

# MTS



MY TAX SAVERS

NOV/DEC  
2015

## Tax Savers

Money  
saving tips

**SMALL  
BUSINESS  
WRITE-OFF**

Your questions  
answered

**Financing  
Equipment  
Acquisitions**

What are the options?

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Many key dates are looming for business including those relating to Activity Statements, GST, superannuation, income tax returns, and more.

## NOVEMBER 2015

### 11 NOVEMBER

July-September quarterly Activity Statements – due for lodgement and payment (if lodging electronically)

### 21 NOVEMBER

October monthly Activity Statements – due for lodgement and payment

### 28 NOVEMBER

Superannuation guarantee (SG) charge statement – due for lodgement and payment if insufficient contributions were made for the July-September quarter by the due date

## DECEMBER 2015

### 1 DECEMBER

Due date for income tax payment for companies that were required to lodge by 31 October

### 21 DECEMBER

November monthly Activity Statements – due for lodgement and payment

Where the due date falls on a weekend or public holiday, it is deferred until the next business day (except in the case of Superannuation Guarantee deadlines)



With the Festive Season almost upon us, following are some year-end tax and other reminders as we head into the Summer holidays.

### STAFF LEAVE

It's quite common for businesses as a whole to shut down their operations entirely over the Christmas–New Year period and in some cases extending well into January. In this situation, the question arises as to whether staff can be forced into taking annual leave during this shutdown period. The answer is that under the Fair Work Act there are two circumstances where an employee can be directed by their employer to take annual leave:

1. The employee has accumulated excess annual leave or
2. The business is closed during slow periods of the year such as Christmas or New Year.

However, under the second of these exceptions an employee can only be directed to take annual leave during a shutdown if their Award or registered employment agreement allows for it. If you are uncertain whether this is the case, visit the Fair Work Australia website [www.fairwork.gov.au](http://www.fairwork.gov.au). If an employee has insufficient leave to accommodate the shutdown you may permit them to go into deficit if their employment agreement allows for this, or they may be required to take unpaid leave depending on their circumstances.

### SUPERANNUATION GUARANTEE

Although the ATO allows an extra month for businesses to lodge their December quarterly BAS (the due date is February 28 regardless of whether you are lodging online via the Business Portal, by paper or via a Tax



Agent/BAS Agent) there is no equivalent extension for the payment of Superannuation Guarantee.

Superannuation Guarantee for the October-December quarter is still due 28 days following the end of the quarter i.e. 28 January. Failure to pay on time (even if you are just one day late) may result in you being liable for Superannuation Guarantee Charge. For this reason, if you are closed throughout January, you may wish to consider making the October-December contribution in December.

### NOTIFY SUPPLIERS/CUSTOMERS

You may wish to make key suppliers/customers aware of your shutdown period. An effective way to do this is to attach a footer to your emails leading up to Christmas such as:

*We will be closed from 2:00pm Thursday 24 December 2015 and will reopen again on Monday 4 January 2016. We thank you for your support during the year and wish you a safe and happy Festive Season.*

Likewise, recorded messages should be left on front office/reception phones advising of the shutdown period.

### OUT-OF-OFFICE EMAIL SETTINGS

All staff should be instructed to activate the 'out of office' reply function on their emails for the entire period of their Christmas–New Year absence. Given that staff members may be returning from leave on different dates, it's important that each staff member tailors this function to align with their planned individual absence.

# WRITE-OFF FAQs

Anecdotal evidence suggests that the small business instant asset write-off announced in the May Federal Budget has proved particularly popular among business owners. To recap, the \$20 000 write-off allows small businesses (those with an annual aggregated turnover of less than \$2 million, including sole traders) to claim an immediate deduction in the year that the asset is first used or installed ready for use in their business.

To assist small business owners to understand this new measure, we've produced a list of frequently asked questions and accompanying answers.

### GST-INCLUSIVE OR EXCLUSIVE?

If your business is GST-registered, the write-off threshold is the GST-exclusive cost of the asset. Therefore, the threshold on a taxable asset is \$22 000 (including GST). By contrast, if your business is not GST registered, the threshold is GST-inclusive (\$20 000, including GST). Whilst the threshold has been touted as \$20 000, the actual asset purchased must be less than \$20 000 to claim the write-off.

### \$20 000 PER ASSET?

The threshold is applied on an asset-by-asset basis. Even where the assets purchased are identical or form part of a set, each is entitled to its own \$20 000 threshold. This is in contrast to non-business taxpayers (such as rental property owners). You should ensure that invoices separately itemise each asset that you purchase or at least the quantity of assets where they are identical:

### EXAMPLE

Constance owns a café and is in need of some new furniture. She acquires 150 identical chairs at \$200 each, totalling \$30 000 (GST-exclusive). Despite the assets being identical, Constance can write-off the entire \$30 000 provided all other criteria are met. She should ensure that the number of chairs purchased is indicated on the invoice.



**WHAT IF AFTER APPLYING THE PERCENTAGE OF BUSINESS USE TO AN ASSET, IT IS UNDER \$20 000 BUT THE ASSET COST MORE THAN THIS?**

Eligibility for the instant asset write-off is referenced against the asset's "cost", but the extent of your claim is referenced against the asset's taxable purpose proportion.

**EXAMPLE**

Fred the Panel Beater is a sole trader and acquires a ute for \$26 000. It is used 60% for business:

- Fred's Cost = \$26 000
- Fred's taxable purpose proportion = \$15 600 (\$26 000 x 60%)

The asset is not eligible for write-off as the cost is not less than \$20 000.

**DOES FBT LIABILITY HAVE ANY IMPACT ON THE TAXABLE PURPOSE PROPORTION?**

Use the following table to assess the FBT impact:

ASSET SUBJECT TO FBT?	TAXABLE PURPOSE PROPORTION is....
Yes	100%
No	Based on business usage

**EXAMPLE**

Fred's Panel Beating Pty Ltd acquires a ute for \$15 000 (+ \$1 500 GST).

The ute is used by Fred who maintains a log-book showing 60% business use. The private use will be dealt with as a motor vehicle fringe benefit under the FBT rules. Because the ute attracts FBT, the taxable purpose proportion is deemed to be 100%. As the cost is \$15 000, the asset is eligible for the write-off. The amount of the write-off is \$15 000, despite only 60% business use.

**WHAT IMPACT DO TRADE-INS HAVE?**

Because the \$20 000 threshold is applied on the cost of the asset, the trade-in value of your item is irrelevant. A trade-in simply reduces the net amount to be paid for the asset, not the cost of the asset. For example, if you purchase a \$30 000 business vehicle, which after a trade-in of \$20 000 only requires a further \$10 000 payment, the new vehicle is not eligible for the \$20 000 write-off as the cost is \$30 000 – even though the net amount to

be paid for the goods is less than the \$20 000 threshold.

**IF I PURCHASED AN ASSET BEFORE THE START DATE, BUT DIDN'T USE IT IN MY BUSINESS UNTIL AFTER THE START DATE, IS IT ELIGIBLE?**

The \$20 000 write-off applies from 7:30pm 12 May 2015 (the start date) to 30 June 2017. Assets must have been first acquired for use in your business after the start date to be eligible. Assets acquired before the start date but first used after the start date are not eligible.

**CONTRIVED OR ARTIFICIAL ARRANGEMENTS**

Consistent with the objective of the \$20 000 threshold only applying to newly acquired assets, assets acquired under artificial or contrived arrangements will not be eligible (for example, where a number of related small business entities that earned income from similar income sources sold their assets to one another after the start date in order to satisfy the 'first acquired' requirement).

The \$20 000 threshold also does not apply to depreciating assets that are first acquired after the start date but are not first used or installed ready for use on or before 30 June 2017. In this case, the \$1 000 threshold will apply.

**ARE THERE ANY EXCLUDED ASSETS?**

Basically, all depreciable assets (new or second hand) are eligible – including motor vehicles, furniture, computer equipment, machinery etc. The following assets are however excluded as they have their own unique treatment:

- Horticultural plants
- Buildings (these are dealt with under the Capital Works provisions)
- Assets allocated to a low value pool or software development pool
- Primary production assets for which an entity has chosen to use the normal depreciation rules rather than the small business depreciation rules, and
- Assets leased out to another party on a depreciating asset lease.

**TREATMENT OF ASSETS THAT EXCEED THE THRESHOLD?**

Standard small business depreciation treatment applies to assets that are equal to or exceed the \$20 000 threshold. That is, the asset is placed into the general small business pool to be depreciated at 15% in the first year, and then 30% in subsequent years. In keeping with the increased threshold, the general small business pool can be written-off once

the balance of that pool falls below \$20 000 at the end of an income year that ends on or after 12 May 2015 and on or before 30 June 2017. From 1 July 2017, the pool can only written-off if it falls below \$1 000.

**EXAMPLE**

In September 2015, Brad who is GST-registered purchased a \$35 000 (GST-exclusive) piece of machinery for 100% use in his manufacturing business.

As the cost of the asset exceeds \$20 000, it is placed into Brad's general pool to be depreciated at 15% in 2015/2016. The following year (2016/2017) the remaining value of the asset of \$29 750 is depreciated at 30%. In the following year (2017/2018), the write-off threshold for the general pool reduces to \$1 000 and Brad continues to depreciate the asset as part of his general pool.

**WHAT IF MY BUSINESS'S DEDUCTIONS, AFTER TAKING INTO ACCOUNT THIS INSTANT ASSET WRITE-OFF, EXCEED MY INCOME?**

The new law may result in significantly increased deductions for your business. Where this results in your deductions exceeding your income (i.e. you make a loss) and you operate as a sole trader or through a partnership, the non-commercial loss rules may apply. Where you fail to pass one of the four non-commercial loss tests or your other income exceeds \$250 000 for the year, you will generally be unable to offset your loss from your business income against any other income you have earned such as salary and wages.

**ARE FINANCED ASSETS ELIGIBLE?**

Yes – depending on the type of finance. Assets that are the subject of a commercial loan, chattel mortgage or hire purchase would all qualify. Assets that are the subject of a lease do not qualify for the write-off due to the fact that the ownership of the asset under a lease remains with the finance company.

