SIRAGUSA
ACCOUNTANTS & ADVISERS

Client Newsletter - Tax & Super

November 2019

Photo by Gift Habeshaw on Unsplash

Lost or destroyed tax records? Don't panic.

Now and then, taxpayers may find themselves in a situation where they simply have no records to back up a tax claim. There can be many reasons for this, such as losing documents (either paper or electronic) when moving home, or technology failures that end up with the same result (or at worst even destroy records).

And with a hot summer predicted, let's not forget the very real danger of natural disasters and the devastation these can have on people's lives, not just their financial concerns.

It's true that in these modern times the ATO's systems are able to pre-fill quite a lot of data, and this is only going to increase over time, which can mean that taxpayers can relax a little more about having to stay on top of record keeping. But there can still be situations where essential back-up documents or other evidence is required that may be unavailable for one reason or another.

continued overleaf ⇨

About this newsletter

Welcome to this edition of the Siragusa Accounting Group's client newsletter — where we keep you informed on the latest news and issues on tax and super. If you would like further information on any of the topics covered in this issue please contact us.

T: 03 9470 5497 | E: admin@siragusa.com.au

Content in partnership with Taxpayers Australia

Lost or destroyed tax records? Don't panic. ***cont***

If your records are damaged or destroyed or simply missing, there are ways to a remedy, or at least an acceptable outcome. First of all, be assured that we will hold quite a substantial amount of required information, so your first and perhaps best inquiry could be to your friendly tax professional.

But the ATO can also help. It can re-issue or supply copies of tax documents, such as income tax returns, activity statements, or notices of assessment. We can help if you need to request copies of any tax documents.

If you have lost your TFN, we will most likely have that on our records. If for some reason you have not given that to us in the past, it is still possible to interact with the ATO using other information to verify your identity, such as your date of birth, address details and bank account details. Your super fund will also have your TFN, but will also require identity verification.

Your employer or payer should have copies of your PAYG payment summaries, and your bank should be able to provide you with any bank records that have been destroyed. Note that if your bank charges a fee for replacing bank records and providing any other service to help you to reconstruct records or provide information due to a disaster; you can claim a deduction in the income year that those fees are charged.

If you are unable to substantiate claims made in your tax returns or activity statements because your records have been lost or destroyed, it is generally the case that the ATO is still able to accept the claim without substantiation — for example, where it is not reasonably possible to obtain the original documents.

If you have a self-managed super fund (SMSF), it is a requirement to maintain compliance as an SMSF to keep certain records. If you have lost these records in a disaster, the ATO will consider a request for additional time to meet your reporting obligations (call 13 10 20). Where possible, the ATO should make available information that was previously reported for your SMSF. ■

Super downsizer scheme: common errors

The super downsizer scheme started on 1 July 2018 and has allowed older Australians to sell their homes and contribute up to $300,000 of the proceeds from the sale into super.

Recent figures from the ATO show that more than 5,000 people Australia-wide have made this type of contribution, with 55% being made by females.

The ATO says it is seeing some common mistakes around eligibility for the downsizer measure. You can only make downsizing contributions for the sale of one home. You can't access it again for the sale of a second home. Downsizer contributions are not tax deductible and will be taken into account for determining eligibility for the age pension. If you sell your home, are eligible and choose to make a downsizer contribution, there is no requirement for you to purchase another home.

Existing contribution caps and restrictions do not apply to downsizer contributions. If you meet the eligibility requirements, a downsizer contribution will not be treated as a non-concessional contribution and will not count towards your contributions caps.

It will however count towards your:

- total super balance when it is recalculated on 30 June at the end of a financial year
- transfer balance cap, and can limit the amount that you can transfer to and hold in your retirement phase superannuation accounts.

