

FINANCIAL YEAR END 2016



NAVIGATING A SYSTEM DESIGNED TO TRIP YOU UP

We are all unpaid and unappreciated tax collectors required to administer a system that constantly changes and which has become insanely complicated. Another year rolls around with bureaucrats and politicians orchestrating a massive fail on all five self-stated principles of good tax design, being equity, efficiency, simplicity, sustainability and policy consistency. The cost to productivity in the community of accumulating tax policy rubbish you are being fed is mounting.

Each year I review the tax changes relevant to year end and the forthcoming financial year in an effort to identify opportunities for clients. In doing so this year it has occurred to me that, increasingly, year end considerations are more about avoiding traps deliberately laid by the authorities to trip you up. This is part of the ongoing transfer of the burden tax administration away from the ATO and onto us and you. In addition, continual tax policy shifts from Budget to Budget and Election to Election add layers of mindless complexity and confusion about what the currently applying rules actually are. Great for the accounting profession perhaps, but costly to you. Nonetheless following are some reminders, issues and tips that hopefully are of some assistance to you.

We hope you find some value in our thoughts and reminders for the approaching financial year end.

TOP 25 YEAR END TAX REMINDERS

Here are our top 25 things to check off in the final days of June or think about for the year ahead.

1. Ensure SMSF Minimum Income Stream Payments Have Been Made to Members

SMSFs paying income streams/pensions to members must ensure minimum required payments have been made by 30th June in order to preserve tax exemption.

Comment: SMSF pension clients were advised of 2016 pension levels on completion of 2015 tax returns. Be careful with this. Underpayments are usually unfixable and costly in terms of extra tax.

2. Maximise Concessional & Non-Concessional Super Contributions & Avoid Breaching Contribution Caps

Annual contribution caps apply to both concessional and non-concessional superannuation contributions. This makes it all the more important not to miss opportunities to contribute where applicable. Taxation benefits of super are still excellent, even allowing for any additional Div.293 Tax of 15% on high income earners ("income" >\$300k). It is the ability to contribute which continues to be restricted. Seek our advice about contributions as there are various requirements for eligibility and deductibility. Contributions must be received by the superannuation fund by 30th June. Better to do it early as there can be delays.

2015/2016 contribution caps are as follows:

2016 Contribution Caps	People aged 49 and over on 30 June 2015	People aged 48 and under on 30 June 2015 (general cap)
<u>Concessional</u>	\$35,000	\$30,000
<u>Non-Concessional</u> *	\$180,000*	\$180,000*
Non-Concessional Maximum 3 Year Bring-Forward (Age < 65) *	\$540,000*	\$540,000*

***WARNING: Non-Concessional contributions made after 03/05/2016 are potentially subject to a retrospective lifetime cap of \$500,000 applied from 01/07/2007 subject to the passing of relevant law.**

TIP: The rules regarding contributions are complicated. It is always best to check with us.

Comment: The Coalition's superannuation policy as announced in the 2016 Budget appears to have been formulated with little or no consultation or due diligence. As with the Labor policy there are numerous administrative issues for the industry to work through and which may be found to be unworkable or too costly. Some or all aspects may never see the light of day. Hopefully the Coalition's \$500,000 Lifetime Cap will be dumped because it is so wrong on multiple levels.

Brushing aside the current uncertainty about super it will remain a favourable investment structure for tax purposes. Both major parties are proposing to remove the tax exemption for income on assets supporting pensions over and above a theoretical base level of around \$75,000, per annum per member, resulting in a tax rate of 15% (10% on discountable capital gains) above that base. Arguably full exemption has been overly generous. Given their policies on the pension exemption are almost identical it would be nice for those clowns to work together to minimise complexity which potentially means taxing the recipient. That won't happen. The big problem with the Coalition policy in particular is that it will be very difficult to build up large superannuation balances, so opportunities each year for concessional and non-concessional contributions will need be carefully considered.

3. Determine If You Qualify As A Small Business Entity (SBE)

SBE's have continued to be a focus of Budget attention. Watch to see if the Coalition 2016 Budget SBE policy gets through. Assuming it is passed, this will take the SBE threshold up to \$10m Turnover (TO) from \$2m on selected concessions as from 1 July 2016. SBE tax lurks are as follows:

SBE CONCESSION	COMMENT
Reduced 28.5% income tax rate for SBE companies for 2016 FY.	Note, the company tax rate will reduce to 27.5% for SBEs up to \$10m TO from 01/07/16 if the law is passed.
Small Business Income Tax Offset (SBITO) of 5% (up to \$1,000) for individuals that are SBE sole traders or in receipt of SBE income from a partnership or trust.	The rate of SBITO will increase to 8% and the TO threshold to \$5m but the maximum tax offset stays at \$1k per person if the law is passed. Will the complexity be worth it?
Trading Stock Concession – No need for stocktake if movement < \$5000 in a year based on a reasonable estimate.	Most businesses prefer to measure their stock though for some businesses this is a relief, for example, in hospitality. Available to SBEs up to \$10m TO from 01/07/16 if the law is passed.
Depreciation – Immediate write off of assets up to \$20,000.	See below.
Depreciation – Asset pooling for assets >\$20,000 (ex GST): 15% write off in first year followed by 30% pa on reducing value.	This is a fairly rapid write down of assets resulting in deferral of tax. You can buy on the last day of June and still claim a 15% write off. Available to SBEs up to \$10m TO from 01/07/16 if the law is passed.
Prepaid Expenses up to 12 months in advance are deductible for SBEs.	Non-SBE business taxpayers can only claim very limited categories of prepayments. Accessible for SBEs up to \$10m TO from 01/07/16 if the law is passed.
CGT Small Business Concessions – Div.152 allows very generous CGT reductions to SBEs when active business assets are sold.	Qualifying as an SBE is one of the pathways into these very generous concessions. The SBE route avoids the \$6m net asset means test. The \$10m TO threshold will not apply for access to the CGT concessions. This will remain at \$2m.
SBE Restructure CGT Rollover Relief - Provides flexibility for SBEs to change the legal structure of their business.	Applies to "genuine restructures" from 01/07/16. Defers gains and losses on the transfer of active business assets from one entity to another. WARNING: GST and/or Stamp Duty can still apply to any transfers. It has not been announced if the new \$10m TO will apply to this concession if the law is passed.
GST Cash Basis Accounting – A qualifying SBE may elect to use Cash Basis GST reporting.	Cash basis can assist GST cash flow for businesses that carry significant net debtors (debtors minus creditors). Available to SBEs up to \$10m TO from 01/07/16 if the law is passed.
Option to pay pre-determined fixed quarterly GST Instalments with a year-end annual balance up.	This concession is sometimes used for businesses that do not carry out a full GST reconciliation quarterly. Available to SBEs up to \$10m TO from 01/07/16 if the law is passed.

