HARDINGMARTIN
CHARTERED ACCOUNTANTS

TaxWise

Individual News April 2022

Flood support

Disaster recovery payments

If you or your business was affected by the recent floods in NSW and Queensland, you may receive a recovery payment from a local, state or federal government agency. The ATO website advises that the income tax treatment of these support payments is as follows:

- *Australian Government Disaster Recovery Payment* (one off payment of $1,000 per adult and $400 for each child younger than 16) and *Australian Government Disaster Recovery Payment – Special Supplement* (a total of $2,000 per adult and $800 for each child under 16, paid in 2 instalments) — you don't pay income tax on these payments. To claim the payments online, you need a myGov account linked to Centrelink.
- *Disaster Recovery Allowance* (a short-term allowance for up to 13 weeks – the amount varies) — this payment is generally taxable.
- *Natural Disaster Relief and Recovery Arrangements* — payments under this scheme are generally taxable.
- *Ex gratia recovery payments* — whether you pay tax on these payments depends on the specific circumstances of the payments and whether the Commonwealth Government has determined to exempt such payments from tax.

If you receive assistance from a charitable organisation, the payment you receive is not taxable. These payments have no GST implications.
Emergency assistance from your employer — for example, a one-off emergency relief payment — is also not taxable.

Even if a disaster relief payment is not taxable, you may have to include it in your tax return.

If you receive emergency help in the form of gifts from family and friends, you don't need to declare them or pay tax on them.

Tip! Talk to your tax adviser if you are uncertain whether a disaster recovery payment is taxable and whether you need to disclose it in your tax return.

ATO help The ATO can help businesses affected by the recent floods, including businesses not directly impacted.

Activity statements and instalment notices

Small businesses in affected local government areas (**LGAs**) in Queensland and NSW who need to lodge business activity statements and instalment notices with an original due date of 28 February 2022 or 21 March 2022 can lodge relevant returns up until 28 March 2022. They do not need to request a lodgment deferral if they are able to lodge by that date.

Lists of affected LGAs in Queensland and NSW can be found on the Services Australia website.

Be aware that:

- ATO systems will still reflect the original lodgment due date of these documents until they are lodged. The due date will only update after the lodgment has been received.
- You may see a penalty on your account until the ATO can complete the process of remitting associated penalties.
- The payment due date for these lodgments will not change. However the ATO will take an empathetic approach to your situation. General interest charge (**GIC**) will still apply if payment is not made by the original payment due date. If you are not able to pay by the due date, you should contact the ATO to discuss payment options and request a remission of GIC.

If you were not able to lodge by 28 March 2022, you can apply for a deferral on a case-by-case basis. If you already have a deferral, it will remain in place.

Other ATO assistance

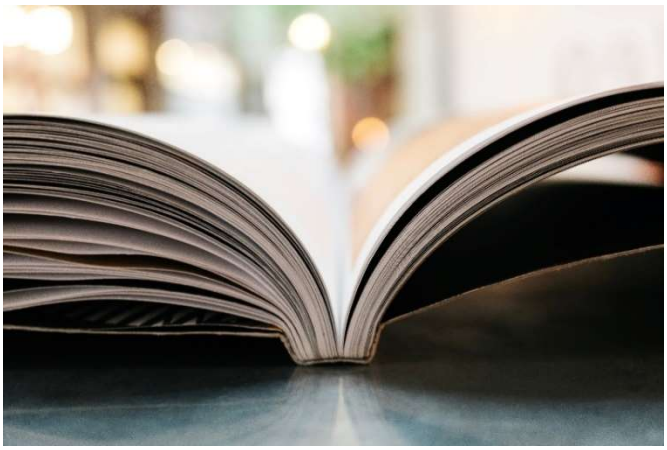
If you are affected by the floods, the ATO may:

- give you extra time to pay your debt;
- set up a payment plan tailored to your individual circumstances, including an interest-free period;
- help you find your lost tax file number (TFN) after verifying your identity;
- re-issue tax returns, activity statements and notices of assessment;
- help you re-construct lost or damaged tax records; and
- remit penalties or interest charged during the time you have been affected.

In addition, the ATO will fast track any GST refunds you are owed.

You can also vary your PAYG instalments, as well as claim a credit at label 5B on your activity statement for previous instalments paid. The ATO has said that it will not apply penalties or charge interest on variations for the 2021–22 income year if you have taken reasonable care to estimate your end of year income tax liability.

Tip! Your tax adviser can liaise with the ATO on your behalf.



What is new?

