client alert | explanatory memorandum

February 2022

CURRENCY:

This issue of **Client Alert** takes into account developments up to and including 24 January 2022.

COVID-19 vaccination rewards: tax implications

Amidst the Omicron COVID-19 wave and with our governments shortening booster dose intervals, many businesses are encouraging their employees and customers to get either vaccinated or get their booster dose by offering rewards or incentives. While this is an effective way to help employees and customers stay safe and businesses to stay open, it's important to consider that there may be some tax consequences involved. Ordinarily, non-cash benefits provided to the general public are not subject to FBT, while non-cash benefits provided exclusively to employees may be, and cash payments to employees need to be reported through Single Touch Payroll (STP).

Non-cash benefits provided to the general public

Where businesses provide free or discounted goods, services, vouchers, gift cards, rewards points or other non-cash benefits (for example, entries into a draw to win prizes) to everyone who has had their COVID-19 vaccinations, those benefits will not be subject to FBT, even if employees take part in the program. This is because the benefit is not provided in respect of the employee's employment. "Public" in this case denotes both members of the public in general, and those who make up a more specific section of the public (for example, all members of a particular club).

Non-cash benefits provided to employees

Providing non-cash benefits specifically to employees, such as goods and services, vouchers and gift cards or points in a rewards scheme may be subject to FBT. However, a benefit that has a value of less than $300 may qualify for a minor benefits exemption provided that:

- the benefit is provided infrequently and irregularly;
- the value and total value of the minor benefit and other similar or identical benefits are low;
- it is difficult to calculate the taxable value of the benefit and any associated benefits; and
- the benefit is provided as a result of an unexpected event.

In the event that the non-cash benefit provided to employees does not qualify for the minor benefit exemption, the business may be entitled to a reduction in taxable value of FBT if the benefit is an in-house benefit. Generally, an in-house benefit is one that is identical or similar to the benefits provided to customers in the ordinary course of business (for example, clothes provided by a clothing retailer, or electronics provided by an electronic retailer). Businesses can reduce the aggregate taxable value of these benefits by $1,000 if the benefits are not provided under a salary packaging arrangement.

Where a business provides transport or pays for an employee's transport to get their COVID-19 vaccination or booster, the travel would be considered work-related preventative health care, and is therefore exempt from FBT.

For businesses that offer their employees entry into a draw to win prizes as a reward for vaccination, there will be no FBT consequences when the entry to the draw is given to the employee; however, FBT may apply when the winner receives their prize, unless an exemption or reduction applies.

Cash payments

Where a business gives its employees a cash payment for getting vaccinated, the business will need to report the payment via Single Touch Payroll (STP) as part of each employee's salary or wages, withhold tax from the amount under PAYG withholding, and include the amount in each employee's ordinary time earnings for the purposes of determining super contributions for the employees.

Businesses that have already made cash payments to their employees and have inadvertently failed to withhold tax should make contact with the ATO as soon as practicable to facilitate the possible remission of any failure-to-withhold penalties. In addition, the ATO reminds businesses that super contributions on cash payments should be made no later than 28 days after the end of the quarter in which the payment was made, otherwise the super guarantee charge may apply.

Source: www.ato.gov.au/law/view/document?DocID=AFS/VACC_INC-COVID-19

www.ato.gov.au/General/COVID-19/Support-for-businesses-and-employers/COVID-19-and-fringe-benefits-tax/
www.ato.gov.au/General/COVID-19/Support-for-individuals-and-employees/COVID-19-vaccination-incentives-and-rewards-for-employees/

Free mental health support for small business

The Federal Government has announced additional funding to extend the availability of free mental health support to small business owners dealing with the current pandemic and recent natural disasters.

Funding of $4.6 million will go to Beyond Blue to boost its successful and innovative mental health program, NewAccess for Small Business Owners, and $2.1 million will go to Financial Counselling Australia to extend the Small Business Debt Helpline for 2022.

NewAccess for Small Business Owners

The NewAccess for Small Business Owners Program provides free, confidential, one-on-one mental health support by phone or video call to small business owners, including sole traders. The coaches are former small business owners themselves, so they understand the unique challenges that small businesses face, including family and financial pressures.

The program, developed and provided by Beyond Blue, starts with an initial assessment that allows the coach to develop a program tailored to each business owner's individual needs. The sessions then use Low-intensity Cognitive Behavioural Therapy (LiCBT) work to help participants in recognising the ways they think, act and feel, and in separating from unhelpful thoughts. The program provides practical skills to manage stress and get back to feeling like yourself.

The recently announced additional funding will allow for six more coaches from 1 April 2022, meaning the program will have a team of 18 specialised support coaches available to help 4,680 small business owners through the series of six one-on-one coaching sessions.

Business owners who've participated in the program say it's helped them feel better able to address the challenges they're facing, and they feel well supported by people who understand them. Participants also say they value being able to get support almost immediately using the free service.

