

Client Newsletter

Year End Tax Planning Checklist For the year ending 30 June 2017

For the information of clients we enclose this checklist which you may find helpful in planning your year-end tax strategies.

WHAT'S NEW?

1. SUPERANNUATION

Many of this years changes in taxation relate to superannuation and so we have listed below key areas that you may need to consider this year-end, both in planning for the rest of 2017 and looking forward into 2018 and beyond:-

- From 1 July 2017, a \$1.6m pension transfer cap will apply per member and the earnings therefrom will continue to be tax free, however earnings on funds in excess of the new \$1.6 million cap will be subject to tax at 15% (if retained in superannuation).
- From 1 July 2017 fund earnings attributable to Transition to Retirement Income Streams ("TRIS") will be taxed at 15% rather than be tax free which has been the rule since 2007.
- From 1 July 2017 individuals will be able to save for their first home deposit by making voluntary contributions into their super fund of up to \$15,000 per year (max. of \$30,000 in total). Contributions and deemed earnings can then be withdrawn (from 1 July 2018) for a first home deposit.
- From 1 July 2018 a person aged 65 or over can make a non concessional contribution into their super fund of up to \$300,000 from the proceeds of selling their home (a couple can therefore contribute \$600k into super). These contributions are not subject to the \$1.6m limit described above.

The tax rate for complying superannuation funds in accumulation phase for the 2017 year is 15% (2016 15%). Superannuation funds in pension phase will continue to be tax free (subject to the new \$1.6m cap mentioned above).

The superannuation contribution caps are as follows:-

	Year Ending 30 June 2017	From 1 July 2017
Concessional (i.e. deductible) caps	Cap Amount	Cap Amount
Aged over 49/under 75 as at 30 June 2016	\$35,000	\$25,000**
Under age 49 as at 30 June 2016	\$30,000	\$25,000**
Non-concessional (i.e. non- deductible) caps		
Eligible contributions	\$180,000*	\$100,000***

* Also note that \$540,000 bring forward rule can still apply (subject to transitional conditions).

** New bring forward rules apply from 1 July 2018 for members with balances of less than \$500k in super.

*** Only available if you have less than \$1.6m in your super account at June 30 the year before the contribution.

The changes to superannuation are complex so we encourage you to call your StewartBrown Partner or Manager to discuss the changes further.

2. BUSINESS TAXES

- Tax rates

The standard company tax rate for the 2017 year is 30%, however from 1 July 2016 companies qualifying as a small business (with an annual turnover of less than \$10m) will benefit from a reduced tax rate of 27.5% (previously 28.5%) - note this concession is for trading businesses only and does not apply to investment companies.

There are also small tax rate concessions for businesses conducted other than through companies.

- Plant and Equipment (\$20,000 Immediate asset Write-Off)

Small businesses (less than \$10m pa turnover (previously \$2m turnover)) may be eligible to use accelerated depreciation rates. These concessions allow small businesses to immediately write-off asset purchases of up to \$20,000 each which are acquired and installed ready for use between 7:30pm (AEST) 12 May 2015 and 30 June 2018 (previously 30 June 2017). Assets allocated to a small business general pool can also be written off if the pool balance is less than \$20,000.

- Obsolete equipment

In order to write-off obsolete plant and equipment in the 2017 financial year and crystallise a tax deduction for the written down value, the assets must be physically scrapped or disposed of prior to 30 June 2017.

3. [PERSONAL INCOME TAXES](#)

The following tax rates apply to individuals who are residents of Australia for tax purposes:-

Tax rates 2016 - 2017		Tax rates 2017 – 2018	
Taxable income	Tax on this income	Taxable income	Tax on this income
\$0 - \$18,200	Nil	\$0 - \$18,200	Nil
\$18,201 - \$37,000	19c for each \$1 over \$18,200	\$18,201 - \$37,000	19c for each \$1 over \$18,200
\$37,001 – \$87,000	\$3,572 plus 32.5c for each \$1 over \$37,000	\$37,001 – \$87,000	\$3,572 plus 32.5c for each \$1 over \$37,000
\$87,001 – \$180,000	\$19,822 plus 37c for each \$1 over \$87,000	\$87,001 – \$180,000	\$19,822 plus 37c for each \$1 over \$87,000
\$180,001 and over	\$54,232 plus 45c for each \$1 over \$180,000 Plus 2% Budget Repair Levy	\$180,001 and over	\$54,232 plus 45c for each \$1 over \$180,000
Medicare Levy	2%	Medicare Levy	2%

The above rates **do not** include the Medicare levy of 2.0%. (this levy will increase to 2.5% from 1 July 2019).

