MTS

MY TAX SAVERS

MyTaxSavers

MAY /JUNE
2016

YEAR END
TAX PLANNING

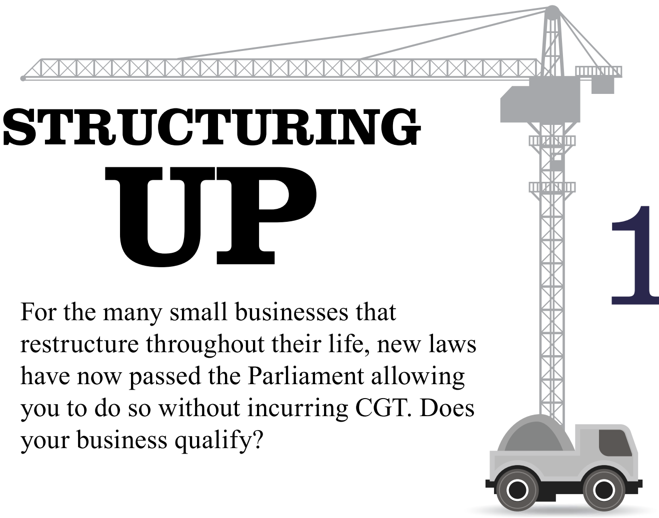
SMALL BUSINESS
TAX BONANZA

LATEST NEWS FROM THE ATO

Index

Published by ***My Tax Savers***, P.O. Box 1177 Southport BC QLD 4215 Email: info@mytaxsavers.com.au **Phone: 1800 SAVETAX**
Web: www.mytaxsavers.com.au. My Tax Savers is a trading name of My Tax Savers Pty Ltd ABN 36 609 058

STRUCTURING UP



14

For the many small businesses that restructure throughout their life, new laws have now passed the Parliament allowing you to do so without incurring CGT. Does your business qualify?

WHAT THE TAXMAN IS THINKING

In this edition, we preview new withholding law, offer some last-minute SuperStream solutions, examine the changes to Earn-Out rights, and much more.

17

SMALL BUSINESS BONANZA

21

From tax cuts, to deductions for start-ups, to more generous FBT rules…a swathe of pro-small business tax legislation has recently been passed into law. How will your business benefit?

KEY DATES FOR BUSINESS

Many key dates are looming over the next two months. Don't be late!

MAY 2016

21 MAY
April 2016 monthly Activity Statements – due for lodgement and payment

26 MAY
3rd Quarter Activity Statements – due for lodgement and payment (for those lodging via Electronic Commerce Interface (ECI), Electronic Lodgement Service (ELS), Tax Agent Portal, BAS Agent Portal, or Standard Business Reporting (SBR))

28 MAY
2016 FBT Annual Return – due for payment

28 MAY
Due date for lodgement and payment of the Superannuation Guarantee Charge Statement if you failed to pay Superannuation Guarantee on time for the January-March quarter. Superannuation Guarantee Charge is not deductible

JUNE 2016

21 JUNE
May 2016 monthly Activity Statements – due date for lodgement and payment

SATURDAY 30 JUNE
SuperStream Deadline – Last day for employers with less than 20 employees to comply

SATURDAY 30 JUNE
Superannuation Guarantee payments must be received by Superannuation funds by this date in order to be deducted in 2015/2016

*

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

SUPER

SHORT AND LONG TERM

Year-end superannuation contributions are traditionally a popular tax-savings strategy – this article details how you can benefit. More broadly, following recent announcements from the Government and the Opposition, there may never again be a more favourable time to invest by making a contribution into the concessionally taxed superannuation environment.

CHANGE IS COMING

Although the Budget is not until May, and the Federal Election is not likely until the second half of the year, some significant superannuation changes would seem to be brewing – mostly designed to reduce the $30 billion (per year) of concessions currently on offer.

GOVERNMENT

Leading up to the Federal Election, the Government has recently flagged the reining in of superannuation tax concessions:

"There is a strong case for examining the size and structure of the tax concessions. It's clear that we are going to have to make some hard decisions when it comes to how we're going to address the targeting of these tax concessions going forward", Treasurer Scott Morrison told a Superannuation Fund conference in Adelaide in April.

Although at the time of writing concrete policies have not been announced, the Government seems to have ruled out a Deloitte proposal to tax concessional contributions at a taxpayer's marginal tax rate, less a 15% rebate (currently, such contributions are taxed at a flat rate of 15% unless your income exceeds $300 000). It is also understood that the Government is unlikely to change the current tax-free status of superannuation retirement pensions. However, proposals under active consideration include:

- Reducing the current concessional contributions cap (currently $30 000, or $35 000 for taxpayers 50 or over). This would mainly impact those that salary sacrifice, and those who receive little or no employer superannuation support during the year.
- Reducing the after-tax non-concessional superannuation cap from its current $180 000 per year, or introducing a life-time cap instead.

OPPOSITION

For its part, the Opposition has announced a suite of specific superannuation policies mainly targeted at high income earners that will it implement if it is elected into Government later this year:

- ***Taxing Superannuation Pensions -*** The Opposition will if elected tax the superannuation pensions of high-income earners. Under this policy, from 1 July 2017, future earnings on assets supporting income streams will be tax-free up to $75 000 per year for each individual. Earnings above $75 000 will attract the same tax rate of 15% that applies to earnings in the accumulation phase (i.e. non-pension mode). Under current law, all earnings on superannuation assets and savings are tax-free when your account is in pension mode. This Opposition policy will if implemented impact an estimated 60 000 superannuation account holders by paring back their retirement income streams.
- ***Reduction in the Higher Income Threshold*** – Currently, concessional superannuation contributions are taxed at 30% for those earning over $300 000 (as opposed to 15% for those on incomes below this level). The Opposition if elected will lower this income threshold to $250 000.

More generally, the Opposition has not ruled out other superannuation changes, including the earlier-mentioned Deloitte proposal or a reduction in the contribution caps.

WHY CHANGE MATTERS

Superannuation is a concessionally taxed environment when compared to the tax rates that apply to earnings outside superannuation as follows:

	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
37 001 – 80 000	$3 948 plus 32.5 cents
80 001 – 180 000	$18 783 plus 37 cents
180 000+	$58 783 plus 47 cents

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.

Thus any move to reduce the superannuation contribution caps (which both sides of politics have not ruled out) may impact the tax position of the many Australians who make voluntary contributions, as less of their money may be able to be injected into the concessionally taxed superannuation environment. Reducing the caps would be a significant policy shift as the concessional cap is currently indexed to increase in line with average weekly ordinary time earnings (AWOTE), in increments of $5 000 (rounded down). When the concessional cap is increased through indexation, the non-concessional cap also increases because, by law, it is required to be six times the amount of the concessional cap.

TAKE HOME MESSAGE

It seems that irrespective of the outcome of the upcoming Federal Election, the current superannuation tax concessions could be curtailed – certainly neither side of politics is talking of making the concessions more generous! Thus if you are contemplating investing in superannuation in the short to medium term, there may never be a better time to do so from a taxation perspective. Aside from taxation, there are of course many other factors to consider before making a contribution, such as the fact that to access your contributions you will need to wait until you have met a superannuation 'Condition of Release' (which could mean no access until you turn 65).

IMPROVING YOUR 2015/2016 TAX POSITION

Leading up to the end of the financial year, there are a number of ways different taxpayers can improve their 2015/2016 tax position by making a superannuation contribution.

THOSE WHO RECEIVE LITTLE OR NO SUPERANNUATION SUPPORT FROM AN EMPLOYER

Tax deductions for after-tax superannuation contributions are only available for concessional contributions made by those who receive less than 10% of their assessable income, their reportable fringe benefits and their reportable employer superannuation contributions (e.g. salary sacrifice contributions) for the year from being an employee. This is otherwise referred to as the '10% Rule'. Whilst most employees are ineligible for this deduction (i.e. they exceed the 10% threshold) 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) and 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 only received workers' compensation payments during the year
- You are a full-time investor
- You are a non-working spouse/individual
- You are an employee for only a small part of the year (see following example).

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 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 $7 800 (including Medicare levy). The superfund will pay tax on the contribution at the rate of 15% however.

To claim a deduction in 2015/2016, the contribution must hit the account of your superannuation fund before 1 July 2016. Thus, if paying electronically, you may need to allow for a few days for the funds to clear. Additionally, you must lodge a 'Notice of intent to claim a tax deduction for super contributions or vary a previous notice' (available on the ATO website) with your SMSF. You must receive acknowledgment of receipt of the notice from your superannuation fund BEFORE you lodge your individual income tax return.

Having done this, eligible taxpayers can claim a deduction for the full amount of their 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. Despite the caps, a tax deduction of up to this amount can significantly reduce your overall tax liability.

EMPLOYEES

Generally, the only way an employee (most of whom would not pass the 10% Rule) can improve their overall 2015/2016 tax position through superannuation is by salary sacrificing. No income tax is payable on the amount that is sacrificed to superannuation. Rather, only a 15% contributions tax is paid by your superannuation account. However, note that:

- The amount you can sacrifice is limited to the earlier-mentioned concessional cap of $30 000, or $35 000 for taxpayers 50 or over. Included in this cap are the compulsory Superannuation Guarantee contributions made by your employer.

