MTS

MY TAX SAVERS

2020

New Year,
New Law

STRATEGIES FOR
TOUGH ECONOMIC TIMES

FINANCING MOTOR VEHICLES

LATEST TAX NEWS

...AND MUCH MORE!

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

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KEY DATES

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

JANUARY 2020

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 2019/2020 income tax return will be due on 31 October 2020.

21 JANUARY
Due date for lodgement and payment of December 2019 monthly Activity Statements.

28 JANUARY
Due date for October-December 2019 Superannuation Guarantee contributions to be made to a complying fund on behalf of your employees.

31 JANUARY
Final date for lodgement of October-December 2019 TFN report for closely held trusts for TFNs quoted to a trustee by beneficiaries.

FEBRUARY 2020

21 FEBRUARY
Due date for lodgement and payment of January monthly Activity Statements.

28 FEBRUARY
Due date for lodgement and payment of October-December 2019 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 2019/2020 return will be due by 31 October 2020.

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 2019 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.

New Year, New Law

As we head into the new year, this article updates readers on a range of new laws that were passed into Parliament late last calendar year. This includes more generous tax treatment for redundancy payments, disclosure of ATO debts to credit reporting bureaus, relief for employees who salary sacrifice superannuation, and more!

REDUNDANCY PAYMENTS

For those of you who handle payroll, legislation has just passed Parliament which extends the age up to which individuals can enjoy concessional tax treatment in the event that they receive a bona fide redundancy payment or an early retirement scheme payment. By way of background, bona fide redundancy payments and early retirement scheme payments have a tax-free component, based on an individual's length of service with an employer. The tax-free component consists of a base amount, and a year of service amount as follows:

Income Year	Base Amount	For each completed year of service
2019/2020	$10,638	$5,320
2018/2019	$10,399	$5,200

To be clear, the concessional tax treatment only applies where the employee:

- is made redundant i.e. their employment ends because the job that they were doing no longer exists, or
- receives an early retirement scheme payment as part of a scheme put in place by their employer to encourage certain groups or classes of employees to retire early or resign.

Before this law change, the concessional tax treatment was only available if an individual was aged below 65 at the time of termination – meaning that people over this age were paying substantially more in tax. From 1 July 2019, however, the qualification age has been aligned with the age pension eligibility age which depends on your date of birth as follows:

Your Birthdate	Your Age Pension Age	Date of Age Pension Age Change
1 January 1954 to 30 June 1955	66 years	1 July 2019
1 July 1955 to 31 December 1956	66 years and 6 months	1 July 2021
On or after 1 January 1957	67 years	1 July 2023

From 1 July 2019, provided an individual is under age pension age at the time of termination, their bona fide redundancy payment or early retirement scheme payment will be taxed concessionally. As the following example illustrates, thousands of dollars can be saved under the new law:

EXAMPLE

Max is a 65-year old conveyancing specialist who has worked at a law firm since May 2009. In November 2019, his employment is terminated because his employer has decided to shut down the conveyancing arm of the firm due to its lack of profitability. Max is paid a $40,000 redundancy payment.

Under the new law, despite being not being under 65 at the time of termination, Max's payment will be eligible for concessional tax treatment as he has been made redundant (i.e. the conveyancing job no longer exists) and he is less than his age pension age of 66. His tax-free component is $63,838 calculated as follows:

- 2019/2020 base amount of $10,638 plus
- year of service amount of $53,200 ($5,320 x 10 years of service)

As this exceeds the actual payment, no tax will be payable by Max.

By contrast, before this law change, at least $6,800 tax would be payable at a minimum rate of 17% on the redundancy payment.

SUPERANNUATION GUARANTEE RELIEF FOR EMPLOYEES

Employees who are salary sacrificing to superannuation will be afforded protection under legislation which passed into law on 22 October.

By way of background, since superannuation guarantee (SG) was introduced way back in 1992, before this new law, salary sacrifice contributions – although made from an employee's agreed total salary package – could technically reduce an employer's SG liability. Despite this, most employers still generously contributed the full 9.5% contribution calculated on the pre-sacrifice (gross) salary. However, many did not.

Under the new law, amounts that an employee salary sacrifices to superannuation cannot reduce an employer's SG liability. To avoid a shortfall an employer must contribute 9.5% of an employee's ordinary time earnings (OTE) base to a complying superannuation fund or retirement savings account (RSA). An employee's OTE base is now comprised of their OTE and any amounts sacrificed into superannuation that would have been OTE, but for the salary sacrifice arrangement.

This change was originally contained in a Bill released in 2017, and had a start date of 1 July 2018. Fortunately, this start date has been pushed back, with the new law to apply to quarters commencing on or after 1 July 2020. Therefore, there is no retrospectivity to these new rules. The take-home message for those of you who handle superannuation is to disregard salary sacrifice amounts when calculating an employer's SG liability from the July-Oct 2020 quarter.

EXAMPLE

Jake has quarterly OTE of $22,000 which would ordinarily generate an entitlement to $2,090 in 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 9.5% superannuation guarantee obligation, and only makes an additional contribution of $1,090.

Under the new rules, Jake's $1,000 sacrificed contribution will no longer reduce his employer's superannuation guarantee 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

Bernice is paid $25,000 in salary and wages per quarter, which includes overtime of $3,000. She enters into a salary sacrifice arrangement of $2,500 of overtime pay per quarter. Her OTE is $22,000 a quarter (as overtime is not included in OTE).

Bernice's total employer contribution should be $4,590 ($2,090 mandatory 9.5% employer contribution + $2,500 sacrificed amount for the quarter).

Bernice's employer contributes $4,590 with $2,090 being the amount relevant for meeting its superannuation guarantee liability. The sacrificed amount of $2,500 is not added into the base of OTE, to the extent 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.

Therefore, the superannuation guarantee charge percentage is reduced to zero and there is no shortfall to pay. This is the correct outcome as overtime should be excluded from OTE.

VACANT LAND DEDUCTIONS

Going forward, expenses incurred in holding vacant land will no longer be deductible in most circumstances. By way of background, the income tax law allows taxpayers to claim the costs of holding vacant land if it is held for the purpose of gaining or producing assessable income or carrying on a business for the purpose of gaining income. However, according to Treasury, some taxpayers had been claiming deductions for costs associated with holding vacant land when it was not genuinely held for the purpose of gaining or producing assessable income. From the ATO's standpoint, there was also a compliance problem in that because the land is vacant, there's typically limited evidence about the owner's intent other than the statements that they make. Relying on the owner's assertions leads to compliance difficulties for the ATO.

To address this, from 1 July 2019, deductions for losses or outgoings incurred in holding vacant land are denied. This is the case even where land began to be held before that date. However, the amendments do not apply to any losses or outgoings relating to holding vacant land to the extent the land was:

- used or held available for use by the taxpayer in the course of a business the taxpayer carries on, or
- used or held available for use by an affiliate, spouse or child of the taxpayer, or an entity that is connected with the taxpayer or of which the taxpayer is an affiliate, in carrying on a business.

The following entities, if they own the land, are also excluded:

- corporate tax entities, superannuation plans (other than self managed superannuation funds), managed investment trusts or public unit trusts, and
- unit trusts or partnerships of which all the members are entities of the above types.

HOLDING COSTS

These include but are not limited to borrowing costs, including interest payments on money borrowed for the acquisition of land, land taxes, council rates and maintenance costs.

VACANT LAND

For the purposes of this new law, land is held to be vacant if there is no substantial and permanent building or other structure that is in use or available for use with an independent purpose.

