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AT LAST!

FESTIVE SEASON TAX TIPS

SMALL BUSINESS INSTANT ASSET WRITE-OFF ***EXTENDED***

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GENERAL ADVICE WARNING: The information contained in this publication is general information only. Any advice, if any, is general advice only. Your objectives, financial situation or needs have not been taken into consideration. You should consider if this information is suitable for your needs and seek the advice of relevant taxation, superannuation and/or other relevant advisers before any financial product information is acted on.

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Key Dates for Business

Many key dates are looming for business including those relating to Activity Statements, superannuation, and more.

NOVEMBER 2018

11 July-September quarterly Activity Statements – due for lodgement and payment (if lodging electronically)

21 October monthly Activity Statements – due for lodgement and payment

28 Superannuation Guarantee Charge (SGC) Statement – due for lodgement and payment if insufficient contributions or late contributions were made for the July-September quarter.

DECEMBER 2018

01 Due date for income tax payment for companies that were required to lodge by 31 October

21 November monthly Activity Statements – due for lodgement and payment.

Where the due date falls on a weekend or public holiday, it is deferred until the next business day (except in the case of Superannuation Guarantee deadlines).

COMPANY TAX RATE CLARITY

As we move into the 2017/2018 lodgement and compliance season, clarity has at last been provided in respect to company tax rates. This article examines which companies are eligible for the lower company tax rate, as well as surrounding issues including changes to the franking credit rules.

BACKGROUND

In mid-2017, the Government passed into law company income tax cuts. For 'corporate tax entities' with a turnover of less than $50 million, the tax rate has been progressively reduced to 25% as follows:

Financial Year	Aggregated Turnover Less Than...	Company Tax Rate if Under the Threshold	Company Tax Rate if Over the Threshold
2015/2016	$2 million	28.5%	30%
2016/2017	$10 million	27.5%	30%
2017/2018	$25 million	27.5%	30%
2018/2019 – 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%

'Corporate tax entities' include companies, corporate limited partnerships, and public trading trusts.

Following the passing of this legislation confusion abounded about which companies would be eligible for the reduced rate, in particular whether a company needed to be 'carrying on a business' (as was believed to be the case) to qualify.

CLARIFYING LEGISLATION

Clarifying legislation was finally passed into law in late August 2018. Rather than address the question of which companies are actually "carrying on a business", the new legislation introduces a 80% passive income test to determine eligibility for the lower company tax rate. Under this test, companies that receive more than 80% of their assessable income in passive forms will not be eligible for the lower tax rate (currently 27.5%) irrespective of their level of turnover. 'Passive income' includes:

- A distribution/dividend by the corporate tax entity (other than non-portfolio dividends i.e. dividends on shares with less than a 10% voting interest)
- Franking credits attached to such distributions
- A non-share dividend made by a company
- Interest (or a payment in the nature of interest)
- Royalties
- Rent
- Gains on qualifying securities
- Net capital gains
- To the extent attributable to any of the above, amounts included in assessable income from a partnership or trust.

The "passive income test" requires a comparison of a company's total passive income for the financial year against its assessable income for that same financial year.

EXAMPLE

ADAPTED FROM THE EXPLANATORY MEMORANDUM

Jane and Dave Smith are the sole shareholders and directors of Smith Pty Ltd. Smith Pty Ltd holds a diversified portfolio of shares from which it earns dividend income as well as several term deposits from which it earns interest. It is also the beneficiary of a trust which owns a commercial investment property. All rental income earned by the trust is distributed to Smith Pty Ltd.

Smith Pty Ltd also earns a small amount of fee for service income. This is derived from the consulting services Jane Smith, a retired business woman, provides to a number of independent businesses during the year.

In 2017/2018, Smith Pty Ltd had an aggregated turnover that is under the $25 million aggregated turnover threshold. The amount of its assessable income was $900,000, comprising:

- dividends, rent and interest income of $620,000
- net capital gains of $180,000, and
- consulting income of $100,000.

Smith Pty Ltd is a passive investment company as 89% of its assessable income is passive income. Consequently, for 2017/2018, Smith Pty Ltd's corporate tax rate is 30%.

EXAMPLE

ADAPTED FROM THE EXPLANATORY MEMORANDUM

Happy Feet Pty Ltd is a small business that has just started selling socks online. Its owner, Winston Chan, wants to expand the business into running shoes as well. The capital he needs to expand the business is put into a term-deposit while he negotiates with suppliers.

In 2017/2018, Happy Feet Pty Ltd had an aggregated turnover that is under the $25 million aggregated turnover threshold. The amount of its assessable income was $104,000, comprising:

- trading income of $100,000, and
- interest income of $4,000.

Happy Feet Pty Ltd is not a passive investment company as only 3.8% of its assessable income is passive income. Consequently, for 2017/2018, Happy Feet Pty Ltd's corporate tax rate is 27.5%.

This new "passive income test" opens the way for companies which are totally passive in nature and in no way carrying on a business to access the lower company tax rate. For example, a corporate beneficiary that is set up solely to receive distributions from a trust that carries on a business would under this test be eligible for the lower company tax rate. This is because the distributions of business income retain their character when passed onto the corporate beneficiary (i.e. they are not passive income, despite the company otherwise being essentially inactive).

2017/2018 AND FUTURE YEARS

The enabling legislation had been held up in Parliament for almost one year, and as such had been a source of great uncertainty for practitioners and their corporate clients. The passing of the legislation now provides certainty as we move into the early stage of the 2017/2018 lodgement and compliance season.

The new 80% "passive income test" applies from 1 July 2017. Therefore, the small number of companies that have already lodged their 2017/2018 tax returns on the basis of the old law (the "Small Business Entity test – see later) may need to revisit those returns and amend if necessary. For the vast bulk of companies that are yet to lodge, they should do so under the new 80% "passive income test" for 2017/2018 and future income years.

PRIOR YEAR TAX RETURNS

Eligibility for the lower tax rate (see earlier table) in 2016/2017 depends entirely on a company being a "Small Business Entity" (i.e. carrying on a business with an aggregated turnover of less than $10 million). This includes the turnover of connected entities and affiliates. At approximately the same time as the earlier-menitioned amending Bill was introduced into Parliament, the ATO released ***draft Taxation Ruling TR 2017/D7*** setting out its views on exactly when a company is "carrying on a business". While this is not relevant for eligibility for the lower company tax rate for 2017/2018 onwards (as this depends upon the "passive income test"), it is relevant for the lower company tax rate in 2015/2016 and 2016/2017.

The draft Ruling – setting out what constitutes 'carrying on a business' – itself states that it is confined to the context of determining the applicable company tax rate for 2015/2016 and 2016/2017. However, subsequently in a website update the ATO has acknowledged that the Ruling will when finalised apply equally to whether a company is carrying on a business for the purposes of ***Section 328-110 of the Income Tax Act (1997)***. This section relates to eligibility for the Small Business Tax Concessions – including concessions relating to CGT, GST, FBT, and income tax (including the $20,000 instant asset write-off).

In the draft Ruling, the ATO has defined 'carrying on a business' quite widely to include:

✓ Bucket companies that invest their distributions
✓ Passive investment companies either those just holding rental properties or share portfolios
✓ Companies that own a single commercial property which it rents to a 3rd party on market terms. Its directors maintain and manage the property themselves - conducting all maintenance and inspections personally. Profits are distributed to shareholders.

The ATO has also subsequently stated that companies which simply have the intention of making a profit are considered to be 'carrying on a business'.

