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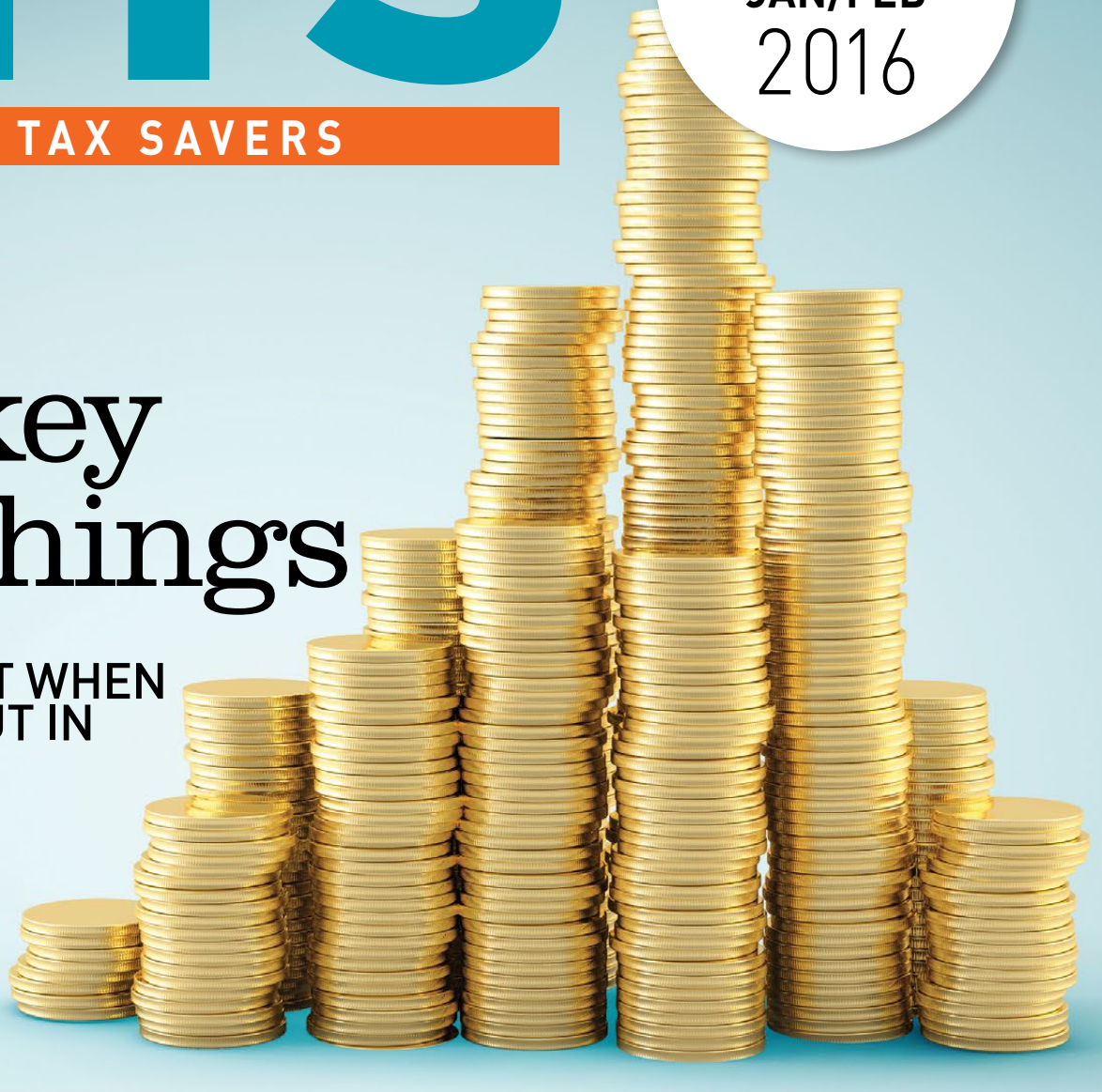

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SAVE $$$$

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KEY DATES FOR BUSINESS

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

JANUARY 2016

15 JANUARY

Due date for lodgement of income tax returns for companies and trusts that were taxable medium to large businesses in 2014/2015 and are not required to lodge earlier. If you fail to lodge by the due date, your 2014/2015 return will be due on 31 October 2015.

21 JANUARY

Due date for lodgement and payment of December 2015 monthly Activity Statements

28 JANUARY

Due date for October-December 2015 Superannuation Guarantee contributions to be made to a complying fund on behalf of your employees

31 JANUARY

Final date for lodgement of October-December 2015 TFN report for closely held trusts for TFNs quoted to a trustee by beneficiaries

FEBRUARY 2016

21 FEBRUARY

Due date for lodgement and payment of January monthly Activity Statements

28 FEBRUARY

Due date for lodgement and payment of October-December 2015 quarterly Activity Statements, including electronic lodgments

28 FEBRUARY

Due date for lodgement and payment of Annual GST returns or Annual GST information reports - if you do not have an income tax return lodgement obligation

28 FEBRUARY

Due date for lodgement and payment of income tax return for self-preparing entities that were not due at an earlier date. If you fail to lodge by this date, your 2015/2016 return will be due by 31 October

28 FEBRUARY

Due date for lodgement and payment of income tax returns for medium to large businesses (taxable and non-taxable) that are new registrations

28 FEBRUARY

Due date for lodgement and payment Superannuation Guarantee Charge Statement if you failed to pay Superannuation Guarantee on time for the October-December quarter. Superannuation Guarantee Charge is not deductible.

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

5 key things

TO GET RIGHT WHEN STARTING OUT IN BUSINESS

This article provides an overview of the important things to get right when starting out in business. Mistakes made when commencing business, can be expensive to rectify later on. Existing business owners may also find the following tips useful.

1. FUNDING AND EQUITY DECISIONS

There are a number of ways to fund a new business including:

- Bootstrap (essentially, building a business from personal finances or from the operating revenues of the new business)
- Family and friends
- Personal loans
- Business loans
- Asset loans
- Debtor financing
- Angel capital
- Venture capital
- Crowdfunding.

Your personal circumstances will typically dictate what's possible, but be sure to do your homework and take advice.

Another way of gaining funding is to take on a business partner. This leads to a discussion of the very slippery issue of equity. Taking on a partner or granting equity to another person in your business is not a decision to be taken lightly. Equity can be forever. Once a person has equity, you will forever be sharing profits and/or ownership with them, and forever reporting and accountable to them. You should think long and hard about who can offer genuine, long-term strategic value to your business and who is merely undertaking a task or filling a role. If it's the latter, that person should generally not be a candidate for equity. The key here is to reward value not time.

There are no "hard and fast" rules, but here are some questions to ask when considering whether someone is deserving of equity in your business:

1. Will they deliver long-term value and be instrumental to the business' success?

2. Will they take the business to heights it couldn't otherwise get to?

3. Will they solve a crisis that threatens the business' livelihood?

4. Will they cause greater damage by doing their own thing?

Having decided that someone is deserving of equity, the style of equity they should receive is then a separate consideration again. There are once more a number of options which include:

- Full equity
- Dividend (profit) participation but not capital participation
- Phantom equity (in other words, a bonus scheme of sorts)
- Vesting equity (i.e. equity that vests gradually over time based on targets being met).

2. CHOICE OF TRADING STRUCTURE

When we talk about "trading structures", we are referring to a decision between sole trader, partnership, trust or company. Every circumstance is different and the right answer will sometimes be a combination of more than one entity. Utilising the wrong structure and needing to rectify it later on can lead to significant disruption and transaction costs, including capital gains tax and stamp duty. It pays to seek professional advice to come up with a structure that suits your circumstances, and is scalable and effective.

Among the considerations when choosing a trading structure are:

- Income Tax effectiveness
- Capital Gains Tax (CGT) friendliness in the event of a future sale
- Asset protection (both personal and for the business)
- Liability
- Estate and succession planning
- Cost (establishment and ongoing)
- Complexity
- Ownership requirements.

It may be cheaper to avoid using a professional advisor, but a simple mistake can mean paying a much higher price later on.

3. UNDERSTAND YOUR STATUTORY OBLIGATIONS

When you're starting out in business, the excitement and frenetic pace can sometimes mean that the more mundane tasks can be neglected.

It is important to understand which government identifiers you will need, which include:

- Tax File Number (TFN)
- Australian Business Number (ABN)
- GST & PAYG-W registrations
- Business name registrations.

Similarly, you should develop an awareness of your reporting obligations and their timings. This refers to the likes of:

- Financial statements
- Monthly or quarterly Activity Statements
- Annual Income Tax Returns
- ASIC filings (companies only).

