MTS

MY TAX SAVERS

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MAR/APR 2018

2018'S HOT ISSUES

MONEY SAVERS

SUPERANNUATION OPPORTUNITY

Index

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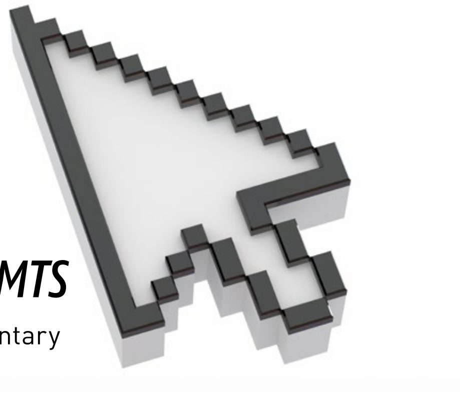
Your Questions to MTS



Take advantage of our complimentary Tax Helpline Service. Here's a selection of the questions we answer every day. There's something in this article for everyone.

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Making the Sacrifice

Whether you're an employer or an employee, what are the benefits and drawbacks of salary sacrifice?

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What are the upcoming, important tax issues for business as we head into 2018? This article is a must-read for all business owners.

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Super Downsizer Scheme!

A fantastic new superannuation opportunity is now offer for individuals who are retired or nearing retirement and are selling the family home.

KEY DATES

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

MARCH 2018

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

APRIL 2018

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

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

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

28 APRIL
Quarter 3 (January–March) PAYG instalment notices (forms R and T) – final date for payment and, if varying the instalment amount, lodgement

28 APRIL
Quarter 3 (January–March) GST instalment notices (forms S and T) – final date for payment and, if varying the instalment amount, lodgement

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

30 APRIL
Quarter 3 (January–March) TFN Report for closely held trusts for TFNs quoted to a trustee by beneficiaries – final date for lodgment

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

IT'S FBT TIME

31 March marks the end of the Fringe Benefits Tax year. This article aims to assist employers to comply with ATO requirements, and to minimize their 2017/2018 FBT liability.

CHANGING RATES

For 2017/2018, the FBT rate decreased from 49% to 47% as a consequence of the repeal of the Temporary Budget Repair Levy. Consequently, the Gross-Up Rates have also changed. By way of background, when working out your FBT liability you must gross-up the taxable value of benefits you provide to your employees to reflect the gross salary employees would have to earn at the highest marginal tax rate (including Medicare levy) to buy the benefits after paying tax. There are two separate Gross-Up Rates:

- ***Higher Gross-Up Rate (type 1)*** is used where you as the employer are entitled to a GST credit for GST paid on benefits provided to the employee. This rate has decreased to 2.0802 for 2017/2018, and
- ***Lower Gross-Up Rate (type 2)*** is used where there is no entitlement to a GST credit. This rate has decreased to 1.8868.

EXAMPLE

Bart is employed by a company, and is provided with the following fringe benefits during the 2017/2018 FBT year:

- Payment of his health insurance $1 500
- Bicycle $700.

The $1 500 health insurance is a Type 2 benefit as no GST credits can be claimed. The Type 2 fringe benefits amount is therefore $2 830 ($1 500 x 1.8868). This along with any other Type 2 fringe benefit provided to an employee within the company is shown at item **14B** of the employer's FBT tax return.

The $700 bicycle is a Type 1 benefit as a GST can be claimed. The Type 1 fringe benefits amount is therefore $1 456 ($700 x 2.0802). This along with any other Type 1 fringe benefit is shown at **14A** of the employer's FBT return.

These amounts are then added together ($4 286) and shown at Item 15 of the FBT return.

The employer's FBT liability for the year of $2 014 ($4 286 x 47% FBT rate) is then recorded at **Item 16** of the FBT return.

The 2018 FBT lodgement date is 21 May 2018. However, employers on a Tax Agent list by 21 May will be eligible for a lodgement extension to 25 June 2018. Any FBT liability is payable on 28 May 2018, irrespective of whether an employer is on a Tax Agent list.

REPORTABLE FRINGE BENEFITS AND PAYMENT SUMMARIES

While many employers will leave the ascertainment of any FBT liability as well as the completion of their FBT tax return to their Accountant, it is quite common for the employer to complete the year-end ***Payment Summary*** for each employee. All employers, other than exempt employers such as public hospitals, are required to report certain fringe benefits on an employee's ***Payment Summary*** if the total taxable value of those fringe benefits to an employee exceeds $2 000. Employees must then include the reportable fringe benefits amounts shown on their Payment Summaries in their personal income tax return. Although the reportable amount will not be taxable to the employee, it is taken into account for the purposes of determining their eligibility and liability for various Government entitlements and liabilities such as the Medicare levy surcharge, Family Tax Benefit, Child Care Benefit, Child support, HELP repayments etc.

The reportable fringe benefits provided for this FBT year from 1 April 2017 to 31 March 2018 must be reported on the 2017/2018 ***Payment Summary*** which must be issued to employees between 1 July 2018 and 14 July 2018. The following benefits are specifically excluded from being reportable fringe benefits and therefore do not count towards the $2 000 calculation:

- Meal entertainment (e.g. Christmas Party, Melbourne Cup etc.) not provided under a salary packaging arrangement
- Car parking
- Pooled or shared cars
- Entertainment facility leasing expenses (expenses incurred in hiring or leasing corporate boxes, boats, planes and other facilities or premises for the purpose of providing entertainment)
- Remote area concessions including remote area residential fuel, remote area housing etc.
- Security risks (certain benefits provided to address the personal safety of an employee arising from their employment)
- Overseas health care costs incurred by Australian resident employers
- Commonwealth overseas living allowance to an employee serving at an overseas post
- Defence force personnel (only certain benefits are exempt)
- Car fringe benefits in respect of externally marked emergency vehicles
- Certain police force concessions
- Living Away From Home benefits provided to Commonwealth employees.

Where you have provided reportable fringe benefits with a total taxable value of more than $2 000 to an employee, you must record the grossed-up taxable value on an employee's ***Payment Summary*** for the corresponding income year. The Reportable Fringe Benefits label is at ***"Section B: Payment Details"*** on the ***Payment Summary***:

When grossing-up, you must use the lower gross-up rate which is currently 1.8868 irrespective of the gross-up rate used in calculating the FBT payable on the benefit.

Note that in determining the taxable value of a benefit, you may need to seek advice from your Accountant as different methods may apply when calculating the taxable value of each category of benefit.

EXAMPLE

John is employed by a company, and is provided with the following fringe benefits from 1 April 2017 to 31 March 2018:

- Meal entertainment fringe benefits $800
- Car fringe benefits $1 800
- Expense payment fringe benefits $700.

As the meal entertainment fringe benefit is excluded (see earlier list) John's individual fringe benefits amount is $2 500. Thus, it must reported on his Payment Summary as it exceeds $2 000. The grossed-up amount to be reported is $4,717 ($2 500 x 1.8868).

PREPARATION OF SOFTWARE FILE

While it will generally fall to your Accountant to:

- Determine whether a fringe benefit has been provided by you to an employee or their associate (e.g. spouse)
- Determine whether an FBT exemption applies
- Determine the taxable value of your fringe benefits
- Ascertain your FBT liability
- Complete and lodge your FBT return…

…there is something you can do to assist with this process. You may wish to collate/detail all the instances where a private expense of an employee has been paid for by the business. If you or one of your employees is responsible for maintaining the accounting software file (entering in and coding each transaction undertaken by your business) ensure the file is in good order. From an FBT perspective, this involves coding personal expenses paid by the employer to an "employee benefits (FBT)" account in the management accounts. This will alert your Accountant to the existence of a potential fringe benefit.

CURRENT ATO FOCUS AREAS

NON-LODGEMENT

The ATO has a strong focus on the non-lodgement of FBT returns. Employers who provide fringe benefits must lodge an FBT return unless the taxable value of those benefits has been reduced to nil. Use our FBT checklist contained in the March/April 2016 edition of our bimonthly magazine (available on our website **www.mytaxsavers.com.au**) to determine if you have provided fringe benefits to your employees. If you are still uncertain as to whether you have provided a fringe benefit, consult your Accountant.

