client alert | explanatory memorandum

July 2022

CURRENCY:
This issue of **Client Alert** takes into account developments up to and including 21 June 2022.

Tax Time 2022: businesses get ready

As the end of another tax year approaches, the ATO is reminding businesses that it is time to:

- see if there are tax-deductible items the business needs before 30 June;
- check if there are any concessions the business can access before 30 June – for example, the small business restructure rollover CGT concession or the increased small business income tax offset (now 16%) for sole traders (capped at $1,000);
- think about their recordkeeping habits this past year – should anything be done differently in future?

For businesses with employees, the Single Touch Payroll (STP) information for 2021–2022 must be finalised by 14 July. Businesses should let their employees know when the information is finalised, so they can lodge their income tax returns.

Deductions

Increasing tax deductions will lead to a lower tax bill. For example, businesses can bring forward expenditure from the next tax year to the current tax year and may be able to deduct the full cost of a depreciating asset under the temporary full expensing rules. An immediate deduction is also available for start-up costs and certain prepaid expenses.

Businesses that are in an industry that requires physical contact with customers, such as healthcare, retail or hospitality, can claim deductions for expenses related to COVID-19 safety. This includes hand sanitiser, sneeze or cough guards, other personal protective equipment and cleaning supplies.

Charitable donations (including, in some circumstances, donating trading stock) are a good way to increase deductions. Don’t forget to keep receipts for all charitable donations. The deductibility status of charities can be checked at https://www.abn.business.gov.au/Tools/DgrListing.

For sole traders or partners in a partnership, the benefits of reducing their taxable income could include:

- reducing their marginal tax rate from, for example, 45% to 37%, or 37% to 32.5%;
- qualifying for the maximum amount of the low and middle income offset – remember it has been increased to a maximum of $1,500 for this tax year; and
- avoiding liability for the Medicare levy surcharge (at least 1%) if they don’t have appropriate private health insurance.

The ATO’s golden rules

The ATO has three golden rules for a valid business deduction.

1. The expense must have been for business, not private, use.
2. If the expense is for a mix of business and private use, only the business portion can be claimed as a deduction.
3. The business must have records to prove it incurred the expense.

For example, if a business owner buys a laptop and only uses it for their business, they can claim a deduction for the full purchase price. However, if the laptop is used 50% of the time for the business and 50% of the time for private use, only 50% of the purchase price can be claimed as a deduction.

The GST component of the purchase price cannot be claimed as a deduction if it can be claimed as a GST credit on the business activity statement.

Recordkeeping

Records explain the tax and super-related transactions conducted by a business. Businesses are legally required to keep records of all transactions relating to their tax and superannuation affairs as they start, run, sell, change or close the business, specifically:

- any documents related to the business's income and expenses;
- any documents containing details of any election, choice, estimate, determination or calculation made for the business's tax and super affairs, including how any estimate, determination or calculation was made.

Your clients should make sure that they understand what records are needed for their business and make accurate and complete recordkeeping practices a part of their daily business activities. You may like to use the following general information to talk to your clients about what records they need to keep and for how long.

What is a record?

A record explains the tax and super-related transactions conducted by your business.

The record needs to contain enough information for the ATO to determine the essential features or purpose of the transactions. The minimum information that needs to be on the record is generally:

- the date, amount, and character (eg sale, purchase, wages, rental) and the relevant GST information for the transaction;
- the purpose of the transaction; and
- any relevant relationships between the parties to the transaction.

Five rules for recordkeeping

The ATO has five recordkeeping rules, which are based on law and the ATO's views.

1. You need to keep all records related to starting, running, changing, and selling or closing your business that are relevant to your tax and super affairs.

   If your expenses relate to business use and personal use, make sure you have clear documents to show the business portion.

2. The relevant information in your records must not be changed (for example, by using electronic sales suppression tools) and must be stored in a way that protects the information from being changed or the record from being damaged.

