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MAY/JUNE 2018

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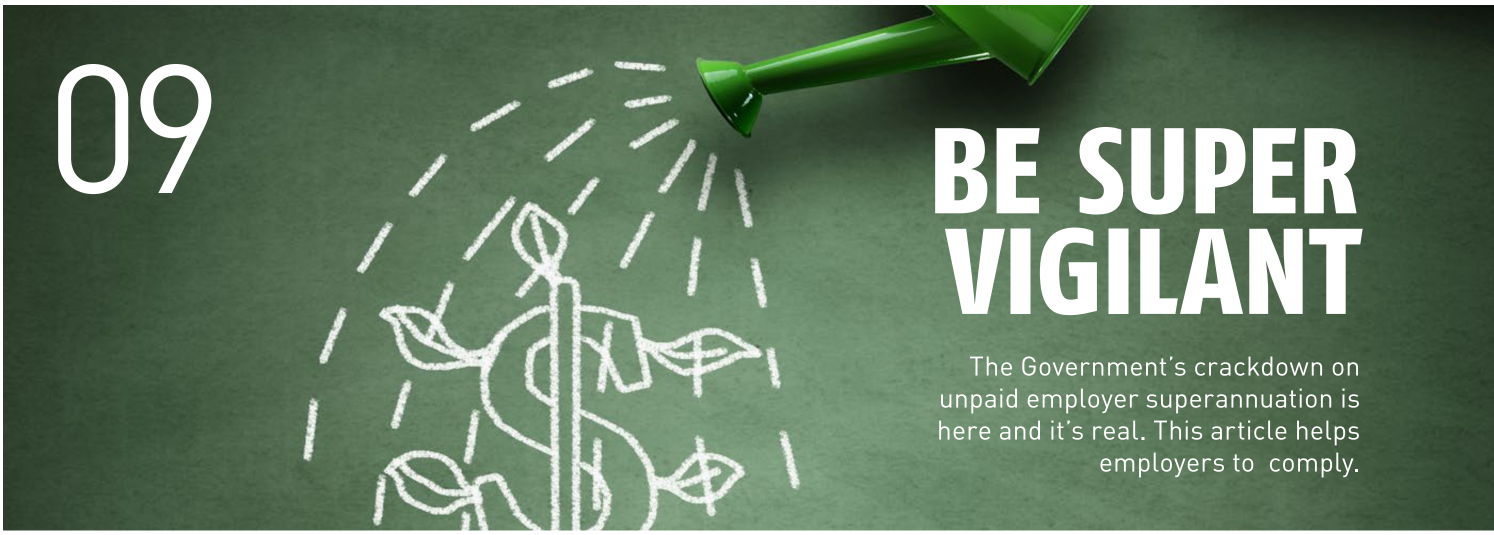

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Whether your business is looking to improve its tax position or comply with Single Tax Payroll, this article is a must-read for business owners.

KEY DATES

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

MAY 2018

12 MAY
3rd Quarter 2018 Activity Statements – due for lodgement and payment if lodging electronically

21 MAY
April 2018 monthly Activity Statements – due for lodgement and payment

21 MAY
2018 FBT Annual Return – due for payment

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

JUNE 2018

21 JUNE
May 2018 monthly Activity Statements - due for lodgement and payment

30 JUNE
Superannuation Guarantee payments must be received by Superannuation funds by this date in order to be deducted in 2017/2018

30 JUNE
End of 2017/2018 financial year

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

YEAR-END TAX PLANNING FOR INDIVIDUALS

With 30 June fast approaching, this article provides individuals with a range of tax planning tips with a view to optimising your 2017/2018 tax position.

BRINGING FORWARD DEDUCTIONS

The most common way that an individual can improve their tax position leading up to 1 July is to bring forward upcoming deductible expenditure. This allows you to reduce your tax liability in the current financial year rather than in the following financial year, and thus results in a cash-flow advantage. It can also result in an actual cash benefit where your income this year is likely to be higher than the following year. This may be the case where you are planning on retiring or cutting back your work hours next year and therefore earn less income next year. Alternatively you may have earned some one-off income this year e.g. capital gain that you will not receive next year. By bringing forward the expense, the dollar value of the tax deduction will likely be greater (see later example). Note the following however:

Firstly, do not spend money that you weren't planning on spending just for the sake of a tax deduction. This is because the money spent will always be more than the dollar value of the tax deduction. For instance, if you were on the top marginal rate of tax and purchased a $300 deductible briefcase that you did not need, then while you would get a $300 deduction, the tax value of the deduction is only $141 ($300 multiplied by 47% being the top marginal tax rate). Therefore, you would be out of pocket $159 for an item that you did not need. Consequently, stick to your business plan, and only purchase deductible items that you actually require, as the expense will always outweigh any tax benefit derived.

Secondly, if you are going to be earning significantly more in the next financial year than the current financial year (for example, you may be returning to work, going to receive a promotion, intending on realising a large capital gain, anticipating a taxable settlement etc.) bringing forward deductions to before 1 July will generally be disadvantageous in terms of taxation. This is because, with Australia having progressive rates of tax, the dollar value of the tax deduction will generally be smaller if expended before 1 July.

EXAMPLE

Jacob is a mobile lender who has just landed a $150 000 per annum job in June 2018, and is contemplating purchasing a $4 000 work-related item (100% for work purposes). He's been out of the workforce in 2017/2018 having gone back to University to study. Consequently, he will only earn $12 500 in 2017/2018 but earn the full amount of his salary in 2018/2019.

If Jacob purchases the item before 1 July, although he will enjoy a $4 000 tax deduction, the dollar value of this deduction will be zero, as his total earnings of $12 500 fall below the 2017/2018 tax-free threshold – therefore no tax is payable anyway.

On the other hand, if Jacob defers the expense to after 30 June, the tax value of the deduction will be $1 560 ($4000 x 39% marginal tax rate including Medicare levy).

We now detail three 'big-ticket' deductible expenses that you may wish to bring forward to before 1 July, in order to optimize your 2017/2018 tax position

AFTER-TAX SUPERANNUATION CONTRIBUTIONS

2017/2018 is the first year that individuals can reduce their tax liability for the year by making a pre-1 July personal superannuation contribution.

To recap, new laws were introduced effective 1 July 2017 allowing all individuals up to age 75 to claim an income tax deduction for personal, after-tax superannuation contributions (pre-tax contributions, also known as salary sacrifice contributions, are deductible to your employer not you). Before this date, you could only claim a deduction for your personal contributions where less than 10% of **(a)** your assessable income **(b)** your reportable fringe benefits and **(c)** your reportable employer superannuation contributions (e.g. salary sacrifice contributions) for the year were from being an employee – this was known as the "10% Rule". This rule prevented most employees from claiming a tax deduction for their personal after-tax superannuation contributions.

EXAMPLE

For the first 10 months of the financial year, Edwin operated a tattoo parlor as a sole trader and earned $69, 000. Keen to provide for his imminent retirement, he contributed $18, 000 to superannuation from his after-tax income in May in that same financial year. Edwin later sold his business, and for the final two months of the financial year was an employee at a factory, where he earned $11, 000 from his employment. Edwin now wonders whether he will be able to claim a tax deduction for his personal superannuation contribution?

OLD RULES

If the contribution was received by the superannuation fund under the old rules that operated before 1 July 2017, then Edwin could not claim a deduction. This is because more than 10% of his assessable income, reportable fringe benefits and reportable employer superannuation contributions are from being an employee ($11, 000 from being an employee is more than 13% of his total assessable income of $80, 000).

NEW RULES

Under the new rules, Edwin can claim a deduction for the entire amount of his contribution ($18, 000) in 2017/2018 if it was received by his superannuation fund at any time between 1 July 2017 and 30 June 2018. The '10% Rule' no longer applies; therefore the composition of Edwin's income is irrelevant for deduction purposes. Claiming an $18, 000 tax deduction in 2017/2018 will save Edwin $6, 280 in tax (2017/2018 tax rates).

To claim a deduction, the standard requirements that existed under the old rules must also be satisfied as follows:

- **Age** – All individuals under the age of 65 are eligible. Those aged 65 to 74 must meet the superannuation 'work test' (work for at least 40 hours in a period of not more than 30 consecutive days in the financial year in which you plan to make the contribution). For those aged 75, the contribution must be made no later than 28 days after the end of the month in which you turn 75. Older taxpayers are ineligible.
- **Minors** – If the individual is under 18 at the end of the income year in which the contribution is made, they must derive income in that year from being an employee or carrying on a business.
- **Complying Fund** – The contribution must be made to a complying superannuation fund.
- **Notice Requirements** – To claim the deduction you must provide your superannuation fund with a *Notice of intention to claim a deduction* form before you lodge your tax return in respect of that financial year.

Note that the maximum deduction that you can claim is $25,000. This is the amount of the concessional contributions cap. As well as your after-tax contributions, included in the $25,000 cap are:

- Employer contributions (including the compulsory 9.5% Superannuation Guarantee (SG) and salary sacrifice), and
- Certain amounts transferred from a foreign superannuation fund to an Australian superannuation fund (this won't affect most taxpayers).

For example, if you earned $50, 000 for the year from your job, and your employer contributed $4, 750, then in effect the maximum amount you could contribute and claim as a deduction would be $20 250 ($25, 000 cap, minus $4 750).

REPAIRS

For taxpayers who own rental properties – commercial or residential – another way to significantly reduce your 2017/2018 tax bill is to bring forward any required repairs to before 1 July 2018. Unlike improvements, repairs are deductible in full at the time they are paid.

