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LWK Pty Limited
ACN 121 288 373

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Chartered Accountants

Business Advisers and Consultants

The Bottom Line

- Business -



What's new? – Tax changes from 1 July 2022

A number of income tax and superannuation changes relevant to businesses took effect from 1 July 2022, including:

- temporary full expensing (allows an immediate deduction for the cost of a depreciating asset) was extended by 12 months to 30 June 2023;
- the loss carry back (allows companies to carry tax losses back as far as the 2018–19 income year) was extended by 12 months to 30 June 2023;
- the cessation of employment as a taxing point for ESS interests that are subject to deferred taxation was removed;
- the superannuation guarantee rate increased from 10% to 10.5%;
- the \$450 monthly salary and wages threshold for superannuation guarantee purposes was abolished.

Tax thresholds and rates

Various tax thresholds and rates have increased for the 2022–23 income year. These are listed below.

| Item | Threshold/rate from 1 July 2022 |
|---------------------------------------------------|-----------------------------------------------------------------------------------|
| CGT improvements | \$162,899 |
| Div 7A benchmark interest rate | 4.77% |
| Car limit (depreciation) | \$64,741 |
| Car expenses – cents per kilometre method | 78 cents/km |
| Reasonable meal expenses – employee truck drivers | Breakfast – \$26.80 Lunch – \$30.60 Dinner – \$52.75 |
| Reasonable meal expenses – other employees | See the tables in Taxation Determination TD 2022/10 (in the ATO's Legal Database) |
| Overtime meal allowance – reasonable amount | \$33.25 |
| Luxury car tax – fuel efficient cars | \$84,916 |
| Luxury car tax – other | \$71,849 |

GDP adjustment for 2022–23

The GST and PAYG instalment amounts are usually adjusted every year by the 'GDP adjustment factor'. This is either calculated on the basis of changes in the GDP (gross domestic product) over a 2-year period or is a percentage set by law.

For 2020–21 and 2021–22, the GDP adjustment factor was reduced by legislative amendment to nil. For 2022–23, the GDP adjustment factor has been reduced by legislative amendment to 2% (instead of the usual 10% uplift).

FBT exemption for electric vehicles

Legislation has been introduced into Parliament that will provide a fringe benefits tax (FBT) exemption for electric and other low emission cars used by employees for private use.

To be eligible for this FBT exemption:

- the car must be a 'zero or low emissions' car – for example, a battery electric vehicle, a hydrogen fuel cell electric vehicle or a plug-in hybrid electric vehicle; and
- the value of the car at the first retail sale must be below the luxury car tax threshold for fuel efficient cars (\$84,916 for 2022–23).

A car that has an internal combustion engine will not be eligible for the FBT exemption unless it is able to be fuelled by a battery that can be recharged by an off-vehicle power source (i.e. a plug-in hybrid car).

The FBT exemption will apply to fringe benefits provided on or after 1 July 2022 for eligible electric cars (including second hand ones) first held and used on or after 1 July 2022. The operation of the amendment will be reviewed after three years in light of electric car take up.

Corporate tax transparency – resident private companies

The corporate tax transparency income threshold for Australian-owned resident private companies has been reduced from \$200 million to \$100 million.

Each year, the ATO is required to publish corporate tax transparency reports which contain information reported by large corporations. The corporate tax transparency population refers to the entities that are included in the reports.

From the 2022–23 income year onwards, the ATO will include in its corporate tax transparency reports, information reported by Australian-owned resident private companies with an income of \$100 million or more.

Sharing economy

Legislation has been introduced into Parliament that will extend the reporting of data to the ATO. The measure, once legislated, will require electronic platform operators to provide information on transactions made through the platform to the ATO.

It is proposed that transactions relating to the supply of taxi travel and short-term accommodation will need to be reported from 1 July 2022, and all other transactions from 1 July 2023.

It's tax time again!

Your business' income tax return for the 2021–22 income year must be lodged by 31 October, unless you have a substituted accounting period. If your business' tax return is lodged through a registered tax agent, the due date for lodgment is likely to be later than 31 October, possibly even as late as May next year.

Lodging a tax return

Are you a sole trader?

- Even if your taxable income is below the tax-free threshold (\$18,200), you still need to lodge a tax return.
- Do you pay PAYG instalments? Lodge your activity statements and pay all your PAYG instalments before you lodge your tax return so your income tax assessment takes into account the instalments you've paid throughout the year.