Such a wide definition – inclusive of the above examples – potentially opens the way for more businesses to access the Small Business Concessions going forward, as well as the lower company tax rate in 2016/2017 and 2015/2016. In the event that the final version of the draft ruling retains the wide definition of "carrying on a business", 2016/2017 and 2015/2016 tax returns may need to be amended potentially to the benefit of certain companies.

FRANKING CREDITS

Under the new rules, the maximum franking credit available to a company is calculated by reference to its *corporate tax rate for imputation purposes* (CTRFIP). This may or may not be the same as its corporate tax rate.

From 2017/2018 to work out the CTRFIP you need to assume that your aggregated turnover, assessable income, and passive income will be the same as the previous income year. Thus for 2017/2018, your CTRFIP is 27.5% if either:

- Your aggregated turnover in 2016/2017 was less than $25 million, and 80% or less of your assessable income was passive income, or
- The entity didn't exist in the previous income year.

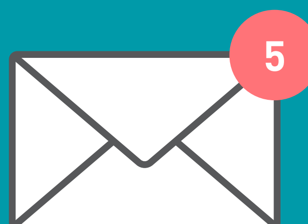
Otherwise, the CTRFIP is 30%.

For 2016/2017, your CTRFIP is 27.5% if either of the following apply:

- Your 2015/2016 aggregated turnover was less than $10 million, and you are carrying on a business (see earlier draft Ruling) or
- This was the first year you are in business.

Otherwise, the CTRFIP is 30%.

If companies have issued their 2016/2017 or 2017/2018 distributions based on the incorrect CTRFIP, they should notify their shareholders of the correct dividend and franking credit amounts. They can do this by sending a letter or email to shareholders, or a revised distribution statement. They also need to ensure the correct amounts are reflected in their franking accounts.



TAKE-HOME POINTS

» Review prior year tax returns for access to the lower company tax rate in light of the new definition of 'carrying on a business'
» From 2017/2018, apply the "passive income test" to determine eligibility for the lower company tax rate
» Ensure franking credits are calculated in accordance with the new rules
» If necessary, issue revised distribution statements for 2016/2017 and 2017/2018
» Review eligibility for access to the Small Business Concessions.

SINGLE TOUCH PAYROLL UPDATE

Single Touch Payroll is the biggest ever change to payroll reporting by employers. This article updates you on some important developments.

AUTHORISATIONS TO LODGE

As detailed previously in this publication, Single Touch Payroll (STP) involves pay-day reporting of payroll information to the ATO. For larger employers (those with more than 19 employees) STP became compulsory on 1 July 2018. Technically, pay-day reporting under STP constitutes a Lodgement of an Approved Form with the ATO. For those of you who outsource your payroll to Bookkeepers and Accountants, Section 388-65 of the Taxation Administration Act 1953 requires that each time they lodge an Approved Form (including a pay run which is known as an STP Pay Event) your Bookkeeper or Accountant must first have received a signed authority in writing that:

- You have authorised lodgement; and
- That the information is true and correct.

THE PROBLEM

This requirement however is just not very practical at all when it comes to STP, as it would require your Bookkeeper or Accountant to hold up lodgement until such a declaration was in place every time a pay run was completed (i.e. fortnightly, weekly etc.). This would be "red tape" gone mad, and place real procedural difficulties in front of practitioners trying to process client payrolls.

Stakeholders have lobbied the ATO quite hard to provide a common sense solution to this problem. A number of possible solutions were canvassed that would provide a more enduring authority to lodge. The ATO agreed with the concerns raised and that the unintended red tape would be a serious issue for practitioners and their STP clients. The Tax Commissioner exercised his General Powers of Administration (rarely used) to interpret the legislation and provide guidance on the issue.

THE SOLUTION

The outcome is that a blanket authority will be permissible but with certain limitations and qualifications. This authority titled an **STP Engagement Authority**, serves as a blanket authority for most clients for 12 months and will help practitioners fit in with normal business processes. To be eligible to provide your registered Agent with a 12-month **STP Engagement Authority** the employer client must not:

- Have any overdue Activity Statement lodgements
- Have any outstanding debts with the ATO, unless they are covered by a payment arrangement or subject to review
- Currently be or have been subject of ATO compliance activity for PAYGW in the past two years.

Additionally, Directors of companies must not have been issued with a Director Penalty Notice (DPN) in relation to the company or any other company where they have been a director.

Where this criteria is failed, clients must provide their registered Agent with an Engagement Authority each time payroll is processed (i.e. weekly, fortnightly etc.).

PRO-FORMA TEMPLATE

The ATO has indicated they will not produce versions of the authorities themselves. For your convenience, we have produced pro forma templates for employers who are eligible to use the enduring authority, and employers who are not eligible and therefore must provide an Authority each pay run:

SINGLE TOUCH PAYROLL ENGAGEMENT AUTHORITY – SINGLE EVENT

Applies and must be completed for each individual STP Pay Event

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SECTION A: PURPOSE OF THIS DOCUMENT

[Insert legal name of Tax or BAS Agent] is a Registered Agent, holding Agent Registration Number *[insert Agent Registration Number]*. By completing this declaration, you are authorising *[insert legal name of Agent]* to prepare and lodge STP Pay Events as required by Division 389 of the Taxation Administration Act (1953).

SECTION B: CLIENT DETAILS

This section refers to the client for whom *[insert legal name of Agent]* will be preparing and lodging an STP Pay Event

Name of Individual or Entity	
ABN of Individual or Entity	

SECTION C: CLIENT DECLARATION

I [insert name of business client] authorise [insert legal name of Agent] to prepare and lodge an STP Pay Event with the Commissioner of Taxation

I declare that:

- I am authorised to make this declaration, and
- That the information provided for the preparation and lodgement of this STP Pay Event is true and correct

Signature	
Name	
Date	

SECTION D: AGENT DETAILS

The ATO requires that the employer and their Tax or BAS Agent co-sign the Engagement Authority. Accordingly, your Tax or BAS Agent must complete this section if they are lodging an STP Pay Event on your behalf

Signature	
Name	
Date	

SINGLE TOUCH PAYROLL ENGAGEMENT AUTHORITY – ENDURING AUTHORITY

Applies for 12 months from date of commencement, after which both parties will review the arrangement taking into account any significant change to workplace law, taxation law, or payroll processes.

SECTION A: PURPOSE OF THIS DOCUMENT

[Insert legal name of Tax or BAS Agent] is a Registered Agent, holding Agent Registration Number *[insert Agent Registration Number]*. By completing this declaration, you are authorising *[insert legal name of Agent]* to prepare and lodge STP Pay Events as required by Division 389 of the Taxation Administration Act (1953) for the duration of this Authority commencing on [insert date of commencement] and ending on *[insert end date]*.

