The following tax planning checklist provides a general list of major issues that should be addressed. (The checklist is not designed to be an exhaustive list of all issues that may warrant consideration.)

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This information is based on legislation current as at 27 May 2018.

|  |  |
| --- | --- |
| ENTITY’S NAME |  |

| DEFERRING ASSESSABLE INCOME | YES | NO | N/A |
| --- | --- | --- | --- |
| APPLICATION OF ARTHUR MURRAY PRINCIPLE TO RECEIPTS |
| Review contracts to identify income that has been received or is receivable in advance for the provision of goods and services to determine whether income from such contracts can be regarded as only being derived as and when the services are rendered.**Note:** review any deferred income or other creditors shown in the balance sheet to ensure that there is no income which needs to be recognised as being derived for income tax purposes applying the principle in *Arthur Murray (NSW) Pty Ltd v FCT (1965) 114 CLR 314.* |  |  |  |
| ACCRUALS OF INTEREST, RENT AND OTHER REGULAR CONTRACTUAL PAYMENTS |
| Consider the basis on which interest, rental or other income is derived and the scope for income deferral where income is recognised on a cash basis when received.**Note:** interest and rent may be derived on an accrual basis if the taxpayer is in the business of lending money or of leasing property.  |  |  |  |
| RECEIPT OF DIVIDENDS |
| Dividends are only included in assessable income under section 44(1) of the *Income Tax Assessment Act (1936)* when distributions are paid or credited to shareholders (including any dividend paid under a dividend reinvestment plan). Consider whether a dividend should be paid around year-end or be deferred until the 2019 year. **Note:** ensure that all deemed dividends arising under the *Income Tax Assessment Act (1936)* have been identified including, amongst others, payments, loans and debt forgiveness transactions that result in a deemed dividend arising under Division 7A, excess payments to associates under section 109, and dividends arising on off-market share buy-backs under section 159 GZZZP. **Note:** foreign dividends received from a foreign company are non-assessable non-exempt income when received by an Australian company who has at least 10% equity in the foreign company (see Subdivision 768-A of the *Income Tax Assessment Act (1997)*).  |  |  |  |
| SALES AND WORK IN PROGRESS |
| Consider the deferral of business income, including delaying the issue of an invoice for sales and/or work in progress until the 2019 year.**Note:** work in progress for the provision of services will only typically be assessable where an invoice is issued, or the work is completed as set out in *Taxation Ruing TR93/11*.  |  |  |  |
| REALISATION OF ASSETS |
| Consider the postponement of the realisation of any assessable gains such as capital gains until after year end.**Note:** it is generally the contract execution date that determines the timing of a disposal of an asset for CGT purposes and not settlement date. It is therefore important to review any contract where the entry and settlement of the contract straddle year-end. |  |  |  |

| DEFERRING ASSESSABLE INCOME | YES | NO | N/A |
| --- | --- | --- | --- |
| REALISATION OF ASSETS (continued) |
| **Note:** prior to deferring any capital gain check to see whether the gain would be either exempt or concessionally taxed, and whether the sale should be deferred so that the asset satisfies the 12-month holding period under the CGT Discount (if applicable). |  |  |  |
| Identify any sale consideration which has been received during the year under an eligible earnout arrangement relating to the prior year disposal of a CGT active asset in which case the consideration received is disregarded in the 2018 year but will form part of the capital proceeds relating to the disposal of that asset in that earlier year.**Note:** care should be taken to ensure that all the requirements of being an eligible earnout arrangement under Subdivision 118-I of the *Income Tax Assessment Act (1997)* are satisfied.  |  |  |  |
| Consider deferring the disposal of a depreciating asset that would result in an assessable balancing charge. |  |  |  |
| Consider CGT and/or depreciation rollover relief where possible, especially the small business restructure rollover under Subdivision 328-G of the *Income Tax Assessment Act (1997)*. |  |  |  |
| REALISATION OF FOREIGN EXCHANGE GAIN |
| Consider deferring the realisation of foreign exchange gains until after year end. |  |  |  |
| INSURANCE PROCEEDS |
| Consider the timing of lodgment of an insurance recovery claim for a loss amount, subsequent negotiations with the insurer and the date the final insurance payment is received. **Note:** review the terms of the insurance policy to determine if the amount of insurance proceeds is only regarded as being derived when received, such is the case with section 15-30 of the *Income Tax Assessment Act (1997)*, which applies to insurance proceeds for the loss of an amount which would otherwise have been included in assessable income.  |  |  |  |
| TRADING STOCK - VALUATION |
| Consider the benefits of revaluing closing value of trading stock at year-end using the lower of cost, market selling value or replacement value to lower taxable income.Note: the choice is available in relation to each item or category of trading stock.  |  |  |  |
| Comments: |
| ACCELERATING DEDUCTIONS | YES | NO | N/A |
| GENERAL |
| Have the outgoings sought to be deducted been properly ‘incurred’? **Note:** section 26-31 of the *Income Tax Assessment Act (1997)* denies a deduction for a loss outgoing incurred by individuals, discretionary trusts, certain unit trusts and self-managed superannuation funds to the extent it is attributable to travel which has been incurred in gaining or producing assessable income from the use of residential premises as residential accommodation effective from 1 July 2017.  |  |  |  |
| Has all expenditure been reviewed to determine whether any deductions would be regarded as capital expenditure and non-allowable under the general deductibility provisions of section 8-1 of the *Income Tax Assessment Act (1997)*?**Note:** where capital expenditure is incurred such an amount may be included in the cost base of an asset for CGT purposes (e.g. the cost of an improvement), or may be potentially deducted over five years under the blackhole deductibility costs under section 40-880 of the *Income Tax Assessment Act (1997)* discussed below. |  |  |  |

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| ACCELERATING DEDUCTIONS | YES | NO | N/A |
| PREPAYMENTS |
| Has an immediate deduction been claimed for all eligible prepayments incurred by a Small Business Entity (SBE) taxpayer, or for non-business expenditure incurred by an individual taxpayer, with an eligible service period of no more than 12 months?**Note**: an entity will be regarded as an SBE for the year ended 30 June 2018 if it carries on business in the 2018 year and its aggregated turnover is less than $10 million for that year. The aggregated turnover test not only requires the calculation of the taxpayer’s annual turnover but also that of any affiliate or entity connected with the taxpayer at any time during the year. Aggregated turnover can be calculated under the look back, look forward or actual results tests. |  |  |  |
| Have the following categories of immediately deductible expenditure excluded from the prepayment rules been identified, being expenses that are: |  |  |  |
| * less than $1,000 (GST exclusive)
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| * required to be made by court order or law
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| * payments made under a contract of service e.g. salary and wages.
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| REALISATION OF ASSETS |
| Consider realising assets that will produce capital or revenue losses which can be used to offset capital gains or revenue income in the income year.**Note**: in considering whether any such sales should proceed it is also necessary to consider the application of the general anti-avoidance provisions of Part IVA of the *Income Tax Assessment Act (1936)*. In this regard, the ATO has issued *Taxation Ruling TR 2008/1* which provides that an asset sold under a ‘wash sale’ to generate a capital or revenue loss will have those amounts cancelled under Part IVA where in substance there has been no significant change in the taxpayer’s economic exposure in the asset (e.g. selling a CGT asset and creating a trust over the asset or transferring the asset to a related trust).  |  |  |  |
| SUPERANNUATION CONTRIBUTIONS  |
| Ensure superannuation contributions are actually paid by year-end and meet any required conditions for deductibility. Broadly, where an employee makes contributions in respect of an eligible employee a deduction will only be available where the employee is engaged in producing the employer’s assessable income, the contribution has been made to a complying superannuation fund or retirement savings account and has been made on or before the 28th day after the end of the month in which the employee turns 75. **Note**: the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017* proposes to amend the ordinary times earnings base on which the 9.5% superannuation guarantee percentage is calculated from 1 July 2018 to include any amount that has been voluntarily salary sacrificed into superannuation that would otherwise have been regarded as ordinary time earnings. Should the amending Bill be enacted it may be necessary to review the calculation of superannuation guarantee contributions made in respect of employees making such salary sacrificed contributions for the 2019 year where the employer has previously calculated superannuation guarantee contributions on an ordinary time earnings excluding salary sacrifice contributions.**Note**: the Federal Government proposed in the 2018-19 Federal Budget on 8 May 2018 that individuals whose income exceeds $263,157 and who have multiple employers will not be subject to mandatory superannuation guarantee contributions by their employers to the extent to which such individuals will exceed the prevailing $25,000 concessional contributions cap effective from 1 July 2018. This opt out from the superannuation guarantee regime should be borne in mind in reviewing the remuneration arrangements for certain employees who have multiple employers for the 2019 year assuming this proposed change is enacted.An individual will be entitled to a deduction for personal superannuation contributions provided such contributions are made to a complying superannuation fund, the contributions are made on or before the 28th day after the end of the month in which that person turns 75, and that person provides a notice to their fund of their intention to claim a deduction for those personal superannuation contributions. |  |  |  |