The temporary budget repair levy of 2% has been removed from 1 July 2017, effectively giving taxpayers earning more than \$180,000 a 2% tax reduction from that date onwards.

4. [PROPERTY INVESTORS](#)

There are two main changes that will affect property investors this year:

- Investors who purchase plant and equipment for their residential investment property after 9 May 2017 will be able to claim a deduction over the effective life of that asset. However, subsequent owners of that property will be unable to claim deductions for plant and equipment items purchased by a previous owner. Acquisitions of existing plant and equipment items will be reflected in the cost base for CGT purposes for subsequent investors.
- From 1 July 2017 you will not be entitled to claim deductions for travel expenses related to inspecting, maintaining or collecting rent for a residential rental property.

5. [FOREIGN INVESTORS](#)

Measures applying from Budget Night on 9 May 2017

- The Government will extend Australia's foreign resident CGT regime by:
 - denying foreign and temporary tax residents access to the CGT **main residence exemption** from 7:30PM (AEST) on **9 May 2017**. Note that existing properties held prior to this date will only be grandfathered until **30 June 2019**.
 - applying the principal asset test on an **associate inclusive basis** for foreign tax residents with indirect interests in Australian real property from 7:30PM (AEST) on **9 May 2017**. This will ensure that foreign tax residents cannot avoid a CGT liability by disaggregating indirect interests in Australian real property.
- The Government will introduce a charge of at least \$5,000 on foreign owners of residential property where the property is not occupied or genuinely available on the rental market for at least six months per year.
- The Government will introduce a 50% cap on foreign ownership in new developments through a condition on New Dwelling Exemption Certificates.

Measures applying from 1 July 2017

- The Government will extend Australia's FRCGW regime by increasing the CGT withholding rate for foreign tax residents from 10.0% to 12.5% **from 1 July 2017**.
- The Government will also reduce the CGT withholding threshold for foreign tax residents from **\$2million to \$750,000 from 1 July 2017**.

NSW taxes on Non Residents

In addition to the above, "foreign persons" (as defined under NSW State legislation) can face up to an additional 4% of stamp duty when they acquire real estate in NSW and will also face a land tax surcharge (in addition to the usual land tax) of 0.75% of the value of the property. Importantly, these additional land taxes and stamp duties can apply to an Australian Trust where the Deed for the Trust allows for a beneficiary to be a foreign person.

If you have a trust that owns property in Australia and one or more of your beneficiaries are currently (or are proposing to become) non residents we urge you to review your Trust Deed to avoid being caught by these additional taxes. Please contact your StewartBrown Partner or Manager to have your Trust Deed reviewed ASAP.

GENERAL YEAR-END TAX STRATEGIES

6. [DEFER INCOME](#)

Certain income is only taxed on receipt and, accordingly, it is sometimes possible to arrange for this type of income to mature or be received after 30 June 2017 rather than before. Examples include rent, interest and dividends.

Certain other business income is only assessable when the taxpayer has a legal right to sue for recovery of the debt and, accordingly, it may be appropriate to defer the completion of certain transactions until after 30 June 2017. Examples include:-

- Defer until July the completion of high profit transactions (e.g. signing of licensing agreements, royalty contracts, delivery of major product installations, etc.).
- Defer the completion of work in progress until July so that invoicing will be raised in the 2018 year.

Of particular importance this year is an effective reduction in tax as the 2% temporary budget repair levy will disappear after 30 June 2017. Therefore in some cases (for those earning more than \$180,000pa personally) income will be taxed at a lower rate next year (2017-2018).

