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Client Information Newsletter - Tax & Super April 2013

ATO revving up its car FBT crosschecking efforts

The fringe benefits tax (FBT) year has just ended and the FBT return lodgement deadline is now on the horizon. The ATO has taken the opportunity to remind employers that it is actively using data matching to identify potential FBT obligations associated with motor vehicles.

Businesses that have bought a vehicle in the last two years are likely to be affected by this data matching program, with the ATO emphasising that its program targets compliance in three key areas — FBT, the luxury car tax, and fuel schemes (such as fuel tax credits) which are administered by it.

The ATO said that common issues found in some of the more high-risk cases involving cars and FBT obligations include employers failing to correctly identify private use, and failing to keep supporting documentation, including log books and odometer records. It has flagged the fact that it is using information obtained from various motor vehicle registration bodies in each state and territory to identify employers who have bought a business registered vehicle but have not, for example, registered for FBT.

The ATO's vehicle data matching efforts also identifies all motor vehicles sold, transferred or newly registered in the 2011-12 and 2012-13 financial years where the transfer and/or market value is $10,000 or greater. Data from income tax returns, at the category for motor vehicle expenses, will also be matched.

The ATO said that employers who make a car available to employees for "private use" will most likely have an FBT liability. Cars are made available to an employee/associate when the car is not at the employer's premises and the employee is allowed to use it for private purposes.

Business owners should be aware that:

- if a car is garaged at an employee's home, it is taken to be "available for private use" (regardless of whether they have permission to use if for private purposes), and
- as a general rule, travel to and from work constitutes private use of a vehicle.

There are only limited circumstances where an employee's private use of a vehicle is exempt. For example, no FBT is payable where all of the following conditions are met:

- a work-related vehicle (being either a taxi, panel van or certain utility vehicles) is provided
- the car is used for work-related travel and for travel between home and work only
- there is minimal private usage of the vehicle (the ATO cites an example of occasional use of the vehicle to remove domestic rubbish).

Consult this office if you feel at all concerned about your obligations related to FBT and motor vehicles. ■

Contact Us

Welcome to Collison Accounting's client information newsletter, your monthly tax and super update keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics covered, please contact us.

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Also in this issue:

Tips on how to avoid paying excess contributions tax 2
Contributions to super beyond age 75 2
Complete guide to SMSF asset valuation 3
Division 7A: Take care when tapping the business's money 5
Tips to prepare for the R&D Tax Incentive deadline 7
Selling your business 8

Tips on how to avoid paying excess contributions tax

No one wants to pay more tax than required, especially when it is due to inadvertent mistakes that could have easily been avoided. This can occur when it comes to making super contributions that exceed contribution caps.

The ATO takes a hard line on excess contributions – whether they are concessional (pre-tax) or non-concessional (after-tax) – so it is best to stay vigilant and take note of what contributions you make.

Excess contributions tax of up to 46.5% can apply where the caps are exceeded.

The table below summarises the caps for 2012-13 and 2013-14 and applicable tax rates.

Year	Concessional cap	Tax on excess
2012-13 & 2013-14	$25,000 (all ages)	31.5%
	Non-concessional cap	
2012-13 & 2013-14	$150,000 (all ages)	46.5%

Following is a guide to guard against some common mistakes made with regard to both contributions.

Individuals who make concessional contributions need to adhere to the following rules to avoid exceeding their cap:

- always monitor voluntary contributions (eg. salary sacrificing) so you can stop, reduce or delay them when you realise you may exceed your concessional contributions cap in a certain financial year (Note: employees cannot ask their employer to change compulsory super guarantee amounts)
- remember that your employer's super guarantee contributions are included under concessional contributions
- always check when super guarantee contributions are received by your fund (eg. contributions for the June 2013 quarter may be received by your fund in July 2013, making it a concessional contribution for 2013-14)
- combine contributions from all employers, where there is more than one
- remember that the transitional concessional contributions cap for over 50s ($50,000 in 2011-12) ended on June 30, 2012
- always take into account deductible super insurance premiums and administration costs being paid by your employer because they both count towards the concessional contributions cap

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Did you know... Contributions to super beyond age 75

The current upper age limit of 70 for employees receiving superannuation guarantee (SG) payments is to be scrapped, effective July 1, 2013. From then on, employees aged 70 or over will become eligible for SG payments with no further age restriction applying.