LIVING AWAY FROM HOME ALLOWANCE FRINGE BENEFITS

The ATO is concerned that employers are incorrectly providing Living Away From Home Allowances (LAFHAs) to employees who are not 'living away from home' but are instead travelling for work or have permanently relocated. Indicators that an employee is living away from home for work purposes (rather than travelling overnight or having permanently relocated) include:

- The employee has established a second or alternative work location and living base
- The employee maintains an interest (whether by lease or ownership) in a home that they have temporarily moved away from
- The employee is absent for a finite, limited period of time – but typically more than 2 to 3 months
- The employee takes personal items with them (not just travel items) and often their family and pets move with them.

To recap, LAFHAs (which also include reimbursed accommodation expenses) are taxed under the FBT regime (not to the employee) and often at concessional rates as a result of the various reductions available. By contrast, allowances paid to employees who are travelling for work purposes or who have permanently relocated are taxed to the employee at their marginal tax rate. For this reason, LAFHAs have historically been used by employers as a remuneration incentive to attract and retain key staff. However, unless the employee is actually living away from home for work purposes (see above indicators) then the full amount of the allowance is generally assessable to them as income.

MOTOR VEHICLE FRINGE BENEFITS MOTOR VEHICLES

The ATO focuses on situations where an employer-provided motor vehicle is used or made available for use by employees. This may constitute a fringe benefit and require an FBT return to be lodged. Note that an employer-provided vehicle will be deemed to be available for private use – and therefore a fringe benefit may arise – where an employee keeps it at their residence overnight (even if it not used).

The ATO is continuing to undertake data matching with State Revenue/Stamp Duty Offices to identify employers who have purchased cars, but have not disclosed car fringe benefits in their FBT return, or appropriate employee contributions in their income tax return.

LEGISLATION UPDATE

With all the legislative change and announcements of late, the following table updates you as to the legislative progress of important tax measures, as well as the commencement dates. This is current at the time of writing (February, 2018).

DETAILS OF NEW LAW/ANNOUNCEMENT	NAME OF BILL OR ACT	STATUS AS AT 9 FEBRUARY	COMMENCEMENT DATE	FURTHER INFORMATION
REMOVAL OF TRAVEL DEDUCTIONS TO RESIDENTIAL INVESTMENT PROPERTIES	Housing Tax Integrity Act (2017)	Passed into law on 30 November 2017	1 July 2017	See our Nov/Dec 2017 magazine available at mytaxsavers.com.au
LIMIT PLANT AND EQUIPMENT DEPRECIATION DEDUCTIONS TO OUTLAYS ACTUALLY INCURRED BY INVESTORS	Housing Tax Integrity Act (2017)	Passed into law on 30 November 2017	1 July 2017	See our Nov/Dec 2017 magazine available at mytaxsavers.com.au
SINGLE TOUCH PAYROLL	Budget Savings Omnibus Act (2016)	Passed into law on 16 September 2016	1 July 2018 for employers with 20 or more employees	See page 19
ATO TO REPORT CERTAIN BUSINESS DEBTS OWED TO THE ATO TO CREDIT REPORTING BUREAUS	Transparency of Taxation Debts Bill (2018)	Draft legislation released on 11 January 2018	Whichever of the following dates occurs first after the Bill is passed...1 April, 1 July, or 1 October 2018	See page 18
ANNUAL VACANCY CHARGE ON FOREIGN OWNERS OF RESIDENTIAL PROPERTIES WHERE THE PROPERTY IS UNOCCUPIED OR NOT AVAILABLE FOR RENT FOR AT LEAST 6 OF THE PREVIOUS 12 MONTHS	Housing Tax Integrity Act (2017): CGT Changes for Foreign Residents	Passed into law on 30 November 2017	9 May 2017	See our July/Aug 2017 magazine available at mytaxsavers.com.au
MEDICARE LEVY INCREASE FROM 2% TO 2.5%	National Disability Insurance Scheme Funding Bill (2017)	Passed by the House of Representatives, now before the Senate	1 July 2019	Current exemptions from the Surcharge will continue to apply
EXCLUDING PASSIVE INVESTMENT COMPANIES FROM THE LOWER CORPORATE TAX RATE	Enterprise Tax Plan Base Rate Entities Bill (2017)	Before the House of Representatives	1 July 2016	See our Jan/Feb 2018 magazine available at mytaxsavers.com.au
DENY FOREIGN AND TEMPORARY TAX RESIDENTS ACCESS TO THE MAIN RESIDENCE EXEMPTION	Housing Tax Integrity Act (2017) CGT Changes for Foreign Residents	Passed into law on 30 November 2017	9 May 2017	Main residences held prior to 9 May 2017 will be grandfathered until 30 June 2019

DETAILS OF NEW LAW/ANNOUNCEMENT	NAME OF BILL OR ACT	STATUS AS AT 9 FEBRUARY	COMMENCE-MENT DATE	FURTHER INFORMATION
INCREASE CGT DISCOUNT FROM 50% TO 60% FOR RESIDENTS WHO INVEST IN AFFORDABLE HOUSING AND THEN PROVIDE IT TO LOW TO MIDDLE INCOME TENANTS AT A REDUCED RENT	Reducing Pressure on Housing Affordability Bill 2017:additional CGT Discount and Providing Affordable Housing Through MITs	Exposure Draft legislation released for public consultation on 14 September 2017. Consultation period has now closed	Whichever of the following dates occurs first after the Bill is passed...1 April, 1 July, or 1 October 2018	See our July/Aug 2017 magazine available at mytaxsavers.com.au
IMPROVING ACCESS TO PRIOR YEAR COMPANY LOSSES BY REPLACING THE 'SAME BUSINESS TEST' WITH A MORE FLEXIBLE 'SIMILAR BUSINESS TEST'	Enterprise Incentives Bill (2017)	Passed by the House of Representatives, now before the Senate	1 July 2015	See our July/Aug 2017 magazine available at mytaxsavers.com.au
FIRST HOME SUPER SAVER SCHEME ALLOWS YOU MAKE ADDITIONAL SUPER CONTRIBUTIONS FOR A FIRST HOME INSIDE YOUR SUPERANNUATION FUND. THIS HELPS FIRST HOME BUYERS SAVE FASTER WITH THE CONCESSIONAL TAX TREATMENT WITHIN SUPER	First Home Super Saver Act (2017)	Passed into law on 5 December 2017	1 July 2017	See our Jan/Feb 2018 magazine available at mytaxsavers.com.au
SUPER HOUSE DOWNSIZING SCHEME ALLOWS INDIVIDUALS AGED 65 OR OVER TO MAKE A CONTRIBUTION TO SUPER OF UP TO $300,000 FROM THE PROCEEDS OF SELLING THEIR HOME	Reducing Pressure on Housing Affordability Act (2017)	Passed into law on 5 December 2017	1 July 2018	See page 21
SALARY SACRIFICE CONTRIBUTIONS TO NO LONGER COUNT TOWARDS THE 9.5% SUPERANNUATION GUARANTEE OBLIGATIONS OF AN EMPLOYER	Improving Accountability and Member Outcomes in Superannuation Bill (2017)	Currently before the Senate	1 July 2018	
GST APPLIES TO LOW VALUE GOODS IMPORTED BY AUSTRALIAN CONSUMERS INTO AUSTRALIA ($1 000 THRESHOLD ABOLISHED)	GST Low Value Goods Act (2017)	Passed into law on 26 June 2017	1 July 2018	
GST WILL APPLY WHERE FOREIGN BUSINESSES SUPPLY DIGITAL PRODUCTS OR IMPORTED SERVICES TO AUSTRALIAN CONSUMERS	Tax and Superannuation Laws Amendment Act (2016)	Passed into law on 4 May 2016	1 July 2017	See our July/Aug 2017 magazine available at mytaxsavers.com.au
SALES AND PURCHASES OF DIGITAL CURRENCY SUCH AS BITCOIN WILL NO LONGER BE SUBJECT TO GST. BITCOIN THEREFORE WILL BE TREATED THE SAME AS MONEY	Treasury Laws Amendment (2017 Measures No.6) Bill 2017	Passed into law on 30 October 2017	1 July 2017	
MAKING SINGLE TOUCH PAYROLL COMPULSORY FOR ALL EMPLOYERS BY 1 JULY 2019	Superannuation Guarantee Integrity Measures Bill (2018)	Draft Bill released on 24 January 2018	1 July 2019	See page 19

CAPITAL EXPENDITURE
A CLOSER LOOK

The start of the year is traditionally a time where business owners re-assess their capital expenditure requirements. This article examines a number of issues in this area.

