MTS

MY TAX SAVERS

HOW A GOOD BOOKKEEPER CAN HELP YOUR BUSINESS

NEW YEAR TAX

Issues and Opportunities

LATEST LEGISLATIVE CHANGES

MyTaxSavers
JAN/FEB
2017

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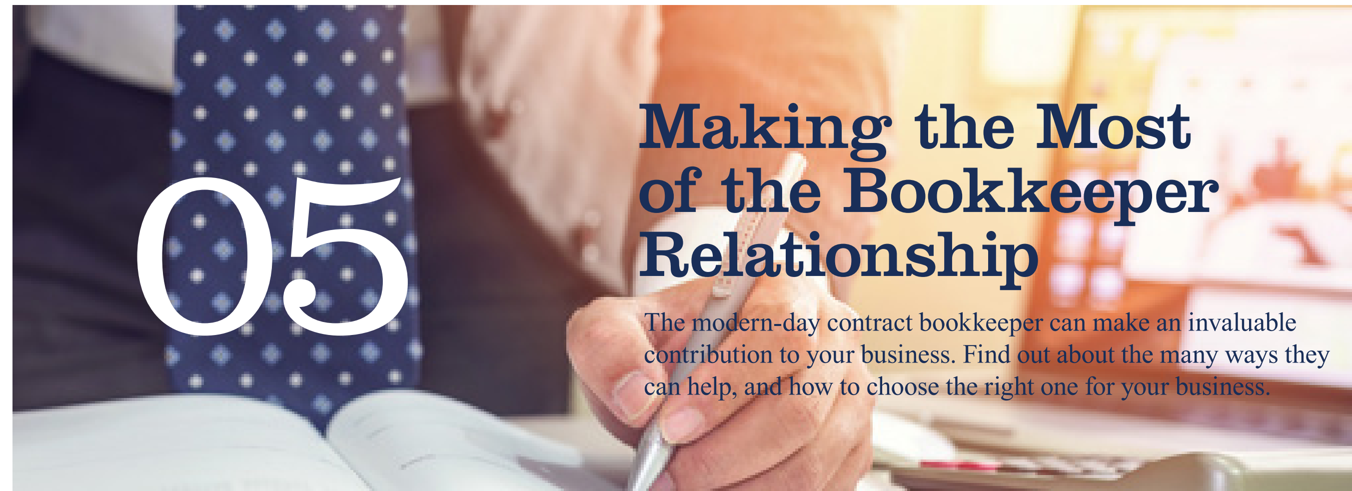

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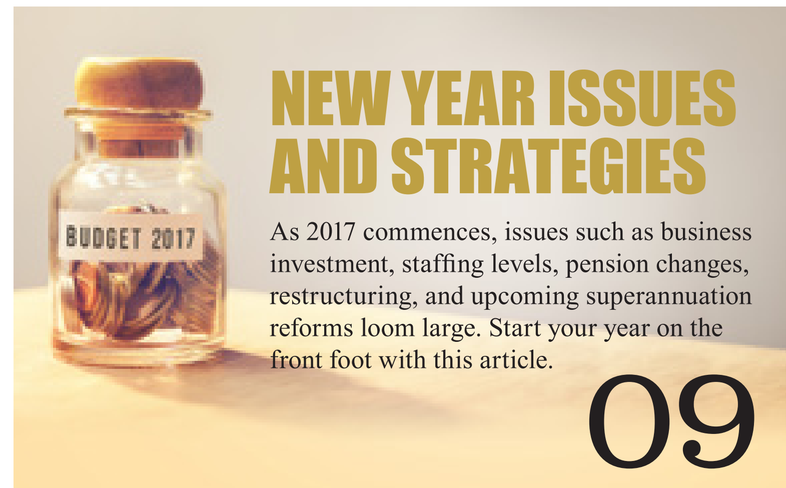

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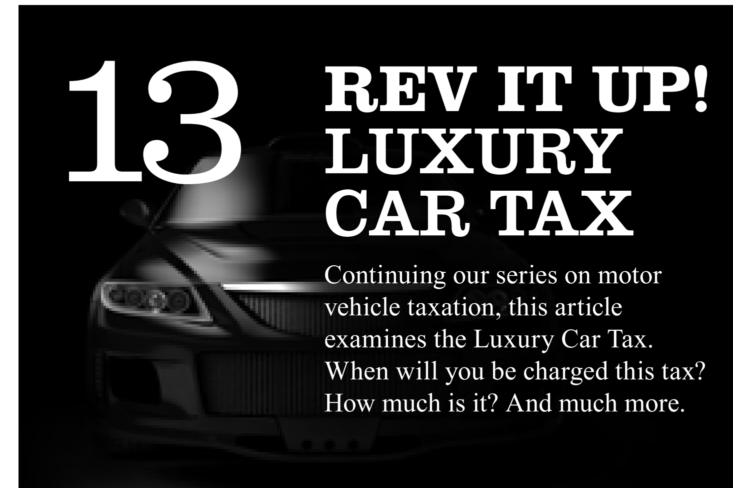

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KEY DATES FOR BUSINESS

Many deadlines are imminent over the next couple of months. **Don't be late!**

JANUARY 2017

21 JANUARY
Due date for lodgement and payment of December 2016 monthly Activity Statements

28 JANUARY
Due date for October-December 2016 Superannuation Guarantee contributions to be made to a complying fund on behalf of your employees

31 JANUARY
Final date for lodgement of October-December 2016 TFN report for closely held trusts for TFNs quoted to a trustee by beneficiaries

FEBRUARY 2017

21 FEBRUARY
Due date for lodgement and payment of January monthly Activity Statements

28 FEBRUARY
Due date for lodgement and payment of October-December 2016 quarterly Activity Statements, including electronic lodgments

28 FEBRUARY
Due date for lodgement and payment of income tax return for self-preparing entities that were not due at an earlier date. If you fail to lodge by this date, your 2016/2017 return will be due by 31 October 2017

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

Where one of these dates falls on a weekend or a public holiday, the due date is extended to the next business day except in the case of October - December 2016 Superannuation Guarantee contributions –these are due on Saturday 28 January.

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Australia's Exit Tax

Despite the fall in the Australian dollar over the last year, record numbers of Australians continue to head overseas. In doing so, this article considers whether they will be liable for Australia's **"Exit Tax"** when they leave.

RELOCATION

When you relocate to another country, the first issue to consider is whether you cease being an Australian resident for income tax purposes. Use the following table as a guide:

IF YOU...	THEN YOU...
Go overseas temporarily and you do not set up a permanent home in another country	Generally remain an Australian resident for tax purposes
Go overseas indefinitely to work and sell your Australian assets and set up a home at that overseas base	Are generally not treated as an Australian resident for income tax purposes
Leave Australia permanently	Are generally not treated as an Australian resident for income tax purposes from the date of your departure

If you are uncertain of your residency status when you head overseas, use the ATO's Residency tool on their website *ato.gov.au*.

CONSEQUENCE

If using the above information and the ATO tool you determine that you are still an Australian resident, you will generally be liable for CGT here in Australia on all your CGT assets acquired on or after 20 September 1985 (except your main residence) when you eventually dispose of those assets even where you dispose of them while overseas.

On the other hand, if you determine from the above that you are a non-resident of Australia for tax purposes, then you are taken to have disposed of your assets for CGT purposes at the time you become a non-resident of Australia. This means that a capital gain is made on your CGT assets (such as shares) if the market value of the asset is more than it cost base at this time. On the other hand, a capital loss arises when the market value of your asset when you cease to be an Australian resident is less than its cost base.

ALL ASSETS?

However, at this point, not all of your CGT assets will be caught. Assets that are classed as "Taxable Australian Property" will not be subject to CGT at the time you become a non-resident. "Taxable Australian Property" includes:

1. **TAXABLE AUSTRLIAN REAL PROPERTY**
   This includes not only real property situated in Australia but also leases of Australian land and mining, quarrying or prospecting rights where the materials are situated in Australia.
2. **INDIRECT INTERESTS IN AUSTRALIAN REAL PROPERTY**
   This is generally a 10% interest (e.g. shareholding) in an entity half or more whose value is comprised of Australian real property.
3. **BUSINESS ASSETS OF A PERMANENT ESTABLISHMENT IN AUSTRALIA**
4. **OPTIONS OR RIGHTS OVER ANY OF THE ABOVE**

Therefore all assets other than Taxable Australian Property will be subject to this "Exit Tax" including foreign CGT assets (such as shares in foreign companies) that you as the departing non-resident hold. However, CGT assets acquired before 20 September 1985 are exempt, and the CGT exemption in relation to Main Residences continues to apply.

DEFER

Individuals may however choose to disregard any capital gain or loss that arises under the above rules when they cease to be an Australian resident. Where this option is taken, those assets which would otherwise have been liable for CGT on exit (see earlier) are then transformed into Taxable Australian Property. Consequently, the capital gain or loss on those assets will be deferred and recalculated when you at some stage in the future dispose of the asset or you become a resident of Australia once again. To be clear, the choice to defer (if made) will apply to all of your CGT assets that are not Taxable Australian Property – the choice does not apply on an asset-by-asset basis.

You make the choice to defer by not declaring the gain/loss on your tax return.

EXAMPLE

Blake decides to leave Australia permanently. The only CGT assets he holds are a rental property and 100 shares in ABC Co.

As his shares are not Taxable Australian Property, Blake is taken to have disposed of his shares for their market value. He will need to declare any capital gain or loss he has made on these shares in his tax return. Alternatively, he can make an Election not to declare that gain or loss on his return. Under this option, Blake's shares would transform into Taxable Australian Property, with the capital gain/loss deferred until the earlier of when Blake becomes an Australian resident again, or sells the shares.

On the other hand, as the rental property is Taxable Australian Property (Category 1), Blake is taken not to have disposed of this asset when he heads permanently overseas and becomes a non-resident. Only when he disposes of this property, will he need to declare the gain/loss on his Australian tax return despite the fact that he may be a non-resident at that time.