- The written agreement between the employee and employer to salary sacrifice must be in place before the salary being sacrificed has been earned. Therefore, at this stage in the year (May/June), there is limited scope to salary sacrifice in 2015/2016 if you do not already have a written agreement in place.

BUSINESS OWNERS - ELIMINATE CAPITAL GAINS TAX

Business owners who have sold CGT assets of their business or the business itself may be liable to CGT. If the taxpayer is eligible for the Small Business CGT Concessions, by utilising the Retirement Exemption, you can improve your 2015/2016 tax position.

Where the CGT 15-year exemption does not apply, the remaining capital gain (after you have applied the 50% Active Asset Reduction) may be eligible for the Retirement Exemption or the Small Business Rollover – you can choose which of these two concessions to apply first. The Retirement Exemption allows you as an individual in your own right or as a CGT Concession Stakeholder of a company or trust, to eliminate the CGT liability on the sale of your business or a business asset.

If you are under 55, to be CGT exempt, the amount of the capital gain must be paid into your complying superannuation fund (a maximum $500 000 lifetime cap applies). On the other hand, if you are at least 55 years of age and retiring, you can simply receive the Retirement Exemption amount tax-free with no further obligations (i.e. there is no requirement to contribute any amount to superannuation).

TAX TIP

For those of you who are under 55 and must make a contribution, the ATO has confirmed that the contribution requirement can be satisfied by making an in-specie contribution of real property into superannuation rather than paying money (see ATO ID 2010/217).

So, if you wish to preserve your cash from the sale for another purpose, you can satisfy the Retirement Exemption by instead contributing real property into your superannuation fund. The advantage of doing so is that, aside from freeing up the cash from the sale for another purpose, once inside your fund, any income from the property (e.g. rent) receives concessional income tax and CGT treatment.

Notwithstanding the above, care should be taken when considering whether to transfer property to a complying superannuation fund to ensure that the prohibition against acquiring assets from related parties is not breached. (Note that in weighing up whether to make a contribution, costs such as CGT and Stamp Duty should also be considered).

Finally, note that if the taxpayer is a Company or Trust the obligation to make a payment to a complying superannuation fund (where the relevant CGT Concession Stakeholder is under 55) rests with that company or trust.

BUSINESS SALES AND CLOSURES

Whether it's through a liquidation or a sale, at some point in time your business will likely close or change hands. This article provides you with some handy tax-related tips across a range of areas.

ATO LIQUIDATIONS

There has been a dramatic increase in the number of winding-up applications filed by the ATO against businesses which owe it money in the past year. For example, in most months since April 2015, ATO wind-up applications have been above 400 per month. This is well above the ATO's long-term average of 92 per month.

Previously the ATO would usually have waited for a business's debt to them to reach around $340 000 before taking action. However, the new winding-up threshold in the last 12 months is coming in on average at $93 000 – a huge drop. In addition to these winding-up applications, the ATO is increasingly using other debt recovery tools such as Director Penalty Notices, garnishee notices, and also seeking third-party property as security for repayment agreements.

If your business is in debt to the ATO, we recommend that you engage with them, perhaps by entering into a payment arrangement to repay the debt over a specified time if you do not have the means to do so immediately. Extreme action (such as any of those methods listed above) is typically only taken by the ATO when there is failure to engage with them in relation to your debt, or when you consistently do not meet your obligations under a payment arrangement you have entered into with them.

OUTSTANDING LEASE OBLIGATIONS

Particularly where there is a forced closure / distressed sale, there will often be outstanding rent where a lease agreement still has some time to run, yet the business has closed. For example, you have entered into a 12 month lease agreement, but the business is closing with several months left to run on the agreement. The question then arises as to whether the ongoing rent payable after the business has closed is tax deductible? The answer is generally yes. The key issue is whether the occasion of the expenditure was the production of assessable income of an earlier income year. Indeed, rent (and other expenses such as interest on a loan taken out to purchase the business) may be deductible even if a considerable time has passed between the closure of the business and the expenditure being incurred. The relevant case law in this area is discussed below.

In ***Guest v Commissioner of Taxation***, interest on an outstanding loan was still permitted as a deduction even though the asset which was the subject of the loan was sold more than 10 years earlier. Similarly, in ***Jones v Commissioner of Taxation*** the Federal Court confirmed that interest incurred on a business-related loan continued to be deductible even though the loan was refinanced. In this case the taxpayer operated a trucking and equipment hire business. The business ceased in December 1992, with a $70 000 loan outstanding. The taxpayer continued to pay the loan, but re-financed it in 1996 at a lower interest rate and with another lender. Despite this, the Federal Court ruled that the interest was still deductible – years after the business had ceased and despite the original loan no longer existing.

Likewise in ***Placer Pacific Management Pty Ltd v Commissioner of Taxation*** the company was sued by a customer for supplying an allegedly defective conveyor belt. The customer commenced proceedings shortly after the taxpayer sold their conveyor belt business. More than 4 years later, and therefore well after the closure of the business, a settlement was reached between the parties. The Court determined that this amount was deductible even though the business had long since been sold.

Likewise, where lease/rent payments relate to where the business was conducted and the lease agreement was entered into before the closure, this will result in the payments continuing to be deductible despite the fact that the business is closed.

SELF-LIQUIDATIONS

Whilst for asset protection reasons and the 30% or 28.5% maximum tax rate, companies are a popular structure through which to operate, extracting tax-free amounts from companies (such as pre-CGT profits or Active Asset exempt amounts) when CGT assets of the business or the business itself is sold can be difficult. The Tax Act treats most company distributions as dividends (unfranked, in the case of the CGT-free amounts mentioned above) which must be included in the assessable income of the shareholders.

If your company is at the end of its life (e.g. you no longer wish to stay in business) and you have CGT exempt amounts after the sale, you may wish to consider a Members Voluntary Wind-Up (MVWU). In simple terms, an MVWU is the only way to fully wind-up the affairs of a solvent company. All outstanding creditors are paid in full, and any surplus assets are distributed to its members.

Instead of CGT exempt amounts being assessable as an unfranked dividend, if the amounts are paid out by a liquidator in the course of winding up the company the amounts are treated as capital proceeds on the cancellation of shares held by the shareholder under CGT event C2. The consequence is that for pre-CGT shares, the distribution will generally be tax-free in the hands of the shareholders. For post-CGT shares, the shareholders may be able to reduce any gain by accessing the CGT concessions (e.g. 50% discount, or any Small Business CGT concessions). This is a much better tax outcome than the distributions being assessed on the revenue account as unfranked dividends. Of course there are many other non-tax issues to consider when winding-up a solvent company, but this strategy is particularly appealing when the untaxed, CGT-exempt amounts are large and your business is closing down anyway.

TAX CONSIDERATIONS ON SALE

If instead you are selling your business there are a number of tax considerations to take account of including:

• GOING CONCERN

Where possible, sell your business as a Going Concern. By doing so, no GST will be charged and thus the purchaser will be better positioned in terms of obtaining finance, improving cash-flow, and reducing Stamp Duty (which is imposed on the GST-inclusive price). This exemption can be quite complex, and therefore you should consult with your advisor before the sale.

• ASCRIBING VALUE

As the seller, if possible in the sale contract look to ascribe as much value as possible to pre-CGT assets or assets that qualify for the CGT Small Business Concessions. Note however that many sale contracts will not apportion values to particular assets and, where this is the case, the allocation must be done on a fair and reasonable basis.

MARKET VALUE
– A CLOSER LOOK

The concept of market value lies at the very heart of many provisions of the Tax Act. This article examines this concept, particularly in light of a potentially ground-breaking recent case in respect to the market value of shares.

OVERVIEW

Many tax-related laws require a determination of the market value of an asset including:

- Transfers of assets and services between related parties
- Non-cash benefit transactions (e.g. barter)
- Some sales of property using the GST margin scheme
- Value shifting rules
- Home first used to produce income rule (if you start using all or part of your main residence to produce income for the first time after 20 August 1996, a valuation may be required)
- In-specie contributions to superannuation
- Self-managed superannuation funds — trustees must annually prepare financial accounts using the market value of assets, The market value ratio of in-house assets to other assets cannot exceed 5%
- Cultural gifts — taxpayers seeking deductions for donations of cultural gifts to certain institutions must obtain valuations from two approved valuers
- Thin capitalisation — requires taxpayers to value assets, liabilities and equity capital according to accounting standards
- Philanthropy — taxpayers seeking deductions for particular kinds of gifts of property must have the valuation determined by the ATO
- Many anti-avoidance provisions, and
- Determining eligibility for the CGT Small Business Concessions via the Maximum Net Asset Value Test).

There has been an important new ruling relating to the last of these concessions – the Maximum Net Asset value test – as it relates to valuations. Before examining this ruling, we explore the concept of market value and how to get things right.

DEFINITION

By way of background, the definition of market value for tax purposes is set out in Section 995-1 of the Income Tax Assessment Act (1997) as the market value of the asset less any GST credits to which you would be entitled if you acquired the asset for a creditable purpose (i.e. to use in your business). The ordinary meaning of market value is defined in ***Spencer v Commonwealth (1907) 5 CLR 418*** as "the price that a willing but not anxious buyer could reasonably be expected to pay…if the vendor and purchaser had got together and agreed on a price in friendly negotiation."

WHO?