**HOW ARE IMPROVEMENTS TO ASSETS DEALT WITH?**

Improvements to assets are also eligible to be written-off with their own \$20 000 threshold provided:

1. The improvement is the first such amount to be deducted for the asset
2. The improvement is under \$20 000, and
3. The asset itself was written-off in a previous financial year.

This is good news in particular for those of you who purchase motor vehicles and machinery for your business, as

improvements are often made to such assets.

**EXAMPLE**

Tariq purchased an \$18 000 vehicle in 2015/2016, and claimed the immediate asset write-off. In the following year 2016/2017, he spent a further \$2 000 on improvements to the vehicle. The additional spend on improvements is eligible to be written-off as it meets the above three conditions.

**CAN OWNERS CONTRIBUTE PRE-EXISTING ASSETS?**

Yes, provided the arrangement is not artificial or contrived. However, to be eligible, the asset will need to be acquired by a different legal entity.

**EXAMPLE**

John has a vehicle that is 5 years old that he wishes to contribute to his business. If he was a sole trader, he couldn't claim the immediate write-off in his business as the vehicle wasn't "first acquired" after the start date of 7:30pm on 12 May 2015. However, if he sold it to a company that he controlled, the "first acquired" criterion could be met (provided the sale was at market value) as the company is a different legal entity.

**ARE THERE ANY SPECIAL SUPPLIER TAX INVOICE REQUIREMENTS?**

There are no greater substantiation requirements than under the old law. Complying Tax Invoices are needed for GST purposes. Evidence of purchase is needed for Income Tax purposes. You should ensure the quantity of assets purchased is documented on the Tax Invoice if the total is greater than \$20 000 but the individual items cost less than \$20 000 each.

**WHAT IF MY BUSINESS GROWS AND IT IS NO LONGER ELIGIBLE?**

If a business ceases to be a Small Business Entity (e.g. its turnover exceeds \$2 million) in a subsequent financial year, it doesn't impact what was claimed in prior financial years. Low value pools continue to be written-off. A separate Uniform Capital Allowance pool may also come into existence. Note that where the business ceases to be a small business, the floor under which a low-value pool can be written-off will drop from \$20 000 to \$1 000.

**IF THE BALANCE OF MY GENERAL POOL AT THE END OF THE INCOME YEAR IS MORE THAN \$20 000 BUT IS BELOW \$20 000 AFTER TAKING CURRENT YEAR DEPRECIATION INTO ACCOUNT, CAN I WRITE-OFF THE BALANCE?**

This clarifies a point touched on in the previous edition of this publication, and is important for preparing 2014/2015 tax returns, and also going forward if you purchase an asset just over \$20 000 and it is the only asset in your general pool. The short answer to the question is 'no'. This is best illustrated by way of example:

**EXAMPLE 2014/2015**

- Hills Pty Ltd has an opening small business general pool balance of \$21 000 at 1 July 2014
- It then purchases machinery worth \$4 000 in January 2015 (assume 100% business use)
- Its depreciation deduction in 2014/2015 is \$6 900 (30% on \$21 000) + (15% on \$4 000). Therefore the closing balance of the general pool is \$18 100 (\$25 000 - \$6 900).

The company wonders whether they can write-off the total balance of the pool and therefore claim a depreciation expense of \$25 000 (\$6 900 depreciation + \$18 100 write-off of the pool) because at 30 June 2015 after taking account of 2014/2015 depreciation, its closing pool balance is less than \$20 000.

**Answer**

No, the balance of the general pool cannot be written-off in the 2014/2015 tax return. That's because in determining whether the balance of the general pool is less than \$20 000, you must not take account of current year depreciation. The authority for this is Section 328-210 of the Income Tax Act which specifies that the amount of the general small business pool at year-end for write-off purposes is the sum of:

- (a) The pool's opening balance for the income year
- (b) The taxable purpose proportion of the adjustable value of each depreciating asset you started to use, or have installed ready for use, for a taxable purpose during the income year that is allocated to the pool (i.e. new assets that you have acquired and subsequently allocated to the pool) and

(c) The taxable purpose proportion of any cost addition amounts for the income year for assets allocated to the pool

**Less**

(d) The sum of the taxable purpose proportion of the termination values of depreciating assets allocated to the pool and for which a balancing adjustment event occurred during the income year (e.g. depreciable assets that were sold)

Despite the closing balance being less than \$20 000 at 30 June 2015, if you follow the Section 328-210 formula, then Hills' pool cannot be written off at year-end. Applying the example to the above formula:

(a) = \$21 000

(b) = \$4 000

(c) = \$0

(d) = \$0

\$21 000 + \$4 000 = \$25 000

As this amount exceeds \$20 000, the pool cannot be written off at year-end. The 2014/2015 depreciation deductions of the pool, which would take it below \$20 000, are disregarded under Section 328-210.

You would need to wait until the following year (2015/2016) to write it off; and even then you may not be able to if you purchased additional assets in that year which were allocated to the pool which took the Section 328-210 amount back above \$20 000.

**EXAMPLE 2015/2016**

Assume instead that Hills Pty Ltd enters 2015/2016 with a nil balance in its general small business pool. During the year, it purchases a \$22 000 (GST-exclusive) piece of machinery and a \$2 000 (GST-exclusive) desk – both to be used 100% for business purposes. The company's 2015/2016 depreciation deductions would be as follows:

**Desk**

With the write-off threshold still set at \$20 000, the desk can be written-off, resulting in a tax deduction for the full \$2 000 cost.

**Machinery**

As the cost of the machinery is \$20 000 or more, it must be allocated to the general pool. As per the standard depreciation rules, the company can claim a 15% deduction in the first year (\$22 000 x 15% = \$3 300). Despite this reducing the value of the general pool to below the \$20 000 write-off threshold, it cannot be written off in 2015/2016 as per the earlier formula in Section 328-210. Instead, the company will need to wait until 2016/2017 to

write-off the balance of the general pool, provided it does not purchase or otherwise acquire any other depreciable items during that year which cost \$20 000 or more which are allocated to the general pool.

#### HOW WOULD I RECORD THESE ASSETS IN THE SOFTWARE FILE?

Whilst there is no prescriptive treatment from either government or the ATO in this area, there may be some sound business reasons why you might like to continue to treat certain asset purchases below \$20 000 as an asset in your Balance Sheet but still record the write-off of that asset at 100%. Here is a suggested treatment when accounting for assets under the new \$20 000 instant asset write-off rules:

##### 1. Agree on a de-minimis value with your accountant

Although many businesses will prefer to record all assets on their Asset Register, businesses that hold many depreciable assets of low value (such as a restaurant, for example) may wish to expense some of these assets in the accounts.

2. **Treat as an asset if above this de-minimis amount, and as an expense if below this amount**
3. **For like assets, base your de-minimis on the total value of the asset purchase, not on the individual value of each asset**
4. **Ensure that you accurately record the quantity of an item if treating it as an asset, so that the accountant can apply the immediate write-off if needed**
5. **Upload or provide source documents to your accountant (such as invoices) if possible**
6. **Highlight assets where the total cost comes from more than one invoice**

#### IS THE HYPE SURROUNDING THE NEW WRITE-OFF WORTH IT?

All told, the increased small business write-off brings welcome tax relief, but note:

- It only accelerates the timing of a deduction you would have eventually got anyway. Therefore, while not providing

a direct cash benefit, the increased write-off provides a cashflow benefit by bringing forward your deductions on assets costing less than \$20 000 rather than having them spread out over a number of years.

- You are only getting back the tax rate on the asset, not the full value of the asset
- The "pay day" on the tax relief could be as much as 22 months (longer if you have a tax loss). That is, you may purchase an asset in July 2015 for example, but your tax agent may not lodge your business's return until the due date which can be as late as May 2017.
- Don't let tax distort or blur your commercial instincts – you don't get any extra cash than you would otherwise have got under the old rules, so continue to only buy assets that fit within your business plan.

an exact number of times a benefit can be provided before it is considered frequent (and therefore less likely to satisfy the minor benefit exemption). However, the ATO has confirmed that a once-per-year benefit (such as a Christmas gift or gym membership) will not be considered frequent. The downside of using the minor benefit exemption is that the meal entertainment is not tax deductible, and nor can you claim a GST credit.

This minor benefit exemption is not available if you elect to value your meal entertainment under the alternative 50/50 Method. Under this method, you pay FBT on only 50% of all taxable meal entertainment provided to employees, associates AND clients, contractors, customers etc. regardless of the cost. Likewise, you can only claim a 50% income tax deduction and 50% GST credits on such meal entertainment.

#### EXAMPLE – COMMON SCENARIO

Oval Pty Ltd uses the Actual Method to calculate its meal entertainment and is contemplating having a \$220 per head (including GST) Christmas party in December 2015 for its 9 employees plus their spouses (\$3 960 in total). This is the only meal entertainment provided for staff during the year. The Directors wonder about the FBT, income tax, and GST consequences of the two methods for valuing meal entertainment.

##### ACTUAL METHOD

The following tax treatment applies for both employees and their spouses:

- **FBT** – Zero is payable as the benefit is an exempt minor benefit
- **Income Tax Deduction** – Cannot be claimed as the benefit is an exempt minor benefit and meal entertainment
- **GST** – Cannot be claimed as the benefit is an exempt minor benefit.

Therefore, the employer's out of pocket expense is simply the cost of the Christmas Party (\$3 960).

##### 50/50 METHOD

The following tax treatment applies for both employees and spouses:

- **FBT** – The taxable value of the meal entertainment would be \$1 980 (\$3 960 x 50%). The fringe benefits taxable amount would be \$4 249 (\$1 980 x 2.1463 gross up rate). The FBT payable would be \$2 082 (\$4 249 x 49% FBT rate).
- **Deduction** – \$ 1800 (50% of the \$3 600 GST-exclusive cost of the party) would be deductible. At a 28.5% tax rate, this would reduce the cost of the party by \$513.
- **GST** – \$180 (50% of \$360) could be claimed back as a GST credit.