WHAT?

To defer the capital gain, or not to defer? This decision should be made on a case-by-case basis with reference to the following factors:

YOUR PARTICULAR CIRCUMSTANCES

Firstly, will there by a capital gain and how large will it be if you are not to make a deferral Election? If the capital gain is only small, you may wish to pay it upfront when you become a non-resident and not defer it. By doing so, any future capital growth will be exempt from CGT here in Australia.

You should also consider your own tax profile at the time. Do you have any current year or carried forward losses that could reduce the capital gain or absorb it altogether? If so, then you may wish not make an Election and crystallise the capital gain at the time you become a non-resident.

ANTICIPATED CAPITAL GROWTH

The likely capital growth of the asset during the period that you intend to be away from Australia should be considered. The capital growth may be significant if you intend to hold the asset long-term.

Remember that the effect of making a deferral Election is that the increase or decrease in the value of the asset from the time you cease being an Australian resident to the time of the CGT event (sale) or you again becoming a resident, is also taken into account in working out your capital gain or loss on those assets. Therefore, if the asset is likely to experience significant capital growth in the period you are away from Australia, you might like to not defer tax and instead crystallise your capital gain upon departure.

Where you make an Election to defer, although you will still have to pay CGT, you will only pay it at resident tax rates which are of course lower than non-resident tax rates. By not making the deferral, and being subject to CGT on ceasing residency, you will get the market value cost base for the asset if you again become a resident. Therefore, the capital gain that occurred when you were overseas will be quarantined from Australian tax.

DOUBLE TAX AGREEMENT

Another factor to consider is which country you are going to reside in. In some cases because of a Double Tax Agreement (DTA) with Australia, it may be that you will not be liable for CGT here in Australia on the eventual disposal of a CGT asset, or the country that you are residing in has lower tax rates for the disposal of a CGT asset. (DTA's allocate taxation rights between countries so as to minimise the chances of double-taxation).

In such cases, it would make no sense to not make an Election to defer CGT liability. If you didn't make the election, you would pay CGT here in Australia at a higher tax rate at the time of becoming a non-resident, and perhaps pay it again in the country that you reside in when you eventually dispose of the asset. By deferring, you could possibly avoid CGT here in Australia and then pay it a lower rate of tax overseas or be exempt altogether depending on the relevant DTA. Your advisor will be able to examine the relevant DTA for you.

EXAMPLE

Following on from the earlier example, assume the shares had a cost base of $500 and, when Blake left Australia permanently and became a non-resident two years later, the market value of those shares was $600. The shares are an investment that Blake intends to hold for many years.

In this situation it would make sense for Blake pay the capital gain upfront and not make a deferral. The capital gain would only be $100, reduced by the 50% CGT discount (down to $50) as Blake had held the shares for 12 months or more. If he instead made a deferral election, then the future capital growth on this asset which he intends to hold long-term would all be subject to tax here in Australia, subject to the terms of the DTA between Australia and the overseas country.

CGT DISCOUNT

Another factor to consider that has only recently come into play is the CGT discount for non-residents. Where a non-resident makes a capital gain on Taxable Australian Property, they are no longer, from 12 May 2012, eligible for the 50% CGT discount that would normally apply for having held a CGT asset for 12 months or more. If you were to make an election and defer your capital gain, then any later capital growth after becoming a non-resident would generally not be eligible for the CGT discount.

The unavailability of the CGT discount for non-residents could make the upfront option more appealing, rather than a deferral Election.

Making the Most of the Bookkeeper Relationship

The use of bookkeepers has grown substantially over recent years. The article examines the merits of using a bookkeeper in your business, and how to get the most out of the relationship.

SERVICES

When many people think of bookkeeping, thoughts turn to looking after petty cash, entering invoices into a software system, and keeping receipts together. The reality though is that the modern-day bookkeeping professional offers a range of services that can be utilised by your business including:

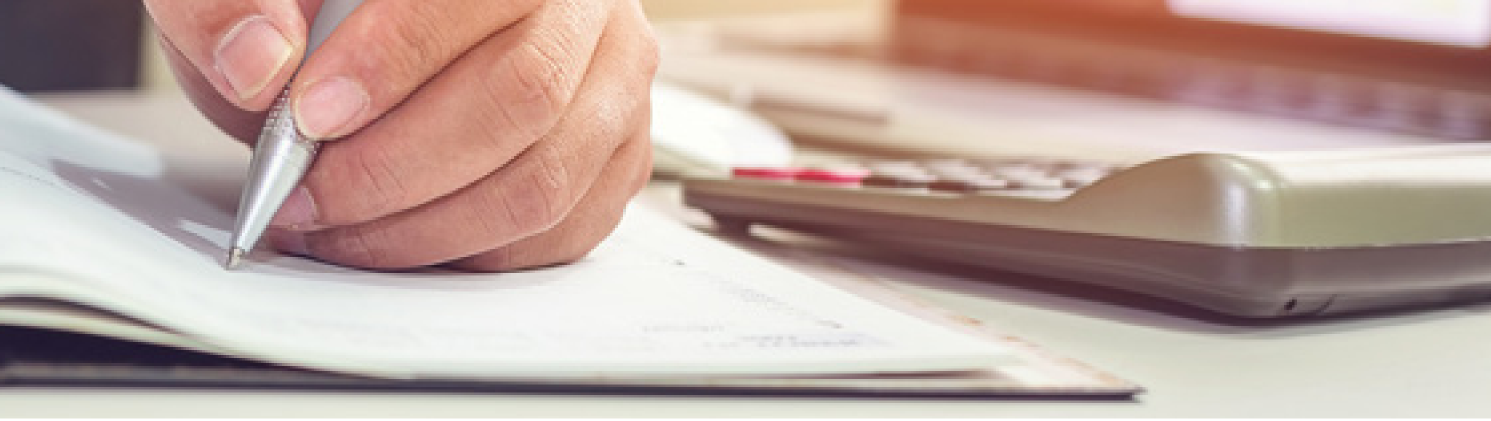
- Management reporting on business performance (comparing the performance of your business from month-to-month, year-to-year etc.).
- Data entry into accounting software
- Cash flow projections
- Payroll tax returns and compliance
- Preparation of year-end financial records for your Accountant
- Payroll and superannuation processing including dealing with the ATO and superannuation funds
- Activity Statement preparation and lodgement
- Record keeping
- Software training.

Given the breadth of services, Bookkeepers can become trusted partners and advisors to your business.

REGISTERED

If you do decide to engage a contract Bookkeeper, then unless they are an employee of your business or unless they are only undertaking basic services (such as bank reconciliations, basic data entry such as entering invoices onto a computer program) then they must be registered with the Tax Practitioners Board as a BAS Agent. If they are not registered, then they may be breaking the law. You can check their registration on the Tax Practitioner Board website ***tpb.gov.au***. They will also have their own BAS Agent number which along with the Tax Practitioner Board logo they may or may not display in their email signature as displayed opposite:

BAS agent
12345678



QUALIFICATIONS AND EXPERIENCE

By engaging a registered BAS Agent, you can be assured they have met various qualification and experience benchmarks.

BAS Agents must at a minimum hold a primary academic qualification in bookkeeping or accounting at a Certificate IV level or a higher award (for example, a diploma, Advanced diploma or degree). This qualification must have been obtained from a registered training organisation or an equivalent institution. BAS Agents must also have completed an approved course in basic GST/taxation principles.

Additionally and reassuringly for clients, BAS Agents must also have obtained at least 1,000 hours of 'relevant experience' such as preparing Activity Statements etc. over the previous 4 years.

To keep their knowledge and skill-sets up-to-date BAS Agents are also required to complete 45 hours of continuing professional development (e.g. technical reading, attending courses etc.) over the previous 3 years.

SAFE HARBOUR

Where you use a registered BAS Agent and supply ALL of the information to them in order to perform a service (e.g. prepare your Activity Statements) did you know that if a mistake happens then it is possible to apply for relief from ATO penalty under the 'Safe Harbour' rules. Under these rules, a taxpayer may not be liable for an ATO administrative penalty for making a false and misleading statement (e.g. recording an incorrect amount on a BAS) if:

1. They gave all the relevant information to their Agent and
2. The false and misleading nature of the statement did not result from an intentional disregard of the law or recklessness by the Agent.

To get the protection of Safe Harbor, you need to object in the approved form to the ATO against the penalties that the ATO have imposed (as a result of the amended BAS, tax return etc.). If you apply to the ATO and are granted Safe Harbour, you will not have to pay the administrative penalty. Rather, the penalty is squashed altogether – neither you nor your BAS Agent is liable for the penalty. Therefore, next time a mistake is made on your Activity Statement and it was not your fault, bear in mind the Safe Harbour rules.

UNDERSTAND YOUR ENGAGEMENT

Ensure you understand the nature of your engagement and the services that your BAS Agent has been engaged to provide.

A good way to formalise your relationship with your BAS Agent is via an Engagement Letter – they will normally draft this letter after an initial discussion with you. Although they are not mandatory, an Engagement Letter is a good idea because it helps to ensure there is no misunderstanding – your BAS Agent knows what is expected of them and vice-versa. Many BAS Agents use such letters. An Engagement Letter sets out the parameters of your relationship with the BAS Agent (including the work you have engaged them to provide, the basis on which fees will be calculated and paid etc.). Carefully scrutinise the Engagement Letter as a BAS Agent's liability will only extend to the services mentioned therein. If you have several entities, ensure that each of these along with the relevant service for each entity is specifically mentioned in the Engagement Letter, for example:

Prepare quarterly BAS for:

- *Company ABC*
- *Mr. Smith, and*
- *Mrs. Smith.*

For your part, ensure that you live up to your obligations as outlined in the Engagement Letter. For example, if your BAS Agent has been engaged to complete your BAS on the basis of the data file you have provided to them, then ensure this file is provided to them in a timely manner and ensure that it is free of mistakes. Under such an engagement, the BAS Agent would not be expected to go back and check the original data file for errors unless they were glaring errors noticeable immediately.

