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MONEY-SAVING
TAX TIPS

COMPANY *"LOAN"*
CHANGES

ALL THE LATEST
TAX NEWS

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KEY DATES

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

JANUARY 2019

15 JANUARY

Due date for lodgement of income tax returns for companies and trusts that were taxable medium to large businesses in the prior year and are not required to lodge earlier. If you fail to lodge by the due date, your 2018/2019 income tax return will be due on 31 October 2019

21 JANUARY

Due date for lodgement and payment of December 2018 monthly Activity Statements

28 JANUARY

Due date for October-December 2018 Superannuation Guarantee contributions to be made to a complying fund on behalf of your employees

31 JANUARY

Final date for lodgement of October-December 2018 TFN report for closely held trusts for TFNs quoted to a trustee by beneficiaries

FEBRUARY 2019

21 FEBRUARY

Due date for lodgement and payment of January monthly Activity Statements

28 FEBRUARY

Due date for lodgement and payment of October-December 2018 quarterly Activity Statements, including electronic lodgments

28 FEBRUARY

Due date for lodgement and payment of Annual GST returns or *Annual GST information reports* - if you do not have an income tax return lodgment obligation

28 FEBRUARY

Due date for lodgement and payment of income tax return for self-preparing entities that were not due at an earlier date. If you fail to lodge by this date, your 2018/2019 return will be due by 31 October 2019

28 FEBRUARY

Due date for lodgement and payment of income tax returns for medium to large businesses (taxable and non-taxable that are new registrants)

28 FEBRUARY

Due date for lodgement and payment *Superannuation Guarantee Charge Statement* if you failed to pay Superannuation Guarantee charge on time for the October-December 2018 quarter. Superannuation Guarantee Charge is not deductible.

Where one of these dates falls on a weekend or a public holiday, the due date is extended to the next business day except in the case of Superannuation Guarantee contributions

PROMISES PROMISES!

ELECTION TAX POLICIES

With the Federal Election due no later than May 2019, this first of a two-part article series examines the tax policies of the Federal Opposition. This includes a reduction to the 50% CGT discount, restrictions on negative gearing, and the end to claiming excess franking credits. In coming editions, we will publish the Election tax policies of the Government.

CGT DISCOUNT

The Federal Opposition is undertaking to halve the capital gains tax (CGT) discount for all assets purchased after a yet-to-be-determined date after the next Election (likely to be the commencement of a future financial year, such as 1 July 2019, or 1 July 2020). This will reduce the current 50% discount to 25% for assets that are held for 12 months or more. All investments made before the commencement date will not be affected by this change, and will be fully grandfathered. This change will also not affect investments made by superannuation funds. The CGT discount will also not change for small business assets. Therefore, according to the Opposition, no small business or superannuation fund will be adversely impact by this change, moving forward.

To understand the tax implications flowing from this change, it's important to recap the existing rules in this area.

BASICS

The CGT discount was introduced on 21 September 1999. It provides a discount of up to 50% for eligible entities that hold CGT assets for at least 12 months. The tax saved by entities eligible for the CGT discount has grown rapidly in recent times from $4.2 billion in 2013/2014 to what is anticipated to be $8.6 billion in 2018/2019.

ELIGIBILITY

Only the following taxpayers are eligible for the discount:

- Individuals (50%)
- Complying superannuation funds (33%)
- Trusts – including non-complying superannuation funds and public trading trusts (50%)
- Life insurance companies in relation to capital gains from a Pooled Superannuation Trust asset (33%).

Therefore, on taxable capital gains where the asset is held for 12 months or more, the maximum effective tax rate payable for superannuation funds is 10% (the standard superannuation concessional tax rate of 15% is reduced by 1/3rd). On the other hand, for both individuals and trustees, the discount halves your capital gain (50%). Therefore even if you are on the top individual marginal rate of tax (currently 47%) the maximum tax rate you will pay on the capital gain if you are an individual is 23.5% (ie 50% of the 47% marginal rate). The notable exclusion here are companies. They are not eligible for the discount, however they may be eligible for the Small Business CGT Concessions.

HOLDING PERIOD

The 12-months is measured from the day that you sign the contract to acquire and then dispose of the asset (not the date of settlement). Where there is no contract, the 12-months is measured from when the change of ownership occurs. The ATO consider in **Tax Determination TD 2002/10** that a clear 12-months must exist between the acquisition of the CGT asset and the happening of the CGT event. For example, if an asset is acquired on 2 February, then for the 12-month 50% discount to apply it must be sold on or after the 3 February in the following year.

TAX TIP

If you are contemplating selling a CGT asset, you may wish to consider if possible delaying the sale until this 12-month mark is met. To reiterate, for CGT purposes, the sale date is the contract date or change in ownership date - not the settlement date!

EXAMPLE

Jane is a Commonwealth public servant who for 2018/2019 earned $120,000. Therefore, she is in the 37% income tax bracket.

During the year she sold her rental property that she owned for 13-months and made a gross capital gain (before any discounts or concessions) of $55,000. Earlier in the year, she made a capital loss of $12,000 on the sale of shares.

Jane's 2018/2019 net capital gain will be calculated and taxed as follows:

- **$55,000 Gross Capital Gain – $12,000 Capital loss = $43,000**
- **$43,000 x 50% = $21,500 (Net capital gain)**

As Jane is not carrying on a business (generally, renting one or even 2 or 3 rental properties will not constitute the carrying on of a business) she will not be eligible for the Small Business CGT Concessions. The $21,500 net capital gain will be added to the rest of her income (salary of $120,000) and taxed at individual marginal tax rates. The total tax payable not including Medicare levy is $39,852 with the tax on the capital gain $7,955 not including Medicare levy.

EFFECT OF OPPOSITION PROPOSAL

If implemented, the Opposition's proposal would have no impact on Jane as the rental property was purchased before the commencement date. The full 50% discount would still apply.

On the other hand, if the rental property was purchased after the commencement date so Jane was only eligible for the 25% discount and assuming the same tax rates applied, the net capital gain would be $43,000 x 75% = $32,250 (assuming the 25% CGT discount) resulting in total tax payable of $43,829 not including Medicare levy. This is an additional $3,977 than under the current rules. The tax payable on the capital gain under the changes would be $11,932 not including Medicare levy (an additional $3,977 than under the current law).

EXCESS FRANKING CREDIT RESTRICTION

From 1 July 2019, the Federal Opposition proposes to abolish the refund of excess dividend imputation credits for individuals and superannuation funds. The change will not apply to ATO-endorsed income tax exempt charities or not-for-profit institutions (e.g. universities) with deductible gift recipient (DGR) status. It is also expected that those in receipt of the Age Pension will be exempt from this change.

According to the Parliamentary Budget Office (PBO), the new law will not affect the vast majority of individual taxpayers (92% will be unaffected). However it will impact approximately 200,000 Self-Managed Superannuation Funds (SMSFs).

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

- Individuals who receive franked dividends either directly or through a trust or partnership
- Endorsed income tax-exempt charities and deductible gift recipients (DGRs)
- Complying superannuation funds, approved deposit funds (ADFs) and pooled superannuation trusts (PSTs)
- Life insurance companies and registered organisations (in respect of their superannuation business), and
- Trustees liable to be assessed, in limited circumstances, under Section 99 of the Income Tax Assessment Act (1936).

As stated, under the Opposition's policy, individuals and superannuation funds will no longer be eligible for excess franking credits. Currently an estimated 1.2 individuals (or 8% of taxpayers) receive a refund of excess franking credits and more than 200,000 individuals (out of 600,000) that are members of SMSFs. This reform if enacted actually takes the law back to what it was pre-2001. Prior to this, taxpayers received a credit for tax paid by the company, however when a taxpayer's liability was reduced to zero by the credit, there was no refund of the excess. It is also worth noting that most tax offsets in the Australian tax system are not refundable once your tax is reduced to zero (there are only three that are currently refundable – the film production tax offset, the research and development (R&D) tax offset, and the franking tax offset).

The following example illustrates how the offset works, and the impact of the Opposition's proposal if implemented into law:

EXAMPLE

In 2018/2019, Oscar receives a fully franked dividend of $700 from Public Pty Ltd, and an unfranked dividend of $200 from ABC Pty Ltd. The fully franked dividend has a franking credit of $300 (at the 30% rate) representing the tax already paid by the company. Oscar has other taxable income for the year of $20 500.

Oscar's Total Taxable Income*	$21 700
Tax Payable on That Taxable Income**	$665
Less Low Income Tax Offset	$645
Total Tax Payable	$20

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

*2018/2019 tax rates including the Medicare levy

The franking credit of $300 reduces Oscar's tax payable to zero. The remaining excess of $280 is refunded to Oscar

EFFECT OF THE OPPOSITION PROPOSAL

While the $300 franking credit would still enable Oscar to reduce his tax payable to zero (and therefore no additional tax is payable under the Opposition's proposal) the excess credits of $280 (like with most tax offsets) will not be refunded. However, where the taxpayer's marginal tax rate is above the franking credit rate they will still receive the full benefit of the franking credit.

