



**BLAZE
ACUMEN**
CHARTERED ACCOUNTANTS

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Contents

- 1
 - ATO Early Engagement Program
 - ATO Trust Taskforce

- 2
 - Changes to 'return not necessary' for SMSF's
 - Business reminders leading up to Christmas

- 3
 - Tax implications for the Festive Season celebrations

- 5
 - Foreign investment in residential real estate – reduced penalty period

ATO Early Engagement Program

The Commissioner of Taxation, Mr Chris Jordan has made a number of public statements about the future direction and focus of the Australian Taxation Office. In particular, the Commissioner has highlighted that the ATO has set out on a path of reinvention and that this journey focuses on changing how they operate better to meet the needs and expectations of the community. One of the ways the ATO intends to better serve the community is to develop more contemporary and tailored services and to use that service to build better working relationships with key stakeholders.

For privately owned groups and high wealth individuals, this contemporary approach means proactively engaging with clients to give certainty about their tax affairs in real time. The ATO are seeking to be transparent with clients about what they know about their tax position and in return, are seeking the same transparency about upcoming transactions or events which may impact on the amount of tax payable. In short, the ATO have described this as a "Preventative approach rather than an audit and corrective approach". While the option to seek a Private Binding Ruling will always be available to taxpayers to gain certainty, this new approach by the ATO allows taxpayers to engage with dedicated ATO contacts to raise any issues of concern and obtain guidance regarding the ATO's view.

We recently had a meeting with the ATO regarding their early engagement program and were interested to see how they "statistically" identify areas of

risk and concern for clients through their data collection and data matching. For example, "trust income" may be identified as an area of concern if there are significant differences between accounting profit and taxable income that are not immediately obvious (such as franking credits attached to dividends). In this example, they may be interested to see the Trust Deed and definition of Net Income to ensure that beneficiaries are paying their appropriate level of tax. During our meeting with the ATO, we were able to provide explanations to them regarding their areas of concern and later provide sufficient details to allow them to move on.

We welcome this new approach by the ATO in engaging with clients and their advisers on a prospective basis to better understand their affairs.

ATO Trust Taskforce

Under the Labor Government, a Trust Taskforce was established to investigate the potential exploitation of the use of trusts by taxpayers. The ATO have stated that they will target those people who exploit trusts to conceal information, mischaracterise transactions and artificially deal with trust income to avoid or reduce tax.

The ATO will undertake compliance activity to target known tax scheme promoters, individuals and businesses who participate in such arrangements. This measure will also identify and deal with other peoples' abusive use of trusts through their intelligence systems, including new tax return labels.

What will the Trusts Taskforce look at?

Some of the factors that will attract the ATO's attention include arrangements where:

- Trusts or their beneficiaries who have received substantial income are not registered, or have not lodged tax returns or activity statements;
- There are offshore dealings involving secrecy jurisdictions;
- Agreements with no commercial basis appear to be in place so as to direct income entitlements to a low-tax beneficiaries while the benefits are enjoyed by others;
- There is artificial characterisation of amounts, such that tax outcomes do not reflect the economic substance, with the result that some parties have received substantial benefits from a trust while the tax liabilities corresponding to that benefit have been attributed elsewhere – for example, by making resolutions that artificially reduce trust income in attempts to direct minimal present entitlement but full tax liability to entities with no capacity or intention of paying;
- There has been mischaracterisation of revenue activities to achieve concessional CGT treatment – for example, by using special purpose trusts to attempt to re-characterise mining or property development as discountable capital gains;
- Changes have been made to trust deeds or other constitutional documents to achieve a tax planning

benefit, and are not credibly explainable for other reasons;

- Transactions have excessively complex features or sham characteristics, such as round robin circulation of income among trusts; and
- New trust arrangements have materialised that involve taxpayers and/or promoters who have histories of or connection to previous non-compliance – for example, people connected to liquidated entities that had unpaid tax debts.

We met with representatives of the ATO Trust Taskforce and note that in addition to referring any identified risks to compliance areas of the ATO, they are also compiling a report to the Government which identifies areas of risk and the potential for exploitation of trusts. The purpose of the report would appear to be for the Government to consider whether the present rules regarding trusts should be tightened or significantly overhauled.

Changes to 'return not necessary' for SMSF's

From the 2015 financial year onwards, the ATO have implemented changes to the Return Not Necessary ("RNN") requirements for newly registered Self-Managed Superannuation Funds.