SBE CONCESSION	COMMENT
Two year ATO amendment period – The ATO can only go back two years to amend unless there is fraud or evasion.	The usual period is four years. SBEs enjoy a shorter amendment period in line with most individuals.

Here's How You Qualify as an SBE:

- ⊙ You or your relevant entity must carry on a business in the current year; and
- ⊙ Your “Aggregated Turnover” is less than \$2,000,000:
 - For the previous financial year; or
 - For the current financial year (estimated) provided you satisfied the test in one of the two previous financial years; or
 - For the current financial year (actual).

Comment: In most things tax there is always a hard bit. Here it is – “Aggregated Turnover” is your annual turnover plus the annual turnover of any business you are connected with or that is your affiliate. In other words the aggregation will bring in another business which is an “**affiliate**” or “**connected**”. These terms have complicated definitions ([s.328-125](#) and [s.328-130](#)) though will mainly bring in businesses in the same family group or with the same owners. If businesses are aggregated transactions between them are not counted in turnover.

4. Immediate Write Off Of Assets Costing Up To \$20,000 (Ex GST) for Qualifying SBEs

These write offs offer a compelling tax deferral opportunity which may be assisted further by announced SBE Tax rate reductions and removal of the 2% Budget Deficit Levy from 01/07/2017 (if not reintroduced by Labor).

SBE Immediate Asset Write Off	
Who Qualifies?	SBE entities only – see above
When from?	Assets purchased and installed after 12/05/15 and before 30/06/17.
What assets can I buy?	Assets used in a business including vehicles, furniture, equipment and software. Building improvements including fixtures are not included.
Does it matter if there is some private use of the asset?	No
Does the \$20k include GST?	If registered for GST – No. If not registered for GST – Yes
Do I have to aggregate separate assets that form a set?	No
If I spend up to \$20k upgrading a qualifying asset I already own does that qualify?	Yes
If I have an existing asset pool and the value falls below \$20k can I write that off?	Yes
If I previously elected out of SBE depreciation can that prevent a claim?	No

Comment: This concession is extended to SBEs with up to \$10m Turnover from 01/07/16 if the law is passed. Keep an eye on the time-out for this being 30/06/2017. The immediate write off threshold will revert back to \$1,000 effective 01/07/2017.

5. Review Capital Gains & Losses and Consider Timing

If there has been a disposal of an asset (including the takeover of a listed company investment) during the year, steps may be possible now to dramatically reduce the tax impact with techniques such as making deductible superannuation contributions (where eligible), realising other capital losses, or taking advantage of roll-overs. Generally capital gains are triggered on signing or entering a contract. For contracts close to year end the advantage of deferring the gain for a year and allowing more time to deal with the tax consequences is often compelling enough to delay signing.

Comment: *If your family trust makes significant capital gain it is very important that gets considered in drafting the year end distribution resolution - prior to 30th June.*

6. Bring Forward Expenditure

For some taxpayers and businesses bringing forward expenditure prior to 30th June assists by deferring tax for a year. Proposed SBE and Deficit Levy tax reductions may magnify the benefit. Possible types of expenditure to bring forward include:

- a) **Donations** – Many donations are tax deductible including certain (arguably undeserved) political donations by individuals up to \$1,500 pa. You can check deductibility of various organisations here: <http://www.abn.business.gov.au/DgrListing.aspx>
Tip: *Always obtain a receipt made out to the highest income earner.*
- b) **Small Business Expenditure on Plant & Equipment** – The SBE Immediate Asset Write Offs mentioned already are essentially a tax deferral, bringing forward depreciation claims.
- c) **Repairs** – Incur the expense for repairs prior to 30th June. It is important to consider the distinction between legitimate repairs and initial repairs or improvements to the form or function of the article being repaired.
- d) **Medical Expenses** – Note, the Medical Expenses Offset is being phased out. From 2015/16 until 2018/19, claims for this offset are restricted to net eligible expenses for disability aids, attendant care or aged care.

7. Prepaid Expenses

Prepaying up to 12 months of an expense prior to 30th June can assist by deferring tax for up to a year in the following circumstances:

- a) Any deductible expenditure <\$1,000 (ex GST)
- b) Any deductible payment required by a court or government - e.g. registrations.
- c) Any payment under a contract for service - e.g. wages.
- d) **Qualifying Small Business Entities** - SBEs have no limit on prepayment claims within the 12 month requirement. Popular claims would be rent, interest, insurance, subscriptions, registrations, service contracts, lease payments etc.
- e) **Individuals Incurring Non-Business Expenses** - This includes things like interest on rental properties and investment portfolios. **Important – prepaid interest and other expenses are not an allowable deduction for non-business entities.** For example a rental property in a trust will not benefit from an interest prepayment.

