

Sub-Contractors

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Important

This booklet is simply a collection of Newsflash articles relevant to sub-contractors. The articles are transferred from Newsflash into this booklet so it is best read from the back page forwards to ensure you are reading the latest article on the topic first. Note that the information contained in this booklet is not updated regularly so it is important that you seek professional advice before acting on it.

How a Discretionary Trust Works

Since the collapse of HIH many clients have decided to incorporate in order to put the corporate veil between themselves and their customers. The HIH catastrophe made people realise it was not enough to have paid the premium on an insurance policy, if the insurance company goes broke. The corporate veil enables them to put a barrier between the business and their personal assets providing they do not trade while insolvent or act illegally. In many cases we recommend placing a trust under the company to take advantage of the CGT concessions and more flexibility of profit distributions. On the other hand trading as a company does allow you to retain profits at the 30% but these profits, if kept in the trading entity, are vulnerable if the company is sued. If they are removed from the company they will probably be exposed to the higher marginal tax rates of the owners or fall foul of the many provisions designed to prevent the owners of companies from utilising the profits for personal purposes, such as Division 7A. For a more detailed discussion on choosing a business structure refer to our article in the Small Business Booklet. The following article is intended to explain the basics to readers that are no doubt good at their trade but have a very limited understanding of business concepts.

A Trust is not a legal entity in its own right. In simple terms the law recognises, legal entities, such as sane people over 18 and companies as having the right to enter into binding contracts. Most readers are probably aware that a deceased estate is a trust. The deceased can no-longer enter into contracts on his or her own behalf but assets still need to be sold. An executor or trustee is appointed to enter into contracts on the deceased's behalf. When the executor or trustee enters into these contracts he or she is not binding his or herself but the deceased.

When a trading trust (as opposed to a deceased estate) is set up a company is normally appointed the trustee of the trust. This means that the effective owner of the trust can become a director of the company and control the trust but not have his or her personal assets responsible for the companies debts (unless they have given personal guarantees) providing they act honestly. The company does not trade and acts simply as a figurehead. Accordingly, it is not required to lodge income tax returns but annual returns to ASIC are required. The actual trading entity is the trust but as it is not a legal entity it enters into contracts under the company name with an additional notation that the company is trustee for the trust. The trust is the trading entity and as such is required to have an ABN, TFN and lodge tax returns. From this point onwards we only address the circumstances of a discretionary trust.

It is most important that the owners of the business remember that the trust is a separate legal entity from the owners themselves. This means that what belongs to the trust belongs only to the trust. Accordingly care should be exercised when using the trust's funds for personal purposes.

If any profits remain in the trust they will be taxed at the maximum tax bracket.

While there are not any specific provision prohibiting trusts lending the profits it has retained back to the "owner" of the business, there are many traps. Therefore if you take profits from your trust without consulting your Accountant you should stick to the following methods;

- 1) Wages – Unlike a sole trader or partnership the trust being a separate legal entity from the owners allows the owners to become employees of the trust. Owners' wages should be treated exactly the same as those of other employees. For example superannuation contributions of 9% should be made, normal PAYG instalments should be deducted and included along with the wages on W1 and W2 of the Trust's BAS. If the "Owners" are not directors of the trustee company their wages should be included in workers' compensation calculation. Care should be taken to ensure these wages do not force the trust into a loss situation as this will result in the "group" paying more tax in the short term and relying on the trust to make profits before the extra tax can be recouped. As employees of the trust the "owners" can participate in fringe benefit arrangements.

- 2) Profit Distribution – Firstly ensure that there are profits to be distributed. Then create a minute declaring the profit distribution to the selected beneficiaries that are nominated either directly or indirectly by the trust deed. The minute should present as follows:

Minute of Meeting of Directors of _____ P/L as trustee for the _____ Family trust

Date:

Present:

Resolution: It was declared that the _____ Family trust distribute the profits for the financial year ending 30th June, 2003 as follows

_____ \$

_____ \$

Signed as a true and correct record:

- 3) Repayment of a Loan - The "Owners" of a business usually lend it money to get started. The trust can repay this without any complications. Make sure the loan does not topple over the other way so that the "Owners" owe the trust money without first consulting an accountant. As stated above profits left in the trust are taxed at the maximum tax bracket. Unless the trust has some tax-exempt income, it will need to retain profits in order to have the funds to repay the loan. So even if during the year the trust repays your loan, at the end of the year you may decide that it was really a distribution of profits because the owners are in a lower tax bracket.

The above should not be viewed as a comprehensive analysis of the law. It is too simplified for this and is merely intended to give the reader an easy method of understanding of the concepts.

APSI (80/20 Rule) and the Building Industry

From 1st July, 2002 contractors who were registered for PPS before April 2000, became subject to the Alienation of Personal Services Income measures (80/20 rule) for the first time. As the 2003 tax returns will be the first returns for many subcontractors prepared on this basis the ATO has been issuing lots of warnings. A full flow chart of how the legislation works is available in our APSI Booklet. The following is just a guideline that should cover many subcontractors in the building industry.

The main sections that subcontractors use to avoid the APSI measures are:

87-65(5)&(6) In at least 75% of the circumstances the contract is to produce a result, the contractor supplies tools and equipment and is responsible for rectifying defective work or is liable for damages. This is called the results test. In its fact sheet on the results test the ATO have stated that "the results test is not met where the client is engaged to work or provide services as directed and is paid for the work or services (often on an hourly rate) rather than for a specified result or outcome produced by the work or services." As an example they use "a carpenter who is contracted to do fit out work on a building site and is allocated tasks or jobs on a daily or regular basis. He is paid on a regular basis (e.g. weekly), which is generally calculated on the number of hours that he works." An example the ATO uses of passing the results test is a carpenter who is "engaged to complete a specified job and payment is conditional upon completion of that job."

87-25(2) Other individuals or business entities perform at least 20% of the market value of the work for that year. Note this must actually be chargeable work not administration and it cannot be performed by a associated business i.e. another company owned by the same individual.

87-25(3) An apprentice was employed for at least half of the year.

87-20(1)(b) If 80% or more of your income is from one source you need to have another source of income that is not associated with the first and you acquired that source through advertising, word of mouth etc.

There are more provisions than those listed above, they are all listed in the booklet. If you are caught by the APSI measures you will not be able to claim deductions for home to work travel if you do not carry bulky tools.

If you have more than one workplace during the day you will be able to claim all travel. You can also claim travel if you have regular workplace but had to work somewhere different that day. Rent, interest and rates associated with your residence are not claimable. Payments to your spouse for work that is not directly involved in earning the income (i.e. bookkeeping) are not deductible nor can you income split. You will only be allowed a deduction for one car other than a vehicle that is used solely in the business.

When Do You Become An Employer?

A key case in this area is *Hollis v Vabu Pty. Limited* where the high court decided that a bicycle courier was an employee of the courier company. Note this case was not in regard to the superannuation guarantee. The contrast between this and another Vabu case gives you an idea of how unclear the area of employee or contractor is and how little this relies on outward appearances such as an ABN. The ATO has announced that it will rule on bicycle couriers to the full extent based on Hollis' case (2001 ATC 4508). In other words all bicycle couriers are now considered employees of their courier company. Accordingly, the ATO ruled that as at 1st July, 2002 all bicycle couriers with an ABN for that purpose only are to cancel their ABN and GST registration if applicable and Courier companies must treat their bicycle couriers as employees including deducting PAYG withholding from their payments, paying FBT on any benefits they receive and paying the 9% superannuation surcharge. Yet the very same courier company won the right not to include its Courier drivers who supplied a purpose built car as employees for the superannuation guarantee levy. Further in the Hollis case the judge said that it does not matter if the courier supplies a bicycle or a car they are still employees.

In view of the above please take the following as the best guideline we can give you but nothing is black and white. Please note that the alienation of personal services income rules (80/20 rule) do not apply to make contractors employees refer TR 2005/16 paragraph 11 and 62. These rules are only intended to control how contractors deal with the payments they receive.

For PAYG Withholding Purposes – Whether a person is an employee (and therefore the Payer is required to withhold PAYG) is an issue of common law. Therefore it is not specified in legislation but by various cases over the years. The ATO has outlined its opinion in TR 2005/16. This topic is full of fine lines for example the difference between an employee and an independent contract is whether the contract is a contract of service or a contract for services. Probably the strongest indicator is the control test. Years ago this used to be called the servant master relationship. The control test looks at how much the payer has a right to direct how, where and when the work is performed. This is where the question of, is the contractor employed to perform a specific task or to provide services as directed by the payer, comes from. If a contractor is paid on an hourly rate it strongly suggest that the payer has control over their efforts and so should be withholding PAYG Instalments. Having said that you should now be aware of some direct contradictions of this situation. Solicitors and accountants may charge on an hourly rate but be contractors because they have so many other clients. A salesperson who only receives commission, so is remunerated purely on a results basis is usually still considered to be an employee.

On the other hand being paid to produce a result will normally mean the contract is not subject to PAYG withholding. This issue is covered in paragraph 36 of TR 2005/16. Does the contractor have the right to employ someone else to perform the work and does the contractor assume any risks that could result in he or she making a profit or loss on the job (payment for a result) rather than a guaranteed income. Risk includes responsibility for poor workmanship or injury to the public. The more tools and materials the contractor provides the less likely the payer will have to withhold PAYG. The more payers the contractor has the less likely that PAYG Withholding Instalments need to be deducted. Paragraph 35 states that it does not matter that the payment is based on expected reasonable hours to complete the task as long as in other ways it is a genuine results based contract and vice versa payment on the basis of performance rather than hourly rate is not enough in itself to turn an employer/employee relationship into one of contracting.