You should remember, however, that existing rules for voluntary super contributions remain. The upper age restrictions already in place state that voluntary concessional (before-tax) and non-concessional (after-tax) contributions may be made until the fund member turns 75.

The timing of the age 75 cut-off however contains a little wriggle room. These contributions are required to be received by the super fund within 28 days of the end of the same month in which an individual has their 75th birthday. Note that the timing of the payment is based on when it is recorded as having been received by the fund, not when paid by the individual.

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- remember that splittable contributions under a super contributions splitting arrangement count towards the concessional contributions cap of the "applicant spouse" (who received the original contributions), not the "recipient spouse"
- always complete and lodge a "notice of intent to claim or vary a deduction for personal super contributions" and supply it to your fund (even if it's a self-managed super fund) before you start an income stream or pension if those concessional contributions form part of the pension assets.

Similarly, individuals who make non-concessional contributions need to be wary of the following:

- remember that excess concessional contributions count towards your non-concessional contributions cap
- take stock of when the "bring forward" option has been triggered in a prior year (Note: under the "bring forward" option, people under 65 may be able to make non-concessional contributions of up to three times their non-concessional cap over a three year period. For instance, if you brought forward your contributions in the 2012-13 income year, it would be 3 x $150,000 = $450,000)
- do not make non-concessional contributions greater than $150,000 when you are ineligible to use the "bring forward option"
- do not undertake a "re-contributions strategy" without realising that the re-contributed amount counts towards your non-concessional contributions cap (Note: a "re-contribution strategy" involves withdrawing a lump sum, paying any necessary tax on the withdrawal and re-contributing these funds into your superannuation as a non-concessional contribution)
- always lodge the appropriate election form before or when you make the following contributions so they can be excluded from your non-concessional contributions cap:
  a. contributions arising from personal injury payments, and
  b. contributions derived from the proceeds of the disposal of certain small business assets, up to their lifetime capital gains tax amount.

Several options exist to manage a potential excess contributions tax problem, but it's best to prevent excess contributions in the first place by following the pointers above. Before each contribution is made, do confirm that no contributions cap will be accidentally exceeded. ■

Complete guide on SMSF asset valuation

Unsure of what the valuation guidelines are for your self-managed superannuation fund (SMSF)? With the end of the financial year fast approaching, we have compiled a guide on what you need to know about asset valuation – a process that became mandatory for all SMSFs from the 2012-13 income year as SMSFs are now required to use market value reporting for all their financial accounts and statements.

What is market value?

"Market value" means the amount that a willing buyer of the asset could reasonably be expected to pay to acquire the asset from a willing seller if the following assumptions were made:

- the buyer and the seller dealt with each other at arm's length in relation to the sale
- the sale occurred after proper marketing of the asset, and
- the buyer and the seller acted knowledgably and prudentially in relation to the sale.

What are the valuation requirements?

There are a few situations outlined below where SMSF assets must be revalued in a particular way (see table on the following page).

When does a valuation need to occur?

The ATO does not require SMSF trustees to undertake an external valuation for all assets each year. For instance, assets such as real property may not need an annual valuation unless a significant event (i.e. natural disaster, market volatility, macroeconomic events or changes to the character of the asset) occurred that has created the need to review the most recent valuation.

On the other hand, assets such as cash, widely-held managed funds and listed securities can be valued easily each year and should be valued at the end of each financial year. It is typically easy for auditors to value shares, managed funds and other listed investments because they can obtain daily valuations online (the value for listed securities, for instance, are

Continued on page 5➔

Complete guide on SMSF asset valuation (cont)

