Bridgland & Co

Chartered Accountants and Financial Advisers

Client Information Newsletter - Tax & Super

February 2020

Photo by Gift Habeshaw on Unsplash

Tax issues when dealing with volunteers

From bushfire relief groups, sporting clubs, environmental groups, charity associations and many more, volunteers are an indispensible workforce and support network for many organisations. For most, if not all, having volunteers ready to lend a hand is pivotal in them being able to function or survive.

Given that there are many hundreds of volunteers propping up all sorts of good works throughout the nation, and in the spirit of thorough tax planning, an important practical consideration for many may be if payments to volunteers constitute assessable income and whether their expenses are tax deductible.

What's a volunteer?

There is no common law definition of "volunteer" for tax purposes, although it typically means someone who enters into any service of their own free will, or who offers to perform a service or undertaking. A genuine

continued overleaf

About this newsletter

Welcome to Bridgland & Co's client information newsletter, your monthly tax and super update keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics covered, please contact us via the details below.

T: 02 8090 4112 | E: lindsay@lindsaybridgland.com.au

© Content in partnership with Taxpayers AUSTRALIA

Tax issues when dealing with volunteers *cont*

volunteer does not work under a contractual obligation for remuneration, and would not be an employee or an independent contractor.

Volunteers can be paid in cash, given non-cash benefits or a combination of both – payments include honorariums, reimbursements and allowances. Generally, receipts which are earned, expected, relied upon and have an element of periodicity, recurrence or regularity are treated as assessable income.

Conversely, where a person's activities are a pastime or hobby, rather than income producing, money and other benefits received from those activities are generally not perceived as assessable income.

The examples below shed light on whether typical payments such as honorariums, reimbursements and allowances constitute assessable income.

Is an honorarium assessable income?

An honorarium is either an honorary reward for voluntary services, or a fee for professional services voluntarily rendered, and can be paid in money or property.

Q Alex works as a computer programmer at the local city council and volunteers as a referee for the local rugby union. This year he organised an accreditation course for new referees. He applied for a grant, arranged advertising, assembled course materials, and booked venues. Michael is awarded an honorarium of $100 for his efforts.

A No, the honorarium is not assessable income as honorary rewards for voluntary services are not assessable as income and related expenses are not deductible.

Q Mindy has a graphic design business and volunteers at the local art gallery. Mindy prepares the gallery's annual report using her business's software and equipment. At the gallery's annual general meeting, Mindy is awarded an honorarium of $800 in appreciation of her services.

A Yes, this honorarium constitutes assessable income because it is a reward for services connected to her income-producing activities.

Is a reimbursement assessable income?

A reimbursement is precise compensation, in part or full, for an expense already incurred, even if the expense has not yet been paid. A payment is more likely to be a reimbursement where the recipient is required to substantiate expenses and/or refund unspent amounts.

Q Matthew is an electrical contractor. He volunteers to mow the yard of a local not-for-profit childcare centre. Matthew purchases a $15 spare part for the centre's mower. The childcare centre reimburses Matthew for the cost of the spare part.

A No, the $15 reimbursement is not assessable income because Matthew has not made the payment in the course of his enterprise as an electrician.

Q Rose is a gardener. She volunteers to prune the shrubs of a local nursing home and uses materials from her business's trading stock.

A Yes, any reimbursement she receives for the cost of the materials is assessable income because the supplies were made in the course of her enterprise.

Is an allowance assessable income?

An allowance is a definite predetermined amount to cover an estimated expense. It is generally the case that it is paid even if the recipient does not spend the full amount.

Q Andy volunteers as a telephone counsellor for a crisis centre. He is rostered on night shifts during the week and is occasionally called in on weekends. When Andy works weekends, the centre pays him an allowance of $150. The allowance is paid to acknowledge Andy's extra efforts and to compensate him for additional costs incurred.

A Yes, these payments to Andy are considered assessable income because he received the allowance with no regard to actual expenses and there is no requirement to repay unspent money.

continued overleaf ⇨

Tax issues when dealing with volunteers ***cont***

Expenses incurred by volunteers

On the tax deductibility of volunteer expenses, a volunteer may be entitled to claim expenses incurred in gaining or producing assessable income – except where the expenses are of a capital, private or domestic nature.

For instance, expenditure on items such as travel, uniforms or safety equipment could be deductible, but expenses incurred for private and income-producing purposes must be apportioned – with only the income-producing portion of the expense being tax deductible.