If the contractor is a partnership, company or a trust the payer does not have to withhold PAYG unless the set up is purely a sham, refer TR2005/16 para 57. The provision by a contractor of an ABN will not automatically relieve the payer of the responsibility to deduct PAYG Withholding (TR 2005/16 para 56). When the contract includes the payment of sick leave and/or annual leave the payee is most likely to be considered an employee. The higher the proportion of the gross income which the worker is required to expend in deriving that income, and the more substantial the assets which the worker brings to his or her tasks, the more likely it is that the contract is for services.

Simply writing in a contract that the payee is not an employee but a contractor will not automatically make that the case for tax law purposes. This clause is only effective if the contract has the elements of a sub contract relationship. The claim that it is not a contract of employment can only be used to clarify any ambiguity.

It helps to support the argument that the worker is a contractor if the relationship came into existence because of an advertisement by the contractor of his or her services to the public or if it was in response to a tender notice.

An oldie but a goodie in support of an independent contractor is the Worldbook Case:

'Undertaking the production of a given result has been considered to be a mark, if not the mark, of an independent contractor'.

A major factor in this case was the contractor's right to employ others to do the work and the fact that payment was only by way of commission for actual sales made. Payment was not related to the amount of work done but to the result it produced. Paying commission alone is not sufficient argument that the payee is a contractor.

For Superannuation Guarantee Purposes

Common law employees as discussed above are caught by the guarantee but contracts with individuals that are principally for their labour are also caught. The most significant case here is Vabu's case, discussed above. The court found that a courier company was not required to pay superannuation under the guarantee where the courier drivers provided their own vehicle that was designed to carry parcels. SGR 2005/1 gives the ATO's opinion of when a courier driver is considered to be acting independently of its company and therefore the courier company is not liable for the guarantee. The more the arrangement becomes a payment for more than just the personal services of the worker the less likely the payer is to be liable for superannuation. For example a payment to the owner driver of a semi trailer is not subject to the superannuation guarantee because the majority of the payment would be for the provision of the truck.

The right to control is also a major determining factor. For example, family day care providers in their own home are not entitled to have superannuation contributions made for them because they have so much independence in their daily tasks (SGD94/4) yet family day care has a large amount of rules and guidelines this is not considered to be control. The right to refuse a child was also considered relevant.

If a contract is with a company, trust or partnership there is no requirement for the superannuation guarantee levy SGR 2005/1 paragraph 99.

If the payee is a sole trader and less than 50% of the payment received is for the sole trader's own labour there is no requirement to pay superannuation. Examples of this would be supplying and installing an air conditioner where the charge for the air conditioner was more than the installation charge. Of course if a sole trader provides you with the services of one of his or her employees you are not required to make a superannuation contribution for that employee the sole trader is.

Paragraphs 43 to 47 of SGR 2005/1 examine when a contract would not be subject to the super guarantee because it is to produce a result. It includes, as in discussed in the PAYG section, consideration of whether there is the right to employ another party to perform the task and/or the provision of plant and equipment, fixed payment rather than hourly rate and a specified outcome.

Paragraph 78 sums it up well:

“Where the terms of the contract in light of the subsequent conduct of the parties indicates that:

- The individual is remunerated (either wholly or principally) for their personal labour and skills;
- The individual must perform the contractual work personally (there is no right of delegation); and
- The individual is not paid to achieve a result,

The contract is considered to be wholly or principally for the labour of the individual engaged and he or she will be an employee under subsection 12(3)”.

If you are found to have not met the requirements of the Superannuation Guarantee you will be fined, required to pay the omitted superannuation and not receive a tax deduction for it. Therefore we recommend you error in favour of caution.

For Workers' Compensation Purposes

In Queensland from 1st July, 2003 a Payer does not have to cover its subcontractors for Workers' Compensation if they have an ATO Personal Services Business determination or they satisfy the results test used in the APSI legislation (80/20 Rule). The results tests states that all the following conditions must be met:

The contract is to produce a result, supply plant and equipment or tools of trade (if it is normal in your industry to have tools) and liability for the cost of rectifying defective work or liability for damages remains with the sub contractor. APSI 87-65(5)&(6).

Further, a Payer who has a contract of service with a company or a trust is not required to cover the company or trust's employees for workers compensation, it is up to that company or trust to cover its' employees. Directors of companies or trustees of trusts do not have to cover themselves with workers compensation. More information can be found on the Queensland Workers Compensation Board' web site at www.workcoverqld.com.au.

Note if you have not covered a worker that is injured and you should have, you will be liable for 150% of the costs associated with the injury.

Claiming Company & Trust Losses in your Personal Tax Return

The trick here is to find a way of failing the APSI test. It Shouldn't be too hard seeing as the legislation was designed to catch you anyway.

Finally, something positive for taxpayers out of the APSI legislation. If your company or trust made a loss you will be permitted to offset the loss against your personal income if the loss is in regard to personal services income caught by the APSI legislation. This initiative was announced in the May 2003 budget. It effectively gives taxpayers caught by APSI an advantage over other taxpayers operating through a company or trust as other taxpayers' losses are quarantined until that company or trust makes a profit and satisfies other requirements. The new concession will be backdated to losses generated in the 2000/2001 financial years and all following years. Unfortunately, the legislation is not yet through parliament and it is now time to prepare these entities tax returns for the 2003 year. Tax returns can be amended for up to four years back from the date of their original assessment. Until this law passes through Parliament the amended returns can not be lodged and any 2003 tax returns prepared before the legislation is passed will not be able to take advantage of this concession. Accordingly, they will have to wait or be amended at a later date.

Nasty Sting for Legitimate Business Expenses

If you are caught by the APSI rules you cannot claim a deduction for payments made to associates unless the work they perform directly relates to the principal work provided to customers or clients. An example of this is if I charged my brother for preparing the income tax return for his tutoring business he would not be able to claim the fee paid to me as a tax deduction, despite the size of my business. Naturally enough I don't charge him. Nevertheless, under GST legislation I am required to remit to the ATO the amount of GST that would have been applicable had I charged him! In an even further development of this double standard the ATO has taken the approach that the rules on payments to associates include payments for goods. Accordingly, if your spouse owns the business from which you purchase your stationery and your income is from personal services you cannot claim a deduction for the stationery. The legislation states:

SECTION 85-20 Deductions for payments to associates etc.

85-20(1) You cannot deduct under this Act:

- (a) any payment you make to your associate; or
- (b) any amount you incur arising from an obligation you have to your associate; to the extent that the payment or amount relates to gaining or producing your personal services income.

85-20(2) Subsection (1) does not stop you deducting a payment or amount to the extent that it relates to engaging your associate to perform work that forms part of the principal work for which you gain or produce your personal services income.

85-20(3) An amount or payment that you cannot deduct because of this section is neither assessable income nor exempt income of your associate.

Makes you wonder if any of our highly paid politicians read the legislation before they vote on it, doesn't it.

ATO Changes its Mind on Unearned Income

The primary purpose of printing this article is because we have advised clients on the basis of the ATO's view to date and now it has changed its mind. Or at least drafted a possible change of its mind in TD2003/D11. So if the following seems to be a contradiction of how we have told you to prepare your BASs you are absolutely right, it is! Fortunately this change of mind only applies from 1st July, 2003.

The principle is based on the Arthur Murray dance school case. Lessons were paid for in advance. The taxpayer won the right not to include in his tax return the funds received for lessons yet to be given. This principle would apply to taxpayers regardless of whether they were on an accruals or cash basis. Despite the fact that this case was heard in 1965 the ATO still relied on it when the simplified tax system (STS) was introduced. Accordingly, it ruled that even if an election was made for the STS, which requires the taxpayer to include as income only amounts actually received there was no need to include income received if it was not yet earned. This has now changed so taxpayers in the simplified tax system must include all income actually received regardless of whether it has yet been earned.

Checklist Before Paying Invoices

Please go over the following check list for before making each payment.

Invoice checklist

You should not have any business expenses over \$75.00 where you do not at least have a record of the supplier's ABN.

Supplier is not registered for GST

If the supplier is not registered for GST then you enter the full amount of the invoice in the relevant expense column but if the invoice is for more than \$75.00 you need to make sure you at least have their ABN.

Supplier is registered for GST

If the supplier is registered for GST then the amount you enter in the relevant expense column is the net of GST amount (usually 10/11ths). This is the case whether you have a tax invoice with the appropriate entries or not. The absence of a valid tax invoice means you do not qualify to claim the GST back but you still do not qualify to claim the GST as an expense! To make the spreadsheet balance it will be necessary to put the GST component of the payment in the column titled 'GST where no tax invoice held'.

If the tax invoice for a GST supply exceeds \$82.50 (GST inclusive) you need to check that the invoice has the appropriate entries to qualify as a valid tax invoice before you qualify to claim a credit for the GST. For supplies over \$82.50 it must be clear that the document is intended to be a "tax or GST invoice" and show how much GST has been charged. It needs to contain the date, supplier's name and ABN. Details are needed of what is supplied, the quantity and price. If the invoice is for \$1,000 or more it must also contain your name or ABN.

Cash Economy Audits

The ATO has released a report called The Cash Economy Under The New Tax System. In annexure 1 it sets out the procedures it will be using to detect unreported cash income. The full text is available on the ATO web site. A few items that may interest readers are:

- 1) The ATO considers the high risk industries to be Building & Construction, Cafes, Restaurants & Takeaways, Cleaning, Hairdressing & Beauty, Trucks, Smash Repairers and Taxis.
- 2) Audit activity will include
 - (a) Walkins – Intended to catch traders not registered for GST or employees who are not on the books.
 - (b) Top Down – Tracing the records of major firms down through to the contractors they pay and the contractors that the contractors pay to make sure all income has been correctly recorded.
 - (c) Statistical Norms – The ATO will be comparing each business against the average for its industry. For example they will be looking at gross margins assuming goods have been marked up at the industry average. If the margin is less they will be suspicious that the income from some of the goods sold has not been declared. Over the last year, when we have prepared a business tax return, we have provided

our clients with a letter which among other things discusses how their figures compare with the ATO industry average. So for further information on your industry please refer to this letter or contact us.

