Tax Preparation Checklist

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This tax preparation checklist provides a general list of major issues that public practice members should address but it is not designed to be an exhaustive list of all issues that may warrant consideration when discharging your obligations in preparing upcoming tax returns or considering tax planning with clients.

This information is based on legislation current as at 25 May 2023.

**About the author**

This checklist was prepared by SW Accountants and Advisors on behalf of CPA Australia.

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|  | INITIAL | DATE |
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| Reviewer: |  |  |
| Partner: |  |  |

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| ENTITY’S NAME |  |

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| 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 services to determine whether income from such contracts can be regarded as only being derived as and when the services are rendered. |  |  |  |
| Review any deferred income or other creditors accounts 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.Interest and rent may be derived on an accruals 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* (*ITAA 1936*)when distributions are paid or credited to shareholders (including any dividend paid under a dividend reinvestment plan). For related entities, consider whether a dividend should be paid around year end or be deferred until the 2024 year. It is also important to check that requirements under section 254T of the *Corporations Act 2001* are met in relation to whether a dividend can be paid.Ensure that all deemed dividends arising under the *ITAA 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, distribution benefits provided by controlled foreign companies under section 47A and dividends arising on off-market share buy-backs under section 159GZZZP. Foreign dividends received from a foreign company are non-assessable non-exempt income when received by an Australian company who has at least a 10% equity in the foreign company (see Subdivision 768-A of the *Income Tax Assessment Act 1997* (*ITAA 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 2024 year.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 TR 93/11.  |  |  |  |
| **REALISATION OF ASSETS** |
| Consider the postponement of the realisation of any assessable gains such as capital gains on the disposal of assets until after year end.It is generally the contract execution date that determines the timing of a disposal of an asset for CGT purposes and not the settlement date. It is therefore important to review any contract where the entry and settlement of the contract straddle year end. 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 and subject to the integrity measures in Subdivision 115-A). |  |  |  |
| 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 2023 year but will form part of the capital proceeds relating to the disposal of that asset in that earlier year. Care should be taken to ensure that all the requirements of being an eligible earnout arrangement under section 118-565 of the *ITAA 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 availability of the small business restructure rollover under Subdivision 328-G of the *ITAA 1997*. |  |  |  |
| **REALISATION OF FOREIGN EXCHANGE GAIN** |
| Consider deferring the realisation of foreign exchange gains until after year end. |  |  |  |
| **INSURANCE PROCEEDS** |
| Consider the timing of lodgement of an insurance recovery claim for a loss amount, subsequent negotiations with the insurer and the date the final insurance payment is received. 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 *ITAA 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 the closing value of trading stock at year end using the lower of cost, market selling value or replacement value to lower taxable income.The choice is available in relation to each item or category of trading stock. |  |  |  |
| Comments: |  |  |  |

