitute evasion when judged objectively against the standard expected of a reasonable person. In establishing evasion, the ATO generally asks the following questions:

- What should a person standing in the shoes of the taxpayer be expected to have done if acting reasonably and honestly?
- What reasons have been provided by the taxpayer for not doing what would be expected of such a person who acted reasonably and honestly?
- To what extent are the taxpayer's acts or omissions still considered blameworthy in light of the reasons they have provided?

Note that failure to keep proper records of a business due to carelessness and indifference has been held to constitute evasion.

Extensions

Section 170 also provides for the following extensions to the two or four year amendment periods:

- Where you apply for an amendment before the expiration of the amendment period but the ATO is yet to process/consider the amendment.
- Where you apply for a Private Binding Ruling (PBR) before the expiration of the amendment period, and the ATO makes a ruling in response to your application after the expiration of the amendment period.
- The ATO has commenced examining a taxpayer's affairs but has not completed that examination by the expiration of the amendment period. In this case, the amendment period can be extended by either the Federal Court where it is satisfied that the failure to complete the examination in time was because of your behaviour, or alternatively it can be extended by the consent of the taxpayer.

TAX TIP ✓ OUT OF TIME?

If you wish to change your tax return but the amendment period has expired, you may instead be able to lodge an objection to your assessment. While the time limits for lodging an objection are the same as an amendment, you can request an extension of time to lodge an objection. To do so, generally one of the circumstances outlined in Law Administration Practice Statement PSLA 2003/7 at paragraph 24 must present. You can access this document on the ATO website www.ato.gov.au

Take Home Message

Ensure you lodge amendments by the respective deadline. On the flip-side, where the ATO seeks to amend your own or your business's return outside the deadline, you and your advisors may be able to put a stop to this action.

2015 FEDERAL BUDGET

WHAT'S IN IT FOR INDIVIDUALS?

Continuing our examination of Federal Budget 2015, this article examines the effect of the Budget at an individual level. Changes to the way you calculate your car expense claims, massive new financial relief for those with children in childcare, and bad news for those who are overseas with HELP debts were just some of the measures announced.

Tax Rates Unchanged

Having been subject to many changes in recent years, the personal individual tax rates remain unchanged from 2014/2015 as follows:

2014/2015 and 2015/2016 INDIVIDUAL RESIDENT TAX RATES*	
INCOME THRESHOLD $	%
0 - 18,200	0
18,201 - 37,000	19
37,001 - 80,000	32.5
80,001 - 180,000	37
180,001 - above	47

**inclusive of 2% Deficit levy, but not including the 2% Medicare levy*

The Government also plans to keep the low-income tax offset unchanged from 2014/2015 as follows:

LOW INCOME TAX OFFSET	
2014/2015 AND 2015/2016	
Maximum Amount	$445
Lower Withdrawal Limit*	$37,000
Upper Withdrawal Limit**	$66,667
Withdrawal Rate	1.5%

**The offset reduces by the withdrawal rate for every dollar earned over $37,000.*
***The offset cuts out altogether.*

Car Expense Claims Simplified

The methods for claiming work-related car expenses will be simplified.

The "12% of original value" method and the "one-third of actual expenses" method will be abolished (the "log-book" method will remain in place). Furthermore, the "cents per kilometre" method will be streamlined by replacing the three current rates based on engine size, with one rate set at 66 cents per kilometre to apply to all motor vehicles. Under the previous law (which will still apply when you complete your 2014/2015 tax return) the rates increase in line with engine capacity as follows:

ENGINE CAPACITY	CENTS PER KM*
1,600cc	65
1,601cc - 2,600cc	76
2,600cc and over	77

**Up to a maximum of 5 000 kilometres.*

As the above table illustrates, the introduction of a flat 66 cent rate will result in a smaller deduction for those who drive vehicles with an engine capacity of 1 600cc or more (more than 0.8 litres). The Government estimates that the deduction will be on average $85 less per year for each taxpayer affected. For drivers who believe their motor-vehicle costs are greater than the 66 cents on average per kilometre, or those who drive more than 5,000 kilometres per year, you will still be able to claim a deduction for the full amount under the "log-book" method.

These changes will be effective from the 2015/2016 year. Therefore they will not apply when completing your 2014/2015 tax return.