SECTION B: CLIENT DETAILS

This section refers to the client for whom [insert legal name of Agent] will be preparing and lodging an STP Pay Event

Name of Individual or Entity	
ABN of Individual or Entity	

SECTION C: CLIENT DECLARATION

I *[insert name of business client]* authorise *[insert legal name of Agent]* to prepare and lodge an STP Pay Event with the Commissioner of Taxation

I declare that:

- I am authorised to make this declaration, and
- That the information provided for the preparation and lodgement of this STP Pay Event is true and correct

Signature	
Name	
Date	

SECTION D: AGENT DETAILS

The ATO requires that the employer and their Tax or BAS Agent co-sign the Engagement Authority. Accordingly, your Tax or BAS Agent must complete this section if they are lodging an STP Pay Event on your behalf

Signature	
Name	
Date	

UPDATE FOR SMALLER EMPLOYERS

The measure to extend the Single Touch Payroll (STP) regime to employers with 19 or less employees has still yet to be passed by Parliament, leaving small business owners with less time to prepare, should it go through. With a start date of 1 July 2019 these smaller employers should have an eye to ensuring their business is positioned to adopt an STP solution by this date. For most employers this will involve using STP-compliant software. The main players in the small-to-medium business space (Xero, MYOB, Reckon, Intuit), are all currently STP-enabled. On the other hand, if you outsource your payroll, the provider of that service will likely provide the STP solution for you.

Talk to your Accountant or Bookkeeper if you are struggling to become STP-enabled in your business.

SUPER PREMISES

Over recent years there has been a sharp increase in the popularity of Self-Managed Superannuation Funds (SMSFs).

One of the biggest advantages of a SMSF is the flexibility and control in relation to investment choice of the underlying balance of the fund. An important legislative concession afforded to a SMSF is the ability of the fund to acquire "business real property" from a related party of the fund. This is a very attractive feature for some small business owners.

In this article we will explore the legislative complexities as to what an SMSF can and can't do in relation to investing in business premises, and strategies as to how an SMSF can purchase your business premises.

LEGISLATION

Navigating the regulatory minefield surrounding SMSFs has become the biggest hurdle for people looking to start their own funds. The legislation is complex and can be a difficult read, even for practitioners. However, it is important to start from scratch, and look at the legislation that needs to be fully understood before looking at the various strategies that can be used to purchase business premises.

SOLE PURPOSE TEST

The legislation underlying every investment decision made by SMSFs is the Sole Purpose Test. The object of the Sole Purpose Test is to ensure that superannuation funds are maintained for the purpose of providing benefits to members upon their retirement, or their dependants in the case of a member's death. The trustees of a superannuation fund must comply with the Sole Purpose Test to attract the taxation concessions available to complying superannuation funds.

Before a Trustee/Member makes any investment decision they need to consider the return potential of the investment, both in terms of income to the fund and capital appreciation. If an investment were made that had no likelihood of income or capital appreciation, then a breach of the Sole Purpose Test would likely occur. The investment would not be in the best interests of the Members.

Trustees considering investing in business premises need to carefully consider the investment return in terms of rental income and capital appreciation and ensure the investment fits within the fund's investment strategy.

ACQUIRING ASSETS FROM RELATED PARTIES

Section 66 of the Superannuation Industry Supervision Act (SIS) Act prevents a superannuation fund from intentionally acquiring an asset from a related party of the fund. In this context, a related party includes a member of the fund, a standard employer sponsor and a Part 8 associate. A Part 8 associate includes a relative of a Member, Trustees of a trust controlled by the member, business partners, related companies and the like.

In circumstances where Trustees are considering the purchase of business premises from a third-party, this legislation won't need to be considered. However, there are many instances where a business owner may already own the premises from which they operate their business and may be considering selling the asset to their SMSF. In these circumstances, by contrast, the legislation requires careful consideration.

There are a number of exceptions to the legislation that permit certain assets that are owned by a member or related-party to be transferred or sold to a superannuation fund. These include:

- Business real property
- Listed securities, and
- Certain in-house assets (where the value of in-house assets do not exceed 5% of the value of the SMSFs assets).

BUSINESS REAL PROPERTY

In relation to an entity this means:

- Any freehold or leasehold interest of the entity in real property
- Any interest of the entity in Crown land, other than a leasehold interest, being an interest that is capable of assignment or transfer; and
- If another class of interest in relation to real property is prescribed by the regulations for the purposes of this paragraph – any interest belonging to that class that is held by the entity.

Business real property in relation to a related-party is real property that is used wholly and exclusively in one or more businesses (whether carried on by the entity or not) but does not include any interest held in the capacity of beneficiary of a trust estate.

This business real property exception provides the ability for business owners to transfer or sell their current business premises to their superannuation fund. This provides a great opportunity for some careful retirement planning; some great tax concessions and can provide important asset protection benefits to members. To this end, in the case of bankruptcy, superannuation benefits are normally protected from creditors and hence the business premises is protected.

Where a SMSF wishes to acquire an asset from a related-party under this exemption, the asset must be acquired at market value and on arm's-length commercial terms. Where business real property is subsequently leased back to a related party, the terms of the lease must be commercial and on an arm's-length basis.

IN-HOUSE ASSETS

The in-house asset rules are one of the more detailed and complex provisions of the SIS Act. It is not the intention of this article to fully explore all of the rules in relation to in-house assets. Rather, we will concentrate on the current rules in relation to leasing assets and how this applies to business real property. Broadly, the in-house asset rules impose a maximum limit of SMSF investments in in-house assets to 5% of total fund assets (based on market value).

Should the percentage exceed 5% then the trustees need to put in place a written plan of how to reduce the level and carry that plan out by the end of the next income year. Further, Section 83 of the SIS Act states that a fund must not purchase an in-house asset should the purchase result in the fund exceeding the 5% level.

Other than an asset which is excepted under Section 71 of the SIS Act, an in-house asset of a superannuation fund is:

- A loan to, or investment in, a related party of the fund
- An investment in a related trust of the fund, or
- An asset of the fund subject to a lease or lease arrangement between the trustee of the fund and a related party of the fund.

The exceptions under Section 71 which are highly relevant for those SMSFs that are linked to small business proprietors including:

- Business real property subject to a legally enforceable lease or lease arrangement between the trustee and a related party of the fund
- An investment in a company or unit trust that meets the conditions in Division 13.22C(2) of the SIS Regulations.

The conditions contained in Division 13.22C(2) relate to investments in non-geared entities where the entity does not borrow and there is no charge over an asset of the entity. The aim of the provision is to allow SMSFs to jointly own business property with related parties via a company or trust. There are other conditions placed on what the non-geared entity can and cannot invest in, so specific advice would need to be sought before using one of these structures.

The up-shot of the legislation is that where normally a lease between a SMSF and a related party would not be allowed, if the lease is in relation to business real property the arrangement is permitted under the SIS Act.

BORROWINGS

The easiest way to make the transfer is the SMSF buying the premises for its market value. Where an SMSF does not have sufficient cash on hand to effect the purchase, it may enter into a Limited Recourse Borrowing Arrangement (LRBA) – see later. Where the transfer is effected in this way, the transfer is not regarded as a contribution and therefore the SMSF member's contribution caps are not impacted. This is quite an advantage in light of the reduced contribution caps that apply from 1 July 2017.

To quickly recap, SMSFs were for a long time prohibited from borrowing. However, this all changed on 24 September 2007 with the introduction of Limited Recourse Borrowing Arrangements (LRBAs) which are a heavily conditional form of borrowing and the only form of SMSF borrowing currently permitted. Under these arrangements, the SMSF takes out a loan from a lender (which can be a related party but is usually a bank) for funds which are used to purchase an asset to be held in a separate, bare holding trust. The returns from the asset (e.g. rent) then go to the SMSF. If the loan defaults, the lender's rights are limited to the asset held in the separate trust. The SMSF has the right to acquire the legal ownership of the asset by making one or more payments. When the loan is paid out, the property is transferred to the SMSF.

There is a common misconception that LRBAs are restricted to commercial property such as Business Real Property. This is not the case. They can also be used to acquire residential property. We caution that LRBAs are complex and should only be entered into under the guidance of your Accountant.