In assessing the acceptability of a valuation, the ATO is generally more concerned with the valuation process undertaken (the rigorousness of the valuation and the documentation of that process) rather than who conducted it. However, some exceptions do exist. For instance, only a professional valuer may undertake a market valuation for GST margin scheme purposes or for determining non-monetary consideration for GST purposes. For CGT purposes, the ATO states that a valuation may be undertaken by any of the following:

- Registered valuers
- Members of a recognised professional valuation association (e.g. property valuers registered with the Australian Property Insitute), or
- A person without formal qualifications (e.g. you, the taxpayer).

Where a person without formal qualifications undertakes a valuation, it's important that their valuation is supported by objective evidence. In the case of a taxpayer valuing their own townhouse for example, such evidence may be the sale price of other similar townhouses within the same complex which you could perhaps source from local real estate agencies.

DO IT YOURSELF?

While the ATO states that it is not strictly necessary for valuations to be undertaken by experts with formal qualifications, care should be taken before adopting a 'do-it- yourself ' approach. In weighing up whether to undertake the valuation yourself, the key thing to remember is that all valuations must stand up to ATO scrutiny. Accordingly, you need to consider whether there is sufficient objective evidence to support your valuation. Where there is a lack of evidence, or the evidence is tenuous, the cost of engaging a valuer may be worthwhile when weighed up against the consequences of your valuation later being amended by the ATO and the adverse tax consequences (including interest and penalties) that can flow from that.

Certainly in relation to high value assets, the consequences of a below market valuation (and it being increased by the ATO at a later date, along with penalties and interest) can be significant.

ELEMENTS OF A GOOD VALUATION

The valuation process should be adequately documented – this is even more important when you are undertaking the valuation yourself. Remember, the key consideration is that the valuation stands up to ATO scrutiny. A valuation is more likely to withstand scrutiny if it includes all or most of the following elements:

- A detailed description of the asset
- The purpose and context of the valuation
- Date of the valuation
- Method or methods used and reasons why you adopted those methods
- Information relied on and evaluation of information
- Assumptions relied on and evaluation of assumptions
- Use of previous valuations
- Explanations of material differences
- Expert reports and the use of experts
- The relationship between valuer and client
- Working papers, and
- The valuer's details.

MILEY AND COMMISSIONER OF TAXATION [2016] AATA 73

The question to be addressed in this case was - must the market value of an asset, equal its sale price, when the buyer and the seller are not related and engage in good faith negotiations?

FACTS

The taxpayer (Mr. Miley) was one of three equal shareholders in AJM Environmental Services Pty Ltd (the Company). During 2007/2008, all three shareholders sold their shares in the Company under a single agreement to a single arm's length buyer for $17.7 million ($5.9 million each). Although the Company's turnover exceeded $2 million, Mr Miley claimed that he was entitled to access the CGT Small Business Concessions under the alternative route, namely that immediately before the sale, the Net Value of the shares and other assets he held was under $6 million. This was premised on the argument that, having regard to the nature of the sale, the market value of his shares in the company was actually less than the $5.9 he received – thus taking the shares together with all other assets that he owned under the $6 million Net Asset Value Threshold. The rationale for this was that if he had sold his shares alone, rather than as a package with the other two owners, he would have received a lesser amount because his shareholding would not have provided a potential purchaser with control of the company (only a 33% stake). The valuer engaged by Mr Maley stated in his report:

I adopt a discount for the relative lack of control of 16.7% (50% minus 33.3%) for the shares based on…all other things being equal, the average price per share of a controlling shareholding will be higher than the average price per share of a non-controlling shareholding because of the value of control. The value of control relates to the value in having the power to make decisions that affect the (company's operations and policies).

For its part, the ATO argued that the market value of the shares is what is what the arms-length buyer paid for them (in this case $5.9 million).

DECISION

The Deputy President of the AAT sided with Mr Maley. He based his reasoning on the principle outlined earlier in the Spencer case. That is, the money Mr Maley received for the share sale was more than a hypothetical, willing but not anxious buyer would have paid if they purchased Mr Maley's shares on a standalone basis – and that is the basis on which the market value of the shares should be been determined. Thus, the AAT applied Mr Maley's valuer's 16.7% discount which equates to $4 914 700 ($5.9 million less 15%). This new valuation, along with other qualifying assets, brings the net value of Mr Maley's assets under $6 million and therefore makes him eligible for the CGT Small Business Concessions which he can then use to reduce his capital gain considerably.

LESSONS

There are several take-away points from this case and from the slippery issue of valuations more generally:

- Be aware of when a market valuation may be required (see earlier list)
- High value sales are likely to attract ATO attention
- Strong consideration should be given to the use of a Specialist Valuer where expensive assets are in play
- Where the buyer and seller are dealing with each other at arm's length, the sale price will in most instances, (but not always – such as in this case) be determinative of market value
- When selling a business with other parties, the market value of the shares sold may be less than the sale price. This in turn, as with Mr Maley, may enable you to access the Small Business CGT Concessions.

PROFESSIONAL EXPENSES
– A CASE IN POINT

In Bhatti v Commissioner of Taxation [2016] AATA 24 the Administrative Appeals Tribunal (AAT) disallowed an Accountant's claims for deductions for work-related expenses – including travel, home office and self-education. Although this case involves an Accountant, the lessons contained are equally relevant for all professionals, and indeed many employees.

FACTS

The taxpayer was employed as an in-house Accountant by a company from May 2006 until August 2012 when she resigned to look after her two infant children.

She claimed she was often required to work at home outside of business hours, and furnished a letter to the AAT from her employer addressed to the ATO which stated: "if required, Mrs Bhatti would perform works outside of business hours from time to time". Mrs Bhatti was unable to get any more specific confirmation of her work from home arrangements because she said the company had undergone significant personnel changes since she left, and she was unable to locate any work colleagues who could vouch for the frequency of her work from home. In June 2012, the company agreed to a written request from Mrs. Bhatti to work at home for one-day per week to care for her baby son. In mid August 2012, soon after this arrangement was agreed to, Mrs Bhatti resigned from the company.

Throughout the 2012 and 2013 income years, Mrs Bhatti undertook study to maintain her CPA status and also undertook a Masters of Taxation. Additionally, in October 2011, she went on a trip to Rome and Poland with her family, and the return airfare was paid for by her employer. The ATO accepted that the three days she spent in Rome were work-related, and thus allowed 50% of Mrs Bhatti's expenses in respect of meals and accommodation. However she continued to dispute her travel claims in the amount of $2 200 for the Poland leg of the trip. These expenses related to travel from Rome to Krakow (Poland) where her father lived. Mrs Bhatti claims these airfares (which she paid for) were deductible because she attended a one-day training course while in Krakow on "dealing with difficult customers and debt collection".

Separate to this, she also claimed various other expenses such as bus and taxi fares, and parking fees in relation to local travel in Sydney. The ATO amended her assessment, disallowing the following deductions:

- Her work-related expenses of $2 200 associated with the trip to Krakow for the 2012 income year
- The self-education expenses of $3 250, and
- Other work-related expenses predominantly consisting of home-office expenses of $7 000 in the 2012 income year, and $3 500 for the 2013 income year.

Mrs Bhatti then appealed to the AAT.

RULING

The home-office expenses were disallowed, as Mrs Bhatti could produce no independent evidence that she was required to work from home. Further, when she applied in writing to her employer for the flexible one-day per week work from home arrangement, the correspondence did not reference any ongoing work being performed by her at home. Hence her claims on the 2012 return were disallowed.

Mrs Bhatti's self-education expenses were disallowed on the basis that there was no evidence produced of the workshops she claimed to have attended including their venue, their date, the content, and how many. Furthermore, in the 2013 year, the vast majority of the expenses were not incurred in earning assessable income as she resigned from her employment in August 2012. In relation to the Krakow course, the AAT noted that again no course materials or receipts were produced, and there was no travel diary. Her employer also had no knowledge of the course, and in email

correspondence with her employer just before leaving on her trip, Mrs Bhatti made no mention of attending the course while in Poland. The AAT flatly concluded that there was no course, and that she was in Poland solely to visit her father.

Finally, the AAT disallowed the claims for bus and taxi fares, and parking fees in relation to local travel in Sydney. Although original receipts were produced, there was no link made back to the earning of assessable income – the AAT concluded that the receipts could have just as likely have related to private travel. The AAT also affirmed the 25% tax shortfall penalty imposed by the ATO for failing to take reasonable care.

LESSONS

Although this case is at the extreme end in terms of non-compliance, the lessons for professionals are as follows:

- When undertaking Continuing Professional Education (CPE), the course you're attending must be relevant to the services that you provide. We recommend keeping a copy of the course outline to demonstrate this nexus. In this case for example, even if the AAT accepted that she attended the course in Krakow, it would be difficult to find a nexus between a course on Polish debt collection techniques and the day-to-day work of an Australian employee accountant.

- You must be able to link expenses incurred back to the earning of assessable income – mere receipts are not sufficient. While in this case Mrs Bhatti produced the originals of the prepaid weekly bus travel passes, parking fees and taxi fares at the hearing, she failed to demonstrate any relationship between the documents and any particular workshops or courses that she attended or any other work-related purposes. She did not keep a diary or timetable and was not able to reference the receipts to workshops or work events on these particular days. Likewise when visiting clients, you must be able to link receipts/costs of parking/travel etc. back to client visits on the day. The original receipts alone are not sufficient.