OPPORTUNITY COST

Is there is an opportunity cost in you undertaking clerical and bookkeeping tasks such as data entry, payroll, superannuation rather than a contract bookkeeper? What are you not doing while you are saving $50 an hour dealing with data entry and payroll? Are you more efficient at these functions than a specialist BAS Agent? The whole point of outsourcing these tasks to a Bookkeeper is to not only "get it right" by putting it in the hands of experts, but also to free up your time for other more profitable tasks. Rather than you or your employees spending hours grappling with a range of complex bookkeeping tasks, outsourcing these functions to bookkeepers frees you up to getting back to actually working in or on your business.

WHAT TO LOOK FOR

Aside from being registered with the Tax Practitioners Board (see earlier), what should you look for in a contract bookkeeper? Consider the following:

PERSONAL TRAITS THAT FIT WITH YOUR TEAM

- Do they have a natural affinity with you and the personnel they will be dealing with in your business?
- Do they understand your business and your industry?
- Are they knowledgeable and add value to your business?
- Are they reliable and punctual, with strong attention to detail?

TRACK RECORD

Your bookkeeper should be able to demonstrate that they have experience relevant to the assignment you are offering. Many will likely have testimonials to evidence this.

BACK-UP AND SUPPORT

A good bookkeeper will have back-up and support that they can use to quickly settle issues that may be outside their skillset or experience. Back-up and support can take the form of educational materials, explanatory resources, and access to other qualified practitioners from whom the bookkeeper can seek feedback and support should any technical issues arise. This support may be in the form of membership of a bookkeeping industry organisation such as Australian Bookkeepers Network.

SUPER HOT ISSUES

This article examines two topical superannuation issues swirling around at the moment

CLEARING HOUSES

With the ***SuperStream*** deadline having now passed, the ATO is reporting a spike in the number of employers who are now using the ***ATO's Small Business Superannuation Clearing House (SBSCH)***. One of the advantages of using the ***SBSCH*** is that employers are automatically ***SuperStream*** compliant in relation to those Clearing House contributions. The other obvious advantage in using the ***SBSCH*** is that it streamlines your superannuation processes. Instead of making separate payments into each employee's own nominated superannuation fund, you make a single payment to the ***SBSCH*** which then passes the payment on to each employee's fund. If this sounds appealing to you and you are eligible to use the ***SBSCH*** (i.e. have less than 20 employees or a turnover of under $2 million), you can sign up at www.ato.gov.au (type 'clearing house' into the search box at the top of the page).

For employers that are not eligible for the ***SBSCH***, you may wish to engage a commercial Clearing House – many employer default funds have such facilities. Commercial Clearing Houses likewise streamline your obligations by generally requiring just one payment from you. However, it's important to note that they may or may not be free of charge, and may or may not be ***SuperStream*** compliant.

With the increased use of Clearing Houses, to meet your quarterly Superannuation Guarantee obligations by the due date, it's important to be aware of the timing issues that apply to Clearing House contributions. In respect of commercial Clearing Houses an employee's Superannuation Guarantee contribution is taken to be paid on the date it is received by the employee's fund (not the date that a Clearing House receives it from an employer). Therefore, as an employer you need to be aware of how long it takes for your commercial Clearing House to process the payment – some take as long as 10 business days. In order to meet your Superannuation Guarantee obligations by the due date, check with the Clearing House for their processing times.

On the other hand, if you are using the SBSCH your Superannuation Guarantee obligations are met on the date the ***SBSCH*** accepts them. Getting the timing right is of great importance. If you are even one day late for the quarterly deadline, you are required under the law to raise a Superannuation Guarantee Charge assessment, and pay the late amounts (based on a wider concept of 'salary and wages'), plus nominal interest and an administration fee per employee.

EXAMPLE

Dave's Leisure Goods uses a commercial Clearing House, Quicker Super Pty Ltd. to process Superannuation Guarantee contributions for its 25 employees. The Clearing House advises that it needs 7 business days to process the payments which are due on Saturday 28 January 2017. Therefore, in order to meet the deadline, Dave must send the contributions and the relevant information to the Clearing House by Thursday 19 January to allow sufficient time for Quicker Super to make the individual contributions to each employee fund by the due date.

RESIDENTIAL RENTAL PROPERTIES

For a number of reasons, SMSF members are keen to acquire high-growth assets within their portfolio such as residential property. These reasons include:

- Rental earnings on the property are subject to concessional rates of tax (15% or 0% if the asset is supporting a pension), as are capital gains when the property is sold
- By acquiring 'big ticket', growth assets, you can build up your superannuation savings faster than by making contributions, and
- Superannuation assets are, generally speaking, protected from creditors in the event of bankruptcy.

However, you should exercise great care in purchasing residential property through your SMSF, and be aware of the following issues:

RELATED PARTIES

You generally cannot acquire residential property from a related party of the SMSF (e.g. yourself, another member of the SMSF or a relative). This will most likely breach the in-house asset rules which require in-house assets to be no more than 5% of the value of your SMSF's total assets. Therefore, your only real option is to purchase residential property from a third-party with no direct or indirect ties to you or other members of your SMSF.

USE

If you do acquire residential property legally (i.e. from a non-related party), the property must not be lived in by a member of the SMSF or any related parties. Furthermore, the property cannot be rented to any member or any related party of the member, even where market value rent is being paid under a bona fide lease agreement.

BORROWING

Often SMSFs do not have the necessary cash on hand to acquire big ticket items such as property. Therefore, their only option is to borrow. In this respect, there are two main options:

- **Third party lending under a limited recourse borrowing arrangement (LRBA).** Most major banks have funding packages specifically tailored to meet the strict requirements of LRBAs. A word of caution however! These arrangements are complex and expensive and should therefore only be entered into following consultation with your advisor.
- **Self-funding under a limited recourse borrowing arrangement (LRBA).** The SMSF can borrow from a member or from another entity within the family group. The advantage of doing so is that a reduced rate of interest can generally be charged to the SMSF (note it must still be commercial and acceptable to the ATO), and some money can be saved by not entering into an LRBA with a bank which can be expensive. It is essential however that any borrowing arrangement from a related party be fully documented and will still require a LRBA be entered into with appropriate structures in place.

TAKE-HOME MESSAGE

In summing up, rental property breaches by SMSF members are very common. However, if you adhere to the above rules and consult your advisor if in doubt you can boost your retirement savings by acquiring this sought-after, high-growth asset.

NEW YEAR ISSUES AND STRATEGIES

The New Year is a time to reflect, but also look ahead. Following are some of the issues business owners and individuals may turn their minds to as we enter 2017.

BUSINESS STRUCTURE

It's common at the start of the year or over the Christmas break to take a "helicopter" or "big-picture" look at your business.

One of the big-ticket items that get addressed in most business reviews is your operating structure. Is it time to review yours? Company, Trust, Partnership, Sole Trader or a combination of these. Which best suits you will depend on a range of factors and which of these are most important to you including: minimising your income tax liability, asset protection, access to equity capital, compliance costs, succession planning, your ability to minimise other taxes such as CGT and FBT, your understanding of each structure, and more. When conducting your review, use the following table to assess the strengths and weaknesses of each structure:

	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. Family Trust Elections , 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 which 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 most appropriate structure for a small business may change over time, or a new small business may choose an initial structure that it later finds to be inappropriate. For instance, for reasons of simplicity and minimisation of start-up costs, a number of small businesses commence as Sole Traders. However, as their business grows, they often wish to change to a more tax-effective structure (such as a Trust). Up until recently however where a business restructured and assets were transferred from the old operating structure to the new structure (e.g. from a company to a trust), significant tax liabilities may have arisen at the time of transfer and therefore created a disincentive to restructure. This deficiency in the old law meant significant tax liabilities could arise upon restructure, or a business could just choose continue to operate under the existing inappropriate structure in order to avoid these tax liabilities. In both cases, this was an unsatisfactory outcome.

New law was recently passed by Federal Parliament allowing Small Business Entities (SBEs) to change their operating structure from 1 July 2016 without incurring income tax or capital gains tax (CGT) liabilities. The new law provides an optional rollover (deferring any CGT liability or any income tax liability until the asset is eventually sold) where a small business transfers an active asset of the business to another small business as part of a genuine business restructure, without changing the ultimate economic ownership of the asset. 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. For the details and technical requirements of this measure, see the May/June 2016 edition of this publication which is available at *mytaxsavers.com.au*

Currently, an SBE is defined as having an annual turnover of less than $2 million (including connected entities and affiliates). However, the current Government has introduced draft legislation into Parliament to increase this threshold to $10 million which would be backdated to 1 July 2016 – potentially allowing thousands of more businesses to restructure tax-free. If, after reviewing the above factors, you are contemplating a restructure, you should consult your advisor. Even if you do not qualify as an SBE, and there are income tax and CGT costs of restructuring, these costs are one-off. The one-off cost ultimately may pale into insignificance compared to the ongoing costs (including exposure to personal liability) of staying with your current unsuitable/inefficient structure.

STAFFING LEVELS

Another area that's often reviewed at the start of the year is staffing levels.

EMPLOYING

If you determine you need additional staff – perhaps you are adding additional services/product lines to your business; you have a shortfall in the number of staff required to undertake current work in your business; or you are replacing staff who have left your business – there is a myriad of obligations and procedures to be followed, both at a State and Federal level. To assist employers, the Government in conjunction with small business owners, Tax Agents, and industry associations, has created a ***Taking on Employees Checklist*** *business.gov.au/info/run/employ-people*. Irrespective of which State or Territory you are located, this comprehensive checklist covers off on all the Federal and State laws that apply when taking on a new employee – from pay entitlements, superannuation, insurance, withholding tax, and more. It's a one-stop shop.

