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2012 TRUST DISTRIBUTIONS - THE ATO IS WATCHING!

The ATO Compliance Program proposes to target trustee resolutions for 2012 to ensure that they meet the requirements of the Trust Deed (post-Bamford) and also that they comply with the new Streaming Rules in the 1997 Act for capital gains and franked dividends.

Whilst many Trustees have previously taken advantage of the Commissioner's administrative extension to prepare Trustee Resolutions by 31 August of each year (per IT 328 and IT 329), some may be surprised to know this concession was removed effective 1 September 2011, meaning that 2012 Trustee Resolutions must be prepared in accordance with the Trust Deed, which generally requires the trustee to appoint income by 30 June of each year.

Furthermore, where a Trustee wishes to stream (or direct) capital gains or franked dividends to a particular beneficiary the new Streaming Rules require the Trustee Resolution to be committed to writing in a specific way and by a specific date in order for the ATO to allow the streaming.

For example, where a Trustee wishes to direct part or all of a franked dividend to a specific beneficiary, the resolution must be made and signed **on or before 30 June 2012**. In regards to capital gains, Trustees have until 31 August 2012 to prepare the resolution **provided** the Trust Deed enables a resolution to be made after 30 June. This will require Accountants to contact our Trust clients before the end of this financial year in order to determine likely capital gains or franked dividends and to assist them in preparing the 2012 Trustee Resolutions.

We understand that the ATO will shortly be sending out letters to trustees across Australia "reminding" them of these deadlines.

Furthermore we are also hearing that the ATO are proposing to target certain Trustees in July 2012 seeking copies of the 2012 resolutions and Trust Deeds in order to confirm compliance. This will add another level of compliance to Trustees in order for them to continue to gain the various benefits and flexibilities of operating through a trust. **Your trust clients will need to be made aware these additional obligations.**

If you have any queries on what is required or would like to have your Trust Deed reviewed prior to the end of this financial year, please contact **Sean Pearce**.

FBT UPDATE - WHAT IS NEW IN 2012?

New fractions for car fringe benefits under the Statutory Formula method

One of the major changes introduced by the Government is the overhaul of the old statutory fractions used to calculate the taxable value of car fringe benefits under the Statutory Formula method.

The new rule applies to all new arrangements to provide car fringe benefits that are entered into after 7.30pm AEST on 10 May 2011. Importantly, it does not apply to a **pre-existing commitment** that was entered before 10 May 2011. A **commitment** is entered into at the point when it is financially binding to a transaction on one or more of the parties and it cannot be backed out of. The commitment needs to be one that relates to the application or availability of the car to an employee or associate. This includes, for example, entering into a purchase contract, lease or hire purchase agreement with a view to provide the car to an employee or associate.

However, if there is an adjustment or change happening to a **pre-existing commitment** after 10 May 2011, then the new rule also applies to the arrangement regardless it was originally entered into before 10 May 2011. Examples of 'adjustments to **pre-existing commitments**' include refinancing of the car, altering the duration and/or repayment amount of an existing lease contract, or fitting in new accessories to a leased car after the lease commenced.

Transitional rules apply from 10 May 2011 to 31 March 2014 and, then, the new rule applies from 1 April 2014 onwards. The following table illustrates the old, transitional and new fractions.

Distance Travelled	OLD	TRANSITIONAL			NEW
	Existing Arrangements	From 10 May 2011	From 1 April 2012	From 1 April 2013	From 1 April 2014
0 – 15,000 km	0.26	0.20	0.20	0.20	0.20
15,001 – 25,000 km	0.20	0.20	0.20	0.20	0.20
25,001 – 40,000 km	0.11	0.14	0.17	0.20	0.20
40,001 km and above	0.07	0.10	0.13	0.17	0.20

The change has altered the 'rules of the game' and, as a result, we recommend Accountants contact their clients to ensure they are aware of these new rules.

Furthermore, the Australian Taxation Office ("ATO") has indicated that it will focus its 'compliance activities' in the 2012 FBT year on car fringe benefits. This is not surprising given that car fringe benefits are one of the most popular benefits provided by employers and the Statutory Formula method is by far the most frequently used method to calculate the taxable value of car benefits.

Taxation Ruling TR 2011/3 - Meaning of cost price of a car for Fringe Benefit Tax (FBT) purpose

The ATO has issued a new ruling clarifying its position on what constitutes the cost price of a car for FBT purpose. A more favourable, practical approach to its previous position has been adopted.