Also on this point, given that the accountant resigned from her job and ceased to be employed in August 2012, expenses incurred after this date had no nexus to the earning of assessable income. That she continued to undertake study after this date to maintain her CPA status is not sufficient. Likewise, if you continue to undertake CPE as a precondition to your registration in your profession or to meet the membership requirements of a professional association that you belong to, the cost will not be deductible unless you are earning assessable income in your field at the time.

- In relation to overseas or interstate seminars or client travel, a travel diary must be maintained if you are away for six or more nights in a row. No travel diary, no claim! The main purpose of a travel diary is to show which of your activities (conference, client meeting etc.) were undertaken in the course of producing your assessable income. You should record the activity in a diary or similar document showing:

  - The nature of the activity
  - The day and approximate time when it began
  - How long it lasted and
  - Where you engaged in it.

YEAR-END

TAX PLANNING

With 30 June looming, this article offers some contemporary tax planning tips to optimise your 2015/2016 tax position. Areas covered include flu vaccinations, repairs on rental properties, crystalising capital losses, and much more.

FLU VACCINATIONS

As we move into Winter and flu season, have you considered paying for your employees to have flu vaccinations? As well as decreasing workforce absences (which in the case of the flu can be anything up to a week per employee which can dramatically impact overall productivity), flu vaccinations receive generous tax treatment.

FBT

If an employer provides an employee with a flu vaccination by paying for the cost of the vaccination this is an exempt benefit which will not attract FBT. Section 58M of the FBT Assessment Act exempts from FBT any 'work-related preventative health care' (WRPHC) of an employee. This term is defined in subsection 136(1) to basically mean any form of care provided by, or on behalf of a medical professional to prevent work-related trauma provided it is not excluded from those employees who:

(a) Are likely to be at risk from similar work-related trauma

(b) Work in close proximity to employees who are suffering from the trauma, or

(c) Perform similar duties to those employees who are suffering from the trauma.

'Work-related trauma' is defined to include the contraction of a disease that is related to the employment of the employee. Because of the nature of flu, all members of a workplace are susceptible to contracting it, and therefore it qualifies as 'work-related trauma'. Although not every employee may take up the offer of free flu vaccinations, it must be offered to all employees in order to be exempt from FBT.

DEDUCTIONS

Flu vaccinations, although generally not deductible when paid for by employees, are deductible when paid for by employers on behalf of their workers. Medical expenses incurred by an employer to vaccinate employees who are at risk of contracting a fever are regarded as arising directly from the employer's income earning activities. Consequently, the medical expenses are of a business nature, and are an allowable deduction in accordance with Section 8-1(1)(b) of the Income Tax Act. .

As we near flu season and financial year-end, by offering flu vaccinations and having them done and paid for/invoiced by 30 June, you can optimise your 2015/2016 tax position – as well as providing a benefit that is typically much appreciated by employees.

NEGATIVE GEARING – CURBED?

There has been much talk from both sides of politics about curbing negative gearing on investment properties. If the Opposition is elected later this year taxpayers will only be able to negatively gear properties which are 'new'. That is, if you buy a used (not new) property after this date, you will not be able to negatively gear that property. This change will be 'grand-fathered', so that properties purchased before this date (including those that are currently owned at the moment) will not be affected and can continue to be negatively geared. This would constitute a major change to the law, as currently 93% of negatively geared properties were not purchased as new. Thus, if you are contemplating purchasing a negatively geared property that is not new, you may need to bring forward your purchase if the Opposition is elected into Government later this year.

For its part, the Government has already ruled out making such a change, but is still actively considering a universal total cap on the amount of negative gearing deductions that can be claimed (possibly $50 000 per year) or on the number of properties that can be negatively geared by each taxpayer.

2015/2016 OPPORTUNITIES

Irrespective of who wins the upcoming Election, any changes to negative gearing on investment properties will not be retrospective and therefore the door is still open to significantly improve your tax 2015/2016 tax position by paying either or both of two categories of significant rental property expenses before 30 June.

The first of these expenses is repairs and maintenance. Repairs make good or remedy

defects in, damage to or deterioration of a property (e.g. replacing guttering or damaged windows, replacing fences, repairing electrical appliances). Maintenance involves work to prevent deterioration or fix existing deterioration (e.g. painting the property, cleaning item/s that are in otherwise good working order, maintaining plumbing etc.). By bringing forward these expenses to before 1 July, landlords will improve their 2015/2016 tax position.

The other 'big-ticket' expense that landlords may be able to bring-forward to before 1 July is interest on loans taken out to purchase the property. If you are financially in a position to do so, approach your bank about the possibility of pre-paying the next 12 months interest on your loan. This again could enhance your 2015/2016 tax position.

DELAY SMALL BUSINESS RESTRUCTURES

As detailed on Page 14, SBEs will soon be permitted to change their operating structure and avoid incurring an immediate tax liability on their CGT assets, depreciating assets, trading stock, or revenue assets when these assets are transferred to the new structure. However the new law only applies to restructures undertaken from 1 July 2016. If you are contemplating restructuring, if possible you should delay the restructure until this date and, in doing so, provide your business with cash-flow relief by rolling-over or deferring any tax liabilities that may otherwise arise.

EXAMPLE

Bill and Bob commenced operating an accounting firm in 2005 through a Partnership structure. Since that time the business has grown considerably - they have taken on employees, have considerable debts owing to banks etc. and are now both paying tax at the highest marginal tax rate.

Realising that, operating through a Partnership structure they would both be jointly liable for the debts of the business if it collapsed, and also wishing to minimize their income tax, in May 2016 they decide to change to a Trust structure which will have several beneficiaries. The change of structure will provide Bill and Bob with asset protection (the Trust will be liable for the debts of the business rather than them personally) and will also provide them with the opportunity to minimise their income tax (by distributing income to other beneficiaries of the Trust) subject to the terms of the Trust deed.

The business has one major capital asset being the business premises that has a cost base of $100 000. It now has a market value of $280 000.

OLD LAW PRE 1 JULY 2016

If the transfer of the premises went ahead before 1 July 2016, then a capital gain would crystalise to the Partnership. Even after reducing the gain by the 50% CGT discount and 50% Active Asset Reduction, a significant capital gain may remain and would need to be reported and paid once tax returns were lodged in 2016.

NEW LAW FROM 1 JULY 2016

Instead, Bill and Bob decide to defer the restructure until on or after 1 July 2016. By doing so, no CGT will be payable by the Partnership on the transfer of the premises. Instead, the capital gain would be rolled-over or deferred until such time as the Trust disposed of the premises. The Trust would inherit the $100 000 original cost base of the premises.

Please note that while the new provides CGT relief, other costs such as stamp duty need to be considered when assets are transferred between entities.

REALISING CAPITAL LOSSES ON SHARES

With billions of dollars wiped off the Australian share-market in the first half of 2016, many share investors may now be sitting on a capital loss for certain shares that they own. If you already have made other capital gains this financial year (by selling other shares or property etc.) by selling your loss-making shares before 1 July 2016 and realising your capital loss, your can minimise or eliminate your earlier capital gain and thus save tax in 2015/2016.

In weighing up whether to employ this strategy you would need to consider a number of factors including **(a)** the long-term potential of the shares (discuss this with your financial advisor) and **(b)** how pressing your need is to reduce your current year capital gain and therefore your overall 2015/2016 tax liability.

SMALL BUSINESS INSTANT ASSET WRITE-OFF

Although we've written extensively about this topic since its introduction, the Small Business Instant Asset Write-Off is a great way for your business to reduce its 2015/2016 tax payable as we near 30 June. You can still get the same cashflow benefit in 2015/2016 as many businesses enjoyed when this policy was introduced in time for year-end 2014/2015.

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.

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, Tim's Coffee Pty Ltd brings forward the purchase of four coffee machines for $17 600 (GST-inclusive) to June 2016. They are then installed later that month. Provided it is an SBE, the company will pay $4 560 less tax in 2015/2016 (with no tax deductions in subsequent years). $1 600 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, Tim would be forced to wait an additional 12 months to receive it. By making the purchase this financial year, the cash-flow relief is brought forward.

Get in quick and have your asset installed ready for use by 30 June 2016.

DELAY START-UP INVESTMENT

On 16 March 2016, the Tax Laws Amendment (Tax Incentives for Innovation) Bill 2016 was introduced into the House of Representatives. The measures contained in this Bill, which have not yet been passed into at the time of writing, were comprehensively detailed in the March/April edition of this publication (which you can download from the Subscriber section of our website www.mytaxsavers.com.au)

Among the suite of available concessions contained in the Bill is a tax incentive for investors who support innovative start-up companies. These incentives will be in the form of:

• 20% non-refundable tax offset on the amount invested (capped at $200 000 per investor, per financial year), and

• 10 year exemption from capital gains tax (CGT) for investments that are held for 3 years or more.

