TAX MATTERS

TAX STRATEGIES FOR YOU AND YOUR BUSINESS

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ATO develops safe harbour for car fringe benefits

The Australian Tax Office has recently collaborated with industry representatives to develop a safe harbour guideline for Australian businesses when calculating tax on car fringe benefits.

The new guideline is designed to ease the burden of compliance, as it simplifies the approach for working out the business use percentage of car fringe benefits for fleets of 20 cars or more.

The new approach reduces the recordkeeping burden for businesses and allows them to use an 'average business use percentage' when using the operating cost method.

Businesses can access the safe harbour and use this new simplified approach if they have:

- a fleet of 20 or more 'tool of trade' cars, which are not part of salary packaging arrangements and cost less than the luxury car tax limit in the year acquired
- a mandatory logbook policy and hold valid logbooks for at least 75 per cent of the cars in the logbook year

Businesses can use the logbooks to calculate the fleet's average business use percentage to all tool of trade cars held in the fleet in the log book year and can use that percentage for the following four years.

Employers can calculate the average business use percentage by:

- gathering all log books kept for each car in the fleet
- determining which of those log books are valid
- confirming they have valid log books for at least 75 per cent of the cars in the fleet
- calculating the average of the business use percentages determined in accordance with each of the valid log books

The simplified record-keeping approach can be applied for a period of five years in respect of the fleet (including replacement and new cars) provided the fleet remains at 20 cars or more, and subject to there being no material and substantial changes in circumstances.

An example of a substantial change would be a change in location of the employer's depot that would substantially alter the business use percentage of the fleet.

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Changing the structure of your business

Some Australian small business owners may now be able to apply the small business restructure roll-over concession upon restructuring their small business.

A key decision when starting up your own small business is deciding on the structure you will use. A small business's structure depends on the size and type of the business, as well as how the owner plans to grow it.

After operating under a specific structure for a period of time, some owners may choose to restructure their business due to various reasons, such as financial or operational issues, business growth, a change in ownership or management or even due to effects from changes in Australia's economy.

From 1 July 2016, the Australian Taxation Office's small business restructure rollover has allowed small businesses to transfer active assets from one entity to one or more other entities without incurring an income tax liability.

Even though owners can transfer certain active assets without incurring an income tax liability, there may be tax implications later when they dispose of that asset. There may also be other transaction costs to consider, such as stamp duty or GST. The rollover applies to the transfer of active assets that are capital gains tax (CGT) assets, trading stock, revenue assets or depreciating assets.

The rollover applies if each party to the transfer is one of the following in the income year in which the transfer occurs:

- a small business entity
- an entity that has an affiliate that is a small business entity
- an entity that is connected with a small business entity
- a partner in a partnership that is a small business entity

This means that an entity not carrying on a business, but holding assets for a small business entity, may be able to apply the rollover. For example, where one entity owns a property in which another connected entity is carrying on a business.

The rollover is available where the transfer of assets forms part of a genuine restructure as opposed to an artificial or inappropriately tax-driven scheme. Determining whether a restructure is 'genuine' depends on all the facts surrounding the restructure.

The transaction involved in the restructure must also not result in a change to the ultimate economic ownership of transferred assets. The ultimate economic owners of an asset are the individuals who, directly or indirectly own an asset. Where there is more than one individual with ultimate economic ownership, there is an additional requirement that each individual's share of ultimate economic ownership be maintained.

Selling an inherited property

Beneficiaries who inherit a property need to be aware of the various CGT implications associated with owning and selling an inherited property.

When someone dies, a capital gain or loss is generally disregarded when a property passes:

- to the deceased person's executor or other legal personal representative
- to the deceased person's beneficiary - such as next of kin or a person named in the will

- from the deceased person's legal personal representative to a beneficiary.

This exception does not apply if the property passes from the deceased to a tax-advantaged entity (such as a charity) or foreign resident.

If you inherit a dwelling or other property after CGT started on 20 September 1985 and later sell or otherwise dispose of it, capital gains tax may then apply.

The degree to which CGT applies depends on:

- when the deceased person acquired the property
- when they died
- whether the property has been used for income-producing purposes.

These rules do not apply to land or a structure you sell separately from the dwelling – they are subject to CGT.

Individuals can avoid paying CGT if the property was the deceased person's main residence and the sale is completed within two years of the date of the deceased person's death.

CGT may apply if the deceased person's legal personal representative sells a property as part of winding up their estate.

ATO crackdown on trusts

The ATO is currently targeting contrived trust arrangements that minimise tax by creating artificial differences between the taxable net income and distributable income of closely held trusts.

Arrangements where trustees are engineering a reduction in trust income to improperly gain favourable tax breaks or pay no tax at all are being targeted by the Tax Office.

Trustees of these arrangements exploit the differences to have the net income assessed to individuals and businesses that pay little or no tax and allow others to enjoy the economic benefits of the net income free-of-tax.

The ATO identified these arrangements through ongoing monitoring and reviews by the Trusts Taskforce. The Trusts Taskforce was established in 2013 to undertake targeted compliance action against people involved in tax avoidance or evasion using trusts.

More than $40 million of lost revenue has been found in ten of the cases examined by the ATO, which go far beyond legitimate tax planning.

The Tax Office is looking closely to see if arrangements comply with trust law, constitute a sham or are captured by anti-avoidance provisions or integrity rules.

Any taxpayer who has entered, or are planning to enter, into a similar arrangement are encouraged to seek independent advice, review their arrangement, or discuss their situation with the ATO.