   You need to be able to reconstruct your original data if your record-keeping system changes over time.

3. You need to keep most records for five years.

   Generally, the five-year retention period for each record starts from when you prepared or obtained the record, or completed the transactions or acts those records relate to, whichever is later. However, in some situations, the start of the five-year retention period is different. For example, for super contributions for employees, the five years starts from the date of the contribution.

   You also need to keep all information about any routine procedures you have for destroying digital records.

4. You need to be able to show the ATO your records if they ask for them. The ATO will also need to be able to check that your recordkeeping system meets the recordkeeping requirements.

   If you store your data and records digitally using an encryption system, you will need to provide encryption keys and information about how to access the data when asked. You also need to ensure the ATO can extract and convert your data into a standard data format (eg, Excel or CSV).

5. Your records must be in English or able to be easily converted to English.

Tax return checklists

The May 2022 edition of Client Alert included a handy set of checklists for individual tax returns, super fund tax returns and company, trust or partnership tax returns to assist your clients in compiling all of the necessary information before seeing you about their returns this tax time.

Source: www.ato.gov.au/Tax-professionals/TP/Tax-Time-Toolkit---Small-business/
www.ato.gov.au/Media-centre/Media-releases/Tax-time-for-small-business--how-to-nail-your-tax-return/
www.ato.gov.au/Business/Income-and-deductions-for-business/Deductions/
www.ato.gov.au/Media-centre/Media-releases/COVID-19-and-getting-your-tax-right/

ATO guidance update: debt relief and waivers

Tax-related debts are sometimes ignored by those struggling with inflationary pressures and sky-high energy prices. However, this may not be the wisest course of action, since these disregarded debts are likely to continue to accumulate general interest charges. A simpler way of dealing with these debts, particularly if experiencing hardship, is to apply to be released from the debt. The ATO has recently updated its Practice Statement on debt relief and waivers, which may provide more clarity for affected taxpayers.

The ATO has recently updated its Law Administration Practice Statement on debt relief, waivers and non-pursuit of debt. Specifically, the Practice Statement provides guidance on the Commissioner of Taxation's discretion to not pursue the recovery of tax debts, and the ATO's ability to release individual taxpayers from their obligation to pay certain tax-related liabilities.

Generally, the ATO will not pursue a debt if it is satisfied that the debt is uneconomic or irrecoverable at law. There are many factors which determine whether debts are uneconomical to pursue, including, but not limited to:

- the anticipated cost of future recovery likely to exceed the amount of the debt;
- the age of the debt;
- the type of debt involved (ie super guarantee charge debts are more likely to be pursued);
- the taxpayer cannot be located (the debt may be re-raised when the taxpayer is located); and
- the asset position of the taxpayer.

However, in certain instances, such as where a taxpayer has a significant history of non-compliance or where there are public interest considerations, the ATO may pursue a debt even though it is uneconomical.

The Practice Statement also details the tax liabilities that taxpayers can be fully released from in cases of serious hardship, and sets out the application process to obtain a release. "Serious hardship" is given its ordinary meaning in this context. According to the ATO, serious hardship exists where the payment of a tax liability would result in a person being left without the means to afford basics such as food, clothing, medical supplies, accommodation or reasonable education.

To decide whether serious hardship exists, the ATO will use the income/outgoings test, the assets/liabilities test, and other relevant factors to determine whether the consequences of paying the tax would be so burdensome that the person would be deprived of what are considered necessities according to normal community standards.

The income/outgoings and the assets/liabilities tests are quite straightforward. The former assesses the taxpayer's capacity to meet their tax liabilities from their current income, taking into account household income and expenditure. The latter assesses the taxpayer's equity in, or access to, assets which may be indicative of their capacity to pay (including residential property, motor vehicle, life insurance or annuity entitlements, collections, furniture and household goods, tools of trade etc).

