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MARCH & APRIL 2024

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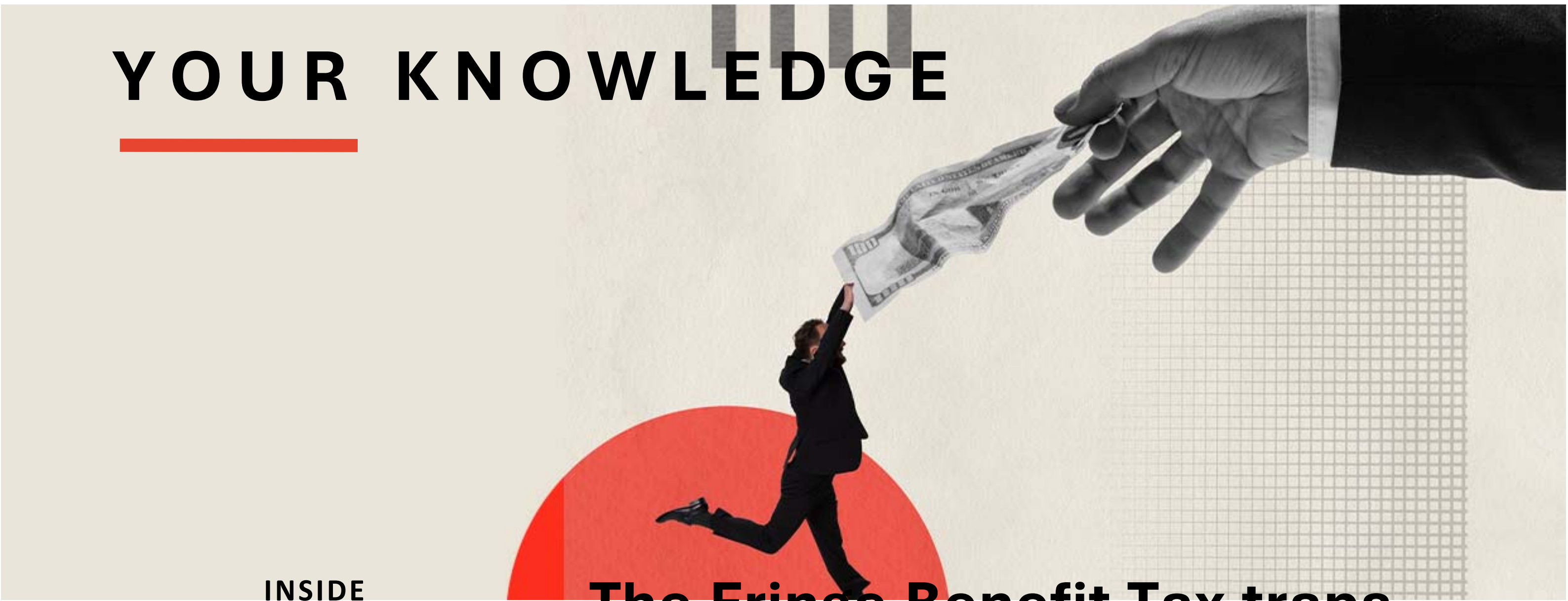
YOUR KNOWLEDGE



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The Fringe Benefit Tax traps

The Fringe Benefits Tax year (FBT) ends on 31 March. We explore the problem areas likely to attract the ATO's attention.

Electric vehicles causing sparks

In late 2022, the Government introduced a concession that enables employers to provide some electric vehicles to employees without incurring the 47% fringe benefits tax (FBT) on private use.

The exemption applies to the use of electric cars, hydrogen fuel cell electric cars or plug-in hybrid electric cars if:

- The value of the car is below the luxury car tax (LCT) threshold for fuel efficient vehicles ($89,332 for 2023-24 financial year) at the time it is first sold in a retail sale; and
- The car is both first held and used on or after 1 July 2022.

If your business is planning on acquiring an electric vehicle, be aware that from 31 March 2025, the FBT exemption will no longer apply to plug-in hybrid electric vehicles *unless* the vehicle met the conditions for the exemption before this date **and** there is already a binding agreement to continue to use the vehicle privately after this date.