Q Robert operates a commercial fishing trawler and uses navigational charts in his business. He also volunteers as an unpaid training officer at the volunteer coastguard. Robert purchases two identical sets of navigational charts – one for his business, the other as a training aid in coastguard courses.

A Yes, Robert can claim the part incurred in gaining or producing assessable income – in this case, half the total cost.

What about donations? Are these deductible?

It is also common for volunteers to donate money, goods and time to not-for-profit organisations. To be tax deductible, a gift must comply with relevant gift conditions, and:

- be made voluntarily
- be made to a deductible gift recipient, and
- be in the form of money ($2 or more) or certain types of property.

Donors can claim deductions for most, but not all, gifts they make to registered deductible gift recipients. For instance, a gift of a service, including a volunteer's time, is not deductible as no money or property is transferred to the deductible gift recipient. However individuals may be entitled to a tax deduction for contributions made at fundraising events, including dinners and charity auctions.

EXAMPLE: Mila buys a clock at a charity auction for $200. This is not a gift even if Mila has paid a lot more than the value of the clock. Payments that are not gifts include those to school building funds as an alternative to an increase in school fees and purchases of raffle or art union tickets, chocolates and pens.

EXAMPLE: Clive receives a lapel badge for his donation to a deductible gift recipient. As the lapel badge is not a material benefit or an advantage, the donation is a gift.

If you wish to know more, consult this office for more information on which volunteer payments are considered assessable income and which expenses are typically tax deductible. ■

This information has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation or needs.

Succession planning for family businesses

For most family businesses as well as private groups, succession planning (sometimes known as transition planning) involves considerations around the eventual sale of your business, or the passing of control of it to other family members when you retire. Depending on your circumstances, this may include realising assets and making other changes to ownership, but is certainly tied up with retirement planning and estate planning.

Adopting a sound tax governance framework can help you manage tax issues around succession planning before they present a problem. Though succession planning may not have an immediate tax impact, it's important to include tax considerations in your plan. This will avoid unexpected tax issues arising down the track when you implement your plan.

Transferring control of your business to family members may involve restructuring your business operations — changes to share structure, changes to the trustee and appointor of a trust, changes to partnership structures — or transferring assets to family members via the creation of trusts or other entities. Remember that these sort of events can have legal and tax implications that need to be carefully considered. A common assumption with business owners is that the transaction being considered is a single "sale" — that of the business — whereas it is actually many sales of individual assets that need to be accounted for, possibly with different tax outcomes.

For example, when you dispose of or transfer your business assets there will likely be capital gains tax (CGT) consequences. The sale of a business can also trigger liabilities in relation to GST and, where applicable, wine equalisation tax, fuel tax credits and excise duty.

Where pre-CGT assets are involved, you should also understand and document the tax consequences for you and your beneficiaries. Issues for consideration include whether changes in the business operations may affect the pre-CGT status of the assets or shares and the availability of carried-forward losses.

Any significant changes to your business structures or operations (including any asset disposals) should be fully documented, along with their tax impact. Ensure information on your assets (such as acquisition dates and cost base) is properly documented. This will also ensure that any subsequent disposals of the assets

Photo by Photo by Sabine van Straaten on Unsplash

can be treated correctly for tax purposes. Different strategies will have different tax consequences for the owner and beneficiaries. Consider each strategy and identify (and keep records of) significant transactions.

For example say, as the owner of a successful family business, you prepared a basic succession plan many years ago, but since then your business has expanded and your children have grown up. One of them may work with you in the business and you would like to see them take over when you retire. The discussion you could have with your adviser would be how best to transfer the business and make the transition to retirement.

One option could be to restructure your business as a family trust, so you can still have some control of the business while reducing your involvement in the day-to-day operations. We can explain the tax consequences of this strategy, while also alerting you to other options and tax considerations. Once you decide on your strategy, you update your succession plan, which now includes a section detailing the tax treatment and tax payable on transfer.

Whatever strategies you use to transfer your business onto the next generation, make sure your plans are documented and you seek advice from professional advisers where needed. This will reduce the risk of incorrect tax treatment and outcomes, and possibly consequent penalties. ■

Photo by Wesley Tingey on Unsplash

Distributions from a discretionary trust

Distributions from trusts and the taxation of those distributions can be complex. This is an attempt to simplify the topic.

The purpose of a trust is to separate the legal and beneficial ownership of assets. The legal ownership of the asset rests with the trustee. The beneficiaries benefit from the income that flows from the assets.