REDUNDANCY

On the other hand, if your year-end review of staffing levels determines that there is excess staff, an employee may be made redundant. From a taxation perspective, a redundancy occurs when the employee is dismissed because the job they are doing no longer exists in your business – it has become redundant, and nobody is required to perform that specific role. Where this is the case, the employee is afforded concessional tax treatment on payments such as: payments in lieu of notice, severance payments of a number of weeks' pay for each year of service, and gratuities or golden handshakes. Any payments that meet the conditions of a genuine redundancy are tax-free up to a limit based on the employee's years of service with you. The tax-free limit is a flat dollar amount ($9,936 for 2016/2017) plus an amount for each year of completed service ($4,969) with the employer. Indexation changes the tax-free limit on 1 July each year. Note that for this concessional tax treatment to apply, the employee must be less than 65 years of age at the time the redundancy payment is made.

EXAMPLE

George is 47 and has been employed fulltime as a sales assistant in a bookstore since July 2012. With the advent of e-books, hard copy sales have been declining for quite some time in the store – and the decision is made in January 2017 to make George redundant due to lack of in-store customers. George elects to leave immediately and is paid $3,200 for 4 weeks in lieu of notice, and under his Award is entitled to a further severance payment of $1,500 for each completed year of service ($6,000). George is also paid out $2,500 representing the cash amount of his annual leave still owing.

For tax purposes, George is being made redundant – the sales assistant position he held will no longer exist. As such, the payment in lieu of notice, and the severance payment for each year of service owed to George under his Award will receive concessional tax treatment. George will be entitled to a tax-free amount of $29,812 ($9,936 flat dollar amount for 2016/2017 plus $4,969 x 4 years of completed service). As this exceeds his redundancy payments of $9,200 ($3,200 in lieu of notice plus $6,000 severance payment), no amount of tax will be withheld by George's employer. If the total had exceeded George's tax-free amount of $29,812, the amount above this would be taxed as an Employment Termination Payment.

The following payments are not included in a genuine redundancy payment – salary/wages/allowances owing for work already done or leave already taken for work completed; lump sum payments of unused annual leave or leave loading paid on termination of employment; lump sum payments of unused long service leave paid on termination of employment under a financial arrangement; or payments made in lieu of superannuation benefits.

SUPERANNUATION CHANGES

Upcoming superannuation changes will impact many thousands of Australians in 2017, and may require some forward planning on your part. The changes which have now been passed by Parliament are:

- **From 1 July 2017, only those with a superannuation account balance below $1.6 million will be able to make non concessional contributions**
- **If you are eligible to make non-concessional contributions from 1 July 2017 (i.e. have an account balance below $1.6 million) you will be limited to $100,000 per annum (or $300,000 over three years using existing bring-forward rules).** Up until this date, the cap remains at $180,000 or $540,000 over 3 years. Thus over the coming months taxpayers who are contemplating making large non-concessional contributions may wish to consider bringing forward those contributions to before 1 July. If making a large contribution (e.g. you may have received an inheritance, or sold a property) this will enable you to deposit more money into the concessionally taxed superannuation environment sooner, and enjoy those tax concessions from an earlier date.

- **Concessional contributions limit will from 1 July 2017 be reduced to $25,000 for all taxpayers.** Currently, the limit is $30,000 (or $35,000 for taxpayers aged over 49). Most employees are currently not eligible to claim a deduction for their after-tax superannuation contributions. If you are eligible to claim a deduction under the "10% Rule" (i.e. less than 10% of your assessable income, your reportable fringe benefits and your reportable employer superannuation contributions - including salary sacrifice contributions - for the year are from being an employee), you may wish to consider bringing forward any planned contributions to before this date and take advantage of the larger cap.
  The reduced cap will also impact those employees who salary sacrifice. From 1 July, for example, an employee who earns $80,000 and is paid Superannuation Guarantee by their employer will – all other things being equal – only be able to salary sacrifice $12,400. Currently, they can sacrifice $22,400 (provided no other concessional contributions are made during the year). Over the coming months if the reduced cap is legislated, employees may wish to increase the amount they are sacrificing before 1 July, or those who are contemplating sacrificing may wish to consider entering into a written agreement with their employer to make this happen.
- **Allowing all individuals eligible to contribute to superannuation a deduction for their personal contributions up to the concessional contribution limit, from 1 July 2017.** If you are contemplating making an after-tax contribution to superannuation and like many employees you do not meet the 10% Test (see earlier), then you may wish to hold off on making that contribution. If you delay the contribution until after 30 June, then you will be able to claim a deduction for that contribution. Under the current law, you cannot.
- **Taxing the earnings in respect of Transition to Retirement Income Streams (TRIS) at 15% (up from 0%) from 1 July 2017.** As this will apply to all TRIS pensions irrespective of their commencement date, no action is required. No pre-30 June strategies are available to mitigate the effect of this measure.
- **Reducing the income threshold at which taxpayers are charged an extra 15% tax on the concessional contributions from $300,000 to $250,000 from 1 July 2017.** This extra tax will apply where an individual's total income (consisting of income for surcharge purposes less reportable superannuation contributions) plus concessional contributions for the year exceeds $300,000. If the threshold is exceeded, 15% additional tax is imposed on the lesser of **(a)** your concessional contributions (excluding excess contributions) or **(b)** the excess amount over the $300,000 threshold. The cutting of the threshold to $250,000 will impact approximately 110 000 taxpayers, doubling the tax on their concessional contributions from 15% to 30%. If your income is set to be above this threshold next financial year, then over the coming months you may wish to consider bringing forward any planned concessional contributions to this financial year if possible, and benefit from a lower contributions tax rate.

INSTANT ASSET WRITE-OFF

With a sunset date of 30 June 2017, small businesses may wish to start considering bringing forward any planned asset investments to the next few months – particularly in this current low interest-rate environment.

Up until 30 June 2017, Small Business Entities (SBE's) can claim an immediate write-off for the acquisition of most depreciating assets used in their business if the asset cost less than $20,000. See earlier for the definition of an SBE. Being in its final year of operation the timing requirements around the instant asset write-off are important.

To claim a deduction in 2016/2017, the asset must be first acquired from 1 July 2016 and first used or installed ready for use in your business on or before 30 June 2017.

Assets acquired before 1 July 2016, but used or installed ready for use between 1 July 2016 and 30 June 2017 are also claimable in full in 2016/2017.

If you miss the deadline (i.e. if the asset is not being used in your business or installed ready for use on or before 30 June 2017) then the write-off threshold reverts to $1 000. Missing the deadline will result in a worse cash-flow outcome for your business than if the deadline is met (see later example). The real benefit from the $20 000 write-off is an improvement to your cash-flow. The write-off improves small business cash-flow by bringing forward deductions rather than having them spread out over more than one year. Cash-flow can be a significant issue for small business, particularly start-ups.

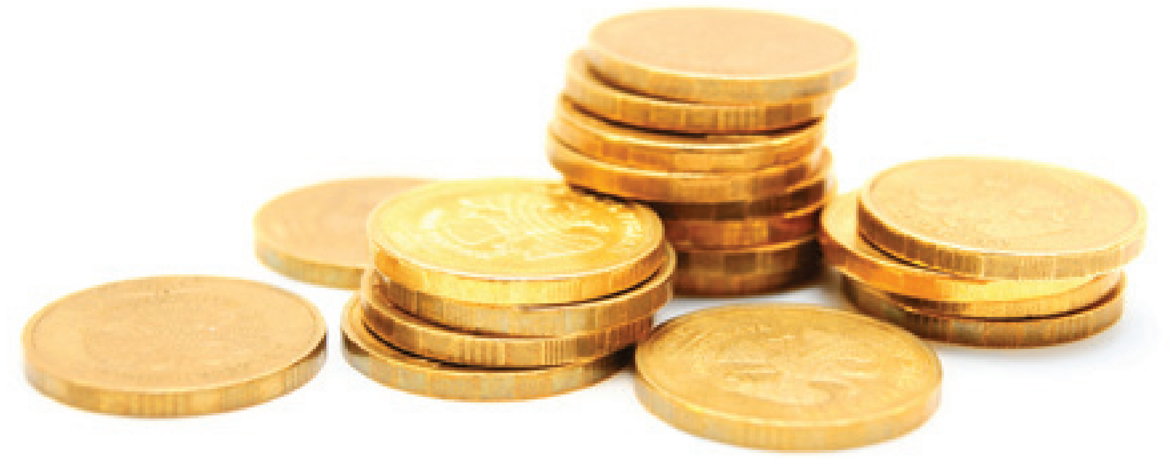
That said, it is important to have perspective. You are only getting back the tax rate on the asset, not the full value of the asset. This is the same as the old law where the write-off was $1 000 (which will apply from 1 July 2017). You don't get any extra cash than you would otherwise have received under the old rules – you simply get it sooner. Consequently, you should not let tax distort or blur your commercial instincts – as you don't get any extra cash than you would otherwise have under the old rules, you should continue to only buy assets that fit within your business plan.

CASE STUDY - CASHFLOW BENEFIT

An eligible SBE company purchases an eligible asset for $19, 999 on 2 July 2017. As the asset is not installed purchased and installed ready for use on or before 30 June 2017 the instant write-off threshold is only $1,000. As this asset exceeds this threshold the standard pooling rules apply. The asset will be written off at 15% in the first year of 2017/2018 ($3,000) and 30% in subsequent years. The cash-flow the company would receive from these depreciation claims is $854 for the first year (assuming a 28.5% small company tax rate) and $1 636 in the second year (assuming a small business company tax rate of 28.5%). The company would continue to depreciate its general pool at 30% until the pool was under $1 000, at which point the entire pool could be written-off (after approximately 9 years).

By contrast, if the purchase of the asset was brought forward a few days and the asset was used or installed ready for use on or before 30 June 2017, then under the $20,000 threshold the company would be able to immediately deduct the entire $19 999 in the first income year (2016/2017). The cash-flow benefit the company would receive from this is $5,699 in the first year ($4, 845 more than under the old rules – i.e. the benefit is brought forward rather than spread out). The company is then free to apply this brought-forward cash immediately (e.g. pay off debt or suppliers, or re-invest in the business etc.). In the second income year, there is no further depreciation of this asset as it has been written-off completely. This means that the company is paying more tax in the second year relative to the earlier scenario (but no more and no less tax overall).