To be eligible for the offset, you must invest in Early Stage Innovation Companies (ESICs). Broadly speaking, the following requirements must be met to qualify as an ESIC. The company:

• Must have been incorporated in Australia within the last 3 income years

• If it has not been incorporated within the last 3 income years, then it must have been registered in the Australian Business Register within the last three years

• If it has not been registered in the ABR within the last 3 years, then:

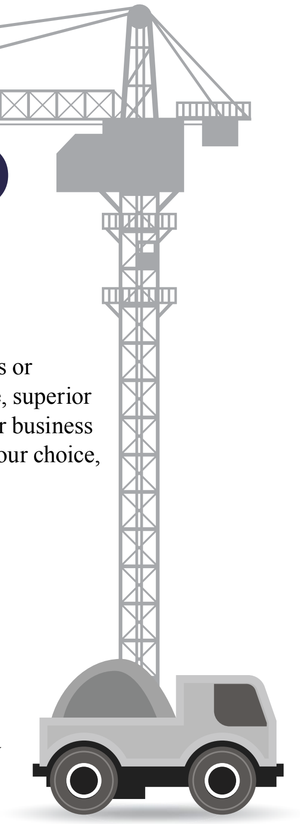
- It must have been incorporated in Australia within the last 6 income years, and

- It and any wholly-owned subsidiaries must have incurred expenses of no more than $1 million in total across all of the last 3 income years.

Furthermore, the company in which you invest must be engaged in innovation. Implicit in the definition of innovation is the requirement that the company is developing a new or significantly improved type of innovation such as a product, process, service, marketing or organisational method. Lastly, the investor and the ESIC must not be affiliates of each other, and the investor must not hold more than 30% of the equity interests in the ESIC including any entities connected with the ESIC.

This new offset will apply from 1 July 2016, even if the Parliament does not manage to pass the legislation by this time. The tax offset will be available upon investment, not when the funds are used by the innovation company. In view of this, from a tax planning perspective if you are contemplating making an investment in an ESIC you should consider delaying the investment until this 1 July 2016 start date. By investing earlier, no offset will be available.

STRUCTURING UP



New laws have now passed the Parliament allowing small businesses to change their operating structure without incurring capital gains tax liabilities. This article examines this important change and what it may mean for your business.

BACKGROUND

Small businesses may operate as Sole Traders, Trusts, Partnerships or Companies, or indeed any combination of these. There is no single, superior operating structure. Rather, the most appropriate structure for your business depends on your individual circumstances and needs. To inform your choice, you should consider the following factors:

- Asset protection
- Minimisation of income tax and capital gains tax (CGT)
- Compliance costs
- Your ability to admit other business partners
- Succession planning
- Your understanding of each structure and your ability to comply
- Minimisation of other taxes such as FBT, GST, and payroll tax.

COMPARING BUSINESS STRUCTURES

	COMPANY	TRUST	PARTNERSHIP	SOLE TRADER
50% CGT discount?	No	Yes – flows through	Yes – flows through	Yes
Capped tax rate?	Yes (30% or 28.5% for small businesses)	No – at individual marginal rates	No – at individual marginal rates	No – at individual marginal rates
CGT concession-friendly?	Yes – but must satisfy extra conditions such as Significant Individual Test Also can be difficult to extract CGT-free amounts (such as pre-CGT amounts and Active Asset exempt amounts). These must be paid as an unfranked dividends	Yes – concessions flow through, but extra conditions apply e.g. Significant Individual Test	Yes – concessions flow through to Partners	Yes
Revenue and Capital Losses carried forward?	Yes – but strict conditions apply (e.g. Continuity of Ownership Test or Same Business Test)	Yes – but strict conditions apply (e.g. Continuity of Ownership Test or Same Business Test)	Yes	Yes
Can you distribute losses?	No – trapped within the Company	No – trapped within the Trust	Yes	Yes
Succession planning friendly – admit business partners?	Yes – just sell existing shares, or issue new shares (but beware of value shifting)	Complicated	Yes	No – a new structure will be required
Splitting of income?	Yes. Subject to the Personal Services Income (PSI) rules, you can distribute to other low income shareholders	Yes. Subject to the PSI rules, you can distribute income to other beneficiaries and subject to your Trust Deed, stream capital gains and franked dividends	Can only share income among the Partners themselves, but be aware of PSI rules especially where it's just a husband and wife partnership and only one spouse does all the work	Must pay tax personally
Expensive to set up and administer?	Yes, especially set-up costs can run into the thousands	Can be expensive especially with advisor fees for drafting of Trust deed	No, but initial Partnership agreement will need legal input	No
Asset Protection?	Yes – except where personal guarantees are given or there is unpaid Superannuation Guarantee or unpaid PAYG withholding on employee wages	Yes	No – unless partnership is limited	No

THE PROBLEM

Under the current law, where a business restructures and this requires assets to be transferred from the old operating structure to the new structure (e.g. from a Company to a Trust), significant tax liabilities may arise at the time of transfer and therefore create a disincentive to restructure. Currently, for business restructures, tax relief relief is only available in limited circumstances. For instance, roll-over relief is available for restructures involving the transfer of CGT assets or all of the assets of a business from a Unit Trust to a Company, or from an individual / a Trustee / a Partner of a Partnership to a wholly owned Company. However, broadly speaking there is no such other roll-over relief (e.g. changing from a Company to a Trust). (To clarify, "roll-over relief", generally speaking, allows you to defer the recognition of gains or losses that may arise under a restructure rather than having to bear the tax consequences in the year that the restructure is undertaken).

To remedy this disincentive to restructure, on 22 February 2016, new laws were passed by Federal Parliament to provide a wider range of tax relief to small businesses that restructure. We now examine this new law.

OVERVIEW

In broad terms, the new law provides small businesses with a new roll-over for gains and losses arising from the transfer of CGT assets, trading stock, revenue assets and depreciating assets as part of a restructure of a small business that occurs on or after 1 July 2016. All assets transferred must be active assets of the business. This will provide small businesses with the flexibility to change legal structure without realising an income tax liability on the transfer of these assets. The tax that would otherwise be payable on the transferred asset or assets is rolled-over from the Transferor entity (the former entity) to the Transferee entity (the new entity). This is achieved under the new law by:

- The Transferor being taken to have received an amount which approximates the 'tax cost' of the asset to them (this means that the transfer will not result in a gain or loss to them), and
- The Transferee is taken to have acquired each asset for the amount that equals the Transferor's tax cost for the asset just before the transfer.

Generally, the roll-over only applies to transfers that do not result in a change in the 'ultimate economic ownership' of the assets (see later). We now examine the qualification criteria for this new concession.

ELIGIBLE ENTITIES

In order to access the new roll-over relief, both entities (the Transferor and the Transferee) must be Small Business Entities (SBE). SBE takes on its standard meaning provided for in Division 328 of the Income Tax Act as an Individual, Partnership, Company or Trust that:

(a) Carries on a business for all or part of the income year, and

(b) Has an aggregated turnover of less than $2 million.

The $2 million turnover test can be met in any of the following three ways:

(a) Turnover of the previous financial year was less than $2 million

(b) Estimated current financial year turnover is likely to be less than $2 million (this avenue is only available if actual turnover was less than $2 million in at least one of the previous two financial years)

(c) Actual current financial year turnover is less than $2 million.

'Aggregated turnover' includes the turnover of any connected or affiliated entities. Thus, where there are associated businesses, they may all be ineligible for the roll-over if they are connected or affiliated and the combined turnover exceeds $2 million.

GENUINE RESTRUCTURE

The roll-over must be part of a 'genuine restructure' of an ongoing business. This requirement is intended to prevent artificial or inappropriately tax-driven schemes. This is not to say that tax minimisation can not form any part of your motivation to restructure, but it must not be the overwhelming main or only factor. For example in changing from a Sole Trader to a Trust structure, the tax benefits may be part of your motivation, but so too may the asset protection advantages, and thus this would almost certainly constitute a 'genuine restructure'. The Explanatory Memorandum to the legislation provides a non-exhaustive list of factors that would indicate a 'genuine restructure':

- Bona fide commercial arrangements undertaken to enhance business efficiency
- The business continues to operate following the transfer, although through a different structure but under the same economic ownership
- The transferred assets continue to be used in the business
- The restructure results in a structure likely to be adopted had the business owners sought professional advice when setting up the business
- The restructure is not artificial or unduly tax-driven (e.g. switching from a Company to a Trust structure in order to access the 50% CGT discount for an impending sale of a business asset)
- The restructure is not a divestment or preliminary step to facilitate asset realisation.

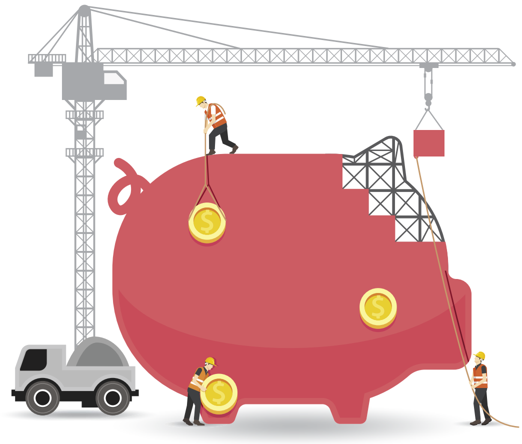
SAFE HARBOUR

The legislation contains 'Safe Harbour' provisions for 'genuine restructures'. Regardless of how the above-mentioned 'genuine restructure factors' apply to your restructure, your business will be deemed to have satisfied the 'genuine restructure' requirement where for three years following the restructure:

- There is no change in the ultimate economic ownership of the significant assets of the business (aside from trading stock) that were first transferred under the restructure
- Those significant assets continue to be actively used in the business, and
- There is no significant or material use of those significant assets for private purposes.

