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Beware of who you share your benefits with

Where some businesses have tripped up in the past is where the source of benefits provided is not clear cut — that is, where non-cash components of remuneration are sourced not directly from an employer, but from an associate, a related company or from a third-party provider.

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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For fringe benefits tax (FBT) to apply, the conventional wisdom is that the benefits involved are provided instead of cash salary, and further that such benefits are usually paid in respect of an employment relationship. Hence the pool of accepted FBT-attracting items — laptops, cars, entertainment expenses and so on.

But as mentioned, it has often been the case that employer taxpayers have made the mistake of assuming that because a benefit is provided by "someone else", they are not liable for FBT — that is, where non-cash components of remuneration are sourced from an associate, a related company or from a third-party.

Third party FBT danger: What to look for *cont*

The arranger provisions

The FBT law provides that an employer can be liable for FBT even if benefits are provided to staff by third parties or by an "associate" of your business. In other words, there could still be an FBT liability even if it is being provided indirectly.

For example, arrangements to which these provisions might apply would include employees who receive goods directly from your suppliers.

For a liability to arise, it is generally accepted that you must have been party to the arrangement or had been knowingly facilitating the provision of the benefit. In some cases, allowing an employee to receive a benefit in these circumstances may be sufficient to result in it being considered an arrangement for FBT purposes.

Arranger provisions and meal entertainment

It is not necessarily the case that you would be held liable for FBT for meal entertainment where you merely allow an employee to, for example, go out to lunch with a client where the client provides the meal, or to attend a function provided by a third party.

Where you need to be careful however is where it could be inferred that an employer "entered into an arrangement" with a third party that includes providing such a benefit to your staff member, such that:

- the meal entertainment was provided under an agreement between you, the employer, and the third party, or
- you knowingly participated in the provision or receipt of such entertainment — for example putting in for drinks at a function organised by the third party, or making premises available, or
- your business promoted or participated in a scheme under which the meal entertainment was provided by the third party (such as by encouraging sales staff to participate in a product promotion organised by the third party).

Specifically "outside" the FBT net

Certain family arrangements may not necessarily trigger FBT. The ATO has ruled out a number of specific examples of benefits under family arrangements that it deems to be outside the scope of FBT law.

These include:

- a birthday present given to a child who works in a business run by the parents
- a wedding gift given by parents to an adult child who had some years earlier worked after school in the family business
- an interest-free or concessional loan given to such a child for the purpose of buying a matrimonial home
- the value of meals and accommodation provided to children of a primary producer in the family home where they work on the family farm
- the rental value of a farm homestead occupied by a family whose private company conducts the farming business in which they work and holds the title to the homestead
- the value of accommodation provided free in the family home to a child apprenticed to his/her parent as a motor mechanic, and
- the administration costs of an employer in providing fringe benefits (for example, via salary packaging). ■

Case study

Rosie is employed by an accountancy practice that provides taxation advice to many soccer teams and their players. The teams often arrange free tickets for Rosie and her partner to attend matches and sometimes corporate functions that precede them on match days. The partners of the accounting practice encourage her to take up these offers as they provide an opportunity to network for new business opportunities.

It is likely that a benefit has been provided, by a third party, which arises in respect of Rosie's employment, which would make the benefit subject to the FBT provisions, resulting in her employer having an FBT liability.

Is your business prepared for Single Touch Payroll?

Single Touch Payroll is a government initiative to streamline business reporting obligations, which is due to become compulsory from 1 July 2018. When a business pays its employees, the payroll information will be sent to the ATO via the business's payroll software.

Reporting under the Single Touch Payroll (STP) system removes the requirement to issue payment summaries, provide annual reports and tax file number declarations to the ATO. During the first year of its introduction, the ATO says employers will not be liable for a penalty for a late STP report.

Important points to keep in mind for the transition to STP include:

- Employers with 20 or more employees will need to start reporting through STP from 1 July 2018.
- You will report salary or wages, pay as you go (PAYG) withholding and super guarantee information to the ATO when employees are paid.
- To determine if you are required to report through STP, you will need to do a headcount of employees on 1 April 2018 (more below).
- You may have the option to invite employees to complete tax file number (TFN) declarations and super standard choice forms online.
- Payroll software will need to be updated to a version that supports STP.
- If your software was already STP enabled, you could have already been able to report through STP from 1 July 2017.

continued overleaf ⇨

EMPLOYER CHECKLIST TO HELP YOU GET READY

Step 1: Do a headcount of the employees you have on 1 April 2018

Count the number of employees you have on your payroll on 1 April 2018 to find out if you are a "substantial employer". If you have 20 or more employees on that date you will need to report through STP. (See overleaf.)