This Case Study illustrates the importance of meeting the 30 June 2017 deadline this financial year. After this date, the write-off threshold reverts back to $1,000.



PENSION AND ALLOWANCES CHANGES – ALMOST HERE!

On 1 January 2017, new rules for pension access will be applied. It is estimated more than 300,000 Australians will have their benefits reduced as a result. Some forward planning may be required to replace any lost income. To be clear, these changes will affect all pensioners who are assets tested, or who are currently income tested but become asset tested including recipients of the Age Pension, Carer Payment, Disability Support Pension, Widow B Pension, and Wife Pension.

The Asset Test Free Area is the amount of assets above which allowances are not paid and pensions are reduced. From 1 January 2017, the Full Pension Thresholds will increase. Only if your assets are below the thresholds in the following table, will you be eligible for a full pension under the 2017 assets test:

FULL PENSION	CURRENT ASSET LIMITS	2017 ASSET LIMITS
Non-homeowner (single)	$360,500	$450,000
Non-homeowner (couple)	$448,000	$575,000
Homeowner (single)	$209,000	$250,000
Homeowner (couple)	$296,500	$375,000

Assets taken into account include property (excluding your home) cars/boats/caravans, financial investments, superannuation (if you are over Age Pension), business assets, household contents and personal effects.

Additionally, the Part-Pension thresholds will decrease from 1 January 2017. If you have assets above the following thresholds you will no longer from 1 January be eligible for the pension:

PART PENSION	CURRENT ASSET LIMITS	2017 ASSET LIMITS
Non-homeowner (single)	$945,250	$742,500
Non-homeowner (couple)	$1,330,000	$1,016,000
Homeowner (single)	$793,750	$542,500
Homeowner (couple)	$1,178,500	$816,000

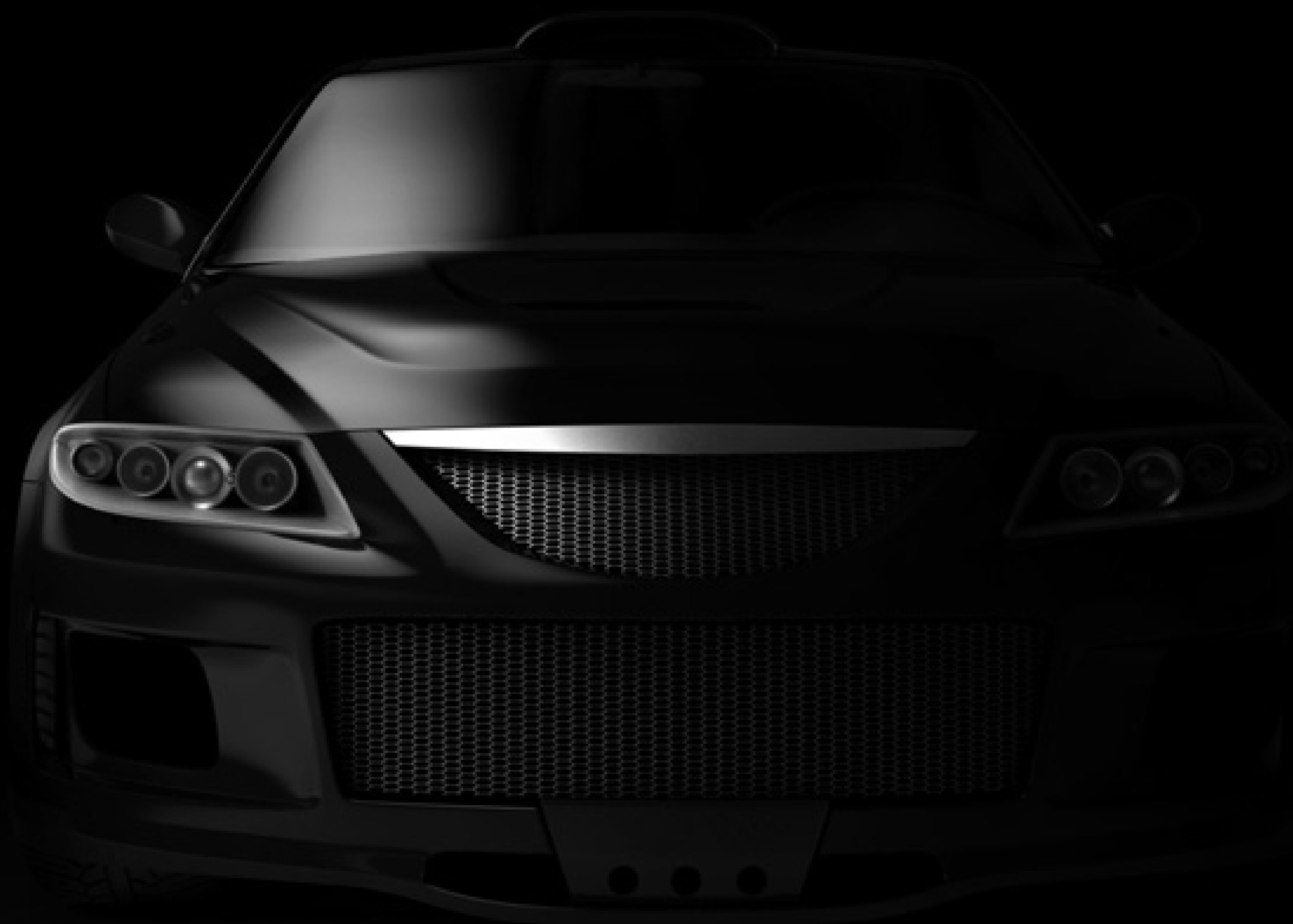
Additionally, from 1 January 2017, the Age Pension Asset Taper Rate will increase. Under the new rules, pension payments will reduce by $3 per fortnight for every $1,000 of assets above the lower assets test threshold. Currently, the taper rate is $1.50 (or 75 cents each for couples) per fortnight. This will result in pensions reducing at a faster rate.

Depending on how the above changes impact you, there are a number of things worth exploring with your financial advisor including:

- How you go about replacing any lost income if your entitlements are reduced
- How you might be able to scale down the value of your assets to retain your current entitlements - for example, bringing holidays or home renovations forward.

REV IT UP!
LUXURY CAR TAX

Continuing on our examination of motor vehicle taxes, this article focuses on Luxury Car Tax. With the LCT rate set at a modest level, it's likely at some point that you will charge or be charged LCT on a vehicle.



OVERVIEW

The basics of the Luxury Car Tax (LCT) regime are as follows:

- LCT is payable where there is a taxable supply or a taxable importation of a luxury car
- LCT applies to the portion of the value of the car that exceeds the LCT threshold which is set by the ATO each year
- The LCT rate is generally 33%, and is additional to any standard GST that is payable
- You can defer paying LCT by quoting your ABN if in relation to the car you are intending to **(a)** hold it for trading stock, or **(b)** conduct research and development for the car's manufacturer, or **(c)** make a GST-free export. In these cases, LCT will be delayed until the car is sold at the retail level
- LCT is payable mostly by businesses that sell or import luxury cars, and also individuals who import luxury cars
- LCT is added to the net amount of GST payable on a BAS
- There is no LCT registration requirement
- LCT does not apply to private sales by non-GST registered parties
- Input tax credits cannot be claimed on LCT.

LIABILITY

LCT is payable in either of the following two circumstances:

1. TAXABLE SUPPLIES BY RETAILERS, MANUFACTURERS, WHOLESALERS AND OTHER BUSINESSES

When these parties make a taxable supply (under GST law) of a luxury car, they must charge LCT to the purchaser and then remit it to the ATO where the LCT Value of the car exceeds the LCT threshold.

COMMON SCENARIOS WHERE LCT MAY APPLY

- A dealer sells a car to an individual or business and the car passes from the manufacturer (or importer) to the finance company, then to the dealership, then to the end customer
- A dealer, wholesaler, manufacturer or importer provides a luxury car to an employee, associate or member of the same GST group or GST joint venture
- A car is sold to a Commonwealth, State or Territory department, agency or statutory authority (other than when used as an emergency vehicle)
- A car that is a capital asset of a business is sold or traded in. However, if a vehicle is sold used and LCT has already been paid on the vehicle (i.e. when it was sold new), a credit is applied for any LCT already paid. This means that except in the rare case where a used vehicle is sold for more than its new car value, LCT is effectively only payable on new cars and used demonstrator cars less than 2 years old.

Only taxable supplies will attract LCT. To recap, a taxable supply is made where it is made in the course of an enterprise, is connected with Australia, and the seller is registered or required to be registered for GST. However, taxable supplies are not subject to LCT where either:

(a) The recipient of the car quotes their ABN

The purpose of this is to prevent LCT being payable until the car is sold or imported at the retail level. To be entitled to quote your ABN the recipient must be registered or required to be registered for GST and must intend to use the car exclusively for either:

(i) Trading stock (but not for hire or lease). Examples include where a dealer/wholesaler acquires a car for resale, or as a demonstrator vehicle, or where a car restorer restores the car for subsequent resale

(ii) The purposes of research and development on behalf of the manufacturer (e.g. testing)

(iii) Making a GST-free export.

Therefore, even though a business may have an ABN and quote it to the seller of a car (for example, the car dealer), this is not sufficient to avoid the imposition of LCT. Rather, quoting your ABN when buying a new or demonstrator vehicle will only stop the imposition of LCT where the ABN holder is going to use the car exclusively for one of the above three purposes. Where this is the case, to avoid LCT the ABN quotation must be made by the purchaser at or before the time of the supply or importation and be in the approved format as follows:

I hereby quote Australian Business Number >>>>>>> in relation to the supply of the luxury car as detailed above/attached

Name of business:
Name of person authorized to quote:
Signature of person authorized to quote:
Date:

The ABN quotation must be on or attached to the order for the car, or any other document provided to the seller or Customs which clearly identifies the car (such as a contract, or import warrant).