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| ACCELERATING DEDUCTIONS | YES | NO | N/A |
| SUPERANNUATION CONTRIBUTIONS (continued) |
| **Note**: both employees and self-employed persons are now potentially entitled to claim a deduction for personal superannuation contributions up to the cap on concessional contributions which for the 2018 year is $25,000 for each individual regardless of age. In prior years the ability to claim deductible personal superannuation contributions was limited to the self-employed or substantially self-employed which meant that full-time employees could only formerly make additional voluntary contributions under salary sacrifice arrangements. You should consult an appropriately licensed financial planner to consider the merits of maximising concessional superannuation contributions by 30 June 2018 if the cap has not been fully utilised for that year. Care should be taken to include employer contributions made for superannuation contribution purposes in any calculation of deductible superannuation contributions that should be made by year-end to ensure that the $25,000 cap is not exceeded. **Note**: Division 293 tax of an additional 15% on concessional contributions applies where the total of the individual’s adjusted taxable income and low tax contributions exceed $250,000 for the year ended 30 June 2018 (rather than the former $300,000 threshold that applied in previous years).**Note**: the Federal Government proposed in the 2018-19 Federal Budget on 8 May 2018 that it would improve compliance with the requirement to provide a notice of an intent to claim personal superannuation contributions including the insertion of a tick box on the return to confirm compliance with this requirement. Whilst this proposed amendment is to take effect from 1 July 2018 it can be expected that the ATO will be increasingly vigilant in ensuring that this condition is satisfied thereby ensuring that the fund is assessed on the contributions received. Also, note that a personal superannuation contribution cannot create or increase a tax loss under section 26-55 of the *Income Tax Assessment Act* *(1997)*. **Note**: the annual cap on non-concessional contributions for the 2018 year is $100,000. As a corollary, the amount of non-concessional contributions that a person aged under 65 can bring forward under the three-year rule is $300,000 (subject to certain transitional arrangements). However, an individual will only be able to make additional non-concessional contributions where that person’s total superannuation balance was less than the $1.6 million general transfer balance cap as at 30 June 2017. |  |  |  |
| EMPLOYEE BONUSES |
| Ensure that staff bonuses are quantified and documented in a properly authorised resolution (e.g. Board minute) prior to year-end to enable a deduction to be incurred for employee bonuses where such amounts are not paid or credited until the subsequent year *(*see *Income Tax Ruling IT 2534* and *Merrill Lynch International (Australia) Ltd v FCT (2001) 47 ATR 611).* |  |  |  |
| FOREIGN EXCHANGE LOSSES |
| Consider the realisation of foreign exchange losses before year-end so that a deduction can be claimed. |  |  |  |
| CAPITAL ALLOWANCES |
| For an SBE taxpayer depreciating assets acquired during the 2018 year costing less than $20,000 can be immediately written off if used or installed ready for used by 30 June 2018. Also, the closing balance of an SBE taxpayer’s depreciating assets in a general small business pool may be written off if less than $20,000 as at 30 June 2018.**Note**: the $20,000 threshold for the immediate asset write-off is calculated on a GST exclusive basis for a purchasing entity which is registered for GST purposes.Depreciating assets costing more than $20,000 acquired during the 2018 year can be depreciated as an addition to the general small business pool at 15% (regardless of the date of acquisition) if used or installed ready for use by 30 June 2018 (and at 30% in subsequent years). The opening balance of prior year pooled assets is similarly depreciated at 30%. Assets excluded from this concessional treatment include horticultural plants, assets allocated to a low value pool or software development pool and certain other assets. **Note**: an entity will be regarded as an SBE for the year ended 30 June 2018 if it carries on business in the 2018 year and its aggregated turnover is less than $10 million for that year. The aggregated turnover test not only requires the calculation of the taxpayer’s annual turnover but also that of any affiliate or entity connected with the taxpayer at any time during the year. Aggregated turnover can be calculated under the look back, look forward or actual results tests.**Note**: the Federal Government proposed in the 2017-18 Federal Budget on 8 May 2018 to extend the $20,000 threshold applied under the small business entity depreciation rules for a further 12 months until 30 June 2019. Accordingly, small business entities will be able to, amongst other things, claim an immediate deduction for eligible depreciating assets that cost less than $20.000 if used or installed ready for use by 30 June 2019 should this proposal be enacted.  |  |  |  |

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| ACCELERATING DEDUCTIONS | YES | NO | N/A |
| CAPITAL ALLOWANCES (continued) |
| For non SBE taxpayers check if there are depreciating assets costing $1,000 or less (other than horticultural plant and certain R&D depreciating assets) which can be allocated to a low-value pool. **Note**: the depreciation rate for such low-cost assets is 18.75% in the year of addition and 37.5% in subsequent years.  |  |  |  |
| Consider allocating expenditure incurred on the development of in-house software which is used solely for a taxable purpose in a software development pool rather than wait until a software is created which only becomes depreciable when it is used or held ready for use.**Note**: taxpayers are required to create a separate software development pool for each income year for which they incur expenditure on in-house software. Where such expenditure is incurred on or after 1 July 2015 no deduction can be claimed in the first year the expenditure is incurred but such costs will be deductible at a rate of 30% in years two to four and a rate of 10% in year five. |  |  |  |
| Check to see if there are any depreciating assets which have stopped being used in the business in which case a balancing deduction may be available in respect of their adjustable value. |  |  |  |
| Check whether any depreciating assets with an adjustable value greater than nil are obsolete and can be scrapped. |  |  |  |
| Consider the restriction on the decline in value of second hand plant and equipment depreciated by certain entities in respect of residential rental premises.**Note**: section 40-27 of the *Income Tax Assessment Act (1997*) denies a deduction for the decline in value of a depreciating asset by individuals, discretionary trusts, certain unit trusts and self-managed superannuation funds to the extent that the asset is used or installed in residential rental premises and was previously used by another entity as a depreciating asset or the depreciating asset was used by the taxpayer for some non-taxable purpose effective from 1 July 2017 (subject to certain transitional arrangements).  |  |  |  |
| TRADING STOCK WRITE-OFFS |
| Determine whether items or lines of trading stock should be scrapped or have become obsolete and whether such items can be valued at their scrapped value (see *Taxation Ruling TR93/23*).**Note**: an entity must use a reasonable scrap value and elect for this provision to apply under section 70-50 of the *Income Tax Assessment Act (1997).*   |  |  |  |
| BLACK-HOLE EXPENDITURE |
| Determine whether business capital expenditure incurred that is not deductible, depreciable or included in the cost base of an asset may be deductible as ‘blackhole expenditure’ under section 40-880 of the *Income Tax Assessment Act (1997).*Eligible blackhole expenditure is deductible over five years in equal proportions (and there is no pro-rating of the deduction in the year the expenditure is incurred by the taxpayer).It may be available in relation to the taxpayer’s business or in respect of a former business that used to be carried on or in respect of a business that is proposed to be carried on provided there is a sufficient and relevant connection between the expenditure incurred and the business carried on (see *Taxation Ruling TR 2011/6*). **Note:** section 40-880(5) provides that no deduction is available under the blackhole deductibility rules where, amongst other things, the expenditureforms part of the cost of land or a depreciating asset; it would be taken into account in working out an assessable profit, deductible loss, capital gain or capital loss; it relates to a lease or other legal or equitable right; or if it is deductible under another provision of the income tax assessment acts. **Note**: broadly, there is a 100% immediate write off available to an SBE for capital expenditure incurred in relation to a proposed business structure or operation where the costs are incurred on or after 1 July 2015 by an SBE. Eligible start-up costs which can be written off include, amongst others, legal and accounting advice on how the business can best be structured and implemented.  |  |  |  |
| BAD DEBTS |
| Ensure that all necessary steps required to write off a debt are completed prior to year-end, and that the debt was previously returned as assessable income or was made in the ordinary course of a money lending business. |  |  |  |