It is the category "other relevant factors" that has recently been updated in the Practice Statement. The information now states that when deciding whether release should be granted, the ATO should take into consideration the facts of the case and have regard to the taxpayer's particular circumstances. In addition, the examples of factors the ATO may consider in arriving at its decision have been reordered and reworded in the recent update.

Applying all three tests – income/outgoings, assets/liabilities, and other relevant factors – will enable the ATO to decide whether serious hardship exists and to what extent. It may be the case that hardship exists, but it is not serious enough to warrant a full release of a tax debt. In this case, a partial release may be applied. Nevertheless, if any of your clients wish to apply for release of debts based on serious hardship, you should revisit this updated Practice Statement.

Source: www.ato.gov.au/law/view/document?DocID=PSR/PS201117/NAT/ATO/00001
www.ato.gov.au/General/Support-to-lodge-and-pay/In-detail/Release-from-your-tax-debt/
www.ato.gov.au/general/paying-the-ato/if-you-don-t-pay/

What might the Federal Government's proposed electric car discounts mean for taxpayers?

Under the current statutory formula for valuing car fringe benefits, electric cars are arguably at a disadvantage compared to fossil fuel-consuming cars, but this may soon change.

One of the new Federal Government's policies, announced as part of its election platform, is to introduce import tariff and FBT concessions for certain electric vehicles from 1 July 2022.

Such vehicles would be exempt from:

- import tariffs – a 5% tax on some imported electric cars; and
- FBT – this is imposed on electric cars that are provided through work for private use.

These exemptions would apply to vehicles valued below the threshold for the luxury car tax for low-emission vehicles, which for the 2021–2022 financial year is $79,659.

FBT exemption

The taxable value arrived at using the statutory formula for valuing car fringe benefits covers a variety of expenses associated with the ability to use the car, such as leasing costs, fuel, maintenance and insurance.

However, the statutory formula only uses 20% of the cost price of the car as the principal component of the formula. Running costs such as fuel and maintenance are not part of the calculation at all.

Therefore, a car with a relatively high purchase cost to running cost ratio (as would typically be the case with an electric car) generally incurs a higher FBT burden for every dollar the employer spends on the car.

The Federal Government’s proposal to treat a car fringe benefit arising from the availability of an electric car for private use as FBT-exempt will therefore tilt the balance very much back in favour of electric cars.

An employee on a salary of $150,000 who salary-packages a $60,000 electric car with annual running costs (including lease payments) of $17,000 net of GST could expect to be around $4,500 better off annually after tax, due to the change in FBT treatment.

Import tariff exemption

The exemption from the import tariff should make certain electric models cheaper for Australian consumers and businesses.

Several models are already exempt from import tariffs because they are manufactured in countries with which Australia has a free trade agreement covering electric cars.

Looking ahead

The Government has not yet confirmed when the next Parliamentary sittings will take place, and so a start date of 1 July 2022 may require an element of retrospective legislation.

The Government has indicated that the electric car discount policy would be reviewed after three years, taking account of developments in the adoption of electric cars by that time. However, as we have seen with the low- and middle-income tax offset, it can be politically challenging to remove tax concessions even when they have been introduced as temporary. Watch this space!

Source: www.alp.org.au/policies/electric-car-discount
www.ato.gov.au/General/Fringe-benefits-tax-(FBT)/Types-of-fringe-benefits/Car-fringe-benefits/

Tax benefits for unused “carry forward” concessional superannuation contributions

From 1 July 2019, new rules were introduced that allow eligible taxpayers to claim tax deductions for the unused portion of their super concessional contributions caps from prior years. This brings tax deductions into the current financial year that would have otherwise been in excess of the ordinary annual concessional contribution cap.

The fundamentals behind the “carry forward” unused cap rules are outlined here.

Outline of rules

A concessional contribution is defined as a contribution to a super fund before tax. This type of contribution is taxed at a flat rate of 15% in the fund.