For example, structures such as a residential garage or shed are constructed for the purpose of adding utility for individuals using the residence on the land. Such structures do not have an independent purpose and are incidental to the related residential premises. For a loss or outgoing to be deductible, the relevant land must generally contain a structure at the time the loss or outgoing is incurred.

TREASURY EXAMPLE – MIXED USE

Howard owns one hectare of land in Queensland. He uses one-third of the land for carrying on his firewood sales business. He stores all his firewood in the open and there are no structures on the land. Howard has set aside the remainder of the land to construct a rental property. The remaining part of the land is separately fenced off and has been subject to site work including earthworks to clear the land ready for construction.

Howard is eligible to claim losses and outgoings relating to holding the part of the land that he uses for carrying on his firewood business, to the extent that the loss or outgoing is necessarily incurred for the purpose of gaining or producing the assessable income.

The remainder of his land is not used or held available for use in carrying on his firewood business. Further, as there are no structures on Howard's land, it cannot contain a building or other structure that meets the requirements of these amendments.

As a result, Howard is not entitled to claim any deductions relating to the costs of holding this part of the land even though he intended to derive income from it in the future as a rental property.

TREASURY EXAMPLE – USED IN BUSINESS BY A RELATED PARTY

Gina owns vacant land in New South Wales which she rents to her spouse Robin for use in a farming business he carries on. Robin, as Gina's spouse, forms part of the class of related parties (spouses, children under 18 years old, affiliates and connected entities) that allow Gina to deduct her costs of holding the land. This is because Robin is carrying on a business on it to produce assessable income.

Losses and outgoings that are not deductible under these new rules are not able to be deducted in later years. However, they may be included in the cost base of the land for CGT purposes, resulting in a corresponding reduction in any capital gain when a CGT event (such as a sale) occurs in the future.

TAX DEBTS ARE NOW REPORTABLE

Back in 2016, the Government announced its intention to allow the ATO to report to credit reporting bureaus (CRBs) the tax debt information of entities that do not engage with the ATO to manage their debts. In late October 2019, legislation was passed to enact this proposal into law – however a number of conditions apply. The consequences of the debt being disclosed by the ATO to CRBs could potentially be quite dire for the business that owes the debt. CRBs may include the tax debt information in their credit reports which are available for purchase by parties who wish to use this information to make an informed decision on the credit worthiness of a business. Having an adverse credit rating, which can last up to five years, can have profound effects for the reported business, such as support from financiers being withdrawn, and supplier credit stopped.

There are two main criteria that must be met before the ATO can report a debt to a CRB:

TAXPAYER MUST HAVE AN ABN AND NOT BE AN EXCLUDED ENTITY

Excluded entities are deductible gift recipients, registered charities, government entities, and complying superannuation funds. The requirement that an entity merely have ABN may draw individuals into the new regime, including contractors and sole traders – not just businesses.

HAVE A TAX DEBT OF AT LEAST $100,000 THAT IS OVERDUE BY AT LEAST 90 DAYS

When this measure was originally announced, the debt threshold was set at a modest $10,000 and therefore would have ensnared many more taxpayers. However, following public consultation, the threshold has been increased to $100,000. This includes income tax debts, activity statement debts (for example, PAYGW, GST), superannuation debts, FBT debts, and penalties and interest charges. Where a taxpayer has multiple debts across a range of accounts, these will be added together for the purposes of the $100,000 threshold. To be clear, the $100,000 threshold is on a per taxpayer/entity basis.

NOTICE

Before reporting debts, the ATO must issue taxpayers with a 21-day notice which outlines the details of the debt, and the corrective action that a taxpayer can take within this timeframe in order to avoid having the debt reported. Corrective action can include entering into a payment arrangement with the ATO or formally disputing the debt.

The take-away message is that those who meet the above two criteria should urgently consider taking corrective action such as by entering into a payment arrangement with the ATO.

OPTING OUT OF SUPERANNUATION FOR HIGH INCOME EARNERS

From 1 January 2020, high income earning individuals with multiple employers will be able to opt out of receiving super guarantee (SG) from some of their employers. This will help that individual avoid unintentionally going over the concessional contributions cap. Where an individual's contributions (including those made by their employer) exceed their annual concessional contributions cap of $25,000, the excess is their 'excess concessional contributions' for the financial year. An individual's excess concessional contributions are included in the individual's assessable income for the year and taxed at marginal rates less a 15% tax offset (representing the tax paid in the superannuation fund). They are also subject to a charge based on the shortfall interest charge to cover the resultant late payment of tax. The new rules were introduced to avoid this.

Individuals may be eligible to opt out if they have more than one employer and they expect their employer's mandated concessional contributions to exceed their $25,000 concessional contribution cap for the financial year.

To opt out, employees need to submit to the ATO the *SG opt out for high income earners with multiple employers* form (available on the ATO website) to apply for an SG employer shortfall exemption certificate. The certificate releases one or more of your employers from their SG obligations for up to four quarters in one financial year. You'll still need to receive SG contributions from at least one of your employers for each of those quarters.

The exemption certificate means the employer will not be liable for the super guarantee charge if they don't make SG contributions on your behalf for the quarters covered by the certificate. It is important to talk to your employer before applying as they can choose to disregard an exemption certificate and continue to make SG contributions.

The ATO has recently released guidance on the income tax and GST consequences of various sharing economy services including ride-sourcing and renting rooms. With this aspect of the economy growing at a rapid rate, this article examines the GST and income tax consequences of these services.

BACKGROUND

The sharing economy describes an emerging business model that connects users and providers who wish to share resources including the provision of services. Sharing economy arrangements are generally booked through a facilitator (such as Uber or Airbnb) using a website or app. Sharing economy services include:

- Renting out or letting a room or other property for accommodation
- Using a car to transport members of the public for a fare (commonly referred to as ride-sourcing).

These services may or may not have GST and income tax implications for both the user and the provider.

RIDE-SOURCING

Ride-sourcing is a relatively new phenomenon and has for some become an alternative to taxi travel. Ride-souring involves a driver (just a normal member of the public) making available their car for public hire. Users wanting a ride, make a request through a phone app or website provided by a third-party facilitator such as Uber. The provider/driver of the car used to transfer the passenger is then paid a fare by the customer requesting the ride. The provider/driver then in turn may be charged a fee/commission by the facilitator.

INCOME TAX

The ATO is of the view that providers of ride-sourcing services will generally be deemed to be running a business where you provide your services:

- For a commercial reason
- With an intention to make a profit
- On a reasonably regular basis
- In a business-like manner, for instance you or the facilitator are issuing tax invoices to customers.

Consequently, you will be required to declare the money earned in your tax return, but will be permitted to claim relevant deductions such as depreciation of your vehicle, running costs, facilitator commission etc. These costs must however be apportioned for any private usage of your vehicle.

GST

Under general law, you are only required to register for GST where you are carrying on an enterprise **and** your annual turnover is $75 000 or more. However, under GST law where your enterprise involves providing 'taxi travel' you must register for GST irrespective of the level of your turnover. The GST legislation defines taxi travel as travel involving transporting passengers by taxi or limousine for fares. The ATO adopts a broad interpretation of taxi to include cars made available for public hire to transport passengers in return for a fare (but not including trucks and bike courier services). Thus ride-sourcing providers using cars are caught by the GST provisions.

Where your services are caught by the GST system, the following applies:

- GST must be charged on the full fare (before any fees or commissions are charged by the facilitator)
- If the fare exceeds $82.50 (including GST), a tax invoice must be provided to the passenger if requested – either by you or the facilitator
- GST credits can be claimed on purchases relating to the provision of the ride (including the car itself, and any GST contained in fuel or servicing costs). GST credits must however be apportioned to take into account any private use of the car. For instance, if you purchased a $44 000 car (with $4 000 GST), and used it 70% for ride-sourcing purposes, only $2 800 GST could be claimed.