The problem areas

The exemption only applies to employees - For the FBT exemption to apply, the vehicle needs to be supplied by the employer to an employee (including under a salary sacrifice agreement). Partners of a partnership

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and sole traders are not employees and cannot access the exemption personally.

If LCT applies to the car it will never qualify for the FBT exemption. For example, if the EV failed the eligibility criteria in 2022-23 when it was first purchased because it was above the luxury car limit of $84,916, the fact that it resold in 2023-24 for $50,000 does not make it eligible for the exemption on resale. Likewise, if the car was used by anyone (including a previous owner) before 1 July 2022 then it will probably never qualify for the FBT exemption.

Home charging stations are not included in the exemption. The FBT exemption includes associated benefits such as registration, insurance, repairs or maintenance, but it does not include a charging station at the employee's home. If the employer instals a home charging station at the employee's home or pays for the cost, then this is a separate fringe benefit.

FBT might not apply but you do the paperwork as if it did. While the FBT exemption on EVs applies to employers, the value of the fringe benefit is still taken into account when working out the reportable fringe benefits of the employee. That is, the value of the benefit is reported on the employee's income statement. While you don't pay income tax on reportable fringe benefits, it is used to determine your adjusted taxable income for a range of areas such as the Medicare levy surcharge, private health insurance rebate, employee share scheme reduction, and certain social security payments.

What about the cost of electricity? The ATO's short-cut method can potentially be applied to calculate reportable fringe benefit amounts and applies a rate of 4.20 cents per kilometre. If you are not using the short-cut method, you need to have a viable method of isolating and calculating the electricity consumption of the car.

The exemption does not apply if the employee directly purchases or leases the EV. If an employee purchases or leases the EV directly, and the employer reimburses them under a salary sacrifice arrangement, the FBT exemption does not apply because this is not a car fringe benefit. However, the exemption can potentially apply to novated lease arrangements if they are structured carefully.

Not all electric vehicles are cars. To qualify for the exemption, the EV needs to be a car – electric bikes and scooters do not count, nor do vehicles designed to carry a load of 1 tonne or more or that carry 9 passengers or more.

Other FBT problem areas

Not registering. If you have employees, it is unusual not to provide at least some fringe benefits. If your business is not registered for FBT but you have provided entertainment, salary sacrifice arrangements, forgiven debts, paid for or reimbursed private expenses, or have provided accommodation or living away from home allowances, it's important that the FBT position is reviewed carefully. The ATO targets businesses that aren't registered for FBT.

When employees travel. There has been a renewed focus recently on whether employees are travelling in the course of performing their work (deductible and not subject to FBT) or travelling from home to their place of work (not deductible and subject to FBT). The Federal Court decision in the Bechtel Australia case is a good example. The case dealt with the travel of fly-in-fly-out workers between home and their worksite - involving flights, ferry and bus travel. The Court found that the employees were travelling before they commenced their shift and that the employer was liable for FBT in connection with the transport that was provided. The case highlights the need for employers to ensure that they are fully aware of the connection between work and travel.

-End-

The ATO Debt Dilemma

Late last year, thousands of taxpayers and their agents were advised by the Australian Taxation Office (ATO) that they had an outstanding historical tax debt. The only problem was, many had no idea that the tax debt existed.

The ATO can only release a taxpayer from a tax debt in limited situations (e.g., where payment would result in serious hardship). However, sometimes the ATO will decide not to pursue a debt because it isn't economical to do so. In these cases, the debt is placed "on hold", but it isn't extinguished and can be re-raised on the taxpayer's account at a future time. For example, these debts are often offset against refunds that the taxpayer might be entitled to. However, during COVID, the ATO stopped offsetting debts and these amounts were not deducted.

In 2023, the Australian National Audit Office advised the ATO that excluding debt from being offset was inconsistent with the law, regardless of when the debt arose. And by this stage, the ATO's collectible debt had increased by 89% over the four years to 30 June 2023.

The response by the ATO was to contact thousands of taxpayers and their agents advising of historical debts that were "on hold" and advising that the debt would be offset against any future refunds. These historical debts were often across many years, some prior to 2017, and ranged from a few cents to thousands of dollars. For many, the notification from the ATO was the first inkling they had of the debt, because debts on hold are not shown in account balances as they have been made "inactive". In other words, taxpayers were accruing debt but did not know as the debts were effectively invisible because they were noted as "inactive."

