

MTS

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**FBT YEAR-
END TIPS**

**NATURAL
DISASTER KIT**

**LATEST TAX
NEWS**

...AND MUCH MORE!



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MAR/APR

2020

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Print Post Approved 100019425

Published by **My Tax Savers**, P.O.Box 2255 Southport BC 4215 Email: info@mytaxsavers.com.au Phone: 1800 SAVETAX
Web: www.mytaxsavers.com.au My Tax Savers is a trading name of My Tax Savers Pty Ltd ABN 85 059 305 976.

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

MARCH 2020

21 MARCH

February monthly Activity Statements – due for lodgement and payment

APRIL 2020

21 APRIL

March monthly Activity Statements – due for lodgement and payment

21 APRIL

Quarter 3 (January–March) PAYG instalment Activity Statements for head companies of consolidated groups – due for lodgement and payment

28 APRIL

Quarter 3 (January–March) Activity Statements – due for lodgement and payment (if lodging by paper)

28 APRIL

Quarter 3 (January–March) PAYG instalment notices (forms R, S or T) – final date for payment and, if varying the instalment amount, lodgement

28 APRIL

Quarter 3 (January–March) GST instalment notices (forms S and T) – final date for payment and, if varying the instalment amount, lodgement

28 APRIL

Quarter 3 (January–March) superannuation guarantee contributions to be made to a complying fund on behalf of your employees

30 APRIL

Quarter 3 (January–March) TFN Report for closely held trusts for TFNs quoted to a trustee by beneficiaries – final date for lodgment

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





IT'S FBT TIME!

31 March marks the end of the Fringe Benefits Tax year. This article aims to assist employers to comply with ATO requirements and to minimize their 2019/2020 FBT liability.

CHECKLIST

One of the major causes of FBT non-compliance is the failure of employers to identify benefits that have been provided throughout the year to employees and their associates (e.g. spouses). In identifying taxable or exempt benefits that have been provided during the year, the best place to start is by reviewing your accounts and ledgers as well as employee salary packages and staff policies. Having done this, then use the following non-exhaustive checklist to further ascertain whether benefits have been provided:

MOTOR VEHICLE EXPENSES

- ✓ Have you reimbursed an employee's motor vehicle expenses during the year?
- ✓ Have you made available a company car to an employee? Note that even where the vehicle is a utility or other 'work-horse' vehicle, a residual fringe benefit may arise.

Loans

- ✓ Have you provided a loan to an employee during the year or released them from paying a debt owing to you?

Housing

- ✓ Have you provided an employee with a right to use accommodation which they treat as their usual home?

LAFHA

- ✓ Have you paid an allowance to an employee to compensate them for the cost of expenses incurred because they are required to live away from their usual home for work purposes?

Travel and Entertainment

- ✓ Have you paid or reimbursed an employee for their travel expenses?
- ✓ Did you pay for or reimburse a taxi fare for an employee?
- ✓ Did you provide or reimburse an employee for the cost of meal entertainment or accommodation or travel in respect of that entertainment?
- ✓ Did you provide recreation (e.g. tickets to sporting events) or accommodation or travel in respect of that recreation, or hire or lease entertainment facilities for an employee's use?

Expense Payments

- ✓ Did you pay for or reimburse an employee for a private expense of theirs?

Car Parking

- ✓ Did you provide a car parking space for the use of an employee (many other conditions apply) or reimburse them for the cost of car parking?

Property

- ✓ Did you provide an employee with property (either in-house or external) e.g. goods, services, real property etc.?

If you answer yes to any of the above questions, a fringe benefit may have been provided, and you may wish to discuss this further with your advisor.

CAR BENEFITS

One of the most commonly provided fringe benefits is car fringe benefits. In terms of substantiation, check the following:

ARE YOUR LOG BOOKS VALID AND CORRECT?

If you use the Operating Cost Method to calculate FBT, in order to calculate the private use percentage (and therefore the FBT payable), you will need to maintain a valid

log book recording your usage of the vehicle over a 12-week sample period by 31 March. Failure to do so will result in the entire use of the vehicle – work and private – being subject to FBT. Log books are valid for five years (assuming no major change in business use, in which case you would need a fresh log book). If you first kept a log book for the 2014/2015 FBT year, you must have kept a new log book for 2019/2020.

Leading up to 31 March, if you do not have a valid log book and are using the Operating Cost Method, don't panic! Although we are now right at the end of the FBT year, it is not too late to keep a log book to substantiate the private use of the vehicle for 2019/2020. Log books can commence as late as right at the end of the FBT year even though the end of the 12-week period for which it needs to be maintained may extend beyond the end of the FBT year in which the log book commenced. To reduce the compliance burden, we would encourage you to download one of the innumerable log book 'apps' on the market, either from the AppStore or GooglePlay as the case may be. The following information must be recorded for each business trip:

- The date the trip began and ended
- Odometer readings at the start and end of each trip
- Kilometers travelled, and
- The description of the purpose of the trip (not just a generic description such as 'work').

KILOMETRE READINGS

Under the Statutory Formula Method, you will need to make note of the closing odometer readings as at 31 March 2020.

Days Available for Private Use

If using the Statutory Formula Method, have you determined the number of days where the car was not available for private use? This may include where the vehicle was garaged at work, or in for repairs. Identifying such days will reduce your FBT liability.

Fuel Use Declarations

You can apply car expenses paid for by an employee as an employee contribution under both the Statutory Formula and Operating Cost methods. (Employee contributions will reduce your FBT payable). However, the employee must provide you with documentary evidence of the expenditure (for example, receipts or invoices). In the case of petrol and oil costs, a declaration from the employee is sufficient. Generally all FBT

Employee Declarations (not just the Fuel Use Declaration) must be obtained by the due date for lodging your FBT return or, if you do not have to lodge a return, by 21 May 2020.

RECEIPTS AND INVOICES

Obtain these for costs paid personally by an employee such as registration, insurance, servicing, and other running costs. If paid for by the employee, these amounts may reduce the taxable value of the benefit and thus the FBT payable by the employer.

EXEMPT VEHICLE DECLARATIONS

Taxi, panel van, utility or other commercial vehicles (not principally designed to carry passengers) are exempt from FBT if private use is limited to:

- Travel between home and work
- Travel that is incidental to travel in the course of employment duties
- Non work-related use that is minor, infrequent and irregular.

Where this is the case, the employee must complete an Exempt Vehicles Declaration (available from the ATO website). This form must be obtained from employees and kept on file.

HOW LONG HAS THE VEHICLE BEEN OWNED?

If you are using the Statutory Formula Method, has the vehicle been held for four years? If so, the cost base of the vehicle can be reduced by one-third (this reduction does not apply to non-business accessories fitted after the acquisition of the vehicle). Non-business accessories fitted to the vehicle during the FBT year must be added to the base value of the vehicle. For example, if an employer purchases a car for \$90,000 on 5 August 2015, the employer can reduce the base value of the car by 1/3 (\$30,000) in the FBT year beginning 1 April 2020, the FBT is calculated on a base value of \$60,300 instead of \$90,000.

ELECTIONS

If you're using the Operating Cost Method, ensure you have an election in place before you lodge your FBT return or by 31 May 2020 if you do not lodge an FBT return. This election is not permanent and only relates to the year which it is made. Even where as an employer you make an election to use the Operating Cost Method and this results in a higher taxable value than would have been the case under the Statutory Formula Method, if you so choose the election will be deemed not to have been made and you will be free to apply the Statutory Formula Method.

EXPENSE PAYMENT BENEFITS

This is quite a common benefit which broadly speaking arises when you pay for or reimburse a private expense of an employee or their associate (e.g. spouse).

DECLARATION

Employees should complete an Expense Benefit Payment Declaration where the expense would have been deductible (in whole or in part) for the employee had they incurred it from their own pocket. Where this is the case, the FBT otherwise payable on the benefit can be reduced.