To claim a deduction, the repairs must relate directly to wear and tear or other damage that occurred as a result of you renting out the property. Repairs generally correct a defective or worn out part, or return a deteriorated part to its condition when first acquired. If the repair goes beyond that and renews or replaces the whole thing, then the repair is a capital expense and is not deductible upfront (rather the claim is spread out over a number of years as a capital works deduction). For example, a repair to a wooden paling fence effected by replacing several dozen broken and rotted palings with new wooden palings is clearly deductible. However, replacement of the entire timber fence with a colour-bond equivalent would go beyond a repair and no deduction would be allowable.

A repair that uses a material that is superior to the original will generally not be allowed as a deduction (as it may constitute an improvement) unless the original material is no longer available. Repairs to recently acquired properties will generally be held to be non-deductible. The ATO's view is that the state of disrepair would have been factored into the purchase price paid for the rental property at the date you acquired it and hence it is of a capital nature.

In the case where you no longer rent out the property, the cost of repairs may still be deductible provided:

- The need for the repairs is related to the period in which the property was used to produce income, and
- The property was income-producing during the income year in which you incurred the cost of repairs.

EXAMPLE

Mr Chan owned a rental property, which was tenanted during his entire period of ownership. With the lease having expired in June 2018, Mr Chan decided to sell the property, which was left vacant and taken off the rental market after this date. Before selling, he repairs some damage caused by the previous tenants, namely several cracked tiles and a small hole in one of the walls. These repairs were undertaken in August 2018, and Mr Chan wonders if he can claim these repair expenses as a deduction.

ANSWER

Although the repairs relate to a period of producing income (i.e. the damage was caused during the time the previous rent-paying tenants were in occupation), they are not deductible as the expense was not incurred in the same income year in which rent was derived (i.e. rent was derived up until June 2018 but the repairs were not undertaken until August 2018). Mr Chan may however include the cost of these repairs in the cost base of his property.

Note that if you are travelling to a residential rental property to conduct repairs, then the cost of the travel is no longer deductible – effective 1 July 2017. Therefore, if the travel costs are significant, you may wish to source a local tradesman or friend/associate to conduct the repairs on your behalf (any fee charged by them will generally be tax deductible).

PRE-PAY INTEREST

If you have a non-business loan and the interest is tax deductible – for example, you have borrowed to purchase an investment property that is currently tenanted or have borrowed money to purchase shares, which have the potential to pay a dividend – consider prepaying most of next financial year's interest upfront before 1 July 2018.

If you are an individual incurring deductible non-business expenditure (such as interest on the above types of loans) you can claim an immediate deduction for the entire amount under the 12-month rule for prepaid expenditure if the payment is incurred for a period not exceeding 12 months and the period ends in the next income year.

EXAMPLE

On 1 June 2018, Jasmin, an employed solicitor, prepaid monthly deductible interest of $6,000 on an investment property loan for the period 1 June 2018 to 31 May 2019. Because the period over which the interest is prepaid is within a 12-month period ending before the last day of the next income year (2018/2019). Jasmin is entitled to a deduction for all of the interest payment in 2017/2018 ($6 000).

The 12-month prepayment rule also applies to other deductible non-business expenses that can be prepaid for the next financial year, for example subscriptions to deductible publications such as trade journals.

COMPANY AND SMALL BUSINESS CHANGES

Legislation has now passed Parliament redefining the range of companies that are permitted access to the lower company tax rates. This article explains what this means for companies in prior years and into the future.

WHAT ARE THE NEW RATES?

The Government has passed into law some company income tax cuts, however cuts for larger companies have not yet passed. The company tax cuts that are now law are as follows:

YEAR	AGGREGATED TURNOVER THRESHOLD	TAX RATE IF UNDER THRESHOLD	RATE IF OVER THRESHOLD
2015/2016	$2 million	28.5%	30%
2016/2017	$10 million	27.5%	30%
2017/2018	$25 million	27.5%	30%
2018/2019	$50 million	27.5%	30%
2019/2020 – 2023/2024	$50 million	27.5%	30%
2024/2025	$50 million	27%	30%
2025/2026	$50 million	26%	30%
2026/2027	$50 million	25%	30%

Although only minor in percentage terms, the dollar value of the income tax cuts is significant. A company with a 2016/2017 turnover for example of $3 million and taxable income of $800 000 will pay $20 000 less in income tax compared to the old law. This is good news for companies that wish to invest the profits back into the business. For companies whose owners strip the profits out of the business in order to provide an income (generally most smaller business owners) the company income tax cuts are however less beneficial. This is because the imputation credit (the tax credit they receive for the tax paid by the company when they lodge their personal income tax return) will also be the same as the reduced company income tax rate. Therefore, the overall tax paid will generally be the same.

The Government also wishes to reduce the company income tax rate to 25% for companies with a turnover above $50 million, but it has been unable to get this legislation through Parliament, and thus these larger companies will pay income tax at 30% until the law is changed.

QUALIFYING FROM 2017/2018 ONWARDS

The Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Bill 2017 has been passed by Parliament and in simple terms sets out the criteria for eligibility for the lower company tax rate from 2017/2018 onwards. A company will not be eligible for the lower company tax rate (currently 27.5%) if more than 80% of its assessable income is passive income. This replaces the previous criteria for the lower company tax rate of 'carrying on a business' which was going to apply for 2017/2018 and future years. 'Passive income' includes:

a. a company dividend — other than a non-portfolio dividend (which is a dividend paid to a company where that company has a voting interest of at least 10% in the company paying the dividend)

b. a franking credit attached to a dividend covered by **(a)**

c. a non-share dividend

d. interest income, royalties and rent

e. a gain on qualifying securities

f. a net capital gain; and

g. assessable partnership and trust distributions to the extent that they are referable (either directly or indirectly through one or more interposed partnerships or trust estates) to an amount that is listed under any of items. **(a)** to **(f)**.

The ‘passive income’ test requires a percentage comparison of the company’s total passive income for the income year with its **assessable income** for the income year. By contrast, the turnover test which must also be met (see earlier table) assesses the company’s **aggregated turnover** which includes the turnover of connected entities and affiliates.

With the legislation now passed by Parliament, when preparing the upcoming 2017/2018 and future company returns, ensure that you indicate that your company is eligible for the lower company tax rate where the 80% test is met.

QUALIFYING FOR 2015/2016 AND 2016/2017

At the same time that the amending legislation was released, the ATO issued Draft Taxation Ruling ***TR 2017/D7 – Income tax: when does a company carry on a business within the meaning of Section 23AA of the Income Tax Act Rates Act?***

Once finalised, it is anticipated that this ruling will be considered within the meaning of ‘small business entity’ which is the relevant test for determining eligibility for the lower company tax rate for 2015/2016 and 2016/2017. This is also relevant for whether your business can access the Small Business Concessions (which include a range of GST, FBT, CGT, and Income Tax concessions – see later). The Ruling will not be relevant for qualification for the lower company tax rate in years after this as this is provided for in the legislation discussed earlier which has just passed Parliament.

The Ruling provides an extremely wide definition of ‘carrying on a business’. It states that companies that are established and maintained to make profits for shareholders will be carrying on a business – even if the company’s activities consist primarily of receiving rent or returns on its investments and distributing these to shareholders. Thus, the vast bulk of passive investment companies would according to the draft ruling qualify as carrying on a business. Companies that have lodged returns for 2015/2016 and 2016/2017 may wish to consider amending their returns to claim the lower rate of company tax, as well as any of the other Small Business Concessions that the company may be entitled to. We now recap those Small Business Concessions (this is also a handy refresher of the concessions for Small Businesses that already qualify irrespective of the change to the definition of “carrying on a business”).

SMALL BUSINESS CONCESSIONS

As stated, given the ATO’s expanded view on carrying on a business which is relevant for ‘small business entity’ purposes, many more businesses may be eligible for the Small Business Concessions – both in prior year returns that will need to be amended (2015/2016 and 2016/2017) and going forward into the current financial year and future years. We now provide an overview of these concessions and importantly outline other qualification criteria (apart from ‘carrying on a business’).

CGT

These concessions allow business owners to reduce, defer and in some cases eliminate the CGT on the sale of business assets including the entire business. However, to be eligible for these concessions not only must a business be carried on, but also the entity must have a turnover of less than $2 million (including connected entities and affiliates). Alternatively, the business must have net assets of less than $6 million. Just to confirm, the CGT turnover threshold test is different to the small business income tax turnover threshold test. However, even where these tests are met, the asset in question must be an Active Asset for 7 ½ years if owned for 15 years or more or half the period of ownership if owned for less than 15 years. An asset will be held to be ‘active’ at a given time where either:

- You own the asset and either you use it or hold it ready for use in the course of carrying on a business or it is used or held ready for use in the course of carrying on a business by your affiliate or an entity connected with you, or
- The asset is an intangible asset (e.g. goodwill of a business) and it is inherently connected with a business that you (or an affiliate or connected entity) carry on.

There are additional conditions that must be met if the asset being sold is shares in a company or interests in a trust. The Active Asset test is especially relevant in respect of the passive investment companies that the ATO’s draft ruling now deems are ‘carrying on a business’. Passive assets such as assets being used to derive rent are not Active Assets and therefore will never qualify for the CGT concessions.

INCOME TAX

There are a number of income tax-related concessions available for small businesses including:

- $20 000 instant asset write-off,
- Small business income tax offset for businesses that are not carried on through a company,
- Accelerated depreciation for primary producers,
- Deductions for professional expenses for start-up businesses,
- Relief from CGT for business restructures,
- Simplified trading stock rules,
- Immediate deductions for prepaid expenses, and
- Two-year amendment period (instead of the standard four).

