G J Barnett
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Tax and the sharing economy

The concept of a "sharing economy" has been around for long enough now to have had a very real impact on how we transact with each other.

About this newsletter

Welcome to our client information newsletter, your monthly tax and super update keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics covered, please contact us via the details below.

T: 02 9686 3130 | E: glenn@gjbarnett.com.au
W: www.gjbarnett.com.au

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What is the sharing economy? Think Airbnb, think Uber. By now, most people will have realised that the "sharing" part of the concept does not refer to an absence of any monetary exchange, but rather to the use and access of shared physical or human resources or assets. The means of these transactions is usually conducted online, and there are many who therefore argue that rather than "sharing economy" a more accurate term that could or should have been adopted would be "access economy".

As for the taxation treatment of these transactions, the ATO has found it necessary to provide guidance.

Tax and the sharing economy *cont*

HOW DOES THE TAXMAN DEFINE THE SHARING ECONOMY?

For its part, the ATO states that it views the sharing economy as a system that "connects buyers (users) and sellers (providers) through a facilitator who usually operates an app or a website".

The ATO identifies some popular sharing economy services in Australia as those that include:

- renting out a room or a whole house or unit on a short-time basis
- providing "taxi" travel services (or ride-sourcing) for a fare
- providing personal services, such as creative or professional services like graphic design, creating websites, or odd jobs like deliveries and furniture assembly, and
- renting out a car parking space.

TAX CONSIDERATIONS

The ATO says taxpayers who are involved with the sharing economy may need to consider:

- if they are carrying on an enterprise,
    - if they need an ABN
    - if they need to register for GST and lodge business activity statements
- if the price of the goods or services provided includes GST
- if and when they need to provide tax invoices for sales and services
- if they need to declare this income in an income tax return
- what GST credits and income tax deductions can be claimed for expenses related to earning income
- how all their sharing economy activities added together affect their GST and income tax obligations.

UBER DRIVERS BEWARE OF YOUR GST OBLIGATIONS

As a general rule, an entity is only required to register for an ABN and GST if they are carrying on an enterprise (say a business) and their current annual turnover or expected annual turnover is $75,000 or more.

The ATO says that if you carry on an enterprise of providing ride-sourcing services, under the GST law you need an ABN, need to be registered for GST, and are required to account for GST on the full amount of every fare regardless of how much or how little you earn (as the GST registration threshold does not apply to ride-sourcing services, but starts from the first dollar).

But you can also claim the business proportion of your input tax credits.

A recent decision in the Federal Court of Australia confirmed that Uber drivers must register for an ABN and for GST from the moment that they derive income from providing such services.

As Uber drivers are typically taken to be conducting a business as a sole trader by the ATO, you'll need to declare all the income earned from providing ride-sourcing services and can claim the expenses to the extent they relate to providing the services.

GST AND MULTIPLE ENTERPRISES

If you are providing goods and services across multiple websites or apps, or through other enterprises outside of the sharing economy, the ATO states that this would require an ABN and registration for GST when total turnover for all activities together is, or is expected to be, $75,000 or more per year.

Further, the ATO says if you are registered for GST because you are already carrying on an enterprise, you must account for GST on all the sharing economy goods and services provided that are subject to GST.

For example, if you have an enterprise that provides ride-sourcing services, and have to get an ABN and register for GST regardless of your turnover, you would also have to account for GST on a car park you rented out.

RECORD KEEPING

Regardless of how much you earn, or the reasons for you providing goods or services, the ATO says you should keep records of income and expenses so we can keep track of your activities and assist with tax obligations when they arise.

"You may intend to provide goods or services as a hobby or recreational pursuit," the ATO says, "but your level of activity over the whole year may mean that you are in fact running a business and need to comply with income tax and GST obligations."

Your duties and obligations under the sharing economy can be tricky, so please check with this office if you have any questions. ■

Share dividend income and franking credits

Mum and dad investors in receipt of dividends from their share portfolio often benefit from investing in blue chip shares because they usually have franking credits attached.

As a general rule, an Australian resident shareholder is assessed for tax on dividends received plus any franking credits attached to those dividends.

The shareholder is assessed on the "grossed-up" income and then allowed a "franking tax credit" in respect of the corporate tax paid by the company on the profits from which those dividends are paid. This system is referred to as the dividend imputation system.