LEASED PROPERTY

Many businesses operate out of leased premises. The good news is that capital expenditure you incur on improvements, fit-outs, construction of buildings etc. is able to be claimed (as depreciation or capital works deductions) while you are operating from the premises even though you are a tenant. This might include, for example installing a kitchen, building shelving, laying new carpet, constructing extra offices, hanging new blinds etc. Therefore, if your landlord is not willing to make these improvements, you can do so in the knowledge that you will be able to in part offset the expenditure through the tax system.

Before you make the improvements/ installations however be mindful of the following:

- Obtain permission from the landlord before undertaking any capital works or improvements. While most landlords will be accommodating, some may not.

- It's not unheard of for landlords to then raise the rent – at the next available opportunity e.g. when the lease comes up for renewal – because of the improvements to the building! Ensure that this is considered and perhaps discussed with the landlord prior to undertaking any expenditure.

- As you are making a free upgrade to the landlord's building, approach them to see if you can secure anything in return for the works. This may include a rent-free period, or a reduction in the rent next time the lease comes up for renewal.

- Where you have capital equipment installed into the building, and the purchase is financed (perhaps even with a personal guarantee from the Director) if the equipment comes to form part of the building (a fixture or fitting) the finance company cannot repossess it in the event that you cannot repay the loan. Rather it becomes an asset of the landlord. This may leave you financially exposed in the event that you cannot repay the loan. The take-home message here is that if capital equipment is installed in a building that you do not own, ensure that it can be easily removed and obtain the landlord's written agreement in advance before installing and removing the equipment.

TAX TIP

The key to taking advantage of these tax breaks is having a Tax Depreciation Schedule done for you by a Quantity Surveyor. This will break down the assets in the building – which assets form part of the building and are therefore claimable by the owner of the building or the owner of the improvement to the building…and on the other hand which assets are separate from the building and can be depreciated by the owner of that separate asset?

LEAVING

Once you no longer use the building to produce assessable income, you will no longer be entitled to claim capital works deductions, and you will not be permitted to take any assets which you have installed and which are now deemed to be part of the building (i.e. fixtures and fittings). Therefore, unless you are reasonably certain of your tenure in the building long-term, you may wish to think twice before undertaking capital works or installing equipment that cannot be removed. If you were to undertake capital works, and the landlord did not agree to you renewing your lease, you would not only be improving an asset that is not yours, but you would also miss out on the tax benefits of doing so!

Another issue that may arise when you leave the premises (at the end your lease) is that the landlord may require you to 'make good' the property once you leave. This means returning the property to the condition that it was in when you commenced leasing it. (When commencing a lease, and certainly before you make improvements, it's prudent to check whether the lease agreement contains this 'make good' clause). Where this is the case, all is not lost from a tax perspective! In many cases you will be able to scrap/demolish the works and claim the remaining depreciation as an immediate deduction. For example, you may need to remove some partitioning or remove a kitchen. Any 'effective life' that still resides in these assets will have a value – this can be claimed as an immediate deduction by your business. Again, to reiterate, to maximize your claim it is recommended that you get a Tax Depreciation Schedule prepared for you by a Quantity Surveyor.

INSTANT ASSET WRITE-OFF

For the benefit of those planning their capex for the year ahead, the ATO issued a Media Release on 2nd January 2018 reminding businesses that these are the final remaining months of the $20 000 instant asset write-off.

For Small Business Entities (SBE's with a turnover of less than $10 million including any connected or affiliated entities) the write-off threshold is $20 000. Where an asset costs less than this, a deduction for the full cost of the asset can be claimed in the year in which the asset is purchased and installed ready for use in your business. 2017/2018 is the final year of the $20 000 write-off. From 1 July 2018, the threshold is set to revert to $1 000. To claim the write off in 2017/2018, an SBE must have:

- Acquired the asset in 2016/2017 or 2017/2018, and
- Have it installed and ready for use in your business between 1 July 2017 and 30 June 2018.

The threshold is applied on an asset-by-asset basis. Even where the assets purchased are identical or form part of a set, each is entitled to its own $20 000 threshold. Where a bulk purchase is made, you should ensure that tax invoices separately itemise each asset that is purchased or at least the quantity of assets where they are identical.

Having determined that a business is eligible, the asset itself must be eligible for the write-off. All depreciable assets (including second-hand assets) used in a business are eligible for the $20 000 write-off – including motor vehicles, furniture, computer equipment, machinery etc. The following assets are however specifically excluded from the write-off as they have their own unique depreciation treatment:

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

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

EXAMPLE

Taylor Co. is a furniture manufacturer with a turnover of $8 million in 2017/2018. In April, it purchases a piece of machinery for $20 900 (including GST). The machinery – which has an effective life for depreciation purposes of six years – arrives in Australia and is assembled and installed ready for use on 1 May 2018.

OLD RULES

Under the old law, Taylor Co. would not be an SBE as its turnover exceeds $2 million. It would therefore not be eligible for SBE depreciation and would need to use the depreciation rules for larger businesses known as the Uniform Capital Allowances (UCA) rules. Under those rules the depreciation deduction in 2017/2018 would be approximately:

- **$1 057 under the Diminishing Value Method (or $301 less tax to be paid in 2017/2018) with the remainder of the asset to be depreciated over subsequent financial years.**
- **$528 under the Prime Cost Method (or $150 less tax to be paid in 2017/2018). With the remainder of the asset to be depreciated over subsequent financial years.**

NEW RULES

Under the new law, Taylor Co qualifies as an SBE as its turnover was less than $10 million in 2017/2018. Therefore, as the machinery cost less than $20 000 (excluding GST) the asset can be written off in 2017/2018 being the financial year it was installed ready for use in the business. Therefore the depreciation deduction in 2017/2018 would be $19 000 (or $5 415 less tax to be paid in 2017/2018. No deductions would be available in subsequent years.

All told, significantly less tax will be payable by Taylor Co in 2017/2018 resulting in a cash-flow advantage. Its deduction is brought forward rather than spread out over a number of years.

FINANCE

With the $20 000 instant asset write-off still available, and the current low interest rate environment, now is an opportune time to make capital investments in your business. Here we examine the income tax consequences of four different types of acquisition – outright purchase, lease, chattel mortgage and hire purchase.

OUTRIGHT PURCHASE

The advantage of purchasing equipment or a vehicle outright, as opposed to financing the acquisition of the item, is that there will be no ongoing direct costs of finance. On the downside, outright purchases can impact on the cash resources of an entity when those funds may be better utilised elsewhere (i.e. an opportunity cost).

As the owner, and depending on the cost of the asset, you are entitled to claim an immediate write-off deduction in the year the asset is first used or installed ready for use in your business. The extent of the write-off depends on the type of taxpayer and the cost of the item as follows:

- Small Business Entity (see earlier) - $20 000
- Non Small Business Entity (operating a business with a turnover of more than $10 million) - $100
- Non-Business Taxpayer (landlord, investor, employee) - $300.

Assets above this value must be depreciated over a number of years, generally over the term of their effective life.

LEASE

Rather than acquiring the capital asset outright, your business may elect to finance the acquisition and thus lessen the cash outlay that is initially required and therefore the cash-flow impact on your business.

The ATO will consider a finance arrangement to be a lease when:

- There is no option to purchase the item written into the agreement, and
- The residual value reflects a bona fide estimate of the item's market value at termination.