A trust is not a legal entity. It is best described as a legal “relationship” that is controlled by the trustee of the trust under the terms of the trust deed.

TRUSTEE

The trustee is the controlling mind of the trust. A trustee can be an individual or a number of individuals. A trustee can also be an entity, such as a company. The trustee has a fiduciary duty to administer the trust for the benefit of the beneficiaries.

A fiduciary relationship is one of the utmost good faith. The trustee must only act in accordance with the trust deed and relevant trust legislation. The trustee is the legal owner of the assets of the trust, but not the beneficial owner.

A trust is a discretionary trust when the trustee has the absolute discretion as to how the income and capital of the trust is distributed to beneficiaries.

TRUST DEED

The trust deed is a legal document signed by the creator of the trust, called the settlor. It gives instructions to the trustee as to how the trust is to be administered and what activities it can engage in. It also names and specifies the beneficiaries of the trust. The trust deed is a very important document.

APPOINTOR

The appointor(s) are the individuals that appoint the trustee and can change the trustee. It is important that a trust always has a living appointor.

DISTRIBUTION MINUTE

In most cases, by 30 June each year, the trustee must determine the distributable income of the trust. The trustee must then decide how the distributable income of the trust is to be distributed among the beneficiaries. This includes the amount of the distributions and also the type of distributions (e.g. capital gains and franked distributions).

BENEFICIARIES

The beneficiaries are those that may benefit from the income and capital of the trust. Usually, there are primary beneficiaries defined in the trust deed and most other beneficiaries will be related or connected to the primary beneficiaries. Beneficiaries can be entities and do not have to be human beings.

TAXATION

Income distributed to adult beneficiaries and beneficiaries that are entities are taxed to those beneficiaries. The trustee is taxed on income distributed to child beneficiaries. The trustee is also taxed, often at the top marginal tax rate, if there is income of the trust that has not been distributed to a beneficiary.

Note that the taxation of trust income can be a complex matter, and usually requires professional advice. ■

What you need to know about the First Home Super Saver scheme

The First Home Super Saver (FHSS) scheme was introduced a couple of years ago with an aim to reduce pressure on housing affordability. The scheme allows eligible taxpayers to save money for their first home inside the superannuation system. The government says this concessionally taxed environment will help first home buyers save faster.

HOW IT WORKS

Under the scheme, a taxpayer can make voluntary concessional and non-concessional contributions into their super fund to save for a first home. This has applied since 1 July 2017. Then they can apply to release these voluntary contributions (along with related earnings), in order to help buy a home.

First home buyers must also meet the following conditions. They must:

- either live in the premises, or intend to as soon as is practicable
- intend to live in it for at least six months within the first year of it being owned, after it is practical to move in.

The scheme allows for a maximum of $15,000 of these voluntary contributions from any one financial year to be released, up to a total of $30,000 across all years. Earnings related to these amounts are also available.

There are however certain limits in percentage terms on withdrawals. You can withdraw, taking into account the yearly and total limits:

- 100% of non-concessional (after-tax) amounts
- 85% of concessional (pre-tax) amounts.

Note that SMSF members must ensure that their fund's trust deed allows for the release of funds to members as is drafted in the FHSS scheme.

ELIGIBILITY

Contributions can be made at any age, however the release of funds or even requesting a determination about amounts under the scheme is limited to those who are 18 years and older.

Also, scheme users must have:

- never owned Australia property, including an investment property, vacant land, commercial property, a lease of land in Australia, or a company title interest in land in Australia (there's an exception for financial hardship)
- not made a previous request to release funds under the FHSS scheme.

Eligibility is assessed on an individual basis. This means that couples, siblings or friends can each access their own eligible FHSS contributions to purchase the same property. If any have previously owned a home, it will not stop anyone else who is eligible from applying.

TYPES OF CONTRIBUTIONS ACCEPTED

You can make the following existing types of contributions towards the FHSS scheme:

- voluntary concessional contributions – including salary sacrifice amounts or contributions for which a tax deduction has been claimed (usually taxed at 15% in the super fund)
- voluntary non-concessional contributions you have made – these are made after tax or if a tax deduction has not been claimed.

You can contribute up to your existing contribution caps. Having amounts released under the FHSS scheme does not affect the calculation of concessional or non-concessional contributions for cap purposes. That is, contributions still count towards your contribution caps for the year they were originally made.

continued page 8 ⇨

Photo by Sandy Millar on Unsplash

Superannuation tax offsets you may be able to use

Tax offsets (sometimes referred to as rebates) directly reduce the amount of tax payable on your taxable income. In general, offsets can reduce your tax payable to zero, but on their own they can't get you a refund.

