

DFK ANZ BUSINESS & TAXATION BULLETIN
keeping you informed **autumn 2014**



**SELF-MANAGED SUPERANNUATION FUNDS
– REQUIREMENT FOR ELECTRONIC SERVICE ADDRESS**

From 1 July 2014, the trustees of a SMSF are required to be able to receive electronic messages and payment information associated with employer contributions using the SuperStream data and payment standard. All SMSF's are required to obtain an electronic service address.

The fund is required to provide their ABN, bank account details and electronic service address to all members of the fund by 31 May 2014. This is to ensure that their respective employers have the required information by 1 July 2014 when the superannuation contribution reporting changes commence.

It is important to ensure all trustees have an electronic address by the required date.

AUSTRALIAN CHARITIES AND NOT-FOR-PROFIT COMMISSION

The ACNC has granted an extension to 31 March 2014 for the 2013 Annual Information Statement for charities with a 30 June year end. This enables charities to have more time to prepare this new statement.

The transitional arrangements between the ACNC, ATO and ASIC ended on 2 December 2013. Now all not-for-profit related organisations must register with the ACNC prior to dealing with other government agencies.



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FRINGE BENEFITS TAX

With 31 March and the end of the Fringe Benefits Tax year just around the corner, now is the time to take advantage of last minute tax planning opportunities. Please find below a summary of the most common types of fringe benefits, and their tax treatment:

Motor Vehicles – This is the most common fringe benefit, and arises where an employer's car is used by an employee for any private purposes, notwithstanding that the vehicle is also used for business purposes. An exemption applies for taxis, utilities of carrying capacity greater than 1 tonne or unregistered cars.

There are two methods for calculating the taxable value of the motor vehicle fringe benefit:

1. **Statutory Formula Method** – calculated on the base value of a car multiplied by a statutory rate. The statutory rate is determined by the number of kilometres travelled during the FBT year if the car was acquired prior to 10 May 2011. Otherwise it is a flat rate of 20%.
2. **Operating Cost Method** – calculated by applying the log book percentage against the actual running costs of the car for the FBT year. The record keeping for this method is more detailed than for the statutory formula method but can often result in a much lower FBT amount.

Car Parking Benefit – FBT liability arises where a car is parked on business premises that is within 1 kilometre of a commercial car parking station. An exemption applies to small businesses with gross ordinary income of less than \$10 million where the car is not parked in a commercial parking station.

Exempt Benefits – There are a variety of FBT exempt benefits, including portable electronic devices, protective clothing, briefcase and tools of trade if they are primarily used for business purposes. There is a limit of one item per FBT year for items that have a mostly identical function, unless the item is a replacement item.

Minor Fringe Benefits – Minor and infrequent benefits of less than \$300 are exempt from FBT.

In-house Benefits Exemption – Allows employers to reduce taxable value of in-house benefits by up to \$1,000 per employee.

Meal Entertainment on employer's premises – Food and drink provided to employees on ordinary working days are FBT exempt.

Meal Entertainment not on employer's premises – Generally, all meal entertainment provided to staff outside of business premises are subject to FBT.

Expense Payment Benefit – This is where an employer pays for or reimburses private expenses incurred by employees. eg. school fees; private telephone bills; rates and land taxes; life and health insurance premiums etc. All these payments would be subject to FBT.

Property Benefits – These arise when an employee is provided with property (e.g. stock) for free or at a discount.

The 'Otherwise Deductible Rule' – In most cases, where the employee would have been allowed a 'once only' tax deduction for the expense if they had paid it themselves, the taxable value is reduced by its deductible portion.

Reductions to Taxable Values – Once the FBT calculations have been completed, we may reduce the taxable value of the fringe benefit to nil through employee reimbursements or contributions. This can actually be paid in cash (eg. employee pays for petrol) but is usually performed by way of a journal entry against a loan account.

ATO WEBINARS

The ATO are running a series of webinars during March on a wide range of taxation topics such as:

- SMSFs for Trustees – an overview
- SMSFs – accepting contributions and managing investments
- SMSFs – Accessing your super
- Tax issues when buying and owning a rental property
- Tax issues when selling a rental property
- Tax Basics for Small Business – Issues for Contractors
- Tax Basics for Small Business – Employer obligations overview
- Tax Basics for Small Business – Home based business
- Tax Basics for Small Business – Activity Statement Essentials

There are more topics than are listed here. For full details go to www.ato.gov.au and search for webinars. In order to be able to view the webinar a free app must be downloaded onto your Apple, Android or Windows device.

GIC & SIC RATES

The ATO has published general interest charge (GIC) and shortfall interest charge (SIC) rates for the third quarter of the 2013-14 income year.

The GIC annual rate for January – March 2014 is 9.59%, and the SIC rate is 5.59%.