APPEAL

The ATO's view that Uber and other ride-sharing drivers are undertaking taxi travel (and therefore must register for GST irrespective of their annual turnover level) was appealed to the Federal Court. The court upheld the ATO's position, and therefore GST must be charged on the fare.

CARVE OUT

The ATO make clear in their recently-issued guidance that there are no income tax or GST implications where any of the following apply:

- Non-commercial car-pooling arrangements where passengers contribute 'petrol money'
- Car sharing arrangements where multiple users have access to the same car which they use to drive from one location to another
- Arrangements using vehicles other than cars
- Arrangements where a car is used to transport passengers for a particular purpose e.g. to funerals or weddings and is not available to the public at large.

SUPER and PAYG?

The ATO generally considers providers/drivers to be independent contractors (as distinct from employees) for the purposes of Superannuation and PAYG withholding. Hence there are no employer obligations in these areas on the part of facilitators such as Uber. For the driver to be classed as an employee factors such as being told when to work, having the vehicle supplied to you by the ride-sharing company would need to be present.

EXAMPLE

Mr Thomas works in hospitality and sees a newspaper advertisement about how he can earn extra money by transporting passengers in his car.

The service is operated by Uber which notifies Mr. Thomas of the location of passengers and provides a phone app through which passengers can request transportation to their chosen destination.

Mr. Thomas charges a commercial fare based on distance and time. Uber then charge Mr. Thomas a facilitator fee. The frequency of these jobs varies, with Mr Thomas averaging between 6 – 8 rides per week, but some weeks zero.

INCOME TAX

The fares are part of Mr. Thomas's income and must be including in his tax return at year-end. He can also claim a deduction for the facilitator fee charged by Uber, and any associated motor vehicle expenses.

GST

Even though his turnover may be below $75 000, Mr. Thomas must register for GST as he is providing taxi travel. Assume for instance he charged a passenger $90 for a fare, then he must charge GST of $9, and then remit this amount to the ATO. As the fare is above $82.50, the passenger can request a tax invoice which must then be provided by Uber or Mr. Thomas. If the travel is work-related, passengers can claim a GST credit using their invoice, with the remaining cost of the fare claimed as a tax deduction.

RENTING ROOMS OR A HOME

The sharing economy provides a great opportunity for individuals with spare rooms or spare entire properties to rent out space and earn rental income using facilitators such as Airbnb.

It's the ATO's view that the tax law applies in the same way to income received in this way as it does to a standard rental arrangement through a real estate agent, for example. That is, the amounts received from the customers must generally be declared as income. Deductions relating to making the room/property available can also be claimed, such as all or part of the interest on a mortgage, insurance, council water and rates etc. Note that if the room/property is let out at less than commercial rates, your deductions allowable may be capped by the ATO to the amount of income you received.

Likewise, the GST rules apply in the same way as normal. Renting a residential property is an input taxed supply, so no GST is charged on the rent, and no GST credits can be claimed on any associated expenses (e.g. electricity, repairs, maintenance etc.).

WARNING

When you rent out all or part of your home (whether through the sharing economy or through a real estate agent) you will only be entitled to a partial exemption from CGT when you later dispose of it – this is irrespective of whether you actually claim deductions for any interest on a mortgage held over the property.

In terms of working out your capital gain, if you start using your main residence to produce income after 20 August 1996, you're generally taken to have acquired it at the time you first used it for this purpose. This means when you sell the dwelling, you need to work out the capital gain or loss using its market value at the time you first used it to produce income. You don't have a choice.

This rule applies if all of the following are true:

- you acquired the dwelling on or after 20 September 1985
- you first used the dwelling to produce income after 20 August 1996
- when you sell the dwelling (or another CGT event happens to it), you would get only a partial CGT exemption because you used it to produce assessable income during the period you owned it
- you would have been entitled to a full exemption if the sale or other CGT event happened to the dwelling immediately before you first used it to produce income.

ATO EXAMPLE

Felicity bought a house in December 1991 for $200,000. It was her main residence. On 1 November 2019 she started to rent 40% of it out (based on floor area). At that time the market value of the house was $520,000.

She decided to sell the house in August 2020 for $620,000. As Felicity was still living in the house and using part of it to earn income, she could not get a full exemption under the 'continuing main residence status after moving out' rule. She works out her assessable capital gain as follows:

Percentage of use × (proceeds − cost base) = capital gain

That is:

40% × ($620,000 − $520,000) = $40,000.

If the 'home first used to produce income' rule applies and the period between when you first use the dwelling to produce income and the CGT event happening is less than 12 months, you can not access the 50% CGT discount when you sell the property.

ATO EXAMPLE CONT'

Felicity is taken to have acquired the house on 1 November 2019, so she is taken to have owned it for less than 12 months. Therefore, she cannot reduce her capital gain by 50%, down to $20,000.

Ideally, if feasible, she should delay the sale until November 2020 to access the 50% discount.

FINANCING MOTOR VEHICLES

With the boost to the instant asset write-off and the current low interest rate environment, now is an opportune time to purchase business equipment including motor vehicles. This article examines the tax consequences of four different types of acquisition – outright purchase, lease, chattel mortgage and hire purchase.

OUTRIGHT PURCHASE

The advantage of purchasing equipment or a vehicle outright, as opposed to financing the acquisition of the item, is that there will be no ongoing costs of finance; though this may not be such a big issue in these times of relatively low interest rates. On the downside, outright purchases can impact on the cash resources of an entity when those funds may be better utilised elsewhere. It's also worth noting that it is far easier to obtain finance for the acquisition of a vehicle than it is for the acquisition of trading stock. Care should therefore be taken not to cripple your business' cashflow if considering an outright purchase.

INCOME TAX

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

TYPE OF TAXPAYER	WRITE-OFF THRESHOLD
Small Business Entity -Carrying on a business with a turnover of less than 50 million	**$30,000** -applies from 7:30pm on 2 April 2019 to 30 June 2020
Non-Small Business Entity -Turnover of $50 million or more	**$100** -staplers, whole punches, tools etc. -also be aware of the sampling rules
Non-Business Taxpayer e.g. landlord, investor, employee	**$300** -where the assets are part of a set or are identical in nature, their cost is added together for the purposes of the $300 threshold

Assets costing above this amount will need to be depreciated. If you are a Small Business Entity (SBE) items will be placed into a general pool to be depreciated at 15% in the asset's first year, and 30% in subsequent years. Once the value of the pool falls below $50 000 all assets within that pool can be immediately written-off.

Non-SBEs will need to depreciate the asset over the term of its effective life under the Uniform Capital Allowances (UCA) regime. The ATO has released ***Taxation Ruling TR 2019/5*** (typically updated annually) outlining the effective life of depreciating assets from 1 July 2019. The concept of effective life underpins depreciation under the UCA. Although you can estimate your own effective life of an asset, practically it is difficult for bookkeepers, accountants or the owners of the business to do this, and therefore most businesses default to the rates in the ATO Ruling.

WARNING – MOTOR VEHICLES

Although for virtually all assets depreciation will be based on an asset's cost (which is broadly the amount that you acquired the item for plus amounts you paid after acquisition to bring the asset to its present condition and location, such as costs of improving the asset), slightly different rules apply to cars. Where a car exceeds the car limit (currently $57 581) its cost for depreciation purposes is reduced to this limit; meaning that depreciation deductions can not be claimed on the excess.