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| ACCELERATING DEDUCTIONS | YES | NO | N/A |
| BAD DEBTS (continued) |
| Determine whether any debts have not been compromised or released before being written off, and whether documentation has been retained evidencing that the debt was non-recoverable.  |  |  |  |
| Where there is a change in the ownership or control of the company, check that the company passes the same business test in seeking to deduct bad debts (see Subdivision 165-C of the *Income Tax Assessment Act (1997))*.**Note**: the *Treasury Laws Amendment (2017 Enterprises Incentive No.1) Bill 2017* proposes to insert an alternate business continuity test to the same business test which will be known as the ’similar business test’ which will apply to income years commencing on or after 1 July 2015 if enacted,Where a fixed or non-fixed trust seeks to deduct a bad debt, the trust must satisfy the applicable trust loss tests.**Note**: consider the application of the tests under Schedule 2F of the *Income Tax Assessment Act (1936)* that apply to deductions claimed for bad debts as well as tax losses.  |  |  |  |
| GIFTS, DONATIONS OR CONTRIBUTIONS |
| Check whether deductions have been claimed for gifts or contributions made to endorsed ‘Deductible Gift Recipients’.If so, confirm that the client did not receive any tangible benefit from making the donation and has receipts to evidence the making of such donations. **Note**: section 26-55 of the *Income Tax Assessment Act* (*1997)* limits the amount of the donation deduction as the making of a deductible gift cannot create or increase a tax loss. Where the deductible donation amount exceeds this limit, you may elect to carry forward the donation deduction and claim this over a maximum of five years for certain gifts where the conditions of Subdivision 30DB of the *Income Tax Assessment Act* (*1997*) are met. |  |  |  |
| **Comments:** |
| CAPITAL GAINS TAX | YES | NO | N/A |
| CGT DISCOUNT |
| If the taxpayer is an individual, a trust or a complying superannuation fund check whether the capital gains made by the taxpayer are eligible for the CGT discount (e.g. capital gain has arisen from the disposal of an asset and the asset has been held by the taxpayer for at least 12 months).**Note:** check to see if the asset has been held for the full 12 months before any sale at year-end. It should be noted that the date of acquisition and the date of the CGT event are not included in satisfying the 12-month holding period (see *Taxation Determination TD2002/10*). Also, determine whether the capital gain is non-discountable because it arose in respect of a CGT event which resulted in the creation of the CGT asset as set out in section 115-25(3) of the *Income Tax Assessment Act (1997*). **Note:** the CGT discount on any capital gain that accrued after 8 May 2012 will not be available to the extent to which the individual was a foreign resident or temporary resident at any time after that date. Where the foreign resident or temporary resident acquired ‘taxable Australia real property’ before 8 May 2012 it is recommended that a valuation is obtained to determine the market value of the asset at 8 May 2012, which will enable the CGT discount to be applied to discount the gain (if any) that accrued from acquisition until this date. |  |  |  |
| CAPITAL GAINS WITHHOLDING |
| A 12.5% non-final withholding tax applies to vendors selling certain taxable Australian property on or after 1 July 2017 which needs to be retained by the purchaser at settlement from the purchase price of the property which must be subsequently remitted to the ATO. However, such tax will not need to be retained from the purchase price of the property if the vendor obtains a clearance certificate from the ATO prior to settlement or if an exemption or variation otherwise applies.  |  |  |  |

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| **CAPITAL GAINS TAX** | YES | NO | N/A |
| CAPITAL GAINS WITHHOLDING (continued) |
| **Note:** the foreign resident CGT withholding obligation does not arise in relation to a CGT asset if the market value of the CGT asset is less than $750,000, and the CGT asset is either taxable Australian real property or certain indirect taxable Australian real property interests. |  |  |  |
| UNREALISED LOSSES AND CGT |
| If the taxpayer is a company, have you considered the unrealised loss rules in Subdivision 165-CC of the *Income Tax Assessment Act (1997)* in relation to the disposal of CGT assets that were held at a changeover time (i.e. change in the ownership or control of the company).**Note:** the purpose of Subdivision 165-CC of the *Income Tax Assessment Act (1997*) is to restrict the availability of a capital loss, deduction or trading stock loss where there is a change of majority ownership or control of the company which earlier made an unrealised loss in respect of a CGT asset. Broadly, where there is an unrealised net loss at the changeover time, any capital loss, deduction or trading stock loss subsequently made by the company in respect of a CGT event on the happening of a CGT event will be disallowed up to the amount of the unrealised loss unless the company satisfies the same business test (SBT) for the period immediately before the changeover time to the period in which the capital loss or deduction is recouped. |  |  |  |
| **SMALL BUSINESS CGT CONCESSIONS** |
| Check whether the taxpayer satisfies all of the **basic conditions** set out below under the CGT small business concessions:1. a CGT event happens in relation to an active asset (being an asset used in the business) and a capital gain arises
2. the taxpayer satisfies either the:
3. $6m maximum net asset value test or
4. $2m CGT small business entity test and
5. the CGT asset satisfies the active asset test.

**Note:** the $6 million maximum net asset value test requires that the aggregate net market value of CGT assets of the taxpayer, the taxpayer’s affiliates and entities connected with the taxpayer cannot exceed $6 million just before the CGT event occurs in an income year in which the CGT event occurs. Given its subjective nature it is typically essential that a vendor obtain valuations of key assets (e.g. land, goodwill and other intangible assets) to prove compliance with this test.By comparison the $2 million CGT small business entity test requires that the taxpayer must be carrying on a business, and the aggregated turnover of the taxpayer, the taxpayer’s affiliates and entities connected with the taxpayer must be less than $2 million. Very broadly, the asset must be used in carrying on a business but can extend to certain assets held by connected entities, affiliates and partners in a partnership where those entities do not carry on a business if the basic conditions are otherwise met. **Note:** if the CGT asset is a directly owned share in a company or an interest in a trust, the taxpayer must be a CGT concession stakeholder in the company or trust. If the CGT asset is a share in a company or an interest in a trust which is owned by an interposed entity the taxpayer must be a CGT concession stakeholder in respect of the object company or trust. In addition, CGT concession stakeholders in that object company or trust must together also have a small business participation percentage of at least 90% in the interposed entity which makes the capital gain in respect of the share or interests in the object company or trust.**Note:** the *Treasury Laws Amendment (Tax Integrity and Other Measures) Bill 2018* proposes to introduce additional basic conditions that will be required to be satisfied in respect to capital gains arising from the disposal of shares in a company or interest in a trust effective from 1 July 2017. These extra new conditions are designed to ensure that the small business concessions are only available for CGT assets that are either used or held ready for use in the course of carrying on the small business or are shares in a company or an interest in a trust which is itself a small business. The proposed additional tests require that:* the taxpayer must have carried on a business just before the CGT event unless the taxpayer satisfies the $6 million net market asset value test
* the object entity must be a CGT small business entity for the income year or must satisfy the $6 million net market value asset test
* the shares or interests in the object entity must satisfy a modified active asset test that looks through shares in companies and interests in trusts to the activities and assets of the underlying entities.
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| **CAPITAL GAINS TAX** | YES | NO | N/A |
| **SMALL BUSINESS CGT CONCESSIONS (continued)** |
| As the proposed changes take effect from 1 July 2017 it may be necessary to review any sales that have occurred during the year ended 30 June 2018 of an active asset being either a share in a company or an interest in a trust to make sure that the eligibility conditions are satisfied if this Bill is enacted.**Note**: the Federal Government proposed in the 2018-19 Federal Budget on 8 May 2018 that partners in a partnership who alienate their rights to future income arising from their interest in the partnership to a related entity will not be able to shelter any capital gain arising on the assignment or creation of such rights under the small business CGT concessions effective from 8 May 2018. |  |  |  |
| Consider whether the taxpayer is eligible to utilise any of the following concessions:* the small business 15-year exemption
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| * the small business 50% reduction
 |  |  |  |
| * the small business retirement exemption
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| * the small business roll-over.

Note: compliance with the small business CGT concessions is an area of ATO focus and the eligibility conditions are difficult to satisfy, especially the $6 million maximum net asset value test which has been litigated on several occasions. Care should be taken and specialist advice obtained where required including the lodgment of any required elections. **Note:** where not all of the capital gain can be reduced under the CGT Discount and/or the CGT small business concessions because their eligibility conditions cannot be satisfied, consider whether rollover relief should be sought under the small business entity CGT restructure rollover relief under Subdivision 328-G of the *Income Tax Assessment Act (1997)*. Very broadly, these provisions apply on or after 1 July 2016 to genuine business restructures from one small business entity who transfers active assets to another small business entity that does not result in any change to the underlying economic ownership of assets. Care should be taken in choosing this rollover to ensure all eligibility conditions are met including the lodgment of a family trust election if required. |  |  |  |
| DEBT AND EQUITY | YES | NO | N/A |
| RELATED PARTY AT CALL LOANS |
| Determine whether any interest deductions on financial interests issued by a company may be denied as a result of loans or other debt instruments being reclassified as equity for income tax purposes (see Subdivision 974-B of the *Income Tax Assessment Act (1997)*). **Note:** distributions on non-share equity interests may be frankable. |  |  |  |
| Ascertain whether:* the carve-out for companies with less than $20 million turnover applied during the current year so that that at call loan for an indefinite term from a connected entity is treated as a debt interest or
 |  |  |  |
| * whether any at call loans should be put under a written loan agreement to specify the terms and duration of the loan which will help to determine if the loan is a debt or equity interest for income tax purposes.

