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SEPT/OCT 2018

MONEY-SAVING **TAX TIPS**

SUPERANNUATION AMNESTY FOR EMPLOYERS!

ATO'S TAX TIME FOCUS

PLUS THE LATEST NEWS!

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KEY DATES

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

SEPTEMBER 2018

21 SEPTEMBER
August monthly Activity Statements – due for lodgement and payment

30 SEPTEMBER
Annual TFN Withholding Report for closely-held Trusts where a Trustee has been required to withhold amounts from payments to beneficiaries during 2017/2018 – due date for lodgement

OCTOBER 2018

21 OCTOBER
September monthly Activity Statements – due for lodgement and payment

28 OCTOBER
Final date for eligible quarterly GST reporters to elect to report GST annually

28 OCTOBER
Due date for Superannuation Guarantee contributions for July-September to be made to employee funds

31 OCTOBER
PAYG Withholding Where ABN Not Quoted – Annual Report – due date for lodgement
These amounts are also reported at W4 on your Activity Statement

31 OCTOBER
Due date for 2017/2018 individual tax returns (unless you are lodging via a Tax Agent and are on their lodgement list by this date).

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).

SUPER ANMESTY –TAKE ADVANTAGE!

Could you as an employer benefit from taking advantage of the Government's new Superannuation Guarantee (SG) Amnesty? This article informs you of how you can wipe your SG slate clean, and enjoy some once-off taxation benefits in doing so.

BACKGROUND

The latest data indicates that the "SG Gap" or SG Shortfall (the difference between the theoretical amount payable by employers to be fully compliant with their SG obligations and the amount they have actually paid) is $2.85 billion annually. This indicates that a concerning number of employers are not paying sufficient SG to their employees or are not paying it at all. In response to this and in order to recoup this key employee entitlement, the Government in late May 2018, announced a once-off, 12-month Superannuation Amnesty for employers.

BENEFITS

Subject to the passage of legislation (which is currently before the Senate), the Amnesty will be available for the 12-month period from 24 May 2018 to 23 May 2019.

For an employer, the benefits of the Amnesty are:

- The administration component of the Superannuation Guarantee Charge (SGC) is waived (this is currently a $20 per employee, per quarter charge for whom there is an SG Shortfall)
- Part 7 penalties will not be applied. This can be up to 200% of the SG Charge that is payable (note that SG Charge includes the SG Shortfall amount that you owe to employees)
- All catch-up payments that you make during the 12-month Amnesty period will be tax deductible. The amendments also allow contributions that an employer has elected to offset against SG charge imposed on the SG shortfall disclosed in accordance with the Amnesty to be deducted from an employer's assessable income. This ensures commensurate benefits are provided for employers who contribute directly to their employees' funds when disclosing under the Amnesty as opposed to the benefits for those who instead make payments in relation to SG Charge and leave it to the ATO to distribute the amounts to the relevant funds.

  By contrast, under the current law, SG Charge paid to the ATO is not deductible, and late contributions that an employer has made to an employee's superannuation fund and has elected to offset against their SG Charge liability are also not deductible.

DETAILS

With a Bill to enact the new Amnesty now having been introduced to Parliament, we can reveal the details are as follows:

- The Amnesty applies to any SG Shortfall from the introduction of SG back on 1 July 1992 to the quarter ending 31 March 2018.
- You must voluntarily disclose amounts of SG Shortfall relating to the above period. Therefore, if an employer has already lodged an **SG Charge Statement** (and in that Statement disclosed particular SG Shortfalls), then those particular Shortfalls are not eligible for the Amnesty even if the amount of the Shortfall has yet to be paid. Likewise, Shortfalls that the ATO uncovers during current, future, or past audits of the employer are not eligible for the Amnesty. The disclosure of a new Shortfall must come from the employer, and must occur during the 12-month Amnesty period. By way of background, SG Charge Statements and SG Shortfalls operate under a self-assessment model. The ATO are in most cases unaware that an SG Shortfall exists except in the case where an employee lodges a complaint against their employer, or where an SG Charge Statement is lodged by the employer themselves, or the Shortfall is uncovered in an ATO audit. This lack of awareness by the ATO of past employer Shortfalls is why eligibility for the Amnesty rests on the disclosure by the employer of new, undisclosed Shortfalls.
- There is no requirement to actually make a payment to get the benefit of the Amnesty. Rather, you only need to disclose an SG Shortfall. However, where you fail to make a payment during the Amnesty period, you will not receive a deduction for the catch-up payments (which are only available during the Amnesty).
- Any payments made outside the Amnesty period are not eligible for a deduction. For example, if an employer discloses a Shortfall during the Amnesty period, and then makes a payment arrangement with the ATO to pay the required amounts back in instalments, any amounts paid after 23 May 2019 cannot be claimed as a deduction.

ACCESS

To access the Amnesty, employers or their Advisors must first calculate the amount payable (the SG Shortfall, plus nominal interest) and lodge one of the following forms:

- ***SG Amnesty Fund payment form*** (where you wish to access the Amnesty and can pay the amount in full (including nominal interest) direct to an employee's superannuation fund)
- ***SG Amnesty ATO payment form*** (where you wish to access the Amnesty but cannot pay the amount owing in full). If an employer has already lodged an SGC Statement or received an SGC assessment for a quarter, they can only use this form.

Employers need to lodge these completed forms electronically through the Business Portal or their Accountant or Bookkeeper on their behalf via the BAS Agent or Tax Agent Portal respectively. There is now a radio button on all portals. Information that must be provided includes:

1. Details of Employer
2. Number of quarters covered
3. Number of employees,
   (no employee details are required)
4. Amount to be paid.

CONCLUSION

Legislation to enact this Amnesty was introduced into Parliament in late May and has been passed by the House of Representatives. It is currently before the Senate. Interestingly, the Opposition have criticised the legislation which it says shows leniency to non-complying employers. Therefore, it is no absolute certainty that the Amnesty will be passed into law over the coming months. For this reason, if you are contemplating disclosing past shortfalls specifically to get the benefits of the Amnesty (including claiming a deduction for their late contributions) then it may be prudent to hold off until such time that the Amnesty actually becomes law. We will keep you apprised of the passage of the legislation through Parliament.

Irrespective of the Amnesty however, all employers should strongly consider coming forward to disclose and pay past shortfalls to get their Superannuation Guarantee affairs in order. The Government is committing more resources to this area – including requiring Superannuation Funds to report more regularly to the ATO (at least once each month) – meaning non-complying employers may be more easily detected going forward.

THE HOME FRONT

Most people are aware that Capital Gains Tax does not generally apply to the sale of the family home. The so-called Main Residence Exemption is a critical piece of tax relief for many homeowners, particularly in this era of high property prices. But beware! There are circumstances where the exemption can be lost, as this article explains.

THE MAIN RESIDENCE EXEMPTION

Before we examine circumstances where the Main Residence Exemption may be lost, we should first ensure that we have a good understanding of exactly what the Main Residence exemption is.

The Main Residence exemption provides that a capital gain or loss on the sale of a "dwelling" that is your "main residence" is disregarded for capital gains tax purposes. Broadly, the Main Residence" Exemption can only apply to one dwelling at a time. The following are held by the ATO to be examples of dwellings:

- home or cottage
- apartment, flat or strata title unit
- unit in a retirement village
- caravan, houseboat or other mobile home.

In terms of whether a dwelling is considered your Main Residence, no single factor is determinative. Rather the following factors are all taken as indicators:

- you and your family live in it
- it contains your personal belongings
- it is the address to which your mail is delivered
- it is your address on the Electoral Roll
- utilities such as telephone, gas or electricity are connected there for you in your personal name(s).

A dwelling is held to be your Main Residence from the date of purchase (contract date) provided you move into it as soon as practicable after the date of settlement or, if it was already being rented to someone, only from the date you move into the premises.

EXAMPLE

Matthew and Michelle sign a contract on 1 November to buy a dwelling in Brisbane which they intend to live in as their home. Settlement is 1 December. However the previous owner had leased the property to a tenant whose lease expires on 1 January another month after settlement. As Matthew and Michelle cannot move in as soon as practical after acquiring ownership, their Main Residence period does not start from the contract date but rather 1 January when the tenant moves out. This means when they eventually sell the residence, they will need to apportion the period of time from 1 November (contract date) to 1 January as being subject to capital gains tax.