And then of course there is arguably the trickiest area of all – employing staff. This spawns a myriad of issues which you should seek expert advice on, including:

- Distinguishing Employees from Contractors
- Determining the status of employees, i.e. casual vs part-time vs full-time
- Ascertaining rates of pay (including Awards) – employees are generally speaking incredibly sensitive when it comes to any mistakes made with their pay
- Understanding leave entitlements
- Obtaining TFN Declarations and Choice of Super forms
- Making quarterly Superannuation payments
- Preparing Payment Summaries.

4. EMBRACE CLOUD ACCOUNTING

Cloud accounting, sometimes referred to as "online accounting", serves the same function as accounting software that you would install on your computer, except it runs on hosted servers and you access it using a web browser or app. Your data is thus stored and processed "in the cloud".

Cloud accounting can carry with it a host of benefits to business owners, stakeholders and advisors, including:

- Real-time
- Reduced data entry
- Intelligent software
- No more filing
- Automatic back-ups
- One version
- Mobility and flexibility.

In the Australian market, most of the major software vendors have cloud accounting offerings.

> "the aim should be to choose advisors who are as much your partners in business as they are your supplier of services."

5. SURROUND YOURSELF WITH GOOD ADVISORS

Being new to business is not for the faint-hearted. It can be a lonely and incredibly daunting space. You need to pick a good team and that includes professional advisors who understand your mission and passion, and want to take the journey with you.

Regardless of the space that they operate in – whether it be accounting, legal, financial services or any other – the aim should be to choose advisors who are as much your partners in business as they are your supplier of services. Sometimes it will take a while to settle on the right advisors, but you'll know when the time arrives.

TIPS

If you are starting up a new business, we recommend you visit www.business.gov.au and then click on the 'Starting' tab at the top of the page. This page contains, amongst other useful information for start-ups, a 'Starting Your Business Checklist' which is particularly helpful.

Also note that, following new legislation which has just passed Parliament, you may also now be able to claim certain start-up expenditure as a deduction if the expenditure was incurred on or after 1 July 2015.

FINANCIAL FUTURE

MURRAY INQUIRY RESPONSE

The Government has released its response to the Murray Inquiry into the financial services system in Australia. Those of you have SMSFs, use credit cards, or offer financial advice, are just some of those who may be impacted.

BACKGROUND

The Murray Inquiry was commissioned by the Abbott Government soon after taking office in 2013. It is the first full-scale review of the financial system since the Stan Wallis-led inquiry back in 1997 which created the modern regulatory framework. Broadly, the Inquiry was charged with examining how the financial system (including banking, superannuation etc.) could be positioned to best meet Australia's evolving needs and support economic growth. The final 320 page report was handed to the Government and released on 7 December 2014. We now detail the Government's October 2015 response to a number of the Inquiry's 44 recommendations, with a particular focus on taxation.

LIMITED RECOURSE BORROWING – HERE TO STAY...

The Government has rejected the Inquiry's recommendation to restore the ban on direct borrowing by SMSFs.

By way of background, since July 2010 SMSFs have been permitted to borrow using Limited Recourse Borrowing Arrangements (LRBAs) (and dating back to September 2007 under Section 67A of the Superannuation Industry Supervision Act. Before September 2007, SMSFs were generally prohibited from borrowing). Under LRBAs, the SMSF takes out a loan from a third-party lender for funds which are used to purchase an asset to be held in a separate trust. The returns from the asset (e.g. net rent) are part of the SMSF income. If the loan defaults, the lender's rights are limited to the asset held in the separate trust. The advantage in borrowing is that it allows your fund to acquire high value assets that would otherwise be out of reach. These assets may give you the capacity to build up your retirement benefits more rapidly than by just making cash contributions to your fund. Future income from these assets (such as rent and dividends) will receive more favourable tax treatment than if the assets were held outside superannuation.

SMSF's have certainly taken advantage of the new ability to borrow. The Murray Inquiry found that limited recourse loans taken out by SMSFs rose almost 18 fold; from $497 million in June 2009 to $8.7 billion in June 2014.

The Inquiry recommended that the Government restore the ban on direct borrowing by SMSFs (back to the law that applied before 2007) to prevent the build-up of unnecessary risk. Continued borrowing, the Inquiry observed, posed a risk to the financial system and conflicted with superannuation's role as a retirement savings system. In rejecting this recommendation, the Government stated that concerns about the impact of SMSF borrowing were 'anecdotal'. The Government will however ask the Council of Financial Regulators and the ATO to monitor the situation and report back in three years.

CREDIT CARD SURCHARGE FEES CURTAILED

In a win for consumers, the Government will ban businesses from imposing unfair card surcharge fees on customers from July next year.

By way of background, business owners (or contractors) are permitted to charge an additional fee when customers pay by credit card (otherwise known as a surcharge). This fee is to compensate for the cost the business incurs when accepting payments by card such as the fees charged by banks for processing. Surcharge fees are generally speaking between 1% and 2% of the cost of the underlying purchase. However, some businesses charge more. Airlines for instance have been frequently criticised for charging excessive surcharges to accept card payments.

From July 2016, businesses will be banned from levying surcharges for credit and debit cards above the cost of accepting payment by card under rules to be enforced by the Australian Competition and Consumer Commission (ACCC). This goes against the Murray Inquiry's recommendation that it would be too costly and impractical for a regulator (such as the ACCC) to decide what each business's true card payment costs are, particularly after taking into account all of the related costs such as purchasing and maintaining card infrastructure, fraud prevention costs, and also costs payable to other service providers such as for gateway fees, switching fees etc.

TAX RECOMMENDATIONS REJECTED

The Inquiry recommended that the Government identify and fix distortions in the tax system as they relate to superannuation and retirement savings. Specifically, the Inquiry recommended aligning the earnings tax rate across the accumulation and retirement phases (currently 15% and 0% respectively) at 15%.

The Government did not respond to this tax-related recommendation which went beyond the Inquiry's terms of reference. Interestingly however the new Prime Minister Malcolm Turnbull has put superannuation changes back on the agenda for consideration, particularly concessions for wealthy Australians. This represents a change of position from the previous Prime Minister who had ruled out any adverse changes to superannuation in the medium term.

FINANCIAL ADVISOR QUALIFICATIONS STRENGTHENED

In a change designed to protect consumers, the Government will strengthen the minimum educational standards for financial advisors. Subject to transitional arrangements, under new law soon to be introduced, before they can advise clients, advisors will be required to hold a degree, pass an exam, undertake continuous professional education (CPE), subscribe to a code of ethics and also complete a professional year.

INCOME NOT LUMP SUM

The Inquiry recommended making it mandatory for superannuation funds to provide more options for annuity or comprehensive income products to encourage retirement savings as income rather than as a lump sum payment.

In response to the Inquiry's recommendation, the Government will work with industry (i.e. superannuation funds) to provide retirees with more flexible retirement income products but will not make this mandatory.

A copy of the Government's full response to these and other recommendations made by the Inquiry can be found on the Treasury website www.treasury.gov.au

TAX TIP 1

Taking your superannuation as a pension (or purchasing an annuity) and leaving the remainder inside superannuation instead of withdrawing it as a lump sum, has significant tax advantages. By leaving the lump sum within the superannuation environment, you enjoy concessional tax treatment compared to the tax on investment earnings outside of superannuation.

TAX TIP 2

Australians currently spend more than $2 billion per year on annuities. Annuities, which can be either for a life term or a fixed number of years, are becoming an increasingly popular alternative to account-based pensions as people seek out secure, guaranteed incomes. Annuities are purchased from a life insurance company using superannuation or savings outside of superannuation. They provide a guaranteed series of payments regardless of the performance of the market. Payments can be indexed to inflation or have pre-set increases. The first step is to work out what your income requirements are.

At the end of the term, all of your capital is returned, and you then have the option of taking back your lump sum and dealing with it as you please, or reinvesting it in another annuity. Annuities differ from pensions in that with pensions you must draw on the capital as well as the income each year. By contrast, with annuities you are not required to touch the capital at all. Account based pensions are however more flexible because they allow you to withdraw lump sums at any time and typically offer you a higher but more volatile return. To find out more about annuities, speak with your financial advisor.

REV IT UP!

THE TAX TREATMENT OF CAR ALLOWANCES

The recent measure to streamline the claiming of deductions for work-related car expenses will have an impact on the tax treatment of car allowances. This article examines this impact and recaps on the tax treatment of all types of car allowances that may be paid.

BACKGROUND

Car allowances are perhaps the most commonly paid allowance by employers. They generally fall into two broad categories:

1. The payment of a flat amount (regardless of the distance travelled) in anticipation of work-related travel.
2. Payment of an amount calculated on a Cents per Kilometer basis.

We now examine all of the various tax issues surrounding these two types of allowances.

1. FLAT AMOUNT

Employers will sometimes pay their employees a set allowance regardless of the number of business kilometres travelled (e.g. an annual $5 000 allowance in addition to an employee's base salary). The advantage of paying this style of allowance is that it cuts 'red-tape'. That is, the employee is not required to keep a diary or other records of the number of business kilometres they've travelled during the year. And, for their part, the employer (or their payroll person) can set up a fixed amount in the payroll, without the need to vary it depending on the distances travelled.