(b) Two Year Rule is Met

This will be the case where either:

(i) The car was locally manufactured more than two years before the supply was made. This is to be determined by the built date plate), or

(ii) The car was entered for home consumption here in Australia more than two years before the subsequent supply

(c) The Supplier Exports the Car and That Exportation is GST-free

This will be the case where the car is exported from Australia either:

- Before receiving payment for it, or
- Within 60 days of the earlier of receiving any of the payment for it, or rendering an invoice.

2. TAXABLE IMPORTATIONS

The second broad circumstance where LCT is payable is where there is a taxable importation of a luxury car. This occurs if the car is imported into Australia and entered for home consumption. Unlike the GST law relating to taxable supplies, there is no requirement for the importer to be GST registered, and nor are they required to be carrying on an enterprise.

However, an importation will not be subject to LCT where one or more of the following exceptions apply:

(a) The importer quotes their ABN in the circumstances outlined earlier, for example where a registered dealer imports the car to use as trading stock

(b) LCT has already been paid on the car (e.g. you take it overseas and later return with it to Australia)

(c) LCT has not previously been paid on the car and it's being reimported in an unaltered condition provided the importer manufactured or owned the car before 1 July 2000, and then exported the car from Australia and ownership of the car has not changed.

Where LCT is payable on an imported vehicle however, LCT will be paid at the same time as Customs duty.

COMMON SCENARIOS WHERE LCT WILL NOT APPLY

- Where the buyer has quoted their ABN in the approved form (but only for one or more of the earlier three purposes)
- Where the car was manufactured in Australia more than 2 years before the sale
- Where the car was imported more than two years before sale
- To a car exported as a GST-free export
- To a car that is (or is intended to be) registered for use as an emergency vehicle (e.g. ambulance, fire vehicle, police vehicle, search and rescue vehicle)
- To a motor home or campervan, or a commercial vehicle designed mainly for carrying goods and not passengers
- To cars that have been modified for people with a disability
- To the LCT value that LCT has already been paid on.

CARS

To qualify as a 'luxury car', the vehicle must firstly qualify as a car for LCT purposes. This will be the case where it is a motor-powered road vehicle designed to carry a load of less than two tonnes and less than 9 passengers. Accordingly, this may include passenger cars, station wagons, four-wheel drives and limousines (irrespective of the number of passengers the limousine is designed to carry). On the other hand, LCT will never apply to:

- Trucks and vans designed to carry a load of more than 2 tonnes
- Vehicles (such as buses) designed to carry 9 or more passengers
- Motorbikes or similar vehicles
- Race/rally cars that are not road vehicles and cannot be registered for use on public roads anywhere in the world
- Cars that are (or intend to be) registered as emergency vehicles e.g. ambulance, police car, firefighting car, search and rescue car.

THE THRESHOLD

Having qualified as a car, LCT applies only to cars whose LCT Value is above the LCT threshold. The LCT threshold is $64,132 (2016/2017), or $75,526 for fuel-efficient cars (cars with a combined-cycle fuel consumption of 7L/100km or less as calculated according to the vehicle standards in force under Section 7 of the Motor Vehicle Standards Act 1989). These limits are indexed annually in line with the Consumer Price Index (CPI), and are announced via an ATO Tax Determination.

To be abundantly clear, the LCT threshold is separate to the Car Limit for depreciation purposes (which is set at $57,581 for 2016/2017). The car limit is significantly lower, and is for a different purpose – namely, it caps the GST and depreciation claims on a motor vehicle…it has nothing to do with LCT. Confusing these two very separate rates/thresholds is a common error made by Accountants, Bookkeepers and taxpayers alike.

SUPPLIED CARS

Where a car is supplied in the normal way e.g. sale (as opposed to an import) the LCT Value of the car includes GST, Customs Duty, standard and statutory warranties, dealer delivery charges, fleet rebates and other incentive payments from 3rd parties, and accessories, modifications and treatments to the car from the supplier or an associate before or at the time of delivery (e.g. tinted windows, paint protection, mag wheels etc., but not including those made for the purpose of a person with a disability). On the other hand, the following are excluded and do not form part of the LCT Value – CTP Insurance, service plans, extended warranties, finance costs, Luxury car tax, and any other Australian tax, fee or charge (including Stamp duty and registration) other than GST and Customs duty.

If a car is supplied under a lease or hire arrangement, the LCT Value is the GST-inclusive market value excluding any other Australian tax, fee or charge, and excluding the price of any modifications for the disabled.

The LCT Value of a car acquired under a hire purchase arrangement does not include the price for the supply of credit under the arrangement.

IMPORTED CARS

On the other hand, where a car is imported into Australia, the LCT Value is the sum of Customs duty, GST, cost of international transport of the car to the place of consignment in Australia plus insurance, and Customs value of the car, and any parts, accessories and attachments included in the importation.

CALCULATION

If you are selling the car (e.g. a dealer) and LCT applies, working out the amount to be charged is a four-step process:

1. Calculate the amount by which the LCT Value of the car exceeds the relevant LCT threshold
2. Exclude GST by multiplying the result at Step 1 by 10/11
3. Apply the LCT rate (33%) to the Step 2 amount
4. Add the LCT payable (Step 3 amount) to the GST-inclusive price of the car. This result is the LCT-inclusive price of the car.

EXAMPLE

Eric's Engines in August 2016 sells a car (not qualifying as fuel-efficient) with an LCT Value of $85,000 including GST (or $77,273 GST-exclusive). To determine the LCT Value, use the above steps:

STEP 1 = $20,868
($85,000 - $64,132, being the LCT threshold in the year the sale was made)

STEP 2 = $18,971
($20,868 x 10/11)

STEP 3 = $6,260
($18,971 x 33% LCT rate, giving us the amount of LCT payable)

STEP 4 = $91,260
($85,000 + $6,260 LCT, giving us the GST and LCT-inclusive price of the car that Eric's will charge the purchaser.

When LCT is payable on a car, the price quoted by a dealership for that car will already include the LCT. While dealerships need to calculate the amount of LCT payable on a car to determine the vehicle's sale price (using the above formula), buyers more commonly want to calculate the amount of LCT already included in the price paid (or quoted) for a car – not that they are entitled to claim this amount back or any GST on this amount (see later).

This calculation for buyers is a two-step process:

1. Strip out the GST and LCT components of the "all-up" price above the LCT threshold (but not the Stamp Duty, Registration etc.). This is 43% (10% GST + 33% LCT) of the amount above the LCT threshold
2. Multiply the Step 1 result by the LCT rate, giving you the LCT payable.

EXAMPLE

Assume the same facts as the earlier Example, with $91 260 as the "all-up" price including GST and LCT but excluding Stamp Duty, Registration etc. To determine the LCT imposed, we use the above two steps:

Step 1 = $18,970
($91,260 - $64,132) x 100/143

Step 2 = $6,260
($ 18,970 x 33%)

The LCT value of the car is therefore $ 85,000 ($91,260 - $6,260)

The GST payable is therefore $ 7,727 (1/11th of $ 85,000)

Therefore, working back from the all-up price of $91,260, we have determined that it included $7,727 GST, and $ 6,260 LCT.

On the other hand, if you are seeking to calculate the LCT payable on an imported car, the formula is the same for a luxury car, with the only difference being that the LCT Value is calculated differently (see earlier).

ACCOUNTING - SUPPLIER

LCT is added to the net amount of GST payable for the relevant tax period, with the same GST attribution and payment rules applying.

As per GST rules, where LCT is payable on a lease or hire transaction, the LCT is attributable to the first tax period to which the supply of the car is attributable.

On your Activity Statement, the total of all LCT amounts for the period ($6,260 in Eric's case, plus any other LCT for the period) must be reported at **1E**.

CREDITS

Although as stated LCT is added to the net amount of GST payable for the relevant tax period, with the same attribution and payment rules applying, you can not claim a GST or LCT credit for any LCT paid when you purchase a luxury car, regardless of how much you use the car in carrying on your business. In this sense, LCT that you are charged is different from GST that you are charged (and can claim back if you are GST registered). LCT is an "out-of-pocket" expense irrespective of your GST registration status.

Furthermore, because the LCT threshold is higher than the Car Limit, any time LCT is payable, the GST and depreciation claims on that vehicle will be capped at the Car Limit of $57,581 (2016/2017). See our article in the previous edition of this publication for the effect of the Car Limit.

10 TIPS FOR SAVING MONEY ON A NEW CAR PURCHASE

With interest rates at record lows and the $20 000 instant asset write-off still in place, there has rarely been a better time to invest in your business by acquiring plant and equipment including motor vehicles. When it comes to sourcing and arranging business or personal finance for such acquisitions, we have asked long-term and trusted subscriber Maxwell Financial to share some tips with us.

1. EDUCATE YOURSELF

In order to get a good deal, you must first know what a good deal is. This requires doing some research to find out what incentives specific car manufacturers are offering. We recommend searching sites like ***racq.com.au*** or ***redbook.com.au*** as well as the manufacturer website to educate yourself on current car prices, reviews, financing, and more.

2. DECIDE WHICH CAR YOU REALLY WANT

While it's easy to be tempted by a great deal, you should make sure the car is actually the one you really want. You need to be able to see yourself driving it for 3 or more years. This will prevent you from making an impulse buy and a very expensive regret or mistake. Importantly, customers who ask a sales person for "the best price" on 3 different cars are never taken seriously. So when it comes to striking a deal, know EXACTLY what you want before talking price.

3. BUY AT THE RIGHT TIME

Since next year's models typically come out in September, a good time to buy this year's model is generally from August to October, as dealerships are more motivated to move outgoing models off the lot. Sales staff are also usually trying to hit a quota at the end of the month, so this is a good time to buy as well. Of equal significance is your own timing – 'dipping your toe in the water' before you are really ready to commit will only get you so far.

4. REMEMBER RRP IS JUST THAT *"Recommended"*

Smart buyers know that there's no such thing as a "fixed cost." You can not only negotiate the recommended retail price of the car, but also the add-on fees that dealerships want you to think are set in stone.

