



YEAR END TAX PLANNING FOR BUSINESSES

June 2023



Several changes have been legislated over the last year which businesses need to be aware of whilst doing their end of year tax planning.

COMPANY TAX RATES

The tax rate for Base Rate Entities (BREs) is now set at 25%.

BREs are entities that have an aggregated turnover of less than \$50 million and derive less than 80% of their income from defined passive sources including (but not limited) to rental income, certain dividends, and interest income.

The tax rate for all other companies is 30%.

LOSS CARRY-BACK FOR COMPANIES

The loss carry back provisions have been extended to the 2022-23 income year.

Companies which carry on a business and have an aggregated turnover of less than \$5 billion are eligible for the loss carry back provisions provided certain criteria are met.

The loss carry back rules are optional and broadly give companies an option to carry back their tax losses to an earlier year and claim a refund for tax paid in a previous income year.

Losses incurred in the 2019/20, 2020/21, 2021/22 and 2022/23 income years can be carried back to the 2018/19, and later income years. The refundable amount of the tax offset is restricted to the lesser of:

- the tax paid in the earlier income year, or
- the company's franking account balance at the end of the current income year.

Companies will not be able to carry back their losses from 1 July 2023.



REVIEW LOANS TO SHAREHOLDERS AND ASSOCIATES (DIVISION 7A LOANS)

The Government had previously announced its intention to introduce changes to the operation of Division 7A. However, at this stage, no draft legislation has been released.

Shareholder loans from companies need to be properly documented and put on a commercial footing in line with the Division 7A tax legislation. In addition to documenting such loans, it is important to ensure interest rates are correctly applied and the minimum repayments are being made to ensure no deemed dividends arise.

The Australian Taxation Office (ATO) continues to undertake audits to ensure payments made by private companies are correctly accounted for and company loans are not used to distribute tax-free profits.

In addition to Division 7A loans, you should also review any unpaid present entitlements (UPEs) where trust distributions remain unpaid at the end of the year.

We recommend speaking to one of our advisors who can guide you through the complexities of the Division 7A provisions.

WARNING – SUB TRUST ARRANGEMENTS

The ATO finalised tax determination (TD) 2022/11 which will impact the use of sub-trust arrangements going forward. Sub-trust arrangements have been popular for some in the past because it gave taxpayers the option to defer the tax payable as a result of the application of Division 7A. However, going forward, as a result of the ATO's new determination, sub-trusts will no longer be practicable.

The change in the ATO's views will apply to trust entitlements arising on or after 1 July 2022. This may have an impact on your trust distribution strategy.

FRANKING AND DIVIDENDS

If you are planning on paying any dividends in your company prior to year-end, it is important to ensure that you have met the documentation/notification requirements. In addition, ensure your franking account is up to date as it is imperative that you have sufficient franking credits to avoid paying franking deficits tax at a later date. Ensure the company has applied the correct franking rate.



TRUST RESOLUTIONS

Trustees of discretionary and family trusts must make valid distribution resolutions before 30 June to effectively distribute trust income to eligible beneficiaries. The resolution must be made in accordance with the Trust Deed.

If the Trust has not made a valid distribution by 30 June 2023, the Trustee may be liable to pay tax on the Trust's taxable income at the highest marginal tax rate (subject to any default beneficiary clauses present in the Trust Deed).

WARNING – TRUSTEES OF DISCRETIONARY TRUSTS BEWARE

A recent case decision handed down by the Supreme Court of Victoria **Owies v JJE Nominees Pty Ltd [2022] VSCA 142** (Owies) should be considered when formulating your year-end distribution resolutions.

In the case, it was found that the Trustee had not given enough consideration to the individual circumstances of the beneficiaries when resolving to distribute income. The beneficiaries of the Trust were successful in removing the Trustee from their position and the distributions for the years considered were voidable.

The simple argument of stating a discretionary trust means the Trustee has ultimate discretion on how to distribute income may not be enough and this power is not without bounds. Based on "Owies", Trustees should inform themselves, before deciding, of matters which are relevant to the decision, and this may involve making enquiries into the individual circumstances of the beneficiaries of the Trust before resolving to distribute income one way or another.

If you have any concerns, we suggest getting legal advice in relation to this matter.

Furthermore, late last year the ATO finalised its guidance on s100A of ITAA 1936. Broadly, s100A gives the ATO powers to assess the Trustee of the trust at the highest marginal tax rate if the ATO considers the distribution part of a reimbursement arrangement and the "ordinary family and commercial dealings" exclusion does not apply.

The finalised guidance issued by the ATO provides its views on when the ordinary family and commercial dealings exclusion may apply.

