

## TaxWise

### Individual News

April 2023



## From the ATO

### Have you been impacted by floods?

If you or your business is in an Australian Government Disaster Recovery Payment declared local government area, you don't need to request a deferral for certain obligations.

You won't be penalised if you lodge by the later date but remember to pay by the original due date. If you can't pay by the due date, contact the ATO to discuss payment options and request a remission of general interest charge.

If you need help, even if you haven't been directly affected by the floods, the ATO may be able to:

- give you extra time to pay tax or lodge tax returns, activity statements or other obligations
- help you reconstruct lost or damaged tax records;

- prioritise any refunds owed to you.

**Tip!** If you are having problems in lodging a return or an activity statement or paying a tax bill, talk to your tax adviser.

### Using business money from your private company for personal purposes

There may be tax consequences if you take or use money or assets from your private company or trust for personal 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 private 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 as part of their assessable income in their individual tax return. This has no impact on the company's balance sheet, tax return or franking account.

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 complying terms.

To put a loan on complying terms, the loan must:

- be made under 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 (4.77% for 2022–23);
- 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):

- must make a minimum yearly repayment each year comprising principal and interest components (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, which can be franked, must 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.

### 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 of the company or an associate of a shareholder of the company, the ATO considers that the unpaid amount is a loan from the company

to the shareholder (or associate) and is therefore subject to the operation of Division 7A.

The ATO 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 unfranked 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 tax liability.

If your business' circumstances have changed and you think you will pay too much (or too little) in instalments for the 2022–23 income year, the instalments can be varied on the next activity statement (due on 28 April 2023). Instalments can be varied multiple times throughout the year. The varied amount or rate will apply for the remaining instalments for the 2022–23 income 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 tax liability.

If an amount or rate is varied online, activity statements and instalment notices will be issued electronically and not in paper form. 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.





## Do the personal services income rules apply to you?

If more than half the income you've received from a contract is a reward for your personal efforts or skills (rather than from the use of assets, the sale of goods, or from a business structure), then your income is classified as personal services income (**PSI**).

You can receive PSI in almost any industry, trade or profession. For example, as a financial professional, IT consultant, construction worker or medical practitioner.

The PSI rules are designed to prevent PSI from being diverted or split with other individuals or entities in an attempt to pay less tax.

If you earn PSI, it's important to check whether these rules apply to you. If you're conducting a personal services business (**PSB**) for a particular income year, then the PSI rules won't apply for that year, although you'll still need to report your PSI in your income tax return and keep certain records. You can self-assess as a PSB if you either:

- meet the results test for at least 75% of your PSI; or
- meet one of the other PSB tests and less than 80% of your PSI is from the same entity and its associates.

The other PSB tests are the Unrelated clients test, the Employment test and the Business premises test. If you can't self-assess as a PSB, then the PSI rules will apply. The PSI rules can affect the deductions you claim and how you report your PSI in your tax return.

**Tip!** If you are uncertain how the PSI rules apply to you, talk to your tax adviser.



## Tax concessions for small business entities

If you are a sole trader, there are a number of small business tax concessions that you may be able to utilise. A small business entity is broadly a business that has an aggregated turnover of less than \$10 million.

### Income tax concessions

**Start-up costs** – you may be entitled to deduct certain costs when starting up a business, including professional, legal and accounting advice and government fees and charges.

**Simplified trading stock rules** – this concession allows you to choose not to account for changes in the value of trading stock at the end of the financial year for tax purposes. You will need to record how the value of the stock was estimated, but there is no need to tell the ATO you have chosen to use an estimate.

You can choose not to conduct a stocktake (and account for changes in the value of trading stock) if there is a difference of \$5,000 or less between:

- the value of your opening stock at the start of the income year; and
- a reasonable estimate of the value of your closing stock at the end of the year.

If you choose not to use an estimate, you will need to conduct a stocktake and account for the changes in the value of your stock.

**Immediate deductions for prepaid expenses** – you may be able to claim an immediate deduction for prepaid expenses incurred in an income year where the payment covers a period of no more than 12 months that ends by the end of the following income year.

**Two-year amendment period for individuals** – the Commissioner generally has a two-year period, starting after the day on which the ATO issued a notice of assessment, to amend the assessment. However, the two-year amendment period does not apply if you are in a 'high risk' category, have complicated tax affairs or are subject to an anti-avoidance provision.

**Small business restructure roll-over** - you can change the legal structure of your business without

incurring an income tax liability. This roll-over applies to active assets that are CGT assets, trading stock, revenue assets and depreciating assets used, or held ready for use, in the course of carrying on a business.

### CGT concessions

There are four CGT concessions available to eligible small businesses:

- the small business 15-year exemption;
- the small business 50% reduction;
- the small business retirement exemption; and
- the small business roll-over.