5. NEGOTIATE THE WHOLE PACKAGE TOGETHER

There's nothing worse than thinking you're getting a good deal at first only to find that you're not getting the trade-in price or incentives that you expected. You should insist the dealership gives you the final cost after all these things are added in before you commit.

6. LEVERAGE SUPPLY & DEMAND

Most Brands have moments of the year where they have too much stock of a particular model. Look out for those periods where a Manufacturer is heavily advertising a particular model – it usually means they have more stock than they would like. Likewise this can apply to individual dealers. You might get a price from Dealer A who only has 1 or 2 of your model available but Dealer B has 10 – usually making them more flexible on the final price.

7. MAKE DEALERS COMPETE FOR YOUR BUSINESS

When you've decided on the car you want, it's a good idea to contact a handful of dealerships and ask each one for their best price. Letting them know you're talking to other dealers will start a bidding war, which will drive the price of the car down. Just remember each car you're looking at has the same features so they are comparable.

8. GET A PREAPPROVED LOAN

It's also a good idea for your financier to arrange finance in advance of your purchase. A preapproval is usually good for 60 days, which should be plenty of time to find the car you want.

PRE-APPROVED ✓

9. GET A FEW OFFERS FOR YOUR TRADE-IN

A dealership may give you a great deal on a new car but low-ball you on the trade-in. So before you buy, go around to various dealerships and find out what they will offer you for a trade-in. The one who offers you the best 'change-over' (the new car price less the trade-in price) is the one to go with.

10. ASK FOR A DEALER SWAP

Do you have a dealer that you trust and have done business with before but they don't have the vehicle you want? Ask if they can do a swap with another dealership. The dealer can likely find a way to make it happen

Maxwell Financial specialises in car finance solutions for small business with our services including:

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SUBDIVISIONS

National Land Title Office data indicates that more property owners than ever are subdividing their property and selling off one of the portions, for example the vacant part of the block that holds your family home. In doing so, there are a range of income tax and CGT issues to consider, as well as strategies that can save you tax.

THE ACT

The act of subdivision does not of itself have any CGT or income tax consequences. This is because, by merely subdividing a property, there has been no change in ownership of any part of the property. Rather the act of subdividing a property creates a new asset(s). Instead, the tax consequences come later – when any portion of the property is sold.

PRE-CGT LAND

CGT assets (including land) that are acquired before 20 September 1985 are exempt from CGT upon sale. Where you subdivide pre-CGT land, and then subsequently sell any portion of that land, it will still be exempt from CGT upon sale even though the subdivision may have occurred and new titles created after 19 September 1985. In all such cases, the land retains its pre-CGT exempt status. However, where the proceeds of sale are assessable on the revenue account (see later for the distinction between capital and revenue) this amount will be assessable even though it relates to pre-CGT land. Therefore, in respect of pre-CGT land, it's generally in your interests for the proceeds from any sale to be assessed on the capital account as this will ensure that those proceeds are exempt from tax.

WARNING - IMPROVEMENTS

Improvements to pre-CGT land will be considered a separate asset from the land where the improvement's cost base at the time of sale is **(a)** more than the CGT improvement threshold for the income year in which the sale took place and **(b)** more than 5% of the capital proceeds from the overall sale. The CGT improvement threshold for 2016/2017 is **$145,401.**

'Improvements' include most development costs including the removal of items from the land as well as council fees for re-zoning.

Therefore, if as a land owner your development/improvements exceed $145,401 and the 5% requirement is met, the works will be considered a separate asset (even where they are undertaken on pre-CGT land) and that portion of the sale will be subject to CGT. Note that buildings are always considered to be separate assets from the land. Erecting buildings on the land also indicates that the profit is to be assessed on the revenue account rather than the capital account (see later).

The improvement threshold is applied to each subdivided block separately.

POST-CGT LAND

On the other hand, where post-CGT land is subdivided and sold off there will generally always be tax consequences. In terms of the sale proceeds, they will either be assessed on the capital or revenue account. This distinction matters because of the vastly different tax treatment:

- ***Revenue Account*** – the sale proceeds will be assessed as ordinary income. If you own the land personally, the sale proceeds will be added to the rest of your income and taxed at marginal rates. As detailed earlier, sales on the revenue account are assessable even though the land may have been pre-CGT.
- ***Capital Account*** – the sale proceeds (less the cost base of the property) are assessed to you as a capital gain. This can then be reduced by any prior year or current year capital losses, and can also be reduced by 50% if you held the property for 12 months or more. For subdivided land, the 12 months is measured from when you acquired the original lot, not when subdivision occurred.

If the subdivision and sale is simply the 'mere realisation of the land', then it will be dealt with on the capital account. On the other hand, if the subdivision and sale is a profit-making venture, the sale proceeds will be assessable as ordinary income. Which category applies is a question of fact determined on a case-by-case basis by weighing the following factors:

MOTIVE

What was the vendor's motive in subdividing the land – was it to re-develop and maximise profit? Or just to realise a profit by selling it as is? If the latter, this indicates capital account.

NATURE OF ACTIVITIES

Is the nature of the activities business-like? Do you use an office/ employees/letterhead etc.? Is borrowed money used to finance the development? If so, this indicates revenue account.

COSTS OF DEVELOPMENT

The significance of the development costs compared with the value of the undeveloped land. If significant, then this indicates revenue account.

SIGNIFICANCE OF WORKS

Have any redevelopment works being carried out (e.g. road works, levelling the land, electricity and sewerage connections). If so, do they go beyond the minimum required by Council? If so, this may indicate revenue account. Note that erecting buildings on the land would almost always result in the sale being dealt with on the revenue account.

ENGAGING PROFESSIONALS

Engaging outside parties to perform specialist work on the property (in addition to that required by Council) would generally indicate revenue account.

EXAMPLE - IMPROVEMENTS

Bill purchased a 3 hectare property in 1984. It was left vacant until January 2016 when he subdivided it into two equal blocks, and erected a four-bedroom house on the front block. The construction cost of the house (cost base) when the property was sold was $200,000. That particular block sold for $800,000. A valuation determined that $550,000 was attributable to the land, and $250,000 to the house. Assuming that the sale of the land is on the capital account (see later), the tax treatment is as follows:

CGT?

The land will not be subject to CGT as it was purchased before 20 September 1985. However, as the cost base of the house exceeds the CGT improvement threshold of $145,401 and its sale price represents more than 5% of the $800,000 overall proceeds, CGT will be payable on the house. In simple terms this will calculated by subtracting $200,000 (plus a portion of the associated sales costs such as agent's commission etc.) from $250,000. No 50% CGT discount will be available as the house was not owned for more than 12 months. The 12 months is measured from when the construction commenced. Consequently, from a tax planning standpoint, Bill may wish to delay the sale until this 12 month requirement is met and cut his CGT liability in half.

EXAMPLE - REVENUE ACCOUNT

Jefferson buys a 2 hectare property in his own name, thinking it may be perfect land upon which to build his dream beach house. 18 months later he receives advice that a subdivision into two blocks and then a sale will be extremely profitable in the current market. However in order to sell, the blocks must meet Council regulations which require the provision of water to each separate block.

Jefferson appoints a sales and marketing manager to carry out this exercise and provides for access to water for the new blocks as well as storm water drainage and telephone services. Now looking to sell the blocks, Jefferson wonders whether the profit will be assessed on the revenue or capital account.

Any profit will be assessed as ordinary income because:

- **Motive -** There is a change in purpose for which the land is held. Originally motivated by building a beach house for personal use, Jefferson decided to change direction and subdivide and sell after hearing that this would be extremely profitable. The appointment of a sales and marketing manager also suggests that Jefferson's motive in subdividing is profit-based.
- **Business-like organisation -** Rather than perform the work personally, Jefferson has engaged a sales and marketing manager.
- **Works -** By providing storm water drainage and telephone services, Jefferson does more than merely meet minimum Council requirements for the new blocks.

As the land is held in a personal capacity, and assessed on the revenue account, the profit will be added to Jefferson's other assessable income (in the year the contract is signed) and assessed at his marginal tax rate. Being on the revenue account, the 50% general CGT discount will not be available, even though the land is held in a personal capacity for longer than 12 months.

EXAMPLE - CAPITAL ACCOUNT

Stella and Gustavo divorced in 2016. They privately agreed as part of their separation that the vacant block (owned by Gustavo's company for two years) be subdivided, sold off and the proceeds split between the couple. The block was sold immediately in its present state. The couple arranged the sale themselves.

Any profit will be assessed on the capital account for the following reasons:

- **Motive -** there was no profit motive in selling the land. Rather it was sold out of necessity (as part of their private divorce agreement);
- **Works -** The property was not improved for sale – it was sold as it was (just as a vacant block); and
- **There is no business organisation -** the sale was undertaken by the couple themselves.

As the gain is made by the company, the 50% CGT discount will not be available even though the land was held for more than 12 months. Any net capital gain will be assessable in the year in which the sale contract is entered into.

TAX TIP

As you have seen specific actions and motives can play an important part in deciding whether a gain is taken on a capital account or income account. It is important you fully consider this and your own circumstances before undertaking action as there can be vastly different tax outcomes of both treatments depending on the circumstances involved.

COST BASE

If the sale is dealt with on the capital account, sellers will be required to calculate the cost base of the land. Where two or more blocks are involved, in ascribing a value to each block, the ATO accepts any approach that is appropriate to the circumstances, for example on an area or relative market value basis. The following two examples are extracted from **ATO Tax Determination 97/3:**

EXAMPLE

Albert subdivided land, which he purchased in 1986 for $150,000, into 5 blocks of equal size and value. On the registration of new titles, the original asset (the land) is 'split' into 5 separate assets for CGT purposes (i.e., the subdivided blocks). In this case it would be reasonable to attribute $30,000 of the original cost to each block. Albert then sells one block for $200,000. Ignoring incidental costs, a capital gain of $170 000 (i.e. $200,000 less $30,000) would accrue to Albert on disposal.