TIP – MANAGING S100A RISK

The release of the ATO's guidance coincided with another significant development in trust tax law, being the Full Court of the Federal Court of Australia's recent decision in **Commissioner of Taxation v Guardian AIT Pty Ltd ATF Australian Investment Trust [2023] FCAFC 3 (Guardian)**.

The "Guardian" case provided some clarification on the application of s100A, including that there must be a reimbursement agreement in place between at least two parties. Merely distributing income to a beneficiary will not give rise to a reimbursement agreement unless there is an intention or plan to use the funds arising from the distribution in a particular manner at the time (or prior to) the resolution being made. If there is a reimbursement agreement, you would then consider whether the ordinary family or commercial dealings exclusion applies.

As a result of "Guardian", the ATO accepted the following:

- Section 100A requires a reimbursement agreement to exist at, or prior to, the time by which a beneficiary is made presently entitled to income of the trust.
- An arrangement that constitutes an agreement may be both informal and unenforceable, and the parties may be free to withdraw from it or to act inconsistently with it, notwithstanding their adoption of it.

There needs to be a common intention, or consensus existing between at least two parties.

Trustees should be cautious in their communications with their beneficiaries (written or verbal) to ensure no arrangements are being entered into which may be considered a reimbursement agreement.

MORE INFORMATION

For more information in relation to s100A, refer to our article here - [Family Discretionary Trusts in Australia: Recent Developments and How to Manage Risks](#)

Prior to finalising any trust resolutions for the 2023 income year, we suggest speaking to your Moore Australia advisor to ensure adequate strategies are put in place to minimise your risk.

DEPRECIATION ON PLANT AND EQUIPMENT

Temporary full expensing provisions

Businesses with an aggregated turnover of less than \$5 billion can claim the full cost of an eligible depreciating asset purchased between 6 October 2020 and 30 June 2023.

These provisions are generally not compulsory, and most businesses can opt in and opt out on an asset-by-asset basis. Furthermore, businesses with an aggregated turnover of more than \$5 billion may have access to these provisions under an alternate test.

These provisions are compulsory for small business entities with an aggregated turnover of less than \$10 million which use the simplified depreciation provisions. The temporary full expensing provisions will no longer be available from 1 July 2023.

TIP – GET THE TIMING RIGHT!

If you plan on purchasing depreciating assets, ensure you have purchased and installed the asset ready to use by 30 June 2023 to claim the full amount of the depreciation in the 2022-23 financial year.

WARNING – CONSIDER THE COST LIMIT BEFORE BUYING CARS!

If you plan on purchasing a car with a carrying capacity of less than one tonne which is designed to carry passengers (such as a sedan or hatchback), the amount of depreciation that can be claimed is limited to the car cost limit which is currently set at \$64,741. The cost limit also impacts the maximum GST you can claim on these vehicles.

The cost limit, however, does not apply to utility type vehicles with a pay load capacity of more than one tonne.

Certain types of dual cab vehicles with a carrying capacity of less than one tonne which are not designed to carry passengers are not impacted by the cost limit. Whether or not a vehicle is designed to carry passengers depends on the specifications of the vehicle. If you are purchasing a dual cab vehicle with a carrying capacity of less than one tonne, contact your advisor to check the depreciation and GST that can be claimed on the purchase of the vehicle.

FROM 1 JULY 2023:

From 1 July 2023, small businesses with an aggregated turnover of less than \$10 million may be eligible for the instant asset write off (IAWO) on the purchase of eligible assets costing less than \$20,000. In order to have access to the IAWO, the small business must use the simplified depreciation provisions.

EMPLOYER OBLIGATIONS – INCREASE IN SUPERANNUATION GUARANTEE RATE

The superannuation guarantee rate will rise from 10.5% to 11% from 1 July 2023.

The rate will subsequently rise by 0.5% each year until it reaches 12% by the 2024-25 income year.

It is prudent to review your employment contracts and ascertain whether the employee's package is inclusive of or excluding superannuation guarantee once again.

EMPLOYER OBLIGATIONS – DEDUCTIBILITY OF PAYMENTS TO WORKERS (INCLUDING DIRECTORS AND ASSOCIATES)

From 1 July 2019, you must comply with PAYG reporting and withholding obligations in order to claim a tax deduction for payments you make to workers (including employees and contractors).

If you fail to withhold PAYG from your workers' payments or do not report the amounts to the ATO prior to an audit/review, they may be considered non-compliant payments and treated as non-deductible for income tax purposes. Particularly, care must be taken when paying associates (e.g. business owners or their family members) to ensure you meet your withholding and reporting obligations.

ADDITIONAL 20% DEDUCTION BOOSTS - EXTERNAL TRAINING & DIGITAL ADOPTION

Small businesses with an aggregated turnover of less than \$50 million will be able to deduct an additional 20% of expenditure incurred on certain type of expenditure in relation to external training and/or digital adoption.

