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# YEAR-END TAX PLANNER

## 2022 TAX HIGHLIGHTS

June 2022

**The end of the tax year is an important time to ensure that your tax affairs are in order. It is important to ensure that all appropriate elections and choices have been made, and the correct documentation is in place, for transactions that will be finalised before 30 June 2022.**

**In this year's BDO Year-End Tax Planner, we summarise the tax highlights from the 2022 Federal Budget and the important considerations for different groups of taxpayers. In addition, we outline the A-Z of ongoing year-end issues.**

**This document is not exhaustive and your individual circumstances must be considered. Please consult your BDO adviser before acting on the information in this document.**

## 2022 TAX HIGHLIGHTS: BUDGET ANNOUNCEMENTS

The 2022 Federal Budget (Budget) was handed down on 29 March 2022. The Budget was predominantly an election Budget, having been brought forward from the traditional May release to account for the Federal Election in May 2022.

The main revenue initiatives that have immediate impact are:

- A 50% reduction in the fuel excise, from 30 March 2022 to 28 September 2022
- An additional cost-of-living adjustment to the low and middle income tax offset (LMITO) of $420, for the tax year ending 30 June 2022
- The introduction of the 'Skills Boost' for small and medium sized enterprises (SMEs), ending 30 June 2024
- The introduction of the 'Technology Investment Boost' for SMEs, ending 30 June 2023.

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## TAX INCENTIVES FOR BUSINESS INVESTMENT

### Capital asset immediate deduction

The Government has extended the capital asset immediate deduction scheme, an initiative introduced in the 2020 Budget, to 30 June 2023. Under this scheme, entities with an aggregated turnover of less than $5 billion are entitled to claim an immediate deduction for the purchase and installation of new qualifying assets, as well as for capital improvements to older assets (i.e. amounts that are not deductible repairs).

The assets must be depreciable under Division 40 - general depreciation rules - and are subject to various exclusions. In addition, the assets must be first held by the entity between 12 October 2020 and 30 June 2023, and be used or installed ready for use, on or before 30 June 2022. The deduction is allowable in the tax year in which the asset is used or installed ready for use. There is an alternative test for entities that do not satisfy the $5 billion threshold.

### SME boosts

As noted in the Budget highlights, the Government proposed to introduce two investment boosts for SMEs with a turnover of less than $50 million.

The 'Skills Boost' will provide an additional 20% deduction for amounts incurred on external training provided by a registered training provider. This excludes in-house and on-the-job training. It will apply to all qualifying expenditure incurred after Budget night to 30 June 2024.

The 'Technology Investment Boost' will provide an additional 20% deduction for amounts incurred on investments in technology items used in the business. The boost is capped at $100,000. It will apply to all qualifying expenditure incurred after Budget night to 30 June 2023.

Neither of these proposed investment boosts have been legislated, nor is there draft legislation available to provide details on the types of qualifying expenditure. Therefore, caution should be exercised in relation to these schemes.

## SUPERANNUATION

The rate for superannuation contributions made by employers, on behalf of their employees, under the Superannuation Guarantee Charge (SGC) is 10% for the 2022 tax year.

The SGC is scheduled to increase over the next few years. For the 2023 tax year, it increases to 10.5%. This means that contributions made in relation to salary and wages paid on or after 1 July 2022 will be subject to the higher 10.5% rate.

The SGC is then scheduled to increase by 0.5% per year, until it reaches 12% on 1 July 2025. However, this schedule may be subject to change.

Employers must make superannuation contributions for their employees on a quarterly basis, within 28 days after the end of each quarter.

### TAX PLANNING TIP

*Although SGC for the June 2022 tax year does not need to be paid until 28 July 2022, tax deductions for these contributions will only be available in the 2022 tax year. This is the case if the contribution is received by the superannuation fund by 30 June 2022.*

*The Australian Taxation Office (ATO) reminded all employers that deductions are not allowed until the SGC payment has been received by the superannuation fund. This may take several days if the contributions are made via a clearing house.*

## INCOME TAX

At the time of publication, there have been no changes to individual income tax rates for the 2022 tax year.

| Threshold | Rate |
|---|---|
| $0 - $18,200 | 0% |
| $18,201 - $45,000 | 19.0% |
| $45,001 - $120,000 | 32.5% |
| $120,001 - $180,000 | 37.0% |
| $180,001 + | 45.0% |

The Medicare levy is calculated at 2% of taxable income. Therefore, the top marginal tax rate for resident individuals will be 47% including the Medicare levy.

The LMITO and low income tax offset will again be available up to a maximum of $1,500, as legislated following the Budget announcement.

## SMALL AND MEDIUM BUSINESS

From 1 July 2020, the small business turnover threshold increased from $10 million to $50 million.

This means that from this date, SMEs can access the concessional prepayment rules and the immediate deduction for start-up costs. From 1 April 2021, the Fringe Benefits Tax (FBT) exemptions for car parking benefits and the provision of multiple work-related electronic devices extends to entities with a $50 million turnover. From 1 July 2021, the balance of the Small Business Entity (SBE) concessions extended to medium enterprises, including:

- Concessional Goods and Services Tax (GST) instalments
- Concessional Pay As You Go (PAYG) instalments
- Small business trading stock
- Two-year amendment period
- Customs and excise reporting.

However, the threshold for small business Capital Gains Tax (CGT) concessions remains at $2 million turnover, or $6 million net asset test. The threshold for the small business tax discount remains at $5 million turnover.

## TRUST REIMBURSEMENT AGREEMENTS

The ATO recently released a draft ruling and other documents regarding the operation of Section 100A of the *Income Tax Assessment Act 1936*. This applies where a beneficiary enters a 'reimbursement agreement' that has the effect of reimbursing part or all the distribution back to the trustee, or to another person. In addition, the purpose of the arrangement must be to obtain a tax benefit.

You should seek further guidance where a trust distribution is to a low-taxed family member or entity, who then gifts or directs the cash to be paid to a higher-taxed family member. Refer to 'Reimbursement agreements' in the 'Trusts' section for more information.

