Collison Accounting Pty Ltd

84 Waterman St, Old Bar, NSW, 2430
Email: collisonpn@bigpond.com
ABN: 18 124 773 440

Tel: 02 6553 3235
Fax: 02 6553 3250
Mobile: 0428 449 376

Client Information Newsletter - Tax & Super December 2022



Xmas gifts from employers

Christmas is traditionally a time of giving, including employers showing gratitude to their workers for a job well done throughout the year. However, depending on the nature and value of the gift, and also who it is gifted to, such magnanimity can attract unwanted tax consequences. So how as an employer do you gift most tax-effectively this festive season?

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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Gifts to employees and their associates (e.g. spouses)

The first step is determining whether the gift constitutes entertainment. Gifts that constitute entertainment include tickets to movies, plays, sporting events, theatre, restaurant meals, holiday airline tickets, and admission tickets to an amusement park. On the other hand, the following gifts are not entertainment: Christmas hampers, bottles of alcohol, gift vouchers, perfume, flowers, and pen sets.

continued on page 3 ⇨

SMSF compliance: what's on the ATO's radar?

In a recent speech, ATO assistant Commissioner Justin Micale outlined the ATO's latest compliance issues for those who operate an SMSF.

ID fraud and investment scams

While ID fraud and investment scams are still quite rare in the SMSF sector, they are becoming more prevalent.

In the 2022 financial year, the ATO identified increasing numbers of individuals who were victims of identity fraud where SMSFs were registered without their knowledge or consent. Luckily for most victims the ATO detected the fraud early so it could protect their super, but not for all.

These scammers are becoming increasingly sophisticated, impersonating well-known Australian companies and using personal details to gain trust.

They use various methods to contact people such as email or cold calling, pretending to be financial advisers and encouraging them to transfer their superannuation into a new SMSF or investment product. The investor is often promised high returns.

Once they have their personal information, they seek to use it to establish an SMSF, rollover money into the fund and steal retirement savings.

This reinforces the need for individuals to treat contact from any third parties in relation to their investment and superannuation choices with an abundance of caution.

Illegal early access

Early access is the most common risk in the sector.

It occurs when individuals access their retirement savings before meeting a condition of release. Not only is this illegal, but money taken out of superannuation early has a detrimental impact on an individual's retirement nest egg.

There are only limited circumstances where a member can legally withdraw their super early, such as where a member reaches their preservation age and retires, is 65 years old (even if not retired) or has died.

Non-lodgment of SMSF annual returns

The lodgment of an SMSF annual return is a fundamental obligation for all trustees/members including those in retirement phase.

There are around 24,000 funds who haven't lodged their first return and a further 80,000 lapsed lodgers with one or more outstanding returns.

Lodgment is vital to ensure your SMSF retains its complying status on SuperFund LookUp as funds which have overdue returns by more than two weeks may have their regulation details removed. This restricts the SMSF from receiving rollovers and employer contributions.

Regulatory contraventions

In the 2022 financial year, the ATO received contravention reports for 13,558 funds with 39,997 contraventions being reported. This is an increase of nearly 3.5% in the number of SMSFs with contravention reports lodged and an increase of nearly 6.3% in the number of contraventions reported compared to the 2021 financial year.

The most common contravention relates to members having accessed their retirement savings early, which is often reported as a loan to a member or a payment standards breach.

The main drivers of regulatory contraventions are financial stress, poor record keeping and a lack of understanding of the rules.

Audits

Adequacy and independence were two key issues identified.

Key to a robust audit is the SMSF documentation. Trustees and their advisors must provide their nominated auditor with all the relevant documentation for the SMSF's accounts and financial transactions for the year.



Xmas gifts from employers cont

Where an entertainment gift costs less than $300 (GST-inclusive) and is provided infrequently throughout the year, there will generally be no Fringe Benefits Tax (FBT), no deduction will be allowed, and no GST credits can be claimed. Where the cost is $300 or more, FBT will apply, and a deduction and GST credits can be claimed.

Where a non-entertainment gift is in play, and it costs under $300, no FBT will apply, but a deduction and GST credits can be claimed. Where the cost is $300 or more, FBT will apply, and a deduction and GST credits can be claimed.

