

TAXWISE® BUSINESS NEWS

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LUXURY CAR TAX REFUNDS

In our Federal Budget roundup this year, we alerted you to the Government's intention to increase the luxury car tax from 25% to 33%.

After much negotiation, the Government has succeeded in getting this proposal through the Parliament and it is now law.

From 1 July 2008, the increased rate of luxury car tax of 33% applies to certain vehicles over the luxury car threshold (\$57,180 for the 2008-09 year).

However, a number of concessions were made to provide relief from the flow-on effects of the increase in the luxury car tax that may be of interest to you and your business.

Primary producers

If you are an eligible primary producer, you could be entitled to claim a refund (up to a maximum of \$3,000) for **one eligible vehicle** in a financial year.

Whilst some of the implementation details for this concession have yet to be clarified in regulations, there are a couple of points you need to be aware of:

- a "primary producer" is a company, trust, partnership or individual carrying on a primary production business including plant and animal cultivation, fishing and pearling, or tree farming and felling; and

- vehicles eligible for the refund include cars that are 4 wheel drive – some "all wheel" drive cars will also be eligible (these will be specified in the regulations).

Tourism operators

If you are an eligible tourism operator, you could be entitled to claim a refund (up to a maximum of \$3,000) **per eligible vehicle** in a financial year.

Whilst some of the implementation details for this concession have yet to be clarified in regulations, there are a couple of points you need to be aware of:

- you are an eligible tourism operator if you use the vehicle solely for the purposes of carrying on your business, the principal purpose of which is carrying tourists for tourist activities; and
- as with primary producers, vehicles eligible for the refund include cars that are 4 wheel drive – some "all wheel" drive cars will also be eligible (these will be specified in the regulations).

TIP

If you are entitled to a refund, you must claim it within four years of you becoming entitled to it.

BUSINESS SUCCESSION PLANNING FOR THE FAMILY BUSINESS

Whilst we tend to focus mainly on tax issues in our newsletters, ensuring ongoing success for your business is not just about tax planning – it's important for sure, but it's not everything.

Exiting your business has been flagged by the ATO as something it is taking a closer look at

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right now, particularly in the small business sector (family businesses especially).

In light of the ATO's focus in this area, we thought it might be useful to have a look at some of the broader non-tax and tax issues involved in getting ready to hand over the family business.

Succession planning

Commonly referred to as **succession planning**, this is all about getting ready to hand over your business effectively.

This is an important planning process often overlooked by small businesses.

Once you have built and grown your business, you may find yourself no longer wanting to play a part in its management and/or ownership.

This may happen voluntarily (eg, when you retire or decide to sell up), or may be forced by unexpected circumstances (eg, bankruptcy or for health reasons).

To help you understand what succession planning is all about, set out below is a checklist of some of the issues that should form part of your succession plan.

It's a big topic to cover in a small space, so we are just outlining the bare bones of some of what is involved.

As always, it's best to get more detailed advice about how to develop and implement this type of plan for your business.

Identify someone to take over

Work out what skills are required to run your business and then identify someone who can do it (your successor).

If you plan to be involved in the business in some way after the hand-over, make sure you are comfortable with the succession process and are in a position to continue to be involved on terms agreeable to all parties.

TIP

Start by carefully documenting how your business is managed, noting what works and what doesn't work. Ideally, your successor should be someone who is aware of how your business works.

Identify and maintain key relationships

Ensure all the relationships that are critical to your business' success continue to exist after any type of hand-over.

Key relationships for your business may include your:

- suppliers;
- business referral sources;
- financiers;
- sources of your market intelligence;
- employees;
- external advisers (eg, your solicitors and accountants); and
- your landlord - if you have one.

Once you identify your key relationships you then consider what strategies to put in place to maintain these relationships after hand-over.

With credit tightening at present, one of your most important relationships is with your bank.

Keep this relationship on a sound footing by ensuring your business is in order:

- make sure your financial records are up to date; and
- get your budgets and cash flow forecasts prepared for the upcoming year.

Funding for life's events

It's advisable to think about funding for events in your business and your life, especially those situations that are usually unexpected. On your planning list should be events like:

- retirement;
- resignation;
- forced leaving (eg, bankruptcy);
- death;
- total and permanent disablement; and
- trauma related events.

THINK ABOUT INSURANCE

If you do not have appropriate insurance, you should be aware that you can insure against events like death, total disablement and trauma related events.

Tax issues

At some stage, succession planning inevitably involves developing strategies to transfer your ownership and management of your business and this will have tax consequences.

These consequences can be complex and may involve not only Federal taxes (eg, income tax and tax on any capital gains) but also State taxes (eg, possibly some stamp duty on asset transfers).

Ultimately, any tax consequences will be directly affected by the business structure through which you operate your business.