- (d) Cash Ratio – According to the ATO’s research Cafes and Restaurants receive 68% of their income as cash. In other words if credit card transactions account for more than 32% of the takings the ATO will assume some cash has not been recorded. Sound a bit extreme? Tell that to the Restaurateur who was sentenced to 3 years and 4 months jail for keeping two sets of books, non-lodgement of company tax returns and paying untaxed cash wages.
- 3) Other Areas The ATO Will Be Looking At:
- (a) Whether GST has been remitted to the ATO when equipment or a vehicle used in the business, is sold, even if the business use is only minor.
 - (b) Checking for a tax invoice for expenses where the invoice amount exceeds \$55 (GST inclusive). A tax invoice needs to include the supplier’s ABN, the words Tax Invoice, the date, the name of the supplier, a brief description of the goods, the tax inclusive price and if the invoice is for over \$1,000 it must also include the quantity or the extent of the services provided and your ABN or name and address. Surprisingly, it is the purchase of vehicles that is most likely not to be supported by a tax invoice.
 - (c) Forgetting to apportion payments between private and business use. If such a payment is over \$1,000 you need to review the portion claimed as business each adjustment period.
 - (d) Not paying GST on cash contributions employees make to reduce their fringe benefits.
 - (e) An up front GST input credit is not available on items purchased under a Hire Purchase agreement if GST is reported on a cash basis, you can only claim the GST portion of each payment made under the HP agreement when that actual payment is made.
 - (f) A GST input credit can not be claimed for land purchased under the margin scheme.
 - (g) Barter Transactions must be included.

Voluntary Agreements

The ATO fact sheet NAT3063 states the following:

- 1) A voluntary agreement must be in writing and must be for the services of an individual who has an ABN.
- 2) The agreement can be terminated by either party advising the other in writing.
- 3) Providing the person who is receiving the services would normally be entitled to a full input credit for these services, the person supplying the services does not charge GST to the person receiving the services. The person receiving the services does not receive an input credit for services provided under a voluntary agreement. So you would expect to be charged 1/11th less than suppliers for whom you can claim an input credit.
- 4) The person who provides the service should be registered for GST as they can claim an input credit for any items they buy in relation to their business but do not have to charge GST to the person receiving the service under a voluntary agreement.

BANTACS Note: If the service provider is also providing services to the public and their total turnover is under \$50,000 it will probably not be in their interest to register for GST.

- 5) Basically, the rate of tax to be withheld is either 20% or the amount shown as the instalment rate at T2 on the subcontractor’s BAS.

BANTACS Note: The ATO has released a voluntary agreement form that can be used but it is not compulsory.

- 6) Appropriate records must be kept by the payer for each individual subcontractor, as a payment summary must be prepared at the end of the year.

Labour Hire Arrangements

Due to the amount of radio advertising about the pit falls of being an employer compared with using a Labour Hire firm I thought the following case relevant reading.

In *Damevski v Giudice* (2003) FCAFC 252 the full Federal Court found a cleaner provided in a labour hire arrangement was really an employee of the person for which they did the cleaning (principle) not the Labour Hire firm. As it was the principle that set the conditions under which the cleaner worked, the Labour Hire company was merely an administrator.

Note that the question of whether you are still liable as an employer is really an issue for a solicitor and you should consult one before shelling out higher labour rates to a Labour Hire company. Some of the important factors are whether the contractor provides their own tools, whether they are paid by the hour or by result, whether they contract to other businesses as well, whether there is any allowance in the agreement for holiday pay and whether the principle deducts tax from the contractors pay.

Overloaded Ute Insurance Risk

The payload on most Ute includes the tray, bull bar, passengers, accessories, canopy and sometimes even fuel. So having a one tonne Ute does not mean that you can put one tonne in the back. After allowing for all the above you may only be able to legally carry half a tonne. If it is shown that being overloaded contributed to the accident your insurance company may not pay the claim. The answer to this problem is a lazy axle that can add another metre to your tray and up to one tonne to your payload. An extra axle can change a Landcruiser or Patrol into a dual cab with a tray area larger than the standard Ute. The extra space provided by the 6 wheel conversion gives you twice as much space as a standard ute at a lot less cost.

Having found myself overloaded by one tonne I found that the best people in the country for this type of conversion are at Dalby in Queensland. Six Wheeler Conversions Pty. Limited. They have found a solution for every problem I have thrown at them. They custom build anything and make any size trailer, even tipper trailers. They also build tipper trays for Ute.

Building & Construction Industry Contractors or Employees

The ATO has issued a fact sheet to help people in the building industry determine the fine line between an employee or sub contractor. Note this fact sheet does not cover the superannuation or work cover consequences. For more detail refer our Subcontractors Booklet under free publications on our web site.

The key points in the ATO fact sheet are:

- A warning that employers can be fined or prosecuted for incorrectly classing employees as contractors.
- Just because a worker has an ABN does not automatically make them a Contractor.
- More than one of the following factors suggest an employment relationship rather than contract:
 - How much control the employer has over how the job is done
 - The contract requires the workers personal services
 - The worker appears to the public as being part of the employers staff
 - Materials or equipment are not supplied by the worker
 - The worker is entitled to paid leave
 - The hours to be worked are determined by the employer
 - The worker is paid an hourly rate rather than to produce a result.
 - If the worker makes a mistake it is the employer's responsibility to set things right
- Apprentices are never contractors.

Tax Minimisation Between Spouses

Before entering into an arrangement that effectively shifts income from one partner to the other or deciding whose name in which to buy an income producing asset, check the need for this considering the new tax brackets.

The way for a couple to minimise their overall tax is to arrange their affairs so that they are both in the same tax bracket. They do not need to have the same taxable income. Their combined tax bill will not benefit from any income shifting arrangement if they are already in the same tax bracket. Even if one is at the higher end and the other the lower end.

Interesting ATO Rulings for Partnerships

GSTA TPP 086 & 87 - A partnership can claim the input credit for a tax invoice in the name of an individual partner or even an employee.

GSTA TPP 089 – If you receive a tax invoice after you have cancelled your registration you are not entitled to an input credit and you cannot claim that input credit before you cancel your registration because you do not have a tax invoice.

ATO Guide - Part IVA – General Anti-Avoidance Rule (Principles about how and when it applies)
traditional husband and wife partnership not caught if no unusual or contrived features. Accepts that profits can be distributed equally even though only one partner performs most of the work. Though if the business of the partnership is simply providing one partner's personal services the alienation of personal services income rules may apply.

PAYG Summaries & Annual Report Due on the 14th AUGUST

Unless you meet the criteria below all employers must send their PAYG summaries and an annual report to the ATO by 14th August. Very small businesses are allowed to delay this until the lodgement date of their business' income tax return if the following is applicable:

- 1) You have lodged your previous income tax return and PAYG annual report on time and
- 2) All employees must be family members, directors or shareholders of the company or a trust beneficiary, and
- 3) Your tax agent notifies the tax office that you have elected to receive this extension.

Accordingly, we ask all clients wishing to take advantage of this concession to contact us before the deadline for notifications which is 15th September. If you meet points 1) and 2) but do not notify us you must send all your PAYG summaries and the annual report to the ATO by 30th September.

Micro Business - Entrepreneur's 25% Tax Offset

That's right the ATO will reduce the tax payable on your business income by 25% if you qualify as a small business entrepreneur. It is called the Entrepreneur's Tax Offset (ETO) and is intended to encourage people to start up small businesses on the side. As a bare basic you must meet the following criteria:

- 1) Elect to join the simplified tax system
- 2) Have a turnover of less than \$75,000 – This excludes rent and dividend income if that is not really part of the business and excludes interest income earned on non business bank accounts.
- 3) The business must have made a profit on the difference between the turnover in 2) and expenses related to earning it. Note if a company is providing personal services that are attributed to the person providing the services, the company will not have any tax payable to utilize the offset unless it has income from other sources.
- 4) Have enough taxable income for the year that you have a tax liability, as the offset can only be used to reduce your tax liability, it is not payable to you if the tax on your income from all sources is less than the offset.
- 5) You include all or part of the business profit in your income tax return.

Note if you are involved in multiple businesses their turnover, applicable to point 2) above, may be added together if they are part of a group. To be part of the same group the following must apply – note entity includes you:

- 1) Either entity controls the other
- 2) Both entities are controlled by the same third entity – ie 40% ownership or more

or

- 3) The entities are STS affiliates of each other – STS affiliates are other entities that can be expected to act in accordance with the first entities wishes in relation to all or a substantial part of the entities business (TR 2002/6). But partners in a partnership are not usually each other's STS affiliates. Likewise a husband and wife are not consider to be STS affiliates if they run separate businesses. The clause is intended to catch artificial ways of getting around point 1) and 2).

As you can see from the above a taxpayer can be a partner in a partnership and a sole trader and qualify for the ETO for both providing each businesses individual turnovers are less than \$75,000 even if combined they exceed it. On the other hand the total turnover of the partnership counts for each partner. For example if the partnership turnover is \$80,000 no matter how many partners there are they will not qualify for the ETO on their partnership income.

This offset is another nail in the coffin of forming a company compared with a discretionary trust which gives you the same asset protection if it has a corporate trustee but better access to the ETO. While companies are technically entitled to receive the offset it will only reduce the tax payable by the company not the owners of the company. So when these profits are eventually distributed to the owners of the company they are either received as wages which reduce the amount of the offset that is applicable to the company because wages reduce the company's profit. Yet the owner is not entitled to an offset on the wages because it is not business income in his or her return. Nor is the owner entitled to receive the offset on dividend income received from the company. This dividend income may not be able to be fully franked because of the reduction in the company tax payable due to the offset, so effectively the offset benefit is paid back when the owner receives the dividend. The only other way an owner of the business can receive the income from the company is by it being attributed to him or her by the personal services income rules. ID2006/28 states that the offset is not available in these circumstances.