8. Superannuation Issues

a) Pay Employees' Superannuation Before 30th June

Many businesses pay their compulsory employee superannuation on a monthly or quarterly cycle whereby the payment is not determined and paid until after period end. Superannuation is not deductible unless received by the fund on or before 30th June. If possible to do so within your pay system, look to making your June contribution before 30th June.

Tip: *Contributions are not deductible until "received" by the fund. Use of a pay service / superannuation clearing house may significantly delay this. As an exception SGC contributions to the "Small Business Superannuation Clearing House (SBSCH)" are deemed to be received by the relevant fund once received by the SBSCH.*

b) Notify Intention to Claim Personal Super Contributions

Where you are eligible and intend to claim personal superannuation contributions as a tax deduction it is important for you to formally notify the fund the extent you wish to claim a deduction. This is often overlooked and causes problems. Your fund is required to confirm they have received a valid notice from you. Please retain the notice with your tax records. Most funds have their own form but the standard ATO one is here: <https://www.ato.gov.au/Forms/Notice-of-intent-to-claim-or-vary-a-deduction-for-personal-super-contributions/>

c) Qualify For The Government Superannuation Co-Contribution

Where you, or your children, are employed or are a sole trader with total assessable income and reportable fringe benefits of < \$50,454 (2015/16), for every \$1 of personal non-concessional superannuation contributions made by 30th June, the government will pay a co-contribution of up to \$0.50 (up to a maximum of co-contribution of \$500) into your superannuation fund. For more details see:

<https://www.ato.gov.au/individuals/super/in-detail/growing/super-co-contribution/>

Tip: *As the co-contribution rate begins to phase out at incomes > \$35,454, as income approaches \$50,454 it may not be worth it. Important – some funds will not process contributions without having a tax file number.*

9. Formalise Business Bad Debts

Bad debts are deductible only when formally recognised by entry in the accounting records or documented decision. Formalising bad debts prior to 30th June will bring the deduction into the current year.

10. Write Off Old Assets

Lurking in most tax depreciation schedules are assets that have been or should be physically disposed of. Be sure to notify us of any such items in order to reduce tax and tidy up your records. Note this does not apply to SBEs using the general pool provisions though those businesses can write off their pool if it drops below \$20k up until 30th June 2017.

11. Choose Optimal Business Trading Stock Valuation Method

It is legally possible to manipulate a business's tax outcome by choosing among alternative allowable stock valuation methods. It is open to value any item of stock (including share trading stock) for tax purposes, by any of the following methods:

- a) Cost;
- b) Market Selling Value;
- c) Replacement Value;
- d) SBEs can use the previous year stock take value in certain circumstances; or
- e) A lower value than the above for reasons including obsolescence.

For SBE simplified trading stock rules see: <https://www.ato.gov.au/Business/Small-business-entity-concessions/In-detail/Income-tax/Simplified-trading-stock-rules/>

For guidance on valuation of trading stock subject to obsolescence see Taxation Ruling TR 93/23:

<http://law.ato.gov.au/atolaw/view.htm?docid=TXR/TR9323/NAT/ATO/00001>

Comment: *The ATO have a Taxpayer Alert TA 2009/12 out to warn investors against “arbitrarily re-characterising” certain parcels of investment shares as trading shares so as to create income losses rather than capital losses on sale or trigger losses on unsold parcels using the trading stock valuation options. Ideally investment v trading shares should be held under different HINs under the same entity.*

12. Franked Dividend Distributions

Depending on circumstances of a company and its shareholders, the overall incidence of tax can be reduced by careful timing (and streaming if possible) of franked dividends particularly when marginal tax rates of shareholders are below the company tax rate which is currently 30% (or 28.5% for SBEs).

Tip: *Under proposals for company tax rate reductions it appears dividends will remain frankable at the rate of 30% which is good. It will be important to monitor the level of frankable profit reserves of each company.*

13. Trust Distributions

Distributions must be determined by trustees prior to 30th June. Each year we assist by sending draft minutes to clients. Added complexity due to the on-going reform of trust tax law and administrative hurdles imposed by the ATO means that special attention must be paid to these minutes. It is important to inform us about out of the ordinary income, capital gains or other transactions.

WARNING: *Failing to give proper consideration to how various components of your trust income will be distributed can result in payment of unnecessary tax which is irreversible.*

14. Trustees Must Nominate New Beneficiaries

Where a trustee wants to distribute to a new individual or entity for a year they must now report the beneficiary's Tax File Number (TFN) to the ATO within a strict time frame or failing that withhold tax at 49% (also within a strict time frame). This measure has no real purpose other than to trip up trustees.

Tip: Children under 18 are exempt from these rules however as soon as they turn 18 it is a good idea to ensure they have a TFN and ensure it is reported.

15. Director's Fees and Staff Bonuses

Deductibility of these entitlements can be triggered through payment, or by documenting intention to attribute the expense to the current year. Where the payee is a related party and would not be taxable until a later year, deductibility in the current year must be part of normal governance rather than by special tax arrangement. Note a Taxpayer Alert from the ATO warns against exploiting this: [TA 2011/4 - Deductibility of unpaid directors fees \(As at 2 June 2011\)](#)

16. Remember To Initiate Tax "Paperwork"

End of financial year is an important opportunity to generate tax reports and paperwork such as internet banking interest summaries, trading stock reports, stockbroker reports, annual rental property statements, annual donation summaries, and private health fund statements.

Tip: Chancellors operate a predominately paperless office. Annual workings for all clients are 100% paperless. We encourage you to submit information in electronic form.

17. Obtain Tax Depreciation Reports for Newly Acquired Rental Properties

Properties constructed on or after 18/07/1985 qualify for depreciation allowances based on construction costs. Because of the difficulty in obtaining this information there is a whole industry within the quantity surveying profession dedicated to production of depreciation reports based on estimated costs. These are apparently acceptable to the ATO, and cost around \$800 for houses and units, which is miniscule compared to the tax benefits normally generated.