7. [ACCELERATE DEDUCTIONS](#)

Generally businesses are able to claim income tax deductions for expenses incurred or paid prior to the end of the financial year (subject to the prepayment restrictions outlined in Item 13). Thus, to obtain an income tax deduction in the 2017 financial year it may be appropriate to accelerate and incur certain regular expenses in June 2017 rather than in July or August (e.g. the service or repair of an item of equipment in June rather than in July).

8. [BAD DEBTS](#)

Review your trade debtors and identify any bad debts that should be written-off. A bad debt will be deductible in the 2017 financial year provided the following tests are satisfied:-

- The debt must exist;
- The debt must be actually "bad" before writing it off;
- The debt must be physically written off prior to 30 June 2017;
- The debt must have been brought to account as income;
- A company writing-off a bad debt must satisfy the continuity of ownership test or same business test; and
- A discretionary trust writing-off a bad debt must have made a "Family Trust Election".

If you write-off a bad debt remember to claim back the relevant GST in your next BAS return (GST accrued basis only).

9. [SALARY SACRIFICE PAYMENTS \(Including Superannuation and Fringe Benefits\)](#)

Where an employee has the option to direct any bonus entitlement or other earnings into a superannuation fund (i.e. salary sacrifice super contribution) the employer must ensure that the request is made in writing prior to the amounts being earned by the employee. Please note that employees who intend to salary package fringe benefits and whose taxable income is less than \$180,000 should review their arrangements as the changes in the tax rates over recent years could impact on the tax-effectiveness of such arrangements.

10. [STAFF BONUSES](#)

For accrued staff bonuses to be deductible in the 2017 tax year the decision to pay the bonus and the determination of the bonus must be made and documented prior to 30 June 2017. If the above decisions are made after year-end, when the actual operating results have been determined, the bonuses will not be deductible until the 2018 tax year. Similar tests must be satisfied for accrued director's fees to be deductible.

11. [DONATIONS](#)

For donations to be deductible in the 2017 tax year they must be for \$2 or more and paid prior to 30 June 2017 (i.e. cheque cleared through the bank account by 30 June 2017). The tax deduction is limited to the available taxable income (i.e. donations cannot be used to generate or increase the amount of tax losses to be carried forward to a subsequent year). Accordingly, if your business is likely to make a tax loss, it may be to your advantage to make donations personally so as to ensure a full tax deduction.

12. FOREIGN EXCHANGE LOSSES

Consideration should be given to accelerating the realisation of unrealised foreign exchange revenue or capital losses before 30 June 2017. Such unrealised losses could be realised by the payment of an overseas liability, thus crystallising the loss before year-end.

Foreign losses continue to be deductible against domestic income.

13. PREPAYMENTS

Most taxpayers are not entitled to claim a deduction in the 2017 tax year for any part of a prepayment that relates to the period after 30 June 2017. Certain expenditure is excluded from this rule, as follows:-

- Where the payment amount is less than \$1,000 (excluding GST);
- Amounts required by law or an order of the court (e.g. workers' compensation premiums, land tax, etc.);
- Under a contract of service (e.g. salary or wages);
- Where the payment relates to non-business expenditure made by an individual taxpayer (e.g. interest on rental property); and
- Where the payment is made by a taxpayer who qualifies as a Small Business Entity (SBE).

Taxpayers who qualify as a SBE (i.e. under \$10 million turnover (previously \$2m)) or individuals with non-business expenditure (e.g. investments, property, etc.) are able to claim prepayments where the period of service does not exceed 12 months and the period of service ends in the next tax year (i.e. before 30 June 2018).

Warning to Businesses other than Small Business Entities (SBE)

Businesses need to carefully identify all expenses exceeding \$1,000 (excluding GST) paid in advance. This will include prepayments made throughout the financial year not just in June. For example, annual insurance premiums paid in December covering the calendar year (i.e. January to December) will be "caught" by these prepayment restrictions.

14. TAX LOSS SITUATIONS

Where your business entity is likely to be running at a tax loss, there may not be any tax benefit in accelerating tax deductions or deferring revenue in the current year. Again, as the tax deductibility of donations is wasted in a tax loss situation it may be more beneficial for donations to be made personally.