EXAMPLE

Jane purchases one hectare of land in 1992. Part of the land is good quality building block (one-quarter of a hectare) worth 75% of the total market value of the property. The balance of the land is low-lying flood-plain. In 1995, Jane subdivides off the flood-plain. It would be reasonable in the circumstances to apportion 75% of the original acquisition cost of the property to the 'building block' and 25% to the 'flood plain'.

In simple terms, a capital gain is calculated by subtracting the land's cost base from the sale proceeds. While the main element of the cost base is the purchase price of the land (apportioned appropriately, as per above examples), the cost base will also include the cost of acquiring, holding and disposing of the property such as legal fees on sale, stamp duty, real estate fees etc. These costs will generally be apportioned on the same percentage basis as above. It's important to retain records of these expenses (invoices, receipts etc.) in order for you or your Accountant to include these costs as part of your cost base and ultimately reduce your overall capital gain on sale.

MAIN RESIDENCE EXEMPTION LOST

The main residence exemption allows a total exemption from CGT when you sell your home and the land on it and it has not been used to produce income (the exception being the "Six Year Rule" which allows you to rent out your main residence for a maximum period of six years, and not pay any CGT on sale provided that during the rental period you have not treated any other dwelling as your main residence for CGT purposes). The main exemption is limited to 2 hectares.

It is quite common in cases of subdivision, to subdivide the property on which your main residence is located, and sell the vacant subdivided part or build on that vacant part. In this case it is important to note that as the vacant (or newly built-on) block is sold separately, the main residence exemption does not apply for any of the period of ownership even where the total area of the two or more parcels of land is less than 2 hectares.

What the Taxman is Thinking

In this edition, we provide you with an update of the Government's legislative agenda (which Small Business and Superannuation Bills have been passed and which are still held up in Parliament?), look at the relief the ATO is offering Small Business owners affected by mental health issues, and much more!

LEGISLATION UPDATE

With Parliament rising on 1 December 2016, and not sitting again until February, following is an update on the passage of some important tax legislation that was before the Parliament in its final sitting last year:

FAIR AND SUSTAINABLE SUPERANNUATION BILL

This Bill has now passed the Parliament and is law. See page 10 for the sweeping changes contained in this legislation, as well as the issues/strategies to consider as we move towards their introduction on 1 July 2017.

WORKING HOLIDAY MAKER REFORM BILL (AKA BACKPACKER TAX)

This Bill has now passed the Parliament and is now law from 1 January 2017. The Bill provides for an income tax rate of 15% for taxable income of up to $37 000 of working holiday makers in a year of income. Income above this amount in a year of income is subject to ordinary marginal income tax rates. Previously, before this change, working holidays makers could self-assess their residency status for tax purposes and therefore if they assessed themselves as an Australian resident (for example, they may have stayed in Australia 183 days or more) could access the tax-free threshold.

Under the new law, working holiday makers are defined as any individual holding one of the following temporary Visas:

- Subclass 462 (Work and Holiday) visa, or
- Subclass 417 (Work and Holiday) visa.

A working holiday maker may also be an individual who holds a bridging visa permitting the individual to work in Australia if:

- The bridging visa was granted under the Migration Act in relation to an application for one of the visas referred to above
- The Immigration Minister's decision on that application is yet to be made, and
- The most recent visa, other than a bridging visa, held by the individual was a Subclass 417 (Working Holiday) visa or Subclass 462 (Working Holiday) visa.

The new tax requires employers of working holiday makers to make a once-off registration with the ATO in order to withhold at the 15% rate.

Employers of working holiday makers who register with the ATO will be required to withhold tax at the new 15% rate.

Employers of working holiday makers who do not register with the ATO will be required to withhold at the 32.5% rate and may be subject to ATO penalties.

If an employer withholds at the 32.5% rate, working holiday makers will have access to the 15% rate on lodgement of their tax return.

ENTERPRISE TAX PLAN BILL

This Bill seeks to reduce the company tax rate for Small Business Entities (SBEs) to 27.5% from 2016/2017, and progressively extend that lower rat to all corporate tax entities by 2023/2024; and and further reduce the corporate tax rate in stages so that by 2026/2027, the corporate tax rate for all entities will be 25%.

The Bill also seeks to increase the Small Business Income Tax Offset (SBITO) progressively to 16% of an eligible individual's basic income tax liability that relates to their total net small business income from 2026/2027; and enable small businesses with an aggregated turnover of less than $10 million to access most small business tax concessions, and small businesses with an aggregated turnover of less than $5 million to access the SBITO.

This Bill is still before the Parliament and has not yet been passed into law. There are significant doubts about the company tax cut being extended to all companies. Those with a turnover of less than $10 million however, may gain access. Likewise the increase in the turnover threshold for SBEs from under $2 million to under $10 million also seems a distinct possibility of passing Parliament. Treasury estimates that this change would open the way for an additional 90 000 to 100 000 businesses (i.e. those with a turnover of between $2 million and $10 million) to access the following SBE concessions:

- The 27.5% company tax rate as at 1 July 2016
- The simplified depreciation rules, including immediate tax deductibility for asset purchases costing less than $20,000 until 30 June 2017 (see page 11)
- The simplified trading stock rules, which give businesses the option to avoid a financial year-end stocktake if the value of their stock has changed by less than $5,000 during the year
- A simplified method of paying PAYG instalments which will be calculated for SBE's by the ATO
- The option to account for GST on a cash basis and pay GST instalments as calculated by the ATO
- Immediate deductibility for various start-up costs (e.g. professional fees and government charges)
- A 12-month prepayment rule, and
- The more generous FBT exemption for work-related portable electronic devices (e.g. mobile phones, laptops and tablets).

The increased turnover threshold will not however apply for the purposes of accessing the CGT Small Business Concessions. To access these CGT concessions, a business's aggregated turnover must be $2 million or less or, alternatively, the entity and related entities must have net assets to the value of less than $6 million just before the relevant CGT event (e.g. sale).

SMALL BUSINESS MENTAL HEALTH INITIATIVE

With an estimated one in four Australians suffering a mental health problem at some point in their lives, the ATO is reaching out to affected small business owners. If you own a small business and are experiencing mental health issues the ATO is now offering a range of relief measures including:

- Having your return or Activity Statement processed quickly where you are due to receive a refund
- Setting up a payment plan if you have a tax debt
- Applying for a lodgement and payment deferral.

Your Tax Agent can apply for relief on your behalf via the Tax Agent Portal. Alternatively, you can contact the ATO by phoning the Small Business Infoline on **132 866**. Warning signs that you may need to reach out for professional health support include finding it difficult to concentrate, avoiding necessary day-to-day tasks and obligations, feeling irritable/stressed or teary, constantly thinking of work - even during personal time, being unable to sleep, disconnecting from friends and family, changing eating and/or drinking habits.

CLAIMING THE SMALL BUSINESS INCOME TAX OFFSET

For those of you who are yet to lodge your 2015/2016 tax return, or Tax Agents who are yet to lodge client returns, the ATO has identified the claiming of the Small Business Tax Income Tax Offset (SBITO) as an area of confusion. By way of background, from 2015/2016 taxpayers with business income from an unincorporated business (i.e. a business operated through a sole trader, partnership or trust structure) which is a Small Business Entity (SBE) are eligible for a tax discount of 5% of the income tax payable on the business income received from an unincorporated SBE. The discount is capped at $1,000 per individual for each income year, and delivered as a tax offset.

In claiming this offset the ATO is noticing that some taxpayers and their Tax Agents are confused around the issue of double-counting small business income when it is included in the individual return at the relevant labels. In a new Fact Sheet that the ATO has developed, they confirm that 'net small business income' amounts included at labels **15A, 13D** and/or **13E** of the individual tax return do not count towards the calculation of a taxpayer's taxable income. Rather by completing these labels you allow the ATO to correctly work out the amount of SBITO that a taxpayer is entitled to. You can access the full fact sheet on the ATO's website www.ato.gov.au by typing 'claiming the small business income tax offset' into the search box at the top of the page.

CHANGES TO GST RULES FOR OVERSEAS BUSINESS TRANSACTIONS

The ATO is reminding Australian businesses that the following supplies are from 1 October 2016 no longer subject to GST – they are now GST-free:

- When an Australian business makes a supply of training services to an overseas company, but provides those services to one of the company's employees in Australia
- When an Australian business supplies repair services to an overseas company, but the supply is provided to an entity in Australia in order to fulfill the overseas company's obligations under a warranty.

Furthermore, from the same date GST-registered importers are no longer required to identify the exact amount paid for international transport, insurance and other ancillary costs (such as loading or handling, or service costs for the transport). This applies when calculating the value of taxable importations for GST purposes. You can now instead elect to use an uplift factor of 10% of Customs value as a substitute for these costs.

NSW FLOOD RELIEF

The ATO has advised that it has put in place the following automatic lodgement and payment deferrals for taxpayers affected by the recent floods in New South Wales in the Spring of 2016:

- For monthly and quarterly Activity Statements due in October 2016, the new lodgement date is 28 January 2017 (excluding large PAYG withholders)
- Taxpayers with income tax returns due in October 2016, now have until 31 January 2017 to lodge.

These automatic deferrals are for lodgement and payment dates for taxpayers within New South Wales central west postcodes of 2671, 2804, 2805, 2806, 2870, 2871, 2875, 2876 and 2877.

CHANGES TO THE TREATMENT OF REPORTABLE FRINGE BENEFITS

Changes have been made to how reportable fringe benefits amounts (RFBA) are treated for family assistance and youth income support payments. Under this change, the Department of Human Services will use 100% of the RFBA reported by a person on their income tax return, instead of adjusting the amount to 51%. However, the Department will continue to adjust the RFBA to 51% if it is provided by certain non-profit organisations.

Affected employees need to update their income details with the Department through ***www.my.gov.au*** before 1 January 2017. Doing so will ensure these individuals get their correct entitlement to any Australian Government payments they receive.