**Note:** the calculation of a company’s $20 million turnover is worked out at the end of the year and will be based on the calculation of the company’s turnover for GST purposes (being a GST exclusive amount) as required under section 974-75(6) of the *Income Tax Assessment Act (1997).* **Note:** review new loans made to the company during the financial year by connected entity (e.g. shareholder) and any amendments to existing loan arrangements from any connected entity to ensure that they are appropriately categorised as debt interests under the debt and equity rules contained in Subdivision 974-B of the *Income Tax Assessment Act (1997*) prior to year-end.  |  |  |  |
| Comments: |

| DEBT ISSUES | YES | NO | N/A |
| --- | --- | --- | --- |
| THIN CAPITALISATION |
| Consider whether an Australian resident taxpayer’s foreign assets represent less than 10% of its total assets. If so, the exemption in section 820-37 of the *Income Tax Assessment Act (1997)* may apply. |  |  |  |
| Consider whether the sum of the taxpayer’s debt deductions together with those of its associate entities is $2 million or less in the year of income. If so, the exemption in section 820-35 of the *Income Tax Assessment Act (1997)* may apply.  |  |  |  |
| Consider whether the taxpayer should seek to reduce the incurrence of ‘debt deductions’ coming up to year end to qualify under the de minimus rule, which is currently set at $2 million. |  |  |  |
| Consider any current year asset impairments and consequential reduction in the safe harbour debt amount and the risk of breaching this safe harbour.**Note**: the Federal Government proposed in the 2018-19 Federal Budget on 8 May 2018 that the thin capitalisation rules will be amended by requiring entities to align the value of their assets for thin capitalisation purposes with the value included in their financial statements effective for income years commencing on or after 1 July 2019. This will be achieved by requiring all entities to rely on the asset values contained in financial statements. Valuations that were made before 8 May 2018 may be relied upon until an entity’s first income year commencing on or after 1 July 2019. |  |  |  |
| Consider the interaction of the thin capitalisation and transfer pricing provisions under Subdivision 815-B of the *Income Tax Assessment Act (1997)* on interest claimed on any cross-border related party debt. **Note:** section 815-140 of the *Income Tax Assessment Act (1997)* essentially provides that the transfer pricing provisions under Subdivision 815-B may apply to reduce any interest rate charged on related party debt to an arm’s length amount which may result in reduced debt deductions. The thin capitalisation provisions under Division 820 of the *Income Tax Assessment Act (1997)* are then applied after any transfer pricing benefit has been cancelled to determine whether an entity’s adjusted average debt exceeds its maximum allowable debt. |  |  |  |
| CAPITAL PROTECTED LOAN FACILITIES |
| Consider whether the taxpayer has obtained any capital protected loans to fund investments? (see Division 247 of the *Income Tax Assessment Act (1997)*)*.* If they have, any capital protection fee payable or any capital protection fee component incorporated within the overall interest charge payable to the lender will be non-deductible. |  |  |  |
| DEBT FORGIVENESSS |
| Where a creditor forgives a commercial debt owed by a related debtor the amount of any net debt forgiveness is applied to reduce certain tax attributes of the debtor under the commercial debt forgiveness (“CDF”) provisions under Division 245 of the *Income Tax Assessment Act (1997).* **Note:** commercial debt includes interest-bearing debt; non-interest-bearing debt where interest on the debt would have been deductible if interest had been charged; and debt where interest has been disallowed under another provision of the *Income Tax Assessment Acts* such as the thin capitalisation provisions.The CDF provisions may apply to reduce the tax attributes of the debtor in the following order until the net forgiven amount is fully absorbed: 1. prior year revenue losses2. carried forward net capital losses3. deductible expenditures including the opening adjustable value of depreciating assets4. the cost base of certain CGT assets.A debt will be forgiven when it is released, waived or otherwise extinguished; the period in which the creditor is entitled to sue for recovery of the debt under a statute of limitations expires without the debt being paid; the debt is forgiven under a debt for equity swap; the debt is assigned by a creditor to an associate or another entity under an arrangement; or there is an in-substance forgiveness of a debt. Subject to the above considerations, consider whether there are any timing advantages of postponing a debt forgiveness until after 30 June 2018. |  |  |  |

| DEBT ISSUES | YES | NO | N/A |
| --- | --- | --- | --- |
| DEBT FORGIVENESS (continued) |
| Where the debtor and creditor are companies under common ownership consider whether the companies should enter into a deed of forgiveness where the creditor forgoes any capital loss or bad debt deduction in exchange for extinguishing the net forgiven amount owed by the debtor company.Determine whether the debtor was solvent at the time the debt was made and at the time the debt was forgiven to determine the net forgiven amount (if any).Consider whether the debt forgiveness is in respect of a loan to an employee which will be subject to the debt waiver fringe benefit provisions under the *Fringe Benefits Tax Assessment Act (1986).* Other exceptions include any debt forgiveness effected under a will or an Act relating to bankruptcy or which has been made for reasons of natural love and affection.**Note:** in some circumstances, the forgiveness of a debt by a private company or even a trust to a shareholder or an associate may give rise to a deemed dividend under Division 7A under separate but similar debt forgiveness rules. Please refer to CPA Australia’s [Division 7A checklist](https://www.cpaaustralia.com.au/professional-resources/taxation/division-7a) and [Division 7A UPE](https://www.cpaaustralia.com.au/professional-resources/taxation/division-7a) checklist for further information. Also, where it is determined that Division 7A does not apply to a debt forgiveness to a shareholder or an associate it is still necessary to determine if the CDF provisions under Division 245 of the *Income Tax Assessment Act (1997)* separately apply to that debt forgiveness.  |  |  |  |
| Comments: |

| INDIVIDUALS | YES | NO | N/A |
| --- | --- | --- | --- |
| SALARY SACRIFICE |
| Ensure that salary sacrifice arrangements have been considered in light of *Taxation Ruling TR 2001/10* so that any gross salary foregone for fringe benefits or additional employer superannuation contributions is under an agreement entered into before gross salary is derived.**Note**: the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017* proposes to amend the ordinary times earnings base on which the 9.5% superannuation guarantee percentage is calculated from 1 July 2018 to include any amount that has been voluntarily salary sacrificed into superannuation that would otherwise have been regarded as ordinary time earnings.**Note:** in entering into a salary sacrifice arrangement make sure that any additional employer superannuation contributions do not result in the total of compulsory superannuation contributions and salary sacrificed contributions exceeding the concessional contributions cap which is $25,000 for the 2018 year.  |  |  |  |
| LOW INCOME TAX OFFSET |
| Check whether the taxpayer is eligible for the $445 low income tax offset (LITO). Note that the full offset is available for individuals with taxable income of less than $37,000 but fully phases out where taxable income is $66,667 or more.Note: since 1 July 2012 minors (i.e. children under 18 years of age) have not been eligible to receive the LITO to reduce tax payable under Division 6AA of the *Income Tax Assessment Act (1936)*Note: the Federal Government proposed in the 2018-19 Federal Budget on 8 May 2018 that a new non-refundable low and middle-income tax offset would be introduced from the year ended 30 June 2019. This proposed offset would provide an additional tax offset of $200 for taxpayers with a taxable income of $37,000 or less; the value of the $200 offset will further increase by 3 cents for each dollar for taxpayers deriving taxable income between $37,000 and $48,000 up to a maximum tax offset of $530; a tax offset of $530 will be available for those taxpayers with a taxable income between 48,001 and $90,000; and the $530 offset will phase out at a rate of 1.5 cents per dollar for every dollar between $90,001 and $125,333. The proposed new low and middle-income tax offset is included in the *Treasury Laws Amendment (Personal Income Tax Plan) Bill 2018* which addresses the Federal Government’s broader 7-year personal tax reform package which is yet to be enacted by the Parliament. |  |  |  |

| INDIVIDUALS | YES | NO | N/A |
| --- | --- | --- | --- |
| SMALLL BUSINESS TAX OFFSET |
| Check whether the individual is entitled to the small business income tax offset for the year ended 30 June 2018 being 8 per cent of the income tax payable on the portion of an individual’s taxable income that is their ‘total net small business income’. This offset is available to sole traders who would meet the requirements of being a small business entity, and to individuals who are not a small business entity, but who are assessed on a share of the income of a small business entity in that they are a partner in a partnership that is a small business entity or a beneficiary of a trust that is a small business entity. An entity is a small business entity if it carries on business and its aggregated turnover for the 2018 year is less than $5 million. An individual is only able to claim one small business tax offset for an income year irrespective of the number of sources of small business income derived by that individual and the maximum amount of the offset is capped to $1,000 per year.  |  |  |  |
| SUPERANNUATION |
| Consider the limits that apply to the making of concessional and non-concessional contributions for the year ended 30 June 2018:* the cap on concessional contributions for the 2018 year is $25,000 for each individual regardless of age
* the annual cap on non-concessional contributions for the 2018 year is $100,000. However, an individual can only make non-concessional contributions if that individual’s total superannuation balance was less than $1.6 million as at 30 June 2017 (see section 292-85(2) of the *Income Tax Assessment Act (1997)*).