## IMPORTANT YEAR-END PLANNING ISSUES: SMALL AND MEDIUM BUSINESS

### Base rate entity company tax rate

The company tax rate for base rate entities applies where companies satisfy the base rate entity passive income test, and have an aggregated turnover less than the amounts outlined in the table below:

| Year ended 30 June | Turnover |
|---|---|
| 2018 | $25 million |
| 2019 | $50 million |
| 2020 | $50 million |
| 2021 | $50 million |
| 2022 | $50 million |

The base rate entity passive income test requires companies to derive no more than 80% passive income in a relevant tax year. Passive income includes items such as rent, interest, capital gains, and distributions from trusts and partnerships.

The company tax rate for base rate entities in each of the relevant tax years is outlined in the table below:

| Year ended 30 June | Rate |
|---|---|
| 2018 | 27.5% |
| 2019 | 27.5% |
| 2020 | 27.5% |
| 2021 | 26.0% |
| 2022 | 25.0% |
| 2023 | 25.0% |

The base rate is also relevant in determining the maximum franking amount that a company can apply to the franked dividends it pays to its shareholders.

For companies that are not base rate entities, the standard 30% company tax rate applies.

#### TAX PLANNING TIP

*Companies should monitor their income tax rates, as these may change from year-to-year. In cases where rates are changing across years, companies may seek to time the derivation of income and/or the incurring of deductible expenses. The purpose of this is to take advantage of the changing rates, subject to prepayment rules and general anti-avoidance rules.*

*Companies should pay particular attention to the impacts of the business shutdown, as a result of the COVID-19 pandemic. The changes in turnover may have caused the company to move thresholds between 2021 and 2022. This may result in a change of the company tax rate, and more importantly a change in the franking rate. It is this change in the franking rate that companies should monitor carefully. The effects of this are illustrated in the section below.*

### Trapped franking credits

As outlined in the above tables, the company tax rate for base rate entities has reduced to 26% for the 2021 tax year. This will further reduce to 25% for the 2022 tax year. Similarly, the franking rate will reduce in both 2021 and 2022.

If a company pays a franked dividend based on profits of a previous year, where the company's tax rate was higher than the franking rate for the current year, there may be trapped franking credits. For example, if the previous year's company tax rate was 30% and the current year's franking rate is 27.5%, then 2.5% franking credits are trapped in the company.

#### TAX PLANNING TIP

*Companies should consider which franking rate they are subject to in the 2022 tax year, as well as which rate they will be subject to next year. Where a company moves from a higher franking rate to a lower franking rate in the following year, there may be advantages in paying franked dividends before 30 June 2022. However, this may be subject to the position of the shareholders.*

### Higher top-up tax

Shareholders in companies that pay a 25% franked dividend will need to pay higher top-up tax. This is because the franking offset they receive will be lower than if the dividend was franked at 30%. Generally, this means that the company tax cut is clawed back by the Government when dividends are paid to the resident shareholders.

For example, if a company has a $100 profit and pays 30% in tax, it pays the $70 balance as a franked dividend to the shareholder. If the shareholder's marginal tax rate is 47%, they will pay tax on the $70 franked dividend of $17 (after franking offset) leaving the shareholder with $53 after tax.

However, if the company pays tax at 27.5% on the $100 income, then it can pay a $72.50 franked divided at 27.5%. In this case, the shareholder pays $19.50 on the $72.50 franked dividend, leaving the shareholder with the same $53 after tax

### Small business restructure rollover relief

From 1 July 2016, small businesses with less than $10 million turnover can use the small business restructure relief. This allows eligible taxpayers to transfer assets between related entities - including companies, trusts and individuals - without any income tax or CGT consequences. While this rollover can be very beneficial to small businesses, care must be taken due to the eligibility rules being complex in some cases.

## LOSS CARRY BACK RULES

Legislation has been passed that allows companies with an aggregated turnover of less than $5 billion to elect to carry back income tax losses in the 2020 to 2023 tax years.

Where a decision is made to carry back a loss, the company receives a refundable income tax offset equivalent to the amount of the tax loss, multiplied by the relevant income tax rate.

This allows income tax losses from 30 June 2020 to 30 June 2023 to be carried back for a refund of income tax paid in the 2019 to 2022 tax years.

The amount of the losses able to be carried back is capped at the lesser of the:

- Tax effected losses
- Income tax paid
- Franking account balance for the year of the loss carry back.

However, by electing and receiving a refund of income tax paid in an earlier year, the company will receive a debit in its franking account equivalent to the amount of the refund. This may restrict the company's ability to pay franked dividends to its shareholders.

If you would like more advice on loss carry back rules, please contact your local BDO adviser.

## MULTINATIONALS AND INTERNATIONAL DEALINGS

Multinationals and taxpayers engaged in international dealings should be aware of several new rules that are now in effect. These new rules include:

- Diverted Profits Tax
- Hybrid mismatch rules
- Country-by-country reporting
- Transfer pricing amendments
- Increased penalties for multinationals that do not keep the required documentation, or fail to lodge documents and returns by the due date.

Taxpayers should confirm the extent to which the new compliance requirements and penalties apply to them, as well as confirm the relevant due dates for lodgement of the required documents.

In addition, the Government has extended the application of the definition of Significant Global Entities (SGEs) beyond multinational groups controlled by public and selected private companies. The definition now extends to groups controlled by all private companies, as well as groups controlled by trusts, partnerships, and investment groups. You should seek specialist advice in relation to the above requirements.

### Significant global entities

The ATO has been increasing its activity in relation to the penalties that apply to SGEs. Although this is not strictly a year-end issue, it is worth considering at this time. This is particularly true of the significant penalties that can be imposed on any late lodgments, of any tax documents, by SGEs.

#### What is an SGE and who is at risk?

An SGE is an Australian entity that is part of a worldwide group, where the worldwide group has a turnover of A$1 billion or more. This is measured using the accounting standards test for consolidation, and applies whether or not consolidated accounts are prepared for the group.

There is no minimum size for the Australian entity - an Australian entity may be an SGE irrespective of its own size. Any entity that is an SGE clearly carries additional risk, including:

- Potential imposition of late lodgment penalties, up to 500 times greater than for other entities
- Potential imposition of shortfall penalties for false or misleading statements, at double the rate for other entities.