However, to access these concessions, as well as carrying on a business, the business must have an aggregated turnover of less than $10 million from 1 July 2016. For the small business income tax offset, turnover must be less than $5 million from 1 July 2016. The turnover threshold for all income tax concessions is $2 million up to 30 June 2016.

GST

The GST-related concessions for taxpayers carrying on a business include:

- Accounting for GST on a cash basis,
- Paying GST by instalments worked out for you by the ATO (rather than having to work them out yourself), and
- Annual apportionment of GST credits (pay back any GST you may owe because of some non-business use of your assets annually rather than quarterly).

However, a turnover aggregated threshold of $10 million must be met, from 1 July 2016 onwards, or $2 million up to 30 June 2016.

FBT

There are two FBT-related concessions:

- Car-parking exemption for employees (not in a commercial car-park)
- Work-related devices exemption (allows employers to provide their employees with multiple work-related portable electronic devices that have substantially identical functions in the same FBT year, and all of the devices will be exempt from FBT. This applies to devices that are primarily used for work, such as laptops, tablets, calculators, GPS navigation receivers and mobile phones.

The turnover threshold for the FBT concessions is $10 million from 1 April 2017, or $2 million before this date.

BE SUPER VIGILANT

Armed with new laws, Superannuation Guarantee compliance will be a key target of the ATO going forward. Non-compliant employers will face a range of beefed-up sanctions. This guide will help employers get it right.

FOCUS

The Government's flagged Superannuation Guarantee (SG) "crackdown" is now here. In January, the Government released for public consultation, exposure draft legislation in the form of the *Superannuation Guarantee Integrity Measures Bill (2018).* The consultation period has now closed. The draft Bill when passed will:

1. Allow the ATO to issue directions to pay unpaid SG and undertake SG education courses in cases where employers fail to comply with their SG obligations

2. Introduce criminal penalties for failure to comply with a direction to pay SG (including prison terms of up to 12 months)

3. Allow the ATO to disclose more information about SG non-compliance to affected employees

4. Facilitate more regular reporting to the ATO by superannuation funds (at least once per month).

Employers should particularly take note of the third item. Under the proposed legislation, if an employee made a complaint to the ATO about their employer failing to make the required superannuation contributions, the ATO could under the new law communicate its concerns to other employees who might be similarly affected. The fourth item too is significant. With increased reporting by the superannuation funds themselves, non-compliant employers will be detected easily and more quickly by the ATO.

The new Bill is a compelling reason for employers to thoroughly review their SG processes and practices with a view towards ensuring compliance. To that end, SG non-compliance can be caused by a range of factors and misinterpretations, which we now explore.

EMPLOYEES

SG is payable for employees, and for contractors who work under a contract that is wholly or principally for their labour. SG may need to be paid irrespective of whether the employee:

- Is full-time, part-time or casual (except where they earn less than $450 per month)
- Receives a superannuation pension or annuity while still working, including those who are in receipt of a Transition to Retirement pension from their superannuation fund
- Is a temporary resident (when they leave Australia they may be able to claim their superannuation through a 'departing Australia superannuation payment')
- Is a company director
- Is a family member working in your business.

That a worker may do any of the following does not mean there is not an SG liability owing on the amounts you pay them:

- Work off-site or
- Have their own ABN or
- Have their own business name or
- Provide their own tools and equipment or
- Invoice you for work done or
- Be paid to achieve a result rather than per hour or
- Delegate the work to others or
- Not work the company's normal hours or
- Not wear the company uniform.

While in many cases it will be clear-cut, if you are uncertain whether a person you pay may be entitled to SG, then you should use the *ATO Employee/Contractor Decision Tool* which is available on their website www.ato.gov.au The ATO itself uses this Tool as the initial step in its employer SG audits. The ATO advises that:

The Tool is free and anonymous. You simply answer questions about the working arrangement and the tool will give you a result, including a report that you can keep in your records. Provided you answer the questions accurately, you can rely on the result provided by the Tool.

Employers using the tool can therefore move forward with confidence. We recommend using the tool for the workers you engage in the future and also checking the status of current workers. Where the tool provides a favourable outcome (for most employers this will be the classification of the worker as a contractor), print out the result and keep it on file. Where the tool provides an unfavourable outcome (for most employers this will be the classification of the worker as an employee), all is not lost! You should speak to your Accountant as the tool in its current form has we believe a slight bias towards classifying workers as employees. For example, if a worker is paid based on achieving a result (rather than on an hourly basis) then the tool virtually always classifies them as employees. Such a classification is incorrect at law as the case law requires that a range of factors (as many as eight) must be taken into account and no single factor is determinative – see ***Taxation Ruling TR 2005/16 and Superannuation Guarantee Ruling SGR 2005/1).***

If you and your Accountant believe that, after weighing these eight factors, the tool has incorrectly classified your worker, then you may wish to apply for a Private Ruling from the ATO to provide absolute certainty around your position.

PAYMENTS

Another area that causes non-compliance is mistakenly believing that certain amounts/payments to an employee do not themselves attract SG. Any amounts/payments that are 'ordinary time earnings' attract SG. To check whether bonuses, allowances, employee reimbursements, termination payments, leave payments etc. are 'ordinary time earnings and therefore attract SG, go to www.ato.gov.au and type 'ordinary time earnings' into the search box at the top of the page. You will then be provided with a comprehensive list.

Note also that amounts paid outside an employee's ordinary hours of work (e.g. overtime payments) will not attract SG. An employee's 'ordinary hours of work' are the hours specified as such in their employment contract, agreement Award etc. That document need not use the exact expression 'ordinary hours of work', but it needs to draw a genuine distinction between ordinary hours and other hours. In particular, it would be expected that the other hours are remunerated at a higher rate (typically described as overtime) than the ordinary hours, or otherwise identifiable as a separate component of the total pay in respect of non-ordinary hours.

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

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

Where it is not possible or practicable to determine the normal, regular, usual or customary hours, then the actual hours worked should be taken to be the ordinary hours of work. 'Ordinary hours of work' are not necessarily limited to hours to be worked between 9am and 5pm, Monday to Friday. They may (depending on the provision in the relevant award or agreement, if any) include hours to be worked at other times, including at night, on weekends or on public holidays.

EXAMPLE

Kim is employed under a contract requiring her to work a minimum number of hours per week in a call centre. By agreement between her and the employer, she may work additional shifts as is mutually convenient. She often does so, though there is no clear and consistent pattern to this. There is no award or agreement governing Kim's employment that specifies her ordinary hours of work, nor do the extra shifts worked attract any overtime penalties or other higher payments. Kim's employer wonders which hours attract SG?

ANSWER

As her ordinary hours are not specified in an employment document (e.g. Award, agreement, contract etc.), there is no regular pattern to her hours, and all her hours are paid at the same rate, all of Kim's hours actually worked are ordinary hours of work. Therefore, all of the hours she works attract SG.

ALERT – SALARY SACRIFICE CONTRIBUTIONS

Legislation is currently before the Federal Parliament seeking to make salary sacrifice superannuation contributions not count towards the 9.5% SG contributions that an employer is required to contribute on behalf of employees. When passed by Parliament, this will apply from 1 July 2018. Currently, an employer is permitted include salary sacrifice contributions as counting towards their 9.5% SG obligation. For example, if an employee earned $50 000 per annum from their employer, the SG liability would all things being equal be $4750 ($50 0000 x 9.5%). However, if that employee salary sacrificed $2 000 of their salary towards superannuation, currently the employer's SG liability would be $4 560 ($48 000 x 9.5%).

From 1 July, the salary sacrifice contribution will not be taken into account, and therefore the employer's SG liability will be calculated on the pre-salary sacrificed amount of $50 000. Failure to note this change may result in an underpayment of SG and therefore make the employer liable for SG Charge (see next section).

SUPERANNUATION GUARANTEE CHARGE

Employers who fail to pay the minimum amount of SG for an eligible worker into the correct fund by the due date are liable for Superannuation Guarantee Charge (SGC), which is comprised of:

(a) SG Shortfall (basically the amount of superannuation you failed to pay on a worker's salary and wages)

(b) Interest on those amounts (currently 10%)

(c) An administration fee ($20 per employee, per quarter).

If you are non-compliant with SG, with the ATO crackdown on the horizon, you should urgently address this by lodging a SG Charge Statement and pay the SGC. An employer will be liable for SG Charge where they have an SG Shortfall, as at one of the quarterly due dates:

- 28 January (for the October-December quarter)
- 28 April (January-March)
- 28 July (April-June)
- 28 October (July-September).

An employer will have an *SG Shortfall* if their actual SG contributions they pay for a quarter across all of their eligible workers is less than the amount required by law. Therefore, all workers must be assessed individually – if there is an *SG Shortfall* for any of them, the employer will have an *SG Shortfall* for the quarter. This may be the case where the employer:

- Doesn't pay enough SG for its workers (they pay less than 9% on all of the ordinary time earnings of every SG eligible worker),
- Incorrectly classifies the worker as a contractor who is ineligible for SG,
- Doesn't pay the amounts by the quarterly cut-off dates listed earlier, or
- Does not pay the contributions to a worker's correct nominated fund (this is called a Choice Liability).

It is important to understand that there is no discretion in this area. Employers must pay the required amount of SG contributions by the quarterly cut-off dates. There is no provision in the SG legislation that allows for any extension of time beyond these quarterly deadlines.

TIP

In many cases, it will be obvious if there is an SG Shortfall (for example, you have not paid any SG at all for some workers). However, if you are unsure if you have an SG Shortfall for the quarter, use the ATO's online SG Contributions Calculator (go to **www.ato.gov.au** and type ***SG Calculator*** in the search box at the top of the page).