On the other hand a trust would be able to effectively pass the offset onto a beneficiary but not if it paid the income out as wages. The personal services income rules requiring the profits of the business or a partnership or trust to be attributed to the tax return of the person who earned the income would not prevent that person claiming the offset in their personal return as the originating entities are still considered to have made a net profit (ID 2006/227).

To calculate the amount of ETO you are entitled to simply calculate the following in regard to each business that qualifies then add the offsets together to get the total tax reduction:

- 1) Divide the total turnover from the STS business by your total taxable income to calculate the percentage of your taxable income it represents
- 2) Multiply the total tax payable on your taxable income (before the offset) by 25%
- 3) If the turnover in 1) was more than \$50,000 subtract the turnover from \$75,000 and divide it by \$25,000.
- 4) Multiply the figure in 2) above by the percentage in 1) above and 3) above, if applicable, for the amount of offset you are entitled to.

Secret Plans and Clever Tricks:

The higher the business profit the higher the Entrepreneurs Tax Offset with the only negative element being the turnover of the business. Accordingly, if you are limited in a claim it is better to claim it against your income, rather than the business. For example if you can only claim 5,000kms for your motor vehicle and you have already done that in relation to your wages income, don't apportion between wages and business use. Claim it all against your wages income thus shifting profit from wages to the business.

Late Lodgements, Interest & Other Penalties

If you are late lodging your income tax return the ATO can fine you \$110 for every 28 days or part onward that the return is late, up to a maximum of \$550. Though, the late lodgement penalty is usually waived if you are due a refund. Even if you are not due a refund it is worth writing to the ATO, explaining your

circumstances and asking the ATO to consider remission of the penalty under TAA Sch 1 s 298-20. If the ATO refuses to remit the penalty and it is for more than \$220 you can object.

Late lodgement of a BAS can be far more serious as the \$110 is per tax that is reported on the BAS. This means if you report your GST, PAYG withheld and FBT on your BAS the penalty is \$330 for every 28 days up to a maximum of \$1,650 (5 x \$330) The penalties also increase with the size of the business for example once the turnover exceeds \$1,000,000 the penalties at least double.

Penalties for late lodgement of income tax returns, BAS and ASIC forms are not tax deductible. A penalty for under estimating GST instalments is tax deductible (section 25-5 1997).

The interest the ATO charges for late payment of taxes is tax deductible but if you borrow the money to pay off your personal tax debt the interest on the monies borrowed is not deductible. On the other hand if you are in business and the borrowings are connected with the business the interest on money used to pay taxes is deductible but not for the partner's in the business's personal tax. (IT2582)

This still doesn't mean it is better to owe the ATO instead of the bank, because the ATO charge a lot higher interest. The current interest rate charged by the ATO is 12.87%, after allowing for tax deductibility this is an effective rate of 8.816% if you are in the 31.5% tax bracket (\$25,000 to \$75,000). Even at the maximum tax bracket which doesn't kick in until your taxable income reaches \$150,000 the 12.87% interest charge is 6.89% after allowing for tax deductibility. So unless you are in the maximum tax bracket, if you can borrow against the equity in your house at housing loan interest rates there is a saving in doing this as soon as possible. Though for short term debt also factor in the costs of borrowing.

In conclusion it is important that you at least lodge your BAS or tax return even if you do not have the money to pay the tax and it is usually better to borrow at housing loan interest rates to pay of your tax bill than have the ATO charge you interest.

Note it is not just the penalties you should fear. The ATO also has the right to prosecute you but if they do this the penalty provisions are not applicable.

Just When Do You Become An Employer

If you are concerned that you should be paying your contractors as employees ie deducting tax from their pay and contributing to superannuation for them, take a quick test on the ATO web site at www.ato.gov.au/businesses/content.asp?doc=/content/00095062.htm When you have completed the questionnaire you can print up a report that gives you a summary of the information you have provided and the basis for the ATO decision. The ATO has undertaken that you will not be fined if you follow the information provided in the report.

If you are concerned that the person who pays you to work for them should be paying you as an employee this test may help convince them but do not be concerned it is only the employer who will be liable if they are paying you the wrong way.

Alienation of Personal Services Income

The Results Test

At the end of 2007 IRG Technical Services Pty Ltd & Anor V DFC of T was a sharp reminder that there is more to the results test than being responsible to rectify mistakes. In this case a couple of engineers argued that they passed the results test even though they worked as part of a team where their work had to be signed off as part of the payer's quality control. They contracted to the payer through their company and trust. If they could pass the results test the entities would be entitled to distribute their income to other members of their households who were in lower tax brackets.

The relevant section number is 87-18(3) which requires at least 75% of the entity's income to pass all of the following three tests:

- a) the income is for producing a result
- b) the personal services entity is required to supply the plant and equipment, or tools of trade, needed to perform the work from which the personal services entity produces the result, and

c) the personal services entity is, or would be, liable for the cost of rectifying any defect in the work performed.

The court found that they passed c) but not a) because they worked as part of a team and were paid an hourly rate. By simply finding that a) was not passed the court could rule but it also commented that b) was not passed either because while they had their own laptops and data base they were not required to bring them to work.

Audits

The ATO is now matching data to catch out people directing personal services income through other entities. It will be collecting data from labour hire firms, placement agencies and computer consultancies on payments they make to entities other than individuals together with the name of the individual who actually provides the services. The information will be cross matched with tax returns to easily detect those entities that are not redirecting all of their personal services income back to the individual who earned it.

If you are concerned about your circumstances our APSI booklet which is available under the free publications section of our web site has a flow chart you can use to see how these rules affect you.

Entrepreneurs' Tax Discount

This little gem has limited application and doesn't get much publicity so is an easy one to miss, here is a timely reminder. If your business turnover is more than \$75,000 excluding GST don't bother looking any further into this. When the business turnover is less than \$50,000 the full rate of the discount applies. Between \$50,000 and \$75,000 the rate shades out. Note this is turnover of the business, for example total sales not net profit. The business also has to elect to be a small business entity to qualify.

The Entrepreneurs' tax offset flows through trusts to apply to the tax payable by the beneficiary, Partners claim it in their personal tax returns too. The offset or discount is 25% of the tax payable on all your taxable income apportioned between you business income and wages income. For example if you had a total taxable income of \$80,000 the tax payable on all your income would be \$18,000. 25% of that is \$4,500, if half your taxable income was from the business (ie \$40,000) the discount or tax offset would be \$2,250 (half of the \$4,500 maximum).

When You Can Claim Super, Has Changed

A little realised trap created by the changes to superannuation means that people who have only a small wages income say less than \$450 or because you are under 18 and work less than 30 hours a week or you are over 70. Note from 1st July, 2007 you may (subject to all the normal limitations) qualify for a tax deduction for superannuation contributions you make if they are made before 28 days after your 75th birthday.

Can still not claim their superannuation contributions unless they satisfy the 10% rule. This is due to a change in the wording of the legislation so just because you could claim last year doesn't mean you will be able to this year.

For example if you are on a low wages income of less than \$450 per month but have, say, a \$35,000 capital gain you cannot get a tax deduction for any money you put into superannuation even though your employer is not required to contribute for you, because more than 10% of your income is from wages, even though those wages do not attract employer superannuation contributions. The best you can do in this situation is to ask your employer to salary sacrifice your earnings into superannuation.

Trap with Contractors Claiming Super

If you qualify for employer support you are not entitled to claim a tax deduction for any personal super contributions you make. This is the case even if your employer doesn't actually make any super contributions for you. A typical example of this would be with contractors. The employer may not think he or she has to make contributions but if the contract is for your labour they should.

The more the arrangement becomes a payment for more than just your personal services the less likely the employer is to be liable to pay super. For example a payment to the owner driver of a semi trailer is not subject to the super guarantee because the majority of the payment would be for the provision of the truck. But if a

courier driver uses the family car their employer would be required to contribute to super on their behalf. More detail on this is available in SGD93/6.

If you contract through a trust or company then your “employer” is not required to contribute to super for you and you can ensure deductibility by getting your company or trust to make the contribution.

Motor Vehicle Data Matching

A very timely reminder for taxpayers driven by the investment allowance stimulus to buy motor vehicles they can't really afford. The ATO has announced that it will be obtaining details of all purchases of vehicles over \$10,000 from the motor registries in each state and matching this against the owners reported taxable income to see if maybe they are earning more than they have declared in their income tax return.

Personal Services Income and 50% Investment Allowance

According to the ATO just having an ABN is not enough if you are an individual and your business's income is from your personal services.

Partnerships, trusts and companies that are in receipt of personal services income and do not pass the alienation of personal services income rules (commonly referred to as the 80/20 rule) will still qualify to claim the investment allowance. It is just the individuals that will miss out. For this reason it is important that an asset is purchased in the name of the partnership not one of the individual partners.

Our booklet on Alienation of Personal Services Income contains a flow chart on when you are caught by these rules. It is available under the free publications section.

In short if you are a sole trader and want to take advantage of the investment allowance it would be better to contact us first to make sure you qualify.

Are You In The ATO Benchmarks?

(November 2009)

In its pursuit of the cash economy the ATO has created benchmarks for 56 businesses. The idea is that if your margins do not fall within these they may just audit you to make sure none of your cash is slipping out of the till. They cannot argue that you must perform to these percentages, but if your record keeping isn't spot on then they will use them. So the idea is to ring up all sales, keep the till tape and reconcile this till tape to deposits ie show what goods and or wages were paid out of the till to bring the gross sales down to the amount deposited. The benchmarks examine cost of goods sold, labour and rent as a percentage of sales. You may even find them useful in evaluating your business. Look at the difference between a chicken shop and a sushi shop, they are also worth examining if you are considering purchasing or setting up a business. There are different ratios depending on the size of the business. The following is a list of the business for which there are benchmarks, to get the full details for your industry go to www.ato.gov.au; the link is on the home page. The percentage that the ATO expects your cost of goods sold to be of your total sales is also included below for small businesses of a medium size.