The ruling sets out that the phrase 'expenditure incurred' defined in s. 136(1) of the FBT Act is intended to reflect the **net expenditure** borne by an employer or lessor in acquiring a car. Below are instances of certain common arrangements where the cost price of a car is reduced:

- A trade-in provided to a car dealer in respect of a car purchased by an employer or lessor
- An employee makes a cash contribution towards the purchase price of a car acquired by an employer direct to the employer
- A manufacturer's rebate is paid to an employer after the purchase of a car
- Fleet discounts and other sales incentives provided in respect of the purchase of a car

The ruling applies to the FBT years commencing both before and after its date of issue, 17 August 2011.

Living Away From Home Allowance (LAFHA)

Another audit focus announced by the ATO is in relation to the benefits provided by employers by way of paying Living Away from Home Allowances (LAFHA). The popularity of these benefits has risen significantly in recent years, considering the mining boom and the fact that the benefits are concessional taxed.

The ATO are particularly concerned with the following issues:

- Employers have incorrectly assessed the status of their employees as Living Away From Home (LAFH);
- Employers have incorrectly applied the FBT exemptions and concessions when they pay the allowances;
- Valid employee declaration forms are either not signed by the employees and/or not kept as records by the employers.

To avoid a costly ATO audit, it is advised that Accountants contact their business clients to review their existing LAFHA arrangements and ensure the current process complies with the record-keeping requirements that are unique to the provision of the LAFHA benefits.

As another FBT end of year is approaching, it is a timely reminder to review current arrangements in place, comply with the record-keeping requirements and seek advice from your accountant on how the changes may affect you.

Please contact **Peter Hong, Alicia Jenkins** or **Mimi Ngo** with your FBT queries.

COMMISSIONER'S POWER TO WITHHOLD GST REFUNDS

This week the Government introduced legislation containing amendments that confers significantly more power to the Commissioner to withhold refunds. This is in direct response to the Full Federal Court's Multiflex decision. You may recall that the case involved the payment of a GST refund when the ATO suspected that tax invoices were fraudulent. The Full Court of the Federal Court concluded that the law did not provide the ATO with power to withhold the payment of a running balance account surplus.

The amending provision to the Taxation Administration Act goes much further than GST input tax credit refunds and confers significant power upon the Commissioner to withhold refunds. **All running balance account surpluses** could be able to be retained by the Commissioner if he is of the view that a return or a Business Activity Statement requires verification.

The Commissioner is required to consider several factors in deciding whether to withhold a refund, and an objective 'reasonableness' test applies to the requirement to verify information given in relation to the refund. However, the refund may be retained for up to 75 days.

In this regard, the retention of a refund to which a taxpayer is entitled can have an irreversible impact on the cashflow of a SME business. We will be monitoring the finalisation of this legislation and will keep you informed of these developments.

If you have a client who has a refund currently being withheld by the ATO or that is the subject of an ATO verification check and require assistance, we have extensive experience in tax advocacy, objections and private ruling matters.

Please contact **Mimi Ngo** to discuss how we can assist.

MKT ACCOUNTANTS NETWORK 2012 FOOTY TIPPING

MKT - Taxation Advisors would like to invite you to join our AFL Footy Tipping competition for the 2012 season.

The competition is free to enter and available to yourself and any member of your firm.

\$20 Voucher to the Weekly Winner and over \$1,000 in the prize pool just for playing.

Please follow the link for details of how to join. <http://content.eneewslettersonline.com/11245/57699.html>

Season starts Saturday **March 24**.

MKT'S PREMIUM ACCOUNTANTS NETWORK - SUBSCRIPTIONS CLOSING

Do You Need More Tax Support?

Would you like Priority Access to Tax Advisors that spend every day dealing with Business Tax matters?

MKT Tax Advisors has been providing specialist tax support to Accountants, Lawyers and Financial Planners for over 20 years through our Accountant's Network and are proud to offer our Premium subscription that elevates the services and value we provide to you and your clients.

If you would like to know more, please contact **Sean Pearce** or **Nigel Kingston** on 9481 8448 or contact **Janine for the Subscription Flyer**.

Registrations close 1 April 2012 so please ACT NOW if you want to be a part of this Network.