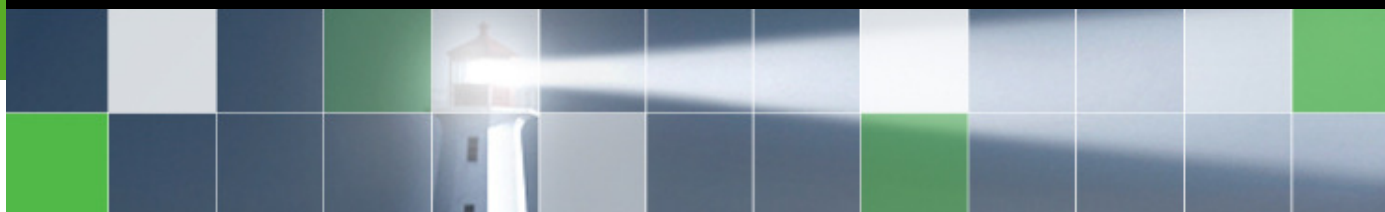


CLIENT ALERT: TAX NEWS | VIEWS | CLUES

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SHARE ECONOMY PARTICIPANTS REMINDED OF TAX OBLIGATIONS

The ATO has reminded people who earn income in the share economy that they have tax obligations. The type of goods or services you provide, and how much you provide, will determine what you need to do for tax. Popular sharing economy services include:

- providing “ride-sourcing” services for a fare;
- renting out a room or a whole house or unit on a short-time basis;
- renting out a car parking space; and
- providing personal services, such as creative or professional services like graphic design and website creation, or doing odd jobs like deliveries and furniture assembly.

The ATO notes that you need to get an ABN if you are carrying on an enterprise providing goods and services through the sharing economy, and register for GST if:

- your turnover is \$75,000 or more per year; or
- you are providing ride-sourcing services, regardless of how much you earn from doing so.

TIP: No matter how much you earn or your reasons for providing goods or services, it’s a good idea to maintain records of your income and expenses, so you can keep track of your activities and deal with tax obligations when they arise. Tax deductions may also be available in certain circumstances. Please contact our office for more information.

ITINERANT WORKER CLAIM DENIED, SO TRAVEL DEDUCTIONS REFUSED

An individual has been unsuccessful before the Administrative Appeals Tribunal (AAT), where he argued that he was an itinerant worker and was therefore entitled to claim tax deductions for travel expenses of some \$38,000 for the 2011–2012 income year. The taxpayer worked a number of short-term jobs in various country towns across New South Wales. He and his wife had a house, but they would travel to the work locations, taking their car and a motorhome to live in. The individual argued he was entitled to claim deductions for car expenses and travel expenses such as meals and accommodation. The AAT found that he was not an itinerant worker and that the expenses were private in nature and therefore not tax deductible. Among other things, the AAT noted that his duties did not in fact require him to travel between and stay near the different workplace locations in the course of his employment.

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ATO FLAGS RETIREMENT PLANNING SCHEMES OF CONCERN

The ATO has launched the Super Scheme Smart initiative to inform people about retirement planning schemes that are of increasing concern. According to the ATO, people approaching retirement are most at risk of becoming involved in schemes that are “too good to be true”. While retirement planning schemes can vary, you should be aware of some common features of problematic schemes. These schemes generally:

- are artificially contrived and complex, and usually connected with a self managed super fund (an SMSF);
- involve a lot of paper shuffling;
- are designed to leave you paying minimal or no tax, or even receiving a tax refund; and/or
- aim to give you a present -day benefit.

The ATO has previously issued statements about concerning schemes that involve non-arm's length limited borrowing arrangements, dividend stripping and diverting personal services income.

TIP: The ATO encourages people to report their involvement in such schemes early. In specific circumstances, penalties may be reduced. Please contact our office for more information.

DEDUCTIBILITY FOR GIFTS TO CLIENTS AND AIRPORT LOUNGE MEMBERSHIP FEES

The ATO has recently released the following Taxation Determinations:

- TD 2016/14 states that business taxpayers are entitled to a tax deduction for the outgoing incurred for a gift made to a former or current client, if the gift is made for the purpose of producing future assessable income. The gift is not deductible if the outgoing is capital, relates to gaining “non-assessable, non-exempt” income, or is non-deductible under another provision.
- TD 2016/15 states that employer taxpayers are entitled to a tax deduction for annual fees incurred on an airport lounge membership for use by employees, if that membership is provided because of the employment relationship.

CHANGES TO \$500,000 LIFETIME SUPER CAP CONFIRMED

The Federal Treasurer has confirmed that there will be some changes to the Government's proposal for a lifetime cap of \$500,000 on non-concessional superannuation contributions. A number of exemptions will be available.

