MTS

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MARCH/APRIL 2016

SHARING THE LOSS

SHARE MARKET TROUBLE
ALL YOU NEED TO KNOW

TAX DEADLINES AND OPPORTUNITIES

INNOVATE AND SAVE

HOW YOU CAN BENEFIT

Index

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INNOVATE AND SAVE

The Government recently released its Innovation Statement. With many of the new tax measures commencing 1 July 2016, we detail how innovators and investors may benefit.

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With overtime now quite common, what are some of the tax and workplace law issues employers and employees need to be aware of?

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Dividend access shares are a useful strategy to employ should you wish for any number of reasons to grant dividend-only access in your company to others. This article looks at this strategy, and an important new development in this area.

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Particularly in the areas of superannuation, tax planning, and HECS-HELP repayments, the first half of 2016 presents individuals and businesses with a number of tax issues to consider. Find out what these are.

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What the Taxman is Thinking

In this edition, we look at how the new SuperStream regime is saving employers time and money, and detail fresh ATO guidance on the tax treatment of website costs.

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KEY DATES FOR BUSINESS

Many lodgement and payment deadlines are looming for business including those relating to Activity Statements, superannuation, and more.

MARCH 2016

21 MARCH
February monthly Activity Statements - due for lodgement and payment

APRIL 2016

21 APRIL
March monthly Activity Statements - due for lodgement and payment

21 APRIL
Quarter 3 (January-March) PAYG instalment Activity Statements for head companies of consolidated groups – due for lodgement and payment

28 APRIL
Quarter 3 (January-March) Activity Statements (if lodging by paper) – due for lodgement and payment

28 APRIL
Quarter 3 (January-March) superannuation guarantee contributions to be made to a complying fund on behalf of your workers

28 APRIL
Quarter 3 (January-March) instalment notices (forms R, S and T) - due date for payment and, if varying the instalment amount, lodgment.

30 APRIL
Final date for lodgement of January-March 2016 TFN report for closely held trusts for TFNs quoted to a trustee by beneficiaries

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

IT'S FBT TIME

31 March marks the end of the Fringe Benefits Tax year. This article aims to assist employers to get their records together with a view to ascertaining and minimising their 2015/2016 FBT liability.

CHECKLIST

One of the major causes of FBT non-compliance is the failure of employers to identify benefits that have been provided throughout the year to employees and their associates (e.g. spouses). In identifying taxable or exempt benefits that have been provided during the year, the best place to start is by reviewing your accounts and ledgers as well as employee salary packages and staff policies. Having done this, then use the following non-exhaustive checklist to further ascertain whether benefits have been provided:

MOTOR VEHICLE EXPENSES

- Have you reimbursed an employee's motor vehicle expenses during the year?
- Have you made available a company car to an employee? Note that even where the vehicle is a utility or other 'work-horse' vehicle, a residual fringe benefit may arise.

LOANS

- Have you provided a loan to an employee during the year or released them from paying a debt owing to you?

HOUSING

- Have you provided an employee with a right to use accommodation which they treat as their usual home?

LAFHA

- Have you paid an allowance to an employee to compensate them for the cost of expenses incurred because they are required to live away from their usual home for work purposes?

TRAVEL AND ENTERTAINMENT

- Have you paid or reimbursed an employee for their travel expenses?
- Did you pay for or reimburse a taxi fare for an employee?
- Did you provide or reimburse an employee for the cost of meal entertainment or accommodation or travel in respect of that entertainment?
- Did you provide recreation (e.g. tickets to sporting events) or accommodation or travel in respect of that recreation, or hire or lease entertainment facilities for an employee's use?

EXPENSE PAYMENTS

- Did you pay for or reimburse an employee for a private expense of theirs?

CAR PARKING

- Did you provide a car parking space for the use of an employee (many other conditions apply) or reimburse them for the cost of car parking?

PROPERTY

- Did you provide an employee with property (either in-house or external) e.g. goods, services, real property etc.?

If you answer yes to any of the above questions, a fringe benefit may have been provided, and you may wish to discuss this further with your advisor.

CAR BENEFITS

One of the most commonly provided fringe benefits are car fringe benefits. In terms of substantiation, check the following:

ARE YOUR LOG BOOKS VALID AND CORRECT?

If you use the Operating Cost Method to calculate FBT, in order to calculate the private use percentage (and therefore the FBT payable), you will need to maintain a valid log book recording your usage of the vehicle over a 12-week sample period by 31 March. Failure to do so will result in the entire use of the vehicle being subject to FBT. Log books are valid for five years (assuming no major change in business use, in which case you would need a fresh log book). If you first kept a log book for the 2010/2011 FBT year you must have kept a new log book for 2015/2016.

Leading up to 31 March, if you do not have a valid log book and are using the Operating Cost Method, don't panic! Although we are now right at the end of the FBT year, it is not too late to keep a log book to substantiate the private use of the vehicle for 2015/2016. Log books can commence as late as right at the end of the FBT year even though the end of the 12-week period for which it needs to be maintained may extend beyond the end of the FBT year in which the log book commenced. You can pick up a log book from your local newsagent. Alternatively, to reduce the compliance burden, we would encourage the download of one of the innumerable log book 'apps' on the market, either from the AppStore or GooglePlay as the case may be. The following information must be recorded for each business trip:

- The date the trip began and ended
- Odometer readings at the start and end of each trip
- Kilometres travelled, and
- The purpose of the trip (not just a generic description such as 'work').

KILOMETRE READINGS

Under the Statutory Formula Method, you will need to make note of the closing odometer readings as at 31 March 2016.

DAYS AVAILABLE FOR PRIVATE USE

If using the Statutory Formula Method, have you determined the number of days where the car was not available for private use? This may include where the vehicle was garaged at work, or in for repairs. Identifying such days will reduce your FBT liability.

FUEL USE DECLARATIONS

You can apply car expenses paid for by an employee as an employee contribution under both the Statutory Formula and Operating Cost methods. (Employee contributions will reduce your FBT payable). However, the employee must provide you with documentary evidence of the expenditure (for example, receipts or invoices). In the case of petrol and oil costs, a declaration from the employee is sufficient. Generally all FBT Employee Declarations (not just the Fuel Use Declaration) must be obtained by the due date for lodging your FBT return or, if you do not have to lodge a return, by 21 May 2016.

RECEIPTS AND INVOICES

Obtain these for costs paid personally by an employee such as registration, insurance, servicing, and other running costs. If paid for by the employee, these amounts may reduce the taxable value of the benefit and thus the FBT payable by the employer.

EXEMPT VEHICLE DECLARATIONS

Taxi, panel van, utility or other commercial vehicles (not principally designed to carry passengers) are exempt from FBT if private use is limited to:

- Travel between home and work
- Travel that is incidental to travel in the course of employment duties
- Non work-related use that is minor, infrequent and irregular.

Where this is the case, the employee must complete an Exempt Vehicle Declaration (available from the ATO website). This form must be kept on file.

HOW LONG HAS THE VEHICLE BEEN OWNED?

If you are using the Statutory Formula Method, was the vehicle purchased before 1 April 2011? If so, the cost base of the vehicle can be reduced by one-third (this reduction does not apply to non-business accessories fitted after the acquisition of the vehicle). Non-business accessories fitted to the vehicle during the FBT year must be added to the base value of the vehicle.

ELECTIONS

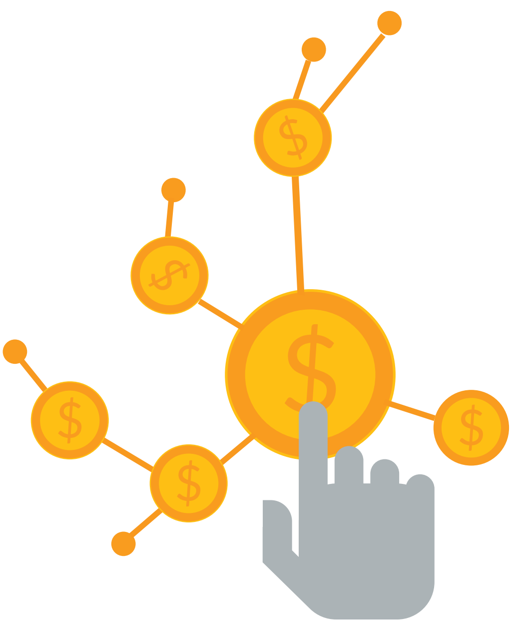
If you're using the Operating Cost Method, ensure you have an election in place before you lodge your FBT return or by 31 May 2016 if you do not lodge an FBT return. This election is not permanent and only relates to the year which it is made. Even where as an employer you make an election to use the Operating Cost Method and this results in a higher taxable value than would have been the case under the Statutory Formula Method, if you so choose the election will be deemed not to have been made and you will be free to apply the Statutory Formula Method.

