MTS

MY TAX SAVERS

SEPT/OCT 2015

Tax Return Time!

All you need to know

SuperStream

Deadline extended

2015 FEDERAL BUDGET

The devil is in the detail

Index

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MyTaxSavers

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

SEPTEMBER 2015

21 SEPTEMBER
August monthly Activity Statements – due for lodgement and payment

30 SEPTEMBER
Annual TFN withholding report for closely held trusts where a trustee has been required to withhold amounts from payments to beneficiaries during 2014/2015 – due date for lodgement

OCTOBER 2015

21 OCTOBER
September monthly Activity Statements – due for lodgement and payment

28 OCTOBER
Final date for eligible quarterly GST reporters to elect to report GST annually

28 OCTOBER
Due date for superannuation guarantee contributions for July - September to be made to employee funds

OCTOBER 2015

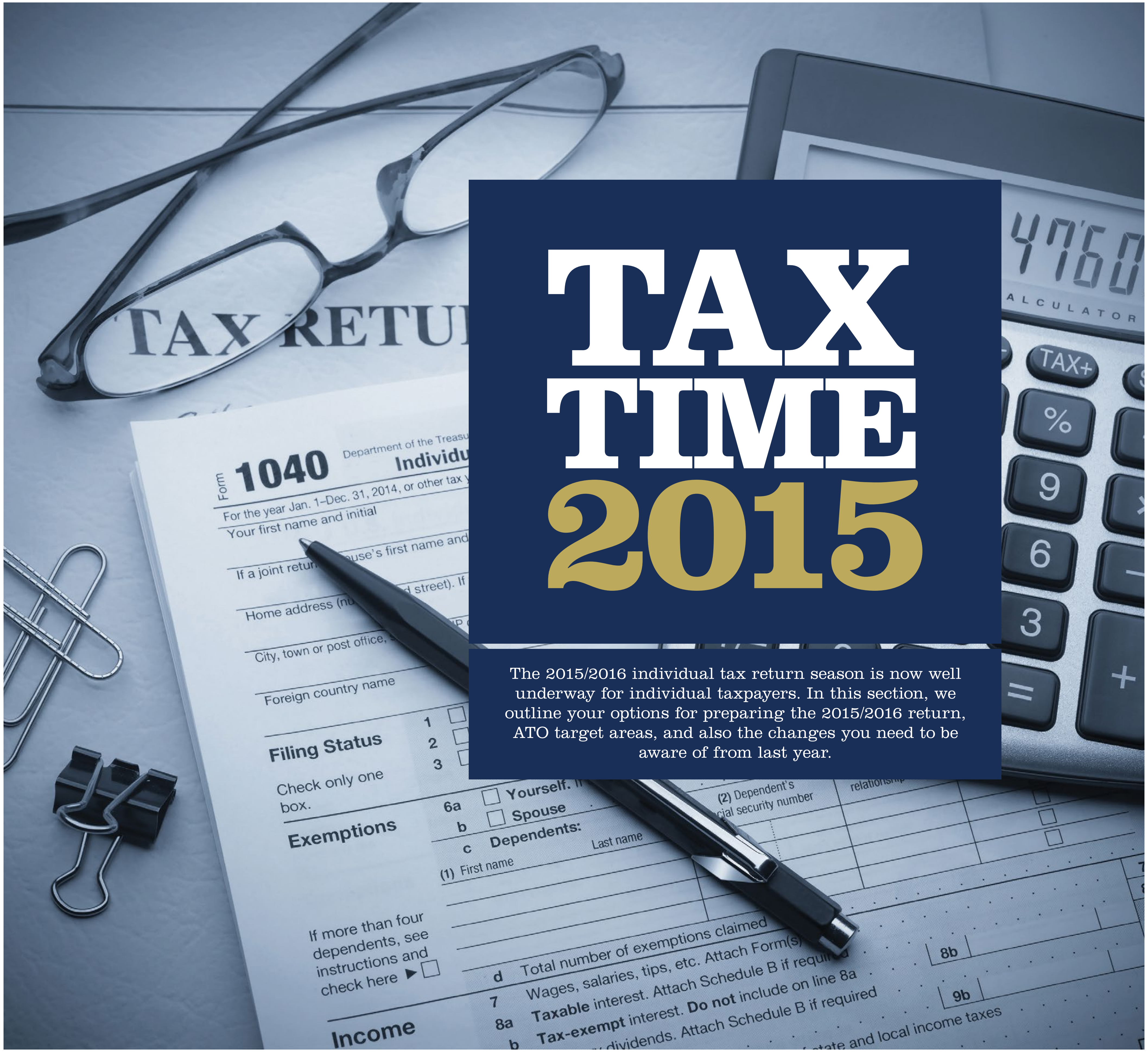
31 OCTOBER
PAYG Withholding Where ABN Not Quoted – Annual Report – due date for lodgement

These amounts are also reported at W4 on your Activity Statement

31 OCTOBER
Due date for 2014/2015 individual tax returns (unless you are lodging via a tax agent and are on their lodgement list by this date)

31 OCTOBER
Revised deadline for *SuperStream* compliance for employers with 20 or more employees

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)



TAX TIME 2015

The 2015/2016 individual tax return season is now well underway for individual taxpayers. In this section, we outline your options for preparing the 2015/2016 return, ATO target areas, and also the changes you need to be aware of from last year.

Tax Agent

The use of tax agents has grown substantially over the last 30 years, with tax agents currently lodging around 73% of income tax returns for individuals and 95% of business tax returns. There are a number of advantages in using a registered tax agent:

KNOWLEDGE AND EXPERIENCE

Under the recently-introduced Tax Agent Services Act (TASA), tax agents are the only class of person who is permitted to complete a tax return for a fee. Under the TASA regime, tax agents must meet minimum experience and qualification criteria as follows:

- Generally, a degree or post graduate award in the discipline of accountancy, and
- Generally, 12 months full-time experience in providing tax agent services in the past 5 years.

MAXIMISE YOUR DEDUCTIONS

With a superior knowledge and experience of the tax system, tax agents are arguably better placed to optimise your tax position than if you were to self-prepare. A tax agent's ability to claim deductions on your behalf will however to a large degree be governed by the records that you have retained throughout the year. Generally speaking – no records, no claim! Speak to your tax agent about any specific record keeping requirements they may have of you, given your industry/dealings. Some tax agents will provide you with a checklist of the types of records they will require, the form they require them in, and by when they require them. If they haven't done so, just ask.

PROTECTION FROM PENALTIES

Penalties of up to 75% of the tax shortfall (plus interest) can be imposed by the ATO if you incorrectly complete your return. Putting your affairs in the hands of a tax agent minimises the chances of error and therefore of the imposition of such penalties.

Furthermore, under what are known as the 'Safe-Harbor rules', you are generally immune from ATO penalties where a mistake is made on your Agent-prepared return if you have provided them with all the necessary information to prepare and lodge that return. Should you be subject to penalties, the ATO will provide you with the details on how you can apply for Safe Harbor.

SAVE TIME

The whole point of outsourcing is to not only get your return right by putting it in the hands of experts (and therefore minimising the chance of penalties) but also to free up your time for other more profitable or enjoyable tasks. Rather than grappling with a range of income tax and tax return issues, outsourcing this function frees you up to getting back to more profitable or enjoyable pursuits. When you think of it like this, often it costs less to outsource.

LOGO

You may have noticed recently in the media that the Tax Practitioners Board who oversee the TASA regime is currently running a community education campaign on the benefits of using a registered tax agent (including minimum education requirements and protection from penalties). To verify that you are using an agent that is registered, visit the Board's website www.tpb.gov.au and search the tax agent register. Agents carrying the following symbol in their stationery, advertising or emails will be registered (note that not all registered agents are choosing to display this symbol):

TAX PRACTITIONERS BOARD REGISTERED

Self-Preparation

Perhaps the biggest benefit in self-preparation is the cost! Even those with the simplest of tax affairs (e.g. salary and wage earners with no other income, or those receiving mainly Centrelink benefits) can expect to pay at least $150 (in most cases more) to have their personal returns prepared and lodged by a tax agent.

With the advancement in ATO technology, an increasing number of taxpayers are electing to 'go it alone'. If you do decide to self-prepare, your options are as follows:

MYTAX

myTax is the ATO's streamlined, online tax return designed specifically for people with straightforward tax affairs. It's available on tablets, smart phones and computers. To use *myTax*, you will first have to create a myGov account and link it to the ATO. Approximately 2.8 million people accessed *myTax* last year to lodge their tax returns online where:

- They were an Australian resident for the income year
- Their only income was from salary and wages, allowances, bank interest, dividends or other Australian government payments
- Their only deductions were for work-related expenses, expenses relating to income from interest or dividends, gifts and donations and/or the cost of managing their tax affairs
- Their only tax offsets were the Senior Australians and Pensioner Tax Offset, the Zone and Overseas Forces Tax Offset or the Private Health Insurance Tax Offset and/or the Private Health Insurance Rebate.

For Tax Time 2015, the ATO advises that *MyTax* is more "tailored, personalised and streamlined and more people will be eligible than those outlined above (including those with other income sources such as superannuation pensions, lump sum payments, managed investment funds and foreign pensions, and those with additional tax offsets and deductions associated with these income types). As a result of this expansion, the ATO estimates that potentially more than five million taxpayers will be eligible to use *myTax* (approximately 40% of individual taxpayers) this tax season. By Tax Time 2016, the ATO plans on *myTax* being able to accommodate all taxpayers, irrespective of the complexity of their tax affairs.

myTax is more user-friendly than the other online alternative e-Tax as it is fully online and does not require a software download. On the downside, *myTax* does not pre-fill deductions (unlike e-Tax where you can roll over last year's return for this year's return). In 2015, for the first time, *myTax* users will receive their ATO Notice of Assessment and tax receipt directly into their myGov inbox. In another first, if you do not need to lodge a tax return this year, you can simply submit a new online non-lodgement advice form or an online refund of franking credits form.