Situation	What you need to know	Valuation requirement
Preparing financial accounts and statements	Assets should be reported at market value.	Based on objective and supportable data
Collectables and personal use assets – acquired after July 1, 2011 and transferred or sold to a related party after that date	A collectable or personal use asset is an investment in: a. artwork b. jewellery c. antiques d. artefacts e. coins, medallions or bank notes f. postage stamps or first day covers g. rare folios, manuscripts or books h. memorabilia i. wine or spirits j. motor vehicles k. recreational boats, and l. membership of sporting or social clubs.	Qualified, independent valuer
Collectables and personal use assets – acquired before July 1, 2011 and transferred or sold to a related party before 1 July 2016		Transfer must be made at arm's length price* that is based on objective and supportable data
Collectables and personal use assets – acquired before July 1, 2011 and transferred or sold to a related party from July 1, 2016		Qualified, independent valuer
Acquisitions or disposal of an asset from or to a related party of the fund	SMSF trustees often transfer personally held assets into their SMSF but there are limited types of assets that can be sold or transferred into your SMSF: • business real property • widely held trusts, and • in-house assets (up to 5% of market value of fund assets). None of these assets can be transferred into your fund unless the transfer is done at a fair arm's length market value. Formal valuations are important to prove that the sale price was market value, especially when the asset transfer is an in-specie contribution into your fund. Consult this office on the legalities of in-specie contributions. The ATO devotes special attention to transactions between members of the fund, relatives or related parties as they all have to be on arm's length market terms.	Acquisition price should reflect market value based on objective and supportable data. Sale price should reflect a true market rate of return
Determining that the market value of in-house assets does not exceed 5% of the value of the SMSF's total assets	In-house assets refer to investments in, loans to or leases with related parties. However, there is a rule that your SMSF's in-house assets must not exceed 5% of the market value of the fund's overall assets. To verify this however, your auditor has to sign off every year on the most up-to-date market value of the in-house assets as well as all the SMSF's assets.	Based on objective and supportable data
Determining the value of assets that support a super pension or income stream	All super fund assets must be revalued at the date the pension commences, with ongoing pensions requiring the member's account balance to be determined at July 1 every income year. The ATO has shone a spotlight on exempt pension income claims and it is becoming increasingly common for the ATO to review pension funds and ask for copies of valuations used at pension commencement. Risk having your exempt pension income claim disallowed if the ATO discovers your assets have not been revalued to market value with appropriate evidence to match.	Based on objective and supportable data

*Arm's length means the price should be the same as it would have been had the parties to the transaction not been related to each other.

easily obtainable from the security's approved stock exchange) but SMSFs with real estate, exotic assets or investments in private companies or trusts will require additional work from auditors.

Who can value your assets?

Generally, the valuation can be undertaken by any appropriate person provided it is based on objective and supportable data. Depending on the situation, appropriate valuers may include a registered valuer, a professional valuation service provider, a member of a recognised professional valuation body, or a person without formal valuation qualifications but who has specific experience or knowledge in a particular area.

In certain cases however, valuations must be undertaken by a qualified, independent valuer. The ATO recommends you use a qualified, independent valuer if:

- an asset represents a significant proportion of the fund's value, or
- the nature of the asset indicates that the valuation is likely to be complex.

In the case of collectables and personal use assets, the valuer should be a current member of a relevant professional body or trade association such as the Australian Antique and Art Dealers Association, the Auctioneers and Valuers Association of Australia and the National Council of Jewellery Valuers. For real estate, valuations can be undertaken by a property valuation service provider – including online services or a real estate agent.

Why pay for a valuation?

Valuations are worth every cent as it is often the fastest and simplest way of ensuring your fund is complying with super laws and taking advantage of the full array of tax concessions available. The cost of not complying with super laws is more costly – penalties for not valuing assets at least once a year can be exorbitant.

Trustees should keep appropriate records of how valuations were determined, so they can be readily verified if required. As part of its compliance processes, the ATO may review an SMSF valuation and ask for evidence of the valuation method to determine if the valuation is acceptable or not. Valuations prepared by qualified, independent valuers are less likely to be challenged by the ATO. Consult this office if you are unsure of your obligations and responsibilities when it comes to SMSF asset valuations. ■

Take care when tapping the business's money



Business owners of private companies often borrow money from their own companies for all sorts of reasons. However there is an area of the tax law that covers situations in which private companies dole out money to those within a business, in a form other than salary, that needs to be understood by business owners. This is known as Division 7A.

What is Division 7A?

Division 7A exists as an integrity measure, and deals with benefits such as payments, loans, or even debt forgiveness made by private companies. The Division 7A law prevents private companies making tax-free profit distributions to shareholders (and their associates).

Such transactions can include:

- amounts paid by a private company to a shareholder (or associate), including transfers or uses of property for less than market value
- amounts lent to the same without specific loan agreement (not loans fully re-paid by lodgement day*)
- debts the business forgives.

Through the Division 7A rules applying, such loans, debt forgiveness or other payments are treated as assessable unfranked dividends to the shareholder (or associate), and taxed accordingly in their hands.

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Division 7A (cont)

Who does it apply to?

"Private companies" are covered by Div 7A. The rules thereby apply to the shareholders of such companies (typically, the principals of the business) and their "associates". This last term is widely defined and can include family members and related entities. Employees may be affected if they are shareholders (although fringe benefits rules may also apply in preference).