Step 2: Update your payroll solution when it's ready

Right now, payroll software and service providers are updating their products. A software product catalogue is available on the Australian Business Software Industry Association (ABSIA) website (search for "absia product catalogue"). The catalogue will be updated as payroll solutions are STP-enabled.

You may wish to talk to your payroll software or service provider or third party provider for more information about your product, and when it will be ready.

Step 3: Start reporting through Single Touch Payroll

You can start reporting when your payroll solution is ready. Also note that:

- **You will not be penalised.** You will not be liable to pay a penalty for a late report during the first 12 months you are required to report through STP, unless the ATO first gives you written notice advising that a failure to report on time in the future may attract a penalty.
- **It's okay if you make a mistake.** When you start reporting through your STP-enabled payroll solution, you will be able to correct any errors you make in a later STP report.
- **PAYG withholding payments.** You will still have the option to pay your PAYG withholding more regularly, for example, when you pay your staff. However, there is no change to current payment due dates.

Is your business prepared for Single Touch Payroll? *continued*

EMPLOYEE END-OF-YEAR PAY INFORMATION

If you report an employee's details through STP, you will not have to provide that employee with a payment summary at the end of the financial year. You also won't be required to provide the ATO with a payment summary annual report for those employee's details.

You will need to notify the ATO when the payment summary data is considered final. The ATO will make that information available to employees (and their tax agent) through myGov, and as pre-filled information in their tax return.

WHO IS AND IS NOT AN EMPLOYEE?

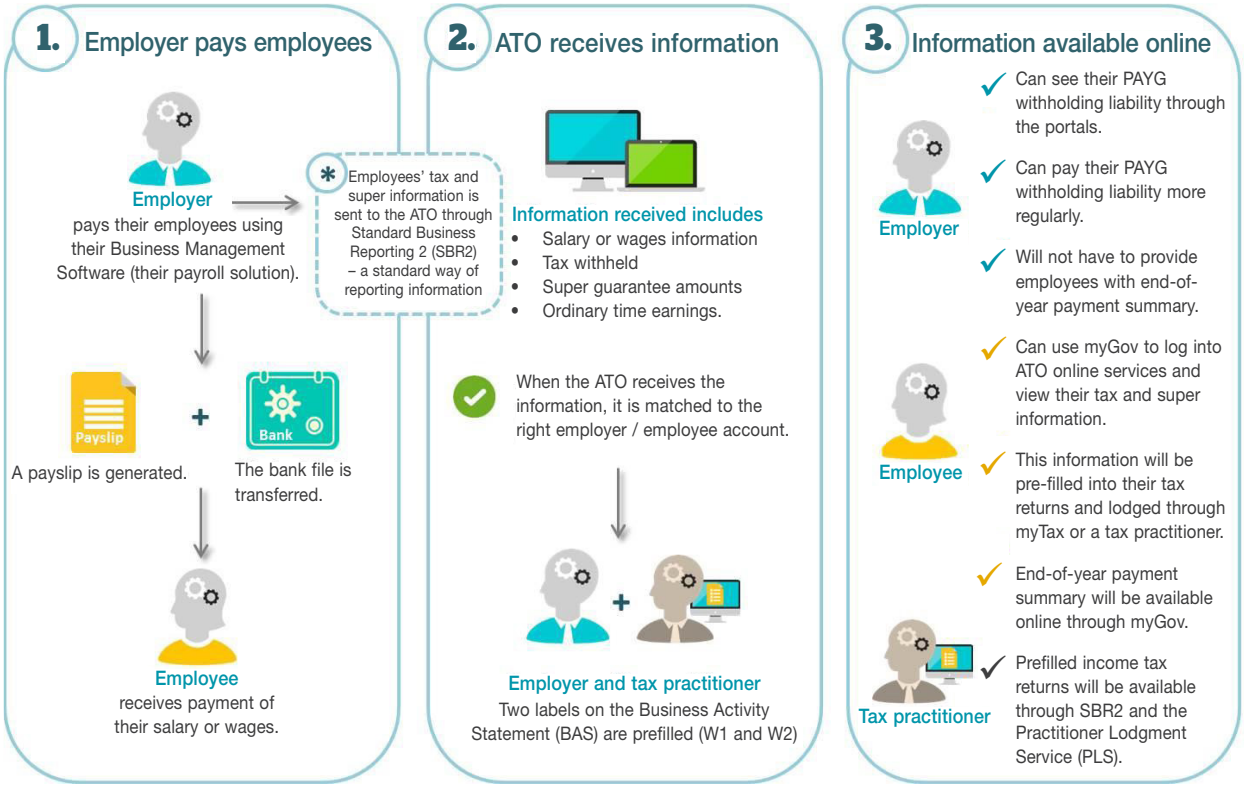
The following employees need to be included in the headcount:

- full-time employees
- part-time employees
- casual employees who are on the payroll on 1 April and worked any time during March
- employees based overseas
- any employee absent or on leave (paid or unpaid)
- seasonal employees (staff who are engaged short term to meet a regular peak workload – the ATO example is harvest workers).