More information about the NewAccess for Small Business Owners program is available by calling 1300 945 301 or on the Beyond Blue website at www.beyondblue.org.au/newaccess-sbo.

Small Business Debt Helpline

The Small Business Debt Helpline was set up in 2020 by Financial Counselling Australia (FCA) with Federal Government funding. It's a service for small business owners in financial difficulty, and supports small business owners to navigate issues including avoiding bankruptcy, negotiating payment plans, debt waivers, grant applications and insolvency.

The helpline is free to use, and the services provided are independent, confidential and impartial. Its professional financial counsellors offer a listening ear and practical business advice. They don't sell anything or work on commission.

Small business owners can contact the Small Business Debt Helpline by calling 1800 413 828 (9 am to 5.30 pm AEDT, Monday to Friday) or on the Small Business Debt website at https://sbdh.org.au/.

ATO support options

The ATO also reminds business owners whose mental wellbeing may be affecting their ability to pay tax or super that it has support options available, including help with setting up payment plans and deferring lodgements or payments. Information is available on the ATO website at www.ato.gov.au/General/Support-in-difficult-times/.

Source: www.ato.gov.au/general/covid-19/
https://ministers.treasury.gov.au/ministers/stuart-robert-2021/media-releases/more-funding-free-mental-health-counselling-small

Changes to recovery loan scheme for small and medium enterprises

As a part of an economic package to help businesses recover from the impacts of the COVID-19 pandemic, the Federal Government provided low-cost credit to qualifying small and medium enterprises (SMEs) in the form of the SME Recovery Loan Scheme. When it was first introduced, and until 31 December 2021, the government essentially guaranteed 80% of the loan amount.

However, from 1 January 2022, as restrictions have eased, the government guarantee has been reduced from 80% of the loan amount to 50% of the loan amount. The eligibility conditions have also been slightly fine-tuned, with the scheme now due to end on 30 June 2022.

To recap, the scheme is available to eligible small and medium businesses with up to $250 million turnover, including sole traders and non-profits. Previously, the scheme was also open to recipients of JobKeeper payments between 4 January 2021 and 28 March 2021, and those businesses affected by floods in eligible local government areas in March 2021. Now, only those businesses that have been adversely economically affected by COVID-19 are eligible.

Eligible small and medium businesses can access up to $5 million in total from participating lenders. This is in addition to the loan limits for Phase 1 (unsecured capital loans of up to $250,000 for terms of up to three years) and Phase 2 (unsecured loans of up to $1 million for terms of up to five years with a cap on interest rates) of the scheme.

Loans can now be unsecured or secured and will generally be for terms of up to 10 years, with an optional repayment holiday period of up to 24 months. The amounts can be used for a range of business purposes, including investment support or refinancing the pre-existing debt of an eligible borrower. For example, the loans can be used to purchase non-residential real property, including commercial property, or for the acquisition of another business.

While the exact interest rate will be determined by participating lenders, under the scheme, the maximum rate will be capped at around 7.5% with flexibility for interest rates on variable rate loans to increase if market interest rates rise over time.

Participating lenders can offer any suitable product to eligible businesses except for credit cards, charge cards, debit cards or business cards.

Loans issued under the scheme to refinance existing loans cannot be used for the purposes of:

- purchasing residential property;
- purchasing financial products;
- lending to an associated entity; or
- leasing, renting, hiring or hire-purchasing existing assets that are more than halfway into their effective life.

Further, there will also be some restrictions on refinancing loans, including not allowing loans more than 30 days in arrears to be refinanced, and not allowing borrowers who have entered into external administration or are insolvent to refinance debts. Participating lenders include the "Big 4" banks, plus a host of other smaller financial institutions and mutual societies.

Source: https://treasury.gov.au/coronavirus/sme-recovery-loan-scheme
https://business.gov.au/grants-and-programs/sme-recovery-loan-scheme

Need more money in retirement?

Retirees who own their own home and need more money in retirement are now able to access the Home Equity Access Scheme, run through Services Australia. The scheme was previously known as the Pensions Loans Scheme but along with a new name, the fortnightly interest rate has been lowered to 3.95% per annum. To access the scheme, there is no need for an individual and/or their partner to be on the Age Pension, although certain other requirements need to be met. Loan payments under the scheme can be started and stopped at any time.

The Home Equity Access Scheme allows older Australian to get a voluntary non-taxable fortnightly loan at an interest rate of 3.95% per annum, which is a much lower rate than personal loans from various providers, which typically start from around 5% per annum. To access the loan, a retiree or their partner needs to meet the following requirements:

- be at Age Pension age or older;
- be receiving or be eligible to receive a qualifying pension (the Age Pension, Carer Payment or Disability Support Pension);
- own real estate in Australia that can be used as security for the loan;
- have adequate and appropriate insurance covering the real estate offered as security; and
- not be bankrupt or subject to a personal insolvency agreement.