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| ACCELERATING DEDUCTIONS | YES | NO | N/A |
| **GENERAL** |
| Have the outgoings being claimed been properly ‘incurred’? Applying the principle in *New Zealand Flax Investments Ltd v FCT (1937) 56 CLR 290* a loss or outgoing is generally incurred and deductible under the general deductibility provisions of section 8-1(1) of the *ITAA 1997* when the taxpayer is ‘definitely committed’ or has completely ‘subjected’ itself to the loss or outgoing. Payments made in respect of contingent liabilities or potential liabilities should therefore be excluded.  |  |  |  |
| Has all business expenditure been reviewed to determine whether any deductions would be regarded as capital expenditure and non-allowable under the general deductibility provision of section 8-1 of the *ITAA 1997*?Where non-deductible business 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 provisions under section 40-880 of the *ITAA 1997* which are discussed further below.Note that if a non-contingent liability to pay a specified amount is included in the cost base of a CGT asset under either section 112-35 or subsection 110-25(2) of ITAA97 and that specific amount is deductible for income tax purposes, in accordance with TD 2022/14 that amount does not form part of the cost base of the CGT asset under ss 110-45(2).  |  |  |  |
| Has Division 26 of the *ITAA 1997* been considered to determine if any specific provisions apply to deny deductions? |  |  |  |
| Where amounts are required to be withheld from expenses, such as withholding tax, ensure withholding has occurred and amounts remitted to the ATO before a deduction is claimed. |  |  |  |
| **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? |  |  |  |
| **PREPAYMENTS (CONTINUED)** |  |  |  |
| For payments made from 1 July 2022, an entity will be regarded as an SBE for the year ended 30 June 2023 if it carries on business in the 2023 year, and its aggregated turnover was less than $50 million for the year ended 30 June 2022 or its aggregated turnover is likely to be less than $50 million in the 2023 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. |  |  |  |
| 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)
* required to be made by a Commonwealth, State or Territory law or court order
* 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.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 *ITAA 1936*. Taxation Ruling TR 2008/1 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 to employees superannuation fund by year end and meet all required conditions for deductibility. Where an employer 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, where the employee has turned 75, the contribution has been made on or before the 28th day after the end of the month in which the employee turned 75. An employee may also make additional voluntary superannuation contributions under a valid salary sacrifice arrangement under Taxation Ruling TR 2001/10 where the employer has agreed to the employee’s request to forego future gross salary for the making of additional superannuation contributions on their behalf. An individual will also 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. The employees aged between 67 and 74 may be entitled to deductions if they satisfy a work test or meet the work test exemption criteria for each financial year in which a distribution is made. Individuals under 18 must have derived income from carrying on of a business or been treated as an employee for the purposes of the Superannuation Guarantee (Administration) Act 1992. Such a deduction is available to both self-employed individuals as well as employees seeking to make additional superannuation contributions in addition to those made by their employer. However, any such personal superannuation contribution cannot create or increase a tax loss under section 26-55 of the *ITAA 1997*.  |  |  |  |
| SUPERANNUATION CONTRIBUTIONS (CONTINUED) |
| Both employees and self-employed persons are subject to a cap on such concessional contributions (i.e., deductible contributions) which is $27,500 for each individual regardless of their age for the year ended 30 June 2023. You should consult an appropriately licensed financial adviser to consider the merits of maximising concessional superannuation contributions by 30 June 2023 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 $27,500 cap is not exceeded. Division 293 imposes an additional 15% tax on concessional contributions where the combined total of the individual’s adjusted taxable income and low tax contributions exceed $250,000 for the year ended 30 June 2023. In this context adjusted taxable income for Division 293 purposes is the aggregate of income for Medicare levy surcharge purposes (other than reportable superannuation contributions), and low tax contributions means concessional contributions up to the amount of the prevailing concessional contributions cap in the relevant year. The annual cap on non-concessional contributions (i.e.**,** post-tax contributions) for the 2023 year is $110,000. The amount of non-concessional contributions that a person aged under 67 can bring forward under the three-year rule is $330,000 (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 $1.7 million general transfer balance cap as at 30 June 2022. The general transfer balance cap will be indexed to $1.9 million from 1 July 2023, however a different cap will apply to individuals based on their circumstances. |
| **EMPLOYEE BONUSES** |
| Ensure that staff bonuses are quantified and documented in a properly authorised resolution (e.g., Board minutes) 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 *(*seeIncome Tax Ruling IT 2534and *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** |
| Temporary full expensing Has temporary full expensing (TFE) been considered in respect of eligible assets? The TFE rules allows eligible businesses to deduct the full cost of eligible depreciating assets as well as the full amount of the second element of the cost, e.g., amounts to bring the depreciating asset into its present condition and location. *Eligible businesses* A business qualifies for TFE if it is an SBE or has an annual aggregated turnover under $5 billion. 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. Where a corporate tax entity does not meet the above criteria, it may still qualify if it satisfies the alternative test. A corporate tax entity is:* A company or
* A corporate limited partnership or
* A public trading trust.
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|  CAPITAL ALLOWANCES (CONTINUED) |  |  |  |
| A corporate tax entity satisfies the alternative test for an income year if: * The entity’s total ordinary and statutory income other than non-assessable non-exempt income is less than $5 billion for either the 2018-19 or the 2019-20 income year (including entities with substituted accounting periods in lieu of 30 June 2020 but only those with income years ending on or before 7.30 pm 6 October 2020) and
* The total cost of certain depreciating assets held and first used, or first installed and ready for use for taxable purpose in the 2016-17, 2017-18 and 2018-19 income years (combined) exceeds $100 million.

In applying the alternative test, it is the entity's ordinary and statutory income that is relevant. Income of affiliates and connected entities are not taken into account. Also, intangible assets and depreciating assets where it is not reasonable to conclude they would be used principally in Australia for the principal purpose of carrying on a business or ever be located in Australia are not taken into account for the purpose for determining whether the total cost of depreciating assets exceed $100 million. *Eligible assets* To be eligible for the TFE incentive, a depreciating asset must be:* First held and first used or installed for use for a taxable purpose between 7.30 pm AEDT on 6 October 2020 (the Budget time) and 30 June 2023 and
* Located in Australia and principally used in Australia for the principal purpose of carrying on a business.