WITHHOLDING

Employers must withhold PAYG from this allowance each pay period. The amount of the allowance is added in with normal salary for the pay period and PAYG is withheld in accordance with the amount specified in the withholding tax tables. This treatment applies irrespective of whether the allowance is paid in anticipation of work-related travel, or whether the allowance is paid in the knowledge that the employee will not be required to undertake work-related travel during the year.

PAYMENT SUMMARY

Treatment will vary depending on whether the allowance is paid in anticipation of work-related travel, or whether it's paid in the knowledge that there will be no work-related travel. In the case of the former, employers should show the allowance separately in the 'allowances' box of the Payment Summary with an explanation (e.g. 'Car Allowance'). In the case of the latter, the employer should include the amount in the 'gross payments' section of the Payment Summary along with salary and wages.

SUPERANNUATION

The general rule is that all allowances received by an employee, except for expense allowances that are expected to be fully expended and allowances that are fringe benefits (e.g. Living Away From Home Allowances), will attract superannuation. However, where an allowance relates to work outside ordinary hours, it will not attract superannuation (for example, overtime meal allowances and on-call allowances paid to an employee in return for them making themselves available to be called into work outside ordinary hours). Applying these general principles to car allowances, if the allowance is expected to be fully expended on work-related travel it will not attract superannuation. Otherwise, it will.

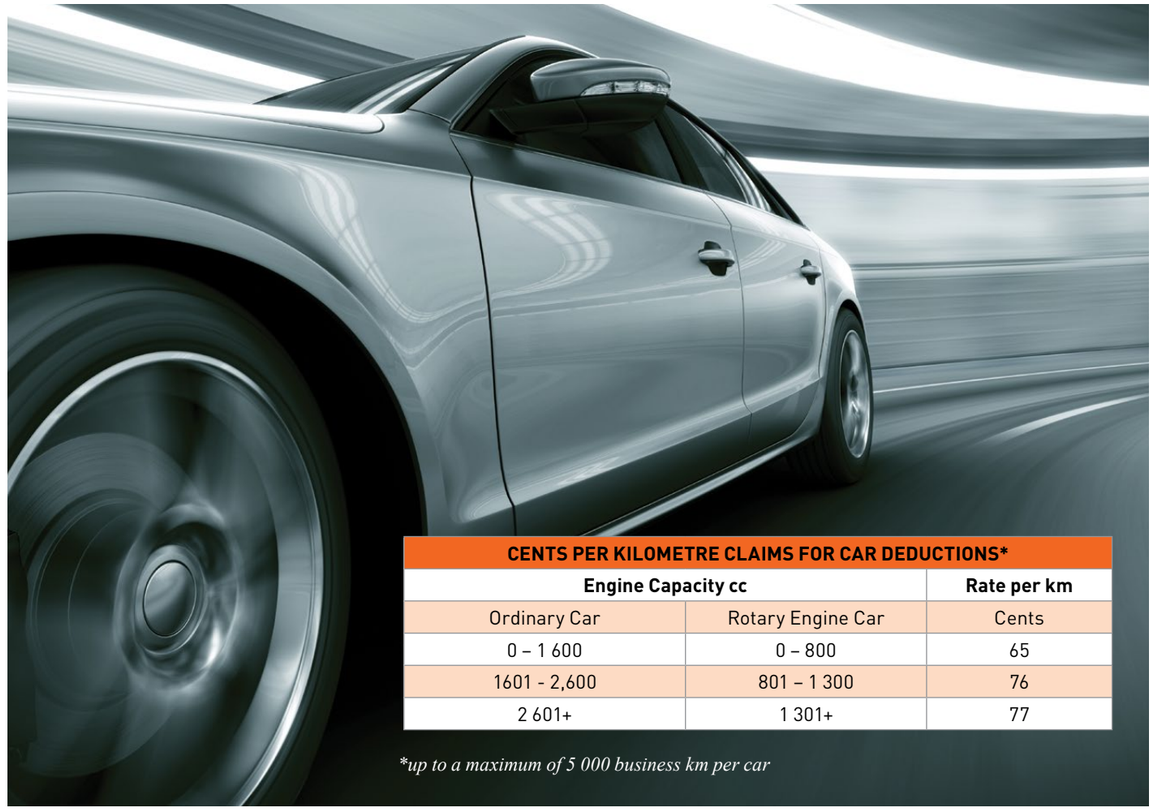
EXAMPLE

Cameron is a mobile home loan lender with no fixed office. In addition to his normal salary, his employer pays him a motor vehicle allowance to cover the travel costs he incurs in meeting with borrowers.

This allowance will not attract superannuation. Because of the nature of his duties (he is required to travel around to meet potential and existing customers), the allowance paid by Cameron's employer is paid in the expectation that it will be fully expended. The allowance is a pre-determined amount (not a reimbursement) calculated to cover Cameron's estimated motor vehicle expenses. It is not therefore paid as a reward for services but in recognition of the costs that are expected to be incurred by Cameron in providing his services.

2. CENTS PER KILOMETRE

On the other hand, employers may pay their workers a Cents per Kilometer allowance – based on either the total kilometres driven for a period or more typically the total number of business kilometres driven. With this type of allowance, the employee will be expected to keep a record (e.g. a diary) of the number of kilometres travelled and furnish the employer with this record before the allowance is paid.



CENTS PER KILOMETRE CLAIMS FOR CAR DEDUCTIONS*		
Engine Capacity cc		Rate per km
Ordinary Car	Rotary Engine Car	Cents
0 – 1 600	0 – 800	65
1601 - 2,600	801 – 1 300	76
2 601+	1 301+	77

**up to a maximum of 5 000 business km per car*

REIMBURSEMENT?

Although with a cents per kilometre allowance the employer is effectively reimbursing the employee at a set rate depending on the number of kilometres traveled, the amount is not a reimbursement as it is not exact compensation for the expenses incurred by the employee. Rather the amount is an allowance. This is a common misconception among employers.

This distinction is important as reimbursements have vastly different tax treatment from allowances (i.e. reimbursements are generally not taxable to the employee, will not be included on their Payment Summary, will not attract superannuation, and the employee will not be able to claim a deduction for their reimbursed expenses).

The rate paid by an employer (i.e. the number of cents) is typically based on either **(a)** the amount specified in an Award or other employment instrument or **(b)** an amount agreed to between the parties or **(c)** the amount specified by the ATO which up until 30 June 2015 was based on the car's engine capacity as per the above table.

In the 2015 Federal Budget, the Government announced that from 1 July 2015, the ATO cents per kilometer rates would be streamlined with a flat rate of 66 cents to apply irrespective of a vehicle's engine capacity. Although the legislation containing this change is still, at the time of writing, before Parliament and yet to be passed, the ATO recommends that employers should commence applying the 66 cents rate if the ATO rate is the benchmark that you use.

If an employee is using a car with an engine capacity of greater than 1 600cc, this will involve a sharp reduction in the allowance. By contrast, if the engine capacity is less than this, then the amount of the allowance will slightly increase. If employers continue paying based on the old ATO rates (those in the above table), this will alter your PAYG withholding obligations and thus necessitate a change to your payroll settings (see Scenario 3 below).

The PAYG Withholding, Payment Summary and Superannuation treatment for Cents per Kilometre allowances depends on a range of factors as follows:

1. Where the allowance is paid for non-deductible travel…

Employers will be required to withhold from the whole of the allowance paid, must include it on the Payment Summary (in the 'Gross Payments' box along with the salary and wage amount), and must pay Superannuation.

2. Where the allowance is paid for deductible travel and the ATO rate (now 66 cents) or a lower rate is used…

For the first 5 000 km, employers do not need to withhold, must show the allowance on the Payment Summary (in the 'Allowance' box), and are not required to pay Superannuation. For any travel over 5 000 km, PAYG must be withheld for payments in excess.

3. Where the allowance is paid for deductible travel and a rate above the ATO rate of 66 cents is used…

Employers must withhold from any amount in excess of the ATO rate, must include the amount paid on the Payment Summary (in the 'Gross Payments' box), and are not required to pay Superannuation.

IMAGE: TANUHA2001 / SHUTTERSTOCK.COM

SHARING IS CARING

The ATO has just released guidance on the income tax and GST consequences of various sharing economy services including ride-sourcing. With this aspect of the economy growing at a rapid rate, this article examines the GST and income tax consequences of these services.

BACKGROUND

The sharing economy describes an emerging business model that connects users and providers who wish to share resources including the provision of services. Sharing economy arrangements are generally booked through a facilitator (such as Uber or Airbnb) using a website or app. Sharing economy services include:

- Renting out or letting a room or other property for accommodation
- Using a car to transport members of the public for a fare (commonly referred to as ride-sourcing).