ADVANTAGES

Firstly, the rental income from the premises will be taxed concessionally. Complying SMSFs are taxed on their income at 15%. This represents a significant tax saving when compared to a business property that is owned by an individual paying tax on the rental income of up to 47%. There can also be significant savings in capital gains tax on the eventual sale of the property. Once again, an individual investor could pay tax on any taxable capital gains at a substantially higher rate than a SMSF. Further, should the sale by the SMSF take place while the fund is in pension mode, the capital gains tax payable could be nil.

The transfer of a currently-held property to a SMSF could free up vital capital to a business owner where the sale proceeds are paid to the individual. We have already mentioned the asset protection advantages of building assets in a superannuation environment.

The concept may be useful for small business owners who own their business and who are looking to pass the business onto future generations. By contributing their business premises into their SMSF, the fund can be converted into a tax-effective income stream on retirement and then passed to future generations on death.

For individuals, an in-specie contribution of the property to the SMSF (that is where the value of the property is taken as a contribution to the fund) will result in a tax deduction for the individual for a portion of the value of the property.

Note that in all cases the costs of transferring/selling the property from the individual to the SMSF needs to be carefully considered. There will be costs incurred including stamp duty, legal costs and capital gains tax. It is also appropriate to consider preservation issues, in that once the property is owned by the SMSF access to capital is not available until the member meets one of the conditions of release, which generally means reaching Preservation Age (currently 57) and retiring.

LIFTING THE CORPORATE VEIL
DIRECTOR PENALTY NOTICES

With legislation currently before Parliament to extend the Director Penalty Notice (DPN) regime, this article examines how this regime can hold Directors personally liable for certain tax and superannuation liabilities of their company.

INTRODUCTION

There are a number of advantages in operating your business through a company structure, chief among them is asset protection. Because a company is a separate legal entity, it is liable for any debts incurred while trading. Directors, it is commonly believed, are protected – they have no personal liability for the debts or actions of the company they run, and therefore their personal assets are not at risk from creditors in the event that the business folds or is sued.

While this is largely true, Director Penalty Notices stand as an exception to this general rule, and can see Directors held personally liable for certain debts owed by their business.

WHO?

The DPN regime applies to 'Directors'. This term is defined by Section 9 of the Corporations Act which lists the following parties:

(a) **A person validly appointed as a director or an alternate director.** These individuals are relatively easy to identify as their names will appear on the company register and on company documents.

(b) **A person, even though not validly appointed as a director, that acts in the position of a director ('de facto' director).** These are individuals whose activities mirror those of a company director, although they do not hold the official title. They are directors in substance, if not in form.

(c) **A person, even though not validly appointed as a director, the directors are accustomed to act in accordance with that person's instructions or wishes.** This group is commonly referred to as a Shadow Director. They may act through nominees or other appointed directors (e.g. a bankrupt husband controlling a company through his wife who has been appointed a Director).

While under the law any of the above individuals are Directors, typically the ATO will send DPNs to those named as Directors on the company register.

FORMER AND CURRENT

The regime also applies to former directors to the extent that the PAYG Withholding (PAYGW) or Superannuation Guarantee (SG) amounts were due before the date of resignation or fell due after resignation if:

- For PAYGW the first withholding event in the reporting period occurred after your resignation, or
- For SG liabilities, for the quarter ending before your resignation.

Therefore, that you may have resigned from the company (even years ago) will not necessarily enable you to avoid liability under the regime.

New Directors too are personally liable for amounts owing that accrued before they became Directors. Therefore, if you are about to become a Director of a company undertake due diligence to ensure that the company does not have any unpaid or unreported PAYGW or SG liabilities. Even though those liabilities predated your appointment, you are personally liable for them once you become a Director. As a new Director, you have 30 days, starting on the day of your appointment, before you become liable to director penalties equal to both:

- All of the company's unpaid PAYG withholding liabilities, and
- All unpaid SG liabilities from 1 April 2012.

WHICH LIABILITIES?

Originally the DPN regime applied only to PAYGW liabilities. These include PAYGW amounts withheld (or that should have been withheld) from payments made to:

- Employees
- Other workers that you have a PAYGW voluntary agreement with such as contractors, and
- Businesses that fail to quote their ABN but were required to do so.

In 2012, the regime was extended to Superannuation Guarantee (SG) amounts from the 1 April 2012 quarter onwards. SG amounts can be payable to not only employees, but also certain contractors. If you are in any doubt as to whether a worker should be paid SG, we recommend you use the ***ATO's Employee/Contractor Decision Tool*** which is available on their website **www.ato.gov.au** The tool asks a series of questions and provides a result (liable for SG or not liable) on the basis of the answers provided. Print out the result and keep a copy on file for your records.

STOP PRESS! EXTENSION OF LIABILITIES!

In a further extension to the DPN regime, legislation is currently before the Senate to extend the DPN regime to GST, Luxury Car Tax, and Wine Equalisation Tax as part of Activity Statements. The scope of the DPN regime is to be expanded to allow the ATO to make estimates of an entity's net amount owing under the GST Act.

As with the other categories of director penalties, the penalty will arise when the Director's obligation is not met on the due date, in this case, the day the company is required to pay the assessed net amount.

However, the penalty is only recoverable following a period of 21 days beginning when the ATO issues a DPN to a Director. The amount of the penalty is the company's unpaid liability to pay the assessed net amount.

EXAMPLE

ADAPTED FROM THE EXPLANATORY MEMORANDUM TO THE NEW LEGISLATION

Emma and Julie are directors of Swift Supply Pty Ltd. Swift Supply is required to pay and report GST on a quarterly basis.

Swift Supply is required to lodge its return for the quarter ending 30 June 2019 by the due date of 28 July 2019.

Swift Supply lodges its return more than three months late on 1 November 2019.

The return gives rise to a liability for Swift Supply to pay an assessed net amount of $100,000.

The due date for the payment is 28 July 2019.

Emma and Julie are under an obligation to ensure Swift Supply pays the liability, enters administration or begins to be wound-up. The obligation begins on the initial day, the day the tax period ended (30 June 2019).

Julie resigns from Swift Supply on 20 July 2019. This does not affect her obligation in relation to the company's liability.

Swift Supply is never in a position to pay the liability. As such, both Emma and Julie were required to place the company into administration or begin winding it up.

This does not happen on or before the due date of 28 July 2019, and the director penalties begin to apply from this date.

The ATO issues DPNs to Emma and Julie on 1 February 2020. The ATO may begin recovery proceedings on or after 23 February 2020.

DEFENCES

The DPN regime contains a number of statutory defences which can be advanced in the event that a Director is served with a notice from the ATO. Directors may request that the ATO consider the defence before it commences recovery proceedings against them. Subject to the type of DPN they are issued with (see later) Directors will not be liable for amounts contained in a DPN if they successfully invoke any of the following three defences:

1. You did not take part (and it would in the circumstances been unreasonable to take part) in the management of the company during the relevant period because of illness or another good reason
2. You took all reasonable steps (unless there were no reasonable steps that you could have taken) to ensure one of the following three things happened:
   - o The company paid the outstanding liability
   - o An administrator was appointed to the company, or
   - o The directors began winding up the company (within the meaning of the Corporations Act).
3. In the case of unpaid SG, the company interpreted the law as applying in a way that could be reasonably argued was in accordance with the law. For example, if a company has not paid an employee SG because it reasonably believed that the worker was a contractor, then a defence may be available.