ULTIMATE ECONOMIC OWNERSHIP

To qualify for the roll-over, the restructure must not have the effect of changing the 'ultimate economic ownership' of the transferred assets in a material way. The ultimate economic owners of an asset are individuals who directly or indirectly beneficially own an asset. Therefore, where a Company, Trust or Partnership owns the asset, you and your advisors will need to look through to the natural persons who own the interests in these interposed entities to determine whether their ownership remains the same post-restructure compared to before the restructure. Where there is more than one owner of an asset, the proportions of the ownership need to be maintained following the restructure.



EXAMPLE

Matt, Bob, and David operate a spa bath business under an equal three way Partnership structure. For tax planning and asset protection reasons they wish to change to a Company structure. In the new Company, 300 shares are issued as follows:

- Bob 125 shares
- Matt 125 shares
- David 50 shares (he wishes to downscale his involvement as he nears retirement).

Even though the same owners continue to own the business to the exclusion of any other party, there is a change in the proportionate share of the ultimate economic ownership. Accordingly, Bob, David and Matt cannot use the small business restructure roll-over, and may therefore be liable to tax on the transfer of assets to the Company.

CARVE-OUT FOR DISCRETIONARY TRUSTS

Quite a number of businesses operate through Discretionary Trusts. Recognising that beneficiaries of Discretionary Trusts generally do not have fixed interests in the assets of the Trust, the new law provides a concession in respect of the ultimate economic ownership test.

The concession only applies to Discretionary Trusts that have made a Family Trust Election (FTE) under the Trust loss rules. To meet this alternative test (and therefore access the roll-over) every individual who had ultimate economic ownership of the transferred assets before the transfer, and every individual who has ultimate economic ownership of the transferred assets after the transfer, must be members of the family group relating to the Family Trust.

EXAMPLE

(from the Explanatory Memorandum)

Chris and Victoria are husband and wife and are the only shareholders in Puppy Co, with each owning one share with a cost base of $2 per share.

Puppy Co has successfully carried on a puppy training school and has acquired significant assets including puppy boarding facilities, a vehicle, and goodwill.

Victoria and Chris wish to transfer the puppy boarding premises from Puppy Co to a recently settled Discretionary Trust, the Fluffy Trust, which will lease the premises to Puppy Co. A Family Trust Election is made nominating Victoria as the primary individual controlling the Trust. Victoria and Chris are members of Victoria's family group.

For the purpose of the roll-over, there will not be a change in the ultimate economic ownership of the premises as a result of the transfer of the asset from Puppy Co to the Fluffy Trust. Therefore, assuming that the other requirements are also met, the roll-over would be available in respect of the transfer.

This is an important concession which will allow SBEs to move the ownership interests of the business assets from one or more family members to a Family Discretionary Trust. This can then benefit any of the members of the Trust's family group.

EFFECT OF THE ROLLOVER

So what does the new law actually achieve?

The intent and effect of the new law is to make the change of structure tax neutral for the transfer of CGT assets, trading stock, revenue assets and depreciating assets and as such will not result in the realisation of any income tax liability following the transfer of such assets from the old entity to the new entity. We now address the effect of the new law on each of these asset classes.

CGT ASSETS

- No capital gain or loss will accrue to the Transferor. The Transferee will be treated as acquiring the asset on the date of transfer for an amount equal to the cost base of the asset.
- Pre-CGT assets will retain their pre-CGT status post-transfer.
- For the purposes of the 50% CGT discount, the '12-month clock' will be reset, such that the Transferee will need to hold the asset for a further 12 months following the restructure to avail themselves of this discount.
- For the 15-Year Exemption however, the Transferee will be taken to have acquired the asset back when it was originally acquired by the Transferor.

TRADING STOCK

Assets that are trading stock of the Transferor will be held as trading stock by the Transferee. The Transferee will inherit the Transferor's cost and other tax attributes of the assets just before the transfer.

REVENUE ASSETS

The roll-over cost is the amount that would result in the Transferor not making a profit or loss on the transfer. The Transferee will inherit the same cost attributes as the Transferor just before the transfer.

DEPRECIATING ASSETS

No amount will be included in or deducted from the Transferor's assessable income as a result of a balancing adjustment event. Instead the Transferee can deduct the decline in value of the asset using the same method and effective life that was used by the Transferor. For pooled assets, rollover relief is also available.

EXAMPLE

(from the Explanatory Memorandum)

Jack and Jill are husband and wife and are the only shareholders in Pail Co, with each owning one share with a cost base of $100. Pail Co has successfully carried on a water hauling business. The assets of the business are a hauling truck and goodwill. The company has no liabilities, and all profits have been distributed.

Pail Co is a small business entity for the income year.

When setting up their business, Jack and Jill did not seek any professional advice and did not consider the compliance costs of operating their business through a company. They now wish to run the hauling operation directly as partners.

Using the small business restructure roll-over, Pail Co can transfer all of the business assets to Jack and Jill as assets of the Jack and Jill partnership. The partnership is also a small business entity for the income year.

The goodwill is a CGT asset with a market value of $30,000. Pail Co's cost base for this asset, and therefore the roll-over cost, of the goodwill, is zero. Pail Co is taken to have transferred the goodwill to Jack and Jill in equal shares for $0, and Jack and Jill are taken to have acquired their shares of the goodwill for this amount.

The hauling truck is a depreciating asset with a market value of $15,000. At the time of the transfer, Pail Co had already claimed depreciation deductions of 50 per cent of the original cost of the truck, and the market value of the truck exceeds its adjustable value. Since the truck receives roll-over relief under section 40-340, no amount will be included in Pail Co's assessable income as a result of a balancing adjustment.

Jack and Jill will be able to continue to deduct the decline in value of the depreciating asset using the same method and effective life that Pail Co was using, to the extent of their respective interests in the partnership.

OTHER CONSIDERATIONS

Whilst this article has considered the income tax implications of changing structures, it is important to note that there may be other liabilities or issues that may also impact any structural changes. For example, the Stamp Duty implications of structural changes may also need to be considered, so contact your regular advisor for further information.

CONCLUSION

The new roll-over laws provide welcome relief for the many small businesses that elect to change structure throughout their existence. By carefully observing the above qualification criteria, your small business can enjoy a tax-free restructure.

WHAT THE TAXMAN IS THINKING

In this edition, we preview new law regarding withholding tax from foreign residents selling land, offer some last-minute SuperStream solutions, examine the changes to Earn-Out rights, and much more.

NEW LAW TO IMPACT EVERY PROPERTY SALE OVER $2 MILLION

On 22 February 2016, Federal Parliament passed legislation designed to collect CGT from foreign residents selling land for more than $2 million. The ATO has recently issued a Press Release reminding taxpayers that these new rules apply from 1 July 2016.

Although the law is targeted at foreign sellers, given the way the legislation has been drafted, all sellers of land above this amount may be impacted. Under the new law, for all property sales of $2 million or more the buyer is required to withhold 10% of the sale proceeds and remit that amount to the ATO without delay – unless the seller obtains a Clearance Certificate from the ATO before settlement. (Note that where the seller is not entitled to a Clearance Certificate (i.e. they are a non-resident), they may seek a variation to the 10% rate. This may be appropriate where no capital gain is made on the sale, or the gain is reduced under a CGT rollover provision, or the tax payable on assessment would be less than 10% of the sale price).

START DATE

The new law applies to contracts for the transfer of property that are entered into on or after 1 July 2016.

AFFECTED ASSETS

The obligation to withhold is confined to sales of 'taxable Australian property' as follows:

- Australian real property, including land, buildings, residential and commercial property

- Lease premiums paid for the grant of a lease over real property in Australia
- Mining, quarrying or prospecting rights
- Interests in Australian entities whose majority assets consist of the above such property interests (i.e. indirect interests)
- Options or rights to acquire the above property or interest.

EXCLUDED ASSETS

- Real property transactions with a market value under $2 million
- Transactions listed on an approved stock exchange (e.g. share trades on the ASX)
- Where the foreign resident investor is under external administration or in bankruptcy
- Sales where the seller has obtained a Clearance Certificate from the ATO before settlement.

CLEARANCE CERTIFICATES

Because a seller's residency for tax purposes is not always easily determined (there are many factors to weigh in determining the residency status of an individual – many of which will be unknown by the buyer) the new legislation provides for assumptions on which a buyer can rely when determining whether they are required to remit an amount to the ATO. The legislation introduces a "Clearance Certificate" model to provide certainty to buyers around their withholding obligations. If the asset being sold is real property, a Clearance Certificate which states that the Seller is a resident must be obtained from the ATO before settlement. Otherwise the legislation requires the buyer to assume that the seller is a non-resident in which case the buyer must:

- Withhold 10% of the sale proceeds from the seller and pay it to the ATO without delay, and
- Register with the ATO, complete a Purchaser Remittance Form, and provide details of the seller, the buyer and the asset acquired.

Sellers may apply for a Clearance Certificate at any time they are considering disposing of real property (even before the property is listed for sale). Clearance Certificates are valid for 12 months and, in order to avoid the withholding obligation, must be valid at the time the sale contract is signed. For its part, the ATO is developing online automated process for obtaining Clearance Certificates. The ATO has stated that in straightforward cases where they have all required information, Clearance Certificates will be provided between 1-14 days. However, where there are data irregularities or exceptions, it could take up to 28 days to obtain a Clearance Certificate.