All told therefore, the best result for an employer (at least from a tax standpoint) is to provide a non-entertainment gift under $300.

Gifts provided to third parties (e.g. clients, suppliers, contractors etc.)

Where gifts are provided to these recipients, the $300 threshold has no relevance.

Gifts that constitute entertainment (irrespective of cost) do not attract FBT, cannot be deducted, and no GST can be claimed.

By contrast, non-entertainment gifts do not attract FBT, however a deduction and GST credits can be claimed – again, irrespective of cost.

Cash bonuses

Alternatively, instead of gifts, employers may wish to provide cash bonuses to their staff. From a tax perspective, the attraction of doing so is that it shifts the tax burden away from the employer and onto the employee. That is, the cash counts as assessable income for the employee while the employer can claim a deduction. No FBT is payable by the employer on a cash bonus.

Leave bonus

Another benefit that may be considered by employers is a leave bonus. For example, allowing workers to finish up for the year a couple of working days before Christmas and not have that count against their annual leave balance, noting that this may be a quiet time of the year for business anyway. There are no adverse tax consequences for either party. The added benefit for the employer is that, unlike a cash bonus, there is no immediate cashflow impact. ■

If you need assistance with the tax treatment of your Christmas giving, including Christmas parties, don't hesitate to reach out to us.



SMSF compliance: what's on the ATO's radar? cont

Record keeping is key. Documentation of an SMSF audit itself is also necessary to determine that the audit has been properly conducted. This is the case even if there were no contraventions.

Trustees also need to appoint auditors who are genuinely independent.

Director IDs

All existing directors, including directors of a corporate trustee of an SMSF, are now required by law to have a director ID by 30 November 2022. It's not too late to comply, as the ATO is taking a softly-softly approach to compliance in this area. ■

If you have any questions around SMSF compliance, we're here to help.

Single member SMSFs

From 1 July 2021, the law was changed to allow for six-member SMSFs (up from five members). At the time of writing, the uptake has been slow so far with just 228 funds with six members. At the other end of the spectrum, it is permissible to have single member funds. The main advantage of doing so is that you have total control over your retirement savings, and the investment decisions in respect of those savings. However, there are some issues to be mindful of.

Number of trustees

An SMSF trustee is a person responsible for ensuring an SMSF is maintained for the purpose of providing retirement benefits, and complies with the investment and regulatory rules. The trustee can be a company or an individual. You can set up your SMSF with only one member; however the superannuation legislation requires you to have two individual trustees or a corporate trustee for the fund.

If you have a corporate trustee for a single member SMSF:



- The corporate trustee company can have one or two directors, but no more.
- The fund member must be the sole director or one of the two directors.
- If there are two directors and the fund member is an employee of the other director, the fund member and the other director must be relatives.

If you choose to have a corporate trustee:

- The corporate trustee company can have one or two directors, but no more.
- The fund member must be the sole director or one of the two directors.
- If there are two directors and the fund member is an employee of the other director, the fund member and the other director must be relatives.

Loss of capacity

If the sole member loses legal capacity, then the person who holds an enduring power of attorney for the member may act as trustee of the fund in their place. This is an important matter to attend to before setting up your SMSF.

If the sole member was also the sole director of a trustee company, then the shareholder of the company will need to appoint a replacement director. If the member was the only shareholder, then the probate of the member's will needs to be granted before a new shareholder is appointed.

Death

In the event that the sole member passes away, then the other trustee will be left with total control of the fund. If the sole member was also the sole director of a trustee company then the same consequences from the loss of legal capacity will appy (see earlier).

Retaining residency

The SMSF must remain an Australian superannuation fund in order to retain its complying status. Whether the super fund does so depends on meeting the following tests:

1. Be established in Australia.
2. Have its central management and control ordinarily in Australia.
3. The fund must have either at least 50% of the fund's assets linked to active members who are residents in Australia or not have any active members.

Thus, having a single member SMSF may limit your ability to travel overseas for extended periods.

All told, there is no ideal number of members to have in your SMSF, and it will depend on your circumstances. ■



On-boarding employees for the holiday rush

Hiring additional employees to help with surging end-of-year demand? A New employment form, accessed through ATO online services, will help reduce your compliance time.