This just means that the company attributes or assigns the underlying tax (imputes it) to the receiving shareholder. The dividend comes with a "franking credit" representing the company tax paid by the company on the profits underlying the dividend, which the shareholder can use to offset their own tax liability.

Dividends can be fully franked (that is, franking credits have been attached to 100% of the dividend paid), partly franked (franking credits have been attached to a portion of the dividend paid) or unfranked (no credits attached). Your dividend statement should spell out the percentage to which the dividend is franked.

Excess franking tax offsets are refundable to certain taxpayers (that is, individuals and superannuation funds). For a company, excess franking credits are not refundable, but may be converted into an equivalent tax loss and carried forward to use in a subsequent income year.

How it works

The example on the following page illustrates how the dividend imputation system works and how you can benefit if you receive a franked dividend.

As illustrated, for an individual, those who are paying tax above the personal tax rate of 30% will need to pay "top up tax" on the dividend received – while those who pay tax below the personal tax rate of 30% will in most cases be entitled to a refund.

What about trusts and partnerships?

If a franked dividend is paid to a trust or partnership, the franking credit is "grossed-up" and included in the trust or partnership's income. Each beneficiary or partner is typically entitled to utilise those credits based on their share of the net income (subject to satisfying a holding period rule, which stipulates that shares must be held "at risk" for at least 45 days – this rule may also apply to individuals). For discretionary trusts, satisfying the

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Share dividend income and franking credits *cont*

holding period rule may entail the trust making a family trust election. Further, special rules apply in relation to ensuring the franked dividends can be streamed to beneficiaries (ask us to clarify if these situations apply to your case).

Where a company is in receipt of franked dividends, the franking credit is included in the recipient company's assessable income and a franking credit tax offset is allowed (subject to the holding period rule). The franking credit is then credited to the recipient company's franking account, available to be attached to the recipient company's own frankable distributions.

As noted, companies that are in receipt of franked dividends cannot be entitled to a refund of franking credits where they are in a tax loss position. Any excess credits are to be converted into a tax loss for recoupment in later years.

Are franking credits always available?

Not always. Note that franking tax offsets can sometimes be denied or limited because the entitlement to franking tax offsets or a refund of franking credits is subject to certain rules (ask us for clarification), which can include:

- the "qualified person" requirement
- anti-avoidance rules, and
- anti-streaming rules.

If shareholders do not qualify for a franking tax offset, they do not "gross-up" (include the imputation credit in assessable income) and are not entitled to a franking tax offset.

We will make enquirie and account for your dividends and franking credits when we prepare your tax return – however, if you have any questions, please contact us.■

Example: Franked dividends and franking credits

A company earned the following amount of taxable income and after tax profit:

Taxable income $15,000
Income tax paid
(30% by the company)....................$4,500
After tax profit $10,500

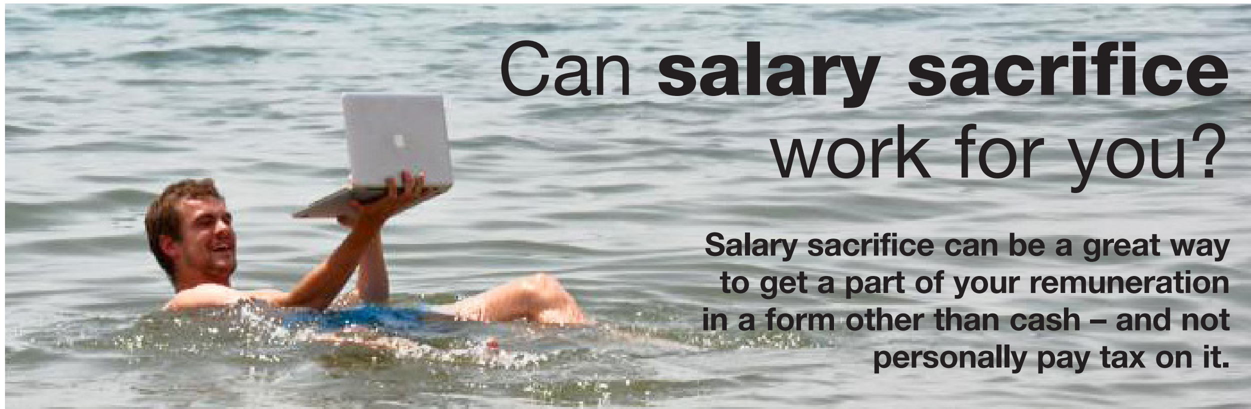
The company tax paid resulted in the following entry in the franking account:

Franking credit $4,500

An individual shareholder of the company receives a fully franked dividend. The table sets out the primary tax payable to shareholders on the dividend income at various tax rates (utilising the 2016-17 marginal tax rates to show the impact of the dividend at different marginal rates and ignores the Medicare levy).

Note: The top marginal tax rate is 47% due to the imposition of the temporary budget repair levy.

Marginal rate	**47%**	**37%**	**32.5%**	**19%**	**0%**
Dividend received (cash component)	$10,500	$10,500	$10,500	$10,500	$10,500
Add: Franking credit	$4,500	$4,500	$4,500	$4,500	$4,500
Assessable income	$15,000	$15,000	$15,000	$15,000	$15,000
Personal primary tax assessed (Rate x assessable income)	$7,050	$5,550	$4,875	$2,850	0
Less: franking tax offset	($4,500)	($4,500)	($4,500)	($4,500)	($4,500)
Tax payable	$2,550	$1,050	$375	Nil	Nil
Excess credit refundable	Nil	Nil	Nil	$1,650	$4,500



Can **salary sacrifice** work for you?

Salary sacrifice can be a great way to get a part of your remuneration in a form other than cash – and not personally pay tax on it.

Salary sacrifice (or salary packaging) is where you agree to take part of your wage as a benefit of some kind, equal in value to the salary it is exchanged for. The upside in you doing this is that your income tax is then based only on the reduced amount of salary that results.

If your employer agrees to go into a salary sacrificing arrangement with you, the benefit you get should typically be equal to the GST-exclusive value to the portion of salary that you give up, plus any FBT that is payable by your employer. Options that may be allowed by your employer include a car, shares or payments for your expenses, such as school fees, child care or home internet connection costs for example.

There's little restriction to the sorts of things you can ask for, but while you may have your own wish list, your employer might need to mull over whether or not any of them would fall within the ambit of the FBT regime. This is a crucial consideration for the employer, because while you get the benefit tax-free, the employer has to pay FBT on the value of the benefit.

Common fringe benefits you can salary sacrifice include:

- cars, (you can talk to us about novated leases, cars and FBT)
- property (which includes shares)
- expense payments (such as the payment of your loan repayments, school fees, child care costs and home internet costs – this also includes reimbursements of certain expenses).

On top of these, one of the most popular ones is salary sacrificing superannuation – more on this below.

FBT EXEMPTIONS

Basically, there are certain benefits that, because they don't generate more tax for your employer, might be more appealing. The following work-related items commonly provided in salary sacrifice arrangements are FBT-exempt benefits:

- a portable electronic device – eg. a tablet computer
- an item of computer software
- an item of protective clothing
- a briefcase
- a tool of trade.

FBT-exempt items can include things such as mobile phones, tools of trade, and protective clothing. Laptop computers can be exempt within limitations, such as a work-only use. Your employer will also need to report certain benefits ("reportable fringe benefits") on your annual tax payment summary where the total value of the reportable fringe benefits (that is, those subject to tax) exceeds $2,000. Excluded benefits and certain types of non-excluded benefits don't count. This will not affect your assessable income or Medicare levy. The total will however be used to calculate entitlements to income-tested government support programs or benefits.

SUPERANNUATION

Topping up super, in addition to the minimum 9.5% that your employer pays, can be a popular option for salary sacrifice arrangements. There are several benefits for going down this path. For starters, any super put away under such a scheme to a complying fund are not considered fringe benefits, and are not taxed to your employer as such. A bonus for your employer is that such super contributions also garner them an extra tax deduction (if you are under 75 years).

Within limits, super funds only pay tax on these contributions at a rate of 15%, which is probably less than the PAYG rates you would otherwise pay if you received the salary as cash. A super fund also only pays 15% tax on earnings (like interest) from the invested money, which again is probably less than what you'd pay if you earned interest on the money yourself.