NEGATIVE GEARING RESTRICTION

The Opposition if elected propose to restrict the ability of taxpayers to negatively gear investments.

Negative gearing is an often-used and sometimes misunderstood phrase in relation to property and borrowings. When boiled down to its basics, negative gearing refers to the practice of accepting a loss from an investment with a view to trading that loss off against a capital gain. Therefore, for a negative gearing exercise to work, it is important to select an asset that will have capital growth – otherwise all those losses you have been absorbing while holding the negatively geared investment will not have been worthwhile.

An investment is said to be negatively geared if, after taking into consideration all of the income and expenses associated with holding the asset (i.e. property, shares), the investment shows a negative net return i.e. a loss. Whilst all taxpayers can negatively gear, it is typically more appealing to taxpayers with higher marginal rates of income tax. This is because the ATO allows an offset of the loss from the holding of a negatively geared investment against other income. Therefore, the higher a taxpayer's marginal tax rate, the greater the benefit from a gearing strategy.

The Opposition if elected propose to limit negative gearing to new housing from a yet-to-be-determined date after the next election. All investments made before this date will not be affected by this change and will be fully grandfathered. This will mean that taxpayers will continue to be able to deduct net rental losses against their wage income, providing the losses come from newly constructed housing.

From a yet-to-be-determined date after the next election losses from new investments in shares and existing properties can still be used to offset investment income tax liabilities. These losses can also continue to be carried forward to offset the final capital gain on the investment.

The Opposition has confirmed that its restrictions for negative gearing would apply on a global basis to every taxpayer on the totality of their investments. For example, if the total of the interest and deductions related to investments exceed the investment income, the excess would not be able to be used for offset against other non-investment income. This excess would need to be carried forward for offset against future investment income or capital gains. Importantly, a taxpayer would not have to look at each individual investment, or at any particular asset class.

Rather, the policy would continue to allow people to hold, for example, 4, 5, or 6 properties with some positively geared and some negatively geared. Provided the overall positives exceed the overall negatives, there will be no problem.

If these changes become law, we make the following observations:

- Hardest hit are new investors wanting to buy existing property and those gearing into shares that don't pay reasonable dividends
- People will likely juggle their investment mix. Those already in the game can offset negative versus positive, and if they are already negative then they can just invest in new property
- Those starting out just buy new property
- Carrying forward of losses means it is just a timing exercise for the Government i.e. they collect more tax now but then give it back later.

SINGLE TOUCH PAYROLL UPDATE

Single Touch Payroll is soon to become mandatory for all employers. The purpose of this article is to provide an overview of how the new regime works, and the options for those employers who are yet to adopt STP but will be required to do so over the coming months.

INTRODUCTION

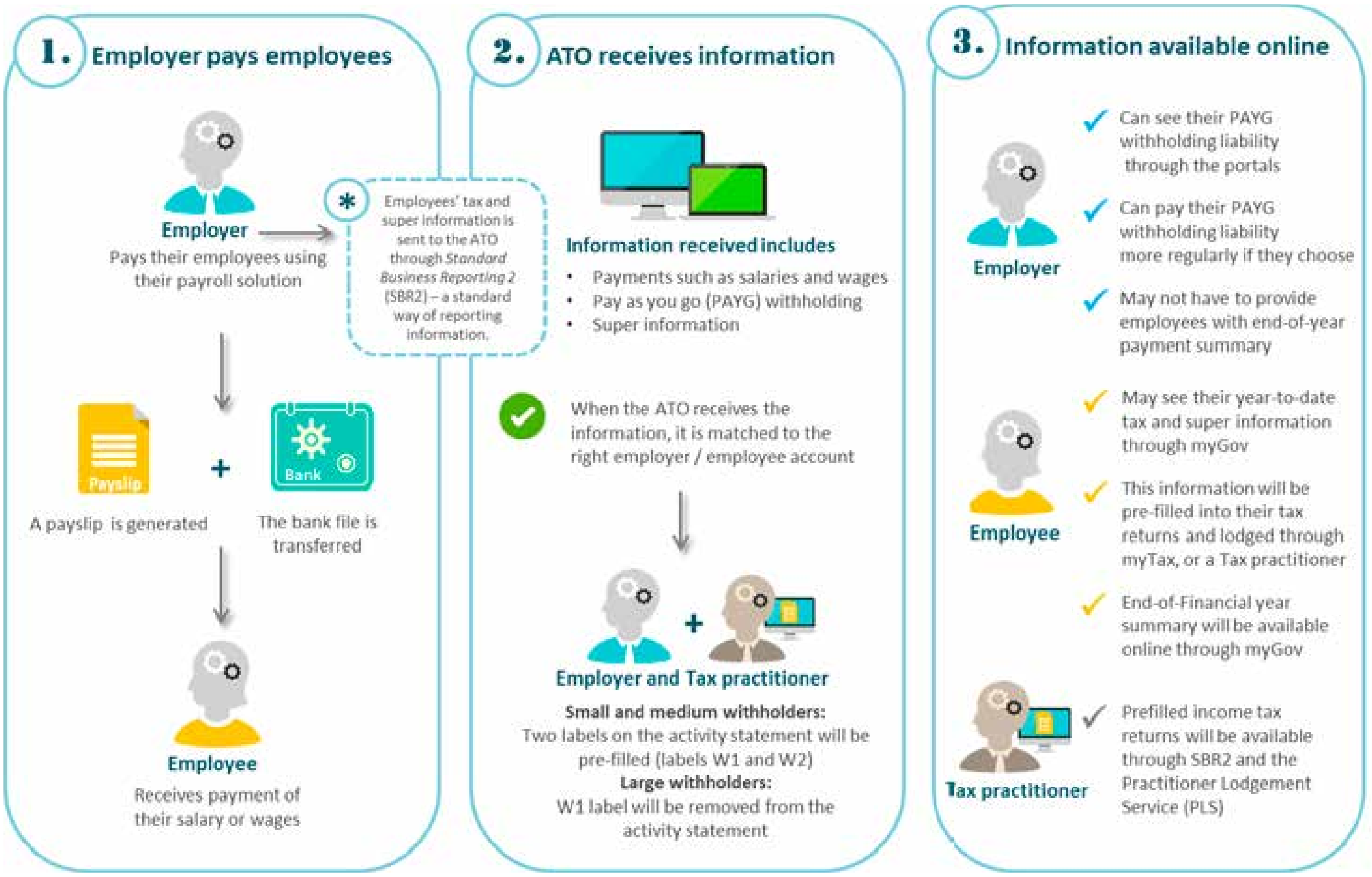
Single Touch Payroll (STP) is a new Government initiative aimed at streamlining business payroll reporting obligations. It is now compulsory for larger employers (those with 20 or more employees) and has been since 1 July 2018. The STP regime revolutionises the way employers report payroll information to the ATO. In essence, STP is a new reporting mechanism whereby employers report employee payments (such as salary and wages, allowances, superannuation) and PAYG withholding to the ATO directly through their STP solution (e.g. upgraded Standard Business Reporting-enabled software) at the same time they pay their employees. To be clear, no additional reporting is required – just a new method of reporting.

HOW IT WORKS

The following ATO diagram illustrates how STP works:

A typical STP-compliant process involves:

- ✔ Adopt upgraded Standard Business Reporting-enabled software (this is essential to reporting under STP) and also software that provides ATO and Fair Work-compliant pay-slips each pay period, and also calculates and processes termination payments
- ✔ Enter employee details accurately in the software
- ✔ Complete standard field details in all the fields requested by your software (STP does not require any additional information to be reported)
- ✔ Provide ATO and Fair Work-compliant pay-slips to employees at the time of payment
- ✔ Calculate Superannuation Guarantee entitlements
- ✔ Consider all workarounds that may exist in your payroll processes and banking instructions to automate them within your software program.



SMALLER EMPLOYERS

Legislation to make STP compulsory for smaller employers (those with less than 20 employees) from 1 July 2019 is still at the time of writing before Parliament. When passed, it is estimated that there will be more than 700,000 employers who will need to be STP-compliant by the 1 July start date. Despite the legislation not yet having been passed into law, the ATO is recommending that these smaller employers join the almost 15,000 other smaller employers who have already voluntarily opted-in early to STP.

STP SOLUTIONS

Standard business reporting-enabled software (SBR-enabled software) is essential to reporting under STP. Employers must adopt an STP solution by the due date. Solutions will vary depending on an employer's current payroll processes.