An SMSF registered on or after 1 January 2015 must now lodge an annual return for the year in which it was registered – irrespective of assets held or income derived.

Previously, an SMSF which did not have any assets held for the benefit of members (and therefore not considered to be legally established) in the first year of registration was not

required to lodge a return for that year. Instead, a Return Not Necessary ("RNN") could be recorded with the ATO.

Under the ATO's changes, an RNN for the 2015 financial year is now only available for SMSFs in their first year of registration if they were registered on or before 31 December 2014.

In order to be eligible to record a fund as an RNN for the 2015 financial year, the following criteria must be met:

- Fund registered in the 2014–15 financial year on or before 31 December 2014;
- Fund was not legally established by 30 June 2015 (i.e. did not hold assets set aside for the benefit of member);
- Fund had not received contributions or rollover amounts by 30 June 2015; and
- Fund has actually received contributions by the date of the request for an RNN.

The ATO have suggested that any new funds which do not meet the above criteria should consider cancelling their registration and only re-registering when the Fund has assets available.

2015 annual returns for the 2015 will be due for lodged by 28 February 2016.

Business reminders leading up to Christmas

In the lead up to Christmas, ensure that your business affairs are in order:

- At this time of year it is not uncommon to find some debtors postponing payments

until the New Year. To avoid this, it is essential to place a strong focus on debtor collection before Christmas to ensure there is cash flow for January and February.

- Christmas is also a good time to review employee leave entitlements. Small businesses need to be firm about minimising accrued employee leave liability entitlements. While small businesses tend to be more willing to accommodate staff requirements they can become a significant liability and a future cost. As such, it is best to deal with leave on an ongoing basis. It is also important that businesses inform employees of when it is suitable to take leave – whether it be Christmas, Easter or another time specific to the business.
- Stock management is also critical at this time of year. Some retail businesses may have a clear focus on minimising retail stock holdings by Christmas Eve. In other instances, businesses may be best to stock up in December so they can recommence production in January rather than waiting for stock deliveries on their return.

Charitable donations and giving

It is great to give something back to those less fortunate than you. There are also many charities that run special Christmas giving programs. To make sure your charitable donations are also tax deductible, remember:

- It has to be a donation - If you receive a material return for your charitable payment, then it cannot be claimed as a tax deduction. Material returns include items such as raffle tickets and merchandise. You should

also make sure to keep all of your receipts.

- The charity must be registered - In order to be eligible as a tax deduction for an individual the charity must have deductible gift recipient status from the ATO, so always confirm this before making a donation (this can be done via the <https://abr.gov.au/website>).

If you are considering a sizeable donation, please contact us to make sure it is tax deductible.

Holiday homes

Holiday homes that you do not rent out

If you own a holiday home and do not rent out the property, you do not include anything in your tax return until you sell it.

You will have to keep records from the time you purchase the property until the time you sell it to be able to work out the capital gain or loss when you sell.

Holiday homes that you rent out

The principles that apply to a rental property also apply to a holiday home if it is rented out. If you rent out your holiday home, you can claim expenses for the property based on the proportion of the income year it was rented out or was genuinely available for rent.

Claiming deductions for a holiday home you both rent out and use privately

If you rent out your holiday home and also use it for private purposes, you cannot claim deductions for the proportion of expenses that relate to the private use. Your expenses are apportioned on a time basis where the property is used for private purposes for part of the year.

Private purposes include use by you, your family, your relatives and your friends free of charge. If your holiday home is rented out to family, relatives or friends below market rates, your deductions are limited to the amount of rent received for that period.

Tax implications for the Festive Season celebrations

Jingle bells are ringing and Christmas celebrations are just around the corner, however, it pays to understand the tax implications before throwing Christmas parties and spoiling your staff with gifts.

Christmas time entertainment up to the value of \$300 per employee (minor and infrequent benefit) is generally exempt from FBT*. This means that you'll end up avoiding paying FBT at the rate of 49% (increase from 47% for FY2015 – FY2017 due to the budget repair levy) for staff Christmas parties and entertainment related gifts. If expenditure exceeds \$300 per person, then a fringe benefit will arise. It's important to note that there are still consequences should entertainment expenses be exempt from FBT due to being minor and infrequent as you are not entitled to a tax deduction, nor will you be eligible to claim input tax credits relating to this expenditure. If a fringe benefit does arise then you will be entitled to a tax deduction and GST can be claimed on such purchases.

