WLP Accountants Pty Ltd

WLP CHARTERED ACCOUNTANTS

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TAX NEWS May 2023

Inside this issue:

Just in time for the Fringe Benefits Tax (FBT) year that started on 1 April, the Australian Taxation Office (ATO) has released new details on electric vehicles.

The FBT exemption for electric cars

If your employer provides you with the use of a car that is classified as a zero or low emissions vehicle there is an FBT exemption that can potentially apply to the employer from 1 July 2022, regardless of whether the benefit is provided in connection with a salary sacrifice arrangement or not. The FBT exemption should normally apply where:

- The value of the car is below the luxury car tax threshold for fuel efficient vehicles ($84,916 for 2022-23) when it was first purchased. If you buy an EV second-hand, the FBT exemption will not apply if the original sales price was above the relevant luxury car tax limit; and
- The car is both first held and used on or after 1 July 2022. This means that the car could have been purchased before 1 July 2022, but might still qualify for the FBT exemption if it wasn't made available to employees until 1 July 2022 or later.

The exemption also includes associated benefits such as:

- Registration
- Insurance
- Repairs or maintenance, and
- Fuel, including electricity to charge and run the vehicle.

But, it does not include a charging station (see *How do the tax rules apply to home charging units?*).

While the FBT exemption on EVs applies to employers, the value of the fringe benefit is still taken into account when working out the reportable fringe benefits of the employee. That is, the value of the benefit is reported on the employee's income statement. While you don't pay income tax on reportable fringe benefits, it is used to determine your adjusted taxable income for a range of areas such as the Medicare levy surcharge, private health insurance rebate, employee share scheme reduction, and certain social security payments.

Who the FBT exemption does not apply to

By its nature, the FBT exemption only applies where an employer provides a car to an employee. Partners of a partnership and sole traders are not employees and cannot access the exemption personally.

If you are a beneficiary of a trust or shareholder of a company, the exemption can only apply if the benefit is provided in your capacity as an employee or as a director of the entity (you need to be able to show you have an active role in the running of the entity).

TAX NEWS

How do the tax rules apply to home charging units?

The ATO has confirmed that charging stations don't fall within the scope of the FBT exemption for electric cars. This means that FBT could be triggered if an employer provides a charging unit to an employee.

If an employee purchases a home charging unit then it might be possible to claim depreciation deductions for the cost of the unit over a number of years if the unit is used to charge a vehicle that is used for income producing purposes. However, if an employee is only using the vehicle for private purposes then the years cost of the charging unit is a private expense and not deductible.

What about the cost of electricity?

A friend of mine travels a lot for work and used to rack up large travel expenses…right up until he switched to an electric vehicle. Now it costs him 3 cents per km in electricity.

Because it is often difficult to distinguish home electricity usage, the ATO has set down a rate of 4.20 cents per km for running costs for EVs provided to an employee (from 1 April 2022 for FBT and 1 July 2022 for income tax).

Rate applying to fringe benefits tax year or income year commencing on and	EV home charging rate
1 April 2022	4.20 cents per km

If you use this rate, you cannot also claim any of the costs associated with costs incurred at commercial charging stations. It is one or the other, not both.

You also have the option of using actual electricity costs if you can calculate them accurately.

What sharing platforms are sharing with the ATO

From 1 July 2023, a new reporting regime will require platforms that enable taxi services including ride sourcing, and short-term accommodation to report their transactions to the ATO each year. From 1 July 2024, the regime will expand to include all other platforms.

While the legislative instrument for the reporting regime is still in draft, it is expected that platform providers will report their transactions to the ATO every six months.

What information on sellers will the ATO know?

The platforms will submit data on the sellers for transactions on their platform including:

- ABN and business / trading name (where applicable)
- First, middle and surname/family name (for individuals)
- Date of birth (for individuals)
- Residential or business address
- Email address and telephone numbers
- Bank account details.
- And, for platforms facilitating short-term accommodation:
- Listed property name
- Listed property address
- Number of nights booked.