The ATO also reminds taxpayers that it can pay to make sure that:

- you or your spouse must have owned the home for 10 years or more prior to sale
- the date for contract of sale must be on or after 1 July 2018
- the proceeds from the sale of the home must be either exempt or partially exempt from capital gains tax under the main residence exemption, or would be entitled to such an exemption if the home was a CGT rather than a pre-CGT asset. ■

Photo by Michał Parzuchowski on Unsplash

An SMSF trustee duty not to be forgotten: The investment strategy

The majority of people who set up their own SMSF say that "control" is a big reason for doing it. There is flexibility and benefits in running your own superannuation fund, but it is also a big responsibility to make sure your fund grows and provides for your retirement.

Preparing an "investment strategy" is one of the key tasks that SMSF trustees need to complete — and maintain. This involves formulating a strategy that takes into account risk, return and diversification. There is no master plan or prescribed format for preparing an investment strategy, and it will be largely determined by your own approach to investment and risk, and in fact will be unique to your SMSF.

Your investment strategy provides you and the other trustees with a framework for making investment decisions. It should be in writing so you can show your investment decisions comply with your fund's trust deed and the super laws, and it will also be used during the annual audit and in making appropriate assessments. This is why your investment strategy will need to be regularly updated, especially as members get older and risk profiles change.

When preparing your investment strategy, you need to consider:

- diversification (investing in a range of assets and asset classes)
- the risk and likely return from investments, to maximise member returns
- the liquidity of fund assets (how easily they can be converted to cash)
- the fund's ability to pay benefits when members retire
- members' needs and circumstances (for example, their age and retirement needs)
- costs that the fund incurs.

continued overleaf ⇨

An SMSF trustee duty not to be forgotten: The investment strategy *cont*

There are however legislated requirements and conditions for investing for your SMSF, such as not buying assets from, or lending to, fund members or other related parties (although there are some exceptions). Note also that the ATO's definition of "non-arms length income" has recently tightened to include certain expenditure. The point however is that your strategy should show that you are sticking to the rules, but also the trust deed can also set out investment criteria.

One major rule is that the SMSF needs to meet the "sole purpose test" – see below. The financial arrangements entered into need to also reflect this purpose.

The *Superannuation Industry (Supervision) Act 1993* (SISA) states that:

> *"The trustee of the entity must formulate and give effect to an investment strategy that has regard to all the circumstances of the entity, including in particular:*
>
> - *the risk involved in making, holding and realising, and the likely return from, the entity's investments, having regard to its objectives and expected cash flow requirements*
> - *the composition of the entity's investments as a whole, including the extent to which they are diverse or involve exposure of the entity to risks from inadequate diversification*
> - *the liquidity of the entity's investments, having regard to its expected cash flow requirements*
> - *the ability of the entity to discharge its existing and prospective liabilities."*

The bottom line is that an SMSF's trustees are responsible, and the "sole purpose test" needs to always be the primary focus.

The members' investment objectives will be the starting point when devising a strategy. However it is also worth remembering that as time goes by these objectives will change. For example, if retirement is still some way off, a member's objective is likely to be to accumulate money and assets, so growing capital may be a primary aim. Later, when retirement is looming or is already a reality, a steady income stream is more likely to be the primary objective. Of course a mixture of the two is also possible, as members may not be of a similar age.

Apart from a bias to growth or income investments, strategic decisions your fund will need to make include will it diversify asset allocation, or take a focused approach, and will your SMSF use other risk management tools for hedging purposes? These are the kind of questions to ask as part of setting your investment strategy.

Exposures to certain asset classes can be expressed as percentage ranges, and within each class you can also outline the investment methods – for example with equities, use of direct holdings, managed funds or derivatives and so on.

As the investment strategy is a document against which trustees are held accountable, it should be signed and dated. The document should also be updated every time a change is deemed necessary in investment approach. Minutes showing decisions made, and members agreeing to these decisions, can also form part of the document. ■

⇨ SOLE PURPOSE TEST

The SMSF needs to meet the "sole purpose test". This sole purpose is that the fund is established and managed solely to save for your retirement (or to your dependants in the event of your death). The financial arrangements entered into need to also reflect this purpose.