The small business CGT concessions are available where one of the following conditions is satisfied:

- the business' aggregated turnover is less than \$2 million (*not* \$10 million as for other most other small business concessions);
- the sum of the net value of your CGT assets and those of your affiliates and any entities connected with you does not exceed \$6 million; or
- you are a partner in a partnership that is a small business entity (i.e. aggregated turnover is less than \$2 million), and the asset is an interest in an asset of the partnership; or
- the conditions for certain passively held assets are satisfied.

Importantly, the asset in question (i.e. the capital gain from the CGT event that happened to the asset that will benefit from the CGT concessions) must be an *active asset*. This means that the asset must be used in the course of carrying on a business (whether alone or in partnership) or must be an intangible asset (for example, goodwill) inherently connected with a business.

There are certain exceptions. For example, an asset that is used mainly to derive rent, interest or royalties is generally not an active asset.

The active asset test is satisfied if the asset was an active asset:

- for a total of at least 7½ years during the test period, if you owned it for more than 15 years; or
- for at least half of the test period, if you owned it for up to 15 years.

If the asset is a share in a company or an interest in a trust, additional conditions must be met.

### Other concessions

These include:

- *GST concessions* – e.g. accounting for GST on a cash basis, and paying GST by instalments and reporting GST annually;
- *PAYG instalment concession* – you can pay PAYG instalments using a GDP-adjusted notional amount calculated by the ATO.

**Tip!** Talk to your tax adviser to make sure you are utilising any available concessions.



### Four tips to help nail your record keeping

Good record keeping helps you manage your business and cash flow, and ensures you get the right outcome with your tax return.

The ATO's top 4 tips for record-keeping are:

- Always keep detailed records of payments to contractors providing taxable payment reporting system (**TPRS**) services so it's easier to prepare and lodge the Taxable payments annual report (**TPAR**) by 28 August.
- Make sure your vehicle logbook records are no more than 5 years old if you are claiming car expenses and use the logbook method. If your

logbook will be older than this when you plan to lodge your return, you need to start a new logbook.

- Check if government grants or payments you receive are taxable and need to be reported as business income when you lodge your tax return. This includes payments from the National Disability Insurance Scheme (**NDIS**) or Child Care Subsidy payments.
- Record the amounts withheld from any payments you receive and keep written evidence from the payer, including their details and ABN. Payments you receive may be subject to withholding because you didn't quote an ABN, you've done subcontracting work through a labour hire firm or you have a voluntary agreement with the payer to withhold tax amounts.

### Digital record-keeping

There are advantages in keeping business 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 accounting practices and save time so you can focus on the business;
- automatically calculate salaries and wages, PAYG withholding, employee superannuation and other amounts for activity statement and other purposes;
- meet Single Touch Payroll (**STP**) reporting obligations;
- back up records using cloud storage to keep records safe from flood, fire or theft.

If you use cloud storage, either through accounting software or 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 the process meets the record-keeping requirements;
- discuss the options with your software provider;
- talk to your business adviser, if necessary.



### New changes to home-based business expenses

If you wholly or partly operate your business from home, you may be able to claim the business-use portion of expenses you incur. For example:

- occupancy expenses (such as mortgage interest or rent, council rates, land taxes and home insurance premiums); and
- running expenses (such as electricity, gas, phone, internet, stationery, cleaning and the decline in value of assets).

The temporary shortcut method (80 cents per hour) ended on 30 June 2022 and the fixed-rate method has been revised.

For the 2022–23 income year, the revised fixed rate is 67 cents per hour. You no longer need to:

- have a dedicated home office space;
- separately work out the business-use portion of phone, internet, gas and electricity.



You can also separately claim the decline in value of depreciating assets and equipment, including any repairs and maintenance costs.

If you want to use the revised fixed rate method, you need to keep a record of all hours worked from home for the entire income year (for example, on a timesheet, roster or in a diary).

If you haven't kept a record of all hours worked from home, you can use a representative record of your hours only from 1 July 2022 to 28 February 2023. You will need a record of the total number of your actual hours worked from home from 1 March 2023 to 30 June 2023.

Your business structure can also affect the method you can use and the expenses you can claim.

**Tip!** Talk to your tax adviser if you wholly or partly operate your business from home.



## Do you have a holiday home?

You can claim deductions only to the extent your holiday home expenses are incurred for the purpose of producing rental income.

Many Australians own a holiday home, but there are a small number of holiday home owners who, on average claim deductions that are six times higher than income earned from their property.

Here are a few questions to consider to make sure your claim for rental deductions is valid:

- How many days was it rented out and was the rent in line with market values?
- Where do you advertise for rent and were any restrictions placed on tenants?

- Have you, your family or friends used the property?