These services may or may not have GST and income tax implications for both the user and the provider.

RIDE-SOURCING

Ride-sourcing is a relatively new phenomenon and has for some commuters become an alternative to taxi travel. Ride-souring involves a driver (just a normal member of the public) making available their car for public hire. Users wanting a ride, make a request through a phone app or website provided by a third-party facilitator such as Uber. The provider/driver of the car used to transfer the passenger is then paid a fare by the customer requesting the ride. The provider/driver then in turn may be charged a fee/commission by the facilitator.

INCOME TAX

The ATO is of the view that drivers are earning accessible income irrespective of whether or not they are carrying on a business.

Consequently, the driver will be required to declare the money earned in their tax return, but will be permitted to claim relevant deductions such as depreciation of the vehicle, running costs, facilitator commission etc. These costs must however be apportioned for any private usage of the vehicle.

GST

Under general law, you are only required to register for GST where you are carrying on an enterprise and your annual turnover is $75 000 or more. However, under GST law where your enterprise involves providing 'taxi travel' you must register for GST irrespective of the level of your turnover. The GST legislation defines taxi travel as travel involving transporting passengers by taxi or limousine for fares. The ATO adopts a broad interpretation of taxi to include cars made available for public hire to transport passengers in return for a fare (but not including trucks and bike courier services). Thus ride-sourcing providers using cars are caught by the GST provisions, and must register for GST within 21 days of becoming a driver.

Having registered, the following applies:

- GST must be charged on the full fare (before any fees or commissions are charged by the facilitator)
- If the fare exceeds $82.50 (including GST), a tax invoice must be provided to the passenger if requested.
- GST credits can be claimed on purchases relating to the provision of the ride (including the car itself, and any GST contained in fuel or servicing costs). GST credits must however be apportioned to take into account any private use of the car. For instance, if you purchased a $44 000 car (with $4 000 GST), and used it 70% for ride-sourcing purposes, only $2 800 GST could be claimed.

APPEAL

The ATO's interpretation that ride-sourcing constitutes 'taxi travel' is currently on appeal to the Federal Court. If this appeal is successful, only drivers with a turnover of $75 000 or more would be required to register for GST.

CARVE OUT

The ATO make clear in their recently-issued guidance that there are no income tax or GST implications where any of the following apply:

- Non-commercial car-pooling arrangements where passengers contribute 'petrol money'
- Car sharing arrangements where multiple users have access to the same car which they use to drive from one location to another
- Arrangements using vehicles other than cars
- Arrangements where a car is used to transport passengers for a particular purpose e.g. to funerals or weddings and is not available to the public at large.

SUPER and PAYG?

The ATO generally considers providers/drivers to be independent contractors (as distinct from employees) for the purposes of Superannuation and PAYG withholding. Hence there are no employer obligations in these areas on the part of facilitators such as Uber.

EXAMPLE

Mr Thomas works in hospitality and sees a newspaper advertisement about how he can earn extra money by transporting passengers in his car.

The service is operated by Uber which notifies Mr. Thomas of the location of passengers and provides a phone app through which passengers can request transportation to their chosen destination.

Mr. Thomas charges a commercial fare based on distance and time. Uber then charge Mr. Thomas a facilitator fee. The frequency of these jobs varies, with Mr Thomas averaging between 6 – 8 rides per week, but some weeks zero.

INCOME TAX

The fares are part of Mr. Thomas's income and must be included in his tax return at year-end. He can also claim a deduction for the facilitator fee charged by Uber, and any associated motor vehicle expenses.

GST

Even though his turnover may be below $75 000, Mr. Thomas must register for GST as he is providing taxi travel. Assume for instance he charged a passenger $90 for a fare, then he must charge GST of $9 on top of this, and then remit this amount to the ATO. As the fare is above $82.50, the passenger can request a tax invoice which must then be provided. If the travel is work-related, passengers can claim a GST credit using their invoice, with the remaining cost of the fare claimed as a tax deduction.

RENTING ROOMS OR A HOME

The sharing economy provides a great opportunity for individuals with spare rooms or spare entire properties to rent out space and earn rental income using facilitators such as Airbnb.

It's the ATO's view that the tax law applies in the same way to income received in this way as it does to a standard rental arrangement through a real estate agent, for example. That is, the amounts received from the customers must generally be declared as income. Deductions relating to making the room/property available can also be claimed, such as all or part of the interest on a mortgage, insurance, council water and rates etc. Note that if the room/property is let out at less than commercial rates, your deductions allowable may be capped by the ATO to the amount of rent you received.

Likewise, the GST rules apply in the same way as normal. Renting a residential property is an input taxed supply, so no GST is charged on the rent, and no GST credits can be claimed on any associated expenses (e.g. electricity).

WARNING

When you rent out all or part of your home (whether through the sharing economy or through a real estate agent) you will only be entitled to a partial exemption from CGT when you later dispose of it – this is irrespective of whether you actually claim deductions for any interest on a mortgage held over the property.

SUPER CONCESSIONS!

With the Federal Government's debt and Budget position heavily 'in the red', there has been much recent talk from both sides of politics about a possible 'crackdown' on 'Superannuation Concessions' especially for the wealthy. According to the Federal Treasury, these concessions will cost the Budget $36 billion this financial year in lost tax revenue (Deloitte says the figure is more like $11 billion which is still a lot of money)!

This article details the 'Superannuation Concessions' on offer – what exactly are they? Do they apply to everyone, equally? This may allow you to assess the attractiveness of superannuation from a tax perspective.

INVESTMENT EARNINGS

Perhaps the biggest 'Superannuation Concession' is the tax imposed on earnings (such as dividends, rent, interest etc.) on the money in your account, compared to the tax that would be imposed if such earnings were made outside the superannuation environment. Earnings on your superannuation account are taxed at 15%, and are tax-free if your account is in pension mode. The following table summarises the tax treatment:

TAX RATE

	Inside Superannuation	Outside Superannuation
Investment earnings	**-15%** if account is in accumulation mode **-0%** if account is in pension mode	Marginal tax rate

The 'marginal tax rate' referred to in the above table is your individual marginal tax rate which for 2015/2016 is as follows:

Taxable Income $	2015/2016 Tax Rate (not including Medicare Levy)
0 – 18 200	Nil
18 201 – 37 000	19 cents for every $1 over $18200
37 001 – 80 000	$3 948 plus 32.5 cents for every $1 over $37000
80 001 – 180 000	$18 783 plus 37 cents for every $1 over $80000
180 000+	$58 783 plus 47 cents for every $1 over $180000

We can see from the above table that unless you earn less than $18 200 (or $20 542 after the low income tax offset is taken into account) then the tax imposed on your earnings inside superannuation will generally always be less than the tax imposed on earnings on your savings and assets (such as interest, dividends rent etc.) outside of superannuation. If however you are a low-income earner and you do earn below $20 542, there is really no benefit from a tax perspective from investing in superannuation. Indeed, you will be paying 15% more in tax than if your money is invested outside superannuation.

On the other hand for the majority of taxpayers who do earn above $20 542, the taxation benefits of investing in superannuation are clear:

- For those whose taxable income is between $18 200 and $37 000…you save 4 cents in the dollar on any earnings on your investments*
- For those whose taxable income is between $37 000 and $80 000…you save 17.5 cents in the dollar*
- For those whose taxable income between $80 000 and $180 000…you save 22 cents in the dollar*
- For those whose taxable income exceeds $180 000…you save 32 cents in the dollar*

*plus an extra 2 cents if you are liable for the Medicare levy.

When your account is in pension mode (i.e. you are receiving a Transition to Retirement pension having reached Preservation Age, or are receiving an Account-Based Pension generally following retirement), the tax benefits are even greater as your earnings inside superannuation are tax-free.

EXAMPLE

TAX ON EARNINGS WHILE ACCOUNT IS IN ACCUMULATION MODE

Kathryn is 35 years of age and earns $55 000 per year. As a result of a recent inheritance, as well as the sale of some shares, Kathryn has $40 000 that she would like to invest.

She wishes to take a conservative approach and invest the $40 000 in a term-deposit which will earn her 3% interest per annum. Kathryn contemplates whether she should first contribute the $40 000 principal to superannuation.

OUTSIDE SUPERANNUATION

If Kathryn makes this investment outside superannuation, she will be taxed $414 on the earnings ($1 200 x 2015/2016 marginal tax rate of 32.5% plus 2% Medicare levy).

INSIDE SUPERANNUATION

If Kathryn contributes the amount into her superannuation fund which then invests in the same term-deposit, she will be taxed $180 on the earnings ($1 200 x 15%). This represents a saving of $234. Assuming Kathryn retires at age 65, and the $40,000 earned 3% for 30 years until retirement, then she will have saved more than $7000 over that timeframe (assuming no change in marginal tax rates or superannuation tax rates).