TFE is not available if the depreciating asset is:* Excluded from the capital allowance rules in Division 40 of the *ITAA 1997* (such as building or other capital works)
* Allocated to a low-value pool or a software development pool
* Deductible to the entity or another entity under the primary production depreciation rules or
* A balancing adjustment event happens to the asset in the current year (for example, it is sold in the year in which the full expensing is applied).

Where the entity has an aggregated turnover of $50 million or more, a depreciating asset is excluded from TFE (in addition to the above exclusions) where:* The entity entered into a commitment to hold, construct or use the asset before the Budget time or
* The asset is a second hand asset.

In addition to these excluded assets, where an entity is only eligible for TFE under the alternative income test, a deduction cannot be claimed for the following assets (in addition to the above exclusions):* Intangible assets
* Assets previously held by the entity’s associates and
* Assets available for use at any time in the income year by the entity’s associates or entities that are foreign residents.
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| CAPITAL ALLOWANCES (CONTINUED) |  |  |  |
| *Amount of deduction* Where TFE applies, the amount that is deductible for the income year (i.e. the decline in value) depends on when the asset starts to be used or installed ready for use for a taxable purpose, as outlined below:

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| Start to be used for taxable purpose | Amount of decline | Example |
| Asset held after the Budget time and start to be used for a taxable purpose in the same income year. | Sum of the cost of the asset and amount paid during the income year to bring the asset to its present condition and location, such as the cost of Improvements (the second element of cost).  | Entity starts to hold and use (or installed ready for use for a taxable purpose) an eligible depreciating asset between the Budget time and 30 June 2023 it can deduct the full cost (including the second element of cost of the asset in the 2022-2023 income year).  |
| Asset held after the Budget time and start to be used for taxable purpose in a later income year ended on or before 30 June 2023. | Sum of the assets opening adjustable value for that later income year and the amount included in the second element of cost in that later income year. | Entity starts to hold an eligible depreciating asset between the Budget time and 30 June 2022 but doesn’t start to use the asset or have it installed ready for use for a taxable purpose until after 1 July 2022. The entity will be able to deduct the full cost (including the second element of cost) of the asset in the 2022-2023 income year, less any decline in value in the 2021-2022 income year for any non-taxable use in the 2021-2022 income year.  |
| Asset held after the Budget time and start to be used for taxable purpose between 1 July 2023 and 30 June 2024. | No deduction allowed under TFE. SBEs can claim immediate deductions for eligible assets costing less than $20,000 and place those costing more than $20,000 in the small business simplified depreciation pool. Other entities will need to comply with Division 40 of the *ITAA 1936* to calculate for the decline in value.  | Entity starts to hold an eligible depreciating asset on or after 1 July 2023. The SBE will be able to deduct the decline in value of the asset in the 2023-2024 income year where the asset costs less than $20,000. |
| Assets held after the Budget time where balancing adjustment happens in the same income year. | No deduction allowed. | Entity starts to hold an eligible depreciating asset between the Budget time and disposes of the asset prior to 30 June 2023.  |

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| *SBEs that choose to apply the simplified depreciation rules*SBEs that apply the simplified depreciation rules can deduct:* The full cost of eligible depreciating assets that are first held and used or installed ready for a taxable purpose between the Budget time and 30 June 2023
* The second element of the cost of existing eligible depreciating assets incurred during this period and

The balance of the general small business pool at the end of the income year (for income years ending between 6 October 2020 and 30 June 2023).  |  |  |  |
| CAPITAL ALLOWANCES (CONTINUED) |  |  |  |
| *Balancing adjustment event* Where a depreciating asset has its decline in value worked out under the TFE rules and subsequently:* Is not used principally in Australia (e.g. where an asset was intended to be relocated in Australia for business use but this does not occur) or
* Ceases to be used for principal purpose of carrying on a business (e.g. if it is applied for private use),

a balancing adjustment event occurs. If such a balancing adjustment event occurs:* The TFE deduction is clawed back
* The first element of the cost of the depreciating asset is the asset’s termination value at the time of the event and
* The TFE rules no longer apply to work out the decline in value of that asset for a later income year (albeit the entity may claim any other capital allowance it is entitled to for that asset).

