ATO provides tax guidance on the sharing economy

The ATO has released advice on the tax consequences of a range of ‘collaborative consumption’ activities, including taxi travel through ride-sourcing (also known as ride-sharing or ride-supplies, parking services and making offers to provide goods or services hailing), provided as part of the ‘sharing economy’. There is also advice on the provision of accommodation to a consumer. The advice released is most relevant for people providing the service, not organisations that facilitate bookings. Presumably, the ATO is still working on advice for the latter.

In the ATO’s press release, Deputy Commissioner James O'Halloran said that “[t]he existing tax law applies equally whether a buyer and seller come together at a bricks and mortar business or via a mobile phone app or web site.”

The ATO view is that ride-sourcing services are ‘taxi travel’ under the GST law. The existing tax law applies, and so drivers are required to register for GST regardless of their turnover. The ATO is allowing...
drivers until 1 August 2015 to obtain an ABN and register for GST.

In relation to accommodation, the ATO has confirmed that renting out a room in your house is an input taxed supply of residential premises, which is not subject to GST. However the rental income will be subject to income tax, and will also have CGT implications. Renting out a car parking space located in a residential building, by contrast, is a taxable supply that is subject to GST if it is made by a GST registered person or entity.

Many articles have appeared in the press on this topic during the week, including this one from the ABC, by Peter Ryan and Sophie McNeill, Uber the loser, Airbnb the winner in new tax office crackdown on digital economy’. General Manager of Uber, David Rohrsheim, is quoted as saying that Uber was taking legal advice and would challenge the ATO decision. Although Uber’s legal arguments are not clear, they are likely to centre on the issue of whether Uber’s services constitute ‘taxi travel’ as defined by s195-1 of the GST Act.

Shadow Treasurer lists the Federal Budget measures Labor will support

On 20 May 2015, the Shadow Treasurer Chris Bowen delivered a speech, Labor and the Economy: owning the future, to the National Press Club. Mr Bowen talked about various Federal Budget measures and listed the measures Labor would support through Parliament. The supported measures are:

- the change to taxation of holders of Work and Holiday visa holders
- the abolition of the large family bonus
- the removal of the zone tax offset for fly-in fly out workers
- changes to work-related car expense deduction methods; and
- the implementation of the “No Jab, No pay” child care policy.

In his Budget reply speech, Labor Leader Bill Shorten had earlier said his party would ‘co-operate’ with the government on the small business changes.

[CA Tax Team comment: note that we do not yet know whether the above measures will be bundled into a Bill which also contains measures which Labor and the minor parties oppose. Parliamentary tactics may yet be a factor in determining whether the Budget measures are enacted.]

New Zealand Budget 2015 delivered

The New Zealand Budget 2015 was delivered on 21 May 2015 by the Minister of Finance, Bill English. Readers can source the Budget material from the New Zealand Treasury website. See the Chartered Accountants ANZ media release for our views on the New Zealand Budget.

2015-16 Federal Budget – Top 10 tax and superannuation issues to talk to clients about and other practice development material for Chartered Accountants

In case you missed it on our website, here is a link to Michael Croker’s Top 10 tax and superannuation issues emerging from the 2015-16 Federal Budget. CAs can also use other Budget material for practice development purposes, including an infographic and key facts and figures (use the same link).

ATO flags tougher line on aged small business tax debt – Talk to clients struggling with their ATO payment plans

Daniel Meers from the Herald-Sun (21 May 2015) has interviewed ATO Deputy Commissioner (Debt), Cheryl-Lea Field in an article titled, ‘No more Mr Nice Tax Guy’. (No direct link provided due to pay wall). The article was also published in The Daily Telegraph.
The gist of the article is that the ATO is beginning a crackdown on unpaid small business tax debt. Wind-up applications have increased from 50 to “well over 100 per month”.

Ms Field is quoted in the following extracts:

- “There are a small number of people that won’t engage with us, and they may be trading insolvent or deliberately not paying.”
- Ms Field insisted the ATO would not close businesses that genuinely wanted to arrive at a payment plan. “If you are having difficulty, call us and let us know. We do want to help people rather than issue these [wind-up] notices.”
- Ms Field said it wasn’t fair for the ATO to overlook businesses refusing to pay taxes. “If someone up the road is not paying their [PAYG] withholding or their superannuation, then that is simply not fair.”

This tougher approach has been flagged for a while now and has been the subject of discussions between the ATO and CA ANZ – see Michael Croker’s Blog, Time to Talk About Tax Debt, published 5 December 2014.

