
FINANCIAL YEAR END 2017



TAXING TIMES

Time is limited this financial year end, primarily due to extra work created by bastardisation of the superannuation system by the current government in the final wash-up of the 2016 Federal Budget.

Australia has been hamstrung by hung parliaments and an unrepresentative senate for an eternity, and the damage is beginning to mount up in terms of out of control government expenditure and resultant stress on our very outdated and over complex income tax system. The heavy lifting in terms of net tax contribution and cost of government services is being dumped on aspirational working and small business classes. This is not sustainable. With corporate tax at internationally uncompetitive rates and personal income tax at breaking point, the next port of call is for the government to resort to confiscating wealth from targets that are unpopular, in the minority, or who don't have a vote at all. We have seen this with the new bank levy and a tidal wave of taxes and charges on non-resident property owners. Now South Australia has announced its own additional bank levy with no particular justification, other than to balance its own budget. The federal government is gagged because it created the disgraceful precedent in the first place.

The review that follows is largely a re-hash due to time constraints and given that relevant issues have been covered in the past. Tax planning is a year round necessity and we tend to deal with it more and more in our regular contact with clients, rather than cram it into year end.

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

CHANCELLORS UPDATE

As reported last year we are proud of our highly qualified and dedicated staff and have implemented with effect from 1st July 2016, equity participation in the Chancellors practice by key employees. In addition Allison Durant became co-director alongside myself. These changes necessitated a conversion of practice registrations to a fresh entity: Independent Family Offices Australia Pty Ltd t/a Chancellors Chartered Accountants. We thank you for your patience in dealing with some additional paperwork and disruption these changes caused.

We take this opportunity to introduce to you and welcome Ryan Murphy who joined us in March 2017. Ryan holds a Bachelor of Business (Accy), is a member of CPA Australia and has 6 years experience working in public practice.

IMPORTANT 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 2017 pension levels on completion of 2016 tax returns. Be careful with this. Underpayments are usually unfixable and costly in terms of extra tax.*

2. If you have significant amounts in superannuation you will need to consider the impact of superannuation changes that mostly take place from 1st July:

- a. Individuals with super balances in excess of \$1.6m will generally lose the ability to make further non-concessional contributions post 1 July. *Tip: There may be opportunities to maximise your balance above that level pre 30th June under the old rules, which in some cases allow a contribution of up to \$540k.*
- b. Members with accounts in tax free pension phase totalling more than \$1.6m may be required to reduce that total to the new cap of \$1.6m, by either re-allocating some of their super to 'accumulation mode' or taking some benefits out of superannuation. *Tip: In most cases it will be best to keep benefits in a superannuation environment from a tax point of view.*
- c. Transition to Retirement Income Stream (TRIS) accounts lose tax exempt status in relation to earnings and capital gains from 1 July. From then, a TRIS will generally be of no benefit unless the funds are needed outside of super. *Tip: In most cases members will cease their TRIS accounts otherwise they will unnecessarily drain their super with reducing opportunities to replenish it.*
- d. The new rules limit the amount of death benefits that can revert to a spouse or dependant in the form of a pension. The impact of this is that death benefits may need to be withdrawn from super where previously they could have continued as a pension. *Tip: It is important that you consider the impact of this in terms of estate planning. Note that there is a 12 month grace period for death benefits in excess of your '\$1.6m transfer balance cap' to remain in superannuation pension provided the death benefits revert to pension form automatically.*
- e. Funds with Limited Recourse Borrowing Arrangements (LRBA's) will need to review their situation as existing proposals (subject to some lobbying) can operate to restrict your ability to fund loan repayments with non-concessional contributions because of the way the \$1.6m total superannuation cap is applied.

Comment: Above is a very simplistic revision of the super changes. If you are in any doubt you should contact us or your financial advisor as soon as possible.

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

Annual contribution caps apply to both concessional and non-concessional superannuation contributions. The policy of the government has been to reduce access to the tax benefits available in super by lowering these caps. This makes it all the more important not to miss opportunities to contribute where applicable.

Taxation benefits of super are still worthwhile, even allowing for any additional Div. 293 Tax of 15% on high income earners ("income" >\$300k **Note: threshold goes down to \$250k on 1 July 2017!**), and now limitation on tax free pensions accounts and total superannuation balances in future.

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 administrative delays.

2016/2017 contribution caps are as follows:

2017 Contribution Caps	People aged 49 and over on 30 June 2016	People aged 48 and under on 30 June 2016 (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*

***IMPORTANT: From 1 July the Non-Concessional cap reduces to \$100k (\$300k Max bring forward) and the Concessional cap becomes \$25k for everybody.**

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

Reasons to be Cheerful: The 10% Rule that restricts the tax deductibility of personal superannuation contributions (as opposed to employer contributions), where your proportion of employment related income is >10% or more is removed from 1 July!