Thus, the after-tax cost of the party would be \$5 349 (\$3960 + \$2 082 - \$513 - \$180).

#### CONCLUSION

In this common scenario, by using the Actual Method (rather than the 50/50 Method) and keeping the party under \$300 per-head, the employer has saved \$1 389 after-tax. This example illustrates the sting in the tail of FBT; payable as it is at 49%. Although the company enjoyed a tax deduction and GST credits under the 50/50 Method, the FBT cost far outweighed this.

#### GIFTS

Provided gifts are only given at Christmas time and are less than \$300, the minor benefits exemption can be used to exempt from FBT all sorts of common Christmas gifts to employees including hampers, gift vouchers, movie or sporting tickets, perfume, flowers, pen sets, bottles of alcohol etc.

#### WEEKENDS AWAY

An employer may also consider rewarding their staff at Christmas time with a weekend away, which typically involves an evening meal at a restaurant and an overnight stay at a nearby hotel. Under the Actual Method, FBT will be payable in respect of the accommodation which will be deemed to be meal entertainment as it is provided in connection with the function. FBT will also be payable in respect to the dinner/drinks. FBT will apply to both employees and their partners. However, each of the benefits will be eligible for the \$300 minor benefits exemption – with each receiving its own \$300 threshold (i.e. \$300 threshold for employee accommodation; \$300 threshold for partner accommodation; \$300 threshold for employee dinner/drinks; \$300 threshold for partner dinner/drinks).

Under the 50/50 Method, FBT will be payable in respect of 50% of the total meal and accommodation expenditure, with a 50% GST credit and a 50% income tax deduction claimed accordingly. Again though, with the FBT rate at 49%, the 50% tax deduction and 50% GST credits available under the 50/50 Method is unlikely to provide a better after-tax result than the Actual Method.

#### WHY?

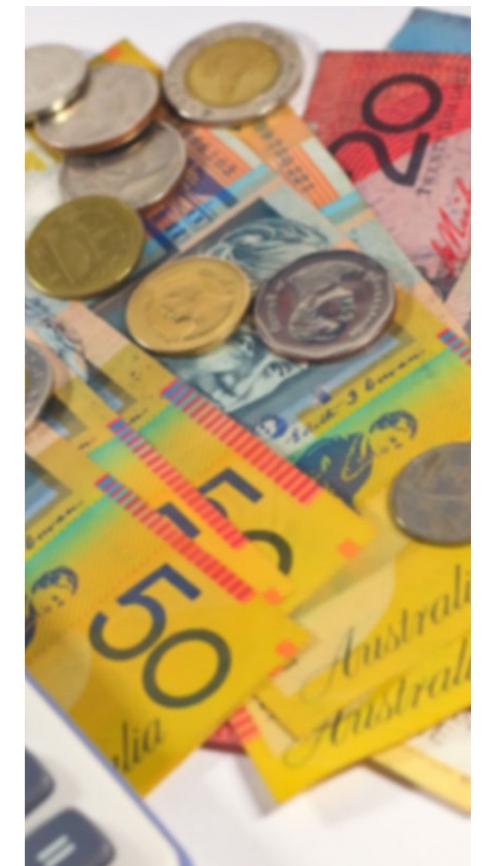
Given the significantly better results that can be achieved with the Actual Method for valuing meal entertainment (by utilising the Minor Benefits exemption) it's reasonable to ask why an employer would choose to value their meal entertainment under the 50/50 Method? The answer is typically that where an employer provides meal entertainment to their employees on a reasonably frequent basis, the minor benefit exemption may not

apply (remember, for the exemption to apply the meal entertainment must be less than \$300 and be infrequent/irregular). If this was the case and the minor benefit exemption did not apply, then the 50/50 Method would provide a better outcome than the Actual Method, given the 50% GST and income tax reduction.

#### CASH BONUS

With the FBT rate sitting at a punitively high 49%, you may instead opt to provide employees with a cash bonus rather than a non-cash benefit this Christmas. This transfers the tax liability to the employee to be assessed at their marginal tax rate, ensures the benefit does not attract FBT, and allows the employer to claim an income tax deduction for the full value.

Alternatively, if your business is shutting down over the Christmas break and your employees are required to take annual leave (over and above the public holidays such as Christmas Day and Boxing Day) then you may wish to consider providing them with a leave bonus. This is where the compulsory annual leave days where your business is closed down (e.g. 29-31 December) are not deducted from employee leave balances but instead is granted to them as a bonus by the business. Such a bonus does not attract income tax or FBT for either party, and has no immediate cash or other impact on your business.



## & CHRISTMAS THE TAXMAN

Christmas is traditionally a time of giving – including employers showing gratitude towards staff for a job well done throughout the year. However gifts and Christmas Parties can attract the attention of the Taxman. With the

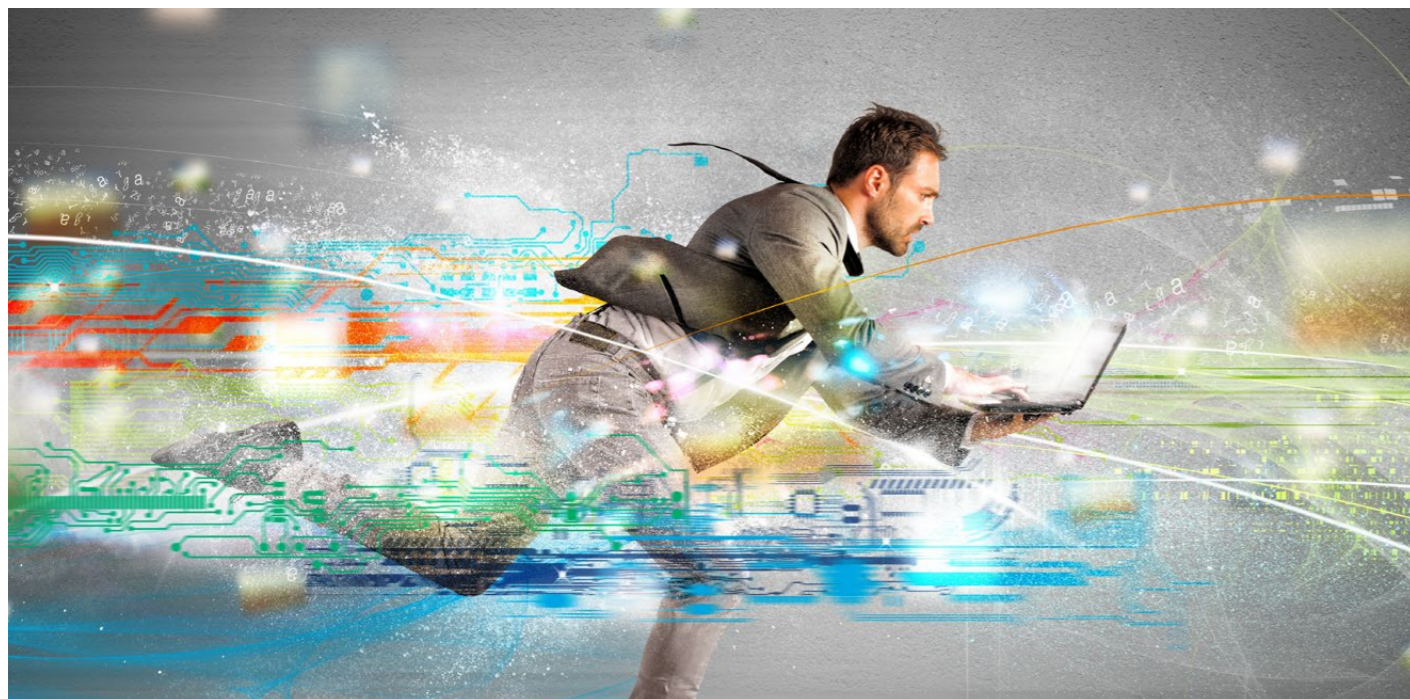
FBT rate now sitting at 49%, avoiding or minimising this impost is now more important than ever. This article looks at a range of common Festive Season scenarios, how FBT applies, and how it may be minimised.



#### PARTIES AT RESTAURANTS

In certain circumstances an employer can hold a Christmas party for staff and have it exempt from FBT. Take for example an employer holding a Christmas party at a restaurant for employees and their partners and it is the only social function they provide for employees each year. Where this is the case, it's very likely to be exempt from FBT provided the per-head cost (dinner and drinks) is kept to under \$300 per person. To enjoy this exemption you must use the Actual Method for valuing FBT meal entertainment. The Actual Method is the default method for valuing meal entertainment FBT and no election is required to use this method. Under this method, an employer pays FBT (in the absence of an exemption) on all taxable meal entertainment provided to employees and their associates i.e. their partners (but not to other parties such as clients, contractors, or suppliers). However an FBT exemption may apply.

If the meal entertainment meets the requirements of the minor benefit exemption, the costs in respect of employees and associates are exempt from FBT. Broadly speaking, under this rule a benefit will be exempt from FBT where its value or cost is less than \$300 **and**, where similar or identical benefits are provided, they are only provided on an infrequent or irregular basis. The less frequent and regular, the more likely each single similar or identical benefit will be exempt from FBT. The ATO has not specified



# TOOLING UP!

There's no doubt that complying with the tax system is a constant drain on the time of small business owners. With the recent upgrading of the ATO's Small Business app, this article takes a look at the latest tools available to small business to manage their compliance obligations.

## Small Business App

The ATO recently upgraded its Small Business app. More than 500 000 individuals have downloaded the app which has the following features:

- ABN Lookup, which verifies business details
- Tax withheld calculator, which shows you how much tax to withhold from payments to employees
- Key dates, which can set important tax and super reminders and alerts
- Payment plan estimator, which shows you how quickly you can pay off a tax debt
- Fuel tax credit calculator for Activity Statements
- Work out if employees are eligible for Superannuation Guarantee, and calculate the contributions required
- Report a concern, which enables you to report suspected tax evasion.

