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The Peak Partnership
BUSINESS ADVISORS

PINNACLE Newsletter

INSIDE THIS ISSUE

VIEW FROM THE PEAK

with Robyn Henshaw

Single Touch Payroll Reporting (STPR) will be a hot topic for business owners over the coming months.

As it currently stands, STPR will be mandatory from 1 July 2018 for any business that employs 20 or more staff. Those businesses will be required to electronically report employee payroll activity to the ATO; including salary and wages, PAYG tax withheld and Super Guarantee contributions.

If your business employs 20 or more staff, your next STPR key date is 1 April 2018 – when you'll need to conduct a head count of employees on your payroll. This includes full and part-time staff, casual employees, those based overseas, absent and seasonal employees.

If you want to know more about STPR, just call your Advisor here at The Peak.

Division 7A loans. Think twice, it's alright!

If you own a small private company, perhaps with your spouse, think twice before borrowing money from that company. If the transaction is not recorded correctly you could end up paying tax on any loan, thanks to the rules known as Division 7A.

You (as an individual) and your company are different entities so using your business to fund private expenses may attract adverse consequences if you don't get proper advice first.

The tax consequences don't only arise when you borrow money from your company. There are other transactions made between you as a shareholder and your company that will come under scrutiny by the rules of Division 7A. As these rules are complicated, we recommend that you contact us before putting any arrangements in place.

WHAT IS DIVISION 7A?

Division 7A (Div A) refers to a group of anti-avoidance provisions from the *Income Tax Assessment Act 1936* that prevent private companies distributing tax-free profits or assets to shareholders or their associates (eg. spouse, child or relative of the shareholder) in the form of informal transactions such as loans, payments or forgiven debts. The use of certain company assets, for example a holiday house by a shareholder, is also captured by the rules.

If Division 7A applies, the amount received by the shareholder will be included in his or her tax return as unfranked dividends and will be taxed at the marginal tax rate without receiving any credit to reduce the tax bill.

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Hot spots from the ATO.

With the current Fringe Benefits Tax (FBT) year ending on 31 March, we look at the key hot spots announced by the Australian Tax Office for employers and employees.

USING THE COMPANY CAR OUTSIDE OF WORK

Just because your business buys a motor vehicle and it's used as a work vehicle, that alone does not mean that it is exempt from FBT. If you use the vehicle for private purposes – to transport the kids, do the shopping, use it on weekends, garage it at home, your spouse uses it – FBT is likely to apply.

While the old "what the ATO doesn't know won't hurt them" mentality often applies when FBT returns are completed, it might not be enough. This year, the private use of work vehicles is firmly on the agenda of the Australian Tax Office (ATO).

Private use is when you use a car provided by your employer (this includes directors) outside of simply travelling for work-related purposes.

If the work vehicle is garaged at or near your home, even if only for security reasons, it is taken to be available for private use – regardless of whether or not you have permission to use the car privately. Similarly, where the place of employment and residence are the same, the car is taken to be available for the private use of the employee.

Finding out that a car has been used for non work-related purposes is not that difficult. Often, the odometer readings don't match the work schedule of the business, and these are areas the ATO will be looking at.

UTES AND COMMERCIAL VEHICLES: THE NEW SAFE HARBOUR TO AVOID FBT

When an employer provides an employee with the use of a car or other vehicle then this would generally be treated as a car fringe benefit or residual fringe benefit and could potentially trigger a FBT liability.

However, the *FBT Act* contains some exemptions which can apply in situations where certain vehicles (eg. utes and other commercial vehicles) are provided and the private use of the vehicles is limited to work-related travel, and other private use that is 'minor, infrequent and irregular'.

One of the practical challenges when applying the exemption is how to determine if private use has been minor, infrequent and irregular. The ATO recently released a compliance guide that spells out what it will look for when reviewing the use of the exemption.