Having established there is an *SG Shortfall* for a quarter, employers must then self-assess their liability for the SG Charge. Where an employer has SG Shortfall for a quarter, they must raise an assessment by lodging an SG Charge Statement and, when lodging that Statement, pay the SG Charge to the ATO by the due date below. Upon lodgement by the employer, the ATO is taken to have made an assessment of the employer's SG Shortfall and SG Charge payable on the Shortfall as calculated and specified by the employer in the SG Charge Statement.

The due date for the SG Charge Statement and payment of the SG Charge is the 28th day after the second month following the end of the quarter as follows:

SG CHARGE DATES

QUARTER	DUE DATE
July – September	28 November
October – December	28 February
January – March	28 May
April – June	28 August

If you lodge your SG Charge Statement late, you are liable for a "Part 7 penalty". The maximum penalty is 200% of the amount of the SG Charge payable. Nominal interest continues to accrue until a completed and signed SG Charge Statement is lodged with the ATO. Any unpaid amounts will incur General Interest Charge (GIC) from the lodgement date.

To be clear, if an employer has not paid sufficient SG (even $1 less than required) by the quarterly cut-off dates, then simply paying the outstanding SG amounts as a late contribution straight to the employee's superannuation fund and not lodging an SG Charge Statement in the hope that this does not get detected, is not a legal solution. It is not up to the ATO to detect employers who have not met their superannuation obligations. Under the SG Charge self-assessment model, employers must raise an assessment themselves by lodging an SG Charge Statement if there is any amount of SG Shortfall.

Therefore, if you have not met your quarterly SG obligations then you must follow the correct procedure by lodging an SG Charge Statement and paying SG Charge. Although most times an assessment will be raised by the employer lodging an SG Charge Statement, if an employer fails to do so and the ATO is of the opinion that the employer is liable to pay SG Charge, the ATO may issue a default assessment of the SG Charge that they believe is payable. The employer will however first be informed by the ATO of its intention to issue a default assessment as well as the basis upon which it will be calculated. This acts as a final warning to the employer to raise an assessment themselves.

TAX TIP

Where you determine that you have an SG Shortfall, and you need to raise an assessment, we recommend using the ATO's SG Charge Statement and Calculator Tool The online tool works out the exact amount of the SG Shortfall and also provides:

- Step-by-step instructions
- Accurate, automatic calculations (which are re-calculated daily). This saves time when compared to manual calculations, and
- A completed *SG Charge Statement* which you can submit to the ATO.

ATO'S COMPLIANCE APPROACH

In April 2018, the ATO released a Fact Sheet explaining its compliance and penalty approach in relation to employer SG obligations. This approach applies to employers who are unable or unwilling to meet their SG obligations, including non-payment, under-payment, or late payment of SG contributions for an eligible employee. The ATO states that in deciding what action to take against employers it takes a differentiated approach depending on what category an employer falls into as follows:

(a) Employers who are not compliant but actively engage with the ATO to become compliant for past unpaid amounts

You will be deemed to have engaged with the ATO where you maintain regular contact with the ATO, provide all information requested and take corrective action when the ATO requests that you do so. Where this is the case, the ATO states that it is unlikely to impose additional penalties provided your business has a compliance history that demonstrates that you have been generally compliant with SG in the past.

(b) Employers experiencing difficulty meeting their obligations

Employers who fall into this category are encouraged by the ATO to contact them as soon as possible if you need assistance to lodge an SG Charge Statement or to discuss your inability to pay the SC Charge. The ATO does have the discretion to consider waiving – either in part or in full – the Part 7 penalty (see earlier) but only where the employer has attempted to comply and has an otherwise good compliance history.

(c) Employers who are eligible but unwilling to meet their obligations

The ATO advises that it will take firm compliance action if this category of employer fails to engage by not promptly replying to the ATO's correspondence or not actively taking steps to pay the SG owing. Action taken by the ATO in this instance may include:

- Collecting amounts owed directly from an employer's bank or third-parties that owe the business money,
- Collecting amounts owed directly from company directors (making them personally liable), or
- Action that may result in bankruptcy or liquidation (such as a bankruptcy notice or wind-up action).

TAKE-HOME MESSAGE

Armed with increased superannuation fund reporting and beefed up penalties (see earlier) the ATO is targeting non-complying employers. Ensure that you are complying and, where there is a shortfall, address this immediately by paying the SG Charge and lodging SG Charge Statements where appropriate. In view of the ATO's recently announced compliance approach (see earlier) if you are having difficulty meeting your obligations contact the ATO as soon as possible. Failure to engage exposes your business and possibly yourself to the ATO's harshest available sanctions.

UBER AND TAX

With ride-sourcing having exploded in popularity in recent years, this article examines the tax implications of this new form of transport, from a Driver, and Rider perspective.

INTRODUCTION

Ride-sourcing is a relatively new phenomenon and has for many commuters, become an attractive, cheaper alternative to taxi travel. Ride-sourcing involves a Driver (just a normal member of the public who has signed up with a Facilitator) making their car available for public hire. Overwhelmingly, the most common ride-sourcing Facilitator in Australia is *Uber* (but there are other players beginning to emerge such as *GoCatch* and *Taxify*). For the purposes of this article, we will concentrate on Uber. The number of Australians using Uber has more than doubled in the past year from 1.16 million people to 2.69 million. In some Australian capital cities, one in four adults use Uber. Indeed, in the final three months of 2017, there were approximately 3.7 million Uber bookings.

The Uber process of requesting and taking a ride was set out in detail in the Federal Court case ***Uber v Federal Commissioner of Taxation [2017] FCA 110***, although the process has changed subtly since then. Broadly, it works like this:

(a) Users wanting a ride (hereafter referred to as 'Riders') typically make a request through an 'app' provided by *Uber*.

(b) The Rider may be asked to confirm their pick-up address.

(c) The Rider is then asked to nominate their destination and will be shown an indicative fare range for several vehicle sizes.

(d) If satisfied, the Rider then chooses their preferred vehicle size and presses a button to confirm their request.

(e) The 'app' then sends the request from the Rider to the Driver (of the requested vehicle size) closest to the Rider's nominated pick-up address. The Driver may choose to accept the request or alternatively decline (in that case, the request is sent on to the next nearest available Driver and so on until the Ride is eventually accepted by a Driver)

(f) The screen on the Rider's device then identifies the Driver who has accepted the request, by their first name. Also displayed on the Rider's screen is:

   (i) a photograph of the Driver,

   (ii) the registration plate of the Driver's vehicle,

   (iii) a description of the make and model of the Driver's vehicle,

   (iv) the feedback ("star rating") of the Driver, and

   (v) an option to cancel the service, to phone the Driver, or to send a text message to the Driver.

(g) When the Rider enters the Driver's vehicle, the Driver presses a button on their app to commence calculation of the fare, and does the same when the ride has ended. These locations are then used by Uber as the basis to calculate the cost of the fare. The calculation also factors in promotional discounts and demand-based pricing

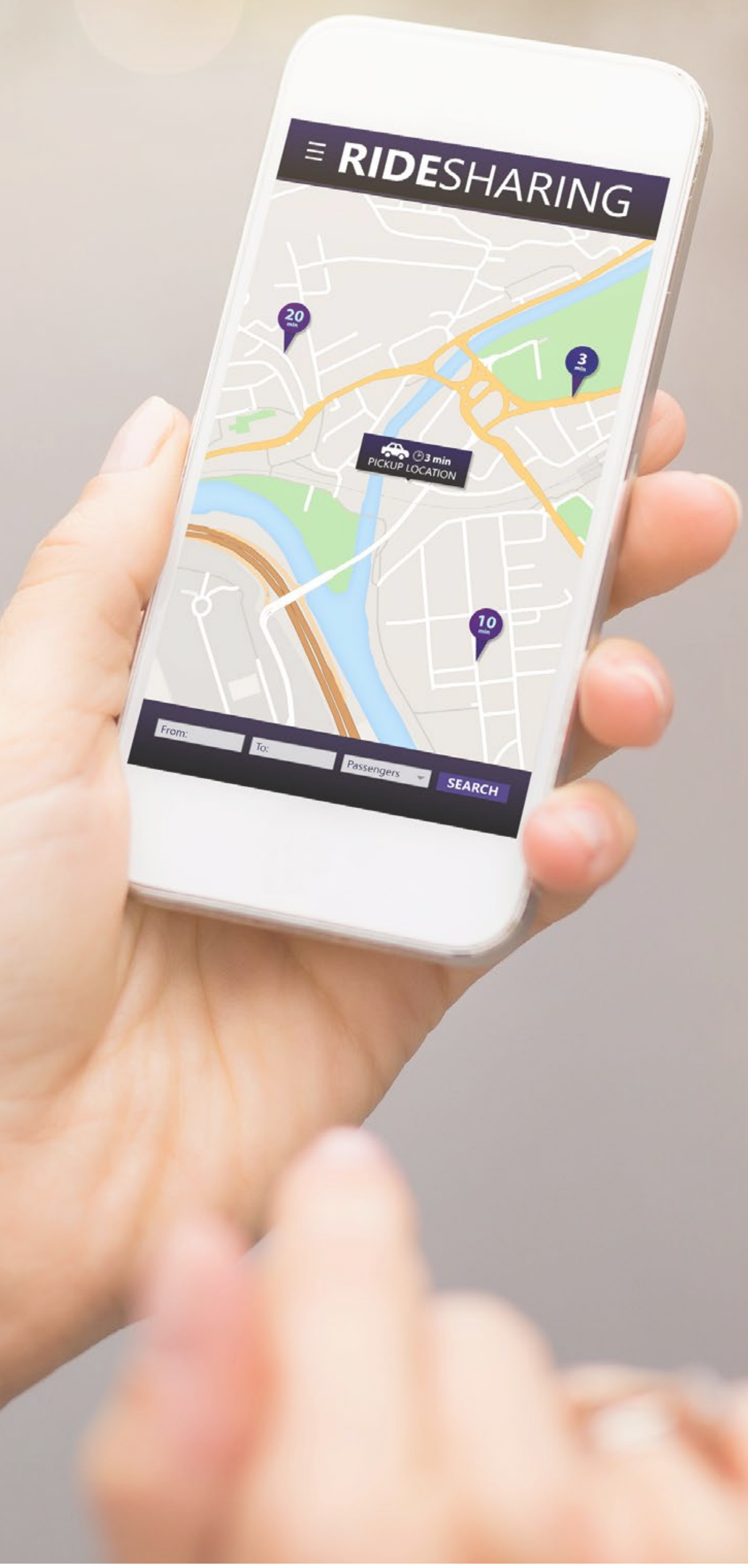
(h) The Rider pays the final calculated fare to Uber. The form of payment is via the Rider's credit card (which they must register with Uber prior to the ride) which is debited at the conclusion of the ride after the fare has been calculated