If these two conditions are not met, the ATO generally considers the finance agreement to be a Hire Purchase or other instalment type agreement. In effect, a leasing document identifies the owner of the asset as being the lessor with the lessee merely renting the asset from them for regular, fixed instalments. It is important to identify which method of finance is used to acquire the asset for the following reasons:

- Under a leasing arrangement, the lease payments are deductible to the extent the asset is used for income producing purposes, and the financed sum is not typically booked on the Balance Sheet.
- Where the financing arrangement is not considered a lease, the item is booked as an asset on the Balance Sheet and depreciated. In addition, the financed sum is booked as a liability and that component of each repayment that represents interest is expensed and the remaining principal reduces the liability.

Under a lease arrangement ownership vests with the lessor and it is the whole lease payment (less any GST, if registered) that is expensed in the profit and loss by the lessee rather than being split into a principal and interest component. The extent of the allowable deduction for income tax purposes will depend upon the business usage of the item by your business as the lessee. No depreciation can be claimed.

LEASING ADVANTAGES

- Less cash-flow impact than an outright purchase – you get to use the item but without having to pay full price upfront. Rather, you only need to pay the monthly lease payments
- Committed financing for the length of the asset's usage (certainty of implied interest rate and repayment)
- You know the costs up-front (i.e. the lease payments). By contrast, with buying, the costs are uncertain as the inputs and disposal costs are unknown.

DISADVANTAGES

- If not acquiring the item at the end of the lease, the equipment needs to be returned in good working order and in original form
- Costs in returning the equipment to the lessor (e.g. transport)
- Termination fees for early repayment
- Sometimes you may want to retain the goods beyond the end of the lease, but there is no implied option to buy. This would need to be negotiated with the lessor based on current market prices.

HIRE PURCHASE

A Hire Purchase arrangement is simply another form of finance. Its tax and GST treatment however are vastly different from both that of leasing and acquisition by Chattel Mortgage. As a result this form of finance needs to be considered on its own merits. In essence, a Hire Purchase arrangement is an agreement to purchase goods by instalments. The term 'hire purchase' is defined in Section 995-1 of the Income Tax Assessment Act 1997 (ITAA 1997) as:

Under a Chattel Mortgage, once you have paid off the loan, the mortgage is removed – much like a traditional home mortgage.

" A contract for the hire of goods where:

i) The hirer has the right or obligation to buy the goods and

ii) The charge that is or may be made for the hire, together with any other amount payable under the contract (including an amount to buy the goods or to exercise an option to do so), exceeds the price of the goods and

iii) Title in the goods does not pass to the hirer until the option to purchase is exercised or

iv) Where title in the goods does not pass until the final instalment is paid."

Unlike a lease where there is no obligation to acquire the goods at the end of the instalment period, a Hire Purchase arrangement provides for this obligation and as such the goods will be eventually owned by the purchaser.

Where the item is either purchased outright, or financed under a Hire Purchase or Chattel Mortgage arrangement, then an income tax deduction may be allowable in respect of the depreciation or decline in value of the asset acquired. In addition to depreciation, where the goods are owned or deemed to be owned by the purchaser, there are the financing costs to consider. Under both the Hire Purchase and Chattel Mortgage, the purchaser is faced with a regular instalment that is required to be split into an interest and a principal component. The interest costs are to be expensed, whilst the principal costs reduce the financed amount in the Balance Sheet. It is therefore very important to obtain from the bank a schedule that identifies the split in these components for each repayment and to account for that split accordingly.

- Less cash-flow impact than an outright purchase – you get to use the item while you are still paying it off and eventually become the owner at the end of the repayment period (and any balloon)
- Is a form of secured finance and thus allows for lower interest rates
- Interest and monthly repayments are fixed, allowing you to plan ahead with certainty
- Flexibility of repayments. Allows for a balloon payment at the end of the arrangement which can be used to reduce your monthly instalments. Deposits can also be used to reduce the size of the loan.

DISADVANTAGES

- You're in a fixed contract. If your commercial situation changes, you may default and lose the asset despite the repayments you have already made
- You will pay more for the asset than under an outright purchase as you are paying interest over the term of the arrangement.

CHATTEL MORTGAGE

A Chattel Mortgage as a form of finance treats the purchaser of the goods as the owner of the goods as if they had acquired them outright but have borrowed in order to do so. They are effectively treated as owning the goods from the outset of the arrangement unlike a Hire Purchase which views the purchaser as the eventual owner but only on payment of the final instalment. Under a Chattel Mortgage, once you have paid off the loan, the mortgage is removed – much like a traditional home mortgage.

Recording the asset purchase and recognising the liability is identical to that of a Hire Purchase arrangement. Like the Hire Purchase arrangement, the repayment of borrowed funds is required to be broken down into an interest and principal component which is then expensed and reduces the borrowing, similar to a Hire Purchase.

The income tax treatment is precisely the same as that under a Hire Purchase (see earlier).

CHATTEL MORTGAGE ADVANTAGES

- Less cash-flow impact than an outright purchase – you get to use the item while you are still paying it off
- As a secured form of finance, lower interest rates can be enjoyed
- You are treated as the owner from the outset, and therefore have use of the asset, and the ability to claim depreciation, GST credits and interest
- Interest and monthly repayments are fixed; allowing you to plan ahead with certainty
- Balloon payments can be arranged – thus lessening your monthly repayments.

DISADVANTAGES

- Not a regulated loan product under the National Consumer Credit Protection Act. Therefore credit checks are not required to be undertaken. Likewise, borrowers are vulnerable in that fees, charges and any early payout penalties are not required to be spelled out as they are under regulated loan products.

MAKING THE SACRIFICE

This article considers the income tax and other benefits as well as the drawbacks of salary sacrifice from both an employee and employer perspective.

BASICS

In simple terms, a salary sacrifice arrangement is an arrangement between an employer and an employee, where the employee agrees to forgo part of their future entitlements (most commonly salary and wages, but also could include bonuses, commissions, annual leave etc.) in return for the employer providing them with benefits of a similar value. Virtually any benefit can be sacrificed, and will generally fall into one of three categories for tax purposes:

- ***Fringe Benefits*** – cars, property, loan repayments, electricity, school fees, health insurance premiums, home phone costs
- ***Exempt Benefits*** – work-related items (such as portable electronic devices (i.e. laptops), protective clothing, otherwise deductible items such as interest on a loan for an investment property etc.
- ***Superannuation*** – this will constitute an employer contribution and will count towards your concessional superannuation contributions cap, which for 2017/2018 has been reduced to $25 000 including employer Superannuation Guarantee contributions. With the reduced caps now operational, be careful not to exceed them if you are sacrificing to superannuation.

Under a salary sacrifice arrangement, the employee must have no access to the sacrificed salary. For example, if the employee is salary sacrificing superannuation, then the employer must pay the sacrificed amount directly to the superannuation fund. Alternatively, if an employee is salary sacrificing loan repayments, then the repayment amount must be paid directly from the employer to the financial institution.

Another key aspect of salary sacrifice is that the amounts sacrificed are sacrificed from pre-tax salary. The employer must therefore not withhold any tax from the amounts sacrificed.

In addition, only future entitlements yet to be earnt (salary and wages, bonuses, commissions, annual leave) can be sacrificed. Therefore, an employee could not decide today that they wish to sacrifice one week's annual leave that they have already accrued. If they wished to sacrifice annual leave, they could only sacrifice future leave that is yet to accrue.

PROS AND CONS

EMPLOYERS

While it is not compulsory to offer salary sacrifice to employees, providing multi-faceted employment packages – a mixture of cash and non-cash benefits – is an attractive employee retention and recruitment tool.

On the downside, salary sacrifice arrangements involve administration. This includes altering payroll withholding settings to ensure that no tax is withheld from the sacrificed amount, paying the sacrificed amounts to the third-party supplier such as a superannuation fund or financial institution, and ensuring that a salary sacrifice agreement is in place (see later). Also ensuring the PAYG Payment Summaries are completed correctly, e.g. Gross Wages exclude salary sacrificed superannuation and recorded as Reportable Employer Superannuation Contributions.

The biggest downside however is where the benefit being sacrificed is subject to Fringe Benefits Tax (FBT) – see earlier non-exhaustive list. With the FBT rate sitting at 47%, this is a significant impost, which many employers – particularly small businesses – may not be prepared to pay. Consequently, this FBT cost may need to be costed into any salary package. Before offering salary sacrifice, employers may wish to consult with their Accountant as to the FBT treatment of the various benefits that you are contemplating allowing employees to sacrifice.