EXAMPLE

In September 2016, George signs a contract to purchase a residential waterfront property worth $3 000 000, with settlement to occur in December. George does not know whether the seller is a foreign resident. Despite repeated requests from George, the seller does not obtain by the time of settlement a Clearance Certificate from the ATO to give to George,

As the property is residential property with a market value exceeding $2 million, and a Clearance Certificate has not been provided before settlement, George is required to withhold $300 000 and remit that amount to the ATO without delay. This is irrespective of whether the Seller is an Australian resident for tax purposes.

The requirement of the buyer to immediately remit the amount to the ATO may cause cashflow problems for sellers, and needs to be taken into account before transactions are entered into. .

PENALTIES

Failure to withhold an amount when required to do so will result in the buyer paying a penalty equal to the amount that was required to be withheld.

MORE INFORMATION

For more details on the new law, visit the ATO website www.ato.gov.au and type 'foreign resident capital gains tax withholding payments' into the Search Box at the top of the page.

SUPERSTREAM – IT'S NOT TOO LATE

With the deadline now almost here, the ATO is embarking on a media blitz reminding smaller employers of their SuperStream compliance obligations. Although we've comprehensively covered this issue in recent editions, with the 1 July deadline now upon us and the penalties that can be imposed for non-compliance, it is worth revisiting.

WHAT?

SuperStream is a Government initiative that aims to improve the efficiency of administering Australia's superannuation system. The system requires employers to remit employee contributions (including Superannuation Guarantee) and other relevant data in an electronic, standardised format. The new regime will impact over 800 000 employers who make employee contributions into corporate super funds, APRA regulated super funds and Self-Managed Super Funds (SMSFs) i.e. virtually all superannuation funds.

DEADLINE

While the compliance deadline for larger employers was 1 July 2015, the compliance deadline for smaller employers (those with less than 20 employees) is 1 July 2016. You have until this date to be SuperStream compliant.

SOLUTIONS

Even though as an employer of 19 or fewer employees you may not yet be compliant, there are a number of SuperStream solutions that may be able to be implemented in time for 1 July as follows:

1. Using the ATO Small Business Superannuation Clearing House (this free Government service is 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. Ensure you have the latest versions)

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 systems in place that will be SuperStream compliant by the deadline).

PENALTIES

In terms of imposing penalties for non-compliance by the deadline, the ATO has continually stated that they will be lenient and flexible with employers who have made a genuine effort to comply (such as by attempting to adopt one of the above solutions). However, where it is deemed that no or little effort has been made to comply, a 'strict liability' penalty can be imposed by the ATO of $3 400, up to a maximum of $17 000. 'Administrative penalties' can also be imposed.

MORE INFORMATION

In terms of further guidance, MTS has produced a fully comprehensive Super Stream Survival Kit webinar. This is a complete step-by-step guide to the what, how and when of making your business SuperStream ready. This is available for purchase now on our website www.mytaxsavers.com.au

EARN-OUT CHANGES NOW LAW

New laws were passed by Parliament on 22 February 2016 which will affect the CGT treatment for Earn-Out rights. This puts into law a proposal that was first floated by the former Labor Government way back in 2010!

To recap, Earn-Out arrangements are a flexible way to structure the sale price of a business. They are generally entered into between a buyer and seller of a business who cannot otherwise agree on a fixed sale price. Under such arrangements, a business is sold for a lump sum plus a right to further payments that generally depend on the future performance of the business over a defined period following the sale. If the performance meets these set benchmarks, then the seller may be entitled to further payments. On the other hand, if the benchmarks are not met, then the buyer may not be required to pay any more amounts. In this case, sometimes the Earn-Out may even be reversed so that the seller is required to refund some of the lump sum if performance over the specified period does not meet agreed targets (known as a Reverse Earn-Out).

Before the law change, in broad terms, Earn-Out rights were treated as a separate CGT asset. This treatment was not only complex but sometimes resulted in anomalous and detrimental outcomes for taxpayers (such as reducing access to the CGT concessions) where the actual payments made under the arrangement differed from the amounts estimated at the outset of the arrangement.

Under the new law, any capital gains or losses arising from look-though Earn-out rights will be disregarded.

LOOK-THROUGH

A look-through Earn-Out right is a right to future financial benefits which are not reasonably ascertainable at the time the right is created. The right must be created under an arrangement involving the disposal of a CGT asset that is an active asset of the seller, and the financial benefits under the right must be contingent on and reasonably related to the future economic performance of the asset/business (or a related business).

The new law applies to Earn-Out rights on or after 24 April 2015. Under the legislation, payments made under Earn-Out arrangements will affect the capital proceeds and cost base of the underlying asset (e.g. goodwill) to which the Earn-Out right related. For the new law to apply however, amongst other things, the Earn-Out arrangements must be made in respect of active assets (i.e. goodwill) and involve an Earn-Out right that spans for no more than five years. As this backdated commencement date of 24 April 2015 may require amendments to prior year returns, the new law extends the amendment periods to allow for such adjustments.

EXAMPLE

Brad owns a restaurant which he is selling to Gary in June 2016. Brad purchased the restaurant 5 years ago for $100 000. Based on prior year turnover, Brad is asking for $200 000 for the sale. Concerned that customers will go elsewhere once Brad leaves, Gary offers to pay Brad $160 000 for the restaurant upfront and the additional $40 000 if the business meets 80% of its prior year turnover in the 12 months after purchase. They sign the contract later that month.

Under the new law, the Earn-Out right is not treated as a separate asset for CGT purposes. It is disregarded when Brad completes his 2015/2016 tax return even though the CGT event (the sale) occurred in that financial year. Instead, he would have a gross capital gain of $60 000 ($160 000 upfront payment - $100 000 cost base). Depending on his operating structure, this amount could then be reduced by the 50% general CGT discount given that Brad owned the restaurant for 12 months or more.

Once the financial results are finalised in August 2017, it's determined that the 80% prior year profits threshold has been met. Thus, the $40 000 additional payment is made by Gary to Brad. This then results in the gross capital gain increasing to $100 000, and the net capital gain also increasing to $50 000 after applying the 50% discount. Brad must amend his 2015/2016 tax return accordingly. No interest will be charged by the ATO.

LODGE NIL ACTIVITY STATEMENTS

The ATO is reminding taxpayers of the requirement to lodge nil Activity Statements (i.e. where there are zero obligations).

Failure to lodge such an Activity Statement may delay processing and result in penalties. You can lodge your Activity Statement through your Tax Agent or BAS Agent, or via the Business Portal on the ATO website.

RELIEF IN REGISTERING FOR TFNS AND ABNS

A number of subscribers have conveyed to us that they have experienced significant delays in getting ABNs and TFNs for their businesses or for their clients' businesses if you are a Tax Agent. Some delays have been up to two months! (from applying online to receiving). In view of these delays, some people have resorted to manual applications, but the result has generally been no quicker. These delays can cause significant issues for taxpayers in terms of opening bank accounts, and even commencing business. For its part, the ATO advises that the chief cause was a major ATO system change which occurred in January 2015 which caused ongoing delays in the issuing of some new business registrations throughout 2015. The ATO says that over the past 12 months it has progressively been fixing these issues, with the majority resolved as of early this year. However, if you are still experiencing problems, let us know here at ATR and we will communicate your concerns to the ATO.

In some good news in this area, as announced in last year's Federal Budget, the Streamlining Business Registration Project is now well underway. A key part of this project is the "single online business registration space" which provides users with the ability to complete one initial business registration transaction with the Government, covering all areas (ABN, ACN, Company Name, Business Name, GST, PAYG, TFN, AUSkey, FBT, LCT, WET). We have viewed a 'demonstration-only' version of this site, and it looks promising. This facility is expected to go live in mid 2016, significantly cutting red-tape for taxpayers and Tax Agents. We will let you know when it's operational.

SMSFS, COLLECTABLES AND PERSONAL USE ASSETS DEADLINE

Apart from SuperStream, as the ATO has recently reminded taxpayers, another superannuation-related deadline is looming for the increasing number of people who have a Self Managed Superannuation Fund (SMSF).

If an SMSF has investments in collectables or personal use assets (such as artwork, jewelry, antiques, artefacts etc.) that were acquired before 1 July 2011, time is fast running out to ensure that your SMSF meets the rules for these assets which require the SMSF to:

- Not lease the assets to SMSF members or related parties (even where market value rent is paid)
- Not store the asset in the private residence of a member or related party
- Not permit the use of the asset by a member or related party
- Document the reasons for your method of storing the asset
- Insure the asset, and
- Obtain a valuation from a qualified, independent valuer should the SMSF later sell the asset to a member or related party.

If your SMSF held such assets before 1 July 2011 and these rules are not being complied with, it may need to take urgent action including reviewing current leasing arrangements, making decisions about storage arrangements, as well as arranging insurance cover. Note that assets acquired on or after this date must have at all times complied with the above requirements.

THE CORE OF R&D

A recent Administrative Appeals Tribunal (AAT) Case – *JLSP v Innovation Australia [2016] AATA 23* - clarifies the definition of "core activities" which is fundamental to claiming the Research and Development (R&D) Tax Incentive on your tax return.