If instead Kathryn was earning $85 000 instead of $55 000, then the tax saving would be $288 per year, or more than $8 500 over 30 years – illustrating the increased benefit for higher income earners of investing inside superannuation.

Of course the tax savings achieved have to be considered against the inability to access superannuation until you meet a Condition of Release e.g. retirement. Depending on age, your capital can be tied up for a long time. However, for those nearing retirement with no immediate need for a lump sum, investing within superannuation can make a lot of sense from a tax saving perspective.

CAPITAL GAINS

Another major 'Superannuation Concession' applies to capital gains made inside superannuation. When CGT assets that your superannuation fund owns such as shares, business real property, units in a unit trust, residential property etc. are sold, the tax rates that apply on the capital gain are as follows:

TAX RATE

	Inside Superannuation	Outside Superannuation
Capital gains	**-15%** if account is in accumulation mode (10% if asset is held for 12 months or more) **-0%** if asset is used to support a pension	Marginal tax rate (less 50% if asset is held for 12 months or more)

Due to the concessional tax treatment afforded to superannuation, some people find it attractive to contribute CGT assets that they personally own such as listed shares and business real property to their superannuation fund (otherwise known as an in-specie contribution).

Note there are rules surrounding the types of assets that can be contributed and the amount of contributions that you can make to your superannuation fund in any single year. However, substantial savings can be achieved when realising assets that result in a capital gain within superannuation rather than holding the assets personally.

In summary, because capital gains on assets that you own outside superannuation are added to the rest of your income (e.g. salary) and taxed at your marginal tax rate (as opposed to the concessional CGT rates inside superannuation), then substantial tax savings can be achieved for tax payers and in particular for higher earning individuals.

DEDUCTIONS

Another 'Superannuation Concession' on offer is the ability to claim a deduction for your after-tax contributions.

You can claim a deduction for the entire amount of your after-tax superannuation contributions if less than 10% of your assessable income, your reportable fringe benefits and your reportable employer superannuation contributions (e.g. salary sacrifice contributions) for the year are from being an employee. This is otherwise referred to as the '10% Rule'. Whilst most employees are ineligible for this deduction, the following people may be eligible if:

- You run your own business, but were not an employee of the business (e.g. you are a sole trader or a partner in a partnership)
- You are under the age of 65 (that is, you are eligible to contribute to superannuation) receiving pension or investment income only
- You are a contractor who is not eligible for Superannuation Guarantee from the organisations that you contract to
- You are a volunteer worker
- You only received workers' compensation payments during the year
- You are an employee for only a small part of the year.

EXAMPLE

10% RULE

For the first nine months of the year, Zack operated a landscaping business as a sole trader and earned $91 000. Nearing retirement, he contributed $20 000 to superannuation. Zack sold his business later that year, and for the last three months of the year was an employee landscaper. He earned $9 000 from his employment. Zack wonders whether he will be able to claim a deduction for his personal superannuation contributions.

Answer

Zack is entitled to a $20 000 deduction as less than 10% of his assessable income, reportable fringe benefits and reportable employer superannuation contributions came from being an employee ($9 000 from being an employee is only 9% of his total assessable income of $100 000). To claim the deduction he must provide his

superannuation fund with a notice in the approved form of his intention to claim a deduction before he lodges his tax return.

Claiming a $20 000 deduction reduces Zack's taxable income from $100 000 down to $80 000 which on 2015/2016 tax rates provides him with a tax saving of $7 400 not including Medicare levy. His superannuation fund will however pay $3000 Contributions Tax (see later) which results in an overall tax saving to Zack of $4 400.

If eligible, as per the above example, you can claim a deduction for the full amount of your contribution. Practically speaking, the maximum amount claimable as a deduction is limited by the superannuation concessional contributions cap. The general cap currently sits at $30 000, climbing to $35 000 if you are 50 or over. Even so, a tax deduction of up to this amount can significantly reduce your overall tax liability, as illustrated in the above example.

In summing up, this 'Superannuation Concession' while significant is capped, and is not widely available. The main beneficiaries of this concession are investors and the self-employed who meet the relevant age tests to make a contribution. Unfortunately most employees are not eligible (unless they meet the 10% rule as above).

EXAMPLE

Ashley and Karen are married. Karen contributes to a complying superannuation fund for Ashley. During 2015/2016 she contributes $5 000 and in that year the total of Ashley's assessable income, reportable fringe benefits and reportable superannuation contributions is $12 000.

Karen is entitled to an offset of $324 calculated as follows:

1. Determine the difference between the total of Ashley's assessable income, reportable fringe benefits and reportable superannuation contributions and $10 800 = $1 200

2. Reduce the maximum contribution amount of $3 000 by the excess at (1): $3 000 - $1 200 = $1 800

3. Calculate the offset as 18% of the amount at (2): $1 800 x 18% = $324.

This will then reduce Karen's tax payable by $324.

All told, this 'Superannuation Concession' is limited in amount and eligibility is tightly targeted. The concession is aimed at boosting the superannuation account balances of low income earning spouses, by providing an incentive to their spouse to make superannuation contributions on their behalf.

OFFSETS

Although at the minor end of the scale, another 'Superannuation Concession' is the Spouse Contributions Tax Offset.

By making a contribution to your non-working or low income earning spouse you may qualify for a Tax Offset. The maximum Tax Offset each financial year is $540, based on 18% of maximum rebateable contributions of $3 000. This limit is reduced by $1 for each $1 that the total of your spouse's assessable income, reportable fringe benefits and reportable employer superannuation contributions exceeds $10 800. The Tax Offset cuts out once this total reaches $13 800. To qualify, the receiving spouse must be under 65 years of age or alternatively aged between 65 and 69 and have worked for at least 40 hours during no more than 30 consecutive days in the relevant financial year.

CONTRIBUTIONS TAX

In addition to tax on investment earnings and capital gains, Contributions Tax can also apply to some contributions made to superannuation. The level of Contribution Tax that may be imposed depends on the type of contribution made and the level of your income as follows:

BEFORE-TAX (CONCESSIONAL) CONTRIBUTIONS

Contributions Tax of 15% is imposed on superannuation contributions you make before-tax. These contributions include:

- Employer contributions, such as compulsory Superannuation Guarantee contributions, and salary sacrifice contributions
- Contributions that you are allowed as an income tax deduction because you satisfy the 10% Rule (see earlier)
- Notional taxed contributions if you are a member of a defined benefit fund.

Unlike the tax on investment earnings which is payable each and every year earnings are made, Contributions Tax is only payable once – at the time the contribution is made to the fund. Additionally, taxpayers with income over $300 000 per year will generally pay 30% tax on all of their before-tax contributions (an extra 15%). If your income is less than $300 000 per year, but climbs to more than $300 000 per year when you include your before-tax contribution, the 30% rate will apply to only the part of your before-tax contribution that takes you over the $300 000 threshold. Again, however, this 30% tax is only payable once. Once the money is inside your superannuation fund, a flat 15% tax is paid on the earnings (see earlier) regardless of your level of income.

AFTER-TAX (NON-CONCESSIONAL) CONTRIBUTIONS

The contributions you make after-tax (non-concessional) contributions are not subject to any Contributions Tax. This type of contribution includes:

- Contributions you or your employer make from your after-tax income
- Contributions made on behalf of a spouse
- Contributions your spouse makes to your super fund
- Personal, after-tax contributions that are not claimed as a tax deduction as you do not meet the '10% Rule'.

BLOW FOR LOW INCOME EARNERS

As part of the repeal of the Mining Tax, the Federal Government also repealed the Low Income Earners Superannuation Contribution (LISC).

The purpose of the contribution, which has an annual cap of $500, is to compensate low income earners for the 15% tax on their concessional contributions made by themselves or their employer. Although legislation to repeal the LISC was passed by Parliament on 2 September 2014, LISC will continue to be payable in respect of concessional contributions made up to and including the 2016/2017 financial year.

CONTRIBUTIONS CAPS

As we have seen, the superannuation system contains generous tax concessions on investment earnings and capital gains, especially for high income earners. It also allows certain taxpayers to reduce their taxable income through deductible contributions. These Superannuation Concessions are only partially negated by a 15% Contributions Tax on before-tax contributions, which climbs to 30% for those who earn over $300 000.

However, the Contribution Caps provide a practical limit on the amount of 'Superannuation Concessions' that can be enjoyed. Contrary to the tone of some media reports, high income earners generally cannot put millions into superannuation and enjoy limitless concessions. The Contribution Caps put a brake on this as follows:

BEFORE TAX (CONCESSIONAL) CONTRIBUTIONS

A general Contributions Cap of $30 000 per year applies to concessional contributions, per taxpayer. A larger cap of $35 000 applies if you are 50 or over.