Note: the amount of non-concessional contributions that a person aged under 65 can bring forward under the three-year rule has been reduced to $300,000 for the 2018 year (subject to certain transitional arrangements). Such a contribution can only be made where the individual’s total superannuation balance was less than $1.6 million as at 30 June 2017. You should consult an appropriately licensed financial planner to consider the merits of making any additional concessional or non-concessional contributions for the 2018 year.**Note:** section 292-102 into the *Income Tax Assessment Act (1936*) allows individuals aged 65 or over to make additional non-concessional contributions of up to $300,000 per individual from the capital proceeds on the sale of the ownership interest in a main residence held by the individual (or their spouse or former spouse) from 1 July 2018 which will be excluded from the broader non-concessional contributions cap. Care should be taken to ensure that all the eligibility conditions to make a downsizer contribution are satisfied. **Note**: The CGT cap excludes exempt capital gains made of up to $1,445,000 under the CGT small business 15-year exemption and the CGT small business retirement exemption from being included in an individual’s cap on non-concessional contributions for the year ended 30 June 2018.  |  |  |  |
| Consider the impact of superannuation reforms that limit the amount of funds that can be held in the retirement phase of a taxed fund to support an account-based pension to $1.6 million, which commenced from 1 July 2017.**Note:** consider referring your client to an appropriately licensed financial planner if a client is intending to enter into the retirement phase of the fund to ensure that the client’s personal transfer balance cap does not exceed the prevailing $1.6 million general transfer balance cap or where they require general retirement planning advice.  |  |  |  |
| Consider the merits of withdrawing superannuation contributions to help finance a first home deposit under the First Home Super Saver (FHSS) scheme.**Note**: the FHSS scheme essentially allows an individual to make additional voluntary superannuation contributions to a complying superannuation fund from 1 July 2017 up to a maximum amount of up to $30,000 which can be withdrawn to help finance a first home deposit starting from 1 July 2018. The FHSS scheme provides that 85% of concessional contributions can be withdrawn together with any associated earnings as a FHSS released amount which is then in aggregate included in the individual’s assessable income and subject to a 30% non-refundable tax offset. Various eligibility conditions need to be satisfied before an individual can access the FHSS scheme. |  |  |  |
| Check whether the taxpayer is entitled to the Federal Government’s superannuation co-contribution for personal after-tax contributions made up to $500, or the $500 low-income superannuation offset. **Note**: individuals will not be eligible for the government co-contribution if their non-concessional contributions exceeded the non-concessional contributions cap for the year, or if their ‘total superannuation balance’ was equal to or more than the $1.6 million general transfer balance cap as at 30 June 2017. |  |  |  |

| INDIVIDUALS | YES | NO | N/A |
| --- | --- | --- | --- |
| SUPERANNUATION (continued) |
| Consider whether the individual would be entitled to the low-income spouse superannuation tax offset.Note: a taxpayer may be entitled to an 18% tax offset of up to $540 where there the taxpayer makes superannuation contributions of up to $3,000 in respect of a low-income spouse whose income does not exceed $37,000. In this context, a spouse’s ’income’ comprises the total of the spouse’s assessable income, reportable fringe benefit amounts and reportable employer contributions. The offset will be gradually phased out so that no offset is available where the spouse’s income is $40,000 or more. However, the offset will not be available where the spouse’s non-concessional contributions exceed the annual non-concessional contributions cap for the 2018 year, or where the spouse’s total superannuation balance exceeds the general transfer balance cap of $1.6 million as at 30 June 2017. |  |  |  |
| MOTOR VEHICLE DEPRECIATION COST LIMIT |
| Check whether the taxpayer is intending to purchase a luxury car (i.e. acquisition cost greater than $57,581) prior to 30 June 2018 (see *Taxation Determination TD2017/18*). If so, ensure that the depreciation claimed is based on an acquisition cost not exceeding $57,581 rather than its actual cost.Note: the motor vehicle depreciation cost limit will remain unchanged at $57,581 for the year ended 30 June 2019 (see *Taxation Determination TD 2018/6*). |  |  |  |
| Check whether the taxpayer is intending to lease a luxury car. If so, ensure that the taxpayer does not claim the lease payment but rather works out a notional interest and depreciation deduction based on the notional loan to the lessee equal to the cost of the leased car (see Division 242 of the *Income Tax Assessment Act (1997)*. |  |  |  |
| WORK-RELATED DEDUCTIONS |
| Check to ensure that any claims for work-related expenses, car expenses and travel expenses are correctly allowable on the basis that such expenses were incurred in gaining or producing salary and wages income or other payments subject to the PAYG withholding regime (including any work-related claims below $300). Ensure that such expenses are only claimed after disallowing any private component of expenditure. |  |  |  |
| Ensure that all claims for work-related expenses and travel expenses can be substantiated (i.e. the taxpayer has evidence of the costs incurred such as invoices, receipts, credit card statements and other documentation).Note: the ATO is continuing to focus on excessive work-related expense claims and the Federal Government announced in the Federal Budget on 8 May 2018 that the Federal Government would provide $130.8 million to the ATO from 1 July 2018 to increase compliance activities targeting individuals and their tax agents which includes additional funding for audit activity. |  |  |  |
| Ensure that any claims for car expenses can be substantiated. Where the taxpayer uses the logbook method for claiming car expenses it is necessary to confirm that the taxpayer has written evidence of those expenses (e.g. invoices and receipts) as well as a correctly maintained logbook. Where the taxpayer uses the cents per kilometre method the taxpayer does not have to comply with the substantiation provisions but it should be confirmed that any claim is based on a reasonable estimate of the business kilometres travelled.Note: the ATO has previously expressed the view that it is concerned that car expense claims based on the cents per kilometre method may be overstated in certain cases as it is necessary to establish that the claim is based on or work-related or business kilometres travelled which must be based on reasonable estimates. |  |  |  |
| NON-COMMERCIAL LOSSES |
| A tax loss from a business activity carried on by an individual (either alone or in partnership) cannot be applied against other assessable income in a particular year unless one of the three following exemptions apply:* the taxpayer’s ‘income’ is below $250,000 and the taxpayer satisfies one of the four commercial tests listed below. For these purposes income comprises the individual’s taxable income (ignoring any tax loss subject to the non-commercial loss rules), reportable fringe benefits, reportable superannuation contributions and the add back of any net financial loss
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| --- | --- | --- | --- |
| INDIVIDUALS | YES | NO | N/A |
| NON-COMMERCIAL LOSSES (continued) |
| * the Commissioner of Taxation has exercised his discretion that the non-commercial loss rules should not apply as one of the four commercial tests was not met due to special circumstances, or there is an objective expectation that one of the tests will be met within a commercially viable period or
* the tax loss arose from a primary production or professional arts business, in which case the loss will be deductible if assessable income (other than net capital gains) does not exceed $40,000.

The four commercial loss tests comprise:* the assessable income test, which will be met if the business activity has assessable income in the current year of at least $20,000
* the profits test, where the business has made a tax profit in at least three of the last five years (including the current year)
* the real property test, where the reduced cost base of real property used in the business activity on a continual basis is at least $500,000 (or the market value of those assets if that value exceeds the reduced cost base of such assets)
* the other assets test, where essentially the value of depreciating assets, trading stock, leased assets and certain intangibles used in a business activity on a continual basis has a value of at least $100,000.

If the taxpayer satisfies the above exemptions tax losses from conducting the business activities will be able to be potentially offset against other income such as salaries and wages. If these tests are failed such losses must be quarantined and carried forward to be applied against taxable income derived from the same business activity in future years.**Note**: the non-commercial loss rules under Division 35 do not apply to the utilisation of capital losses incurred by an individual taxpayer as the carrying forward and recoupment of capital losses is fully determined under the CGT provisions. **Note**: in applying the non-commercial loss rules it may be necessary to group together business activities of a similar kind in the satisfying the above commercial loss tests where an individual is a partner in a partnership.  |  |  |  |
| Comments: |

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| --- | --- | --- | --- |
| TRUSTS | YES | NO | N/A |
| TRUST DISTRIBUTIONS |
| Does the trust deed of the discretionary trust allow the trustee to stream franked dividends and capital gains to specifically entitled beneficiaries?Where the trust deed does not contain a streaming clause is there a power to amend the deed, and if so, will the exercise of that power trigger a resettlement (see *Taxation Determination TD2012/21*)?  |  |  |  |
| Where the trustee has the power to stream franked dividends and capital gains has the trustee’s exercise of this power been evidenced in a trustee resolution?  |  |  |  |
| Has the making of any specific entitlement to any capital gains or franked dividends been made before beneficiaries have been made presently entitled to the balance of trust income?  |  |  |  |

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| --- | --- | --- | --- |
| TRUSTS | YES | NO | N/A |
| TRUST DISTRIBUTIONS (continued) |
| Where the trustee has the power to stream, and this is evidenced by a trustee resolution, have trust funds been distributed optimally? Consider the tax status of the beneficiaries:* franked dividends should be distributed to low-taxed Australian residents as the excess franking credits are available to reduce tax payable on other income derived by individual resident taxpayers
* franked dividends distributed to company beneficiaries will not generally suffer further tax
* companies do not have access to the CGT discount and are not an efficient vehicle for the distribution of discountable capital gains
* foreign residents and temporary residents do not have access to the CGT discount for capital gains that accrue on or after 8 May 2012.