15. RESEARCH and DEVELOPMENT EXPENDITURE

Expenditure by a company on eligible R&D Projects will be entitled to the R&D tax incentive being a tax off-set of 43.5% of the eligible expenditure. To maximise the eligible expenditure for the year ended 30 June 2017, payments to related parties should be paid by 30 June (not just accrued) and superannuation attributable to R&D projects should also be paid prior to 30 June 2017.

16. TRADING STOCK & WORK IN PROGRESS

Factors to consider in respect of trading stock at year-end include:-

Stocktake

On the last day of trading of the financial year a physical count of all trading stock and work in progress should be undertaken and recorded (unless you have a reliable stock control system in place). Please note that a Small Business Entity (SBE) is not required to undertake a stock count of closing stock where the difference between the value of opening trading stock at the beginning of the year and closing stock is estimated to be \$5,000 or less. In these cases the SBE can elect not to do a stocktake but simply assume the closing stock is the same value as the opening stock.

Valuation

For income tax purposes trading stock (including work in progress) may be valued at cost price, market selling value or replacement value. The appropriate choice of valuation of trading stock will depend on the business circumstances for the year. The most common method adopted is the lower of the three alternatives for each item of stock. The valuation method selected can have a significant effect on the calculation of the year's taxable income. Cost should include direct material, shipping, labour and other manufacturing costs (if applicable). In addition, wholesalers and retailers should include an allowance for warehousing and distribution costs.

Obsolete Stock

In order to write-off obsolete and worthless stock in the 2017 tax year it is necessary to either physically scrap the stock prior to 30 June 2017 or to identify such stock and set it aside for scrapping within a reasonable time after year-end.

17. CAPITAL GAINS TAX (CGT)

Where an asset is acquired on or after 19 September 1985, CGT may apply on its subsequent sale. **Please note that for CGT purposes the purchase or selling date is the date of entry into the contract, not the settlement date.** To defer or minimise CGT payable where a capital profit would arise you could:-

- Take advantage of the 50% discount for individuals and trusts or the 33.33% discount for superannuation funds, by not disposing of the asset within 12 months of purchase;
- Defer the sale of assets until the beginning of the next tax year (where lower tax rates may apply);

- Match capital gains against capital losses; and/or
- For individual taxpayers, consider deferring the sale of assets until you have a low income year.

Other CGT facts to consider are:-

- Capital losses can only be used to reduce Capital Gains (prior to applying the 50%/33.33% discount);
- Any unrecouped realised CGT losses in the name of an individual are lost or forfeited in the event of death, so it is prudent to utilise such CGT losses as soon as possible; and
- On the sale of a business it may be possible to benefit from the various CGT small business tax concessions.

18. REDUCING EFFECTIVE TAX RATE

Individual taxpayers may be able to reduce their effective tax rate by:-

- Levelling out income peaks and troughs to avoid higher tax brackets;
- Moving deductions and losses to a higher income spouse or business entity;
- Moving income and gains to a lower income spouse or business entity;
- Deferring retirement or roll-over benefits until after 30 June; or
- Realising capital gains in a low income year and/or realising capital losses to offset capital gains.

SUPERANNUATION

19. SUPERANNUATION CONTRIBUTIONS – ACCUMULATION PHASE

The important aspects for tax deductibility of superannuation contributions are as follows:-

A) Tax Deductible Contributions

To be deductible in the 2017 year Superannuation contributions must be paid to a complying superannuation fund prior to 30 June 2017. The contribution payment must be cleared through the payer's bank account by 30 June 2017. We recommend making payments at least a week before the end of the financial year for this reason.

B) Superannuation Guarantee Legislation

In accordance with the Superannuation Guarantee (SG) legislation all employers must contribute at the specified contribution levels to a complying Superannuation Fund in respect of employees and also in respect of contractors who are individuals and who are providing predominantly services of labour. Such contributions are required to be paid within 28 days of the end of each quarter with the final payment in respect of the 2017 tax year due by 28 July 2017, otherwise Superannuation Guarantee Charge (SGC) is payable (which is not tax deductible).