EXPENSE PAYMENT BENEFITS

This is quite a common benefit which broadly speaking arises when you pay for or reimburse a private expense of an employee or their associate (e.g. spouse).

DECLARATION

Employees should complete an Expense Benefit Payment Declaration where the expense would have been deductible (in whole or in part) had they paid for it from their own pocket. Where this is the case, the FBT otherwise payable on the benefit can be reduced.



LIVING AWAY FROM HOME ALLOWANCE

If you pay employees a living away from home allowance (LAFHA) important substantiation documentation will need to be obtained in the coming weeks. The LAFHA transitional rules have now expired. All employee LAFHA recipients (residents and non-residents) must meet all of the following conditions in order for their LAFHA to be exempt from FBT:

1. Maintaining an ownership interest in a private residence which is available for immediate use and enjoyment

In terms of substantiation, the recipient employee must provide the employer with a declaration containing the following details:

- The place in Australia where the employee usually resides when in Australia; and:
  - That the place is a unit of accommodation in which the employee or the employee's spouse has an ownership interest
  - That the place continues to be available for the employee's immediate use and enjoyment during the period that their duties require the employee to live away from it.
- The address of each place where the employee was actually residing during the period to which the LAFHA relates.

This declaration must be provided by the employee to the employer before the date that the employer lodges their FBT return for that year. The declaration is available on the ATO website.

2. The LAFHA can only be paid for 12 months, per employee, per location

3. Substantiation of the accommodation and food/drink components must be provided by the employee

Accommodation expenses incurred by the employee while living away from home must be substantiated in full. Thus invoices/receipts will need to be obtained in respect of these expenses.

Food and drink expenses will also need to be substantiated, thus invoices and receipts will need to be obtained. Note though that these expenses need only be substantiated where they exceed a "reasonable amount". Where the food/drink expenses incurred exceed the "reasonable amount", the whole expense must be substantiated – not just the amount above the threshold. The 'reasonable amounts' for food and drink for the 2015/2016 FBT year are set out below.

To be clear, amounts below this do not need to be substantiated, whereas for amounts above those in this table, the whole amount needs to be substantiated:

Family Make-Up	Reasonable Food and Drink Amount Per Week – in Australia
One adult	$241
Two adults	$362
Three adults	$483
One adult and one child	$302
Two adults and one child	$423
Two adults and two children	$484
Two adults and three children	$545
Three adults and one child	$544
Three adults and two children	$605
Four adults	$604

For the purpose of the above table 'adults' are persons who had attained the age of 12 years before the beginning of the FBT year in which the LAFHA was paid. For larger family groupings than those in the above table (e.g. two adults and four children) the ATO accepts an amount based on the above figures plus:

- $121 for each additional adult, and
- $61 for each additional child.

MEAL ENTERTAINMENT

Whether you calculate the taxable value of meal entertainment under the 50/50 Split Method or the Actual Method, you will be required to substantiate the amount of your meal expenditure. This will involve getting together your receipts/credit card statements/invoices etc. Also ensure you have records showing:

- The date you provided the entertainment
- The kind of entertainment provided, and
- Where the entertainment was provided.

Now we're at year-end, the other records you will be required to produce will vary depending on the method you adopt to value your meal entertainment as follows:

50/50 SPLIT METHOD

Under this method, an employer is liable to pay FBT on 50% of their total meal entertainment expenditure regardless of who was being entertained (whether it was clients/suppliers/contractors or employees). It follows that you will not be required to produce records showing who the recipient of the meal entertainment was (as half of all meal entertainment, regardless of the recipient, is subject to FBT). Unlike the Actual Method, to use the 50/50 Method you must make an FBT meal entertainment election by the time your FBT return is lodged for the relevant FBT year or 31 May 2016 if you are not required to lodge a return. This election does not need to be sent into the ATO. However, you will need to keep it on file for five years, and produce it if you are audited. What is less well known is that to claim the GST credits on the entertainment under this method you also need a GST election in force at the time your return is lodged.

ACTUAL METHOD

Under this method, FBT is payable on the portion of meal entertainment expenditure relating to employees and their associates (e.g. spouses). FBT is not payable on expenditure incurred on clients/suppliers/contractors.

Under this method, an employer is required to keep sufficient records identifying the number of employees and non-employees entertained. This can be done in the following ways:

- An attendance register, diary or other similar record – an employer can maintain a register, diary etc. of all persons (e.g. employees and non-employees) attending a particular function
- Annotating receipts or credit card statements – an employer can make notes on credit card statements recording details of the individuals to whom the expenditure relates (e.g. employees and/or clients).

TAX TIP

You are not required to decide until the end of the FBT year which meal entertainment method you adopt.

The Actual Method is the default method – if you decide to adopt it, you do not need to make a formal election. The way you complete your FBT return will be evidence that you have adopted this method.

On the other hand, if you adopt the 50/50 Method you must make an election in the form and by the time outlined earlier.

With no decision required to be made until year-end, carefully review the entertainment you have provided throughout the year before you determine which method to use. If you have mainly provided it to clients/suppliers/customers etc. you may wish to use the Actual Method. On the other hand, if you have provided regular entertainment to employees, then the 50/50 Method may provide a better result. Speak with your accountant about which method is best for you.

REPORTABLE FRINGE BENEFITS

Where you have provided reportable fringe benefits (not all fringe benefits are reportable) with a total taxable value of more than $2 000, you must record the grossed-up taxable value on an employee's Payment Summary for the corresponding income year. The reportable fringe benefits provided for this FBT year from 1 April 2015 to 31 March 2016 must be reported on the 2015/2016 Payment Summary which must be issued to employees between 1 July 2016 and 14 July 2016. When grossing-up, you must use the lower gross-up rate which is currently 1.8868 irrespective of the gross-up rate used in calculating the FBT payable on the benefit.

Employers must also keep records which reconcile the taxable value of all fringe benefits recorded on your FBT return to the reportable fringe benefits amounts recorded on each employee's Payment Summary. Where there are discrepancies, this often triggers an ATO audit. Broadly, an employer's documentation must identify:

- The allocation to the individual employee of the taxable value of the fringe benefits provided, and
- How you determined the allocation of the taxable value of shared benefits (i.e. those provided to two or more employees).

COMMON ERRORS

- Including meal entertainment benefits on Payment Summaries
- Including car-parking fringe benefits on Payment Summaries
- Forgetting to include spouse and other associate benefits as part of an employee's reportable amount
- Forgetting that benefits excluded from the reporting requirements may nonetheless attract FBT.

MID-YEAR ECONOMIC AND FISCAL OUTLOOK

Recently the Government released its Mid-Year Economic and Fiscal Outlook (MYEFO), updating forecasts made in the May 2015 Budget and announcing some modest tax changes. This article provides an overview of those changes which include strengthening the HECS-HELP integrity regime, bringing forward the start date for accelerated depreciation for certain primary production outlays, increased access to tax averaging, and more.

GENERAL ECONOMIC OUTLOOK

In disappointing news for business owners and the wider economy, Australia's economic growth rate has been revised down since the May 2015 Federal Budget. While the Budget forecast a growth rate of 2.75% for 2015/2016, the economy is now expected to grow at a rate of 2.5%. This rate is expected to pick up to 2.75% in 2016/2017, however this is down from the forecast 3.25% in the Budget. To provide some context, average annual economic growth in Australia has been 3.47% from 1960 to 2014. Conditions for business investment are however set to continue to remain favourable with low borrowing costs leaving firms well placed to increase investment.

On the jobs front, unemployment is expected to hover around 6% (it's currently at 5.8%) through to the June quarters of 2016 and 2017.

ACCELERATED DEPRECIATION FOR PRIMARY PRODUCERS BROUGHT FORWARD

In the Budget it was announced that primary producers will be able to immediately deduct (totally write-off in the year of purchase) capital expenditure on fencing and water facilities such as dams, tanks, bores, irrigation channels, pumps, water towers, and windmills. These measures are significant because under the current law fences are to be depreciated over a period of up to 30 years, and water facilities three years. This measure will therefore significantly bring forward tax deductions for primary producers in respect of these expenditures and in doing so provide cashflow relief.

While the start date for these measures was originally 1 July 2016, MYEFO confirms that the start-date has been brought forward to 12 May 2015 (Budget Night).

BETTER ACCESS TO TAX AVERAGING

In further good news for primary producers, they are now able to re-access tax averaging ten years after the year in which they chose to opt out. This is effective 1 July 2015. Previously, if a primary producer chose to withdraw from the averaging system, they were unable to ever re-enter.