Age Pensioners Spared

The Government will not proceed with an unpopular measure from last year's Budget whereby it was seeking to index the Age Pension in line with the Consumer Price Index (CPI) which would have resulted in smaller future increases. Going forward, the Age Pension will continue to be set 27.7% of Male Total Average Weekly Earnings. Also, despite pre-Budget speculation, the Government has not changed the asset exemption for the family home.

However, the Government has announced it will adjust the thresholds for assets tests on the pension, meaning 172 000 pensioners at the lower end of the pension will be better off, while 81 000 pensioners who currently claim the part pension will no longer be eligible.

Fly-In Fly-Out and Drive-In Drive-Outs Lose Out

The Zone Tax Offset will no longer be available for these types of workers where their normal residence is not within a specified tax "zone". Effective 1 July 2015.

By way of background, to be eligible for the Zone Tax Offset, you must reside or work in a specified remote area for more than 183 days in an income year. The Budget papers estimate that around 20% of all claimants do not actually live full-time in the zones. This change will therefore better target the offset to taxpayers who have taken up genuine residence within the zones.

EXAMPLE

Ted is a fly-in fly-out worker who works in the mines for 200 days per year. The mine is located in a specified remote zone, but Ted's normal family residence is in Perth. From 1 July 2015, Ted will no longer be eligible for the Zone Tax Offset, despite meeting the 183 day benchmark.

Childcare Relief

The centrepiece of the Budget was a $3 billion childcare package which will be introduced from 1 July 2017. The key points are:

- A new Child Care Subsidy (CCS) will replace the current Child Care Benefit, Child Care Rebate and Jobs, Education and Training Child Care Fee assistance programs currently in place.
- A means-tested single CCS will be brought in for all families, but will be subject to a new activity test for up to 100 hours of subsidised care per child per fortnight, paid directly to approved care service providers.
- Families with incomes less than $65,000 will enjoy a CCS of 85% per child or the lower of the actual fee or benchmark price. The CCS will reduce to 50% for families with incomes of $170,000 or more.
- Families with incomes under $185,000 will no longer have an annual cap (currently $7,500) on the subsidy they receive.
- For families with incomes above $185,000, a cap of $10,000 per child will apply for the total value of subsidies.
- A new activity test will apply as follows:
  - o Parents working between 8 and 16 hours per fortnight will be eligible for up to 36 hours of childcare.
  - o Parents working between 17 and 48 hours per fortnight will be eligible for up to 72 hours of childcare.
  - o Parents working 49 hours or more per fortnight will be eligible for up to 100 hours of childcare.
- Up to 24 hours per fortnight will also be provided to children from families with incomes of less than $65,000 per year who do not meet the activity test.

A new Child Care Safety Net will also be introduced to provide additional support to eligible disadvantaged or vulnerable families.

Immunise or Lose Out

In order to receive childcare subsidies and the Family Tax Benefit (Part A) year-end supplement, children will need to be up-to-date with all childhood immunisations. Effective 1 January 2016.

PPL 'Double-Dip' Removed

From 1 July 2016, individuals will not be able to claim paid parental leave (PPL) from both

their employer (if their employer offers it) and also from the Government.

To recap, under the current Government scheme the Federal Minimum Wage is paid to new working parents (i.e. those who give birth or adopt) for up to 18 weeks of parental leave (equating to $11,536.20).

From 1 July 2016, the Government scheme will only be available to individuals whose employer does not provide PPL. In cases where individuals get less PPL from their employer, the Government will top up the amount paid to be equal to the full amount available under the Government scheme i.e. $11,536.

HELP Debts Chased Abroad

The HELP (HECS) repayment scheme will now apply to individuals residing overseas for six months or more if their worldwide income exceeds the standard HELP repayment thresholds (applying to both new and existing debts). From 1 January 2016, individuals going overseas for six months or more must register with the ATO. Those already overseas must register by 1 July 2017. Repayment obligations commence 1 July 2017 (for income earned in 2016/2017).

Residency and Temporary Working Holiday Makers

From 1 July 2016, the tax residency rules will be changed to treat most people who are temporarily in Australia for a working holiday as non-residents for tax purposes, irrespective of how long they are here. Consequently, they will be taxed at 32.5% from their first dollar of income.

Currently, such people can be treated as a resident for tax purposes if they satisfy the tax residency rules, typically if they are in Australia for more than six months. Consequently, they are then taxed as residents which means they enjoy the tax-free threshold, the low-income tax offset and the lower tax rate of 19% for income between the tax-free threshold and $37,000.