Are you a partnership?

If you operate your business in a partnership:

- the partnership lodges the partnership tax return, reporting the partnership's net income or loss (assessable income less allowable deductions).

As an individual partner, you report on your individual tax return:

- your share of any partnership net income or loss
- any other assessable income, such as salary and wages, dividends and rental income.

The partnership doesn't pay income tax on the income it earns. Instead, you and each of the partners pay tax on the share of net partnership income (if any) you receive.

Are you a trust?

- If you operate your business through a trust, the trust reports its net income or loss (this is the trust's assessable income less allowable deductions).
- The trustee is required to lodge a trust tax return.
- As a trust beneficiary, you report on your individual tax return your share of the trust's net income based on your share of the income of the trust to which you are presently entitled from the trust.

Are you a company?

- If you operate your business through a company, you need to lodge a company tax return.
- The company reports its taxable income, tax offsets and credits, PAYG instalments and the amount of tax it is liable to pay on that income or the amount of tax that is refundable to the company.

The company's income is separate from your personal income.

Tax losses

A tax loss is when the total deductions you can claim, excluding gifts, donations and personal superannuation contributions, exceed your total income for an income year.

If your business makes a tax loss, you may be able to:

- offset the loss in the same tax year against other assessable income;
- carry forward the loss and claim it as a business deduction in a later year; or
- carry the loss back to an earlier year (but not before 2018–19) in which the business has an income tax liability and receive a refundable tax offset – *this is available only to companies*.

If your business has made more than one tax loss in a year, you will need to consider each tax loss separately.

If you're a sole trader or in a partnership and want to offset a tax loss, first check if the business activity meets at least one of the tests under the non-commercial loss rules. (Those rules do not apply to losses made by primary producers and professional artists whose income from other sources is less than \$40,000.)

If you do meet one of the tests, then you can offset the loss against other assessable income (such as salary or investment income) in the same income year.

If you don't meet the tests, you can defer the loss or carry it forward to future years. For example, you can offset it when you next make a profit. You may also be entitled to an exercise of the Commissioner's discretion to use the loss, depending on your circumstances.

Non-commercial losses made by an individual with an adjusted taxable income exceeding \$250,000 are quarantined.

The rules for record-keeping still apply in relation to business losses. You need to keep records for 5 years for most transactions. However, if you fully deduct a tax loss in a single income year, you need to keep records only for 4 years from that income year.

Personal services income

If you operate your business through a company or a trust, income earned by the company or trust from the provision of your personal services (personal services income or PSI) will be attributed to you unless:

- the company or trust is conducting a personal services business (PSB); or
- the PSI was promptly paid to you as salary or wages.

The company or trust will be conducting a PSB if at least one of four tests are satisfied. These are:

- *the results test* (the most important test) – this is based on common law criteria for characterising an independent contractor (in contrast to an employee/employer relationship);
- *the unrelated clients test* – this requires the PSI to be earned from at least two unrelated clients who contract your services as a direct result of an advertisement or other public offer of your services;
- *the employment test* – this requires at least 20% (by market value) of your work to be performed by employees;
- *the business premises test* – this requires you to use business premises that meet certain conditions (e.g. you have exclusive use of the premises and the premises must be physically separate from any premises you use for private purposes).

If 80% or more of your PSI (with certain exceptions) is income from one client (or the client and their associate(s)) and the results test is not met, the company or trust will only be able to be treated as conducting a PSB if it obtains a PSB determination from the ATO.

If a company or trust is not conducting a PSB and the PSI was not promptly paid to you as salary or wages, the PSI is attributed to you, the company or trust has PAYG withholding obligations and there are limitations on certain deductions. The company or trust cannot deduct amounts that relate to gaining or producing your PSI, unless you could have deducted the amount as an individual or the company or trust received the PSI in the course of conducting a PSB.

Even if you don't use a company or trust to derive your PSI, there are limitations on the deductions that you may claim against your PSI. For example, you may not be able to deduct certain home office expenses, for example, occupancy expenses such as mortgage interest or rent.

Tip! The PSI rules are complicated so talk to your tax adviser if you provide your services through a company or trust.

Home office

A lot more people are working from home because of the COVID-19 pandemic. If you operate your business from a home office, you may be able to deduct the expenses of running that office. A home office is a room in your home that is used exclusively (or almost exclusively) for business activities.