COMPLAINTS

Although, as you may have heard in the media just recently there were complaints with *myTax* (regarding accessibility and slow speeds) at the time of writing the ATO has assured us that these issues have been resolved.

ETAX

If you are ineligible to use *myTax* or are eligible for other offsets in addition to or separate from those listed earlier and wish to lodge your return online, you can use e-Tax. Features and advantages include:

- The program performs checks and calculations to help prepare your return correctly
- You can roll over last year's return to this year's return if you are using the same computer
- You are provided with an instant estimate of your refund/ amount payable (*myTax* does not provide this)
- As with *myTax*, most refunds are issued within 12 business days (as opposed to up to 28 days if you lodge by paper).

On the downside, e-Tax requires a software download and may not be compatible unless your computer and operating system meets certain requirements. Furthermore, pre-fill is not automatic (unlike *myTax*).

ONLINE ADVANTAGE – PREFILLING

One of the chief advantages of lodging online (via either *myTax* or *e-Tax)* is that your return is pre-filled by the ATO with a range of information provided by third parties such as banks, employers, Medicare etc. The 2015 prefilling report contains the following information:

- Your personal details
- PAYG payment summaries
- Government payments
- Dividend income
- Share disposals
- Private health insurance policy details.

The ATO advises that this information will be available in full by the end of August. They also encourage you to review the pre-filled data for accuracy. While *myTax* returns are automatically prefilled, you will need to download a prefill report if using *e-Tax*.

PAPER

Although the ATO encourages online lodgement, you can still lodge your return by paper using the *Tax return for individuals* and the *Individual tax return instructions* and then send the completed return in by mail. Additionally, depending on the complexity of your affairs, you may need to lodge the *Tax return for individuals (supplementary section)* and perhaps additional schedules such as the *Business and Professional Items Schedule* for taxpayers who derived business income such as personal services income (PSI).

The downside of lodging by paper is that your return can take up to 28 days to process. Therefore, if you are expecting a refund, you can be in for a lengthy wait compared to online lodgement or lodgement via a tax agent.

What's New?

Irrespective of your lodgement method, there are three main changes to the individual tax return that may impact you this year:

MATURE-AGED WORKER TAX OFFSET ABOLISHED

This offset no longer appears on individual returns as it was abolished from 1 July 2014.

MEDICAL EXPENSES TAX OFFSET – LAST CHANCE!

This is the last tax return in which you can claim this tax offset. You are only eligible to make a claim in this year's return if you received this offset in last year's tax assessment (2013/2014). Note however if you have out-of-pocket medical expenses in relation to disability aids, attendant care or aged care, these expenses can be claimed up until 1 July 2019 irrespective of whether you have made a claim in previous years.

DEPENDENT SPOUSE TAX OFFSET ABOLISHED

This offset does not appear in this year's return as it can no longer be claimed.

If you have claimed this offset through a withholding arrangement with your employer in the last 12 months (via your TFN declaration form) this may result in you having a tax bill for 2014/2015 all other things being equal. To change this and ensure you do not receive another tax bill for this now abolished tax offset for 2015/2016 you will need to complete a Withholding Declaration and provide it to your employer.

Publications Released

The ATO has just released its Tax Time publications for 2015, ranging from "Individual tax return 2015" to "You and Your Shares".

Included in the more than 60 publications released are 2014/2015 occupation specific guides outlining the deductible and non-deductible expenses for:

- Airline employees
- Australian Defence Force members
- Cleaners
- Factory workers
- Hairdressers
- Hospitality industry employees
- Journalists
- Lawyers
- Performing artists, and
- Shop assistants.

To access this suite of Tax Time 2015 publications visit www.ato.gov.au

Targets

The ATO has announced that this tax season it will be focussing on unusually high work-related expense claims across all industries and occupations. This signals a much wider approach than previous years where specific occupations were targeted. Assistant ATO Commissioner, Adam Kendrick, said that the ATO's ability to identify and investigate claims that differ from the 'norm' is improving every year at a rapid rate due in the main to enhancements in technology and the use of data. He says :

These enhancements mean that every return is scrutinised and it is becoming a lot easier to identify claims that are significantly higher than those claimed by people with similar occupations and employment income.

In addition to focussing on work-related expense claims that are significantly higher than expected, we will also be paying particular attention to claims:

- *For expenses that have already been reimbursed by employers, and*
- *For private expenses such as travel from home to work.*

Mr Kendrick said that there are three key points to remember when claiming work-related expenses:

1. You must have spent the money yourself and not have been reimbursed
2. The expense must be related to your job, and
3. You must have a record to prove it (e.g. a receipt).

TAX TIP

The new focus on usually large claims within individual industries should of course not deter you from making large legitimate claims. There may be valid reasons why your deductions are larger than normal, for example your employer may now require you to travel between separate workplaces etc. Whatever the reason, provided you have documentation to support your claims, you should go ahead and make them.

Mr Kendrick further advises that when claiming work-related travel, it's important to remember you cannot claim for a normal trip between home and work unless:

- You use your car to carry bulky tools or equipment which you use for work and cannot leave secured on the work premises
- Your home is a base of employment, or
- You have shifting places of employment (i.e. you regularly work at more than one place each day).

GETTING YOUR [SUPER] HOUSE IN ORDER

Access to the ATO's Small Business Superannuation Clearing House (SBSCH) has recently been expanded. This article examines the many employer benefits and issues surrounding Clearing Houses, including the timing of contributions made.

Background

Introduced 1 July 2010, the *SBSCH* is a free online superannuation payments service that helps small businesses meet their superannuation guarantee (SG) payment obligations. The *SBSCH* reduces red-tape and compliance costs by enabling employers to pay their SG contributions for all employees in one transaction to a single location. This can save significant time and administration, especially where your employees have chosen a range of different superannuation funds. Upon receiving this contribution, the *SBSCH* distributes the required amounts to each employee's individual superannuation fund that they have nominated (employers must provide the name of each fund upon registering for the *SBSCH*).

Expansion

New laws have now been passed expanding the range of employers who can access the *SBSCH*.

From 1 July 2015, an Australian small business with 19 or fewer employees, or employers who are Small Business Entities (i.e. those with an annual aggregated turnover of less than $2 million, including the turnover of any connected or affiliated entities) are eligible to use the *SBSCH*. Previously, eligibility for the *SBSCH* was restricted only to employers with 19 or fewer employees. It is estimated that the extension of access to the *SBSCH* will see an additional 27,000 businesses become eligible (i.e. those currently with a turnover of under $2 million but with more than 19 employees).

SuperStream Strategy

As well as reducing employer red-tape and compliance costs, by using the *SBSCH* an employer will automatically be *SuperStream* compliant. That is, you can continue to make payments to the *SBSCH* in the manner that you have always done (e.g. via electronic funds transfer or via BPAY) with no changes to your systems, and you will automatically be *SuperStream* compliant. This takes the hassle and potential cost out of what may otherwise be involved when transitioning to the new *SuperStream* regime.

By way of background, *SuperStream* is a new way of making and receiving employer superannuation contributions. *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, unless you are using a Clearing House, the new *SuperStream* regime requires you to make all employee superannuation contributions by submitting the payment and related data electronically in a consistent and simplified manner. The date by which an employer must be *SuperStream* compliant depends on how many employees your business has as follows:

- For employers with 20 or more employees – you could commence using *SuperStream* from 1 July 2014, and must be compliant by 1 July 2015 (though the ATO has just extended this date to 31 October – see page 22)
- For employers with less than 20 employees – you can commence using *SuperStream* from 1 July 2015, and must be compliant by 1 July 2016.

Although failure to comply with *SuperStream* can result in penalties of up to $3,400 per offence, the ATO advises that it will allow some flexibility with the deadline date, provided employers are doing their best to comply by this date and that there is a clear plan in place to commence complying by this date. It's recommended that employers do not leave it until the last minute to comply, because in the absence of using a Clearing House it may take some time to implement your *SuperStream* solution.

Commercial Options

Aside from the ATO's *SBSCH* there are many commercial Clearing Houses in the marketplace which employers can opt to use. Indeed most payroll service providers (e.g. XERO) offer such a facility. These commercial Clearing Houses should especially be considered by employers who because of their size are ineligible to use the ATO's *SBSCH*. Broadly speaking, commercial Clearing Houses operate on the same basis as the *SBSCH* whereby you make a single payment of superannuation on behalf of all employees, and then the Clearing House forwards the contributions on to each invidiual employee's nominated superannuation fund. As with the *SBSCH*, generally speaking by using a commercial Clearing House you will automatically be *SuperStream* compliant and therefore can continue to make superannuation payments in the same way you have always done (e.g. EFT or BPAY) without any changes to your systems. The key difference with the *SBSCH* is that some commercial Clearing Houses may charge a fee for their services or attach other conditions to their use.