Scott Morrison said in a radio interview that he had previously spoken about the changes and that draft legislation on the measures, to be released soon, will contain a number of changes. He said if someone gets a pay-out “as

a result of an accident or something like that, then that is exempted from the \$500,000 cap”.

He also said that if someone had entered into a contract before Budget night to settle on a property asset out of their SMSF and they use after-tax contributions to settle that contract, “that won't be included” in the \$500,000 cap. Mr Morrison said there also would be “other measures” in the exposure draft legislation.

He effectively ruled out lifting the \$500,000 cap amount, saying “the only people that would benefit are people who [...] already on average have \$2 million in their superannuation scheme, have already put \$700,000 in after tax contributions”.

TIP: The ATO can only calculate the amount of your non-concessional contributions available based on the information it has. You may wish to review your own history of contributions. Please contact our office for more information.

HOME EXEMPT FROM LAND TAX FOR “WORLD-TRAVELLER”

An individual has been successful before the Victorian Civil and Administrative Tribunal (VCAT) in seeking the principal place of residence land tax exemption for his home located in Shoreham, Victoria, despite being a “world-traveller” whose wife lives overseas.

In 2003, the taxpayer was left the property in Shoreham in his mother's will. After moving into the property, he continued his interest of overseas travel, meeting and marrying his now wife, who continues to live in Canada.

Broadly, for each of the five tax years in question, the taxpayer spent a couple of months in Australia at the property, with the balance spent mostly in Canada and other overseas destinations.

He submitted that he considered the Shoreham property his “home”, where he kept “all his personal treasures”, among other things. He also noted “significant and communal family ties” in Victoria (including his three children and eight grandchildren in Melbourne) and “financial ties” to Australia.

In finding in favour of the taxpayer, VCAT said that in this day and age people are far more mobile than in the past, and it is not unreasonable that someone would have a base at a particular place to which they intend to return and resume occupation. In this regard, the Tribunal was of the view that the land tax exemption applied to the taxpayer's circumstances.

TIP: Land tax regimes differ from state to state. Please contact our office for assistance or more information.

IMPORTANT: Information contained in this newsletter is not advice. Clients should not act solely on the basis of the material contained in Client 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. Client 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.

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THE HIGHLIGHTS OF XEROCON SOUTH 2016



Gavin Johns, Dandapani, Paul Fiumara

Brisbane played host to XeroCon South earlier this month, the world's most beautiful and innovative conference for cloud accounting leaders in Australia, NZ and Asia. DFK Hirn Newey partners Paul Fiumara and Gavin Johns, and managers Mitchell Brooks and Jessica Jakeman, along with 2,000 other delegates, attended the event that opened each day with a DJ, had a playground to enjoy and worldwide speakers who shared their invaluable knowledge.

With over 80 exhibitors, XeroCon was a great opportunity to further explore the ever-expanding Xero ecosystem. Meeting face to face with a multitude of Xero add-on app vendors allowed our team to learn more about how these products can add value and efficiencies for our clients.

The conference also provided a wide range of industry-related workshops and speakers included Dandapani, a former Buddhist monk and entrepreneur, who offered valuable insights into focus and conscious accounting and Rachael Robertson, speaker, author and Antarctic expedition

leader - not to mention the various Xero personnel who presented updates on the future of Xero and cloud accounting.



Rod Drury and Paul Fiumara

While at the conference, our team met up with colleagues from DFK Gray Perry, DFK Everalls and DFK Laurence Varnay who travelled from Adelaide, Canberra and Sydney to attend. Paul and Gavin also caught up with Xero founder and CEO, Rod Drury and Xero Key Accounts Manager, Gavin Fernandes.

DFK Hirn Newey look forward to continuing our valued relationship with Xero as a Gold Partner and are excited to share with our clients the many benefits of Xero and its add-ons.



DFK Hirn Newey staff with colleagues from DFK Gray Perry, DFK Everalls and DFK Laurence Varnay

If you haven't already made the move to Xero, or just need some advice on Xero add-ons, please contact us to discuss how the Xero platform can benefit your business.

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Due Diligence Checklist: Purchasing a Business



Buying a business requires careful consideration of various choices. This checklist highlights common areas that must be considered when buying a business. A business can be purchased by purchasing either the business's assets or the shares in the company or interests in the trust.

It is important to conduct a thorough due diligence review before making a decision to buy. The review should find out as much information about the business as possible, which you can then discuss with your adviser. You should also consider how embarking on a business venture would fit with your personal circumstances.