In a recent statement, the ATO said: "The ATO has paused all action in relation to debts placed on hold prior to 2017 whilst we review and develop a pragmatic and sensible way forward that takes into account concerns raised by the community.

It was never our intention to cause frustration or concern. It's important to us that taxpayers have trust in our tax system and our records."

For any taxpayer with a debt on hold, it is important to remember that just because the ATO might not be actively pursuing recovery of the debt, this doesn't mean that it has been extinguished.

Small business tax debt blows out

Out of the $50bn in collectible debt owing to the ATO, two thirds is owed by small business. As of July 2023, the ATO moved back to its "business as usual" debt collection practices. For entities with debts above $100,000 that have not entered into debt repayment terms with the ATO, the debt will be disclosed to credit reporting agencies.

If your business has an outstanding tax debt, it is important to engage with the ATO about this debt. Hoping the problem just goes away will normally make things worse.

-End-

How to take advantage of the 1 July super cap increase

From 1 July 2024, the amount you can contribute to super will increase. We show you how to take advantage of the change.

The amount you can contribute to superannuation will increase on 1 July 2024 from $27,500 to $30,000 for concessional super contributions and from $110,000 to $120,000 for non-concessional contributions.

The contribution caps are indexed to wages growth based on the prior year December quarter's average weekly ordinary times earnings (AWOTE). Growth in wages was large enough to trigger the first increase in the contribution caps in 3 years.

Other areas impacted by indexation include:

- The Government super co-contribution – Income threshold
- The super guarantee maximum contribution base (the limit for compulsory super guarantee payments)
- The tax-free thresholds for redundancy payments
- The CGT contribution cap (amount that can be contributed to super following the sale of eligible business assets)

For those with the disposable income to contribute, superannuation can be very attractive with a 15% tax rate on concessional super contributions and potentially tax-free withdrawals when you retire. For business owners who might have had an exceptional year or sold their business, it's an opportunity to get more into super. However, the timing of contributions will be important to maximise outcomes.

If you know you will have a capital gains tax liability in a particular year, you may be able to use 'catch up' contributions to make a larger than usual contribution and use the tax deduction to help offset your capital gain tax bill.

But, this strategy will only work if you meet the eligibility criteria to make catch up contributions and you lodge a *Notice of intent to claim or vary a deduction for personal super contributions*, with your super fund.

Using the bring forward rule

The bring forward rule enables you to bring forward up to 2 years' worth of future non-concessional contributions into the year you make the contribution – this is assuming your total superannuation balance enables you to make the contribution and you are under age 75.

If you utilise the bring forward rule before 30 June, the maximum that can be contributed is $330,000. However, if you wait to trigger the bring forward until on or after 1 July, then the maximum that can be contributed under this rule is $360,000.

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‘Catch up’ contributions

If your super balance is below $500,000 on the prior 30 June, and you want to quickly increase the amount you hold in super, you can utilise any unused concessional super contributions amounts from the last 5 years.

Let’s look at the example of Gary who has only been using $15,000 of his concessional super cap for the last few years. Gary’s super balance at 30 June 2023 was $300,000, so he is well within the limit to make catch up contributions.

	Concessional Cap	Used	Unused
2018-19	$25,000	$15,000	$10,000
2019-20	$25,000	$15,000	$10,000
2020-21	$25,000	$15,000	$10,000
2021-22	$27,500	$15,000	$12,500
2022-23	$27,500	$15,000	$12,500
2023-24	$27,500	?	?

Gary could access his $27,500 concessional cap for 2023-24 plus the unused $55,000 from the prior 5 financial years.

If Gary doesn’t access the unused amounts from 2018-19 by 30 June 2024, the $10,000 will no longer be available.

Transfer balance cap unchanged

The general rate for the transfer balance cap (TBC), that limits how much money you can transfer into a tax-free retirement account, will remain at $1.9 million for 2024-25. The TBC is indexed by the December consumer price index (CPI) each year.

Quote of the month

“Life isn't about finding yourself. Life is about creating yourself.”