Expenses you can claim a deduction for include:

- *occupancy expenses* – these include rent, mortgage interest, water rates, land taxes and house insurance premiums. Occupancy expenses are usually calculated by apportioning the expenses between the home office and the rest of the property on a floor area basis;
- *running expenses* – these are the increased costs from using your home for your business, including electricity or gas charges for heating, cooling and lighting, cleaning costs and the decline in value and the cost of repairs of depreciating assets such as furniture, furnishings and equipment; and
- *work related phone and internet expenses*, including the decline in value of the handset – an apportionment will be required if the phone or computer is not used exclusively for work.

If you are entitled to claim occupancy expenses in relation to your home, you may have a capital gains tax (**CGT**) liability when you sell your home, due to the possible partial loss of the main residence exemption. The CGT issue arises when you are entitled to claim occupancy expenses, not whether you actually do claim them.

If you work from home but don't have a home office as such, you can still claim deductions for 'running expenses'. To simplify matters, the ATO allowed a rate of 80 cents per hour for running expenses incurred in the 2021–22 income year. Of course, you can still make a claim based on your actual running expenses if it produces a larger deduction. But remember that those expenses will need to be apportioned between work and private use and substantiation of the expenses you have incurred will be required.

Company tax rate

The standard company tax rate is 30%.

The tax rate for the 2021–22 income year for companies whose aggregated annual turnover is under \$50 million and where no more than 80% of a company's assessable income is 'base rate entity passive income' (e.g. dividends, rent, interest, royalties and net capital gains) — called 'base rate entities' — is 25%. This is also the rate for the 2022–23 and later income years.

If more than 80% of a company's assessable income is 'base rate entity passive income', or the company's aggregated turnover is \$50 million or more, the company will be taxed at the standard 30% rate.

Small business tax offset

If you are a sole trader, an individual who is a partner in a business partnership or an individual who is a beneficiary of a trust that carries on a business, you may qualify for the small business tax offset if the business' aggregated turnover is less than \$5 million (yes,

\$5 million and not the general \$10 million small business aggregated turnover threshold). The offset is not available to an individual acting as a trustee.

The offset for the 2021–22 income year (and also for the 2022–23 income year) is equal to 16% of the income tax payable on the sole trader's or other individual's taxable income that qualifies as their net small business income. The offset is capped at \$1,000.

Taxable payments annual report

Businesses that pay contractors or sub-contractors for certain services may need to lodge a taxable payments annual report (**TPAR**) with the ATO. These services are:

- building and construction services;
- cleaning services;
- courier or road freight services;
- IT services; and
- security, investigation, or surveillance services.

The TPAR for 2021–22 should have been lodged by 28 August 2022.

From the ATO

Claiming tax deductions

A business can generally claim a tax deduction for most expenses it incurs, as long as:

- the expense relates directly to earning the business' assessable income;
- only the business-use portion of an expense that's for a mix of business and private use is claimed;
- the business has records to substantiate the claims.

Note that apportionment of an expense that has a mix of business and private use is required only by sole traders and partnerships where at least one partner is an individual. If there is a non-business portion of an expense incurred by a company or a trust, the full expense is still claimed as an income tax deduction by the company or trust but the fringe benefits tax (**FBT**) rules or the rules in Division 7A may separately apply to the non-business use.

A business can claim deductions for:

- day-to-day operating expenses, such as office stationery and salaries and wages – salaries and wages are deductible only if the business complies with its PAYG withholding and reporting obligations;
- capital expenditure, such as machinery and equipment, which typically provide a long-term benefit. This expenditure can be depreciated over the term of the asset's effective life. Alternatively, the business may be able to claim an immediate deduction through temporary full expensing (available until 30 June 2023).

Business expenses may include motor vehicle, travel, legal, digital product and home-based business expenses, and items related to protecting staff from COVID-19 at work such as hand sanitiser and sneeze or cough guards.

A business can claim deductions for superannuation contributions made on behalf of employees.

Keep in mind some expenses are not deductible, such as private expenses, entertainment expenses (unless they are provided as a fringe benefit), traffic fines and expenses that relate to earning tax-free income. Taxpayers who carry on a business are required to keep complete records of expenses incurred throughout the income year.