## FBT Issues

### FBT return time

If you have one or more employees and you provided fringe benefits to them or their associates between 1 April 2022 and 31 March 2023, it's now time to lodge the 2023 fringe benefits tax (**FBT**) return and pay any outstanding FBT. [An associate includes a spouse, child, parent, sibling and most other relatives (but not cousins).]

You should note the following dates:

- The 2022–23 FBT year ended on 31 March 2023.
- You'll need to lodge the FBT return and pay any outstanding liability by 22 May to avoid interest and penalties (the statutory due date of 21 May falls on a Sunday this year).
- If you're lodging electronically via a tax agent, the due date to lodge and pay is 26 June (the concessionary due date of 25 June falls on a Sunday this year).
- If it is the first time you will use a tax agent to lodge an FBT return, you'll need to contact them before 21 May. The agent needs to add you to their FBT client list by this date to be eligible for the June lodgement and payment date.

If you don't need to lodge an FBT return but you are registered for FBT, you should still let the ATO know by the date the return would have been due. You can do this by completing a *Notice of non-lodgement – Fringe benefits tax* form.

If you cannot lodge and pay on time, you should contact the ATO or speak with your tax adviser as early as possible.

Don't forget to keep all records relating to the fringe benefits you provided during the 2022–23 FBT year, including how the taxable value of the benefits was calculated.

## FBT thresholds and rates for 2023–24

The FBT rate (47%) and the gross-up rates — **2.0802** where the benefit provider is entitled to a GST credit (type 1 gross-up rate) and **1.8868** where the benefit provider is not entitled to a GST credit (type 2 gross-up rate) — for the 2023–24 FBT year are unchanged from the 2022–23 FBT year.

The following have changed for the 2023–24 FBT year:

- the benchmark interest rate (e.g. for loan fringe benefits) is 7.77% (up from 4.52%); and
- the record keeping exemption (also relevant for eligibility to use the base rate method to calculate FBT) is \$9,786 (up from \$9,181).

The cents per km rates for motor vehicles (other than a car) for the 2023–24 FBT year are:

- 0–2500cc – 62 cents (up from 58 cents);
- over 2500cc – 73 cents (up from 69 cents); and
- motorcycles – 18 cents (up from 17 cents).

## Valuing assets

It is important to value assets (or liabilities) correctly for tax purposes. Valuations may be required for a variety of purposes, such as:

- market value substitution rules used for domestic CGT and income tax purposes;
- asset threshold tests such as those in relation to the small business CGT concessions; and
- indirect tax rules such as the GST margin scheme rules.

But valuing an asset isn't always easy. To help taxpayers, the ATO has updated its guidance on market valuation for tax purposes. The updated guidance sets out the ATO's views on a range of matters, including:

- the definition of market value for tax purposes;
- who can determine market value for tax purposes;
- valuation fundamentals for tax purposes, including: (i) eight guiding principles; (ii) valuation approaches and methods; (iii)

expectations in relation to valuation reports, including common issues; and

- the ATO's approach to reviewing valuations.

**Tip!** Valuing an asset (or a liability) for tax purposes is complex. Talk to your tax adviser if you need to obtain a valuation for tax purposes.

## SMSF statistics

The ATO's *Self-managed super fund quarterly statistical report – December 2022* contains some interesting statistics on the self-managed superannuation fund (**SMSF**) sector. For example, as at 31 December 2022:

- there were 602,883 SMSFs (15,854 more than at 31 December 2021);
- there were 1,131,234 members of SMSFs (30,371 more than at 31 December 2021);
- total net Australian and overseas assets of SMSFs were \$846,823 million (\$20,475 million less than at 31 December 2021);
- the top asset types held by SMSFs (by value) were listed shares (\$256,429 million) and cash and term deposits (\$136,498 million);
- 52.9% of SMSF members were male and 47.1% were female (a slight increase in female members compared to December 2021);
- 86.5% of SMSF members were 45 years or older (a slight increase compared to December 2021).



## Tax Tips

### Planning for the end of the tax year

#### Defer assessable income

To reduce the tax you will pay for the 2022–23 income year, you might want to consider deferring assessable income to the next income year.

For example, you could delay issuing an invoice so you won't be paid until after 30 June – that way, the income will be taxed next year. It is trickier if you account for income on an accruals basis – you might have to delay issuing the invoice until after 30 June.

If you are in the process of selling property and the profit will be taxable as a capital gain, you could defer the sale until the next income year – but remember that the taxing point of a capital gain arises on the date that you exchange contracts and not on settlement.

Of course, these tips are always subject to cash flow requirements.

#### Increase deductions

Another way to reduce your tax bill for the 2022–23 income year is to increase your deductions. For example, you could bring forward the purchase of one or more depreciating assets (new assets are currently immediately deductible under the temporary full expensing regime). An immediate deduction is also available for start-up costs and certain prepaid expenses.