** \$300 (minor and infrequent) exemption is not available for entities applying the '50/50 split' method and the '12 week register' method for calculating FBT on entertainment.*

Client / customer entertainment (whether on business premises or off-site) will not be subject to FBT (using the 'actual' method)

and always be non-deductible and no GST can be claimed on these expenses. Different rules apply if using alternate methods.

There are various tax implications for Christmas parties and gifts including the application of FBT and eligibility to claim a tax deduction and GST on purchases and they are as follows:

The Christmas Party

On business premises – food and alcohol on a working day

If this is an employee only event then this would be FBT exempt, no allowable tax deduction and no GST can be claimed.

If families are invited to come along and the cost is less than \$300 per person this will be considered minor and infrequent, therefore no FBT applicable, no tax deductions and no GST to be claimed. If the cost is more than \$300 per person then FBT arises (for the family portion) and as a result the family portion will be tax deductible and GST can be claimed.

Off-site – at a restaurant

If the Christmas party is being held off-site and the cost is less than \$300 per person, no fringe benefits will arise (minor and infrequent), therefore as a consequence there will be no tax deduction and no GST to be claimed. Should the price per head be more than \$300 per person, a taxable fringe benefit will arise therefore expenditure will be tax deductible and GST can be claimed.

Christmas Gifts

Non-entertainment gifts – e.g. hamper, bottle of wine, gift voucher

If the gift is provided to an employee or their associate and is more than \$300, a fringe benefit will arise. This will be tax

deductible and GST can be claimed on the purchase. If less than \$300, this will be FBT exempt and the purchase will be tax deductible and GST can be claimed.

Gifts (non-entertainment) for clients / customers will not be subject to FBT and will be income tax deductible and GST can be claimed.

Entertainment gifts – e.g. holidays, movie tickets, Australian Open tickets

Gifts for employees or their associates that costs more than \$300 per person will be subject to FBT. For Gifts that cost less than \$300 per person they will be exempt from FBT. However, unlike non-entertainment gifts, there will be no allowable tax deduction and no GST can be claimed on these purchases.

Entertainment Gifts for clients / customers will not attract FBT, no income tax deduction will be allowed and no GST can be claimed.

The below table may vary where the 50/50 method is used. Given the complexity of this area, you should check with your Blaze Acumen adviser if in doubt.

Benefit Provided	FBT Liability	Deductible	GST
Christmas party			
Using Actual Method			
<u>On Premises</u>			
Employees	No	No	No
Associates	Yes	Yes	Yes
Minor Benefit	No	No	No
Clients	No	No	No
<u>Off Premises</u>			
Employees / Associates	Yes	Yes	Yes
Minor Benefit	No	No	No
Client	No	No	No
Gifts (Entertainment)			
Employees / Associate	Yes	Yes	Yes
Minor Benefit	No	No	No
Client	No	No	No
Gifts (Not entertainment)			
Employee / Associate	Yes	Yes	Yes
Minor Benefit	No	Yes	Yes
Client	No	Yes	Yes

Foreign investment in residential real estate – reduced penalty period

As part of the new reforms to foreign investment policies that applied from 2 May 2015, all foreign investors who intend to purchase Australian residential real estate from this date will need to apply to the Foreign Investment Review Board to obtain approval before they can proceed ahead with the acquisition.

There are now stricter penalties in place for foreign investors who have not complied with this rule:

- \$135,000 for individuals (criminal penalty)
- \$675,000 for companies (criminal penalty)
- Other civil pecuniary penalties depending on the severity of the breach

Fortunately, the government has provided an opportunity for foreign investors who breached the rules to voluntarily disclose these acquisitions during the reduced penalty period, which ends on 30 November 2015.

By disclosing the breach of the rules relating to real estate purchases before 30 November 2015, you may be eligible for the following reduced penalties concessions:

- A concessional 12 months to divest yourself of the property, rather than a shorter period
- Not be referred for criminal prosecution.

For clients who may be affected by this and wish to take

advantage of the reduced penalty concessions, a reduced penalty disclosure form must be submitted to the Foreign Investment Review Board, which is available on:

<http://compliance.firb.gov.au/personal-circumstances/>.

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