Family Tax Benefits Tightened

Two Family Tax Benefit (FTB) measures were announced:

- Family Tax Benefit (Part A) large family supplement will cease from 1 July 2016, and
- Families will only be able to receive FTB (Part A) for six weeks in a 12-month period while they are overseas. Currently, recipients who are overseas are able to receive their usual rate for six weeks and then the base rate for a further 50 weeks.

Netflix Tax

Australian consumers will soon be forced to pay GST on offshore intangible supplies. "Intangibles" will be defined as anything other than goods or real property (such as digital products including streaming or downloading movies, music, apps, games, e-books, as well as consultancy, professional and any other service performed offshore for consumers in Australia). GST will be imposed at a rate of 10% on the value of the supply and will only apply to consumers who are not registered or required to be registered for GST.

With the world becoming increasingly global, with the ability to purchase and download many items online, this change is arguably one of the most significant to the GST system since its introduction way back in 2000. Effective 1 July 2017.

Superannuation and Terminal Illness

Unlike recent years, it was a very quiet Budget on the superannuation front with the Government keeping its promise of making no major adverse changes to superannuation. However, it did provide relief for those diagnosed with terminal illness. Currently, individuals can access their superannuation early if they have two medical practitioners certify that they are likely to die within one year. This period will be increased to two years; providing individuals with earlier, unrestricted access to their superannuation savings at a vulnerable time in their life. Effective 1 July 2015.

Panel Beating

This article focuses on some of the taxation issues that should be considered for those of you who have had or will in the future have solar panels installed on your property or business premises. How are the installation costs treated? And what about any income you receive?

Background

As electricity costs climb, an ever-increasing number of people and businesses are installing solar panels. While such an investment was once the preserve of the wealthy, solar panels are now much more affordable with the cost of having panels installed almost halving over the past 5 years. From an environmental standpoint, unlike Australia's main fuel for electricity (coal), solar panels produce no emissions in generating power and are therefore an environmentally friendly alternative.

Solar panels can also add real value to your home. A May 2015 survey for Origin Energy, done through realestate.com.au, found that 85% of respondents believed solar rooftop increased the value of a property. Solar rooftop panels were considered the top 'green' feature to increase a home's value. Almost three quarters of renters surveyed said they would be happy to pay more rent to live in a property with solar panels, while 78% of respondents believed it would add up to $10,000 to the price of a home.

Irrespective of whether you've installed panels for environmental or economic reasons, with their increasing popularity it's important to have a working knowledge of the taxation implications of both the installation costs of the panels and any payments or offsets received for electricity fed back into the wider electricity grid.

Business Premises

FEED-IN PAYMENTS

Individual State and Territory governments across Australia have adopted differing approaches to what are known as Solar Feed-In Tariffs (also known as Solar Bonus Schemes). These tariffs are essentially a payment from the electricity suppliers for the clean energy that your panels feed back into the electricity grid. Although the payments are now much less generous than what was formerly the case (and in some jurisdictions they have been abolished altogether for future installations) there are nonetheless feed-in payments still received by many solar panel owners under current and former schemes. Therefore the tax treatment of these payments needs to be considered.

There are no specific provisions in the tax legislation that deal with solar panels and any feed-in payments that may be received from Governments or energy suppliers. Therefore the payments do not constitute 'Statutory Income'. Thus, it's necessary to consider whether the payments constitute 'ordinary income'. The general position is that taxpayers who install solar panels on a property which is used in a business or other income-producing activity are not in the business of generating electricity. Nonetheless, there is a direct link between the electricity generated by the panels and the electricity used in the income-producing activity. Therefore any payments from the sale of electricity generated by the solar panels and fed back into the grid constitute assessable income and must be declared as such.

INSTALLATION COSTS

Solar panels installed on a property that is used for income-producing purposes are considered to be depreciating assets. As such they are depreciable under the Capital Allowances provisions of the Tax Act. In its latest Determination, the ATO has ascribed 20 years as the effective life of solar panels, and therefore they are depreciable over this time period.

If you are a Small Business Entity you will be able to take advantage of the accelerated depreciation rules which will enable you to claim an outright deduction for the cost of the solar panels (if less than $20,000) or, in the event that the panels cost more than this, claim 15% of the cost in the year they are installed, and 30% in subsequent years.