The ATO has indicated that in general, private use by an employee will qualify for the exemption where:

- the employer provides an eligible vehicle to the employee to perform their work duties. An eligible vehicle is generally a vehicle for commercial purposes. The requirements are very strict and guidance on this is published on the ATO website at **www.ato.gov.au/General/Fringe-benefits-tax-(FBT)/**
- the employer takes reasonable steps to limit private use and they have measures in place to monitor this – this might be a policy on the private use of vehicles that is monitored using odometer readings to compare business kilometres and home to work kilometres travelled by the employee against the total kilometres travelled.
- there's no non-business accessories – eg. a child safety seat.
- the value of the vehicle when it was acquired was less than the luxury car tax threshold ($75,526 for fuel efficient vehicles in 2017-18 and $65,094 for other vehicles).
- the vehicle is not part of a salary sacrifice arrangement; and
- the employee uses the vehicle to travel between their home and their place of work and ***a)*** any diversion adds no more than two kilometres to the ordinary length of that trip; ***b)*** they travel no more than 750 km in total for each FBT year for multiple journeys taken for a wholly private purpose; and ***c)*** no single return journey for a private purpose exceeds 200 km.

If you meet all these specifications, the ATO has stated that it will not further investigate the use of the FBT exemption. However, the employer will still need to keep records to prove that these conditions have been satisfied and to show that private use is restricted and monitored.

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Division 7A loans.
What you need to know.

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HOW DIVISION 7A APPLIES TO SOME TRANSACTIONS.

The main arrangements and situations that are caught by Division 7A rules are as set out below.

Loans

For example, if a shareholder borrows money from the company and the amount is not repaid before the company lodges its tax return for the financial year in which the loan was made, that amount will be deemed as dividends paid to the shareholder.

However, loans made for a maximum of seven years (or 25 years if secured by a mortgage) with an interest rate at least equal to the benchmark interest rate will comply with the rules.

Payments

Division 7A also applies when the company makes payments to a shareholder, including the use of a company's asset for less than market value. The use isn't limited to actual use, but includes availability for use. For example, a yacht is available for a shareholder's use because the shareholder holds the keys, even though actual use is relatively infrequent.

If the payment is provided to a shareholder in their capacity as an employee of the private company (eg. as a director), Fringe Benefits Tax (FBT) will apply instead of Division 7A. Note that benefits received by the shareholder-employee valued at less than $300, say for a Christmas gift or food hamper, are exempt from FBT if minor and infrequent.

Debts forgiven

Amounts of debts owed by a shareholder to the company that the company forgives will be deemed as dividends.

Interposed entities

Division 7A can also apply when a private company provides a payment or loan indirectly to a shareholder by using another entity. The other entity, known as an "interposed entity", can be an individual, company, partnership or trust and sits between the private company and its shareholder.

WHAT ABOUT FAMILY TRUSTS?

Family businesses are normally structured as discretionary trusts with bucket companies set up as beneficiaries for the purposes of income distribution. Therefore, if you are the trustee, be aware that when you declare a distribution of income to the company beneficiary and it remains unpaid (known as unpaid present entitlement, or UPE), that UPE will be treated as a loan from the private company to the trustee, hence giving rise to a deemed dividend under Division 7A.

NEED MORE HELP?

Division 7A rules are far-reaching and can apply to numerous different situations, so please talk to your Accounting Advisor at The Peak Partnership to review your circumstances and arrangements in light of these anti-avoidance provisions. Just call us on 07 **3360 9888**.

Big GST changes
for Property Developers.

If a Bill currently before Parliament passes, from 1 July 2018, purchasers of new residential premises or new residential sub-divisions will need to remit the GST on the purchase price directly to the ATO as part of the settlement process.

Currently, developers collect the full sale proceeds and remit GST in their next BAS (which can be up to three months after settlement). The reforms aim to prevent developers from dissolving the business before the next BAS lodgement to avoid remitting GST.