For further information and guidance in relation to the streaming of capital gains and franked distributions please refer to CPA Australia’s [*Trust* *Streaming Manual*](https://www.cpaaustralia.com.au/professional-resources/taxation/trusts).  |  |  |  |
| Review the trust deed of a discretionary or hybrid trust to ensure that the relevant beneficiaries are being made presently entitled to a share of the income of the trust estate, (subject to any beneficiaries being made specifically entitled to any capital gains or franked distributions).**Note:** the ATO has withdrawn its administrative treatment that previously permitted trustees to make resolutions after 30 June. If the trust deed requires the trustee to make a beneficiary presently entitled to trust income by way of a trustee resolution, this resolution must now be made by the end of the income year (i.e. 30 June). This resolution will determine each beneficiary’s share of the trust income which in turn will establish who is to be assessed on share of the trust's net income (i.e. taxable income). If the trust deed requires a resolution to be made at a date before 30 June the trustee should comply with the requirements of the deed. For further information and guidance in relation to the preparation and requirements of effective trustee resolutions please refer to CPA Australia’s [*Trustee Guidance Resolutions*](https://www.cpaaustralia.com.au/professional-resources/taxation/trusts)publication*.* |  |  |  |
| Where permitted by the trust deed, has the trustee made a determination about what amounts should be treated as income of the trust estate (e.g. trust capital gains may be treated as trust income in certain circumstances *(*refer to *Commissioner of Taxation v Bamford [2010] HCA 10)*).**Note:** check to see how the income of the trust estate is defined under the trust deed. Given the disparity of trust deeds income of the trust may be defined in a number of ways including income as defined under trust law; income which is equal to the trust’s net income; income determined at the discretion of the trustee, but which will be treated as ordinary income where the trustee does not exercise that discretion; and income according to trust law but which also includes some specific receipts such as net capital gains.**Note:** the Commissioner takes the view in *Draft Taxation Ruling TR 2012/D1* that there is a statutory limitation on the meaning of the income of the trust for the purposes of Division 6 of the In*come Tax Assessment Act (1936)* in that trust income does not include notional tax only amounts such as franking credits, deemed dividends arising under Division 7A or a deemed capital gain arising under the market value substitution rule. Check the trust deed to determine how the definition of trust income apply to such amounts.  |  |  |  |
| Check that trust income has been fully distributed to beneficiaries so that all net income of the trust is assessed to beneficiaries. If not, section 99A will usually apply to tax the trustee at the effective highest marginal tax rate on any net income which is not assessed to beneficiaries, which is currently 47% where no beneficiary is presently entitled to trust income.  |  |  |  |
| Check whether a beneficiary has been made presently entitled to trust income due to a reimbursement agreement with a third party. If so, section 100A of the *Income Tax Assessment Act (1936)* may deem a beneficiary not to be presently entitled and the trustee will be assessed on the net income as the effective highest marginal tax rate which is currently 47%.**Note:** if a tax-exempt entity is being made presently entitled to a proportion of trust income, the trustee should ensure that a similar proportion of the net income (i.e. taxable income) is attributed to the entitlement.Furthermore, if the tax-exempt entity has not received a payment in respect of their entitlement within two months of the end of the year, the trustee should ensure that the tax-exempt beneficiary is notified of this entitlement in writing.If there is a mismatch between the proportion of trust income compared to the proportion of net income, or if the trustee fails to notify the tax-exempt entity of their entitlement, then sections 100AA and 100AB of the *Income Tax Assessment Act (1936)* may deem the tax-exempt entity to not be presently entitled to the income of the trust estate. The trustee will therefore pay tax on net income at the effective highest marginal rate being currently 47%. |  |  |  |

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| --- | --- | --- | --- |
| TRUSTS | YES | NO | N/A |
| TRUST DISTRIBUTIONS (continued) |
| **Note:** the Federal Government proposed in the 2018-19 Federal Budget on 8 May 2018 that specific anti-avoidance provisions will be introduced to ensure that a round robin of trust distributions amongst closely held trusts where the distribution is returned to the original trustee will be taxed at the effective highest marginal tax rate effective from 1 July 2019. |  |  |  |
| TRUSTEE UNPAID PRESENT ENTITLEMENTS OWING TO COMPANIES |
| Consider whether the trust has a post 16 December 2009 Unpaid Present Entitlement (UPE) owing by a trust to a company which is part of the same family group.In relation to 2018 UPEs has the UPE been put on sub-trust for the sole benefit of the private company in accordance with *Practice Statement PS LA 2010/4* by the lodgment date of the trust’s 2018 tax return (assuming this is permitted under the trust deed)?**Note**: *Practical Compliance Guideline PCG2017/13* allows a trustee who has failed to repay the principal of an interest only loan relating to the 2011 year which has 7-year loan term on a sub-trust to put the outstanding loan principal on a complying section 109N excluded loan basis provided that occurs before the lodgment day for the private company’s 2018 income year being generally 15 May 2019.Where the 2018 UPE has not been put on a sub trust the Commissioner considers that this UPE will be deemed to be a loan made from the company to the trust on the trust’s lodgment day (e.g. 15 May 2019). Subject to the relevant company having distributable surplus, the Division 7A rules need to be considered in relation to this new deemed loan including either the payment of the unpaid distribution or the entry into an excluded loan under section 109N of the *Income Tax Assessment Act (1936)*. (See *Taxation Ruling TR 2010/3)*. **Note**: please refer to CPA Australia’s [Division 7A and Division 7A UPE checklists](https://www.cpaaustralia.com.au/professional-resources/taxation/division-7a) for further information*.* |  |  |  |
| Consider whether the trust has a pre-16 December 2009 UPE owning to a company. If so, to the extent that these have been properly recorded as a UPE (and not a loan), then ensure that these UPE’s are not disturbed. These UPE’s should not generally be subject to deemed loan treatment. |  |  |  |
| Where the trust has a pre-16 December 2009 UPE, or has put a post-16 December 2009 UPE on sub trust terms, you should consider the application of Subdivision EA of Division 7A of the *Income Tax Assessment Act (1936)* - where the trustee makes certain loans, payments or forgives a debt in favour of shareholders or associates of the private company where there is an unpaid present entitlement owed to the private company.**Note**: please refer to CPA Australia’s [Division 7A UPE checklist](https://www.cpaaustralia.com.au/professional-resources/taxation/division-7a) for further information*.* |  |  |  |
| Consider the implications of the interposed entity rules in Subdivision EB of Division 7A of the *Income Tax Assessment Act (1936)* where:* an entity has been interposed between the trustee with the UPE owed to a private company beneficiary and the shareholder or associate (i.e. the target entity) receiving a payment or loan from that trust or
* one or more trusts has been interposed between the trust (i.e. target trust) which is making the payment, loan or debt forgiveness to the shareholder or associate and the private company beneficiary which is, or becomes, entitled to a UPE.
 |  |  |  |
| CLOSELY HELD AND FAMILY TRUSTS – TFN WITHHOLDING TAX  |
| Has the trustee obtained the TFNs of all beneficiaries prior to making distributions of ordinary or statutory income or such beneficiaries becoming presently entitled to a share of the income of the trust estate. No disclosure is required for beneficiaries that are under a legal disability (e.g. minors), non-residents or tax-exempt entities. Nor will these measures apply to complying superannuation funds, listed trusts, certain deceased estates and trusts which have been subject to the trustee beneficiary reporting rules or family trust distribution tax.  |  |  |  |

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| --- | --- | --- | --- |
| TRUSTS | YES | NO | N/A |
| CLOSELY HELD AND FAMILY TRUSTS – TFN WITHHOLDING TAX (continued) |
| **Note:** where no TFN is quoted before the distribution or present entitlement arises the trustee must withhold tax from any future payments at the effective highest marginal tax rate of 47% unless a TFN is quoted. However, once a trustee has provided a beneficiary’s TFN details to the ATO it will not need to be quoted again. Where a TFN has not been quoted a trustee must:* lodge an annual TFN withholding report containing details of all withheld amounts by 30 September
* provide an annual payment summary to the beneficiary where tax has been withheld
* register for pay as you go (PAYG) withholding for closely held trusts
* remit tax withheld to the ATO.
 |  |  |  |
| FAMILY TRUST ELECTION  |
| Determine whether the trustee of a non-fixed trust should make a Family Trust Election for the purposes of:* loss recoupment, as any non-fixed trust electing such relief will only be subject to a modified version of the income injection test
* satisfying the 45/90 day holding period rules for franking purposes so that franking credits can be passed on to beneficiaries of non-fixed trusts who are not otherwise eligible for the small shareholder exemption
* assisting a loss company (in which the trust holds shares) to satisfy the continuity of ownership test
* being excluded from the trustee beneficiary reporting rules or
* applying the small business restructure rollover relief under Subdivision 328-G of the *Income Tax Assessment Act (1997)* where the transferor or transferee is a trust which is also a small business entity.

