GFM Gruchy Accounting

THE PRACTITIONER
Tax News and Commentary for you and your business

Edition #15 - 2022

Business Advisory | SMSF Administration | Accounting & Taxation | Taxation Planning | Estate Planning

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ATO'S NEW CRACKDOWN ON DISCRETIONARY TRUSTS

The ATO has just updated its guidance around trust distributions made to adult children, corporate beneficiaries and entities that are carrying losses. Depending on the structure of these arrangements, there is a potential that the ATO may take an unfavourable view on what were previously understood to be legitimate arrangements.

Background

For many reasons, including legal tax minimisation and asset protection, many business owners operate their affairs through a trust structure. While trust structures are certainly legitimate, over the years the ATO has become increasingly sceptical of the motivations behind the use of trusts which it believes in many cases are motivated chiefly by tax minimisation. In February 2022, the ATO updated its guidance directly focusing on how trusts distribute income, and to whom. Consequently practices which may have once been previously accepted may now not be. This may result in higher taxes for family groups in particular – both going forward, and potentially retrospectively.

Target

The ATO is chiefly targeting arrangements under section 100A of the Tax Act, specifically where trust distributions are made to a low rate tax beneficiary but the real benefit of the distribution is transferred or paid to another beneficiary usually with a higher tax rate. In this regard, the ATO's new Taxpayer Alert (TA 2022/1) illustrates how section 100A can apply to the quite common scenario where a parent benefits from a trust distribution to their adult children.

Released at the same time, the ATO's new draft ruling states that for the new guidance to potentially apply, one or more of the parties to the agreement must have entered into it for a purpose (not necessarily a sole, dominant purpose) of securing a tax benefit. This sets the bar quite low and may capture a number of arrangements.

Assessing the Risk

The ATO released an accompanying guideline providing taxpayers with a risk assessment framework for them to work through with their accountants to assess the level of risk involved in current and past distribution arrangements. In the guideline, the ATO has provided a number of examples of high-risk arrangements that are actually quite common and include:

1. Arrangements where the presently entitled beneficiary lends or gifts some or all of their entitlement to another party and there is a tax benefit obtained under the arrangement
2. Arrangements where trust income is returned to the trust by the corporate beneficiary in the form of assessable income and the trust obtains a tax benefit
3. Arrangements where the presently entitled beneficiary is issued units by the trustee (or related trust) and the amount owed for the units is set-off against the beneficiary's entitlement
4. Arrangements where the share of net income included in a beneficiary's assessable income is significantly more than the beneficiary's entitlement
5. Arrangements where the presently entitled beneficiary has losses.

For arrangements that fall into the high-risk category, the ATO advises that it will conduct further analysis on the facts and circumstances of the arrangement as a matter of priority. If further analysis confirms the facts and circumstances of your arrangement are high risk, they may proceed to audit where appropriate.

What next?

The ATO's new ruling and guidelines are still in draft form, and are expected to be finalised soon. Once finalised, they are intended to apply both prospectively and retrospectively. However, for entitlements conferred before 1 July 2022, the ATO has indicated it will stand by any administrative position reflected in its prior website guidance before the new material was released.

If you have any concerns about your trust distributions and exposed risk to Section 100A, you should contact your accountant for a discussion based on your personal circumstances.

GFM Gruchy Accounting Pty Ltd
190 Through Road, Camberwell VIC 3124
T: (03) 8809 0700 F: (03) 9830 1308
enquiry@gfmgruchy.com.au
www.gfmgruchy.com.au

Tax Practitioners Board Registered
Tax agent 24703131

Partner
Andrew Goldman
Associate
Philip Gruchy

CPA

Liability limited by a scheme approved under Professional Standards Legislation.

ACN 166 797 306
ABN 57 166 797 306

FBT YEAR-END CHECKLIST

March 31 marks the end of the 2021/2022 fringe benefits tax (FBT) year which commenced 1 April 2021. It's time now for employers and their advisors to turn their attention to instances where non-cash benefits have been provided to employees, and also where private expenses have been paid on their behalf.