To recap, the R&D Tax Incentive is the Australian Government's principal measure to encourage industry investment in R&D. The program provides offsets for eligible entities (essentially Australian companies and foreign companies with an Australian permanent establishment) that spend $20 000 or more per annum on experimental R&D activities subject to strict conditions. If your company is eligible, the program can be quite lucrative as follows:

- A refundable 45% tax offset for companies with turnover of less than $20 million, and
- A non-refundable 40% tax offset for other companies.

The Incentive has been increasingly taken up by eligible entities such that it cost the Government over $3 billion in 2013/2014 (the latest available statistics). You can read more about the Incentive (including some tips on how to make a successful application) in the January/February 2015 edition of this publication which you can download from our website www.mytaxsavers.com.au

In this case, JLSP (an Australian-based biopharmaceutical company) was engaged under a contract to conduct clinical trials to determine the safety and effectiveness of a drug. The question that came before the AAT was whether JLSP's activities were conducted for the purpose of generating new knowledge. If not, then it would not fall within the definition of 'core activities' and therefore disqualify them from making an R&D claim. For its part, Innovation Australia argued that the only significant purpose of the trial was for JLSP to perform specific services in order to fulfil their contractual obligations and not to generate new knowledge.

The AAT rejected Innovation Australia's argument, deeming that the trial satisfied the definition of 'core activities' as it was an experimental activity for the purpose of discovering something unknown or testing a principle and that the outcome of the activity could not be determined in advance. The AAT further stated that the purpose of generating new knowledge need not be the dominant or prevailing purpose of engaging in the experimental activities. Rather the purpose of generating new knowledge must only be more than an insubstantial purpose "and must be substantial enough to enable the activity to be characterised as conducted for that purpose".

The take-away point is that even where you are contractually obliged to conduct R&D, a Tax Incentive claim may still be made – even though your main purpose is to fulfill your obligations in return for payment by the other party to the contract. In other words, the R&D need not necessarily be at your instigation.

SMALL BUSINESS BONANZA

Being a Small Business Entity qualifies your business for a range of tax concessions. The purpose of this article is two-fold – to remind you of the new concessions on offer, and also how perhaps to stay under the $2 million threshold, if you are one of the many thousands of businesses who, according to Treasury, have an annual turnover very close to this amount.

$2 MILLION THRESHOLD

According to Treasury statistics, there are approximately 2.5 million Small Business Entities (SBEs) in Australia. SBEs are defined as an Individual, Partnership, Company or Trust that:

(a) Carries on a business for all or part of the income year, and

(b) Has an aggregated turnover of less than $2 million.

The $2 million turnover test can be met in any of the following three ways:

(i) Turnover of the previous financial year was less than $2 million,

(ii) Estimated current financial year turnover is likely to be less than $2 million (this avenue is only available if actual turnover was less than $2 million in one of the previous two financial years), or

(iii) Actual current financial year turnover is less than $2 million (worked out at the end of the financial year).

Aggregated turnover includes the turnover of any "connected" or "affiliated" entities (but excluding transactions between such entities). Therefore, where there are associated businesses, they may all be ineligible for SBE status once their individual annual turnovers are aggregated.

CONNECTED

This is an entity where your business controls, or which controls your business to the extent of at least 40%.

AFFILIATE

An affiliate of your business is basically an individual or a company that acts, or could reasonably be expected to act, in accordance with your directions or wishes or in concert with you in relation to business affairs.

TURNOVER

The definition of 'turnover' for the $2 million test is contained in Section 328-10 of the Income Tax Assessment Act (1997) and is much broader than the 'definition of GST turnover' which excludes:

- Supplies that are input taxed,
- Supplies where there is no consideration paid, unless paid to associates,
- Supplies that are not connected with Australia,
- Insurance payouts,
- Transfers of capital assets (such as business premises, plant etc.), and
- Supplies made solely as a consequence of closing down an enterprise or substantially reducing its size/scale.

By contrast, for Section 328 purposes, turnover constitutes the total or your ordinary income (GST ex) throughout the year (plus of course that of any connected and affiliated entities). Put simply, amounts received by your business in the form of ordinary business receipts (GST ex) are ordinary income.

ACCESS

Being an SBE gives your business access to a range of tax concessions, including a number of new measures which we can confirm have now passed through Federal Parliament into law as follows:

NEW COMPANY TAX CUT

Applying for the first time in 2015/2016, SBE Companies will receive a tax cut of 5% with the SBE Company tax rate being reduced from 30% to 28.5%. This is estimated by Treasury to benefit more than 780 000 incorporated SBEs. This new measure passed into law on 22 June 2015. Importantly, SBEs will retain a franking credit rate of 30% maintaining the existing arrangements which is good news for small business owners who invariably take out most of their money that their company makes each year via dividends.

NEW TAX CUT FOR UNINCORPORATED BUSINESSES

Also applying for the first time in 2015/2016, the more than 70% of SBEs that are not incorporated, will also enjoy income tax relief. According to Treasury, there are approximately 1.7 million of such entities in Australia. Under the new law, individual taxpayers with business income from an unincorporated business (i.e. a business operated through a Sole Trader, Partnership or Trust structure) which is an SBE are eligible for a tax discount of 5% of the income tax payable on the business income received from their entity. The discount is capped at $1 000 per individual for each income year, and delivered as a Tax Offset.

EXAMPLE

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

2014/2015
Under the old law, Jeff would pay tax at his marginal tax rate and would have a tax bill of $4 547 (excluding Medicare).

2015/2016
Under the new law, the $4 547 would be reduced by 5% ($227) down to $4 320.

This measure is now law, having been passed by Parliament on 26 August 2015.

NEW RESTRUCTURE CONCESSIONS

This provides SBEs with the opportunity to change their business structure without any CGT or income tax consequences (see page14 for more details). This was passed into law on 22 February 2016.

NEW DEDUCTIONS IN RELATION TO PROFESSIONAL EXPENSES OF START-UP BUSINESSES

Applying from the beginning of the 2015/2016 financial year, SBEs can deduct certain professional expenses they incur (e.g. professional legal and accounting advice or legal expenses to establish a Company, Trust or Partnership). This measure was passed into law on 26 August 2015. If you commenced a business this financial year, ensure that you keep your receipts and tax invoices for these expenses and pass them onto your Accountant at tax-time.

EXTRA PORTABLE ELECTRONIC DEVICES

From 1 April 2016, SBEs can now provide their employees with more than once 'portable electronic device' (such as personal digital assistants (PDAs), blackberries, Smartphones, portable printers, tablets, electronic diaries, laptops, phablets, notebook computers etc.) during the FBT year even where the devices perform substantially the same functions e.g. laptop and tablet. Previously, only one such similar device could be provided unless the second or subsequent device was a replacement. This measure gives employers greater scope to provide multi-faceted employment packages to their workers. This measure was passed into law on 26 August 2015. Accordingly, employers and employees may now wish to review employee remuneration packages (perhaps including more of these devices).

OTHER LONGSTANDING MEASURES

A range of other long-standing measures also rely on the $2 million turnover test being met including:

- **Income Tax Concessions** - (including the instant asset write-off (see page 12), simplified trading stock rules, immediate deductions for prepaid expenses, and a two-year amendment period)
- **CGT Concessions on the Sale of Business Assets** - (including the 50% Active Asset Reduction, the Retirement Concession, the 15-Year Exemption, and the Rollover). Note however that where your turnover exceeds $2 million, there are alternative entry points to access the CGT concessions – the main one being that the net value of the assets of your business is less than $6 million at the time of sale.
- **FBT** – (all car-parking benefits provided to employees are exempt if certain conditions are met).
- **GST** – (accounting for GST on a cash basis, paying GST on instalments worked out for you by the ATO, annual apportionment of GST credits).
- **Excise** – (you can apply to defer settlement of your excise duty and excise-equivalent customs duty from a weekly to a monthly reporting cycle).
- **PAYG Instalments** – (you can pay GST by instalments worked out for you by the ATO but also vary this amount each quarter if you choose).

WARNING

If your business only qualifies as an SBE based on its Actual Turnover (see earlier) it cannot access the following concessions as these concessions must be applied from the beginning of the Income Tax year:

- Paying PAYG instalments based on GDP-adjusted notional tax
- Accounting for GST on a cash basis
- Making an annual apportionment of GST credits for partly creditable acquisitions
- Paying GST by quarterly instalments.

TAX TIP

From the above, we can see the importance from a tax perspective of staying under the $2 million threshold. It can significantly impact your business's tax position.

According to Treasury, more than 5 500 Companies have an annual turnover either just below or above the $2 million threshold (and presumably many more non-incorporated businesses, as they total more than double the number of companies - see earlier statistics). Therefore it's worth keeping a close eye on your turnover as we move toward year-end (your accountant or would be able to provide you with current year turnover figures). While we do not suggest that you avoid growing your business just to stay under the $2 million threshold, if your turnover is nearing that mark at year-end, it certainly pays to stay under that threshold from a tax perspective – perhaps by deferring year-end invoicing where practical to the following financial year (post 30 June).

Note that the other common tax planning strategy of bringing forward year-end deductible expenditure will not be effective in reducing your turnover under $2 million as deductions are not taken into account in determining turnover. This strategy would only reduce your taxable income.

To avail yourself of the above concessions, no formal elections need to be made. Rather, the way in which your business completes its tax return will be evidence of the concessions that you have chosen to adopt.