If you find yourself in circumstances where there is a possibility of Div 7A provisions applying, and the tax consequences that go along with it, consult this office.

What commonly triggers Division 7A?

Most commonly, Div 7A applies where there is a loan by the company to the business's owners (that is, shareholders). A loan will generally be treated as a dividend if a company lends money to a shareholder (or associate) in an income year and the loan is not fully repaid by the lodgement day* of the same income year.

Another example, which is not all that uncommon, is where an asset of the company is made available for use of the shareholders — a holiday house owned by the company is a typical example.

Where shareholders of the private company use that holiday house for free over a certain period, this will likely trigger Div 7A as a "payment", as this use is viewed as having a commercial value. That value is deemed to be a distribution to shareholders that would otherwise be tax-free were it not for the Div 7A provisions.

What can be the consequences?

Any loans, payments and debt forgiveness from the business to its shareholders (or associates) may be deemed to be an assessable dividend to tax in the hands of the shareholder (or their associates) typically at their marginal tax rate, under the Div 7A rules. The dividend is "unfranked" meaning that there are no franking credits available to the recipient (unless the Commissioner exercises his discretion to the contrary).

But one important aspect of Div 7A, broadly speaking, is that there needs to be "profits" from which the business can make payments. This is referred to as a "distributable surplus".

In general terms, provided there is a sufficient distributable surplus in the company, all payments made by a private company to a shareholder (or their associate) to which Div 7A applies are treated as dividends at the end of the income year.

Can you avoid Division 7A?

To avoid the Div 7A provisions, such transactions must be arranged correctly and at "arm's length". In particular there are certain payments, loans and debt forgiveness that are not always treated as dividends.

Certain payments are not always treated as dividends:

- the repayment of a genuine debt owed to the shareholder
- a payment to a company (not acting as trustee)
- any payment that is otherwise assessable for tax
- a payment made to a shareholder in the capacity of an employee (including their associates)
- a liquidator's distribution.

The following loans are not treated as dividends:

- a loan fully repaid within an income year
- loan to a company (if it is not acting as a trustee)
- loans made "in the ordinary course of business" on commercial terms
- a loan made to buy shares or rights under an employee share scheme
- any loan that is otherwise assessable for tax
- a loan that is put under a special type of loan agreement called a "Division 7A loan agreement" before the lodgement day of the company's tax return*
- other types of loans that meet the definition of "excluded loans" for Div 7A (see this office).

And not all debts that are forgiven end up being treated as dividends, such as:

- where the debtor is a company
- if the debt is forgiven because the shareholder becomes bankrupt
- where the loan that created the debt is itself treated as a dividend
- if the Tax Commissioner exercises discretion due to being satisfied that the shareholder would otherwise suffer undue hardship.

Borrowing money from a private company, even if it is your own business, can have serious pitfalls if not carried out correctly. It may be necessary to put in place a Div 7A loan agreement. Seek advice from this office if you find yourself in such circumstances. ■

*the earlier of the due date for, or actual date of, lodgement of the company's return.

Tips to prepare for the R&D Tax Incentive deadline

Active innovation and constant resourcefulness are vital to a business's success. Tax incentives are available for those businesses undertaking research and development (R&D) activities. Such businesses should take note that the deadline to register R&D activities for the 2011-12 financial year is April 30, 2013 if they haven't yet done so.



The R&D Tax Incentive, which recently replaced the R&D Tax Concession, has two core components:

- a 45% refundable tax offset (equivalent to a 150% deduction) for eligible companies with an aggregated annual turnover of less than $20 million, provided they are not controlled by income tax exempt entities, and
- a 40% non-refundable tax offset (equivalent to a 133% deduction) for all other companies.

Eligible companies claim these incentives in their company tax return. As a general rule, to be eligible – a business needs to be a company, needs to be undertaking some form of experimental activities (referred to as "core" and "supporting" R&D activities), and must have incurred more than $20,000 R&D expenditure for the year.

Eligible R&D expenditure may include:

- operating costs such as salaries, consumables and contractor costs incurred on R&D activities, and
- the decline in value of plant and equipment used for R&D activities.

Before you claim the R&D Tax Incentive however, you must first register your R&D activities with AusIndustry.

You must register your R&D activities:

- for every income year you want to claim the incentive
- prior to claiming the R&D tax offset in your company income tax return
- within 10 months of the end of your company's income year (for example, if your income year ends on June 30, then you must register with AusIndustry by April 30 of the following year).

