

BUSINESS INFORMATION >

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Help! I've put too much into my super fund

One of the great things about superannuation is the concessional tax rates. Concessional contributions, which come from pre tax income, are taxed at 15%.

There are caps imposed on how much you can put into super and still get the concessional tax rate. In the 2007/2008 and 2008/2009 financial years, the concessional contributions cap was \$50,000 for those under 50 years of age and \$100,000 for those who were 50 or older on 30 June. The concessional contributions cap for the current financial year is \$25,000 for those under 50 and \$50,000 for those 50 or over on 30 June 2009. The non-concessional contributions threshold is \$150,000 (which can be averaged across three years - allowing you to exceed the cap in one year and reduce your contributions in others giving you a total of \$450,000 over three years). Further changes will apply from 1 July 2012 when the concessional cap will reduce to \$25,000 per annum, although by that time the amount may have been subject to increase due to indexation.

Excess contributions are not uncommon and many taxpayers inadvertently breach their contribution limits. The problem is that if you breach the concessional contributions cap, the tax on the contributions over the cap is an additional 31.5% on top of the initial 15% paid by the super fund. And, it's very difficult to do anything about it once you have put the cash into the superannuation account. Where both the concessional and non-concessional caps are breached, the excess contributions tax could be as high as 93%.

The exception is when you breach the contributions limit in one transaction, for example, if you wrote a cheque for \$1 million and deposited in your superannuation fund account. Superannuation funds have a fund capped contribution limit to prevent unwanted excess contributions. By law, they must refund the excess contribution to reverse it. No excess tax applies in these circumstances. The problem is, the fund acceptance cap only applies when the contributions limit has been breached in one transaction.

The problem with making excess contributions is that under the law, once the contribution has been accepted by the fund the preservation rules apply (meaning that you can only get the money out once you meet the conditions of release - for example, you turn 60).

In some cases, where an honest mistake has been made, the amount can be refunded. However, if you are over the contributions cap, have changed your mind about the contribution, or you have had a change in income levels so that you cannot utilise the tax deduction, then it is unlikely your excess contribution would be called an honest mistake. However, if you inadvertently banked money into the wrong account (and that account was the superannuation funds account) then that might be an honest mistake if you can prove it.

A few adventurous taxpayers have tried to get around the contributions cap by amending their trust deeds. Under these arrangements, a clause is inserted into the SMSF trust deed to restrict the trustee from accepting all or part of a contribution if it would cause the member to exceed a contributions cap. If the trustee does accept the contribution the trust deed directs the trustee to hold the contribution in a separate trust, even though the amount has been treated as a contribution and mixed with other assets of the super fund. But the Commissioner is onto this scheme and has stated that he considers the schemes "ineffective" and tax is still likely to apply to the excess contributions.

The important thing is to be aware of what your contributions caps are, the total amounts that have been contributed, and what's contained in your trust deed.

Those most likely to breach the cap are those with multiple employers and those who have entered into salary sacrifice arrangements in past years and have not reviewed the amounts being paid into their superannuation fund. This includes those utilising the transition to retirement strategy.

For advice on managing your SMSF and getting money in and out of your fund, speak to BHT Partners today.

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Quote of the Month

"Don't find fault, find a remedy."

Henry Ford

Our Mission

To help **grow** and realise the **profit** improvement potential, **business value** and **lifestyle** choices of our clients through **innovative** application of **wealth** creation strategies.

Compliance Corner

Why the Tax Office is looking at your Facebook profile

A recent article published in the online small business magazine [SmartCompany](#) will have many people reviewing what they say and expose on Facebook and other social networking sites.

Tax Office staff are the last people you expect to be looking at your Facebook profile but according to a lecturer at Latrobe University's Faculty of Law and Management cited in the [SmartCompany](#) article, the popular social networking site is being used to build prima-facie cases against investors using offshore tax havens.

Our compulsion to share our every movement on online forums is being used by the Tax Office as a tool to build

profiles on high net wealth individuals. So, if you're telling the tax office that you have a modest income but are constantly posting pictures of yourself in your floral board shorts in Barbados, or your latest shopping expedition in Paris, then you can expect a call from the Tax Office very soon.

Offshore tax havens are a particular focus and this compliance program has claimed the scalps of many high profile taxpayers through Project Wikenby.

The accessibility of the information available to the Tax Office to investigate and build cases against taxpayers is increasing every day. Your Facebook profile is just another avenue.