(i) Uber remits a Driver's fares to them at periodic intervals, less an "Uber Fee". The Uber Fee is designed to take account of certain costs borne by Uber including technology, development of app features, marketing, and payment processing for driver-partners.

We now examine some of the key tax issues from a Driver and Rider perspective.

DRIVER

There are a number of tax implications for Drivers, and these should be taken seriously! In 2017, the ATO issued a Media Release stating that it is collecting names of Drivers directly from *Uber* (and other sharing economy Facilitators such as *Airbnb*) and will cross-check these names to the Driver's tax returns and Business Activity Statements to ensure that income tax and GST obligations have been met. Therefore, there is a very high likelihood that non-compliant Drivers will be detected by the ATO.



INCOME

Income from a Driver's ride-sourcing activities must be declared as assessable income in a tax return irrespective of the amount they earn, and irrespective of whether they have another job. The amount to be declared is the full fare (including or "grossed-up" by the Uber Fee) less GST. *(see below re ABN and GST requirements).* The full fare amount must be declared in a Driver's personal tax return (or in an entity's return if they are operating through a company, trust etc.) If the driver is operating as an individual (not through an entity) in their personal tax return, the Driver must select the code for their main occupation. If their main occupation is ride-sourcing, they should select the Business industry code **46231** (taxi service operation).

EXAMPLE

FARE BREAKDOWN

Simon is a full-time school teacher who, to earn extra income, signed up as a Driver with *Uber* in April 2017. On one of his rides, the Rider was charged $110. The Uber Fee was $27.50, and ultimately Simon received $82.50. (This figure is indicative only. The Uber Fee will vary depending on a range of factors).

In this scenario, Simon must declare $100 as assessable income in his tax return (being the full fare of $110, less GST of $10).

TAX TIP

Unlike salary and wages, because a Driver's ride-sourcing income has no tax withheld when paid to them, a Driver may end up with a tax bill at year-end. To avoid this, the Driver can make voluntary tax pre-payments to the ATO. Alternatively, they can voluntarily enter into the PAYG instalments system which allows them to make provision for an anticipated tax liability at year-end by paying small amounts of tax during the year to offset any tax payable on their ride-sourcing income.

DEDUCTIONS

Expenses (less GST) incurred by Drivers in operating their ride-sourcing activities are deductible. As per the following table, not all expenses will be deductible. Expenses that are deductible may need to be reduced/apportioned to take account of any private use.

DEDUCTIBLE	NON-DEDUCTIBLE
Commissions charged by the Facilitator	Driver's licence fees
License fees or service fees charged by the Facilitator	Fines (speeding or parking)
Car insurance	Cost of own meals and drinks during shifts
Car registration	Clothing (except if either compulsory or non-compulsory clothing, that is unique and distinctive to the Facilitator you drive for). Note that Uber do not require drivers to wear a uniform.
Car depreciaion	
Car repairs, services, tyres etc.	
Car lease payments	
Interest on loan funds to buy car	
Tolls	
Parking	
Phone bills	
Fuel	
Refreshments for Riders (e.g. mints, water etc.)	
Cost of becoming a Driver such as police checks, application fees etc.	

EXAMPLE

Returning to the earlier example, Simon can claim a $25 deduction for the Facilitator commission (i.e. Uber Fee) (being $27.50 less $2.50 GST).

Note however that the actual costs relating directly to a Driver's vehicle will be claimed using either of the following methods:

1. Cents per Kilometre Method

Whereby you claim a set number of cents per kilometre travelled (currently 66 cents). The advantage of this method is very little record keeping is required. You only need to be able explain how you arrived at your calculation – you do not need any documentary evidence in the way of recepts or log books etc. Even where you travel more than 5,000 kilometres, you may still elect to use this method (and save the hassle on the record-keeping requirements that are required under the logbook method) by capping your claim at 5,000 kilometres. In summary, this method can be appealing to Drivers who:

- o Have travelled less than 5,000 business kilometres
- o Have older vehicles (therefore depreciation and interest costs are low)
- o Have not kept, or do not wish to keep, records of kilometres travelled.

This method incorporates all car expenses including petrol, servicing, depreciation, interest etc. You can make no further car expense claim.

2. Logbook Method

Under this method, your claim is based on the business use percentage of each car expense. The business use percentage is determined by a logbook, which must have been kept for a minimum 12-week period. This logbook must be updated every 5 years or where there has been a change to the percentage of business use (by more than 10%). To ease the record-keeping burden, we would encourage the download of one of the innumerable logbook 'apps' on the market, either from the *App Store* or *Google Play* as the case may be. In summary, under this method you can claim all expenses that relate to the operation of the car, at your percentage of business use, as established from your logbook. This method generally gives the best result where the vehicle has substantial business use.

Drivers can calculate their claim and determine which method provides the largest deduction, by using the ATO's *Work-related car expenses calculator* on its website.

ABN

In its ride-sourcing guide, the ATO states that it is "likely" that Drivers are carrying on an enterprise, and therefore they must register for an ABN and GST as they:

- Intend to make a profit
- Operate in a business-like manner, and
- Must provide customers with Tax Invoices when required.

Despite this qualification ("likely"), Uber drivers generally speaking will always be 'carrying on an enterprise', and therefore should always register for an ABN and GST. The only instance where we could conceive that a driver would not be carrying on an enterprise would be where they are an employee of the Facilitator. However, in a typical ride-sourcing model (and certainly in the case of Uber) drivers are not employees. Drivers would only be employees if some or most of the following factors featured in a ride-sourcing model:

- The Facilitator provided the vehicle,
- The Drivers were paid on a set salary or per hour basis, rather than per job/fare,
- The Facilitator determined when the Drivers worked,
- The Drivers were reimbursed any expenses by the Facilitator, and
- The Facilitator bore the commercial risk, such as by insuring the vehicle.

None of these factors apply with Uber, so the Drivers are not employees, and therefore are carrying on an enterprise. Consequently, Drivers should obtain an ABN as soon as they register with Uber and provide it to Uber.

GST

Drivers must register for GST within 21 days of signing up with Uber. Under general GST law, you are only required to register for GST where you are carrying on an enterprise and your annual turnover is $75,000 or more.

However, where your enterprise involves providing 'taxi travel' you must register for GST irrespective of the level of turnover. The Government chose back in 2000 when the GST system was introduced to apply compulsory registration to taxi drivers for several reasons including:

- To avoid the confusion created if some taxis did not charge GST, but others did.
- Avoiding the added problem that would arise if a passenger was using a taxi for a business trip (creditable acquisition). In such a case, the passenger would want to be able to claim GST credits for the GST component of all fares.
- Each State authority sets meter rates. After 1 July 2000, all meters were adjusted to reflect the GST. If some drivers were registered but others were not, all would be collecting the higher rate. This would disadvantage drivers who had to be registered if the standard $75,000 turnover registration threshold applied.

The GST legislation defines 'taxi travel' as travel involving transporting passengers by taxi or limousine for fares. The ATO adopts a broad interpretation of 'taxi' to include cars made available for public hire to transport passengers in return for a fare (but not including trucks and bike courier services). Thus, Uber drivers are caught by this interpretation. Although Uber appealed this ATO interpretation to the Federal Court, in February 2017 the Court unanimously ruled in the ATO's favour that making your car available for ride-sourcing constitutes taxi travel. Uber are not appealing against this decision, thus this is settled law. Therefore, Drivers must register for GST within 21 days of signing up with Uber, irrespective of the level of turnover. From a Driver's perspective, they are financially better off registering for GST anyway, as many of the costs they incur while driving for Uber will attract GST (see earlier list of expenses). Without registration, there is no ability to claim back the GST component of these expenses. Having registered for GST, Drivers:

- Must pay to the ATO GST on the full fare ($10 in the earlier example), and
- Can claim GST on business expenses (see earlier list), taking into account any private use of the vehicle.

WARNING

We understand that Uber's position to a Driver's tax obligations is to encourage the Driver to seek their own advice from a qualified tax advisor. Accordingly, Uber stop short of requiring Drivers to register for an ABN and GST. Irrespective of this, Drivers must register in order to comply with their tax obligations, such as remitting the GST component of the fare.