#### Why is this penalty risk important?

To put the penalty risk in context, SGEs are subject to potential penalties starting at $105,000 and rising to $525,000 per tax document lodged late.

Understatement penalties for lack of reasonable care will start at 50% of the tax shortfall, instead of 25% for non-SGE entities. These penalties apply to all tax lodgments, including Business Activity Statements (BASs), FBT returns, PAYG withholding requirements, and SGC statements - not just the special lodgments required for SGEs.

This is particularly important for small Australian subsidiaries of SGEs who may not be aware of the greatly increased penalties. If late lodgment is unavoidable, you should contact the ATO before the due date to obtain an extension of time to lodge. If the lodgment has been made without getting an extension, you should contact the ATO as soon as possible. This is because a remission of part or all of the penalty may be arranged.

### Director penalties

Company directors should review the reporting mechanisms of their companies, in order to ensure they are adequately informed of the company's financial position. The director penalty provisions may leave company directors personally liable, where their company fails to make PAYG withholding and SGC payments by the respective due dates.

From 1 April 2020, the director penalties provisions were extended to cover outstanding payments for GST, wine equalisation tax, and luxury car tax.

The defences against director liabilities include situations where the director has:

- Been unwell,
- Taken all reasonable steps to ensure the outstanding liabilities have been paid, or
- In limited circumstances, been appointed to the company within the last 30 days.

However, good evidence is required for each of these defences.

## Loans from private companies - Division 7A

Shareholders of private companies and associates may be assessed on a deemed dividend if the company provides them with loans, payments, loan forgiveness, or private use of company assets. This is unless the requirements of Division 7A are satisfied.

Companies should ensure that all Division 7A loans made in the 2021 tax year have been either repaid, or put under a complying Division 7A loan agreement, by the lodgement date of their company's 2022 tax return.

In addition, companies should ensure the minimum repayment amounts have been made by 30 June 2022, for complying Division 7A loans made in the 2020 and previous tax years.

Private company directors are reminded to ensure they comply with Division 7A, where they provide loans or other financial assistance to shareholders and associates, or allow them to use company property.

Loans made by private companies to shareholders and associates will be treated as deemed dividends under Division 7A. This is unless the loan is repaid by the earlier of the lodgement or due date for company's tax return for the year, or the loan is converted to a formal loan with the following features:

- Under a Division 7A compliant written agreement, and on commercial terms by the earlier of the company's lodgement day or due date
- Minimum benchmark interest rate
- Term of no more than seven years, or 25 years for registered mortgages over real estate.

Other important Division 7A issues include:

- Ensure minimum loan repayment amounts are paid in years after the loan is made, as any shortfall will be a deemed dividend in that year
- Division 7A deemed dividends are generally unfranked
- Payments and debt forgiveness to a shareholder or associate can be a deemed dividend
- Private use of company-owned assets, for less than market value consideration, can be a deemed dividend
- Rules apply to shareholders and associates, which include relatives of shareholders and trusts, companies, and partnerships of the shareholders and associates
- The Commissioner's discretion specifies that non-complying loans are not to be treated as deemed or franked dividends, if it resulted from an honest mistake or inadvertent omission
- Loans for income producing purposes can be caught as a deemed dividend under Division 7A, as there is no otherwise deductible rule
- All Division 7A loans made in the 30 June 2021 tax year must be either repaid, or put under a complying Division 7A loan agreement, by the earlier of the lodgement date or due date of the company's 2021 tax return
- If the company has an unpaid present entitlement from a trust, it may be a deemed dividend to the trust and/or the shareholder or associate in some circumstances. Refer to the 'Trusts' section for more information.

### TAX PLANNING TIP

*To ensure that all future Division 7A loans are covered by a qualifying loan agreement, companies should consider entering into a Division 7A complying facility loan agreement. This loan agreement must be able to cover all future loans to shareholders and associates. If such a facility loan agreement is already in place, it should be reviewed regularly to ensure that it complies with current law, and that it covers all relevant shareholders and associates.*

## TRUSTS

### Unpaid trust distributions

Distributions made by trusts to associated private companies which remain unpaid at the end of the following year may be deemed to be a loan to the trust, and become subject to Division 7A.

For the 2022 tax year, unpaid distributions to a private company that arose in the 2021 tax year may be a deemed dividend to the trust for the 2022 tax year unless the trustee:

- Placed the amount in a sub-trust for the exclusive benefit of the private company. This must occur by the lodgement date or the due date for lodgement of the trust's 2021 tax return, which is usually 15 May 2022,
- Converts the amount to a Division 7A complying loan by the earlier of the lodgement date, or the due date for lodgement, of the company's 2022 tax return, or
- Pays the amount to the company by the earlier of the lodgement date, or due date for lodgement, of the company's 2022 tax return.

For unpaid distributions that have been placed into a sub-trust, the annual return on the sub-trust investment must be paid to the private company by 30 June 2022.

The ATO has announced that they intend to change the way in which Unpaid Present Entitlements (UPEs) will be dealt with under Division 7A. At the time of publication, the draft ruling has not been finalised. Therefore, the treatment of UPEs from 1 July 2022 onwards is unclear. However, it is expected that UPEs arising after that date will become Division 7A loans, either in the year the UPE arises or in the following year. It is expected that a sub-trust arrangement, for the exclusive benefit of the beneficiary company, may also be an available alternative.

### Reimbursement agreements

The ATO recently released a draft ruling and other documents regarding the operation of Section 100A of the *Income Tax Assessment Act 1936*. This applies where a beneficiary enters a 'reimbursement agreement' that has the effect of reimbursing part or all of the distribution back to the trustee, or to another person. In addition, the purpose of the arrangement must be to obtain a tax benefit.

These documents seek to expand the operation of Section 100A, as well as to clarify (reduce) the availability of the ordinary commercial and family exemption. This is particularly the case where the distribution is to a low-taxed family member or entity, who then gifts or directs the cash to be paid to a higher-taxed family member.

At the time of publication, these documents have not been finalised and the scope of the ATO's position may change when they are finalised. There is particular controversy regarding the ATO's position that these new views may retrospectively apply as far back as 2014. This is unless the taxpayer has relied on the previous 2014 guidance in good faith, in which case the ATO view will apply from 1 July 2022.