- **Accountant or Bookkeeper** – Employers who use an Accountant or Bookkeeper to process their pays will simply rely on them to provide an STP solution (SBR-enabled software) by the deadline. Even where an Accountant or Bookkeeper does not process employer payroll, employers may turn to them for advice around how they can become STP-compliant.
- **Software Upgrades** – If an employer uses commercial payroll software, then they should contact their software provider as the deadline nears and ensure that they offer an updated Standard Business Reporting-enabled version of the software. Major software houses have this software available.
- **In-House Method** – If an employer uses an in-house method of payroll or manual method (such as paying employees by EFT and manually providing them with pay-slips and Payment Summaries)…then they will likely need to adopt STP-compliant payroll software. Such employers may lean heavily on their Bookkeeper or Accountant when installing this software, and may need upfront training. Alternatively, they may **choose** to outsource their payroll to a payroll service provider such as a payroll bureau, or an Accountant or Bookkeeper

CARVE OUT FOR MICRO EMPLOYERS

The ATO is acknowledging that there are a significant number of smaller employers who do not use any type of payroll software when processing the pays each week/fortnight etc. Consequently, micro businesses (employers with 1 to 4 employees) will not be required to adopt/buy payroll software in order to comply with Single Touch Payroll (STP) reporting. Whilst for most employers their STP solution will be adopting STP-compliant software, micro-businesses will according to the ATO be provided with different STP compliance options. Speaking on a recent ATO webcast, ATO Assistant Commissioner, John Shepherd confirmed this:

"You won't need to buy payroll software, that's why we're looking for those alternate solutions- some of which might be an app, something that's fit for purpose to get the STP information in but is easy to use, doesn't take much time and doesn't cost that business money to do so ," said Mr Shepherd.

"We've spoken to some different banks and the possibilities around as people pay staff through internet banking being able to submit the single touch pay run information at the same time and we expect that to be part of the list of options that come forward over the next 12 months.

"There are obviously lots of other benefits from using payroll software but we're not saying for STP that you need to go out and buy a product to do STP."

The ATO is currently still consulting with focus groups to look at flexible ways to transition micro employers into STP over the coming year.

FLEXIBILITY

Even assuming the legislation passes into law and smaller employers are required to comply with STP from 1 July 2019, the ATO has indicated that it will be flexible with the commencement date, including the provision of deferrals to help stagger the uptake.

Importantly, from a compliance standpoint, the ATO states that employers need not be concerned about penalties for the first 12 months after the 1 July 2019 commencement date as the primary aim is to help employers get the new system bedded down

EXEMPTIONS

Certain employers can apply to the ATO for an STP exemption. Exemptions may be granted on a class basis. For instance, as SBR-enabled software is essential to reporting under STP, if an employer lives in a remote location with no reliable internet connection, an exemption may be granted. Other circumstances where a class exemption may be granted include for cultural or religious reasons, or where a natural disaster has occurred.

To apply for an exemption, employers or their Tax Agents or BAS Agents will need to contact the ATO directly to apply. To this end, you can submit an exemption request via **www.ato.gov.au** using the ATO Business Portal, Tax Agent or BAS Agent Portal. Once in the portal:

1. Select General questions/problems/help as the message topic.
2. Enter Single Touch Payroll as the message subject.

Include the following information:

- the number of employees on your payroll – this will help the ATO understand the size and complexity of your business
- the reasons why you are unable to report through STP
- any steps you have taken to attempt to get ready for STP
- any supporting evidence that may help us understand your circumstances.

REV IT UP! TAX TREATMENT OF BUSINESS VEHICLES

It is quite common for a business to own a motor vehicle. This article examines the tax implications of motor vehicle ownership for different types of business structures where there is personal usage.

FACTORS

The motor vehicle expenses that your business can claim depend on the following factors:

- Your business structure – sole trader, partnership, company or trust?
- The type of vehicle
- How the vehicle is used.

Additionally, where an employee uses the vehicle for private purposes, a Fringe Benefits Tax (FBT) liability may arise – again though this depends on a range of factors; principally the structure through which your business operates.

SOLE TRADERS, CONTRACTORS, AND PARTNERSHIPS

If you operate your business as a sole trader, contractor of partnership (where at least one partner is an individual) you can claim a deduction for the work-related use of a motor vehicle that your business either owns, leases or hires under a hire purchase agreement. A deduction can be claimed for the actual motor vehicle expenses which may include the cost of:

- Petrol
- Oil
- Repairs
- Servicing
- New tyres
- Lease payments
- Insurance (compulsory third-party, comprehensive etc.)
- Registration
- Depreciation
- Washes and polishes.

However, claims must be apportioned/reduced to take account of any private use.

METHOD

In terms of how to calculate your deduction and the substantiation rules, you are subject to the same rules as employees – and must use of one of the following two methods:

1. *Cents per Kilometre*

Under this method, your claim is based on a set rate (currently 66 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 receipts or log-books etc. However, be aware that the ATO recently announced that it is significantly increasing its compliance checks under this method. If requested, you must be able to explain how you calculated your claim, for example, you make a weekly drive from your business premises to a supplier who lives 100 kilometers away. The ATO will also likely check with any of these customers/ suppliers. So, while no record keeping is required under this method, plausible explanations of your deduction calculation are required if reviewed by the ATO.

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 logbook 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 kilometres 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.

Where a vehicle is jointly owned by two taxpayers who both use the vehicle for business purposes, each person can make a claim of up to 5,000 kilometres for the same vehicle.

To calculate your claim, multiply the total business kilometres travelled, by the ATO prescribed cents per kilometre amount (currently 66):

EXAMPLE

Bruce travelled 2 800 business kilometres in 2017/2018. His deduction for motor vehicle expenses is $1 848

(2 800 kilometres x ATO rate of 66 cents per kilometre)

2. *Logbook Method*

For drivers who believe their motor-vehicle costs are greater than 66 cents on average per kilometre, or those who drive more than 5,000 kilometres per year, you will still be able to claim your deduction for the full amount under the Logbook Method. Under this method, your claim is based on the running costs and ownership costs of your vehicle multiplied by the business use percentage which is calculated over a 12-week logbook sample. This method generally gives the best result where the vehicle has substantial business use. The downside of this method is the compliance burden. Logbooks are required to be kept for 12-weeks to prove your business percentage (these log books are valid for 5 years, but should be refreshed where your percentage of business usage increases or decreases by 10% or more). Each logbook must contain the following information:

- When the logbook period begins and ends
- The vehicle's odometer readings at the start and the end of the logbook period
- The total number of kilometres travelled during the logbook period
- The business-use percentage for the logbook period
- The number of kilometres travelled for each journey recorded in the logbook (note that if you made two or more journeys in a row on the same day, you can record them as a single journey). According to ATO guidelines, for each journey you will need to record the:
  - » Start and finishing times of the journey
  - » Odometer readings at the start and end of the journey
  - » Kilometres travelled, and
  - » Reason for the journey.

In terms of record-keeping, to ease the burden of manually preparing a logbook, we would encourage download of one of the innumerable log book apps on the market, either from the *AppStore or GooglePlay* as the case may be.

Alternatively, if you have reasonably simple tax affairs, you can use the myDeductions tool in the ATO app to keep a logbook and record business-related car trips and other expenses. For more information, refer to www.ato.gov.au/mydeductions

Aside from the logbook, you will need to keep all receipts throughout the year to justify your claim, such as for insurance, registration, servicing and repairs. Petrol can be estimated using the start and end odometer readings for the year, indicating the total kilometres travelled.

NOT A CAR?

The above rules apply to 'cars'. This is defined as a motor vehicle that is designed to carry a load of less than one tonne and fewer than 9 passengers. Most four-wheel drives and some utes will qualify as cars.

Vehicles that do not meet this criteria are not permitted to use the above two methods. Instead, your claim must be for actual costs for expenses which will be based on receipts. To apportion between private and business use, you can use a diary or journal.

COMPANIES AND TRUSTS

Your business can claim a deduction for motor vehicle expenses of a car that is owned or leased by the business. However, your trust or company cannot use the above two methods. Instead, it must also claim the actual costs, based on receipts. You can only claim the actual costs for cars that are part of the everyday running of your business (such as travelling to and from different business premises, visiting clients, or picking up goods for sale). Once again, a diary or journal should be used recording the purpose of each trip, and the portion that was for business.

SHAREHOLDER USAGE

If your business is a private company and it provides a vehicle to a shareholder or their associates (e.g. spouse, relative etc.) and the vehicle is used other than in the capacity of an employee, this usage will generally be subject to Division 7A. This Division of the Tax Act is an integrity measure designed to ensure that private companies cannot make tax-free payments to shareholders or their Associates. The use of a company asset (including motor vehicles by a shareholder or their associate, or the transfer of a company asset to a shareholder or their associate) may be treated as a Division 7A dividend. Such arrangements are treated as payments for the purposes of Division 7A. The first time the vehicle/asset is provided by the company is considered the time the payment is made. However, if the right to use continues into another income year, the provision of the vehicle/asset for use in the subsequent year is treated as being a separate payment made at the start of that year.

EXAMPLE

Peter is a shareholder of a private company that owns a car for company use. Shareholders and their associates have general permission to use the car on weekends if they are not being used for company business. Peter regularly takes the car home.

Peter's use of the car that he takes home will be subject to Division 7A. This will include driving the car (actual use) and the availability of the car for his use to the exclusion of the company, such as when it is parked at home, or at a restaurant that Peter is visiting. The market value of the use of the car for this period will be deemed to be a 'payment' for Division 7A purposes.