George Bernard Shaw

Revised stage 3 tax cuts confirmed for 1 July

The revised stage 3 tax cuts have passed Parliament and will come into effect on 1 July 2024.

Before the new tax rates come into effect, check any salary sacrifice agreements to ensure that they will continue to produce the result you are after.

Resident individuals

Tax rate	2023-24	2024-25
0%	$0 – $18,200	$0 – $18,200
16%		$18,201 – $45,000
19%	$18,201 – $45,000	
30%		$45,001 – $135,000
32.5%	$45,001 – $120,000	
37%	$120,001 – $180,000	$135,001 – $190,000
45%	>$180,000	>$190,000

Non-resident individuals

Tax rate	2023-24	2024-25
30%		$0 – $135,000
32.5%	$0 – $120,000	
37%	$120,001 – $180,000	$135,001 – $190,000
45%	>$180,000	>$190,000

Working holiday markers

Tax rate	2023-24	2024-25
15%	0 – $45,000	0 – $45,000
30%		$45,001 – $135,000
32.5%	$45,001 – $120,000	
37%	$120,001 – $180,000	$135,001 – $190,000
45%	>$180,000	>$190,000

Getting back what you put in: Loans to get a business started

It's not uncommon for business owners to pour their money into a business to get it up and running and to sustain it until it can survive on its own. A recent case highlights the dangers of taking money out of a company without carefully considering the tax implications.

A case before the Administrate Appeals Tribunal (AAT) was a loss for a taxpayer who blurred the lines between his private expenses and those of his company.

The taxpayer was a shareholder and director of a private company that operated a business. Over a number of years, he made withdrawals and paid personal private expenses out of the company bank account, but the amounts were not recognised as assessable income.

Following an audit, the ATO assessed the withdrawals and payments as either:

- Ordinary income assessable to the taxpayer, or
- Deemed dividends under Division 7A.

Division 7A contains rules aimed at situations where a private company provides benefits to shareholders or their associates in the form of a loan, payment or by forgiving a debt. If Division 7A is triggered, then the recipient of the benefit is taken to have received a deemed unfranked dividend for tax purposes.

The taxpayer tried to convince the AAT that the withdrawals were repayments of loans originally advanced by him to the company and therefore should not be assessable as ordinary income. Alternatively, he argued that the payments were a loan to him and there was no deemed dividend under Division 7A because the company did not have any "distributable surplus" (a technical concept which limits the deemed dividend under Division 7A).

The AAT found issues with the quality of the taxpayer's evidence, concluding that he failed to prove that the ATO's assessment was excessive. This was based on a number of factors, including:

- The taxpayer produced a number of different iterations of his financial affairs and tax return.
- He could not satisfactorily explain how he was able to fund the original loans to the company, especially given he had declared tax losses in multiple years around the time when the loans were made.

While the taxpayer had tried to explain that some of his loans to the company were sourced originally from borrowings from his brother, the AAT considered this was implausible given the brother's own tax return showed modest income.

So, how should a contribution from a company owner to get a business up and running be treated? It really depends on the situation, but for small start-ups, the common avenues are:

- Structure the contribution you make as a loan to the company, or
- Arrange for the company to issue shares, with the amounts paid being treated as share capital.

In making a decision on which is the best approach, it is necessary to consider a range of factors, including commercial issues, the ease of withdrawing funds from the company later and regulatory requirements.

The way you put money into the company also impacts on the options that are available to subsequently withdraw funds from the company. However, the key issue to remember is that if you take funds out of a company then there will probably be some tax implications that need to be carefully managed.

YOUR KNOWLEDGE

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Note: The material and contents provided in this publication are informative in nature only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained.

Publication date: 4 April 2024.

Warning on SMSF asset valuations

The ATO has issued a warning to trustees of SMSFs about sloppy valuation practices.

ATO data analysis has revealed that over 16,500 self managed superannuation funds (SMSFs) have reported assets as having the same value for three consecutive years. With many of these assets residential or commercial Australian property, you can forgive the ATO for being incredulous.

For trustees of SMSFs, where asset values are consistently reported at the same value, it's likely your SMSF will be flagged for closer scrutiny by the ATO.