Section 100A may also apply where a trust has made a distribution of income to a private company owned by the trust, which then pays a franked dividend back to the trust.

Where the ATO determines that Section 100A applies to an arrangement, the net income that would otherwise have been distributed by the trustee, is instead assessed to the trustee at the highest marginal rate.

### Distributions to low-taxed family members

The ATO recently released a draft ruling and other documents regarding the operation of Section 100A of the *Income Tax Assessment Act 1936*. This particularly applies to the meaning and operation of the ordinary commercial and family dealings.

These documents seek to expand the operation of Section 100A, as well as to clarify (reduce) the availability of the ordinary commercial and family exemption. This is particularly the case where the distribution is to a low-taxed family member or entity, who then gifts or directs the cash to be paid to a higher-taxed family member.

At the time of publication, these documents have not been finalised and the scope of the ATO's position may change when they are finalised. There is particular controversy regarding the ATO's position that these new views may retrospectively apply as far back as 2014.

The ATO has issued a media release stating:

> *"The ATO will not be pursuing taxpayers that entered into arrangements between 1 July 2014 and 30 June 2022 where, in good faith, they concluded that section 100A did not apply to them based on the previous 2014 guidance."*

Although this statement may provide some assurance, the 2014 guidance lacked detail and may therefore be difficult to rely upon.

### Loans from trusts

Loans or payments may be subject to Division 7A where:

- There are unpaid distributions to a private company, including those under a sub-trust, that have not been converted into a Division 7A loan
- The trustee has made loans or payments to shareholders or associates of the private company.

A loan from a trust will be deemed a dividend where the:

- Trust has made a distribution to a company
- Trust has made a loan to company's shareholder or associate
- Trustee has not paid the distribution to the company that is presently entitled to the distribution.

The loan is deemed to have been made by the company, to the company's shareholder or associate, and will be subject to the

Division 7A rules outlined above. It will not be deemed dividends if they are repaid, or put on a commercial footing, before the lodgement date for the trust tax return.

### Trust distributions and resolutions

Most discretionary trust deeds require distribution determinations for the relevant tax year to be made before 30 June, or earlier. Therefore, trustees must make these determinations before 30 June, or the date specified in the deed if it is earlier than 30 June. This is notwithstanding the requirements outlined in the 'Trust streaming' section below.

The ATO stated that they expect there to be evidence of the trustees making determinations, in accordance with their trust deeds, by the date stated in the trust deed.

We suggest that written evidence of the 2021/22 trustee determination of income of the trust - preferably in the form of a trustee resolution - be prepared by 30 June 2022, or whatever earlier date is required by the trust deed.

### Trust streaming

Under the trust streaming provisions, trustees can stream franked dividends and capital gains to specific beneficiaries. This is instead of distributing these amounts as part of the general distribution to beneficiaries.

The trust deed must not prevent the trustee from streaming these amounts to specific beneficiaries. In addition, the trust accounts must separately account for the streaming of the capital gains and franked dividends to the specific beneficiaries.

In addition, the beneficiaries who are to receive these amounts must be specifically entitled to them. The trustees' distribution resolution, in favour of the specifically entitled beneficiary, would generally be sufficient for this purpose.

Where beneficiaries are streamed franked dividends, this must be recorded by 30 June 2022. Where beneficiaries are streamed capital gains, this must be recorded by 31 August 2022. However, where capital gains are included in the 'income of the trust' - accounting/trust law income - the trust deed will usually require the trustee's distribution determination to be made by 30 June 2022, or earlier.

Where the definition of income in the trust deed includes capital gains and franked dividends, the determination to stream these amounts must be made before the determination to distribute the balance of the trust income. For example, where the distribution of streamed franked dividends and/or capital gains is in the same resolution as the distribution of the balance of the trust income, the distribution of the former must be mentioned before the latter.

In two recent Full Federal Court decisions, the distribution of capital gains to non-resident beneficiaries was found to be assessable in the hands of the non-resident beneficiaries. This was notwithstanding that the relevant CGT assets were not taxable Australian property. This is due to the operation of Division 855 of the Income Tax Assessment Act 1997. This provision does not have the same effect for fixed trusts. You should exercise caution when making distributions of Australian capital gains to non-resident beneficiaries, where there is a discretionary trust.

#### TAX PLANNING TIP

*Both you and your tax adviser should regularly review your trust's deed, in order to ensure that you and your tax adviser understand how it interacts with the various tax requirements, some of which are mentioned above.*

### TFN trust reporting

Trustees of resident discretionary trusts, family trusts, and other closely held trusts are reminded that they are required to report the Tax File Number (TFN), and certain personal information, of new beneficiaries to the ATO.

The TFN report of new beneficiaries must be made by no later than the end of the month, after the end of the quarter that the trustee received the TFN. For the 2022 tax year, the TFN report of new beneficiaries must generally be made to the ATO by 21 July 2022.

The trustee only needs to report each TFN once and only for those that have not previously been reported to the ATO.

If the beneficiary has not provided their TFN to the trustee, then the trustee will need to withhold tax from the trust distribution. This is in cases where the beneficiary becomes presently entitled to trust income, or is paid an amount of trust income. The beneficiary will be entitled to claim a credit on the tax when they lodge their income tax return.

Affected beneficiaries include: individuals, companies, partnerships, and other trusts. This is except for non-residents and beneficiaries under a legal disability, such as minors. The trustee is generally assessed on distributions to non-residents and beneficiaries under a legal disability.

#### TAX PLANNING TIP

*To ensure you don't miss the deadline for the TFN report, we suggest that you report the TFNs of all likely new beneficiaries of the trust to the ATO now. This is worthwhile even though they may not be receiving a distribution until a future tax year.*

## THIRD PARTY REPORTING

The Government has introduced a system of reporting for third parties, in addition to the existing income tax, BAS and PAYG withholding reporting systems, as well as the annual investment income reports by investment bodies.

The new system requires reports be provided to the ATO from 1 July 2016 for:

- State and Territory revenue and Land Titles Offices to report all land or leasehold transfers
- Australian Securities and Investments Commission (ASIC), market participants, and trustees of trusts with an absolutely entitled beneficiary, to report transactions relating to shares and units of unit trusts.