*Opting out*An entity can make a choice to opt-out of TFE for an income year on an asset-by-asset basis. The choice is unchangeable and must be made in an approved form by the day that the income tax return is lodged for the income year to which the choice relates. |  |  |  |
| Enhanced instant asset write-offThe instant asset write-off does not apply for assets held, and first used (or have installed ready for use) for a taxable purpose, from 7.30pm (AEDT) on 6 October 2020 to 30 June 2023. They must be immediately deducted under the temporary full expensing rules. However, SBEs will be able to fully deduct the cost of eligible assets under $20,000 which are first used or ready for use between 1 July 2023 and 30 June 2024, while those costing more than $20,000 will be subject to the simplified depreciation rules under *Subdivision 328-D of the ITAA97*.  |  |  |  |
| Where the entity is a SBE that chooses to apply the simplified depreciation rules and the depreciating assets are not eligible for any of the immediate or accelerated depreciation deductions above, the asset can be allocated to the general small business pool and depreciated at a rate of 15% regardless of the date of acquisition during the 2023 year, provided the asset starts to be used or is installed ready for use during the 2023 year. Likewise, any second element costs incurred in the 2023 year exceeding the threshold and in respect of an asset that has been pooled in an earlier year will similarly be depreciated at a rate of 15%. For assets included in the pool at the start of the 2022 year the opening pool balance will be depreciated by 30%. Finally, where a balancing adjustment occurs, the asset’s termination value must be deducted from the pool.  |  |  |  |
| 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 the software is created which only becomes depreciable when it is used or held ready for use.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. |  |  |  |
| CAPITAL ALLOWANCES (CONTINUED) |
| Consider the restriction on the decline in value of second-hand plant and equipment depreciated by certain entities in respect of residential rental premises.Section 40-27 of the *ITAA 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.  |  |  |  |
| **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 TR 93/23).An entity must use a reasonable scrap value and elect for this provision to apply under section 70-50 of the *ITAA 1997.*   |  |  |  |
| **BLACKHOLE 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 *ITAA 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). Section 40-880(5) provides that no deduction is available under the blackhole deductibility rules where, amongst other things, the expenditure forms 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.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. For expenditure incurred on or after 1 July 2020, the 100% immediate write off is available for entities with aggregated turnover of less than $50 million. |  |  |  |
| **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. |  |  |  |
| 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. |  |  |  |
| BAD DEBTS (CONTINUED) |
| 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 *ITAA 1997*). An alternate business continuity test to the same business test known as the ’similar business test’ applies to bad debts incurred in income years commencing on or after 1 July 2015.Where a fixed or non-fixed trust seeks to deduct a bad debt, the trust must satisfy the applicable trust loss tests. Accordingly, consider the application of the tests under Schedule 2F of the *ITAA 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’ under Division 30 of the *ITAA 1997*.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. Section 26-55 of the *ITAA 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 *ITAA 1997* are met. Deductions to political parties are limited to $1,500. |  |  |  |
| Comments:  |  |  |  |

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| 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 a capital asset, the asset has been held by the taxpayer for at least 12 months and the integrity measures contained in Subdivision 115-A do not apply)).Check to see if the asset has been held for the full 12 months before any sale. The date of acquisition and the date of the CGT event are not included in satisfying the 12-month holding period (see Taxation Determination TD 2002/10). 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 *ITAA 1997*. 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 its 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 withholding 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. The foreign resident CGT withholding obligation does not arise in relation to the disposal of real property with a market value less than $750,000. No threshold applies for indirect Australian real property interest and other assets such as options or rights.  |  |  |  |
| **UNREALISED LOSSES AND CGT** |
| If the taxpayer is a company, consider the unrealised loss rules in Subdivision 165-CC of the *ITAA 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).The purpose of Subdivision 165-CC of the *ITAA 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. 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 for the period immediately before the changeover time to the period in which the capital loss or deduction is recouped. Alternatively, the company may not be required to disallow the unrealised loss if it satisfies the similar business test prior to the changeover time in respect of the applicable income year commencing from 1 July 2015.  |  |  |  |
| SMALL BUSINESS CGT (SBCGT) CONCESSIONS |
| Check whether the taxpayer satisfies all of the basic conditions set out below:* CGT event happens in relation to an active asset (being an asset used in the business) and a capital gain arises
* the taxpayer satisfies either the $6m maximum net asset value test or $2m CGT small business entity test
* the CGT asset satisfies the active asset test.
* Additional basic conditions must be satisfied if the CGT asset is a share in a company, interest in a trust or a CGT event that relates to rights or interest in relation to income or capital of a partnership.
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| 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 do not exceed $6 million just before the CGT event occurs. Given its subjective nature it is typically essential that a vendor obtain valuations of key assets (e.g. land, goodwill & 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. 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. |  |  |  |
| **SMALL BUSINESS CGT (SB CGT) CONCESSIONS (CONTINUED)** |
| Some of the requirements to claim the SB CGT concessions include:* where the asset being disposed of is a share or an interest in a trust, the taxpayer must be a CGT concession stakeholder in the object company or trust. Alternatively, 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, and 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
* the object entity must be a CGT small business entity for the income year or the $6 million maximum net asset value test must be satisfied just before the CGT event. In applying this test, it is important to note that a modified connected entity test applies in determining whether these turnover and asset tests are satisfied
* 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.
 |
| Consider whether the taxpayer is eligible to utilise any or all of the following concessions:* the small business 15-year exemption
* the small business 50% reduction
* the small business retirement exemption
* the small business roll-over.
 |
| 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 lodgement of any required elections.  |
| 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 ITAA 1997. These provisions apply 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 lodgement of a family trust election if required where either the transferor and/or transferee is a discretionary trust.  |
| Comments: |

