

CLIENT ALERT

DECEMBER 2014

Mining tax repeal & other notable tax changes

With the abolition of the mining tax from 1 October 2014, a number of other tax measures have come into force:

- ◆ Abolition of the company loss carry-back concessions from 1 July 2013.
- ◆ Reduction of the instant asset write-off for small business entities from \$6,500 to \$1,000 – that applies from 1 January 2014*.
- ◆ Abolition of accelerated depreciation (of up to \$5,000) for motor vehicles from 1 January 2014*.

Note(): It is important to note that the changes to the depreciation rules for small business entities (e.g., the immediate write-off threshold reducing to \$1,000) applies to assets first 'used' or 'installed ready for use' from 1 January 2014.*

GIC and SIC rates for the 2014 December quarter

The ATO has published the 2014 December quarter rates for the General Interest Charge (GIC) and the Shortfall Interest Charge (SIC) as follows:

GIC annual rate	9.63%
GIC daily rate	0.02638356%
SIC annual rate	5.63%
SIC daily rate	0.01542466%

When can super monies be released on 'compassionate grounds'

Where an SMSF member is suffering a severe medical condition and **cannot** afford to pay for major medical expenses, they can apply to the Department of Human Services (not the ATO) to have some of their super funds released on 'compassionate grounds'.

Basically, a member will be entitled to claim 'compassionate grounds' where:

- the medical treatment (which is not readily accessible through the public health system) is necessary to treat a life threatening condition, to alleviate acute or chronic pain, or to alleviate an acute or chronic mental disturbance/illness; and
- two registered medical practitioners (one of whom is a specialist) have certified that the above requirements have been satisfied.

Editor: However, there are many other issues involved, including significant penalties where funds are withdrawn incorrectly, so clients should contact our office before trying to withdraw any funds from their superannuation fund.

Project DO IT – the ATO's amnesty for offshore tax avoiders

The ATO has advised that over 100 disclosures have already been received, with total additional income disclosed of over \$12 million.

The ATO has also received almost 200 expressions of interest from taxpayers who intend to lodge a disclosure but are seeking more time to finalise the details.

The take-up of the disclosure offer has been slow and steady, but the ATO has anecdotal feedback that a lot of taxpayers are getting their affairs in order before filing, especially where their arrangements are complex.

The ATO is currently in the process of writing directly to taxpayers that may be in a position to avail themselves of the disclosure initiative to encourage disclosure.

ATO's data matching program on specialised payment systems

The ATO has announced a data matching program in relation to electronic payments made to businesses through specialised payment systems.

For the period 1 July 2013 to 30 June 2014, it will request and collect data from the following businesses:

- Ausfit
- BillBuddy
- Debit Success
- eDebit

- Ezidebit
- Integrapay
- Paymate
- PaySmart
- Quickpay
- EzyPay
- IP Payments
- PayPal Australia
- POLi Payments

and the following banks BPAY data:

- ANZ Bank
- Commonwealth Bank
- National Australia Bank
- St George Bank
- Westpac

The ATO will collect details of merchant and biller business names, contact details, settlement amounts, and transaction records. Records relating to approximately 25,000 individuals will be matched.

ATO says beware of 'boiler room' sales tactics

The ATO has warned that some operators are using telemarketers to apply high-pressure sales tactics to lure superannuation trustee investors into high risk or suspect investments. This practice is known as 'boiler room' type operations.

Such tactics are being used to coerce investors to invest in artwork at inflated prices while promising inflated rental returns on these investments.

The value of complex asset classes such as artwork and collectables can be very subjective in nature.

There have been concerns raised with the ATO about how some of these assets are being valued in the marketplace.

To avoid any pitfalls in relation to such investments, trustees are encouraged to:

- seek a second, independent opinion when purchasing assets such as artwork;
- undertake a separate valuation of the asset (to confirm the SMSF has complied with relevant super laws); and
- ensure that the asset type is the right investment for their SMSF and complies with the sole purpose test.

Changes to employee share schemes

The government has announced that, effective 1 July 2015, it will claw back many of the former government's changes to the taxation of Employee Share Schemes.

While the Treasurer will consult with industry in finalising the draft legislation, the main proposal centres around discounted options generally being taxed when they are exercised (converted to shares), rather than when the employee receives them.