A new function for the app has just been released which includes a business performance check tool. This tool provides a snapshot of your business's profitability, cashflow, working capital and debt serviceability. For details on how to access the app, visit the ATO website [www.ato.gov.au](http://www.ato.gov.au) and type 'ato app' into the search box at the top of the page.

### More

While on the ATO site, check out the vast array of tools available to assist your business. Scroll down to the bottom of the home page [www.ato.gov.au](http://www.ato.gov.au) and click on 'calculators and tools'. Then apply the 'business' filter.

## Foreign Worker Eligibility

In this increasingly mobile workforce, it's quite common in certain industries for employers to employ foreign nationals in Australia on a Visa. Be aware though that a foreign national working in Australia without a Visa or in breach of their Visa conditions is an illegal worker. It's generally a criminal

offence to employ an illegal worker. It's important that employers check the work entitlements of non-citizens they wish to employ. In doing so, be aware that not all Visa holders have their Visa details recorded in their Visa, and just because they have a Tax File Number (TFN) does not mean they are legally entitled to work in Australia.

Courtesy of a new tool, you can now check the work entitlements of non-citizens. The Department of Immigration and Border Protection has developed the Visa Entitlement Verification Online (VEVO) tool which you can access on their website [www.border.gov.au](http://www.border.gov.au)

## Super?

When employing non-citizens, perhaps the most common points of confusion for employers is whether Superannuation Guarantee must be paid. Generally, unless the non-resident is doing work for you outside Australia or is a foreign executive holding certain Visas, Superannuation Guarantee is payable. You can verify whether you have a Superannuation Guarantee obligation by using the ATO's Superannuation Guarantee Eligibility Tool which is available on their website.

If eligible, you will need to provide the employee with the Superannuation Guarantee Choice form, as well as other documentation relevant to new employees (including a TFN Declaration and a Fair Work Information Statement).

## Software

Have you checked out the latest accounting software programs? There are many products in the marketplace. Talk to your accountant

about the best software program for your particular business. Modern software programs offer many benefits to the small business owner including:

### Save Time On Data Entry

Keeping your accounting file in order to allow for the preparation of tax and BAS returns, can be a time-consuming process. However, modern software programs have made quite a positive impact in this area. Software companies have taken a quantum leap forward with cutting-edge features now inherent in modern Cloud-based accounting packages. There is no question that features such as live bank feeds, data import and predictive postings reduce the time to enter data. Used properly, they can be a great labour saver for businesses.

Cloud-based packages also save on IT costs. They typically require a subscription fee

which covers not only the financial system but upgrades, maintenance, support etc. Back-up costs are also dramatically reduced as there is no need for physical off-site storage (rather, all your data is held 'in the cloud' – all you need to access it is an internet connection).

### Lodgement

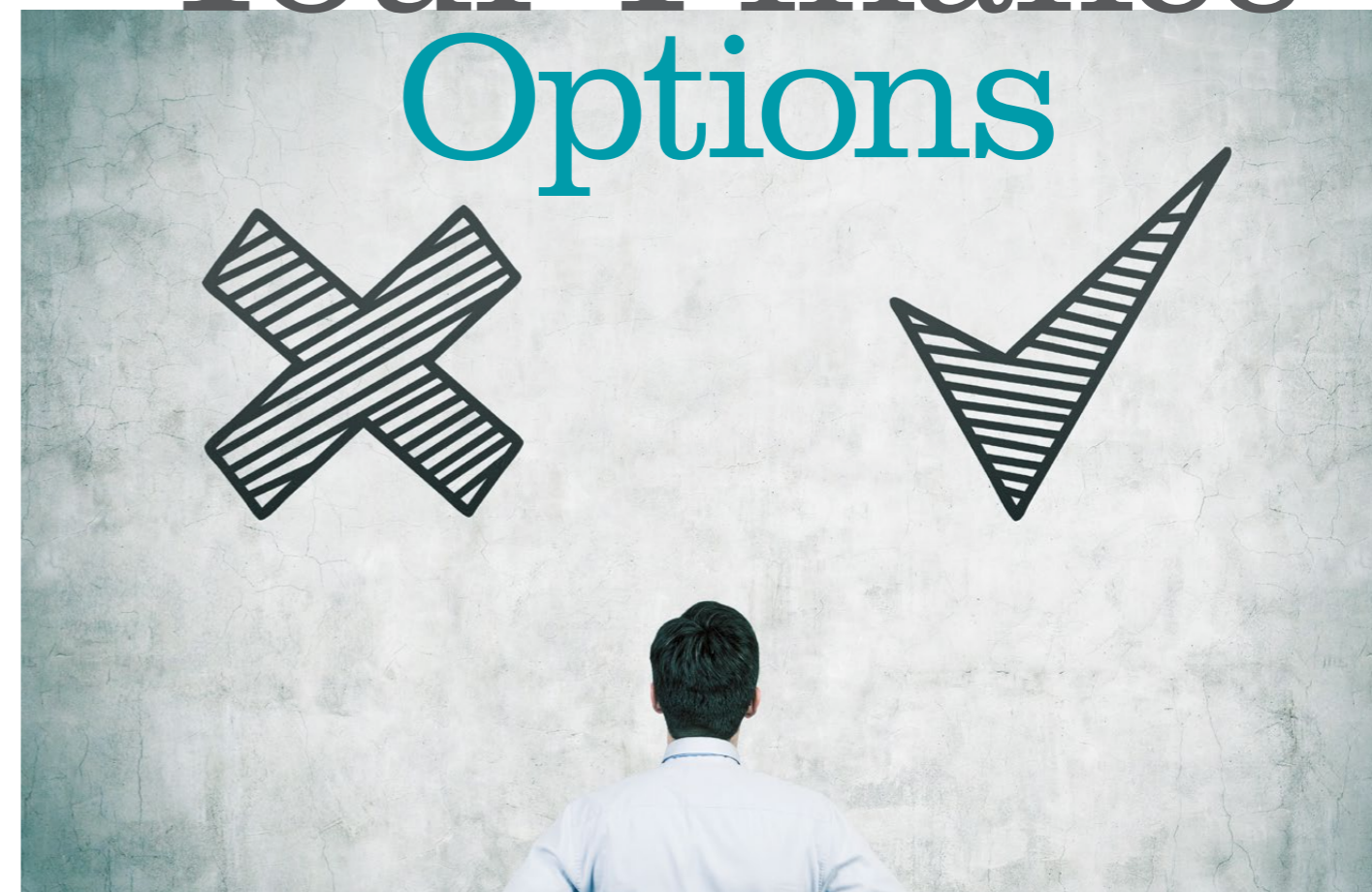
Another benefit of modern software is the time saved on document preparation and lodgement via Standard Business Reporting. SBR is built into business/accounting software making it SBR-enabled (in other words, it is free as part of your business software). SBR incorporates standard terms that are used in government legislation and reporting. These terms are then linked to terms that are in the business/accounting software.

SBR extracts information that has been recorded in business/accounting software as

part of running your business and prefills this into your Activity Statement. The report can then be checked for accuracy and submitted directly and securely to the ATO using an AUSKey, without the need to log into a separate portal. Compared to other ways of lodging your Activity Statement, SBR can reduce preparation and submission time to a matter of seconds.

You can also use SBR to lodge other Government forms such as payroll tax returns and financial statements with ASIC. Furthermore, by using SBR to lodge your Activity Statement, you are granted an additional two weeks to lodge. For a practical demonstration of Activity Statement preparation using SBR, Google 'lodging an activity statement with SBR'

# Your Finance Options



With the introduction of the instant asset write-off and the current low interest rate environment, now is an opportune time to purchase business equipment including

motor vehicles. This article examines the tax consequences of four different types of acquisition – outright purchase, lease, chattel mortgage and hire purchase.



Darrell Weekes

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# Your Finance Options [Cont.]

## Outright Purchase

The advantage of purchasing equipment or a vehicle outright, as opposed to financing the acquisition of the item, is that there will be no ongoing costs of finance; though this may not be such a big issue in these times of relatively low interest rates. On the downside, outright purchases can impact on the cash resources of an entity when those funds may be better utilised elsewhere. It's also worth noting that it is far easier to obtain finance for the acquisition of a vehicle than it is for the acquisition of trading stock. Care should therefore be taken not to cripple your business' cashflow if considering an outright purchase.

As the owner, depending on the cost of the asset, you are entitled to claim an immediate write-off deduction in the year the asset is first used or installed ready for use in your business. Eligibility for a write-off depends on the type of taxpayer and the cost of the item as follows:

TYPE OF TAXPAYER	WRITE-OFF THRESHOLD
<b>Small Business Entity</b> - Carrying on a business with a turnover of less than \$2 million	<b>&lt;\$20 000</b> - applies from 7:30pm on 12 May 2015 to 30 June 2017
<b>Non-Small Business Entity</b> - Turnover of \$2 million or more	<b>&lt;\$100</b> - small, loose tools and similar items - also be aware of the sampling rules
<b>Non-Business Taxpayer</b> e.g. landlord, investor, employee	<b>&lt;\$300</b> - where the assets are part of a set or are identical in nature, their cost is added together for the purposes of the \$300 threshold

Assets costing above the amounts listed in the table and depending on the type of taxpayer will need to be depreciated. If you are a Small Business Entity (SBE) items will be placed into a general pool to be depreciated at 15% in the

asset's first year, and 30% in subsequent years. Once the value of the pool falls below \$20 000 all assets within that pool can be immediately written-off (note this increase to \$20 000 in the value of the pool able to be written-off applies for the period 12 May 2015 to 30 June 2017).

Non-SBEs will need to depreciate the asset over the term of its effective life under the Uniform Capital Allowances (UCA) regime. (Non-SBEs also have access to a low value pool for assets between \$100 and \$1000 with depreciation rates of 18.75% in Year 1 and then 37.5% in subsequent years). The ATO has released *Taxation Ruling TR 2015/2* (typically updated annually) outlining the effective life of depreciating assets from 1 July 2015. The concept of effective life underpins depreciation under the UCA regime. Although you can estimate your own effective life of an asset, practically it is difficult for bookkeepers, accountants or the owners of a business to do this, and therefore most businesses default to the rates in the ATO Ruling.

