

# InForm Accounting and Taxation

E - NEWS BULLETIN BROUGHT TO YOU BY BT CORPORATE ADVISORY PTY LTD

Welcome to the March/April 2018 Edition of InForm Accounting and Taxation

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## **Big changes proposed to eligibility for the CGT SBCs**

The Treasurer has released draft legislation containing new "integrity improvements" to the CGT small business concessions ("SBCs") (i.e., including the 15-year exemption, the retirement exemption, the 50% active asset reduction and the small business roll-over).

Due to the government's "*continued support for genuine small business taxpayers*", it proposes making amendments so that the CGT SBCs can only be accessed in relation to assets used in a small business or ownership interests in a small business.

Predominantly, the amendments include **additional basic conditions** that must be satisfied for a taxpayer to apply the CGT SBCs to a capital gain arising in relation to **a share in a company** or an interest in a trust (i.e., **a unit in a unit trust**).

This integrity rule is designed to prevent taxpayers from accessing these concessions for assets which are unrelated to their small business, such as where taxpayers arrange their affairs so that their ownership interests in larger businesses do not count towards the tests for determining eligibility for the concessions.

Under the proposed amendments, the measure would be backdated to apply from **1 July 2017**.

The proposed amendments, if enacted as currently drafted, will significantly restrict access to the CGT SBCs where taxpayers owning shares in a company, or units in a unit trust, seek to dispose of their interests in the entity.

This will particularly be the case where such interests are held in an asset-owning entity (i.e., which holds and/or leases business assets across to a separate, yet related, business entity).

It is to be hoped that the more draconian aspects of these measures may be scaled back, but due to the retrospective nature of the proposed amendments

(i.e., from 1 July 2017), caution is warranted with respect to the SBCs in relation to the disposal of shares or units.

### **ATO's focus on work-related expenses**

This year, the ATO is paying close attention to what people are claiming as 'other' work-related expense deductions, so it's important when taxpayers claim these expenses that they have records to show:

- they spent the money themselves and were not reimbursed;
- the expense was directly related to earning their income; and
- they have a record to prove it.

If the expense is for work and private use, the taxpayer can only claim a deduction for the work-related portion.

Importantly, taxpayers are not automatically entitled to claim standard deductions, but need to be able to show how they worked out their claims.

'Other' work related expenses are expenses incurred by employees in relation to their work that are not for travel, clothing or self-education, such as home office expenses.

### **Taxpayer can't explain where she got the money to pay her expenses**

The Administrative Appeals Tribunal has upheld amended assessments issued by the ATO to a beauty technician, based on the high volume of money passing through the taxpayer's various accounts when compared with the modest income she had included in her tax returns.

For example, in the 2015 income year, the taxpayer had declared income of \$61,842, but the ATO's analysis of her bank accounts, records of international money transfers, and casino data suggested she had spent \$107,328.

The Tribunal noted that, in cases like this, the ATO is effectively making an "informed guess" as to the taxpayer's income, but, provided there is a rational basis for the estimate, the ATO's assessment will stand, unless the taxpayer can:

- demonstrate the assessment was excessive; and
- establish what the correct (or more nearly correct) figure is.

After hearing from the taxpayer and witnesses at the hearing, and after reviewing the documents, the Tribunal was not persuaded that the taxpayer had

demonstrated that the Commissioner's assessments were 'excessive'.

In particular, the taxpayer's explanation regarding her income and expenditure was not supported by the objective facts in the hearing, being:

- the 'churn' through her bank accounts;
- the absence of contemporaneous records beyond the bank accounts (for example, she was always paid in cash without receiving pay slips); and
- the deficiency in corroborating evidence from other witnesses.

In addition to upholding the amended assessments, the Tribunal was also satisfied that the ATO's 75% administrative penalty on top of the tax payable was properly imposed.

### **Uber driver not an 'employee'**

In a recent case, an Uber driver's access to the Uber app had been terminated as a result of failing to maintain an adequate overall rating, and he applied to the Fair Work Commission (FWC) for an unfair dismissal claim against Uber.

However, the FWC held that he was an independent contractor and not an 'employee', and therefore his application for unfair dismissal was dismissed.

Although this was not a tax case, it is obviously of interest to anyone involved in the 'gig economy', and it may have flow-on implications for other employment issues, such as super guarantee.

### **Government to fix a problem with reversionary TRISs**

The government has released draft legislation to ensure that a reversionary Transition to Retirement Income Stream ('TRIS') will always be allowed to automatically transfer to eligible dependants (i.e., upon the death of the primary recipient).

Currently, a reversionary TRIS cannot transfer to a dependant if the dependant has not personally satisfied a condition of release.

If this positive measure is legislated, it will apply to reversionary TRISs from **1 July 2017**.

### **New small business benchmarks are available**

The ATO has updated its small business benchmarks with the latest data from the 2015/16 financial year.

In addition to helping businesses to see if they are performing within their industry average, the benchmarks are one of the tools the ATO uses to identify businesses that may be a higher risk.

That is, they use the benchmarks to pick their audit targets, so please contact us if you would like us to check whether your data is inside or outside the average benchmark range for your industry.

## Guide to the new Small Business Super Clearing House

The Small Business Superannuation Clearing House (SBSCH) joined the ATO's online services on 26 February 2018.

This is intended to streamline how businesses use the SBSCH, and will also include extra functionality, such as the ability to sort employee listings and payment by credit card.