Contact this office if you want to learn more about salary sacrificing for yourself or as an employer. ■

FBT and cars: a perennial head-scratcher

The provision of cars by employers to employees remains an issue that continues to create confusion for some business taxpayers. A not-uncommon situation is where the employer fails to identify that a car fringe benefit has been provided. This is typically found in family companies or trusts where a car bought by the business is provided to one of the owners who is also an employee (or that person's "associate" – say a spouse or child). Remember, a director is still considered an employee.

The ATO in the past has undertaken data matching activities with state base road registration authorities to identify newly registered vehicles under a company or trustee's name and issue amended assessments where the car has been provided to an employee (or an associate of the employee). The default statutory formula would be adopted in calculating the resulting FBT liability (contact us for more information). This could be costly where the car is considered a luxury motor vehicle. It is therefore important to identify whether there are any vehicles held by a business and whether they are provided for use in the personal capacity of any employee or their family members.

Another issue that can present problems with respect to car fringe benefits is whether valid log books have been properly maintained (where the employer has relied on the log book method in valuing benefits). Again, this is most relevant for family businesses where record keeping may not be up to scratch.

The ATO is reviewing log books being maintained for vehicles where there has been a high business use percentage. If you have adopted such an approach, it's important that you maintain and keep the appropriate log books. Failure to do so could result in the default statutory formula method being required by the ATO to be used, which will ultimately give rise to a higher FBT bill.

If you have any questions in relation to the ATO's recent activities, please contact this office. ■

Simplified approach for valuing car fringe benefits for fleets

During the FBT year, a simplified approach for calculating car fringe benefits for fleet vehicles was announced by the ATO. This change applies to the 2017 and later FBT years.

The new rules specifically apply to:

- an employer with a fleet of 20 or more cars
- the cars are "tool of trade" cars
- the employees are mandated to maintain log books in a log book year
- the employer holds valid log books for at least 75% of the cars in the log book year
- the cars are of a make and model chosen by the employer, rather than the employee
- each car in the fleet had a GST-inclusive value less than the luxury car limit applicable at the time the car was acquired, and
- the cars are not provided as part of an employee's remuneration package (for example, under a salary packaging arrangement), and employees cannot elect to receive additional remuneration in lieu of the use of the cars.

If the above is satisfied, a business can apply an average business use percentage to all tool of trade cars held in the fleet in the log book year and the following four years.

Average business use percentage is determined by:

- gathering all log books kept for each car in the fleet
- determining which of those log books are valid
- confirming that the employer has valid log books for at least 75% of the cars in the fleet, and
- calculating the average of the business use percentages determined in accordance with each of the valid log books. ■

SMSFs and the **in-house asset rules** explained

A not-uncommon conundrum for many SMSF trustees is what to do when the fund is found to have breached the in-house asset rules. There are also some common misconceptions about these regulations that keep resurfacing.

WHAT DOES THE ATO SAY IN RELATION TO THE IN-HOUSE ASSET RULES?

Recent ATO statistics on the SMSF sector show the proportion of reported breaches that relate to the in-house asset rules remains high. While it can be argued that the higher number is because the in-house asset provisions are by far the most complex and hard to understand SMSF investment rules, it is still critical for trustees to improve compliance to prevent the substantial penalties imposed for breaching these rules.

WHAT'S AN IN-HOUSE ASSET AND HOW DOES THE LIMIT WORK?

Essentially, an in-house asset is a loan to, lease to, or an investment in, a related party of the fund.

The term "related party" is relevant for an SMSF for the purpose of ascertaining whether an investment constitutes an investment in an in-house asset.

Full discussion of the definition of a related party will take up more space than we have available here, but the key issue for our purposes is that a related party will include the fund's members, their relatives, and entities such as companies or trusts that are controlled or majority-owned by members and their associates (that is, relatives of members, partners in partnerships with those members, and companies or trusts that are controlled or majority-owned).

Whether or not a particular investment is an "in-house" asset of the fund is important because a trustee must not invest in assets that cause the value of the in-house assets of the fund to exceed 5% of the total market value of the fund's assets.