TYPES OF DPNS

Broadly, there are two types of DPNs that can be issued. Depending on lodgements made, they are often issued at once:

21-DAY DPN – PAYG TAX OR SUPERANNUATION UNPAID BUT RETURNS LODGED WITHIN THREE MONTHS

Where a company fails to pay PAYGW or SG but lodges its BAS and SGC Statements within three months of the due dates, the ATO is able to issue a DPN to the company's Directors. At this point, they can be personally liable for the amounts owed. However, personal liability can be avoided where one of the above defences is exercised within 21 days:

- The PAYGW or SG is paid, or
- The company is placed in liquidation or voluntary administration within 21 days of the date of the DPN.

LOCKDOWN DPN – PAYG TAX OR SUPER UNPAID AND RETURNS NOT LODGED WITHIN THREE MONTHS

Where a company fails to pay PAYGW and SG AND it also fails to lodge its BAS and SGC Statements within three months of the due dates, the Directors are automatically personally liable for unpaid PAYG and SG. In this circumstance:

- Placing the company into liquidation or voluntary administration will not quash the director's liability. The ATO is free to issue DPNs even after liquidation or voluntary administration happens.
- Because returns are not lodged, the ATO can estimate a company's PAYGW and SG liability and issue DPNs on the basis of estimates.

TIP

To avoid a lockdown DPN being issued directors should ensure that companies they preside over have their PAYG (BAS) and SGC lodgements up-to-date. Even where the amounts are not paid.

EXAMPLE

Jake and Lucy are Directors of ABC Pty Ltd, which is required to report and pay PAYGW amounts quarterly. For the 2018/2019 October to December quarter, the Company withheld $7,000 from payments made to its employees and Directors.

The company did not report or pay the amounts withheld within three months of the due date (28 February 2019) of the underlying liability.

Therefore, the only way Jake and Lucy's director penalties can now be remitted is by paying the amounts. Liquidation or voluntary administration will not quash the amounts owing under the DPN.

The DPN will typically be posted to either the director's home or business address held by ASIC. The 21-day deadline commences from when the DPN is posted – not received. Even if it is not actually received (for example, the Directors may not have updated their address) liability applies from 21-days after the DPN is posted.

INDEMNITY

If a Director is liable to pay and has indeed paid an amount under the DPN provisions, Section 269-45 of the Tax Administration Act provides a right of indemnity which allows the Director who paid the DPN to then recover the amounts paid against the Company and any other Director that was equally liable. This can come in handy where there is a dispute between the Directors over who was responsible for the original non-payment and only some of the Directors ending up paying the amount owing under the DPN and wish to recover those amounts from either the Company or other non-paying Directors.

The issue of indemnity and recoupment is relevant because if a company has multiple directors, the ATO will typically target recovery action at the Director or Directors which it considers have the best ability to pay. This can be gleaned by the ATO from past tax returns.

LIABILITY

If the above process plays out unfavourably and you become liable under a DPN, the ATO will treat that liability as it would any other tax that is ordinarily overdue and payable. The ATO is permitted to:

- Garnish money from your bank account or wages
- Commence legal proceedings against you to obtain judgement for the amount of the debt
- Use any judgement to issue a Bankruptcy Notice and render you bankrupt.

TAKE-HOME MESSAGES

- Company owners are not immune from liability
- Ensure your SG, and PAYGW payment and lodgements are up-to-date
- Before becoming a Company Director, do due diligence and ensure SG and PAYGW payments and lodgements are up to date
- Keep your address details up-to-date with ASIC
- Explore the option of indemnity from the Company or other Directors if you have paid a DPN personally
- The ATO is cracking down on outstanding company liabilities
- Take action within the 21-day period should you receive a 21-day DPN.

INSTANT ASSET WRITE-OFF EXTENDED

The extension of the $20,000 instant asset Write-Off has now been passed into law. This article provides a recap of the Write-Off and how you can take advantage of it before it expires.

PASSED!

In the May 2018 Federal Budget the Government announced an extension to the Small Business Instant Asset Write-Off that was originally introduced from 1 July 2015. Under the Budget announcement, the Write-Off was to be extended until 30 June 2019 (it was to set expire 30 June 2018). On 12 September, ***The Treasury Laws Amendment (Accelerated Depreciation for Small Business Entities) Bill 2018*** was passed by the Parliament into law to give effect to this 12-month extension.

TIMING

Being in its final year of operation the timing requirements around the Write-Off are important.

To claim a deduction in 2018/2019, the asset must be first acquired from 1 July 2018 and first used or installed ready for use in your business on or before 30 June 2019.

Assets acquired before 1 July 2018, but used or installed ready for use between 1 July 2018 and 30 June 2019 are also claimable in full in 2018/2019.

If you miss the deadline (i.e. if the asset is not being used in your business or installed ready for use on or before 30 June 2019) then the Write-Off threshold reverts to $1,000. Missing the deadline will result in a worse cash-flow outcome for your business than if the deadline is met (see later example).

Assets costing $20,000 or over are depreciable at a rate of 15% in the first year, and then 30% in subsequent years.

WHAT'S THE BENEFIT?

The real benefit from the $20,000 Write-Off is an improvement to your cash-flow. The Write-Off improves small business cash-flow by bringing forward deductions rather than having them spread out over more than one year. Cash-flow can be a significant issue for small business, particularly start-ups.

That said, it is important to have perspective. You are only getting back the tax rate on the asset, not the full value of the asset. This is the same as the old law where the Write-Off was $1,000 (which will apply from 1 July 2019). You don't get any extra cash than you would otherwise have received under the old rules – you simply get it sooner. Consequently, you should not let tax distort or blur your commercial instincts – as you don't get any extra cash than you would otherwise have under the old rules, you should continue to only buy assets that fit within your business plan.

CASE STUDY – CASHFLOW BENEFIT

An eligible SBE company purchases an eligible asset for $19,999 on 2 July 2019. As the asset is not installed purchased and installed ready for use on or before 30 June 2019 the Write-Off threshold is only $1,000. As this asset exceeds this threshold the standard pooling rules apply. The asset will be written off at 15% in the first year of 2019/2020 ($3,000) and 30% in subsequent years. The cash-flow benefit the company would receive from these depreciation claims is $825 for the first year (assuming a 27.5% small company tax rate) and $1,402 in the second year. The company would continue to depreciate its general pool at 30% until the pool was under $1,000, at which point the entire pool could be written-off (after approximately 9 years).

By contrast, if the purchase of the asset was brought forward a few days and the asset was used or installed ready for use on or before 30 June 2019 under the $20,000 threshold, the company would be able to immediately deduct the entire $19,999 in the first income year (2018/2019). The cash-flow benefit the company would receive from this is $5,499 in the first year ($4,674 more – i.e. the benefit is brought forward rather than spread out). The company is then free to apply this brought-forward cash immediately (e.g. pay off debt or suppliers, or re-invest in the business etc.). In the second income year, there is no further depreciation of this asset as it has been written-off completely. This means that the company is paying more tax in the second year relative to the earlier scenario (but no more and no less tax overall).

This Case Study illustrates the importance of meeting the 30 June 2019 deadline this financial year. After this date, the Write-Off threshold reverts to $1,000.

ASSET ELIGIBILITY

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

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

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

TAKE-HOME MESSAGE

The Small Business Instant Asset Write-Off is in its final year of operation. If you are contemplating purchasing a depreciable asset in the near term and it costs under $20,000 you may wish to bring the purchase and installation forward to on or before 30 June 2019 and enjoy the cash-flow benefits outlined earlier.