In addition, the platforms will provide aggregate quarterly data on the value of transactions, industry types, total gross income etc.

The reporting regime does not include platforms that simply match suppliers to sellers and are not engaged in the transaction such as quotes for hiring tradies where the job is not accepted through the website.

Update: Tax on super balances above $3m

In a very quick turnaround from announcement to draft legislation, Treasury has released the exposure draft legislation for consultation to enact the Government's intention to impose a 30% tax on future superannuation fund earnings where the member's total superannuation balance is above $3m.

The draft legislation confirms the Government's intention to:

- Impose the tax on member accounts with superannuation balances above $3 million from 1 July 2025 (not indexed); and

- Apply the additional 15% tax to 'unrealised gains'. This will mean that a tax liability will arise if the value of the assets goes up

TAX NEWS

ATO Rental Property Blitz

The Australian Taxation Office (ATO) has launched a full-on assault on rental property owners who incorrectly report income and expenses.

The ATO's assessment, based on previous data matching programs, is that there is a tax gap of around $1 billion from incorrect reporting of rental property income and expenses. And, they would like that back now please.

As a result, banks and other financial institutions will be required to hand the ATO residential investment loan data on an estimated 1.7 million rental property owners for the period from 2021-22 through to 2025-26.

The data collected will include:

- identification details (names, addresses, phone numbers, dates of birth, etc.)
- account details (account numbers, BSB's, balances, commencement and end dates, etc.)
- transaction details (transaction date, transaction amount etc.)
- property details (addresses, etc.)

In addition to identifying whether landlords are declaring their residential investment property income at all, the data matching program is looking specifically at how rental property loan interest and borrowing expense deductions have been reported in the rental property schedules, and whether net capital gains have been declared for property used to generate income.

Banks are not the only source of data. In a complimentary program, the ATO is targeting rental property management software. Over the last decade, much of the financial management of residential rental property has moved online, facilitated by various platform providers. The ATO will require these rental property software providers to provide details of property owners including their bank details, income, expenses and the amount of those expenses, and details of their associated rental properties and agents. Data collection of the estimated 1.6 million individuals in this data program will cover the period from 2018-19 to 2022-23.

With that, let's recap on the common problem areas:

Claiming interest and redrawing on the loan

The interest component of your investment property loan is generally deductible. However, if you redraw on your invest loan for personal purposes, interest on this portion of the loan will not be deductible. This means that interest expenses will need to be apportioned into deductible and non-deductible parts and repayments will often need to be apportioned too. If the redrawn funds are used to produce investment income, then the interest on this portion of the loan should be deductible.

Borrowing costs

You can claim a deduction for borrowing costs (typically over five years) such as application fees, mortgage registration and filing, mortgage broker fees, stamp duty on mortgage, title search fee, valuation fee, mortgage insurance and legals on the loan. Life insurance to pay the loan on death is not deductible even if taking out the insurance was a requirement to get finance. If the loan is repaid early or refinanced, the whole amount including mortgage discharge expenses and penalty interest can often be deductible.

Repairs or maintenance

Deductions claimed for repairs and maintenance is an area that the Tax Office always looks closely at so it's important to understand the rules. An area of major confusion is the difference between repairs and maintenance, and capital works. While repairs and maintenance can be claimed immediately, the deduction for capital works is generally spread over a number of years.

Repairs must relate directly to the wear and tear resulting from the property being rented out. This generally involves a replacement or renewal of a worn out or broken part – for example, replacing damaged palings of a fence or fixing a broken toilet. The following expenses will not qualify as deductible repairs, but are capital:

- Replacement of an entire asset (for example, a complete fence, a new hot water system, oven, replacing a shower curtain with a glass wall, etc.)
- Improvements and extensions.

Also remember that any repairs and maintenance undertaken to fix problems that existed at the time the property was purchased are not deductible.

