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Practice Update

Please read this update
and contact this office
if you have any queries

September - October 2015

ATO's apps and other online tools

As a result of user feedback, the ATO has improved their ATO Small Business app and it continues to expand in functionality and usability.

The most useful features for small business include:

- ABN Lookup, which verifies business details.
- Tax withheld calculator, which shows how much tax to withhold.
- Key dates, which can set important tax and super reminders and alerts.
- Report a concern, which enables users to report suspected tax evasion.

The ATO has also released a new function for the app which includes a business performance check tool (which provides a snapshot of profitability, cash flow, working capital and debt serviceability).

It also compares a business's performance against similar businesses in its industry using the benchmark database.

'myDeductions' online tool

Another online tool that came live recently is "*myDeductions*", which allows taxpayers to upload their receipts and information for deductions for the 2015/16 year. Taxpayers are advised to simply take a photo of a receipt and upload it.

The deductions covered include work-related expenses, car expenses (it also includes a trip information calculator using Google maps) and other travel expenses, uniforms, self-education, and other types of deductions (such as the cost of managing tax affairs and donations).

Data will be stored in the taxpayer's mobile device and, at the end of the financial year, can be shared with their tax agent.

Capital gains & property

The thought of the Australian Tax Office (ATO) sharing up to 50% of any gain you make on an investment decision is enough to strike fear into the hearts of most people. Given Australia's love affair with property, it is little wonder that we are often asked about the impact of capital gains tax (CGT) on property. This month, we explore the most frequently asked questions.

In general, CGT applies to any change of ownership of a CGT asset, unless the asset was acquired before 20 September 1985 when the CGT rules first came into effect.

Most questions about CGT on property are based on the main residence exemption that exempts your home (your main residence) from any CGT exposure when you sell the property.

I jointly own an investment rental property with my elderly mother. Neither of us has ever lived in the property. We've recently updated our wills. The lawyer says that if

Mum's will gifts her half of the property to me then this 'gift' will not attract capital gains tax. Is this correct?

If you inherit your mother's share of the property, there would generally be no tax liability until you sell the property. What is important here is how the CGT is calculated when you ultimately sell.

When the rental property transfers to you from your mother's estate, the tax rules determine how CGT is calculated when you eventually sell. Basically, if the property was bought on or after 20 September 1985 then when you sell the property your taxable profit will be based on the original purchase price. That is, you will end up being taxed on the increase in value of the property since it was acquired, including the portion that accrued while your mother was still alive.

In general, if you jointly own an investment property, your individual exposure to CGT will depend on how the property is owned. If the property is held as tenants in common then any CGT exposure is in line with your ownership interest. For example, in your case, it is 50% owned by your mother and 50% by you but different people can own different ownership interests. If the property is owned as joint tenants then any CGT exposure is equally shared by the owners.

I bought a house in 2000, and lived in it until 2003. I was posted overseas with my job between 2003 and 2011. During that time my brother lived in the house rent free – he just paid for utilities. In 2011 to 2012, I rented the house out (no one I knew). I moved back into the property in 2012 and have just sold the house. Do I have to pay capital gains tax on the property?

The capital gains tax rules are more understanding about how people live their lives than other laws and in some circumstances allow you to continue to treat your home as your main residence even if you are not actually living in it.

While you are away overseas, if you leave the property vacant or let a friend or relative live in the property rent-free, assuming you do not claim any other property as your main residence, then you can continue to treat the property as your main residence for CGT purposes indefinitely.

If you rent the property out while you are away, the tax laws allow you to still claim the property as your main residence as long as the period you rent it for is not more than a total of 6 years. This 6 year period can actually be reset by moving back into the property again.

Effectively, you can move out and move back in as many times as you like and still claim the property as your main residence as long as it is your only main residence during that time and if you are renting it out, you do not rent it out for more than a total of 6 years across the period you are claiming the property as your main residence.

During the rental period you can also claim deductions against the rent, even though the property might still be exempt from CGT during this period.

I bought a property in 2008 and expected to move in straight away, but there were tenants still in the property and their lease still had 8 months to go. I waited for the lease to expire and then moved in. I have lived there ever since and plan to sell later this year. Can you just confirm that I would still qualify for a full CGT exemption on the sale as the property has significantly increased in value?

This is a very common situation but is probably overlooked much of the time. Unfortunately, you would not qualify for a full exemption in this case.

The main residence rules allow you to treat a property as if it has been your main residence since settlement date as long as you actually move into the property as soon as practicable after settlement. This is intended to cover situations where there is some delay in moving into the property due to illness or some other "reasonable cause". The ATO's view is that this rule cannot apply if you are waiting for existing tenants to vacate the property.