It should be noted that retirees can get a loan even if their income and assets mean that they wouldn't normally get one of the qualifying pensions – they just need to be able to meet the eligibility rules. People who are on either the Pension Bonus Scheme or an Asset Hardship Payment may have affected eligibility for the scheme affected.

There are costs associated with starting and stopping the scheme – for example, Services Australia will place a charge or caveat on the property offered as security for the loan, and the retiree will need to pay the costs involved with registering and removing the charge or caveat. These costs will not need to be paid upfront and can be added to the loan balance, which can then be paid at any time.

When qualifying for the scheme, people can choose to get their loan payment each fortnight at either the maximum amount (which is 150% of the person's maximum pension rate), a smaller percentage, or a fixed loan amount of their choosing. The loan amount will be automatically adjusted whenever the pension amount changes.

For individuals who do not receive the pension, the maximum amount under the Home Equity Access Scheme, $1,665.45 per fortnight, can be accessed.

Payments under the scheme will continue until the holder reaches their maximum loan amount (including interests and costs). This maximum loan amount depends on the person's age, the age of their partner (if any), and the market value of the property offered as security. For example, for a single person aged 70 who has a home with a market value of $800,000, the maximum loan amount available under the scheme is $246,400.

The scheme is flexible, which means it's possible to stop loan payments at any time and to make repayments at any time, but regular repayments are not required. Rather, recipients of the loan have the choice to wait to pay the loan, legal costs and accrued interest in full when they sell the property they've used as security. However, it should be noted that the longer the loan is held, the more interest will accrue.

Source: https://ministers.dss.gov.au/media-releases/7851
www.servicesaustralia.gov.au/home-equity-access-scheme
www.dva.gov.au/financial-support/income-support/support-when-you-cannot-work/pensions/home-equity-access-scheme

Income protection insurance in super: beware of offsets

In Australia, around seven of the 20 largest MySuper products provide default income protection insurance on an opt-out basis. While income protection insurance has the advantage of providing a regular income for a specified period of time if a person cannot work due to temporary disability or illness, a recent ASIC review into this type of cover in super has raised concerns around the amount of information given to members – in particular communication about "offset clauses", which are often described in technical and legalistic language.

Insurance within super is usually the most cost-effective way for an individual to cover themselves in the event of a mishap. Most super funds typically offer three types of insurance for their members: life cover, total and permanent disability (TPD) and income protection insurance (or salary continuance cover).

Life cover (death cover) pays a lump sum or income stream to beneficiaries upon the insurance holder's death, or in the event of a terminal illness. TPD insurance pays the holder a benefit if they become seriously disabled and are unlikely to work again. Income protection insurance pays a regular income for a specified period, ranging from two years to five years, or up to a certain age, if the holder can't work due to temporary disability or illness. It is estimated that seven out of the 20 largest MySuper products provide default income protection insurance on an opt-out basis, and approximately 3.4 million MySuper accounts have income protection insurance.

Recently, ASIC reviewed the practices of five large super funds that provide default income protection insurance on an opt-out basis to their members, accounting for around 2 million MySuper member accounts as at June 2021. From that review, the regulator has raised various concerns around the amount of information received by members on these policies and whether funds should be doing more to communicate clearly about insurance.

Overall, the review found that most income protection insurance policies contain "offset" clauses, which mean that the insurance benefit is reduced or "offset" if the individual receives other kinds of income support. This is used as a way to reduce incentives for individuals to delay their return to work as a result of receiving more income while disabled than when working. In addition, the review found there were large variations between super funds in the types of income that were offset against income protection benefits.

For example, different funds will offset different combinations of alternative income such as paid leave (annual or long service), employer super contributions, social security benefits, TPD benefits, workers compensation, and other insurance settlement or benefits.

ASIC found that trustees were not proactively giving their members clear explanations about when insurance benefits would or would not be paid as a result of offsets. This information is obviously relevant to members considering whether they should opt out of default income protection insurance, and to those making insurance claims.

ASIC's concern is not that these offset clauses exist, but rather that relevant information to explain the clauses was not available in website communications or in welcome packs, and the clauses were only described in technical and legalistic language in insurance guides.

The regulator is also concerned that super fund trustees were unable to demonstrate that they had sought reliable data on offsets and used it to review the appropriateness of their default income protection insurance offering. This could cause unnecessary erosion of super benefits of members if offsets mean that particular groups of members get little value from their default insurance if they need to claim.

Super fund members can get more information on ASIC's MoneySmart website about what to look for when considering income protection insurance through super, at https://moneysmart.gov.au/how-life-insurance-works/income-protection-insurance.

Source: https://asic.gov.au/about-asic/news-centre/find-a-media-release/2021-releases/21-343mr-super-trustees-offering-default-income-protection-insurance-urged-to-check-on-member-outcomes/

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Thomson Reuters (Professional) Australia Limited ABN 64 058 914 668
PO Box 3502, Rozelle NSW 2039

Tel: 1800 074 333

Email: SupportANZ@thomsonreuters.com

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