Timing in General

The timing of employer superannuation contributions is important for several reasons as follows:

SUPERANNUATION GUARANTEE CHARGE

In practice, very few employers make SG payments (which is the compulsory 9.5% payment that must be paid on the ordinary time earnings of eligible workers, including some contractors) at the same time as wages are paid. Instead, for cashflow reasons many employers prefer to leave payments of SG to as late as possible and in one lump sum just before the quarterly deadlines of 28 January, 28 April, 28 July and 28 October. It's important to understand that there is no discretion as regards to these deadlines. Employers must pay the required amount of SG contributions by the quarterly cut-off dates. There is no provision in the SG legislation that allows for any extension of time beyond these quarterly deadlines. If payment is even one day late, employers will generally be required to raise an SG Charge Assessment which includes the payment of SG Charge (broadly consisting of the amount of the late payment, interest and an administration charge). Therefore, for SG purposes, determining the exact date that a payment is deemed to have been made by an employer is important.

DEDUCTION

Employer superannuation contributions such as salary sacrifice and SG are deductible for the employer. Although not due until 28 July, for tax planning reasons a number of employers bring forward their SG contributions for the April-June quarter to before 30 June. By doing so, they can improve their year-end tax position by bringing forward their tax deduction that would otherwise be deferred until the following financial year.

WHEN?

Taxation Ruling TR 2010/1 neatly sets out the timing of when a contribution is made when paid directly to a superannuation fund (i.e. not through a Clearing House). It states that a contribution will be deemed to have been made only when it is 'received' by the superannuation fund to which it is being paid. The following table, extracted from the Ruling, sets out when a contribution is deemed to be 'received' by a superannuation fund for the purposes of claiming a deduction and for meeting your SG obligations:

IF THE FUNDS ARE TRANSFERRED BY...	...A CONTRIBUTION IS MADE WHEN...
Making a cash payment (either in Australian or foreign currency)*	The cash is received by the superannuation fund
An electronic transfer of funds	The funds are credited to the superannuation fund's account (usually within one or two days)
Giving a money order or bank cheque*	The money order or bank cheque is received by the superannuation fund, unless the order or cheque is dishonoured

**no longer permitted after your SuperStream deadline*

Therefore, when making an electronic payment directly to a superannuation fund, you may need to bring forward the timing of the payment to a couple of days before the cut-off deadline (and even earlier when the cut-off date falls on the weekend, or on a Monday, or on a public holiday) in order for the electronic payment to process and appear in the recipient superannuation fund's account.

Clearing House Timing

When making a payment to a Clearing House (either the ATO's SBSCH or a commercial alternative) there is a lag between when you make the contribution, and when the Clearing House remits it onto each individual employee's nominated fund. This can be up to two weeks in some cases (mostly only a few days, but check with your own Clearing House for their turnaround time). While the rules regarding the timing of a contribution made directly to a superannuation fund are clear-cut (see earlier table), the timing rules are more nuanced when as an employer you make a contribution to a Clearing House (either to the ATO's SBSCH or to a commercial operator) as follows:

SUPERANNUATION GUARANTEE

For SG purposes, *Section 23B of the Superannuation Guarantee Administration Act (1992)* decrees that contributions made to a Clearing House are not regarded as being made to the employee's superannuation fund until they are received by the fund, unless the Clearing House is an "approved" Clearing House. This is restated by the ATO in *Superannuation Guarantee Determination SGD 2005/2*. The list of 'approved' Clearing Houses is set out in the *Superannuation Guarantee Administration Regulations (1993) under Regulation 7AE*. Currently, the only 'approved' Clearing House listed by that regulation is the ATO's SBSCH.

This means that if you are making superannuation payments to any other Clearing House (i.e. all commercial Clearing Houses) then for SG purposes they will only be deemed to have been made at the point in time that they are received by the nominated superannuation fund of each individual employee. As stated, with turnaround times of up to two weeks, to ensure you meet the quarterly cut-off dates (i.e. the 28th of each month following the end of each quarter) it may be prudent to bring forward your SG quarterly contributions to as early as two weeks before they are due. This allows for not only the turnaround time of each Clearing House, but also for the processing and receipt of electronic payments (which can take a few days) made by you as the employer to the Clearing House, and by the Clearing House to the individual employee superannuation funds.

DEDUCTION

On the other hand, for the purposes of claiming a deduction for your SG contribution, the rules are uniform across all Clearing Houses. Whether you are making a contribution via the ATO's SBSCH or a commercial Clearing House, a deduction can only be claimed in the year in which the individual employee's nominated superannuation fund receives the contribution from the Clearing House (see earlier table) – not when you make the contribution to the Clearing House.

Therefore, for the many employers who, for tax planning reasons, bring forward their April-June quarterly SG contributions to before 1 July, depending on the turnaround time of your Clearing House, you may need to make these contributions by as early as 15 June.

GETTING WOUND-UP!

Although we often hear about the popularity of SMSFs, there have been an increasing number of SMSFs being wound-up in recent years. This article examines the many reasons why an SMSF may be wound up and the process that should be followed when doing so

Why?

In the 12 months to March 2015, SMSF wind-ups have exceeded SMSF establishments (6,652 to 5,978). This follows almost 10,000 wind-ups in the previous 12 months. There are many reasons why you may consider winding up your SMSF including:

MOVING OVERSEAS

If Members of the SMSF are moving overseas, this may cause the SMSF to become non-resident. This will occur unless the "central management and control" of the SMSF is located in Australia. This will be the case where the majority of Members (50% or more) permanently reside in Australia. Although there is a two-year window for Members to be absent overseas without failing the "central management and control" test, the absence must be for a specified time or to undertake a specific purpose.

The consequences of an SMSF losing its residency status are severe. The SMSF may be made non-complying in which case its assets (less certain contributions) and its income will be taxed at the highest marginal tax rate (47%) rather than the concessional tax rate of 15% afforded to resident superannuation funds.

LACK OF TIME, SKILL OR CAPACITY

Being a Member of an SMSF can be onerous. Once your SMSF is established you have a range of ongoing responsibilities including accepting contributions within limits, making investments without breaking the myriad of investment rules, regularly reviewing your investment strategy, and paying out benefits in accordance with the rules. Once again, breaching these rules can result in your SMSF being deemed non-complying and bearing the consequences that go with that status (see earlier). Aside the SMSF being penalised, recently introduced laws now mean that SMSF Trustees can be personally fined up to $10 000 for breaches of the rules.

Similarly, circumstances may change whereby members no longer have the capacity (e.g. mental or physical) to operate the SMSF. Where this occurs, the incapacitated person can remain a member of the fund if another person who holds an enduring power of attorney acts as trustee on their behalf. In the absence of this, the SMSF may need to be wound up.

For any of the above reasons, you may consider it easier to wind-up your SMSF and roll your savings over into a retail/industry fund and be relieved of the SMSF compliance burden.

EXITS

All of the Members may have exited the SMSF; either involuntarily through death or from all their benefits being paid out. Alternatively, some of the key Members may have exited and the remaining members may have no interest in or ability to manage the SMSF on an ongoing basis.

INSUFFICIENT ASSETS

Your SMSF may have insufficient assets to justify staying open. This can come about as a result of a number of reasons such as where members have depleted the capital of the SMSF by drawing pensions or been in the receipt of lump sum payments including death benefits.

ATO ORDER

The ATO presides over the regulation of SMSFs and can in certain extreme cases order that they be wound-up if breaches or risk of future breaches of the rules are considered sufficiently serious.

RELATIONSHIP BREAKDOWN

Relationships between SMSF members can break down to the extent that it is no longer considered feasible to work together to operate the SMSF or have your affairs linked in any way.

Check the Deed!

Having decided to wind-up, your SMSF Deed is the first document you should consult. It may set out the requirements and the procedures to be followed during the wind-up process – such as how the benefits are to be paid out, and how any remaining assets are to be disposed of. It's paramount that the procedures/rules that it sets out are followed.

Written Agreement

To formalise your decision, all SMSF Members should sign a written document agreeing to close the SMSF. In the absence of any guidance from your Deed, Members should also put in writing the manner that any SMSF assets are to be disposed of and the way proceeds are to be paid out. This written document should be retained by you or your advisors.

Disposal of Assets

The wind-up of your SMSF requires that it be emptied of all assets (e.g. shares, property etc.). Members will generally need to arrange for the disposal of assets to facilitate the transfer of benefits from the SMSF or the payment of lump sums (see later). There are a number of options for disposal including:

- Making an in-specie transfer to another SMSF
- Members purchasing assets from the SMSF (this must be done at market value) and rolling the proceeds over to a new superannuation fund
- If a Condition of Release is met, receiving the assets and cash as a lump sum benefit, or
- Selling to an external party.

Common to all these scenarios is the possible application of capital gains tax (CGT). Unless the fund is in pension phase sufficient cash will need to be retained in the SMSF to meet any CGT liability once it lodges its final return. This liability will reduce the remaining member account balances.

Disposal of Benefits

Having disposed of the assets, you will need to empty the SMSF of the sale proceeds and any remaining cash (however cash will need to be retained to meet wind-up costs – see later). In emptying your SMSF of its cash, you will generally be required to either:

1. *Pay Out Lump Sums to Members*

This can only be done if a member has met a standard Condition of Release (such as turning 55 and retiring). To be clear, closing your SMSF does not entitle you to access the cash or assets it holds. You can only do so if a Condition of Release is met. Where lump sums are paid out, an ETP Payment Summary – Superannuation Fund form will need to be completed. These can be accessed on the ATO website www.ato.gov.au

2. *Rollover Your Benefits into Another Superannuation Fund*

Alternatively, your benefits will be rolled over to another superannuation fund (usually a retail or industry fund). This is compulsory for members who have not yet met a Condition of Release and is optional for members who have met such a Condition. Where this is done, the following two ATO forms will need to be completed:

- *Request to Transfer Whole Balance of Superannuation Benefits Between Funds*
- *Rollover Benefits Statement (you must keep a copy of this, and also send a copy to the recipient superannuation fund that your benefits are being transferred into).*

Final Audit

You will need to organise for a registered SMSF auditor to undertake the final audit of the SMSF (for the period from the commencement of the financial year up until the closure of the SMSF). The audit will be the same as previous years, with some key differences such as the requirement of the auditor to sight final bank statements and confirm that all benefits and assets have been disposed of, that the ATO has been notified of the closure, and that final liabilities have been met.