This means that you would only qualify for a partial exemption under the main residence rules. We will need to calculate your gross capital gain and then apportion it to reflect the period of time when it was actually your main residence (i.e., from when you actually moved in).

As long as you are a resident of Australia and have owned the property for more than 12

months we can also apply the 50% CGT discount to reduce the leftover capital gain.

It will be important in this case to gather as much evidence as possible of non-deductible costs that you have paid in relation to the property such as stamp duty, legal fees, commission paid to real estate agents, interest, rates, insurance, etc. This will help to reduce the gross capital gain that is subject to tax.

ATO linked MyGov accounts – correspondence no longer sent to your tax agent

For those clients who have set up a MyGov account which is linked to the ATO, please be aware that all correspondence from the ATO will now be sent to your MyGov inbox. It has recently come to our attention that we are no longer receiving BAS, IAS or PAYG instalment notifications, or other correspondence such as data matching audit letters for those clients who are receiving this information via MyGov. Please ensure that you check the contents of your MyGov inbox when you receive a SMS or email notification and forward a copy of the correspondence to us if it is something that you need us to deal with. Do not assume that we have received a copy of this correspondence directly from the ATO as was previously the case.

GST to apply to all physical imports purchased online

The $1,000 low value threshold on imports will be scrapped from 1 July 2017. The announcement followed a workshop of the State and Territories Treasurers' and intensive lobbying by retail groups.

The GST system will be broadened to apply to all goods purchased online and imported from overseas. The Treasurers have opted for a vendor registration model which means that they are relying on businesses based overseas and selling into Australia to register and comply voluntarily with Australian tax law.

The top small business $20k deduction Q&As

In a recent speech, Small Business Minister Bruce Bilson stated that a lot of his time talking about the $20,000 immediate deduction for small business was convincing people it was not a hand out.

"I have spent a lot of my time explaining that asset write-off mechanisms aren't grants, they are not gifts, they are not cash backs. They are a way of expensing a purchase in an asset that can contribute to a functioning business. Now, if you are not making any income there is not a huge benefit in you being able to write-off additional expenses at a faster rate."

Here are some of the common questions we are asked to help clear confusion.

If I spend $20,000 how much will I get back?

The instant asset write off is a tax deduction that reduces the amount of tax your business has to pay. It enables small business entities **(businesses with annual aggregated turnover below $2 million)** to claim a deduction for depreciating assets of less than $20,000 in the year the asset was purchased and used (or installed ready to use). For example, if your business is in a company structure the most you will 'get back' (reduce your tax by) is 30% (in 2014-15) or 28.5% (in 2015-16) of the cost of the asset. If the business made a $19,000 purchase in June 2015, the most the business would reduce its tax bill by is $5,400. It's a much better deal than the previous $1,000 immediate deduction limit but there are still cash flow issues for the business that need to be considered. Remember also that the business would have been able to deduct the purchase anyway, just over a longer period of time.

If I signed a contract before Budget night but didn't pay for the asset or receive it until after the Budget, can I still claim the deduction?

To be able to claim the immediate deduction, you had to "acquire" the asset on or after 7.30 pm AEST on Budget night (12 May 2015) and use it (or install it ready for use) before 30 June 2017.

Contracts are often tricky because the date you acquired the asset really depends on what the

contract says and how it's structured. Generally, if you signed the contract before Budget night and the contract made you the owner of the asset, then the asset would not qualify for the $20k immediate deduction.

We've invested in new equipment for just under $18,000. How soon can we claim the immediate deduction?

'Immediate deduction' is a bit of a misnomer. Immediate in this context means that your business can claim a tax deduction for the asset in the same income year that the asset was purchased and used (or installed ready for use). The deduction is claimed on the business's tax return.

Requiring the asset to be used or installed ready to use is an interesting catch. It means that businesses cannot stockpile assets and claim the immediate deduction for those assets. For example, if a restaurant business bought three ovens in June 2015, those ovens would need to be in use or installed ready to be used before the tax deduction could be claimed. If only one oven was used or installed before the end of the financial year, then the business could only claim the immediate deduction for one oven in their tax return. Assuming the other ovens are used before 30 July 2017, the immediate deduction could be claimed in the year they were first used or installed ready for use on the business's tax return.

Can I buy multiple items and claim the immediate deduction even though the total being claimed is more than $20,000?