MORE INFORMATION:

For more information in relation to the deduction boosts, refer to our article here - [Training and Technology Investment Boosts - draft legislation released.](#)

FROM 1 JULY 2023:

The Small Business Energy Incentive will be made available to small and medium sized businesses with an annual turnover of less than \$50 million. The incentive will provide an additional 20% deduction on spending that supports electrification and more efficient use of energy. This additional deduction will only apply to the 2023-24 income year.

ATO RISK AREAS – PROFESSIONAL FIRM PROFITS

The ATO previously released PCG 2021/4 which sets out its compliance approach to the allocation of profits or income from professional firms in the assessable income of the individual professional practitioner (IPP). The ATO is specifically concerned with arrangements involving the provision of services where the individual taxpayer redirects income to an associated entity, where it has the effect of altering their tax liability. Professionals working within accounting, architectural, engineering, financial services, legal and medical professions may want to consider this in further detail.

MORE INFORMATION:

For more information in relation to the ATO's compliance approach, refer to our article here - [ATO - Practical Compliance Guideline 2021/4](#)

ATO RISK AREAS - EMPLOYEE VS INDEPENDENT CONTRACTOR

The ATO released draft Practical Compliance Guideline (PCG) 2022/D5 which sets out their compliance approach for businesses that engage workers and classify them as employees or contractors. In 2022, the High Court handed down two decisions that impact how businesses distinguish between employment and contractor relationships. The ATO's risk assessment framework provides their compliance approach on how they will apply compliance resources in determining whether arrangements have been classified correctly.

The key theme from the various risk zones is that the ATO expects businesses to get specific advice from appropriate professionals to fall into the lower risk zones. An arrangement is high risk if the arrangement does not fall into the white, green, or yellow zones and to fall within any of those zones, there is a requirement to get advice in relation to this issue from the engaging entity's in-house counsel or an appropriately qualified third party, such as a solicitor or tax professional, an administrative body or client-specific written advice from the ATO.

MORE INFORMATION:

For more information in relation to the ATO's compliance approach, refer to our article here - [ATO's Compliance Approach for Employee-Contractor Classification in Australia](#)



REPORTING - TAXABLE PAYMENT ANNUAL REPORT (TPAR)

If you are in one of the following industries, you may need to lodge a TPAR by 28 August 2023 containing information in relation to payments made to contractors:

- Building and construction.
- Cleaning services.
- Courier services.
- Road freight services.
- Information technology services.
- Security, investigation, or surveillance services.
- Mixed services (provides one or more of the services listed above).

REPORTING – PAYMENT TIMES REPORTING

The Payment Times Reporting Scheme (PTRS) requires certain entities including (but not limited to) companies to publicly report on their payment terms and practices for their small business suppliers. This is achieved primarily through the imposition of a bi-annual reporting requirement whereby effected entities must provide details of their payment terms for small business. This information is then published on a public register which can then be accessed by any interested party.

Companies that carry on an enterprise may have a compliance obligation for the purposes of the PTRS if any of the following apply:

1. The total income for the entity for the most recent income year for the entity was more than \$100 million.
2. If the entity is a controlling corporation – the combined total income for all members of the controlling corporation’s group for the most recent income year for the controlling corporation was more than \$100 million.
3. If the entity is a member of the group of a controlling corporation to which subparagraph (2) applies – the total income for the entity for the most recent income year for the entity was at least \$10 million.



FINANCIAL REPORTING OBLIGATIONS

Since changes in the Australian Accounting Standards (AAS), effective for year-ended 30 June 2023, more entities are now required to prepare General Purpose Financial Statements (GPFS) in accordance with AAS.

All entities with reporting obligations under the *Corporations Act* (2001), including disclosing entities, public companies, large proprietary companies, AFSL holders and some small proprietary companies in specific circumstances, are required to prepare GPFS. Some other entities may also be required to prepare GPFS, if required to do so by their constitution, loan agreements or other agreements or because they are considered to be a Country-by-Country reporting entity.

Most entities except for disclosing entities, public companies and some AFSL holders, will be able to prepare Simplified Disclosure (SDS) financial statements, which have reduced disclosure requirements. However, all financial statements will need to be consolidated (if applicable) and comply with all recognition and measurement requirements of AASs. There have been no changes in the obligation of entities to have audits.

