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## Tax Alert April 2017

### Ride-sharing drivers must register for GST

In a recent decision, the Federal Court has held that the UberX service supplied by Uber's drivers constitutes the supply of "taxi travel" for the purposes of GST. The ATO has now advised that people who work as drivers providing ride-sharing (or ride-sourcing) services must:

- keep records;
- have an Australian Business Number (ABN);
- register for GST;
- pay GST on the full fare they receive from passengers;
- lodge activity statements; and
- include income from ride-sharing services in their tax returns.

If you work as a ride-sharing driver, you are also entitled to claim income tax deductions and GST credits on expenses apportioned to the services you have supplied.

**TIP: You must register for GST if you earn any income by driving for a ride-sharing service. The usual \$75,000 GST registration threshold does not apply for these activities.**

### Tax offset for spouse super contributions: changes from 1 July 2017

The ATO has reminded taxpayers that the assessable income threshold for claiming a tax offset for contributions made to a

spouse's eligible superannuation fund will increase to \$40,000 from 1 July 2017 (the current threshold is \$13,800). The current 18% tax offset of up to \$540 will remain in place. However, a taxpayer will not be entitled to the tax offset when their spouse who receives the contribution has exceeded the non-concessional contributions cap for the relevant year or has a total superannuation balance equal to or more than the general transfer balance cap immediately before the start of the financial year when the contribution was made. The general transfer balance cap is \$1.6 million for the 2017–2018 year. The offset will still reduce for spouse incomes above \$37,000 and completely phase out at incomes above \$40,000.

**TIP: Contact us for more information about making the most of super contributions for you and your spouse.**

### ATO targets restaurants and cafés, hair and beauty businesses in cash economy crackdown

The ATO will visit more than 400 businesses across Perth and Canberra in April as part of a campaign to help small businesses stay on top of their tax affairs. The primary focus is on businesses operating in the cash and hidden economies. ATO officers will be visiting restaurants and cafés, hair and beauty and other small businesses in these cities to make sure their registration details are up to date. These businesses represent the greatest areas of risk and

highest numbers of reports to the ATO from across the country, and the visits are part of the ATO's ongoing program of compliance work.

### Super reforms: \$1.6 million transfer balance cap and death benefit pensions

Where a taxpayer has amounts remaining in superannuation when they die, their death creates a compulsory cashing requirement for the superannuation provider. This means the superannuation provider must cash the superannuation interests to the deceased person's beneficiaries as soon as possible.

The ATO has released a Draft Law Companion Guideline to explain the treatment of superannuation death benefit income streams under the \$1.6 million pension transfer balance cap that will apply from 1 July 2017.

The Draft Guideline provides that where a deceased member's superannuation interest is cashed to a dependant beneficiary in the form of a death benefit income stream, a credit will arise in the dependant beneficiary's transfer balance account. The amount and timing of the transfer balance credit will depend on whether the recipient is a reversionary or non-reversionary beneficiary.

**TIP: To reduce an excess transfer balance, you may be able to fully or partially convert a death benefit or super income stream into a super lump sum. Contact us if you would like to know more.**



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### No deduction for carried-forward company losses

The Administrative Appeals Tribunal (AAT) has ruled that a company was not entitled to deductions for carried-forward losses of over \$25 million that it incurred in the 1990 to 1995 income years. The AAT found that the company did not satisfy the "continuity of ownership" and "same business" tests that applied in relation to the 1996 to 2003 income years, when it sought to recoup the losses.

In relation to the continuity of ownership test, the AAT found that the interests the relevant shareholders held during the loss years were different from their interests recoupment years. The AAT noted that the taxpayer company was obligated to keep appropriate records, even though 25 years had passed since the first claimed loss year (1990). The Tribunal also found that the company had clearly not met the requirements of the "same business" test for the different years in question.

**TIP: This decision illustrates the need for companies to keep appropriate ownership records year-by-year to support any future carried-forward loss claims.**

### Overseas income not exempt from Australian income tax

The Administrative Appeals Tribunal (AAT) has agreed with the ATO's decision that income a taxpayer earned when working for the United States Army was not exempt from Australian income tax.

The taxpayer, who was a mechanic and electrician, played a critical role in plant construction in Afghanistan.

While the project the taxpayer worked on met the legal definition of an "eligible project", the AAT decided that the exemption he had claimed under 23AF of the Income Tax Assessment Act 1936 did not apply because the project was not one that the Trade Minister had approved in writing, and there was no evidence that the Trade Minister considered it "in the national interest".

### GST on low-value imported goods

A Bill introduced into Parliament in February proposes to make Australian goods and services tax (GST) payable on supplies of items worth less than A\$1,000 (known as "low value goods") that consumers import into Australia with the assistance of the vendor who sells the items.

For example, GST would apply when you buy items worth less than \$1,000 online from an overseas store and the seller arranges to post them to you in Australia.

Under the proposed measures, sellers, operators of electronic distribution platforms or redeliverers (such as parcel-forwarding services) would be responsible for paying GST on these types of transactions.

The GST could also be imposed on the end consumer by reverse charge if they claim to be a business (so the overseas

supplier charges no GST) but in fact use the goods for private purposes. If the Bill is passed, the measures would come into force on 1 July 2017.

**TIP: The ATO has also released a Draft Law Companion Guideline that discusses how to calculate the GST payable on a supply of low-value goods, the rules to prevent double taxation of goods and how the rules interact with other rules for supplies connected with Australia.**

### Alternative assessments not tentative: Federal Court

The Federal Court has found that a company's tax assessments were not tentative or provisional, and therefore were valid.

For the 2011 to 2014 income years, the Commissioner of Taxation had notified the taxpayer, which was the trustee of a discretionary trust, that it was liable to pay tax assessed in two different amounts calculated by two different methods. The Commissioner explained to the taxpayer in writing how the two assessments applied.

The taxpayer argued that the assessments were tentative because, for each year, they imposed two separate and different income tax liabilities on its single trustee capacity.

The Court denied this claim, agreeing with the ATO that a trustee's liability to pay income tax is of a "representative character" and the relevant tax law



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provisions allow for a trustee's liability to multiple assessments regarding different beneficiaries' entitlements to a share of the net trust income. Accordingly, in effect the Court found that the primary and alternative assessments were comparable to assessments issued to two or more taxpayers in relation to the same income in the same income year, and were not liable to be set aside as tentative or provisional.

**Important:** This is not advice. Clients should not act solely on the basis of the material contained in this Tax Alert. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Tax Alert is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval. Liability limited by a scheme approved under Professional Standards Legislation.

## Thomas Noble & Russell

31 Keen Street Lismore NSW 2480 Australia  
Telephone +61 2 6621 8544 | Fax +61 2 6621 9035  
Email: [enquiries@tnr.com.au](mailto:enquiries@tnr.com.au) | Website: [www.tnr.com.au](http://www.tnr.com.au)