The SBSCH is a free service that businesses with 19 or fewer employees (or which are SBEs) can use to comply with their super obligations.

## New superannuation rates and thresholds released

The ATO has published the key superannuation rates and thresholds for the 2018/19 income year.

- The **Non-Concessional Contributions cap** will remain at \$100,000 (although transitional arrangements may apply), and the **Concessional Contributions cap** will remain at \$25,000.
- The **CGT cap amount** will be \$1,480,000.
- The **Division 293 tax threshold** will be \$250,000.
- The **maximum super contribution** base for superannuation guarantee purposes will be \$54,030 per quarter.
- The **maximum superannuation co-contribution entitlement** for the 2018/19 income year will remain at \$500 (with the lower income threshold increasing to \$37,697 and the higher income threshold increasing to \$52,697).

The superannuation benefit caps for the 2018/19 income year include:

- a **low rate cap amount** of \$205,000;
- an **untaxed plan cap amount** of \$1,480,000;
- a **general transfer balance cap** of \$1.6m;

- a **defined benefit income cap** of \$100,000;
- an **ETP cap amount** for life benefit termination payments and death benefit termination payments of \$205,000; and
- the **tax-free part of genuine redundancy payments** and **early retirement scheme payments** comprising a base limit of \$10,399 and for each complete year of service an additional \$5,200.

## Super guarantee payable on 'public holidays' and 'additional hours'!

The Federal Court has held that superannuation guarantee contributions were payable with respect to the 'additional hours' and 'public holidays' component of annualised salaries paid by BlueScope Steel, on the basis that these particular components formed part of ordinary time earnings ('OTE').

Under an enterprise agreement, primarily due to the specific working environment, the employees in question were required to be available (at short notice) 365 days per year and 24 hours per day, including a requirement to work additional hours and public holidays.

As such, the employees were paid an annualised salary, which was made up of a base rate, as well as a component which absorbed all additional payments, such as penalty rates, allowances, public holiday loadings and pay-outs, and payment for additional hours worked outside the normal rostered hours.

However, when paying superannuation, adjustments were made to the annualised salary, so that the additional hours and public holiday components were **not included** by BlueScope Steel as OTE for superannuation guarantee purposes.

### Decision

The Federal Court did not agree with the employer's adjustments, instead finding that, under the circumstances, the 'additional hours' and 'public holidays' formed part of an employee's 'ordinary hours of work' and, therefore, were considered OTE for superannuation guarantee purposes.

This remained the case whether or not the employee actually worked the additional hours or the public holidays.

That is, the ordinary conditions of the employee's work required them to be available outside their rostered shifts and on public holidays (on short notice) and, as this was factored into their annual salary, they were considered ordinary hours for these particular employees.

## Inactive ABNs will be cancelled by the ATO

The ATO has recently advised that, in an effort to maintain accurate data, the Australian Business Register (or 'ABR') periodically checks its records for Australian Business Numbers ('ABNs') and automatically cancels those that appear inactive.

Ultimately, a taxpayer's ABN may be cancelled if they:

- have told the ATO they stopped their business activity;
- declared no business income in the last two years; or
- have not lodged a BAS or an income tax return in more than two years.

To avoid cancellation, the ATO has reminded taxpayers that they need to bring their lodgments up to date, and have reminded sole traders that, regardless of their income, they need to lodge the individual tax return with the supplementary section, as well as the business and professional items schedule.

## Commissioner's speech highlights ATO's focus areas

Recently, the Commissioner of Taxation highlighted the areas in which the ATO has recently increased its focus, including:

- undeclared income;
- individuals' unexplained wealth or lifestyle;
- incorrectly claimed private expenses;
- unpaid superannuation guarantee; and
- cash-only businesses and those with low usage of merchant banking facilities, with black economy visits to over 2,600 businesses across 8 locations in 2017.

The Commissioner also highlighted ongoing ATO concern with respect to the predicted 'work-related expense claim gap', which (at least by the ATO's estimates) could amount to being greater than the 'large corporate tax gap' of \$2.5 billion of lost revenue.

## No need to actually 'downsize' for 'downsizer contributions'

From **1 July 2018**, individuals aged 65 or over may use the proceeds from the sale of an eligible dwelling that was their main residence to make superannuation contributions (referred to as '**downsizer contributions**'), up to a maximum of \$300,000 per person (i.e., up to \$600,000 per couple), without having to satisfy the age or gainful employment tests that usually apply.

This measure was announced in the 2017/18 Federal Budget, and aims to provide an incentive for older Australians to 'downsize' their home.

This, in turn, is expected to reduce pressure on housing affordability by freeing up stocks of larger homes for growing families.

Importantly, it should be noted that there is no requirement for an individual to **actually 'downsize'** by acquiring a smaller property, or to even acquire another property at all.

In this regard, all that is required is that the individual (or their spouse) 'downsized' by selling their 'main residence'.

The individual can then move into any living situation that suits them, such as aged care, a retirement village, a bigger or smaller dwelling than the one sold, a rental property, or living with family.

Also, the property sold does not need to have been the individual's (or their spouse's) main residence during their entire ownership of it, provided the property was owned for at least 10 years and was their main residence at some time during the ownership period. Therefore, the sale of an investment property that at one stage was their main residence may enable an individual (or their spouse) to make downsizer contributions.

### **YOUR IMPORTANT ACTION STEPS FOR THIS MONTH**

**If you are struggling with cashflow or spare time please call us to discuss how we can help.**

**And we can!!! For every problem there is a solution!!!!**