### WARNING – MOTOR VEHICLES

Although for virtually all assets depreciation will be based on an asset's cost (which is broadly the amount that you acquired the item for plus amounts you paid after acquisition to bring the asset to its present condition and location, such as costs of improving the asset), slightly different rules apply to cars. Where a car exceeds the car limit (currently \$57 466) its cost for depreciation purposes is reduced to this limit; meaning that depreciation deductions can not be claimed on the excess.

### GST

For outright purchases, under the GST accruals method creditable acquisitions are attributable to the tax period in which the earlier of the following occurs:

- An invoice is issued/received, or
- The consideration (i.e. money) is received/paid.

On the other hand, if you account on a cash basis, GST credits are attributed to the tax period in which you pay for the item. Whatever your method of accounting, you must be in possession of a valid tax invoice before GST credits are claimed.

As with depreciation, the GST claimable on cars is limited by the car limit. As highlighted above, with the car limit being \$57 466, any purchase of a vehicle that exceeds this limit will have the GST claim capped at \$5 224 (being 1/11th of \$57 466).

### Lease

Rather than choosing to acquire the item outright, your business may elect to finance the acquisition and thus lessen the cash outlay that is initially required and therefore the cashflow impact on your business. The central issue that surrounds any form of financing, and how it is to be accounted for, is whether the person providing the asset under the finance arrangement is the legal owner of that asset. This issue goes to the heart of how the finance transaction is to be treated and is often the subject of ATO scrutiny. The ATO has warned taxpayers about the trap of claiming deductions for what appear to be lease payments when in fact the finance arrangement is a Hire Purchase or similar type of transaction. The only way to identify the difference is to read the terms and conditions of your particular finance agreement. The ATO will consider a finance arrangement to be a lease when:

- There is no option to purchase the item written into the agreement, and
- The residual value reflects a bona fide estimate of the item's market value at termination.

If these two conditions are not met, the ATO generally considers the finance agreement to be a Hire Purchase or other instalment type agreement. In effect, a leasing document identifies the owner of the item as being the lessor with the lessee merely renting the item from them for regular fixed instalments. It is important to identify which method of finance is used to acquire the item for the following reasons.

- Under a leasing arrangement, the lease payments are deductible to the extent the item is used for income producing purposes, and the financed sum is not typically booked on the Balance Sheet.
- Where the financing arrangement is not considered a lease, the item is booked as an asset on the Balance Sheet and depreciated. In addition, the financed sum is booked

as a liability and that component of each repayment that represents interest is expensed and the remaining principal reduces the liability.

As the lessee is not the owner of the item, the tax invoice for the purchase of the item would go to the leasing company who would deal with making the claim for any GST on the purchase price of the item at their end. In effect, when an item is financed under a lease arrangement, the amount financed is the GST-exclusive price of the goods.

On payment of the final instalment, the lease company would typically give you the choice of acquiring the goods or handing them back. At this point in time, the final payment (if made) represents an acquisition of the goods and payment of the residual value is booked as an asset on the Balance Sheet.

### LEASING ADVANTAGES

- Less cashflow impact than an outright purchase – you get to use the item but without having to pay full price upfront. Rather, you only need to pay the monthly lease payments
- Committed financing for the length of the asset's usage
- You know the costs up-front (i.e. the lease payments). By contrast, with buying, the costs are uncertain as the inputs and disposal costs are unknown

### DISADVANTAGES

- If not acquiring the item at the end of the lease, the equipment needs to be returned in good working order and in original form
- Costs in returning the equipment to the lessor (e.g. transport)
- Termination fees for early repayment
- Sometimes you may want to retain the goods beyond the end of the lease, but there is no implied option to buy. This would need to be negotiated with the lessor based on current market prices

### INCOME TAX

Under a lease arrangement ownership vests with the lessor and it is the whole lease payment (less any GST, if registered) that is expensed in the profit and loss rather than being split into a principal and interest component. The extent of the allowable deduction for income tax purposes will depend upon the business usage of the item by your business as the lessee. No depreciation can be claimed.

### GST

The amount financed is the GST-exclusive amount. As we identified in our earlier discussion, leased goods are not owned by the

lessee, but rather ownership is retained by the lessor. As such there is no purchase of an asset but rather there are rental or hire payments in respect of the asset's use. It is the rental payments themselves that attract any GST. As such any GST to be claimed is done so in respect to the amount that may be imbedded in the lease instalment. For a taxpayer accounting on a cash basis, any GST would be claimed in the period the physical lease payment was made. For an accruals basis GST taxpayer, the GST would be claimed in the tax period in which the lease payment was due (whether paid or not).

### Hire Purchase

A Hire Purchase arrangement is simply another form of finance. Its tax and GST treatment however are vastly different from both that of leasing and acquisition by Chattel Mortgage. As a result this form of finance needs to be considered on its own merits. In essence, a Hire Purchase arrangement is an agreement to purchase goods by instalments. The term 'hire purchase' is defined in Section 995-1 of the Income Tax Assessment Act 1997 (ITAA 1997) as:

*"A contract for the hire of goods where:*

- The hirer has the right or obligation to buy the goods and*
- The charge that is or may be made for the hire, together with any other amount payable under the contract (including an amount to buy the goods or to exercise an option to do so), exceeds the price of the goods and*
- Title in the goods does not pass to the hirer until the option to purchase is exercised or*
- Where title in the goods does not pass until the final instalment is paid."*

Unlike a lease where there is no obligation to acquire the goods at the end of the instalment period, a Hire Purchase arrangement provides for this obligation and as such the goods will be eventually owned by the purchaser.

### HIRE PURCHASE ADVANTAGES

- Less cashflow impact than an outright purchase – you get to use the item while you are still paying it off and eventually become the owner at the end of the repayment period (and any balloon)
- Is a form of secured finance and thus allows for lower interest rates
- Interest and monthly repayments are fixed, allowing you to plan ahead with certainty
- Flexibility of repayments. Allows for a balloon payment at the end of the arrangement which can be used to reduce your monthly instalments. Deposits can also be used to reduce the size of the loan.

### DISADVANTAGES

- You're in a fixed contract. If your commercial situation changes, you may default and lose the asset despite the repayments you have already made
- You will pay more for the asset than under an outright purchase as you are paying interest over the term of the arrangement.

### INCOME TAX

Where the item is either purchased outright, or financed under a Hire Purchase or Chattel Mortgage arrangement, then an income tax deduction may be allowable in respect of the depreciation or decline in value of the asset acquired. In addition to depreciation, where the goods are owned or deemed to be owned by the purchaser, there are the financing costs to consider. Under both the Hire Purchase and Chattel Mortgage, the purchaser is faced with a regular instalment that is required to be split into an interest and a principal component. The interest costs are to be expensed, whilst the principal costs reduce the financed amount in the Balance Sheet. It is therefore very important to obtain from the bank a schedule that identifies the split in these components for each repayment and to account for that split accordingly.

### GST (cash or accruals)

#### 1. Purchase of Asset

Since 1 July 2012 you are entitled to the **full amount of the GST immediately** (the GST on the purchase price of the item and all interest charges and fees) irrespective of whether you account on a cash or accrual basis for GST. You should therefore record the asset as a capital acquisition. Bear in mind also that if an amount has been shown as a capital acquisition, you may still be required to add back an amount relating to input taxed usage or private usage if applicable.

#### 2. Payment of Instalments

For BAS purposes, since 1 July 2012 all the GST is claimed upfront, therefore the principal component and interest component of each Hire Purchase instalment is to be treated as being outside the GST system.

### Chattel Mortgage

A Chattel Mortgage as a form of finance treats the purchaser of the goods as the owner of the goods as if they had acquired them outright but have borrowed in order to do so. They are effectively treated as owning the goods from the outset of the arrangement unlike a Hire Purchase which views the purchaser as the eventual owner but only on payment of the final instalment. Under a Chattel Mortgage, once you have paid off the loan, the mortgage is removed – much like a traditional home mortgage.



A Chattel Mortgage from the perspective of recording the asset purchase and recognising the liability is identical to that of a Hire Purchase arrangement. The difference between a Chattel Mortgage and other forms of finance such as Hire Purchase and lease comes when dealing with the GST consequences which will be discussed later.

Like the Hire Purchase arrangement, the repayment of borrowed funds is required to be broken down into an interest and principal component which is then expensed and reduces the borrowing, similar to a Hire Purchase.

**CHATTEL MORTGAGE ADVANTAGES**

- Less cashflow impact than an outright purchase – you get to use the item while you are still paying it off
- As a secured form of finance, lower interest rates can be enjoyed
- You are treated as the owner from the outset, and therefore have use of the asset, and the ability to claim depreciation, GST

credits and interest

- Balloon payments can be arranged – thus lessening your monthly repayments

**DISADVANTAGES**

- Not a regulated loan product under the National Consumer Credit Protection Act. Therefore credit checks are not required to be undertaken. Likewise, borrowers are vulnerable in that fees, charges and any early payout penalties are not required to be spelled out as they are under regulated loan products

**INCOME TAX**

The treatment is precisely the same as that under a Hire Purchase (see earlier).

**GST (cash or accruals)**

*1. Purchase of Asset*

Under a Chattel Mortgage arrangement you are entitled to the full amount of the GST on the purchase price of the item immediately,

irrespective of whether you account on a cash or accrual basis for GST. This is because the creation of the Chattel Mortgage contract amounts to a settlement for the purchase of the item. You should therefore record the asset as a capital acquisition. Bear in mind also that if an amount has been shown as a capital acquisition, you may still be required to add back an amount relating to input taxed usage or private usage if applicable.

*2. Payment of Instalments*

The interest component of each Chattel Mortgage instalment is a financial supply, therefore it needs to be treated as a GST-Free acquisition. The principal component of each instalment is to be treated as being outside the GST system.