Bakeries and Hot Bread Shops*	32 to 40%	Cake Shops and Patisseries*	35 to 43%
Air Con, Refrigeration & Heating Services	38% to 54%	Block Laying	5 to 10%
Brick Laying	Under 10%	Electrical	31 to 41%
Concreting	Under 10%	Fencing	42 to 56%
Painting	14 to 22%	Plastering – if supplying materials	33%
Plumbing	33 to 43%	Roof Guttering Installation	45 to 55%
Roof Painting and Repair	20 to 40%	Installing Tiles & Metal Roofing	20 to 44%
Tiling and Carpeting	16 to 32%	Timber Floor Installation	50 to 70%
Timber Floor Sanding	N/A	Clothing Retail	54 to 64%
Computer Retailing	60 to 72%	Floor Coverings Retail	56 to 68%
Florist	44 to 54%	Footwear Retail	55 to 63%
Seafood Retailing	66 to 74%	Poultry Retailing	56 to 74%
Fruit & Veg Retailing	68 to 76%	Furniture Retailing	56 to 64%

Grocery Retailing	73 to 81%	Houseware Retailing	49 to 59%
Liquor Retailing	76 to 82%	Butchers	64 to 72%
Newsagents	69 to 77%	Tyre Retailing	63 to 69%
Chicken Shops	50 to 60%	Coffee Shops	33 to 43%
Fish and Chip Shops	49 to 57%	Kebab Shops	40 to 48%
Pubs and Taverns	42 to 54%	Restaurants	33 to 41%
Sandwich Shop	40 to 52%	Sushi Takeaway	36 to 44%
Takeaway Food	41 to 55%	Takeaway Pizza	37 to 45%
Courier Service (motor vehicle expenses)	11 to 21%	Road Freight (truck expenses)	11 to 37%
Delivery Services (motor vehicle expenses)	4 to 22%	Towing Service (truck expenses)	14 to 26%
Furniture Removal (motor vehicle expenses)	11 to 21%	Video Hire	24 to 38%
Industrial Cleaning (Labour)	19 to 41%	Pest Control	9 to 17%
Barber	4 to 14%	Beauty Salons	19 to 25%
Hairdresser	14 to 20%	Dry Cleaning	7 to 15%
Nail Salons	8 to 18%		

Taxis are expected to generate sales of \$1.18 for every kilometre they travel

*You may qualify to use the business norms percentages when calculating your GST

N/A means that there are benchmarks available but they do not include the percentage of sales that should be cost of goods sold.

If you are concerned please ask your accountant to review your ratios in relation to the benchmarks and your record keeping methods. Make sure you are armed with a list of things that may affect the benchmarks that are particular to your business. Also record unusual events such as the loss of stock as a result of a freezer break down.

If your industry has an * against it consider asking your accountant whether using the business norms percentages would reduce your record keeping costs for GST purposes. The first step to qualify is that you do not have the point-of-sale equipment that will identify and record separately GST free and GST taxable sales.

Construction Workers - “Going Out On Their Own”

Typically your boss or an associate says to you; get your ABN and I will pay you more and you can start your own business. Stop right here and make sure you see an accountant first because there are several issues that need to be discussed in relation to your particular circumstances. For example:

Business Structure

If you operate in your own name as a sole trader you cannot distribute income to other members of your family unless they actually work for it. You would not be able to distribute income to other family members anyway, if you are simply paid for your labour. If you are paid to produce a result, for example if you make a mistake you have to fix it at your own cost, then you may be able to distribute income to other family members. The simplest way of doing this is through a partnership and the ATO is much more lenient with partnerships splitting income rather than using a trust. The trouble is operating in your own name or a partnership does not give you asset protection, a trust may but in some trades such as gas fitting you are always going to be personally liable. Taking the next step to a trust is costly for both ongoing and initial set up costs. If you are in Queensland and wish to operate through a trust the QBSA requirements are much higher but you are still going to be personally liable anyway.

Registering for GST

Usually the person you contract to wants you to be registered. They get the GST they pay you back off the ATO anyway and being registered means that anything you have to buy for the business will be cheaper because you will also get the GST back on your expenditure. Nevertheless, you do not have to register for GST unless your anticipated turnover exceeds \$75,000.

Quoting

When you set the price you will charge on jobs you will probably use an hourly rate as a basis. This hourly rate needs to be considerably higher than the amount you were earning as wages. You need to factor in GST, non chargeable time such as quoting, doing your paper work and when you can't work in the rain. Don't forget you will need to earn enough to put aside for your holidays, sick leave and income tax. Then there are tools, materials, motor vehicle expenses and insurance at a very minimum. Maybe you should also consider how reliable your industry is. Will you get paid for every job you do? If the contract is for your labour then the person you contract to may be liable to pay the superannuation guarantee of 9% for you but the reality is they very rarely do, so this should also be priced into the quote.

The above is not even the bare minimum, you must see an accountant but before you do you might like to read the material provided in our construction workers section in the menu to the right of this page to help you prepare your questions for your accountant.

More ATO Data Matching To Control the Cash Economy

The ATO utilises many indicators to consider whether a business in the cash economy may not be reporting all its income. The most significant of these is their benchmarks for particular industries, there are now 100 different business types covered. Details are available on the ATO web site. Further, the new tax agent regime requires the person preparing your tax return to consider whether you have declared all your income. For tax law purposes the onus of proof rests with the taxpayer so unlike a murderer you are considered guilty until you prove yourself innocent.

The latest data matching tools the ATO will be accessing are details of merchant card sales for business who have their merchant card facilities with the 4 major banks. Plasterers should also be aware that Boral Ltd, CSR Ltd and La Farge Plasterborad Pty Ltd will be providing details to the ATO of sales to approximately 10,000 individuals and entities.

Something Concrete for Sub Contractors

The ATO has set up a questionnaire on its web site to help people determine whether they are contractors or employees. We recommend that Payers take this test for anyone they are employing as a contractor. Then print out the results and keep it on file so that you can show you made an effort. The web address is:

www.ato.gov.au/businesses/pathway.asp?pc=001/003/018&mfp=001/003&mnu=35879

Personal Service Income that Passes the 80/20 Rule

In Newsflash 216 we discussed the considerations when choosing a business structure. This led to a brief discussion on the restrictions on splitting personal services income with your family. It was pointed out that even if you passed through all the alienation of personal income test, if the income is primarily generated by your labour you still have to pass the common law tests. In this edition we delve deeper.

In IT 2639 the ATO states that using a trust or company to split income with your family is a scheme with the dominant purpose of a tax benefit so it can use Part IVA to remove the tax benefit. The point being that income from your personal labour can never be taxed in someone else's hand unless it is generated in a personal services business where other people also provide labour to customers. One of the guidelines in IT 2639 is that there is at least as many employees whose services are being charged to clients as there is owners of the business. Administration staff do not count unless their services are being billed to clients.

IT 2639 looks firstly to see if the income is being generated primarily by personal services as opposed to the assets of the business. If it is not primarily an asset or sale of goods that generates the income then it is a head count to see whether chargeable employee staff exceed business owners. Paragraph 10 states:

If the practice company or trust has at least as many non-principal practitioners as principal practitioners, then income is considered to be derived from the business structure (ie not personal exertion).

Practitioners are described in paragraph 11 as:

“Practitioners” include both full-time professional and non-professional staff whose function is to derive material fees from the practice. Part-time staff count proportionately. The term does not include administrative, clerical or support staff. For example, a nurse under the direction of a doctor or a legal secretary under the direction of a solicitor are not “practitioners” unless they earn material fees in their own right.

It seems that you can dissect the income of the business if there is some that is not directly earned from personal exertion. In paragraph 9 of IT2639 it recognises that the initial commissions earned by an insurance broker are income from personal services but the renewal commissions would not be caught. This would also no doubt be the same for trails received by finance brokers and financial planners.

IT professionals should also consider that if they write a program and then sell it the income of their business is not from personal exertion but from sale of goods.

Note that when the business is a partnership between individuals then all the partners are personally liable so the ATO accepts that they should all be entitled to the profits, even if the income is mainly generated by one partners labour. The catch is of course that a business does not provide any asset protection.

More Bullying By The ATO

The ATO penalised a taxpayer \$10,000 for not notifying his superannuation fund that he intended to claim a tax deduction for his superannuation contribution. Fortunately the taxpayer could afford to fight the ATO in the AAT and won (Byron Johnston v Commissioner of Taxation). The \$10,000 penalty was remitted but of course the superannuation contribution was still not deductible because of section 290-170(1)(b) discussed earlier in this newsletter.

The following comments by the member of the AAT, S E Frost show that he considered it unfair that the ATO could mislead the taxpayer and then fine him \$10,000 so he remitted the penalty.

10. Mr Johnston could hardly be blamed for not being aware that he had to provide a "notice of intent to claim a deduction" to his superannuation fund. He is not a superannuation expert or a taxation expert, and the requirement for a "notice of intent" is not particularly well highlighted in the public material dealing with the tax treatment of superannuation contributions. Mr Johnston's research, undertaken around the time of the then Government's announcement in late 2006 and early 2007 of the so-called "simpler super" proposals, uncovered the deduction limits for a person his age but did not alert him to any additional administrative requirements for deductions to be allowable. In my view, the inclusion of the deduction claim in his 2008 tax return is not attributable to any extent to a failure on Mr Johnston's part to take reasonable care to comply with a taxation law.

Budget Changes That Affect Small Business

Entrepreneurs' Tax Offset:

This is the last financial year that small businesses with a turnover under \$75,000 will qualify for the entrepreneurs' tax offset which reduces the tax payable on their business income.