> Great Debate: “Technology advancements will be the death knell of the accountant”

This debate at Business Forum Melbourne last week was soundly won by the Negative side, comprising Rob Carlton, Paul Meissner (Director, 5 Ways Group Chartered Accountants) and CA ANZ’s Geraldine Magarey. This is a debate which the Affirmative side – Tony Wilson, Paula Allen (Consultant) and Michael Croker (CA ANZ) – were happy to lose.

CASES

> **ElecNet (Aust) Pty Ltd (Trustee) v Commissioner of Taxation [2015] FCA 456**

This case resulted from an appeal against the Commissioner’s disallowance of an objection to a private ruling, and considered whether the Electrical Industry Severance Scheme was a “unit trust” for the purposes of Division 6C ITAA 1936. On analysis of the trust deed, Davies J found that the trust fund (i.e. the “property” of the trust”) was held for the benefit of the persons in respect of whom the employer contributions were made and each worker had a discrete proprietary interest in the contributions paid and standing to their worker’s account, although not a present right to immediate payment. The proprietary nature of their interest was sufficient to give rise to “beneficial interests in any property of the trust estate” within the meaning of “unit” in s 102M. The matter was remitted back to the ATO for further consideration.

LEGISLATION UPDATE

> **House of Representatives sits this week and next**

The House of Representatives will re-commence sittings today - Monday, 25 May 2015 - for two weeks. The Senate does not sit during this time because of Estimates hearings.

The **Tax and Superannuation Laws Amendment (Employee Share Schemes) Bill 2015** is expected to be debated on Tuesday 26 May.

> **Royal Assent to Customs anti-dumping Bills**

The **Customs Amendment (Anti-dumping Measures) Bill (No. 1) 2015** and **Customs Tariff (Anti-Dumping) Amendment Bill 2015** received Royal Assent on 20 May 2015.
ATO RULINGS

> View all ATO Rulings for the period 19 – 25 May 2015.

Comments are being sought for the following draft determination released on 20 May 2015:

> **TD 2015/D1** - Income tax: is an amount that is a cost in relation to a debt interest covered by paragraph 820-40(1)(a) ITAA 1997 deductible under section 25-90 (or, alternatively, under subsection 230-15(3)) where that amount is incurred in earning income that meets the requirements of both section 23AH ITAA 1936 and section 768-5 of the ITAA 1997?

Chartered Accountants Australia and New Zealand may be preparing or coordinating the preparation of a joint submission to the ATO in respect of the above draft Ruling. If you have any comments please e-mail them to us at the CA Tax Team at least a week before the ATO’s due date for comments.

ATO PUBLICATIONS

> **ATO trusts letter campaign for SMSF clients**

The ATO is reviewing the returns of self-managed superannuation funds (SMSFs) which have received distributions from a discretionary trust. Distributions of income to SMSFs from discretionary trusts are considered to be non-arm’s length income, which is taxed at the highest marginal rate and recorded at label U2 of the SMSF’s annual return.

Trustees of SMSFs (or their advisors) will receive an ATO letter asking them to contact the trustee of the distributing trust and review the trust deed and any resolutions to determine whether the amount reported in the annual return is non-arm’s length income. Based on the review, either an amendment will need to be lodged or a different letter should be used in the CODE box at label 11M of the SMSF annual return.

For more information, see the ATO’s web page, [Non-arm’s length income](http://services.ica.trclient.com/online/18256471-175.html).

> **ATO expresses preliminary views in GST technical discussion paper on adjustments and windfall gains – Wants feedback**

The ATO has published its preliminary views about the application of Division 142 to Division 19 adjustments on the Let's Talk page. Under Division 142 of the *A New Tax System (Goods and Services Tax)* Act 1999, a supplier is generally not entitled to a refund of overpaid GST until they have reimbursed the customer for any GST that has been passed on to that customer. This ensures that the supplier does not get a windfall gain where the cost of the GST has been borne by the customer.

The ATO requests feedback by 12 June 2015 (you'll need to register for Let's Talk to leave a comment on the discussion board).

> **ATO website updates – Note Federal Budget-related items**

Note that some ATO website updates deal with recent Federal Budget announcements:

- **Small Business - expanding accelerated depreciation** - ATO webpage on the 2015-2016 Budget measure to allow small business to immediately deduct each depreciating asset that costs less than $20,000.
- **ATO issues advice on $20,000 immediate asset deductibility for small business** - The ATO has published guidance on the Government’s proposal to allow small business to immediately deduct each asset that costs less than $20,000.
- **FBT - Introducing a cap for salary sacrificed meal entertainment and entertainment facility leasing expenses** – Changes are proposed to the FBT concessional treatment of meal entertainment and entertainment facility leasing benefits (meal entertainment benefits). Salary sacrificed meal entertainment benefits will be subject to a new grossed-up exemption cap of $5,000.
- **Zone Tax Offset - exclude 'fly-in-fly-out** – Information on the 2015-16 Budget measure to exclude...
people who are fly-in fly-out and drive-in drive-out workers whose normal residence is not within a zone from claiming the Zone Tax Offset from the 2015-16 tax year.