**TAX**



This article offers readers a range of tax tips. Areas covered include CGT tips for home-based business owners, improved depreciation rules for primary producers, the key to applying the small business CGT concessions, and more.

*“As the owner, depending on the cost of the asset, you are entitled to claim an immediate write-off deduction in the year of acquisition”*



**Home Office**

For the many of you that have home-based businesses, the ATO has recently updated information on its website regarding claimable expenses. Only if you have a home-based business are you permitted to claim occupancy expenses such as mortgage interest, rent, house insurance, rates etc. To qualify as a home-based business you will need to meet one of the following criteria:

- **You Work At home** – that is, you carry out most of the business' work at your home. For example, a dressmaker who does all their work at home, with clients coming to their home for fittings.
- **You Work From home** – that is, your business does not own or rent any premises other than your home. For example, a tiler who does most of their work on clients' premises but does not have any other business premises.

In addition to this you would also need to show that an area of your home was set aside exclusively for business purposes. The downside of claiming occupancy expenses (mortgage interest, rent, house insurance, rates etc.) is that when it comes time to sell your home you may lose the main residence exemption from CGT on the portion of your property used in your business. To this end, if you're contemplating buying a new family home, consider acquiring it your spouse's name if you are intending to use it for business purposes. By doing so, you may be able to retain the full CGT exemption. However, in these circumstances, interest expenses incurred on moneys borrowed by the spouse (or other family member) to acquire the property (or an ownership interest in it) will not be deductible, because





the spouse (or other family member) is not using the property themselves for income-earning purposes.

## HELP Repayments

As announced in the 2015 Federal Budget, non-residents who have a HELP debt (formerly known as HECS) will from 1 July 2017 be forced to make compulsory repayments as though they were a resident. As under the HELP regime for residents, the more the person earns, the larger the compulsory annual repayment amount will be. To date draft legislation to enact this measure has not been released, thus there is little detail as to what income test will be used (it will need to be different to that which applies to residents) and what enforcement mechanisms will be put in place.

However, what is known to date is that:

- The new non-resident regime applies to all existing and future HELP debts
- Legislation will commence on 1 January 2016, with the first compulsory repayments to be made from 1 July 2017, based on 2016/2017 income.
- Debtors must register with the ATO through MyGov. Those already overseas have until 1 July 2017 to register. Those leaving for Australia after the measure commences (1 January 2016) will need to register before they leave.

On a broader level, for those who have HELP debts (whether residents or non-residents) we offer the following tips on managing your debt:

- The bonus for making a voluntary repayment (in contrast to a compulsory repayment which may be deducted from your salary each pay period) of \$500 or more is now down to just 5% (it once stood at 15%). That is, if you make a voluntary repayment of \$1000 for example, the ATO will deduct \$1 050 off your debit (\$1000 + 5%).
- No interest is applied on your outstanding debt, however debts are indexed on 1 June each year in line with the Consumer Price Index (CPI). Last year for instance, the CPI figure was 2.1% (thus outstanding debts increased by this amount). Therefore, your debt will increase each year on this date. This itself provides an incentive to pay your debt off as quickly as possible – perhaps by making a voluntary repayment.
- If you are contemplating making a voluntary repayment, we recommend doing it in a single large lump sum rather than smaller amounts over multiple payments. The bigger the single voluntary repayment, the bigger the 5% bonus (provided the payment is \$500 or more).

- Compulsory HELP repayments can be a significant impost. If you are a relatively low income earner of \$55 000 for example, you may be required to pay an extra 4% tax under the current repayment thresholds. If you earn over \$100 000, compulsory HELP repayments can be as high as 8% of your income. What is not known by many people is that you can defer your compulsory repayments if making those repayments would: **(a)** cause you serious financial hardship or **(b)** there are other special circumstances affecting you (e.g. natural disasters, or death or serious illness in the family that requires you to travel). To apply for a deferral, you should contact the ATO.
- The amounts that are deducted from your salary each year are subtracted from your debt balance when you lodge your tax return following the end of the previous financial year. Therefore, if you are contemplating paying out your HELP debt by making a voluntary repayment, we recommend doing so before you lodge your tax return, otherwise you may not get the benefit of the 5% bonus – as per the following example:

### EXAMPLE

In June 2016, Doug has a remaining HELP debt of \$6 000. In 2015/2016, Doug's income for HELP repayment purposes is \$90 000, and accordingly he has had \$6 300 withheld by his employer during the year. Nearing the end of 2015/2016, Doug decides to pay out the full \$6 000 via a voluntary repayment of \$5 715 (+ 5% bonus of \$285). The timing of the voluntary payment is important as follows:

#### A] Payment Made Following Lodgement of 2015/2016 Tax Return

If Doug makes the voluntary payment following the lodgement of his tax return, the debt will have been reduced to nil as the \$6 300 PAYG will have been applied. There is no 5% bonus applied to compulsory repayments. Therefore, Doug has missed out on the \$285 bonus, and his voluntary repayment of \$6 000 will be refunded.

#### B] Payment Made Before the Lodgement of the Tax Return

If Doug makes the voluntary payment before lodgement of his return, then Doug will get the benefit of the \$285 bonus, and the \$6 300 PAYG that has been withheld will be applied as a credit on his tax assessment and, all other things being equal, may be refunded to him when his tax return is lodged. By receiving the 5% bonus, Doug is \$285 better off than under Scenario A.

#### C] Payment Made Before 1 June 2016

Doug will avoid indexation if he makes the payment before this date. Assuming an annual indexation rate the same as last year, this would mean Doug would save \$126 more compared to Scenario B (or \$411 compared Scenario A).

## CGT Concessions – Starting Point

Last income year alone, more than \$12 billion of concessions were claimed under the CGT Small Business Concessions, allowing business owners to dramatically reduce and in some cases eliminate CGT on the sale of business assets (including their entire business). There's no doubt, particularly where there are multiple entities involved, applying the concessions can prove complex. However, you can make this process considerably easier if you establish the following two points right from the outset:

### 1. Who Actually Owns the CGT Asset That Has Given Rise to the Capital Gain?

This question is important in determining whether the taxpayer qualifies for the concessions in the first place by satisfying either the \$6 million Net Asset Value Test or the \$2 million Turnover Test. These two tests require the aggregation of the net value of assets or turnovers of the taxpayer plus affiliates and connected entities respectively. Without first determining who owns the asset, it is impossible to work your way through these concepts. Therefore, when starting out, it's essential to correctly establish ownership of the asset giving rise to the gain – is the asset owned by an individual, a trust, a beneficiary of the trust, a company, or a shareholder of the company?

### 2. What Is the Asset That Gives Rise to the Capital Gain?

This sounds obvious. But, for example, is the asset being sold owned by a company or is it shares in the company owned by a shareholder? In the latter case, additional conditions will need to be met before the concessions can be applied. Being clear on this question is also important for the purposes of establishing any entitlement to the time-based concessions such as the 50% discount, the Active Asset Reduction and the 15-Year exemption.

Without being clear in your mind about the above two questions, applying the CGT Small Business Concessions correctly becomes impossible. Use these two key questions as your starting point – and refer back to them when applying the concessions.

## Bonanza for Primary Producers

While much of the attention in the recent Federal Budget surrounding depreciation was focused on the \$20 000 small business write-off, primary producers were also big winners on the depreciation front. The following table summarises the new rules that apply to assets that primary producers start to hold, or to expenditure incurred, at or after 7.30 pm on 12 May 2015 which have now been passed by Parliament:

OLD LAW	NEW LAW
Primary producers may deduct capital expenditure on a fodder storage asset (1) over the effective life of the asset (this could be between 10 to 50 years depending on the asset)*	Primary producers may deduct capital expenditure on a fodder storage asset over three years

OLD LAW	NEW LAW
Primary producers may deduct capital expenditure on a water facility (2) over three years*	Primary producers may deduct capital expenditure on a water facility in the year in which the expenditure is incurred
Primary producers may deduct capital expenditure on a fencing asset (3) over the effective life of the asset (this could be up to 30 years depending on the asset)*	Primary producers may deduct capital expenditure on a fencing asset in the year in which the expenditure is incurred

\*Primary producers that are small business entities may be able to choose to depreciate this expenditure over a shorter timeframe

- (1) **Fodder storage** asset is defined as an asset that is primarily and principally for the purpose of storing fodder (including extensions and improvements).

Common examples of fodder storage assets include silos, liquid feed supplement storage tanks, bins for storing dried grain, hay sheds, grain storage sheds and above-ground bunkers for silage. 'Fodder' refers to food for livestock, usually dried, such as grain, hay or silage.

- (2) **Water facilities** include dams, earth tanks, underground tanks concrete or metal tanks, tank stands, bores, wells, irrigation channels or similar improvements, pipes, pumps, water towers, windmills (or extensions or improvements to any of these).
- (3) **Fencing asset** is an asset or structural improvement that is a fence, or a repair of a capital nature, or an alteration, addition or extension, to a fence. The term 'fence' takes its ordinary meaning and includes an enclosure or barrier, usually of metal or wood, as around or along a field, or paddock. It also extends to parts or components of a fence including, but not limited to, posts, rails, wire, droppers, gates, fittings and anchor assemblies.



## TAX TIP INTERACTION WITH SMALL BUSINESS DEPRECIATION RULES

Instead of using the above new rules, primary producers that are small business entities (SBEs) may choose, on an asset-by-asset basis, to claim depreciation on the above expenditure by using the standard SBE depreciation rules – whichever results in a more favourable outcome.



“Primary producers were also big winners on the depreciation front”

# WHAT THE TAXMAN IS THINKING

In this edition, we look at the launch of the ATO deductions app, detail new support for drought affected taxpayers, examine the ATO's final position on the allocation of profits within professional firms, and much more.

## Deductions App

The ATO has just launched the **myDeductions** app. The app, which is designed for individuals claiming work-related expenses as an employee, makes it easier and more convenient for you to store all your deductions in the one place. You can use the tool to:

- Capture and classify work-related expenses, gifts and donations or the cost of managing your tax affairs
- Store photos of receipts
- Record car trips.