By way of background, tax averaging enables a limited range of taxpayers (such as primary producers, performing artists, authors and sportspeople) to even out their income and tax payable over a maximum of five years, to allow for good and bad years. This ensures that these individuals do not pay more tax over a number of years than taxpayers on comparable but steady incomes.

HECS-HELP COMPLIANCE STRENGTHENED

The Government will provide almost $4 million over 4 years from 2015/2016 to strengthen the compliance and enforcement arrangements for the recovery of Higher Education Loan Programme (HELP) debts from Australians living overseas. This measure is aimed at ensuring the new rules announced in the May 2015 Budget are complied with.

These new rules are now operational and require from 1 January 2016 all HELP debtors who leave Australia intending to go overseas for more than six months to 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 changes impose 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 exceeded certain thresholds. The definition of HELP Repayment Income has now been expanded to capture income earned by ex-pat, non-resident Australians with a HELP debt.

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.

EASING OF FARM MANAGEMENT DEPOSIT RULES

Effective 1 July 2016, the following changes will be made to the Farm Management Deposit rules:

- Removing the restriction on accounts being used as an offset for business loans
- Doubling the deposit limit to $800 000, and
- Allowing drought-affected primary producers to withdraw the FMD when needed without losing their tax benefit.

CGT ROLLOVER RELIEF

The Government will provide CGT roll over relief for mandatory transfers of assets within a superannuation fund in the transition to MySuper (transfers made from 29 June 2015 to 1 July 2017).

SHARING

THE LOSS

It's been a horror start to the year on global share markets with the ASX not being immune. At the time of writing more than $100 billion has been wiped off the value of Australian stocks in the first few months of 2016. With 36% of the adult population in Australia invested in the Australian share market, this article examines some of the tax issues for share owners in the current gloomy climate.

SHARE TRADER V SHARE INVESTOR

While the large majority of share owners are share investors, it may be the case that you are a share trader. The distinction between share investors and share traders is important for the following reasons:

	SHARE TRADER	SHARE INVESTOR
Sale Proceeds	Assessed as income	Assessed as capital gain or loss
Buy and Sell Costs (e.g. brokerage fees)	Deductible in the year incurred	Added to cost base for the CGT calculation
Year-end stock-take	Generally required	Not required
Dividends	Assessed as income	
Interest expense	Allowable deduction	
Franking Credit	May not be entitled unless shares are held for 45 days or more	Will generally be entitled

While as stated most share owners are share investors, if we were to apply the principles in the case law to date, we could create the following profile of a share trader:

- A share trader is likely to employ a more systematic approach than a share investor e.g. operating to a plan, setting budgets and keeping detailed records etc.
- A share trader is likely to engage in regular and sometimes complex transactions, and employ greater capital than a share investor
- A share trader is likely to buy and sell shares at more regular intervals than a share investor, and is likely to hold the underlying security for a shorter period of time than a share investor
- A share trader is more likely than a share investor to be motivated by the prospect of a short-term profit, and that profit is more likely to arise from a discernible pattern of trading. A share investor is more likely to have long-term timeframes in mind
- A share trader is likely to spend a greater amount of time on share transactions than a share investor, in part due to the greater scale and repetition of the activities.

Given the vast difference in tax treatment, if you are uncertain whether you are a share trader or share investor, you should consult your accountant. Having distinguished between the two types of share owners, we now consider issues surrounding losses on shares which may be quite commonplace in the current environment.

PROCEEDS ON SALE

Whether you are a share trader or a share investor, in the current gloomy environment it's important to understand that even if shares may be worth less now than what you bought them for, any loss at the moment is only on paper. It only becomes a real loss if you actually sell the shares. Therefore, in consultation with your financial advisor you may come to the view that the share market will in time rebound and along with it the price of your shares, or that your particular shares have long-term growth potential. In which case you may be willing to 'ride-out' the current turbulence.

SHARE INVESTOR

If you do decide to sell and crystalise a loss, the loss cannot be used to reduce your other income such as salary and wages. Rather, your capital loss is quarantined and can only be used to offset current year capital gains which you have made on the sale of other capital assets during the year such as property or another share sale.

TAX TIP 1

On the tax planning front, if you have already made capital gains during the year, then now leading up to 30 June you may wish to reduce the tax on these gains by selling loss making shares. Such decisions should be made in consultation with your financial advisors; weighing factors such as your desire to reduce your CGT liability, your need for the cash resulting from the sale, the growth potential of the shares you are contemplating selling etc.

TAX TIP 2

In simple terms capital gains and losses are calculated by comparing the amount of your cost base with the amount of your sale proceeds. Where the former exceeds the latter, a capital loss will be made. In calculating your capital loss on shares, to maximise it be sure to include (and retain records of) costs associated with buying and selling the shares such as stamp duty, brokerage fees, agent fees, legal fees, financial advisor fees, and also any costs of establishing, maintaining or defending your ownership of the shares.

On the other hand, if you make a gain on your shares you will generally be entitled to the 50% discount if you have held those shares for 12 months or more. The discount is applied only after you have applied capital losses for the current year and any unapplied net capital losses from earlier years. Note that if the shares are held in a company, the 50% discount will not apply while if the shares are held by your superannuation fund, a reduced discount of 33% applies. Therefore, if you are nearing the 12 month timeframe and are contemplating selling your shares, you may wish to defer the sale until this 12 month timeframe is met and effectively cut your CGT liability in half (note that the day of sale and the day of purchase are not included in the 12 month calculation).

SHARE TRADER

As a share trader, even where your sale proceeds are less than what you purchased the shares for, the proceeds must be declared as income. Unlike a share holder, costs such as stamp duty, brokerage fees, agent fees, legal fees, financial advisor fees etc. should not be included in this calculation as these should be claimed as deductions in the year in which they are incurred. A share trader in effect keeps a "trading account" to determine the net income or net loss from share trading activities during the year. This "trading account" in essence keeps track of share sales, opening stock, any purchases of shares made during the year and the value of closing stock.

Any net income derived after preparing your trading account will be added to the rest of your income (e.g. salary) and taxed at your individual marginal tax rates, whilst any net loss identified in your trading account will be able to be offset against your other income and reduce your taxable income by this loss. Therefore, from a tax planning standpoint, it is important that you keep sufficient records and regularly prepare your trading account in the lead into 30 June to keep abreast of your net income or net loss and the impacts this could have on your other income and overall tax position.

As the sale proceeds are taxed on the revenue account, no 50% CGT discount is available.

STOCK TAKE

As a share trader your shares are treated as trading stock. Consequently, you are generally required to undertake a stock take as close as possible to the end of each financial year. An increase in your trading stock's value (i.e. the value of your shares) over the year is assessable income, while a decrease is an allowable deduction. Conducting a stock take usually involves valuing each share at 30 June, using one of the following two methods:

- **Cost** – in relation to shares this is basically what you paid for them
- **Market Selling Value** – what you would receive in the event of an ordinary sale (e.g. the share's market valuation as at 30 June).

You can choose a different valuation method each year for different shares. The closing value for particular shares at the end of one income year automatically becomes their opening value at the beginning of the next income year.

BASIC EXAMPLE

Alisa is a share trader and purchased 200 shares in XYZ Pty Ltd in September 2015 for $10 each. With the stock market downturn, shares in XYZ were valued at $7 on the share market as at 30 June 2016. Alisa contemplates the tax effect of the two valuation methods:

Cost

If Alisa elected to value the shares at Cost, then she would declare $0 in her trading account using the following formula:

Sale of shares ($0) - Opening Stock at 1 July ($0) - Purchases ($2 000) + Closing Stock ($2 000) = $0. In 2016/2017, the Opening Stock value would be $2 000.

Market

On the other hand if Alisa used the Market method she could claim a loss of $600 which could then be used to reduce her other income (e.g. salary and wages) and therefore her tax payable using the following formula:

Sale of shares ($0) - Opening Stock at 1 July ($0) - Purchases ($2 000) + Closing Stock ($1 400) = $600 loss. In 2016/2017, the Opening Stock value would be $1 400.

By valuing your shares at the lower of Market or Cost, as a share trader you are effectively minimising your income for the current tax year and thus will pay less tax. However, if the shares then go back up in value in subsequent years then you are really just deferring any tax to a subsequent year(s), (see following example). The strategy of deferring tax from the current year (e.g. 2015/2016) to subsequent years (e.g. 2016/2017) may come in handy where your income for 2016/2017 is likely to be less than this year or you are experiencing cashflow pressures in 2015/2016.

Returning to the above example, of course if XYZ shares are permanently on the downward spiral and are not likely to increase in value, then Alisa is better off deferring tax to subsequent years by continuing to use the Market method.