$20k Small Business Energy Incentive

In a pre-Budget announcement, the Government has committed to a Small Business Energy Incentive Scheme that offers a bonus tax deduction of up to $20,000.

The Small Business Energy Incentive encourages small and medium businesses with an aggregated turnover of less than $50 million to invest in spending that supports "electrification" and more efficient use of energy.

Up to $100,000 of total expenditure will be eligible for the incentive, with the maximum bonus tax deduction of $20,000 per business. Eligible assets or upgrades will need to be first used or installed ready for use between 1 July 2023 and 30 June 2024 to qualify for the bonus deduction.

If your business is contemplating upgrading to improve energy efficiency, it's worth waiting to see the detail of the proposal. We'll bring you more details of the scheme and how your business might benefit as soon as they are released.

Access to home guarantee scheme expanded to friends and siblings

From 1 July 2023, access to the Government's Home Guarantee Scheme will be expanded to joint applications from "friends, siblings, and other family members" and to those who have not owned a home for at least 10 years.

The eligibility criteria for access to the First Home Guarantee Scheme and Regional First Home Buyers Scheme will be expanded. From 1 July 2023, the schemes will no longer be limited to individuals and couples who are married or in de facto relationships, but will also include eligible friends, siblings, and other family members for joint applications. In addition, the requirement for the applicants to be Australian citizens at the time they enter the loan has been extended to include permanent residents.

The schemes guarantee part of a first home owner's home loan enabling them to purchase a home with as little as 5% deposit without paying Lenders Mortgage Insurance. Guarantees are capped at 15% of the value of the property. Thirty five thousand places are available for the First Home Guarantee Scheme each financial year. From 1 October 2022 there will be ten thousand places available each financial year until 30 June 2025 for the Regional First Home Buyers Scheme.

Eligibility to the Family Home Guarantee will also be extended. From 1 July 2025, the scheme will no longer be restricted to single parents with at least one dependant natural or adopted child, but will also be available to borrowers who are single legal guardians of dependent children such as aunts, uncles and grandparents.

The Family Home Guarantee guarantees the home loan of an eligible single parent with at least one dependent child enabling them to purchase a home with as little as 2% deposit without paying Lenders Mortgage Insurance. The guarantee is capped at 15% of the value of the property. Five thousand places are available to the scheme each year to 30 June 2025.

“OnlyFans” Tax Risk Warning

The explosion of OnlyFans, YouTubers, TikTokers and others all offer an opportunity for ‘content creators’ to profit from the audiences they generate. But now the Tax Office has given notice to the booming industry.

Back in October 2022, OnlyFans CEO Ami Gan announced that the platform had reached a milestone - paying out $10 billion to content creators since its launch in 2016. While known for its adult content, the OnlyFans CEO intends to broaden the platform’s scope and provide a means for other content creators – chefs, personal trainers, etc – to utilise its subscription and reward model to generate income. While there are plenty of stories of content creators generating large incomes from the platform like Perth creator Lucy Banks who told Channel 7 she earnt $60,000 in one month, the average income per month is reportedly around USD $150-$180. Creators might also receive ‘gifts’ in various forms from their subscribers.

OnlyFans is not the only platform generating revenue for Australians; there are plenty of other stories. Google’s AdSense calculator estimates that for finance channels with 50,000 monthly views, estimated income is $15,012 ($9,390 for beauty & fitness channels). The message is, there are a lot of content creators generating benefits in a wide variety of forms and the Tax Office wants to ensure everyone is crystal clear about their expectations.

How content creators are taxed

A new update released by the Australian Taxation Office (ATO) in April outlines the regulator’s expectations for how content creators will be assessed for tax purposes:

Income tax on money, gifts and goods

If you make an income as a content creator, then it’s likely it will be assessed for tax purposes unless what you are doing is a genuine hobby with no expectation of generating a profit For subscriber-based sites like OnlyFans, there is normally no question about the profit-making expectation.