All employers are urged to review their SG obligations and to pay the necessary superannuation contributions by 30 June 2017 (if a deduction is required in the 2017 year) and certainly by 28 July 2017 so as to avoid the SGC. The SG rate payable by all employers for the 2017 year is 9.5% of the employees' ordinary time earnings.

The Superannuation Guarantee rate will continue to be 9.5% until 1 July 2021.

C) Tax Deductible Contribution Caps

The 2017 concessional (i.e. tax deductible) contribution caps for all individuals are detailed in Item 1 above. The annual contribution caps apply to the total contributions from all sources (including compulsory SG contributions) so it is very important to check that contributions are not made in excess of these caps as additional tax payable may be significant. **Remember the contribution cap is measured by reference to the amount received by the super fund each year not the amount recorded as an expense in the employer's wages records/financial accounts.**

D) Self-Employed Contributions

Self-employed individuals are eligible (provided their employment related income is less than 10% of total assessable income and reportable fringe benefits) to claim a full deduction for superannuation contributions up to their contribution cap. Salary sacrifice contributions will be included as employment income in determining whether the 10% employment test is satisfied. Note that from 1 July 2017 this 10% employment test is being removed. This is a welcomed amendment.

E) Work Test

The eligibility to make contributions to superannuation for those aged over 65 but less than 75 is subject to the member satisfying a "work test" whereby they must be gainfully employed or self-employed for at least 40 hours in a period of not more than 30 consecutive days during the financial year. The relevant fund's trust deed must also allow such contributions to be accepted. We strongly recommend that the "work test" be satisfied before making any contribution.

F) Non-Concessional Contributions

The non-concessional contribution (i.e. non-tax deductible) caps for all individuals are detailed in Item 1 above. Individuals aged under 65 are still entitled to “bring forward” three years of non-concessional contributions totalling \$540,000. Inadvertent contributions in excess of the non-concessional cap, provided the correct procedure is followed, may be withdrawn from the super fund in accordance with a determination issued by the Commissioner. If not withdrawn penalty tax is applied. **Warning: New rules apply for Non Concessional Contributions from 1 July 2017 - see item 1 above.**

G) Concessional Contributions Provided to High Income Earners (Division 293 Tax)

Concessional superannuation contributions for high income earners are taxed effectively at the rate of 30% (rather than the standard 15%). A high income earner for this purpose is anyone who earns more than \$300,000 of adjusted taxable income. Note that from 1 July 2017 this reduces to \$250,000pa.

The Division 293 tax can be reduced or even eliminated if it is possible to reduce your adjusted taxable income to be below the \$300,000 (2018:\$250,000) threshold or by simply deferring income to a future year (e.g. by deferring the payment of dividends).

H) Superannuation Choice – MySuper

From 1 July 2005, employers making Superannuation Guarantee (SG) contributions are required to make a “choice of fund” offer to employees. If the employee has not elected a fund by the due date for payments of super, the employer must pay the contributions to the employer’s “Default Fund”, which now must be an approved “MySuper” Product. MySuper products have lower fees and documentation requirements.

I) Co-contributions Incentive

The Government has a package of assistance whereby for eligible individuals the Government will contribute up to \$0.50 for each \$1.00 of member contribution. To be eligible for this co-contribution certain requirements need to be met, including:-

- Your personal non-concessional superannuation contribution must be made to your superannuation fund by 30 June 2017;
- Your assessable income, reportable fringe benefits and reportable employer superannuation contributions must be less than \$51,021 per annum;
- 10% or more of your total income for the year must be from employment and/or carrying on a business;
- You are under 71 years of age;
- You are a permanent resident of Australia; and
- You lodge an income tax return for the year.

The maximum benefit is a \$500 co-contribution from the Government when an individual's assessable income including reportable fringe benefits is \$36,021 or less and a personal contribution of \$1,000 has been made. This benefit reduces on a sliding scale between the assessable incomes of \$36,021 and \$51,021. In addition from 1 July 2017 your total superannuation balance must be less than \$1.6m and you must not have exceeded your Non Concessional Contribution Cap in the relevant financial year in order to qualify for this incentive.