COMPLEX EXAMPLE

Following on from the previous example, assume Alisa used the Market method in 2015/2016 and the share price of XYZ improves and at 30 June 2017 is valued at $12. Also during 2016/2017, Alisa acquires shares in Buster Pty Ltd in July 2016 (200 shares at $30) and September 2016 (200 shares at $35). At 30 June 2017, Buster shares are at trading at $33.

XYZ

Alisa's Opening Stock at 1 July 2016 is $1 400 (the value of her Closing Stock at 30 June 2016). If she again uses the Market method the value of her XYZ stock will have increased by $1 000 ($2 400 - $1 400). If she were to use the Cost method, then the value of her XYZ shares will have increased by $600 (from $1 400 to $2 000).

Alisa elects to use the Cost method and thus minimise her 2016/2017 tax liability.

Buster

To get the best tax result for 2016/2017, Alisa elects to use different valuation methods for the Buster shares.

For the shares acquired in July 2016, she uses the Cost method and therefore the value of this stock has increased by $0 ($6 000 - $6 000).

For the shares acquired in September 2016, Alisa uses the Market method, and therefore the value of the stock has decreased by $400 as follows:

Opening Cost at 1 July ($0) + Purchases ($7 000) – Closing Stock ($6 600).

End Result

Taking account of all of her shares, Alisa must declare $200 on her tax return as a result of her net share trading activity during the year (the $600 increase in XYZ shares minus $400 decrease in Buster shares).

TRADING STRUCTURE

Certainly in the current loss-making environment it pays from a tax perspective to own your shares personally and thus have the ability to reduce your overall personal tax payable (see earlier). However the current environment in which billions of dollars have been wiped off global share markets is unlikely to last forever. We therefore now examine the merits of other possible share owning structures. Note that share dealings in these structures will generally be dealt with on the capital rather than revenue account.

SUPERANNUATION FUND

There are many pros and cons of transferring your shares into your SMSF (note that to do so they must be listed securities). The advantages include:

- Asset protection (generally assets and money inside superannuation are protected from creditors in the event you personally become bankrupt unless it can be established that you made contributions with the purpose of preventing those monies being available to creditors).
- Capital gains on the sale of shares are taxed at 15% as opposed to your marginal tax rate if held personally. This superannuation rate is reduced to 10% if the shares are held by the fund for more than 12 months, or tax-free if your account is in pension mode.
- Dividends are taxed at 15% as opposed to your marginal tax rate (and tax-free if your account is in pension mode). This may be a significant consideration where you have high yielding shares, but less so if low dividends are paid.
- Dividends that are fully franked and held in a superfund result in surplus tax paid that can either be refunded or is offset against other income of the fund.

On the downside however, any capital losses (particularly relevant in the current environment) are trapped within your SMSF and cannot be used to offset any capital gains you may have made personally. Likewise, the shares themselves as well as dividends and sale proceeds are trapped inside of your SMSF until a condition of release (such as reaching 60 and retiring) is met. Note also that if you transfer personally owned shares to your SMSF, CGT may apply. The contribution may also count towards your non-concessional contribution cap.

COMPANY

Despite the obvious asset protection advantages, companies are generally not effective structures in which to hold shares. Capital losses cannot be distributed to share holders (particularly relevant in the current environment).

In respect of capital gains on shares, while a company will pay the company tax rate (28.5% or 30%), any sale proceeds that are distributed to shares holders will come out not as capital gains to be reduced but as assessable dividends to the share holder. Furthermore, even where the shares are held for 12 months or more, the 50% CGT discount is not available.

TRUST

The advantage of a trust owning shares is that the income distributed by the trustee generally retains its character in the hands of beneficiaries. Therefore, with the streaming rules, net income such as capital gains can be directly streamed through to beneficiaries with capital losses, beneficiaries on a low marginal tax rate, or beneficiaries that can access the general 50% discount (corporate beneficiaries cannot access this discount). Franked dividends can also be streamed.

TAX TIP
STREAMING FRANKED DIVIDENDS

From a tax planning standpoint it is advantageous to distribute franked dividends to resident beneficiaries who have a marginal tax rate of 30% or less, as at worst they will be tax neutral upon declaring the distribution, and at best could receive an improved tax outcome if the franking credits (30%) exceed their marginal rate of tax.

It is not possible to stream unfranked dividends, nor is it possible to separately stream just franking credits.

NEGATIVE GEARING

Negative gearing is often only mentioned in the context of property and borrowings, but it can apply equally to shares.

When boiled down to its basics, negative gearing refers to the practice of accepting a short-term loss from an investment with a view to trading that loss off at a later date against a greater capital gain. Therefore, for a negative gearing exercise to work, it's important to select shares that have potential for capital growth – otherwise all those losses you have been absorbing while holding the negatively geared share investment will not have been worthwhile. An investment is said to be negatively geared if, after taking into consideration all of the income (e.g. dividends) and expenses (e.g. interest on a loan to finance the share acquisition) associated with holding the shares, the investment shows a negative net return. Whilst all taxpayers can negatively gear a share investment, it is typically more appealing to taxpayers with higher marginal rates of income tax. This is because the ATO allows an offset of the loss from the holding of a negatively geared investment against other income (e.g. salary and wages). Therefore, the higher a taxpayer's marginal tax rate, the greater the benefit from a gearing strategy.

Thus if you are contemplating engaging in a negative gearing exercise with shares, consider acquiring the shares in the name of the higher earning spouse. For existing share holdings that are negatively geared, consideration should be given to transferring the ownership to the higher earning spouse if this is not already the case. In doing so, transactional costs such as CGT and stamp duty should be considered.

Share expenses that can be claimed as a deduction and thus which will contribute to your negative gearing strategy include:

- Interest on loans to finance the share acquisition
- Management fees or retainers to investment advisors
- Subscription fees and purchase fees of specialist investment journals/publications
- Internet access and depreciation of computers/devices used in managing your investment portfolio (apportionment may be necessary to take account of private use)
- Travel expenses (e.g. to consult with your broker or attend AGMs)
- Interest on capital protected borrowings.

TAX TIP

Reflecting on the earlier-mentioned tax structures, negative gearing exercises typically are more effective where you hold the shares personally in your name rather than in another entity.

INNOVATE AND SAVE

Just before Christmas, the Federal Government released its National Innovation and Science Agenda Report (the Innovation Statement). This article looks at the tax-related measures which are expected to come on stream on 1 July 2016. If you are in line to benefit from these measures, you may wish to consider delaying any planned investment or innovation until after this date if feasible. It is noted that the measures have bi-partisan political support and are therefore almost certain to pass into law.

TAX INCENTIVE FOR EARLY STAGE INVESTORS

The Innovation Statement provides the following tax concessions from 1 July 2016 for investors who support innovative 'start-up' businesses:

- 20% non-refundable tax offset on the amount invested. This offset will be capped at $200 000 per investor, per financial year
- 10 year exemption from capital gains tax (CGT) for investments that are held for 3 or more years.

These concessions will be available for investments in companies that:

- Undertake an 'eligible business' (this term will be defined after consultation with industry)
- Were incorporated during the last 3 income years (i.e. the company need not necessarily be brand new)
- Are not listed on any stock exchange
- Have expenditure of less than $1 million and income of less than $200 000 in the previous income year.

EXAMPLE

In November 2016, Cameron provides $250 000 in equity to an eligible start-up company that was established in 2014. The 20% non-refundable tax offset reduces his tax payable by $50 000 (provided the expenditure and income thresholds are met by the company).

In 2020, Cameron then sells his shares in the company for $400 000. As he has held his investment within the company for the minimum 3 year period but less than 10 years, the entire $150 000 capital gain is exempt from CGT.

It is to be hoped that 'eligible business' will be defined widely. With the non-refundable offset capped at $200 000 per investor, per year, the maximum investment amount for which there will be a tax benefit is $1 million. As the incentive is in the form of a non-refundable tax offset it will only be of use to those who have an income tax liability in the relevant year.

NEW ARRANGEMENTS FOR VENTURE CAPITAL LIMITED PARTNERSHIPS

To attract more investment into high potential 'start-ups', changes will be made to the tax treatment of Early Stage Venture Capital Limited Partnerships (ESVCLPs) and Venture Capital Limited Partnerships (VCLPs).

By way of background, ESVCLPs and VCLPs are investment vehicles that provide tax exemptions for those investing in innovative companies at the early and growth stages of the entity's life cycle. At these stages of development, companies will typically have received one or more rounds of initial funding (e.g. from early stage (angel) investors) but do not yet have the scale and track record needed to go public or attract buy-in from institutional investors. To address this, under the new rules announced in the Innovation Statement:

- Partners in a new ESVCLP will receive a 10% non-refundable tax offset on new capital invested during the year

- The maximum fund size for new ESVCLPs will be increased from $100 million to $200 million
- ESVCLPs will no longer be required to divest from a company when its value exceeds $250 million.

