Client Information Bulletin

BLAZE ACUMEN
CHARTERED ACCOUNTANTS

Autumn 2015

Contents

Fringe Benefits Tax

FBT Rates

Employers will need to make fundamental adjustments to their FBT liability in the 2015 FBT year. Particularly, the FBT rate and gross-up rates have changed as a result of the increase in the Medicare levy from 1.5% to 2%. This rate increase continues in the 2016 FBT year as the new temporary budget repair levy of 2% is introduced for the 2016 and 2017 income years. As a result, the FBT rates will be as follows:

FBT Year	FBT Rate
2014	46.5%
2015	47.0%
2016	49.0%
2017	49.0%

The gross rates will be as follows:

Year	Type 1	Type 2
2014	2.0647	1.8692
2015	2.0802	1.8868
2016	2.1463	1.9608
2017	2.1463	1.9608

FBT on Social Clubs

On a positive note, the ATO has released a Draft Tax Ruling (TR 2014/D1) that provides FBT relief for employers who make contributions into social clubs or employee benefit trusts. In the past, the ATO issued a taxation ruling that conveyed the Commissioner's view that FBT was generally payable at the time an employer made a contribution to an employee benefit trust and not when the employee benefit trust actually provided the benefit. That ruling was withdrawn and in the draft ruling TR 2014/D1, the ATO now accepts that a FBT liability does not arise until such time as a benefit is being provided to a particular employee. The ATO's new approach does not mean employers escape FBT on contributions made to employee social clubs, it merely defers the possible FBT taxing point until when the social club actually provides the benefit.

Employers will be entitled to apply the minor benefit exemption subject to the conditions being satisfied.

ATO's microscope on FBT

The ATO has publicly stated that two key areas under the microscope in terms of FBT will be a crackdown on 'pooled' or 'shared' cars and on employees taking a holiday after attending a business conference.

From 1 April 2007, a FBT reporting exclusion has applied in respect of 'pooled' or 'shared' cars that give rise to a car benefit. One area of contention was whether the reporting exclusion applied to a car provided to one employee which is shared with another on limited occasions under an informal arrangement. The ATO will now be looking at whether there is evidence of 'consent' from the employer to an employee in regards to sharing the car.

With respect to employees taking a holiday after attending a business conference, an area of difficulty arises in calculating an employer's FBT liability 'to the extent' that transportation costs

were incurred for business purposes. The ATO issued a Private Binding Ruling that takes a more rigid and straightforward approach of apportioning expenses based on 100% business, 50% business or no business percentage. However, Ronpibon's case has shown strong support for the notion that apportionment of transportation costs can be made on a 'fair and reasonable basis'. The important thing to note would be to ensure that proper documentation/declarations requirements are satisfied to support the 'fair and reasonable basis' apportionment. In addition to private apportionment for transportation costs, the ATO will also be looking at potential FBT exposure with respect to spouses and family members accompanying an employee when attending a business conference.

Airport car parking facilities subject to FBT

In the recent Qantas Airways Limited case the Full Court of the Federal Court found that Qantas was liable to pay FBT in relation to car parking fringe benefits provided to the employees. The ATO also issued a Decision Impact Statement to clarify the meaning of 'public' within the definition of 'commercial parking station' in subsection 136(1) of the FBTAA 1936. The ATO's view of the court's decision in this case in interpreting the word 'public' is consistent with the Commissioner's view that despite the restricting conditions being imposed on the use of the car park, the car parks are considered available to the public on the conditions imposed by the car parking operator.

As such, you should be aware that providing the use of a car park to your employees may attract FBT. If you require further information please contact your Blaze Acumen advisor.

John Holland Group Pty Ltd's case

In the recent John Holland Group Pty Ltd case the Federal Court found that flights paid for employees to travel between their home and place of work under a fly in fly out (FIFO) arrangement were not considered "otherwise deductible" and therefore subject to FBT. This is because travel between home and work is considered private in nature and because the employee had chosen to live away from their place of work.

If your business is paying for employees to travel between their place of work and home, please be aware that the amount may be subject to FBT. If you require further information please contact your Blaze Acumen advisor.