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

SBE's have continued to be a focus of Budget attention. Recently legislation was passed taking the SBE threshold up to \$10m Turnover (TO) from \$2m on selected concessions from 1st July 2016. SBE tax perks are as follows:

SBE CONCESSION	COMMENT
Reduced 28.5% <u>income tax rate</u> for SBE companies for 2016 FY.	Note, the company tax rate will reduce to 27.5% for SBEs up to \$10m Turnover from 1st July 2016.
<u>Small Business Income Tax Offset (SBITO)</u> of 5% (up to \$1,000) for individuals that are SBE sole traders or in receipt of SBE income from a partnership or trust.	Available to SBEs up to \$5m from 1 st July 2016. The rate of SBITO will increase to 8% from 1 July but the maximum tax offset stays at \$1k per person! Hardly worth the complexity.
<u>Trading Stock Concession</u> – 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 Turnover from 1st July 2016.
<u>Depreciation</u> – Immediate write off of assets up to \$20,000.	See below. The 2017 Federal Budget extended the operation of this for another year up until 30 th June 2018.
<u>Depreciation</u> – 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 Turnover from 1st July 2016.
<u>Prepaid Expenses</u> 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 Turnover from 1st July 2016.
<u>CGT Small Business Concessions</u> – 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 Turnover threshold will not apply for access to the CGT concessions - this will remain at \$2m. NOTE: The 2017 Federal Budget flagged changes to this concession to prevent the concessions applying to assets not used in the <\$2m Turnover business triggering the concession.
<u>SBE Restructure CGT Rollover Relief</u> - Provides flexibility for SBEs to change the legal structure of their business.	Applies to "genuine restructures" from 1st July 2016. 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 been confirmed that the new \$10m Turnover threshold does apply to this concession. This concession is shaping up to be of benefit only in very limited circumstances.
<u>GST Cash Basis Accounting</u> – 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 Turnover from 1st July 2016.
<u>Option to pay pre-determined fixed quarterly GST Instalments</u> 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 Turnover from 1st July 2016.
<u>SBE Start Up Costs</u>	From 1 st July 2015 SBEs are entitled to certain deductions when starting a small business. These deductions include professional, legal & accounting advice and certain government fees & charges.
<u>Two year ATO amendment period</u> – 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 \$10,000,000:
 - 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 devil in the detail. 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.

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

These write offs offer a compelling tax deferral opportunity, especially in light of further reduction in SBE tax rates and removal of the 2% Budget Deficit Levy from 1 July.

SBE IMMEDIATE ASSET WRITE OFF	
Who Qualifies?	SBE entities only – see above
When from?	Assets purchased and installed after 12 th May 2015 and before 30 th June 2018.
What assets can I buy?	Assets used in a business including vehicles, furniture, equipment and software. Building improvements including fixtures are not included.
At what point in time do you qualify for the deduction?	The relevant time is when the asset has been acquired and is installed ready for use.
Does it matter if there is some private use of the asset?	No, but any private use must be accounted for, and the \$20k limit relates to total asset cost, not just the Business Use %. Assets such as vehicles to be provided to employees or associates under FBT rules do not require claims to be apportioned. That is covered through an annual FBT adjustment.
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 in respect of 1 st upgrade and in respect of assets previously claimed under the SBE immediate write-off rules.
If I have an existing asset pool and the value falls below \$20k can I write that off?	Yes, if the value is <\$20k prior to deducting depreciation.
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 1st July 2016. As mentioned above the time-out for this is now 30th June 2018. The immediate write off threshold will revert back to \$1,000 effective 1st July 2018.

6. 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 now be possible 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 a significant capital gain it is very important that it gets considered in drafting the year end distribution resolution - prior to 30th June.

7. 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 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. In some circumstances you can elect to spread the deduction for a donation >\$5k over up to 5 years if that works better for your tax.
- 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.

8. 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.

9. 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) Review Salary Sacrifice Superannuation Contribution Arrangements

The concessional contribution cap reduces to \$25,000 from 1 July. Salary sacrifice arrangements that take you over your cap will result in no tax benefit and potentially costly administration.

d) 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 < \$51,021 (2016/17), 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 > \$36,022, as income approaches \$51,020 it may not be worth it. Important – some funds will not process contributions without having a tax file number.

10. 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.

11. 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 2018.

12. 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.

13. 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 (27.5% in 2018)).

Warning: During the year legislation was passed confirming that the maximum franking rate available on dividends is reset to the tax rate relevant to the company in the year the dividend is paid. This means that although you may have paid 30% tax on profit reserves you may only be able to frank them at 28.5% (2017) or 27.5% (2018).

14. 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.*

15. 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.*

16. 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 \(As at 2 June 2011\)](#)

17. 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.*

18. Obtain Tax Depreciation Reports for Newly Acquired Rental Properties

Properties constructed on or after 18th July 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. Note that the 2017 Federal Budget imposed limitations on depreciation of plant and equipment existing at the time of purchase. Residential rental properties purchased after 9th May 2017 cannot claim plant & equipment depreciation that is assets easily removed from a property, such as ceiling fans and dishwashers. This makes the reports less valuable though the changes do not impact construction costs.