Item		Yes	No
	Where the business is conducted through a company		
1	Have you done a company search to verify the vendor?	<input type="checkbox"/>	<input type="checkbox"/>
2	Are all ASIC compliance requirements up to date?	<input type="checkbox"/>	<input type="checkbox"/>
3	Does the company have any overseas operations?	<input type="checkbox"/>	<input type="checkbox"/>
	Financial health		
4	Have you obtained the last four years' financial statements for the business?	<input type="checkbox"/>	<input type="checkbox"/>
	TIP: The financial statements should contain this breakdown: liabilities (including contingent liabilities), inventory, and accounts receivable and payable.		
5	Have you obtained information on the business's capital structure and, where possible, obtained a current list of vested interests (such as shares, options, warrants, etc) and outstanding debt instruments?	<input type="checkbox"/>	<input type="checkbox"/>
6	Have you obtained an up-to-date copy of the business's credit report, if available?	<input type="checkbox"/>	<input type="checkbox"/>
7	Has a comparison between the business's gross profits and the industry trends been done?	<input type="checkbox"/>	<input type="checkbox"/>
8	Does the business have a loyal customer base? For example, subscriptions, loyal programs, etc.	<input type="checkbox"/>	<input type="checkbox"/>
9	Have you considered the financial projections and major growth drivers of the business for the next four years?	<input type="checkbox"/>	<input type="checkbox"/>
	Taxation considerations		
10	Have you familiarised yourself with the tax obligations of the entity?	<input type="checkbox"/>	<input type="checkbox"/>
	ALERT: You must consider the duties of a director under the tax law. New directors need to take action within 30 days of their appointment if the company has outstanding PAYG withholding or superannuation contribution amounts, or they face the possibility of becoming personally liable to pay a director penalty.		
11	Have you obtained confirmation that all tax obligations (for example, income tax, GST, PAYG withholding, stamp duty and payroll tax) are up to date and paid?	<input type="checkbox"/>	<input type="checkbox"/>
12	Have you obtained the last four years' tax returns, including supporting schedules and workpapers of the business, such as capital allowance schedules, business activity statements, fringe benefits tax returns, etc?	<input type="checkbox"/>	<input type="checkbox"/>
13	Have you reviewed all correspondence with the ATO and determined whether any private tax rulings, tax elections, amended notices of assessment, etc may apply the business?	<input type="checkbox"/>	<input type="checkbox"/>
14	Are you aware if the business is currently being audited by the ATO or has been audited in the last four years and, if so, are you aware of the outcome?	<input type="checkbox"/>	<input type="checkbox"/>
15	Have you considered the stamp duty implications for the purchase of the business?	<input type="checkbox"/>	<input type="checkbox"/>

Item		Yes	No
16	Have you considered whether the business purchase will be a supply of a going concern, ie GST-free?	<input type="checkbox"/>	<input type="checkbox"/>
	ALERT: Where a business is sold through an asset sale, the purchaser does not inherit any tax liabilities of the business. However, where a business is sold through the sale of units or shares, the purchaser inherits the tax liabilities of the business. Where a business is sold through the sale of units or shares, it will not qualify as a supply of going concern – the purchase of the units or shares will be an input taxed financial supply.		
	If you are buying a business through an asset sale		
17	Have you obtained a fixed asset register detailing all the assets being sold?	<input type="checkbox"/>	<input type="checkbox"/>
	TIP: The register should detail the following information about each asset: <ul style="list-style-type: none"> • the original purchase price; • the purchase date; • the depreciation method used; • the depreciation rate used; • the effective life of the asset; and • the written-down value. 		
18	Have you checked the ownership and condition of the assets being sold? Are copies of instruction manuals available?	<input type="checkbox"/>	<input type="checkbox"/>
19	Where the assets are leased by the business, have you obtained copies of the leases?	<input type="checkbox"/>	<input type="checkbox"/>
	TIP: If you are taking over the existing leases, you should consider whether the leasing terms are reasonable.		
20	Are the assets adequately insured until settlement of the purchase?	<input type="checkbox"/>	<input type="checkbox"/>
21	Has the purchase price been apportioned across the assets being purchased?	<input type="checkbox"/>	<input type="checkbox"/>
	If you are buying a business through a sale of units or shares		
22	Have you obtained a listing of all current shareholders or unit holders?	<input type="checkbox"/>	<input type="checkbox"/>
23	If you are purchasing the business through the sale of units, has the trust made a family trust election (FTE)?	<input type="checkbox"/>	<input type="checkbox"/>
24	If you are purchasing the business through the sale of shares, has the company made an interposed entity election (IEE)?	<input type="checkbox"/>	<input type="checkbox"/>
	ALERT: The existence of an FTE and IEE restricts who may receive a distribution from the trust or company, and to whom the trust may distribute any income derived. Generally, a trust will be denied a tax deduction for carried-forward losses or bad debts provided certain tests are passed. Similarly, where the substantial shareholder of a company changes, the company can be denied a tax deduction for carried-forward losses or bad debts unless the same business test is satisfied.		
	Employee obligations		
25	Have you obtained a list of the employees, including their salaries and other entitlements?	<input type="checkbox"/>	<input type="checkbox"/>
26	Do any employees have close contacts with customers so that if they were to leave, the business would be at risk of losing customers?	<input type="checkbox"/>	<input type="checkbox"/>
27	Are there any key staff who would be imperative to the smooth continued running of the business? Considerations should include special skill sets or knowledge.	<input type="checkbox"/>	<input type="checkbox"/>
28	Are you aware of all employment conditions, including key workplace agreements, any incentive bonus plans, staff rotation policies, disciplinary procedures, etc?	<input type="checkbox"/>	<input type="checkbox"/>