Next year at Tax Time (July 2016 onwards) you can upload your completed deductions to the ATO and they will then pre-fill your individual tax return for you with the information you have recorded. You can also share your deductions via email. Never miss out on a deduction claim because of a lost receipt again! Download the ATO app from [www.ato.gov.au](http://www.ato.gov.au) and start using the **myDeductions** tool.

## Support for Drought Affected Taxpayers

The Government has announced new help for drought-affected communities to assist in managing their tax affairs.

Under this new initiative, the ATO will work with the Department of Agriculture to identify drought-affected taxpayers with a view to providing personalised assistance and customised support plans for business owners and communities in these areas. Additionally, a new dedicated hotline has been established **13 11 42**. Drought-affected taxpayers who need support can now ring this hotline and discuss their situation and the options available to them to manage their tax obligations. These options include individually tailored payment plans including interest-free periods, and extensions of time to pay tax bills or to lodge returns and Activity Statements. The ATO has also vowed to contact businesses in drought-affected areas to make them aware of the options available to them to help them meet their obligations. As part of this, ATO representatives will visit some regional towns and centres to provide face-to-face support, and also hold a series of 'town hall' style meetings.

If you're a drought-affected taxpayer or business, get in touch with the ATO and discuss the available options to manage your tax affairs.

## Beware of Tax Scams

A pensioner caring for his sick wife has lost more than \$100 000 in a tax scam.

WA Consumer Protection says that the 81 year-old was conned by scammers pretending to be from the ATO. The scammers contacted the man and told him that he owed money to the ATO and that he would be jailed unless he paid the amount owing immediately. The scammers also told him that his wife and three children would lose their jobs. In WA alone, more than \$157 000 has been lost as a result of this scam, with Consumer Protection receiving more than 850 enquiries from taxpayers who have been targeted. Responding to the scam, Anne Driscoll from WA Consumer Protection said:

*I am concerned that the increasingly threatening nature of the ATO scam calls is intimidating many in our community, including seniors, with the urgent demands forcing victims to respond and lose their money to these heartless and ruthless criminals. The most recent tactic has been hostile threats of court action, an arrest warrant or even prison for tax evasion unless money is paid as soon as possible.*

If you are ever contacted by someone claiming to be from the ATO and you have any suspicions as to their identity or they are demanding payments from you that you were otherwise unaware of, we recommend asking them for their name and the office from which they are calling from. You should then phone the ATO back on their general number **13 28 61** and ask to be put through to the person who contacted you.

## Professional Practices and the Allocation of Profits

The January/February 2015 edition of this publication contained an article about the ATO's release of draft guidelines on how it will apply the anti-avoidance provisions of the Tax Act to the allocation of profits from professional firms (including all professional practices such as doctors, lawyers, accountants, architects etc.).

The guidelines have now been finalised, and they basically mirror the draft guidelines. By way of background, in terms of the application of the guidelines the ATO states:

*These guidelines apply where the practice income is being generated by a business structure and does not, therefore, constitute income from personal services. Broadly, income from personal services is income earned mainly as a result of personal efforts or skills, rather than being generated by assets or employees of a firm.*

At the core of the ATO's concerns are arrangements which are designed to ensure that the individual practitioner professional (e.g. a partner/director of the practice) is not being directly rewarded for the services they provide to the business or receives a reward which is significantly less than the value of their services. With the guidelines now finalised, going forward the ATO will now apply the following three tests outlined in the guidelines. Where at least one of these tests is met, a taxpayer will be rated at "low risk" and not be subject to ATO audit. At the other end of the spectrum, where a taxpayer fails all three tests, they will be rated as "high risk" and are much more likely to be audited. The three tests are:

**1. Equivalent Remuneration Test**  
The individual professional practitioner (IPP) (e.g. partner of a partnership, director of the company etc.) needs to receive remuneration which is equivalent to, or higher than, the lowest paid member of the upper quartile of professional employees in the firm (or similar equivalent firms). This includes the cost of any fringe benefits and any FBT amount payable in respect of such benefits.

**2. 50% Test**  
At least 50% of the income to which the IPP and their associated entities are collectively entitled to is assessable in the hands of the IPP.

**3. 30% Tax Rate Test**  
The effective tax rate must be 30% or higher on both (a) income from the firm to which the IPP is entitled (b) income from the firm to which the IPP and their associated entities are collectively entitled.

With these guidelines now finalised, if you or your clients have a professional services firm including one listed in the industries above, we recommend applying the above tests to your firm to determine whether the allocation of profits to the IPPs is in line with ATO expectations.

### New Rulings GST Ruling GSTR 2015/2

This ruling explains the GST treatment of particular transactions arising in the context of development lease arrangements entered into between Government agencies and private developers.

#### ATO ID 2015/16

Capital Works: construction expenditure area - rental property previously used as a display home

#### ATO ID 2015/21

Allocations from reserves and concessional contributions caps. Allocations to a member's account by the trustee of a superannuation fund from a self-insurance reserve can be taken into account in calculating the member's concessional contributions for capping purposes.

#### Rio Tinto Services Limited v FCT [2015] FCAFC 117

GST credits cannot be claimed if residential accommodation is supplied as an incidental part of a larger business. In this test case before the Full Federal Court, Rio Tinto argued that it was entitled to claim GST credits for acquisitions made in providing and maintaining residential accommodation for its workforce in remote locations. The Court disagreed.

### SuperStream

With the extended 31 October 2015 deadline now having passed for larger business, the ATO continues to push its *SuperStream* compliance message.

*SuperStream* is a new way of making and receiving employer superannuation contributions (such as Superannuation Guarantee). *SuperStream* is compulsory for all employers making superannuation contributions, and is also compulsory for all APRA-regulated superannuation funds, and SMSFs who receive employer contributions. From an employer standpoint, the new regime requires you to make all employee superannuation contributions (including compulsory Superannuation Guarantee contributions) by submitting the payment and related data electronically in a consistent and simplified manner (in a special format). No longer will you be able to simply make BPAY, cheque or cash payments directly to super funds in the manner that you may have done in the past. The deadline for compliance is:

- 31 October 2015 for employers with 20 or more employees
- 1 July 2016 for employers with 19 or less employees.

It's recommended that you don't leave it until the last minute (just before these dates) to act, as it could take you a few months to road-test, and iron out any kinks in, your chosen *SuperStream* solution. As an employer, your *SuperStream* solution may involve doing any of the following:

- Upgrading your payroll/accounting software – the latest versions of the main software brands are now generally speaking *SuperStream* compliant
- Using an outsourced payroll provider (e.g. payroll bureau or other service provider such as a tax agent or BAS Agent) and leaning on them for a solution
- Using a commercial superannuation clearing house or the ATO's Small Business Clearing House. This solution will generally enable you to continue to make payments like you usually do (e.g. electronic transfer or BPAY) without any change to your current systems
- Using your default superannuation fund (which may have its own compliant facilities).

With the 31 October deadline now having passed for larger employers, the ATO says that it will soon turn its attention to identifying employers who are not complying with the new regime. The ATO advises that it will continue to help employers adopt *SuperStream*, but there could be penalties for those who deliberately choose not to adopt it.

### Yasi Victims Targeted

The ATO has recently written to North Queensland rental property owners in the region hit by Cyclone Yasi in 2011. This correspondence was heavily reported in the media recently (see for example in *The Australian* newspaper on 30 August). In the correspondence the ATO makes the observation that in some cases the rental income declared on owners' returns is down from previous years, pre-Cyclone. The correspondence then goes on to caution the owners that if they are either using their properties as holiday homes or letting them at a discount to family members, then their deductions claimed on their returns should be reduced accordingly. For their part, many owners in the area claim that the declared income is down not because of these reasons, but rather because they are struggling to find paying tenants in the post-Cyclone period.

#### ATO STANDPOINT

Although the ATO may not have correctly pinpointed the main reasons for rental income

being down post-Cyclone, the ATO's broader points are valid and reiterate concerns expressed in its recently-released *Building Confidence* document (this document, amongst other things, flags ATO focus areas in the coming 12 months). These ATO concerns were encapsulated in the following ATO Case Study:

#### ATO Case Study – Holiday Homes

The ATO recently amended a taxpayer's return to disallow deductions claimed for a holiday home after discovering that the home was rented to family and friends during the year at less than market rate.

Apart from a brochure which was only available at the taxpayer's business premises, there were no realistic efforts made to rent the property. The nightly rent advertised in the brochure was appreciably higher than that of surrounding properties. The pattern of income did not match the advertised rate, or the requirement for a minimum five-night stay.

Accordingly, the ATO ruled that the property was mainly used for the taxpayer's personal use, and the deductions were therefore limited to the amount of income earned from family and friends. The end result was that the taxpayer had to pay more tax, and a penalty was imposed.

#### TAXPAYER STANDPOINT

If the contentions made by some owners in the Cyclone ravished area are correct (i.e. that the rental property income declared on their returns is down because they are struggling to find paying tenants) then the position taken in their tax returns is correct. That is, they are entitled to claim the **full cost** of making their properties available for rent (including interest on borrowings used to purchase the property, Council rates and water charges, maintenance, insurances etc.) provided the property is (a) genuinely available for rent or (b) is indeed being rented at commercial rates. To evidence the former an owner would need to point to tangible proof to indicate that the property has been advertised to the public at large such as listings with real estate agencies, or advertisements in newspapers or public noticeboards. Merely advertising to a closed circle such as work colleagues, friends and associates is unlikely to be sufficient. Evidencing the latter (i.e. that the property is being rented out at commercial rates) may involve a comparison between the rental prices for other similar properties in the area or surrounding areas which could easily be obtained from local real estate agencies.

### GST and Online Shopping

In a Media Release dated 21 August 2015, the Federal Treasurer Joe Hockey confirmed that all State and Territory leaders have agreed that the GST should be applied to all overseas online transactions involving physical goods from 1 July 2017.