Tip: If you are interested BMT have some useful on-line and mobile device calculators to help you estimate available claims: <http://www.bmtqs.com.au/tax-depreciation-calculator>

18. Avoid Medicare Levy Surcharge By Taking Out Private Hospital Cover

For those taxpayers without private hospital cover, with adjusted taxable incomes above \$90,000 for individuals and \$180,000 for couples or families, the Medicare Levy Surcharge will apply. This will be an additional 1% -1.5% tax, depending on your level of income. It applies in any period the individual does not have private health insurance with private patient hospital cover.

Tip: This can be a real trap if you have an abnormally high year through a capital gain for example. If you don't have cover now it may be too late to do anything about the surcharge for 2016.

19. Consider The Benefits Of New Online Bookkeeping Technologies

With the start of a new financial year comes the opportunity to implement a more efficient bookkeeping solution. Cloud accounting and automatic data feeds is causing a revolution for small business, investment entities and self-managed superannuation funds. If you act quickly before year end you can set up data feeds ready for the new year.

Tip: We are strong supporters of [Xero](#) for compatible business and investment entities and individuals. The efficiencies of single ledger cloud accounting are very real and Xero is the best product in most situations. For non-superannuation investment entities Class Portfolio is a very powerful product.

20. Consider Audit Risks / Taking Out Tax Audit Insurance

The ATOs data matching programs are gaining momentum and they have begun re-hiring under a new \$680m Tax Avoidance Taskforce Program. The breadth of data they are sucking in from other agencies and non-government institutions is ever expanding. These include property and investment transactions and income, insurance details

including luxury items, real estate data, online sales data, overseas transactions etc. etc. The idea is that they match this data to your tax returns and if something could be missing you get a “please explain” letter. We are seeing a gradual increase in these and you would think that that will continue. We have highlighted some areas of known ATO activity following and in other sections of this report:

- 🔥 Small business benchmarking, cash economy, data matching online sales (eBay etc.);
- 🔥 Tracing of income from internet based businesses including Uber, Apps, YouTube, and Airbnb;
- 🔥 Work related expenses. These are an irritation to Treasury and ATO expect a clamp down;
- 🔥 Matching of lifestyle assets from insurance data to reported income history;
- 🔥 Categorisation of employee v contractor. Often triggered by dob ins;
- 🔥 Reporting in the building and construction industry;
- 🔥 Data matching investment income and profits from buy/sells;
- 🔥 Data matching of possible undeclared foreign income from international fund transfers reported to the ATO by the Australian Transaction Reports & Analysis Centre (ATRAC);
- 🔥 Employee obligations such as PAYG withholding and superannuation guarantee;
- 🔥 Use of Trusts;
- 🔥 Rental Property Expenses including initial repairs and holiday houses not genuinely for rent;
- 🔥 Wealthy individuals using complex business structures; and
- 🔥 Capital gains non-disclosure and under-reporting.

Responding to ATO audit activity and questionnaires is costly in terms of professional time regardless of the outcome. In order to assist clients in reducing the uncertainty of unexpected fees we offer audit insurance cover through [Audit Shield](#) of up to \$10,000 (or \$20,000 for business between \$1m and \$10m) at relatively low cost. As the policies run annually to 31st July we have or will shortly be sending out renewals/information to those clients we feel could benefit from the service. If you do not receive information from us by mid-July and would like to obtain further information please contact us.

21. Businesses With Employees Must Have SuperStream Running By 1st July 2016

Please refer to the information in the next section of this report. Note, however, in a media release dated 22 June 2016 the ATO have announced that while many small business have already implemented SuperStream, they will provide compliance flexibility to those small businesses that are not SuperStream ready until 28 October 2016.

Tip: If you employ anybody and are unsure what this is about please contact us as soon as possible.

22. Individuals - Review Your Motor Vehicle Claim Method Before 30th June

For individuals, sole traders and individuals in partnership, the concessional vehicle claims using 1/3rd operating expenses and 12% of vehicle cost for non-commercial style vehicles are no longer available from the 2015/2016 financial year. Unless you have a valid log book **commenced before 30th June 2016** you will be restricted to claiming \$0.66 per kilometre up to a maximum of 5,000 km or total claim per vehicle of \$3,300.

Tip: If you commence recording your log book before June 30 your 2016 your claim can be based on that percentage, and applied to the total operating costs of the vehicle including depreciation and finance costs.

23. People With HELP & TSL Debts Working Overseas May Have to Pay Up

Overseas income, whether or not taxable in Australia, will be counted in determining whether a compulsory Higher Education Loan Programme (HELP) or Trade Support Loan (TSL) debt repayment is required by Australians living overseas from 01/07/17. From 01/01/16 HELP and TSL debtors who intend to move overseas for 183 days or more in any 12-month period are required to update their contact details using the ATO's online services via myGov, within seven days of leaving Australia. Those debtors already overseas have until 01/07/17 to update their details. Self-assessment is due by 31 October each year, again through myGov. An online calculator to convert foreign-sourced income into Australian dollars will be provided as part of the assessment form. Therefore, from 01/07/17, overseas debtors will be required to submit details of their 2016/2017 world-wide income to the ATO by 31/10/17. Note, the 2016/2017 income repayment threshold is \$54,869. For more information see:

<http://studyassist.gov.au/sites/studyassist/helpfulresources/pages/overseas%20debts%20-%20faqs>

<https://www.ato.gov.au/Individuals/Study-and-training-support-loans/Overseas-repayments/>

24. SMSF Documentation Including Valuations

Self managed superannuation funds that hold property or unlisted, irregular assets ideally should obtain external market valuations annually, or up to once every three years. For properties that would be a written appraisal from a real estate agent including analysis of comparable sales or market rents/yields. For unlisted assets, such as private company shares or trust units, that may be financial reports, meeting minutes etc. An outdated or unreliable market valuation could mean that account based pension calculations are incorrect and land you in hot water.