If Division 7A is not dealt with properly a deemed dividend may arise for the amount of the 'payment' to the extent of the company's distributable surplus for the year. That is, an unfranked dividend (with no franking credits) will be deemed to have been earned by the recipient shareholder or associate who used the car. To avoid a deemed dividend arising, corrective action would need to be taken as follows:

- A written loan agreement (formal Division 7A agreement) is put in place – annual minimum interest and principal repayments are required in subsequent income years
- The amount is repaid before the lodgement date or due date for lodgement (whichever is earlier) of the company's income tax return in the year in which the 'payment' is made.

EMPLOYEE USAGE

If the car that a company owns is made available for an employee to use privately, fringe benefits tax (FBT) may apply. To calculate the value of a car fringe benefit, an employer must use either:

- The Statutory Formula Method (based on the car's cost price)
- The Operating Cost Method (baaed on the costs of operating the car).

To work out the value of the benefit using either of these methods, access the ATO calculator on their website: **https://www.ato.gov.au/Calculators-and-tools/FBT---car/.**

Also be aware of the ATO's new FBT interpretations surrounding the private use of 'work-horse' vehicles which you can read more about in the September/October 2018 edition of this magazine **www.mytaxsavers.com.au.**

DEPRECIATION

Where the motor vehicle is either purchased outright, or financed under a hire purchase or chattel mortgage arrangement, then an income tax deduction may be allowable in respect of the depreciation or decline in value of the motor vehicle acquired in respect of the business use of the vehicle. Vehicles that are the subject of a lease however do not qualify due to the fact that ownership of a vehicle under a lease remains with the finance company.

Also note that if you used the Cents per Kilometre method for claiming your motor vehicle deductions (see earlier) you cannot make a separate depreciation claim on your business vehicle. This is because depreciation is already taken into account under that method.

On the other hand, if deductions using the Logbook method or actual costs, then you can generally make a depreciation claim (deductions for the purchase price of the vehicle) using one of the following two methods:

SIMPLIFIED DEPRECIATION RULES

Small Business Entities (SBEs) can use these simplified rules to claim depreciation deductions. To qualify as an SBE you must have an aggregated turnover of less than $10 million (including connected entities and affiliates), and also be carrying on a business. In draft taxation ruling **TR 2017/D7** the ATO adopts a wide definition of 'carrying on a business' to include:

✔ Bucket companies that invest their distributions

✔ Passive investment companies either those just holding rental properties or share portfolios

✔ Company owns a single commercial property which it rents to a 3rd party on market terms. Its directors maintain the manage the property themselves- conducting all maintenance and inspections personally. Profits are distributed to shareholders.

Under the SBE rules, if the vehicle costs ***less than $20,000*** it can be claimed in full as a tax deduction in the year it is used or ready for use in your business. The $20,000 threshold is applied to the cost of a vehicle. If a business is GST-registered, the write-off threshold is the GST-exclusive cost of the vehicle. Therefore, the threshold on a taxable asset is under $22,000 (including GST). By contrast, if a business is not GST registered, the threshold is GST-inclusive (under $20,000, including GST). The $20,000 write-off improves small business cash-flow by bringing forward

deductions rather than having them spread out over more than one year.

Where the vehicle is not eligible for the write-off as its cost is $20,000 or more, it will be allocated to the general small business pool to be depreciated at 15% in the first year, and 30% in subsequent years. Once the value of that pool falls below $20,000 it can be written-off in full.

GENERAL DEPRECIATION

Where your business is not an SBE, it will depreciate the vehicle under the Uniform Capital Allowance (UCA) provisions. In simple terms under the UCA the vehicle is depreciated each year over the term of its effective life (with a percentage claimable each year). The ATO has prescribed that the effective life of a motor vehicle is 8 years – therefore the vehicle can be depreciated over this period. Alternatively, if the vehicle is to be used intensively, you can prescribe your own shorter effective life period. Before doing so, you should consult your accountant.

In most cases, you can choose to use either of two alternative methods for calculating depreciation:

- The Prime Cost Method assumes that the value of a depreciating asset decreases uniformly over its effective life.

- The Diminishing Value method assumes that the value of a depreciating asset decreases more in the early years of its effective life. Therefore, this method is more cash-flow friendly in the initial years.

DEPRECIATION LIMIT!

Car depreciation and GST claims are capped by the Car Limit. If the cost of the car exceeds the car limit (which is $57,581 for 2018/2019) the cost of that car is reduced to the car limit. For depreciation purposes, in working out the cost, any available GST credit is deducted.

EXAMPLE

In October 2018, Steve buys a car for $80 000 (including GST and luxury car tax) which is to be used 100% for business purposes. As the cost exceeds the car limit, his GST credit is limited to $5,234 (1/11th of the car limit). This amount then reduces the cost of the car for depreciation purposes to $74,766. As this amount still exceeds the car limit, depreciation is calculated as if the cost was of the car is the $57,581 car limit.

In the majority of cases where the vehicle is not used 100% for business purposes, any depreciation claim (under the SBE system or UCA system) must be reduced by the private use percentage.

TAKE-HOME MESSAGES

Although your Accountant will typically work out your deductions and depreciation on motor vehicles for you, this article raises business owner awareness of issues that you need to be across including:

- The potential adverse tax consequences of permitting employees, associates, or shareholders use of business vehicles for private purposes
- The impact that your trading structure has on motor vehicle claims
- The taxation claims that can be made if you were contemplating purchasing a vehicle for your business
- The type of records that you need to retain.

MORE CGT CONCESSION *HURDLES*

New rules have recently been passed by Parliament for determining whether capital gains made on the disposal of shares and trust interests qualify for the Small Business CGT Concessions. The changes, already in operation, may make it more difficult to access the concessions.

BACKGROUND

The Small Business CGT Concessions can dramatically reduce or eliminate the CGT liability for small business owners upon the sale of their business or assets within the business. Hundreds of millions of dollars of concessions are claimed each year – reducing CGT otherwise payable by business owners.

Recent changes to the law now may make it more difficult for those disposing of shares or interests in trusts to qualify for the concessions. Broadly, the changes require that the entity in which the shares or trust interests are held must satisfy either the Small Business Entity Test (SBE) test or the Maximum Net Asset Value Test in its own right. Prior to this, to access the concessions, only the entity/individual who was selling the shares or trust interests had to satisfy either of these alternative tests in order to access the concessions.

We now briefly revisit both of these key tests.

$2 MILLION TEST

You will qualify for the concessions if your business has an annual aggregated turnover of less than $2 million. This can include individuals, partnerships, superannuation funds, trusts, companies and unincorporated associations. ‘Aggregated turnover’ is your turnover plus that of any affiliated or connected entities. Your turnover can be measured in the previous income year, or in the current income year (projected or actual). Having met the turnover requirement, you must also be carrying on a business in the year that the CGT event occurs (but not necessarily just before the CGT event occurs).

MAXIMUM NET ASSET VALUE TEST

If your turnover is in excess of $2 million, the Maximum Net Asset Value Test may provide alternative access to the concessions. Under this test, you can access the concessions provided the net value of your assets (and those of your affiliates and connected entities) is less than $6 million just before the CGT event (e.g. sale) that results in the capital gain for which the Concessions are sought. The net value of your assets is calculated by subtracting the following from the market value of your assets:

(a) The liabilities related to your assets (e.g. unpaid loans);

(b) The following provisions:

- Provisions for annual leave
- Provisions for long service leave
- Provisions for unearned income
- Provisions for tax liabilities.

NET ASSET TEST – WHICH ASSETS COUNT?

YES	NO
CGT assets	Shares
Pre-CGT assets	Trust interests in connected entities
Cars	Personal use and enjoyment assets (e.g. boats, holiday house if non-income producing)
Depreciating assets	Main residence (non-income producing)
Assets of foreign residents	Superannuation fund assets and cash
Vacant land on which you intend to build a house	Life insurance policies
Interest-earning personal business and bank accounts	

REFORM

The changes are contained in the Treasury Laws Amendment (Tax Integrity and Other Measures) Bill 2018. This legislation was passed into law on 20 September 2018. The intent behind the changes is to prevent the CGT concessions being available to "large business". The first thing to note is that amendments only apply where share or trusts interests are being disposed of.

Under the new rules (which apply to CGT events occurring from 8 February 2018 onwards) the "object" company or trust in which the share or trusts interests are held must itself satisfy the $2 million test or the Maximum Net Asset Value test.

EXAMPLE – FROM THE EXPLANATORY MEMORANDUM – INVESTMENT IN LARGE BUSINESS

Karen carries on a small consulting business as a sole trader, and has an aggregated turnover of less than $2 million 2019/2020.

Karen also owns 30% of the shares in Big Pty Ltd, a large private company with annual turnover in excess of $20 million in both 2018/2019 and 2019/2020. The net value of Big Pty Ltd's CGT assets exceeds $100 million throughout this period.

On 1 October 2019, Karen sells her shares in Big Pty Ltd. She would not be eligible to access the CGT concessions for any resulting capital gain.

Even if Karen satisfies the other basic conditions for relief, she cannot satisfy the new condition. Big Pty Ltd has a turnover in excess of $2 million in 2019/2020. It also does not satisfy the maximum net asset value test in relation to the capital gain, as its net assets exceed $6 million immediately prior to the sale (being in excess of $100 million for the entire income year).