If you contribute in excess of this per year cap, the excess will be included in your assessable income and taxed at your marginal tax rate. You will also be required to pay an Excess Contribution Charge on the increase in your tax liability which is calculated at the 90 day bank bill rate + 3%. This charge is applied to recognise that the tax paid on your excess contributions is collected at a later date than it would have been had these amounts been taxed as part of your income. To reduce your tax liability, the ATO will apply a 15% Tax Offset which takes into account the Contributions Tax that has already been paid by your superannuation fund when you originally made the contribution. You may then elect to withdraw up to 85% of your excess concessional contributions from your superannuation fund to help you pay the increased tax on your income tax. Any amounts withdrawn will no longer count towards your non-concessional contributions cap.

AFTER-TAX (NON-CONCESSIONAL) CONTRIBUTIONS

A general cap of $180 000 applies, but larger contributions can be made as follows:

Type of Cap	Annual Cap for 2015/2016
Standard Non-Concessional Contribution	$180 000
3 Year Bring-Forward Non-Concessional Contributions for Those Aged under 65	Up to $540 000 over three financial years*

*for instance a single contribution of $540 000 in 2015/2016, but then no more for the following two financial years

If you contribute in excess of your Non-Concessional cap, you can either:

A You can choose to withdraw the excess contribution, and any earnings on the excess. These earnings must then be included in your assessable income and taxed at your marginal tax rate.

B Not withdraw your excess contribution. Under this option, the excess will then be taxed at the top marginal tax rate (currently 49%).

TAKE-HOME MESSAGE

The tax system certainly contains generous Superannuation Concessions which you may wish to take advantage of by making contributions to your fund or that of your spouse. Superannuation is the most tax-friendly environment to build wealth to provide for your retirement. And, once your account is in pension mode, all earnings of the fund are tax-free which can deliver you considerable tax savings when compared to someone who has their wealth outside of superannuation.

EXTRA FOR EXITING BUSINESS OWNERS

In addition to the standard Concessional and Non- Concessional caps, an additional CGT Cap Amount applies for business owners. Because many business owners see their business as their retirement asset, many exiting business owners are keen to invest the capital proceeds from selling their business into superannuation. However, the Non-Concessional Contribution Cap restricts the amount that can be contributed to your superannuation fund (see earlier). Even where you elect to use the 3-year bring forward cap, $540 000 can for many business owners fall short of the proceeds they receive for a business sale. To assist in this regard, business owners may wish to consider utilising the Lifetime CGT Cap. This cap allows non-concessional contributions to be made in excess of the standard $180 000 or $540 000 limit. The Lifetime Cap for 2014/2015 is $1.395 million and is indexed each year. The cap is only available for Small Business Entities (SBEs) when the amounts contributed to superannuation are:

- Capital proceeds from the sale of an asset that qualifies for the 15-Year Exemption or
- Capital gains from the sale of an asset that qualifies for the $500 000 Retirement Exemption.

DIAL UP THE SAVINGS

The ATO has released fresh guidance on claiming phone and internet expenses. With increasingly flexible work practices and the advent of new technology, many taxpayers are making claims in this area. This article examines the deductibility and substantiation requirements of these expenses in light of the new ATO information.

ELIGIBILITY

If you use your phone or internet for work purposes and you have the required records to support your claim, you may be able to claim a deduction for these expenses. On the other hand if you use your phone or internet for work and private purposes, then you will need to apportion your claim and restrict it to the work related percentage.

EXPENSE?

Where you have an employer-provided phone and they pay the monthly bill for messages, calls etc. you cannot claim this as a deduction. Likewise, where the phone is yours and your employer either pays the bill for the messages/calls or reimburses you for this cost, you cannot claim a tax deduction.

SUBSTANTIATION

According to their recently released Fact Sheet, to claim a deduction of more than $50, the ATO now requires you to:

"keep records for a 4-week representative period in each income year. These records may include diary entries, including electronic records and bills. Evidence that your employer expects you to work at home or make some work-related calls will also help you demonstrate that you are entitled to a deduction".

The requirement to keep a diary is new. For internet usage, the diary entries themselves may contain:

- The time your session started
- The time it finished
- The websites you visited.

Unlike a log book for a motor vehicle (which is also kept over a representative period but can be used to substantiate your claim for 4 years), the diary must be maintained each year irrespective of whether your percentage usage remains the same. The 4-week period must be representative (i.e. a typical period which would therefore not be over a holiday period for instance) which you will then apply across the whole year.

APPORTIONING YOUR PHONE USE

There are many different phone plans offered in the marketplace and, as such, you will need to determine your work use percentage on a basis that is reasonable given your circumstances:

Incidental Use

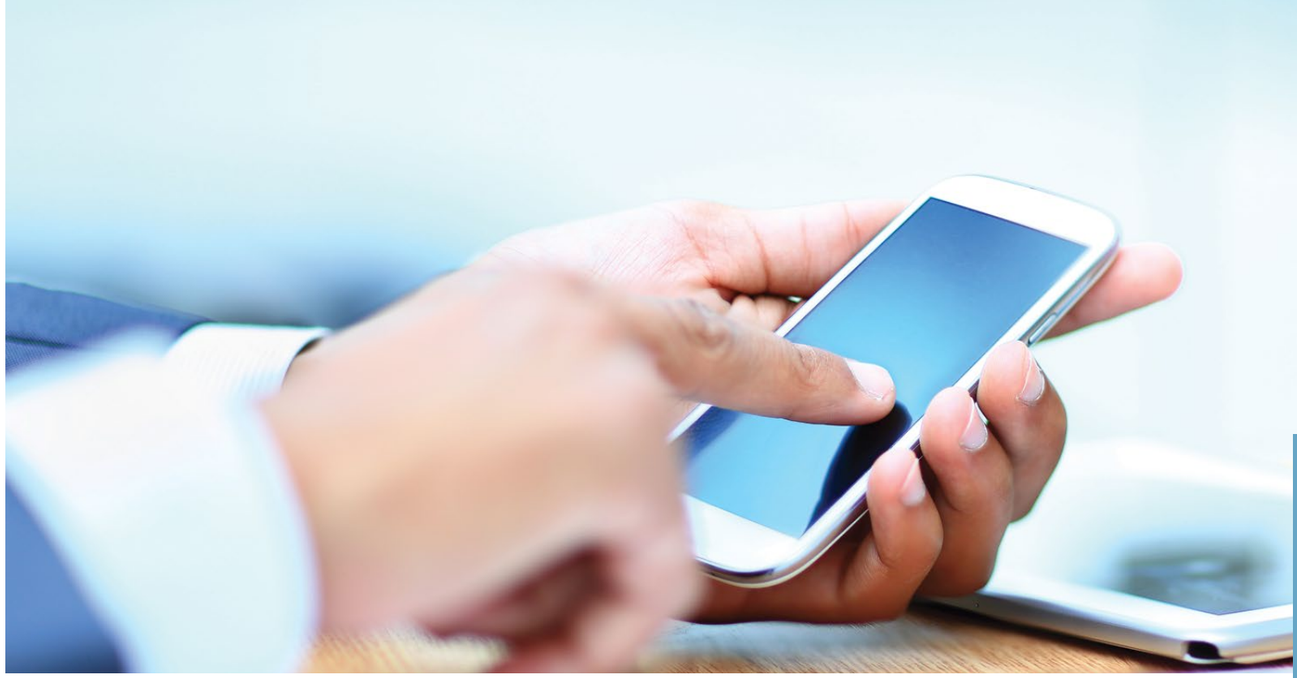
If the work use of your phone is incidental (minor) and you are not claiming a deduction of more than $50 in total, you can make a claim based on the following without having to analyse your bills:

- 25 cents for work calls made on your landline
- 75 cents for work calls made on your mobile
- 10 cents for text messages from your mobile.

Usage is Itemised

Where your phone company gives you an itemised bill (listing out all the phone numbers called and the length of the calls), you must determine your work percentage use over a 4-week representative sample (which you can glean from the phone numbers called on your bill) which you will then apply across the whole year. The percentage then must be worked out on a reasonable basis such as:

- The number of calls made as a percentage of total calls
- The amount of time spent on work calls as a percentage of total calls, or
- The amount of data downloaded for work purposes as a percentage of your downloads.



ATO EXAMPLE

Julie has an $80 per month mobile phone plan which includes $500 worth of calls and 1.5GB of data. She receives a bill which itemises all of her phone calls and provides her with monthly data use.

Over a 4-week representative period Julie identifies from her itemised bill that 20% of her calls are work-related. She worked for 11 months of the income year, having had one month of leave. Julie can claim a deduction of $176 in her tax return (20% x $80 x 11 months).

Assume instead that the work calls were only brief (e.g. just to verify with Head Office the location of your next job) however the private calls were lengthy (e.g. to relatives overseas). In such a situation Julie would need to work out her percentage based on the time spent on work calls, as this would be the most reasonable method.