Pre-Budget announcements

The Treasurer announced that the following measures will form part of the Federal Budget 2022–23:

- the GDP uplift rate that applies to PAYG instalments and GST instalments will be set at 2% for the 2022–23 income year;
- new measures will leverage technology to automate tax reporting requirements and align instalment payment obligations with financial performance (the implementation date is 1 January 2024);
- the Government will facilitate sharing of Single Touch Payroll data with the State and Territory Governments on an ongoing

basis to cater for pre-filling payroll tax returns;
- eligible businesses will have the option of reporting taxable payments via software at the same time as activity statements (the implementation date is 1 January 2024) — this will remove the requirement to lodge a yearly Taxable Payments Annual Report (TPAR); and
- the Government will develop systems to ensure all trusts will have the option to lodge income tax returns electronically (the implementation date is 1 July 2024).

If the Federal Budget 2022–23 provides more detail, we will report on these measures in the special Federal Budget edition of *TaxWise® News* due out on Tuesday 5th April 2022.

Changes that are now law

The extension of temporary full expensing (for depreciating assets) by 12 months to 30 June 2023 is now law. So if you are a sole trader, you will be able to claim an outright deduction for the cost of depreciating assets you acquire (and install ready for use) before 1 July 2023 (this includes second hand assets if your business has an aggregated turnover of less than $50 million).

Superannuation changes that have been passed by Parliament include:

- removing the Superannuation Guarantee $450 monthly income threshold;
- increasing the maximum releasable amount under the First Home Super Saver Scheme from $30,000 to $50,000;
- reducing the eligibility age for downsizer contributions from 65 to 60;
- removing the work test for non-concessional and salary sacrificed superannuation contributions for individuals aged 67–75 (they will still need to satisfy the work test to make personal deductible contributions).

All these measures apply from 1 July 2022.

Changes in the pipeline

Bills currently before Parliament will:

- allow a small business, such as a sole trader, to apply to the Small Business Taxation Division of the Administrative Appeals Tribunal (**AAT**) for an order staying, or otherwise affecting, the operation of an ATO decision being reviewed by the AAT. For example, the AAT may direct the ATO not to take steps to collect a disputed debt that is being reviewed;
- make disaster recovery grants paid to small businesses and farmers in relation to Cyclone Seroja tax-free;
- allow the ATO to require a taxpayer to complete an approved record-keeping course where the ATO reasonably believes the taxpayer has failed to comply with laws governing tax records — this will be an alternative to paying an administrative penalty; and
- allow a business to self-assess, for depreciation purposes, the effective life of most intangible assets, e.g. copyright (other than copyright in a film), patents and in-house software, but not for assets held before 1 July 2023.

Of course, these measures may not be passed by the Parliament before the next Federal election (which will be held in May). If that happens, it is reasonable to assume that the measures will be re-introduced in the next Parliament since they are uncontroversial and should receive bi-partisan support regardless of which party forms government.

Deduction for COVID-19 tests

The Government has announced that legislation will be introduced to make it clear that work-related COVID-19 test expenses incurred by individuals will be tax deductible. This will include Polymerase Chain Reaction ('PCR') tests and Rapid Antigen Tests ('RATs').

If you provide COVID-19 tests for your employees, FBT will not be payable.

From the ATO

Tax losses

Before you claim a tax loss, make sure you have correctly claimed expenses that you are entitled to. Overclaiming expenses can put you in an incorrect tax loss situation.

It's also important to remember to apportion your expenses correctly, so that only the business portion of the expense is claimed, and not any personal component of the expense.

If your business makes a tax loss in the current year, you can generally carry forward that loss and claim a deduction for your business in a future year (subject to satisfying either the continuity of ownership or business ownership test).

You may be able to offset current year losses if you're a sole trader or an individual partner in a partnership and meet certain conditions.

If your business is carried on through a company or an entity that is taxed as a company (e.g. a corporate limited partnership), you may be able to claim the loss carry back tax offset. You can carry back losses made in the 2019–20, 2020–21, 2021–22 and 2022—-23 income years to an earlier income year (but no further back than 2018–19) and claim an income tax offset in the company's 2021, 2022 or 2023 income tax return.

Keeping accurate and complete records will help you keep track of your tax losses. It can help you avoid incorrectly carrying back or carrying forward a tax loss.

If you're carrying on a non-commercial business activity as an individual, either alone or in a partnership, and your business makes a loss, you must check to see how the non-commercial loss rules apply to you.

Tip! Talk to your tax adviser about how to best utilise a tax loss.