Small Business Superannuation Clearing House

To reduce compliance burden on small businesses, the ATO is assisting small businesses with less than 20 employees to help meet their superannuation guarantee obligations. Small businesses are able to register online for free to use the Small Business Superannuation Clearing House which will ensure compliance with the SuperStream rules by 1 July 2015. For more information about SuperStream please refer to Blaze Acumen's Client Alert No 27 on our website.

Payslip reporting

In some good news for employers, the proposed payslip reporting rules that were intended to make employers include on payslips the amount of superannuation contributions and the date on which the employer expects to pay them have been repealed.

There are already existing separate rules in the Fair Work Act 2009 and the Fair Work Regulations requiring employers to include in payslips the amount of superannuation contributions they are liable to make.

ATO to investigate foreign investment rule breaches

Given the recent focus on the effectiveness of the Foreign Investment Review Board (FIRB), the Australian Government is proposing to establish a specialised compliance and enforcement area within the ATO as part of enforcing the rules governing foreign investment in Australian residential real estate. The ATO will identify and investigate breaches of foreign investment rules for which a range of penalties may apply and the Government is also proposing to introduce an application fee on all foreign investment proposals to fund the increased enforcement activity. It is also proposed the ATO be given power to issue statutory demands for information relating to matters that could breach these foreign investment rules.

There are proposed fees that will go toward funding this enforcement that include charging foreign buyers of farming land or new or existing residential properties a $5,000 application fee for properties valued up to $1M, a $10,000 application fee for properties valued at over $1M and $10,000 increments thereafter for each additional $1M of value. A civil penalty regime is also proposed for breaches of the rules that would involve either forced sale of the property or fines of the highest of the capital gain, 25% of the market value or 25% of the purchase price.

These new enforcement measures may be relevant to clients based outside Australia considering acquiring residential property developments or investment properties in Australia.

Research & Development issues

Registration with AusIndustry

A reminder for June balancing companies that conduct R&D activities that the registration with AusIndustry for the 30 June 2014 tax year is required to be lodged by 30 April 2015. For companies with substituted accounting periods registration is required to be lodged within 10 months after the year end.

Tax Laws Amendment (Research and Development) Bill 2013

The Tax Laws Amendment (Research and Development) Bill 2013 passed through the Senate with amendments on 10 February 2015 and is awaiting Royal Assent.

The amended Bill introduces a $100 million cap on the amount of R&D expenditure that companies can claim as R&D tax offset under the R&D incentive rules. For expenditure above $100 million, companies will be able to claim a tax offset at the company tax rate (effectively companies will be entitled to a tax deduction for the expenditure in excess of $100 million). This is a benefit where R&D expenditure would otherwise be capital expenditure.

The new rules will commence from the first tax year commencing on or after 1 July 2014.

The amended Bill also contains amendments commencing 1 July 2024 which effectively dismantle the $100 million cap on the amount of R&D expenditure effectively restoring the legislation to its pre-amendment position i.e. the $100 million cap will apply for 10 years.

Advance Findings

Companies which are uncertain as to whether their activities qualify as eligible core or supporting R&D activities are able to apply to Innovation Australia for an Advance Finding.

An Advance Finding can be sought in relation to:

- Activities conducted in the current income year, whether completed or commenced in that year; and
- Proposed activities to be conducted in the subsequent two income years.

Bullying in the workplace

From a business/employer point of view, there is a lot of confusion about the new anti-bullying laws, particularly concerning the involvement of the Fair Work Commission and its powers in dealing with complaints. Many businesses are conscious of the need to stamp out bullying and have taken steps to have policies in place, but in many instances their procedures for dealing with complaints need to be updated. There remains confusion about what constitutes bullying, and employers are aware of the fact that some employees will be prepared to make complaints that do not constitute bullying. Some of these issues can be resolved via training of managers and other senior staff, with a focus on their role and responsibility on bullying, harassment and discrimination issues, as well as having satisfactory arrangements in place for monitoring and a process for managing complaints. Business owners and Directors should satisfy themselves that their business has done all it should reasonably do to protect the business against adverse outcomes under these new laws.