EMPLOYEES

Purchasing benefits from pre-tax salary results in an income-tax saving. That salary has no income tax withheld from it by your employer. Where the item being sacrificed is subject to GST, savings will also be achieved as the employee will typically only sacrifice the GST-exclusive amount, with the employer able to claim the GST credits back themselves provided they are registered for GST.

On the downside, if the item being sacrificed attracts FBT, the employer may require the employee to make an after-tax contribution to mitigate the FBT cost. This can significantly reduce the tax-effectiveness of the exercise. This is a matter that should be addressed before the arrangement is entered into, and documented in a written salary sacrifice agreement.

Furthermore, if you are salary sacrificing superannuation, employers are only legally obligated to calculate their 9.5% Superannuation Guarantee contribution on the amount of your salary post-sacrifice. For example, if you earn $80 000 gross salary and sacrifice $15 000, an employer is only required to pay $6 175 in Superannuation Guarantee rather than $7 600. That said, many employers are nonetheless prepared to pay Superannuation Guarantee on the gross salary despite not being obligated to do so. (However still check any award requirements).

NEWSFLASH

Legislation has been introduced into Parliament to change the law so that amounts that an employee salary sacrifices to superannuation cannot reduce an employer's Superannuation Guarantee obligations. Therefore, in the above example if the law is passed by Parliament, despite sacrificing $15 000 into superannuation, the employer's Superannuation Guarantee obligation will be calculated on the gross salary and thus remain at $7 600. If passed, this will commence from 1 July 2018.

THE SAVINGS

Because Australia has a progressive tax system (the more you earn, the higher your marginal rate of tax), salary sacrifice is most beneficial for high income earners. However, as the following example illustrates, middle-income earners can also benefit.

EXAMPLE

NO FBT OR GST

Bill's annual salary is $80 000. In 2017/2018 he salary sacrifices a $2 500 laptop (ignoring GST) that he used 50% for business purposes . The following illustrates the savings made if he pays for the laptop via salary sacrifice rather than through after-tax dollars:

SALARY COMPONENT	NO SALARY SACRIFICE	SALARY SACRIFICE
Gross Salary	$80, 000	$80, 000
Less pre-tax interest	-	$2, 500
Taxable gross salary	$80, 000	$77, 500
Less taxation	$19, 147	$18 284
Take Home Pay	$60, 853	$59, 216
Post-tax laptop	$2, 500	-
Net salary remaining	$58 353	$59, 216
Add Tax Benefit 50% laptop deduction at personal level	$431	Nil
Total Benefit	$58 784	$59,216

Through salary sacrifice, Bill has realised a saving of $432. This was achieved as a result of the laptop being paid with pre-tax dollars (i.e. the $2 500 was not subject to income tax). Bill's employer is no worse and no better off as they will still in either case be required to outlay $80 000. No FBT will be payable as Bill is using the laptop predominantly for business purposes.

THE SAVINGS...WITH A TWIST OF GST

When you add in the GST, the savings are even greater by salary sacrificing. Bill would only sacrifice the GST-exclusive cost of $2 500. Bill's employer can claim the GST amount ($250) back on its next Activity Statement. The overall saving for Bill is therefore increased by $250 to $682.

THE SAVINGS...WITH A TWIST OF FBT

As stated earlier, the savings associated with salary sacrifice can be severely reduced where the item being sacrificed attracts FBT. Assume the same facts as per earlier however this time Bill is sacrificing a $2 500 laptop ($2 750 including GST) that he is plans to use for private purposes. In this case the savings for Bill will be the same ($682) however Bill's employer will be liable for FBT of $2 444 (calculated as $2 500 x gross up rate of 2.0802..which is then multiplied by the FBT rate of 47%).

This FBT impost may be grounds for the employer to reassess the viability of the arrangement, or require the employee to make an after-tax employee contribution to the laptop, which in turn would reduce the attractiveness of the arrangement from the employee's perspective.

EMPLOYER CHECKLIST

✓ Assess your ability to provide salary sacrifice (do you understand it? Are you prepared for the administration?) as against the benefits (i.e. increased staff satisfaction).

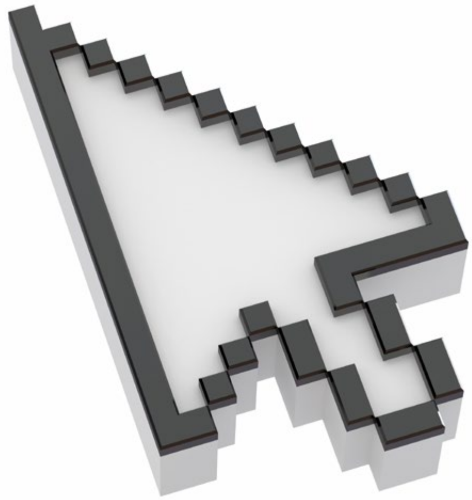
✓ Have in place a written salary sacrifice agreement with the employee, setting out the terms of the arrangement including the amount to be sacrificed, the benefit to be obtained (e.g. laptop), names of both parties, the start and end date of the arrangement.

✓ Ensure that there is no access to the sacrificed salary.

✓ If superannuation is being sacrificed, make it clear in the agreement whether you are paying Superannuation Guarantee on the gross wage or the amount post-sacrifice (from 1 July 2018, it must be paid on the gross amount).

✓ Be aware of the FBT treatment of the benefit being sacrificed. If it attracts FBT, can you absorb the cost or will you make the employee contribute?

YOUR QUESTIONS TO
MTS



The following questions came to us via our complimentary Tax Helpline service. Do you have a tax question that you need guidance on? Our team of qualified Accountants is standing by.

New Message

To **MY TAX SAVERS** Cc Bcc

Subject **LOST EMPLOYEE SUPERANNUATION**

One of our employees who worked with us for two weeks resigned over the phone without notice, and has just disappeared – we're unable to contact them. He also has not returned his Superannuation Choice form. Where do we pay the Superannuation Guarantee that we owe him?

Send

This is quite a common problem in the hospitality industry in particular where employees come and go regularly. Until rather recently, employers simply paid the amounts owing to the ATO's Superannuation Holding Accounts Reserve (SHAR). However, the SHAR is no longer operational. Instead, any amounts owed must be paid to the employer's default superannuation fund.

New Message

To **MY TAX SAVERS** Cc Bcc

Subject **MAIN RESIDENCE**

We've only lived in our current home for 3 months (which we own) but are contemplating selling. How long must you live in a home before it constitutes your Main Residence for tax purposes?

Send

To recap, for the period that you treat a place you own as your Main Residence, it will be exempt from capital gains tax (CGT) upon sale. Contrary to popular belief, there is no minimum period of occupation before you are entitled to treat a residence as your Main Residence for tax purposes. Conceivably, it can be as short as a few weeks. Rather, the length of occupation is only one factor relevant in determining whether your residence qualifies as your Main Residence. Other factors include:

- Whether you have moved your belongings into the residence
- Whether it is your address on the electoral roll
- Whether it is your mailing address, and
- Whether your family lives there with you.

Note that legislation has now passed the Parliament which prevents non-residents from accessing the Main Residence exemption from 9 May 2017. The legislation is clear-cut in that if you are a non-resident for tax purposes at the time you dispose of your property CGT will apply to any gain you have made even if you were a resident for part of the time that you owned the property. Accordingly, if you are contemplating leaving Australia and in doing so potentially becoming a non-resident, you may wish to consider selling your Main Residence before doing so. Transitional rules do apply however for non-residents who owned the property on or before 9 May 2017. If you dispose of the property by 30 June 2019, you will still be eligible for the Main Residence exemption. This gives affected taxpayers more than another year to sell their property and enjoy the exemption.

New Message

To **MY TAX SAVERS**

Subject **BORROWING FROM YOUR COMPANY**

I borrowed $500 000 from my private company to buy a property in January 2018. I have repaid the company some of these funds but my accountant tells me I may have to repay the whole loan over seven years. Is this correct?

Send

Your Accountant is correct.