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| --- | --- | --- | --- |
| 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 *ITAA 1997*). 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 an 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.

The calculation of a company’s $20 million turnover is worked out at the end of each 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 *ITAA 1997*. 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 *ITAA 1997* prior to yearend.Where a company has an instrument which satisfies the debt test in Division 974, confirm whether section 25-85 of the ITAA 1997 is applicable, and if so, whether the benchmark rate of return is breached. |  |  |  |
| Comments: |

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| --- | --- | --- | --- |
| 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 *ITAA 1997* may apply if the entity is an outward investor. |  |  |  |
| 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 *ITAA 1997* may apply. Refer to Taxation Determination TD 2019/12 for the ATO’s views as to the type of costs covered by debt deductions. |  |  |  |
| 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, 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. |  |  |  |
| THIN CAPITALISATION (CONTINUED) |
| Consider the interaction of the thin capitalisation and transfer pricing provisions under Subdivision 815-B of the *ITAA 1997* on interest claimed on any cross-border related party debt. Section 815-140 of the *ITAA 1997* 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 *ITAA 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 *ITAA 1997*)*.* If so, 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 *ITAA 1997*. 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 a provision of the *ITAA*, 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: * prior year revenue losses
* carried forward net capital losses
* deductible expenditures including the opening adjustable value of depreciating assets
* the cost base of certain CGT assets.

A debt will be forgiven in any of the following circumstances:* 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
* 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 2023.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.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. Refer to CPA Australia’s [Division 7A checklist](https://www.cpaaustralia.com.au/tools-and-resources/taxation/2022-year-end-tax-resources) and [Division 7A UPE](https://www.cpaaustralia.com.au/tools-and-resources/taxation/2022-year-end-tax-resources) checklist in the [tax time year-end resources](https://www.cpaaustralia.com.au/tools-and-resources/taxation/tax-time-year-end-updates-and-resources/checklists) for more information. 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 *ITAA 1997* separately apply to that debt forgiveness.  |  |  |  |
| Comments: |