EXAMPLE

Jacob acquires a car on 1 July 2019 for $60 000 (plus $6 000 GST) which he uses 70% in his business which has a turnover of less than $50 million. As the GST-exclusive cost of the car is more than the $57 581 car limit, depreciation is limited to this amount. As the car exceeds the $30,000 instant asset write-off threshold, it will be placed in a small business pool, to be depreciated at 15% in the first year, and 30% in subsequent years.

GST

For outright purchases, under the GST accruals method creditable acquisitions are attributable to the tax period in which the earlier of the following occurs:

- An invoice is issued/received; or
- The consideration (i.e. money) is received/paid.

On the other hand, if you account on a cash basis, GST credits are attributed to the tax period in which you pay for the supply. Whatever your method of accounting, you must be in possession of a valid tax invoice before GST credits are claimed.

As with depreciation, the GST claimable on cars is limited by the car limit. Following on from the above example, as the GST-exclusive cost of the car exceeds $57 581, the GST claimable would be limited to 1/11th of this amount ($5 234); with private usage then reducing this claim further to $3 664.

LEASE

Rather than choosing to acquire the item outright, your business may elect to finance the acquisition and thus lessen the cash outlay that is initially required and therefore the cashflow impact on your business. The central issue that surrounds any form of financing, and how it is to be accounted for, is whether the person providing the asset under the finance arrangement is the legal owner of that asset. This issue goes to the heart of how the finance transaction is to be treated and is often the subject of ATO scrutiny. The ATO has warned taxpayers about the trap of claiming deductions for what appear to be lease payments when in fact the finance arrangement is a Hire Purchase or similar type of transaction. The only way to identify the difference is to read the terms and conditions of your particular finance agreement. The ATO will consider a finance arrangement to be a lease when:

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

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

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

As the lessee is not the owner of the item, the tax invoice for the purchase of the item would go to the leasing company who would deal with making the claim for any GST on the purchase price of the item at their end. In effect, when an item is financed under a lease arrangement, the amount financed is the GST-exclusive price of the goods.

On payment of the final instalment, the lease company would give you the choice of acquiring the goods or handing them back. At this point in time, the final payment (if made) represents an acquisition of the goods and payment of the residual value is booked as an asset on the Balance Sheet. Under a lease arrangement, it is the regular monthly instalment that is expensed, and it is not until a decision is made at the expiry of the lease that any asset may be booked to the Balance Sheet. It follows that there is no liability booked to the Balance Sheet at any stage of the lease agreement.

INCOME TAX

Under a lease arrangement ownership vests with the lessor and it is the whole lease payment that is expensed in the profit and loss rather than being split into a principal and interest component. The extent of the allowable deduction for income tax purposes will depend upon the business usage of the item by your business as the lessee.

GST

The amount financed is the GST-exclusive amount. As we identified in our earlier discussion, leased goods are not owned by the lessee, but rather ownership is retained by the lessor. As such there is no purchase of an asset but rather there are rental or hire payments in respect of the assets use. It is the rental payments themselves that attract any GST. As such any GST to be claimed is done so in respect to the amount that may be imbedded in the lease instalment. For a taxpayer accounting on a cash basis, any GST would be claimed in the period the physical lease payment was made. For an accruals basis GST taxpayer the GST would be claimed in the tax period in which the lease payment was due (whether paid or not).

HIRE PURCHASE

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

" A contract for the hire of goods where:

1. *The hirer has the right or obligation to buy the goods and*
2. *The charge that is or may be made for the hire, together with any other amount payable under the contract (including an amount to buy the goods or to exercise an option to do so), exceeds the price of the goods and*
3. *Title in the goods does not pass to the hirer until the option to purchase is exercised or*
4. *Where title in the goods does not pass until the final instalment is paid."*

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

INCOME TAX

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 asset acquired. In addition to depreciation, where the goods are owned or deemed to be owned by the purchaser, there are the financing costs to consider. Under both the Hire Purchase and Chattel Mortgage arrangements, the purchaser is faced with a regular instalment that is required to be split into an interest and a principal component. The interest costs are to be expensed, whilst the principal costs reduce the financed amount in the balance sheet. It is therefore very important to obtain from the bank a schedule that identifies the split in these components for each repayment and to account for that split accordingly.

GST (cash or accruals)

1. *Purchase of Asset*

Since 1 July 2012 you are entitled to the **full amount of the GST immediately** (the GST on the purchase price of the item and all interest charges and fees) irrespective of whether you account on a cash or accrual basis for GST. You should therefore record the asset as a capital acquisition. Bear in mind also that if an amount has been shown as a capital acquisition, you may still be required to add back an amount relating to input taxed usage or private usage if applicable.

2. *Payment of Instalments*

For BAS purposes, since 1 July 2012 all the input tax credit is claimed upfront, therefore the principal component and interest component of each Hire Purchase instalment is to be treated as being outside the GST system.

CHATTEL MORTGAGE

A Chattel Mortgage from the perspective of recording the asset purchase and recognising the liability is identical to that of a Hire Purchase arrangement. The difference between a Chattel Mortgage and other forms of finance such as Hire Purchase and lease comes when dealing with the GST consequences which will be discussed later.

A Chattel Mortgage as a form of finance treats the purchaser of the goods as the owner of the goods as if they had acquired them outright but have borrowed in order to do so. They are effectively treated as owning the goods from the outset of the arrangement unlike a Hire Purchase which views the purchaser as the eventual owner on payment of the final instalment. Like the Hire Purchase arrangement, the repayment of borrowed funds is required to be broken down into an interest and principal component which is then expensed and reduces the borrowing similar to a Hire Purchase.

INCOME TAX

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

GST (cash or accruals)

1. *Purchase of Asset*

Under a Chattel Mortgage arrangement you are entitled to the **full amount of the GST on the purchase price of the item immediately**, irrespective of whether you account on a cash or accrual basis for GST. This is because the creation of the Chattel Mortgage contract amounts to a settlement for the purchase of the item. You should therefore record the asset as a capital acquisition. Bear in mind also that if an amount has been shown as a capital acquisition, you may still be required to add back an amount relating to input taxed usage or private usage if applicable.

1. *Payment of Instalments*

The interest component of each Chattel Mortgage instalment is a financial supply, therefore needs to be treated as a GST Free acquisition. The principal component of each instalment is to be treated as being outside the GST system.

Failure To Lodge On Time Penalty

Although there has been no official ATO pronouncement, anecdotal evidence suggests that it is now strictly enforcing failure to lodge on time penalties. With tax returns due shortly, this article takes a close look at all issues surrounding the ATO's failure to lodge on time penalty.

OVERVIEW

The Failure to Lodge (FTL) on time penalty is an administrative penalty that may be imposed by the ATO for the late lodgement of a particular return, notice, statement or other approved form including:

- Income tax returns (for individuals, companies, partnerships, trusts etc.)
- Business Activity Statements
- FBT returns
- Annual GST returns
- Annual GST information reports
- Taxable payment annual reports.

HOW MUCH?