Don't forget that temporary full expensing – which allows an immediate deduction for the full cost of depreciating assets – ends on 30 June this year. To take advantage of temporary full expensing, you must acquire and start to use an asset (or have it installed ready for use) by 30 June 2023.

Charitable donations are a good way to increase your deductions. If you are not sure whether a donation will be deductible, you can check the deductibility status of charities at <https://www.abn.business.gov.au/Tools/DgrListing>

Every now and again, new charities are added to the list, while others drop off (usually because the time limit for making a tax deductible donation has expired).

In certain circumstances, you can claim a deduction if you donate trading stock.

Don't forget to obtain and keep receipts.

**Tip!** As the end of the 2022–23 income year approaches, talk to your tax adviser about ways to minimise your tax bill.



## What's new?

### Private health insurance rebate

If you pay private health insurance premiums, you may be entitled to a rebate. The rebate percentage is based on the age(s) of the person(s) covered by the policy and the adjusted taxable income of the person paying the premiums and their spouse (if they have one).

The rebate can also be claimed monthly by way of a reduction in the premiums.

The rebate percentages may be adjusted every 1 April by the 'rebate adjustment factor' (**RAF**). However, the percentages won't be adjusted on 1 April this year because the RAF was 1. This means that the rebate percentages for premiums paid from 1 April 2023 to 31 March 2024 will be the same as for premiums paid during the period from 1 April 2022 to 31 March 2023.

## From the courts

### Lawyer jailed for 12 years

In a case that attracted a lot of publicity, a Sydney lawyer has been sentenced to 12 years' jail for his role in knowingly dealing with the proceeds of crime, being amounts blackmailed from offenders participating in a syndicate that defrauded the



Commonwealth of more than \$105 million of unpaid tax over three years. Five people have now been found guilty in the Supreme Court of NSW for their roles in the syndicate.

The lawyer was found guilty of dealing in proceeds of crime worth \$1 million or more. He received a non-parole period of 7 years and 6 months. Assets in a trust account controlled by the lawyer were also restrained.

This was the eighth sentencing outcome for Operation Elbrus, which was an investigation led by the Australian Federal Police (AFP), with significant assistance from the ATO as part of the Serious Financial Crime Taskforce, into a large-scale and organised tax fraud conspiracy.

Operation Elbrus, which began in 2016, exposed a large-scale and organised tax fraud and money laundering conspiracy that used Plutus Payroll Australia Pty Ltd and other payroll service entities to divert for the conspirators' benefit amounts of money payable to the ATO as PAYG withholding and GST.

The Sydney lawyer provided the mechanism for disguising that more than \$24 million received into and then transferred out of his legal practice's trust account was the proceeds of crime derived from other persons blackmailing the Plutus tax fraud conspirators of some of the proceeds of their fraud.

All matters were prosecuted by the Commonwealth Director of Public Prosecutions.



## Conviction for false deduction claims

A South Australian woman has been sentenced to 4 months' imprisonment after being convicted of falsely claiming almost \$10,000 in income tax deductions. The woman lodged 22 original and amended income tax returns for the income years

from 2015 to 2018. Each tax return contained overstated work-related expenses and understated her income.

While being audited and subsequently investigated, she continued to lodge original and amended tax returns containing the same false claims.

The woman was released from imprisonment immediately on the condition that she enter into an 18-month good behaviour bond. She was ordered to repay \$1,599.45 for the tax refunds she unlawfully obtained.



## Key tax dates

Date	Obligation
<b>21 Apr 2023</b>	March 2023 monthly BAS due
<b>28 Apr 2023</b>	March 2023 quarterly BAS due
	Pay March 2023 quarterly PAYG instalment
	Employee superannuation guarantee (SG) contributions due
	March 2023 quarterly BAS due
<b>22 May 2023*</b>	April 2023 monthly BAS due
	2022-23 FBT return due
<b>29 May 2023*</b>	March 2023 SG statement due (if required)
<b>21 June 2023</b>	May 2023 monthly BAS due
<b>21 July 2023</b>	June 2023 monthly BAS due
<b>28 July 2023</b>	June 2023 quarterly BAS due
	Pay June 2023 quarterly PAYG instalment

**Note!** Talk to your tax agent to confirm the correct due dates for your own tax obligations. For example, you may have more time to lodge and pay if impacted by COVID-19 or a natural disaster.

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E: [admin@hardingmartin.com.au](mailto:admin@hardingmartin.com.au)  
T: +61 7 3812 2233  
F: +61 7 3812 2386 -  
W: [www.hardingmartin.com.au](http://www.hardingmartin.com.au)

A: 221 Brisbane Street, Ipswich, QLD  
4305  
PO Box 763, Ipswich, QLD 4305

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