**Note**: if such a trust is a new client check to see if It has previously made a family trust election.  |  |  |  |
| Where a family trust election is in place, have any distributions been made outside the test individual’s family group which may be subject to family trust distribution tax? If so, check whether the entity receiving the distribution has made an interposed entity election. **Note**: distributions by a trustee of a trust that has made a family trust election, or by an entity that has made an interposed entity election, to persons and entities outside the family group are potentially taxed under the family trust distribution tax which is levied at 47% for the year ended 30 June 2018. **Note**: Section 272-60 of Schedule 2F of the *Income Tax Assessment Act (1936)* provides that a trustee ‘distributes’ income or capital to a person outside the family group if it pays or credits income or capital to such a person; transfers property to that person, or allows the use of that property by the person; deals with money or property for or on behalf of a person or as the person directs; applies money or property for the benefit of the person; or extinguishes, forgives, releases or waives a debt or other liability owed by the person.  |  |  |  |
| TRUST LOSSES  |
| If the trust has tax losses to be recouped ensure that you have considered the respective trust loss rules that apply to fixed and non-fixed trusts under Schedule 2F of the *Income Tax Assessment Act (1936)*.**Note**: a non-fixed trust will need to satisfy the income injection test, control test, pattern of distributions test and the 50% stake test (if applicable). In practice, the most difficult test for a non-fixed trust to apply is typically the pattern of distributions test especially where there is significant variance in trust distributions over the period tested. As discussed, the trustee of a discretionary trust will be relieved of the need to comply with the trust loss tests other than a modified version of the income injection test where the trustee has made a family trust election. Broadly, a fixed trust need only satisfy the income injection test and 50% stake test. **Note**: the legislative distinction between fixed and non-fixed trusts has become somewhat blurred following the issue of the ATO’s Decision Impact Statement in respect of the Federal Court decision in *Colonial First State Investments Ltd v Commissioner of Taxation* (2011) FCA 16. However, the Commissioner of Taxation may exercise a discretion to treat a trust as a fixed trust in certain circumstances. *Practical Compliance Guideline PCG2016/16* provides practical guidance on how the Commissioner exercises this discretion including the application of safe harbours that allow trustees of certain trusts to manage their tax affairs on the basis that the Commissioner has exercised a discretion to treat the trust as a fixed trust.  |  |  |  |
| Comments: |

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| --- | --- | --- | --- |
| COMPANIES  | YES | NO | N/A |
| Note: the company tax rate has been reduced to 27.5% for a company which is a base rate entity for the 2018 year. A company will be regarded as a base rate entity for the year ended 30 June 2018 if it carries on business and has an aggregated turnover of less than $25 million. The 27.5% company tax rate will also apply to a company which is a base rate entity for the year ended 30 June 2019 being a company which carries on a business and which has an aggregated turnover of less than $50 million for the 2019 year. The *Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Bill (2017)* proposes to replace the requirement that a company be carrying on a business in order to be a base rate entity with the requirement that the company’s assessable income must be comprised 80% or less of passive income in the relevant income year. This Bill has yet to be enacted as at that date of this update and includes related changes to the imputation provisions.  |
| DIVIDENDS  |
| Check whether the taxpayer has a franking deficit account balance at year-end. |  |  |  |
| If there is a franking deficit account balance:* consider deferring any franked dividends to the next financial year
 |  |  |  |
| * check the liability for franking deficit tax (and the amount of any franking deficit tax offset potentially available).
 |  |  |  |
| Ensure that the 45/90-day rule has been considered in relation to dividends paid/received. |  |  |  |
| Check to ensure that dividends have been franked to the correct extent given that the company tax rate for a company which is a base rate entity has been reduced to 27.5% for the year ended 30 June 2018.  |  |  |  |
| FRINGE BENEFITS TAX  |
| Review an employee’s remuneration package to determine whether any exempt or concessionally taxed fringe benefits could be provided to employees as part of their future packaging arrangements.**Note:** refer to CPA Australia’s [FBT checklist](https://www.cpaaustralia.com.au/professional-resources/taxation/year-end) for details of each category of fringe benefits and their valuation rules. |  |  |  |
| Consider if your staff entertainment expenditure will qualify for the minor and infrequent FBT exemption (i.e. less than $300) to minimise FBT liability.**Note**: further details on the rule regarding the provision of minor benefits is set out in *Taxation Ruling TR2007/12.* |  |  |  |
| Ensure that no GST input tax credit has been claimed on entertainment that qualifies for the minor and infrequent FBT exemption. |  |  |  |
| Ensure pooled or shared cars which are used by more than one employee for private purposes are not reported on the employee’s payment summary. |  |  |  |
| Check for any exempt eligible work items, intended to be used primarily in the employee’s employment, including:* portable electronic devices
* computer software
* protective clothing
* briefcase
* tools of trade.
 |  |  |  |
| Is the employer a small business that provides car parking to its employees?**Note**: employers that are not public companies, and which have derived less than $10 million in ordinary and statutory income in the previous income year or are small business entities, may currently qualify for a small business car parking exemption. An exemption is also potentially available to an entity which is a small business entity which carries on a business and has an aggregated turnover of less than $10 million.  |  |  |  |
| Check for exempt relocation benefits, such as relocation transport travel and removal and storage expenses. |  |  |  |

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| COMPANIES  | YES | NO | N/A |
| LOSSES  |
| If the company has tax losses to be recouped ensure that the continuity of ownership test (COT) or the same business test (SBT) is passed.**Note**: the *Treasury Laws Amendment (2017 Enterprises Incentive No.1) Bill 2017* proposes to insert an alternate business continuity test to the same business test which will be known as the ’similar business test’ which will apply to income years commencing on or after 1 July 2015 if enacted. |  |  |  |
| Ensure that the company does not entered into transactions or business of a new kind in order to inject income into the loss company to absorb its losses where reliance is placed on the SBT.**Note**: the Commissioner recognises in *Taxation Ruling TR1999/9* that the organic growth of business through the adoption of new compatible operations will not mean that it automatically fails the SBT as there is some recognition that a business may expand or contract as part of its business without it necessarily ceasing to carry on the same business. Refer to *Taxation Ruling TR1999/9* for guidance concerning the application of the SBT. |  |  |  |
|  **DIVISION 7A** |
| Check whether loans, payments or debt forgiveness by a private company to a shareholder, former shareholder or an associate of such a person would be deemed to be an unfranked dividend. Where such an exposure arises do any of the exemptions under Division 7A apply which could exempt such an amount from Division 7A? For example, can a payment or loan transaction be structured to be an ‘excluded loan’ before the earlier of the actual or due date of lodgment of the company’s income tax return?Where a loan has been made by the private company to a shareholder, former shareholder or an associate of such a person can it be repaid before the earlier of the actual or due date of lodgment of the company’s income tax return?Has the private company’s distributable surplus been calculated at year-end in accordance with section 109Y of the *Income Tax Assessment Act (1936)?* **Note**: the amount of any deemed dividend(s) arising at year-end will be proportionally reduced where the total amount of dividend(s) exceeds the distributable surplus of the company at that time under section 109Y(3). Moreover, where the company has a nil distributable surplus the amount of any deemed dividend(s) will be reduced to nil. |  |  |  |
| Ensure that pre-4 December 1997 loans are not refreshed and remain undisturbed.**Note**: pursuant to section 109D(5) of the *Income Tax Assessment Act (1936)* where the terms of a loan made before 4 December 1997 are varied on or after that date by either extending the duration of the loan or increasing the amount of the loan, Division 7A applies to that loan as if it were made on new terms from the time the variation occurred. |  |  |  |
| Has a payment or loan been made to an interposed entity been made solely or mainly as part of an arrangement involving a payment or loan by a private company to a shareholder or shareholder's associate (the 'target entity') in which case the target entity may derive a deemed dividend under Subdivision E of Division 7A of the *Income Tax Assessment Act (1936)*?  |  |  |  |
| Does the company provide its shareholders or associates with free (or less than market rate) use of property owned by the private company e.g. holiday home or boat?If so, such use of assets may deem a dividend to be paid from the company to the shareholder (subject to certain conditions being met). The amount of the dividend is the market value of such use less any consideration paid. However, the deemed dividend will not arise if the annual value of the benefits received was less than $300, the private usage would otherwise have been allowable as a once-only deduction or where certain dwellings are provided for private use by the company. |  |  |  |
| Check whether corrective action can be undertaken to eliminate a deemed dividend which arose because of an honest mistake or inadvertent error by applying to the Commissioner to disregard the deemed dividend or allow it to be franked under section 109RB of the *Income Tax Assessment Act (1936)*.**Note**: reference should be made to *Taxation Ruling TR 2010/8* and *Practice Statement PS LA 2011/29* for guidance on the matters that the Commissioner of Taxation will have regard to when considering requests to exercise the discretion under section 109RB. Also, please refer to CPA Australia’s [Division 7A Checklist](https://www.cpaaustralia.com.au/professional-resources/taxation/division-7a) for further information. |  |  |  |
| Comments: |