ATO beefs up data matching

The Australian taxation Office has expanded its data-matching program to track down businesses avoiding tax.

Banks and merchant card providers now furnish the ATO with intelligence on credit card and eftpos sales by businesses.

Senior assistant tax commission Chris Barlow said: "We will get all of those transactions for a financial year and then are able to compare that with the sales reported in the tax return."

"We are looking to see the cash to non-cash ratios you might expect to see in different types of businesses," he said.

In the building industry, the ATO also collects data on the sale of plasterboard in NSW to plasterboard installers.

Benchmarks established in conjunction with industry show how much profit a plasterer should make per square metre of plasterboard.

The Tax Office raised more than \$140 million from the cash economy last year through audits and other compliance activity.

But it suspects there are still millions of dollars more in unreported income that are undetected, especially in high-risk industries such as restaurants and cafes, health and beauty parlours, dry cleaners and builders.

Some of these businesses have a tendency to "skim" some or all of their cash takings, run part of their business off the books or not report all their income.

The ATO is able to detect businesses that do not accept card payments, which could mean they are prone to cash-only sales that might not be fully declared.

"It is a business model not to provide card services and charge a lower price as a competitive advantage but in some circumstances it might be an opportunity for large amounts of cash and be a temptation," Mr Barlow said.

Small business benchmarks developed by the ATO provide a snapshot of how businesses in an industry are performing, on average, by providing a measure of various business costs in relation to turnover.

Businesses reporting outside the benchmarks will be scrutinised.

"We will use that to identify outliers from those benchmarks," Mr Barlow said.

The last federal budget provided \$71 million for the ATO to crack down on the cash economy in the small business sector.

The ATO plans 3700 audits, 8000 business visits and 35,000 letters to businesses at risk of cash economy activity this year. "In serious matters we would look to prosecute," Mr Barlow said.

Millionaire Tasmanian baker Mark Saxby was found guilty on March 22 of tax fraud. He allegedly took \$1000 from the till of his Hobart store every Saturday, Sunday and public holiday and altered the sales sheets to hide the cash skimming.

Source: The Weekend Australian Financial Review 1-5/4/2010

The \$88k FBT motor vehicle trap

You know you're having a bad day when you get an \$88,000 FBT bill from the Tax Office for a car that you thought was exempt. This is exactly what happened to one taxpayer.

A sole director of a company bought a Lexus in June 2004 for \$119,000. The Director purchased the car through his company for use in the business (100% business use by the Director). The company operated from the same block of land as the Director's principal place of residence but the two buildings were divided by a wall and had separate driveways and letterboxes. As the car was for business use and garaged at the business, it was assumed that FBT did not apply and as a result, no FBT returns were lodged. No log books were kept evidencing the business use of the car until the Tax Office announced their intention to audit the business

Following an FBT audit in 2009, the Tax Office gave the Director an assessment for just under \$88,000 in outstanding tax. The Director challenged the Tax Office's assessment as "excessive" but lost. The reason for the assessment is that the FBT Act states that a vehicle will be available for private use (and subject to FBT) if the car is garaged or kept "at or near a place of residence of the employee or an associate of the employee." In this case, the Administrative Appeals Tribunal found the Lexus was kept 'near' the Director's place of residence and as a result, gave rise to a car fringe benefit for each day it was garaged there.

Another complicating factor for the Director and the company was that the operating cost method, commonly called the log book method, could not be used to evidence the business use of the car. To use the operating cost method you need to make an 'election' to the ATO that you will be using this method and keep a log book and other appropriate records. The Director only had a partial log book compiled after the audit was announced. The Tax Office will accept

the non-lodgement of an FBT return as an election if there are no taxable fringe benefits. However, and this is the important part, you still need to keep a log book and other documents to show how you arrived at a nil FBT position.

If there are no records to show how you arrived at a nil FBT position, the statutory method will apply instead. The statutory method uses a prescribed formula to calculate the FBT liability that hinges on the number of days the car fringe benefit is provided (in this case, 365 days a year!). In this case, as no election to use the operating cost method had been made, the Tax Office used the statutory method to calculate the company's FBT liability.

While this particular case is unusual because the Director's principal place of residence was on the same block of land the company operated from, there are a couple of key points that all employers (including the self employed) should take away:

- Always keep records to justify your tax decisions; and
- Be aware of what method you need to use for FBT and motor vehicles.