All entities including individuals are liable for the base penalty amount where they fail to lodge the relevant document on time. The base penalty amount is one penalty unit for each 28-day period or part period that the document remains outstanding, up to a maximum of five penalty units. With the value of a penalty unit currently sitting at $210, sizable penalties can now be imposed where you are late to lodge:

DAYS LATE	PENALTY
0-27	$210 (1 unit)
28-55	$420 (2 units)
56-83	$630 (3 units)
84-111	$840 (4 units)
112 or more	$1,050 (5 units)

The amount of the penalty payable increases according to the size of the offending entity as follows:

TYPE OF ENTITY	PENALTY
Small Entity (An entity that is not a medium or large entity)	The base penalty amount for every 28 days overdue (see opposite table)
Medium Entity • A medium withholder under the PAYG system, or • Has assessable income of more than $1 million but less than $20 million, or • Has a current GST annual turnover of more than $1 million but less than $20 million	Double the base penalty amount for every 28 days overdue (double the opposite table)
Large Entity • A large withholder under the PAYG withholding system, or • Has an assessable income of more than $20 million, or • Has a current annual GST turnover of $20 million or more	Five times the base penalty amount for every 28 days overdue (five times the opposite table)

EXAMPLE

Joy Co is a medium withholder and was due to submit its BAS by 28 July, but it lodged on 26 August. Despite only being 29 days late, Joy Co is liable for a $840 FTL penalty (the base penalty amount (2 penalty units) is multiplied by 2 because the taxpayer is a medium entity).

NO PENALTY

Generally speaking, a penalty will not be applied to late lodged income tax returns, FBT returns, annual GST returns or Activity Statements where the lodgment results in a refund or a nil result.

REMISSION

As stated, anecdotal evidence suggests that the ATO is strictly enforcing FTL penalties. Nonetheless, you can apply for remission in writing via the Business Portal (on the secure Portal mail facility) or by mail to:

Australian Taxation Office
PO Box 3524
ALBURY NSW 2640

Alternatively, your tax agent or BAS Agent (in the case of a BAS FTL) can apply via their portal or by phone.

According to ATO Practice Statement PSLA 2011/19 remissions may be granted where you or your registered tax agent or BAS agent can demonstrate that the late lodgement was due to circumstances beyond your or their control which clearly could not be predicted and you or your agent was not in a position to request further time to lodge. Such circumstances may include but are not limited to natural disasters or the serious illness of an individual or their agent if a sole practitioner.

SAFE HARBOR

If you used a registered tax agent or registered BAS Agent to prepare and lodge your return/activity statement etc. then under the Safe Harbor rules the ATO may cancel the FTL penalty if the action/inaction of the agent was the reason why the document was lodgement late (provided the agent was not reckless or intentionally disregarded the law). You can request Safe Harbor protection in writing to the above address or via the Business Portal (on the secure Portal mail facility). To be granted Safe Harbor, you must be able to prove that you gave all the relevant information to your agent in time for the document to be lodged by the due date.

TAKE HOME MESSAGE

The ATO is now strictly enforcing the FTL penalty. Know your due dates (or extended due dates if you use an agent) and ensure you lodge on time (or ensure you provide all the required information to your agent to enable them to lodge on time).

TOUGH TIME STRATEGIES

With the economy slowing and growth stagnant, this article offers business owners and individuals some ideas for financial relief.

ATO PAYMENT ARRANGEMENT

From time-to-time, all businesses are in debt with the ATO. Consider entering into an ATO payment arrangement if your business is. The ATO offers flexible arrangements which allow you to pay off your debt in amounts that are affordable and won't unduly impact your cash flow or cash reserves. Where you enter into such an arrangement, general interest charge will still be levied on any amounts outstanding after the due date. To enter into an arrangement, you or your advisor can phone the ATO.

INTEREST-ONLY

Almost all business owners have outstanding loans. Some business loans and many home loans have an interest-only option which reduces your repayments as you only pay the interest portion of your loan for a set period. Revisit the terms of your loan agreement to see if you have this flexibility. Even where you loan does not have this facility, some financiers will allow you to pay interest-only on application when you or your business is struggling financially.

INSTALMENT VARIATIONS

If your business is less profitable this year than last year, then you should consider varying your PAYG instalments downwards.

PAYG instalments are effectively prepayments towards your expected end of year tax liability. The amount of instalments you are required to pay is generally based on your income from the previous year. The instalment amounts are provided to you by the ATO as either an instalment rate (which you then multiply by your income) or a fixed dollar amount. Because the amounts and rates are based on your income from a prior year, you should consider varying the PAYG instalment dollar amount downwards if your current year turnover is trending less than last year. By doing so, it may provide your business with significant short-term relief.

In making a downwards variation, be aware that penalties may apply if your variation results in you paying an amount that is less than 85% of the actual tax payable on your business and investment income for the financial year. Therefore, before you make a variation, consult your advisor.

RENT-FREE PERIODS

If your lease is coming to an end, consider requesting from your landlord a rent-free period in the next term. When your lease is up for renewal or when a landlord is looking to entice you as a new tenant, it's common commercial practice for them to offer lease incentives to secure your business. Lease incentives come in many forms including:

- Cash payments (including upfront payments, the payment of your removal costs, payment for the surrender of an existing lease etc.)
- Rent-free periods
- Free fit-outs
- Non-cash incentives such as holiday packages, free equipment etc.

Choosing a rent-free period (which is generally the most common incentive offered) not only gives you relief from what is one of your business's most expensive fixed costs, but it is also generally the best result from a tax perspective. Rent-free periods are taxation neutral. The amounts saved as a result of the rent-free period will not be assessable to the tenant, however nor will they be deductible.

BANKRUPTCY

Perhaps the ultimate step if you are experiencing financial difficulty is making an application for bankruptcy, however this decision should not be made lightly. Bankruptcy is the process by which you obtain protection from creditors when you are unable to repay your outstanding debts and are unable to reach agreement with those creditors to discharge yourself from your repayment obligations. If you co-operate with your Bankruptcy Trustee (a licensed professional who oversees your period of bankruptcy) your bankruptcy will generally last for three years. While we would always recommend that before declaring yourself bankrupt you seek the counsel of your financial advisor, people generally consider bankruptcy when:

- In making repayments to creditors, you do not have sufficient money to meet general living expenses
- You do not have assets that you could sell in order to generate the cash to repay your creditors and
- You can survive with the restriction on access to credit.

ONCE YOU ARE DECLARED BANKRUPT

The main reason why people declare themselves bankrupt is to seek shelter from creditors. Once you are declared bankrupt, creditors are generally unable to commence or continue with action to recover debts owed to them, except for:

- Debts that are secured against an asset (e.g. family home, car etc.)
- Fines or penalties imposed by a court HECS/HELP obligations
- Social Security overpayments, and
- Child support.

During bankruptcy, if your after-tax income exceeds the following amounts, you will be required to pay half of the excess to your trustee in bankruptcy.

Number of Dependents	Income Limit
Zero	$58,331.00
One	$68,830.58
Two	$74,080.37
Three	$76,996.92
Four	$78,163.54
More than Four	$79,330.16

*Compulsory contributions are paid at the rate of 50 cents in every dollar over the above thresholds for each year of your bankruptcy.

AFTER BANKRUPTCY

Once the three-year period has expired and you are discharged from bankruptcy, you are released from all your unsecured debts, and those not listed above. However, even after you are discharged your name will forever appear on the National Personal Insolvency Index register which can be checked by lending institutions when you apply for credit in the future. This can have ongoing effects in terms of being able to access finance in the future. Therefore, before declaring yourself bankrupt we recommend seeking professional advice.

CASH FLOW FORECAST

Because cash is the cornerstone of business, planning your cash flow is vital. Studies suggest that the failure to plan cash flow is one of the leading causes of small business failure. To this end, a Cash Flow Forecast is a crucial cash management tool for operating your business effectively. Specifically, a Cash Flow Forecast tracks the sources and amounts of cash coming into and out of your business over a given period.