DECEASED ESTATES

At some stage, most individuals will become involved with a Deceased Estate – whether as a beneficiary, Executor, or an Administrator. Indeed you may even be planning on bequeathing your assets, and are wondering how the process works. This article examines Deceased Estate process with a focus on tax.

THE PARTIES

THE ESTATE

The assets and cash that belong to a person who has passed away is known as their Deceased Estate. A Deceased Estate takes the form of a Trust which comes into existence at the time of a person's death, and then ceases to exist when it has been fully administered. Like other Trusts, a Deceased Estate is not a legal entity in its own right. Instead, it involves a relationship between the Trustee (the executor of the Estate) and the Beneficiaries.

EXECUTOR

This person is effectively the Trustee of the Deceased Estate. As such, they control the assets held in the Estate on behalf of and for the benefit of the Beneficiaries. An Executor is appointed by the deceased person in their Will. If the Will does not name an Executor or if the person appointed cannot discharge the duties of an Executor, the courts step in and make the appointment (they will typically appoint a family member).

The role of an Executor is central to the whole Deceased Estate process. It falls to the Executor to "step into the shoes" of the deceased person and administer their affairs on their behalf and in accordance with their wishes. Among the duties they will be required to discharge include:

- Arrange the funeral
- Locate the Will
- Make the probate application
- Obtain the death certificate
- Inform investment bodies of the death
- Notify Centrelink
- Locate and assess the assets
- Pay debts, income tax, etc. and
- Distribute income and assets to Beneficiaries.

BENEFICIARIES

These are the people that share in the assets and income of the Deceased Estate. The Beneficiaries are usually named in the Deceased's Will, but if no will exists then it is usually the Deceased's next of kin who will be made the Beneficiaries.

THE ADMINISTRATION PROCESS

1. TAXPAYER PASSES AWAY, AND IS THEN BURIED

2. EXECUTOR APPOINTED EITHER VIA THE WILL OR IF NO WILL THEN APPOINTED BY THE COURTS

A Will is the legal document which directs the Executor to deal with the Deceased's assets in accordance with their wishes. If the Deceased did not leave a Will, then they have died 'intestate'. In that case, the Supreme Court will appoint an Executor and they will be required to distribute the assets according to the succession laws of the relevant State or Territory. These succession laws may not always reflect the intentions of the Deceased had they made a Will. This underscores the importance of putting in place a legally binding Will before death.

3. PROBATE APPLIED FOR

Probate is granted by the Supreme Court of the relevant State or Territory, and must be applied for by the Executor. Probate gives authority for the Executor to deal with the assets of the Estate, and must be applied for before any distributions take place.

Where a person believes they have an entitlement to part of a Deceased Estate (irrespective of whether they are named as a Beneficiary) they may contest the Will prior to the granting of Probate. However, once Probate is granted, no further challenges can be made against any distribution.

4. ASSETS VEST IN EXECUTOR TO ADMINISTER THE ESTATE WHO PAYS DEBTS AND TESTAMENTARY EXPENSES IN THE FOLLOWING STAGES:

(a) Net income of the Estate is applied to reduce debts

(b) Part of the net income of the Estate that is not required to pay debts is distributed to Beneficiaries

Here, the Executor may exercise discretion and pay an amount that is considered surplus to the needs of the estate to the Beneficiaries. This could occur where it becomes apparent that some of the Estate assets or income will not be required for the payment of expenses, debts and any other liabilities of the Estate. Where this occurs, the Beneficiaries will be presently entitled to amounts paid to them, and therefore assessed on the net income paid to them or on their behalf, even though the Estate has not been fully administered.

(c) Debts are paid or provided for in full, and net income of the Estate is available for distribution

5. ADMINISTRATION OF THE ESTATE IS COMPLETE

TAX OBLIGATIONS

The Executor of a Deceased Estate assumes certain taxation responsibilities on behalf of the deceased person including:

- Lodging a final income tax return for the deceased (known as the "date of death return")
- Applying for a Tax File Number (TFN) for the Deceased Estate if a tax return is required to be lodged
- Preparation and lodgement of the Deceased Estate's income tax return if required
- Making distributions to Beneficiaries; and
- Paying tax on behalf of Beneficiaries where **(a)** they are under a legal liability or **(b)** where there are no Beneficiaries that are presently entitled to the income of the Estate.

As noted, where a deceased person would have been required to lodge an income tax return, this obligation is taken on by the Executor. This "date of death return" covers the period from the previous 1 July up until the date of death (normal income tax rates apply).

Following the date of death, the Estate may continue to receive income from a variety of sources or pay expenses. Where this occurs, the Executor will be required to prepare and lodge a Trust income tax return in order to determine the taxation liabilities in respect of that income.

A Trust income tax return will be required to be lodged for each financial year that the Deceased Estate receives income until such time as the estate is fully administered and all of its assets and income have been distributed to Beneficiaries.

A Trust is not a legal entity in its own right and therefore does not pay tax. The rules as to who pays tax are as follows:

Income is an amount to which...	Then...	The income is assessed...	The tax rates which apply...
a Beneficiary is presently entitled*	determine whether or not the Beneficiary is under a legal liability		
	if the Beneficiary is under a legal liability**	to the Executor on behalf of the Beneficiary	general income tax rates apply
	if the beneficiary is not under a legal liability	to the Beneficiary on their personal income tax return	the Beneficiary's marginal tax rates will apply
no Beneficiary is presently entitled		the Executor is assessed on the income	concessional tax rates apply for the first three tax returns of the Deceased Estate

** Beneficiaries are under a legal disability if they are either:
- Minors (that is, under 18 years of age as at 30 June)
- Bankrupt or
- Declared legally incapable because of a mental condition.

TAX TIP

Generally, beneficiaries not under any legal disability bear the tax on their shares of the net income of the estate for the income year that they become presently entitled. The net income of the estate and whether any Beneficiaries are presently entitled should be determined on 30 June of that income year.

Where the Estate has earned income or has liabilities, and there is no present entitlement, or where a beneficiary is under a legal disability, the Executor is assessed on any income. Therefore, as the following example illustrates, it is important for the Executor to retain money in the Estate to provide for tax and other liabilities of the Estate:

EXAMPLE

Tabitha passes away, and part of her Estate includes a rental property which under the terms of her Will she has instructed to be sold and the proceeds split among her Grandchildren. As the final step in the Estate's administration, Adam her brother and Executor sells the house, and distributes the proceeds as instructed. The Estate is now fully administered.

In the event that the Estate has made a capital gain, when it lodges its tax return for the year in question, it will be liable to for CGT. This will be assessed to the Executor Adam. However, because the Estate has been fully administered, Adam will be liable to pay the CGT personally.

This personal taxation liability – in the event that the Estate does not have sufficient cash on hand – underscores the importance of retaining money in the Estate until its liabilities have been met.

This issue may also come into play where a superannuation fund pays a death benefit to the Estate (rather than directly to a Deceased's dependent). The Estate may be liable for tax on that benefit. Failure to make provision for the tax that may be payable on that benefit may once again leave an Executor exposed personally.

DECEASED ESTATE TAX RATES

For the first three tax returns, the Deceased Estate's income to which no Beneficiary is presently entitled is taxed at individual rates, with the benefit of the full tax-free threshold. No Medicare levy is payable.

