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Why the ATO is Looking Closely at You this FBT Time

Almost half of all tax collected flows through about 800,000 employers. In an environment where tax revenues are falling, Fringe Benefits Tax (FBT) is of particular interest to regulators. The simple reason is that the ATO can rely on the fact that many employers simply fail to recognise their FBT obligations - it is low hanging fruit.

To save you from the virtual equivalent of a knock on the door from the ATO, we've devised a list of the key things to watch out for pre- and post the end of the FBT year on 31 March.

iPad vs Laptop ... What's the Difference?
The answer is not a lot any more. A few years ago the ATO considered that an iPad and a laptop were two different items with different functions. But now the ATO is being forced to keep pace with evolving technology, and has revisited the issue.

So why is this important? The distinction is important because under FBT law, an employee can, for example, salary sacrifice one portable electronic device each year FBT-free as long as that device is also used in their job. So, that means that as long as you use the device for your work (e.g. working from home), you can pay a lot less for that device than if you just walked into the shop and bought it. But wait there's more. You can also salary sacrifice more than one electronic device each year as long as those devices have different functions. So, you could salary sacrifice a laptop and an iPad in the same year FBT-free if the laptop and iPad had different functions.

With technology melding the functionality of electronic devices, the ATO have now said that employers need to look at the function of the device to make sure there is only one FBT-free device with that function each year. If the function is effectively the same, then only one device can be FBT-free. This is something to watch out for.

Cars and FBT: What You Should be on the Look Out For
Every year the ATO tells us what sort of things they're looking out for and they are always interested in cars! The ATO's view is that there are probably plenty of situations where FBT should be paid, but isn't.

One of the ways the ATO figures out if there is an FBT liability is by looking at companies claiming car expenses, but not lodging FBT returns and not reporting employee contributions on the company tax return. This doesn't mean there is a problem, but in some cases the ATO might ask you to prove that the car expenses don't trigger FBT.

Car Fringe Benefits: Rudd Government Changes Now Six Feet Under
Before the election, the Rudd Government sent the car and finance industry into a spin by announcing that they would scrap the Statutory Formula Method used to calculate fringe benefits tax on cars. The Abbott Government has now formally stated that they will not proceed with this measure.

If the statutory formula method had been scrapped, there would be an adverse effect on the taxable value of car fringe benefits where the car was mostly used for private use or the employee failed to keep an eligible log book. When using the statutory formula method, the taxable value of car fringe benefits is a flat 20% of the base value of the car, regardless of the distance travelled by the employee (note there are transitional rates in certain circumstances).

Travelling or Living Away From Home. What's the Difference When it Comes to Tax?
Over a year ago, significant changes were made to 'living away from home' allowances (LAFHA) to tighten up the rules. But the ATO has a view that not everyone is playing by the new rules.

Part of the problem comes down to defining whether someone is actually living away from home, or just travelling. The ATO is looking closely at Australian taxpayers claiming LAFHAs to make sure they are not incorrectly claiming exempt LAFHA.

If somebody is living in Sydney, but travelling to Melbourne every other week for work, they are simply travelling. They may be entitled to travel deductions, but cannot claim an exempt LAFHA. If the person relocates temporarily to Melbourne, keeps their home in Sydney for their use (it cannot be rented out), then it's more likely they can claim a LAFHA. You need to double check to get the distinctions right.

Is it Possible to Salary Sacrifice Your Spouse's Car?
It's not all bad news on the FBT front - there are still some opportunities out there. One area we are often asked about is associate leases. An associate lease is where you salary sacrifice the car repayments for an associate's car, e.g. your wife's car. In effect, your spouse leases their car back to your employer for you to use. This arrangement does not have to be just for new cars; it can work well with existing cars. And it works best when your spouse is on a lower tax bracket than you or is not earning an income.

While these arrangements sound good because they ultimately reduce the tax paid by the higher earning spouse, they may fall foul of the ATO's anti-avoidance rules. It's important to make sure that the appropriate documentation is in place to support these arrangements and the non-tax reasons for having an associate lease are clear.

School Teachers and Retail Employees Beware: In-House Benefit Rule Changes
If your employer lets you salary package the goods and services that they sell, then this is an in-house fringe benefit. Common examples include retailers who provide discounted clothes to employees or private schools discounting school fees for the employee's children.

Back in the 2012/13 'mini Budget' (the Mid-Year Economic and Fiscal Outlook) the Government announced that they would scrap the concessional treatment that applied to in-house fringe benefits. The old treatment allowed employees to only recognise 75% of the lowest publicly available cost of the goods or services reduced by a further $1,000 in their salary sacrifice agreements.

The transition period for this change that allowed people with pre-22 October 2012 salary sacrifice agreements to keep receiving the concession ends on 31 March 2014. If you are an employer with these agreements in place and you have not reviewed them, you need to do this quickly as it might significantly change the remuneration of your employee. If you are an employee receiving the concessional FBT treatment, you need to understand what the change will mean to you.

Selling Shares or Property? Why the ATO is Looking Over Your Shoulder

Data matching helps the ATO identify taxpayers that have not declared the full amount of income they make on their tax return.

They are now looking to expand the sources of data they match to make sure they get every last cent owing from the 12.4 million individual income tax returns lodged.

Treasury released a discussion paper on tax compliance and ATO data matching, putting forward ideas on some ways they wanted to increase the powers of the ATO to data match to cover areas such as sales of property, shares and units, and sales through merchant services. And you can understand why, given that in 2012 alone the ATO identified 1.4 million anomalies in property sales data compared to what was declared on income tax returns for Capital Gains Tax purposes.

The discussion paper is a 'warning' of what is coming. It's likely that in years to come, the ATO will not need you to tell them what you have been doing; they will already know.

AusIndustry R&D Deadline Looms

The deadline to register with AusIndustry for the R&D Tax Incentive ends on 30 April 2014.

The tax incentive is there to help businesses offset some of the costs of doing R&D. The program is open to businesses of all sizes in all sectors that undertake eligible R&D. If your business' activities are eligible, the offset can be a huge benefit offering:

- A 45% refundable tax offset (equivalent to a 150% deduction) to eligible entities with an aggregated turnover of less than $20m pa; or
- A non-refundable 40% tax offset (equivalent to 133% deduction) to all other eligible entities.

If you are uncertain whether your business would qualify for the R&D Tax Incentive, contact us today.