Loans (including money that is just taken with no intention of repayment) made by a private company to their Shareholders or Associates (e.g. spouses, relatives, companies that the Shareholder or Associate controls etc.) are governed by Division 7A of the Tax Act. Even if the money was borrowed for the purpose of purchasing a property which would derive income and that income would therefore be subject to tax in the shareholder's own hands, the ATO still considers that the loan may be subject to Division 7A.

A loan to a shareholder can be considered an unfranked dividend assessable to the shareholder unless it qualifies as an excluded loan. If it is not an excluded loan then to avoid the amount being assessable to you personally as an unfranked dividend, you will need to have a complying Division 7A loan agreement put in place by the private company's tax return lodgement due date (which could be as late as May 2019). To be clear, no minimum repayment or interest is required in the year in which the payment is made – only that the loan agreement be put in place. In subsequent years, annual repayments of principal and interest are required by the end of the financial year to prevent a deemed dividend arising in a later income year.

The loan agreement does not need to be in a prescribed form. However it should as a minimum identify the parties and set out the terms of the loan (i.e. the amount, the requirement to repay, the applicable interest rate, the term of the loan etc.). It should also be signed and dated by both parties. When drafting an agreement, input from your Accountant is recommended.

The interest rate on the loan for each year after the year in which the loan was made must be greater than or equal to the ATO benchmark interest rate for each year (currently 5.3% for 2017/2018). The maximum term for a loan is 7 years. However where the loan is secured by a mortgage over real property, the maximum term is 25 years. In this case, the whole of the loan must be secured by a registered mortgage over the real property. At the time the loan is first made, the market value of the property (less liabilities secured over the property in priority to the loan) must be at least 110% of the amount of the loan.

You can read more about Division 7A in the March April 2017 edition of this publication which is available on our website **mytaxsavers.com.au**

TAX TIP

With the lodgement date for many company tax returns looming (for 2016/2017), if you took/loaned money from your private company in that year and have not repaid it, you may wish to talk to your Accountant to determine whether Division 7A applies. If so, a complying loan agreement may need to be put in place over the coming months to avoid the amount being assessed to you as an unfranked dividend.

New Message

To **MY TAX SAVERS**

Subject **TRAVEL ALLOWANCES FOR EMPLOYEES**

We are looking at paying a daily allowance of $50 for staff that are required to travel interstate or overseas to work on site at the premises of our clients. Is the allowance taxable to the individual? Should there be any records to support the usage of the $50 allowance?

Send

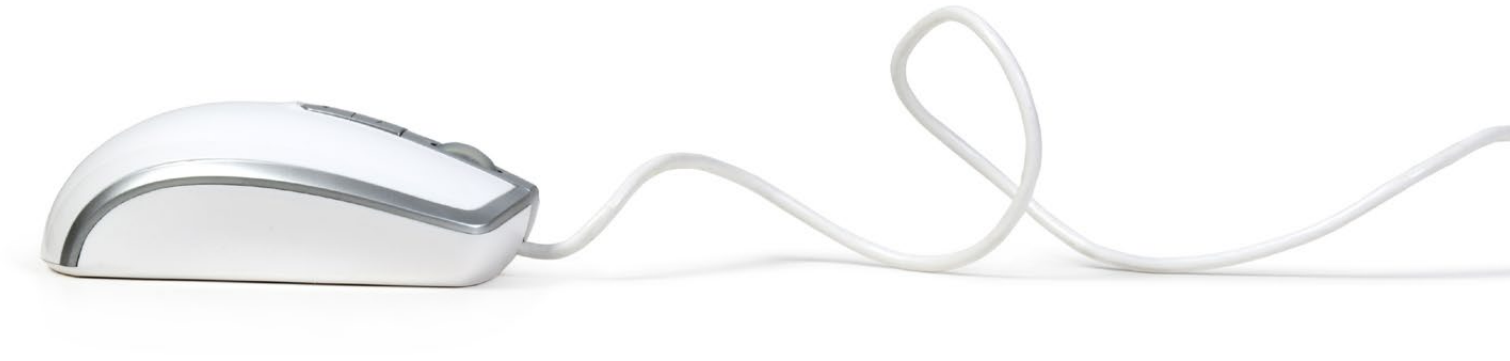
Business operators who need to travel or have their staff travel need to be aware of their obligations and, just as importantly, their rights to claim meal and travel allowances. Allowances are amounts paid to cover anticipated costs or as compensation for conditions of employment. The most commonly used method to accommodate the situation you have outlined is for the company to pay the employees a ***Reasonable Travel Allowance.***

Each year, the ATO publishes a ruling setting out the amounts considered 'reasonable' in relation to claims for:

- Overtime meal allowance expenses
- Domestic travel allowance expenses
- Travel allowance expenses for employee truck drivers, and
- Overseas travel allowance expenses.

The amounts for 2017/2018 are available in our ***Travel Allowance*** publication which is housed on our website. The advantages in paying these allowances, or lesser amounts, for travel are that they are tax deductible to the employer and not taxable to the employee. Importantly, they are not required to be shown on ***Payment Summaries*** or have PAYG Withholding Tax deducted from them. Perhaps the greatest benefit lies on the substantiation front. If you were to claim as a deduction the 'reasonable amounts' (to do so, the amounts must be shown on your Payment Summary) or less than those amounts, you do not require written evidence to substantiate either your meals or incidental expenses. However, you can only claim the amounts you have actually incurred (as opposed to claiming the amounts up to the amounts specified by the ATO).

If you wish to claim more than those amounts as a deduction, then you will require written evidence (by way of receipts) of the whole amount.



New Message

To **MY TAX SAVERS** Cc Bcc

Subject **CLAIMING INTEREST ON A LOAN TO PAY A TAX BILL**

I recently received a large tax bill from the ATO after lodging my tax return, and have taken out a loan to service the bill. Can I claim a deduction for the interest incurred?

Send

A deduction is allowed for all losses and outgoings to the extent to which they are incurred in gaining or producing assessable income or necessarily incurred in carrying on a business to gain or produce assessable income, except where the outgoings are of a capital, private or domestic nature. Accordingly, for an individual not in business, the interest will not be deductible. Rather, it is considered a private expense, as it is not related to producing assessable income. However, interest incurred on monies borrowed to pay income tax will be deductible where a taxpayer is carrying on a business. This general principle applies to sole-traders as well as companies/trusts etc.

New Message

To **MY TAX SAVERS** Cc Bcc

Subject **RECORD KEEPING AND CREDIT CARDS**

In the case of credit card expenditure where the statements show adequate descriptions of a transaction, is it also necessary to retain receipts for that expenditure should the tax man cometh?

Send

If you are carrying on a business you need to keep records explaining all transactions that are relevant to substantiating the expenses of your business. This would include a record of the name of the supplier, the Australian business number (ABN) of the supplier where GST credits are sought and the expense is $75 or greater in amount, the amount of the expense, the nature of the goods or services sold or purchased, the date the expense was incurred and the date of the document.

In relation to individual taxpayers, if your total work-related deductions during a financial year exceed $300, you must keep written evidence to prove the total amount, not just the amount over $300. The $300 limit does not include claims for car, meal allowance, award transport payments and travel allowance expenses. Written evidence can take the following form:

- A document from the supplier of the goods or services showing name of the supplier, amount of the expense, nature of the goods or services (although if not shown, you may write this on the document before you lodge your tax return), the date the expense was incurred and the date of the document; or
- Another document or combination of documents containing the information listed above. If you use a combination of documents, the dates of the documents are not required but they need to contain the date you incurred the expense. These documents can be in written or electronic form. They include bank and other financial institution statements, BPay reference numbers, email receipts, your PAYG Payment Summary, or paper or electronic copies of documents.

Therefore, providing that your credit card statements show the information listed above, you will not need to retain the receipts which also show that same expenditure.

HOT BUTTON ISSUES

As we head into a new calendar year, there are a number of important tax and other related issues that business owners should be focussing on. These include an ATO debt crackdown, Single Touch Payroll, Superannuation Guarantee compliance, and more!