As always with tax, the devil is in the detail.

For motor vehicles, it's important to have a record of what cars are subject to FBT, when things change, periods of use, and the method being used to calculate FBT. If you use the statutory method, make sure you do an odometer reading at the end of the FBT year on 31 March, and if you have elected to use the operating cost method, make sure that your log books are current.

Don't forget that informal arrangements between employers and employees can unintentionally give rise to an FBT liability - such as allowing employees to use company cars for private use over a weekend.

Selling up? Watch out for CGT

If you're selling your business, the CGT small business concessions have the capacity to reduce your capital gains tax liability to \$0. Understandably, the tax savings that can be achieved make the concessions very popular with business owners. However, the extent of the tax savings also means that the concessions come under close Tax Office scrutiny. Quite a few taxpayers have been stung with very large and unexpected tax bills because they claimed the concessions but did not pass the eligibility tests.

There are a number of rules and conditions that a small business and their owners need to meet to be able to access the concessions. One of the main eligibility requirements is the \$6 million maximum net asset test (although an alternative \$2 million turnover test is available in some circumstances). This test requires that the combined value of the assets of the business, any connected entities, any affiliates and any entities connected to the affiliates, is less than \$6 million.

The \$6 million maximum net asset test applies at the time when the CGT event occurs (generally when the contract of sale is entered into), so you need to satisfy yourself, and be able to substantiate to the Commissioner if you are audited, that your net assets were less than the \$6 million threshold at that time.

Certain assets such as the family home, some personal assets, and your superannuation are not counted toward the threshold. With some of your assets it should be reasonably easy to calculate their value. Other assets such as privately held businesses or listed securities can provide greater problems.

The risk with listed securities is where there is volatility in their value and you are near the \$6 million threshold. Because your position is counted at the time of the CGT event, if you hold listed securities and there is a spike in their value at this time, then you could breach the threshold. The value of these assets is on public record and this is an area you need to be careful about if you are near the maximum limit.

Private businesses create a different risk. In the majority of cases there is no ready market for these businesses and so their value is not readily identifiable. Without a formal valuation you may underestimate the value of your businesses. It is not uncommon for the ATO to ask for evidence of your eligibility for the concessions. If they have doubts about the value you have assessed then they may substitute their own valuation. Keep in mind that the value of your business is not necessarily what is recorded in your financial statements. Where the business holds unrealised goodwill or other intangible assets, the value of the business can be substantially greater than is recorded in the financial statements.

Clearly, the more valuable your business is, and the closer your other assets are to the \$6 million threshold, the greater your risk.

If you are contemplating selling your business or want to make sure you have the right structure in place, contact us today for a review.

Business Development

Managing your team

We all have to work with people. These may be loosely known as a team or a department or a squad or a crew. It doesn't matter. The mistake a lot of managers make is to think they are managing people. They think that people are their tools, their stock-in-trade. Make the people successful and you have the successful manager—or so the theory goes.

But unfortunately this is a myth and we need to see that the real role of the manager is to manage processes rather than people. People can manage themselves if you let them. What you need to be concentrating on is the real job of management—the strategy. The team is merely a means to fulfilling that end. If all your people could be replaced by machines—and how many of us haven't prayed that this might happen? - we would still have a strategy, still have to be managing the process.

The people will have disappeared to be replaced by automatons but the real job would still be there. The good

manager is managing change, the process, strategy, progress and balance. In all of this we might well need our 'people', but we also may not. We can't ignore the people of course, but we should be handing over as much self management to them as we possibly can.

Of course we, as managers, have to work with real flesh-and-blood people and we have to know what motivates them, how they think and feel, why they come to work, why they give their best (or their worst), what they are afraid of, what they hope and dream for. We shall have to encourage them, coach them, give

them the resources to do their job and manage themselves, oversee their processes and set their strategy for them. We will worry about them, look out for them, be on their side and support them. But we won't manage them. We will let them manage themselves and we shall concentrate on a real role as manager.

**“PEOPLE CAN MANAGE
THEMSELVES IF YOU LET
THEM.”**

The Seven Deadly Small Business Sins

As the vital signs of the economy continue to improve, BHT Partners has seven tips for SMEs looking to shake off the GFC cob webs and better their business as they enter the new financial year.

Look to the end at the start—having an exit plan even if you don't plan to exit

All businesses, big or small, should have a strategy to build the business so it has a multitude of customers and is not complete reliant on the owner—enabling you to sell it. Those who work towards that, rather than just working week to week, generally build great businesses.