Although it will generally fall to your accountant to prepare the FBT return, it may not always be apparent to them from your software file or other records, all of the instances where you have provided employees and their associates (e.g. spouse) with a potential fringe benefit. To assist you in bringing these potential benefits to the attention of your accountant, following is a general checklist (non-exhaustive):

Cars

☐ **Did you provide or make available a car that your business (or an associate of the business) owned or leased, to an employee or their associate for private purposes?**

Exemptions include minor, infrequent and irregular non-work-related use by an employee of certain commercial vehicles.

☐ **Did you as an employer reimburse expenses of an employee in relation to a car they owned or leased?**

Exemptions include where the business compensates the employee on a cents per km basis for estimated travel and where the car has not been used for private purposes.

Loans

☐ **Did your business provide a loan to an employee or their associate?**

Exemptions include where the loan is strictly related to meeting an employment expense (which must be incurred within sixth months of the loan being made).

Exemptions also include loans made by private companies to employees who are also shareholders but the loan is Division 7A compliant.

Debt waiver

☐ **Did your business release an employee or their associate from paying an outstanding debt?**

An exemption applies where the debt in question is genuinely written off as a bad debt (as distinct from waived for employment or personal reasons)

Housing

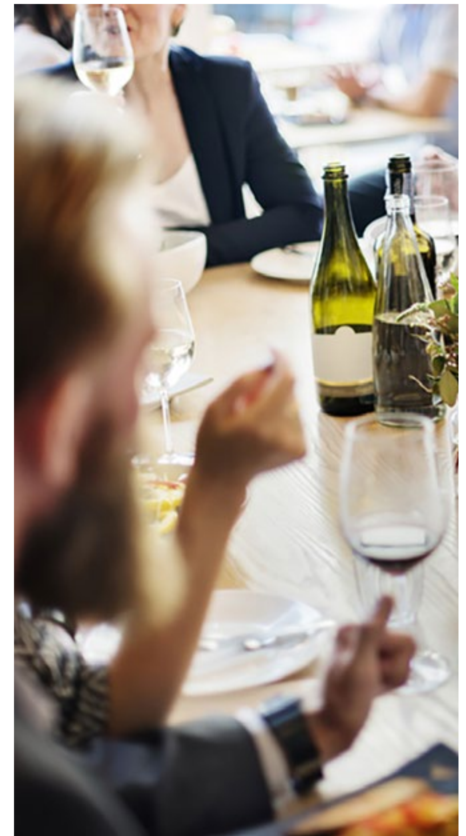
☐ **Did your business or an associated entity provide an employee or their associate with the right to use accommodation by lease or licence?**

The benefit may be exempt in the event that it relates to a remote area.

Living away from home allowance (LAFHA)

☐ **Did you pay an employee an allowance to compensate them for private non-deductible expenses because they are required to live away from their usual place of residence for work?**

Strict exemption conditions can apply which your accountant can walk you through



Expense payments

☐ **Did your business reimburse an employee or pay a third-party expense of theirs?**

Exemptions include where the expense would have been otherwise deductible to the employee because it was work-related.

Car parking

☐ **Did you pay for an employee's car parking expenses or provide them with a car park during the year?**

Various exemptions apply including where the benefit is for a disabled person, or provided by small businesses or certain non-profit employers, or the minor benefit exemption applies.

Entertainment

☐ **Did your business provide an employee or associate (or in some cases third-parties with entertainment by way of food, drink or accommodation in connection with this?**

☐ **Did your business provide an employee or their associate with a corporate box, a boat or plane for the purpose of providing entertainment, or other premises for the purpose of providing entertainment?**

RECORD KEEPING

Keeping good business records is important for a number of reasons. It assists you to:

- comply with your tax and superannuation obligations
- gain a greater insight into the financial health of your business, enabling you to make informed decisions
- manage your cashflow
- demonstrate your financial position to prospective lenders, and also potential buyers of your business.

ATO requirements

Broadly, the ATO requires that:

- you keep most records for five years from when you obtained the records, or completed the transactions or acts that they relate to – whichever is the later
- you be able to show the ATO your records if they ask for them
- your records must be in English or be able to be easily converted to English.

Digital records

The ATO is reminding business owners that you can keep your records (paper/hard copies) digitally. The ATO accepts images of business paper records saved on a digital storage medium, provided the digital copies are true and clear reproductions of the original paper records and meet the standard record keeping requirements.