Superannuation

Rates and thresholds for 2015/16

The ATO has released the key superannuation rates and thresholds for the 2015/16 year. These rates and thresholds have been indexed in accordance with the average weekly ordinary time earnings figures released by the Australian Bureau of Statistics.

The key superannuation rates and thresholds include the following:

- Concessional contributions cap — the general concessional contributions cap is $30,000 for the 2015/16 year. A higher cap of $35,000 applies to those aged 49 years or over on 30 June 2014;
- Non-concessional contributions cap — the non-concessional contributions cap is $180,000 for the 2015/16 year (for the bring forward rules, the cap is $540,000 over a three year period);
- CGT cap amount — the CGT cap amount for non-concessional contributions is $1,395,000;
- Superannuation guarantee — the maximum super contribution base for 2015/16 is $50,810 per quarter;
- Superannuation co-contribution — the maximum superannuation co-contribution entitlement for the 2015/16 year remains at $500. However, the lower income threshold increases to $35,454 and the higher income threshold increases to $50,454 for the 2015/16 year;

- Superannuation benefit caps — the low rate cap amount for 2015/16 is $195,000. The untaxed plan cap amount for 2015/16 is $1,395,000;
- Employment termination payments (ETP) — the ETP cap amount for life benefit termination payments and death benefit termination payments for 2015/16 is $195,000; and
- Tax-free part of genuine redundancy payments and early retirement scheme payments — for genuine redundancy and early retirement scheme payments for 2015/16, the base limit is $9,780 and, for each complete year of service, $4,891.

Source: Tax Office website, "Key superannuation rates and thresholds", 27 February 2015.

Reminder regarding changes to superannuation contribution caps for the year ending 30 June 2015

As indicated above the standard concessional contribution cap increased to $30,000 from 1 July 2014. In addition, there is even better news for those aged 49 and above on 1 July 2014 as their concessional contribution is increased to $35,000. This contribution cap applies to any superannuation contributions you make via a salary sacrifice arrangement, superannuation guarantee contributions or personal deductible contributions.

This increase will cause many clients to review their salary sacrifice arrangements, to potentially take advantage of the increased cap. If you have not already done so it may be appropriate to review your salary sacrifice arrangements now so there is plenty of time before the end of the financial year for any change in salary sacrifice arrangement to take effect.

From 1 July 2014 the after tax contributions cap (also referred to as the non-concessional contributions cap) increases to $180,000 which means if you trigger the bring forward rule after 1 July 2014 a total of $540,000 can be contributed over the fixed three year period. You should be aware though that if you triggered the bring forward rule before 30 June 2014, the maximum amount will be $450,000 for the fixed three year period (i.e. 2013/14 to 2015/16). Furthermore, you should note that the bring forward rule is only applicable to those under age 65.

If you are older than 65 you will need to meet a work test to contribute to superannuation in most cases. The work test requires you to work for at least 40 hours during 30 consecutive days at some time during the financial year before making tax deductible and non-deductible contributions to super.

Payment of annual pension amounts

As we are coming closer to the end of the current financial year, we once again remind our clients who are in receipt of pension income streams from their SMSF of the obligation to ensure that the SMSF has paid the minimum level of pension to meet the obligations as set out in the Regulations. In the event that the Trustee fails to make sufficient payments to meet the minimum pension obligation, the superannuation income stream ceases for income tax purposes from the beginning of the income year. This is the case even if a member remains entitled to receive a payment from the superannuation fund in relation to the purported superannuation income stream under the terms of the superannuation trust deed, or under general trust law concepts.

The implications of not meeting the minimum pension payment obligations can include:

- **Fund tax:** the fund's income on the assets that were supporting the income stream (including capital gains) may not be exempt from tax in the that year;
- **Benefits tax:** any payments made in that year may not be taxed as income stream benefits and will instead be taxed as lump sum benefits; and
- **Preservation:** in the event that a Transition to Retirement pension which is wholly or predominantly preserved, any lump sum payments may not be permissible and early access penalties may apply.