It's an easy way for your employees to provide you and the ATO with the information that the ATO need. If your new employee has a myGov account linked to the ATO, once signed in they can:

- access ATO online services
- go to the 'Employment' menu
- select 'New employment' and complete the new form.

Your employees will need your ABN to complete the form. When they submit the form, their tax file number (TFN) declaration details are sent straight to the ATO, so you as their employer do not need to do this. The form will then enable them to print and give you the summary of their tax details. You'll need the summary so you can input the data into your system.

The New employment form can also be used to collect a range of information. For example, employees can use it to authorise variations to the amount you withhold from their pay for tax or the Medicare levy, or to advise you of their choice of super fund. They can also use it to update their tax circumstances with you, for example, if:

- their residency status has changed
- they no longer have a government study and training loan
- they are claiming the tax-free threshold from a different employer.

This is an alternative to your employee completing a Tax file number declaration and Superannuation standard choice form to obtain their details.

When your employee completes the online commencement forms, this needs to be done within 28 days of them starting.

Other issues

You'll also need to confirm your new worker is legally allowed to work in Australia. Australian citizens, permanent residents and New Zealand citizens are legally allowed to work here. If you believe the worker is a foreign national (other than a New Zealander), you must confirm they have a visa with permission to work. More information about employing migrant workers is available on the Department of Home Affairs website.

If you're hiring someone on a working holiday visa (subclass 417 or 462), you must also register as an employer of working holiday makers. You need to do this before paying them.

If your business has a contract with a labour-hire firm, then they're responsible for pay as you go (PAYG) withholding, super guarantee and fringe benefits tax obligations. Regardless of how the activity is described, if a labour-hire firm supplies workers to your business, they must withhold from payments to individual workers.

To be clear, it is the labour-hire firm that needs to withhold tax from individual workers under a labour-hire arrangement whether they are an employee or independent contractor. ■

As your tax practitioner we can help you with the tax and super issues surrounding putting on a new worker, including determining if they are an employee or contractor.

New work from home deduction rules

The ATO has issued new draft guidelines around a new method (the revised fixed rate method) of calculating work-from-home running expenses from 1 July 2022 (as an alternative to calculating the actual work-related portion of all running expenses).

The new revised fixed rate method will replace both:

- the 52 cents fixed-rate method set out in paragraph 5 of Practice Statement PS LA 2001/6 (for electricity and gas expenses, home office cleaning expenses and the decline in value of furniture and furnishings), and
- the short-cut (COVID-19) 80 cents method (for all additional running expenses).

You are eligible to use the revised fixed-rate method from 1 July 2022 if you:

- work from home to fulfil your employment duties or to run your business (a separate home office or dedicated work area is not required)
- incur additional running expenses that are deductible, and
- keep and retain records of the time spent working from home and of the additional running expenses incurred.

New rate

The new rate of 67 cents (replacing the fixed rate of 52 cents in PS LA 2001/6) was "based on the Australian Bureau of Statistics (ABS) household expenditure survey with consideration of annual Consumer Price Index (CPI) weightings". However, given that the recent Federal Budget forecast a 50% increase in electricity bills alone over the next two years, the adequacy of the new 67 cent rate is open to question.

Furthermore, in arriving at the new rate, there was no explanation or reconciliation to the 80 cents per hour rate in place under the COVID-19 shortcut method. The new 67 cent rate represents a 16.25% reduction on that COVID rate.

Further undermining the adequacy of the new 67 cent rate is that it is inclusive of certain expenses that were not included under the former 52 cent rate. As noted in footnote 3 of PCG 2022/D4, the fixed-rate method in PS LA 2001/6:

continued overleaf ⇨



New work from home deduction rules cont

> *... allowed 52c per hour for each hour a taxpayer worked from their home office to calculate their electricity and gas expenses, home office cleaning expenses and the decline in value of furniture and furnishings. In addition, a separate deduction for the taxpayer's work-related internet expenses, mobile and home telephone expenses, stationery and computer consumables and the decline in value of a computer, laptop or similar device could be claimed.*

However, PCG 2022/D4 at paragraph 23 proposes that the revised 67 cent fixed rate under the new rules is inclusive of:

- internet expenses
- mobile and/or home telephone expenses, and
- stationery and computer consumables.