Concessional contributions can come from several sources: from a person’s employer, from pre-tax salary sacrificed contributions the person has elected to make through their employer, and from contributions they have made personally where they claim a tax deduction for those contributions. The combined total of the contributions from each of these sources counts towards the person’s concessional contribution cap.

The 2022 financial year concessional contribution cap is $27,500, an increase from the previous financial year’s $25,000.

The new rules give people the capacity to look back on each financial year commencing from 1 July 2018 to calculate the “unused” portion of their concessional contributions cap in each financial year. Once this is calculated, the individual can “carry forward” and, when desired, “catch up” and claim the unused portion of their concessional contributions caps in a later financial year. Claiming the unused portion of concessional contributions caps in a later financial year can achieve a better tax outcome for that financial year, and maximise the amount the person is able to contribute to their super.

The “unused” cap is effectively the difference between the concessional contribution cap for the financial year less the total of all before tax contributions made in that same financial year.

A person can only claim unused super contributions from previous years if their total super balance is less than $500,000 at 30 June in the financial year before the year in which they make their catch-up contributions. For example, if a person's total super balance is $450,000 at 30 June 2021, they can make catch-up contributions for their unused cap in the 2022 financial year. If their total super balance at 30 June 2021 is $550,000, they are not eligible to claim unused super contributions from previous years.

Unused concessional cap amounts can only be carried forward for a maximum of five years. After five years, the unused amounts expire.

What are the benefits of catch-up contributions?

Making a catch-up contribution is an easy way to boost a super balance at a time when a person has the financial resources to do so, while offering significant tax benefits.

The rules give greater flexibility in making contributions to a range of taxpayers, at a time that suits their personal circumstances. For example:

- Work patterns and income may fluctuate from year to year. A tax deduction for super contributions may not be required in a low income year, but may be the following financial year if income is significantly higher.
- Restricted cash flow may prevent making super contributions. As cash flow improves, catch-up contributions can be made.
- Usual income may mean there is little to no tax advantage in making super contributions, but the sale of a large capital asset, such as shares or rental property, could result in a significant capital gain. In this instance, a catch up contribution made by harnessing unused caps from previous years would reduce taxable income in the year of the sale.

Beware complexity

Concessional superannuation contributions can be complex, and implementing the right strategies is vital to ensure people maximise their superannuation savings.

Case study

In the 2019 financial year, Virginia was employed on a full-time basis. The superannuation contributions from her employer and her salary sacrificed pre-tax contributions totalled $25,000. In that financial year, Virginia maximised her concessional contributions cap and has no "unused cap" to carry forward.

During the 2020 financial year, Virginia lost her job due to the impacts of COVID-19. Her employer had made $8,000 in super guarantee contributions during that financial year. Virginia was concerned about her short-term employment prospects and chose to make no personal super contributions in that year. At the end of the 2020 financial year, Virginia had an unused cap amount of $17,000 – the annual concessional contributions cap of $25,000, minus the $8,000 employer super guarantee contributions.

Virginia remained unemployed throughout the 2021 financial year and made no personal contributions. Her concessional contributions cap for that year was again $25,000, with the total amount counting towards her unused cap. Virginia's total unused cap of $42,000 across the 2020 and 2021 financial years carries forward to the 2022 financial year: $17,000 from the 2020 financial year plus $25,000 from the 2021 financial year.

During the 2022 financial year, Virginia finds employment and her employer pays $16,000 in super guarantee contributions to her fund.

Virginia's total super balance at 30 June 2021 is $468,000. Because this is under the $500,000 threshold, she is eligible to utilise all of the unused cap of $42,000 from the previous two financial years.

In addition, Virginia has a 2022 financial year cap of $11,500 remaining, which is the 2022 cap limit of $27,500 minus the $16,000 employer super guarantee contributions made by her employer.

Virginia can therefore choose to make a total concessional contribution of $53,500 in the 2022 financial year, which provides an immediate tax benefit by reducing her taxable income and allowing her to boost her super balance.