25. Tax Withholding On Payments To Foreign Residents Upon Disposal Of Certain Australian Property

For contracts entered into on or after 1 July 2016, purchasers (including individuals) of “taxable Australian property” (principally real property situated in Australia) from a foreign resident vendor, with a market value of \$2m or above, will be required to withhold 10% of the purchase price and pay that amount to the ATO. For more information see: <https://www.ato.gov.au/General/New-legislation/In-detail/Direct-taxes/Income-tax-on-capital-gains/Foreign-resident-capital-gains-withholding-payments/>

WARNING: *Although the new withholding obligation is labelled as apply in respect of acquisitions from foreign residents, Australian resident vendors who dispose of Australian real property with a market value of \$2m or above will need to apply for a “residency clearance certificate” from the ATO to ensure that amounts are not withheld from their sale proceeds.*

Please contact us to discuss or clarify any of these points. During our contact with you and in attending to annual compliance work we will normally come across issues such as these and provide valuable feedback in our issues report prepared when finalising that work.

SUPERSTREAM

The new SuperStream standard requires super funds and employers to use new data and e-commerce standards for all superannuation transactions, and are designed to address inefficiencies in back office processing by encouraging the use of technology. The widespread use of cheque payments and paper-based forms has apparently resulted in poor quality data, processing delays and duplicated or lost member accounts across the large member funds and SuperStream is an attempt to address this issue.

SuperStream is mandatory from 1st July 2016 for all employers making super contributions. In practical terms this means that employers will be required to send contributions data and payments electronically for all staff, with the only exception being contributions to a SMSF from a related party employer. You do not need to use SuperStream for personal contributions (for example if you are a sole trader and contribute for yourself).

There are a number of options that employers can use to meet their SuperStream obligations which include:

- ATO Small Business Superannuation Clearing House (SBSCH) which may be used by employers with 19 or fewer employees.
- Your superfund’s on-line system or clearing house.
- An external superannuation clearing house.
- Your payroll system.

Some important things to note about SuperStream are:

- You are required by law to send the payment and data on the same day. This enables the receiving super fund to reconcile your payment and message and allocate the contribution to the member account.
- If you use a clearing house to make contributions, check their terms and conditions of processing information and payments. Some clearing houses take ten days to process, but others may only take one day. Generally an employee’s super contribution is counted as being paid on the date their super fund receives it, not the date a clearing house receives it from you.
- If you use the ATO’s Small Business Super Clearing House (SBSCH) your super guarantee and SuperStream obligations are met on the date the SBSCH accepts them (so long as the super fund doesn't reject the payments). This is because the SBSCH is an ‘approved clearing house’ under government regulations. Note that this timeframe does not apply to salary sacrifice payments which are not considered to have been made until the date the super fund receives the payment.

- Even though you currently pay your super contributions by EFT or BPAY you will not necessarily be SuperStream compliant. We suggest that you talk to your fund to determine if this is the case.
- You may also choose to continue to contribute directly to each fund, as long as you send both the payment and member information electronically. If you wish to use this option you should check with each fund to ensure you are providing all necessary information to be SuperStream compliant.

Further details may be found at the following link: [SuperStream | Australian Taxation Office](#)

Comment: *It is not easy to see what this system will look like. Hopefully there are real benefits and this is not just a transfer of administration from the ATO to business.*

TAX HOT SPOTS

Following is some coverage of areas that appear to be under the ATO microscope at the moment:

HOTSPOT	COMMENT
<p>Home Office Claims – Phone, Mobile & Internet : The ATO have updated their website guidance regarding proportional claims for home phone, mobile & internet. The proposition is that they will deny deductions if the guidelines which aren't law aren't followed. They include maintaining a 4 week register of usage of each of these utilities. The details are here: https://www.ato.gov.au/individuals/income-and-deductions/deductions-you-can-claim/other-deductions/claiming-mobile-phone,-internet-and-home-phone-expenses/</p>	<p><i>Here in the real world no person has time to record the detail demanded by the ATO. It's obvious they wish deductions like this would go away. If you are prepared to fight a reasonable analysis of the details on a representative bill would perhaps be accepted by a court or tribunal with the ATO very reluctant to test given the verdict is public. It is worth noting that if you operate a business entity it is possible to package under FBT rules costs of this nature that are primarily for business use.</i></p>
<p>Dividend Access Shares: The ATO had previously released Taxpayer Alert 2012/4 to register their concern about schemes where a company issues dividend access shares (class shares) with the view to channelling existing profits to a lower tax environment. The ATO released Tax Determination TD 2014/1 stating that Part IVA may apply to such arrangements. More recently the ATO have been sending detailed questionnaires to companies with multiple share classes.</p>	<p><i>Care has always been required here particularly when tax advantages are likely. The main concern of the ATO seems to be Dividend Access Shares established after the profits are earned. It is always a good idea to consider the share structure carefully at the outset as opposed to a late change.</i></p>
<p>Businesses Operating Outside of ATO Benchmarks: The ATO collect and maintain benchmark profitability and expense ratios for a variety of business types. Where a tax return is submitted with data outside of the ATO 'acceptable ranges' it is now fairly routine for audit activity to be triggered.</p>	<p><i>Details of the benchmarks used for various industries are available at: https://www.ato.gov.au/Business/Small-business-benchmarks/In-detail/</i></p>