Small business:
Low-cost assets & the threshold rule

Photo by Melissa Walker Horn on Unsplash

There is a rule in the tax law that allows a business that doesn't use simplified depreciation to claim an immediate deduction for most business expenditure of $100 or less to buy tangible assets.

Known as the threshold rule, this can help small business owners save time as well, because you don't need to decide whether each purchase is of a revenue nature (immediately deductible) or of a capital nature (generally written-off over time).

Purchases of a revenue nature normally mean that the business expects the item to be consumed, damaged or lost within a short period of time, while purchases of a capital nature generally result in the item or asset being used over a longer period.

If a business is using the simplified depreciation rules, generally they won't use the threshold rule that applies for tax administrative purposes to low-cost items of $100 or less. Note that this figure includes GST in the price of the item.

How the threshold rule works

If your small business isn't using the simplified depreciation rules and it spends $100 or less, including any GST, to acquire a tangible asset in the ordinary course of carrying on the business, it can generally be assumed to be of a revenue nature for income tax purposes.

Note however that this rule doesn't apply to expenditure on:

- establishing a business or business venture, or building-up a significant store or stockpile of assets
- assets held under a lease, hire purchase or similar arrangement
- assets acquired for lease or hire to (or that will otherwise be used by) another entity
- assets included in an asset register that is maintained in a manner consistent with reporting requirements under accepted Australian accounting standards
- any asset that forms part of a collection of assets that is dealt with commercially as a collection (for example, by being sold and leased-back as a means of raising finance for the business)
- trading stock or spare parts.

Also the rule doesn't apply separately to expenditure on assets that are part of another composite asset (items wouldn't normally be separate assets where they're not functional on their own — for example, scaffolding clamps). Generally in these cases, the taxpayer must test expenditure on the composite asset.

Some examples of low-cost items that fall within the threshold rule, subject to the qualifications listed above, are:

- office equipment costing $100 or less, including handheld staplers, hole punches, manila folders, ring binders, geometry sets, stencils, calculators, tape dispensers, scissors, labelling machines, document holders, bar coding machines and the like
- catering items costing $100 or less, including cutlery, saucers, cups, and table linen
- tradesperson's small hand tools costing $100 or less, such as pliers, screwdrivers and hammers
- tools used by primary producers costing $100 or less, including secateurs and pliers. ■

Photo by Brigitta Schneiter on Unsplash

Three wise FBT tips for Christmas

Employers know that popping a champagne cork or three to celebrate the festive season lets staff know their efforts are appreciated, but the well-prepared business owner will also know that a little tax planning can help ensure that it's not the business that ends up with the FBT hangover.

Three benefits generally provided for the festive season, rather than gold, frankincense and myrrh, typically include:

- entertainment (that is, a Christmas party)
- gifts to employees, (and even their family), and
- cash bonuses.

Entertainment

Remember, there is no separate FBT category that relates to Christmas parties. Any social function may result in FBT, so the provision of "entertainment" at Christmas therefore mirrors the tax treatment such benefits will receive at other times of the year.

The ATO says that "meal entertainment", and therefore an FBT liability, can generally be said to arise when food or drink is provided. There can be exceptions, such as when morning and afternoon tea are supplied on a working day, or finger food is put out at a "working lunch". Note however that providing any alcohol while not on the business premises automatically slaps a big "entertainment" label on an event.

continued overleaf ⇨

Three wise FBT tips for Christmas ***cont***

The implications of certain benefits provided at the year-end Christmas function for an employer may vary depending on:

- whether the function is provided at the employer's premises or provided externally
- the cost of the function per attendee, and
- the basis that the employer is using in working out the taxable value of such benefits.

FBT implications

With a Christmas party, FBT applies to an employer when they provide a benefit to an employee or their associate (for example, family members). Food, drink, entertainment and gifts provided at a Christmas party to employees and their associates may constitute either:

i. an expense payment fringe benefit (eg. reimbursing an employee for expenses incurred or paying an expense on their behalf)

ii. a property fringe benefit (eg. provision of property such as meals or gifts by the employer), and

iii. a residual fringe benefit (eg. the provision of any right, privilege, service or facility such as the right to use a venue).