Additionally, eligibility and investment requirements for ESVCLPs and VCLPs will be relaxed to allow managers to undertake a wider range of investment activities and enable a greater diversity of investors to participate.

TREASURY EXAMPLE

Jessica's start-up, PaySmart Pty Ltd, is moving to the next stage of development. Jessica has successfully developed a working prototype of her on-time bill payments software application with assistance from Alex, her early stage (angel) investor. She is now looking to commercialise her software and needs a further injection of capital. She is hoping to raise $5 million in equity funding.

Jessica receives funding from a range of venture capital funds, including a new ESVCLP (called A-OK Ventures). Moores Trust invests $500 000 into A-OK Ventures (alongside other investors) and A-OK Ventures invests this capital in the same income year. The 10% non-refundable tax offset available under the new arrangements will reduce the tax payable by the beneficiaries of Moores Trust by $50 000.

Three years later Moores Trust receives income from the disposal of investments and is exempt from CGT and from tax on any share of income derived by the ESVCLP.

These new arrangements will apply from 1 July 2016.

INCREASING ACCESS TO COMPANY LOSSES

Loss making companies will soon be able to access prior year losses more easily than is currently the case.

To recap, under current rules in order to use prior year losses to offset current and future year income, companies must pass either the Same Business Test or the Continuity of Ownership Test. Where there have been changes in underlying ownership of the company since the losses were originally made which are sufficient to fail the Continuity of Ownership Test, loss making companies can be deterred from seeking out new business opportunities for fear that they will lose access to prior year losses. Under the new rules which will apply to losses made in the current (2015/2016 financial year) and future financial years:

- The current Same Business Test will be relaxed to allow businesses to access prior year losses when they have entered into new transactions or business activities
- A new and more flexible 'Predominantly Similar Business Test' will be introduced
- Under this 'Predominantly Similar Business Test' companies will be able to access losses where their business, while not the same, uses similar assets and generates income from similar sources.

TREASURY EXAMPLE

RePoly Pty Ltd has developed a way to turn algae into biodegradable plastic. It incurs large initial expenditure on manufacturing equipment. In the first three years of operation, RePoly makes a loss.

To ensure its viability, RePoly brings in an early stage (angel) investor who contributes additional capital. This results in a majority change in ownership.

After this change, RePoly seeks to expand its business in an effort to reach profitability. This expansion allows RePoly to make a profit in year four. RePoly seeks to offset its past losses against current year profits.

Possible treatment under existing law
RePoly would fail to meet the 'Same Business Test' and access to prior year losses would be denied.

Possible treatment after new measure introduced
RePoly would pass the 'Predominantly Similar Business' test because it makes use of the same assets, generates the majority of its income from the same business, and took advantage of an opportunity a similarly placed business would take advantage of. As a result, RePoly would be able to access prior year losses to offset current and future year income.

INTANGIBLE ASSET DEPRECIATION

This reform will see businesses with a new option to self-assess the tax effective life of intangible assets (such as patents, trade-marks, copyrights etc.). The effective life rates on these assets are currently fixed by statute, meaning that such assets must be depreciated over a preset number of years determined by the ATO. This reform will better align the tax treatment of these intangible assets with the period over which these assets provide an economic benefit to the holder. Investment in these types of intangible assets is crucial to innovation and growth. Moreover, innovative companies are more likely to hold a higher proportion of these intangible or knowledge-based assets.

Ultimately, faster depreciation of these assets will provide cashflow benefits for business, and thereby encourage investment in these assets. This new measure will apply to assets acquired from 1 July 2016.

TAKE-HOME MESSAGE

The suite of tax-related incentives announced in the Innovation Statement may provide tax benefits for investors and innovative businesses going forward. With these new measures all slated to commence on 1 July 2016 (and enjoying bi-partisan political support) you may wish to consider delaying any currently planned investment or innovations if you are in line to be benefit from these changes until after this start date if feasible.

OT

This article takes a comprehensive look at all issues surrounding overtime, from both an employee and employer standpoint. From superannuation guarantee, payment summary, and taxation treatment...it's all covered.

BACKGROUND

In simple terms overtime is work performed outside the ordinary hours stated in an Award or other employment instrument such as an enterprise agreement or individual agreement. Overtime may be paid (as is common in sectors such as hospitality, retail etc.) or unpaid (as is common in professional sectors such as law or accounting). If overtime is payable, the relevant employment instrument will generally set out when overtime rates apply, and at what rate they must be paid. Whether paid or unpaid, under employment law an employer can request that an employee works 'reasonable overtime'. Where a request is unreasonable, an employee can refuse. According to Fair Work Australia, an overtime request from the employer will be reasonable where the following are taken into account:

- Any risk to the health and safety of the employee in working the extra hours
- The employee's personal situation including their family responsibilities
- The needs of the workplace
- If the employee is entitled to receive overtime payments or penalty rates for working the extra hours
- If the employee is paid at a higher rate on the understanding that they work some overtime
- If the employee was given sufficient notice that they may have to work overtime
- If the employee has already stated that they can not ever work overtime
- The usual patterns of work in the particular industry.

TIP

In terms of overtime entitlements – both when and if overtime applies as well as the rates that are payable – it can't be emphasised strongly enough the importance of consulting the relevant employment instrument. If your workforce is covered by an Award, these can be located on the Fair Work Australia website which also contains an overtime pay calculator https://www.fairwork.gov.au/pay/penalty-rates-and-allowances/overtime-pay

WITHHOLDING AND PAYMENT SUMMARY

Although typically paid at a different rate, in terms of PAYG withholding overtime payments are treated the same as salary and wages. Overtime amounts must be added to the salary and wages for a pay period and the total taxed according to the ATO's PAYG withholding tax tables. If you normally process payments in a pay period later than the work is performed, for example overtime payments paid with a time lag of one pay period, they are not considered back payments and should not be taxed using the special ATO tax table for back payments.

In terms of Payment Summary treatment, any overtime payments should be included with salary and wages in the 'Gross Payments' box.

SUPERANNUATION GUARANTEE

Superannuation is payable only on an employee's ordinary time earnings (OTE). As such, payments for work performed outside an employee's ordinary hours of work are not OTE and therefore will not attract superannuation. This is the case whether payments are calculated at hourly rate or the employee gets a specific loading, or an annualised or lump sum component of a total salary package that is expressly referable to overtime hours.

Note however that some employees, particularly managers and professionals, receive a single un-dissected annual salary within their remuneration package which recognises in a non-specific way that the employee may be expected to work hours outside their ordinary hours. In such cases, the whole amount is considered OTE and therefore attracts superannuation unless overtime amounts are distinctly identifiable.

Given that only payments made in respect of 'ordinary hours' attract superannuation, how are these hours identified? According to Superannuation Guarantee Ruling SGR 2009/2:

An employee's 'ordinary hours of work' are the hours specified as his or her ordinary hours of work under the relevant award or agreement, or under the combination of such documents, that governs the employee's conditions of employment.

The document need not use the exact expression 'ordinary hours of work', but it needs to draw a genuine distinction, for the purposes of the award or agreement, between ordinary hours and other hours. In particular, it would be expected that the other hours *are remunerated at a higher rate (typically described as overtime) than the ordinary hours, or otherwise identifiable as a separate component of the total pay in respect of non-ordinary hours*

Any hours worked in excess of, or outside the span (if any) of, those specified ordinary hours of work are not part of the employee's 'ordinary hours of work'.

If the ordinary hours of work are not specified in a relevant award or agreement, the 'ordinary hours of work' are the normal, regular, usual or customary hours worked by the employee, as determined in all the circumstances of the case. This is not necessarily the minimum or maximum number of hours worked or required to be worked.

In such cases, it may often not be possible or practicable to determine the normal, regular, usual or customary hours of an employee's work. If so, the actual hours worked should be taken to be the ordinary hours of work.

'Ordinary hours of work' are not necessarily limited to hours to be worked between 9am and 5pm, Monday to Friday. They may (depending on the provision in the relevant award or agreement, if any) include hours to be worked at other times, including at night, on weekends or on public holidays.