LIVING AWAY FROM HOME ALLOWANCE

If you pay employees a living away from home allowance (LAFHA) important substantiation documentation will need to be obtained in the coming weeks. All employee LAFHA recipients (residents and non-residents) must meet all of the following conditions in order for their LAFHA to be exempt from FBT:

1. Employee maintains an ownership interest in a private residence which is available for their immediate use and enjoyment

In terms of substantiation, the recipient employee must provide the employer with a declaration containing the following details:

- The place in Australia where the employee usually resides when in Australia; and:
 - » That the place is a unit of accommodation in which the employee or the employee's spouse has an ownership interest
 - » That the place continues to be available for the employee's immediate use and enjoyment during the period that their duties require the employee to live away from it.
- The address of each place where the employee was actually residing during the period to which the LAFHA relates.

This declaration must be provided by the employee to the employer before the date that the employer lodges their FBT return for that year. The declaration is available on the ATO website.

2. The LAFHA can only be paid for 12 months, per employee, per location

3. Substantiation of the accommodation and food/drink components must be provided by the employee

Accommodation expenses incurred by the employee while living away from home must be substantiated in full. Thus invoices/receipts will need to be obtained in respect of these expenses.

Food and drink expenses will also need to be substantiated, thus invoices and receipts will need to be obtained. Note though that these expenses need only be substantiated where they exceed a “reasonable amount”. Where the food/drink expenses incurred exceed the “reasonable amount”, the whole expense must be substantiated – not just the amount above the threshold. The ‘reasonable amounts’ for food and drink for the 2019/2020 FBT year are set out below. To be clear, amounts below this do not need to be substantiated, whereas for amounts above those in this table, the whole amount needs to be substantiated:

Family Make-Up	Reasonable Food and Drink Amount Per Week – in Australia \$
One adult	269
Two adults	404
Three adults	539
One adult and one child	337
Two adults and one child	472
Two adults and two children	540
Two adults and three children	608
Three adults and one child	607
Three adults and two children	675
Four adults	674

For the purpose of the above table ‘adults’ are persons who had attained the age of 12 years before the beginning of the FBT year in which the LAFHA was paid. For larger family groupings than those in the above table (e.g. two adults and four children) the ATO accepts an amount based on the above figures plus:

- \$135 for each additional adult, and
- \$68 for each additional child.

MEAL ENTERTAINMENT

Whether you calculate the taxable value of meal entertainment under the 50/50 Split Method or the Actual Method, you will be required to substantiate the amount of your meal expenditure. This will involve getting together your receipts/credit card statements/invoices etc. Also ensure you have records showing:

- The date you provided the entertainment
- The kind of entertainment provided, and
- Where the entertainment was provided.

Now we’re at year-end, the other records you will be required to produce will vary depending on the method you adopt to value your meal entertainment as follows:

50/50 SPLIT METHOD

Under this method, an employer is liable to pay FBT on 50% of their total meal entertainment expenditure regardless of who was being entertained (whether it was clients/suppliers/contractors or employees). It follows that you will not be required to produce records showing who the recipient of the meal entertainment was (as half of all meal entertainment, regardless of the recipient, is subject to FBT). Unlike the Actual Method, to use the 50/50 Method you must make an FBT meal entertainment election by the time your FBT return is lodged for the relevant FBT year or 31 May 2020 if you are not required to lodge a return. This election does not need to be sent into the ATO. However, you will need to keep it on file for five years, and produce it if you are audited. What is less well known is that to claim the GST credits on the entertainment under this method you also need a GST election in force at the time your return is lodged.

ACTUAL METHOD

Under this method, FBT is payable on the portion of meal entertainment expenditure relating to employees and their associates (e.g. spouses). FBT is not therefore payable on expenditure incurred on clients/suppliers/contractors. Under this method, an employer is required to keep sufficient records identifying the number of employees and non-employees at a particular function/event where meal entertainment is provided. This can be done in the following ways:

- An attendance register, diary or other similar record – an employer can maintain a register, diary etc. of all persons (e.g. employees and non-employees) attending a particular function
- Annotating receipts or credit card statements – an employer can make notes on credit card statements recording details of the individuals to whom the expenditure relates (e.g. employees and/or clients).

TAX TIP

You are not required to decide until the end of the FBT year which meal entertainment method you adopt.

The Actual Method is the default method – if you decide to adopt it, you do not need to make a formal election. The way you complete your FBT return will be evidence that you have adopted this method.

On the other hand, if you adopt the 50/50 Method you must make an election in the form and by the time outlined earlier.

With no decision required to be made until year-end, carefully review the entertainment you have provided throughout the year before you determine which method to use. If you have mainly provided entertainment to clients/suppliers/customers etc. you may wish to use the Actual Method. On the other hand, if you have provided regular entertainment to employees, then the 50/50 Method may provide a better result. Speak with your accountant about which method is best for you.

REPORTABLE FRINGE BENEFITS

Where you have provided reportable fringe benefits (not all fringe benefits are reportable) with a total taxable value of more than \$2 000, you must record the grossed-up taxable value on an employee's Payment Summary for the corresponding income year. The reportable fringe benefits provided for this FBT year from 1 April 2019 to 31 March 2020 must be reported on the 2019/2020 Payment Summary which must be issued to employees between 1 July 2020 and 14 July 2020. When grossing-up, you must use the lower gross-up rate which is currently 1.8868 irrespective of the gross-up rate used in calculating the FBT payable on the benefit.

If you use Single Touch Payroll (STP) your end-of-year reporting may be different for recording your employee's reportable fringe benefit amount (RFBA) Where year-to-date RFBA is provided through a payroll or update event during the year, you'll need to report these amounts for each following payroll event, even if the amounts remain the same.

Alternatively, you may report these amounts through an update event as part of the finalisation process at the end of the financial year.



TAX PLANNING – PREPAID EXPENDITURE

With the end of financial year looming, this article takes a look at the rules for prepaid expenditure. When can you bring forward a large deduction to this financial year? Individuals as well as business can enjoy the benefits of this strategy.



BACKGROUND

The attraction of prepaying expenditure is that eligible taxpayers can claim a deduction this financial year, for expenditure that actually relates to next year. For example, 12 month's rent that you prepay in April 2020, may be deductible in full in your 2019/2020 tax return, even though most of the expense relates to 2020/2021. By prepaying the expenditure, you effectively bring forward a tax deduction and therefore improve your tax position in the year that the expense is paid. Whether you are eligible to take advantage of this tax planning opportunity leading up to 30 June this year depends on the type of taxpayer you are.

SMALL BUSINESS ENTITY

Small Business Entities (SBE) are those that are carrying on a business with a turnover of less than \$10 million. SBE prepaid expenditure is immediately deductible in the year it is incurred if:

- The eligible service period for the expenditure is 12 months or less, and
- The period to which the expenditure relates ends no later than the last day of the income year following the year in which the expenditure was incurred.

EXAMPLE

Smart Pty Ltd is a law firm with a prior year turnover of less than \$1.5 million. In May 2020 it prepays \$22 000 in rent to cover the period 1 June 2020 to 31 May 2021. It wonders how much it can claim as a deduction in 2019/2020.

ANSWER

Smart can claim a \$22 000 deduction in 2019/2020 because:

- It is an SBE (has turnover of less than \$10 million)
- The eligible service period is for 12 months or less (1 June 2020 to 31 May 2021), and
- The period to which the expenditure relates ends no later than 30 June 2021 (being the last day of the income year following the year in which the expenditure was incurred).

If Smart did not take advantage of this tax planning opportunity and rather just paid its rent on a monthly basis for example, then it would only be able to claim a deduction of \$1 833 (the rent for the month of June 2020). Instead, by employing the prepayment strategy, Smart has improved its 2019/2020 tax position by claiming an extra \$20 167 in deductions (\$22 000 - \$1 833). Using the corporate tax rate of 27.5, the cash position of the business has been improved by \$5,545.

If the eligible service period was more than 12 months or the period ended later than the last day of the income year following the year in which the expenditure was incurred, then you cannot claim an immediate deduction. Instead, you must apportion the deduction over the period to which it relates or 10 years (whichever is less), using the following formula:

$$\text{Expenditure} \times \frac{\text{Days of service period in the income year}}{\text{Total days of service period}}$$

EXAMPLE

Assume instead that Smart Pty Ltd prepaid 2 years rent totalling \$44,000 in advance (i.e. from 1 June 2020 to 31 May 2022). Despite being an SBE, Smart would not get a deduction for the entire amount of the payment in the 2019/2020 year, because the service period is more than 12 months (it is two years). Smart's 2019/2020 deduction would instead be \$ 1808 worked out in accordance with the above formula:

$$\frac{\$44\,000 \times 30}{730}$$

Therefore, if you wish to claim the whole of your prepaid expenditure in 2019/2020, limit your prepayment period to no more than 12 months.