Final Returns and Statements

Once the final audit has been completed, you or your advisors must complete your SMSF's final tax return (for the period from the commencement of the financial year up until the closure of the SMSF). On the front cover of the return you need to ensure you indicate the status of the SMSF as 'closed'. Likewise, when completing the Members Schedule, the status of each member must be indicated as being closed.

Final Financial Statements and Members Statements will also need to be prepared. In the case of the former, they must account for all income and expenses to the date of the SMSF closure.

Notify the ATO

Having lodged the final return, the ATO should be notified in writing within 28 days that the SMSF has been wound up. The following details must be provided:

- The name and ABN of your SMSF
- The wind-up date, and
- A contact person and their contact details (name, phone number, email etc.).

The ATO will then in due course send you a letter confirming that they have cancelled your SMSF's ABN and closed its records on their internal systems.

Close Bank Accounts

After you have received the confirmation letter from the ATO, you should close your SMSF's bank account.

TAX TIP

Some SMSF expenses may not fall due until after the SMSF has been wound up and the bank account closed. Instead of delaying the wind-up process, the SMSF and its bank account can be closed and cash can be held on trust by the former Members until such time as all liabilities are paid.

Darrell Weekes

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The 123 of FTEs

For a number of reasons, including asset protection and tax minimisation, many people choose to operate their business affairs through a trust structure. This article examines the benefits of your trust going a step further and making a family trust election.

What?

In simple terms, making a Family Trust Election (FTE) is a choice by the trustee to make the trust a family trust for taxation purposes. In making the election, the trustee must specify a particular individual (the Test Individual) around whom the Family Group is formed. This Family Group then comprises the exclusive range of beneficiaries that can then receive distributions from the trust without triggering significant adverse tax consequences, such as family trust distributions tax whereby amounts distributed outside the Family Group are taxed at the penalty rate of 47%. It follows that the nomination of the Test Individual is crucial as not all of your family members will necessarily form part of the Family Group of the nominated Test Individual. Broadly, under the tax legislation, the Family Group includes:

- The Test Individual and their spouse
- Any parent, grandparent, brother or sister of the Test Individual (or of the Test Individual's spouse)
- Any nephew, niece or child of the Test Individual or their spouse, and any lineal descendent of these people, and
- The spouse of anybody mentioned above.

To be clear, even if you fall within the above categories (and therefore within the Family Group), this does not mean you are then entitled to receive a distribution from the trust – you must still of course be listed in the trust deed as a beneficiary.

In addition to these listed individuals, entities such as companies, trusts and partnerships can also fall within the Family Group provided, broadly speaking, they are wholly owned by individuals within the Family Group or where an appropriate Interposed Entity Election has been made.

Why?

There are a number of reasons why it may be advantageous to make an FTE as follows:

CLAIMING FRANKING CREDITS

Where your discretionary trust receives franked dividends on shares it acquired after 3pm on 31 December 1997, the making of an FTE will enable the beneficiaries of the trust to claim any franking credits distributed to them. Without an FTE in place, franking credits can only be claimed by beneficiaries where:

- The shares were acquired before 31 December 1997, or
- The shares were acquired after this date, and the beneficiary is an individual who did not receive more than $5,000 in franking credits from all sources during the income year.

TRUST LOSSES and DEBT DEDUCTIONS

Making an FTE gives your trust easier access to its prior year tax losses and debt deductions. In the absence of an FTE, for a non-fixed trust to use prior year revenue losses, all of the following complex tests which can be difficult to meet must be met:

- Income injection test
- Control test
- 50% stake test, and
- Pattern of distributions test.

By contrast, with an FTE in place, your trust only needs to meet a modified version of the income injection test in order to claim tax losses and debt deductions such as bad debts.

COMPANY LOSSES

Where your trust owns shares in a company with tax losses or debt deductions, the making of an FTE may assist the company to pass the Continuity of Ownership Test (COT). Passing this test or the Same Business Test is a prerequisite for companies seeking to claim such losses or deductions. With an FTE in place, under the COT the trust is taken to hold its interests as an individual; making this test easier to satisfy.

RED TAPE REPORTING

Family trusts are excluded from the Trustee Beneficiary Reporting Rules which may otherwise require you to make trustee beneficiary statements advising of certain details of beneficiaries who receive income distributions from the trust during the year. This statement must be provided by the due date for lodgement of your trust's tax return. With an FTE in place, and your trust therefore exempted from reporting, this can save on administration or accounting fees as the case may be.

How?

FTEs can be made at any time but must be made in writing, and in the approved form specified by the ATO. They apply from the year that you nominate (typically, the current income year). However, they can also be made retrospectively for 2004/2005 and later years where the following conditions are met:

- Family members controlled the trust, and
- No distributions were made outside the family group.

FTEs can be lodged with the trust's current year income tax return. Once made, they apply from the beginning of the specified income year and all future years.

CAUTION

Careful thought should be given before making an FTE as they can only be revoked in limited circumstances including where the trust is a fixed trust and where the FTE was not required for the utilisation of tax losses, bad debt deductions or accessing franking credits. An inability to revoke an election already made means that the trust, for the term of its life, cannot make distributions outside the family group without triggering penalty tax of 47%.

Budget Reflections

With the dust having now settled on the 2015 Federal Budget, following the release of more details, this article reflects on how some of the measures may impact you and your business. We look at the technical aspects of the small business depreciation changes, the streamlining of the methods for claiming motor vehicle expenses, the progress of the paid parental leave and pension legislation, and much more.

Accelerated Depreciation for SBEs

Among small business owners, perhaps the most remarked-upon Federal Budget measure was the increase to the instant asset write-off threshold for Small Business Entities (SBEs) from $1,000 to $20,000 (GST-exclusive). The measure applies to newly acquired assets that are used or installed ready for use from 7:30pm on 12 May 2015 to 30 June 2017. Because it applied from Budget Night, a number of SBEs would have taken advantage of the measure to purchase tools and equipment before 1 July 2015 and thereby improve their 2014/2015 tax position. In claiming a total write-off in your 2014/2015 return the asset must not only have been purchased but must have been used or installed ready for use in your business before 1 July 2015. There are several other points to note in respect of this measure:

BOOKKEEPING

As a result of this change, many more assets will be eligible to be written-off in the year of purchase. In posting to the general ledger we recommend that the assets eligible to be written-off entirely should be allocated to an asset account first and dealt with at year-end when depreciation is calculated (100% depreciation for such assets). Some businesses use fixed asset accounts that indicate an immediate write-off intention.

An alternative treatment would be to expense these eligible assets but this is not recommended as it results in an incomplete asset register and makes it more difficult for the accountant to make appropriate decisions regarding depreciation at year-end.

More broadly, for all assets purchased, continue to apply the appropriate general ledger codes, and properly describe the asset in your postings.

From a GST coding perspective, you should indicate such purchases as capital acquisitions in order to ensure they find their way to label G10 on the BAS.

POOLING

Normal small business depreciation rules will continue to apply to assets exceeding this new SBE write-off threshold. Assets valued at $20,000 or more (which cannot be immediately written-off) can continue to be placed in the small business simplified depreciation pool and depreciated at 15% in the first income year and 30% each income year thereafter. The pool can now be immediately written-off if the balance is less than $20,000 at the end of an income year that ends on or after 12 May 2015 but on or before 30 June 2017 (including existing pools).

Thus not only will the new $20,000 threshold itself provide cashflow relief – by enabling you to bring forward deductions that would otherwise be spread over a number of years – so too will the increase to the value of the small business simplified depreciation pool. Any time it now drops below $20,000 (GST-exclusive) all the assets within that pool will be able to be written off. This may even allow you to write-off an asset in the year of purchase which cost more than $20,000 as follows:

EXAMPLE

Jacob is a sole trader who is an SBE. He purchases a $24,200 (GST-inclusive) vehicle solely for use in his courier business in August 2015. Before this purchase, the balance of his small business simplified depreciation pool was $0, and no other assets were purchased during 2015/2016. Although the vehicle cost more than $20,000, it can be immediately written-off in the year it is first used in the business as follows:

The vehicle is booked as an asset to the small business depreciation pool and depreciated at 15% in the year of acquisition

- 15% of the GST-exclusive cost of $22,000 ($3,300) is written-off in the first year (2015/2016). The remaining value of the pool at the end of the 2015/2016 financial year is therefore $18,700.
- As the remaining value of this pool is now less than $20,000 at the end of 2015/2016 it can be written off, with the ultimate result being that the $22,000 GST exclusive vehicle is claimed in full as a deduction in one year.

EXAMPLE

(adapted from the Explanatory Memorandum to the new law)

Levi's Pet Washing Pty Ltd is an SBE in the 2013/2014 and 2014/2015 income years.