Private Residence

FEED-IN PAYMENTS

Where taxpayers install panels on properties used for private purposes (e.g. your residence) any feed-in payments received will generally not constitute assessable income. The size and scale of the system installed will indicate that the system was installed to cater for the electricity needs of the household (a private, non-income producing purpose). However, if the size and scale of the system was far in excess of the needs of household, and consequently the amount of the credits received was large and regular, this may result in the amounts transforming into ordinary income and therefore being assessable.

INSTALLATION COSTS

As a private residence is not being used to produce assessable income, the solar panels will not be deductible or depreciable. Instead, they will be added to the cost base of the property which may be relevant in determining any capital gain when the property is sold.

Split Usage

Where the building is used for dual purposes (part-income producing and part private, for example you may operate your business from home) you must apportion both the feed-in payments received and the depreciation claimed. Apportionment must be carried out on the basis of the electricity used as opposed to the portion of the property where solar panels are physically installed. For instance, if the electricity used was 40% for private purposes, then you would reduce your depreciation claim by this same rate, and only declare 60% of the feed-in payments received.

Post 30 June Tax Issues

While the arrival of 1 July means that your tax position for 2014/2015 is largely now determined, there still may be significant matters that must be attended to post-30 June which will impact your tax position for 2014/2015. These include superannuation contribution notices, CGT choices, the distribution of capital gains from trusts and much more.

Superannuation Deductions

If you have made a superannuation contribution for which you can claim a deduction, then you will need to complete paperwork urgently.

To be eligible to claim a deduction for contributions made to superannuation in 2014/2015, the contribution must be made between 1 July 2014 and 30 June 2015. In terms of timing:

- A contribution in cash is made when received by the fund
- A contribution by electronic funds transfer is made when the amount is credited to the superannuation fund's bank account – this may occur some time after you have done what is necessary to effect the payment, and
- A contribution by cheque is made when the cheque is received by the fund unless it is dishonoured.

If you have met this timing requirement then you can claim a deduction for your personal after-tax contribution if you have met the conditions of the "10% rule".

A deduction is only allowable if you have given a notice to the trustee of your superannuation fund or to the Retirement Savings Account (RSA) provider stating your intention to claim a deduction for the whole or part of a contribution covered by the notice, and an acknowledgement of that notice has been received. In practical terms, this requires you to complete a ***Notice of intent to claim or vary a deduction for personal superannuation contributions*** and then send it to your superannuation fund or RSA. Copies of this notice are available on the ATO website. The notice must be given by the earlier of:

- The day you lodge your 2014/2015 personal tax return, and
- The end of the financial year following the year in which the contributions are made (i.e. 30 June 2016).

Division 7A

Where you operate a private company the following time-sensitive actions must be considered following 30 June 2015:

LOANS

Where the company has made a "loan" (this has a broad definition) or payment that is not a legitimate dividend during 2014/2015 to a shareholder or an associate (e.g. spouse) a deemed dividend may arise in 2014/2015 unless the amount is repaid or made subject to a complying Division 7A loan agreement (with minimum interest and principal repayments) ***before the company's lodgement day for its 2014/2015 tax return.*** Thus, before you lodge your company's return (or before it is due) you will need to assess whether a loan has been indeed been made and, if so, how you wish to deal with that loan. Where you opt to put a loan agreement in place, there will need to be at least one repayment made in 2015/2016.

UNPAID PRESENT ENTITLEMENT (UPE)

Where a private company and a discretionary trust are in the same group of entities and the private company is an unpaid presently entitled income beneficiary of the trust in 2014/2015, you will need to consider how to deal with this amount. Division 7A may apply to these unpaid present entitlements unless:

- o The present entitlement has been paid out by the lodgement day of the 2014/2015 tax return
- o The funds are held on sub-trust by the lodgement day of the 2014/2015 tax return, or
- o A complying Division 7A loan agreement is entered into by the lodgement day of the 2014/2015 tax return.

Therefore, whatever course you choose, if you fail to take action by the lodgement day for the company's 2014/2015 tax return, then pursuant to Division 7A the company will be deemed to have paid an unfranked dividend to the trust for the amount of the UPE.

Trust Distributions – Capital Gains

For the many people who operate their affairs through a discretionary trust you must distribute the trust income (by making resolutions) by no later than 30 June 2015 (or an earlier time if your deed provides). Otherwise your default beneficiary clause will be triggered or, in the event that your deed has no such clause, the trustee will be assessed on the income under Section 99A of the Tax Act at the top marginal tax rate.