Given the tax advantages of this strategy, if your business is an SBE and you have the spare cash at your disposal, you should consider the types of expenditure that you can prepay before 30 June 2020 such as:

- Insurance
- WorkCover
- Rent
- Interest
- Subscriptions
- Advertising
- Memberships
- Maintenance contracts (e.g. for photocopiers), and
- Service contracts.

SBE

A business is an SBE for the year (and therefore able to take advantage of this tax planning opportunity) if:

- It is carrying on a business, and
- It has a turnover of less than \$10 million in the current or prior year (including the turnover of any connected or affiliated entities).

NON-SBE

Business Expenditure

Businesses that are not SBEs (i.e. have an aggregated turnover of more than \$10 million) are not eligible for the prepayment deduction in relation to business expenditure. Instead they must apportion their deduction for prepaid business expenditure over the lesser of the eligible service period or 10 years in accordance with the earlier formula.

Non-Business Expenditure

Likewise, for non-business prepaid expenditure incurred by businesses that are not SBEs, the deduction is apportioned in the same way i.e. over the lesser of the eligible service period or 10 years in accordance with the earlier formula. An example of non-business expenditure is rent paid by a business on a rental property that it holds as a passive investment unrelated to its core business.

Therefore, it makes no sense from a 30 June tax planning perspective for a business which is not an SBE to prepay its business or non-business expenditure. You will never be eligible for a deduction for the entire amount in the year in which it is incurred. By prepaying the expenditure, the main effect is to negatively impact cashflow, with no tax benefit.

INDIVIDUALS

SBEs are not the only taxpayers who can take advantage of the prepayment deduction rule – individuals can too! Non-business prepaid expenditure incurred by individuals is also eligible for an immediate deduction in the year in which it is incurred provided the same rules are met that apply for SBEs, namely:

- The eligible service period for the expenditure is 12 months or less, and
- The period ends no later than the last day of the income year following the year in which the expenditure was incurred.

Non-business expenditure for an individual is any expenditure you incur in earning assessable income from activities that do not relate to carrying on a business. This includes expenditure in relation to earning:

- Salary and wages, for example:
 - » Subscriptions to professional trade journals
 - » Memberships to professional associations
 - » Union fees.
- Rental Income (even if your property is not earning income, provided it is available for rent), for example:
 - » Maintenance fees (e.g. gardening)
 - » Body corporate fees
 - » Interest on your loan.
- Dividends on Shares, for example interest on your loan taken out to purchase those shares.

TO USE OR NOT TO USE?

In deciding whether to employ the prepayment strategy you need to take stock of your cash flow and also whether it is advantageous to bring the deduction forward or delay it until the following year (this will depend on your current year and following year income).

EXAMPLE

Evan is a tradesman who also owns a rental property with a related loan of \$150,000, currently subject to 3% interest. He expects the rental property to incur a net rental loss for the income year ending 30 June 2019. Evan has had a slow 2018/2019 year work-wise with the building activity in his area very slow. He has only earned \$35,000 as a tradesman during the year. However, he anticipates his earnings rebounding to his normal \$100,000 in 2019/2020 as a building developer has just moved into his area. In May, Evan makes a call to his banker about prepaying 12 months' interest from 30 June 2019 to 29 June 2020 on his rental property and is quoted a rate of 2.5% equalling an amount of \$3,750. Evan wonders whether to proceed with this prepayment strategy or pay the interest in the following year.

2018/2019

Evan is eligible for the prepayment deduction and is entitled to deduct the entire \$3,750 in this year if he makes the payment before 30 June because:

- Evan is not running a business but merely owns a single rental property
- The eligible service period is for 12 months or less (30 June 2019 to 29 June 2020), and
- The period to which the prepayment relates ends no later than 30 June 2020 (being the last day of the income year following 2018/2019).

By prepaying Evan will reduce his income from \$35,000 to \$31,250, and will save \$788 in tax than if he did not prepay the amount and waited until 2019/2020.

2019/2020

If Evan elects to wait and not prepay the 12 months of interest he will reduce his anticipated 2019/2020 income of \$100,000 down to \$96,250 and save \$1,575 dollars in tax. This is an extra \$787 saving compared to prepaying the amount in 2018/2019.

Evan, with his financial advisor, needs to weigh up whether he wants the immediate tax saving of \$788 or the bigger tax saving of \$1,575 but the longer wait until 2019/2020. If his cashflow is tight in 2018/2019, he may opt for the immediate, but smaller deduction.

CONCLUSION

If you are an SBE or an individual not in business, prepaying your expenditure can bring forward a significant tax benefit to the current financial year. As we can see from the earlier example however, sometimes the prepayment option is not always best if you anticipate having a significantly higher income in the following year such as when you are re-entering the workforce or are in line for a promotion or your business is expected to be much more profitable. By contrast, if you desire a cashflow benefit in the current year, or if your income is expected to be significantly less next year (e.g. you are retiring or downsizing your business etc.) then consider getting in quick and prepaying before 30 June!



DISASTER RELIEF AND RECOVERY

The scale of the recent bushfire disaster has seen 27 deaths, more than 15,000 known insurance claims, and up to 192 businesses that have been moderately or severely impacted. This article explores some tax and other issues around natural disasters.

RELIEF

When any natural disaster strikes, for affected residents and businesses, there is often a range of assistance available at both a State and Federal level. This assistance may help defray some of the recovery costs. Irrespective of which State or Territory you are located, to view the assistance on offer, visit the Disaster Assist website www.disasterassist.gov.au

FEDERAL GOVERNMENT

In relation to the current bushfire disaster, the Federal Government has announced some additional relief to that already announced in the form of:

- Immediate cash grants of up to \$50,000 to small business owners hit by the bushfires
- Immediate cash grants of up to \$75,000 to farmers hit by the bushfires
- Loans of up to \$500,000 to be made available to any business that has suffered asset or revenue losses as a result of the bushfires. The term of the loan will be for up to 10 years with no repayments and no interest charges in the first 2 years. Thereafter, the loans will carry a fixed interest rate of just 0.6%
- \$10.5 million will be spent on providing affected individuals with 10 free counselling sessions
- Medicare rebates will also be available for up to 10 psychological therapy sessions.

The Government has stated that it will pass legislation to ensure that money paid by the Government to affected individuals and business will be tax-free.

NEW SOUTH WALES GOVERNMENT

- A hold on all revenue NSW fines and debt for people in bushfire affected areas
- Extensions for payment deadlines and timeframes for lodging of documents with Revenue NSW
- Waiver of Revenue NSW interest charges
- Waiver of payroll tax owing to employees for bushfire-fighting activities or emergency operations
- Two month payment deferrals for any amounts due to Revenue NSW
- Lifting of driving sanctions
- Contact Work and Development Order sponsors to place WDOs on hold if necessary.
- If your vehicle was written off in a declared natural disaster, you may be able to apply for a refund of motor vehicle duty you pay on a replacement vehicle.

DONATIONS

Australians have been very altruistic in recent months, donating millions of dollars to various organisations to assist those impacted by the bushfires. Unfortunately, there have been stories of scammers setting up bogus websites and donation points. For this reason, it's important to check the veracity of the organisation you are donating to. One way of doing so is to search the register on the Australian Charities and Not-for-profits Commission website www.acnc.gov.au If an organisation is on the register, it will be legitimate. However, if you are donating electronically, you will still need to be satisfied that the website is not fake.

BUSINESS GIFTS

In the case of taxpayers carrying on a business, donations to various organisations that are made for purely business purposes (for example, as a form of advertising) may be deducted in full. This is the case even where the gift or donation is made to a recipient who is not registered as a Deductible Gift Recipient (DGR) with the ATO.