If you are building, land does not become eligible for the Main Residence Exemption until you build a dwelling and move into it. However, provided this happens within four years, the exemption is retrospective to when you acquired the land.

There is a myth in the community that one must live in a Main Residence for a period of time (e.g. 12 months) in order to qualify for the Exemption. This is not the case. The Tax Act stipulates no such timeframe (it can be as short as a few weeks). The only matters of relevance are the indicators discussed earlier.

USING YOUR HOME TO PRODUCE INCOME WHILE STILL LIVING IN IT

The full Exemption from capital gains tax is lost if you:

- used any part of the Residence to produce income during all or part of the period you owned it, and
- would be allowed a deduction for interest had you incurred it on money borrowed to acquire the dwelling.

This is referred to as the "Interest Deductibility Test". This is a notional test, which means that it is applied irrespective of whether money has actually been borrowed to acquire the dwelling. In broad terms, the Interest Deductibility Test would result in the following conclusions:

- for taxpayers renting out all or part of their home as a rental property they would be entitled to claim a portion of their interest costs, thus the Interest Deductibility Test would be met and the full Main Residence Exemption would be lost. For example, renting out a room on Airbnb.
- for taxpayers running a business in part of their home, they would be entitled to claim a portion of their interest costs provided

that part of the dwelling was set aside exclusively as a place of business and clearly identified as such, and that part of the home is not readily adaptable for private use. An example is a photographer who has converted the lower level of his house into a studio containing backdrops, special lighting, dark rooms and a waiting room. In this case, the full Main Residence Exemption would be lost

- for taxpayers using part of their home as a study or home office, they would not be entitled to claim a portion of their interest costs. Their claims would be limited to a portion of running costs such as electricity. In this case, the full main residence exemption would not be lost.

QUANTIFYING THE LOST EXEMPTION

Where you have used your home to produce income and the Interest Deductibility Test is met. One of the following two approaches is used to calculate your capital gain.

The first approach applies where you start using your home to produce income in a way that satisfies the Interest Deductibility Test for the first time after 20 August 1996, and you would have been entitled to a full Exemption had you sold the property immediately before using it to produce income. In this case, the period before the dwelling is first used by you to produce income is not taken into account. Instead, a market valuation is to be obtained as at the date that the property first became income-producing. The capital gain is taken to be the difference between the sale proceeds and that market value, multiplied by the proportion of floor area used in an income-producing manner.

The second approach applies where your home was first used to produce income before 20 August 1996, or where it starts to be used for income-producing purposes from the time it is purchased. In this case, the capital gain is calculated as the difference between the sale proceeds and the actual cost base, multiplied by the proportion of floor area used in an income-producing manner, then multiplied by the percentage of the period of ownership that part of the home was used in an income-producing manner (see later example for the mechanics of the calculation). Once the capital gain has been established, you may then be able to reduce that gain further through use of the 50% Discount Method provided that the dwelling has been held for at least 12 months, or the (lesser used and usually less effective) Indexation Method. The Indexation Method is only available where the contract to acquire the dwelling was entered into before 11:45 am on 21 September 1999.

EXAMPLE 1

Jabba owns a two level apartment in Melbourne which he acquired on 1 January 2015 for $500,000. For the first year, Jabba used the property solely as his home. On 1 January 2016, Jabba commenced using the lower level (representing 40% of the total floor area) as a painting workshop which also served as a gallery for selling his paintings to the general public. The market value of the apartment at 1 January 2016 had increased to $700,000.

On 1 January 2019, Jabba sold the apartment for $900,000 net of all costs.

In calculating the capital gain, the first approach discussed earlier will be applied as Jabba started using the apartment to produce income in a way that satisfied the Interest Deductibility Test for the first time after 20 August 1996, and would have been entitled to a full exemption had he sold the property immediately before using it to produce income. As a result, Jabba's capital gain is the difference between the sale proceeds and the market value as at 1 January 2016, multiplied by the proportion of floor area used in an income-producing manner.

Accordingly, the calculation is as follows:

($900,000 - $700,000) x 40% = $80,000

Jabba could reduce the capital gain by a further 50% (down to $40,000) using the Discount Method as he has held the property for 12 months or greater.

EXAMPLE 2

Assume the same facts as Example 1, except that Jabba's period of non-income producing usage was his last year of ownership (i.e. 1 January 2018 to 1 January 2019) rather than his first year of ownership. The significance here is that the second approach discussed earlier must be applied as the property has been used in an income-producing manner from the time it was purchased.

As a result, Jabba's capital gain is the difference between the sale proceeds and the original cost, multiplied by the proportion of floor area used in an income-producing manner, multiplied by the percentage of the period of ownership that part of the home was used in an income producing manner (which was three of the four years).

Accordingly, the calculation is as follows:

($900,000 - $500,000) x 40% x 75%= $120,000.

Jabba could then reduce the capital gain by a further 50% (down to $60,000) using the Discount Method having held the property for 12 months or longer.
Where the Main Residence Exemption is lost because you have used your home for business purposes (as distinct from, say, having used it as a rental property), you may also be able to take advantage of the Small Business CGT concessions, however these are beyond the scope of this article.

THE MYTH SURROUNDING NOT CLAIMING COSTS ON YOUR HOME

In the same vein as the myth surrounding the length of time one must live in their main dwelling to qualify for the Main Residence Exemption, another common myth surrounds the loss of Main Residence Exemption for income producing use. Many taxpayers and some Tax Practitioners take the view that if a taxpayer chooses not to claim deductions for a proportion of the holding costs of their home (e.g. rates, mortgage interest), then the Main Residence Exemption is preserved. This is not the case. The loss of the full Main Residence Exemption is based on the tests discussed earlier. Whether you choose to claim or not claim your rightful share of deductible home running and holding costs is of no bearing. Therefore, you are disadvantaging yourself by not claiming these expenses.

SOMEONE ELSE USES PART OF YOUR HOME TO PRODUCE INCOME WHILE YOU ARE STILL LIVING IN IT

The full Main Residence Exemption will still apply if someone else uses part of your home to produce income and you receive no income from that person.

EXAMPLE 3

John and Jane own a dwelling in Sydney which they live in as their home. Their daughter, Libby, uses the basement of the house to conduct xylophone lessons for which she derives a part-time income. John and Jane do not receive any part of Libby's earnings from the lessons. As a result, John and Jane retain the full Main Residence Exemption on their home.

LEGISLATION UPDATE

With Parliament in a long Winter recess, this article updates you on some pending legislation, and is current as at September 2018.

SALARY SACRIFICED SUPERANNUATION – EMPLOYEE PROTECTION!

Subject to the passage of legislation, commencing 1 July 2018 employees who salary sacrifice superannuation are protected from having their Superannuation Guarantee (SG) entitlement reduced.

Before this date, salary sacrifice contributions – although made from an employee's salary – could reduce an employer's SG liability. Salary sacrificed amounts, if paid late, could also be offset against the SG amount due. Some employers however still generously contributed the full 9.5% contribution calculated on the pre-sacrifice (gross) salary. However many did not.

To protect employees, from 1 July 2018, amounts that an employee salary sacrifices to superannuation cannot reduce an employer's SG liability. Salary sacrificed amounts also do not form part of any late contributions an employer makes that are eligible to be offset against the SG liability. To avoid a shortfall for a quarter, an employer must contribute at least 9.5% of an employee's Ordinary Time Earnings (OTE) base to the employee's complying superannuation fund or retirement savings account (RSA). An employee's OTE base is comprised of their OTE and any amounts sacrificed into superannuation that would have been OTE, but for the salary sacrifice arrangement.

EXAMPLE

Jake has quarterly OTE of $22,000 which would ordinarily generate an entitlement to $2,090 in employer SG contributions ($22,000 x 9.5%). He salary sacrifices $1,000 a quarter, expecting his superannuation contributions to rise to $3,090 for that quarter.

However, his employer uses the sacrificed amount ($1,000) to satisfy part of its mandated SG obligation, and only makes an additional contribution of $1,090.