FBT On “Company” Cars:

Nothing has changed if the log book method is used to calculate the FBT payable on an employer provided car.

Most employers use the simpler, formula method. The way the formula works is it is assumed the more kilometres the car has travelled the more likely it is used for business purposes. The formula takes the original cost of the car (in most cases) and multiplies it by a percentage to determine the value of the fringe benefit. The more kilometres used the smaller this percentage is. The government is under the impression this is an incentive to drive the car unnecessarily. Accordingly, it intends to introduce a flat rate of 20%.

The rates will stay the same for cars purchased before the announcement but for new contracts entered into from 10th May, 2011 the new rates will apply. Though the new flat rate will be phased in slowly and remember it only applies to cars that are purchased after 9th May, 2011. From that date cars that travel less than 25,000 kilometres will be subject to the 20% rate. From 1st April 2012 (2012/13 FBT yr) cars that have travel up to 40,000 kilometres will be subject to the 20% rate. By 1st April 2014 all cars will be subject to the 20% rate.

Upfront Deduction On Vehicle Purchase:

This applies to all vehicles used in a business not just cars. The first \$5,000 can be immediately written off. The balance is depreciated at 15% in the first year regardless of the month purchased then 30% in following years. This will apply to vehicles purchased after 1st July, 2012 so it may be worth delaying purchases.

Carbon Tax Changes That Affect Small Business

The only concessions small business got was an increased threshold for capital expenditure write-off. Currently small businesses have to depreciate any item costing more than \$1,000. This threshold will be increased to \$6,500 so should provide quite bit of record keeping relief.

Claiming Home Office Expenses

The ATO allows you to claim 34 cents per hour for each hour you spend working in your home office. This amount is to cover electricity and wear and tear on furniture, carpet etc. It is not necessary that you have to work at home because you don't have an office elsewhere. To make this claim you can simply have chosen to work at home. Phone calls, internet, computers and printers can also be claimed but utilizing the 34 cents per hour rate will prevent you from being able to depreciate the furniture in your home office.

If you have purchased furniture this year you may be better off claiming actual costs rather than the ATO's hourly rate. If you choose to do so here is some information that will help you calculate how much you can claim for the electricity. A computer costs about 5 ½ cents an hour to run and a fluorescent light about 3 cents an hour. The cost of running an air conditioner varies depending on the kilowatt input figure. To be accurate you should multiply the kw input figure by the rate you are charged per kilowatt for your electricity. As a general guide air conditioners cost around 17 cents an hour to run.

Before you can make any claim for all these home office expenses you need to keep a diary for one month showing how many hours the office is used for work related purposes, this includes managing your tax affairs and investments. In the case of equipment and furniture the diary will also need to show the ratio of deductible to nondeductible use so the expense can be apportioned.

Australian Government Sweat Shops

It made news in January that Apple had to admit that some of its suppliers were breaching its standard of a maximum 60 hour work week and minimum one day off per week. As I prepare my BAS and deal with various other government shackles placed on small business owners, how I wish that the Australian Government had a similar policy.

MYOB Users

When you roll over data in MYOB the previous year's entries are no longer accessible. In the case of an ATO audit you will not be able to print a report to show the individual entries that make up the amounts appearing in the tax return. If you do not have a pre roll over back up you are in deep trouble. Not just with substantiating your tax deductions, even if you go back and reconstruct from all your paper records you are still in breach of the requirements of section 262A. In that you didn't keep all your records in a manner that allows "ATO staff to determine a person's liability quickly and easily". Paragraph 25 of TR 96/7 makes it clear that this requirement is more than just keeping receipts it includes keeping ledgers and journals. When you roll over MYOB these ledgers are no longer accessible.

It is my opinion that Quickbooks provides a much better method of retaining and reporting your tax records. Not only does it not require the data to be rolled over but the Quickbooks reporting function is far superior. You can simply block entries to non current dates with a password. This helps prevent incorrect dates being entered in current periods. The most significant advantage Quickbooks has over MYOB is its find facility which will allow you to produce a report on any basis for any date, even just look for entries of a specific amount. Quickbooks records data as a data base and allows you to sort on the basis of any of the fields in that data base.

More Flexibility for Businesses Financing Equipment etc

From 1st July, 2012 small businesses accounting for GST on a cash basis will be able to claim the GST input credit up front for their equipment purchases even when they are financed under a hire purchase agreement. Chattel mortgages have always had this ability but are less popular because they are usually more expensive.

Generally no GST input credits are allowed on interest payments but under the new law the whole of the hire purchase arrangement will be subject to GST even if the interest amount is listed separately. This means the GST input credit will simply be 1/11th of the total price. This only applies to contracts entered into after 1st July, 2012.

Get Those Superannuation Contributions in on Time

Employers have until the 28th July to make the superannuation contributions they are obligated to pay for the June period, under the superannuation guarantee. But if the contribution is made after the 30th June, 2012 the employer will not be entitled to a tax deduction for it until the 2012/2013 financial year even though the liability fell in the 2011/2012 financial year.

If you are contributing salary sacrificed contributions or have employees who are close to the \$25,000 or \$50,000 cap you should also take a careful look at their particular circumstances. The amount contributed for the purposes of the cap is also based on the date it is received by the fund. Delaying these contributions until after 30th June could result in your employees missing out on maximising their cap this year and possibly exceeding their cap next year.

On the other hand if last year you made the June contribution in July but this year you are making it in June your employees will have 5 quarters' worth of contributions in the 2011/2012 financial year. Before you do this make sure you will not be pushing anyone over their cap.

In Peaker 2012 AATA 140, the employer posted the contribution on 28th June but it was not recorded as income of the fund until 5th July. This meant that the employee exceeded his cap for the following year. The AAT upheld the ATO's assessment of excess contributions tax as there were no special circumstances which would allow the amount to be allocated to another year.

Due to data matching the ATO will always be informed should your cap be exceeded.

Employees when negotiating their salary package should consider including a clause requiring their employer to physically make the superannuation contribution in the month that it is sacrificed.

Preparing PAYG Summaries

During this year we noticed a lot of errors on PAYG summaries in the reportable payment boxes. Here is a quick check of common misconceptions.

Reportable FBT – This is the fringe benefit amount grossed up (multiplied) by 1.8692. If the fringe benefit amount before grossing up is less than \$2,000 it does not need to be reported. This means that if you receive a PAYG summary with an amount less than \$3,738 in the reportable fringe benefits box a mistake has been made.

Reportable superannuation contributions – this amount does not include payments your employer is required to make under the superannuation guarantee or award. It generally only catches salary sacrificed contributions.

Employers are only allowed to claim a tax deduction for superannuation contributions they have actually paid into a superannuation fund during the 2011/2012 year. This usually means they can't claim a tax deduction for the last quarter's super but can claim the last quarter's super from the previous year. This is not the case for reportable superannuation contributions. The amount that appears in the box is the amount of superannuation attributed to the 2011/2012 financial year ie. earned by the employee and sacrificed even if not yet received by the superannuation fund. For the purposes of superannuation cap it is added back to the amount actually received by the superannuation fund and allocated to the employee's account during the year that contributes to the employee's cap, whether it be a salary sacrificed contribution or a compulsory amount paid by the employer.

The QuickBooks vs MYOB Debate Continues

The battle of the major software packages rages on, for more see edition 242 of Newsflash, QuickBooks:

- 1) Allows you to print a financial statement over any period of time, it is not restricted by the financial year period you have selected.
- 2) Speeds up data entry by allowing you to just enter the date without the / in between
- 3) Does not require you to find and allocate a number for each account you set up
- 4) Offers you the details of the last transaction for the supplier so you only have to enter the differences.

Employee or Contractor?

The following is a link to an ATO tool to help you decide whether someone you are paying to provide you with services is really a contractor. Quite a hot spot with the ATO at the moment.

<http://www.ato.gov.au/businesses/content.aspx?doc=/content/00095062.htm&mnu=42711&mfp=001/003>

Discretionary Trust Distribution Minutes

Bamford's case resolved that the income of a trust is to be determined according to the wording of the trust deed and not in accordance with ordinary accounting concepts. This means that as a minimum the income clauses in your trust deed will need to be reviewed and possibly amended. In the following, a reference to a trust is a discretionary trust.

This article is based on a draft ATO ruling, changes to legislation that are less than a year old so untested and test cases that barely scratch the surface of the issue. In its draft ruling TR 2012/D1 the ATO creates some very bizarre circumstances where it claims that while some items are included as income for tax purposes they can't be included in trust income. Accordingly, there are no guarantees with the following. It is compiled from a variety of material on the topic, looking for consistencies in opinions but also pointing out some possible traps. To truly cover yourself you should discuss this with a specialist lawyer in regard to your particular circumstances and the wording of your trust deed. The catch is the ATO hasn't finished with the changes yet! So of course if your trust is not in the danger zone below it would be great if you could delay a review of your deed until there is more certainty. To help in this regard we have listed the situations that may put you in the danger zone. If none of these apply to you then you may want to take the calculated risk of waiting for your review. For example previously it was thought that an income equalization (stating that trust income equals taxable income) clause was the solution but now in some cases this could work against you.

The Danger Zones - If any of the following apply to you, you need advice on the wording of your distribution minutes and may need to have your deed amended before 30th June, 2012.

- 1) There will be a small business capital gain made by the trust within the next 15 years. You will need to make sure there is continuity of ownership.
- 2) You will make a small business capital gain this year.
- 3) You want to stream (identify the beneficiary that is to get that particular stream of income) capital gains or franking credits.
- 4) You will make a capital loss this year. It will need to be recorded in the balance sheet to be carried forward.
- 5) Your deed states that trust income equals taxable income.