ATO DEBT ALERT

One of the sleeper issues as we head into 2018 is the Government's Transparency of Tax Debt measure which, it is anticipated, will be passed into law in the first half of 2018. In a nutshell, the new measure will allow the ATO to disclose tax debt information to registered Credit Reporting Bureaus (CRBs) where certain criteria are met. While the main purpose behind the new measure is to reduce the more than $21 billion of outstanding debt that is owed to the ATO (two thirds of which is owed by small business), other aims of the new measure include:

- To level the playing field and ensure that those businesses that do the right thing are not relatively disadvantaged by those that don't, and
- Ensuring that suppliers who deal with errant businesses are fully informed as to their debt position and their creditworthiness.

While the specific circumstances and exceptions for disclosure of an ATO debt to CRBs will be subject to public consultation and confirmed through the legislation (expected to be tabled in Parliament early 2018), the ATO will only disclose the tax debt information of a business to a CRB if the business meets all of the following criteria:

- It has an Australian Business Number (ABN)
- It has a tax debt of at least $10 000 that is overdue by more than 90 days; and
- It has not effectively engaged with the ATO to manage its tax debt (such as by entering into and then abiding by an ATO payment arrangement) or if the debt is subject to genuine dispute.

The consequences of the debt being disclosed by the ATO to CRBs could potentially be quite dire for the business that owes the debt. CRBs may include the tax debt information in their credit reports which are available for purchase by parties who wish to use this information to make an informed decision on the credit worthiness of a business. This could have profound effects on the reported business such as support from financiers being withdrawn, and supplier credit being stopped. Importantly, before ATO disclosure to CRBs is made, the ATO will notify a business if they meet the reporting criteria, and advise that they have 21 days to respond before their tax debt information is reported to CRBs. Accordingly, this will then give that business the chance to take 'corrective action' that may prevent CRB reporting such as:

- Paying the ATO the debt in full
- Entering into a payment arrangement with the ATO
- Abiding by the terms of any existing repayment arrangement with the ATO
- Formally disputing that there is actually a debt owed.

After a report is made to a CRB, and it is included in their credit reports, it is still important to take corrective action as soon as possible. When corrective action is taken to the satisfaction of the ATO, they will then "fix" the report that they have made to the CRBs. It is our understanding that the notified debt is then expunged from CRB records. This is in contrast to debt reported by other creditors about your business to CRBs. In those cases there is an ongoing record of the amount owed, even when the amount owed is subsequently repaid by you. This underscores the importance of taking corrective action as soon as possible (and ideally before the expiration of the 21 day notice period) to avoid CRB notification in the first place.

TAKE AWAY POINTS

1. If a debt is owed that meets the above criteria for CRB notification, contact the ATO and enter into a payment arrangement and then abide by the terms of that arrangement
2. Take the 21-day ATO notification seriously. Disclosures to CRBs can have significant financial impacts on your business
3. Even after a debt is disclosed to CRBs, take corrective action as soon as possible so that the notified debt is expunged from CRB records as quickly as possible
4. If you believe the ATO has erred in making a CRB notification, contact them as quickly as possible, as they have undertaken to rectify false notifications promptly.

SINGLE TOUCH PAYROLL

How is your business tracking for the 1 July 2018 implementation deadline for ***Single Touch Payroll?***

STP is one of the biggest changes to ATO reporting since the GST was introduced in 2000. The STP regime will revolutionise the way employers report payroll information to the ATO. To recap, STP is a new reporting mechanism whereby employers will report employee payments (such as salary and wages, allowances, superannuation) and PAYG withholding to the ATO directly through their STP solution (e.g. upgraded Standard Business Reporting-enabled software) at the same time they pay their employees. From 1 July 2018, employers with 20 or more employees will be required to be STP compliant, while smaller employers can voluntarily opt in to STP.

In order to determine the start date for your business, an employee headcount must be undertaken on 1 April 2018. If there are 20 or more employees at that time, the business must comply with STP from 1 July 2018. Where this 20 employee threshold is met, even if the number of employees at a later date drops below this number, an employer will still be required to report via STP (however they may be able to apply to the ATO for an exemption if going forward employee numbers are expected to remain permanently below 20). Employers with less than 20 employees (as on 1 April 2018) may be required to report via STP from 1 July 2019. Indeed draft legislation was recently released to lock in this date for smaller employers.

'Employee' for STP head-count purposes is the common law definition of employee (which is narrower than the definition for Superannuation Guarantee purposes). Thus, workers for whom an employer does not withhold PAYG from will generally not count towards the 20 employee threshold. Although in most cases it will be clear-cut as to whether a worker is an employee, if you are uncertain, you should seek advice from your Accountant. Note that it appears that connected or related businesses are not required to include employees from those other businesses in their head count. Only wholly-owned groups are required to do so. Where a company owns 100% of any other company they would generally form a wholly-owned group and if the employee headcount across all entities of the wholly-owned group is 20 or more, then all entities in the wholly-owned group would be larger employers and thus required to be STP-compliant by 1 July 2018

For more information on STP, including compliance solutions for your business, see the January/February 2018 edition of this publication which is available for download in the subscriber section of our website **mytaxsavers.com.au**

SUPERANNUATION GUARANTEE COMPLIANCE

Another hot-button issue coming into 2018 will be Superannuation Guarantee compliance.

In a measure designed to complement the transparency aspect of Single Touch Payroll and boost employer Superannuation Guarantee compliance, the Government in mid-2017 announced changes to the way super funds report to the ATO. Super funds will soon be required to report contributions received from employers more frequently, at least monthly, to the ATO. This in turn will enable the ATO to identify and take prompt action against employers who are not meeting their Superannuation Guarantee obligations. Additionally, to aid Superannuation Guarantee compliance the Government will:

- Improve the effectiveness of the ATO's recovery powers including strengthening the Director Penalty Notice regime and the use of security bonds for high-risk employers. This is aimed at ensuring that unpaid Superannuation Guarantee is better collected by the ATO, and paid to employees' superannuation accounts
- Give the ATO the ability to seek court-ordered penalties in the worst cases of non-compliance

In view of this, as a matter of some urgency, all employers should review their current Superannuation Guarantee compliance processes to ensure that employee superannuation (calculated on ordinary time earnings) is being paid in full and on time.

DATA BREACH LEGISLATION... NOW HERE

In February 2017 the Privacy Amendment (Notifiable Data Breaches) Bill 2016 was passed through Parliament into law with a commencement date of February 2018. The key objective of the legislation is to bring accountability and transparency to organisations which hold the personal information of individuals. The accountability comes in the form of remedial action in the event of a data breach by the holder of the personal information. Many holders of personal information may be impacted. The Bill also has the intention to encourage business to improve their data security protocols.

WHO IS IMPACTED?

In a nutshell, the new regime requires certain organisations (many businesses and Government agencies) to notify individuals likely to be seriously impacted in the event of a data breach at that organisation. These organisations include:

(a) All entities subject to the commonwealth Privacy Act (most Government agencies and private sector organisations with a turnover of $3 million or more)

(b) Certain credits providers

(c) Credit reporting bodies, and

(d) TFN recipients (such as Accounting firms who hold client TFNs on file).

DATA BREACHES

The new legislation considers a breach to have occurred when data is accessed by an unauthorised entity, and that generates a real risk of serious harm to the individuals whose personal information has been disclosed. Data breaches need not involve malicious actions from third-parties (such as theft or hacking). Rather they can also result from internal errors or process failures that cause accidental loss or disclosure, or from clicking on an email link and inadvertently providing sensitive information to hackers.

NOTIFICATION OF DATA BREACHES

Drilling down into the details of the legislation, the remedial action that an organisation must take is in the form of a notification. Specifically, the legislation requires the above-listed organisations to notify "eligible data breaches" - which are likely to result in serious harm to any individuals to which the information relates - to the Office of the Australian Information Commissioner and also to the affected individuals themselves. Notification must be made as soon as possible after the organisation becomes aware that "there are reasonable grounds to believe that there has been an eligible data breach of the entity". Examples of an "eligible data breach" are quite wide-ranging and include when:

- A device containing a client's personal information is lost or stolen and there is no way of managing it remotely or ensuring that it hasn't been accessed
- A database containing personal information is hacked
- Personal information is mistakenly provided to the wrong person (staff accidentally email personal information of a client to another individual).
- There is unauthorised access to a spreadsheet containing client financial information.