In 2013/2014, Levi's Pet Washing purchased a fitted out van for the mobile pet washing business for $20,000. The van was purchased 100% for a taxable purpose. The business did not have any other assets in its small business simplified depreciation pool.

In its 2013/2014 income tax return, as the cost of the van was over the $1,000 threshold that applied for the income year, the business claimed a deduction for 15% of the cost ($3,000), with the remaining cost ($17,000) being deductible in later income years under the pooling rules.

The business did not make any further purchases during the 2014/2015 income year and the balance of the pool at the end of the 2014/2015 income year remained at $17,000.

In its 2014/2015 income tax return, Levi's Pet Washing claimed a deduction of $17,000 for the balance of the pool, as the balance of the pool at the end of the year is below the $20,000 threshold that applies for that year.

INVOICING

The accelerated depreciation measure applies on a per-asset basis i.e. each asset is separately considered for the purposes of the $20,000 instant write-off threshold. Therefore, it's important that each item is separately stated on invoices you receive. For example if you went down the hardware store and purchased more than $20,000 of business equipment but there was a generic description on the invoice (e.g. "various equipment") which grouped the items together, your accountant may not properly recognise your entitlement to an immediate write-off at year-end. Even worse, should you ever be audited, the ATO may disallow or query your entitlement to a 100% write-off for each asset in the year that it is first used or installed ready for use.

STATUS

The small business accelerated depreciation changes passed both houses of Federal Parliament on 15 June 2015 and are now law. The changes are backdated to 7:30pm on 12 May 2015 (Budget Night).

Accelerated Depreciation for Primary Producers

Also announced in the Budget, primary producers can immediately deduct (i.e. totally write-off in the relevant year) 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 old law fences were depreciated over a period of up to 30 years, water facilities three years, and fodder storage assets up to 50 years.

On Budget Night it was announced that these measures would apply from 1 July 2016. However, in a Media Release just one week later the Government subsequently announced that this measure will apply to assets that an entity starts to hold, or to expenditure an entity incurs, at or after 7:30 pm on 12 May 2015.

STATUS

This measure passed both houses of Federal Parliament on 15 June 2015. It is backdated to 7:30pm on 12 May 2015 (Budget Night).

PPL Roadblock

The Government is facing likely defeat in its bid to end what it calls 'double-dipping' on Paid Parental Leave (PPL).

On Budget Night the Government announced that from 1 July 2016 the Government-funded PPL scheme introduced by Labor, which pays all new parents (mainly women, and only one payment per couple) the minimum wage for 18 weeks without superannuation, would act as a safety net, not a general entitlement. The current Government-funded scheme pays the minimum wage, now $640 a week, for 18 weeks, making it worth $11,500, and is payable to new parents regardless of whether their own employer has a scheme.

The Budget change was to mean that parents who are eligible for a scheme provided by their employer which is more generous than the Government-funded scheme, would no longer receive the Government-funded scheme. Treasury estimates this will affect approximately 20% of eligible new parents, or about 34,000 new parents a year. Conversely, if a new parent is entitled to an employer scheme that pays less than the Government-funded scheme, their parental leave will be topped up to the maximum $11,500 payout. This will apply to approximately 45,000 new parents (mainly women) per year. About 53% of new parents, or 90,000 new parents a year, will not be affected as they have no access to a separate employer scheme.

The proposed change has however hit a roadblock, with the Labor Opposition, the Greens and several crossbench Senators indicating strong opposition. Without their support, the Government will not be able to change the law. Therefore, the way will remain open for new parents to continue to claim from both the Government and their employer (if their employer indeed provides a PPL scheme).

Work-Related Car Expenses Simplified

Following the announcement in the Budget of the streamlining of the methods for claiming work-related car expenses, many of the more than four million taxpayers who claim work-related car expense deductions may be contemplating how the changes impact them, and how to claim these expenses going forward.

To recap, the methods for claiming work-related car expenses by individuals (including sole traders and partners in partnerships) have been simplified commencing 1 July 2015. The "12% of original value" method and the "one-third of actual expenses" method has been abolished. Furthermore, the "cents per kilometre" method will be streamlined by replacing the three old rates based on engine size, with one rate set at 66 cents per kilometre to apply to all motor vehicles irrespective of their engine capacity. Under the previous law (which will still apply when you complete your 2014/2015 tax return) the rates increased 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*

IMPACT

According to Treasury, the two methods that have been abolished (namely the "one-third of actual expenses" method and the "12% of original value" method) are used by less than 2% of taxpayers and therefore on this basis the impact of their abolition will not be widespread. For those who continue to use the "cents per kilometre" method, 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.

GOING FORWARD

From 2015/2016, only two methods will be available. In terms of which method will give you the biggest deduction this will depend on your circumstances and the extent to which you are willing to keep records as follows:

1. Log Book Method

You may use the "log-book" method if your vehicle travels more or less than 5,000 business kilometres (however, if your travel is less than 5,000, then strong consideration should be given to the "cents per kilometre" method which may provide a better result and have lesser record keeping obligations).

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 the deduction for the full amount under the "log-book" method. Under this method, your claim is based on the running costs and ownership costs of your vehicle multiplied by the business use percentage which is calculated over a 12-week log book sample. This method generally gives the best result where the vehicle has substantial business use.

The downside of this method is the compliance burden. Log books are required to be kept for 12 weeks to prove your business percentage (these log books are valid for 5 years, but should be refreshed where your percentage of business usage increases or decreases by 10% or more). Each logbook must contain the following information:

- When the logbook period begins and ends
- The vehicle's odemeter readings at the start and the end of the log book period
- The total number of kilometres travelled during the log book period
- The business-use percentage for the log book period
- The number of kilometres travelled for each business journey recorded in the logbook (note that if you made two or more journeys in a row on the same day, you can record them as a single journey). According to ATO guidelines, for each journey you will need to record the:
  - o Start and finishing date of the journey
  - o Odometer readings at the start and end of the journey
  - o Kilometres travelled, and
  - o Reason for the journey.

In terms of record keeping, to ease the burden of manually preparing a log book we would encourage download of one of the innumerable log book apps on the market, either from the AppStore or GooglePlay as the case may be.

2. Cents per Kilometre Method

Under this method:

- Your claim is based on a set rate (now 66 cents regardless of the engine capacity of your vehicle) of each business kilometre travelled
- You can claim a maximum of 5,000 kilometres per vehicle
- You cannot make a separate claim for depreciation of the vehicle.

The advantage of this method is very little record keeping is required. You only need to be able explain how you arrived at your calculation – you do not need any documentary evidence in the way of receipts or log books etc. Even where you travel over 5,000 kilometres, you may still elect to use this method (and save the hassle of the record-keeping requirements of the log book method) by capping your claim at 5,000 kilometres. In summary, this method is ideal for those who:

- o Have travelled less than 5,000 business kilometres
- o Have older vehicles (therefore depreciation and interest costs are low)
- o Have not kept, or do not wish to keep, records of expenses or kilometres travelled.

The cents per kilometre method is a per-car claim. If you have changed vehicles during the year, nothing stops you from claiming up to 5,000 kilometres for each of the vehicles.

GST CONSEQUENCES

Under the one-third of actual expenses method and the 12% of original value method, both of these car expense claiming methods assume a 33% extent of business use for income tax purposes. This same percentage is deemed acceptable as the GST purpose percentage if *more than 5,000 kilometres* are travelled for a creditable purpose during the year. Therefore, working out your GST claim was easy – you could claim GST credits on one-third of your motor vehicles expenses.

The GST Act does not contain specific rules for calculating the extent of creditable purpose. For motor vehicle expenses, this is generally determined in accordance with the guidelines in GST Bulletin GSTB 2006/1. This Bulletin has not been updated since the Budget announcement, but presumably will be. It is reasonable to assume that determining the extent of creditable purpose for motor vehicle expenses will continue to be based on the extent of business use determined for income tax. In which case, from 1 July 2015, the extent will be determined on either of the 2 methods that will be available for income tax (Cents per Kilometre Method or Logbook Method) as follows:

Cents per Kilometre

If no log book has been maintained and you use the cents per kilometre method to claim car expenses for income tax, the percentage of GST credits which can be claimed for GST purposes is dependent on the number of kilometres travelled for work as per the following table:

Kilometres Travelled	*%*
< 1,250	*5*
1,251 – 2,500	*10*
2,501 – 3,750	*15*
3,751 – 5,000	*20*

For example, if your estimated annual kilometres for a creditable purpose is 2,600, the ATO will accept 15% as a reasonable estimate of your extent of creditable purpose for car expenses. Therefore, GST can be claimed on 15% of your car expenses for the financial year.

If the business travel is more than 5,000 km, the cents-per-kilometre method has a capped claim at 5,000 km for income tax purposes. However, this limitation does not apply for GST purposes – "provided your records are sufficient to show that the extent of creditable purpose you use is a fair and reasonable approximation of the actual use of your car" (paragraph 26 of GSTB 2006/1).

This GST Bulletin requires taxpayers travelling more than 5 000 km to adapt the cents-per-kilometre method to GST by keeping a diary i.e. which is a type of logbook anyway. This means that, in effect, each method requires that a log book or diary be kept, as set out in GSTB 2006/1.

Log Book Method

The log book percentage of business use is deemed acceptable as the creditable purpose percentage for GST claims. There is no maximum or minimum number of creditable purpose kilometres. For GST purposes as for income tax purposes, log books are valid for five years.

Note however that where the business purpose and creditable purpose are not the same, the GST claim would need to be reduced accordingly (such as where part of the travel relates to making input taxed supplies e.g. travelling to inspect your rental property).