Our Ideal Income Distribution Statement In The Trust Deed – Would give the trustee the discretion to decide what is the income of the trust and the power to stream capital gains and franked dividends. This flexibility should be backed by a default definition of income, if the trustee chooses not to exercise its discretion, this clause should state that the trust income is to be determined in accordance with tax law.

Further, the trustee should be entitled to distribute gross income if it desires. This may be necessary to avoid the loss of franking credits as they are not entitled to be passed onto beneficiaries unless they follow at least some income. The Trustee should also have the power to make interim distributions.

The catch in all this is that you may trigger resettlement by making these changes. A resettlement will cause a CGT event.

Important Points For The Distribution Minutes - Do not delay organising your distribution minutes for the 2012 financial year. It must be done before 30th June, 2012.

The big concern when sorting out the wording of your distribution minutes is if the ATO later audit the trust tax return and decide that its taxable income is higher. Bamford's case determined that the taxable income is to be apportioned on a pro rata basis with the trust income. For example if the trust income was \$1,248 and the distribution minutes gave \$416 to a child and the rest of the income namely \$832 to the parent then if the ATO later audited the trust and determined that the trust income was \$1,500 then the child would have to include \$500 in his or her tax return. The trap with this is children receiving passive income over \$416 are subject to penalty tax rates.

It appears there is no way of wording the distribution minutes to avoid this problem so it is probably not worth the risk of distributing any trust income to children considering the little tax benefit gained compared with the risk.

As you are making the distribution minutes before the income of the trust is known it is important that the distribution minutes does not just list all dollar amounts. There needs to be a beneficiary that receives the balance, a mop up, as at this stage you only have a vague idea of the trust income.

Guidelines For Minutes In Simple Circumstances – First review the deed to check that the trustee has the discretion to determine income. Start with an explanation of how the trust deed defines income. If the trustee has discretion then make sure the minutes thoroughly covers how the trustee is exercising that discretion. Franked dividends, capital gains and other income should be individually addressed. Distribute at least \$1 of gross income as it may help you distribute franking credits.

If your circumstances are very basic, with no expected capital gain or franking credits and the trustee has the right to determine income, here is an example of minutes of a distribution meeting. No guarantees, but it does have a few extra points that may help cover the unforeseen.

Minutes of the Meeting of –

Location –

Date –

Present –

In accordance with the powers granted to the trustee in the trust deed the trustee determines income to include all sources of income including if applicable gross capital gains and franking credits. From this gross income all beneficiaries listed below are to receive a distribution of \$1. All expenses and outgoings from the trust are then to be deducted from the gross income to determine the net income of the trust which is to be distributed as follows:

- A \$ or %
- B \$ or %
- C receives any balance of net income remaining

For the avoidance of doubt should any adjustment be made to the net income of the trust the dollar amounts stated above are not to change.

For the avoidance of doubt payments made by the trustee during the year do not necessarily constitute distributions unless expressly recorded by a resolution of the trustee. Further any interim distributions so recorded count towards the amounts shown above.

There being no further business the meeting was closed.

Signed as a true and correct record

Dated

Traps - If the trust deed says income in ordinary concepts then only the net capital gain can be streamed. This could result in other beneficiaries paying CGT on a distribution they did not receive. To avoid this, an interim distribution of the whole capital gain will need to be made to the beneficiary who receives the capital gain.

A nasty shock in TR 2012/D1 was the ATO's opinion that franking credits, while taxable, cannot be considered trust income. If a trust does not have net income (ie does not make a profit) it cannot distribute its franking credits and they are wasted. A possible but not proven method of avoiding this problem is to distribute

a small amount of gross income. If this could apply to you no harm in including it in your minutes just in case, as shown above.

Tip For Small Business Capital Gains - The small business concessions can reduce a capital gain to zero.

On a \$100,000 capital gain this could work as follows:

Capital Gain	\$100,000
Less 50% CGT Discount	50,000
Less 50% Active Asset Discount	25,000
Less Retirement Exemption (Max \$500,000)	25,000

When a beneficiary receives this amount it must be grossed back up again in their tax return but all the above discounts still apply. The trap is if that beneficiary had capital losses they would be wasted. If the beneficiary had capital losses of \$20,000 the entry in their tax return would be:

Capital Gain	\$100,000
Less Capital losses	<u>20,000</u>
	\$80,000
Less 50% CGT Discount	40,000
Less 50% Active Asset Discount	20,000
Less Retirement Exemption (Max \$500,000)	20,000

Still no capital gain but only 25% of the losses were effectively used. If instead of the retirement exemption the small business rollover was used by the trust then nothing would be distributed to the beneficiary in the current year. The trust has two years to buy a replacement asset. If it does not buy one then in two year's time the beneficiary will simply receive a capital gain of \$25,000 (no grossing back up) this can be offset by the \$20,000 capital loss and the balance of \$5,000 applied to the retirement exemption leaving more of the \$500,000 limit available in the future and requiring less of the funds to be locked away in superannuation if the beneficiary is under 55 years of age.

Disposing of Records

Don't throw out your old records as you get ready for this year's tax return. Not even if they are twenty years old! Think of the business that threw out its old records before the 15 year CGT concession was introduced. At the time they had no reason to believe the records would be needed.

When they sold the business they had no way of proving continual ownership for 15 years, through trust distribution records. If they could, the whole capital gain on the sale of the business would be tax free!

You don't know what retrospective law changes are around the corner.

Temporary Reprieve for LAFHA Changes

Due to the short notice of the changes to the Living Away From Home Allowance (LAFHA) announced in May and the draft legislation not even being available until the 28th June, 2012 the government has agreed to delay the introduction of changes to the Living Away From Home Allowance concessions until 1st October, 2012.

The following are the major points in the draft:

The 12 month Rule – The allowance can only be paid for the first 12 months that the employee lives away from home. This 12 month period does not start until 1st October, 2012 even if the employee begins living away from home before then. When the employee returns home for holidays etc this will not restart the 12 month clock but the time they are at home will not count towards the 12 months, yet they will still be entitled to a tax deduction for any accommodation costs they incur (back at their workplace) while at home but not food.

Taxable food component – Is the portion of the food component of the allowance that is considered to cover normal food costs so does not qualify for concessional treatment. This will now be held at \$42 per week for people over 12 years of age and \$21 per week for children. Previously, employers could simply reduce the amount they paid by this amount and no FBT would apply. It is now intended that whatever portion of the allowance that is paid for food will be deemed to include this component and the employer will have to pay FBT on it. Basically, forcing an employer to pay a taxable amount before they can pay an exempt amount.

Hopefully this problem will be able to be solved by an employee contribution. Note employees must also give their employer a “deductible food and drink expense declaration”.

Transitional Rule – Agreements that were in place on 8th May, 2012 remain unaffected until 1st July, 2014 providing they are not varied or renewed. A variation could simply be an increase in pay rate.

Taxable to Employees – Any LAFHA received, other than the food component, will be taxable income to the employee for which they will have to produce receipts to make claims for accommodation etc. In the case of food the ATO will issue guidelines on what is reasonable and receipts will only be necessary, for all food expenses, if the claim is for more than these reasonable amounts.

Opportunity When not Receiving LAFHA – It will no longer be a requirement that your employer pay a LAFHA to qualify for this concession. All employees that meet the requirements of living away from home while maintaining another home in Australia will qualify to claim their costs, in the first 12 months, if they have the necessary receipts.

Maintaining Another Home in Australia – Of course this means no LAFHA concessions for people coming to Australia to work from overseas. Also people who lived with their parents etc before relocating will not be entitled. Maintaining another home means owning it or leasing it in your name or your spouse’s name. It cannot be rented out while you are away but if you had boarder that was living with you before you relocated then they can continue to live there and you will still qualify.

Mining Accommodation – These changes will also affect employer provided meals and accommodation but this will only be of concern to the employer not the employee. The employer will only be able to exempt from FBT the portion of the costs that the employee would have been able to deduct if they were paid an allowance. This of course means no concessions after 12 months. It appears the remote area housing concessions will not be changed. The LAFHA concessions are not applicable to fly in fly out workers.

Now before you go acting on this remember, it is not through parliament yet, so anything could happen.

Personal Property Security Act

There is a lot more to the Personal Property Register than just checking if a vehicle or machinery you are buying is unencumbered or to confirm that an interest in goods you have supplied on credit has been registered. The traditional way we view our rights of ownership now have to change. It is not just a case of needing to register your interest to protect your rights, a lack of registration or incorrect registration can be used to override your rights in favour of someone else who is correctly registered.

If the entity that actually has possession of the goods is placed into administration or liquidation and your interests are not listed on the register then the administrator or liquidator can treat the goods as belonging to the entity in administration or liquidation and sell them to meet the debts owing to all creditors. You may well be able to line up along with the other creditors for some payment but you will not be specifically entitled to recover the goods or the proceeds of the sale of those particular goods.

There are transitional measures until 30th January 2014 for unregistered interests, which means you must register before that date but there is much debate currently among lawyers about whether these measures cover goods you sold on account even though you may have a valid retention of title clause written into your terms. The transitional measures do not cover arrangements entered into after 30th January, 2012 such as new customers signed up after 30 January, 2012

The full ramifications of this Act are far from clear with it already being tested in the courts by the WOW Sight and Sound Receivers who are busily trying to challenge the rights of any supplier, that was not already listed on the register, in favour of a secured creditor.

At a bare minimum, here are some of the circumstances readers should be concerned about:

- 1) Where you hold your plant, equipment, machinery, vehicles etc in a holding entity separate to your trading entity. The problem is they are either hired or leased for more than 90 days by the trading entity. If not registered, this arrangement will no longer provide you with any form of asset protection should your trading entity be placed into liquidation. The liquidator is entitled to treat the equipment in

the possession of the insolvent trading entity as owned by the trading entity unless the holding entity has registered its interest.