Under the new rules, Jake's $1,000 sacrificed contribution will no longer reduce the employer's SG liability. The employer must therefore contribute an additional $2,090 on top of the $1,000 sacrificed by Jake.

Where the amounts sacrificed are not OTE however, they are not added back to determine the employer's SG liability for the quarter, as per the following example adapted from the Explanatory Memorandum to the legislation:

EXAMPLE

Lucille is paid $20,000 in salary and wages a quarter, which includes overtime of $5,000. She enters into a salary sacrifice arrangement of $2,500 of overtime pay per quarter. Her OTE is $15,000 a quarter (as the $5,000 overtime is not included in OTE).

Lucille's total employer contribution should be $3,925 ($1,425 mandatory employer contribution + $2 500 sacrificed amount for the quarter).

Lucille's employer contributes $3,925 with $1,425 being the amount relevant for reducing the SG charge. The sacrificed amount is not added into the base of the OTE, to the extent that it includes overtime. This is because it is not a sacrificed OTE amount, since the salary sacrifice arrangement results in no reduction in the employee's OTE.

Lucille's employer's SG Charge percentage is reduced by the following amount:

($1,425/$15,000) x 100 = 9.5%

Therefore, the SG Charge percentage is reduced to zero and there is no shortfall to pay, which is the correct outcome since overtime should be excluded from OTE.

Legislation to enact this change (Improving Accountability and Member Outcomes in Superannuation Measures No.2 Bill 2017) has been passed by the House of Representatives, and is currently before the Senate. When passed into law (it has the support of both sides of politics) it will apply from 1 July 2018. It's recommended therefore that those handling superannuation/payroll should as of 1 July pay employer SG on the basis of new rules – commencing from the first quarterly payment due on 28 October 2018.

ELIGIBILITY FOR COMPANY TAX CUTS

The Senate's failure to yet pass the new Bill clarifying the eligibility for the lower company tax rate before the new financial year (2018/2019) has caused much uncertainty for Tax Practitioners and their corporate clients, with flow-on impacts to shareholders.

By way of background, *The Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Bill 2017* was introduced into Parliament on 18 October 2017, and is still stuck in the Senate. In simple terms, the Bill 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 or its turnover exceeds ($25 million for 2017/2018, and $50 million for 2018/2019). 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)**.

As it stands at the moment and until the legislation is passed there are practically two sets of rules to determine the company tax rate and imputation credit for 2017/2018 onwards, namely:

- The current law which is that the company must be "carrying on a business" as set out in draft Taxation Ruling ***TR 2017/D7*** – for the definition of this, see our January/February 2018 magazine **www.mytaxsavers.com.au**)
- The new – not yet not passed – law where a company must meet the 80% requirement.

In addition to this, a company must also meet the relevant turnover threshold to access the lower tax rate of 27.5% ($25 million for 2017/2018, and $50 million for 2018/2019). In terms of which tax rate to apply if you are lodging your company tax return at present, many companies may qualify for the lower tax rate under both sets of rules. However, there will be some companies that – depending on which rules you apply – end up with a different outcome and may need to amend their returns when the new law finally passes or gets rejected.

FRANKING CREDIT RATE?

From 2017/2018, the maximum franking credit that can be allocated to a frankable distribution made by a company is based on the company's tax rate for imputation purposes. For 2017/2018, a company's corporate tax rate for imputation purposes is 27.5% if either:

- The company's aggregated turnover in 2016/2017 was less than $25 million, and it was carrying on a business, or
- This is the first year that the company is in business.

Otherwise, the company's corporate tax rate for imputation purposes is 30%. If your company has issued 2017/2018 distribution statements that are incorrect, the company should notify shareholders of the correct dividend and franking credit amount. This can be achieved by sending a letter or email to shareholders, or alternatively a revised distribution statement. You also need to ensure that the correct amounts are reflected in your company's franking account

EXTENSION OF STP

For larger employers, **Single Touch Payroll** (STP) commenced on 1 July 2018.

Legislation requiring small employers (those with less than 20 employees) is currently before the Senate. Essentially, STP requires that each time an employer pays their employees, they are required to instantly report to the ATO information such as the salaries and wages, pay as you go (PAYG) withholding and superannuation. The information needs to be reported from software which is STP-enabled. Eventually this will mean:

- Employers will not need to provide Payment Summaries to their employees for the payments reported through STP.
- Employees will be able to view their payment information in ATO online services, which they will access through their **myGov** account.
- Some labels on employer Activity Statements will be pre-filled with the information already reported, for example PAYG withholding.

The expansion of mandatory and real time reporting of employer liabilities via STP is designed to improve the ATO's ability to monitor Superannuation Guarantee compliance by increasing the visibility of non-payments by all employers.

Although the Bill enacting these changes - *Treasury Laws Amendment (2018 Measures No 4) Bill 2018* – is still before the Senate and yet to be passed into law, the Government seems determined to press ahead with this measure. Although the start date is still up to 9 months away (1 July 2019), prudent smaller employers will 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. Alternatively, you may wish to outsource your payroll to a Tax Agent or BAS Agent (registered bookkeeper) or to a specialist payroll bureau who will all provide you with an STP-compliant solution as part of their service.

REPORTING OF TAX DEBTS

The legislation to enable the reporting of certain tax debts owed to the ATO seems some way off.

By way of background, to recoup the millions of unpaid debt that is owed to the ATO by business, the Government is proposing that certain overdue, undisputed tax debts of $10, 000 or more (that are not covered by a formal arrangement) be reported to Credit Reporting Bureaus (CRBs). The effect of this on a business could be quite devastating as CRBs may include the tax debt information in their credit reports which are available for purchase by parties who wish to use this information to make an informed decision on the credit worthiness of a business such as banks and other lenders. This could have profound effects on the reported business such as support from financiers being withdrawn, and supplier credit being stopped.

Under the proposed new regime, the ATO will only disclose the tax debt information of a business to a CRB if the business meets all of the following criteria:

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

Therefore, to avoid the debt being reported, a business would need to take corrective action by adopting one of the following:

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

Back in January, the Government released Exposure Draft legislation to enact this new measure. The consultation period closed on 9 February 2018. Since then, no legislation has been tabled in Parliament although the Government has not scrapped these plans. The original commencement date when the measure was announced was whichever of the following dates occurs first after the Bill is passed…1 April, 1 July, or 1 October 2018. Therefore, even if legislation was introduced when Parliament resumes in Spring, the absolute earliest date that this measure would apply is 1 October 2018.

Although the introduction of the reporting rules would seem some way off, prudent businesses with a debt described above should seek to take corrective action (see earlier) as soon as possible. Even if the new laws were not to come into force, engaging with the ATO and even just commencing a payment arrangement can save hundreds of dollars of interest charges going forward.

SUPERANNUATION GUARANTEE INTEGRITY

The *Treasury Laws Amendment (2018 Measures No.4) Bill* proposes to:

- Allow the ATO, in cases where employers fail to comply with their Superannuation Guarantee (SG) obligations, to issue directions to pay unpaid SG and undertake SG education courses
- Introduce criminal penalties for failure to comply with a direction to pay an estimate of unpaid SG. In cases where employers defy directions to pay their SG liabilities, the ATO will be able for the first time to apply for court-ordered penalties, including up to 12 months imprisonment
- Improve the operation of the ATO's collection and compliance measures e.g. strengthening the integrity of the director penalty provisions for directors who fail to comply with their SG and PAYG withholding obligations
- Allow the ATO to disclose more information about SG non -compliance to affected employees.

The Bill to enact these measures is currently stuck in the Senate. When passed, the new law will be backdated to 1 July 2018. In view of this, as a matter of some urgency, all employers should review their current SG compliance processes to ensure that employee superannuation (calculated on Ordinary Time Earnings) is being paid in full and on time.

TAX CUTS DELIVERED!

The Government has successfully passed into law all three stages of its income tax cuts. This article details the reductions, and what it means for you.