J) Contributions for Spouse

Individuals may be entitled to a tax offset for superannuation contributions made by them on behalf of a low income or non-working spouse. The maximum rebate available is \$540, and is calculated at 18% of contributions up to a maximum of \$3,000. The offset begins to phase out once the spouse’s gross assessable income (before deductions), reportable fringe benefits and salary sacrifice superannuation contributions exceeds \$10,800, and is fully phased out once it reaches \$13,800. From 1 July 2017 the \$10,800 threshold increases to \$37,000 and phases out at \$40,000.

K) Superannuation Guarantee Charge

Employers are obligated to make Superannuation Guarantee Contributions on behalf of employees at the rate of 9.5% of Ordinary Times Earnings through to the next review date of 1 July 2021.

20. SUPERANNUATION - PENSION PHASE

Clients who reach preservation age (i.e. for those who were born before 1 July 1960, the preservation age is 55) could consider the benefits of commencing a Transition to Retirement Income Stream (“TRIS”), however the changes discussed in Item 1 above may make this strategy less attractive in the longer term.

As an alternative to taking the annual pension, certain clients may be eligible to take their pension by way of a tax-free lump sum withdrawal. The lifetime limit for such withdrawals is currently \$195,000 but this will end on 30 June 2017. Please refer back to Item 1 above concerning this strategy.

Where members have commenced a pension from their superannuation fund it is essential that they ensure the fund pays to them by 30 June 2017 at least the minimum amount of pension and not in excess of the maximum allowed. The minimum and

maximum rate is applied to the value of the pension at commencement or, if started in a prior year, the market value of the pension at the beginning of the financial year. The maximum pension is 10% for a TRIS but otherwise there is no maximum.

The current minimum pension amounts payable for the 2017 and 2018 years are the same, as follows:-

Age	2018 Minimum Pension %	2017 Minimum Pension %
< 65	4.00%	4.00%
65-74	5.00%	5.00%
75-79	6.00%	6.00%
80-84	7.00%	7.00%
85-89	9.00%	9.00%
90-94	11.00%	11.00%
>95	14.00%	14.00%

OTHER INFORMATION

21. DISCRETIONARY TRUSTS

One of the benefits of discretionary trusts is the ability to stream different types of income to different beneficiaries, and in particular franked dividends and capital gains. This streaming of income provides significant flexibility and tax benefits between the beneficiaries (usually family members).

As in prior years and in accordance with the applicable Trust Deed, the trustee of a discretionary trust must resolve to distribute the income of the trust prior to 30 June each year. Historically, this was undertaken by the Trustees simply holding a meeting (often around the kitchen table) in the final week of June each year to resolve the distribution split between the beneficiaries. The resolution was then evidenced in a Trustee minute of the meeting which was prepared and signed at the same time as the tax return was drafted. In the view of the ATO this long standing practice is no longer adequate evidence of compliant resolutions.

The ATO has determined that distributions of trust income are to be evidenced as follows:-

- Where the Trustee is streaming franked dividends, the Trustee must not only pass a resolution distributing the income to the beneficiaries by 30 June but must record (in that character) in the trust's accounts or records by 30 June;
- Where the Trustee is streaming capital gains, the Trustee must not only pass a resolution distributing the income to the beneficiaries by 30 June but must record (in that character) in the trust's accounts or records no later than two months after the end of the financial year in which the distribution is made (i.e. 31 August);
- Where streaming is not undertaken it is sufficient for the Trustees to pass a resolution prior to 30 June and for it to be documented by a resolution minute post 30 June.

Trusts are under greater scrutiny from the ATO and we recommend all Trustees review their Trust Deeds (the rules of the Trust) to ensure the trust is conducted in accordance with the deed, including:-

- Check the vesting date
- Confirm the eligibility of the beneficiaries
- Clarify the definition of "income" and the availability of income streaming
- Whether a "Family Trust Election" has been lodged or is required

22. PROFESSIONAL FIRMS & 'INCOME SPLITTING'

The ATO has released a paper which effectively gives guidance to Professional Firms (e.g. architectural, engineering, legal, accounting, medical practices, etc) of what is unacceptable income splitting (whereby income is distributed away from the professional worker who has generated the fee income).