EXAMPLE

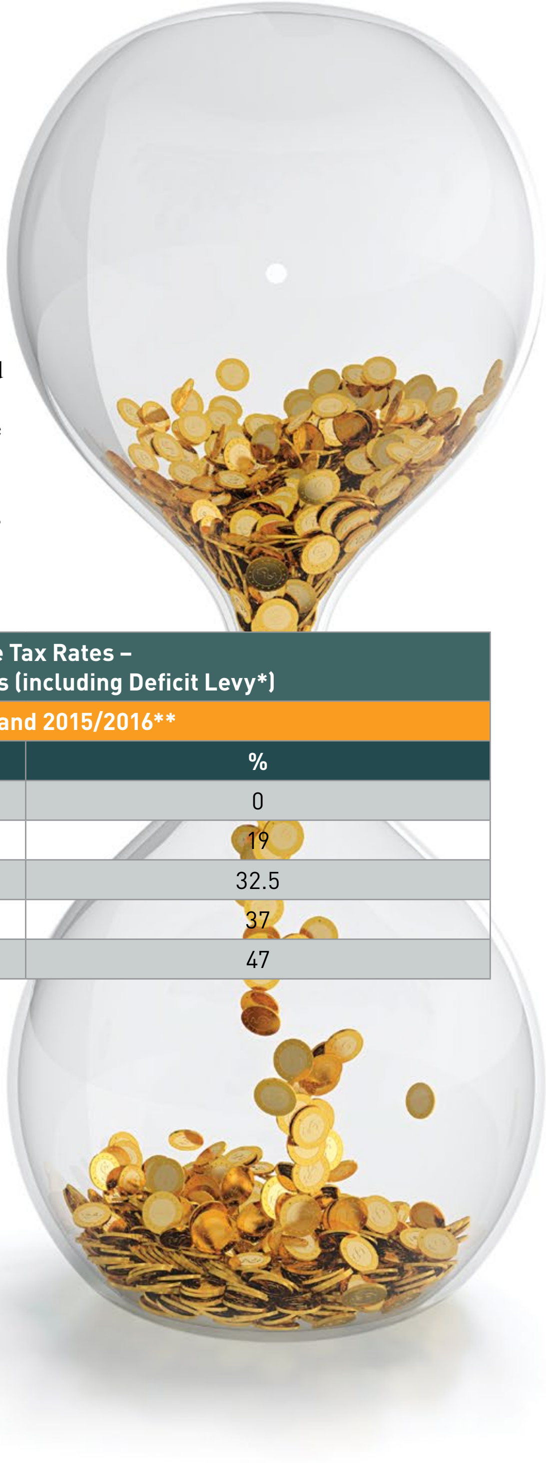
Jake is employed under a contract requiring him to work a minimum number of hours per week in a pizza parlour. By agreement with his employer, he may work additional shifts as is mutually convenient. He often does so, though there is no clear and consistent pattern.

There is no employment instrument governing Jake's employment that specifies his ordinary hours of work, nor do the extra shifts worked attract any overtime penalties or other higher payments.

As there are no stipulated ordinary hours of work, and no readily discernible pattern of customary, regular, normal or usual hours, all of Jake's hours actually worked are ordinary hours of work. Therefore all of his wages attract superannuation including the additional shifts.

Given that they attract different superannuation treatment to ordinary hours, it's important to separately identify overtime payments in your accounts.

'HIGHER TAX BRACKET' MYTH



Anecdotally, a common reason given by people for not wanting to take up the offer from their employer to work overtime is that it may take them into a higher tax bracket and therefore end up costing more than its worth. This is misguided. While Australia does have a progressive tax system whereby the more you earn, the higher the rate of tax you pay, the tax rates are incremental – your income is taxed at different rates, not one single rate as follows:

Income Tax Rates – Resident Individuals (including Deficit Levy*)	
2014/2015 and 2015/2016**	
Income threshold $	%
0-18 200	0
18 201- 37 000	19
37 001- 80 000	32.5
80 001-180 000	37
180 001- above	47

For example, if you have a base annual salary of $80 000 for the 2015/2016 year and are offered overtime by your employer leading up to 30 June, it is only the overtime that is taxed at the higher rate of 37% - not your entire income. Therefore, your first $80 000 would be unaffected and the same tax rate would apply to that amount (i.e. 32.5% for the amount between $37 001 and $80 000) regardless of whether you elected to undertake the overtime work offered. By rejecting the overtime offer in this situation, you are costing yourself money and making no tax saving.

OVERTIME MEAL ALLOWANCE

Overtime meal allowances are sometimes paid in connection with overtime worked. Again, an employee's entitlement to this will be stated (or not stated as the case may be) in their employment instrument. The Payment Summary and Withholding treatment depends on the amount of the allowance paid. If the amount is at or below the reasonable allowance amount ($28.80 for 2015/2016) then an employer is not required to withhold tax, and the allowance should not be shown on the employee's Payment Summary. On the other hand, where the amount of the allowance exceeds the reasonable allowance amount, then tax must be withheld from the excess, and the whole amount of the allowance must be recorded in the Allowance box on the Payment Summary.

Superannuation is never payable on overtime meal allowances irrespective of the amount of the allowance.

SHARED ACCESS

A new ruling may pave the way for a more generous CGT treatment on the sale of ordinary company shares where dividend access shares have also been issued by a company. This is good news for company owners as issuing dividend access shares is a popular strategy used to achieve a number of outcomes not always achievable with ordinary shares.

DEFINITION

Typically when shares are issued by companies they are issued as ordinary shares which confer the following rights on the shareholder:

- A right to receive notice of any annual general meeting (AGM) of the company
- A right to vote at any general meeting of the company
- A right to receive dividends from time to time in accordance with the company's Constitution
- The right to participate in the distribution of surplus assets on the winding up of the company.

By contrast, Dividend Access Shares (DAS) restrict the shareholder's rights down to a right to receive a dividend solely at the discretion of the directors, with the DAS having no rights to capital and no voting rights. Thus, the holder of a DAS has no real input into how the company is run, and no stake in the company's assets in the event that it is wound up.

ADVANTAGES

Issuing DAS rather than ordinary shares may be useful in a number of circumstances:

Employee Share Schemes
Employee share schemes are a means to aligning the interests of employees and employers. By giving employees a stake in your business (by allowing them to own shares) 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. Often however many employees may not have sufficient cash on hand to acquire ordinary shares even at a discount offered under an employee share scheme. DAS however are typically issued at a nominal value (e.g. $1) and therefore this problem does not arise.

TAX TIP

Effective 1 July 2015, generous employee share scheme tax concessions came into force, making these arrangements eminently more attractive for employees and employers. You can read more about these concessions in our 2015 Income Tax and FBT Savers publication which you can download from our website www.taxreporter.com.au

Dependents
There may be cases where you wish to provide an income stream to other parties (e.g. your adult children) but do not wish for them to have any say in how your company is operated. DAS, devoid as they are of voting rights, allows this outcome to be realised.

Divorce
Divorce proceedings may require assets of a company to be transferred to a party who is not an existing shareholder. DAS can potentially be used to accommodate any court-ordered requirements.

Other Advantages
DAS can also come in handy from an asset protection and succession planning perspective. Speak to your advisor for further details.

PROBLEMS

Up until recently, one of the problems with issuing DAS was that in doing so the company may be denied access to several Small Business CGT concessions when the ordinary shares of the company are sold at a later date. The ATO has always been of the view that where there are different classes of shares on issue from a company (such as ordinary shares as well as DAS) no single class of shareholders could assert that they had an indefeasible equitable interest of 20% or more of the dividends of the company. Without this, generally speaking, no shareholder of the company can be either a significant individual or a CGT concession stakeholder. Without meeting this requirement, access to the following CGT Small Business Concessions will be denied when the ordinary shares are sold:

- Small Business 15-Year Exemption (which provides a total exemption from CGT where the conditions are met)
- Small Business Retirement Exemption (which can exempt any remaining part of a capital gain once the Active Asset Reduction and 50% discount have been applied)
- Access to the Small Business Rollover (which can exempt any remaining part of a capital gain once the Active Asset Reduction and 50% discount have been applied).

However the recent Federal Court decision in ***Federal Commissioner of Taxation v Devuba [2015] FCAFC 168*** may have altered this long-standing position adopted by the ATO and, in doing so, opened the door for business owners to access the above lucrative concessions despite the existence of DAS.

FACTS

- In May 2010 Devuba Pty Ltd. sold shares in a company and incurred a capital gain of more than $4 million. The company subsequently applied the CGT Small Business Concessions and reduced the capital gain to nil (a tax saving of more than $1.2 million using the corporate tax rate of 30%).
- At the time of the share sale, one person held a DAS but no ordinary shares in the company.
- The DAS was issued in 2007 by way of a company Resolution which stated that holders had a right to dividends, but no rights to vote at meetings of the company and no right to share in any surplus should the company be wound up. The Resolution also stated that there was a right *"to receive in respect of any such shares, such dividends, capital or other distributions that the Directors may from time to time determine to pay.*
- A later 2008 Resolution declared that the holders of DAS have no right to the payment of a dividend until such time as the directors of the company resolve that the holders are so entitled.

ARGUMENTS

The ATO argued that as the DAS holder could be paid a dividend to the exclusion of all and any other classes of shares (i.e. ordinary shareholders) the earlier 20% threshold which is to be applied just before sale could not be met – indeed the percentage would be nil.