Using business money for private purposes

There may be tax consequences if you take or use money or assets from your company or trust for private purposes.

For example, it is quite common for the company or trust to make a loan to a shareholder or an associate of a shareholder (e.g. the shareholder's spouse or child). When a company lends money or assets to a shareholder, the shareholder may be taken to have received a Division 7A deemed dividend if certain conditions are not met.

If this happens, the shareholder will need to report an unfranked dividend in their individual tax return. A deemed dividend has no impact on the company's balance sheet or income tax return.

To avoid a Division 7A deemed dividend, before the company tax return is due or lodged (whichever comes first), the loan must:

- be repaid in full; or
- put on Division 7A complying terms.

To put a loan on Division 7A complying terms, the loan must:

- be in a written agreement and signed and dated by the lender;
- have an interest rate for each year of the loan that at least equals the benchmark interest rate (4.52% for 2021–22);
- not exceed the maximum term of 7 years, or 25 years in certain circumstances when the loan is secured by a registered mortgage over real property.

You (the shareholder or associate of the shareholder):

- must make the minimum yearly repayment each year (the ATO publishes a Division 7A calculator to work this out);
- cannot borrow money from the company to make the minimum yearly repayment;
- can make payments on the loan using a dividend declared by the company. This dividend must still be reported in your individual tax return as assessable income.

It is important to keep accurate records of any such transactions and ensure they are reported correctly for tax purposes. This may require a transaction to be reported in both the company's or trust's tax return and your individual tax return.

Unpaid present entitlement

An unpaid present entitlement (**UPE**) arises where a beneficiary of a trust is presently entitled to a share of trust income but it remains unpaid. If the

beneficiary is a private company and the trust is a shareholder in the company or an associate of a shareholder in the company, the ATO considers that the unpaid amount is a loan and therefore subject to the operation of Division 7A.

The ATO has recently issued a draft taxation determination, revising its views on the application of Division 7A where there is a UPE for arrangements arising on or after 1 July 2022. For example, the ATO now considers that Division 7A may apply where a private company beneficiary has knowledge of a UPE and does not demand payment of that amount.

Tip! Division 7A is very complex – particularly the UPE rules – so talk to your tax adviser to make sure you don't take steps that result in a Division 7A deemed dividend.

Check your PAYG instalments

If you are a sole trader, now is a good time to check that your PAYG instalments still reflect your expected end of year income tax liability.

If your business' circumstances have changed and you think you will pay too much (or too little) in instalments for the year, the instalments can be varied on the next activity statement. Instalments can be varied multiple times throughout the year. The varied amount or rate will apply for the remaining instalments for the tax year or until another variation is made.

If your business is affected by COVID-19 or a natural disaster, the ATO has said it will not apply penalties or charge interest to varied instalments if you have made your best attempt to estimate your end of year income tax liability.

If an amount or rate is varied online, paper activity statements and instalment notices will no longer be issued. These will be issued electronically. You will need to consider this when deciding how to lodge, revise and vary future activity statements and instalment amounts.

Tip! Your tax adviser or BAS agent can help you with your activity statements and tax returns.

Digital record keeping

The ATO has highlighted the advantages of keeping your records digitally. If, for example, you use a commercially-available software package, it may help you:

- keep track of business income, expenses and assets as well as calculate depreciation;
- streamline your accounting practices and save time so you can focus on your business;
- automatically calculate wages, tax, superannuation and other amounts for activity statement and other purposes;
- meet your Single Touch Payroll (**STP**) reporting obligations;
- back up records using cloud storage to keep your records safe from flood, fire or theft.

Digital storage of paper records

You can store and keep paper records (or hard copies) digitally. The ATO accepts images of business paper records saved on a digital storage medium, provided the digital copies are true and clear reproductions of the original paper records and meet its five rules for record-keeping.

Once you have saved an image of your original paper records, you don't have to keep the paper records unless a particular law or regulation requires you to.

However, if you enter information (for example, supplier information, date, amount and GST) from digital or paper records into your accounting software, you still need to keep a copy of the actual record, either digitally or on paper. Some accounting software packages may do both your accounting as well as your record keeping.

The ATO website gives tips on how to choose suitable record-keeping software.

Providing the ATO with copies of records

If the ATO asks to see copies of records you keep digitally, you can provide either digital or printed copies. The ATO may also request documentation from your computer about your record-keeping system (for example, information about your

regular back-up and record destruction procedures) or ask you to provide paper copies.