For instance, you may need to consider the best way of transferring:

- direct ownership (eg, a sole trader);
- an interest in a partnership;
- shares in a company; and
- units in a unit trust.

Access to significant CGT reductions

Any transfer/sale of your business assets or your interest in your business may attract capital gains tax (CGT). You should be aware that there are general CGT concessions as well as CGT concessions designed especially for eligible small businesses.

You may considerably reduce any potential tax bills with a well planned combination of these concessions.

From 1 July 2007, there is a single point of access for most small businesses with an aggregated turnover of less than \$2 million to a range of small business tax concessions that meet their business needs.

The small business CGT concessions are part of this simplified single entry point and set out below is a list of the main small business CGT concessions.

It's best to get advice about how these concessions may apply in your particular

circumstances because their application can be tricky.

CGT 15-year asset exemption - you may be able to choose to be exempt from CGT when you sell a business asset you have owned continuously for 15 years (if at the time you are at least 55 years old and retiring, or you are permanently incapacitated).

CGT 50% active asset reduction - you may be able to choose to reduce your capital gain by 50% on the sale of an active asset (this reduction can apply in addition to the general 50% CGT discount for assets held for twelve months or more).

CGT retirement exemption - if you are 55 years or over, you may be able to choose to be exempt from CGT on the sale of a business asset up to a lifetime limit of \$500,000. If you are under 55, this payment must be rolled over into a complying superannuation fund or an eligible retirement savings account.

CGT roll-over provisions - you may be able to choose to roll-over all or part of a capital gain from the sale of a business asset if you acquire a replacement asset or make improvements to an existing asset.

TIP

If your business doesn't satisfy the \$2 million small business threshold test, but the net value of certain of your CGT assets (and those of entities associated with you) is less than \$6 million, it can still access the CGT small business concessions, subject to satisfying any other eligibility criteria for these concessions.

CHRISTMAS CHEER AND THE ATO

With the December festive season just around the corner, it's time to remind you again to be aware of some of the potential tax traps in spreading the season's festive goodwill.

A bit like an unwanted guest who turns up at your party without an invitation, the ATO has an interest in your office festive season events especially from a fringe benefits tax (FBT) point of view.

FORWARD PLANNING IS ESSENTIAL

The impact of FBT rules on Christmas celebrations can be particularly vexing. It's absolutely essential to get advice about what to do beforehand to keep things under control.

Christmas parties and FBT

The potential FBT consequences of your Christmas party can be tricky because of the different ways FBT can impact on different types of people, costs and situations.

Whether you're likely to have an FBT problem depends on:

- where and when you have your party;
- who comes; and
- how much it costs.

We can't cover all the possibilities, but here are some outcomes for you to consider.

Celebrating on site

If you hold your party on a work day at your business premises and only your employees attend, costs such as food and drink are FBT exempt, regardless of what the cost is per head for each employee.

However, if you also invite your employees' associates (eg, family) and perhaps some clients then it gets a bit more complicated:

- what you spend on entertaining your employees' associates are taxable fringe benefits and you'll need to work out whether you have an FBT liability; and
- what you spend on your clients may be exempt from FBT altogether.

TIP

Food and drink you provide to your clients is likely to be exempt from FBT whether at a social or business function on or off your business premises.

Celebrating offsite or not on a work day

If your party isn't held on a work day or on your business premises (eg, you head off to the local restaurant), the FBT alarm bells can really start to ring loud and clear.

However, if you can contain your costs by keeping them under \$300 per head for your employees and employees' associates – you may be able to reduce your FBT liability by relying on the *minor benefit exemption*.

Calculating whether you come in below the \$300 minor benefit threshold can be tricky.

For example, the cost per head includes the cost of food and drink and other items like:

- the cost of transport to venues; and
- taxis home.

A happy gift giving experience

Give some careful thought to how you give gifts to your employees at Christmas time:

- if you are also handing out gifts to your employees at the party, the ATO now considers them separately from the cost per head with regards to the party - you may be able to rely on the *minor benefits exemption* for a Christmas gift of less than \$300 in value, which is considered to be a separate benefit from the party itself;
- if you don't hand out gifts at the party but at some other time, it's possible that you may still be able to rely on the minor benefit exemption at that time if the value of each gift is less than \$300; and
- as an alternative, if the gifts you give are products that you would normally sell to members of the public, there is another exemption of \$1000 per annum for each employee that may apply (called an in-house exempt property benefit).

What's tax deductible?

Generally the cost of providing a Christmas party is income tax deductible only to the extent that it is subject to FBT.

In working out what you can claim as a tax deduction, you will need to watch out for the following types of expenditure:

- any costs that are exempt from FBT (eg, the exempt minor benefits and in-house exempt property benefits noted above) cannot be claimed as an income tax deduction; and
- the costs of entertaining clients are not subject to FBT and are also not income tax deductible.

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