For their part, the company argued that as per the Resolution until any decision was made by the Directors of the company to pay a dividend on the DAS (and no such decision had been taken by the company directors at the time of sale) the only dividends that could be paid were those to the ordinary shareholders. As there was an individual in this particular company who owned 50% of the ordinary shares, then they have 50% of the dividend, capital and voting rights and thus are a significant individual/CGT concession stakeholder and thus the CGT concessions can be accessed.

DECISION

In arriving at its decision in favour of Devuba, the Federal Court carefully considered the terms of the above Resolution. It found that it expressly limited Devuba's ability to pay a dividend to holders of DAS until such time as the Directors resolved that this occur. Because no such declaration had been made at the time of the sale of the shares back in 2010, the only dividends that could be paid were those to ordinary shareholders. Thus, by virtue of the 50% shareholding held by an individual in the company, the company did indeed have a CGT concession stakeholder and could therefore access the CGT Small Business Concessions.

TAKE-HOME MESSAGE

DAS are a useful strategy should you wish, for any of the earlier mentioned reasons, to grant dividend-only access to individuals or other entities. Whilst this case does open the door for CGT Small Business Concession access where DAS have been issued, it does turn very much on the facts and in particular the wording of Resolutions made by Company directors. It is though a significant step forward to accessing the very lucrative concessions on offer which, as illustrated in this case, can significantly reduce an entity's taxation liability at the time shares are eventually sold. Before issuing DAS we recommend you talk to your advisors.

A WORD OF CAUTION

Whilst this case provides some guidance on an area that has concerned advisors when considering the use of DAS (namely the CGT consequences) there remain other areas of concern surrounding the use of DAS that taxpayers and their advisors need to be aware of. One such example is where a DAS is issued for a nominal value and whether this gives rise to value shifting (a whole new topic of conversation).

TAX

CHALLENGES, DEADLINES, AND OPPORTUNITIES

This article provides an overview of the looming tax challenges, deadlines and opportunities over the coming months. Areas covered include PAYG instalments, SuperStream, tax planning, and more!

VARY YOUR INSTALMENTS

From 1 January 2016, new rules require Corporate Tax Entities to commence paying their PAYG instalments monthly rather than quarterly if their base assessment instalment income is more than $20 million. 'Corporate Tax Entities' include companies, corporate limited partnerships, corporate unit trusts and 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 rather than quarterly).

Regardless of these new rules, it should still be remembered that entities do have the ability to vary their PAYG instalments under certain circumstances. That is, if you pay your PAYG instalments under Option 1 whereby the ATO provides you with a dollar figure (based on your last assessed Income Tax Return) that you must pay by the due date, you are permitted to vary this amount downwards if it does not reflect estimated current year tax payable. Therefore, if you have experienced a downturn in profit and therefore your estimated tax is less than your last Income Tax Return consider a downwards variation. Speak with your advisor about varying the instalment amount downwards and enjoy the cashflow relief that this provides.

Indeed this strategy applies to all businesses and individuals in the PAYG instalment system. If the ATO notified amount on your current Activity Statement is too high and does not reflect current operating conditions, then a downwards variation should be considered in consultation your advisor. This may apply where for example you or your business:

- Have less business or investment income but approximately the same level of deductions as last year
- Have more tax deductions but about the same level of business and investment income as last year
- Has ceased to earn income from business activities
- Now receives significantly lower dividends from your share portfolio.

Be aware though that penalties in the form of interest may be applied if your varied amounts for the year are less than 85% of your actual tax payable on your business and investment income for the year. Given the possible application of these penalties, any decision to vary the instalment amount downwards should be made in consultation with your advisor.

SUPERSTREAM... THE TIME HAS COME

Small employers who have not already done so must urgently implement a **SuperStream** solution over the next few months. Employers with less than 20 employees have until 30 June 2016 to comply with the new **SuperStream** regime. By way of background, **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 to 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 are now **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 should confirm with them that they have a plan in place that is **SuperStream** compliant).

INSTANT ASSET WRITE-OFF

Now that we're into the last half of the financial year, thoughts inevitably turn to tax planning. If you are a Small Business Entity (SBE) don't forget about the Small Business Instant Asset Write-Off. Although the publicity surrounding the Small Business Instant Asset Write-Off has died down, the write-off still offers the same great tax planning opportunity that it offered at the end of last financial year when it proved so popular among business owners.

To recap, SBEs (businesses with a turnover of less than $2 million, including the turnover of connected and affiliated entities) can claim an immediate deduction (total write-off) for depreciating assets that cost less than $20 000 (up from $1 000) provided the asset is first acquired on or after 7.30pm EST on 12 May 2015, and first used or installed ready for use on or before 30 June 2017. To get the benefit for this 2015/2016 financial year, the asset will need to be purchased and installed ready for use on or before 30 June 2016. Basically, all depreciable assets (including second-hand assets) used in a business are eligible for the $20 000 write-off – including motor vehicles, furniture, computer equipment, machinery etc. The following assets are however specifically excluded from the write-off as they have their own unique depreciation treatment:

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

Financed assets are also eligible. Assets that are the subject of a commercial loan, chattel mortgage or hire purchase would all qualify. Assets that are the subject of a lease however do not qualify for the write-off due to the fact that the ownership of the asset under a lease remains with the finance company.

If you are planning on purchasing assets for your business in the near term, to take advantage of the Small Business Instant Asset Write-Off you may wish to bring-forward the acquisition to before 1 July and optimise your 2015/2016 tax position. In terms of assessing the wider benefits of this measure to your business we note the following:

- ***Cashflow*** – The $20 000 write-off improves small business cashflow by bringing forward deductions rather than having them spread out over more than one year. Cashflow can be a significant issue for small business, particularly start-ups.
- ***Timing*** – The "pay day" on the cashflow relief could however be as much as 22 months (longer if your business has a tax loss). That is, an asset may be purchased in July 2016 for example, but the tax agent may not lodge the tax return until the due date which can be as late as May 2018 and this is when the tax payable would be due.
- ***Perspective*** – You are only getting back the tax rate on the asset, not the full value of the asset. You don't get any extra cash than you would otherwise have received under the old rules (you simply get it sooner). Consequently, you should not let tax distort or blur your commercial instincts – you should continue to only buy assets that fit within your business plan.

EXAMPLE

In order to optimise its 2015/2016 tax position, Jade's Pizza Parlour Pty Ltd brings forward the purchase of a specialist pizza oven for $19 800 (GST-inclusive) to May 2016. The oven is installed ready for use in June 2016. Provided it is an SBE, the company will pay $5 130 less tax in 2015/2016 (with no tax deductions in subsequent years). $1 800 will be claimed as a GST credit. The money saved can then immediately be deployed to other areas of the business.

Although this tax benefit would still be available if the purchase was made after 30 June 2016, Jade would be forced to wait an additional 12 months to receive it. By making the purchase this financial year, the cashflow relief is brought forward.

HELP YOURSELF

If you are planning to make a voluntary repayment to your HECS-HELP debt or pay out your HECS-HELP debt in the near future, doing so as soon as possible could save you hundreds of dollars. Over the next few months, the following HECS-HELP developments will occur:

- The upfront HECS-HELP discount of 10% will be removed for eligible students that pay their student contributions upfront. This will take effect from 1 January 2017. Currently Commonwealth supported students who are eligible for HECS-HELP and elect to fully pay, or part pay $500 or more of their student contribution amount upfront currently receive a discount of 10%. The amount of the discount is paid by the Government to the student's higher education provider.

- The current HECS-HELP repayment bonus of 5% will be abolished from 1 January 2017. Currently, students who have a HECS-HELP debt and make a voluntary repayment of $500 or more towards their debt receive a bonus of 5%. For example, a voluntary payment of $2 000 attracts a bonus of $100. The amount of the bonus is an additional credit against the student's outstanding HECS-HELP debt. If you are contemplating making a voluntary repayment, we recommend doing it in a single large lump sum rather than smaller amounts over multiple payments. The bigger the single voluntary repayment, the bigger the 5% bonus (provided the payment is $500 or more).

- Outstanding HECS-HELP debts are about to be indexed. Although no interest is applied on your outstanding debt, debts are indexed on 1 June each year in line with the Consumer Price Index (CPI). Last year for instance, the CPI figure was 2.1% (thus outstanding debts increased by this amount). Therefore, your debt will increase each year on this date. This in itself provides an incentive to pay your debt off as quickly as possible – perhaps by making a voluntary repayment before 1 June this year.