It enables you to foresee peaks and troughs of cash amounts held by your business, and therefore whether you have sufficient cash to fund your debts at a particular time. Moreover, it alerts you to when you may need to take action – by discounting stock or getting an overdraft, for example – to make sure your business has sufficient cash to meets its needs. On the other hand, it also allows you to see when you have large cash surpluses, which may indicate that you have borrowed too much, or you have money that ought to be invested. In practical terms, a Cash Flow Forecast can also:

- make your business less vulnerable to external events in the economy, such as interest rate rises;
- reduce your reliance on external funding;
- improve your credit rating;
- assist in the planning and re-allocation of resources; and
- help you to recognise the factors that have a major impact on your profitability.

At this point, a distinction should be drawn between budgets and Cash Flow Forecasts. While budgets are designed to predict how viable a business will be over a given period, unlike Cash Flow Forecasts, they include non-cash items, such as depreciation and outstanding creditors. By contrast, as stated above, a Cash Flow Forecast focuses on the cash position of a business at a given period. Non-cash items do not feature. In short, budgets will give you the profit position; Cash Flow Forecasts will give you the cash position. Cash flow forecasting can be used by, and be of great assistance to, the following entities:

- business owners
- start-up businesses
- financiers
- creditors.

Talk with your Accountant or Bookkeeper today about developing a Cash-flow Forecast for your business.

ACCESS YOUR SUPERANNUATION

Individuals who have fallen on hard times, need to be aware that they may be able to access their superannuation early! By way of background, you can only access your superannuation once you meet a condition of release. By far the most common conditions of release are:

- Reaching Preservation Age (between 55 and 60 depending on when you were born) and retiring
- Ceasing an employment arrangement on or after the age of 60
- Reaching 65 years of age (even if you are still working)
- Dying.

However, individuals can also access their superannuation savings on compassionate grounds. Subject to certain cashing restrictions, an individual's superannuation benefits can be released on compassionate grounds where they lack the capacity to meet the following expenses:

- Medical treatment or medical transport for the individual or a dependant
- Payment of a loan, to prevent either fore-closure of a mortgage on the individual's principal place of residence, or exercise by the mortgagee of an express or statu-tory power of sale over the individual's principal place of residence
- Payments to modify the individual's principal place of residence or vehicle to accommodate the special needs of the individual or a dependant arising from severe disability
- Expenses associated with an individual's palliative care in the case of impending death, funeral or burial
- Any other expenses which are consistent with the compassionate grounds criteria, outlined above, but may be outside the specific criteria.

The amount of superannuation that can be released on compassionate grounds is limited to what is reasonably needed. If your application is successful, the amount will be paid as a lump sum by your superannuation fund. Your application must be made to the Federal Department of Human Services www.humanservices.gov.au

EXTEND PAYMENT TERMS WITH SUPPLIERS

To manage cash flow, review supplier payment terms. Where possible, consider requesting them to extend payment days from 30 to 45 days.

SIX KEYS WHEN STARTING OUT IN BUSINESS

This article provides an overview of the important things to get right when starting out in business. Mistakes made when commencing business, can be expensive to rectify later on.

1. FUNDING AND EQUITY DECISIONS

There are a number of ways to fund a new business including:

- Bootstrap (essentially, building a business from personal finances or from the operating revenues of the new business)
- Family and friends
- Personal loans
- Business loans
- Asset loans
- Debtor financing
- Angel capital
- Venture capital
- Crowdfunding.

Your personal circumstances will typically dictate what's possible, but be sure to do your homework and take advice.

Another way of gaining funding is to take on a business partner. This leads to a discussion of the very slippery issue of equity. Taking on a partner or granting equity to another person in your business is not a decision to be taken lightly. Equity can be forever. Once a person has equity, you will be forever sharing profits and/or ownership with them, and forever reporting and accountable to them. You should think long and hard about who can offer genuine, long-term strategic value to your business and who is merely undertaking a task or filling a role. If it's the latter, that person should generally not be a candidate for equity. The key here is to reward value not time.

There are no "hard and fast" rules, but here are some questions to ask when considering whether someone is deserving of equity in your business:

1. Will they deliver long-term value and be instrumental to the business' success?
2. Will they take the business to heights it couldn't otherwise get to?
3. Will they solve a crisis that threatens the business' livelihood?
4. Will they cause greater damage by doing their own thing?

Having decided that someone is deserving of equity, the style of equity they should receive is then a separate consideration again. There are once more a number of options which include:

- Full equity
- Dividend (profit) participation but not capital participation
- Phantom equity (in other words, a bonus scheme of sorts)
- Vesting equity (i.e. equity that vests gradually over time based on targets being met).

2. CHOICE OF TRADING STRUCTURE

When we talk about "trading structures", we are referring to a decision between sole trader, partnership, trust or company. Every circumstance is different and the right answer will sometimes be a combination of more than one entity. Utilising the wrong structure and needing to rectify it later on can lead to significant disruption and transaction costs, including capital gains tax and stamp duty. It pays

to seek professional advice to come up with a structure that suits your circumstances, and is scalable and effective.

Among the considerations when choosing a trading structure are:

- Income tax effectiveness
- Capital Gains Tax (CGT) friendliness in the event of a future sale
- Asset protection (both personal and for the business)
- Liability
- Estate and succession planning
- Cost (establishment and ongoing)
- Complexity
- Ownership requirements.

It may be cheaper to avoid using a professional advisor, but a simple mistake can mean paying a much higher price later on.

3. UNDERSTAND YOUR STATUTORY OBLIGATIONS

When you're starting out in business, the excitement and frenetic pace can sometimes mean that the more mundane tasks can be neglected.

It is important to understand which government identifiers you will need, which include:

- Tax File Number (TFN)
- Australian Business Number (ABN)
- GST & PAYG-W registrations
- Business name registrations.

Similarly, you should develop an awareness of your reporting obligations and their timings. This refers to the likes of:

- Financial statements
- Monthly or quarterly Activity Statements
- Annual Income Tax Returns
- ASIC filings (companies only).

And then of course there is arguably the trickiest area of all – employing staff. This spawns a myriad of issues which you should seek expert advice on, including:

- Distinguishing Employees from Contractors
- Determining the status of employees, i.e. casual vs part-time vs full-time
- Ascertaining rates of pay (including Awards) – employees are generally speaking incredibly sensitive when it comes to any mistakes made with their pay
- Understanding leave entitlements
- Obtaining TFN Declarations and Choice of Super forms
- Making quarterly Superannuation payments.

4. EMBRACE CLOUD ACCOUNTING

Cloud accounting, sometimes referred to as "online accounting", serves the same function as accounting software that you would install on your computer, except it runs on hosted servers and you access it using a web browser or app. Your data is thus stored and processed "**in the cloud**".

Cloud accounting can carry with it a host of benefits to business owners, stakeholders and advisors, including:

- Real-time
- Reduced data entry
- Intelligent software
- No more filing
- Automatic back-ups
- One version
- Mobility & flexibility

In the Australian market, most of the major software vendors have cloud accounting offerings.

5. SURROUND YOURSELF WITH GOOD ADVISORS

Being new to business is not for the faint-hearted. It can be a lonely and incredibly daunting space. You need to pick a good team and that includes professional advisors who understand your mission and passion, and want to take the journey with you.

Regardless of the space that they operate in – whether it be accounting, legal, financial services or any other – the aim should be to choose advisors who are as much your partners in business as they are your supplier of services. Sometimes it will take a while to settle on the right advisors, but you'll know when the time arrives.

6. STAFF RECRUITMENT

The first place you should try is your network. Place a "wanted ad'" on social media sites like Facebook and/or LinkedIn. Ideally you want someone that is a friend of a friend, so they are a referral. This is also free, so obviously the best choice all around. If you don't have any success you can put an ad' on Gumtree. This is not very expensive and it locates people who are looking for work locally.