The guidelines particularly target individual professional practitioners (IPP) earning income from a business structure. The ATO states that IPPs will be rated as low risk and will not be subject to compliance action where their circumstances satisfy one of the three following tests:-

- Whether the IPP receives market rate remuneration from the business entity for their services. In determining market rate, the taxpayer may use the level of remuneration paid to the highest band of professional employees providing equivalent services to the firm or industry market-rate benchmarks; or
- Whether 50% or more of the income to which the IPP and their associated entities are collectively entitled (whether directly or indirectly through interposed entities) in the relevant year is assessable in the hands of the IPP; or

- Whether the IPP, and their associated entities, both have an effective tax rate of 30% or higher on the income received from the firm.

If the entity is unable to satisfy any of the three tests, the entity will be classified as high risk and may be potentially subject to an ATO review.

23. SERVICE ENTITIES

The ATO has issued guidelines for service entity arrangements. The guide “Your Service Entity Arrangements” (NAT 13086) and TR 2006/2 set out acceptable profit mark-ups in relation to services provided. It is essential that service entities review current mark-ups to ensure that they are within the reasonable guidelines and for appropriate adjustments to be made in the June BAS.

24. PERSONAL SERVICES BUSINESS

If your business entity (e.g. company, trust or partnership) derives all or part of its income from the personal services of an individual (i.e. hiring or contracting out your personal services) then you must determine whether the business entity satisfies the personal services business tests. If it fails these tests, the income generated from your personal services may be regarded as wholly that of the individual for tax purposes (rather than the business entity), and as such your business entity may be denied certain tax deductions that may have applied in prior years.

These tests include the following:-

- Results Test
- Unrelated Clients Test
- Employment Test
- Business Premises Test

If your business entity is earning personal services income you must determine whether you satisfy these tests. If you are in doubt please contact us as soon as possible and certainly before you complete your June 2017 Business Activity Statement. Individuals in professional practice should also consider the notes in Point 22 above.

25. NON COMMERCIAL LOSS PROVISIONS

When a loss from a business activity carried on by an individual or partnership occurs, consideration must be given to the non-commercial loss provisions as to whether the loss needs to be quarantined. There are concessions for taxpayers such as primary producers, artists, etc.

Many “genuine” business losses incurred by individuals continue to be quarantined for tax purposes where income exceeds \$250,000 p.a. Income for the purpose of the test comprises the aggregate of taxable income, reportable superannuation contributions, net investment losses and reportable fringe benefits. The Commissioner may exercise his discretion where he considers that the deferral would be unreasonable and there is objective evidence that the activity is commercially viable. To seek this discretion an application for a private ruling and an evidentiary checklist must be lodged with the ATO.

26. PAYROLL TAX - WARNING

The NSW Office of State Revenue continues to increase audit activity in relation to payroll tax. The annual wage threshold for NSW for the year ended 30 June 2017 is \$750,000. The payroll threshold includes wages, superannuation, reportable fringe benefits, payments to employee contractors, and the wages and benefits of “grouped” or connected entities. You must register within seven days of exceeding the monthly wages threshold.

27. CONTRACTOR TAX REPORTING SYSTEM

From 1 July 2012 a reporting system applies to those entities engaged in the building and construction industry and who engage contractors. You are considered to be in the building and construction industry if one of the following applied to you:

- 50% or more of your business income is derived from providing building and construction services
- 50% or more of your business activity relates to building and construction services
- If in the previous year, 50% or more of your business income was derived by providing building and construction services.

The reporting will relate to actual amounts paid to contractors and will need to include identifying references such as the contractor’s ABN & address. The “Taxable Payments Annual Report” is required to be lodged with the ATO by 28 August 2017. This reporting system will be expanded from 1 July 2018 to include contractors in the courier and cleaning industries.

28. [PRIVATE COMPANY LOANS \(DIVISION 7A\)](#)

a) Private company debit loans

Borrowings by shareholders from their private companies are referred to as debit loans or Division 7A loans and extend to almost all types of payments or advances to shareholders and their associates (excluding loans to another company). Division 7A continues to apply to the use of company assets where inadequate consideration is paid to the company. Borrowings that do not satisfy the required exemption tests under Division 7A are deemed to be unfranked dividends and fully taxable in the recipient's hands. It is essential that private company directors ensure that any payments on behalf of shareholders or their associates are either repaid prior to the due date of lodgement of the company's tax return or that the borrowings are covered by a complying Division 7A loan agreement, the terms of which must be strictly complied with each year.