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>*

19. 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 2017.*

20. Consider The Benefits Of New Online Bookkeeping and Filing Technologies

With the start of a new financial year comes the opportunity to implement a more efficient administration and bookkeeping solution. Cloud accounting and automatic data feeds are 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. Otherwise it is easy enough to upload a few days of transactions. Storing data in the cloud is becoming very cheap and there are numerous storage options including storing source documents such as receipts, invoices, agreements etc. within Xero itself either in folders or attached to the relevant transaction. Document scanning apps available on smartphones allow you to upload or email documents to your chosen filing solution.

Tip: The market is rapidly changing. We are strong supporters of [Xero](#) for compatible business and investment entities and individuals as Xero currently offers the best end to end solution from bank feed right through to tax return. Intuit Quickbooks has improved its product and is hungry for market share. For non-superannuation investment entities Class Portfolio is a very powerful product however ShareSight although less flexible, has a far better user interface.

21. 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. 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.

Comment: The Michael Cranston and associates ATO Tax Fraud matter can't be left without comment. Hardworking small businesses and taxpayers have rightful cause for extreme anger over this situation. The fact that the most senior officer in charge of monitoring high net worth “clients” of the ATO including “assets betterment” (in other words unexplained wealth) has apparently been complicit in the very conspicuous consumption of his children and their associates, is bad enough. That is only part of it. Government departments have used Plutus as a labour hire firm to bypass employment and IR obligations imposed by law on every business in the country. To put it another way the government is bypassing the very laws it imposes on everybody else. In

addition the departments in question have put hundreds of millions of taxpayers money at risk through lack of due diligence on such service providers.

22. 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 1st July 2017. From 1st January 2016 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 1st July 2017 to update their details. Self-assessment is due by 31st 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 1st July 2017, overseas debtors will be required to submit details of their 2016/2017 world-wide income to the ATO by 31st October 2017. 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/>

23. 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.

24. Beware of Requirement to have a "Clearance Certificate" when Selling any Property

Since 1 July 2016, it has been necessary to prove to someone purchasing "taxable Australian property" (principally real property situated in Australia) from you, with a market value of \$2m or above, that you are an Australian tax resident. Failing that, a withholding tax of 10% is required to be deducted from your sale proceeds and paid to the ATO, and claimed back as part of your tax return. Note, from 1 July the market value threshold falls from \$2m to \$750k, and where applicable, the withholding rate increases from 10% to 12.5%. Australian resident vendors need to apply to the ATO for and provide the purchaser with a "Clearance Certificate" otherwise the purchaser is required to withhold and remit the relevant amount at settlement. This is because they have no other way of knowing your tax residency status. For more information see: <https://www.ato.gov.au/General/Capital-gains-tax/In-detail/Calculating-a-capital-gain-or-loss/Capital-gains-withholding--Impacts-on-foreign-and-Australian-residents/>

WARNING: Although the new withholding obligation is labelled as only applying in respect of acquisitions from foreign residents, Australian resident vendors who dispose of Australian real property with a market value in excess of the relevant threshold will need to apply for a "residency clearance certificate" from the ATO to ensure that amounts are not withheld from their sale proceeds. Further if you are purchasing a property over \$750k and you have not been supplied with a clearance certificate from the seller the onus will be on you to withhold from proceeds and remit the required amount to the ATO. BEWARE –WITH A THRESHOLD OF ONLY \$750k APPLYING AS OF 1 JULY 2017, THIS IS NOW RELEVANT TO NEARLY EVERY SALE OF REAL ESTATE!

25. Changes Affecting Holders of Work / Holiday Visas

Effective 1st January 2017 the ATO started classifying employees with Subclass 417 'Working Holiday Visa' or Subclass 462 'Work & Holiday Visa' as "Working Holiday Makers". From this date, these employees are now subject to a 15% tax rate for income up to \$37,000, significantly less than the previous tax rate of 32.5%. The new tax rates can be viewed here:

<https://www.ato.gov.au/Rates/Schedule-15--Tax-table-for-working-holiday-makers/>.

If you employ working holiday makers you are required to register with the ATO via <https://www.ato.gov.au/twhm>. Unregistered businesses must continue to withhold at 32.5%. For the 2017 income tax year two payment summaries will also be required for earnings before and after 1st January 2017.

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.

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 :</p> <p>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:</p> <p>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:</p> <p>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.</p> <p>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:</p> <p>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:</i></p> <p>https://www.ato.gov.au/Business/Small-business-benchmarks/In-detail/</p>

HOTSPOT	COMMENT
<p>Non Resident Tax Status of Individuals:</p> <p>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 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:</p> <p>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</p> <p>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:</p> <p>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>
<p>SMSF Related Party LRBAs</p> <p>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 issued the following “Practical Compliance Guidelines” and provided an amnesty for SMSFs to rectify non-arms length LBRAs by 31st January 2017:</i></p> <p>https://www.ato.gov.au/law/view.htm?DocID=COG/PCG20165/NAT/ATO/00001</p>

HOTSPOT	COMMENT
<p>s.100A Trust Reimbursement Agreements:</p> <p>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 nigggle, 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:</p> <p>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.</i></p> <p>TA 2013/3 - Purported alienation of income through discretionary trust partners (As at 22 November 2013)</p> <p><i>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:</p> <p>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 expanding 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>

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.

2. Superannuation

Superannuation as 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

Despite the ATO concerns noted above, 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.

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