Division 7A – unpaid present entitlements

The ATO has published its final view on how Division 7A (which taxes certain amounts as deemed dividends) applies to trust entitlements of private company beneficiaries, for entitlements arising on or after 1 July 2022.

Division 7A can apply to an unpaid trust entitlement if it results in a private company providing financial accommodation to its shareholders or their associates (including the trust). This can occur where a private company beneficiary is made presently entitled to trust income and either the:

- entitlement remains unpaid (an unpaid present entitlement) and the private company beneficiary knows it can demand payment but does not do so; or
- the trustee holds the income amount on a separate trust (sub-trust) for the sole benefit of the private company beneficiary, and the private company beneficiary knows that the sub-trust fund is being used by the private company beneficiary's shareholder or their associate.

In those circumstances, the private company is treated as having made a loan to the trust, or its shareholder or their associate (i.e. the trust or the entity using the income amount). If Division 7A applies, the loan will be treated as an unfranked dividend to the trustee of the trust, or that shareholder or associate.

Entitlements arising on or after 1 July 2022

No deemed dividend for the trust entitlement will arise if, before the earlier of when the private company's tax return is lodged or is due to be lodged, any of the following occur:

- trustee pays the private company its entitlement;
- the entity that uses the funds enters into a complying loan agreement with the private company; or
- the entity that uses the funds repays the funds in full (no interest is required to be charged in this case).

Entitlements that arose before 1 July 2022

Although the ATO has revised its views on the application of Division 7A to unpaid present entitlements, taxpayers can continue to rely on the ATO's previous views where trust entitlements arose before 1 July 2022. This including managing existing sub-trust arrangements where the trust entitlements arose before 1 July 2022.

Tip! If an unpaid present entitlement (or other amount) is treated as a Division 7A deemed dividend, there may be adverse tax consequences. Talk to your tax adviser if your private company is the beneficiary of a related trust.

Partnerships – assigning interests

If you operate your business through a partnership, you may assign your interest in the partnership to an individual or other entity (the assignee). The assignee may be an individual or an entity related to you. These assignments are commonly known as ‘Everett assignments’, after the taxpayer in a 1980 High Court case.

The effect of this type of assignment is that you hold your assigned partnership interest on trust for the assignee.

The assignment does not make the assignee a partner in the partnership or give the assignee any entitlement to the assets, management or administration of the partnership or the right to inspection of books and accounts.

The ATO has a new risk assessment framework for these arrangements (they are set out in a Practical Compliance Guideline). The risk assessment framework is available only to taxpayers if their arrangements are commercially sound and do not exhibit high risk features.

An arrangement may be high risk where:

- it purports to admit an individual, who is not an owner or equity holder in the partnership, as a partner of the partnership;
- a partner’s relationship with the partnership has characteristics indicating that the relationship is akin to a contractor or employee of the partnership.

The ATO also considers a partner undertaking an Everett assignment as high risk if they:

- do not have rights to full participation in management and the benefits of partnership;
- receive a fixed draw or salary when they have limited or no exposure to the risks and benefits associated with the performance of the partnership to that draw or salary;
- are indemnified by partners for any professional liability in respect of actions against the partnership.

If your Everett assignment has high risk features, the ATO is likely to give closer attention to the individual facts and circumstances of the arrangement. This includes a deeper consideration of whether anti-avoidance provisions, such as Part IVA, apply.

Small business CGT concessions

If a partnership interest is assigned, the small business CGT concessions are available only for capital gains arising from CGT events that relate to rights or interests that entitle an entity to income or capital of a partnership by making that entity a partner of the partnership.

The latest scam

The ATO is concerned about a high volume of SMS scams pretending to be from the ATO.

These scams tell you that you’re owed an income tax repayment and ask you to click a hyperlink and complete a form.

Clicking the link takes you to a fake ATO webpage that asks for your personal identifying information, including your credit card details.

The real ATO will never send you an SMS with a link to log in to their online services and will never ask for your credit card details.

If you're ever unsure whether an SMS or email is really from the ATO, don't reply. Phone the ATO on **1800 008 540** to check.

Tip! Check out the ACCC's [Scamwatch](#) website for helpful tips and resources.