STAGE 1

This involves the introduction of a new non-refundable Low and Middle Income Tax Offset from 2018/2019 to 2021/2022. The offset will provide tax relief of up to $530 for each of those years. The offset will be delivered after you lodge your tax return each year, and is in addition to the existing Low Income Tax Offset. The Low and Middle Income Tax Offset will provide a benefit of up to $200 for taxpayers with taxable income of $37,000 or less. Between $37,000 and $48,000, the value of the offset will increase at a rate of 3 cents per dollar to the maximum benefit of $530. Taxpayers with taxable incomes from $48,000 to $90,000 will be eligible for the maximum benefit of $530. From $90,001 to $125,333, the offset will phase out at a rate of 1.5 cents per dollar.

To be clear, the offset reduces the amount of tax you are liable for each year. The offset is not refunded to you as such. Therefore if you earn $10,000 for the year for example, the offset is redundant as you have no tax liability anyway, and therefore there is no tax to offset. Indeed the only refundable tax offsets are in respect to franking credits on shares, and research and development.

Furthermore, from 1 July 2018, the Government increased the top income threshold of the 32.5 tax the bracket from $87,000 to $90,000. Therefore, every person earning over $87,000 will receive tax relief with those earning over $90,000 all enjoying the same maximum annual tax cut of $135. As a result of this change, the new tax rates are as follows:

Resident Individuals*

2017/2018		2018/2019	
Income threshold $	%	Income threshold $	%
0-18,200	0	0-18,200	0
18,201-37,000	19	18,201-37,000	19
37,001-87,000	32.5	37,001-90,000	32.5
87,001-180,000	37	90,001-180,000	37
Over 180,000	45	Over 180,000	45

**not including 2% Medicare levy*

The following table shows the cumulative tax relief provided by the above two measures:

TAXABLE INCOME	$30,000	$50,000	$80,000	$90,000
	Tax Relief	Tax Relief	Tax Relief	Tax Relief
2018/19	$200	$530	$530	$665
2019/20	$400	$1,060	$1,060	$1,330
2020/21	$600	$1,590	$1,590	$1,995

TAXABLE INCOME	$120,000	$160,000	$200,000
	Tax Relief	Tax Relief	Tax Relief
2018/19	$215	$135	$135
2019/20	$430	$270	$270
2020/21	$645	$405	$405

STAGE 2

In 2022/2023, the top threshold of the 19% bracket will increase from $37,000 to $41,000 and the LITO will increase from $445 to $645. The increased LITO will be withdrawn at a rate of 6.5 cents per dollar between incomes of $37,000 and $41,000, and at a rate of 1.5 cents per dollar between incomes of $41,000 and $66,667. The top threshold of the 32.5% bracket will increase from $90,000 to $120,000 from 1 July 2022 with the rates to change as follows:

Resident Individuals*

2018/2019		2022/2023	
Income threshold $	%	Income threshold $	%
0-18,200	0	0-18,200	0
18,201-37,000	19	18,201-41,000	19
37,001-90,000	32.5	41,001-120,000	32.5
90,001-180,000	37	120,001-180,000	37
Over 180,000	45	Over 180,000	45

**not including 2% Medicare levy*

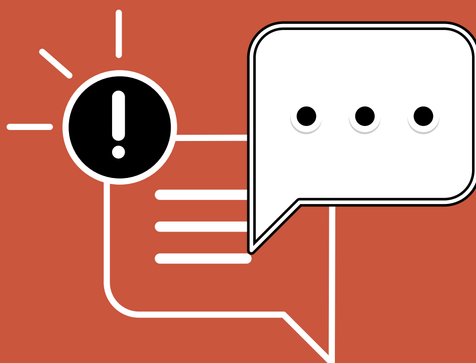
STAGE 3

From 1 July 2024, the top threshold of the 32.5% bracket will increase from $120,000 to $200,000, removing the 37% tax bracket completely. Taxpayers will pay the top marginal tax rate of 45% from taxable incomes exceeding $200,000 and the 32.5% tax bracket will apply to taxable incomes of $41,001 to $200,000. The Government says this means that around 94% of all taxpayers are projected to face a marginal tax rate of 32.5% or less in 2024/2025. Therefore, the tax rates will look very different than from now as follows:

Resident Individuals*

2018/2019		2024/2025	
Income threshold $	%	Income threshold $	%
0-18,200	0	0-18,200	0
18,201-37,000	19	18,201-41,000	19
37,001-90,000	32.5	41,001-200,000	32.5
90,001-180,000	37	Over 200,000	45
Over 180,000	45		

**not including 2% Medicare levy*



Take-Home Messages

- Employers should ensure that they are using the updated tax tables for payments made to employees on or after 1 July 2018.
- The Low and Middle Income Tax Offset will not be enjoyed until you lodge your tax return at year-end.
- The offset is not a refund, and will only reduce your tax payable.
- While now law, Stage 2 and 3 are subject to change – depending on whether subsequent Governments repeal or amend in the four-year period until they are slated to commence.

HEALTHY WORKPLACES

Employers can improve staff workplace satisfaction and in turn increase retention by providing a range of health benefits, over and above their salary. Structured carefully, Fringe Benefits Tax (FBT) can also be avoided.

FRUIT / COFFEE / LIGHT MEALS

Being hungry or dehydrated during the day impedes concentration and can lead to a dip in productivity. With this in mind, employers may wish to consider providing fresh fruit, water and coffee for their workers (coffee, especially, is a much-appreciated workplace benefit). Light refreshments such as this are generally fully deductible to the employer and will not attract FBT.

As well as bowls of fresh fruit, the following meals will be FBT exempt under Section 41 of the FBT Act:

- Morning and afternoon teas and light meals (coffee, cakes, biscuits, sandwiches, finger foods, orange juices) consumed on an employer's premises during the day, including for work meetings and overtime. These will also be income tax deductible and GST creditable.
- Weekly lunches provided by an employer on the business premises to its employees. The provision of such food and drink will also generally be income tax deductible and GST creditable.

WORK-RELATED COUNSELLING

Professional counselling for an employee is beneficial for both them and the employer alike as it is likely to result in improved health and performance. If you as an employer reimburse or pay for the work-related counselling of an employee it will, subject to

the following conditions outlined in **ATO ID 2001/543**, be exempt from FBT:

- The employee's attendance at the counselling gives effect to an objective, purpose, plan or policy devised or required to be followed by the employer to improve or maintain the quality of the performance of the employee's duties
- The counselling relates to health, fitness or stress management, and
- The benefit is not provided wholly or principally as a reward for services rendered by the employee.

Therefore, if you have a policy or plan in place that relates to health (including mental health), fitness (e.g. smoking) or stress management, and you identify an employee who needs professional assistance to meet the requirements of this policy, then any professional counselling that you provide for them will generally be exempt from FBT.

GYM MEMBERSHIPS

Over recent years, gym membership has exploded in popularity with many people finding it a time-effective way to keep fit either before or straight after work or during their lunch break. In recognition of this, as a goodwill gesture an sizeable number of employers provide gym memberships to their employees either by paying the gym directly or by reimbursing the employee for the cost of the membership. Either way, paying for a gym membership on behalf of an employee is considered recreational entertainment, and will therefore attract FBT. However, under the Minor Benefits Exemption, the gym membership will be exempt from FBT if:

1. The benefit is less than $300, and
2. It would be unreasonable to treat the benefit as a fringe benefit.

Regarding point 1, the $300 threshold is GST-inclusive (which equates to $272 GST-exclusive). Where the cost of an employee's gym membership exceeds this amount, to avoid FBT employers may wish to consider only partly reimbursing the employee for the membership cost up to $300. Regarding point 2, in the case of gym memberships the ATO in the FBT NTLG sub-committee minutes of meeting dated 8 May 2008 stated that an annual gym membership costing less than $300 will generally not attract FBT. On the downside, where it is an exempt Minor Benefit, the employer cannot claim a tax deduction or GST credits for the cost of the membership.

INSURANCE/INJURY

PRIVATE HEALTH INSURANCE

This insurance provides policy holders with a range of medical benefits with some policies covering everything from massages to cosmetic treatment. Unfortunately, however, where the cost of the policy you provide to an employee exceeds $300 (virtually all policies) it will attract FBT. The FBT payable cannot be reduced under the otherwise deductible rule (as the benefit does not qualify as a deduction for the employee had they paid for the benefit out of their own pocket).