The exception to this 30 June deadline is where the trust has a capital gain that is not wholly included in trust income (i.e. all or part of it is allocated to capital). Where this is the case, the trustee has until 31 August 2015 to stream that part of the capital gain representing trust capital (e.g. that part not taxed due to the 50% general discount, where the trust income is determined under an Income Equalisation Clause). You can over the next two months use this extended deadline to perhaps selectively distribute these capital gains to a beneficiary who has current or prior year carried forward capital losses for example.

CGT Elections

There are a considerable number of choices that are available under the CGT provisions. Mainly they relate to whether you wish to avail yourself of various exemptions and discounts under the Income Tax Assessment Act (1997) including, among others, those relating to your main residence (an absence choice, and a building, repairing or renovating choice) as well as those relating to the CGT Small Business Concessions and Rollovers. Many of these discounts and exemptions can save you thousands in CGT. Accordingly it's important to understand how to claim them, and by when to claim them.

In terms of the timing (i.e. deadline) of your choice/election, there is a general CGT choice-making rule contained in Section 103-25. Under this Section, unless the provision providing for the choice specifies otherwise, your choice must be made by the day that your income tax return is lodged or due to be lodged for the income year in which the relevant CGT event happened, or within a further time allowed by the Act such as in the case of the Six-Year Rule where the choice does not need to be made until you sell your main residence (under this rule, you can rent out your main residence for six-years and pay no CGT on sale, provided you do not treat any other residence as your main residence for CGT purposes during that time).

In terms of the method of making your choices, the way in which you prepare your relevant income tax return is sufficient evidence of making a choice. For example, if you sold your business and the gain was exempt under the 15-Year Ownership Exemption then in your 2014/2015 tax return you would totally exclude that gain from the return. This would constitute evidence of your choice. No formal, separate election would need to be made in writing.

However, the following special rules should be noted and may require action on your part over the coming weeks and months:

- *Subsection 115-230* (relating to assessment of capital gains of resident testamentary trusts) requires a trustee to make a choice by the day two months after the last day of the income year (by 31 August 2015) and
- *Subsections 152-315(4)* and *152-315(5)* (relating to the small business retirement exemption) require a choice to be made in writing, not in the tax return by the day your income tax return is lodged for 2014/2015.

Estate planning

Part 2 TESTAMENTARY TRUSTS

Continuing our series on Estate Planning, we examine the benefits of Testamentary Trusts. Establishing a Testamentary Trust in your Will can have many advantages including asset protection and tax minimisation.

Background

A "Testamentary Trust" is a trust established by the terms of a person's Will, as opposed to a Family Trust which is established to operate during a person's life. Testamentary Trusts come into existence on the Will-maker's death. These trusts can be fixed (such as a simple life estate), discretionary, or hybrid (a combination of both fixed and discretionary entitlements). Most typically though, Testamentary Trusts will be discretionary in nature. It is possible to establish more than one Testamentary Trust in your Will, for example one for each child.

The principal benefits of Testamentary Trusts are their ability to reduce tax paid by beneficiaries on income earned from the inheritance as well as their ability to protect assets that you leave behind at death.

Asset Protection

When we pass away, most of us would like to think that our assets and wealth will be left to the benefit of our loved ones for many years ahead. Under a normal Will, if an inheritance is left directly with a beneficiary (e.g. child) it may be lost to that person if they are wasteful, they get into trouble with creditors, or they experience a relationship breakdown (e.g.. divorce). By establishing a Testamentary Trust in your Will, this risk is mitigated.

WASTEFULNESS / INABILITY TO MANAGE MONEY

If you are concerned that some of your beneficiaries are financially wasteful or because of their inherent characteristics they have an incapacity to manage money (for example, they may be a minor or may be mentally impaired) you may wish to strongly consider the establishment of a Testamentary Trust. Although your inheritance is passed to the Testamentary Trust for the benefit of your nominated beneficiaries, the Trustee of the Trust is vested with the sole power to control any distributions. Thus, the income and capital from the inheritance can be gradually bled out to the beneficiaries at the absolute discretion of trustee; and therefore sustain those beneficiaries for hopefully many years into the future – rather than being potentially squandered if passed directly to them at death.