The ATO’s guide also makes it clear that assessable income covers not only money but appearance fees, goods you receive, cryptocurrency, or gifts from fans. And, this is where the problem lies for most content creators. Income in the form of money is easy to track and report. Non-monetary income in the form of goods is not so easy. Let’s say a company sends you a handbag with a retail value of $800. The bag is yours to keep. The Tax Office expects you to declare the market value of the bag as income and pay tax on that income. If you receive multiple items throughout the year, or larger inducements like a destination holiday, then this might create a cashflow problem when you need to pay real money to the Tax Office for a ‘free’ product.

The ATO’s blanket statement that all ‘gifts’ and products should be reported as assessable income fails to recognise that it is not always quite that simple in practice. If you create content as a hobby and not as a profit-making venture for example, and a company sends you an unsolicited gift, the position is a little less clear. It really comes down to the specific scenario.
The timing of when you receive income is also important for content creators. The tax rules consider that you have earned the income “as soon as it is applied or dealt with in any way on your behalf or as you direct”. If you are an OnlyFans content creator for example, this is when your OnlyFans account is credited, not when you direct the money to be paid to your personal or business account. So, squirrelling it away from the ATO in your platform account won’t protect you from paying tax on it. And, from 1 July 2023, a new reporting regime will require electronic distribution platforms to report their transactions to the ATO. The regime starts with ride sharing and short-term accommodation platforms, then extends to all other platforms, including OnlyFans, from 1 July 2024.

Do I need to register for GST?

Generally, once you earn or expect to earn $75,000 or more per annum, you will need to register for GST. The exception to the $75,000 threshold is Uber and other ride -sourcing drivers who must have an ABN and be registered for GST regardless of how much they earn.

However, even if a content creator is required to register for GST, this doesn't necessarily mean that all of the money and goods they receive will trigger a GST liability. For example, the GST rules contain some special provisions which sometimes enable supplies made to foreign resident customers to be GST-free (although they still normally need to be taken into account in determining whether the supplier needs to register for GST).

Even if GST-free income is received from foreign resident customers, it will normally still be possible to claim back GST credits for the expenses incurred in connection with these activities.

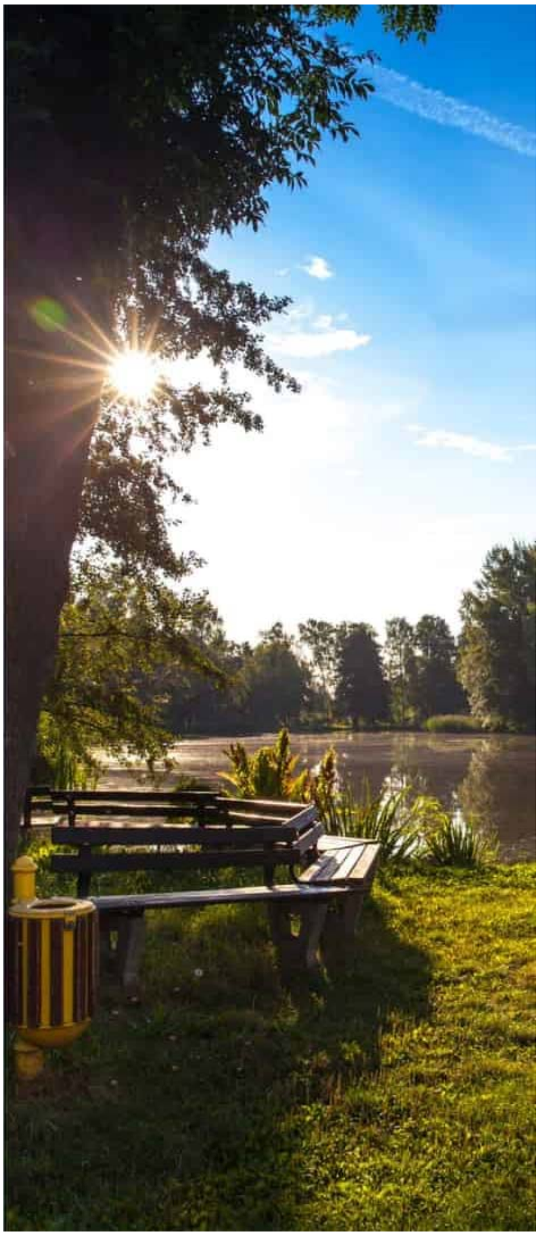
What deductions can I claim?