The value of assets in your SMSF impacts on member balances and by default, can impact the amount you can contribute, ability to segregate assets for exempt current pension income, the work test exemption and access to catch-up concessional contributions. And, as we move closer to the implementation of the Division 296 $3m superannuation tax, valuations will be very important for anyone with a member balance close to or in excess of $3m.

If the asset is an in-house asset, for example a related unit trust, then an accurate valuation is essential to ensure the fund remains within the 5% in-house asset limit. If the value of in-house assets rises above 5% of total assets, the asset/s need to be sold to bring the limit back below 5%.

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Valuing at market value

Each year, the assets of your SMSF must be valued at 'market value' and evidence provided to your auditor. Broadly, market value is the amount that a willing buyer of the asset could reasonably be expected pay to acquire the asset from a willing seller assuming that the buyer and seller are dealing at arm's length, and everyone acts knowledgeably and prudentially. It's a common sense test that looks at the value you could reasonably expect to achieve for an asset.

If your SMSF holds collectible and personal use assets like artwork, jewellery, motor vehicles etc., a valuation must be performed by a qualified independent valuer on disposal. This does not necessarily mean that an independent valuation needs to be completed every year but at least every three years would be prudent. If you are not utilising an independent valuer, you will still need to make an active assessment based on market conditions. For example, if you hold artwork and the artist who created your investment artwork died, has this changed the value? Are the primary and secondary markets for the artwork transacting at a higher value? Leaving the value of the asset at its acquisition price calls into question the rationale for acquiring the asset within the fund in the first place. If the asset is unlikely to add any value to your retirement savings, then should it be held in your SMSF when you could achieve a higher rate of return elsewhere?

In most cases, the ATO require trustees to value an asset based on "objective and supportable data". This means that you should document the asset being valued, a rational explanation for the valuation, and the method in which you arrived at it.

Valuing real property

Commercial and residential real estate does not need to be valued by an independent valuer. But, if there have been significant changes to the property, the market, or the property is unique or difficult to value, it is a good idea to have a written independent valuation from a valuer or estate agent undertaken (their report should also document the valuation method and list comparable properties).

If you are completing the valuation yourself, ensure that you document the time period the valuation applies to and the characteristics that contribute to the valuation. For example, a 10 year old brick four bedroom property on 640m^2 of land in what suburb and any features that make it more or less attractive to a buyer, for example proximity to transport. And, you should access credible sales data either on similar properties in the same suburb that have sold recently or from a property data service. More than one source of data is recommended.

The estimates on a lot of online property sales sites are general in nature and not reliable for a valuation of a specific property. The average price change for the suburb however could be used as supporting evidence of your valuation.

For commercial property, net income yields are required to support the valuation. Where the tenants are related parties, for example your business leases a commercial property owned by your SMSF, you will need evidence that a comparative commercial rent is being paid and the rent is keeping pace with the market.

Valuing unlisted companies and unlisted trust investments

Valuing unlisted companies and unlisted investments can be difficult. The financials alone are not enough. But, if your SMSF invested in an unlisted company or shares in a unit trust, then there is an expectation that the trustees made the decision to make the initial acquisition based on the value of the asset, its potential for capital growth and income generation. That is, if you assessed the market value going into the investment, then it should not be a stretch to value the asset each year.

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The difficulty for many investors is that in unlisted companies or trusts, the initial investment was broadly equivalent to the cash requirements of the activity being undertaken.

Generally, the starting point is the value of the assets in the entity and/or the consideration paid for the shares/units. For widely held shares or units, this is the entry and exit price.

Where property is the only asset, then the valuation principles for valuing real property are likely to apply.

Where there is no reliable data or market

We've seen a few scenarios where the assets purchased or created by the SMSF have no equal or there is no market – the true extent of the value will only really be known when the asset is realised. These unusual items default to either a professional valuation or a viable market assessment. This might be a derivative of the purchase price or data from a related market.

Valuations and the impending Division 296 tax on super earnings

The value of assets will be particularly important for those with super balances close to or above the $3m threshold for the impending Division 296 tax on fund earnings. Because the tax will measure asset values and tax the growth in earnings above the $3m threshold, accurate valuations will be important to ensure that the fund does not pay tax when it does not need to, and to reduce the likelihood of anomalies artificially inflating tax payable.