In the event that a Driver does not register for GST, and the ATO later detect this,, it will be the Driver (not Uber) that will be liable for the unpaid GST (to the ATO) on all fares. Additionally, interest and penalties for failing to pay the GST on time will likely be imposed. Therefore, irrespective of the fact that Uber do not compel Drivers to register for an ABN and GST, Drivers should do so as they are the taxpayers who will be left exposed in the event of non-payment of GST on fares. In this sense, the GST 'risk' and ultimate liability sits with the Driver.

RIDER

DEDUCTION

The same principles apply as per taxi fares. Where the fare is business-related, for example, you are travelling from your office to a client's premises; the fare will be deductible in full. However, where the travel is personal – such as going to the movies or travelling home from work – the fare is not deductible. To evidence the deduction, the Rider will need documentation. The good news is that Uber (if you log back into their 'app' after the ride) will provide you with sufficient documentation, (although the form of the documentation may differ – see later) to enable a deduction to be claimed.

Therefore, for business-related fares, Uber is an income tax substantiation-friendly option for Riders. Indeed, it is possible within the Uber app to create a "personal" and a "business" profile, each linked to separate credit cards. This feature assists Riders to better delineate their private and work-related travel.

GST

To claim a GST credit on a fare, the trip must be business-related (see earlier), and the Rider must be in possession of a valid Tax Invoice. For quite a number of fares however, a Tax Invoice will not be required as the total fare may be less than $82.50 (including GST). Where this is the case, any of a Tax Invoice, a docket, an invoice, or a receipt will suffice and can form the basis for your GST claim.

The question then arises, what actual documentation does *Uber* or the Driver provide you with at the conclusion of the ride? In the vast majority of cases, the Driver will not provide you with any documentation (e.g. invoice etc.). Rather, after the ride, if you log back into *Uber's* 'app' they will in due course, on behalf of the Driver, provide you with either a:

- Tax Invoice (where the Driver has registered for an ABN and GST). Tax Invoices are provided by Uber even where the fare is below $82.50. We can confirm that the standard Uber-provided Tax Invoices we have sighted are in full compliance with the ATO's requirements.
- Invoice (in the event that the Driver has failed to register for an ABN and GST, or simply failed to provide this information to Uber). Again, the standard Uber-provided invoices we have sighted provide sufficient information to claim a tax deduction but not make a GST claim in instances where the fare exceeds $82.50.

Given these two forms of documentation, a Rider making a business trip could be left unable to claim the GST (1/11th of the full fare) where the Driver is not registered for GST (or they are, and have simply failed to advise Uber) **and** the fare exceeds $82.50. In this sense, Uber can, in some cases, create uncertainty of GST treatment for Riders. The solution to the GST-registered Rider not being out of pocket for the GST amount in this circumstance lies in the process for booking a ride (see earlier steps). At '**Step F**' the Rider has the ability to send the Driver a text message or to phone the Driver prior to accepting that ride. Theoretically, at this point, the Rider could ask the Driver whether they are registered for GST and if the Driver is not, the Rider could cancel the service and request another Driver via the 'app'. This approach may however be difficult in practice, and is still vulnerable to the following risks:

1. The Driver dishonestly claiming they are GST-registered when in fact they are not (something the Rider will only learn of after the event);

2. The Driver not understanding the question and thinking they are GST-registered when in fact they are not (again, something the Rider will only learn of after the event);

3. The Driver not responding to the Rider's message by the time they arrive at the Pick-up location (which could then see the Rider levied a cancellation fee if they were to cancel at that point).

Where a Tax Invoice is provided by *Uber* because the Driver is registered (the ATO state that Uber are permitted to do this on behalf of the driver) this will enable the Rider to clam the GST on the fare.

ABN WITHHOLDING?

Another relevant issue ABN Withholding.

Under this regime, if a supplier of a good or service does not provide an ABN and the total payment for that good or service is more than $75 (excluding GST), the recipient generally has to withhold at the top rate of tax (currently 47%) from the payment and pay it to the ATO. Having withheld from the payment, the recipient of the supply must then complete a *PAYG payment summary - withholding where ABN not quoted* and give it to the supplier at the same time the net amount is paid to them or as soon as possible after. However, withholding is not required where any of the following exceptions apply:

- the payer is not making the payment in the course of carrying on an enterprise in Australia (i.e. the Uber trip is for private travel),
- the payment is $75 or less (excluding GST),
- the supply that the payment relates to is wholly input-taxed,
- the supplier is an individual and has given the payer a written statement (Statement by a supplier) that states the supply either,
  – relates to a private recreational pursuit or hobby, or
  – is wholly of a private or domestic nature for that supplier.

Therefore, in the absence of one of these exceptions, do Riders technically have a requirement to withhold 47% of the fare from Drivers who do not provide an ABN? This question is important as where there is a failure to withhold by a payer (in this case, the Rider) when they are required to do so under the law, the ATO can penalise the payer the equivalent of what should have been withheld. Thus, the Rider may be left liable for 47% of the fare in the event that they do not withhold when according to the law they should have done so.

In theory, the answer is yes – withholding should apply to the fare where the Driver fails to produce their ABN (and none of the above exceptions apply) as the Driver is carrying on an enterprise. However, under a typical ride-sourcing model (and certainly with Uber, see earlier Steps), the Rider is not in a position to withhold as the payment they make for the fare is in the form of a direct debit of the Rider's credit card by Uber. Therefore, it would be highly unlikely to imagine the ATO penalising Riders for not withholding when in a physical sense they have no ability to do so.

However, if a Rider was still concerned about contravening the 'no ABN withholding' laws, to be abundantly cautious, at **Step F** of the booking process (see earlier) the Rider may wish to contact the Driver before the booking is confirmed and enquire as to their ABN status. Where the Driver in turn confirms that they do not have an ABN, the Rider can then cancel the service and request another Driver via the 'app'.

VALUING YOUR NET ASSETS

The Maximum Net Asset Value Test is one of the key access points to the Capital Gains Tax Small Business concessions. This article examines some of the key requirements that must be met.

INTRODUCTION

The CGT Small Business Concessions allow business owners to significantly reduce, and in some cases eliminate capital gains tax on the sale of business assets, or the business itself. This can lead to a significant saving when you retire or exit your business. In 2016/2017, business owners claimed more than $12 billion of CGT concessions. There are two alternative entry points for access to the CGT concessions as follows:

1. Small Business Entity (SBE) Test – this broadly requires that your aggregated turnover is less than $2 million (including the turnover of any connected entities or affiliates).

2. Maximum Net Asset Value (MNAV) Test – this broadly requires that the net value of the assets of the entity that made the capital gain (e.g. individual, or company, Trust etc.) be less than $6 million just before the event giving rise to the capital gain (e.g. the sale).

The SBE test was introduced in 2006, and yet the $2 million threshold has not been increased or even indexed since that time. Indeed, even when the definition SBE was changed in 2016 (increasing the turnover threshold to $10 million), the CGT small business concessions were specifically excluded from this increase. Increasingly with the effect of inflation and business growth, business owners are needing to rely on the MNAV test in order to access the concessions. Therefore, an understanding of the requirements of this test is useful.

WHO?

From the outset, it is important to first determine who owns the asset/business that is giving rise to the capital gain. This is because the MNAV test requires the aggregation of the net value of assets of the taxpayer plus their affiliates and connected entities. Without first determining who owns the asset, it is impossible to work your way through these concepts. Therefore, when starting out, it is essential to correctly establish ownership of the asset giving rise to the gain – is the asset owned by an individual, a trust, a beneficiary of the trust, a company, or a shareholder of the company etc.

WHAT IS IN?

Having determined who owns the asset, under the MNAV test the net value of all of the CGT assets belonging to the taxpayer who made the sale, their connected entities and affiliates must be taken into account for the purposes of the $6 million calculation. If an asset is not excluded (see later) then implicitly it is part of the calculation including:

- Cash (including personal interest-bearing bank accounts)
- A debt owed to an entity
- Assets held in a foreign jurisdiction unless they are specifically excluded
- Depreciating assets
- Trading stock
- Work in progress
- Where a connected entity to the Trust taxpayer has an unpaid present entitlement (UPE) to receive an amount of income or capital from a Trust, the value of the UPE must be included (and only included once)
- CGT assets (including investment properties and listed shares)
- Main residence (to the extent that it is set aside exclusively as a place of business and it is identifiable as such and that part of the home is not readily adaptable for private use).

The net value of the assets means that liabilities relating to assets to be included must be subtracted. The following table sets out typical liabilities and whether these should be subtracted:

On the other hand, Section 152-20(2) of the Income Tax Assessment Act identifies the following assets as being excluded:

- Assets used solely for the personal use and enjoyment of an individual or an individual's affiliate
- An individuals main residence (unless included, as per the above rules)
- An individual's superannuation fund or similar assets.