Once you have saved an image of your original paper records, you don't have to keep the paper records unless a particular law or regulation requires you to.

However, if you enter information (for example, supplier information, date, amount and GST) from digital or paper records into your accounting software, you still need to keep a copy of the actual record, either digitally or on paper. Some accounting software packages may do both your accounting as well as your record keeping.

Storage options

1. Cloud

If you use cloud storage, either through your accounting software or through a separate service provider, eg, Google Drive, Microsoft Onedrive or Dropbox, ensure:

- the record storage meets the record-keeping requirements

- you download a complete copy of any records stored in the cloud before you change software provider and lose access to them.

2. E-invoicing

Regardless of your E-Invoicing software or system, your business is responsible for determining the best option for storing business transaction data.

You should:

- ensure that your process meets the record-keeping requirements
- discuss your options with your software provider
- talk to your business adviser, if necessary.

Digital advantages

As the ATO point out, there are many advantages to keeping your records digitally. If, for example, you use a commercially-available software package, it may help you:

- keep track of business income, expenses and assets as well as calculate depreciation
- streamline your accounting practices and save time so you can focus on your business
- automatically calculate wages, tax, super and other amounts, including
  - develop summaries and reports for GST, income tax, fringe benefits tax (FBT) and taxable payments reporting system (TPRS), as required
  - be prepared to lodge your tax and super obligations, including your tax return, business activity statements (BAS) and taxable payments annual report (TPAR) if you are a business that is required to
  - send some information to the ATO online (if the package meets ATO requirements), for example, your activity statement
  - meet your legal Single Touch Payroll (STP) reporting obligations
- back up records using cloud storage to keep your records safe from flood, fire or theft.

SALARY SACRIFICING TO SUPER

Are you an employee thinking of putting some of your pre-tax income into superannuation to boost your retirement savings? This is known as salary sacrifice, and the good news is that it can benefit you and your employer.

What is salary sacrifice?

An effective salary sacrifice agreement (SSA) involves you as an employee, agreeing in writing to forgo part of your future entitlement to salary or wages in return for your employer providing you with benefits of a similar value, such as increased employer superannuation contributions.

Contributions made through a SSA into superannuation are made with pre-tax dollars and do not form part of your assessable income.

This means salary sacrifice contributions are not taxed at your marginal tax rate (MTR) and will instead be subject to superannuation contributions tax of up to 15% when received by your superannuation fund and will count toward your concessional contributions (CC) cap.

The CC cap is a limit to how much you can contribute to superannuation. The combined total of your employer superannuation guarantee (SG) and salary sacrificed contributions must not be more than $27,500 per financial year. Note that there are other, very rare types of contributions that also contribute towards your CC cap.

For most people, the 15% contributions tax will be lower than their MTR. You benefit because you pay less tax while boosting your retirement savings.

Your employer also benefits because salary sacrifice contributions are tax deductible to them and there is no limit to the amount of their contribution/ deduction.

However, this is not the case for employees. Salary sacrifice contributions in excess of your CC cap will be included in your assessable income and taxed at your MTR. You will however be entitled to a 15% non-refundable tax offset to compensate for the tax paid by the superannuation fund on the same excess contribution.

Warning – Division 293 tax on higher income earners

If you earn more than $250,000 pa in income, you will pay an additional 15% tax on your CCs.

For many impacted people however, CCs are still worthwhile as even though they pay 30% tax on CCs, this is still less than the top MTR of 47% (including Medicare levy) that applies to high income earners who are liable for Division 293 tax.

The additional Division 293 tax is administered by the ATO who will work out if you need to pay the tax based on information in your tax return and data the ATO receives from your superannuation fund(s).

The benefits of salary sacrifice

- Disciplined approach to saving – individuals who struggle to save may benefit from salary sacrificing as contributions are deducted directly from pre-tax income. This automatic process can help you build your superannuation over the long-term and save for retirement.
- Tax saving is immediate – because contributions are made from pre-tax salary, the personal tax benefit is derived 'up-front'. This means the saving goes straight to your superannuation fund and you can benefit from compounding returns on the tax saving amount (presuming the return is positive) throughout the year.
- Dollar cost averaging – salary sacrifice allows you to buy into the market at regular intervals and, therefore, reduce the risk of market timing.
- Easy to administer once established – you do not need to claim a deduction in your tax return or lodge a notice of intent form with your superannuation fund when salary sacrificing, unlike personal deductible contributions.
- Employer matching arrangements – salary sacrifice may also be attractive if your employer offers generous matching arrangements to their employees, for example, an additional 1% employer contribution for each 1% of salary sacrificed.