GIFTS OF \$2 OR MORE

All taxpayers (including individuals, trustees of a trust or superannuation funds, partnerships, companies, residents, and non-residents) are entitled to a deduction for gifts of money or property of \$2 or more to nominated funds (including private ancillary funds) authorities, institutions or bodies, or specified persons. However, the claiming of a deduction is subject to the following conditions:

- The gift must not be made by will upon death
- Each gift must be of \$2 or more. This may take the form of money, land, personal property, shares etc.
- You must have evidence of the donation (e.g. receipt)
- Where property is given, it must have been purchased by the person making the gift no more than 12 months before the gift was made or be valued by the ATO at more than \$5 000, and
- The recipient of the gift must normally be in Australia (except in the case of overseas aid funds).

However, a deduction is still generally not permitted unless the recipient of the gift/donation is a deductible gift recipient (DGR).

A full listing of DGRs can be found at

www.abn.business.gov.au/DgrListing.aspx

TAX TIP

Many families make donations throughout the year. Where this is the case, to maximise the taxation benefit, the higher income earner of the family unit should make the payment and claim it on their income tax return.

ATO ASSISTANCE

The ATO:

- is fast tracking any refunds due to taxpayers in the impacted regions
- is remitting any interest and penalties applied to tax debts since the commencement of the bushfires that have been applied to accounts of individuals and businesses located in impacted regions
- will not be initiating any debt recovery action for those taxpayers in affected areas with a tax debt or outstanding obligation until at least 28 May 2020
- will consider releasing individuals and businesses from income tax and FBT debts if they are experiencing serious hardship
- will allow extended deadlines for affected businesses to lodge Business Activity Statements and income tax returns
- allowing PAYG Instalments for the December 2019 quarter may also be varied to zero where appropriate.
- temporarily suspending audits
- making arrangements for payment of tax debts by instalments
- remitting penalties that were automatically imposed during a disaster.

ACCESS TO SUPER

Early access to your superannuation may be available where you have been receiving Commonwealth income support payments for at least 26 continuous weeks and were in receipt of this when you applied to have your benefits released), and you are unable to meet reasonable and immediate family living expenses. If this is met, the payment will be a single lump sum of no more than \$10,000 and no less than \$1,000 (or, if your balance is less than this, the lesser amount). Only one payment is allowed each 12 months. You will need to apply to the trustee of your superannuation fund.

OTHER CONSIDERATIONS FOR BUSINESS OWNERS

FINANCIAL ASSESSMENT

The next step for businesses affected by a natural disaster is to undertake a financial assessment. By doing so, you can determine not only a realistic timeframe for re-opening, but whether it is viable to re-open at all. Moreover, a thorough financial assessment will allow you to determine your existing sources of cash – cash which will be crucial for the survival of your business if you are faced with a significant period of closure or have substantial re-commencement costs.

To make a financial assessment you must first reconstruct your financial records, many of which may have been lost during the natural disaster. To reconstruct any lost records, consider the following sources:

- ✓ **Surviving electronic files** – although from the outside your hard drive may look damaged, computer experts may be able to recover valuable data. Also remember files and backups that are kept offsite. Of course, if you use Cloud accounting then recovering your financial data won't be an issue.
- ✓ **ATO** – prior year income tax returns, BAS, FBT returns, PAYG annual statements all contain key financial data of which the ATO usually has a copy
- ✓ **Banks, Financial Institutions** – obtain past bank statements, tracking all your business's incomings and outgoings
- ✓ **Auditors** – if your accounts are audited, the auditor is a valuable source of information
- ✓ **Lenders**
- ✓ **Accountant/Bookkeeper/Financial Advisor**
- ✓ **Suppliers**

Having reconstructed your financial records, you are then well-placed to determine the cash position of your business. Making such a determination is crucial for the survival of your business particularly if, as with many affected businesses, you are faced with a significant period of closure or have substantial recommencement costs. You can determine your cash position by constructing a cash flow statement:

Cash at Bank + Inflows (recoverable debtors, insurance payouts, Government assistance)

Minus

Outflows (loan repayments, payments to suppliers)

= Cash Position

The next step, in consultation with your bookkeeper or accountant, is to create a balance sheet and profit and loss statement from the beginning of the current financial year to the time of the natural disaster. Armed with your cash position, balance sheet and profit and loss statement you now have an accurate picture of the overall financial health of your business.

DAMAGE ASSESSMENT

To determine the cost of re-opening, you need to conduct a comprehensive damage assessment. This will need to be undertaken on several levels including:

- **Premises** – Are your premises operational or will you need to relocate? Be mindful that with events such as bushfires, there can be structural damage which is not always recognisable to the untrained eye. You may need to engage a builder or engineer in this regard.
- **Repairs** – What repairs, if any, will you need to undertake and what will these cost?
- **Commencement** – Can you re-commence full trading immediately or is the damage such that you will need to wait until repairs are undertaken (if so, how long?). Be mindful that, in disaster-affected areas, skilled tradesmen/repairmen may be in great demand and may be charging exorbitant rates.
- **Stock, Supplies and Equipment** – How much of this is salvageable? For computers/I.T, we recommend that you consult an expert as more information may be salvageable than is first apparent.
- **Damage assessment** (see earlier).

INITIAL ACTIONS

One of the first practical steps to take is to contact your insurers. To maximise insurance compensation, don't attempt to clean up or make repairs before you have taken photos of the damage and provided your insurer with a preliminary damage assessment. You want to convey to them the full extent of the damage.

With the damage having been assessed, your insurer will then be in a position to inform you of the payout, and when it will be made. This may be crucial in determining whether you are in a position to recommence, or whether you may have to alter your business (e.g. downsize), or cease business altogether.

Staff will also need to be kept in the loop. Redundancies or instructions to take annual leave may need to be considered – depending on the timeframe for recommencement (if at all). The Fair Work Act generally allows employers to instruct their workers to take annual or long service leave in less busy periods. Where an employee has no accrued annual or long service leave to take, or does not wish to take paid leave during an enforced shutdown outside the employer's control, then the Fair Work Act allows the employer to stand them down without pay. This provision of the Fair Work Act however only applies where the employee's Award or employment agreement does not contain a stand down provision which deals with the same circumstances.

It's also noted that an employer is not permitted to ask employees to start or continue work if it is unsafe or unreasonable. Where this is the case, employees are not entitled to be paid during this period – unless their Award or employment agreement requires otherwise.

Key customers and suppliers will also need to be kept updated. On this front, do you need to cancel orders, or notify clients that you cannot meet their demands at present? Where possible provide a timeframe to them on the recommencement.

RECOVERY PLAN

Post-disaster, what are your recovery objectives, actions, and priorities? In practical terms what the steps involved to recommence your business? Having determined this, can you afford it, and how will you finance it? There are a number of finance methods available – particularly in respect of equipment – which you should discuss with your accountant.

At this point, if it is looking unaffordable, could you remodel your business, for example by removing or adding in new product lines, adapting more efficient technologies, reducing operating costs such as by downsizing to smaller premises? Use this as an opportunity to potentially reshape your business (not necessarily for the worse).

FUNDING THE REOPENING

Having completed cash-flow, profit and loss forecasts, use them to workshop various unexpected scenarios (such as important clients not returning) to measure how your cashflow may be impacted by the unexpected. Attention should then turn to how you will fund the reopening which could potentially be in the form of existing funds (but be cautious as cashflow could be an issue), additional borrowings, or perhaps existing lines of credit. If the decision is made to borrow, consult with your advisors on the amount, terms and duration of any loan.

BUSINESS LICENCES

Depending on your industry the natural disaster may have caused you to lose registration certificates, licenses to operate etc. If so, approach the relevant authorities to obtain replacements.

LEARNINGS

With these extreme weather events seemingly becoming more common, for future reference ensure you document your learnings about business recovery from this natural disaster. This is particularly the case around insurance – did it cover you, were you happy with the payout, do you need to alter your policy or change insurer?

ATO DEBT RECOVERY ACTION

This article looks two heavy-duty methods that the ATO may use if you or your business fail to pay an outstanding debt. In response, what strategies can you employ?



INTRODUCTION

The ATO is currently owed more than \$24 billion in unpaid tax, with 1.7 million taxpayers owing a debt (both individuals and businesses). The latest available statistics indicate that in a single year (2017/2018), the ATO:

- Issued 51,072 garnishee notices
- Issued 21,595 director penalty notices
- Initiated 1,282 liquidations
- Initiated 470 bankruptcies
- Recovered 4.6 cents in the dollar from formal insolvencies, and
- Entered into 950,000 payment arrangements.