Cloud storage

If you use cloud storage, either through your accounting software or through a separate service provider, for example, Google Drive, Microsoft OneDrive or Dropbox, you should ensure:

- the record storage meets the record-keeping requirements;
- you download a complete copy of any records stored in the cloud before you change software provider and lose access to them.

eInvoicing storage

Regardless of your eInvoicing software or system, you are responsible for determining the best option for storing business transaction data. You should:

- ensure that your process meets the record-keeping requirements
- discuss your options with your software provider
- talk to your business adviser, if necessary.

Don't get burned by a phoenix

The ATO has warned small businesses about phoenixing. That happens when (to quote the ATO) a 'dodgy' business shuts down to avoid paying its debts, but then pops up under a different company name without any debt.

The ATO is working, through the Phoenix Taskforce, with other federal, state and territory agencies to detect, deter and disrupt illegal phoenix businesses.

Here are 5 red flags to look out for when working with a company:

- unusually low quotes or tenders can suggest that the company isn't taking superannuation or PAYG instalments into account;
- the company directors have previously been involved with liquidated entities;
- the company's name and directors have changed, but the manager and staff remain the same;
- the company is requesting payments to a new company;
- you're told that your last contract won't be paid unless you sign a new contract, often with a different company name from the one you first dealt with.

If you suspect illegal phoenix activity, you can contact the ATO by phoning **1800 060 062** or by emailing phoenixreferrals@ato.gov.au.

Re-contributing superannuation amounts

Individuals can now re-contribute amounts they withdrew under the COVID-19 early release of superannuation program without the contributions counting towards their non-concessional contributions cap. These contributions can be made between 1 July 2021 and 30 June 2030.

The individual must use the approved form and give it to the superannuation fund by the time the contribution is made. Individuals can make COVID-19 re-contribution amounts to any fund of their choice where the fund rules allow.

A fund cannot accept a COVID-19 re-contribution amount if it exceeds $20,000 (the maximum amount that could be withdrawn under the COVID-19 early release program). If the amount re-contributed exceeds the amount withdrawn, the difference will be treated as a non-concessional contribution.

A COVID-19 re-contribution may qualify as an eligible personal superannuation contribution that attracts the government co-contribution.

SMSF statistics

The ATO's *Self-managed super fund quarterly statistical report – December 2021* (contains some interesting statistics on the self-managed superannuation fund (SMSF) sector.

Highlights include:

- there are 601,906 SMSFs;
- there are 1,129,321 members of SMSFs;
- the total estimated assets of SMSFs are $876.7 billion;
- the top asset types held by SMSFs (by value) are listed shares (28% of total estimated SMSF assets) and cash and term deposits (17%);
- 53% of SMSF members are male and 47% are female;

- 86% of SMSF members are 45 years or older.

Employee or independent contractor?

It is an age old question. Are you an employee or an independent contractor?

The High Court recently considered this issue in two separate cases and agreed in both that it is the 'totality of the relationship between the parties' that should be considered. However, instead of adopting a 'multifactorial' approach, considering factors such as the degree of control, who bears the commercial risk and who provides the equipment, the High Court focused on the contractual relationship between the parties.

This is not the place to analyse the High Court's decisions in detail. However, it is worth noting that the High Court observed that where the terms of the parties' relationship are comprehensively committed to a written contract (that is not a sham), the terms of the contract should determine the character of the relationship. On that basis, the High Court held that the relevant individuals were employees in one case (*CFMEU v Personnel Contracting*), but not in the other (*ZG Operations v Jamsek*).

These cases are relevant for tax (e.g. PAYG withholding obligations) and the Superannuation Guarantee (**SG**) scheme. Of course, the SG picture is complicated by rules treating certain individuals as employees for SG purposes, even if they are not employees at common law.

Tip! Talk to your tax adviser if you have any concerns about the status of your relationship with entities to which you provide services.

Key tax dates

Date	Obligation
21 Apr 2022	March 2022 monthly BAS due
28 Apr 2022	March 2022 quarterly BAS due
	Pay March 2022 quarterly PAYG instalment
	Employee Superannuation Guarantee contributions due
23 May 2022*	April 2022 monthly BAS due 2021–22 FBT return due
30 May 2022*	March 2022 SG charge statement due (if required)
21 June 2022	May 2022 monthly BAS due
21 July 2022	June 2022 monthly BAS due
28 July 2022	June 2022 quarterly BAS due
	Pay June 2022 quarterly PAYG instalment

*These are the next business days as the due dates (21 and 28 May) fall on a Saturday.

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