Take Home Message

The recent Federal Budget change has made GST claims on car expenses more complicated. No longer can taxpayers automatically claim GST on one-third of their expenses. Taxpayers who travel more than 5,000 kilometers will now be required to keep a log book or diary as the case may be to substantiate their claim.

Pension Reform Breakthrough!

On 16 June, the Government struck a deal with the Greens to pass its centrepiece Age Pension reform announced in the Budget. From 1 January 2017 the Age Pension parameters will change as follows:

INCREASED PENSION

Access to the full Age Pension will become more generous with the Asset Test cut-off point increasing:

- *Single Homeowners* – the Asset threshold will increase from $202,500 to $250,000
- *Couple Homeowners* – the Asset threshold will increase from $286,500 to $375,000.

According to the Government, more than 90% of pensioners (3.7 million recipients) who receive pension-linked payments will either be better off or have no change to their existing arrangements under these new proposals. More than 170,000 pensioners with modest assets will have their pensions increased by an average of more than $30 per fortnight when this measure comes into effect from January 2017. This will include approximately 50,000 part pensioners who will now qualify for a full pension under the new rules.

DECREASED PENSION

Access to the Part Pension is being tightened with the Asset cut-off point decreasing as follows:

- Single Homeowners – the Asset threshold for Part Pension eligibility will reduce from $775,000 to $547,000
- Couple Homeowners – the Asset threshold for Part Pension eligibility will reduce from $1,151,500 to $823,000.

As a result of this change, 91,000 of current part pensioners will no longer qualify for the Pension, and a further 235,000 will have their Part Pension reduced.

ALTERED INDEXATION SCRAPPED

These changes to the Age Pension are much more targeted than the changes proposed in the May 2014 Budget where the Government was seeking to link Age Pension indexation to the Consumer Price Index (CPI). This would have impacted all Age Pensioners and would have seen the Age Pension increase slower in the future. In good news for Age Pensioners, this plan has been aborted. Going forward, the Age Pension will continue to be set 27.7% of Male Total Average Weekly Earnings.

Company Tax Cut Now Passed

The company tax cut announced in the Budget received Royal Assent on 22 June 2015 and is now law. From 2015/2016, companies which are Small Business Entities (SBE's) now have a tax rate of 28.5% (down from 30%). The corporate tax rate for larger companies (those that are not SBEs) remains at 30%.

The term 'small business entity' takes its standard meaning from section 328-110 of the Income Tax Assessment Act 1997 (ITAA 1997) and includes the requirement that an entity must have an aggregate turnover of less than $2 million in the previous year and are likely to be under the turnover threshold of $2 million for the current year. 'Aggregate turnover' includes the turnover of any connected or affiliated entities. This measure is expected to benefit approximately 780,000 companies. There is no cap on this tax reduction. However, the requirement for your company's turnover to be less than $2 million, means that the maximum benefit that can be derived under this change is $100,000 (in the unlikely event that your company's taxable income and turnover were both $2 million). The current maximum franking credit rate for a distribution remains unchanged at 30% for all companies, maintaining the existing arrangements for investors, such as self funded retirees.

As the corporate tax rate is being reduced to 28.5% for SBE companies, the shade-in limit is reduced to $863 for non-profit companies that are small business companies. Consequently for non-profit companies, taxable income over $863 is now taxed at 28.5%.

Tax Offset For Unincorporated SBEs

The Budget announcement providing for a tax cut for unincorporated small businesses has been given more clarity following the release of draft legislation.

From 2015/2016, individuals will be entitled to a 5% non-refundable tax offset if they are an SBE or they have a share of a small business' net income included in their assessable income, provided the small business is not a corporate tax entity. An individual can only claim one small business tax offset for an income year irrespective of the number of sources of small business income that an individual receives. The maximum amount of the offset from all sources of SBE income is $1,000 for an income year which will be claimed in your year-end tax return.

Because the tax offset is only available to individuals, it cannot be claimed by trustees who are liable to pay income tax on the income of an SBE that is a trust. Therefore, the offset is only available to:

- Individuals who are themselves an SBE (i.e. sole traders)
- Individuals who are not an SBE but who have received SBE income for the year, including:
  - o Partners in a partnership that is an SBE, *and*
  - o Beneficiaries of a trust which is an SBE.

Although capped at $1,000 per individual, several individuals within the one structure can enjoy their own offset (not just the business owner) provided at the end of income year they are assessed on income from an SBE. According to the legislation, the 5% discount will be applied to your 'net small business income' as follows:

- *Sole traders* – Your taxable income from the business
- *Beneficiaries of a trust and Partners of a Partnership* - your distribution, less any deductions to which you are entitled, to the extent that those deductions are attributable to that distribution.

EXAMPLE

(adapted from the draft Explanatory Memorandum to the new law)

Adrian is a sole trader which is a small business entity. For the 2015/2016 income year, Adrian's taxable income is $100,000, his basic income tax liability is $25,000, and his total net small business income is $50,000. To work out the amount of his small business income tax offset for the 2015 /2016 income year, Adrian first divides his total net small business income by his taxable income ($50,000/$100,000 = 0.5). The result of this calculation shows that half of Adrian's taxable income relates to his total net small business income.

Adrian then multiplies the result of the first calculation by his basic income tax liability (0.5 × $25,000 = $12,500). The result of this second calculation shows that $12,500 of Adrian's basic income tax liability is from his total net small business income. Adrian's small business tax offset is equal to 5% of the result of this second calculation (0.05 × $12,500 = $625). The full amount of Adrian's small business tax offset is therefore $625. Adrian can claim the full amount of the small business tax offset for the 2015/2016 income year because it is less than $1,000.

STATUS

At the time of writing this measure has not been passed into law, and will be considered by Parliament when it resumes on 10 August following its Winter recess. The Federal Opposition has however indicated that it will pass this measure.

Robust Economic Forecasts Vindicated... at this stage!

When the Budget was released, the economic growth forecasts were criticised in some quarters as being overly optimistic. According to the Budget, economic growth is forecast to increase from 2.5% in 2014/2015 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. These strong forecasts were to some extent vindicated just a few weeks later when the March national account figures were released showing quarterly growth rate of 0.9% which was well above market expectations.

Start Up Business Concession

The Budget announcement providing for an immediate tax deduction for start-up costs has been given more clarity following the release of draft legislation. To recap, on Budget Night the Government announced that from 1 July 2015, certain entities will be able to immediately deduct costs incurred when starting up a business which under the old law were only deductible over five years. Hence this measure will provide cashflow relief to 'start-ups,' by bringing forward the deduction for this type of expenditure. With cashflow one of the major killers of new businesses, this reform is welcome.

The release of draft legislation has given clarity around the key aspects of this new law as follows:

WHO IS ELIGIBLE?

To take advantage of this new measure, the entity claiming the deduction must be either of the following in the income year in which the deduction is claimed:

- An SBE (see earlier for definition), or
- Not carrying on a business and not connected with, or an affiliate of, an entity that carries on a business that is not a small business entity.

Businesses that are looking to expand and for example seek professional advice on how to finance the expansion will not be eligible, as there is an existing business already in place.

TYPE OF EXPENDITURE

The draft legislation limits the eligible expenditure to either of the following two types:

1. *Expenditure on advice or services relating to the structure or operation of the proposed business*

This may include, for example:

- Advice or services from a lawyer or accountant on how to best structure the business as well as services these advisors provide in setting up legal arrangements or business systems for such structures
- Advice or services from a lawyer or accountant on the viability of the proposed business (including due diligence where an existing business is being purchased) and the development of a business plan
- Costs associated with raising capital (whether debt or equity) for the operation of the proposed business including, for example, costs incurred in accessing crowd-sourced equity funding.

2. *Payments to Australian Government Agencies*

Payments of taxes, fees or charges that relate to establishing your business or its structure are eligible if made to an Australian Government agency. Examples may include costs associated with creating the entity that will operate the business (such as the ASIC fee for creating a company) as well as costs associated with transferring assets to the entity that will carry on the business (such as Stamp Duty).

STATUS

At the time of writing this measure has not been passed, and will be considered by Parliament when it resumes on 10 August following its Winter recess. The Federal Opposition has however indicated that it will pass this measure.

'Net-Flix' Tax Takes Shape

The Government has released an Exposure Draft Bill and associated explanatory material to give effect to its proposed GST "Net-Flix" tax announced in the Federal Budget.

WHAT WILL BE CAUGHT?

The proposed changes, which will commence from 1 July 2017, will align the GST treatment of digital products and services with that of more traditional products and delivery methods. Broadly, the changes are intended to cover situations where supplies of things other than goods or real property are supplied by both Australian and non Australian businesses to Australian consumers. Specifically, offshore supplies of services and intangibles will potentially be subject to GST where the recipient of the supply is an "Australian consumer" which is basically defined as follows:

- Is not registered or required to be registered for GST (or alternatively a GST registered recipient does not make the acquisition as part of the carrying on of their enterprise)
- Is an Australian resident.

It follows that businesses and individuals who are registered for GST and make acquisitions of things other than goods or real property from offshore suppliers will not be impacted by the changes (they will not be charged GST on such acquisitions). Rather, the new law is targeted at Australian consumers who are not registered for GST or those who make acquisitions that are not part of their enterprise. Affected sales that will be caught by the new law include not only the streaming or downloading of movies, music, apps, games, e-books and other digital products but also offshore services such as consultancy and professional services (e.g. legal advice etc.). As a result of the law changes all of these supplies will receive similar GST treatment whether they are supplied by a local or foreign supplier (i.e. they will be taxable).