For some developers, there will be a significant cash flow impact because the purchaser will be required to pay 1/11th of the full sale price to the ATO, even if the developer's GST liability on the sale would be less than this (eg. where they can apply the GST margin scheme). In these cases, developers will need to seek a refund from the ATO.

The reforms apply to the sale or long-term lease of:

- new residential premises (other than those created through a substantial renovation and commercial residential premises); or
- sub-divisions of potential residential land.

FOR THE PURCHASER

If you are purchasing a new property affected by the changes after 1 July 2018, you will need to pay 1/11th of the full sale price directly to the ATO at settlement. The vendor must supply you with a notification advising that the payment is required and the amount that is to be paid.

FOR THE DEVELOPER (VENDOR)

From 1 July 2018, the vendor will no longer collect and remit GST on the purchase price of the residential premises. Instead, the vendor must notify the purchaser in writing that GST needs to be paid to the ATO and advise the amount payable – simply 1/11th of the full sale price. In general, this notification will need to include:

- the name and ABN of the entity that made the supply;
- when the purchaser is required to pay that amount to the ATO (generally settlement date); and
- where some or all of the consideration is not expressed as an amount of money (eg. sale of property for cash plus another property) – the GST-inclusive market value of the consideration that is not expressed as an amount of money.

Developers who fail to provide this notification face fines of up to $21,000 per event.

The vendor will receive a credit for the amount that has been paid by the purchaser to the ATO (if the amount was simply withheld but not paid these amounts cannot be claimed). If the vendor's net amount for the tax period is in a credit, a refund will be made.

We'll have more on this issue as the Bill progresses through Parliament, as it potentially has substantial financial implications for developers and property buyers.

Life Insurance.

Inside or outside your super?

If you've got super, chances are you'll have some default insurance included and the option to buy more at an attractive price. It's a cost-effective way to get a basic level of cover, but holding insurance inside super does have some downsides.

FORMS OF SUPER INSURANCE

There are three types of insurance you can hold inside super: life, total and permanent disability (TPD) and income protection insurance. Many super funds automatically insure their members and will provide a (relatively small) payout if, for example, they die or suffer a debilitating accident. But the level of default cover is likely to fall short of your day-to-day living needs.

CANSTAR financial comparison website found that while young families typically need around $680,000 of life cover, the average default life policy is only $200,000.

Nevertheless, you can pay a little extra to top up your insurance through your super fund if you want more cover. There are three big advantages to doing this:

- These policies are relatively inexpensive because super funds can buy in bulk and pass on the discount they receive to members.
- These policies are easily accessed. You'll typically have your application for insurance approved without having to be examined by a doctor or provide detailed medical information.
- You pay for cover from your pre-tax income because the cost of premiums is taken out of the super contribution your employer deposits into your fund.

WHAT'S THE CATCH?

Some life insurance is better than none, but there are downsides of a one-size-fits-all solution.

Super funds get bulk-buying discounts on the basis that they purchase standardised 'off the shelf' policies. Such a policy may or may not be suited to your individual needs.

Automatic default cover also means younger, healthy members are subsidising older and less healthy members. And while paying for insurance out of your super contributions can help your cash flow, it's money that's being diverted from your retirement nest egg.

You also need to keep in mind that insurance taken out through your super isn't portable; if you switch to another super fund that insurance will cease. Payouts can take a while because the insurer pays the super fund, which then pays the claimant.

If you fail to make a binding beneficiary nomination, or your super fund doesn't offer binding nominations, the super trustee will decide who gets your benefits if you die. That beneficiary may be taxed more heavily than would be the case with a retail policy. And finally, the insurance ends when you retire.

GOING OUTSIDE

Getting insurance outside of super can be a little more expensive and time-consuming, but it's worth considering for a number of reasons.

