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YEAR-END TAX BULLETIN

2022 TAX HIGHLIGHTS

June 2022

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.

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.

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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

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 prior to 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.

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.

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 Pay As You Go (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 Goods and Services Tax (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.

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.

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 prior to 30 June, or the date specified in the deed if it is earlier than 30 June.

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 beneficiaries who are to receive these amounts must be specifically entitled to them. The trustee must record the streamed distributions in the accounts or records of the trust by 30 June 2022 for franked

dividends, or by 31 August 2022 for capital gains. However, the trust deed will usually require the trustee's distribution determination to be made by 30 June 2022.

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 Capital Gains Tax (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 you have 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.

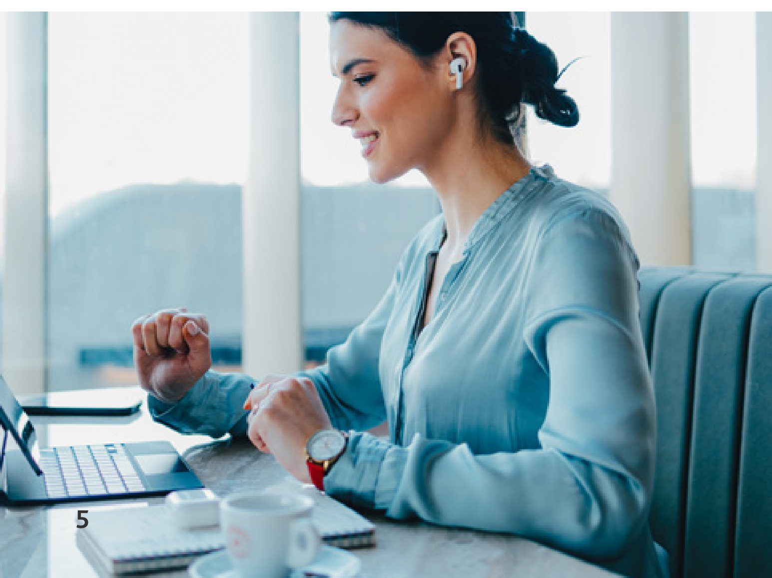
TFN trust reporting

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. For the 2022 tax year, the TFN report of new beneficiaries must generally be made to the ATO by 21 July 2022.

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.

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.



A-Z OF ONGOING YEAR-END ISSUES

Bad debts

- Review all debts before 30 June 2022
- Write-off bad debts before year end to get deduction in that year, as the provision for doubtful debts is not deductible.

Business/project-related costs

- Project costs can be pooled and deducted over the life of the project using diminishing value
- Other business-related costs that are not otherwise deductible, not included in a 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 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 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.

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.

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.

Expenses

- Expenses are deductible if incurred by 30 June 2022. This requires a presently existing liability.
- Provisions are generally not deductible
- Some accruals are not deductible
- Some prepayments are not deductible until future years
- Interest paid after business ceases may continue to be deductible.

Expenses - home office

- Interest, rent, and insurance costs are not deductible, unless conducting business from home. The area must be separate and distinguished 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 set aside as a home office
- 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.

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 (special conditions apply).

Imputation

- 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
- 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
- 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.

Income derivation

- Determine whether cash or accruals tax accounting should be used
- Consider whether income can be deferred until after 30 June 2022
- If you are in 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, as long as the income is credited to the unearned income account and released to profit when the services are provided.

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, or 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.

Sale of business/investments

- Where CGT assets can be realised for a gain, delay the sale until after 30 June 2022. This is unless you have 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, Fringe Benefits Tax (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.

Taxable payments reporting system

Companies 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, companies engaged in the courier or cleaning industries were also required to make these reports. From 1 July 2019, the rules were extended to companies engaged in the information technology (IT), road transport (freight), and security industries. The annual report is due to be lodged by 21 July 2022.

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 - tax effective investments

- Ensure the promoter has obtained a product ruling and operated the scheme in accordance with the product ruling
- Check 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 schemed should be avoided in 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; and arrangements not independently assessed for viability.

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