When performing the headcount, the following are not included:

- any employees who ceased work before 1 April
- casual employees who did not work in March
- independent contractors
- staff provided by a third-party labour hire firm
- company directors
- office holders
- religious practitioners. ■

HOW SINGLE TOUCH PAYROLL WORKS





Starting out in business? You may be able to use simpler trading stock rules

If you are operating a small business and at the end of the income year you estimate that your trading stock's value has not changed by more than $5,000, remember (especially if you are new to business) that you can choose not to conduct a formal stocktake.

By making a decision to do this, you will not be required to account for the changes in the trading stock's value. The estimate you use to make this decision (known by the ATO as an "election" to use the "simplified trading stock rules") will be deemed to be reasonable by the ATO if either:

- you maintain a constant level of stock each year and have a reasonable idea of the value of stock on hand
- stock levels fluctuate, but you can make an estimate based on records of the stock purchased.

A small business will need to use the general trading stock rules if the difference in trading stock value has varied by more than $5,000. The general trading stock rules are sketched out a little more below, but ask us if you need further guidance.

And another reminder in case you are indeed new to business and tax — an increase in trading stock value over the year is assessable income, while a decrease is an allowable deduction. Again, ask this office for more details if you need it.

The general rules

The general trading stock rules apply if the value of trading stock changes by:

- more than $5,000
- $5,000 or less if a business owner chooses to do a stocktake and account for the change in value.

(A business can choose to do a stocktake and use the general trading stock rules even if you are eligible to use the simplified trading stock rules.)

Using the general trading stock rules, you must do an end-of-year stocktake and record the value of all trading stock on hand at both:

- the beginning of the income year
- the end of the income year.

It should come as no surprise if it is found that the value of stock at the end of an income year is generally the same as its value at the start of the next income year. However if for some reason:

- the value of closing stock is more than that of opening stock, your business must include the difference as part of its assessable income
- the value of closing stock is less than that of opening stock, you can reduce assessable income by the difference.

Where a business starts during an income year, the total value of stock on hand at the end of that year is included in assessable income.

Using stock for your own purposes

If, as the business owner, you take an item of trading stock for your private use, you need to:

- account for it as if it had been sold
- include the value of the item in assessable income.

Alternatively, stock can be valued by:

- keeping records of the actual value of goods taken from trading stock for private use and report that amount, or
- using the amounts the ATO provides as estimates of the value of goods taken (updated annually, ask us for a copy if applicable).

If your enterprise is in primary production and you slaughter livestock for your own consumption, it must be accounted for as though it was disposed of at cost. ■



Valuations and your SMSF

The days of a lax approach to valuations are over.

While there is not always the need to employ a qualified independent valuer for each valuation, there are important circumstances where it is mandated, and others where it is recommended. Where one is not used then appropriate documentation needs to be kept of how valuations were determined. Back-of-the-envelope or simply made-up valuations will not suffice.

Whilst in the old days the ATO had little it could do against SMSF trustees, the current penalty rules provide the ATO with much greater firepower. In particular, be careful in the valuation of assets for determination of whether a member is or is close to being in excess of the contribution rules. The ATO has signalled this is an area they will police in 2017-18.

When must a valuation occur?

A valuation is required in each of these situations:

- Valuation of all assets in an SMSF must be undertaken to reflect the value of assets held as of 30 June of every year. This is to ensure that the financial statements and accounts of the fund can be prepared and are accurate.
- Valuations are also required when acquiring assets from a related party to ensure that a proper price is paid and to ensure the asset is not under- or over-valued.
- When you sell a collectable or personal use asset (i.e. jewellery, art works), the asset must be valued by a qualified independent valuer. The valuer must also be an expert in that type of asset.
- Most importantly when you are setting up a pension, the assets that underpin the pension must be properly valued at the time that the pension is established. It also needs to be valued every year as at 1 July of the year the pension is paid.
- Valuation is also required if you have in-house assets to ensure that the assets do not exceed the 5% threshold.
- If you intend to use the CGT relief, then the value of the assets will also need to be determined.
- Valuation will also be required to determine if a member is in breach of the new contribution cap rules.