The upside of being a profit-making venture is that if you spend money to generate income, you can claim a deduction for certain expenses that directly relate to that income. Items such as video production equipment, microphones, online stores etc., might be deductible although in some cases the deductions will be spread over a number of income years. However, you can't normally claim items such as cosmetic surgery, gym memberships, 'every day' clothes, or the cost of your hairdresser 'because you need to look good'. The Tax Office does not consider that these are directly related to how you earn your income and that in many cases, these are still primarily private expenses (see the ATO's occupation specific guides for what you can claim).

When is a side hustle a business?

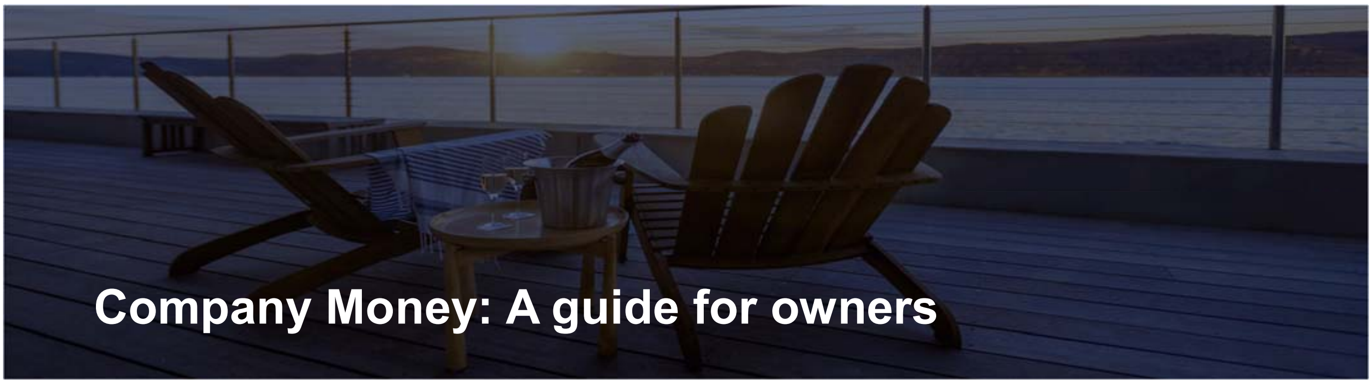
The distinction between something you do on the side and carrying on a business can be a fine line. There is no one test for what determines whether you are carrying on a business versus a hobby but factors such as the regularity of your transactions, whether or not you are promoting yourself as a business (developing a brand name etc.,), if you engage in marketing activities, whether you intend to develop a business and make a profit (or have the capacity to generate a profit over time), the size, scale and permanency of your activities, and whether you operate in a business-like manner, all go toward determining whether what you are doing is a business or merely a hobby.

If your activities are just a hobby then the income is not assessable, and the expenses are not deductible. If you are carrying on a business, then you need to declare the income earned but you also get to claim deductions for the cost of the business activities (although this still needs to be analysed to see whether amounts can be deducted upfront or over a period of time).



"Don't worry about failure; you only have to be right once."

Drew Houston, Co-founder and CEO, Dropbox



Company Money: A guide for owners

When you start up a business, inevitably, it consumes not just a lot of time but a lot of cash and much of this is money you have already paid tax on. So, it only seems fair that when the business is up and running the business can pay you back. Right?

There a myriad of ways owners look for payback from a company they have invested their time and money into it from dividends, salary and wages, jobs for sometimes underqualified family members to cash advances and personal expenses like school fees and nights out picked up as a company expense. But, once the cash is in the company, it is company money.