TAX TIP 1

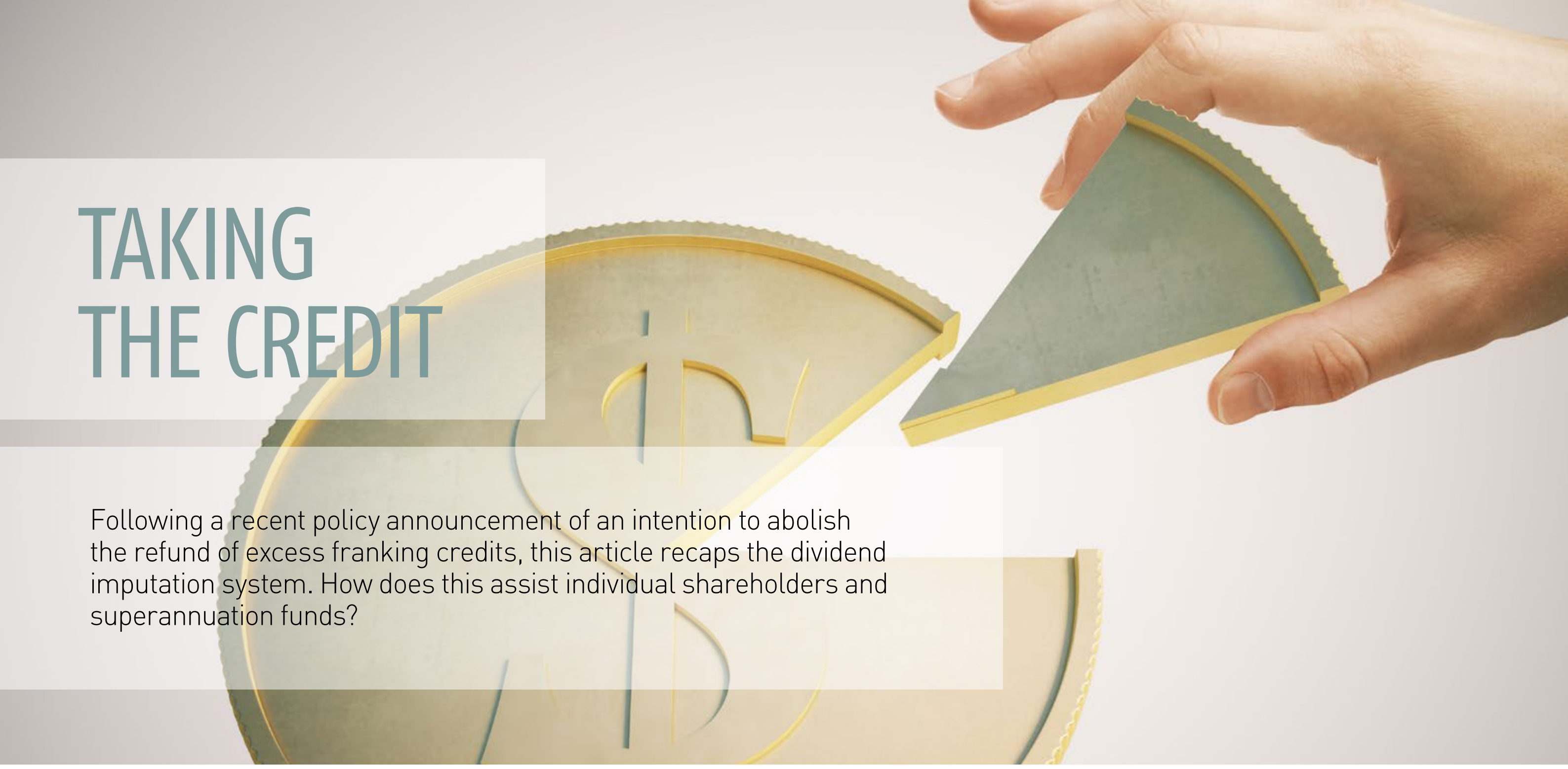
The exclusion of superannuation interests from the net asset value test presents planning opportunities. For instance:

- Holding your business premises or shares within your SMSF (perhaps by contributing them in-specie)
- With the inclusion of cash in the net asset value test, making concessional or non-concessional contributions to superannuation even just before the CGT event. By doing so, the amount of the contribution will be disregarded under the Net Asset Value Test.

TAX TIP 2

With the exclusion of personal use assets from the net asset test, consider purchasing personal use assets before the CGT event that you may have been eventually planning to purchase anyway, such as vehicles or property that you do not intend to use for business or to produce assessable income.

SHOULD THE FOLLOWING LIABILITY BE SUBTRACTED FROM THE VALUE OF THE ASSET?	YES	NO
Loans to purchase an included asset	✓	
Unbilled expenses		✓
Contingent liabilities (contingent on certain events e.g. lawsuit)		✓
Provision for: annual leave, long service leave, unearned income, tax liabilities	✓	
Liabilities linked to the sale of the CGT asset (e.g. real estate agent commission)	✓	
Legally enforceable debts	✓	
Provisions for liabilities in respect of earn-out arrangements		✓



TAKING THE CREDIT

Following a recent policy announcement of an intention to abolish the refund of excess franking credits, this article recaps the dividend imputation system. How does this assist individual shareholders and superannuation funds?

BACKGROUND

On 14 April, the Federal Opposition announced that in the event that it wins the next Election (due no later than next year) it intends to abolish the refund of excess dividend imputation credits from 1 July 2019.

By way of background, under the current law, where you are paid a dividend, that amount will generally be assessable. However, where the dividend is franked (i.e. tax has already been paid by the company on the dividend before it was distributed to you) you will be entitled to a franking tax offset which is basically a credit for the amount of tax already paid by the company on that dividend. This credit is then used to reduce the tax payable on your taxable income. Where your tax payable is reduced to zero, and there is a franking credit left over, the following Australian residents are eligible for a refund of that excess credit:

- individuals who receive franked dividends, either directly or through a trust or partnership
- endorsed income tax-exempt charities and deductible gift recipients
- complying superannuation funds, approved deposit funds (ADFs) and pooled superannuation trusts (PSTs)
- life insurance companies and registered organisations (in respect of their superannuation business)
- trustees liable to be assessed, in limited circumstances, under section 99 of the *Income Tax Assessment Act 1936*.

Under the Opposition's policy, charities and other non-profit organisations will be exempt from the change, and therefore still entitled to a refund of excess credits. There are also reports that certain pensioners will be exempt from the reform.

Currently, an estimated 1.2 million individual taxpayers (or 8% of taxpayers) receive a refund of excess franking credits, and more than 200 000 individuals (out of 600 000) that use Self-Managed Superannuation Funds (SMSFs). The reform if enacted actually takes the law back to what it was pre-2001. Before then, taxpayers received a credit for the tax paid by the company, however when a taxpayer's tax liability was reduced to zero by the credit, there was no refund of the excess. It is also worth noting that most tax offsets in the tax system are not refundable once your tax liability is reduced to zero. Indeed, there are only three tax offsets that are currently refundable – the film production tax offset, the Research and Development (R & D Tax Offset), and the franking tax offset.

We now examine how the offset operates in relation to individuals and superannuation funds.

INDIVIDUALS

Individuals who receive a dividend from a company must include the unfranked distribution, or the franked distribution, plus franking credits in their tax return as assessable income. They are then entitled to a tax offset for the amount of the franking credits, with any credit left over to be refunded as follows:

EXAMPLE

In 2017/2018, Bill receives a fully franked dividend of $700 XYZ Pty Ltd and an unfranked dividend of $200 from ABC Ltd. The fully franked dividend has a franking credit of $300 (at the 30% rate) representing the tax already paid by the company. Bill has other income taxable income of $19 500 for the year.

Bill's Total Taxable Income*	$20 700
Tax Payable on Taxable Income**	$475
Less Low Income Tax Offset	$445
Total Tax Payable	**$30**

*This includes the franking credit, and the franked and unfranked dividends

**2017/2018 tax rates including the Medicare Levy

The franking credit of $300 reduces Bill's tax payable to zero. The remaining $270 excess is then refunded to Bill.

Under the Opposition's proposal, while the franking credit of $300 would still enable Bill to reduce his tax payable to nil (and therefore no additional tax is payable under that proposal), the excess of $270 (like with most tax offsets) would not be refunded.

TAX TIP 1

It stands to reason that those who own larger share portfolios (and therefore potentially receive a larger amount of imputation credits), and also those who have lower amounts of other income (and therefore smaller amounts of tax payable) may be more adversely affected by the proposed change.

If you have a high income from other sources, then the imputation credits are unlikely to exhaust the tax payable on your other income. Therefore, the franking credits can be fully used.

TAX TIP 2

If you have received a dividend that has Australian franking credits attached from a New Zealand franking company, you may be eligible to claim the Australian-sourced franking credits.

TAX TIP 3

To claim a refund, you do so in your tax return by declaring your dividend income, and franking credits (along with any other income). The ATO will then calculate and send out any refund to your nominated bank account.

If you are not required to lodge a tax return, you can apply for a refund online at www.my.gov.au

SUPERANNUATION FUNDS

The other significant entities that benefit from the imputation credit regime are superannuation funds, particularly SMSFs. Holding shares inside your superannuation fund is appealing for a number of reasons. Chiefly, earnings on the shares are taxed concessionally compared to if you held the shares personally as follows:

	TAX RATE	
	INSIDE SUPERANNUATION	Outside Superannuation
Investment earnings	-15% if account is in accumulation mode -0% if account is in pension mode*	Marginal tax rate**
Capital gains	-15% if account is in accumulation mode (10% if asset is held for more than 12 months) -0% if asset is used to support a pension	Marginal tax rate**

**The Government has proposed to increase this to 15% for earnings on accounts that exceed $1.6 million*

**The marginal tax rate referred to in the above table is your individual marginal tax rate, which for 2017/2018 is as follows:

TAXABLE INCOME $	2016/2017 Tax Rate
0 – 18 200	Nil
18 201 – 37 000	19 cents
37 001 – 87 000	$3 572 plus 32.5 cents
87 001 – 180 000	$19 822 plus 37 cents
180 000+	$54 232 plus 45 cents

As we can see from the above tables, unless you earn below $18 200, your marginal tax rate will always be higher than the highest superannuation tax rate of 15%. Therefore the tax imposed on your investment earnings inside superannuation will always be less than that imposed on these earnings outside superannuation (provided you earn more than $18 200). One of the advantages of operating an SMSF is the ability to purchase shares that pay franked dividends. Being able to pick and choose your shares to ensure both maximum tax efficiency and a diversified portfolio is one of the big attractions of SMSFs. Franking credits from dividends can eliminate or reduce the tax you have to pay on your SMSF's earnings, including any capital gains your fund may realise. The key issue around imputation credits is the fact that the income tax rate for superannuation funds is only 15%, while imputation credits from fully franked dividends can be as high as 30% of the gross dividend. This means that the imputation credit accounts for the tax payable on the dividend received and leaves an excess to be used to reduce the other tax payable by the fund or, where that tax is reduced to zero, to receive a refund of the excess.