The new system requires reports be provided to the ATO from 1 July 2017 for:

- Government grant payments
- Administrators of payment systems to report electronic business transactions.

## AUTOMATIC EXCHANGE OF INFORMATION

Australian financial institutions have been required to report details of the accounts and other investments held by U.S. Citizens to the ATO since 1 July 2014. The ATO then reports that information to the U.S. Internal Revenue department, under the *Foreign Account Compliance Act* (FATCA).

From 1 July 2017, this extended to all non-resident account holders and investors in Australian financial institutions under the *Common Reporting Standard*, which was developed by the Organisation for Economic Co-operation and Development (OECD). This required financial institutions to report these details to the ATO, which then reports that information to the relevant foreign country. In turn, the ATO receives such reports of Australian citizens with accounts and investments in foreign financial institutions.

The definition of financial institutions for this purpose is very wide. In addition to banks, it can include: managed funds, private equity groups, investment advisers, brokers, spread-betters, custodians, certain insurance entities, personal investment companies, and certain trusts.

## SINGLE TOUCH PAYROLL

Employers with more than 20 employees have been required to provide real-time reports to the ATO since Single Touch Payroll (STP) was introduced on 1 July 2018. These reports include for salary and wage payments, SGC contributions, ordinary time earnings, and PAYG withholding amounts.

From 1 July 2019, this system extended to all employers. From March 2022, the ATO required payments of salary and wages to be broken-down into a number of classes. These classes include: ordinary salary and wages, leave payments, etc.

There will be no change to the due dates for payment of SGC contributions and PAYG withholding remittance. However, employers may elect to pay early using the new software when they report to the ATO.

## A-Z OF ONGOING YEAR-END ISSUES

### Audit fees

Audit accruals are not deductible unless the audit contract creates a presently existing liability, before 30 June. This is subject to the prepayment rules outlined in the 'Prepayments' section.

### Bad debts

- Review all debts before 30 June 2022
- Write-off bad debts before year-end to get the deduction in that year, as the provision for doubtful debts is not deductible
- Bad debts may not be deductible if there has been a change in ownership or control of a company or trust, unless company passes the same business test.

### Business/project-related costs

- Project costs can be pooled and deducted over the life of a project using diminishing value
- These project costs include:
  - Upgrading community infrastructure
  - Site preparation for depreciating assets
  - Feasibility studies and environmental assessments
  - Obtaining information associated with the project.
- Mining and transport project capital expenditure that is not otherwise deductible may be amortised over the life of the project
- Other business-related costs that are not otherwise deductible, not included in the CGT cost-base of an asset, and not included in the depreciable cost of an asset, may be deductible over five years
- These costs must directly relate to a business that is, was, or will be carried on for a taxable purpose (blackhole expenditure).

### Ceased/sold business

- Consider the consequences of payments for employee entitlements, the transfer of employee entitlements to a new employer, and redundancy payments
- Consider paying redundancy or long-service leave to employees, which must be arm's length if paid to associate
- Defer any retirement payments to beyond 30 June, if employees will be on a lower marginal tax rate in the following year
- Consider whether small business concessions, rollovers, or superannuation contributions will still be available
- Consider whether expenses that were incurred after the business ceased will still be deductible.

### CGT - small business

- The CGT small business concessions are:
  - 15-year exemption
  - Active asset reduction
  - Retirement exemption
  - Small business rollover.
- To qualify for the basic concessions, the taxpayer must either pass the $6 million net asset value test, or be a small business entity with an aggregate turnover of less than $2 million. In addition, the assets must satisfy the active asset test used in the relevant business
- To qualify for the 15-year exemption, the taxpayer must be retiring, or permanently incapacitated, and assets must have been held for at least 15 years.
- To qualify for the retirement exemption, the exempt amount must be contributed to a superannuation fund if the taxpayer is before the age of 55
- If the taxpayer is a trust or company, special rules determine if the entity can access the concessions
- If the taxpayer sells shares in a company, or interests in a trust that conducts a business, there are rules to determine whether the sale qualifies for the concessions
- There are special rules that apply where an asset owned by one entity, and is used in a business by a related entity
- Also, consider the small business restructure rollover relief that has applied from 1 July 2016
- Be aware of the amendments to the basic conditions, where the asset being sold is a share in a company or an interest in a trust. These amendments took effect from 1 July 2017.

### CGT - sale of investments

- Where CGT assets will be realised for a gain, consider delaying making the contract for sale until after 30 June. This is unless there are losses that may be lost due to the loss integrity measures
- Caution is required if capital losses are crystallised, in order to offset against capital gains just before 30 June. This may result in the loss being denied if the taxpayer does not lose effective control of the loss assets, or if they are replaced with substantially identical assets (wash sales)
- The timing of disposal under a contract for CGT purposes, is generally the date of making the contract
- If assets eligible for the CGT discount are held for less than 12 months by individuals, trusts, or superannuation funds, consider delaying the sale until 12 months has passed
- Exercise caution if using options to defer the date of sale of an asset either to pass the 12-month rule for the CGT discount, or to delay CGT event until the next year. This is because certain options may not be effective for these purposes
- Recoup capital losses against the indexed capital gains, before the discounted gains.

### Consolidated group

- If the taxpayer is a company with 100% owned subsidiary companies, partnerships, or trusts, consider making a consolidation election before lodging the head company's first consolidated tax return
- Company groups must consolidate to be able to:
  - Transfer losses between members

- Pay unfranked dividends between members, without paying income tax
- Rollover assets between members, without paying CGT or income tax.

▶ There are various calculations and valuations that need to be completed and documented, when calculating the allocated cost of entities joining or leaving a consolidated group. Ensure these calculations and documents are finalised, before the lodgement of the group's relevant tax returns.

## Debt/equity rules

▶ Review all shares, loans, and other financial instruments that are used to raise finance, in order to determine whether they are debt or equity

▶ This may include traditional non-debt or equity interests, such as contracts with remuneration that is contingent on profit are considered financing arrangements.