HOTSPOT	COMMENT
<p>Non Resident Tax Status of Individuals: The ATO are increasingly on the lookout to overturn claims of tax non-residency by Australians working offshore. In one case involving one of our clients the ATO took an aggressive assess first and ask questions later approach only to later reverse their decision.</p>	<p><i>Due to the increasing international mobility of labour and the obvious tax benefits of excluding offshore income from the Australian Tax System there have been a large number of cases coming through on this issue. Many of the cases have been decided against the taxpayer based on the fact that a normality of living had not been established in at the new destination, there were substantial continuing personal or financial ties with Australia, or there was conflicting evidence such as the way immigration cards were completed. It is important to carefully analyse your circumstances before declaring yourself a non-resident for Australian tax purposes.</i></p>
<p>Employee vs. Contractor: There has been a lot of activity from the ATO here and recent published decisions show horrendous consequences where “contractors” have been held to be employees. At stake are penalties for failure to deduct PAYG tax and pay super. In many cases the penalties can amount to more than the amounts you would have paid. Super paid after the event (SGC) is not deductible. Assessments arising from an audit could easily bring a business down. There are plenty of resources out there to help assess your position such as: https://www.ato.gov.au/Business/Employee-or-contractor/</p>	<p><i>Many businesses still are sloppy with this. Here are some tips:</i></p> <ol style="list-style-type: none"> <i>1. Individuals trading under ABNs are the biggest risk area. Beware that labour only contracts attract compulsory super contributions.</i> <i>2. Having an ABN and documenting as a contractor does not alter the reality of an employment relationship.</i> <i>3. Contracting with a company, trust or partnership is always a safer bet.</i> <i>4. Most audits result from dob-ins. There are now web pages facilitating these dob-ins.</i>
<p>Property Profits As Ordinary Income Rather Than Discountable Capital Gains It doesn't take much to tip a property sale into being regarded as a business or profit making undertaking with resultant adverse tax and GST outcomes. This can apply to even a subdivision of a single residential property. The ATO are on the lookout for incorrectly categorised property transactions.</p>	<p><i>Factors pointing to a business or profitmaking arrangement include:</i></p> <ul style="list-style-type: none"> <i>- Documented intention at purchase / financing</i> <i>- Period of ownership</i> <i>- Level of organisation and repetition</i> <i>- Other activities within the property industry</i>
<p>Trusts Taskforce: An announcement was made in the 2013 Budget that the ATO will receive extra funding to target misuse of trusts. In May 2013 the ATO set up their Trusts Taskforce web page to elaborate. The website lists some particular areas of focus, most of which are suitably vague. The emphasis appears to be on more artificial practices. It is difficult to know if this will impact mainstream use of trusts.</p>	<p><i>Hard core tax avoidance using trusts was a target for ATO compliance funding in the 2013 Labor Federal Budget. This relates to high level tax avoidance and not ordinary family, investment and business arrangements. As with trust tax reform the focus on trust compliance seems to have waned.</i></p>

HOTSPOT	COMMENT
<p>s.100A Trust Reimbursement Agreements: The ATO appear to be dusting off an old anti-avoidance provision with relevance to trusts. Section 100A of ITAA 1936 is an anti-avoidance provision that applies where a beneficiary is presently entitled to a share of trust income, and that present entitlement arose out of a "reimbursement agreement". That is basically where a distribution is declared (but not physically paid) to one party for tax purposes and another party benefits from it in some way. Agreements, arrangements or understandings entered into in the course of "ordinary family or commercial dealing" are specifically excluded from the definition of "agreement" in s 100A(13)</p>	<p><i>It is no secret that the ATO does not like trusts. The tax reform of trusts has been in the pipeline for five years and looks to be stuck there. Many trusts declare distributions and apply those funds for other purposes such as loans to other family members or working capital. The ATO have have decided to have a niggle, and in July 2014 set out some of their views on the boundaries of "ordinary family or commercial dealing" in a dedicated web page: Trust taxation – reimbursement agreement. The ATO examples imply that unpaid entitlements lent to another family member or entity must be lent on commercial terms. This is at odds with the way many trusts are run and may warrant reviewing the treatment of unpaid entitlements.</i></p>
<p>Partnerships of Trusts: With relaxation of rules of various professional bodies over the years one of the operating structures of choice has become a partnership of discretionary trusts. These are increasingly being used by professional firms such as accountants, lawyers and other professions with leverage created by employed professional staff. This structure is very effective on a number of fronts. The ATO however have concerns particularly that the underlying partners are transferring goodwill to these structures without addressing CGT and deflating their wages to achieve high levels of income splitting.</p>	<p><i>Where appropriate, careful use of this structure is definitely still warranted. The ATO have merely tried to slow the aggressive use of this structure by professional firms such as accountants and solicitors who have reduced the wages of the 'directors' in order to boost income splitting through their trusts. The Tax alert is here. TA 2013/3 - Purported alienation of income through discretionary trust partners (As at 22 November 2013) The ATO have followed this up with some curious guidelines as to acceptable levels of income splitting: "Assessing the risk: allocation of profits within professional firms" It is important to note that the income splitting is only available to firms with sufficient professional staff leverage.</i></p>
<p>Anti-Avoidance Part IVA Widened Retrospectively: The ATO have been losing quite a few cases brought using the Part IVA general anti-avoidance provisions over recent years. Changes retrospective to 19/11/2012 have been introduced. These strengthen the provisions expending the notion of what a 'tax benefit' is and when it is considered as the dominant purpose of a transaction.</p>	<p><i>Part IVA is drawn widely enough to cause much uncertainty. It is always advisable to have sturdy family or business reasons for entering any transactions. Anything arranged purely for tax reasons (other than intended tax concessions) could fall foul.</i></p>
<p>SMSF Related Party LRBAs There has been a lot of press about this following a spate of SMSF property loans being set up on terms far more favourable than would be available from a bank.</p>	<p><i>The ATO have issued "Practical Compliance Guidelines" in April and since extend the time to comply from 30th June to 31st January 2017. https://www.ato.gov.au/law/view.htm?DocID=COG/PCG20165/NAT/ATO/00001</i></p>

SIX OF THE BEST TAX SHELTERS

In this day and age there is no such thing really as tax planning for tax planning sake except for some deliberate concessions such as superannuation. Anti-avoidance provisions are drawn so wide that anything done with a significant tax purpose is at risk. The six of the best structures below are more to do with structuring your family and business affairs in a smart way that can attract incidental tax benefits that occur mainly due to inequities and inefficiencies in the tax system which are hardly the fault of taxpayers.