EXAMPLE

Betty's SMSF holds some ANZ and NAB shares. For the income year it receives:

	Dividend	Imputation Credit	Taxable Income
NAB	$2800	$1200	$4000
ANZ	$1750	$750	$2500
Total	$4550	$1950	$6500
Tax @ 15%			$975
Less Imputation Credit			$1 950
Results in Excess Imputation Credits			**$975**

Where the SMSF has no other income to be offset, the fund will receive a refund for the excess credits from the ATO.

An important point to note is that the SMSF must hold the shares for at least 45 days (plus the day of purchase and day of disposal) to be entitled to franking credits. The 45-day rule applies to SMSFs regardless of the amount of franking credits. The 45-day holding rule only applies to individuals whose total franking credit entitlement is $5 000 or more.

YEAR-END TAX ISSUES FOR BUSINESS

This article provides a range tips for business as we lead up to 30 June.

INSTANT ASSET WRITE-OFF

These are the final months – and a small business's final opportunity – to take advantage of the $20, 000 instant asset write-off!

This is available until 30 June 2018 for Small Business Entities (SBE's with a turnover of less than $10 million including any connected or affiliated entities). From 1 July 2018, the write-off is set to revert to $1, 000. However, currently where an asset costs less than $20, 000, 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. 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.

Therefore, it is not sufficient that you pay for or order a qualifying asset before 1 July – it must be delivered, and installed ready for use in your business by this time.

Having determined that a business is eligible (aggregated turnover below $10 million, and carrying on a business) 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.

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

Penny's Pizza Parlour Pty Ltd. has a turnover of $2.2 million in 2017/2018 and therefore is a Small Business Entity (SBE). With the delivery arm of its business rapidly growing, in June 2018 it purchases another custom-made delivery vehicle for $19 800. The vehicle arrives at the car dealership and is picked up by Penny on 2 July 2018.

RESULT?

The deadline for the $20, 000 write-off has not been met. Although the vehicle was ordered and paid for before 30 June, it was not available ready for use in Penny's business until after this date. Therefore, with the write-off having reverted to $1, 000, in terms of depreciation the vehicle will be allocated to a general small business pool to be depreciated at 15% in 2018/2019, and 30% in subsequent years. No depreciation claim can be made in 2017/2018.

ALTERNATIVELY…

Assume instead that the vehicle was delivered and picked up by Penny by 30 June. Under this scenario, she would be entitled to a tax deduction for the full cost of the vehicle (less GST) of $18 000. This would reduce her company's tax bill by $4 950 in 2017/2018 which would provide her with cash-flow relief rather than having to wait until 2018/2019 for a 15% write-off, and then 30% in subsequent years.

Although in utilising the $20, 000 write-off by 30 June you are improving tax position in 2017/2018, 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 under the $1, 000 threshold. You do not 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 do not 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.

TAX TIP

While on the subject of depreciating assets and deductions, before financial year end you should review your asset register. Write-off and scrap by 30 June any obsolete items to get a tax deduction for the remaining written down value of that asset.

WRITE-OFF BAD DEBTS

Peruse your list of debtors and consider whether you can write-off any bad debts by 30 June…and in doing so claim a tax deduction in this financial year!

When a debt actually becomes 'bad' and can be written-off is an objective determination. You would consider facts such as where:

(a) The debtor has died leaving no, or insufficient, assets out of which the debt may be repaid,

(b) The debtor cannot be traced and the creditor has been unable to ascertain the existence of, or whereabouts of, any assets against which action could be taken,

(c) Where the debt has become statute-barred and the debtor is relying on this defence (or it is reasonable to assume that the debtor will do so) for non-payment, or

(d) If the debtor is a company, it is in liquidation or receivership and there are insufficient funds to pay the whole debt, or the part claimed as a bad debt.

In the absence of these objective, external factors, the time at which a debt becomes 'bad' will be a commercial decision by the business owner. The owner should consider, on a reasonable view of all the facts, or on the probabilities existing at the time, that there is little or no likelihood of the debt or the part of the debt being recovered. You would typically come to this conclusion after taking steps to recover the debt. These steps and considerations would vary depending on the resources available to the business and the size of the debt but may include:

(i) Reminder notices, telephone calls/emails/mail contact,

(ii) A reasonable period of time has elapsed since the original due date for payment of the debt. This will of necessity vary depending upon the amount of the debt outstanding and the credit arrangements (e.g. 90, 120 or 150 days overdue),

(iii) Formal serving of demand notice,

(iv) Issue of, and service of, a summons,

(iv) Judgment entered against the delinquent debtor,

(v) Execution proceedings to enforce judgment,

(vi) The calculation and charging of interest is ceased and the account is closed, (a tracing file may be kept open; also, in the case of a partial debt write-off, the account may remain open),

(viii) Valuation of any security held against the debt, and

(ix) Sale of any seized or repossessed assets.

Where by reference to these factors you determine that the debt is bad, to claim a deduction in 2017/2018 the debt must be written-off as bad prior to 30 June. The bad debt will need to be extracted from the Trade Debtors or Accounts Receivable and recognised as an expense in the Profit and Loss Statement of the business. To achieve this will depend on whether there has been a previous provision for doubtful debts raised for the debtor. If there is no provision, then the receivable is written-off to a Bad Debts Expense account and where doubtful debts are provided for, to the Provision for Doubtful Debts account. Note that a deduction is only available where the original transaction has been brought to account as assessable income. Therefore, a deduction is not available for businesses that account on a cash basis.

AVOID LOST FRANKING CREDITS

In the September/October 2017 edition of this publication (available in the Subscriber section of our website **www.mytaxsavers.com.au)** we detailed how, because of the staggered reduction to the company tax rate, companies may end up with 'lost' franking credits. This can occur when a company becomes entitled to the lower 27.5% tax rate (because of the increase to the turnover threshold) so they can only frank dividends at 27.5% even if the profits were taxed at 30%. In the absence of the company having some non-taxed income (such as non-portfolio foreign dividends) the trapped franking credits represent a real tax cost for the company's shareholders as it increases the 'top-up tax' that the shareholder will ultimately pay when they receive the amount as a dividend.

This problem first affected companies with less than $10 million turnover that became entitled to the 27.5% tax rate on 1 July 2016. It again affected companies on 1 July 2017 where a company has a turnover of less than $25 million. There is now nothing that can be done about these companies that became entitled to the lower 27.5% tax rate on those above dates (unless as stated earlier they have non-taxed income to which the unused franking credits can be applied). Of course, none of this will be a problem if the company intends to keep the funds in the company – however for many family businesses this will not be the case.

Going forward, for companies that will become entitled to the lower corporate tax rate of 27.5% rate on 1 July 2018 (i.e. those with a turnover above $25 million) they should consider paying out their 30% taxed retained earnings and current year profits before 1 July 2018. This will enable those companies to frank the dividends at 30% and thus no franking credits will be lost. Bear in mind this "additional" dividend would be assessable to the shareholders. Thus along with the franking credit it may push the shareholders' taxable income up to a higher tax bracket. This strategy may not be ideal for all situations and should be discussed with your tax advisor. This is unless of course the directors wish to keep those funds within the company, and this could be necessary if the company has to meet certain lending or licencing criteria.

SINGLE TOUCH PAYROLL... ALMOST HERE!

Larger employers need to urgently prepare for the imminent introduction of ***Single Touch Payroll!***

Employers with more than 20 employees as at 1 April 2018 must be STP-compliant by 1 July 2018. The employee headcount can in theory be done retrospectively if you have not already done so. It must include all employees that were employed as at 1 April – even if they have since exited. Employees who have joined since this date should be excluded from the headcount. 'Employee' for STP headcount 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. Also not included in the count are staff provided by third-party labour-hire, office-holders and directors of companies, casual employees who did not work in March 2018, independent contractors, or religious practitioners.

On the other hand, employees based overseas, employees absent on leave, and seasonal employees are included. 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 was 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.

The ATO urges employers to start preparing now to be STP-ready. The next steps are:

- Download the **"Get ready checklist"** from the ATO website **www.ato.gov.au/business/single-touch-payroll/get-ready-for-single-touch-payroll/**
- Determine how many employees you had on 1 April 2018
- Talk to your software provider on how and when their product will be STP ready
- Employers who don't have existing software should choose a product that offers STP. Your Accountant or Bookkeeper may be able to suggest a suitable product.
- Update the payroll software when it's ready and start reporting to the ATO through STP.

A number of STP resources including factsheets, checklists, information packs and advice on how to manage the headcount are available on the ATO Webpage at **www.ato.gov.au/stp.**

Note that although the ATO is currently working closely with software providers, some providers may not be ready by the 1 July start date. Where this is the case, the ATO will grant a deferral for affected employers. The ATO may also grant exemptions for employers in rural areas with no reliable internet connection, and also employers who only have 20 or more employees for a short period of the income year (e.g. due to harvesting activities).