EXAMPLE – FROM THE EXPLANATORY MEMORANDUM – INVESTMENT IN PASSIVE INVESTMENT ENTITES

George carries on a small gardening business, with an aggregated turnover of less than $2 million in 2019/2020.

George holds all of the units in G Trust, a trust that holds a number of investments in other entities but which does not carry on a business. The total value of the investments held by G Trust also means that it does not satisfy the Maximum Net Asset Value test.

On 17 February 2020, George sells the units he holds in G Trust. George is not eligible to access the CGT concessions.

Even if George satisfied the basic conditions for relief, he cannot satisfy the new condition as G Trust is not carrying on a business and does not satisfy the Maximum Net Asset Value test.

OBJECT ENTITY

The "object entity" for the purposes of the new rules also includes "other entities" that the object entity "controls". Whether they control other entities is measured by reference to a 20% "controlling interest" percentage. Where this test is satisfied, the object entity needs to count the assets and turnover of the other entity towards the total net value of their assets and their aggregated turnover respectively.

EXAMPLE – FROM THE EXPLANATORY MEMORANDUM – INDIRECT INVESTMENT IN LARGE BUSINESS

Tien owns 20% of the shares in Investment Co, a company that carries on an investment business. Investment Co has an aggregated turnover of less than $2 million in 2020/2021.

Investment Co holds 20% of Van Co, a transport company. Van Co's turnover and assets mean that it exceeds the $2 million turnover test and does not satisfy the Maximum Net Asset Value test at any point during the income year.

On 15 May 2021, Tien sells his shares in Investment Co. He is not eligible to access the CGT concessions for any resulting capital gain.

Even if Tien satisfies the other conditions, he cannot satisfy the new condition requiring the object entity to have a turnover of less than $2 million or satisfy the Maximum Net Asset Value test.

For the purposes of the new law, Investment Co is considered to be connected with Van Co, as Investment Co holds 20% of Van Co's shares. As a result, for this purpose, Investment Co's turnover and assets include the turnover and assets of Van Co. As Van Co has turnover exceeding the $2 million threshold, and does not satisfy the Maximum Net Asset value test, Investment Co is also treated as not satisfying these requirements (despite its status under the general rules in the tax law).

SHARES UNDER THE *MICROSCOPE*

With interest rates on savings accounts and term-deposits at record lows over the past few years, many investors have turned to shares as an alternative form of passive income (also offering capital growth). As this article details, the ATO has just announced a massive targeting of shareholder tax compliance.

ATO CRACKDOWN

In early November 2018, the ATO announced that it is extending its data matching to share transactions to identify taxpayers who have not properly reported income or capital gains in their tax returns. With more than 5 million Australians owning shares, the ATO says that share transactions are high on their priority list.

The ATO's data matching program will receive share data for the period form 20 September 1985 (from when CGT was introduced) to 30 June 2018 from ASIC and the following share registries:

- Linked Market Services Limited
- Computershare Limited
- Australian Securities Exchange Limited
- Boardroom Pty Ltd
- Advanced Share Registry Services Pty Ltd
- Security Transfer Registrars Pty Ltd
- Automic Registry Services (Automic Pty Ltd).

It's anticipated that more than 500 million records will be obtained in relation to just over 2 million individuals. The data received by the ATO will include:

- Names and addresses
- Holder identity number
- Shareholder registry number
- Share price
- Purchase date and sale
- Quantities of share acquired or disposed
- Corporate reconstructions.

The ATO's Assistant Commissioner, Kath Anderson, said that this information will be used in conjunction with information that the ATO already holds from brokers, share registries, and exchanges. The ATO will then use this suite of information to match it against tax returns and other ATO records to identity taxpayers who have not properly reported the sale or transfer of shares as capital gains or (in rarer cases) income.

ATO ADVICE

The ATO state that there is evidence that some taxpayers are getting it wrong when it comes to reporting their capital gains or losses from the sale of shares, especially so among those who do not regularly trade in shares. In the coming years (date not yet specified) the ATO intends to make this information available to taxpayers as part of the tax return pre-fill service in the future i.e. the same way that other pre-determined income such as from Centrelink is pre-filled on tax returns currently.

In the meantime however, the ATO advises taxpayers to keep good records of share purchases and sale prices, and declare capital gains in your returns. Tax Agents or taxpayers that have made an error or left out their capital gains should, the ATO advises, contact the ATO as soon as possible. Penalties may be reduced where taxpayers contact the ATO prior to errors being potentially detected in an ATO audit.

HOW FAR BACK?

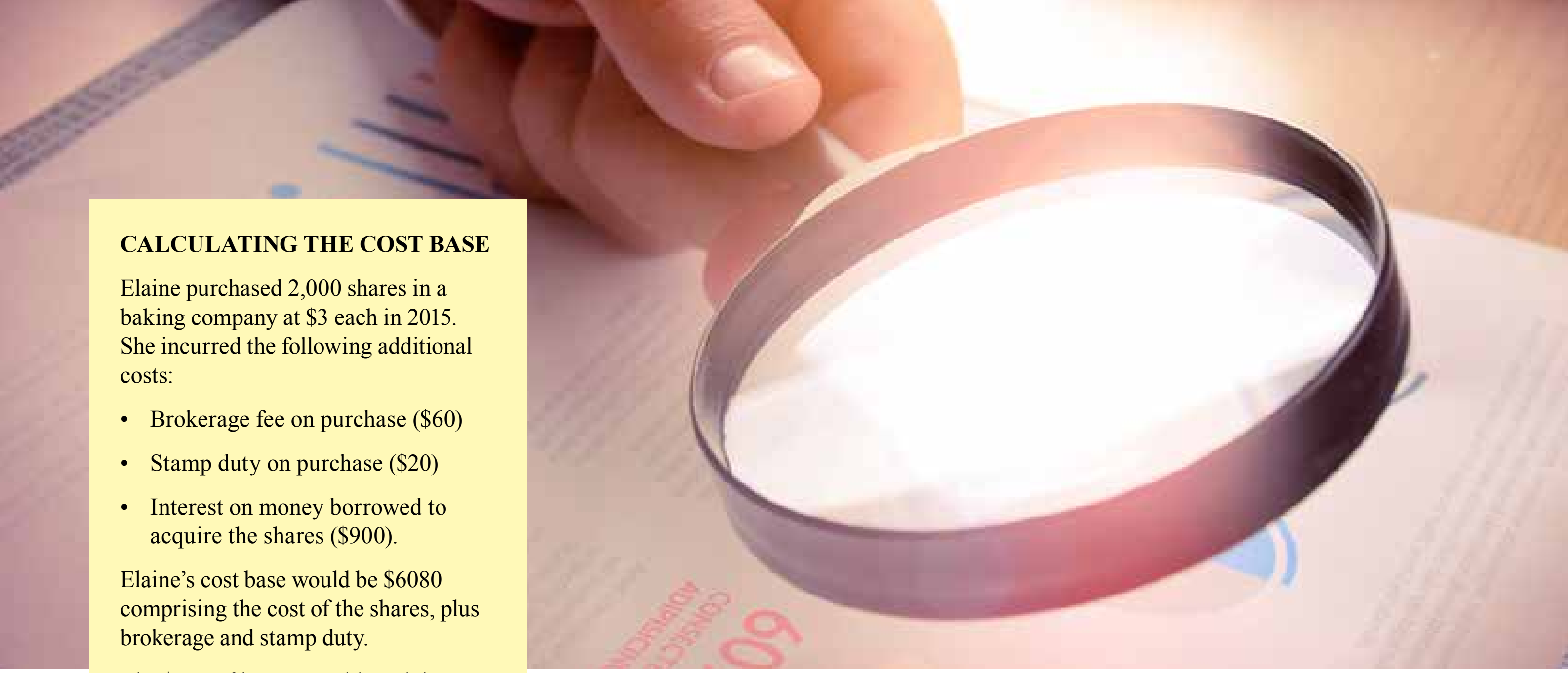
With the ATO collecting information to as far back as the commencement of CGT (1985!) taxpayers may feel concerned about what CGT they declared or didn't declare on their tax returns dating back all this way (some 33 years!). The good news is that even if the ATO detect past non-compliance, there is a limit to how far they – and how far you as the taxpayer – can go back and amend your tax return. This limit depends on which entity actually owned the shares. For individuals and small businesses the time limit is generally two years, and for other taxpayers four years, from the day after the ATO give you the notice of assessment for the year in question (generally taken to be the date on the notice or, if the ATO didn't issue a notice, the date the relevant return was lodged).

For example, if you are an individual and receive a notice of assessment dated 12 November 2019. Your two-year amendment period starts on 13 November 2019 (the day after the date on the notice) and ends two years later, on 12 November 2021. You have until that day to lodge a request for an amendment to that assessment. Likewise the ATO generally can't amend your that assessment after that date.