In-house assets are measured at market value, and the market value ratio of 5% (that is, market value of in-house assets expressed as a percentage of the market value of total fund assets) applies to all regulated superannuation funds. This low percentage was mainly designed to limit use of fund assets by related parties to protect the retirement benefits of members.

Perhaps one of the most important points to note is that the market value ratio must be tested at June 30 each year as well as during the course of the income year that a new in-house asset is acquired by the fund.

WHAT IF THE LIMIT IS EXCEEDED?

The relevant provision of the legislation requires the trustees of funds exceeding the 5% in-house asset limit at the end of an income year to prepare a written plan to rectify the situation before the end of the following income year.

The plan must specify the amount that is above the in-house asset limit and set out what steps will be undertaken to get the limit below 5% (generally by disposing or selling excess assets). Each trustee of the fund must ensure that the steps in the plan are carried out within the next year of income.

Another provision of the same legislation applies during the course of the year when a new in-house asset is acquired, and prohibits the acquisition of an in-house asset if the market value ratio already exceeds 5%, or,

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SMSFs and the in-house asset rules *cont*

if this level is not exceeded, applies when acquiring an in-house asset that would cause it to exceed 5%. This means a trustee is only allowed to acquire an in-house asset provided the percentage of the total does not exceed the 5% limit after the acquisition.

It is worth noting these provisions must be considered in their entirety, not relying on either one in isolation. Focusing solely on the level of in-house assets at June 30 each year (the first provision) and not taking into account the rules applicable to new in-house assets acquired during the course of an income year (set out in the second provision) may lead to the misconception that no breach of the in-house asset rules could occur as long as the fund's in-house assets at June 30 each year is under the 5% limit. This may not be the view taken by the ATO.

Another noteworthy point is that the trustee, under the rectification plan, can only sell/dispose of an asset that meets the definition of an in-house asset if the level of 5% is exceeded at the end of a financial year. This is an important consideration that is quite often misunderstood.

EXCEPTIONS TO THE IN-HOUSE ASSET RULES

Like many rules governing SMSFs, there are a range of exclusions and transitional arrangements that specifically exclude certain investments in related parties from being considered an in-house asset, including, but not limited to:

- investments in business real property
- any investments in a related unit trust (or company) purchased before August 11, 1999 and certain new investments in these trusts/companies made before June 30, 2009
- investments in a non-geared related unit trust or company that meets certain requirements, and
- investments in a widely held unit trust (such as a public unlisted property fund).

OTHER CONSIDERATIONS

As stated earlier, the definition of an in-house asset includes a loan to a related party of the fund. It is important to note however that while a related party of the fund can include a member and their relatives, SMSF loans and other financial assistance to members and/or relatives of members are expressly prohibited under another section of the legislation.

Consequently, an SMSF cannot lend money or provide any other financial assistance to members and/or their relatives even though the value of the loan may not contravene the in-house asset rules (that is, being less than 5% of the fund's value). This is because there is no allowable limit under the superannuation law when it comes to loans to members or relatives of members. In order to rectify this contravention, the loan must be repaid in full to the SMSF.

In addition to the above, an SMSF loan to a related trust/company would not be prohibited under superannuation laws (subject to 5% in-house asset rule) on the assumption that the loan is not made to indirectly facilitate loans/financial assistance from the trust/company to fund members and/or their relatives. Otherwise, the fund may be in breach.

This part of the legislation is black and white; it outright prohibits the lending of money directly or indirectly to a member or a relative of a member regardless of the terms.

If you have any concerns with the in-house asset rules please contact us. ■

IN-HOUSE ASSET BREACH, OR NOT: AN EXAMPLE

An SMSF lends $10,000 to the family company (a related party), which represents less than 5% of all fund assets. The SMSF loan is supported by a written loan agreement, at a commercial rate of interest, with the capital to be repaid in three years.

Shortly after that, the company provides financial assistance to members of the fund by lending them $10,000 at a commercial rate of interest. The fund members use the $10,000 to cover personal credit card debt.

At face value, the loan would be in accordance with the in-house asset rules. In this case, there is however a clear breach as the company uses the money borrowed from the fund to facilitate loans from the company to fund members. In other words, financial assistance using SMSF resources has been indirectly provided to members. The investment is not allowed, and thus the loan must be repaid in full to the fund. ■

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