

TAX MATTERS

TAX STRATEGIES FOR YOU AND YOUR BUSINESS

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Shorrock Partners

ATO targeting mischaracterised lifestyle assets

The Australian Tax Office (ATO) is targeting privately owned and wealthy groups that display specific behaviours and characteristics in relation to their tax affairs and lifestyle.

A large focus is currently on lifestyle assets and private pursuits that generate deductions or are mischaracterised as business activities. The ATO is also looking at those assets and pursuits which are incorrectly accounted for in terms of Division 7A or Fringe Benefits Tax (FBT).

Activities that attract the Tax Office's attention include:

- private aircraft ownership or activities
- art ownership and dealings
- car or motorbike racing activities
- luxury and charter boat activities
- enthusiast or luxury motor vehicles

- grape growing and other farming pursuits
- horse breeding, racing and training activities
- holiday homes and luxury accommodation provision
- sporting clubs and other activities involving the participation of principals or - associates of principals of private groups.

The ATO is addressing the following tax risks:

Income tax

- Entities claiming deductions from ownership lifestyle assets or private pursuits against other income derived by the entity but not carrying on a business.
- Individuals disposing of assets and not declaring the revenue or capital gains on those disposals.
- Entities incorrectly apportioning deductions where assets have been used privately or periods not available for rent or hire.

- Division 7A - individuals purchasing assets through their business entities but applying those assets to the personal enjoyment of a shareholder or associate of a private company giving rise to a deemed dividend.

FBT

Individuals purchasing assets through their business entities but applying those assets to the personal enjoyment of an employee or associate giving rise to a FBT liability.

GST

The purchasing of assets or expenditures concerning private pursuits for personal use through their business or related entities and claiming input tax credits they are not entitled to claim.

Superannuation

SMSF's acquiring assets but applying them to the benefit of the fund's trustee or beneficiaries.

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Property investors reminded of new deduction rules

Unless you are in the business of rental property investing, most residential rental property investors can no longer claim a deduction for travel costs incurred when inspecting, maintaining or collecting rent from rental properties.

The new legislation was introduced from 1 July 2017 as part of the housing affordability measures introduced in the 2017/18 Federal Budget. These laws disallow the deduction of travel expenses related to residential rental properties and no longer recognise travel expenditure in the cost base of the property for CGT purposes.

Travel expenses that can no longer be claimed as a deduction include:

- preparing the property for new tenants (except for the first tenants)

- inspecting the property during or at the end of tenancy
- undertaking repairs, where those repairs are because of damage or wear and tear incurred while renting out the property
- maintaining the property, such as cleaning and gardening, while it is rented or genuinely available for rent
- collecting the rent
- visiting your agent to discuss your rental property

If you are an excluded class of entity or are carrying on a business for the purposes of gaining or producing assessable income, you are exempt from the new rules.

The ATO considers an excluded class of entity as:

- a corporate tax entity;
- a superannuation plan that is not a self-managed superannuation fund;

- a public unit trust;
- a managed investment trust; or
- a unit trust or a partnership, members of which are entities of a type listed above.



FBT issues that raise ATO attention

With the fringe benefits tax (FBT) year-end just around the corner, it is a good time to review your FBT compliance to avoid raising attention from the Australian Tax Office (ATO).

The ATO is currently targeting the following rules for FBT:

Motor vehicles

Situations where an employer-provided motor vehicle is used or available for private travel for staff. This is a fringe benefit and must be declared on the FBT return (if lodgment is required). However, there are some circumstances where this is exempt; be sure to check before lodgment.



Employee contributions

The ATO will focus on employee contributions that have been paid by an employee to an employer and are declared on both the FBT return and employer's income tax return to ensure they are correctly reported.

Employer rebate

A taxpayer must be a rebatable employer to claim a FBT rebate; the ATO will check the taxpayer's eligibility as some employers incorrectly claim for this rebate.

Living-away-from-home (LAFHA) allowance

Common errors with the LAFHA allowance include claiming reductions for ineligible employees, failing to obtain declarations from employees, claiming a reduction in the taxable value of the LAFHA benefit for exempt accommodation and food in invalid circumstances and failing to substantiate expenses relating to accommodation and food or drink.

Non-lodgement

Employers who provide fringe benefits must lodge a FBT return unless the taxable value of all benefits has been reduced to nil.

Car parking valuation

Common errors include market valuations that are significantly less than the fees charged for parking within a one km radius of the premises on which the car is parked, the use of rates paid where the parking facility is not readily identifiable as a commercial parking station, rates charged for monthly parking on properties purchased for future development that do not have any car park infrastructure, and insufficient evidence to support the rates used as the lowest fee charged for all day parking by a commercial parking station.

Extended due date for 2016-17 SMSF returns

The ATO has announced that the due date for self-managed superannuation fund (SMSF) annual returns for 2016-17 has been extended until 30 June 2018.

The lodgement extension date comes as the ATO recognises the impact of the super reforms introduced 1 July 2017 on SMSFs and their advisers for the 2016-17 financial year.

The extended deadline will reduce the burden of SMSF compliance work for the first financial year since the 1 July 2017 changes and provide SMSFs with more time to focus on major new considerations and decisions, and determine the suitability of each option for their fund.

SMSFs who are eligible for transitional CGT relief as a result of the \$1.6 million transfer cap will now have additional time to consider and make relevant decisions before the due date for their 2016-17 return.

The ATO has noted that as the due date 30 June 2018 falls on a Saturday, lodgement can be made on the next business day, Monday 2 July 2018, without penalty.