1. Division 152 Small Business CGT Concessions

Capital Gains Tax on active business assets such as business real estate and goodwill can be eliminated or substantially reduced with these concessions. In addition they can lead to an additional lifetime non-concessional superannuation cap of up to \$1.415m (2016/2017) per person. For all but the most straightforward cases the rules are complex and there are many hoops to jump through.

Tip: Apparently 2016/17 Budget announcements capping non-concessional contributions at \$500k per person do not include the above CGT concession cap.

2. Superannuation

Superannuation and an investment structure takes a lot of beating in terms of tax efficiency. The policy intention of both major parties is to limit the benefits available or limit the amount you can shelter in a superannuation environment.

3. Testamentary Trusts

High net worth individuals and families all need to consider incorporating testamentary discretionary trusts (TDTs) into their wills. Not only can they assist in protecting family wealth and maintain it within bloodlines, but also the tax impact of assets bequeathed can be spread around and penalty tax rates do not apply to minors in receipt of TDT income.

4. Discretionary Trusts

Discretionary trusts are the legal structure hated by the ATO and anyone that is not involved with one. Over recent years authorities have overreached in terms of compliance requirements for trusts and watered down their asset protection qualities by attempting to look through them. There have been promises to review the outdated tax law that applies to them but that process always ends up on the back burner. There is an increased compliance burden for trusts these days however in the right circumstances they are a very flexible and tax effective structure.

5. Bucket Companies

The term "bucket company" is accounting slang for a company that receives distributions of trust income and is accordingly taxed on these distributions at the rate of 30%. Use of companies in this way is institutionalised within the tax/accounting world and readily acknowledged by the ATO. The tax effect of distributing to a bucket company is a deferral of tax that might otherwise be borne at a higher rate in individuals hands. The days of bucket companies never seeing a cent of the distributions allocated to them are over courtesy of Division 7A. In reality the money has to find its way into the company otherwise it becomes unmanageable, however in many circumstances this creates a very useful family "bank", investment or succession structure, which unlike a trust is not limited to 80 years of life.

6. Partnerships of Discretionary Trusts

In the right situation such as some businesses, professional practices, and property ventures there is a lot to be said for this structure. It tends to provide the ultimate flexibility, access to Small Business CGT Concessions where available, help minimise Payroll Tax and can spread the base of land for Land Tax. The downside is that entry and exit of participants lacks the convenience and simplicity offered by a company structure.

APPS YOU MAY FIND USEFUL

Apps on your PC, Tablet, or phone have been fun to have but of questionable usefulness. Increasingly our lives are conducted on mobile devices and it seems the trend will continue. Here are some apps we have come across and found actually useful:

Name	Category	Comment	Link
Dashlane	Password Manager & Personal Info Security	Syncs between devices	https://www.dashlane.com/
LastPass	Password Manager & Personal Info Security	Similar to Dashlane; Has enterprise version	https://lastpass.com/
Scanner Pro	Scan documents to PDF	Automated scanning and emailing / cloud storage. Good for tax documents!	https://readdle.com/products/scannerpro
ATO App	Tax Office Services	Worth keeping an eye on. Becoming more useful as it develops.	https://www.ato.gov.au/General/Online-services/ATO-app/

KEY TAX RATES

Attached to this newsletter is a table of tax rates and information that you may find useful and/or interesting. It outlines a selection of key rates for the last financial year (2014/2015), the current financial year (2015/2016), and the proposed rates for coming financial year (2016/2017).

CHANCELLORS UPDATE

We are proud of our highly qualified staff and have implemented with effect from 1st July, share ownership in the Chancellors practice by key employees. In addition Allison Durant is to become co-director alongside myself. These changes have necessitated operating Chancellors Chartered Accountants through a fresh company structure. Given that the current company structure has been in place since 1982 the transition is fairly involved, though will hopefully not be disruptive or very noticeable to clients. There will be some changes to stationery, registrations, engagement documentation and bank account details which will flow through over the forthcoming year.

As many of you know Danielle has moved on to start a new career in the intelligence section of the Air Force after five years in the reception administration assistant role. Taking her place is the very capable Eve Scannella. A familiar face in Crystal Robinson (nee Graham) re-joined the firm as practice manager back in October 2015 and is doing a fantastic job keeping the practice up to date in a rapidly changing operating and technological environment.

As part of the reforms to regulation of Financial Advice many of you will be aware that the so called "accountants exemption" carve out allowing accountants to advise on set up, contributions to and withdrawals from, Self-Managed Superannuation Funds (SMSFs) ends on 30th June. Because of the actions of a few dodgy operators putting people into SMSFs for inappropriate or dishonest reasons, SMSFs are themselves classed as a financial product requiring a Securities Industry Licensee to advise on some aspects. Allison Durant and I embarked upon the requisite RG146 qualification required for a limited Securities Licence, however we have decided that the firm cannot justify the additional costs to clients of operating under a licence. Nor were we comfortable compromising the hard fought independence of the firm by operating under someone else's licence. From 1st July 2016 our advice and administrative services in relation to SMSFs will be on an execution and taxation advisory basis only. In other words, we can advise clients about taxation aspects, set up and administer their funds, but we cannot compel clients to set up or wind down a fund, nor can we compel clients to contribute or withdraw specific amounts other than to advise them about taxation aspects such as contribution caps and regulatory requirements. There will not be a recognisable change in the way we deal with clients, though you will see more disclaimers along the lines that we are providing information and tax advice only and not investment advice.