Yes. As long as you acquired the asset on or after 7.30 pm AEST on Budget night (12 May 2015) and use it (or install it ready for use) before 30 June 2017, then an immediate deduction should be available if each individual item costs less than $20,000.

Don't forget about the cash flow implications. Depending on when you purchase the assets it might be another year before you can claim the deduction.

What sorts of assets can I claim an immediate deduction for?

To be able to claim the $20,000 immediate deduction, the asset needs to be a depreciating asset. A depreciating asset is an asset whose value you expect to decline over time. Examples include computers, furniture, and motor vehicles. So, no investment assets.

We've had some very interesting questions from people wanting to know what they can and can't claim the immediate deduction for. Take artwork being advertised by a local art gallery. The gallery tells you that your business can buy anything up to $20,000 and claim an immediate deduction for it. Is this correct? The answer is, it depends.

There has to be a connection between the artwork and your business for it to be a depreciating asset. For example, the artwork could be displayed in your office reception or waiting area.

The Tax Office says that the life of an artwork for tax purposes is 100 years. So, deducting the artwork immediately is a big tax bonus.

The same principle applies to items that relate to an existing asset, like machinery. If what you are purchasing qualifies as a depreciating asset in it's own right, then you can claim it.

Whatever the asset is, the same principles apply. **Your business needs to qualify as a small business entity, the asset needs to be purchased and used (or installed) after Budget night and before 30 June 2017, the asset must cost less than $20,000, and the asset must be a depreciating asset. Not everything will qualify**.

Tax Free

Christmas is fast approaching and for those of you who would like to keep your Christmas tax-free here 5 tips to help you achieve this goal:

1. Gift giving & minor benefits under $300

There is a fringe benefits tax (FBT) exemption for providing minor benefits valued at less than $300 that satisfy certain criteria — these being that they are provided to staff or their associates, for example their spouse or partner, on an "infrequent" or "irregular" basis, and the benefits are not considered a reward for services.

The important thing to note however is that the $300 threshold applies to each benefit provided, not to a total value of “associated benefits”. So if, as a generous employer, you host a party and also give a gift to everyone, the party and the gift are considered separately for FBT. If each is less than $300, they are both generally FBT-free.

2. The party location is important
The most certain way to ensure festivities are kept tax-free is to host the party at your workplace during the working week, and to limit attendees to staff only. However if “associates” of employees attend, it is important to stay below the $300 ‘minor benefit’ threshold to keep things FBT-free (see above).
If the Christmas party is away from the workplace, it is important to keep the cost per person (staff and their family) below this $300 threshold to retain minor benefit status — but remember this is a total of meals, drinks, entertainment and associated benefits.

3. Where do taxis stand?
For an employer thinking of paying for a taxi to get their staff from point A to point B, the important consideration in regard to this will be *where* exactly those points A and B are.
If the taxi travel is from work to a venue where the party’s being held (and vice versa), the Tax Office says this is all part of the fun and the fare can be included in the cost-per-head minor benefit limit. However if some staff members perhaps overload on the Christmas cheer and consequently are themselves loaded into a taxi to be taken home (not back to the workplace), this cost may attract FBT.

4. Cash bonuses
If instead of giving gifts or covering the bar tab you’d rather hand out cash bonuses to thank your employees for their hard work during the year, this payment is treated in the same way as salary and wages. PAYG withholding and super guarantee obligations will be triggered, and the Tax Office will treat this bonus as ordinary time earnings.

5. Deduction and GST credits for employee gifts? It’s a fine balance
While in the giving spirit, the important thing to remember is that if a Christmas gift or benefit to an employee is exempt from FBT, such as a minor benefit, you typically won’t be able claim it as an income tax deduction, nor can you claim any GST credits from the purchase.

Whether a gift is deductible and GST credits can be claimed depends on whether the gift provided is “non-entertainment” or “entertainment”. The former includes such gifts as flowers, wine, “beauty” products, gift vouchers and hampers for example, while the latter includes items of “recreation” such as tickets to a musical, theatre, movie, or sporting event.

The tax treatment where a gift is provided to an employee is best summarised in the following table:

Gift to employee or associate	FBT liability?	Income tax deduction?	GST credit available?
If gift constitutes “entertainment”			
Property	Yes	Yes	Yes
Minor benefit (< $300)	No	No	No
If gift constitutes “non-entertainment”			
Property	Yes	Yes	Yes
Minor benefit (< $300)	No	Yes	Yes

Quote of the month

“Success is a lousy teacher. It seduces smart people into thinking they can't lose.”

Bill Gates

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information’s applicability to their particular circumstances.