WORK-RELATED INJURY BENEFITS

Benefits provided to employees for work-related injury (such as the payment of hospital or medical costs, ambulance travel, accommodation costs) are exempt from FBT. To qualify, the benefits must be provided for 'compensable work-related trauma' suffered by an employee. Compensable work-related trauma is defined as 'an injury or disease related to employment for which the employee is entitled to compensation under a Workers' Compensation law'.

WORK-RELATED PREVENTATIVE HEALTH CARE

Section 58M of the FBT Act exempts from FBT the provision of certain benefits provided in respect of the employment of an employee, including where the expenditure relates to work-related preventative health care. This is defined as any form of health care provided by (or on behalf of) a doctor, nurse, dentist, optometrist made available to employees at risk of suffering from work-related trauma. The health care must, however, be made available to all employees at risk of suffering a particular work-related trauma. ATO case law has established that the following common expenses fall under Section 58M and are therefore exempt from FBT:

- Flu shots paid for or reimbursed by the employer – see **ATO ID 2004/301**
- Massages – where they are recommended by and carried out by or on behalf of a medical practitioner (e.g. by a masseuse on behalf of a doctor) – **ATO ID 2003/689**.

PREVENTATIVE MEDICAL HEALTH PROGRAMS

In ATO **Class Ruling 2009/29**, a company offered its employees a comprehensive preventative medical program which was designed to reduce workplace related injury, reduce absenteeism, improve employee engagement, performance, life balance and personal relationships, increase productivity and reduce stress.

The program featured a group session also involving spouses followed by an individual appraisal of each person's health (in the areas of skin, psychology, podiatry and nutrition) culminating in a Health Risk Analysis. As part of the group session, employees and spouses sampled 'balanced diets' prepared for them by a chef. Employees were also provided with books on topics such as healthy eating and lifestyle changes. As well, the employees were provided with transport to the venue, and undertook to meet with an exercise psychologist monthly for the next 12 months (as part of a Vitality Challenge).

The ATO concluded that the food and books (property) was exempt from FBT, as was the transport. The cost of the course (the advice and information provided to the employees and associates, as well as the health report and the Vitality Challenge) was also exempt from FBT. This case, although unique, demonstrates the broad nature of Section 58M and how it can be used to provide employees with a range of healthy lifestyle benefits.

Section 58M also provides an FBT exemption for:

- **Medical Examinations** – are FBT exempt where the examination (psychological or physical) is carried out to determine the suitability of an employee to be employed, continue to be employed or undertake a change of duties.
- **Medical screening tests** – this is exempt from FBT where the examination or test is carried out to determine if an employee has suffered or is at risk of suffering from work-related trauma (defined as an injury or disease relating to an employee's employment).

IN-HOUSE HEALTH CARE FACILITIES

Under Section 58K of the FBT Act, health care benefits provided at an in-house health care facility by an employer are exempt from FBT subject to the following conditions:

- The benefit is provided in respect to the employee's employment
- The health care is provided at an in-house health care facility of the employer (e.g. first aid room, or medical clinic located on site or adjacent to the work site or on an associate's business premises or adjacent to it), and
- Where condition 1 is not satisfied, health care is provided by a member of the health care facility staff in the performance of their duties.

To qualify, the in-house health care facility must be operated principally for providing health care for work-related trauma (an injury or disease related to employment). 'Health care' is defined as any test or form of care (whether therapeutic, preventative or rehabilitative), that is related to a person's physiological or psychological health.

HOLD YOUR HORSES! CRACKDOWN ON WORKHORSE VEHICLES

Recently finalised ATO guidance may cause employers to think twice before providing certain vehicles to staff as part of their employment package.

BACKGROUND

For commercial vehicles that have a carrying capacity of greater than one tonne, the FBT legislation provides that where the private use of the vehicle is greater than minor, infrequent or irregular, the employer will be liable for FBT on that vehicle. Consequently, for these vehicles (with a carrying capacity exceeding one tonne) if the private use is not minor, infrequent and irregular, the private use is subject to FBT – on a Cents Per Kilometre basis, or on an Operating Cost (based on a log book that tracks private usage) style of calculation.

For vehicles of less than one tonne, the FBT legislation has similar wording on the restrictions around private usage. For vehicles of less than one tonne where the private use exceeds that which is minor, infrequent or irregular, the employer will be liable for FBT on the car using the Statutory Formula method (a percentage of the cost) or the Operating Cost Method.

"WORK-HORSE" VEHICLES MYTH

For FBT purposes, 'cars' are defined as motor vehicles (except motorcycles or similar vehicles) designed to carry a load of less than one tonne and fewer than nine passengers. This includes motor cars, station wagons, and panel vans, utilities (subject to the above weight and passenger restrictions). Where there is private usage of these vehicles (which exceeds being minor, infrequent and irregular) a car fringe benefit arises.

There is a common misconception that where a vehicle is not a 'car' as per the above definition, no FBT is payable on the private use component. This may in part explain why Toyota Hi-Lux and Ford Ranger four-door utes are the two best selling vehicles in Australia (year to June 2018). While it is true that a "car" fringe benefit will not arise in respect of these vehicles, private usage of these vehicles will be classed as a "residual" fringe benefit. Therefore, they still attract FBT but are a different class of benefit whereby the FBT payable is calculated slightly differently.

It follows that for eligible vehicles (see later list) the definition of the term "minor, infrequent or irregular" is important. The private use will be exempt from FBT where all of the following conditions are met:

- The vehicle is a utility, panel van or other commercial vehicle that is not designed to primarily transport passengers, or is a registered taxi (see later list)
- Any private use by the employee is limited to:
  - o Travel between home and work
  - o Travel incidental to the use of the vehicle in the course of employment
  - o Private use that is "minor, infrequent and irregular".

OLD RULES

Up until recently, there has been very limited guidance from the ATO about what constitutes "minor, infrequent or irregular". This along with the difficulty (for the employer as well as the ATO) of monitoring after-hours usage has lead to a generous interpretation by employers and tax professionals alike on what exactly this term means. Consequently FBT may not have been paid where it perhaps otherwise should have been. In response to this, the ATO has released **Practical Compliance Guideline PCG 2018/3** to assist employers to identify to what extent they need to determine if an employee's private use of a vehicle is within the exemptions outlined earlier. The Guideline is focused on vehicles that are "eligible vehicles" (see later list). If the private use of these vehicles is greater than the limited use allowed in this **PCG 2018/3** in a single FBT year (1 April to 31 March) than either a taxable car fringe benefit or a taxable residual fringe benefit arises for the whole of that FBT year.

PCG 2018/3 applies from the current FBT year (2018/2019) onwards.

THE NEW ATO GUIDELINE

PCG 2018/3 establishes a safe harbour by listing the following situations as those the ATO will not closely investigate as to whether the usage of a vehicle is "minor, infrequent, or irregular":

- An eligible vehicle* is used (including the popular brands of four-door utes such as the Toyota Hi-Lux and Ford Ranger)
- The vehicle is provided to the employee for business use to perform their work duties
- The vehicle has a GST-inclusive value of less than the Luxury Car Tax threshold at the time it was acquired
- The vehicle is not provided as part of a salary packaging arrangement, and the employee cannot elect to receive additional remuneration rather than using the vehicle
- The employer has a policy in place that limits private use of the vehicle and obtains an assurance from the employee that their use is limited to the following:
  - (a) Travel between home and work and any diversion adds no more than two kilometres to the ordinary length of that trip, and
  - (b) For journeys undertaken wholly for a private purposes (other than travel between home and work), the employee does not use the vehicle to travel:
    - o more than 1,000km in total, and
    - o a return journey that exceeds 200km.