For the fourth income year and later years (Deceased Estates with prolonged administration) the following tax rates apply:

Deceased Estate Taxable Income (No Present Entitlement)	Tax Rate (2018/2019)
$0 - $416	Nil
$417 - $670	50% of the excess over $416
$671 - $37,000	$127.30 plus 19% of the excess over $670 If the Deceased Estate's taxable income exceeds $670, the entire amount from $0 will be taxed at 19% up to $37,000
$37,001 - $90,000	$7,030 plus 32.5% of the excess over $37,000
$90,001 - $180 000	$24,255 plus 37% of the excess over $90,000
$180,001 and over	$57,555 plus 45% of the excess over $180,000

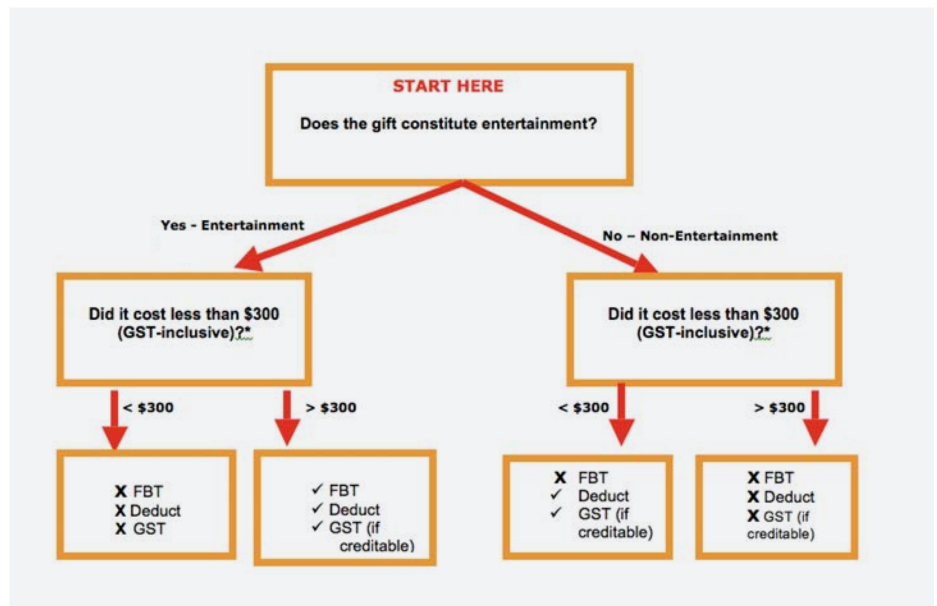
Christmas and the Taxman

Christmas is traditionally a time of giving – including employers showing gratitude towards staff and clients/suppliers for their loyalty throughout the year. With the right approach, it's possible to enjoy some tax benefits out of your generosity, and also avoid Fringe Benefits Tax (FBT). But as always with tax, the landscape is layered with complexity. The following is a general summary of the tax treatment of Christmas giving.

GIFTS TO EMPLOYEES AND ASSOCIATES (SPOUSES)

Before examining the technicalities in this area, the following flowchart provides an overview of the rules. Return to this user-friendly flowchart as and when you need to:

This Flowchart allows you to assess the tax treatment of gifts provided to employees/associates:



The first step in the process is to identify whether or not entertainment has been provided. The ATO make the observation that the provision of entertainment means:

- Providing entertainment by way of food, drink or recreation
- Providing accommodation or travel in connection with such entertainment, or
- Paying or reimbursing expenses incurred in obtaining something covered by the above points.

What is recreation? Recreation includes amusement, sport and similar leisure time activities, for example, a game of golf, theatre or movie tickets, a joy-flight or a harbour cruise.

Having identified whether or not your gift is entertainment, you then need to consider the value of the gift.

Let's start with a gift that is NOT considered to be entertainment…

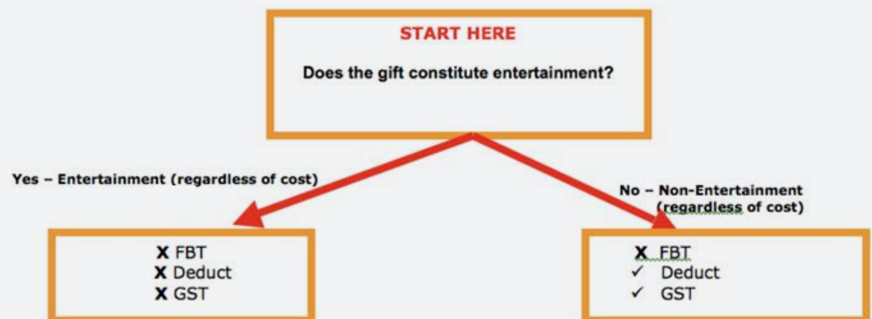
Non-entertainment gifts to staff (such as Christmas hampers, bottles of alcohol, gift vouchers, pen sets etc.), are tax deductible and you can claim GST credits, irrespective of cost. Note however that you can generally avoid paying FBT if you keep the gift under $300. If this threshold is exceeded, FBT will apply. Therefore, be conscious of this threshold when providing such gifts to staff this Christmas.

On the other hand, entertainment gifts to staff (such as tickets to movies/theatre/amusement park/sporting events, holiday airline tickets etc.) which are under $300 will not attract FBT, are not income tax deductible, and you can not claim GST credits. If over $300, FBT will apply, but a tax deduction and GST credits can be claimed. With FBT rate at 47%, the tax deduction and GST credits available is unlikely to provide a better tax outcome than avoiding FBT by keeping the gift under $300.

GIFTS TO CLIENTS/CONTRACTORS/SUPPLIERS/CUSTOMERS

Again, before examining the technicalities in this area, the following flowchart provides an overview of the rules.

This Flowchart allows you to assess the tax treatment of gifts provided to client/customers:



No FBT is payable, irrespective of the type of gift and irrespective of cost. However, where a gift constitutes entertainment, no GST or tax deduction can be claimed. Thus, at least from a tax standpoint, it's better to provide non-entertainment gifts to clients (Christmas hampers, bottles of alcohol, gift vouchers, pen sets) and, in doing so, enjoy a tax deduction and GST credits.

CHRISTMAS PARTIES

Instead of gifts, it's quite common for employers to host a Christmas Party for their staff (often including spouses) at a restaurant.

Where this is the case, the total cost will generally be exempt from FBT provided the per-head cost (dinner and drinks) is kept to under $300 per person. This is known as the Minor Benefits Exemption. To enjoy this exemption the employer must use the Actual Method for valuing FBT meal entertainment. The Actual Method is the default method for valuing meal entertainment, and no formal ATO election is required to use this method. Under the Actual Method, an employer pays FBT (in the absence of an exemption) on all taxable meal entertainment provided to employees and their associates such as spouses (entertainment provided to other parties such as clients, contractors, or suppliers is exempt from FBT). The downside of using the Minor Benefit Exemption is that the meal entertainment is not tax deductible, and nor can you claim a GST credit.

This Minor Benefit Exemption is not available if you elect to value your meal entertainment under the alternative 50/50 Method. Under this method, you pay FBT on only 50% of all taxable meal entertainment provided to employees, spouses AND third-parties such as clients/contractors/customers etc. irrespective of the cost. Likewise, you can only claim a 50% income tax deduction and 50% GST credits on such meal entertainment. However as stated earlier, with the FBT rate at 47%, the 50% tax deduction and 50% GST credits available under the 50/50 Method is unlikely to provide a better after-tax result than the Actual Method where no FBT is payable.