After contributing the $53,500, Virginia has no unused cap to carry forward to the 2023 financial year, but will continue to accumulate cap space in future years if she chooses not to maximise her concessional cap.

It is unlikely she will use her unused cap space again in future years, given that her total super balance at 30 June 2022 may exceed the $500,000 threshold once contributions are made during the 2022 financial year.

The following table shows Virginia's use of the carry forward rules for concessional super contributions across the 2019 to 2022 financial years.

Financial year	Concessional contributions made in year	Concessional contributions cap for year	Unused concessional cap for year	Cumulative unused cap to carry forward
2019	$25,000	$25,000	$0	$0
2020	$8,000	$25,000	$17,000	$17,000
2021	$0	$25,000	$25,000	$42,000
2022	$69,500*	$27,500	$0	$0
Total	$102,500	$102,500	$42,000	N/A
* The $69,500 in contributions made during the 2022 financial year are the combination of Virginia's employer's super guarantee contribution of $16,000, plus the concessional cap in 2022 of $11,500, plus her full cumulative unused carry forward cap of $42,000.				

Source: www.ato.gov.au/individuals/super/in-detail/growing-your-super/super-contributions---too-much-can-mean-extra-tax/?page=5

Personal super deductions: remember the notice of intent

The end of financial year is fast approaching, and individuals with excess savings or those who have received a bonus since the beginning of the year may want to use the extra cash to grow their super. One of the easiest ways to grow super and get a tax deduction at the same time is to make a personal superannuation contribution. However, there are certain factors that need to be considered including eligibility requirements and contribution caps, as well as giving the required notice in time.

If you are considering making a personal contribution to your super and would like to claim a deduction on the contributions made, it is important to remember to give the required notice to your super fund before making a claim in your tax return. There have been recent cases of taxpayers being denied deductions for personal super contributions made where the required notice to a super fund was not made on time.

There are a few different types of contributions that can be made to super funds. These include compulsory super guarantee that is paid by an employer, salary sacrifice super amounts usually paid from before-tax income, reportable employee super contributions such as having a bonus paid directly into super, and personal contributions to super funds made from after-tax income.

With regard to personal contributions to super funds made from after-tax income, a deduction can only be claimed by an individual if eligibility requirements are met. A deduction for a personal contribution can be claimed if the income earned came from salary and wages, a personal business, investments, government pensions or allowances, superannuation, partnership or trust distributions, or a foreign source.

An individual between 67 and 74 years old must also meet the work test or satisfy the work test exemption criteria to be able to claim a deduction for any personal contributions made. To satisfy the work test, an individual must work at least 40 hours during a consecutive 30-day period each income year. For those individuals 75 years or older, a deduction for personal contributions can only be claimed if made before the 28th day of the month following the month in which they turned 75.

Provided an individual satisfies the eligibility criteria and has made a personal contribution for the year, a notice of intent to claim or vary a deduction must be made to the super fund by the earlier of:

- the day they lodge their tax return for the year in which they made the contributions; or
- the end of the income year following the one in which they made the contributions.

The ATO provides a standard form for giving this notice to super funds. However, many super funds also have their own online forms which can be lodged easily. A super fund will then send a written acknowledgment indicating that they have received a valid notice from an individual. Only then can a claim for the deduction be made in the person's tax return.

Remember, the notice must be given by "earlier of" the two date options, so if an individual inadvertently forgets to give notice by the time their tax return is lodged, they will be unable to claim a deduction for the personal contributions made for the year. Cases have shown that there is no discretion in s 290-170 of the *Income Tax Assessment Act 1997*, or in any other provision of legislation, to extend the time for giving the notice or to disregard non-compliance with the time frame specified, even if the delay is caused by external factors.

Source: www.ato.gov.au/Individuals/Super/In-detail/Growing-your-super/Claiming-deductions-for-personal-super-contributions/

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