TAX TREATMENT

Generally speaking, the proceeds you receive from a disposal of shares will form part of a capital gain or capital loss. The capital gain or loss must then be declared in your tax return in the year that you sell the shares. To work out the capital gain or loss, you subtract the cost base of the shares from the capital proceeds (the amount you received from the purchaser, or the market value if you gave the shares away). The cost base of your shares consists of:

- What the shares cost you, and
- Incidental costs of buying and selling the shares e.g. brokerage or agent fees, stamp duty, and investment advisor fees (but not investment seminar costs).



CALCULATING THE COST BASE

Elaine purchased 2,000 shares in a baking company at $3 each in 2015. She incurred the following additional costs:

- Brokerage fee on purchase ($60)
- Stamp duty on purchase ($20)
- Interest on money borrowed to acquire the shares ($900).

Elaine's cost base would be $6080 comprising the cost of the shares, plus brokerage and stamp duty.

The $900 of interest – although it represents a cost of owning the shares – will be claimed as a tax deduction in the years that the expense is incurred rather than form part of the cost base.

Having added this capital gain to any other capital gain that you made during the financial year, you then subtract from this any current or prior year capital gains. You will likely enjoy the greatest tax benefit if you deduct capital losses from capital gains in the following order:

1. Capital gains that were made from shares for which you bought and sold within 12 months
2. Capital gains calculated using the Indexation Method, and then
3. Capital gains to which the 50% CGT discount could apply.

Having exhausted your losses, if you still have any remaining capital gain it is at this point that you apply the 50% discount provided you held the shares for 12 months or more and did not work out your capital gain using the Indexation method. The 50% CGT discount is not available to companies.

The remaining amount represents your net capital gain which will need to be included in your tax return.

SHARE TRADER?

For the most part, proceeds from the sale of shares will be dealt with on the capital account – as a capital gain or loss. However, in rare case where there is a high volume of trading, the proceeds received may be deemed to be assessable income. The distinction between capital and revenue treatment matters because the tax treatment differs considerably as follows:

- Capital Account (share investor) – the gain or loss is a capital gain or loss, and hence:
  - » The gain may be able to be reduced by the 50% CGT discount
  - » The loss may only offset any current year or future year capital gains.
- Revenue Account (share trader) – the gain or loss is assessed as ordinary income, and hence:
  - » Any gain is added into your other income, and cannot be reduced by the 50% discount; and
  - » Any loss may offset other income you earn during the current year or future years such as salary and wages.

To distinguish between these differing treatments, if we were to apply the generic principles in the case law to date, we could create the following profile of a share trader as distinct from a share investor:

- A share trader is likely to employ a more systematic approach than a share investor e.g. operating to a plan, setting budgets and keeping detailed records
- A share trader is likely to engage in a greater number of share transactions than that of a share investor, and employ greater capital. The transactions could also be more complex
- A share trader is likely to buy and sell shares at more regular intervals than a share investor, and is likely to hold the underlying security for a shorter period of time than a share investor
- A share trader is more likely than a share investor to be motivated by the prospect of a short-term profit, and that profit is more likely to arise from a discernible pattern of trading. A share investor is more likely to have long-term timeframes in mind, and
- A share trader is likely to spend a greater amount of time on share transactions than a share investor, in part due to the greater scale and repetition of the activities.

RECORDS

You need to keep proper records, regardless of whether you use a tax agent to prepare your tax return or do it yourself. You must retain:

- Your acquisition and disposal statements (your 'buy' and 'sell' contracts) - keep these records for five years from the date you dispose of your shares
- Your dividend statements - keep these records for five years from 31 October or, if you lodge later, for five years from the date you lodge your tax return.

You will receive most of the records you need to keep from:

- the company that issued the shares
- your stockbroker or online share trading provider
- your financial institution, if you took out a loan to buy the shares.

An easier way to keep records is to set up an asset register. It is easy and once you have entered your information into the register you may be able to throw out records you would otherwise have to keep for a long time. Your Accountant can assist you if you choose this option.

STRICTER COMPANY *'LOAN'* RULES

In what are some of the biggest changes to Division 7A in twenty years, a Consultation Paper has been released by Treasury in relation to changes that will be implemented as of 1 July 2019. This article is a must read for company owners and their advisors.

BACKGROUND

Division 7A was introduced into the tax legislation with effect from 4 December 1997. In essence, it is an integrity measure designed to ensure that private companies cannot make tax-free distributions to shareholders or their associates in the form of payments, loans and debts forgiven etc. Division 7A is one of the most commonly encountered problems for Accountants when taking on new clients, and is a tax 'time-bomb' waiting to go off for a number of company owners/shareholders as they are simply unaware of this aspect of the tax law.

The introduction of the Division 7A legislation means that previous practices of "loaning" shareholders or their associates money, interest-free, and never repaying that debt is a thing of the past. In bringing in the Division 7A legislation, the ATO has ensured that any informal loans or payments made to shareholders or associates are treated as a loan, with a loan agreement in place (over 7 or 25 years) and with interest and principal repayments being due each year. Interest is to be charged at a benchmark ATO-determined rate. Failure to put in place a complying loan agreement, may result in the amounts being treated as an unfranked dividend assessable to the recipient.

For a full understanding of Division 7A, including amounts/payment that are excluded from the regime, see the March/April 2017 edition of this magazine – available at www.mytaxsavers.com.au

In the May 2016 Federal Budget, the Government announced that it was planning 'targeted amendments' to Division 7A which would simplify the regime, and come into force on 1 July 2018. While this did not eventuate, just prior to this start date (in the May 2018 Budget) the Government announced that the changes would be delayed 12 months until 1 July 2019. With this in mind, the Government released a Consultation Paper on 22 October 2018 titled "Targeted Amendments to the Division 7A Integrity Rules". Public consultation closed on 21 November 2018.

SUMMARY OF CHANGES

The Consultation Paper recommended that:

1. NEW 10-YEAR LOAN MODEL

The current 7-year and 25-year time requirements will be replaced by a single 10-year loan model. However, existing 7-year loans will remain on the same time period but switch to the higher interest rate.

2. NEW INTEREST RATE

The annual benchmark interest rate will be the "small business, variable, other, overdraft indicator" lending rate most recently published by the Reserve Bank of Australia prior to the start of each financial year. For the year commencing 1 July 2018, this rate is 8.3%. This represents a significant increase from the 5.2% current benchmark interest rate that currently applies on Division 7A loans.

3. UNPAID PRESENT ENTITLEMENTS SUBJECT TO DIVISION 7A

UPEs will formally be deemed to be loans for Division 7A purposes. By way of background, in the past it has been commonplace and tax effective for a trust to distribute trust income to a corporate beneficiary (bucket company) as it allowed the tax payable to be taxed at the lower company tax rate while also allowing the trust to retain and use the funds representing the UPE to fund its business activities. This 'loophole' was shut down from 16 December 2009 where such arrangements were from that date forward re-interpreted by the ATO to fall within extended definition of 'loan' for Division 7A purposes. The legislation will be amended to confirm this interpretation once and for all.

4. MOST AMOUNTS ARE NOW CAUGHT IN THE 7A NET

To ensure clarity and consistency, most amounts will be put on 10-year principal and interest loans on a higher interest rate than currently, including:

- Pre 1997 loans
- Pre December 2019 "quarantined UPE's"
- Any UPE's that have been put on "sub-trust" arrangements
- 25 year loans, and
- Existing 7 year Division 7A loans (will remain on the same time period but change to the higher interest rate).

However, all existing 25-year Division 7A loans as at 30 June 2019 will be exempt from most of the proposed changes for two-years until 30 June 2021. However, the interest rate payable on loans during this transitional period must equal or exceed the RBA Rate rather than stay at the Division 7A Rate. After this transitional period, the outstanding principal will give rise to a deemed dividend of that amount unless a 10-year compliant loan is put in place prior to the lodgment day for 2020/2021. In practice, this means that those who have existing 25-year loans in place, have approximately 3 years after the start date of 1 July 2019 until they are forced to decide whether they pay the outstanding loan amount or convert these amounts into a 10-year compliant loan.

5. DISTRIBUTABLE SURPLUS REMOVED

The other major change is to the concept of distributable surplus – this concept will no longer exist from 1 July 2019. To recap, for an unfranked dividend to arise and be assessable to the recipient, the Company from which the amount was paid/loaned must have a "distributable surplus" in the year the amount was paid/loaned. That is, the deemed dividend was limited to the amount of the distributable surplus in that year.

OBSERVATIONS

Although the original stated aim was to simplify the Division 7A regime, the changes if implemented generally speaking make the regime more strict from a taxpayer standpoint including:

- **Interest** – a significantly higher interest rate is imposed. Such is the proposed interest rate, a simple loan from the bank with at a much lower rate may be more appealing and certainly less complicated. Such a loan is even more attractive considering that under the mooted changes, regardless of when a repayment occurs during the year, interest will be for the full year. By contrast, if you made a significant repayment on a bank loan early in the financial year, the amount of interest payable for the remainder of the year would reduce.
- **Cash-flow** – taxpayers no longer have the option of putting a 25-year loan in place. Loans set at a maximum 10-years will be more difficult to service from a cash-flow standpoint.
- **Distributable Surplus** – The removal of this means that irrespective of a company's financial position, the recipient taxpayer will be in receipt of a deemed dividend or a Division 7A loan will apply.