There are two superannuation-related tax offsets for which you may be eligible. The Australian super income stream tax offset, and a tax offset for super contributions made on behalf of your spouse.

Australian super income stream tax offset

If you receive income from an Australian super income stream, you may be eligible for a tax offset equal to:

- 15% of the taxed element
- 10% of the untaxed element.

The tax offset amount available to you on your taxed element will be shown on your payment summary (or "income statement"). However there is now a limit on the amount of tax offset you're entitled to on your untaxed element. This is generally limited to $10,000 and will not be shown on your payment summary.

Photo by Patrick Tomasso on Unsplash

You may be entitled to a tax offset on your untaxed element, and we can help you work this out by accessing the ATO's defined benefit income cap calculation tool.

You're not entitled to a tax offset for the taxed element of any super income stream you receive before you reach your preservation age, unless the super income stream is either a:

- disability super benefit
- death benefit income stream.

You're not entitled to a tax offset for the untaxed element of any super income stream you receive before you turn 60 years old *unless*:

- the super income stream is a death benefit income stream
- the deceased died after they turned 60 years old.

Tax offset for super contributions on behalf of your spouse

If you make contributions to a complying super fund or a retirement savings account (RSA) on behalf of your spouse (married or de facto) who is earning a low income or not working, you may be able to claim a tax offset.

You can claim the maximum tax offset of $540 if:

- you contribute to the eligible super fund of your spouse, whether married or de-facto, and
- your spouse's income is $37,000 or less.

The tax offset amount reduces when your spouse's income is greater than $37,000 and completely phases out when your spouse's income reaches $40,000.

continued overleaf ⇨

Superannuation tax offsets you may be able to use ***cont***

You will be entitled to a tax offset of ***up to*** $540 per year if you meet all of the following conditions:

- For income years prior to 2017-18, the sum of your spouse's assessable income, total reportable fringe benefit amounts and reportable employer super contributions was less than $13,800.
- For 2017-18 the sum of your spouse's assessable income, total reportable fringe benefit amounts and reportable employer super contributions was less than $40,000 and the contributions were not deductible to you.
- For 2018-19 and later income years, the sum of your spouse's assessable income (disregarding your spouse's First Home Super Saver scheme released amount for the income year), total reportable fringe benefit amounts and reportable employer superannuation contributions was less than $40,000 and the contributions were not deductible to you.
- The contributions were made to a super fund that was a complying super fund for the income year in which you made the contribution.
- Both you and your spouse were Australian residents when the contributions were made.
- When making the contributions you and your spouse were not living separately and apart on a permanent basis.
- For 2017-18 and later income years, your spouse had not exceeded their non-concessional contributions cap for the relevant year or had a total super balance equal to or exceeding the transfer balance cap immediately before the start of the financial year in which the contribution was made (the general transfer balance cap for 2018-19 is $1.6 million).

The tax offset for eligible spouse contributions can't be claimed for super contributions that you made to your own fund, then split to your spouse. That is called a rollover or transfer, not a contribution. ■

What you need to know about the First Home Super Saver scheme ***cont***

IMPORTANT THINGS TO KNOW

There are other important things you should be aware of. These include:

- It can be advisable to request the release of FHSS amounts around the same time you start your home buying activities – for example, when applying for a home loan.
- After you have requested the release, it may take between 15 and 25 business days to receive the money.
- You must apply for and receive a FHSS determination from the ATO before signing a contract for the first home or applying for release of FHSS amounts.
- If you have already received a determination and signed a contract to purchase or construct the home, you must make a valid release request within 14 days of entering into that contract. You can also sign the contract after you make a valid release request.
- The home must be located in Australia.
- You can only apply for release of FHSS amounts once.

FHSS scheme users have 12 months from the date you make a valid request for release of FHSS amounts to do one of the following:

- sign a contract to purchase or construct your home – you must notify the ATO within 28 days that you have signed the contract
- recontribute the assessable FHSS amount (less tax withheld) into your super fund – you must notify the ATO within 12 months of the release request date that you have recontributed.

If you don't notify the ATO that you have done one of the above, or you keep the FHSS money, you may be subject to an FHSS tax. This is a flat tax equal to 20% of the assessable FHSS released amounts. This may not be the same as the total amount released.

We can provide further guidance should the FHSS scheme be of interest to you or anyone you know. ■