Disclaimers

Financial Product Advice

Nothing in this advice is intended as 'financial product advice' as defined by the Corporations Act (as amended by the Financial Services Reform Act 2001). We are not licensed to provide 'financial product advice' which includes recommendations regarding contribution to or withdrawal from, or specific investments within a particular superannuation fund (including a Self-Managed Superannuation Fund). You should consider if it is in your interests seeking advice from an Australian Financial Services Licensee before making decisions in relation to a financial product.

Currency of Income Tax Advice

Any taxation advice included in this correspondence is current to the date of writing. Taxation laws in Australia are complex and constantly changing. The government often changes rules effective from the date announced and in some cases retrospectively. If there is any delay in the use of this advice you should consider having it refreshed.

Quality of information

Before relying on the information on this newsletter, users should carefully evaluate its accuracy, currency, completeness and relevance for their purposes, and should obtain professional advice relevant to their particular circumstances. We and associated parties cannot guarantee nor assume any legal liability or responsibility for the accuracy, currency or completeness of the information or material.

Links to external websites

This newsletter may contain links to other websites which are external to our newsletter and website. It is the responsibility of the user to make their own decisions about the accuracy, currency, reliability and correctness of information contained in linked external websites.

Linkage to external websites should not be taken to be an endorsement or a recommendation of any third party products or services offered by virtue of any information, material or content linked from or to this website. Users of links provided by this website are responsible for being aware of which organisation is represented or providing the information or material on the website they visit.

Views or recommendations provided in linked websites do not necessarily reflect our views or recommendations, nor the views or recommendations of associated parties.

Security of our website

Users of our website should be aware that the World Wide Web is an insecure public network that gives rise to a potential risk that a user's transactions are being viewed, intercepted or modified by third parties or that files which the user downloads may contain computer viruses or other defects.

We and associated parties accept no liability for any interference with or damage to a user's computer system, software or data occurring in connection with this website. Users are encouraged to take appropriate and adequate precautions to ensure that whatever is selected from this website is free of viruses or other contamination that may interfere with or damage the user's computer system, software or data.

KEY RATES	2014-15		2015-16		2016-17 (Current proposals)	
Personal Income Tax Rates (Residents)	Threshold	Rate	Threshold	Rate	Threshold	Rate
1st rate	\$18,201	19.00%	\$18,201	19.00%	\$18,201	19.00%
2nd rate	\$37,001	32.50%	\$37,001	32.50%	\$37,001	32.50%
3rd rate	\$80,001	37.00%	\$80,001	37.00%	\$87,001	37.00%
4th rate (* includes temporary budget repair levy until 1/7/17)	\$180,001	47%*	\$180,001	47.00%*	\$180,001	47.00%*
Medicare Levy (ex surcharge)		2.00%		2.00%		2.00%
Resident Minor Tax Rates	Threshold	Rate	Threshold	Rate	Threshold	Rate
1st rate	\$417	66.00%	\$417	66.00%	\$417	66.00%
2nd rate	\$1,308	45% on entire amount	\$1,308	45% on entire amount	\$1,308	45% on entire amount
3rd rate (* includes temporary budget repair levy until 1/7/17)	\$180,001	45% on entire amount + 2% budget levy* on excess over \$180k	\$180,001	45% on entire amount + 2% budget levy* on excess over \$180k	\$180,001	45% on entire amount + 2% budget levy* on excess over \$180k
Medicare Levy (ex surcharge)		2.00%		2.00%		2.00%
Non-Resident Tax Rates (Non-Minor)	Threshold	Rate	Threshold	Rate	Threshold	Rate
1st rate	\$0	32.50%	\$0	32.50%	\$0	32.50%
2nd rate	\$80,000	37.00%	\$80,000	37.00%	\$80,000	37.00%
3rd rate (* includes temporary budget repair levy until 1/7/17)	\$180,001	47.00%*	\$180,001	47.00%*	\$180,001	47.00%*
Medicare Levy		0.00%		0.00%		0.00%
Company Tax Rate						
All Companies	30%		small business entity 28.5% - other 30%		small business entity 27.5% - other 30%	
Super Fund Tax Rates						
Concessional Contributions	15%		15%		15%	
Div 293 Contributions (addition tax applies where "income" over \$300k)	15%		15%		15%	
Income (accumulation phase)	15%		15%		15%	
Exempt Income (pension phase)	0%		0%		0%	
Superannuation Contribution Thresholds						
Concessional - age 48 and under at 30/6	\$30,000		\$30,000		\$30,000	
Concessional - age 49 and over at 30/6	\$35,000		\$35,000		\$35,000	
Non-Concessional	\$180,000		\$180,000 up to 3rd May 2016, lifetime limit of 500k thereafter		\$500k lifetime limit	
Draw Down Limits						
55 -64	4%		4%		4%	
65 -74	5%		5%		5%	
75 -79	6%		6%		6%	
80 -84	7%		7%		7%	
85 -89	9%		9%		9%	
90 -94	11%		11%		11%	
95+	14%		14%		14%	
Assets Test Thresholds	20/9/15 to 19/3/16		20/3/16 to 30/6/16		From 1/1/17	
Homeowners	Single	Couple (combined)	Single	Couple (combined)	Single	Couple (combined)
Full pension (assets at or below)	\$202,000	\$286,500	\$205,500	\$291,500	\$250,000	\$375,000
No pension (assets at or above)	\$775,750	\$1,151,500	\$788,250	\$1,170,000	\$547,000	\$823,000
Non-Homeowners						
Full pension (assets at or below)	\$348,500	\$433,000	\$354,400	\$440,500	\$450,000	\$575,000
No pension (assets at or above)	\$922,000	\$1,298,000	\$937,250	\$1,319,000	\$747,000	\$1,000,000