The ATO as Regulator has provided some guidance as to its powers of general administration to treat a pension as having continued where the breach is considered minor. However, to apply its powers, the trustee must meet all of the five relevant conditions. Rather than relying on the ATO's powers, we strongly recommend that you ensure that the relevant amount(s) have been paid no later than 30 June 2015.

ATO Investment Strategy requirements

The ATO requires that SMSF's have a documented investment strategy that considers:

- Diversification (investing in a range of assets and asset classes);
- The risk and likely return from investments to maximise member returns;
- Liquidity of fund's assets (how easily they can be converted to cash to meet fund expenses);
- The fund's ability to pay benefits when members retire

and other costs the fund incurs;

- Whether the fund should hold insurance cover for members; and
- Your members' needs (e.g. age, income level, employment pattern and retirement needs).

Furthermore, from 1 July 2012 Trustees are required to "review regularly" their investment strategy. The ATO have stated these reviews "should occur on a regular basis and could be evidenced by documenting decisions made in the minutes of meeting held during the income year". Although the regulations do not specify what constitutes "regular" anything less than an annual review would be unlikely to satisfy this requirement.

Excess non-concessional contributions

Treasury has released exposure draft regulations to implement reforms aimed at reducing the severity of penalties imposed where an individual breaches their non-concessional contributions cap. The reforms will allow individuals to withdraw superannuation contributions in excess of the non-concessional contributions cap made from 1 July 2013 and associated earnings, with these earnings to be taxed at the individual's marginal tax rate.

The Tax and Superannuation Laws Amendment (2014 Measures No 7) Bill 2014, which is currently awaiting royal assent will allow individuals who exceed their non-concessional contributions cap in the 2013/14 or later financial years to elect to release from superannuation an amount equal to their contributions in excess of the cap plus 85% of the associated earnings amount. It is also proposed that excess non-concessional contributions that are released from superannuation will not attract excess non-concessional contributions tax.

The proposed regulation amends the Superannuation Industry (Supervision) Regulations 1994 (SISR) and the Retirement Savings Account Regulations 1997 (RSAR) to enable superannuation providers to release amounts to individuals that make an election to release non-concessional contributions.

Please contact your Blaze Acumen advisor should you wish to discuss opportunities for making concessional or non-concessional superannuation contributions or your contribution caps.

An introduction to Blaze Acumen's latest Partner - Paul O'Brien

I recently moved from PwC Private Clients to Blaze Acumen.

I started my career with KPMG in Sydney and moved to Coopers & Lybrand in the early 90's which later became PwC. Initially I was principally a corporate tax adviser looking after mining and large manufacturing companies until I became Partner in 1997 and was asked to go to Port Moresby where I advised a range of clients including expatriates, local car dealers, Palm Oil plantations and large multi-nationals.

Working in an office of four Partners gave me a taste of what it is like to work in a smaller firm which I really enjoyed. After advising the PNG Government on the introduction of their Value Added Tax (VAT), I was asked to move to Melbourne and help PwC set up their GST practice. The experience I gained at the time was fantastic as you had to really understand the supply chain within a business and the processes they used.

Notwithstanding that, I was keen to further pursue my income tax career so accepted a secondment to Jakarta Indonesia to look after the expatriate tax practice and their multi-national clients. It was a privilege to work in Indonesia and to gain experience in Asia advising on some significant deals.

I was asked in 2005 to come back to Melbourne in an Entrepreneurial tax role and later became part of the PwC Private Client group. During the last 10 years I have developed a practice advising senior executives (particularly around employee remuneration), family groups, entrepreneurs and privately owned businesses. I have a great passion for entrepreneurs and developed a close relationship with the Entrepreneurs Organisation, working closely with many of the members of that group.

My decision to move away from PwC after 17 years of Partnership was not an easy one but my entrepreneurial side was pushing me to do something to take me into the next phase of my career. The decision to join Blaze Acumen was a natural one as I have worked with many of the senior team in the past and I had seen them doing very well.

I look forward to introducing my clients and contacts to Blaze Acumen.