MORE INFORMATION:

For more information in relation to the obligation to prepare GPFS, refer to our article here – [Guide to Transitioning to Simplified Disclosure Reporting](#)

For more information in relation to the types of financial statements required by AFSL holders, refer to our article here – [ASIC Financial Reporting guidance for AFSL holders](#)



TAX PLANNING CHECKLIST

Item	Enhance your tax deductions
Accrued expenses	Ensure you accrue expenses where you have a present existing liability to pay the expense irrespective of the fact that you may receive the invoice or make the payment after year end. Example: Accrued wages – for instance, if you have a monthly pay cycle ending on 15 June, you can accrue the costs of your payroll from 16 June to 30 June and claim the wage cost as a tax deduction in the 2023 year itself.
Bad debts	Review your debtors listing and determine whether any debts can be written off. A written record should be kept evidencing the decision to write off the debt from the accounts.
Bonuses	If you have not paid your bonuses by 30 June, you may still be able to claim a deduction provided you have an obligation to pay this. To substantiate this, ensure the amount is quantifiable and approved (via minutes) and the staff are notified of the bonus.
Deferring income	The ability of a business to defer income will depend on each business, cash flows and the type of income derived.
Plant and equipment	Consider the impact of the temporary full expensing provisions on depreciating assets purchased during the 2022-23 income year.
Plant and equipment – obsolete	Review your asset register and write off any assets that have been disposed or are no longer in use.
Prepayments – immediate deductions	If you are a small or medium business (aggregated turnover of less than \$50 million), you may be entitled to an immediate deduction for certain prepaid expenses where the goods or services will be provided within 12 months from the date of expenditure. Examples of items that may be deductible under the 12-month rule include subscriptions and prepayments of interest on a loan used for income producing purposes.
Simplified trading stock rules	If you are a small business (aggregated turnover of less than \$50 million), the simplified trading stock rules may apply. Broadly, you do not have to account for changes in trading stock for tax purposes where the difference between the value of the original opening stock and a reasonable estimate of the closing stock is \$5,000 or less.
Stock – obsolete	Review your stock on hand and identify any obsolete stock. You should conduct a detailed physical stock take of all stock on 30 June. Retain your detailed stock sheets as part of your taxation records.
Superannuation – June 2023 quarter	If you would like to claim a deduction for your superannuation guarantee accrued during the June 2023 quarter, ensure it is paid by 30 June 2023 (subject to cash flow). The amount should be received into the employees' fund by 30 June 2023 so you may have to pay it earlier to allow for bank processing times.

TAX PLANNING CHECKLIST CONT...

Item	Preserve your tax deductions
International related party dealings	Ensure your transfer pricing documentation is up to date.
Salary and wages (incl. director fees)	Ensure PAYG withholding and reporting obligations have been met to prevent loss of deduction for non-compliant payments.
Superannuation – current year	Ensure superannuation is paid by the due dates to maintain your income tax deduction. If any amounts have been paid late, ensure you have prepared and lodged the necessary superannuation guarantee charge forms with the ATO to minimise interest charges and penalties.

Item	Comply with ATO Year-end reporting requirements
Single Touch Payroll	Ensure year end payroll procedures have been completed and make a finalisation declaration. You must make a finalisation declaration for your employees by 14 July 2023.
Taxable Payment Annual Reports (TPAR)	<p>If you are in these following industries, you will need to prepare a TPAR:</p> <ul style="list-style-type: none"> • Building and construction • Cleaning services • Courier services • Road freight services • Information technology services • Security, investigation or surveillance services • Mixed services (provides one or more of the services listed above) <p>Lodge the TPAR (if necessary) with the ATO by 28 August 2023.</p>

Item	Comply with other income tax/ASIC requirements
Loans	Ensure your loans to and from companies and trusts comply with the current Division 7A provisions and ensure you have made the minimum repayments during the year for any complying Division 7A loans.
Dividends	Ensure you have reviewed your franking account and record any dividends paid to shareholders in your accounting systems. Ensure you have met your documentation / notification requirements.
Trust resolutions	In general and subject to the terms of the Trust Deed, a discretionary trust needs to resolve how to distribute its income in writing before 30 June.

MOORE AUSTRALIA

Moore Australia is part of a global network of offices, providing auditing and financial reporting services, advising local, national and international clients in the public and private sectors. Moore Australia generates annual revenues in excess of \$80m.

Moore Australia is part of the Moore Global network and has 14 offices with over 500 people nationwide.

Moore Australia has extensive experience in state and local government, biotechnology, energy mining and renewables, health and aged care, education, manufacturing, not for profit, property and construction, retail and tourism and hospitality and has a strong presence in the following service lines: Asia Desk, Audit & Assurance, Business Advisory, Taxation, Corporate Finance, Governance and Risk Advisory.

CONTACT US

Find your nearest member firm at
www.moore-australia.com.au

Or email:
ma@moore-australia.com.au



www.moore-australia.com.au

An independent member of Moore Global Network Limited – members in principal cities all throughout the world. Liability limited by a scheme approved under Professional Standards Legislation.
The information provided in this document is for general advice only and does not represent, nor intend to be advice. We recommend that prior to taking any action or making any decision, that you consult with an advisor to ensure that individual circumstances are taken into account.