How is a valuation undertaken?

In circumstances where a qualified independent valuer is not needed, there are a variety of ways that assets can be valued. The valuation though needs to be genuine and based on acceptable methods for valuing. There should always be records kept of how any valuation is done.

For a lot of SMSF assets such as shares and bank accounts, the means of valuation is easy. It will be the value of the bank account at the time of valuation or the price of share/unit at the time of valuation, which is publicly available.

continued ⇨

Valuations and your SMSF *continued*

When valuing a property, there are a number of ways that property could be valued such as:

- getting a valuation by a qualified independent valuer, this is generally not required, however, if the property is a commercial property leased to a related party then it will need to be valued by a qualified independent valuer
- real estate agent – many real estate agents are willing to provide valuations, though this will generally be a range of valuations that may cover a wide range of prices
- Online valuation tools – a number of real estate websites can provide general valuations for property for free; and
- The trustees can value the property themselves, though they must use reasonable methods and document how this was done. Two popular methods are looking at the sale price of similar homes in the suburb and taking an average or by using a previous valuation and increasing (or decreasing it) by the average price increase (or decrease) in the suburb.

Where a significant change has been made to the property, it is probably best to get a proper new valuation (eg renovations to the property that increase its value).

What happens if I get valuations wrong or don't do a valuation?

The old days of the ATO not having power to take action against trustees for issues with validation are over. The penalty regime provides specific penalties in relation to valuations.

For the trustee (or directors of a corporate trustee) they face a fine of 10 penalty units (about $2100) for each trustee for any failure to value an asset as required by the law.

Furthermore, s 103 of SIS provides an offence of strict liability for failing to keep proper accounting records, which includes the need to have a valuation for assets as at 30 June each year. The fine here is 50 penalty units (about $10,500) per trustee.

Furthermore, if the ATO determines that assets are undervalued for the purpose of the contribution cap rules, then it can take further action against the trustees as well as determine that they are in excess of the contribution caps with all that entails. ■

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.



Investing: Growth vs income

Every investor goes in with dreams of a pot of gold, but there is a fundamental difference between investor types – one looks to line their pockets with investment returns along the way, and the other has the patience to wait until the end of the rainbow to reap the rewards.

The distinction between investing for growth or investing for income should not be seen as a "them or us" battle. Rather, investing for growth or investing for income will depend on the personal circumstances of the individual.

The needs of each person naturally differ, and the type of investment they prefer will depend on these needs. Many investors simply need capital growth, and are looking to grow their portfolio for later use, say with the aim of securing a more comfortable retirement. Others, for example people already retired, will be looking to receive earnings from their investments, perhaps to replace income from employment.

Naturally, as needs and priorities change, the approach to investing may change as well – such as shifting a portfolio's emphasis from growth to income as one's longer-term goals are achieved.

Investing for growth will tend to require a longer time commitment, as assets such as shares or property will be anticipated to increase in capital value over time rather than provide a quick return. Investors wanting to build wealth over the long term will want to put more money into assets that should increase in value. Having a longer time horizon will also allow some shock-proofing for the inevitable ups and downs of markets.

Investing for income will have more appeal for people who are counting on some cash to meet living expenses or meet some short-term goal. While the aim should include keeping the principal base stable, the idea is to have a predictable income stream from interest payments or dividends that are earned on the value of that principal amount.

Of course there is also the idea that a healthy investment portfolio will have a balance of both growth and income assets, with part of the portfolio geared for growth while another part is tailored towards income producing investments.

Many investment assets will have elements of both growth and income, and the sharemarket abounds with examples of stocks that will offer both capital growth and dividend generation. The likely difference between different shares will be the emphasis given to delivering returns – of either the growth or the income variety.

One company, for example, might review profit more regularly and distribute it via dividend payments. Making a return on an investment will therefore not rest entirely on selling the shares, and if the company pays regular dividends the investor can continue earning over a prolonged period. The negative here however is that dividends can always diminish or even dry up.

A company that emphasises growth will more likely re-invest profits back into the company, and so not allocate the same amount of earnings for dividend payments to shareholders. However it is that re-investment that should see increased company value (and share price), which will translate into cash for the investor when the stock is eventually offloaded.

The risk of course is always that the share price could head south, and fall below the price that an investor paid for it, resulting in a capital loss rather than a capital gain.

The tax consequences of each differ too, with interest earnings counted towards assessable income (although share dividends can be treated differently due to the imputation system, which sees tax paid in the hands of the issuing company). Earnings from growth (capital gains) will come under the CGT rules.

See this office for more detailed guidance on your best investment options. ■