

# sharptax

Grant Thornton periodical  
reporting on taxation issues  
for business owners.

Grant Thornton 

In this edition of **sharptax** we will review the latest ATO announcements and changes to the superannuation rules...

## Some super news

The Assistant Treasurer, Peter Dutton, has recently announced that businesses who make a late superannuation contribution directly to a superannuation fund instead of to the ATO will not be required to make the same contribution to the ATO.

Currently, businesses that are late with their superannuation contributions are required to direct the contribution, together with interest and an administration charge, to the ATO instead of to a superannuation fund. The payment of the superannuation, interest and charges is known as the Superannuation Guarantee Charge (SGC). This announcement goes beyond last year's changes that allows employers to reduce their SGC by actual superannuation contributions made within a month of the due date.

It should be noted however that interest and charges will still apply to late superannuation contributions.

In other superannuation news, Mr Dutton has also recently announced that terminally ill taxpayers under the age of 60 will not be taxed upon receiving the early superannuation benefits. Currently, anyone under the preservation age who is eligible to access their superannuation benefits early will be subject to tax at the maximum rate of 20%.

We note that the announcement, which takes effect immediately, only relates to the taxation treatment of superannuation benefits for the terminally ill and not the actual criteria concerning the early release of superannuation benefits.

## SME audit activities

The Commissioner has recently issued his compliance focus for small-medium enterprises (SME). In this coming year, the ATO will be seeking to take a closer look at the following areas:

## Outstanding lodgements

Outstanding lodgements will now receive increased attention from the ATO, especially when there is reason to believe that non-lodgement is being used to undermine the ATO's compliance programs.

## Loss recoupment

The focus here is on both the general loss recoupment rules and arrangements that utilise losses incurred by related parties. In addition to coming in for attention are losses that lack any economic or legal basis and the misclassification of capital losses as revenue losses.

## FBT calculation on luxury cars

Luxury cars, particularly those with high business use, will now attract increased FBT calculation focus. Refer to the below FBT article for more warnings.

## CGT upon the sale of a SME

This will be examined particularly where there are arrangements or schemes to reduce any capital gain or create capital losses. The ATO will also be seeking to confirm that small business CGT concessions have been correctly claimed.

## Schemes that extract wealth from a SME

Division 7A transactions (ie loans, payments and debt forgiveness involving a shareholder) are still on the radar, so to are share sales, share buy-backs and capital reductions, especially when pre-CGT shares are involved.

## International transactions and transfer pricing

Naturally the use of tax havens are of special interest to the ATO, especially in light of Project Wickenby. The ATO are also seeking to confirm that the transfer pricing and thin capitalisation rules are being correctly applied.

### Trust resettlement

A paper has recently been released by the ATO in which their views on whether AIFRS-related trust deed amendments give rise to a trust resettlement for income tax purposes. The issues explored include the removal of the fixed end date of the trust, changes to the distributable income clauses and changing the definition of liability.

### Removal of fixed end date

Trust deeds typically include a fixed end date, being the date in which the trust must end, in order to satisfy the various statute and common laws prohibiting perpetuities. However, the presence of a fixed end date will result in the contributions received by a unit trust from its unitholders being treated as debt under AIFRS.

In order to circumvent this accounting treatment, many unit trust deeds have been amended to remove the fixed end

date and inserting a rule preventing the issuance or redemption of units after the original fixed end date. In this circumstance, the ATO does not consider the amendments give rise to a trust resettlement.

### Changes to distributable income clauses

Unit trust deeds usually give each unitholder a right to receive a share of the distributable income of a trust in proportion to their unit holdings. Under AIFRS, this can be seen as an imposition of an obligation on the trustee to make distributions, which can therefore result in the unitholders' contributions being classed as debt and the distributions as an expense (resulting in nil accounting income).

Amendments have been made to trust deeds to provide the trustee with discretion in determining the amount of income to be distributed. In a separate amendment, some trust

deeds have been updated in a manner which sees the distributable income of the trust calculated with reference to AGAAP, which would not expense the trust distributions.

While there is a change to the rights of unitholders, the variations impact on all unitholders equally, as such the ATO considers that the amendments do not give rise to a trust resettlement. We note however, the ATO's view is based upon a trust with only one class of units on issue.

### Changing the definition of liability

Owing to the aforementioned issue of seeing unitholders' contributions regarded as a liability under AIFRS, some trust deeds have been updated to explicitly exclude contributions from being a liability for the purposes of determining the entry and exit values of a unit trust. The ATO is of the view that the amendment does not result in a resettlement of a trust.

### FBT & cars - ATO warning

The ATO has issued a warning to employers who use the operating cost method to determine their FBT liability on cars. Recent audit activity in this area has revealed common errors with this method, namely:

- logbooks that are insufficient
- employers claiming substantial business use for cars that are garaged at an employee's residence without maintaining logbooks
- incorrectly treating employee contributions for income tax and GST

Following on from the above, we advise that each business-related entry in a logbook, at a minimum, must specify:

- the date of each business journey
- the starting and ending odometer readings
- the distance travelled
- the purpose of the journey - this must be specific, ie meeting with John Smith at XYZ's office in CBD and not simply business or business meeting.

We further advise that any employee contribution must be made out of an employee's after-tax income and that the GST rules apply to contributions in the same manner as GST applies to any other sale.

### For further information please contact:

**Adelaide**  
Malcom Wight  
67 Greenhill Road  
Wayville SA 5034  
T 08 8372 6666  
F 08 8372 6677  
E info@gttsa.com.au

**Brisbane**  
Peter Godber  
Grant Thornton House  
102 Adelaide Street  
Brisbane QLD 4000  
T 07 3222 0200  
F 07 3222 0444  
E info@gtql.com.au

**Melbourne**  
Greg Keith  
Rialto Towers  
525 Collins Street  
Melbourne VIC 3000  
T 03 8260 6000  
F 03 8620 6066  
E info@gtvic.com.au

**Sydney\***  
John Ross  
383 Kent Street  
Sydney NSW 2000  
T 02 8297 2400  
F 02 9299 4445  
E info@gtsw.com.au

**Perth**  
Graeme Jolley  
10 Kings Park Road  
West Perth WA 6005  
T 08 9480 2000  
F 08 9322 7787  
E admin@gtwa.com.au

**Grant Thornton** 

[www.grantthornton.com.au](http://www.grantthornton.com.au)

#### DISCLAIMER

This newsletter is general in nature and its brevity could lead to misrepresentation. No responsibility can be accepted for those who act on its content without first consulting us and obtaining specific advice.

Each office listed is a business operated independently of other firms and entities who use the trademark Grant Thornton. Grant Thornton is a trademark owned by Grant Thornton International and used under licence by independent firms and entities throughout the world.  
\*Liability limited by a scheme approved under Professional Standards Legislation.