▶ Closely associated debt and equity transactions may be combined and treated as a whole, as either debt or equity

▶ The year-end actions to consider for debt/equity rules include:
- Whether payments on instruments are deductible debt deductions (interest), or non-deductible dividends
- Establishing a non-share capital account for instruments other than membership interests (shares) issued by the company, which are treated as equity
- Whether call loans made on or after 1 July 2005 to a company from a connected entity are equity. Companies with a turnover of less than $20 million are exempted from this rule.

## Debt forgiveness

▶ Where a debt owed by the taxpayer is released before 30 June, ensure there are no adverse consequences from the application of the commercial debt forgiveness rules

▶ These rules operate where a debt is released and interest on the debt is deductible. If the debt is interest free, then interest would have been deductible if interest was charged

▶ The beneficiary of the release may forfeit tax losses, future deductible amounts, and/or CGT cost bases

▶ In certain circumstances, there may be advantages in deferring the forgiveness until the following tax year. Where the release of debts if being considered, also consider the optimal timing of release.

## Deductions - personal

▶ Individuals seeking to claim deductions for employment-related expenditure should be aware of an increase in audit activity by the ATO, in relation to personal employment-related deductions.

▶ When claiming these deductions, ensure that you:
- Are actually entitled to claim the deduction. Is the amount deductible?
- Can substantiate the expenditure you are seeking to deduct. Do you have the appropriate receipts, tax invoices, diaries, etc.?
- Have you restricted your deduction to the business/employment related portion of the deduction? Have you excluded the private/non-deductible amounts? Can you substantiate business/employment use?

## Depreciation

▶ Scrap any obsolete items by 30 June 2022 to claim the undepreciated cost

▶ Increase depreciation by reassessing the effective life of assets, if asset's effective life is less than the ATO estimates of effective life

▶ For items that cost less than $1,000, consider a low-value pool with a diminishing value rate of 37.5%

▶ Assets that are subject to the asset write-off can be immediately deducted, subject to threshold and cost limits

▶ Other small business assets may be placed in the small business depreciation pool, which is depreciated at 15% in the first year and 30% in subsequent years

▶ If it is not a small business, some depreciable items of less than $100 may be immediately deductible. This threshold is $300 if the business has ceased operation. Refer to PSLA 2003/8 for more information

▶ Consider reassessing the effective life if the asset has excessive use

▶ Balancing adjustment on disposal – excess assessable or deficit deductible – rollover is available

▶ Consider delaying disposal of items for a profit until after 30 June, and bringing forward disposal of items for a loss before 1 July

▶ For plant costing less than $1,000, there is the option to allocate assets to a low-value pool:
- Depreciated at diminishing rate value of 37.5%
- The first-year rate is 18.7% diminishing value
- New low-value assets must go into the low-value pool.

▶ The replacement cost of items costing less than $100 each can be deducted in businesses where the items have a short life, and may be subject to breakage or loss. Refer to PS LA 2003/8 for more information.

## Depreciation - computer software

Software that is mainly used as a business tool, rather than for sale (in-house software), is depreciated over four years. This is the case if acquired before 1 July 2015, and over 5 years if acquired after that date.

## Depreciation - small business

▶ Small businesses can claim an immediate deduction for assets that they start to use, or install ready for use, subject to the new asset costs thresholds

▶ A small number of assets are not eligible for the immediate write-off, including horticultural plants and in-house software allocated to a software development pool. In most cases, specific depreciation rules apply to these assets

- Assets valued in excess of the asset write-off thresholds, may be placed in the small business depreciation pool. This can be depreciated at 15% in the first year, and 30% in subsequent years
- The depreciation pool can be immediately deducted, if the balance falls below the relevant thresholds over the period, which includes any existing pools
- These rules are subject to the concessional rules for SME and larger businesses, as part of the Government's investment incentives.

## Director/employee entitlements

- Conduct the shareholders meeting before 30 June 2022, in order to approve directors' fees and obtain deductions for 2022
- Ensure arrangements for employee bonuses based on 2021/2022 results are in place before 30 June 2022, in order to get deductions for the 2022 tax year
- Ensure employee salary packages that include fringe benefits and/or additional employer super contributions, are r eviewed and in-place before the sacrificed salary is earned by the employee.

## Expenses

- Expenses are generally deductible if incurred by 30 June. This requires a presently existing liability.
- Provisions are generally not deductible
- Some accruals are not deductible
- Some prepayments are not deductible until future years
- There are specific rules that determine when some expenses are deductible. Refer to the 'Prepayments' section for more information
- Interest paid after business ceases may continue to be deductible.

## Expenses - car

- If claiming actual expenses, check that the logbook is current and logbook details are correct
- Ensure year-end odometer readings are taken
- Ensure all relevant receipts have been kept.

## Expenses – home office

- Home office expenses may be deductible where business or employment activities are conducted at home
- Interest, rent, and insurance costs are not deductible, unless conducting business from home. The area must be separate and distinguishable from private living areas
- Converting a spare room is not sufficient to be classified as a home office
- Power, heating, and depreciation costs can be claimed at a flat rate established by the ATO, even if the room is not exclusively used as a home office
- If conducting business from home, the deductibility of interest, rent, and other expenses may be determined by the space occupied by the home office. This is in addition to the extent that the space is used for income producing purposes
- If an office is provided by the employer, working from home as a convenient place to do part of the work may not be sufficient to claim home office expenses
- For individuals who are working from home because of the COVID-19 pandemic, the ATO has released a ruling regarding a simplified approach to claiming home office expenses. Refer to PCG 2020/3 for more information
- The PCG 2020/3 ruling applies to individuals who are working from home in order to fulfil their employment duties, or to run their own business. They must be incurring additional running expenses that are deductible as a result of working from home. For qualifying taxpayers, individuals can keep a record of the hours they worked from home and claim a deduction of 80 cents per hour. This alternative to claiming a deduction under the ordinary rules will apply until 30 June 2022
- There have been a number of recent Administrative Appeals Tribunal (AAT) cases, which look at the deductibility of home office costs. This issue has been identified by the ATO as a risk area that may be subject to increased audit activity.