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| TAX COMPLIANCE  | YES | NO | N/A |
| RESEARCH AND DEVELOPMENT  |
| Ascertain whether a company may be eligible for the R&D tax incentive for companies whose aggregated turnover is less than $20 million and are not controlled by income tax exempt entities, in which case a 43.5% refundable tax offset is available. If the company’s aggregate turnover exceeds $20 million, a 38.5% non-refundable tax offset is available. **Note:** where an entity’s notional R&D deductions exceed $100 million for an income year, the rate of the R&D tax offset is reduced to the company tax rate for that portion exceeding $100 million.**Note:** the Federal Government proposed in the 2018-19 Federal Budget on 8 May 2018 that the rate of the refundable tax offset would be fixed at 13.5% above the relevant company tax rate, and that the amount of the refundable tax offset that could be cashed out would be limited to $4 million with the balance of any offset entitlement being treated as a non-refundable offset effective from 1 July 2018. For companies only eligible for the non-refundable offset the Federal Government has proposed that the rate of the non-refundable offset be determined by the incremental intensity of the research and development undertaken which is also to take effect from 1 July 2018. |  |  |  |
| SUPERANNUATION GUARANTEE – ‘ORDINARY TIMES EARNINGS’  |
| Consider whether all required Superannuation Guarantee (SG) contributions have been made for the year. Employers who do not meet their obligations may be liable to the superannuation guarantee charge. **Note**: an employer will not be required to provide minimum superannuation guarantee support to the extent that an employee’s ordinary time earnings each quarter exceeds the ‘maximum contribution base’ which is $52,760 for the year ended 30 June 2018.**Note**: the Federal Government proposed in the 2018-19 Federal Budget on 8 May 2018 that individuals whose income exceeds $263,157 and who have multiple employers will not be subject to mandatory superannuation guarantee contributions by their employers to the extent to which such individuals will exceed the prevailing $25,000 concessional contributions cap effective from 1 July 2018. This opt out from the superannuation guarantee regime should be borne in mind in reviewing the remuneration arrangements for certain employees who have multiple employers for the 2019 year assuming this proposed change is enacted. |  |  |  |
| Has the company identified all eligible employees for superannuation guarantee purposes?**Note**: under section 12 of the *Superannuation Guarantee Administration Act (1992)* an eligible employee includes an employee at common law; an individual performing duties as a member of an executive body of a body corporate; and an individual working under contract wholly or principally for labour of that person. Further details on the meaning of eligible employees is set out in *Superannuation Guarantee Ruling SGR 2005/1*. |  |  |  |
| Consider whether the payroll needs to be reviewed to ensure that Superannuation Guarantee calculation is based on the employees’ ordinary time earnings as opposed to salary and wages.**Note:** the term ordinary times earnings is defined in section 6(1) of the *Superannuation Guarantee Administration Act (1992)* as an employee’s total of earnings in respect of ordinary hours of work and specifically includes earnings consisting of over award payments, shift loading or commission. It also specifically excludes lump sum payments received on the termination of an employee’s employment which are in respect of unused sick leave, unused long service leave and unused annual leave*.* For more information about what constitutes ordinary time earnings please refer to *Superannuation Guarantee Ruling SGR 2009/2.* |  |  |  |
| Comments: |

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| TAX CONSOLIDATION  | YES | NO | N/A |
| GENERAL  |
| If the taxpayer is part of a corporate group, consider the best time to consolidate if the taxpayer has not already done so. |  |  |  |
| Consider selling shares in certain wholly owned subsidiaries to exclude the entities from consolidation if the taxpayer does not want the entities to be part of the tax consolidation group. |  |  |  |

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| TAX CONSOLIDATION  | YES | NO | N/A |
| GENERAL (continued) |
| Consider whether tax sharing and tax funding agreements should be put in place for the existing tax consolidated group. |  |  |  |
| Comments: |
| TAXATION OF FINANCIAL ARRANGEMENTS – DIVISION 230  | YES | NO | N/A |
| WHAT IS A FINANCIAL ARRANGEMENT?  |
| A financial arrangement is any arrangement under which **all** significant rights and/or obligations can be settled with money or another financial arrangement (i.e. cash settleable arrangements).Some common examples of financial arrangements are:* debt type arrangements including loans, bonds, promissory notes and debentures
* risk shifting derivatives including swaps, forwards and options
* deferred settlement arrangements.

**Note:** the broad effect of the provisions may be to bring gains and losses to account on a mark to market valuation basis rather than on a realisation basis. |  |  |  |
| DOES DIVISION 230 APPLY TO YOU  |
| Division 230 may apply to the following taxpayers with financial arrangements:* financial institutions whose aggregated annual turnover exceeds $20 million
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| * managed funds and superannuation funds with assets of $100 million or more
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| * other businesses, unless their aggregated annual turnover is less than $100 million, the value of financial assets are less than $100 million and the value of total assets are less than $300 million
 |  |  |  |
| * other taxpayers that hold a qualifying security with a remaining term of more than 12 months at the time that they begin to hold it.

**Note**: where Division 230 does not apply, a taxpayer can make an irrevocable election to that it will apply (which may suit associates of entities that are required to apply Division 230). |  |  |  |
| Comments: |

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| TRANSACTIONS AT RISK UNDER ATO COMPLIANCE ACTIVITIES  |
| Arrangements to exploit mismatches between trust and taxable income (*Taxpayer Alert 2013/1*) |
| The general anti-avoidance provisions of Part IVA of the *Income tax Assessment Act (1936)* may be applied in relation to ‘dividend washing’ arrangements in *Taxation Determination TD 2014/10*, and specific anti-avoidance provisions have been enacted to counter such activity under section 207-157 of the imputation provisions in the *Income Tax Assessment Act (1997)*.  |
| Purported alienation of income through discretionary trust partnerships (*Taxpayer Alert TA 2013/3*) |
| Using data matching the ATO will be increasing its focus on employer obligations in relation to superannuation guarantee and PAYG withholding. |
| An increased focus on international transactions including exploitation of transfer pricing and thin capitalisation. |
| Using data matching to identify non-disclosure and incorrect reporting of capital gains. |
| Self-managed superannuation funds arrangements to acquire property which contravene superannuation law (*Taxpayer Alert TA 2012/7*). |
| Accessing private company profits through a dividend access share arrangement attempting to circumvent taxation laws (*Taxpayer Alert Tax 2012/4).* |
| Non-disclosure of foreign source income by Australian tax residents (*Taxpayer Alert TA 2012/1*). |
| Loans to members of companies limited by guarantee in an effort to circumvent the operation of Division 7A (*Taxpayer Alert TA 2011/1*). |
| The use of certain labour hire arrangements utilising a discretionary trust to split income to avoid the application of the personal services income rules (*Taxpayer Alert TA 2011/2*). |
| Arrangements that involve holiday travel claimed as a work related, investment or self-education expense where there is a private purpose for the travel (*Taxpayer Alert TA 2011/3*). |
| Deductibility of unpaid director’s fees (*Taxpayer Alert TA 2011/4*). |
| Offshore income transactions including dividends and interest, royalties and rental income. |
| Loans, payments and debt forgiveness by private companies to shareholders or their associates in a form other than dividends. |
| International non-arms-length transactions between related Australian and offshore entities that may be intended to shift profits from Australia to other countries. |
| Arrangements which are contrived and artificial in their method of execution. |
| Arrangements involving limited or non-recourse financing associated with a round-robin flow of funds. |
| Arrangements where the taxpayer is not subject to significant risks when the tax benefit is taken into account because of the existence, for example, of a ‘put’ option. |
| Little cash outlay associated with borrowing of funds under a capitalising debt facility. |
| Mechanisms for winding up or exiting an arrangement before net income is generated for an investor. |
|  Use of tax exempt entities, especially charities, to wash income. |
| Transactions involving tax havens and preferential tax regimes. |
| Financial arrangements made on unusual terms e.g. interest rates above or below market rates, security for loans of little value in comparison to the principal amount, repayment of loan substantially deferred until the end of a length repayment period. |
| Arrangements where the transaction or series of transactions produce no economic gain or loss e.g. where the whole scheme is self-cancelling. |

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| TRANSACTIONS AT RISK UNDER ATO COMPLIANCE ACTIVITIES  |
| Arrangements which lack economic substance and are not rationally related to any useful non-tax purposes e.g. inter-group or related party. |
| Arrangements to shift foreign losses into Australian branches or resident entities and greater deductions for losses are sought in Australia by the Australian resident entity. |
| Arrangements whereby a shareholder claims to make a repayment of a shareholder loan from a private company via a round robin of endorsed cheques to avoid the operation of Division 7A of the *Income tax Assessment Act (1936)*. |
| Dividend stripping arrangements involving the transfer of private company shares to a self-managed superannuation fund. (*Taxpayer Alert TA 2015/1 and related addendum TA2015/1A*) |
| Franked distributions funded by raising capital to release franking credits to shareholders. (*Taxpayer Alert TA 2015/2*) |
| Trusts mischaracterising profits on certain property developments as being capital gains rather than as income on revenue account. (*Taxpayer Alert TA 2014/1*)  |
| Accessing business profits through an interposed partnership with a private company partner where most of the net income is taxed to a private company partner at the company tax rate but such profits are accessed by individuals without paying any additional top-up tax. (*Taxpayer Alert TA 2015/4*)  |
| Diverting personal services income to Self-Managed Superannuation Funds. (*Taxpayer Alert TA 2016/6*) |
| Exploiting the proportionate approach to trust taxation which result in the economic benefits associated with the net income being retained by the trustee or passed on to a different beneficiary in a purportedly tax-free form (*Taxpayer Alert TA 2016/12*)  |
| Reviewing arrangements which attempt to re-characterise trading income into more favourably taxed passive income (*Taxpayer Alert TA 2017/1*) |
| Claiming the Research and Development Tax Incentive in respect of construction activities, ordinary business activities, agricultural activities and software development activities which may not be regarded as being eligible R&D activities for the purposes of the incentive (*Taxpayer Alerts TA2017/2, TA2017/3, TA2017/4, 2017/5 and TA2017/5A*)  |
| Structured arrangements that provide imputation benefits on shares acquired on a limited risk basis around ex-dividend dates (*Taxpayer Alert TA 2018/1)* |
| ENTITY’S NAME |  | INITIAL  | DATE |
| Preparer |  |  |
| Reviewer |  |  |
| Partner |  |  |

**Year ended 30 June 2018**

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