We look at the flow of money in and out of a company and the problems that trip business owners up.

Repaying money loaned to the company

If you have lent money to your company, you can draw this money back out as a loan repayment. The loan repayment is not deductible to the company but any interest payments made to you will be as long as the borrowed money has been used in the company's business activities (assuming interest has actually been charged on the loan).

Conversely, any repayments made by the company on the loan principal are not income for tax purposes but you will need to declare any interest earned in your income tax return. All loans, including the loan term and repayments, should be documented.

Dividends: Paying out profits

Dividends basically represent company profits being paid out to the shareholders of a company. If the company has franking credits from income tax it has paid, the dividends might be franked and the credits can often be used by the shareholder to reduce their personal tax liability.

When a dividend is paid by a private company it must provide a distribution statement to the shareholders within four months after the end of the financial year. This gives private companies up to four months after the end of the financial year to work out the extent to which dividends will be franked.

If any of the shares in the company are held by a discretionary trust then there are some additional issues that will need to be considered, including whether the trust has a positive amount of net income for the year, whether the trust has made a family trust election for tax purposes and who will become entitled to distributions made by the trust for that year.

Repaying share capital

Many private companies are set up with a relatively small amount of share capital. However, if a company has a larger share capital balance then there might be scope for the company to undertake a return of share capital to the shareholders. Whether this is possible will depend on the terms of the company constitution and there are some corporate law issues that need to be addressed.

From a tax perspective, a return of share capital will normally reduce the cost base of the shares for CGT purposes, which means that a larger capital gain could arise on future sale of the shares but there won't necessarily be an immediate tax liability. Having said that, there are some integrity rules in the tax system that need to be considered. The risk of these rules being triggered tends to be higher if the company has retained profits that could be paid out as dividends.

Shareholder loans, payments and forgiven debts: Using company money

There are some rules in the tax law (known as Division 7A) that determine how money taken out of a company is treated. Division 7A is a particularly tricky piece of tax law designed to prevent business owners accessing funds in a way that circumvents income tax. While amounts taken from a company bank account by the owners are often debited to a shareholder's loan account in the financial statements, Division 7A ensures that any payments, loans, or forgiven debts are treated as if they were dividends for tax purposes unless there is a loan agreement in place which meets certain strict requirements. These 'deemed' dividends cannot normally be franked.

TAX NEWS

If you have taken money out of the company bank account then the main ways of avoiding this deemed dividend from being triggered are to ensure that the loan is fully repaid or placed under a complying loan agreement before the earlier of the due date and actual lodgement date of the company's tax return for that year. To be a complying loan agreement the agreement requires minimum annual repayments to be made over a set period of time and there is a minimum benchmark interest rate that applies – currently 4.77% for 2022-23.

For example, if your company is paying school fees for your kids, or you take money out of the company bank account to pay down your personal home loan, if you don't pay back this amount or put a complying loan agreement in place then this amount is likely to be treated as a deemed unfranked dividend. That is, you need to declare this amount in your personal income tax return as if it was a dividend and without the benefit of any franking credits. This means that even though the company might have already paid tax on this amount, you will be taxed on it again without the ability to claim a credit for the tax already paid by the company (causing double taxation of the same company profits).

The rules are very strict when it comes to loan repayments. If a repayment is made but the same amount or more is loaned to the shareholder shortly afterwards then there are some special rules that can apply to basically ignore the repayment. There are some exceptions to these rules and the position needs to be managed carefully to avoid adverse tax implications.

The 2023-24 Federal Budget will be released today. Look out for our update tomorrow on the important issues to you, your superannuation and your business.

At the beginning of February we moved our Forster office to:

5/7-9 Beach Street, Forster

We are now located in the Astina Building on Level 1 above The Professionals office. The entrance to the building is between The Professional entry and byo cellars. The good new is that there is a lift.

Phone numbers and email addresses remain the same.

We look forward to seeing you in our new office shortly.

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