- You'll have access to a wider range of policies. That means you can find one that's more tailored to your individual needs.
- You can't get trauma insurance through super, but you can in a retail policy.
- Payouts tend to be faster and you'll have more capacity to ensure a death benefit goes to the beneficiary you want it to.
- If you're in good health, your premiums will reflect this.
- While you'll be using your after-tax income to pay for it, income-protection insurance is tax-deductable.

Another issue with income protection policies through super is that they are linked to your current income. This may be unusually low when you make a claim due to, for example, having gone part-time to look after children. In contrast, retail income protection policies can offer a guaranteed benefit.

SMSFs AND INSURANCE

It's not just big public super funds that can provide insurance cover. If you have your own self-managed super fund (SMSF) you're legally obliged to consider the insurance needs of members when drafting your fund's investment strategy. Life, TPD and income protection insurance can all be purchased through an SMSF but it won't have access to the discounts large funds enjoy. You also generally need to undergo a medical examination before receiving cover, so there are a few advantages of holding insurance inside your SMSF.

If you would like to discuss insurance solutions that work best for your family's needs, you should get in touch with one of our Financial and Risk Insurance Advisors – Pat Kelly or Will Pham. You can call them on 3360 9898 or send an email to wealth@peakpartnership.com.au.

More on Australian Tax Office's FBT hot spots.

CAR PARKING

We all know how expensive commercial car parks can be. The ATO has noticed that where car parking benefits are being declared (ie. where an employer provides parking to an employee), the value of what is being declared is significantly less than what you would expect to pay. Common errors include:

- market valuations that are significantly less than the fees charged for parking within a one kilometre radius of the premises at which the car is parked;
- using parking rates or facilities not readily identifiable as a commercial parking station;
- rates charged for monthly parking on properties purchased for future development that do not have any car parking infrastructure; and
- insufficient evidence to support the rates used as the lowest fee charged for all day parking by a commercial parking station.

SALARY SACRIFICE OR EMPLOYEE CONTRIBUTION?

One FBT issue that frequently causes confusion is the difference between the employee salary sacrificing in order to receive a fringe benefit and making an employee contribution towards the value of that fringe benefit.

Salary sacrificing for a fringe benefit

To be an effective salary sacrifice arrangement (SSA), the agreement must be entered into before the employee becomes entitled to the income (eg. before the period in which they start to perform the services that will result in payment of salary etc).

Where an employee has salary sacrificed on a pre-tax basis towards the fringe benefit provided – laptop, car, etc. they have agreed to give up a portion of their gross salary on a pre-tax basis and receive the relevant fringe benefit instead.

As a starting point, the taxable value of the fringe benefit is the full value of the expense paid by the employer.

The employer recognises a lower cost of salary and wages provided to the employee as their 'cost saving', which results in lower PAYG withholding and super contribution obligations, but they still recognise the full value of the fringe benefit as part of their taxable fringe benefit which is subject to FBT.

The employee recognises that they have a reduced amount of salary and wages, and a non-cash benefit in the form of the fringe benefit.

What is an employee contribution?

An employee contribution is made from post-tax income and will often form part of arrangements relating to car fringe benefits. The employee recognises the gross salary and wages as income in their tax return. However, the payment of an after-tax employee contribution would generally have the effect of reducing the taxable value of the fringe benefit that was provided to them by the employer.

The employer would still be subject to the 'standard' PAYG withholding and superannuation contribution obligations in relation to the gross salary and wages amount.

The ATO is looking for discrepancies with contributions paid by an employee to ensure that these have been treated consistently for income tax and GST purposes, as well as on the FBT return. This is really an issue for the employer and a discrepancy may mean that there is an FBT exposure or that the employer has paid less GST or income tax than what they should have.

Clients rate The Peak experience.

Last December we conducted our sixth annual Client Feedback Survey, and once again we had some very encouraging results. We think it's important to understand how our clients perceive what we do for them.

Our research is based on six key attributes that clients identify as important in the work we do and the overall relationship they have with us. Responses ranged on a scale from 1 to 5 – our snapshot takes in those clients who rated our service as good or excellent.