ELIGIBLE VEHICLE	
VEHICLE TYPE	**REQUIREMENTS**
Taxi	Taxis qualify for the work-related use exemption if they are owned or leased and designed to carry a load of less than one tonne and fewer than nine passengers
Panel Van – solid rigid-bodied, non-articulated car, smaller than a truck, without rear side windows	Qualify for the work-related use exemption
Single cab ute	Qualify for the work-related use exemption
Dual cab ute – different from conventional vehicles with extra seats behind the driver and front passenger. They also share a common chasis which can fit a single or dual passenger cab and alternate tray section	Qualify for the work-related use exemption only if they are not designed for the principal purpose of carrying passengers
Four-wheel drive vehicle (other than utilities and dual cabs)	Qualify for the work-related use exemption if they are **(a)** designed to carry a load or one tonne or more or **(b)** designed to carry more than 8 passengers or **(c)** not designed for the principal purpose of carrying passengers
Modified vehicle	Qualify for the work-related use exemption if for the entire FBT year when the car is provided, a modification or alteration permanently affects the inherent design of the vehicle (e.g. hearses)
Other road vehicle	Qualify for the work-related use exemption if they are designed to carry **(a)** a load of more than one tonne or more or **(b)** more than 8 passengers

HOME TO WORK TRAVEL

To illustrate where the private use of an "eligible" vehicle will be eligible for the work-related FBT exemption, **PCG 2018/3** contains two examples relating to diversions between home and work. The examples are based around an employer that provides an employee with a new panel van designed to carry a load of less than one tonne. In satisfaction of the above conditions, the van is also not provided as part of a salary packaging arrangement, and was acquired for a value below the applicable Luxury Car Tax threshold. The van is garaged at the employee's home, and the employer has a strict policy in place limiting the private usage.

EXAMPLE 1
Allowable Diversion

The employee usually stops at the newsagent to pick up a newspaper on their way to work. The diversion adds no more than two kilometres to the total trip from home to work.

On 10 occasions during the FBT year, the employee also transported their niece to school in the van during the employee's journey from home to work. The journeys from home to work generally do not exceed 20 kilometres.

At the end of the 2019 FBT year, the employer receives an email from the employee. The email outlines that multiple journeys were undertaken in the FBT year for a wholly private purpose and these journeys did not exceed 1,000 kilometres in total. The employee also outlines in the email that in driving to and from work, no diversions were undertaken that exceeded two kilometres. The employer is satisfied that the employee has adhered to their policy about limited private use.

The employer is entitled to rely on the Guideline.

EXAMPLE 2
Not an Allowable Diversion

Assume the same facts as Example 1, however, during the football season the employee attends weekly football training after work. The diversion adds more than two kilometres to the total journey from work to home.

The employee's travel from work to football training is not considered to be an allowable diversion, as the primary purpose of the journey was for the employee to travel to football training, not from work to home. Additionally, the travel to attend this weekly football training and the travel to transport their niece exceeds 1,000 kilometres. Therefore, the employee cannot provide assurance that the requirements of PCG 2018/3 are met and therefore the employer will not be able to rely on this Guideline.

The employer will need to rely on the relevant provisions of the FBT law to determine if they can access the car-related exemptions.

SEPARATE PRIVATE USAGE

The two remaining examples relate to separate private usage. They are based on a panel van designed to carry a load of less than one tonne, which is fitted with a navigation device. In compliance with the earlier conditions, the van is acquired for a value below the Luxury Car limit and is not provided under a salary packaging arrangement. The employee uses the van to transport goods in their role as a courier driver.

EXAMPLE 3
Separate Allowable Private Usage

The employee provides confirmation to the employer that their private use of the van during the year is limited to:

- taking domestic rubbish to the tip (100 kilometres return journey), and
- moving residences and travel from the new residence three times (200 kilometres travelled in total).

The journeys undertaken for a wholly private purpose by the employee in the 2019 FBT year amounted to 300 kilometres in total and no more than 200 kilometres was travelled on a return journey. The employer is satisfied that the employee has adhered to their policy about limited private use and is therefore able to rely on **PCG 2018/3.**

EXAMPLE 4
Separate Disallowable Private Usage

Assume the same facts as Example 3, except that the employer is aware that the van provided to the employee was also used to travel to the beach on a public holiday and is not satisfied with the assurance provided. The employee acknowledges they used the vehicle to travel to the beach and that the return journey exceeded 200 kilometres.

As each return journey must not exceed 200 kilometres, the journey to the beach would not fall within this Guideline.

Accordingly, even though the journeys undertaken wholly for a private purpose do not exceed 1 000 kilometres, the employer cannot rely on **PCG 2018/3** and will therefore need to rely on the relevant provisions of the FBT law to determine if they can access the exemptions.

TAKE-HOME MESSAGE

Moving forward for the current and future FBT years, **PCG 2018/3** may be useful for employers that provide eligible vehicles to employees to determine what type of private travel can be considered to be minor, infrequent and irregular for the purposes of the work-related exemption.

The guidelines require a big shift in mind for employers who for many years may have turned a blind eye to FBT. Such is the strict interpretation of "minor, infrequent or irregular" picking up children from school, attending after work events or visiting the grocery store on the way home from work may not be allowed.

Employers should review current policies and data collection procedures to ensure the private use of vehicles currently treated as FBT exempt, fall within the conditions detailed above or they may find themselves subject to ATO compliance activity.

We recommend that employers review the commercial vehicles that may be subject to FBT for their potential taxation implications. Those employers with vehicles whose use falls outside the scope of **PCG 2018/3** also need to consider the potential tax implications.

TAX TIPS

This article provides readers with a range of money saving tax tips. Areas covered include business restructures, tax-friendly Melbourne Cup functions, and more.

TAX-FREE RESTRUCTURES

Thinking of restructuring your business but concerned about the tax consequences of doing so? Small Business Entities (SBE's with a turnover of up to $10 million including the turnover of connected entities and affiliates) can now – subject to certain conditions – change their operating structure tax-free.

Having decided to go into business, one of the most important initial decisions is to choose which structure through which you will operate. Options include sole trader, company, trust, partnership, or a combination of these. In making this decision, a number of factors need to be considered including minimising your tax liability, asset protection, access to equity capital, compliance costs, succession planning, and more.

The most appropriate structure for a small business may change over time or a new small business may choose an initial structure that it later finds to be inappropriate. For instance, for reasons of simplicity and minimisation of start-up costs, a number of small businesses commence as sole traders. As their business grows, they often wish to change to a more tax-effective structure (such as a trust). Aside from tax minimisation, restructuring into a more appropriate operating structure may help a business to:

- Provide protection from personal liability
- Allow the business to develop and grow (e.g. taking on new partners and equity by changing from a sole trader to a company)
- Minimise compliance costs
- Enhance business efficiency, or
- Adapt to current conditions.

If at any stage, like many business owners you are contemplating restructuring, an optional rollover is available deferring any CGT liability and any income tax liability until the asset or business is eventually sold. This occurs where an SBE transfers an active asset of the business to another SBE as part of a **genuine business restructure,** without changing the **ultimate economic ownership** of the asset (i.e. the people who own the business). The intent and effect of the new law is to make the change of structure CGT and income tax neutral for the transfer of CGT assets, trading stock, revenue assets and depreciating assets.

In consultation with your Advisor, periodically review your existing business structure to ensure it still meets your needs. If a restructure is desired, check your eligibility for tax relief under the new SBE Rollover laws. If eligible, observe the requirements of these new provisions (e.g. same ultimate economic ownership requirement).

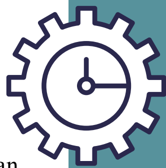
ALLOWANCE INSTEAD OF BENEFIT

One of the more common fringe benefits provided to employees is an Expense Payment fringe benefit. These may arise in either of two ways:

- Where the employer reimburses the employee for expenses that they incur, or
- Where the employer pays the third-party supplier (e.g. shop) directly in satisfaction for expenses incurred by the employee.

The expenses paid for or reimbursed can consist of basically any good or service including work-related items such as laptops or private expenses such as health insurance premiums. Fringe Benefits Tax (FBT) may however be imposed unless the expense would have been deductible to the employee had they incurred it themselves, or unless the employee made an after-tax employee contribution for the full cost of the benefit, or unless the expense is exempt from FBT. Exempt items include:

- The employer pays for or reimburses an employee for Living Away From Home accommodation



- The employer reimburses the car expenses of a car held by an employee on a cents per kilometre basis
- The employer reimburses or pays for car expenses in respect of a car held by an employee
- There is a provision of certain work-related or other benefits such as newspapers, costs incurred in relocating an employee, and employee health benefits such as compassionate travel.