Other updates include:

- **Your clients' tax losses - tips to get it right.**
- **TB3 Tax basics for small business - home-based business** - If you operate your business from home, this webinar will help you claim home-based expenses and understand how capital gains tax may apply to you.
- **TB5 Tax basics for small business - concessions for small business** - Small businesses have access to a variety of tax concessions. This webinar looks at the concessions that are available for income tax, capital gains tax and GST.
- **TB6 Tax basics for small business - activity statement essentials** - This webinar explains how to complete your activity statement. The primary focus is on the labels to complete for the goods and services tax (GST), pay as you go (PAYG) withholding, and PAYG instalments.
- **Registered agent non-lodgment prosecutions** - Tax professionals who fail to lodge their own returns face prosecution where non-compliance persists.
- **Missed the 30 April webcast? Recording now available.**
- **Your personal lodgment statistics** - Find out some interesting statistics about registered agent lodgments.
- **ATO provides advice on taxi travel services through ride-sourcing** - The ATO has released advice on the tax consequences of a range of collaborative consumption activities, including taxi travel through ride-sourcing (also known as ride-sharing or ride-hailing), provided as part of the 'sharing economy'.
- **R&D tax incentive: what's attracting ATO attention** – ATO is working with AusIndustry to identify taxpayers involved in aggressive R&D tax incentive arrangements
- **Non-Profit News Service No 0423 - Public ancillary fund - transitional period closing soon** - The transitional period to amend the governing rules of public ancillary funds to comply with the Public ancillary fund guidelines closes on 1 July 2015. To remain endorsed as deductible gift recipients, these funds must comply with the guidelines.
- **Introduction to phoenix businesses video transcript** – A video transcript of the ATO Phoenix Webcast in which the ATO, ASIC, the Fair Work Ombudsman and Helen Anderson from the University of Melbourne talk about phoenix businesses.
- **Statutory Remedial Power** – Information on the Commissioner's statutory remedial power to allow for a more timely resolution of certain unforeseen or unintended outcomes in the taxation and superannuation law (announced by the government on 1 May 2015).

**TAX-RELATED TECHNOLOGY**

> **Federal Budget gives ATO more money for digital by default approaches**
The 2015-16 Federal Budget provides $130.9 million over four years to the ATO (including capital of $35.6 million) to "deliver an improved experience for clients in their dealings with the ATO". Or in other words, money to fund a digital by default approach, improvements to data and analytics infrastructure, and enhancing streamlined income tax returns through the myTax system for taxpayers with more complex tax affairs (e.g. wealthy individuals and small businesses). Refer [Reducing red tape - reforms to the Australian Taxation Office](http://services.ica.trclient.com/online/18256471-175.html).

> **Software providers and tax agent services**
The Tax Practitioners Board (TPB) has called for comments on the Draft TPB Information Sheet TPB(I) D27/2015 Software providers and the Tax Agent Services Act 2009. The draft is designed to help software providers who provide tax related software systems understand the operation and impact of the tax agent services regulatory regime. Comments are requested by 10 June 2015.

> **ATO system issues**
To ensure agents are able to access all the mail in the client correspondence list, the ATO says you need to increase the date range parameters when searching for your clients' mail. Read more about how the delivery date parameter works and how to use it: [Expand date range in client correspondence list](http://services.ica.trclient.com/online/18256471-175.html).
OTHER NEWS

> Assistant Treasurer publishes opinion piece on Federal Budget international tax integrity measures

> Senate inquiry into tax avoidance – additional documents submitted
The Additional Documents web page of the Senate Committee Inquiry into corporate tax avoidance has been updated for further answers to additional questions on notice received from various witnesses.

> Shadow Assistant Treasurer’s speech on tax-related issues
Dr Andrew Leigh’s speech to the Deloitte Tax Symposium 22 May 2015 is available on his website. In the speech, he talks about Labor’s approach to tax policy, including their two policy announcements covering multinational taxation and superannuation tax concessions, and what Budget measures Labor will support through Parliament (as noted by Chris Bowen in his address to the National Press Club which is covered earlier).

> Tax Commissioner backs laws on tax avoidance
The Commissioner of Taxation, Chris Jordan, talks about supporting the multinational anti-avoidance law announced by the Treasurer, Joe Hockey, in an article in The Australian (paywall restricts link).