Quote of the month

"Experience is one thing you can't get for nothing."

Oscar Wilde

Budget 2024-25

The 2024-25 Federal Budget is the third for the Albanese Government and consistent with previous years, the primary themes are expected to be the cost of living and the economic shift to net zero.

According to election guru Antony Green, the window for the next election starts on Saturday, 3 August 2024, "the first possible date for an election if writs are issued on 1 July. The election window will stay open until mid-May 2025, the last date being 17 or 24 May." No doubt, the Government will have the election in mind when it presents the Budget on 14 May at 7.30pm AEST.

Stage 3 tax cuts

The redesigned stage 3 tax cuts have been passed by Parliament and will apply from 1 July 2024. The amendments broadened the benefits of the tax cut by focussing on individuals with taxable income below $150,000.

Investment incentives for small business

It remains to be seen whether an increased instant asset write-off threshold will apply to smaller businesses in the 2024-25 income year. The increased threshold to $20,000 announced in the 2023-24 Budget still has not passed Parliament (the Senate increased the threshold to $30,000). If the intent of this measure is to encourage investment, it is essential that legislation enabling these measures is passed by Parliament in a reasonable time to give business operators the certainty they need to commit to any additional investment spending.

Energy bill relief

The Prime Minister has hinted at another round of energy bill relief to ease cost of living pressures for low-income households and small business. The measure is subject to support from State and Territory governments.

Look out for our analysis on how the 2024-25 Federal Budget will impact you, your business, and your superannuation.

The assault on professional services practices

The ATO has signalled that it is willing to pursue professional services firms who divert profits to avoid tax.

Two new cases before the Administrative Appeals Tribunal demonstrate how serious the Australian Taxation Office (ATO) is about making sure professional services firms - lawyers, accountants, architects, medical practices, engineers, architects etc., – are appropriately taxed.

In both cases, the ATO pursued the practices using Part IVA. Part IVA is an area of the income tax law that enables the Tax Commissioner to attack schemes or arrangements undertaken to obtain a tax benefit, enabling him to cancel any benefit derived by the scheme. That is, you could have a legally viable structure in place but if the only purpose of that structure is to reduce tax, then the Commissioner can use Part IVA to remove the tax benefit. And, if Part IVA applies, you may end up with an additional tax liability as well as an administrative penalty of either 25% or 50% of the tax shortfall amount.

Broadly, the cases involved a solicitor who controlled a number of practice trusts that derived profits through marketing and facilitating tax planning arrangements.

While the arrangement in each case was complex and involved a large number of steps, the practice trusts ensured their business profits weren't subject to tax by essentially making trust distributions on paper through a series of trusts and ultimately to either a company that had existing tax losses, or a tax-exempt entity. However, the real funds relating to the trust distribution (less a commission paid for the use of these entities) were ultimately received by the solicitor or their associated entities in the form of a loan.

Professional practices have been in the ATO spotlight for many years now for the way they distribute profits. Back in 2021, the ATO finalised its guidance on the allocation of professional firm profits, putting in place a series of risk ratings and gateway tests. These two cases however demonstrate the ATO's willingness to pursue the issue in the courts using the Commissioner's powers in Part IVA.

For professional services firms, it's important to be aware that there are several ways in which the ATO can potentially challenge arrangements involving the distribution of profits from a professional practice. For example:

- If a trading entity derives personal services income that mainly relates to the skills and efforts of a particular individual, the ATO has certain expectations around ensuring the profits are assessed to the individual performing the work.
- If a trading entity doesn't derive personal services income but income from a business structure involving a professional practice, the ATO has set out its compliance approach to targeting arrangements that don't result in a reasonable level of profit being taxed in the hands of the individual practitioners.
- If a trust makes paper distributions to loss entities to 'soak up' deductions or losses, there are integrity rules in section 100A, another area of tax law under intense scrutiny, that need to be considered.

How much is my business worth?

For many small business owners, their business is their largest asset and for many, one that is expected to help fund their retirement. But what is your business really worth and what sets a high value business apart?

Every business owner is naturally curious about just how much their business is worth. However, for every business that sells at an attractive price, there are others that struggle to sell, let alone fetch a premium. The question is, what makes a difference?