- With 2015/2016 tax returns able to be lodged from 1 July, be aware that the amounts that are deducted from your salary each pay period by your employer are subtracted from your debt balance when you lodge your tax return following the end of the financial year and do not attract a 5% bonus. Therefore, if you are contemplating paying out your HELP debt by making a voluntary repayment, we recommend doing so before you lodge your 2015/2016 tax return, otherwise you may not get the benefit of the 5% bonus.

WHAT THE TAXMAN IS THINKING

In this edition, we look at how the new SuperStream regime is saving employers time and money, detail fresh ATO guidance on the tax treatment of website costs, look at how according to the ATO partnerships are being used to avoid tax, and much more.

SUPERSTREAM CUTTING ADMIN TIME

With the 30 June 2016 SuperStream compliance deadline looming for small business (those with less than 20 employees), the ATO reports that the new SuperStream system is reducing the time employers spend on superannuation by approximately 70% or 1.5 hours, each cycle, on average and has collectively saved small businesses up to $50 million per year. Phil Hind, the ATO's National Program Manager, Data Standards and E-Commerce (SuperStream) says:

For some businesses, the earlier part of the year is a quieter period, so now is a great opportunity to check that your SuperStream option is ready, whether that be your payroll software, your super fund's online payment system, or a clearing house (like the ATO's Small Business Superannuation Clearing House). You can also ask your accountant or bookkeeper for help.

Importantly you should collect the necessary employee identification data – being your employees' TFNs and their funds' unique super identifiers (USIs) – and enter it into your system ahead of the next quarterly due date on 28 April. That way, you have time to check that things are running smoothly before the deadline. Your employees can find their fund's USI on their super statement or by calling their fund. You can also find these details using the Super Fund Lookup website – our online SuperStream checklist has the link.

The ATO's step-by-step SuperStream checklist for employers can be found at www.ato.gov.au/SuperStreamChecklist

WEBSITE COSTS

The ATO is currently in the process of drafting a public ruling on the deductibility of website development costs. In the interim, for the many business owners that may incur such expenditure, the ATO has provided the following guidance on its website:

If you incur expenses creating or maintaining a website for your business, you may be able to claim the costs as a deduction.

START-UP COSTS

If you incur the expense before your business starts, you can claim the cost over five years (20% per year), once you start up.

AFTER YOU START

If you're a small business (i.e. businesses with an aggregated turnover of less than $2 million) you can use the simplified depreciation rules. If you choose to do this and the cost is:

- Less than the instant-asset write-off threshold (currently $20 000) you can claim a deduction for the full amount in the income year you incur the expense
- Equal to or more than the instant write-off threshold, you allocate it to a general small business pool.

You cannot use the simplified depreciation rules if you've chosen to allocate your expenditure on the software to a software development pool. From 1 July 2015, in-house software expenditure incurred and allocated to such a pool is deductible over five years. (In-house software is computer software, or the right to use computer software, that you acquire, develop or have someone else develop and that is mainly for you to use in performing the functions for which the software was developed (that is, not for resale). This could include off-the-shelf software acquired for use in your business). If the simplified depreciation rules do not apply, you can claim a deduction for website costs over five years if you incurred them on or after 1 July 2015. If the expense is:

- In-house software, you deduct 20% of the cost per year
- Included in a software development pool, you deduct different proportions of the expense each year.

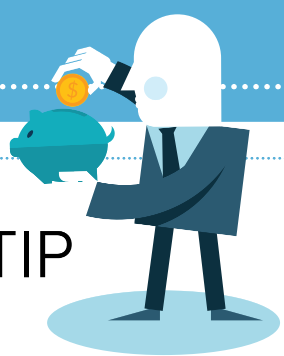
You can only allocate expenditure to a software development pool if it was to develop software (as distinct from buying it off the shelf).

CLAIMING ONGOING RUNNING AND MAINTENANCE COSTS

You can also claim an outright deduction for some ongoing expenses associated with running and maintaining your website in the financial year that the expense was incurred. Some examples include domain name registration fees and server hosting costs.

EXAMPLE

In July 2015, your small business bought a $2 000 website hosting package. You also have to pay service fees of $50 per month, plus a $50 annual fee for the domain name. You can claim a deduction of $2 000 in your 2015/2016 tax return under the simplified depreciation rules, and a deduction for the monthly and annual fees in the year that they are incurred.



TIP

Websites are a key marketing tool for business, and can also of course be a portal for sales and orders. For advice on the key features of an effective website, see the November/December 2013 edition of this publication which you download from the subscriber section of our website.

MISUSE OF PARTNERSHIPS TO AVOID TAX

At the end of last year, the ATO issued **Taxpayer Alert 2015/4 – Accessing business profits through an interposed partnership with a private company partner.**

The Alert identifies certain arrangements that purport to enable individuals to access business profits without paying top-up income tax at their higher marginal tax rate (up to 49%). The arrangements under the ATO microscope contain some or all of the following features:

- An individual and private company enter into a partnership
- The private company provides the majority of the capital (typically as much as 99%) and the individual controls the management of the partnership
- Income is channelled to the partnership via distributions from a discretionary trust or dividends paid from a private company (typically via dividend access shares)
- If a discretionary trust has been used, the trustee of the discretionary trust distributes a share of the net income of the trust to the partnership and either:
    - Retains the money on sub-trust for the partnership
    - Purports to retain the money on sub-trust, but does not set aside the private company's share of the money for the sole benefit of the private company or
    - Pays the money to the partnership
- The managing partner makes a resolution to distribute the net income of the partnership to the partners in their respective proportions (e.g. 99% to the private company). The partners include their share of the net income in their assessable income
- In the same or a subsequent income year, the profits, including amounts taxed to the private company partner, are ultimately loaned or paid to a shareholder or associate of the individual partner, and
- The individual partner's associates, to which the money is loaned or paid, do not include amounts received in their assessable income and additional 'top-up' tax on the economic benefit they receive is therefore not paid.

Among the many concerns the ATO has about these arrangements is that they may not be effective at law or have a different effect from that which has been understood by the taxpayers. The ATO advises that they have already conducted more than 20 audits of this type of arrangement, with another 50 cases currently under review. If you (or a client) is involved in an arrangement which exhibits some or all of the characteristics listed above, it is recommended that you seek professional advice with a view to potentially making a voluntary disclosure to the ATO or applying to them for a Private Binding Ruling in order to obtain some certainty around your dealings.

ATO'S VISA DATA-MATCHING PROGRAM

The Department of Immigration and Border Protection has advised that it will provide the ATO with the names, addresses, and other details of Visa holders, sponsors and migration agents for the 2013/2014 to 2016/2017 financial years. The following data items will be provided:

- Address and contact history for Visa applicants and sponsors
- All Visa grants, and Visa status by point in time
- All migration agents, and their address and contact history
- Sponsor details (subclass 457 Visa)
- Education providers (educational institution where the Student Visa holder intends to undertake their study)
- Visa subclass code and descriptor, and
- All international travel movements undertaken by Visa holders (arrivals and departures).

All up, records relating to approximately 1 000 000 individuals will be provided.

TIP

In this increasingly mobile workforce, it's quite common in certain industries for employers to employ foreign nationals in Australia on a Visa. Be aware though that a foreign national working in Australia without a Visa or in breach of their Visa conditions is an illegal worker. It's generally a criminal offence to employ an illegal worker. Therefore, it is important that employers check the work entitlements of non-citizens they want to employ. In doing so, be aware that not all Visa holders have their Visa details recorded on their Visa, and just because they have a Tax File Number does not mean they are legally entitled to work in Australia. The best way to quickly and easily check the work entitlements of non-citizens is via the Visa Entitlement Verification Online (VEVO). www.border.gov.au/Busi/Visa

DISASTER RELIEF

During Summer there were major bushfires in various parts of Australia, most significantly in Victoria and Western Australia. Although tax may be the last thing on your mind at the moment, if you were affected or have clients affected by these natural disasters the ATO advises that it will fast-track refunds for these people. You will also have additional time to lodge Income Tax Returns and Activity Statements. The ATO has automatically deferred the lodgement and payment dates (excluding large PAYG withholders) for Income Tax Returns due between January and March 2016, and for Activity Statements due in December 2015, January or February 2016. The new lodgement date is 28 April 2016. You do not need to apply for these deferrals as they have been automatically granted if you live in the following postcodes:

- Yarloop, Western Australia (postcode 6218)
- Wye River and Shepparton Creek, Victoria (3234).

The ATO advises that it will also fast-track any income tax refunds that are due for taxpayers in these areas. If you do not live in these postcodes but were impacted by the bushfires, the ATO advises that you contact them with a view to securing the same concessions. More broadly, if you are ever impacted by a Natural Disaster, we recommend visiting the Disaster Assist website to determine if you are eligible for any direct financial assistance from the Federal or Commonwealth Governments www.disasterassist.gov.au

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