> Productivity Commission draft report identifies ways to help businesses in start-up, transfer or closure mode
The Productivity Commission’s draft report examines the key drivers of business set-ups, transfers and closures and makes preliminary recommendations on ways (including tax-related mechanisms) that governments can do more to reduce impediments. A key draft recommendation is that the Corporations Act 2001 (C’th) should be amended to include provision for a ‘safe harbour’ to allow companies and their directors to explore restructuring options without liability for insolvent trading. During such a period, the directors would retain control of the company, but receive independent advice from registered advisers. Submissions are requested by Friday 3 July 2015.

> ACOSS report says Federal Budget fails fairness test
Read full statement and report.

> OECD - Revised discussion draft on BEPS Action 6 (Prevent Treaty Abuse)
The OECD has released a revised discussion draft regarding Action 6 of its Action Plan on Base Erosion and Profit Shifting (BEPS). Action 6 is concerned with preventing treaty abuse, in particular treaty shopping, by developing OECD Model treaty provisions, recommendations for domestic provisions and other guidelines. This latest discussion draft follows on from a November 2014 discussion draft that identified 20 different issues to be addressed as part of the follow-up work from the September 2014 Report on Action 6. Part 1 of the revised discussion draft sets out a new proposal for an alternative “simplified” limitation-on-benefits (LOB) rule. Part 2 discusses the follow up issues, including new proposals for treaty rules targeted at concerns related to special tax regimes and to changes to domestic law made after the conclusion of a treaty.

Comments on the revised discussion draft are due by 17 June 2015.

> OECD - Public comments released on BEPS Action 11 discussion draft
The OECD has released the public comments received on its discussion draft, BEPS Action 11: Improving the analysis of BEPS that was issued on 16 April 2015. Action 11 of the OECD’s Action Plan on Base Erosion and Profit Shifting (BEPS) involves establishing methodologies to improve the availability and analysis of data on BEPS, including to monitor the implementation of the Action Plan and to evaluate the effectiveness and economic impact of actions to address BEPS on an ongoing basis.

> OECD - Interview with Pascal Saint-Amans, OECD Tax Director in charge of the BEPS project
A video interview with Pascal Saint-Amans, Director, Centre for Tax Policy and Administration, OECD by Simon Rooke, Partner, PwC Australia focuses on the current status of the BEPS project.

> OECD releases report on global inequality – Urges greater focus on taxing the wealthy
In It Together: Why Less Inequality Benefits All Growth is an OECD report which says growth has disproportionally benefited higher income groups while lower income households have been left behind.
The richest 10% of the population now earn 9.6 times the income of the poorest 10%. This long-run increase in income inequality not only raises social and political concerns, but also economic ones (i.e. it tends to drag down GDP growth).

At the launch of the report, Angel Gurria (Secretary-General of the OECD) said: “…governments should not hesitate to use taxes and transfers to moderate differences in income and wealth. There has been a fear that redistribution damages growth and this has led to a long-term decline in redistribution in many countries. Our work suggests that well-designed, prudent redistribution need not harm growth. As top earners now have a greater capacity to pay taxes than before, governments should ensure that they pay their fair share of the tax burden.”

TRAINING & DEVELOPMENT

> Trending Tax Topics - Year end tax planning - Case Study
This practical, case study based session will ensure you understand your clients’ compliance requirements and the opportunities that may be available, risks to avoid, as well as seek to identify the issues that should be considered before 1 July 2015. LiveOne, 2 June 2015.

Check out Navigate Online >

MEMBER SERVICES

The weekly Tax Bulletin is an initiative of the Tax Team of Chartered Accountants Australia and New Zealand.

We invite your input on tax policy and administration issues. Please direct comments to Tax Team.

Please be aware that the Tax Team’s comments service is limited to the following areas:

- Where members believe they have identified a problem with the law/ATO interpretation of the law and want to bring it to our attention as a potential advocacy activity, or if they want to find out more about our advocacy activities more generally.
- Where members are experiencing difficulties dealing with the ATO, or if they believe they are being treated unfairly.
- When members want to find out more about submissions lodged or meetings with stakeholders that they have read about in the Tax Bulletin.

For specific advice or guidance, members can take advantage of the Chartered Accountants Tax Helpline service (CATH) that has been established with Crowe Horwath.

This is a subscription service with an annual cost of $495 (GST inclusive), which entitles members to eight advisory calls of up to ten minutes duration. A 10% discount to the normal hourly rates applies for extended consultation and written advice.

Telephone: 1800 069 330
The phone is staffed business days 8.30am - 5.30pm, Sydney time - answering service outside these hours.

Email: cataxhelp@crowehorwath.com.au

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