Item		Yes	No
29	Have all outstanding employee entitlements, such as superannuation guarantee and annual leave, been accounted for?	<input type="checkbox"/>	<input type="checkbox"/>
30	Are the WorkCover premiums up to date?	<input type="checkbox"/>	<input type="checkbox"/>
	ALERT: Where a business is sold through an asset sale, the purchaser can choose not to take on the employees of the vendor. However, where a business is sold through the sale of units or shares, there will be a continuity of employment and the buyer is responsible for any employee liabilities accrued.		
	Trading stock		
31	Does the trading stock include any obsolete stock?	<input type="checkbox"/>	<input type="checkbox"/>
32	Has the trading stock been valued at market value?	<input type="checkbox"/>	<input type="checkbox"/>
	TIP: Where the purchase of the business includes trading stock, the trading stock must be valued at market value on the day of disposal, which is normally the date of the purchase contract.		
	Business premises		
33	Have you sighted copies of all real estate lease agreements, deeds, mortgages and any documents relevant to the premises?	<input type="checkbox"/>	<input type="checkbox"/>
34	If the same business premises are to continue, has the vendor facilitated a lease assignment and have you signed all documents?	<input type="checkbox"/>	<input type="checkbox"/>
35	If there are improvements to the business premises, have you obtained a register detailing the improvements?	<input type="checkbox"/>	<input type="checkbox"/>
	TIP: The register should detail the following information: the cost of the improvements and the date of construction or acquisition.		
	Other considerations		
36	Do you know why the vendor is selling?	<input type="checkbox"/>	<input type="checkbox"/>
37	Has the vendor attempted to sell the business before? If so, what happened?	<input type="checkbox"/>	<input type="checkbox"/>
38	Is there a documented business plan?	<input type="checkbox"/>	<input type="checkbox"/>
39	How complex is the business? Does it involve many disparate subsidiaries or multiple products and services?	<input type="checkbox"/>	<input type="checkbox"/>
40	Are the business operations subject to any government regulations? If so, are all relevant government licenses, permits or consents up to date?	<input type="checkbox"/>	<input type="checkbox"/>
41	Do you know who the main competitors are?	<input type="checkbox"/>	<input type="checkbox"/>
42	Does the business have any pending or ongoing lawsuits, or any recently finalised litigation cases?	<input type="checkbox"/>	<input type="checkbox"/>
43	Have you searched the local council and other government agency records to ensure there are no plans or council orders that could disrupt the business or lead to a potential drop in sales?	<input type="checkbox"/>	<input type="checkbox"/>
44	If a restrictive covenant, an earn-out clause or a claw-back clause is included in the purchase contract, have you ascertained the legal and tax implications?	<input type="checkbox"/>	<input type="checkbox"/>
45	Have you identified the key customer and supplier contracts and the likely impact a change of ownership might have on these agreements?	<input type="checkbox"/>	<input type="checkbox"/>
46	Have you examined current production, distribution, sales and marketing strategies (including websites and social media) of the business and the likely impact of a change of ownership?	<input type="checkbox"/>	<input type="checkbox"/>
47	If you are acquiring the business with other people, do you have the necessary agreements in place?	<input type="checkbox"/>	<input type="checkbox"/>

Item		Yes	No
48	Have you considered potential future issues that could negatively impact the viability of the business (eg changing technology, trends, etc)?	<input type="checkbox"/>	<input type="checkbox"/>
49	Are there any intellectual property matters to consider? For example, trademarks, licences, patents, etc.	<input type="checkbox"/>	<input type="checkbox"/>