Tip – consider the carry forward rules

You may be eligible to make large CCs in a year without exceeding your CC cap under the carry forward CC rules. These rules allow certain individuals to make extra CCs in excess of the general concessional cap by utilising any unused concessional cap amounts from the previous five financial years (commencing from 1 July 2018).

To be eligible to make carry forward CCs in a year, you must have:

- A total superannuation balance (TSB) of less than $500,000 at the end of 30 June in the previous financial year, and
- Unused CC cap amounts for one or more of the previous five financial years in which the extra CCs are made.

The key issues to consider

- SSA may be ineffective – where your employer offers salary sacrifice, the arrangement must be in place before you have actually earned the entitlement. This means only income that relates to future employment and entitlements can be salary sacrificed into superannuation. This is known as an 'effective' SSA. With any bonus payments, the arrangement needs to be made before a decision to pay the bonus has been made. This applies even when the bonus won't be paid until some time in the future.
- No control over when a salary sacrifice contribution will be made – all SSA should be documented and signed by you and your employer in writing. It should also include details outlining the amount to be salary sacrificed and frequency of contributions. This is because superannuation legislation does not specify the contribution frequency required for salary sacrifice contributions, unlike SG contributions.
- Employer may not offer salary sacrifice to employees – although most employers will offer SSA to their employees, it is not compulsory for an employer to offer salary sacrifice to their staff. Further, due to the paperwork involved and changes to the pay system, some employers may restrict their employees to one salary sacrifice negotiation per year, which can make it hard if the employee changes their mind if things change from month to month.
- Potential for excess CCs – once established, salary sacrifice should not be a 'set and forget' strategy. For example, your salary may increase/decrease, or the CC cap may change. Therefore, it is important to track the contributions regularly if aiming to maximise, and also stay within, the CC cap.

RIDESHARING – THE DRIVER

Uber and other ride-sourcing facilitators have become increasingly popular over recent years. From a driver's standpoint, there are a number of tax issues potentially in play. See the following article for the tax implications from a rider's perspective.

Income

Income from a driver's ride-sourcing activities must be declared in their tax return irrespective of the amount they earn, and irrespective of whether they have another job. The amount to be declared is the full fare (including or "grossed-up" by the facilitator's fee, less GST). The full fare amount must be declared in a Driver's personal tax return (or in an entity's return if they are operating through a company, trust etc.).

Expenses

Expenses (less GST) incurred by drivers in operating their ride-sourcing activities are deductible. However, not all expenses will be deductible and may need to be reduced/apportioned to take account of any private use of the vehicle. The following common expenses are not deductible – fines (e.g. speeding or parking), cost of own meals and drinks during shifts, and clothing except if either compulsory or non-compulsory clothing that is unique and distinctive to the Facilitator you drive for.

In instances where a vehicle is being claimed in the driver's personal tax return, the costs will be claimed using either of the following methods:

1. Cents per Kilometre

Whereby you claim a set number of cents per kilometre travelled (currently 72 cents). The advantage of this method is very little record keeping is required. You only need to be able explain how you arrived at your calculation – you do not need any documentary evidence in the way of receipts or log books etc. Even where you travel more than 5,000 kilometres, you may still elect to use this method (and save the hassle on the record-keeping requirements that are required under the logbook method) by capping your claim at 5,000 kilometres. In summary, this method can be appealing to Drivers who:

- Have older vehicles (therefore depreciation and interests costs are low)
- Have not kept, or do not wish to keep, records of kilometres travelled. This method incorporates all car expenses including petrol, servicing, depreciation, etc. You can make no further car expense claim.

2. Logbook

Under this method, your claim is based on the business use percentage of each car expense, which is determined by a logbook that must have been kept for a minimum 12-week period.

This logbook must be updated every five years or where there has been a change to the percentage of business use (by more than 10%). To ease the record-keeping burden, check out one of the innumerable logbook 'apps' on the market, either from the App Store or Google Play as the case may be.