The inclusion of these expenses within the revised fixed rate, when coupled with the current high inflation environment, means that there is a high likelihood that taxpayers may be worse off when moving from 52 cents to 67 cents.

Record keeping

From 1 January 2023, this will become more onerous under the new revised fixed rate method.

Under that method, you will need the keep a record of the actual hours worked from home (e.g. timesheets, rosters or a diary kept contemporaneously). This is more onerous than the 52 cent method where you only needed to keep a record to show how many hours you worked from home. You could do this over the course of the year, or if your work from home hours are regular and constant, by keeping a record for a representative four-week period.

The ATO under the new revised fixed rate method also requires evidence in relation to each of the running expenses listed above. For energy, mobile and/or home telephone and internet expenses, one bill per item needs to be retained. If the bill is not in your name, additional evidence is needed to prove that you incurred the expenditure. For stationery and computer consumables, one receipt needs to be kept for an item purchased.

Summary

All told, under the new method, the amount that can be claimed will potentially be lower, while the compliance obligations are higher – the taxpayer not only needs to keep a record of times spent working from home, but also there is a need to keep an invoice/receipt for each of the additional costs, such as an electricity bill. This is a new requirement which never formerly existed under either of the replaced fixed rate methods.

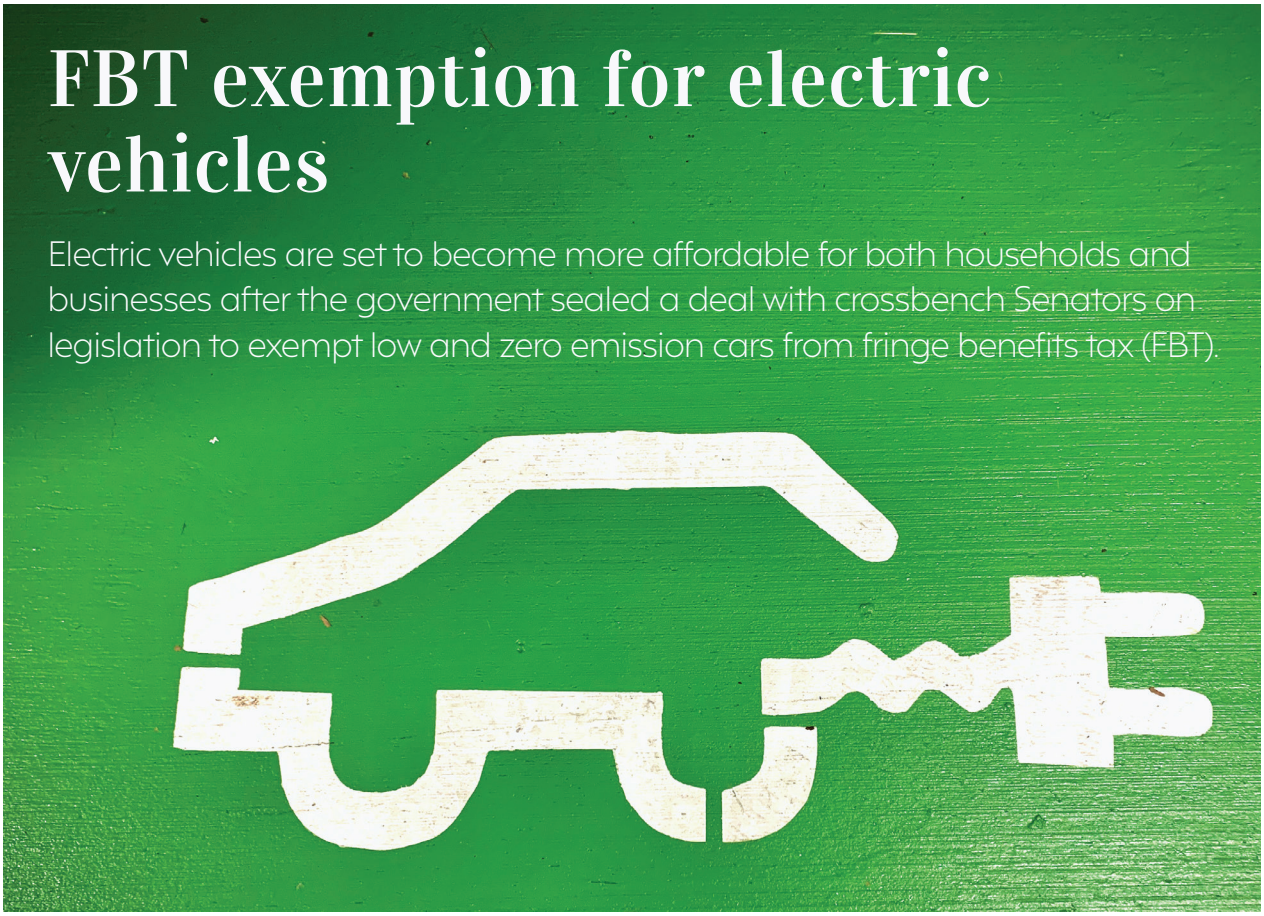
While the new draft guidance offers a transitional arrangement until December 2022, individuals currently availing themselves of the 52 cent fixed rate method will need to consider whether they can meet the additional administrative burden from 1 January 2023, or whether the "actual expenses" method is a more achievable alternative.