When you come to sell a business the first question is, what are you selling? In most cases, this is fixtures and fittings, plant and equipment, stock on hand, and the goodwill of the business. Generally, a buyer won't want to purchase your liabilities or your business structure, nor will they want to collect your outstanding debtors. Most business sales become a sale of business assets.

These assets are relatively easy to value with the exception of the goodwill. The value of plant and equipment and trading stock can generally be agreed. The tension tends to be around the value of the goodwill because goodwill is made up of many intangible assets that can't be readily quantified.

We can all agree that there is value in these assets but the question is, how much? Goodwill is basically the value of the future free cashflow of the business. Based on how your business is structured, it is the value of the profits the business can generate in the future. This is what a buyer is prepared to pay for.

If a buyer has a reasonable certainty of profits and free cashflow in the future, then this is worth something. By comparison, a start-up business will have a higher level of risk and no certainty that profits can be generated. In general, a new business may need to trade for a number of years at a loss before it can establish itself and generate profits. Goodwill is what you are prepared to pay to avoid the risk and the 'time to establish' factor.

So, what influences business value and what will people pay for?

- A history of profits, profits, and more profits
- Returns on capital invested (better than 30%)
- Strong growth and growth prospects
- Brand name and value
- A business not dependent on the owners
- A strong, verifiable customer list
- Monopoly income – exclusive territories
- A sustainable competitive advantage
- Good systems and procedures

It is possible to get a price that is widely different from the norm. Unique businesses, unique circumstances, and unique opportunities can always produce 'an out of the box' price. If you can build something unique, then you may achieve a price beyond normal expectations. At the end of the day however, the market will set the price.

If you are planning on selling your business, identify who your buyers might be. There could be a purchaser who is prepared to pay a large premium to own your business because of the accretive value or because it is pivotal to their growth strategy.

And, even if you are not thinking about selling your business, the reality is that one day you will. If you build your business with this in mind, then you should look to do the things that will grow your business value from year to year.

Non-compete clauses and worker restraints under review

A new issues paper from Treasury's Competition Review questions whether non-competes and other restraints are limiting job opportunities and movement.

A recent Australian Bureau of Statistics (ABS) survey found that 46.9% of businesses surveyed used some kind of restraint clause, including for workers in non-executive roles. The survey also found 20.8% of businesses use non-compete clauses for at least some of their staff and 68.2% for more than three-quarters of their employees.

Over the last 30 years, Australia has seen a decline in job mobility. Australia is not alone in this and other advanced economies have experienced the same issue. While restraint clauses are not the only factor contributing to the decline – an ageing population and a rise in post-pandemic market concentration in some industries has also contributed, it is specifically the role of restraints that is the focus of the Competition Review issues paper (submissions close 31 May 2024).

From an economic perspective, declining job mobility impacts wage growth and innovation as restraints prevent access to skilled workers within the economy. Productivity is a key concern as Australia's productivity has declined in the last 20 years.

The review states that, "The direct consequence of a non-compete clause is that it hinders competition among businesses: it disincentivises workers from leaving their current job, creating a barrier to the entry of new businesses and the expansion of existing businesses."

For business however, this is the point - restricting the knowledge developed by a worker during their employment from benefiting a competitor, limiting the likelihood of a 'mass exodus' of key workers from the business to a competitor, preventing clients from employing key workers, and protecting the value of the business by preventing employees from walking away with customers that were hard won, at a cost, by the business.

Non-compete clauses	prevent workers from joining a competitor or starting a new business in competition with their current employer for a period of time.
Non-solicitation clauses	prevent workers from soliciting former customers and co-workers.
Non-disclosure clauses	prevent workers from disclosing confidential information relating to their employment.

However, the impact of restraints appears to be a psychological deterrent given that most are not contested. Of the 115 matters relating to restraints of trade between 2020 and 2023 dealt with by Legal Aid NSW, only one business commenced proceedings in court against a former worker. And, a further study indicates that where employers seek legal redress in the courts, they are more likely than not to fail.

The international trend is to either ban restraints for workers under a certain income level and time limit restraints for higher paid workers, or to limit the duration of restraints generally but specify a level of compensation to the worker for the restraint period.