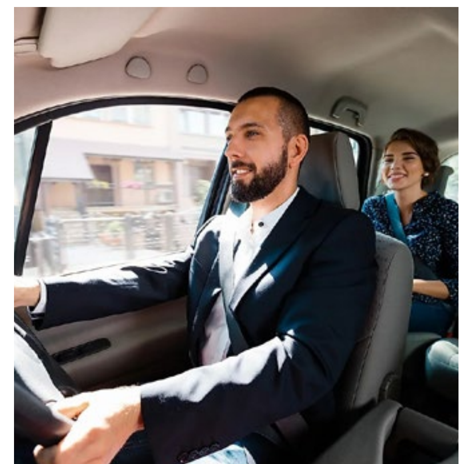
In summary, under this method you can claim all expenses that relate to the operation of the car, at your percentage of business use, as established from your logbook. This method generally gives the best result where the vehicle has substantial business use. Drivers can calculate their claim and determine which method provides the largest deduction, by using the ATO's Work-related car expenses calculator on its website.

ABN

Uber drivers generally speaking will always be 'carrying on an enterprise', and therefore should register for an ABN. The only instance where it's conceivable that a driver would not be carrying on an enterprise would be where they are an employee of the facilitator. This is rare, however.

GST

Under general GST law, you are only required to register for where you are carrying on an enterprise and your annual turnover is $75,000 or more. However, where your enterprise involves providing 'taxi travel' you must register for GST irrespective of the level of turnover. The ATO adopts a broad interpretation of 'taxi' to include cars made available for public hire to transport passengers in return for a fare (but not including trucks and bike courier services). The Federal Court has confirmed this interpretation. Drivers therefore generally must register for, and charge, GST as soon as they commence operating.



2022 FEDERAL BUDGET WRAP – WHAT'S IN IT FOR YOU AND YOUR BUSINESS?

The 2022/23 Budget was handed down last night by the government. While there was some targeted, boutique assistance for small business, the Budget was very much focused on addressing cost of living pressures faced by individuals and families. In a departure from recent years, the Budget was relatively silent on the superannuation front.

For more details and advice on these and other Budget proposals and how they may impact you or your business – noting that each measure is generally subject to the passage of legislation through Parliament – touch base with your advisor.

Business

The headline measures included:

- **20% Additional Deduction for Skills Training and Digital Adoption** – Businesses with a turnover of less than $50 million stand to receive a 20% uplift in deductions (on what they would normally be entitled to) for eligible expenditure on external training courses and digital technology. This 20% boost applies to expenditure incurred from the time of last night's Budget until 30 June 2023 for digital adoption, and until 30 June 2024 for skills training. Some exclusions apply.
- **Apprentice Wage Subsidies Extended** – The Boosting Apprenticeship Commencement (BAC) and Completing Apprenticeship Commencements (CAC) wage subsidies will be extended by three months to 30June 2022. Additionally, funding has been set aside over five years to introduce a new Australian Apprenticeships Incentive System from 1 July 2022 to support employers and apprentices in 'priority occupations'.

  This is welcome news for employers and apprentices alike.
- **Reduction in GDP Uplift Factor for PAYG and GST Instalments for 2022/23** – This will be pegged at 2% for 2022/23. This is significantly lower than the 10% that would otherwise have applied under the statutory formula. It will apply to small to medium enterprises eligible to use the relevant instalment methods (up to $10 million annual aggregated turnover for GST instalments, and $50 million annual aggregated turnover for PAYG instalments).

  For background, each year the ATO adjusts GST and PAYG instalment amounts your business may be required to pay using a formula known as the gross domestic product (GDP) adjustment. This is based on data published by the Australian Bureau of Statistics.

  This measure may provide real cash flow relief for eligible businesses in the coming financial year.
- **PAYG instalments: Option to Base on Current Financial Performance** – Companies will be permitted to opt to have their PAYG instalments calculated based on current financial performance (as opposed to past year/past period performance) extracted from business accounting software.