97% Quality service and advice

91% More than accounting and tax

85% Proactive support

100% Trusted advisor

100% Knowledgable, experienced staff

91% Value for the work we do

While we're thrilled with the results of this latest Client Feedback Survey, there were some little things we could improve upon. So even though we're not perfect, we've learned that most of our clients are genuine advocates of The Peak Partnership – largely borne out of how we demonstrate our high standard of service and respect; and the outcomes we achieve for them.

Thank you to all the people who took part in the survey – your opinions are important to us.

> **"The expertise, advice, how phone calls are always returned. I cannot speak highly enough of John and the team.**

Framed. Nick Kapadia.

Soon to celebrate his first anniversary with us, Nick joined The Peak Partnership Wealth Design Solutions team in the role of Paraplanner in May 2017.

Nick is a relatively fresh face to the world of financial planning – his role with The Peak Partnership is only his second full-time industry appointment. However, he is highly qualified in business and has prior financial experience in short-term project roles across government and private sector organisations.

He holds a Business Masters degree, majoring in Applied Finance, and he has a Diploma of Financial Planning. As our Paraplanner, Nick prepares the advice documents that our financial planners present to clients, as well as producing the supporting financial models and assisting with general planning enquiries.

Away from the office, Nick loves to travel overseas whenever he gets the chance, he enjoys a hit of tennis, and he's a Toastmasters regular to sharpen up his public speaking skills.

What chance your business will be audited?
How the ATO identifies audit targets.

The ATO is very upfront when it comes to their compliance activity. Every year they publish small business benchmarks that outline what a typical business 'looks like' in different industries. If your business falls outside of those benchmarks, the ATO is likely to take a closer look at why that is.

Falling outside the benchmarks might not indicate a tax-related problem. It might mean that your business has a different business model to the norm or is performing poorly relative to others in the industry.

If your business does fall outside of the benchmark however, it is important to ensure that the reasons why can be clearly explained (preferably documented) and the reason for those differences is not tax-evasion. If there is no proof as to why the business is outside of the benchmarks, the ATO is likely to simply apply the benchmark ratio and issue a revised tax assessment.

Under the benchmark process, the ATO will look at:

- cost of sales to turnover (excluding labour);
- total expenses to turnover;
- rent to turnover;
- labour to turnover;
- motor vehicle expenses to turnover;
- non-capital purchases to total sales; and
- GST-free sales to total sales.

For example, for a veterinary practice with a turnover between $300,001 and $800,00, the cost of sales to turnover ratio is expected to be between 25% and 29% (averaging at 27%), and average total expenses are 78%. The cost of labour to turnover ratio is between 21% and 29% and rent is between 5% and 8%.

The benchmarks are also a useful tool for anyone wanting to understand what is typical in their industry and how they perform against the average. It might also indicate opportunities for improvement and where the business is falling behind its competitors.

PROTECTING YOU AND YOUR BUSINESS FROM AN AUDIT

Audit Insurance through The Peak Partnership provides cover for payment of professional fees incurred when audits, reviews or investigations are initiated by the ATO or other regulators.

Audit Insurance protection ranges from a basic phone enquiry to a complete audit of lodged returns. It also extends to situations that require consultation with taxation specialists, such as a tax lawyer – and it covers audits and reviews requested for previous financial years, if that's what the ATO wants to look at.

To date, we've lodged a number of Audit Insurance claims on behalf of clients who have been subject to various audits, with a 100% successful claim history - saving those clients thousands of dollars in professional fees, not to mention significant stress relief while they got on with running their businesses.

A one-off annual premium, starting from around $300, could be far better than no insurance if an audit notice arrives in the mail. If you want to know more about Audit Insurance, contact your Accounting Advisor at The Peak Partnership on **3360 9888** or you can email us at **email@peakpartnership.com.au**.

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