Loans – Pre 4/12/97: If you have a Pre 4/12/97 borrowing from your company, the terms of the loan must not be altered and the interest payable on the loan must be paid by 30 June 2017. In effect the loan should be quarantined and all future borrowings treated as separate loans. A strategy should be adopted to repay these loans.

Loans – Post 4/12/97: If you have a Post 4/12/97 borrowing from your company brought forward from last year, you must make the minimum annual repayment of capital and interest prior to 30 June 2017. If the minimum repayment is not made, the amount of any shortfall will be deemed to be an unfranked dividend if the company has retained or unrealised profits.

Loans – Current Year: If during the current year your company has made a payment to or on behalf of a shareholder or an associate creating a Division 7A loan, this loan will be deemed to be an unfranked taxable dividend in the hands of the recipient, unless the loan is repaid by the due date of lodgement of the company's tax return or alternatively is supported by a complying Division 7A loan agreement.

Unpaid Trust Distributions to Companies - Where a trust has distributed income to a corporate beneficiary post 16 December 2009 and the distribution remains unpaid, then this unpaid present entitlement could be treated as a loan for Division 7A purposes. We recommend that these unpaid present entitlements be paid or alternatively such amounts be treated as a Division 7A compliant loan by the time of lodgement of the trust tax return.

The relevant payments can be repaid by:-

- Charging the payment against a pre-existing credit loan account;
- The payment of wages (after PAYG tax and superannuation is paid);
- The payment of a fully franked dividend provided franking credits and retained profits are available; or
- Borrowing from another source to repay the debt.

Alternatively, if the payments are unable to be repaid by the due date of lodgement of the company's tax return, the payments for the year can be added together and treated as an "amalgamated" loan provided there is a written loan agreement which:-

- Is entered into prior to the due date of lodgement of the company's tax return;
- Stipulates a minimum interest rate (i.e. currently 5.40 % for the 2017 year; 5.45% for the 2016 year);
- Provides a maximum loan term (i.e. 7 years with no security and up to 25 years with registered mortgage security); and
- Requires a minimum annual repayment each year.

For your assistance we have available a sample of a standard loan facility agreement for use in documenting loan terms and conditions.

If a loan to a shareholder complies with the requirements of Division 7A it will not constitute a loan fringe benefit.

b) Private company credit loans treated as equity where borrowing company turnover exceeds \$20 million

Where the borrowing company has a turnover in excess of \$20 million, a related party credit loan will be treated as equity rather than debt unless commercial loan tests are satisfied. If the loan is treated as equity, payment of interest would be treated as a frankable distribution and not deductible.

FINANCIAL PLANNING & ESTATE PLANNING

STEWARTBROWN ADVISORY PTY LIMITED

For your information our financial planning division, namely StewartBrown Advisory Pty Limited, offers clients comprehensive advice on Self Managed Superannuation Funds, financial and retirement planning, and estate planning matters generally. Amanda Lee is the director in charge of this division and is very experienced in providing appropriate and sound financial advice to clients. Amanda is now assisting many of our clients, however, if you have not met Amanda yet we invite you to contact us to arrange a complimentary meeting to discuss your situation and how Amanda and her team can assist you in achieving your financial goals in a tax effective manner.

To help you decide if financial planning advice could benefit you, please review the list below for some indicators:-

- Aged 56-75 – When to commence pensions? Contribution strategies?
- Close to retirement – Can you afford to retire? When is the right time? Should I take a voluntary redundancy?
- When will my superannuation run out - How much can I spend per year? How long will it last?
- Estate Planning – How is superannuation taxed on death? Can this be reduced? Can I gift money to my children now?
- Investment strategy – Do your current investments suit your needs, objectives and financial situation?
- Insurance – Are you comfortable that you are adequately insured? Are you over insured?
- Withdrawal and re-contribution strategies – How could this help you?

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