Therefore, all told, the ATO has been extremely active in pursuing debt, using a variety of different methods.

DIRECTOR PENALTY NOTICES

Under the DPN regime, directors of companies can be held personally liable to pay outstanding PAYG withholding (i.e. the tax that is withheld from employee wages) and Superannuation Guarantee owed to workers. Penalty notices can be issued to current directors (even for unpaid amounts that arose before they became a director) as well as former directors (but only where the unpaid amount relates to their time as a director).

There are two types of DPNs, the first of which is a 21-day DPN which is where a company has failed to pay the PAYG or SG, but has lodged the corresponding Superannuation Guarantee Charge statement or Activity Statement with the ATO. With this type of DPN, directors will be held personally liable unless within 21 days either:

- The amount owing is paid, or
- A liquidator or administrator is appointed to the company.

The second style of DPN is a lockdown DPN. This is where a company fails to pay the SG or PAYG withholding within three months of the due dates and also has not lodged the respective Activity Statement or Superannuation Guarantee Charge statement. The only way to avoid liability here is to actually pay the amounts owing. Liquidation or administration has no effect on director liability.

TAX TIP

- Ensure you at least lodge your Activity Statement or Superannuation Guarantee Charge statement within the three month period to avoid a lockdown DPN
- Keep your addresses up-to-date with ASIC as this is the address that a DPN will be mailed to
- Legislation is currently before Parliament to extend the DPN regime to outstanding GST amounts. This legislation however is not retrospective.
- Attempt to enter into an ATO payment arrangement even where a DPN has been issued.

GARNISHEE NOTICES

The ATO can issue this type of notice to an individual or business that holds money for you or that may hold money for you in the future. Such a notice requires them to pay your money directly to the ATO to reduce your debt. The ATO will also send a copy of the notice to you. For individuals, the ATO may issue a garnishee notice to:

- Your employer (or payer if you are a contractor) for future payments
- Banks, financial institutions, or building societies where you have accounts
- People who owe money to you from the sale of property, such as purchasers.

On the other hand, for businesses the ATO may issue a DPN to your financial institution, trade debtors, or suppliers of merchant card facilities.

EXAMPLE

A real estate agent had his own business but it went into liquidation. He owed \$200,000 to the ATO comprised of income tax debts and DPNs. He also had other debts of approximately \$100,000. He got a job earning more than \$170,000.

To recoup the money owing, the ATO issued garnishee notices to his employer for 30% of his gross wages per pay.

In terms of strategy, if he had gone bankrupt prior to the garnishee notices, his bankruptcy income contributions would have been approximately \$30,000 per year. Of course, there are many factors to consider before declaring bankruptcy. These should be discussed with your accountant before taking any action.

The ATO is most likely to garnishee accounts where refunds are paid to or payments are received from. Taxpayers are at risk of a garnishee notice if the ATO becomes aware of debtors or the sale of property and the purchaser's details.

To avoid garnishee notices taxpayers need to be proactive in negotiating payment arrangements with the ATO.

PAYMENT ARRANGEMENTS – SECURITY OVER ASSETS

One of the ways to stave off extreme ATO debt recovery action such as them seeking to wind up your company or declare you bankrupt, is to enter into an ATO payment arrangement (and stick to the arrangement). However, the ATO may be reluctant to enter into a payment arrangement when they don't believe you have the ability to pay, or where you have a history of late payment or not abiding by the conditions of previous payment arrangements.

If the ATO rejects your push for a payment arrangement, one of the ways to convince them is by offering security over assets. The value of the security does not necessarily need to be the full amount of the tax debt owed. Security can be given by individuals (including the person's wife or husband). Where the taxpayer is a company, the directors can give guarantees but they will then be personally liable and be guaranteeing the debt.

Before offering security over assets, the following should be considered:

- Your ability to comply with the arrangement
- Exactly who is giving security – individual, director, husband/wife?
- Is the director liable for the debt anyway via a DPN?
- What are the risks if security is not given, and you cannot enter into a payment arrangement? For example, will the ATO wind up your business, or make you bankrupt?





TAX TIPS

This article provides readers with a range of money saving tax tips.

DEDUCTIONS AFTER BUSINESS CEASES

It's sometimes the case that after a business has ceased operating, the business owners themselves will still have liabilities to discharge such as loans, rent payable under lease agreements etc. The good news is that where an expense arising from a business carried on in a prior income year is paid in a subsequent income year it may be deductible in the subsequent year even though the business may have ceased operating. This is provided that the expense was directed towards generating assessable income.

This general principle has been applied to certain legal expenses incurred in subsequent year, and also the following:

INTEREST

In *Jones v Federal Commissioner of Taxation 2002 ATC 4135* interest on a loan taken out to purchase business equipment for a partnership was deductible by the individual partners when paid in subsequent years following the cessation of the business. This then reduced their tax payable on other income (such as salary and wages) in subsequent years.

The ATO in *Taxation Ruling TR 2004/4* confirmed the deductibility of interest in these circumstances and even where the original loan is refinanced. However, this is subject to one caveat! Generally no deduction is available if the loan is deliberately kept on foot (not repaid) for taxation or commercial advantage. Therefore, where you have the capacity to pay out the loan but make a

conscious decision not to do so, the ATO may deny you a deduction after your business has ceased.

LEASE EXPENSES

Where a business closes, it's sometimes the case that it will do so prior to the expiration of leases (for example, it may have run into financial strife). Where this is the case, the ATO gives 'green light' to a subsequent year deduction after the business has ceased operating. In the ATO ruling, an individual was operating a business and entered into a fixed-term lease agreement for their business premises. After the business had ceased, they couldn't afford to pay the outstanding rent immediately, and instead paid it out in a subsequent income year. The ATO held that the expense was deductible by the taxpayer in the subsequent income year because the taxpayer was definitely committed to this recurring expense (they had signed a lease agreement).

GUARANTEE PAYMENTS

Payments made pursuant to a personal guarantee are also deductible in subsequent years as confirmed by the Administrative Appeals Tribunal (AAT) in *Evenden v Federal Commissioner of Taxation [1999] AATA 731*. To establish a business, the partners in a partnership entered into leasing agreements for equipment, borrowed money, gave personal guarantees and mortgaged their home. In the course of its business, it leased assets including a motor vehicle in respect of which the partners were required to give personal guarantees. Upon the business

ceasing trading in mid-1991, and the leased assets had been returned to the lessors, demands were made for amounts outstanding to be settled under the personal guarantees that were given. These guarantee amounts were deductible even in subsequent income years when the business was no longer operational.

RENTAL PROPERTIES

It is quite common for individuals to later use an existing house that they have owned as a rental property, for example:

- Where you and your partner each own your own home and decide to move in together, the vacant property may be rented out
- You temporarily move interstate for work purposes and rent out your former residence while away, or
- You go on an extended overseas working holiday, and rent out your house while away.

In these situations, often the owner (i.e. the soon-to-be landlord) will make repairs or undertake maintenance to the property before they rent it out. Where this is the case, we advise that where possible you should advertise the property for rent before making repairs or attending to maintenance. Where you make repairs or undertake maintenance to a rental property before it is genuinely available for rent, such expenditure may not be deductible because it is considered to be prior to earning assessable income rather than in connection with earning assessable income.



EXAMPLE

Damon and Esther each own their own home. Having been in a relationship for six months, they decide to move in together into Esther's house. To earn extra income, Damon resolves to rent out his house, however part of the front wooden fence which was damaged in a storm requires replacing and painting. The repair and painting of the fence costs \$4,500.

In this situation, if Damon repairs the fence and paints it before tenants move in and before it is available for rent, then the \$4 500 will not be deductible as the expenditure does not have a connection to the earning of rental income (it is incurred at a point too soon).

Instead, Damon should advertise the property (e. g in the local newspaper, with real estate agencies etc.) before undertaking the repairs. By doing so, the property will be available for rent and therefore the deduction will be allowed. (significantly improving his tax position).