Employers should consider whether an item you wish to provide to employees (i.e. expense you wish to meet on their behalf) is an exempt benefit, or whether it will be deductible to them if they had paid for it themselves. If so, employers will reimburse the employee or directly pay the third-party who provided the goods or services. On the other hand, if the benefit is not exempt or would not be deductible to the employee had they incurred it themselves, or they have not made an after-tax employee contribution to the full value of the benefit, then employers should consider paying the amount as an allowance to the employee instead. This is because in most cases the employee will pay a lower marginal rate of tax on the allowance than the 47% FBT rate. The employee will only pay an equivalent rate of tax on such an allowance where their annual taxable income is more than $180 000. In summary, this strategy shifts the taxation burden (often at a lower rate) from the employer to the employee.

MELBOURNE CUP FUNCTIONS

Putting in place your Melbourne Cup function for your employees? With some careful planning, employers can structure the function to avoid FBT.

Consider the common scenario of an employer holding a Melbourne Cup party at a restaurant for employees, and apart from the staff Christmas party it is the only social function they provide for employees each year. Where this is the case, the Melbourne Cup function is very likely to be exempt from FBT provided the per-head cost (dinner and drinks) is kept to under $300 per person. To enjoy this exemption you must use the Actual Method for valuing FBT meal entertainment.

Actual Method is the default method for valuing meal entertainment FBT and no election is required (e.e no action is needed) to use this method. Under this method, an employer pays FBT (in the absence of an exemption) on all taxable meal entertainment provided to employees and their associates i.e. their spouses (but not to other parties such as clients, contractors, or suppliers).

If the meal entertainment meets the requirements of the Minor Benefit Exemption, the function is exempt from FBT under the Minor Benefits Exemption. Broadly speaking, under this exemption a benefit will be exempt from FBT where its value or cost is less than $300 **and**, if similar or identical benefits are provided, they are only provided on an infrequent or irregular basis. The less frequent and regular, the more likely each single similar or identical benefit will be 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, but remember no FBT is payable at 47%.

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, associates **AND** clients, contractors, customers etc. regardless of the cost. Likewise, you can only claim a 50% income tax deduction and 50% GST credits on such meal entertainment.

EXAMPLE – COMMON SCENARIO

Smith Pty Ltd uses the Actual Method to value its meal entertainment and is contemplating having a $220 per head (including GST) Melbourne Cup party for its 12 employees ($2,640 in total). This, apart from the annual Christmas Party, is the only meal entertainment provided for staff during the year. The Directors wonder which meal entertainment valuation method will bring about the best tax result.

ACTUAL METHOD

The following tax treatment applies:

- ***FBT*** – Zero is payable as the benefit is an exempt Minor Benefit (under $300 per head and provided infrequently)
- ***Income Tax Deduction*** – Cannot be claimed as the benefit is an exempt Minor Benefit
- ***GST*** – Cannot be claimed as the benefit is an exempt Minor Benefit.

Therefore, the out-of-pocket cost for the employer is simply the cost of the Christmas Party ($2,640). There are no tax implications.

50/50 METHOD

The following tax treatment applies:

- ***FBT*** – The taxable value of the meal entertainment is $1,320 ($2,640 x 50%). The fringe benefits taxable amount is $2,745 ($1,320 x 2.0802 FBT gross-up rate). The FBT payable is therefore $1,290 ($2,745 x 47% FBT rate).
- ***Deduction*** – $ 1,200 is deductible (50% of the $2,400 GST-exclusive cost of the party). At a 27.5% company tax rate, this would reduce the cost of the party by $330.
- ***GST*** – $120 can be claimed as a GST credit (50% of $240).

Thus, the after-tax cost of the party under the 50/50 Method would be **$3,480** ($2,640 + $1,290 - $330 - $120).

CONCLUSION

In this common scenario, by using the Actual Method (rather than the 50/50 Method) and keeping the party under $300 per-head, the employer has saved $840 after-tax. This example illustrates the sting in the tail of FBT; payable as it is at 47%. Although the company enjoyed a tax deduction and GST credits under 50/50 Method, this was outweighed by the FBT payable under that method. Therefore, if planning your Melbourne Cup function in the coming weeks, have an eye to the FBT treatment, and speak to your Accountant if necessary.

WHAT THE TAXMAN IS THINKING

In this edition, we provide some Tax Time tips for small business, detail the latest tax scams, look at what the ATO is focusing on this tax season, and more!

CLOTHING CLAIMS

This Tax Time will see the ATO closely focus on clothing and laundry expense claims. According to ATO Assistant Commissioner Kath Andersen, more than 6 million people claimed work-related clothing and laundry expenses in their previous tax return. These total claims added up to almost $1.8 billion. The ATO is of the view that taxpayers are either making mistakes, or deliberately over-claiming. Common mistakes include people claiming ineligible clothing, claiming for something without having spent the money, and not being able to explain the basis for how the claim was calculated. Says Assistant Commissioner Andersen:

> *"Around a quarter of all clothing and laundry claims were exactly $150, which is the threshold that requires taxpayers to keep detailed records. We are concerned that some taxpayers think they are entitled to claim $150 as a 'standard deduction' or a 'safe amount', even if they don't meet the clothing and laundry requirements.*
>
> *"Just to be clear, the $150 limit is there to reduce the record-keeping burden, but it is not an automatic entitlement for everyone. While you don't need written evidence for claims under $150, you must have spent the money, it must have been for uniform, protective or occupation-specific clothing that you were required to wear to earn your income, and you must be able to show us how you calculated your claim."*

Assistant Commissioner Andersen went on to say that conventional clothing will also be in the ATO's sights this Tax Time:

> *"Many taxpayers do wear uniforms, occupation-specific or protective clothing and have legitimate claims. However, far too many are claiming for normal clothing, such as a suit or black pants. Some people think they can claim normal clothes because their boss told them to wear a certain colour, or items from the latest fashion clothing line. Others think they can claim normal clothes because they bought them just to wear to work. Unfortunately they are all wrong - you can't claim a deduction for normal clothing, even if your employer requires you to wear it, or you only wear it to work".*

The Assistant Commissioner goes on to warn taxpayers or Tax Agents who are thinking of over-claiming, that the ATO's technology and access to data is improving each year:

> *"We now scrutinise every return and we have sophisticated analytics to identify unusual claims, including comparing taxpayers to others in similar occupations earning similar income. If a red flag is raised, we will investigate. It might be as simple as checking with your employer to check if you were required to wear uniforms or protective clothing".*

There are three 'golden rules' in making a claim, the Assistant Commissioner said:

1. You must have spent the money yourself, and not been reimbursed by your employer
2. Your claim must be directly related to earning your income
3. You need records (e.g. receipt) to evidence your claim.

If like many taxpayers you are claiming $150 or less for clothing and laundry (and less than $300 for work-related expenses in total):

- Ensure your claim is for eligible clothing (occupation-specific, protective, or a uniform). You cannot claim for conventional clothing even if your employer requires you to wear it, and even if you only wear it to work.
- Calculate your claim for washing, drying, or ironing at:
  - o $1 per load if the load is made up of only work-related clothing
  - o 50c per load if you include other laundry items.

You may be asked by the ATO to demonstrate how often you wore your eligible clothing (for example, evidence that you worked four shifts each week for 48 weeks of the year allowing time off for leave during the year).

ATO TAX TIME TIPS FOR SMALL BUSINESS

To assist Small Business in the lead up to and during Tax Time, ATO Assistant Commissioner Mathew Umina shares the following tips:

RECORDS

Keeping good records helps business complete and lodge tax returns and Activity Statements, and meet their tax obligations. Apart from tax, keeping good records:

- Makes your Accountant's job easier – this can result in both decreased fees (the Accountant will take less time in preparing returns etc.) and increased deductions (claims cannot be made without having the required records)
- Enables you to demonstrate your financial position – this is particularly important where a business wishes to obtain finance from banks, or the business is being sold
- Enables you to monitor the overall health of your business, especially its true cash and profit position.