## Gifts

- Donate to deductible charities before 30 June 2022
- Ensure the payment is to an endorsed deductible gift recipient (DGR)
- Donations are not deductible if some benefit is received by the donor, unless the contribution was made at an 'eligible fundraising event' for a DGR and the contribution is more than $10. The following special conditions apply:
  - Deductions will be reduced by the value of any benefits received at the event
  - GST inclusive value of the benefits received must not exceed the lesser of 20% of contribution, or $150.

## Immediate deduction - non-business assets

For non-business taxpayers, immediate deduction can be used for items that cost less than $300 where they are:

- Income producing assets predominantly for non-business use. For example, briefcase, tools of trade, or small items of furniture in a rental property
- Not part of set of assets that cost more than $300
- Not substantially identical to other assets, which cost more than $300 in total.

## Imputation

### Benchmark franking rules

For companies paying less than 100% franked dividends, the benchmark franking percentage rules apply. These rules include:

- The franking percentage chosen, for the first frankable dividend paid in a franking period, establishes the benchmark percentage
- The franking period is usually the income year for private companies, and six months for public companies

- All frankable dividends paid during the franking period must be franked in accordance with the benchmark percentage.

**Franking deficit tax**

- Companies should determine whether a franking account is in deficit and whether they are liable for Franking Deficit Tax (FDT). This is payable by 31 July 2022 for the 2022 tax year
- Where a company pays more than one dividend in a franking period, ensure that all dividends are franked under the benchmark rate. The benchmark rate is the franking percentage of the first dividend.
- Where the franking deficit exceeds 10% of the franking credits for a company in a year, the company's entitlement to a tax offset for FDT is reduced by 30%.

**Franking offset**

- If shares were acquired after 1 July 1997 and are not held at risk for at least 45 full days, then the franking offset may not be available. This is except in the case of individuals whose franking offset is less than $5,000
- If shares were acquired by a trust after 31 December 1997, both the trustee and the beneficiary must pass the 45-day holding period rule to obtain the benefit of the franking credits.

**Trust beneficiaries**

- Trust beneficiaries lose the franking offset, unless the beneficiaries have a vested and indefeasible interest in the shares held at risk for at least 45 full days. A family trust election may also be made for trustee-held shares at risk for at least 45 full days.
- Trust beneficiaries that have a vested and indefeasible interest in the shares, or a fixed interest in the corpus on which the dividends were paid, will pass the 45-day holding period rule if the trustee does
- Beneficiaries of a non-fixed trust (e.g. discretionary trust), will not pass the 45-day rule unless in the following circumstances:
  - A family trust election is made,
  - The Commissioner exercises their discretion to deem the trust to be a fixed trust, or
  - The beneficiary is an individual whose franking offset is less than $5,000.
- As outlined in the 'CGT – small business concessions' section, the changes to the small business company income tax rate affect the imputation rules.
- The maximum franking amount, which is the amount of franking credits that can be attached to a fully-franked dividend, will be either 30% or the reduced base rate entity rates. Refer to the 'Trapped franking credits' section for more information about the calculation of the franking rate.

**Other considerations**

- Companies will need to consider their turnover levels before 30 June, in order to determine whether they will suffer a lower franking rate in future tax years
- Companies that are impacted by a changing franking rate may seek to pay higher fully-franked dividends before 30 June, in order to free-up excess franking credits.

## Income derivation

- Determine whether cash or accruals tax accounting should be used
- Consider whether the amount is income or capital, as income and capital gains have different tax timing rules
- Consider the appropriate method of income recognition for each type of income:
  - Cash is generally for income from personal services, rent, interest, dividends, and other income from non- business investments
  - Accruals is generally for trading income, or other business income, that relies on circulating capital, staff, or equipment to produce income.
- Consider specific rules to determine when the income was derived
- Consider whether income can be deferred until after 30 June 2022
- If there is a tax loss, consider accelerating income receipt before 30 June 2022 to recoup losses that may not be available in future years.

## Income received in advance

- Income received in advance may not be derived and taxed until the services are provided
- Income received in advance should be credited to the unearned income account
- This rule will not generally apply if payment is not refundable if the services are not provided
- Income received in advance must be released to profit when the services are provided. If the services are not provided, the income must be released when this is determined and no refund is claimed by customer
- Income received in advance is not taxed until the services are provided, as long as the income is credited to the unearned income account and released to profit when the services are provided.

## Losses

Check to ensure companies and trusts that are seeking to claim a deduction for current year, or prior year, losses satisfy the company loss and trust loss rules by 30 June.

### Losses – non-commercial

- Losses from businesses that are carried on by individuals, or partnerships that have individuals as partners, are quarantined and deductible. This is only against income from that business, or a related business, unless the tests below are met
- For individuals with adjusted taxable income of less than $250,000, at least one of these tests must be met:
  - Assessable income from the business of $20,000 or more,
  - Profit from the business in three out of the five previous years, including the current year,
  - Real property of $500,000 or more, or other assets of $100,000 or more, used in the business, or
  - The Commissioner exercises discretion.
- For individuals with adjusted taxable income in excess of $250,000, they must rely on the Commissioner's discretion. They will have losses quarantined unless they can satisfy the Commissioner that the loss was the result of unusual circumstances beyond the control of the taxpayer, or because of the nature of the business.

### Personal services income

- If you, or an entity you work for - personal services entity (PSE) - receive income for the reward for personal efforts or skills (e.g. consultants), the PSI rules apply. These rules may limit the deductions that you or the PSE may be entitled to claim, and you may be taxed on the PSI received by the PSE
- The rules do not apply to a personal services business (PSB), if you or the PSE:
  - Pass the results test (engaged to produce a result), or
  - Do not receive more than 80% or more of PSI from one source, and pass one of the PSB tests:
    - Unrelated clients test,
    - Employment test, or
    - Business premises test.
- Where more than 80% of the PSI is derived from a single client, and you do not pass the results test, you may apply for ATO discretion to be classified as a PSB.

### Prepaid investments – tax shelters

- The prepaid investment expenses rules apply to all taxpayers.
- There is an exception for interest expenditure on:
  - Real estate investments
  - Shares in listed companies
  - Units in widely held unit trust, with at least 300 beneficiaries.
- Deductions for prepayments of managed investments are spread over the service period, if:
  - Expenses of investment exceed the income of the investment for that year
  - The taxpayer does not have day-to-day control over the investment
  - There is more than one investor in the same capacity, or a manager manages similar arrangements.