Usage is Not Itemised

If your phone company does not provide you with an itemised bill, you must determine your work use by keeping a record (e.g. diary) of all your calls over a 4-week representative sample and then calculate your claim on a reasonable basis. Because, as per earlier, the most reasonable basis may be time spent on calls, in your diary or record you will need to note not just the number called each time, but the duration of each call.

ATO EXAMPLE

Ahmed has a prepaid mobile plan which costs him $50 per month. Ahmed did not receive a monthly bill so he keeps a record of his calls over a 4-week representative period. During this period, he makes 25 work calls and 75 private calls. Ahmed worked for 11 month of the income year, having had one month of leave.

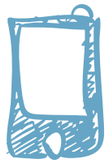
Ahmed calculates his work use as 25% (25 work calls / 100 total calls). He claims a deduction of $138 in his tax return (25% x $50 x 11 months).

Bundled Services

In the Fact Sheet the ATO finally provides guidance on bundled phone and internet services which are quite common nowadays. Where you have a bundled phone and internet package, when you are claiming a deduction for the work-related use of one or more services, you need to apportion your costs based on your work use of each service. If other members of your household also use the service (e.g. internet), you need to factor their usage into your calculation as well. Those with a bundled plan need to identify their work-related use for each service over a 4-week representative period during the income year. This enables you to determine your pattern of work use which you can then apply to the full income year. The ATO suggests that a reasonable basis for determining your work-related use could include:

Internet

- The amount of data downloaded for work as a percentage of total data downloaded by all members of your household
- Any extra costs incurred as a result of your work-related use, for example if your work-related use results in you exceeding your monthly download cap.



Phone

- The number of work-related calls as a percentage of total calls
- The amount of time spent on work-related calls as a percentage of total calls
- Any extra costs incurred as a result of your work-related use, for example if your work-related use results in you exceeding your monthly call cap.

ATO EXAMPLE

Sujita has a $100 per month home phone and internet bundle. The bill identifies that the monthly cost of her phone service in the bundle is $40, and her internet service is $60. She also has a mobile plan for $90 per month, and receives a $10 monthly discount. Her total cost for services is therefore $180 per month. She worked for 11 months of the income year, with the other month taken as annual leave.

Based on her itemised accounts, Sujita determines that her work-related use of her mobile phone is 20%. She also uses her home internet for work and, based on her use, she determines that 10% is for work purposes. She does not use her home phone for work. As the components (mobile phone and home internet) are part of a bundle, Sujita can calculate her work-related use as follows:

1. Home Internet Use
10% x $60 per month x 11 months = $66

2. Mobile Phone Use
20% x $80 x 11 months = $176

In her tax return, therefore, Sujita claims a deduction of $242.

In the other ATO example in the Fact Sheet on apportioning bundled services the taxpayer has a $90 per month home phone and internet bundle, and unlimited use of the internet is part of the plan. As there is no clear breakdown between internet and phone costs, the ATO accepts that it is reasonable to allocate 50% of the cost to each.

TAX TIPS

This piece offers readers some tax tips, including:

- **A** A new opportunity to save tax by salary sacrificing multiple portable electronic devices; and
- **B** For those with an SMSF, we also detail your investment strategy obligations.

SALARY SACRIFICE ADDITIONAL DEVICES

Employees will soon be able to salary sacrifice multiple 'portable electronic devices' – resulting in a reduction of your taxable income…and no FBT for the employer!

In the May 2015 Federal Budget the Government announced that Small Business Entities (those with a turnover of less than $2 million) will from 1 April 2016 be permitted to provide employees with more than one eligible work-related 'portable electronic device' with substantially identical functions during the year, without attracting FBT. Currently, only one such device can be provided each year to a worker, unless the second or subsequent device performs substantially different functions or is a replacement for the original device. This new law will allow employees to salary sacrifice, for example, a laptop and a tablet during the same FBT year without attracting FBT.

'Portable electronic devices' are devices that have the following characteristics:

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

Therefore, they include personal digital assistants (PDAs), blackberries, Smartphones, portable printers, tablets, electronic diaries, laptops, phablets, portable GPS navigation receivers, notebook computers etc.

Still Worth It?

Prior to 2008, salary sacrificing laptops and similar devices was extremely popular as employees were able to 'double-dip' by paying for the laptop with pre-tax dollars (and thereby reducing their taxable income), and also claiming a deduction. In the May 2008 Federal Budget however the Government took away the ability to claim a deduction where laptops and other similar devices were salary sacrificed. Despite this, from a tax perspective, salary sacrificing such devices (now multiple devices!) is still very much beneficial. By doing so, you can:

- Pay for your devices out of pre-tax dollars, and therefore reduce your taxable income by the amount of the devices, and therefore reduce your overall income tax liability
- Not pay GST on the devices. Under a salary sacrifice arrangement, you will sacrifice the GST-exclusive cost of the device and your employer will claim the GST credit themselves.

To avoid FBT, the devices must be used 'primarily' for employment purposes by the employee. According to the ATO, this means that they must be used for work purposes at least 51% of the time. The alternative to salary sacrificing your work-related portable electronic devices is to purchase them outright (plus GST) with your after-tax dollars, and then claim a tax deduction by depreciating the devices in your tax return. This will invariably result in a worse tax outcome than salary sacrificing and effectively receiving a 100% tax deduction upfront in the year of purchase, and saving 10% GST.

EXAMPLE

Casey is an employee lawyer who is on an annual salary of $100 000. In 2015/2016, she desires a laptop and iPad which she estimates she will use 60% for employment purposes. The total GST-inclusive cost of the devices is $1 100. The devices are depreciable over a 3 year period. Casey wonders about the tax effect of an outright purchase versus salary sacrifice:

OUTRIGHT PURCHASE	$
Salary	100 000
Deduction (prime-cost method)	220
Taxable Income	99 780
Tax Payable	26 862
Less Cost of Laptop and iPad	1 100
Disposable Income	72038

(Note Casey will continue to get a tax deduction over the next 2 years worth a further $172 at her current marginal rate) Therefore her disposable income would effectively be $72 210

SALARY SACRIFICE	$
Salary	100 000
Less Sacrifice	1 000
Taxable Income	99 000
Tax payable	26 557
Disposable income	72 443

By salary sacrificing the GST-exclusive cost of the items Casey is $233 better off as a result of the salary sacrifice arrangement. This is achieved by reducing her salary by 100% of the cost of the items (rather than the 60% work-related portion) and avoiding GST (she only sacrifices the GST-exclusive cost, and her employer claims this amount back as a GST credit).

Furthermore, under the new law, Casey's employer will not pay any FBT (provided the items are used mainly for work purposes) despite an iPad and laptop performing substantially the same functions.

TAX TIP

The work-related benefits exemption above requires that the employee uses the item predominantly for work purposes during the year. To limit FBT exposure, it's common for employers to ask their staff to sign a declaration to the effect that items provided under this exemption such as Smartphones, Iphones, Ipads, laptops etc. be used predominantly for work purposes. In the event that they are not used this way, the employee, in the signed declaration, agrees to pay the FBT if as a result of an audit or enquiry, the ATO rules that the employee's use of the item does not pass the work-related use test.

SMSF INVESTMENT STRATEGY REVIEW

The New Year is traditionally a time when investors review their portfolios with a view to making changes where appropriate. Those of you who have an SMSF have an obligation under the law to formulate and regularly review your fund's investment strategy. In basic terms, investment strategies are plans for making, holding and realising assets of your SMSF. A failure to regularly review your strategy may result in Trustee fines of up to $17 000. The obligation to review applies irrespective of whether you invest directly or indirectly through advisors/investment managers.

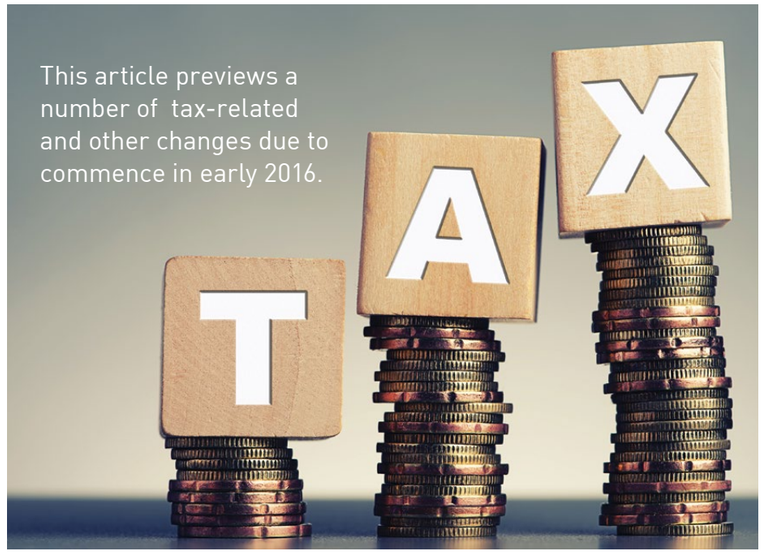
Under SIS Regulation 4.09(2) your investment strategy must address the following issues:

- The risk involved in making, holding and realising, and the likely return from, the SMSF's investments having regard to its objectives and its expected cashflow requirements
- The composition of the SMSF's investments and the extent to which the investments are diverse or involve the SMSF being exposed to risks from inadequate diversification
- The liquidity of the SMSF's investments having regard to its cashflow requirements
- The ability of the SMSF to discharge its existing and prospective liabilities.