The next course of action would be to use Seek. There is a cost to this and also you start to move out of your area. The people who are looking on this site are going to be Australian-based. Unfortunately, you are also going get a lot of applicants. Seek ads cost about $290 and there is a lot of culling to get to the interview stage. You can instead use the services of a Recruiter. Be careful in using recruitment agencies. They are very expensive – 10% to 15% of salary (so be clear in what you are getting for the fee).

There are also firms that can offer recruitment services on an hourly basis, so if you are busy and can't take the time out to shortlist and interview, utilise their services. They can do this over a few hours, because they are experienced at shortlisting and can do this faster than you can.

It is important you have a contract between yourself and your worker, whether you are employing them casually, permanent full-time, part-time or independently. This clearly outlines the relationship you have with them. It stipulates things like:

- Remuneration
- Probation
- Superannuation
- Termination
- Hours of work
- Leave arrangements.

You also need to give your staff a Fair Work Statement. This can be sourced from the Fair Work site.

Getting the person with the skills that you are looking for should be second order. The first thing you should look for when employing someone is work ethic and fit with your organisation. You can always teach the skills you need. If you can find someone who is going to put in the extra mile and works for you because they want to, that is what you should be looking for. They get up of a morning and want to come to work. They start early, finish a bit later and don't check the clock for breaks. Unfortunately, this is difficult to glean in an interview, so sometimes you need to do a bit of "try before you buy".

If they are permanent part-time or full-time, you can still let them go in the probation period, without any more than paying out their notice period of one week. Always place a six-month probation period in your contracts, so there is plenty of time to see how they are going.

In job advertisements, ensure you have a very clear description of the role. You will lose new recruits pretty quickly if they have to do a task that you didn't mention in the ad' or at the interview. For some people, there are certain tasks that will be "deal breakers" and you want to find out those, sooner rather than later. It is also important to include the location at which they are going to have to go to see clients. If you have clients that are outside the metropolitan area and you are expecting the employee to go to these sites, you need to discuss if you are going to pay them to travel to these sites or pay them once they arrive. This is also an important point to get on the table early because it may be a "deal breaker".

If you are requiring certain skill sets, ensure they are also included in your ad.

In this edition, we look at the black economy crackdown, the reintroduction of the super guarantee amnesty, and more!

EMPLOYEE DEDUCTIONS FOR WORK EXPENSES

The ATO has just released a draft taxation ruling TR 2019/D4: *Income tax: employees: deductions for work expenses under section 8-1 of the Income Tax Assessment Act 1997.* Practical guidance on common work expense types, including occupation-specific expenses, is provided through an appendix that gives a list of work expense categories with links to relevant rulings, determinations and other material published by the ATO. The ruling states that these links will be updated as further rulings and guidance products are issued.

You can access the ruling from the legal database section of the ATO website www.ato.gov.au

TRUSTS EXPLOITING CGT RESTRUCTURE ROLLOVER

The ATO has issued Taxpayer Alert TA 2019/2 *Trusts avoiding capital gains tax (CGT) by exploiting restructure roll-over.*

By way of background, this rollover provides CGT relief (deferring a CGT liability until the asset is eventually sold) where a Small Business Entity (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. For example, where a business restructures by changing from sole trader to a trust structure, the transfer of the assets will not attract CGT if the same underlying ownership persist. The rollover comes in particularly handy as the most appropriate structure for an SBE may change over time, or a new SBE may choose an initial structure that it later finds no longer appropriate.

This Alert outlines the ATO's concerns with arrangements involving the trustee of a unit trust inappropriately avoiding CGT when selling an asset with a large unrealised capital gain to a purchaser, by transferring the asset to a trustee of a new unit trust to obtain a restructure roll-over.

The ATO isn't concerned where the restructure roll-over has been used as part of a genuine restructure.

BLACK ECONOMY TIPS OFFS EXPLODE

Tips-off are continuing to flow in to the ATO's Black Economy Integrity Centre. The ATO has revealed it received a record-breaking 15,000 tip-offs to its Tax Integrity Centre in the first quarter of this financial year as the agency continues its focus on the black economy.

The top categories of tip-offs the ATO has received so far this year have been about:

1. Not declaring income
2. Demanding cash from customers and / or paying workers "cash in hand"
3. Someone's lifestyle does not appear to match their income level
4. Not reporting sales.

ATO Assistant Commissioner said the results are not surprising:

"We're hearing loud and clear that people are sick and tired of this kind of dodgy behaviour. Running a small business can be a really tough gig, and when dishonest competitors are cheating the tax system by operating off the books, it's really unfair and makes it even harder to succeed. It's also effectively stealing from the community."

"So it's hardly surprising that so many people have tipped us off about this kind of behaviour so we can investigate and keep things fair for everyone," Mr Holt said.

"The proof is in the pudding. Our risk indicators tell us that there is a black economy problem in the café and restaurant industry and the fact that tip-offs about this industry top our list tells us that there is still more work to be done to protect honest café and restaurant owners and workers in this industry".

"Trading in cash and paying your workers in cash is perfectly legal but failing to report the income to the ATO and not paying your workers their entitlements like superannuation is not only illegal but also incredibly unfair."

"Regardless of what industry you're in, if you're cooking the books, your competitors and workers are probably aware of it. And they're not hesitating to let us know about it."

"The hospitality industry employs more than 800,000 people and these workers all deserve to be paid their full entitlements. Profit margins in this sector are low, which is probably why some operators think they can top up their bottom line by dealing in cash. But this is a very risky strategy. Cash is not favoured by most customers as a payment method, we all prefer to 'tap and go'. Also, we know that businesses that deal primarily in cash tend to make more mistakes."

Members of the community can make a tip-off by:

- completing a Tip-Off form on the ATO website at ato.gov.au/tipoff or in the 'contact us' section of the ATO app (which is available from the App store)
- phoning the ATO's Black Economy Hotline on 1800 060 062.

FIRST HOME HELP

The first-home loan deposit scheme has been passed into law.

During the Election campaign, the Government pledged to help first home-buyers into the market by topping up their 5% deposits with a Government guarantee for 15% of the loan.

Single people earning up to $125,000 or couples earning up to $200,000 will be eligible for this first-home loan deposit scheme if they have saved 5% of the value of the home.

The Government will set aside $500m of equity through the National Housing Finance and Investment Corporation to guarantee loans up to a value of 20% of the home. Buyers won't need to have a full 20% deposit and will save around $10,000 by not having to pay lenders mortgage insurance.

The scheme is limited to 10,000 first homebuyers, roughly one-in-10 of the 110,000 Australians who bought their first home in 2018.

The Government has suggested there will be regional caps on the value of homes for which it will guarantee a deposit.

Once the first homebuyer has borrowed 95% of the value of the house, the Government guarantee lasts until the homeowner refinances.

SUPER GUARANTEE AMNESTY

The Government's proposed superannuation amnesty is now a step closer to becoming law. In late November, The Senate Economics Legislation Committee has *tabled its report on Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019* and recommended that the amnesty be passed into law.

The amnesty was originally announced in May 2018 to apply from 24 May 2018 until 23 May 2019, but the legislation to establish the amnesty did not pass the last parliament.

Specifically, an employer that qualifies for the amnesty in relation to their SG shortfall for a quarter:

- Will have the administrative penalty waived ($20 per employee, per quarter)
- Will have Part 7 penalties waived (this can be an additional penalty of up to 200% of the shortfall owed)
- Will be able to deduct the late shortfall contribution (under current law, late payments cannot be deducted).