SPECIFIC EXCLUSIONS

The Exposure Draft materials recognise that there may be some unintended anomalies from the new law when Australian consumers make acquisitions while they are overseas. To address this, supplies that are used or enjoyed outside of Australia will be excluded from the new law and thus Australian consumers will not be charged GST on such supplies:

EXAMPLE

(adapted from the draft Explanatory Memorandum to the new law)

Frisor GmbH is a large German hairdressing company that operates from premises in Munich. It is close to a number of hostels very popular with Australian tourists.

Because of this location, Frisor supplies hairdressing services to a large number of Australian residents holidaying in Germany, with the total value of the supplies made to Australian residents in the 2018/2019 financial year exceeding $80,000.

These supplies are not supplies of goods or real property and are not obtained by the Australian resident customers in the course of enterprises that are registered or required to be registered for GST.

Accordingly, these supplies are connected with the indirect tax zone as a result of these amendments. However, there is no practical impact for Frisor. This is because the supplies of hairdressing services in Germany are GST free, as they are made to recipients who are outside Australia at the time of the supply and the effective use or enjoyment of the supply is outside Australia (see item 3 in subsection 38-190(1) of the GST Act).

In addition, the amendments ensure that these GST free supplies do not count towards Frisor's GST registration threshold. Therefore Frisor will not need to register for GST as a result of these supplies.

RELIEF FOR OFFSHORE SUPPLIERS

The proposed amendments recognise the difficulty of offshore suppliers determining whether the purchaser is an 'Australian consumer'. Given that foreign suppliers may have limited capacity to make this determination, so long as the offshore entity:

- takes reasonable steps to obtain information concerning whether the recipient of the supply is an Australian consumer; and
- after taking these steps, reasonably believes that the recipient is not an Australian consumer…

…then the entity may treat the supply as if it had been made to a non-resident even if this is later found not to have been the case.

Further relief is provided to offshore suppliers who sell their digitised products through an electronic distributions service such as a website, internet portal or virtual store operated by a third-party. Recognising that the operators of such services will be better resourced and more able to discharge GST obligations, the underlying supplier can if they wish shift the GST obligations to the operator of the distribution service where any of the following apply in relation to the sale:

- the supplier is not identified in any of the sale documents
- the operator authorises billing
- the operator authorises delivery of the supply
- the operator sets the terms an conditions of the supply.

Limiting FBT Concessions

For the portion of our subscriber base who are non-profit organisations (or if you have clients in this space) the Government has released Exposure Draft legislation providing clarity around its Budget reforms to FBT concessions. The draft legislation makes two core changes:

CURRENT LAW	NEW LAW
All meal entertainment benefits and entertainment facility leasing expense benefits are excluded from forming part of an employee's individual fringe benefits amount and reportable fringe benefits	Salary packaged meal entertainment and entertainment facility leasing expense fringe benefits will always appear as part of an employee's reportable fringe benefit total which is included on their payment summaries This is achieved through the removal of an existing reporting exclusion contained in Section 5E of the Fringe Benefits Tax Assessment Act
Rebatable or exempt employers can have their FBT liability eliminated (subject to a $31,177 or $17,667 cap per employee). If the total grossed-up taxable value of fringe benefits is more than the relevant cap, no FBT exemption is available for the excess amount This cap does not include excluded fringe benefits (such as salary packaged entertainment benefits)	Rebatable or exempt employers are still entitled to have their FBT liability eliminated up to the applicable cap per employee If the total grossed-up taxable value of fringe benefits is more than this amount, no rebate is available for the excess amount The cap does not include excluded fringe benefits but now includes salary packaged entertainment benefits previously excluded. However, if the standard cap is exceeded during an FBT year, it is raised by the lesser of $5,000 or the total grossed up taxable value of salary packaged entertainment benefits

CHANGE 1 (in the table above)

To be clear, meal entertainment benefits and entertainment facility leasing benefits are still excluded from forming part of an employee's individual reportable fringe benefits amount – so long as they are not provided via salary sacrifice.

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, the Higher Education Loan Programme (HELP), and your entitlement to certain income-tested Government benefits.

Entertainment facility leasing expenses are expenses incurred in hiring or leasing:

- A corporate box
- Boats or planes for providing entertainment, *or*
- Other premises or facilities for providing entertainment such as:
  - o A function room in a club or hotel that has been hired to the exclusion of others
  - o A hotel/motel room
  - o A room in a bed and breakfast facility
  - o A cabin on a cruise ship
  - o A cabin or on-site van at a caravan park
  - o A marque
  - o A golf course that is hired or leased for a set time or full day to the exclusion of others (e.g. a corporate golf day, and
  - o A tennis court that is hired to the exclusion of others (e.g. for a corporate tennis day).

CHANGE 2

This effectively introduces a new, separate, single grossed-up $5,000 cap on salary sacrificed meal entertainment and entertainment facility leasing expense benefits for employees of employers who are able to access a general FBT exemption or rebate. Benefits which exceed the $5,000 cap can also be counted towards determining whether an employee exceeds their existing FBT exemption or rebate cap.

By way of background, if your organisation is FBT exempt, the benefits it provides to employees are exempt from FBT where the grossed-up taxable value of certain benefits for each employee during the year is equal to or less than the applicable capping threshold. It follows that where the total grossed-up value of fringe benefits provided to an employee is more than the capping threshold, your organisation will be liable for FBT on the excess.

The Preserve Of The Aging

With the commencement of the new financial year, the Preservation Age has increased. This article looks at how this increase may impact your retirement planning, your ability to access your superannuation, the tax treatment of amounts paid on termination of employment and, more.

Background

Since it was introduced in 1999, the Preservation Age has been 55. However, it was always intended that this would increase to 60. To ease the impact on those nearing retirement, this increase is phased-in. While the Preservation Age is locked in at 55 for those born before 1 July 1960, those born after this date will from 2015/2016 feel the impact of the above-mentioned phase-in with their Preservation Age ranging from 56 to 60 (not the standard and widely recognised 55) depending on when you were born as follows:

DATE OF BIRTH	PRESERVATION AGE
Before 1 July 1960	55
1 July 1960 – 30 June 1961	56
1 July 1961 – 30 June 1962	57
1 July 1962 – 30 June 1963	58
1 July 1963 – 30 June 1964	59
After 30 June 1964	60

Those born in July-December 1960 for example will in 2015, despite turning 55, have not reached their Preservation Age. For these people, it's now 56 – and they will feel the impact of that in 2015. This impact will be felt by more taxpayers over the next five years and forever after as the phase-in takes effect.

The increase to the Preservation Age for those born from 1 July 1960 has impacts across a number of areas which we now examine.

Retirement

Over the years, financial planners and advisors have drummed into our psyche that we need to reach at least 55 years of age before retiring and accessing our superannuation benefits. For those born after 1 July 1960, you will now need to be older than this!

To recap, under the superannuation Conditions of Release, if you have reached Preservation Age but are less than 60, then you are considered retired and can therefore access your superannuation savings if:

- An arrangement under which you were gainfully employed has ended (i.e. you are you are made redundant or resign etc.), and
- The trustee of your superannuation fund is reasonably satisfied that you never again intend to become employed either part-time (10 hours per week) or full-time. If you do return to work, no penalties apply – provided that the trustee was satisfied at the time that you originally applied for your savings that you would not return to work.

Therefore, from 2015/2016, if you were born after 1 July 1960 the earliest age-based Condition of Release for access to your superannuation is 56 – i.e. your Preservation Age. Consequently, if you wish to have an employment income stream all the way through to retirement, you will now need to stay in the workforce longer than those born earlier than 1 July 1960. Indeed those born after 30 June 1964 will need to stay in the workforce a full 5 years longer. The take-home message is that the phasing in of the increase to the Preservation Age is now taking effect and those impacted (i.e. those born from 1 July 1960 onwards) need to start planning for potentially staying in the workforce longer than was previously the case.

TTR Pension

From 2015/2016 if you were born on or after 1 July 1960 and wish to ease your way into retirement under a Transition to Retirement Pension strategy you will now need to wait longer.

Under this strategy, once you've reached Preservation Age you can commence drawing a pension from your superannuation fund which can then be used to supplement your employment income. The rules are as follows:

- You must have reached your preservation age
- You can only take an income stream from your superannuation account generally by way of a account-based pension. These pensions require a minimum percentage amount be paid to you each year
- No lump sum withdrawals are allowable until retirement
- There is no work test to be met
- A maximum of 10% of your account balance can be drawn down each year
- The taxable part of your income stream will be taxed at your marginal tax rate, but if your pension is paid from a taxed source, you will receive a tax offset equal to 15% of the taxable part of the income stream. Once you reach 60 years of age, the income stream is tax-free, and
- Your pension can be rolled back into accumulation mode at any time.

Therefore, from 2015/2016, if you were born on or after 1 July 1960 the earliest you can utilise the Transition to Retirement strategy is 56. For those born after 30 June 1964, the increase to the Preservation Age will remove the ability for you to commence a Transition to Retirement pension before you turn 60. By this age, you may well have met an alternative Condition of Release.

TAX TIP

Leaving aside the impact of the phasing-in of the Preservation Age, the Transition to Retirement strategy offers wonderful flexibility for those nearing retirement. By drawing on your super while still working, you can perhaps reduce your working hours – easing your way into retirement – with little or no impact on your living standards.

Severe Financial Hardship

The increase to the Preservation Age will now also impact the severe financial hardship provisions which allow early access to superannuation.