TAKE-HOME MESSAGES

- Changes are slated to commence on 1 July 2019 but until draft legislation is released it is uncertain that all the proposals put forward in the Consultation Paper will be adopted in full.
- Going forward, company owners and their advisors should be more wary of triggering Division 7A – such as by taking money from your private company without declaring it as a dividend – as the rules are set to be much less taxpayer-friendly.
- Practitioners who have clients with 25-year loans will eventually over the next few years need to decide whether to pay the outstanding loan amount or convert it into a 10-year loan. This may, among other considerations, depend upon when the 25-year loan began. For example, if the 25-year loan began in 2003, by 2021 the loan will have been in place for 18 years. It appears that the remaining principal (if not repaid) could be put on a 10-year compliant loan giving a combined loan period of 28 years. By contrast, if the loan began in 2017, the combined term of the original 25-year loan that is replaced by a 10-year loan in 2021 will be 14 years. That is, a reduction of 11 years.

A follow-up article will be published in this magazine once the draft legislation is released in the first part of 2019.

TAX *TIPS*

This article provides readers with a range of money saving tax tips. Areas covered include substantiation, company tax relief, a GST time-saver, and more!

CREDIT CARD STATEMENTS AS SUBSTANTIATION

Despite the widespread belief, credit card statements in most cases do not suffice – on their own – as substantiation for claiming a tax deduction for a business or work-related expense.

To recap, to claim a tax deduction, you must have written evidence as set out in Subdivision 900-E of the Tax Act. That Subdivision states that written evidence may be a document from a supplier of the good or services (most typically a receipt). That supplier document must set out all of the following:

- The name or the business name of the supplier
- The amount of the expense, expressed in the currency in which it was incurred
- The nature of the goods or services (if the document provided by the supplier does not set out the nature of the goods or service, you may write these missing details on the document yourself)
- The day on which the expense was incurred (if the supplier document does not show this, you may use a bank statement or other independent evidence), and
- The day it is made out.

The ATO state in Practice Statement PSLA 2005/7 that "where the above (supplier documents) are insufficient, we accept the following documents (or combinations of documents) as acceptable evidence of expenses:

- Bank statements
- Credit card statements
- BPay reference numbers, combined with bank statements, or
- BPay reference numbers, combined with tax invoices.

Therefore, if the credit card statement does contain all of this information then there is no deduction if that is your only substantiation. In most cases, credit card statements do not contain a description of what the good or service actually is. Therefore, on its own, it is insufficient evidence to claim a deduction.

COMPANIES 'OFF THE HOOK'

In the previous edition of this publication, we detailed how legislation has finally been passed into law outlining which companies are eligible for the lower company tax rate which applies from 2015/2016 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 – 2019/2020	$50 million	27.5%	30%
2020/2021	$50 million	26%	30%
2021/2022	$50 million	25%	30%

For 2017/2018 and future years, a new 80% passive income test must be met. 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.

On the other hand, for 2015/2016 and 2016/2017 only companies that qualified as a Small Business Entity (SBE) are eligible for the lower tax rate, namely those companies that:

(a) Had an aggregated turnover (in either the previous or current income year) of less than that outlined in the above table, and

(b) Carried on a business according to the definition set out by the ATO in their draft taxation ruling TR 2017/D7 (including traditional trading companies, but also including passive investment or bucket companies). See previous article for more details.

With most 2015/2016 and 2016/2017 now lodged, in Practical Guidance Note 2018/D5 the ATO details its compliance approach as follows:

The Commissioner will not allocate compliance resources specifically to conduct reviews of whether the corporate tax entities have applied the correct rate of tax or franked at the correct rate for 2015/2016 and the 2016/2017 income years.

Therefore, if your company has already lodged for either of these years and, now that the law is settled, has applied the lower tax rate when it was not eligible to do so, it appears that there is no absolute requirement to go back and amend the return for that year. The ATO did note however that this hands-off approach will not apply where:

(a) Your company has: otherwise attracted ATO compliance activity for other reasons unrelated to whether the correct company tax rate applied, or

(b) The ATO becomes aware that a company’s assessment of whether they were carrying on a business during these years was plainly unreasonable, or

(c) The company entered into:

- Any artificial or contrived arrangement affecting the characterisation of the company as carrying on a business or not

- A tax avoidance scheme who outcome depends, in whole or in part, on the characterisation of the company as carrying on a business or not, or

- Arrangements have been designed to conceal ultimate beneficial or economic ownership of any connected entities or affiliates.

On the other hand, companies should amend their returns, if your company has already lodged for 2017/2018, 2016/2017 or 2015/2016 and paid tax at the higher rate of 30% but now the law has settled, it is actually eligible for lower company tax rate. Amending your company return in these circumstances should – all other things being equal – result in a refund.

ANNUAL APPORTIONMENT OF GST CREDITS

Many business expenses incurred – for example on electronic devices, vehicles, or home office – are also used for private purposes. Consequently, businesses must apportion the GST on these costs between private and business use. Determining how much a purchase is used for business/work purposes can be difficult. Fortunately, the ATO allows an annual adjustment in such situations. However, not all businesses are eligible.

Under this concession, small businesses can elect to account for the private portion of their business purchases annually, rather than each time they lodge a BAS. Therefore, where a business purchase has a private use component, an entity can claim a full GST credit (rather than claiming a partial credit by estimating the private use component) and then, in a later BAS, make an increasing adjustment in recognition of the private usage. Where you take up this option, you must make the annual increasing adjustment on the BAS that covers the period when your income tax return (for the income year covering the tax period in which you claimed your GST credit) is due, or an earlier BAS.

This concession gives small businesses both an administrative and cash-flow advantage. Administratively, they are better off by being able to account for the private use component of purchases annually – all in one hit. While, in a cash-flow sense, they also benefit by being able to retain the full GST credit for a longer period (up to a year in some cases) rather than receiving a partial credit upfront by having to estimate the private use component.

Common types of payments that may include a mix of business and private use and therefore will be covered under this concession include:

- Home office costs/home power use
- Home telephone and internet costs
- Motor vehicle running costs (registration, fuel, repairs etc.)
- Motor vehicle purchases
- Computers and other electronic devices, and
- Stock taken for private use.

The annual apportionment election can be made if:

- The taxpayer is a Small Business Entity (turnover of less than $10 million, including the turnover of connected and affiliated entities), or an enterprise (that is not a business) with a GST turnover of $2 million or less, and
- No election to pay GST by instalments or to have an annual tax period has been made.

To commence using this concession, you do not need to notify the ATO. However, you should keep a record showing the date you commenced using this concession and when it took effect.

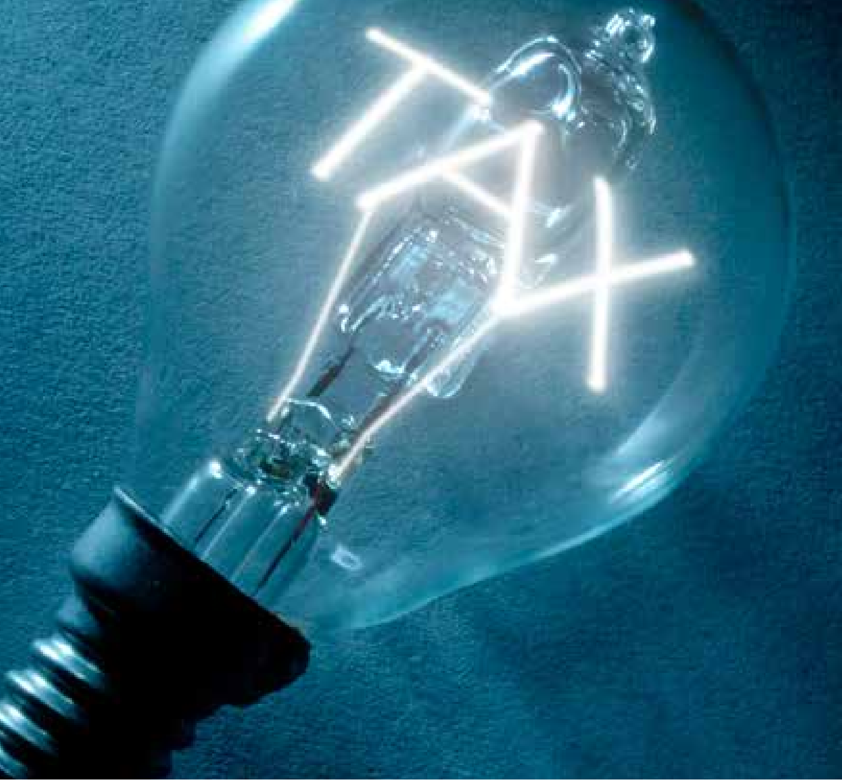
CHILD MAINTENANCE TRUSTS

Pursuant to Section 51-50 of the Income Tax Act, child support payments made by non-custodial parents to or for the benefit of a child will generally speaking need to be funded by after-tax income in order to be tax-free to the recipient. As an alternative to making direct payments of child support, non-custodial parents may wish to consider establishing a child maintenance trust which may in turn provide significant tax savings depending on the circumstances.