FEATURE ARTICLE: ARE YOUR CONTRACTORS DEEMED EMPLOYEES?

One of the major areas of focus currently by the ATO and the OSR is taxpayer's treatment of payments to contractors for purposes of determining whether the contractors are 'deemed employees'.

The distinction is important for business, as contractors deemed as employees are entitled to superannuation guarantee contributions and payments made to them may be regarded as wages and subject to payroll tax. In addition, there may be a pay as you go withholding liability and a workers compensation liability for sole trader contractors. This obligation may arise even if the contractor quotes an ABN and provides a tax invoice.

The classification of workers as employees as interpreted by the ATO can be a grey area and has been the subject of litigation on several occasions. Each situation needs to be examined to assess whether an employee relationship exists.

According to the ATO, a key factor in deciding if a worker is an employee is the degree of control that can be exercised over the worker. If the payer has the right to direct how, when, where and who is to perform the work, the worker is likely to be an employee. These directions may be verbal or in writing, or simply understood between the parties.

Factors to determine if a worker is an employee are:

- INDEPENDENCE
 - Work is controlled by the payer.
- PAYMENT
 - Made for hours worked, rather than completion of a task.
- WORK PERFORMANCE AND COMMERCIAL RISK
 - Work cannot be delegated or subcontracted to others.
 - Employer provides tools and equipment required.
 - Regular hours are set by an agreement or award.
 - The worker takes no commercial risk and cannot make a profit or loss from the work performed.

The factors that indicate a worker is a contractor are:

- INDEPENDENCE
 - Organises and determines how the work is to be completed.

- PAYMENT
 - Remunerated when the job is completed (results-focused).
- WORK PERFORMANCE AND COMMERCIAL RISK
 - Able to delegate or subcontract the job to employees or others.
 - Provide their own tools and equipment to perform the job.
 - Advertise and conduct themselves from the payer as a separate business.
 - Rectify defects in their work at their own expense.

One of the indicators that has emerged from recent case law is the 'entrepreneurship test' which considers whether the worker is running an independent business and whether the relevant economic activity is being performed by a person in, and for that business, rather than the business of the payer. If an independent business does not exist, the worker is likely a deemed employee.

Irrespective of what the payer may call the relationship and what may be documented in a contractual agreement, the ATO will assess the substance of the relationship and weigh up the indicators present rather than the written terms of a contract. Contracts which include terms describing the working relationship as contractual rather than an employee relationship thereby excluding superannuation guarantee or other employee entitlements will not be considered valid if the substance of the relationship indicates the worker is an employee.

In the event that your business is elected to undergo an ATO review of contractors, the following records should be kept to ensure you can demonstrate you have correctly classified workers appropriately:

- A record listing of Australian Business Numbers of all contractors.
- Records of quotes and contracts from the contractor.
- A log of the jobs completed, their duration and amounts paid to workers.

If you require further assistance regarding this topic, please feel free to contact our staff.

FOR MORE INFORMATION & FUTURE NEWSLETTERS

For more information on anything contained in this bulletin please telephone or email us.

UPCOMING KEY DATES & DEADLINES

21 MARCH 2014	February Monthly Activity Statement due for lodgement and payment.
31 MARCH 2014	2013 Income Tax Returns for companies (including a head company of a consolidated group) and super funds with a total income in excess of \$2million due for lodgement and payment.
31 MARCH 2014	2013 Income Tax Return due for lodgement and payment for individuals and trusts that were Level 6 per last year lodged.
31 MARCH 2014	2014 Fringe Benefits Tax year ends.
21 APRIL 2014	Quarterly PAYG Instalment activity statement due for lodgement and payment for head companies of a consolidated group.
21 APRIL 2014	March Monthly Activity Statement due for lodgement and payment.
28 APRIL 2014	Superannuation Guarantee Contributions due for payment for January – March 2014 quarter.
30 APRIL 2014	Lost members report for super funds for the period 1 July 2013 to 31 December 2013.
15 MAY 2014	2013 Income Tax Returns due for lodgement for all entities not previously required to lodge and not eligible for 5 June 2014 concession (Loss entities only). Companies and super funds are also required to pay on this date.
21 MAY 2014	April Monthly Activity Statement due for lodgement and payment.
26 MAY 2014	January – March 2014 Business Activity Statement due for electronic lodgement and payment.
21 MAY 2014	April Monthly Activity Statement due for lodgement and payment.

FOR MORE INFORMATION & FUTURE NEWSLETTERS

For more information on anything contained in this bulletin please telephone or email to our details below.

DFK AUSTRALIA NEW ZEALAND

For further information or enquiries about any of the latest business and taxation topics discussed in this newsletter, please contact the Directors and team at DFK ANZ.

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