### Prepayments

- If expenses are not subject to the prepayment rules, prepay deductible expenditure before 30 June 2022
- The prepayment rules operate to spread a pro-rated deduction over more than one year, where the expenditure provides benefits after the end of the current income year
- The prepayment rules do not apply to exclude expenditure, which includes:
  - Salary
  - Amounts required to be paid by law or a court
  - Expenditure under $1,000.
- Small business entity taxpayers and non-business individuals are allowed to recognise prepayments in the year they are incurred, if the benefit does not extend beyond 12 months.

### Repairs

- Deduct repairs and maintenance incurred before 30 June 2022, unless they relate to initial repairs, substantial replacement, or improving an asset
- Incur repairs on or before 30 June 2022 to obtain the deduction in the 2022 tax year. These repairs must not be:
  - Initial repairs
  - Substantial replacement of an asset
  - Improving an asset.

### Salary sacrifice

- Employers are required to report all reportable superannuation contributions on PAYG payment summaries
- Reportable superannuation contributions are those in excess of the amount required under the SGC. This includes those under an industrial award or law where the amount exceeds the SGC amount, or where the employee influenced the additional contribution (salary sacrifice)
- Contributions out of post-tax salary are not included.

### Sale of business/investments

- Where CGT assets can be realised for a gain, delay the sale until after 30 June. This is unless there are losses that may be lost because of either company or trust loss rules
- Crystallise capital losses to offset gains. However, be mindful that losses may be disallowed in the event of wash sale. This is where the loss asset, or a similar asset, is re-acquired or continues to be controlled by the taxpayer
- If CGT assets have been held for less than 12 months by individuals, trusts, or superannuation funds that are eligible for the CGT discount, then consider delaying the sale until 12 months have passed
- For small businesses with CGT assets of less than $6 million, or an annual turnover of less than $2 million, consider small business CGT concessions and restructure rollover relief
- If assets were sold via an earn-out arrangement, apply the look-through approach that applies from 24 April 2015.

### Small business

- The small business turnover threshold has increased from $10 million to $50 million. The benefits of this include simplified depreciation, FBT exemptions, and trading stock rules
- Thresholds for the small business CGT concessions remain at $2 million in turnover, or a $6 million net asset test.

### Superannuation

Some of the following superannuation issues require advice from a qualified financial adviser:

- Employee superannuation guarantee quarterly contributions are required by 28 July 2022
- Ensure that at least the minimum pension payments have been made for those in pension phase
- Before making any contributions prior to year-end, ensure you are aware of your contribution caps
- Ensure you take into account contributions that have already been made, and ensure that contributions made for the year do not exceed the concessional and non-concessional contribution limits
- Ensure that contributions made near year-end are actually received by the fund by 30 June, in order to ensure deductibility
- Review salary sacrifice arrangements, especially if you have more than one employer, to ensure that you do not breach your total concessional cap.

### Superannuation - contractors

- Employers must ensure they make superannuation contributions for all eligible employees, including certain independent contractors for SGC purposes
- Under SGC, an 'employee' includes individuals who are employees in the ordinary sense (PAYG), as well as independent contractors that are engaged under a contract primarily for the provision of labour
- Where contractors are engaged, review the contracts to determine whether the individuals are treated as employees for SGC purposes.

### Taxable payments reporting system

Businesses in the building and construction industry are required to record payments to contractors, as well as report these payments to the ATO. From 1 July 2018, businesses engaged in the courier or cleaning industries were also required to make these reports. From 1 July 2019, the rules were extended to businesses engaged in information technology (IT), road (freight) transport, and security industries. The annual report due is to be lodged by 21 July 2022.

### Thin capitalisation

- Consider whether thin capitalisation rules apply to reduce interest and debt deductions. These rules will apply if the taxpayer:
  - Has a foreign investment,
  - Has a foreign owner, or
  - Is a non-resident investor.
- Thin capitalisation applies to all debt deductions, not just to related foreign party debt deductions. This includes unrelated Australian or foreign debt
- If an entity's debt exceeds the maximum allowable debt, then a proportionate amount of the entity's debt deductions may be disallowed
- Consider whether the 'de minimis' rules apply. These rules apply for:
  - Interest amounts of less than $2,000,000
  - Foreign assets that constitute 10% or less of the taxpayer's combined total assets. This applies to outward investors that are not also inward investors.
- Consider these year-end steps to meet thin capitalisation by 30 June:
  - Review all entities to determine whether they are caught by the definitions of an inward or outward investing entity
  - Calculate the value of assets, liabilities, and equity to determine maximum debt levels
  - Valuation must comply with the relevant accounting standards
  - Identify and value assets. If possible, consider revaluing upwards to maximise the asset base
  - Identify and value liabilities with a view to revaluing them downwards
  - Review any hybrid debt/equity instruments to determine whether they are debt or equity
  - Obtain a reasonable valuation from a professional valuer. The Commissioner can substitute values if the assets are overvalued, or the liabilities are undervalued.

### Trading stock

- Consider the appropriate valuation method - cost, market value, or replacement price
- Identify any obsolete stock using the special valuation rule
- Scrap any unwanted stock before 30 June 2022
- If the taxpayer is a small business entity, stock valuation is not required if the difference between the opening and estimated closing value of trading stock for the year is less than $5,000.

### Year-end – date cut-off

If the accounts close either before or after 30 June, a tax adjustment may be required. This is unless the taxpayer has an approved substituted accounting period.

Year-end - tax effective investments

- Ensure the promoter has obtained a product ruling and operated the scheme in accordance with the product ruling
- Consider whether the investment is the subject of an ATO 'Taxpayer Alert'
- Consider the impact of the general anti-avoidance rules (Part IVA) and other integrity measures
- The ATO has stated that schemes should be avoided in the light of these warning signs:
  - Contrived or artificial arrangements
  - Limited or non-recourse funding
  - Minimal cash outlay
  - In-built exit strategies
  - Prepayments
  - High management fees or promoter's commission
  - Arrangements not economically viable without the tax benefit
  - Arrangements not independently assessed for economic viability.

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