- 2) Lease or hire arrangements with customers or subcontractors/drivers to use your machinery or equipment over a period exceeding 90 days must be registered. The machinery or equipment must be "serial numbered" assets such as motor vehicles, earthmoving equipment and plant. Even if your equipment is something else, you must also register for any lease or hire arrangements exceeding twelve (12) months.
- 3) If you are supplying goods on account you will also need to register your interest for each customer, if you want to retain the title in those goods, should the customer not pay for them immediately. Fortunately, your interest does not have to be itemised just a general interest in their stock. We encourage you to obtain legal advice before registering your interest.
- 4) In the case of service providers such as storage facilities and repairers who do not release cars, goods or machinery until they are paid. This right maybe enforceable against your customer but if someone else has already registered their right over that equipment they are entitled to it.

Point 1 above would apply to many of our business clients. If any of these circumstances apply to you or you would like to talk to someone about your particular concerns we recommend you contact the following PKF branch, depending on which state you are in.

Queensland - Matthew Joiner on 07 3811 4441 matthew.joiner@pkf.com.au

Victoria – Dennis Turner 03 9603 1804 dennis.turner@pkf.com.au

NSW – James White 02 8264 6507 james.white@pkf.com.au

Keeping Diaries

Due to the ATO's extraordinary interest in diaries this year and their tendency to completely deny deductions without a diary showing the apportionment between business and private use of computers, phones, cars, internet, etc. we have developed a little spread sheet to help clients get started. As always, no bells and whistles, a clear presentation with minimal instructions and optional additional information if required. This is available on the shopping section, <https://www.bantacs.com.au/shop-2/>, of our web site for \$5.95.

If you would like to receive this free, all you have to do is take the time to sign up for our forum. Something that you will find well worth your while anyway but we want to provide a little incentive. To initiate the process go to www.bantacs.com.au/forum_introduction.php. To become a member of our forum you need to prove your identity and any qualifications. This enhances the quality of the information on the forum. If you are already a BAN TACS client simply tell us which office and we will take it from there. Please don't let this discourage non clients from joining, they are just as welcome, it is just the identification process that may take a little longer.

Small Business Plant and Equipment

Most readers will be aware that from 1st July, 2012 small businesses are entitled to an immediate tax deduction for any plant they buy, including cars that cost less than \$6,500. A little know trick is that there are no grouping provisions in that \$6,500.

Employees or rental property owners only get a \$300 immediate write off threshold. This means that if an employee buy's a set of 20 spanners for \$400 they are not entitled to the immediate write off because each spanner is part of a set. Similarly if the owner of a rental property replaces some curtains in their property they have to add all the individual curtains together for the \$300 test because they are like items.

Small businesses are entitled to apply the \$6,500 to individual items whether they are part of a set or identical to other items.

Further, if small businesses buy a car for \$6,500 or more they get an immediate write off for \$5,000, the balance being depreciated at 15% in the first year and 30% after that.

PAYG Instalments – Not So Simple

The ATO have recently begun calling small businesses to discuss PAYG instalments reported on quarterly activity statements. This unusually proactive approach from the ATO indicates that there are still a lot of errors being made in the arena of Pay As You Go (PAYG) tax.

PAYG is a system for paying instalments towards your expected tax liability. When you lodge your tax return for the year your actual liability is assessed and instalment amounts that you have paid are credited against your assessment to determine your final refund or tax bill.

As a general rule the ATO will place you in the PAYG system if you have reported \$2k or more of gross business and/or investment income (excluding net capital gains) in your last tax return; your last assessment notice included tax payable of more than \$500; your notional tax is more than \$250; you are not entitled to the Senior Australian or Pensioner Tax Offset.

Most people are required to pay instalments on a quarterly basis and will receive an Instalment Activity Statement (IAS). On this statement you will have the option to pay either an instalment amount calculated by the ATO or your own instalment calculated by multiplying your instalment income by a rate provided by the ATO.

The calculation of instalment income is the area in which the majority of mistakes are made. Instalment income is generally your gross business and/or investment income, excluding GST. It includes gross sales and fees received for services, gross interest, gross rent received, unfranked and franked dividend amounts, foreign pensions and other foreign income, royalties and income from trusts and partnerships. It does not include wages, imputation credits or income that is not assessable. Nor does it include Capital Gains.

You are able to vary the instalment amount or rate but there are heavy penalties for getting it wrong so it is a good idea to seek professional advice before making any variation to your PAYG instalments and before making a decision as to which instalment option you will select.

Contributed by Lyn Gower, owner of our Tenterfield, Stanthorpe and Gold Coast offices.

Directors' Liability for Unpaid Super and PAYG

Directors of a company can very quickly become personally liable for any superannuation that the company has not paid or any amounts of PAYG that it has withheld from wages but not paid to the ATO.

If 3 months have lapsed since the PAYG was due to be paid to the ATO, the ATO can simply serve a penalty notice on the directors and make them personally liable.

In the case of the superannuation guarantee, these payments must be paid into a superannuation fund before the 28th day after the end of the relevant quarter. If they are not paid by that date then the company must lodge and pay the superannuation guarantee charge within another 28 days ie 56 days after the end of the quarter. If this is not done then the company directors are personally liable.

2013 Budget Update

Data Matching – Funds in the budget have been allocated to increasing the data matching that the ATO collects, to include, government grants, sales of property, shares and units in managed funds. They will also have access to data on sales through merchant services i.e. Managed investment fund distributions, partnership distributions, company dividends and interest payments.

Trusts – The ATO has received extra funding to attack trusts used to “conceal income, mischaracterise transactions, artificially reduce trust income amounts and under pay tax”. Further work will be done on reconciling taxable trust income to ordinary trust income, hopefully giving a bit more clarity. One thing is for sure Hybrid Trusts will be under even more scrutiny with threats being made to prosecute promoters of such arrangements.

2017 Budget Update for Small Businesses

Plant and Equipment - The most exciting news is that the \$20,000 immediate write off for plant and equipment will continue until 30th June 2018. The equipment must be installed and ready for use in the year

you claim it. If you have a turnover of under \$2 million then you qualify. It is proposed that the turnover threshold will be increased to \$10 million. If this passes the senate it will apply to the 2016-2017 financial year and of course to the 2017-2018 financial year. As usual we go into the lead up to the 30th June without certainty as to who will qualify for the write off. Accordingly, when it comes to businesses with a turnover above \$10million, only people who can afford to do so without the tax deduction will buy plant and equipment anyway so it does not provide the incentive that it was intended to create.

Please note that once you have bought plant and equipment under \$20,000 and written it off your responsibility does not finish there. Each year for the next 3 years you have to review whether the ratio of business and private use has remained the same. If it varies by more than 10% you have to make an adjustment to the amount you have written off.

If your low value pool balance has reached less than \$20,000 you can write it off if you qualify as a small business.

New Small Business Definitions - The definition of small business varies depending on what tax concession you are after. The small business page on our web site has all these thresholds in one place so you can check which applies to you. It is down the bottom of this page <http://www.bantacs.com.au/topics/small-business/> One thing is for sure, if your turnover is under \$2 million you qualify for all the small business concessions. If your turnover is less than \$10 million and you operate as a company you will be entitled to a tax rate of 27.5% on the company profits starting from the 2017 financial year. For businesses that are not incorporated refer the section on Individual Taxpayers.

Cleaners and Couriers – For the 2017 – 2018 year, cleaners and couriers will be included in the reportable payments regime. If it is anything like the construction industry the definition will be very wide so expect it to apply to you if you are in a business that is in anyway associated with courier or cleaning services. You will not have to complete the form until 28th August 2018 but it will need to cover the period starting 1st July 2017. The form requires you to include the GST inclusive amount you have paid but normal record keeping may not easily provide you with this amount. For tax purposes you are only interested in the net of GST amount if you are registered for GST. It is important that you are aware of your responsibilities so you can keep the right information from the start. Also make sure you get full details of the person you are paying, right from the start as they may not be around next year. Here is a sample of the form you will be required to complete so you can see the information you need to keep

<https://www.ato.gov.au/uploadedFiles/Content/MEI/downloads/BUS00321342n74109.pdf>

Individual Taxpayers - If you have small business income (sole trader, trust or partnership) that is not from a company and the turnover is less than \$5million then you are entitled to an 8% tax offset on that income when it appears in your personal tax return, up to a maximum of \$1,000. The government is boasting how in 2025 this will increase to 10% then 13% then 16% by 2027 but the turnover threshold does not increase and the \$1,000 cap does not increase so the increase in the offset percentage is really just smoke and mirrors.

Ask BAN TACS

For \$79.95 at Ask BAN TACS, <https://taxquestions.com.au/> you can have your questions regarding Capital Gains Tax, Rental Properties and Work Related Expenses answered. We will include ATO references to support our conclusion. There is also a notice board where some askbantac users have generously allowed their question and answer to be published. Lots of good real life information.

More Information

Please make sure you continue to keep your knowledge up to date by [subscribe to our Newsflash reminder](#). There are many other booklets available on our web site <https://www.bantacs.com.au/media-library/booklets/> in fact the whole web site is full of useful information so also have a look around under topics.

How to Make Sure Your Next Property Is a Good Investment

- Do you really know how much the property is going to cost you to hold?
- What name should the property be purchased in?
- Will this property fit your investment strategy and goals?
- What does the contract say about GST?
- How does the price compare with similar sales in the area?
- If it is negatively geared, how much capital growth is required before you breakeven?
- Do you know what records you need to keep and how?
- Are your financing arrangements maximising your tax deductions?
- What happens if interest rates rise?

.....and the list goes on!

To ensure you don't make a costly mistake with your next purchase make sure you see a BAN TACS Accountant before you sign

Disclaimer: The information is presented in summary form and could be out of date before you read it. It is only intended only to draw your attention to issues you should further discuss with your accountant. Please do not act on this information without further consultation. We disclaim any responsibility for actions taken on the above without further advice as to your particular circumstances.