Says Assistant Commissioner Umina:

> *"Small businesses need to keep records explaining all transactions that relate to their tax affairs containing enough information to calculate the income, expense and other amounts that must be reported in tax returns. For more information on what records are needed for tax returns visit ato.gov.au/taxreturnrecords or use our record keeping evaluation tool on our website to evaluate how well a small business is keeping business records".*

CONSIDER SMALL BUSINESS CONCESSIONS

Any of the following concessions may apply:

- ***Simplified Trading Stock Rules*** – Rather than conduct a physical year-end stocktake and account for the changes in value of your stock (this can be a time-consuming process), small businesses (with a turnover of less than $10 million, including the turnover of connected entities and affiliates) can

choose not to conduct a year-end stock-take (and account for changes in the value of your stock) if there is a difference of less than $5,000 or less between:

- o The value of your stock on hand at the start of the income year, and
- o A reasonable estimate of the value of your stock on hand at the end of the income year.

You may however wish to bypass this concession and undertake a stock-take if the value of closing stock is less than that of opening stock. Where this is the case, you can claim a deduction for the difference, so it would therefore make sense to conduct the year-end stock-take and bypass this concession. Regardless of the tax outcome, it's recommended that all businesses should have a good idea of the quantity and type of stock they are holding. A stock-take or at least a review makes the business aware of any slow-moving or redundant lines or excess holding.

- ***Immediate Deduction for Start-Up Costs*** – Taxpayers who are not in business or are a small business may immediately deduct certain expenses relating to the proposed structure or operation of a business. The expenses must relate to a business that is proposed to be carried on, including certain Government fees and charges and costs associated with raising capital, where these expenses would otherwise be deductible over five years. Examples of expenses include expenditure on advice or services relating to the structure or operation of the proposed business, and payments to Australian Government Agencies.

- ***Simplified Depreciation Rules*** – including the $20,000 Instant Asset Write-Off. If you are registered for GST the threshold is $20,000 exclusive of any GST you claim. If you are not registered for GST the threshold is $20,000 including any applicable GST on the asset. Where a depreciating asset costs less than this, a deduction for the full cost of the asset can be claimed in the year in which the asset is purchased and installed ready for use in your business. Some assets are excluded however such as buildings.

DEDUCTIBILITY OF EXPENSES

Check that expenses – including operating expenses, business travel expenses, home-based business costs, and the costs of employing people – are actually deductible. Visit www.ato.gov.au/businessdeductions to find out which expenses can be claimed.

CHANGES APPLY TO YOU?

Find out if any major changes apply to your business including:

- **Single Touch Payroll** – Employers with 20 or more employees are from 1 July 2018 required to commence reporting their payroll and superannuation through Single Touch Payroll unless they or their payroll service provider have been granted a deferral or have been granted an exemption by the ATO

- **Low Value Imports** – Small businesses that are registered for GST that import low-value goods for business use into Australia may not need to pay GST (provided they inform the supplier that they are registered for GST, and provide them with their ABN).

Stay on top of the latest changes by reading our magazine.

FOCUS ON SHARES AND CAPITAL GAINS

This Tax Time the ATO is focusing heavily on taxpayers who have sold or transferred shares to another party, and the amount of capital gains that is subsequently being declared on tax returns. To this end, taxpayers should inform their Tax Agent if they have sold or transferred shares during the year, and also retain records of share purchase and sale prices, as well as brokerage fees. For their part, Tax Agents are encouraged to:

- Check pre-fill information provided by the ATO
- Look for signs that shares may have been sold such as reduced dividend income
- Ask clients whether they have sold or transferred shares during the year
- Include any capital gains in returns.

TAX TIME SCAMS

The ATO has warned taxpayers to be on high alert for tax-related scams, especially around Tax Time. The ATO said that the most common scam is the "fake tax debt" phone scam, while there is also an increase in "fake refund" or "refund for a fee" scams, and email and SMS scams enticing people to click a hyperlink, download a file or open an attachment. It is also concerned about people handing over personal or financial information.

Taxpayers are reminded that the ATO will not:

- use aggressive or rude behaviour, or threaten them with arrest, jail or deportation

- request payment of a debt via iTunes, pre-paid Visa cards, cryptocurrency, or direct credit to a bank account with a BSB that is not either 092-009 or 093-003

- request a fee in order to release a refund owed to them

- email or SMS taxpayers asking them to click on a link to provide login, personal or financial information, or to download a file or open an attachment.

The ATO also provided the following key tips for taxpayers:

- know your tax affairs – taxpayers can log into myGov to check your tax affairs at any time, or contact your Tax Agent or the ATO

- guard your personal and financial information – be careful when clicking on links, downloading files or opening attachments; only give personal information to people you trust, and don't share it on Social Media

- if you are unsure about whether a call, text message or email is genuine, do not reply. Call the ATO on 1800 008 540

- talk to your family and friends about scams; call the ATO as soon as possible if you have fallen victim to a tax-related scam.

Further information is available at **www.staysmartonline.gov.au/taxtime**

In addition to email and voicemail scams, the ATO has revealed that scammers are now sending bogus text messages as well, similar to the example below:

George (not his real name) received a text message from 'ATO Refund' saying there's a tax refund of $275 for him to claim. All he needed to do was click on the website link and log in with his phone number and the PIN number provided in the message. He was asked to fill in personal details and provide his Tax File Number (TFN) and credit card number (including the 3 digit code from the back of his card) so his refund could be deposited into his account. George didn't have a credit card so he called the ATO to make other arrangements. The ATO operator advised him that the text message was a scam designed to get his information and potentially steal money from his credit card.

Another variation of this scam asks for a small fee to be paid via personal credit or debit card in order to receive the refund. Within days of paying the small fee those impacted by the scam see sizable deductions made from their bank accounts.

These text message scams often:

- Appear to come from the ATO
- Tell you that you are eligible for a refund and that you need to respond
- Ask you to pay a fee to receive a refund
- Contain hyperlinks that lead to a fake website or a fake log-on page
- Instruct you click on a link to submit a form with personal information
- Lead to money being stolen from your credit/debit card account
- Ask you to call back to a phone number that is not listed on the ATO's "Phone Us" page.

NEW CENTS PER KILOMETRE RATES

A new Cents Per Kilometre rate for car expenses has just been announced for the 2018/2019 financial year. The new rate is 68 cents (up from 66 cents).

EMPLOYEES /SOLE TRADERS / CONTRACTORS
The new rate is relevant for claiming a deduction for your work-related car expenses. Under the Cents Per Kilometre method:

- Your claim is based on a set rate (68 cents regardless of the engine capacity of your vehicle) of each business kilometre travelled
- You can claim a maximum of 5,000 kilometres per vehicle
- You cannot make a separate claim for depreciation of the vehicle.

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 over 5,000 kilometres, you may still elect to use this method (and save on the hassle of the record-keeping requirements of the Log-Book method) by capping your claim at 5,000 kilometres. In summary, this method is ideal for those who:

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

The Cents Per Kilometre method is a per-car claim. If you have changed vehicles during the year, nothing stops you from claiming up to 5,000 kilometres for each of the vehicles. You may use the Centre Per Kilometre method if your vehicle travels more or less than 5,000 business kilometres. If your business travel is more than this, then this method is unlikely to provide you with the best result. Rather strong consideration should be given to the alternative Log-Book Method.

EMPLOYERS
For employers, the new rate is relevant if you pay employees a Cents Per Kilometre motor vehicle allowance. Where this is the case and the travel is work-related, the following Payment Summary, withholding and Superannuation Guarantee rules apply:

TYPE OF PAYMENT MADE	WITHHOLDING REQUIRED?	INCLUDE ON PAYMENT SUMMARY?	SUPERANNUATION PAYABLE?
Payments made by applying the approved rate to the number of km travelled up to 5,000 business km	No	Yes (show total allowance separately in allowance box with an explanation)	No
Payments made by applying the approved or lower rate to the number of km travelled in excess of 5,000 business km	Yes (from payments for the excess over 5,000km)	Yes (show total allowance separately in allowance box with an explanation)	No
Payments made at a rate above 68 cents for distances tralled up to 5,000 business km	Yes (from the amount which relates to the excess over 68 cents)	Yes (show total allowance separately in allowance box with an explanation)	No