IMPACT

If your own systems/passwords were hacked you may in the worst cases be required to notify all your clients, and all of their employees/associates etc. The requirement to notify may therefore have a crippling effect on the reputation of your business, not to mention be an onerous process to undertake. It may also open you to civil action by these parties. Failure to comply with the legislation itself (by not making notifications where breaches have occurred) may result in fines from the Government (maximum $1.8 million corporations, $60 000 individuals).

TAKE AWAY POINTS

1. Be certain that the new regime applies to your business
2. Be aware of your obligations
3. Have rigorous IT and information security protocols in place – **oaic.gov.au/agencies-andorganisations/guides/guide-tosecuring-personal-information**
4. Ensure you have insurance coverage for cyber breaches
5. Consider whether your business should have a limited liability structure (such as a company or trust).

TAX TIP

From a tax perspective, expenses incurred on IT and other information security upgrades will generally be deductible. However, certain expenditure such as IT software, may only be deductible over a number of years (as opposed to deductible in full in the year of purchase). Check with your Accountant if you are unsure.

SUPER DOWNSIZER SCHEME

The superannuation "Downsizer" legislation has now passed Parliament; allowing those nearing retirement to contribute extra to superannuation from the money left over when selling the family home.

INTRODUCTION

Legislation to enact the ***Superannuation Downsizer Contributions Scheme*** ("the Scheme") was passed into law by Parliament on 5 December 2017. The Scheme allows 'downsizer contributions' to be made in respect of a person who is aged 65 or over from the proceeds of the sale of a dwelling that was their main residence. It was one of several measures announced in the 2017 Federal Budget aimed at reducing the pressure on housing affordability. Prior to this measure being enacted, older Australians were restricted in making significant 'downsizer contributions' because of the various superannuation rules and in particular the superannuation contribution caps. The non-concessional contribution cap (which is the relevant cap if contributing the proceeds of the sale of your dwelling) has recently been reduced to \$100 000 per year or \$300 000 over three years. With housing prices at record highs, for many people these caps may not accommodate the entire or even a significant percentage of the proceeds from a sale of the family home.

Another restriction was the so-called superannuation "Work Test". Under the general superannuation law, if you are 65 and over you can only contribute to superannuation if you pass the "Work Test" (which broadly requires you to have worked for at least 40 hours in a period of not more than 30 consecutive days in the financial year that you make the contribution).

The new Scheme overcomes these restrictions.

FEATURES

The key features of the Scheme are as follows:

- The individual making the contribution must be aged 65 or over
- The contribution must be from the proceeds of the sale of an eligible Australian dwelling
- The dwelling must have been owned for at least 10 years

> *You can move into another dwelling that you may own, or indeed, purchase a bigger, more expensive home to move into.*

- The dwelling in whole or in part must have qualified for the Main Residence exemption from CGT
- The contribution to superannuation must be made within 90 days of the disposal of the dwelling
- The contribution must be no more than the lesser of $300 000 or the proceeds from the sale
- Downsizer contributions sit apart from other non-concessional contributions in the following respects:
    - They are not subject to the "Work Test" (see earlier)
    - They are not deductible
    - They can be made by people over 75 (unlike other superannuation contributions)
    - They do not count towards your non-concessional contributions cap (see earlier), and
    - They not counted towards $1.6 million total superannuation account balance cap
- The individual notify their superannuation fund in the approved form at the time the contribution is made that they wish to treat it as s Downsizer Contribution
- The individual must not have previously made a Downsizer Contribution in respect of an earlier main residence.

Although referred to in the Explanatory Memorandum as a "downsizing" scheme, there is actually no requirement to purchase a new, smaller home after having sold your existing dwelling. You can move into another dwelling that you may own, or indeed, purchase a bigger, more expensive home to move into.

THE ATTRACTION

The attraction of contributing to superannuation – whether making Downsizer Contributions or other any other younger person making voluntary contributions – is the concessional tax treatment! Superannuation earnings (such as interest, dividends, rent etc.) are taxed at just 15% when your account is in accumulation mode (i.e. not in pension mode). These earnings are tax-free when your account is in pension mode (which may be the case for many individuals who make Downsizer Contributions). By contrast, investment earnings on assets (such as shares, property, term deposits etc.) held outside of superannuation are taxed at your marginal tax rate as follows:

TAXABLE INCOME $	2017/2018 TAX RATE (NOT INCLUDING MEDICARE LEVY)
0 – 18, 200	Nil
18, 201 – 37, 000	19 cents
37, 001 – 80, 000	32.5 cents (plus 3 572)
80, 001 – 180, 000	37 cents (plus 19 822)
180, 001	45 cents (plus 54 232)

To read about the other benefits of contributing to superannuation, access our 2017/2018 Superannuation publication in the subscriber section of our website **mytaxsavers.com.au**

We now examine some of the earlier-listed features of the Scheme.

PROCEEDS FROM DWELLINGS

Downsizer Contributions can only be made from the proceeds of eligible dwellings. For the purposes of the Scheme, the dwelling must be located in Australia and must not be a houseboat, caravan, or other mobile home. Although an ownership interest in the dwelling is essential in order to make an eligible contribution, this ownership interest can be held by you or your spouse; whether that ownership interest was held solely, jointly or as tenants in common. The following example, adapted from the Explanatory Memorandum to the legislation, illustrates this point:

EXAMPLE

Justin owns an income producing farm with a total of 200 hectares of land which he has owned for 15 years. Only Justin's name is on the title.

Justin and his wife, Caitlyn have lived in the residence on the farm for the past 15 years. Justin sells the farm including the main residence for $3 million dollars. Under the existing CGT rules, Justin is entitled to disregard the capital gain on the main residence and the adjacent land, up to 2 hectares, which is not used to produce income.

As Justin qualifies for a partial main residence exemption on the sale of the property, and his wife Caitlyn would have qualified had her name been on the title deed, they are entitled to make a downsizer contribution of up to $300,000 each into their superannuation as this is less than the sale price of the property.

There is no need to apportion the sale price of the property based on which part of the property was eligible for the main residence exemption and which part was not for the purposes of working out the maximum amount Justin and Caitlyn can contribute to their superannuation accounts.

10-YEAR OWNERSHIP INTEREST

You and your spouse, or you or your spouse, must have owned the dwelling for 10 years or more just prior to disposing of it. This is calculated from the date of settlement of the contract to purchase through to the settlement date of the later contract. Failure to meet this requirement – even by one day – renders you ineligible for the Scheme. Interestingly, in the quite common case where a vacant block of land is purchased and the family home is built, the '10-year clock' commences from the settlement date of the block of land. Likewise, if your dwelling has been lost or destroyed or you've knocked it down, and another replacement dwelling has been built, the '10-year clock' will continue to tick throughout the time that there was no dwelling.

MULTIPLE CONTRIBUTIONS

Individuals may make multiple contributions under the Scheme. However, any contribution can only be made from the proceeds of the sale of one dwelling. The ability to make multiple contributions is useful where for example you have more than one superannuation fund, or your circumstances change and you decide that your initial contribution was insufficient. However, to be eligible under the Scheme, each contribution must satisfy the notice requirements as below.

NOTICE REQUIREMENTS

When you choose to make a contribution under the Scheme, you must complete the ***Downsizer Contribution Form.*** This form must be provided to your superannuation fund when making the contribution. This will alert your fund to the fact that the 'Work Test', the 75 year-old age limit, and the $1.6 million cap are irrelevant in determining whether to accept your contribution.

DOWNSIDES

If contemplating taking advantage of this Scheme, be mindful of the following:

- Age Pension Asset Test – for those in receipt of the Age Pension, while the family home is not taken into account in determining whether your assets exclude you from the Age Pension or full Age Pension, superannuation savings are taken into account once you reach Age Pension Age.

- Selling your home and buying a new, smaller home (though, as noted, buying another home is not compulsory under the Scheme) comes with a range of costs including Stamp Duty, legals, Agent's commission etc. Therefore, the Scheme should perhaps be viewed as an additional incentive to downsize rather than downsizing solely to take advantage of the Scheme. Folks moving into a nursing home may find the Scheme particularly appealing.