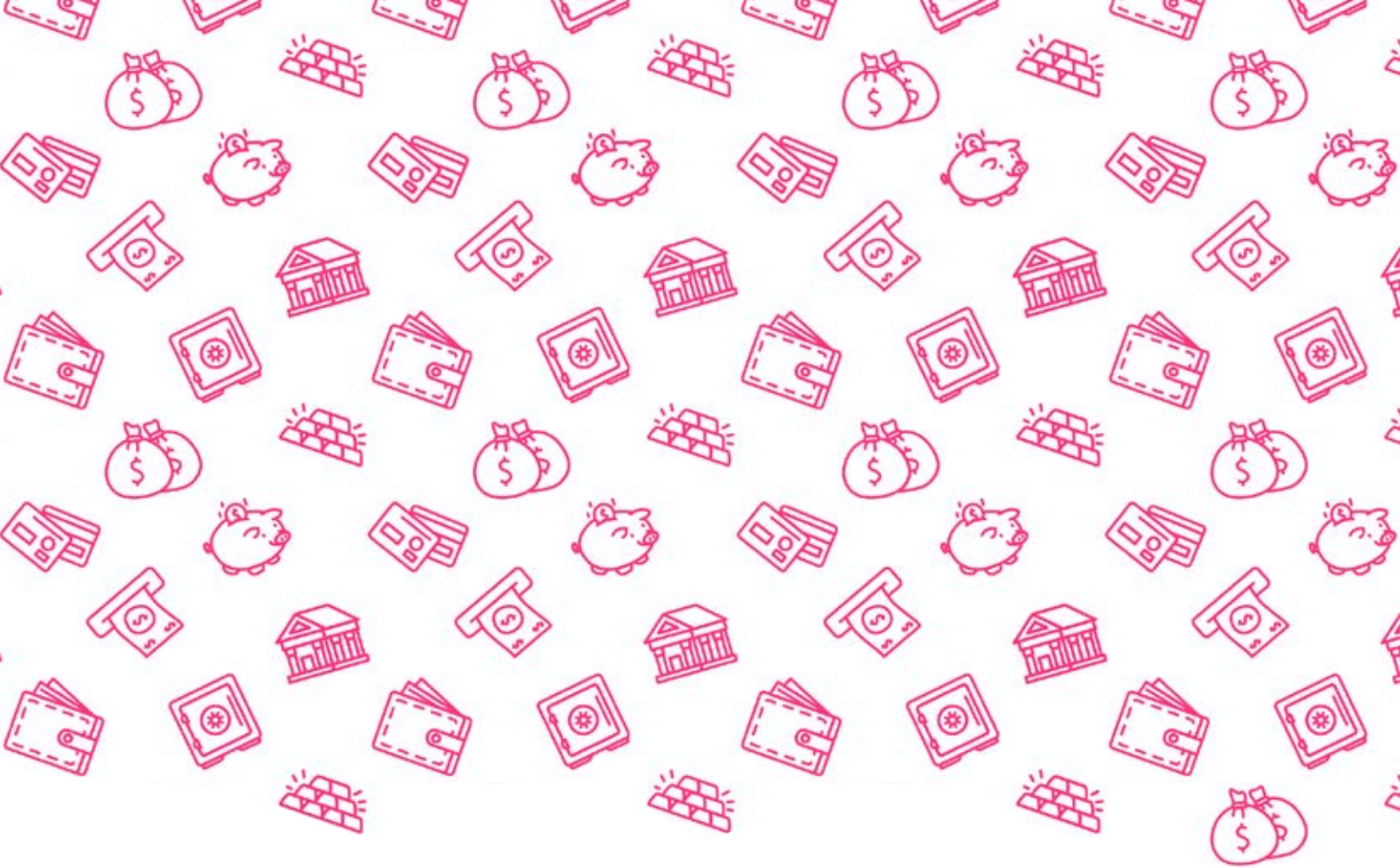
Prospective landlords should note two things about this example however:

1. If the repairs to the property are such that it is not habitable until the repairs are carried out, then the property is not genuinely available for rent even though you may be advertising for tenants. Returning to the earlier example, if Damon was instead repairing the collapsed lounge room ceiling which had been damaged in the storm, then the house would be uninhabitable until this is done. Therefore deductions could not be claimed as the property is not genuinely available for rent despite being advertised as such.

2. Improvements cannot be claimed as a tax deduction. Rather they must be claimed over the term of their effective life (i.e. depreciated). Improvement means work that:

- provides something new
- generally furthers the income producing ability or expected life of the property
- changes the character of the item that is improved, or
- goes beyond just restoring the item to its original condition.

Returning to the earlier example, if Damon were instead to replace the entire wooden fence with a fortified brand new storm-proof steel fence, then the cost would not be immediately deductible. The steel fence constitutes an improvement because it provides something new, increases the expected life of the fence, and goes beyond merely restoring the damaged part.



ENTERTAINMENT FACILITY LEASING EXPENSES

If you are an employee of an FBT exempt employer such as a Public Benevolent Institution (PBI), Health Promotion Charity (HPC), public hospital or public ambulance service, have you considered salary packaging your meal and accommodation expenses while on holidays? By doing so, you can reduce your tax payable on your income, and the benefit will not count towards your \$17 000 or \$30 000 caps that apply to limit the amount of concessional tax benefits you can enjoy throughout the year.

In **ATO ID 2009/45** the ATO concluded that the reimbursement by an FBT exempt employer (in this case a public hospital) of expenses incurred by an employee to hire a hotel room while on holidays qualified as an entertainment facility leasing expense. Therefore, it was exempt from FBT and was excluded from the employee's \$17 000 capping threshold.

Generally, the transport to and from an entertainment facility (e.g. airfares) will be a separate benefit that will not be part of the entertainment facility leasing expense and thus will attract FBT. However, for example, the reimbursement of the cost incurred by an employee in purchasing an all-inclusive package from a travel agent that includes both the travel and the hire or lease of holiday accommodation is a single tax-exempt body

entertainment benefit. Such a benefit is one whose taxable value is partly attributable to entertainment facility leasing expenses (being the lease or hire of the holiday accommodation). As the tax-exempt body entertainment benefit is partly attributable to entertainment facility leasing expenses, the whole of the tax-exempt body entertainment benefit including transport will be exempt from FBT.

SHAREHOLDER AND PARTNERSHIP AGREEMENTS

There are three broad options to choose from when taking on a business partner: Partnership, Unit Trust or Company. A Discretionary Trust may also work if your business Partner is also your life partner but let's assume they are not.

One of the most important relationships you will ever have is with your business partner(s), thus it is very important that you have consensus with your fellow business principal(s) and that you have this documented. In the case of a Partnership, this will be a Partnership Agreement and with a Company it will be a Shareholders Agreement. Such an agreement can (and should) be largely bespoke and cover off on those issues that are important to you but typically include entry and exit, remuneration, decision making, valuation etc. A Solicitor will arrange such an agreement for you.

To get started however, you should take the time to sit down with your prospective Partner(s) and build your own Heads Of Agreement. You may even ask a colleague or mentor for their thoughts (ideally someone who knows you) who may also have some valuable suggestions. The Heads of Agreement is a good place to record the principles and working arrangements that you have fundamentally agreed between yourselves. Forget the legalese at this point; your Solicitor will craft these clauses for you. Your Heads of Agreement will do two important things:

1. It will bring to the surface those things that might have been assumed between you as future partners and give you a chance to discuss them up front and gain consensus (better this happens before you start) and
2. Will serve as a useful guide to your Solicitor about the issues that you want to enshrine in your Partnership/Shareholders agreement.

The good news is that professional advice and services from your Accountant or Solicitor in respect of Shareholder agreements or Partnership agreements at the time you commence your business is now tax deductible in the year the expense is incurred if your business is a Small Business Entity (generally a turnover of less than \$10 million).

PAYOUTS FOR INSURANCE

Following the devastating bushfires down the east coast of Australia and also South Australia over summer, in the coming months many individuals and business owners may receive insurance payouts. This article looks at the tax issues that may be in play.



INSURANCE

MAKING A CLAIM

One of the first practical steps to take is to contact your insurer. To maximise insurance compensation, don't attempt to clean up or make repairs before you have taken photos of the damage and provided your insurer with a preliminary damage assessment. You want to convey to them the full extent of the damage.

With the damage having been assessed by an assessor, your insurer will then be in a position to inform you of the payout, and when it will be made. This may be crucial in determining whether you are in a position to recommence business for instance or whether you may have to alter your business model (e.g. downsize), or cease business altogether.