By way of background, GST applies to online sales of goods in essentially the same way as face-to-face sales/in-store sales. However, a GST and customs duty exemption applies to imported goods (other than alcohol, tobacco and bulk orders) that have a 'Customs Value' of no more than \$1 000 (known as the low value threshold). This exemption generally only applies where the imported goods have already been purchased (such as when you order an item online from an overseas supplier and it's then transported to Australia). This existing \$1 000 threshold for imported goods gives overseas online vendors an advantage over their Australian equivalents. The "Customs Value" (which will determine whether GST applies – see earlier) is generally the price that the importer is going to pay, or has already paid, for the goods they have purchased. This must be expressed in Australian currency. If the invoice is not in Australian dollars, then to determine the cost, you must use the rate on the day the goods were exported, as published in the Commonwealth of Australia Gazette. The following table outlines the other components that make up "Customs Value"

CUSTOMS VALUE		
COST	INCLUDED	NOT INCLUDED
Freight and insurance in transporting to Australia		✓
Inland freight and insurance incurred before the goods leave the place of export	✓	
Costs of packing overseas (i.e. labor and packages)	✓	
Containers and pallets imported temporarily		✓

Under the new law it is envisaged that the non-resident vendor would be responsible for registering, charging and collecting GST. While under this soon to be introduced law online overseas shopping will become more expensive in relation to low value products, given that the threshold is set at just \$1 000, consumers will at the most only pay an extra \$100 from 1 July 2017.

This new law will commence the same time as the new 'Netflix Tax' which was announced in the May 2015 Federal Budget – see the previous edition of this publication. Under that measure offshore supplies of services and intangibles (such as streaming or downloading

of movies, music, apps, games, e-books and other digital products) will potentially be subject to GST where the recipient of the supply is an "Australian consumer" which is basically defined as a consumer who:

- Is not registered or required to be registered for GST (or alternatively a GST registered purchaser makes the acquisition but it is for non-business purposes), and
- Is an Australian resident.

### Changes to Receiving Activity Statements and Instalment Notices

If you are an individual or sole trader and have linked your *myGov* account to the ATO, the ATO will no longer be sending your BAS and PAYG instalment notices by paper. You will now receive all of your BAS and PAYG instalment notices electronically via your *myGov* inbox when they are ready. This is an important change to be aware of as many taxpayers use the receipt of the paper copy as a reminder to lodge.

If you have a tax agent or BAS Agent, they will be notified electronically when your BAS or instalment notice has been sent. They will still be able to complete and lodge these documents online. Note however that if you have a prior, separate arrangement with the ATO to continue receive these documents by paper, you will not be affected by this change.

### Superannuation Guarantee Relief

Relief from the full imposition of Superannuation Guarantee Charge (SGC) may now in limited circumstances

be available from the ATO.

SGC is payable by an employer where they have failed to pay the required amount of Superannuation Guarantee (SG) to their employees' superannuation funds by the quarterly cut-off dates. SG is currently set at 9.5% of an employee's Ordinary Time Earnings (OTE). When the quarterly cut-off dates are not met, employers are required to raise the SGC liability themselves by lodging an SG Charge Statement and, when lodging that Statement, pay the SGC to the ATO. Upon lodgement of the Statement by the employer, the ATO is taken to have made an assessment of the employer's SG Shortfall and SGC payable on

the Shortfall as calculated and specified by the employer in the SG Charge Statement.

To be clear, if an employer has not paid sufficient SG (even \$1 less than required) by the quarterly cut-off dates, simply paying the outstanding SG amounts as a late contribution straight to the employee's superannuation fund and not lodging an SG Charge Statement in the hope that this does not get detected by the ATO, is not a legal solution. It's not up to the ATO to detect employers who have not met their superannuation obligations. Under the SG Charge self-assessment model, an employer must raise an assessment themselves by lodging an SG Charge Statement if there is any amount of SG Shortfall by the quarterly cut-off dates.

Therefore, if you have not met your quarterly SG obligations then you must follow the correct procedure by lodging an SG Charge Statement and paying SG Charge (SGC). Although most times an assessment will be raised by the employer lodging an SG Charge Statement, if an employer fails to do so and the ATO is of the opinion that the employer has not paid superannuation for their employees, the ATO may issue a default assessment of the SGC that it believes is payable. The employer will however first be informed of the ATO's intention to issue a default assessment as well as the basis upon which it will be calculated. This acts as a final warning to the employer to raise an assessment themselves. Having not lodged their own SG Charge Statement by the due date, the SG Charge payable by an employer on a default assessment will attract interest until paid.

However, before any of this procedure kicks in and you lodge an SG Charge Statement and therefore trigger an SGC liability, we recommend contacting the ATO. Where your business has a good compliance history (in relation to superannuation and ATO lodgements and payments of tax generally) the ATO has recently in some cases allowed employers to pay the unpaid SG amount to an employee's fund with an interest amount added and not force lodgement of the SG Charge Statement. This is a much more favourable outcome than paying SGC which consists of the following three components:

1. The total of the employer's SG shortfalls for each employee for the quarter (a much wider concept than Ordinary Time Earnings)
2. Nominal interest (Component 1 multiplied by 10% per annum)
3. Administration fee (\$20 per employee for whom there is an individual shortfall).

We can see therefore that being able to pay the



SG late and an interest amount is significantly better than raising an assessment and paying the typically much more expensive SGC. As stated however, a good superannuation and ATO compliance history is essential for the ATO to even consider granting leniency. The fact that the ATO might in some cases granting this leniency is something you should pursue if you are ever late with your SG payments and have a good lodgement history rather than simply lodging the SG Charge Statement and paying the 3 components noted above.

### **Taxable Payments Annual Reporting**

For those of you in the Building and Construction industry, we trust you met the newly-extended 28 August lodgement deadline for the Taxable Payments Annual Report. If you are no longer in the building and construction industry or did not make any payments to contractors during 2014/2015 but lodged a report last year, then you should complete the 'Not required to report' form available on the ATO website.

### **SMSF Audits**

The ATO is warning taxpayers of the futility of terminating an SMSF auditor's engagement (and then appointing a new auditor) on the basis that the original auditor has raised issues or concerns with the compliance of your SMSF.

By way of background, if you operate an SMSF the superannuation laws require you to appoint an auditor each year to examine the SMSF's accounts, statements and compliance. Having conducted these examinations, the auditor provides an opinion on the status of the fund (complying or non-complying). While it is the right of SMSF members to hand-pick their own ASIC-registered auditor, the ATO is reminding SMSF members that an auditor's obligation to report breaches of the SMSF rules apply irrespective of whether they complete the audit engagement or not. Therefore, even where an auditor is removed from an audit by the members of the SMSF, the auditor is still obligated by law to report to the ATO any contraventions they uncovered during their unfinished audit.

### **New Look ato.gov.au**

Have you checked out the new look ATO website?

The ATO has listened to taxpayer feedback and produced an enhanced website with the following features:

- **New Look** – the site now has an uncluttered design with a simplified layout. You'll find it easier to locate what you're looking for
- **Improved Navigation** – When you hover over the tab that's relevant to you (e.g. individual, business, not for profit, superannuation etc.) you'll be presented with a comprehensive menu of relevant topics
- **Improved Search** – The much-criticised ATO search function has been enhanced – throwing up more accurate and relevant search results. Search results also now show the date the site content was last updated
- **Mobile Friendly** – The site is now easier to use on all of your mobile devices – with larger touch-friendly buttons, larger text, and user-friendly mobile menus.

Visit the improved site at [www.ato.gov.au](http://www.ato.gov.au)

### **Understanding Business Structures**

The ATO advises that it has worked with the Department of Industry and Science and ASIC to develop a comprehensive checklist outlining key differences between two common business structures: sole traders and companies. This checklist will guide you through some of the key differences between starting and operating as a sole trader or a company. It covers issues that people commonly misunderstand, which can affect how you run your business. To access the checklist, go to [www.business.gov.au](http://www.business.gov.au) and type 'checklist sole trader' in the search box at the top of the page.

### **Data Matching – Credit and Debit Card Payments**

The ATO has just announced that it will request and collect data relating to credit and debit card payments to merchants for the period between 1 July 2014 to 30 June 2015. The data obtained will include information that enables the ATO to match merchant accounts to a taxpayer, including name, address and contact information on the number and value of transactions processed for each merchant account. This acquired data will be electronically matched with ATO data (e.g. tax

returns and BAS) to identify non-compliance with the tax law. The ATO estimates that records relating to more than 900 000 merchant accounts are expected to be received. The number of affected individuals linked to those accounts is expected to be more than 90 000.

This exercise is just another example of the sophisticated data matching techniques that the ATO is increasingly employing to detect non-compliance with the tax law (such as not declaring income). As ATO technology evolves, non-compliant taxpayers (such as those who omit income from their returns) are generally now more likely than ever to be caught. If you've omitted an amount (inadvertently or otherwise), by coming forward and making a voluntary disclosure you will generally receive a reduced penalty than where the ATO uncovered the non-compliance itself in an audit or data-matching exercise.

### **Bank Deposit Tax Dumped**

The Government has announced that it will not proceed with introducing its previously-flagged bank deposits tax. The tax, which was originally proposed by the previous Labor Government just prior to the 2013 Federal Election, was to impose a 0.05% levy on every single bank deposit up to \$250 000. It was scheduled to commence on 1 January 2016 and raise approximately \$500 million per year. The decision not to proceed with the tax adopts a key recommendation of the Financial Systems Inquiry and comes after extensive consultation with key stakeholders and the community.

### **PAYG Instalment Change for High Income Entities**

The ATO has issued a reminder to 'corporate tax entities' that they may soon be due to commence paying monthly rather than quarterly PAYG instalments. From 1 January 2016, corporate tax entities must commence PAYG instalments on a monthly basis if their base assessment instalment income is more than \$20 million. Monthly instalments must be paid electronically and are due on or before the 21st day of the following month. If you are a deferred BAS payer on the 21st day of the next instalment month, then the payment is due on the 28th day of the following month. 'Corporate tax entities' include companies, corporate limited partnerships, corporate unit trusts or public trading trusts. This new measure may have cashflow impacts on the entities affected.