Companies should collate all the necessary records, complete the detailed application forms, and separate their "core" and "supporting" R&D activities.

Record keeping is critical to your application so you need to show business and tax records that support your claims for R&D. Your records must either be in English – or easily translated into English – and you must keep them for five years after you make a claim as the ATO and AusIndustry may ask to see them. Below are some examples of acceptable records:

- project plans and design specifications
- contracts between yourself and people working for you or third parties for which you have agreed to develop a product
- progress reports; sales and purchase tax invoices; receipts; bank account/financial/ credit card statements; bank deposit books and cheque butts
- diaries, timesheets, expenditure journals and cash books
- R&D working papers, apportionment-based log books
- employee records such as copies of tax file number declarations, wage books, time sheets and super records
- motor vehicle expenses, including logbooks
- debtors and creditors lists
- records of depreciating assets; stocktake records; records of any private use in relation to assets or other purchases.

Records that are backdated or contain vague details of the R&D activities undertaken are not considered appropriate. For assistance or guidance on obtaining proper advice when it comes to registering for the R&D Tax Incentive, consult this office. ■

Selling your business

The last thing on your mind when you first go into a business is the day you lock the door and walk away for the last time. But whether through selling up, retirement, or even due to health reasons, it's inevitable that you will one day need to consider what is involved in winding up the business, and have some idea about what loose ends may need to be tidied up.

Registrations to cancel

As part of the process, you need to cancel your registrations with the ATO when you sell or cease trading. You are required to notify the Australian Business Register within 28 days of ceasing business and cancel, where applicable, registrations for the following:

- Australian business number (ABN)
- goods and services tax
- fuel tax credits
- luxury car tax
- pay-as-you-go (PAYG) withholding.

A note of caution however — it's best to make sure all activity statements are lodged (even if there is "nil" to report) as well as PAYG withholding reports before cancelling your ABN. Your GST registration needs to be cancelled 21 days from ceasing trading, and the final activity statement will need to show any sales or purchases for that period (including the sale of the business, if applicable).

Final tax returns

A final tax return will need to be prepared for the business if operating from a structure such as a company or trust. The return will need to cover the portion of the financial year up to when the business folds. Further, you should still keep your records. The tax law says they need to be kept for five years for all sales, purchases, and payments to employees and other businesses.

GST loose ends

The sale of a "going concern" will generally be GST-free, subject to certain conditions. One of these conditions is that "all things necessary for the continued operation of the enterprise" is made. If not all assets are sold as part of the continuing business (for example, essential plant and equipment are sold separately), there is a risk is that you may lose the going concern GST exemption.

If this particular exemption is unavailable, an asset that is "real property", such as land and buildings will attract GST when sold. This is set at one-eleventh of the sale price. For example, if you sell land for $88,000, the GST will be $8,000. But there is a "margin scheme" for real property you might be able to use, which sets the GST at one-eleventh of the difference between the sale price and typically how much you paid for it. Again, there are specific conditions which apply to access this scheme. GST issues involving the sale of a business are complex; see this office for more details.

CGT loose ends

Capital gains tax (CGT) will likely come into play in the course of your business sale transaction. Don't forget to account for any capital losses that have been previously carried forward.

There are various CGT concessions available for the "small business" owner. For example, if you are retiring and have been in business for at least 15 years, the profits from the sale of assets may be CGT-free. Alternatively, your super fund could get a helpful boost. If the proceeds of the sale of a business CGT asset are rolled over into a super fund, the capital gain is exempt from CGT. This "retirement exemption" applies to the gains made on the sales of as many business CGT assets as you like, subject to a total lifetime limit of $500,000. And if you're at least 55 years old, you don't even need to put the money into a super fund to qualify for the tax exemption (ask this office for more details).

For those operating from a company, beware of doling out payments or benefits to shareholders and their families, as such distributions could trigger a tax liability for them under the "Division 7A" provisions. This section of tax law means (among many other things) that if a company makes a payment to a shareholder or associate, or even "forgives a debt", the ATO can deem it to be a "dividend" and require tax to be paid by the recipient.

(See separate article on page 5 of this newsletter on Division 7A, however this can be a complicated tax area, so tailored and specific advice will be advisable.)

Helpful checklist

Tying off all the loose ends can be a lengthy, onerous process. Our office can tailor advice to your circumstances. In the meantime, there is an ATO checklist to ensure you tick all the right boxes when selling a business. Ask this office for a copy. ■