Under this superannuation Condition of Release, if you have received Commonwealth income support payments for a cumulative period of 39 weeks after reaching Preservation Age, and you were not gainfully employed either full-time or part-time when you applied to have your benefits released, you may acess your superannuation. There are no restrictions on the amount that can be withdrawn. With access tied to the Preservation Age, taxpayers who turn 55 in 2015/2016 will now need to wait until at least age 56 and 39 weeks (increasing over the next five years for those born later). Therefore access to your benefits is not permitted before 2016/2017.

TAX TIP

If you are under Preservation Age, you can also take advantage of the hardship provisions and access your superannuation early.

To do so, you must have been receiving Commonwealth income support payments for at least 26 continuous weeks (and are in receipt of this when you apply to have your benefits released), and you are unable to meet reasonable and immediate family living expenses. If this is met, you can access a single lump sum of no more than $10,000 and no less than $1,000 (or, if your balance is less than this, the lesser amount). Only one payment is allowed each 12 months, and you must make a separate application each time.

Taxation of Superannuation Lump Sums

The tax payable on superannuation lump sum benefits from a taxed sourced depends on the components of the benefit as well as the age of the recipient at the time payment is made. For those who are eligible to receive lump sum benefits prior to Preservation Age, the lump sum of a taxable component will generally be taxed at 22%. On the other hand, if the amount is taken after Preservation Age, it may be tax-free. Therefore, taxpayers who turn 55 in 2015/2016 may wish to defer drawing benefits until after they turn 56 to access the generous tax treatment afforded to you once you attain Preservation Age.

Employment Termination Payments

The increase to the Preservation Age also impacts the taxation of Employment Termination Payments. The tax treatment of an ETP depends on an individual's age at the end of the financial year in which the payment is made (as distinct from when the payment is made). The taxation of ETPs and what constitutes a Column 1 and Column 2. As per the following 2015/2016 ETP withholding tables, concessional tax treatment is available for the taxable component of an ETP. Ultimately, the taxation of an ETP depends on **(a)** the type of ETP (Column 1 or Column 2) **(b)** the amount of the taxable component and **(c)** whether the employee has reached their Preservation Age at the end of the financial year in which the ETP is received:

COLUMN 1 ETPS

RECIPIENT'S AGE	TAX ON TAXABLE COMPONENT
Under 55 on the last day of the income year in which the payment is made	- Up to ETP Cap taxed at a maximum rate of 32% - The excess is taxed at 49%
55 or over on the last day of the income year in which the payment is made	- Up to ETP Cap taxed at a maximum rate of 17% - The excess is taxed at 49%

COLUMN 2 ETPS

RECIPIENT'S AGE	TAX ON TAXABLE COMPONENT
Under 55 on the last day of the income year in which the payment is made	Up to the lesser of ETP cap or Whole-of-Income Cap less taxable income... - Taxed at a maximum rate of 32% - The excess is taxed at 49%
55 or over on the last day of the income year in which the payment is made	Up to the lesser of ETP cap or Whole-of-Income Cap less taxable income... - Taxed at a maximum rate of 17% - The excess is taxed at 49%

As illustrated, the taxable component of an ETP received by an employee under Preservation Age at the end of the financial year is taxed at a much higher rate than if they have reached their Preservation Age. Thus ETPs paid to employees who turn 55 in 2015/2016 will be taxed more heavily than if the payment is delayed until 2016/2017. Note that to receive concessional tax treatment, the ETP must be paid within 12 months of termination.

Going forward, for all employers, where an employee is nearing Preservation Age, if the ETP is large, you should consider delaying the payment until the financial year that they reach Preservation Age if possible. Doing so, can save more than 15% tax for employees at what can be a financially stressful time in their life.

Take Home Message

For those born after 30 June 1960, the Preservation Age (widely understood to be 55) is increasing. Consider how this impacts you in the coming years.

WHAT THE TAXMAN IS THINKING

In this edition, we look at the SuperStream deadline extension, two new ATO Taxpayer Alerts, some recently published material to assist employers entering into employee share scheme arrangements, and more.

SuperStream Extension

The ATO has extended the deadline for larger businesses to comply with *SuperStream*. By way of background, *SuperStream* is a new way of making and receiving employer superannuation contributions. *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

Employers with 20 or more employees were required to be *SuperStream* compliant by 1 July 2015. However Philip Hind, ATO's National Program Manager, Data Standards and E-Commerce (*SuperStream*) says the ATO will extend its deadline for employers who are not ready by four months until 31 October 2015.

Employers with 20 or more employees should already be implementing SuperStream. But we understand some businesses have not made the deadline and need more time. Employers should be making sure they are putting plans in place now and come up-to-speed as soon as possible. We want to ensure businesses do not rush into this at the last minute, but take the time to get ready and ensure they get their implementation right.

The ATO will not be taking compliance action against employers who missed the 30 June deadline but rather working closely with these employers to provide education and support. Smaller employers (those with less than employees) have until 30 June 2016 to comply with *SuperStream* which may include an employer doing anything of the following:

- Upgrading their payroll software – the latest versions of the main software brands are generally speaking *SuperStream* compliant
- Using an outsourced payroll provider (e.g. payroll bureau or other service provider such as a tax agent)
- Using a commercial superannuation clearing house or the ATO's Small Business Clearing House
- Using your default superannuation fund (which may have its own compliant facilities).

Employee Share Scheme Material

In October 2014 and in the May 2015 Federal Budget, the Government announced a series of changes to make employee share schemes (ESS) more attractive effective 1 July 2015. Broadly these changes involve:

- Deferring the point at which ESS interests that are options are taxed so that the taxing point applies not at the point at which an option can be exercised, but at the point at which it is exercised
- Increasing the maximum ownership limit to 10% of the total shares (up from 5%)
- Increasing the maximum deferral period at which taxation occurs from 7 years to 15 years for tax deferred schemes
- Introducing a generous concession for start-up companies whereby if shares are issued at a discount of up to 15%, (relative to market value), then the discount is exempt from income tax altogether for the employee. The shares will only be subject to capital gains tax at disposal.

"START-UP COMPANIES"

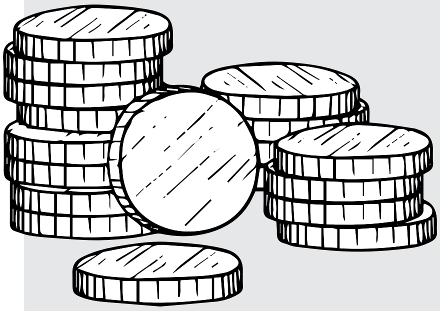
Under the legislation, 'start-up company' is defined very broadly as:

- 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
- A company that is an Australian resident taxpayer.

To assist employers and start-up companies to develop and maintain ESS, the ATO has now published a guide for employers as well as standard templates. Additionally, a guide has also been developed for employees to assist them in making a decision whether to participate in an ESS arrangement. This material is available on the ATO website www.ato.gov.au

TAX TIP

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 motivation as well as reduced staff turnover. The 1 July 2015 changes, particularly the "start-up company" concessions, may prompt employers to look more favourably at ESS as an alternative means of remuneration.



New Effective Life Ruling

The ATO has released Tax Ruling TR 2015/2 outlining the effective life of depreciating assets from 1 July 2015. Depreciation under the Uniform Capital Allowances (UCA) system is underpinned by the concept of 'effective life' of an asset. 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. To assist, for taxation purposes, the ATO publishes its own determination of the effective lives of most depreciable assets. This Ruling is usually updated annually. Most businesses also use these taxation rates for accounting purposes.

Be Alert

The ATO has recently issued two Taxpayer Alerts:

FRANKED DISTRIBUTIONS FUNDED BY CAPITAL RAISINGS

The ATO is currently reviewing arrangements where companies raise new capital to fund franked distributions and release accumulated franking credits to shareholders. The arrangement and the ATO's concerns are set out in *Taxpayer Alert TA 2015/2*. ATO Deputy Commissioner Tim Dryce says: "We consider that these arrangements are being entered into by companies with accumulated franking balances to release franking credits which they otherwise would have retained."

CONTRIVED DIVIDEND ARRANGEMENTS USED BY SMSFs

The ATO has issued *Taxpayer Alert TA 2015/1* which describes arrangements where a private company with accumulated profits channels franked dividends to an SMSF instead of to the company's original shareholders. As a result, the original shareholders escape tax on the dividends and the original shareholders (or individuals associated with the original shareholders) benefit as members of the SMSF from franking credit refunds to the SMSF.

These Alerts are available in the legal database section of the ATO website www.ato.gov.au

ATO SMS

The ATO has advised that it is now using SMS and emails for promotional and information purposes.

The ATO advises that if individuals receive an SMS or email claiming to be from the ATO, you can check the list of the ATO's current activities (on its website at ATO Online Services) to verify that the correspondence is genuine. Importantly from a security standpoint, the ATO advises that these messages will never ask taxpayers to reply by SMS or to provide personal information such as TFNs, bank account details etc. Current general notifications include:

- Advice that an application has been received
- A reminder to provide documents
- A reminder to attend a meeting
- Advice of new tax rates
- Important information for your business or industry
- Promotion of an ATO product or service such as *myTax, e-tax, SuperSeeker*
- Notifications of delays and system outages, *and*
- Reminders to meet ATO obligations to avoid penalties including:
  - o Lodgement of outstanding returns
  - o Payment of debt, and
  - o Payment of instalments as negotiated with the ATO.