RELATIONSHIP BREAKDOWN

If a beneficiary is in a volatile relationship, has a history of relationship breakdowns (e.g. divorce) or you just wish to guard against this in the future, Testamentary Trusts may assist in ensuring their inheritance is not depleted or lost to their partner. Assets held inside the Trust do not form part of the pool of assets that can be the subject of division (either by court order or formal agreement) in the event of a relationship breakdown.
It is however acknowledged that due to the nuances of family and bankruptcy law, in some cases the protection offered by a Testamentary Trust may not in all cases be absolute. However, the protection afforded is generally greater than if the inheritance sat directly with the beneficiary.

CREDITORS

Under a normal Will where an inheritance is passed directly to a beneficiary who is experiencing solvency difficulties or is already bankrupt at the time of the deceased's death, that inheritance is likely to end up in the hands of creditors. However, where a Testamentary Trust is used, the beneficiary has no actual entitlement to a distribution until the Trustee so determines. Accordingly, assets are generally not exposed to creditors but rather remain the property of the Trust.

Taxation

Testamentary Trusts offer a range of tax benefits:

MINORS

If you have children under the age of 18, or have grandchildren under that age, unlike family discretionary trusts, distributions from a Testamentary Trust attract concessional tax treatment.

Where income is distributed from a family discretionary trust to a minor, the minor is generally only entitled to a tax-free threshold of $416 on such income. Any distribution above this modest amount is generally taxed at penalty rates of up to 66%. By contrast, where minors receive distributions from a Testamentary Trust they are taxed at adult tax rates. Therefore, they are entitled to receive up to $18,200 tax-free (the tax-free threshold for 2014/2015, and more, when the low-income tax offset is taken into account) from the

Testamentary Trust each year without paying any income tax. Where there are multiple minor beneficiaries, the taxation advantages can be very significant – with each entitled to a tax-free threshold of $18,200.

INCOME SPLITTING
Where a beneficiary receives their inheritance as an individual, they will pay tax on any earnings (such as interest) at their own personal tax rate. By establishing a Testamentary Trust, income from the assets and cash from the Estate can be distributed to tax-advantaged beneficiaries (such as non-working spouses of your children… children who may themselves have high personal marginal tax rates). This can in turn minimise the overall tax payable.

INCOME STREAMING
In simple terms, income streaming is the ability to allocate different styles of income to particular beneficiaries. Establishing a Testamentary Trust allows you to stream fully franked dividends to tax-advantaged beneficiaries (such as resident beneficiaries – non-resident beneficiaries can not utilise franking credits) and likewise stream capital gains to tax-advantaged beneficiaries (such as those who have a current year or prior year unused capital loss, which can then reduce the capital gain). This is as opposed to assets just sitting with beneficiaries themselves; which will give you no flexibility as to who pays tax on any earnings.

CGT RELIEF
When you pass away and bequeath a CGT asset directly to a beneficiary, where they subsequently transfer the asset to another person, CGT and stamp duty may apply on that subsequent transfer. Testamentary Trusts can provide relief in this regard.

Example

Brad tragically dies and leaves behind his two rental properties to his children, Jake and Cameron in equal shares. The children decide to rent out the houses for ten years. After this time and having now become adults, they decide to take ownership of one house each with a view to making each their family homes.

If the houses are bequeathed to them directly, then CGT and stamp duty will be triggered on the transfer of 50% of each house when they each take ownership of one house each. This is because each person is transferring a half interest in each house to the other sibling.

By contrast, if both houses pass into a Testamentary Trust, each child will generally be able to take ownership of a single house each without triggering CGT or stamp duty. This can save thousands of dollars in tax.

Other Considerations

As illustrated, Testamentary Trusts are a useful estate planning tool. In consultation with your advisor, carefully consider whether a Testamentary Trust is right for you. Factors to be considered include:

- The characteristics of beneficiaries (are any of them minor or incapacitated)? And are any of the above-listed factors at play, such as wastefulness, the potential for relationship breakdown, exposure to creditors etc. which could see any inheritance depleted.
- Whether you have sufficient assets, and whether sufficient income is going to be generated from those assets, to justify the establishment of a Testamentary Trust in the first place.
- Costs. Testamentary Trusts will incur ongoing costs such as accountancy fees for the preparation of tax returns, as well as initial establishment costs.

If having consulted your advisors, you do decide to establish a Testamentary Trust, careful thought should be given to who to appoint as the Trustee. Anybody can be appointed, including your spouse, the Executor of your Will etc. As the Trustee exercises effective control of the Trust, it is essential to appoint a party that will act in a way that is broadly reflective of your intentions and in the best interests of the beneficiaries going forward.