Child maintenance trusts are a valid means of satisfying child maintenance payments in a property settlement or divorce. This is accomplished by settling income-producing property into a trust established to provide child maintenance payments, and satisfying a number of conditions.

The reason why such trusts are established is that they are exceptionally tax effective, as well as being a certain means of providing child maintenance payments. The tax advantage is primarily one of income splitting. The income of such a trust is taxed to the infant beneficiary at normal resident tax rates. In most trust structures, infant beneficiaries would be subject to penalty rates of tax on distributions received in excess of $416 (2018/2019 tax rates).

The savings here are potentially immense, particularly if the taxpayer settling the asset into the trust is a top tax rate payer. An infant beneficiary can receive $21,600 from a maintenance trust before paying tax. A taxpayer on the top marginal rate of tax would have to apply $40,790 of their before-tax income to make the same $21,600 payment.



WHAT THE TAXMAN IS THINKING

In this edition, we look at the tax treatment of crypto-currency, detail the latest tax scam, inform you of the tax treatment of bank compensation, name the suburbs with the most lost super, and more!

EXTENSION OF TAXABLE PAYMENTS REPORTING SYSTEM

The Taxable Payments Reporting System (TPRS) has just been extended!

By way of background, the Taxable Payments Reporting System (TPRS) is a transparency measure designed to ensure that payments made to contractors in prescribed industries where cash payments are common, are declared in full. It requires businesses that operate in these prescribed industries to report payments they make to contractors for work performed within that same industry.

The TPRS was originally implemented to apply to the building and construction industry from 1 July 2012, but was expanded to the courier and cleaning services industries from 1 July 2018; with the first report due on 28 August 2019 for payments made in 2018/2019. Additionally, the **Black Economy Taskforce Measures No.2 Bill (2018)** was introduced into Parliament on 20 September 2018 proposing to further expand the TPRS to businesses within the following industries:

- Road freight
- Security, investigation, surveillance
- Information technology services.

This legislation has now passed both Houses of Parliament and is law. In broad terms, entities that have an ABN that have provided consideration to contractors providing these services on their behalf will be subject to the reporting requirements. This extension to the TPRS will apply from 1 July 2019 with the first report due on 28 August 2020.

While generally all businesses who operate primarily within the above industries are required to report payments made to suppliers, a little-known exception applies to the courier and cleaning services industries which will also apply to the road freight services industry. That is, a de minimis rule exempts businesses from reporting where all of the following conditions are met:

- The total value of consideration received by the business entity during the reporting period in relation to the provision of services including where such services are provided by a contractor is less than 10% of the entity's relevant GST turnover as at the end of the reporting period
- The transaction is not required to be reported under another item of the table in Section 396-55 of the Tax Administration Act (such as where a Government entity must report on services provided to it)
- A choice is not voluntarily made to provide a report to the ATO detailing a transaction.

This exception provides welcome compliance relief for businesses within these industries who make minimal payments to contractors. Additionally, a draft legislative instrument is being prepared to exempt businesses where less than 10% of their relevant GST turnover consists of payments received either for security, investigation and surveillance services or, alternatively, IT services.

CRYPTO-CURRENCY AND TAX

The ATO has updated its guidance on the tax treatment of cryptocurrency (i.e. Bitcoin or other crypto or digital currencies that have the same characteristics as Bitcoin) after receiving feedback and submissions on the topic. Broadly, the taxation treatment is as follows:

- Transacting: If the cost of your cryptocurrency is less than $10,000 and you are only using it to pay for personal goods or services, they are not included in your assessable income.
- Investment: If you are holding cryptocurrency as an investment, you will pay capital gains tax (CGT) on any profits when you dispose of them (e.g. exchange them back to Australian dollars). If you hold them personally, in a partnership or trust for more than 12 months, you may be entitled to the 50% general CGT discount. Alternatively, if you make a loss when you dispose of your cryptocurrency, this can generally be offset against other capital gains you made during the financial year.
- Trading: If you are actively trading cryptocurrencies for profit, as opposed to holding them for investment, the profit or loss will form part of your assessable income. The profit or loss is determined at the time of disposal. To be considered a trader (which is rare) the number of transactions would need to be significant as would the time invested.
- Carrying on a business: If you are using cryptocurrencies as payment for goods or services or accepting these as payment for goods or services, the transaction may be subject to GST.

SCAMMERS IMPERSONATING TAX AGENTS

The ATO has received increasing reports of a new take on the 'fake tax debt' scam, whereby scammers are now impersonating registered Tax Agents to lend legitimacy to their phone call.

The fraudsters do this by coercing the victim into revealing their Agent's name and then initiating a three-way phone conversation between the scammer, the victim, and another scammer impersonating the victim's registered Tax Agent or someone from the agent's practice.

As the phone conversations with the scammers appeared legitimate and the victims trusted the advice of the scammer 'Tax agent', victims have been falling for this new approach. In a recent example, a victim withdrew thousands of dollars in cash and deposited it into a Bitcoin ATM, fearing that police had a warrant out for their arrest.

The ATO is reminding Tax Agents and their clients that they will never:

- demand immediate payments
- threaten them with arrest or
- request payment by unusual means, such as iTunes vouchers, store gift cards or Bitcoin cryptocurrency.

Taxpayers are advised that if they are suspicious about a phone call from someone claiming to be the ATO, then they should disconnect and call the ATO or their Tax Agent to confirm the status of their tax affairs and verify the call.

REMOVAL OF TAX DEDUCTIBILITY FOR NON-COMPLIANT PAYMENTS

In November 2018, legislation passed the Parliament removing the tax deductibility for payments to their employees (e.g. for salary) or contractors (e.g. for them failing to provide you with an ABN) where they have not withheld any amount of PAYG from these payments, despite being required to do so by law. This comes into force on 1 July 2019.

In addition to not being permitted to claim a tax deduction for these amounts, directors of companies that fail to pay employee PAYG withholding amounts to the ATO or no ABN withholding amounts by the due date may also be held personally liable for these amounts under the Director Penalty Notice (DPN) regime.

COMPENSATION RECEIVED FROM BANKS

With the banking Royal Commission shining a spotlight on banking misconduct, financial institutions have been getting on the front foot and recently been compensating customers for various reasons. The ATO states taxpayers will need to consider the tax consequences of receiving compensation from a financial institution as a result of:

- Receiving advice from the bank that was found to be inappropriate, or
- Paying for advice that they did not receive.

The tax consequences of the compensation is dependent upon what the compensation is being paid for and how the investments are (or were) being held. Compensation payments can include a number of different components, some of which are discussed below.

COMPENSATION FOR LOSS ON AN INVESTMENT

Compensation may be received for a loss amount if the value of the relevant investment is lower than it would have been if appropriate advice was received. Where the relevant investment has already been disposed of, then the compensation can be treated as additional capital proceeds. If the disposal occurred in a previous income year, then an amendment request may be required to reflect the additional capital gain in the relevant tax return. Conversely, if the compensation relates to an investment that the taxpayer still owns, then the cost base (or reduced cost base) will need to be reduced by the compensation received.

REFUND OR REIMBURSEMENT OF ADVISER FEES

Where a deduction was claimed for the original adviser fees, then the amount refunded or reimbursed will be assessable in the year in which it was received. On the other hand, if no deduction was claimed for the adviser fees, then the refund or reimbursement will not be assessable. However, where the adviser fees have been included in the cost base (or reduced cost base) of any investments, then this must be reduced by the amount refunded or reimbursed. If the investment has already been disposed of and has resulted in a capital gain or loss in a previous income year, then the relevant tax return may need to be amended.

INTEREST

The interest component of any compensation payment is assessable as ordinary income and should be included in your tax return in the financial year in which it was received.

POSTCODES WITH MOST LOST SUPER

The ATO has recently released its latest statistics on lost and unclaimed superannuation, which reveal an astonishing $17.5 billion currently sitting in lost super accounts. Deputy ATO Commissioner James O'Halloran said that the postcode with the highest amount of lost super (totaling $49 million) is 4740 in Queensland – which covers Mackay and surrounding suburbs. He goes onto say:

A lot of people who worked casually while they were studying or worked part-time jobs find super they had completely forgotten about. Members often lose contact with their super funds when they change jobs, move house, or forget to update their details. All small lost member accounts with balances of $4 000 or less are transferred to the ATO and become what is called 'unclaimed super'. Just like lost super, unclaimed and other ATO-held super can be claimed at any time. The top ten locations with the most lost super are in MacKay, Cairns, Toowoomba, Werribee, Campbelltown, Mandurah, Surry Hills, Darlinghurst, Bondi, and Cranbourne.

Finding out whether you have any lost superannuation is now easier than ever. Simply create a myGov account by going to **www.my.gov.au** Once your account is established, link it to ATO online services. From there you will be able to view all your super account details, including any that has been lost or forgotten about.