INCOME TAX TREATMENT OF PAYOUTS

Where you receive a payout from your insurer, the tax treatment will vary depending on the type of asset that the payout relates to as follows:

DEPRECIATING ASSETS

Where a depreciating asset that is used to produce income is to be scrapped, and an insurance payout is received there would ordinarily be an assessable or deductible balancing adjustment that would result for the amount by which the consideration/settlement exceeds the written-down value for tax purposes (see below example). However, some relief is provided on this front by section 40-365 of the Income Tax Assessment Act (1997), but only in those situations where the asset at issue is not part of a pool.

If an assessable balancing adjustment arises on a so-called involuntary disposal of a depreciating asset, section 40-365 gives the taxpayer the option of offsetting the assessable balancing adjustment against the cost or opening adjustable value of any replacement asset. The effect of this is that an otherwise assessable gain is deferred in favour of lower depreciation claims over the life of the replacement asset. The replacement asset must be used, or installed ready for use,

no earlier than one year before the balancing adjustment occurs and no later than one year after the end of the income year in which the event occurs, although there is an ability for the ATO to exercise its discretion in extending these time limits.

The notion of an involuntary disposal for the purposes of this relief refers to situations where an asset is lost, destroyed, or compulsorily acquired by a Commonwealth, State or Territory government.

EXAMPLE

On 1 May 2019, Kellie's Manufacturing suffers a total destruction of one of its conveyor belts as a result of a lightning strike. The asset is not part of a pool. The original cost of the conveyor-belt was \$80,000 and its adjustable value (taking into account depreciation) was \$60,000 at the time of the strike. Kellie received an insurance settlement of \$75,000 and on 1 August 2019, acquired a replacement conveyor belt for \$85,000 (GST-exclusive). The settlement proceeds received by Kellie are treated as the termination value of the asset. As the termination value (\$75,000) exceeds the adjustable value (\$60,000), an assessable balancing adjustment of \$15,000 has resulted.

Kellie has the option of either declaring the \$15,000 as assessable income or offsetting the assessable balancing adjustment against the cost of the replacement asset. This option is available to Kellie because the destruction of the asset qualifies as an involuntary disposal and a replacement asset was installed ready for use within one year of the balancing adjustment.

Kellie elects to apply the relief. Her decline in value (depreciation) calculations on the replacement conveyor belt will be based not on its cost of \$85,000, but rather on its opening adjustable value of \$70,000 (being cost of \$85,000 less assessable balancing adjustment of \$15,000).

If the scrapped asset is part of a pool, whether that is because it is a “low-cost” or “low-value asset” under the Uniform Capital Allowances regime or because the taxpayer is a Small Business Entity (SBE), then no relief under section 40-365 is available. You must reduce the pool closing balance by the taxable purpose proportion of the “termination value”. Termination value includes monies received from the sale of an asset or insurance monies received as the result of the loss or destruction of an asset.

On the other hand, where the amount received from your insurer is less than the written down value for tax purposes, you can claim a deduction for the difference.

If you used the asset partly to produce assessable income, and partly for personal use, calculate the proportions of each.

EXAMPLE

Edwin's computer was destroyed and he receives an insurance payout of \$400. The computer cost him \$1,300. He uses the computer 70% of the time for work purposes and 30% for private use. At the time it was destroyed, the computer's adjustable value was \$600.

Edwin can claim a deduction for the balancing adjustment amount of \$140 – that is, 70% (the proportion of business use of \$200), which is the difference between the insurance payout he received (\$400) and the adjustable value of the computer at the time it was destroyed (\$600).

In addition, Edwin makes a capital loss of \$270 – that is, 30% (the proportion of use for private purposes) of \$900, which is the difference between the amount of insurance received (\$400) and the computer's cost (\$1,300).

TRADING STOCK

Where you are entitled to a tax deduction for the insurance premium, payouts received under your policy for a loss of trading stock are generally treated as assessable income.

CGT ASSETS

Taxation Ruling TR 95/35 sets out the ATO's treatment of insurance payouts in respect of CGT assets. The following categories are dealt with

1. *Pay out received on the actual disposal of the underlying assets or part thereof*

This typically involves compensation in relation to the destruction or loss of the asset. Where this is the case, the compensation is the consideration for the disposal. For example, if a factory was purchased for \$800,000 and compensation received for its destruction was \$900,000, then in simple terms the capital gain would be \$100,000. This capital gain could then be reduced by the 50% discount if the asset was held for 12 months or more. If the taxpayer was in business, the small business CGT concessions may also apply if eligible.

In the same vein, the normal CGT exemptions apply such as the main residence exemption, pre-CGT assets, and personal use assets costing less than \$10,000.

Where the proceeds are used to purchase a replacement asset or the insurance compensation is by way of a replacement asset, small businesses may be eligible for a rollover, thereby deferring any capital gain until a later year.

Where the insurance receipt exceeds the cost of the replacement asset, the excess amount will generally result in the realisation of a taxable capital gain.

2. *Compensation for permanent damage*

Where there is no disposal of the CGT asset, but the asset is permanently damaged, or there is a permanent reduction in its value, any insurance compensation received will reduce that asset's cost base. For example, assume a CGT asset originally had a cost base of \$600,000 when it was purchased. It was then partially damaged in a storm and \$50,000 compensation was received. In this case, the cost base will be reduced to \$550,000 which broadly means more CGT may be payable when the asset is sold in the future.

GST TREATMENT OF PAYOUTS

Without doubt, the greatest complexity of accounting for insurance surrounds settlements. The ATO's GST Ruling 2006/10 is the governing document on this issue.

1. *The Insurer Makes a Cash Settlement*

Under this scenario, the insured is technically making a supply to the insurer. That supply is the forfeiture of its rights under the policy. However, section 78-20 of the GST Act provides that a settlement of a claim by an insurer is not treated as consideration. (Consideration is one of the six conditions for a taxable supply to take place under section 9-5 of the GST Act). Thus, the settlement of an insurance claim is not a taxable supply.

Accordingly, the insurer is not entitled to a GST credit on the settlement. Likewise, the insured does not have a GST liability for the amount paid on settlement of a claim. As the settlement transaction is not a taxable supply per se, the classification of it for BAS purposes is that of non-reportable, as distinct from being that of GST-free.

2. *The Insurer Replaces the Damaged Item*

Under this scenario, the insurer claims an input tax credit, where applicable, on the purchase of the replacement item from a retailer. The amount of the settlement is, in effect, the market value of that replacement item.

Again, however, a supply of goods or services by the insured to the insurer in settlement of a claim is not a taxable supply. Therefore, the insured will not remit GST and the insurer will not claim input tax credits.

Payment of an excess by the insured to the insurer is not consideration for a supply, and is not subject to GST. This outflow would be treated by the insured as not reportable for BAS purposes.

Sometimes an insurance company will acquire the damaged item from the insured. GST does not apply to this transaction.

EXAMPLE

A cooling unit in a business's warehouse was damaged. The business owner submits to his insurer a repair quote for \$2,220. The insurer determines that a new cooling unit would be a more economical course of action as they are priced at only \$1,650 GST-inclusive.

In this case, the insurer claims the GST credit upon their purchase of the cooling unit. The business owner has no GST credits to claim.

3. Insurer arranges for a supplier to provide a service (e.g. repair) to the insured, and pay the settlement monies directly to the service provider.

There are no GST implications whatsoever for the insured in respect to the dealings between the insurer and the repairer.

There are, however, two variations possible as to the payment of the excess by the insured, namely payment of the excess to the insurer or payment of the excess to the repairer.

Payment of an excess by the insured to the insurer is not consideration for a supply, and is not subject to GST under section 78-55. This outflow would be treated by the insured as not reportable for BAS purposes.

By contrast, if the insured pays an excess to the repairer, the insured is entitled to a GST credit on that payment, provided that it is registered for GST purposes and it has acquired those repair services for a creditable purpose. It will be necessary in such instances for the insured to request a separate tax invoice of the repairer for the value of the excess paid to them.

The repairer should also have issued a tax invoice to the insurer for the payment made by them. The insurer can claim a GST credit on this amount provided that the insurer chose the supplier, instructed the supplier about the supply of the goods or services to the third party, entered into a contractual relationship for a right to have the supply performed (such contract providing that the goods or services be supplied to the third party), and is liable to pay for the supply.