Innovate and reinvent

Businesses need to move at the same speed as their customers—what your clients wanted in 2008 may no longer be desired in 2010. Ask the hard questions and don't be afraid to get constructive criticism. Everyone used to have a Sony Walkman; now more people own iPods than all other MP3 players. If you only carry out your business with the same products and the same methods, you can only get the same results—or worse.

Manage cash flows—the key is usually managing your debtors

SMEs need to concentrate on the money coming and going from their business, not just their projected profits. We have seen many businesses show a profit on papers, but the owners can't draw a salary because debtors don't pay. That's why it is so important to ensure people pay on time—and that you stay on top of those who don't.

Begin tax planning on the first day of the year, not the last

Business tax has a complex and documented set of rules; the precedents and rulings are ever-changing, sometimes every couple of months—so don't wait until June 30 to start thinking about tax minimisation. Start as early as possible, and consult a professional who can understand your business and its taxation consequences and advantages

Plan for staff change—and if you don't want to risk getting a rotten apple, grow your own

You should always be building replacements for your key people, because bigger fish will have deeper pockets to poach your staff. SMEs need to be able to say no worries, good luck, the person I've trained under you is dying to have your seat. The bonus is you know these people, they know your business and you don't have to recruit outside.

Ensure your marketing efforts are cost-effective and efficient & don't underestimate word of mouth

Small business needs to have a cost-versus-benefit approach to all marketing activity and should never underestimate the value of cost-free marketing or third-party advocacy. The best advertising tool for a company is the people who use it.

Celebrate your victories—in moderation

Small business is hard and can be a difficult slog. Owners must constantly remind and reward themselves for their perseverance and determination in keeping it together. In our experience people who don't celebrate (in moderation) and enjoy the spoils of their hard work lose motivation to keep going.

Top Tip

A quick and easy test to see if your marketing is working: Ask customers how they found out about your business. Was it in local advertising, your website or word of mouth.

Business Scruples

How do I know how much my business is really worth? We've been talking to a new investor and are starting to doubt our assumptions about its value.

Business owners are often so invested in their business they lose sight of what the value of their business really is. If you put your heart and soul, and sweat and tears into the business you expect it will be worth the effort.

If you own a publicly listed company or an interest in one, you know what the market says your interest in that business is worth on any day of the year. A private business is very different. For most businesses, like yours, there is no ready or automatic market that will tell you what the business is worth.

So, how do you know if your perception of the value of your business is fair, below what it should be, or totally unrealistic? Knowing what your business is worth should be a fundamental of being in business not just for sale or succession. Proving the value of your business is critical if you are looking to borrow, to understand where you are growing the business, for assessing business performance and the adequacy of your profits, or if you are looking to complete a restructuring.

The value of your business is a key benchmark. If you don't know what it is worth then you have no real frame of reference against which to measure your performance and this could cost you a lifetime of under-performance. But this you know.

Not all businesses are measured in the same way. One reason why many business owners misunderstand the value of their business is because they compare it to another business which may be fundamentally quite different. There are a number of different generally accepted valuation methods for small and medium businesses. At a high level, the majority of businesses will be valued on their earnings, their cash flow, or their assets.

Different approaches will produce different results. The right answer is not the one that produces the best result but rather the one that is in line with the fundamentals of the business. For example, a business that has a limited life with a defined income stream will be valued on the cash stream it will produce. Whereas a mature business, like a wholesale business being valued as a going concern (that is, as an ongoing business), is likely to be valued on a multiple of its earnings. A business, like a farm, is more likely to be valued on its tangible assets.

Risk also influences business value. The higher the risk, in most cases, the lower the relative value. Risk impacts the ability of the business to maintain its earnings, the stability of the cash flow or the reliability of the assets. Irrespective of the valuation method employed, variations in risk will influence value. Risk is measured at an economic, industry, business and ownership level. If you want to enhance business value, then look at areas where you can 'de-risk' the business without impacting on earnings.

Ideally, your business should generate and grow its earnings, its free cash flow, and its asset base. These factors, and a positive growth trend, are indicators of real value and a business that is likely to be growing in value. The absence of these factors may bring into question the value that really exists.

If you are basing commercial or tax decisions on your business value, have a business valuation completed. At least then you have a third party opinion of what your business is really worth.

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