  While this measure is welcome, reflecting real time business performance, it is anticipated that this will not come on stream until 1 January 2024.
- **Employee Share Schemes for Unlisted Companies** – Thresholds Amended – The investment thresholds for unlisted companies in respect to employee share schemes (ESS) will be changed. Where employers make larger offers in connection with ESS in unlisted companies, participants will be able to invest up to:
  - $30,000 per participant per year, accruable for unexercised options for up to five years, plus 70% of dividends and cash bonuses, or
  - Any amount, if it would allow them to immediately take advantage of a planned sale or listing of the company to sell their purchased interests at a profit.

  The regulatory requirements for offers to independent contractors will also be removed where they do not have to pay for interests.

  No date of commencement was announced.

  ESS are becoming increasingly popular as a way to incentivise employees by (at least in part) tying their remuneration to the performance of the business.

Individuals

In a Budget targeting the hip pocket, some of the big-ticket measures were:

- **LMITO Increased** – The low and middle income tax offset (LMITO) will increase by $420 in 2021/22. Thus, eligible individuals may receive a tax offset of up to $1,500 upon lodgement of their upcoming 2021/22 tax returns. This will be for those earning between $48,001 and $90,000 but phasing out up to $126,000.

Depending on your personal tax position, this could certainly act as an incentive to get those tax returns lodged early this upcoming tax season.

- **$250 Cost of Living Payment** – A once-off, tax exempt, cost of living payment will be made to six million eligible pensioners, welfare recipients, veterans and eligible concession card holders.

  This will provide immediate relief as the payment is made next month (April 2022).

- **COVID Test Expenses Deductible** – As announced last month, the cost of taking a COVID test (PCR or RAT) to attend work will be tax deductible, dating back to 1 July 2021. There's also relief for employers in that FBT will not apply where COVID tests are provided to employees in this context.

  Employees and employers should retain proof of their expenditure (e.g. receipts).

- **2022/23 Income Tax Rates Unchanged** – The tax rates for the upcoming financial year remain unchanged from the current year.

  The next round of personal income tax cuts, which have already been legislated, will not come into effect for another couple of years (from 1 July 2024).

Superannuation

Compared to recent years, the Budget was relatively mute on this front, with only two items of note:

- **Pension Drawdowns – 50% Reduction Extended to 2022/23** – This reduction to minimum annual drawdown amounts for superannuation pensions and annuities will be extended by a further year to 30 June 2023. This is aimed at avoiding the scenario where retirees are forced to sell assets, in the prevailing volatile economic climate, to satisfy the standard drawdown percentage requirements.

  Of course, this measure will only prescribe a minimum. Recipients are permitted to draw down more than this if they so choose.

- **Super Guarantee Increase to Proceed** – There was no indication that amending legislation would be introduced to repeal the existing law that will see the SG rate increase to 10.5% (up from the current 10%) from 1 July 2022. SG applies to an employee's (and some contractors) ordinary time earnings.

Employers will need to factor this extra cost into their budgets depending on how existing employment remuneration arrangements are structured. Speak to your advisor if uncertain.

- **Other 1 July Changes** – Although not announced in the Budget, be mindful of other superannuation changes coming on stream from 1 July 2022 including:
  - Bring-forward non-concessional cap extended to anybody under 75 (subject to Total Superannuation Balance)
  - Work test requirements abolished for 67-74 year olds in respect of making or receiving personal and salary sacrificed contributions
  - $450 per month income threshold abolished for SG contributions – those earning below this amount may now be eligible for SG
  - Reduction to age 60 (down from 65) for the home downsizer contribution scheme
  - Increase on voluntary contribution release amounts under the first home super saver scheme from $30,000 to $50,000.

Other

- **Temporary Reduction in Fuel Excise** – This has been reduced by 50% for a period of six months. If passed on in full, it will result in the excise (and the price of fuel) being reduced by just over 22 cents per litre. This takes effect immediately from 30 March 2022.
- **Relief for First Home Buyers** – The Home Guarantee Scheme will expand by it being made available to 50,000 individuals/couples each year. This scheme helps those eligible clear perhaps the main hurdle in entering the housing market – saving for a deposit. Under the scheme, eligible first home buyers can with the assistance of government obtain a loan to build a new home or purchase a newly-built home with a deposit of as little as 5%.

If you have any questions about what was contained in the Budget and how it may impact you or your business moving forward, contact us.

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