These benefits are generally valued for FBT purposes at their face value – typically referred to as an "actual basis" of valuation. However, an employer may elect to apply special valuation rules by using either the 50/50 split method or 12-week register method. Ask us about these two valuation methods and if they are suitable for your business. If the employer does not make an election, the taxable value is determined according to actual expenditure.

However "meal entertainment" fringe benefits provided at a Christmas function can be exempt from FBT if it is:

- a "minor benefit" (more below)
- an exempt property benefit (see below) is provided at the employer's premises on a work day.

Minor benefits

Broadly, a minor benefit is one where it:

- has a notional taxable value of less than $300 (inclusive of GST)
- is provided on an "infrequent" or "irregular" basis
- is not a reward for services, and
- satisfies other relevant conditions (ask us for details).

Note that other benefits (such as gifts) provided at a Christmas party may be considered as separate minor benefits in addition to meals provided, so the $300 threshold generally applies separately to each.

Exempt property benefit

A Christmas party held at the employer's business premises on a working day where food and drink, including alcohol, is provided is generally deemed to be an exempt property benefit, and is therefore usually FBT-free. This is no different to the occasional Friday drinks at work.

Note however that the FBT rules only exempt such property benefits where:

- the benefit is provided to a current employee in respect of his or her employment, and
- it is provided to, and consumed by, the employee on a **working day** and on the **business premises** of the employer (our emphasis).

This exemption applies only to employees. Where members of the employee's family ("associates") also attend a function (such as the Christmas party), the cost attributable to each associate is subject to FBT unless it is a minor benefit. If clients are invited to the function, the cost of providing the entertainment to these attendees is excluded from the FBT regime as this is not a "fringe benefit" to staff (and may qualify as a tax deduction — see below under "The giving of gifts").

continued overleaf ⇨

Three wise FBT tips for Christmas ***cont***

External Christmas functions

The costs associated with Christmas parties held off business premises (such as food, drink and transport to a restaurant) will give rise to FBT unless these costs are under the minor benefit threshold. Again, FBT will not apply to the extent that the benefit is provided to a client.

Getting there (and getting home)

It may be the case that to get to the Christmas function, an employer will provide their staff with taxi travel or some other form of transport. Taxi travel provided to an employee will generally attract FBT unless the travel is for a trip that either starts or ends at the employee's place of work.

For taxi travel to or from a Christmas function, employers should be mindful that:

- where the employer pays for an employee's taxi travel home from the Christmas party and the party is held on the business premises, no FBT will apply
- where the party is held off premises and the employer pays for a taxi to the venue and then also pays for the employee to take a taxi home, only the first trip will be FBT exempt. The second trip may be exempt under the minor benefits exemption if the employer has adopted to value meal entertainment on an actual basis
- the exemption does not apply to taxi travel provided to "associates" of employees (for example family members).

If other forms of transportation are provided to or from the venue, such as bus travel, then such costs will form part of the total meal entertainment expenditure and be subject to FBT. A minor benefit exemption for this benefit may be available if the threshold is not breached.

The giving of gifts

Gifts provided to employees or their associates will typically constitute a property fringe benefit and therefore are subject to FBT unless the minor benefit exemption applies. Gifts, and indeed all benefits associated with the Christmas function, should be considered separately to the Christmas party in light of the minor benefits exemption. For example, the cost of gifts such as bottles of wine and hampers given at the function should be looked at separately to determine if the minor benefits exemption applies to these benefits.

Gifts provided to clients are outside of the FBT rules, but may be deductible if they are being made for the purposes of producing future assessable income. Some exceptions apply, and employers should check with this office to make sure.

Cash bonuses

Some generous employers, budget permitting, may choose to provide cash bonuses to staff in their end-of-calendar-year payroll. Bonuses in the form of cash are considered to be a business cost, and therefore deductible under the general deduction provisions. But while there may be no FBT issues to consider, employers may need to remember PAYG withholding, superannuation guarantee and payroll tax issues. We can help with these decisions. ■