The "take-home message" is that if like many employers the only social functions you host for employees during the year are a Christmas Party (and perhaps the Melbourne Cup), be conscious of keeping the per-head cost under $300. By doing so, you may be able to exempt the entire cost of the party from FBT.

WHAT THE TAXMAN IS THINKING

In this edition, examine new ATO rulings and detail the ATO's focus this coming tax return season.

NEW RULINGS

EFFECTIVE LIFE OF DEPRECIATING ASSETS

A new effective life Ruling applying from 1 July 2018 has been issued – **TR 2018/4.** If you are not a Small Business taxpayer, and the asset is not eligible to be written off in the year of installation, then you will generally depreciate the asset under the Uniform Capital Allowance (UCA) regime over the term of its effective life. In determining the effective life of an asset, you have the choice to either determine it yourself, or you may use the effective life determined by the ATO (contained in this annual Ruling). Remember of course that Small Business Entities (businesses with an annual aggregated turnover of less than $10 million) still have access to the outright deduction for assets using the $20,000 Instant Asset Write Off.

OVERNIGHT TRAVEL ALLOWANCES

The ATO recently updated its annual Tax Determination – **TD 2018/11** – setting out the reasonable travel and overtime meal allowances expense amounts for 2018/2019 for employees who are paid a travel allowance when travelling overnight for work purposes. Where a bona fide travel allowance is paid within the limits set out in this annual ATO Tax Determination for employees who are required to travel overnight for employment purposes, the deductible expenses incurred by employees on meals and accommodation are not required to be substantiated with receipts etc. Furthermore, from an employer perspective, the allowance:

- Will not attract FBT
- Is deductible
- Will not be shown on an employee's Payment Summary (excess amounts must be)
- Will not have tax withheld (excess amounts will)
- Does not attract superannuation.

To enjoy these benefits as well as the substantiation benefit for the employee:

- Be aware of the reasonable amount limits set out in the Tax Determination
- The amount paid must be a bona fide travel allowance which means:
  - » It must be calculated per night away rather than a predetermined, fixed lump sum amount
  - » If less than the reasonable amounts it must not be so negligible as to not realistically cover out-of-pocket expenditure for meals and/or accommodation e.g. $20 per day would not be a bona fide travel allowance
- It must be separately identifiable in the payroll system as a separate allowance – not just folded into the employee's salary.

WORK FROM HOME FOCUS

The ATO is set to focus on the claiming of work from home expenses, this tax lodgement season.

A record $7.9 billion in 'other work-related expenses deductions was claimed in 2016/2017 by more than 6.7 million taxpayers, with the ATO detecting a sharp rise in expenses relating to working from home. Says ATO assistant Commissioner, Kath Anderson:

"There is a rising trend of employees working from home, and while extra costs related to working from home are usually deductible, we are seeing some taxpayers either over-claiming or claiming private costs," Ms. Anderson said.

There is mounting evidence that many taxpayers don't know what they can and cannot claim. In particular, we are seeing some taxpayers claiming expenses they never paid for, expenses their employer reimbursed, private expenses and expenses with no supporting records.

One of the biggest issues we are seeing is people claiming the entire amount of expenses like their internet or mobile phone, not just the extra bit related to work. In reality, the rest of us are subsidising their private phone calls and internet usage, which is not okay," said Ms Anderson.

"If working from home means sitting in front of the TV or at the kitchen bench doing some emails, it's unlikely that you are incurring any additional expenses. However, if you have a separate work area, then you can claim the work-related portion of running expenses for that space.

"Employees cannot generally claim occupancy-related expenses like rent, mortgage repayments, property insurance, land taxes and rates".

In the following table, generally only Columns 2 or 3 will apply to employees (Column 1 will generally only apply to those who operate a business from home):

What You Can Claim	How You Operate From Home		
	Home is your place of business and you have a dedicated home-work area	Home is not your place of business but you have a dedicated home-work area from where you undertake some work	You work at home but don't have a dedicated home-work area
Occupancy Expenses			
(such as mortgage interest, rent, house insurance, rates etc.)**	Yes	No	No
Running Expenses			
Electricity and gas	Yes	Yes	Yes
Business phone costs (including phone calls and phone rental)	Yes	Yes	Yes
Work-related internet costs	Yes	Yes	Yes
Decline in value of office plant and equipment (such as laptop, desks, chairs etc.)	Yes	Yes	Yes
Depreciation of curtains, carpets, light fittings	Yes	Yes	No

**Subject to not being caught by the Personal Services Income (PSI) rules.

To substantiate your home-office claim, you are required to keep a diary covering a representative four-week period as establishing a pattern of use for the entire year. You can then use this pattern of home office use to calculate the home office running expenses claim for the entire year, allowing for periods when the home office is not used for income production (such as holidays, illnesses) and also allowing for concurrent use by other family members. A new diary must be kept for each financial year, as patterns of use are likely to fluctuate over two or more years.

"DODGY" DEDUCTIONS

More than 8 million Australians claim work-related expenses each year. The ATO is reminding taxpayers to ensure they get things right when lodging 2017/2018 returns over the coming months. In 2016/2017 alone, the ATO conducted over 500,000 reviews and audits of individual taxpayers, resulting in revenue adjustments of more than $1 billion. The ATO says:

Every tax return is scrutinised using increasingly sophisticated tools and data analytics. Consequently, we can identify and review income tax returns that may omit information or contain unreasonable deductions. When a 'red flag' is raised, our staff will investigate. If your claims seem unusual, we will check them with your employer.

THE FOLLOWING REAL LIFE CASE STUDIES PROVIDE AN INSIGHT INTO THE ATO'S METHODS:

CASE STUDY 1 CAR EXPENSES

A railway guard claimed $3,700 in work-related car expenses for travel between his home and workplace. He indicated that this expense related to carrying bulky tools – including large instruction manuals and safety equipment. The employer advised the equipment could be securely stored on their premises. The taxpayer's car expense claims were therefore disallowed because the equipment could be stored at work and carrying them was his personal choice, not a requirement of his employer.

CASE STUDY 2 TRAVEL EXPENSES

A wine expert, working at a high-end restaurant, took annual leave and went to Europe for a holiday. He claimed thousands of dollars in airfares, car expenses, accommodation, and various tour expenses, based on the fact that he'd visited some wineries. He also claimed over $9,000 for cases of wine. All his deductions were disallowed when the employer confirmed the claims were private in nature and not related to earning his income.

CASE STUDY 3 SELF-EDUCATION

A taxpayer claimed self-education expenses for the cost of leasing a residential property, which was not his main residence. The taxpayer claimed he had to incur the expense of renting the property as he 'required peace and quiet for uninterrupted study which he could not have in his own home'. This was not deductible.

In addition to the rental expenses, the cost of a storage facility was claimed where 'the taxpayer needed to store his books and study materials'. He claimed he needed this because of the huge amount of books and study material associated with his course and that he had no space in his private or rented residence where these could be housed. This was not deductible.

The cost of renting the property was around $57,000, with additional expense of $7,500 for the storage facility. The actual cost of the study program he attended that year was only $1,200.

CASE STUDY 4 TRAVEL EXPENSES

A medical professional made a claim for attending a conference in America and provided an invoice for the expense. When the ATO checked, they found that the taxpayer was still in Australia at the time of the conference. The claims were disallowed and the taxpayer received a substantial penalty.