EXAMPLE

Brian damages his Mustang and submits to his insurer a repair quote for \$550 from Steve's Smash Repairs. The insurer enters into a contract with Steve's to repair the vehicle, advising that they will pay \$350 and that Brian will remit a further \$200 directly to them, this \$200 representing his excess under the policy. The nature of the contract between the insurer and Steve's satisfies the conditions outlined above.

Brian requests a separate tax invoice from Steve's in respect to his \$200 payment and claims a GST credit of \$18.18 (being 1/11th of \$200). The insurer claims a GST credit of \$31.82 (being 1/11th of their \$350 payment to Steve's). Steve's remits to the ATO a total of \$50 in GST so the GST impact is neutral across all three parties.

The dealings between insurer and Steve's have no impact on Brian's accounting or BAS.

REVIEW

When a claim is made and the compensation received for insurance following on from a natural disaster, review your policies. Did it cover you? Were you happy with the payout? Do you need to alter your policy or change insurer?



WHAT THE TAXMAN IS THINKING

In this edition we look at new law around salary sacrifice, how to go about being Single Touch Payroll-compliant if not already, how to go about correcting PAYG withholding mistakes, and more.

CORRECTING PAYG WITHHOLDING MISTAKES

The ATO is reminding employers that to correct a mistake in the pay as you go (PAYG) withholding amount reported on your activity statement, you need to revise the original activity statement. If you failed to report an amount not withheld when it should have been, you can write to the ATO.

FAILING TO WITHHOLD

To correct a mistake when you did not withhold PAYG withholding amounts from a payment, or you withheld the wrong amount, you need to write to the ATO. You should not include any amount that you failed to withhold on either an original or a revised activity statement or make a correction to information reported through Single Touch Payroll (STP) unless advised by the ATO.

By writing to the ATO, you are making a voluntary disclosure which gives you the opportunity to correct your tax obligations. If you have failed to withhold an amount, then under new laws that came into effect last year, you could lose your deduction unless you

make a voluntary disclosure.

When you write to advise the ATO of an amount you didn't withhold from a payment, include the following information:

- the title 'Voluntary disclosure – PAYG withholding'
- your name or your business name – that is, the full name of the taxpayer that should have withheld the amount
- your phone number and address, or the name, phone number and address of your authorised contact or tax agent
- the name of the person or organisation you made the payment to
- the date you made the payment
- what the payment amount was
- what the amount you should have withheld was, or an estimate of what it should have been
- a signed and dated declaration as follows: *"I declare the information I have given in this letter, including attachments, is true and correct and that I am authorised to disclose this information"*
- your signature
- the date.

Mail your letter to:
Australian Taxation Office
PO Box 3575
ALBURY NSW 2640

Alternatively, your tax agent can also make a voluntary disclosure on your behalf by sending the required information through an ATO approved electronic channel. The tax agent will need to ensure that their tax agent number is linked to your records.

FAILING TO NOTIFY

If you withheld the correct amount of PAYG withholding, but made a mistake reporting it, or failed to report it when you should have, you need to lodge a revised activity statement and correct information reported through STP.

To correct a mistake where PAYG withholding amounts were overstated, you need to lodge a revised activity statement and correct information reported through STP.

SUPER ON SALARY SACRIFICED AMOUNTS

As we move towards the end of the first quarter of the financial year, the ATO is reminding employers that superannuation guarantee (SG) is now payable on amounts that an employee has salary sacrificed to superannuation (from 1 January 2020).

Prior to this, salary sacrificed amounts counted towards the 9.5% SG that an employer must pay on an employee's ordinary time earnings (OTE). From 1 January 2020, OTE that is sacrificed to superannuation must be added back to the employee's OTE that have not been sacrificed. SG is payable on the total of those amounts.

EXAMPLE

Damon is an engineer who for the quarter had \$42,000 of ordinary time earnings. This would ordinarily entitle him to SG of \$3,990 (\$42,000 x 9.5%). However, keen to provide for his retirement, he enters into an agreement with his employer to sacrifice \$3,000 for the quarter.

OLD LAW

Under the old law (quarters commencing before 1 January 2020), Damon's employer could count the \$3,000 sacrificed amount as part of his SG contribution. Therefore, only being required to make a further contribution of \$990. This results in an overall quarterly package of \$42,900.

FROM 1 JANUARY 2020

The sacrificed amount of \$3,000 can not be counted towards the employer's 9.5% SG obligation. The employer must add back the sacrificed \$3,000 to the other OTE that has not been sacrificed. Therefore, SG will be payable on the full \$42,000. This results in an overall package of \$45,990.

FBT EXEMPTIONS IN NATURAL DISASTERS

The ATO is reminding employers that fringe benefits tax (FBT) exemptions can apply when employers provide certain assistance to their employees in emergencies. This can include natural disasters, but also accidents, serious illness, civil disturbances, armed conflict or similar events. Direct from the ATO:

With parts of Australia currently experiencing drought, bushfires and other severe weather events, tax is the last thing on your employer clients' minds when it comes to lending a hand to their impacted workers. However, it's

good for them to know that certain benefits they provide by way of emergency assistance to their employees are exempt from fringe benefits tax (FBT).

Normally when an employer provides employees, or their associates, with benefits such as accommodation or transport it is considered a fringe benefit. In an emergency, when employers provide immediate relief to impacted or potentially impacted employees, these benefits are exempt, where the assistance is:

- *first aid or other emergency health care (subject to specific requirements)*
- *emergency meals, food supplies, clothing, accommodation, transport or use of household goods*
- *temporary repairs (but not long-term benefits such as a new house or replacement car)*
- *any similar matter.*

There are specific requirements when it comes to providing health care. The exemption only applies to health care treatment provided by an employee of your client (or related company), or on your client's premises (or those of a related company), or at or near an employee's worksite. For example, the exemption would not apply if your client paid for an accident victim's medical or hospital bills, but would apply to emergency treatment by a company doctor at the accident site.

Emergencies do not just include natural disasters. These exemptions also apply where an employee is affected by an accident, serious illness, armed conflicts, civil disturbances or any similar event.

SINGLE TOUCH PAYROLL - THERE'S STILL TIME

The ATO advises that it's not too late to join the other 550,000 employers who are reporting through Single Touch Payroll (STP), but time is running out.

If you aren't reporting through STP, you can start by:

- finding a software solution that's right for you.
- asking for a concession. This could be reporting quarterly at the same time as your activity statement. Eligibility will depend on your circumstances.
- asking for more time if you're not ready.

The ATO says that it understands that it takes time to transition to STP, but there are a range of options to assist your transition.

If you have been affected by a natural disaster, there is additional support available and the ATO will help you sort out your tax affairs later.

Remember, registered tax agents can help you with your tax and STP.

AUSKEY ALMOST GONE

From 25 January, myGovID replaced AUSKey as the default login option on the Business Portal login page.

myGovID and Relationship Authorisation Manager (RAM) replace AUSKey and Manage ABN Connections from the end of March.

- myGovID is the Australian Government's digital identity provider and a new way to prove who you are online.
- RAM is a new Australian Government authorisation service that allows you to act on behalf of a business online.

You will still be able to access the Business Portal using your AUSKey until it retires.

Following the retirement of AUSKey, if you have not set up your myGovID, you won't be able to access the Business Portal to lodge your Activity Statements and Super Clearing House reporting obligations.

Setting up myGovID on your compatible smart device only takes a few minutes. You can use it with most Apple devices using iOS 10 or above and most Android devices using Nougat 7.0 or above.

TIP-OFF LINE

The ATO advises that it received over 27,000 tip-offs to our Tax Integrity Centre in the first half of this financial year. The 15,000 tip-offs received in the first quarter was a record-breaking number. The top tip-off categories have been:

- not declaring income
- demanding cash from customers
- someone's lifestyle does not appear to match their income level
- not reporting sales
- employer avoids reporting correct wages.

Tip-offs are a vital source of information when the ATO need to investigate someone who is illegally operating in the black economy. If you know or suspect a business is taking part in phoenix, tax evasion or black economy activities, you can make a tip-off by phoning the ATO Black Economy Hotline on 1800 060 062.