Whilst, under the law, there is no actual requirement to document your strategy, it is strongly recommended that you do so, as this will enable you to demonstrate (to the ATO if any questions are asked by them) that the strategy is being adhered to when making investment decisions. It's also best practice to document minutes of meetings in order to demonstrate how investment decisions were made during the year, and that strategy reviews have been undertaken.

TAX CHANGES

NEW ARRIVALS



PAYG INSTALMENTS CHANGE FOR HIGH EARNING ENTITIES

High earning Corporate Tax Entities may now be required to commence paying monthly rather than quarterly PAYG instalments.

From 1 January 2016, Corporate Tax Entities must commence paying PAYG instalments monthly if their base assessment instalment income is more than $20 million. Monthly instalments must be paid electronically and are due on or before the 21st day of the following month. If your entity is a deferred BAS payer on the 21st day of the next instalment month, then the payment is due on the 28th day of the following month. 'Corporate tax entities' include companies, corporate limited partnerships, corporate unit trusts or public trading trusts. This new measure may have cashflow impacts on the entities affected as they will be required to pay their instalments on a more regular basis (i.e. monthly instead of quarterly). Cashflow forecasts, as well as any internal procedures for lodgement, may need to be adjusted as a result.

In terms of any action on your part, if your entity is impacted then you will receive a letter from the ATO confirming your entry into monthly instalments. On the first day of each month, the ATO conduct a monthly payer requirement (MPR) test to work out which entities must pay PAYG instalments monthly. If this applies to your entity, as stated you will receive notice from the ATO. You cannot object to being required to account for your PAYG instalments on a monthly basis.

SUPERSTREAM – DEADLINE IMMINENT

Smaller employers (those with less than 20 employees) should now be well down the track to implementing their SuperStream solution with a view to meeting the 30 June 2016 deadline.

To recap, SuperStream is a new way of making superannuation contributions. It requires employers to make all employer superannuation contributions by submitting the payment and related data electronically. Failure to comply with this new regime can result in penalties of up to $3,400 per offence. SuperStream solutions will vary depending on an employer's circumstances and how they currently go about making superannuation contributions. On a practical level, an employer's SuperStream solution may involve any of the following:

1. Using the ATO Small Business Superannuation Clearing House (this is a free Government service, available for employers with an annual turnover of less than $2 million)

2. Signing up to a commercial Clearing House (your default fund may have its own Clearing House. Note that, unlike the ATO offering, this may not be free of charge).

3. Upgrading your payroll software (most of the major software brands will now be SuperStream compliant)

4. Outsourcing (if you outsource your payroll including superannuation to a BAS Agent (bookkeeper), tax agent or payroll bureau, they will generally provide the SuperStream solution for you as part of their engagement. You may wish to confirm with them that they have a plan in place that is SuperStream compliant).

HELP REPAYMENT SCHEME REGISTRATION

The new regime requiring 'expat Australians' living overseas who are now foreign residents to repay their HELP (HECS) debts has now commenced with the enabling legislation passed by Federal Parliament and commencing from 1 January 2016.

From this date, all HELP debtors who leave Australia intending to go overseas for more than six months must register with the ATO before or within 7 days of leaving, using an online myGov account. Those who are already overseas for six months or more at this time have until 1 July 2017 to register, again using an online myGov account. Failure to notify the ATO in the above situations by the respective deadlines will constitute a failure to comply with taxation requirements meaning that ATO penalties can be imposed. Having registered, compulsory HELP repayments for foreign residents will commence from 1 July 2017, for income earned in 2016/2017.

Broadly, the legislation imposes the same HELP repayment obligations on Australians living overseas with a HELP debt as currently apply to those who reside in Australia. Previously, foreign residents were not required to make repayments unless they were required to lodge an Australian tax return which showed that their HELP Repayment Income (HRI) exceeded the minimum HELP threshold (currently $54 125 for 2015/2016). HRI is the sum of your:

- Taxable income for the financial year
- Net investment loss for the financial year (e.g. negative gearing loss on your rental property)
- Any reportable fringe benefits for the financial year (for those persons who are employees)
- Exempt foreign pension income for the financial year, and
- Reportable superannuation contributions for the financial year.

To overcome the fact that Australians living overseas long-term are unlikely to have this type of income (or only small amounts) and therefore will not be required to repay their HELP debt, HRI for 'foreign residents' now also includes their 'assessed worldwide income'. 'Assessed worldwide income' is defined as your foreign sourced income converted into Australian currency. 'Foreign resident' is a person who is not a resident of Australia for tax purposes.

EXAMPLE

Chloe is a lawyer who left Australia in 2012 to work in London and has not returned since. She has a rental property in Australia and an accumulated HELP debt of $12 000. Because she has been overseas for six months or more as at 1 January 2016, she is required to register with the ATO using a myGov account by 1 July 2017.

If Chloe's salary from her law firm (plus any other foreign income), plus any income or loss made from her rental property in Australian exceed the HELP repayment threshold (currently $54 125) in 2016/2017, then Chloe will be required to make a HELP contribution.

From 1 July 2017, those overseas will need to self-assess income received in the 2016/2017 financial year and submit details of their foreign-sourced income. It is expected that the self-assessment will be due by 31 October each year (the same due date as individual tax returns). Returns will be submitted and payments made through the myGov website.

ENFORCEMENT?

Failure to comply with the self-assessment model may result in penalties being imposed by the ATO. Additionally, this new regime also allows the Commissioner of Taxation to make assessments of a person's accumulated HELP debt and the amount the person is required to pay. Returning to the above example, if Chloe were to not lodge an assessment with the ATO through myGov, the Commissioner would have the power to issue an assessment to her requiring her to pay a compulsory repayment based on any information it may receive from the UK about money she has earned in that country and any other information within its possession. Penalties may also be applied.

MORE WORK-RELATED PORTABLE ELECTRONIC DEVICES

In a few months time, small business employers will be permitted to provide their employees with certain additional devices without incurring the wrath of the Taxman.

In a measure announced in the May 2015 Federal Budget, Small Business Entities (those with a turnover of less than $2 million) will from 1 April 2016 be permitted to provide employees with more than one eligible work-related 'portable electronic device' with substantially identical functions during the year, without attracting FBT. 'Portable electronic devices' are devices that have the following characteristics:

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

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

This change to the law may prompt employers to review/enhance the non-cash component of employee packages; safe in the knowledge that no FBT will apply to a second, similar portable device. Offering flexible, multi-faceted employment packages, featuring cash and non-cash components, is a useful employee retention and recruitment tool. This measure has now passed the Parliament.

$5 000 RESTRICTION ON SALARY PACKAGED ENTERTAINMENT FRINGE BENEFITS

From 1 April 2016, salary packaged meal entertainment and salary packaged entertainment facility leasing expenses will be required to be reported on an employee's Payment Summary (for the definition of 'entertainment facility leasing expenses', see the September/October 2015 edition of this publication). This applies to all employers who provide these types of salary packaged benefits – not just FBT exempt or rebatable employers. 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.

In light of this change, employers should identify employees who currently have these types of salary packaging arrangements in place and advise them of the changes. If an employee is impacted adversely, they may wish to alter their existing remuneration package.

ALL SALARY PACKAGED ENTERTAINMENT BENEFITS TO COUNT

Also applying from 1 April 2016, a single grossed-up cap of $5 000 will apply for salary sacrificed meal entertainment and entertainment facility leasing expenses for employees of Not-for-Profits such as public and Not-For-Profit hospitals, public ambulance services, public benevolent institutions (except hospitals) and health promotion charities. Currently, FBT rebatable and exempt employers can have their FBT liability eliminated (subject to a $31 177 or $17 667 cap per employee – any excess is subject to FBT). This cap currently does not include excluded fringe benefits such as salary sacrificed meal entertainment and entertainment facility leasing expense benefits).

In light of this upcoming change and separate cap, FBT exempt and rebatable employers should undertake a review of how their existing practices will be impacted and whether an FBT liability may arise under the new, separate $5 000 cap. For employers who are adversely affected, you may wish to consider renegotiating employee packages in order to minimise or eliminate any resultant FBT exposure.