Fraudulent GST refunds halted

The ATO has reported that the Serious Financial Crime Taskforce has undertaken further enforcement action in respect of 40,000 individuals suspected of being involved in a major GST fraud involving fake businesses to claim false refunds. Search warrants were executed in relation to 5 suspected offenders located in Sydney as part of Operation Protego. This follows earlier action where raids were executed against 19 individuals.

The ATO wants anyone who has given their myGov details to a criminal to contact the ATO so it can assist to protect the individual's identity from being used to commit further crimes in their name. Any individual who believes their identity has been compromised should contact the ATO on **1800 467 033**.

The ATO noted that social media has played a key role in promoting this type of GST fraud, with reports of people offering to buy and sell myGov details in order to access these refunds. Since investigations were commenced in May 2022, the ATO said it has stopped over \$1 billion in fraudulent refunds from issuing.

Tipped off: ATO reveals most doxxed-in industries

Demanding cash from customers, paying workers 'cash in hand' or not declaring all sales are the most common examples of the 43,000 tip-offs received by the ATO in the last financial year (2021–22). The ATO is using intelligence from tip-offs as part of its approach to dealing with the shadow economy.

The shadow economy (previously referred to as the 'black economy') refers to activities that take place outside of the tax and other regulatory systems. The ATO estimates that the community misses out on around \$11 billion in taxes each year as a result of the shadow economy.

Topping the list of industries the ATO was tipped off about in the past year were building and construction, hairdressing and beauty services, cafés and restaurants, management advice and related consulting services and road freight transport. Tip-offs from NSW topped the ATO's list with over 13,400, followed closely by Victoria (over 11,500) and Queensland (over 9,200).

An ATO Assistant Commissioner explained that tip-offs helped the ATO shine a light on tax avoidance and protect honest businesses.

Other information

Tendering for Commonwealth Government procurements?

Businesses tendering for Commonwealth Government procurements that are undertaken through open tenders are subject to the Commonwealth Procurement Rules. Where the procurement has an estimated total value of over \$4 million (including GST), the entity must obtain a statement of tax record (**STR**) showing satisfactory engagement with the tax system.

The satisfactory STR needs to be valid at the time of the tender closing.

The ATO recommends that entities requiring an STR:

- refer to the tender request documents to clarify the requirements;
- refer to the Black Economy Procurement Connected Policy to understand how the rules affect them (it is available on the Treasury website [here](#));
- apply for an STR early to allow time for processing before the tender closing date; and
- keep their tax obligations (registration, lodgment, payment) up to date, to ensure they receive a satisfactory STR.

JobMaker Hiring Credit

The seventh claim period for JobMaker Hiring Credit payments is now open; it ends on 31 October 2022. The scheme is now closed to new entrants.

Eligible businesses can claim the JobMaker Hiring Credit for up to a year for each eligible employee hired between 7 October 2020 and 6 October 2021.

If your business is eligible, you can:

- nominate your additional eligible employees – run payroll events through your Single Touch Payroll-enabled software;
- claim – use ATO online services, Online services for business or a registered tax or BAS agent.

Healthcare practices and payroll tax

A recent NSW Tribunal decision, *Thomas and Naaz Pty Ltd (ACN 101 491 703) v Chief Commissioner of State Revenue* [\[2022\] NSWCATAP 220](#), confirmed that payments from a healthcare practice, such as a medical centre, to a healthcare practitioner may attract payroll tax under the contractor provisions in the payroll tax legislation.

The taxpayer in the case operated three medical centres. The Tribunal concluded that where the services provided by the doctors were a necessary part of the taxpayer's business, the doctors provided them to the taxpayer as well as to the patients. This brought the payments within the scope of the payroll tax legislation.

The NSW decision followed the position taken by the Victorian Court of Appeal in 2019.



Key tax dates

| Date | Obligation |
|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 21 Sept 2022 | August monthly BAS due |
| 30 Sep 2022 | Finalisation due date by payers of PAYG withholding payments reporting through STP for closely= held payees |
| 21 Oct 2022 | September monthly BAS due Payment of annual PAYG instalment for 2021–22 |
| 28 Oct 2022 | September quarter BAS due Payment of first PAYG instalment for 2022–23 by quarterly payers |
| 31 Oct 2022 | 2021–22 income tax return due |
| | PAYG withholding annual reports due (no ABN withholding; interest, dividend and royalty payments paid to foreign residents; and payments to foreign residents) |
| 21 Nov 2022 | October monthly BAS due |

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.

Disclaimer

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