The beneficial treatment provided by the amnesty is available for a quarter that ends at least 28 days before the start of the amnesty period. This means that the beneficial treatment provided by the amnesty is available in relation to the quarter starting on 1 July 1992 (which is the day that Superannuation Guarantee commenced) and all subsequent quarters until and including the quarter starting on 1 January 2018. An employer will not be able to benefit from the amnesty for SG shortfall relating to the quarter starting on 1 April 2018 or subsequent quarters.

To qualify for the amnesty, a disclosure of a superannuation amount owing must be made during the amnesty period. The amnesty period is the period that started on 24 May 2018 and ends 6 months after the day the legislation is passed (therefore, beyond April 2020). Since the one-off amnesty was announced, over 7,000 employers have come forward to voluntarily disclose historical unpaid super.

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. In its own words the ATO is now undertaking matching exercises right down to the employee level whereby they: "compare the amounts you report with information we receive from super funds. If we identify your contributions vary significantly from the liability reported, we will contact you".

MYGOV SECURITY

A recent case highlights the risk of identity crime and the importance of not sharing your private myGov password information.

Benjamin Cox posed as a tax agent and lodged over a thousand individual tax returns using each taxpayer's personal myGov access. He charged clients for his services and also took some refunds his clients were due by using his own bank details to take the payments.

Mr. Cox pleaded guilty to dishonestly obtaining financial advantage by deception, and also dealing with identity information to commit an indictable offence.

ATO FOCUS ON RENTAL PROPERTY OWNERS

With Tax Time now here, the ATO is encouraging rental property owners to ensure that their deduction claims are accurate. It will be paying close attention to:

EXCESSIVE INTEREST EXPENSE CLAIMS

Your interest claim must be limited to interest you have actually paid from 1 July to 30 June on borrowed funds used to purchase the rental property.

REAL LIFE ATO CASE

Rental property owner Sarah reported high rental interest claims and was required to provide bank statements as evidence to the ATO. The statements showed borrowings well in excess of the purchase price of the property. The interest charges relating to the private part of the loan were disallowed.

Sarah was required to pay more than $15, 000 back to the ATO.

INCORRECT APPORTIONMENT OF RENTAL INCOME AND EXPENSES BETWEEN OWNERS

The way that rental income and expenses are divided between co-owners varies depending on whether the co owners are joint tenants or tenants in common or there is a partnership carrying on a rental property business.

Co-owners who are not carrying on a rental property business (generally, it is very unlikely that a business is being carried on) must divide the income and expenses for the rental property in line with their legal interest in the property. If they own the property as:

- Joint tenants, they each hold an equal interest in the property (therefore 50% of income, and 50% of expenses)
- Tenants in common, they may hold unequal interests in the property. For example, one person may hold a 20% interest and the other an 80% interest.

...rental income and expenses must be attributed to each co-owner according to their legal interest in the property, irrespective of any agreement between co-owners, either oral or in writing, stating otherwise.

REAL LIFE ATO CASE

A rental property was investigated by the ATO where the rental expenses had not been apportioned correctly. The property was jointly owned by a couple but the higher earner was claiming the larger portion of the expenses.

The expenses were adjusted to reflect the legal ownership interest in the property, and the higher earner had to pay back more than $8, 000 in tax.

HOMES THAT ARE GENUINELY NOT AVAILABLE FOR RENT

To claim rental property deductions, your property must either be being currently rented out, or be genuinely available for rent. In the case of the latter, the property must be habitable (for example, if you were carrying out major renovations this may render the property uninhabitable), and it would also be expected that you could produce evidence to show it being genuinely made available for rent (e.g. advertisements in newspapers, or listings with local real estate agents).

REAL LIFE ATO CASE

John had a newly purchased rental property that had not returned any rental income. He told the ATO that the property was occasionally advertised on community noticeboards and websites. John was unable to prove that there was a genuine arrangement in which he actively sought tenants, or that he had taken sufficient steps to genuinely advertise the property for rent.

A rental loss of almost $60, 000 was disallowed and penalties were applied.

INCORRECT CLAIMS FOR NEWLY PURCHASED PROPERTIES

You cannot claim as a deduction acquisition costs such as Stamp Duty, conveyancing expenses, legal expenses). These costs form part of the property's cost base and can only be taken into account for capital gains tax (CGT) purposes when you dispose of the property.

The other common expense that is not claimable as a deduction is initial repairs made to the property. If the repairs are performed just after the purchase of the property in preparation to rent it out, then they are considered to be *initial repairs*. These *cannot* be claimed as a rental property expense on your tax return. Instead they will form part of the cost base of the property and will reduce your capital gain (or increase your capital loss) when you sell the property.

REAL LIFE ATO CASE

Nancy recently purchased a rental property and had her tax return amended by the ATO to remove deductions for repairs, capital works and incorrectly apportioned borrowing expenses. Nancy had inappropriately claimed a deduction for repairs to defects present in a newly purchased property and the capital works, and borrowing expenses should have been spread over several years. Nancy also provided false receipts for property management fees undertaken by a family member.

Nancy was required to pay more than $57, 000 back to the ATO as well as over $10, 000 in penalties for making a false statement in her tax return.

COMMON DIVISION 7A ERRORS

Recently the ATO released a list of common errors made in relation to Division 7A.

By way of background, Division 7A is an integrity measure designed at preventing private companies from making tax-free distributions to shareholders or their associates (e.g. spouses). Advances, loans or other payments to shareholders or their associates may be deemed as assessable dividends unless they come within specified exclusions such as being put under a complying loan agreement. The common errors identified by the ATO include:

- **Shared Bank Accounts** - Where a number of entities operate out of the same bank account, funds used from that account by shareholders or their associates may give rise to deemed dividends.
- **Minimum Yearly Repayments** – Even where a complying loan agreement is in place, a deemed dividend may arise (and be assessable to the respective shareholder/associate) if the minimum yearly repayment (worked out using the current year's benchmark interest rate) is not made by the end of the income year.
- **Associates** – Division 7A applies to both shareholders and their associates. Associates include the trustee of a discretionary trust where the shareholder is also a beneficiary of the trust, even if they have not actually received a distribution.
- **UPEs** – An unpaid present entitlement (UPE) from a trust to an associated private company can amount to providing financial accommodation and thus be considered a loan for Division 7A purposes. While exceptions do apply, unless the funds are held on sub-trust for the sole benefit of the private company, or a complying loan agreement is entered into by lodgement day of the company's tax return, the amounts will be treated as a dividend paid by the company to the trust.

'DODGY' FINANCIAL PRODUCTS

The ATO has advised that it is on the look out for those entering into "dodgy" financial products.

The ATO counsels investors to carefully review any material – such as product disclosure statements – before deciding whether to invest in the product. While acknowledging that the majority of financial products are within the law and are legitimate investments, the ATO is concerned with a small number of products that promise to provide investors with tax benefits that are not available to some or all investors in the product. Issues that concern the ATO include advice that:

- Suggests investors draw certain conclusions about positive tax outcomes from investing in certain products that most taxpayers would not receive in their individual circumstances (i.e. statements such as "generally, deductions will be available, however for certain taxpayers a deduction will not be available');
- Includes inappropriate statements such as when discussing the possible application of the tax avoidance provisions to the arrangements, stating that 'no other economic alternative to this transaction exists'. The ATO warns that simply making this statement does not make it true.

The ATO recommends that you seek independent tax or legal advice about the tax consequences of investing in complex financial products. This advice should be from an advisor who is not themselves involved in the selling of the product. That tax advice should be separate from any advice you receive from a financial planner about the merits of the investment itself. You should also check to see if the ATO has issued a product ruling on the investment.