Year-end and other staff parties

Editor: With the December/January break on the way, many employers and businesses will be planning to reward staff with a celebratory party or event. However, important issues for our clients to consider are the possible FBT and income tax implications of providing 'entertainment' (including Christmas parties) to staff and clients.

FBT and Entertainment

Under the FBT Act, employers must choose how they calculate their FBT entertainment liability and most use either the 'actual method' or the '50/50 method'.

Under the actual method, entertainment costs are normally split up between employees (and their family) and non-employees (e.g., clients and suppliers).

Expenditure on employees is deductible and liable to FBT. Expenditure on non-employees is **not** liable to FBT, and **not** tax deductible.

Using the 50/50 method instead?

Rather than apportion entertainment expenditure on the basis of actual attendance by staff, etc., many employers choose to use the more simple 50/50 method.

Under this method (irrespective of where the party is held or who attends) – 50% of the total expenditure is subject to FBT and 50% is tax deductible.

However, the following traps must be considered:

- even if the function is held on the employer's premises – food and drink provided to employees is not exempt from FBT;
- the minor benefit exemption* cannot apply; and

- the general taxi travel exemption (for travel to or from the employer's premises) cannot apply.

(*) **Minor benefit exemption**

The minor benefit exemption provides an exemption from FBT for most benefits of 'less than \$300' which are provided to employees (and their family/associates) and which are infrequent and irregular.

The ATO accepts that different benefits provided at, or about, the same time (such as a Christmas party and gift) are **not** added together when applying this threshold.

However, entertainment expenditure that is FBT exempt is also not deductible.

Editor: And that's 'less than' \$300, i.e., no more than \$299.99. A \$300 gift to an employee will be caught for FBT, whereas a \$299 gift can be exempt.

Example: Christmas party

An employer holds a Christmas party for its employees and their spouses – 40 attendees in all.

The cost of food and drink per person is \$250, and no other benefits are provided.

If the actual method is used:

- For all 40 employees and their spouses – **no FBT** is payable (i.e., applying the minor benefit exemption), however, the expenditure is **not tax deductible**.

If the 50/50 method is used:

- Expenditure is \$10,000 and 50% (i.e., \$5,000) **is liable to FBT** and **tax deductible**.

Christmas gifts

Editor: With the holiday season approaching, many employers and businesses want to reward their staff and loyal clients/customers/suppliers.

Again, we thought we would now discuss how gifts to staff and clients, etc., are handled "taxwise".

Gifts which are considered to be entertainment

These generally include, for example, a Christmas hamper, a bottle of whisky or wine, gift vouchers, a bottle of perfume, flowers, a pen set, etc.

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.

Briefly, the general FBT and income tax consequences for these gifts are as follows:

- gifts to employees and family members – **are liable to FBT** (except where the 'less than \$300' minor benefit exemption applies) and **tax deductible**; and
- gifts to clients, suppliers, etc. – **no FBT**, and **tax deductible**.

Gifts which are considered to be entertainment

These generally include, for example, tickets to attend a theatre, live play, sporting event, movie or the like, a holiday airline ticket, or an admission ticket to an amusement centre.

Briefly, the general FBT and income tax consequences for these gifts are as follows:

- gifts to employees and family members – **are liable to FBT** (except where the 'less than \$300' minor benefit exemption applies) and **tax deductible**; and
- gifts to clients, suppliers, etc. – **no FBT** and **not tax deductible**.

Non-entertainment gifts at functions

Editor: What if a Christmas party is held at a restaurant at a cost of less than \$300 for each person attending, and employees with spouses are given a gift or a gift voucher (for their spouse) to the value of \$150?

Under the actual method, for employees attending with their spouses – **no FBT** is payable because the cost of each separate benefit (including the gift) is less than \$300 (i.e., the benefits are not aggregated).

No deduction is allowed for the food and drink, but the gift is **tax deductible**.

Where the 50/50 method is adopted:

- 50% of the total cost of food and drink **is liable to FBT** and **tax deductible**; and
- the total cost of all gifts **is not liable to FBT** because the individual cost of each gift is less than \$300.

As the gifts are not entertainment, the cost is **tax deductible**.

Editor: We understand that this can all be somewhat bewildering, so if you would like a little help, just contact our office.