If you are uncertain which method is best for you, contact us directly to discuss your circumstances. ■



FBT exemption for electric vehicles

Electric vehicles are set to become more affordable for both households and businesses after the government sealed a deal with crossbench Senators on legislation to exempt low and zero emission cars from fringe benefits tax (FBT).



The new law introduces an electric car discount in the form of an FBT exemption. This allows for car fringe benefits comprising the use or availability for use of an eligible car that is a zero or low emissions vehicle to be exempt from FBT. Specifically, a car benefit will be an exempt benefit for a year of tax if:

- the car is a zero or low emissions vehicle (note the scheme has been extended to include plug-in electric and internal combustion hybrids until 1 April 2025)
- the value of the car at the first retail sale was below the luxury car tax threshold for fuel efficient vehicles (currently $84,916), and
- the car is first held and used on or after 1 July 2022.

The FBT exemption would mean a customer with a gross income of $95,000 using a 36-month novated lease through their employer to purchase a 2022 Tesla model Y would see their take-home pay reduced by $1,364 a month, compared to $1,863 under the current rules, according to Inside Edge. Over the course of the lease, the total saving to the buyer would be $29,451 compared to a standard car loan.

Employers are the other big winners from the changes, which will remove the FBT liability on company-owned electric vehicles provided as part of a salary package for personal use by employees.

Under the earlier example, a Tesla valued at $64,000 currently results in a company FBT charge of around $12,500, according to Treasury calculations. This would be reduced to nil where the conditions above are met.

Car fringe benefits that are exempt from FBT will continue to be included in the employee's individual fringe benefits amount for the purposes of determining the employee's reportable fringe benefits amount for each FBT year in which the exempt benefit is provided.

FBT exemption for electric vehicles cont

Your reportable fringe benefits amount is used for:

- calculating your liability for the Medicare levy surcharge
- calculating your adjusted taxable income in determining whether a child is a dependant for Medicare levy purposes
- determining your entitlement to the private health insurance rebate
- determining whether you are liable for Division 293 tax for superannuation contributions
- determining your eligibility for the government co-contribution for personal superannuation co-contributions you made
- determining your eligibility for the low-income super tax offset for concessional (before tax) super contributions you or your employer pays into your super fund
- determining whether you can offset your business loss against other income (non-commercial losses)
- working out if you are entitled to reduce your employee share scheme discount
- working out the amount you must repay against your
  - Higher Education Loan Program (HELP)
  - Vocational Education and Training Student Loan (VETSL)
  - Student Financial Supplement Scheme (SFSS)
  - Student Start-up Loan (SSL)
  - ABSTUDY Student Start-up Loan (ABSTUDY SSL)
  - Trade Support Loan (TSL) debt
- determining your entitlement to a tax offset for
  - contributions you made to your spouse's superannuation
  - invalid and invalid carer
  - zone or overseas forces
  - Medicare levy surcharge (lump sum payment in arrears)
  - seniors and pensioner
- determining your eligibility for family assistance payments, including
  - Family Tax Benefit Part A and Part B
  - Child Care Subsidy
  - Parental Leave Pay
  - Dad and Partner Pay
- working out your child support obligations. ■

Contact us if you would like to know more about this new law.

This information has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation or needs.