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| --- | --- | --- | --- |
| INTERNATIONAL TAX MATTERS | YES | NO | N/A |
| **HYBRID MISMATCH** |
| The foreign hybrid mismatch rules (introduced 1 January 2019) are aimed at preventing entities that are liable to income tax in Australia from being able to avoid income taxation, or obtain a double non-taxation benefit, by exploiting differences between the tax treatment of entities and instruments across different countries. The principal objective of the hybrid mismatch rules is to neutralise the effects of hybrid mismatches so that unfair tax advantages do not accrue for multinational groups as compared with domestic groups.In addition, multinational entities are expected to make enquiries with and request information from their overseas head office to ensure that their payments are not shielded by the use of hybrid mismatch arrangements offshore (PCG 2021/5)The Taxation Determination TD 2022/9 sets out the Commissioner’s view that income subject to tax under the United States’ global intangible low-taxed income rules is not taken to be subject to foreign income tax under the Australia’s foreign hybrid rules, as section 951A of the United States Internal Revenue Code is not a provision of a law of foreign country that corresponds to laws under Australia’s controlled foreign company (CFC) regime.  |  |  |  |
| **REPORTABLE TAX POSITION**  |
| The reportable tax position (RTP) schedule is part of the company income tax return. Consideration must be taken as to whether the entity meets the criteria to complete the RTP schedule. From 1 July 2021, private companies will need to self-assess their requirement to lodge the RTP schedule. |  |  |  |
| **ADDITIONAL LODGEMENT REQUIREMENTS FOR SGE’S**  |
| From 1 July 2019, an entity is a significant global entity (SGE) for a period if their annual global income is A$1 billion or more.As an SGE they are required to complete the relevant SGE label in their annual income tax return. This applies to company, trust, partnership, and fund income tax returns. In addition to income tax return disclosures SGE’s are required to give the Commissioner general purpose financial statement (GPFS) if the entity has not already provided the GPFS to ASIC.Furthermore, SGE’s are required to lodge Country-by-country reports/information with the Australian Taxation Office. |  |  |  |
| **TRANSFER PRICING** |
| All international related party transactions must be undertaken on an arm’s length basis. This means that an arm’s length rate of interest should be charged on any related party loans. Transfer pricing documentation supporting the arm's length price must be maintained for a taxpayer to have a reasonable arguable position for the purposes of protection from administrative penalties. Please note that not all documentation will be acceptable for these purposes (i.e the loan agreement, in of itself, is not sufficient). |  |  |  |
| **Foreign Income Tax Offset (FITO)** |
| Division 770 deals with foreign income tax offsets (FITOs).Providing taxpayers with a tax offset for foreign taxes paid on foreign income is a way of avoiding double taxation. A FITO reduces the Australian tax that would have been payable on foreign income earned by an amount up to the foreign income tax paid. |  |  |  |

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| --- | --- | --- | --- |
| 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. Care should be taken where there is only a temporary adjustment for the making of additional voluntary superannuation contributions or exempt benefits (e.g., laptops) prior to year-end as this still needs to be subject to a valid salary sacrifice agreement even if the arrangement is only temporary in nature. Where the taxpayer may be entitled to a bonus have, they entered a salary sacrifice arrangement pursuant to which they have requested that any bonus be paid in a form other than gross salary?In entering 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 $27,500 for the 2023 year. |  |  |  |
| **LOW INCOME TAX OFFSET** |
| Check whether the taxpayer is eligible for the non-refundable $700 low income tax offset (LITO). Note that the full offset is available for individuals with taxable income of less than $37,500 but fully phases out where taxable income is $66,667 or more.Minors (i.e., children under 18 years of age) are not eligible to receive the LITO to reduce tax payable under Division 6AA of the *ITAA 1936*. |  |  |  |
| **LOW MIDDLE INCOME TAX OFFSET** |  |  |  |
| The non-refundable low and middle-income tax offset (LMITO) is available to Australian resident individuals from 1 July 2018 until 30 June 2022. The amount of offset available is determined by the amount of taxable income derived by the taxpayer in the relevant year. Note that 2021-22 was the last income year for which LMITO was available to eligible taxpayers. |  |  |  |
| **SMALL BUSINESS TAX OFFSET** |
| Check whether the individual is entitled to the small business income tax offset for the year ended 30 June 2023 being 16% of the income tax payable on the portion of an individual’s taxable income that is their ‘total net small business income’.This non-refundable 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 net income of a small business entity where 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 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 2023:* the cap on concessional contributions for the 2023 year is $27,500 for each individual regardless of age
* the annual cap on non-concessional contributions for the 2023 year is $110,000. However, an individual can only make non-concessional contributions if that individual’s total superannuation balance was less than $1.7 million (plus indexation if applicable) as at 30 June 2023 (see section 292-85(2) of the *ITAA 1997*).

The amount of non-concessional contributions that a person aged under 67 can bring forward under the three-year rule is capped at $330,000 for the 2023 year (subject to certain transitional arrangements). Such a contribution can likewise only be made where the individual’s total superannuation balance was less than $1.7 million as at 30 June 2023 . You should consult an appropriately licensed financial adviser to consider the merits of making any additional concessional or non-concessional contributions for the 2023 year.Section 292-102 of the *ITAA 1997* allows individuals aged 55 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 January 2023 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.The CGT cap excludes exempt capital gains of up to $1,650,000 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 2023.  |  |  |  |
| Consider the impact of the $1.7 million limit on the amount of funds that can be held in the retirement phase of a taxed fund to support an account-based pension. Consider referring your client to an appropriately licensed financial adviser 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 $1.7 million general transfer balance cap or where they require general retirement financial planning advice.  |  |  |  |
| Consider the merits of withdrawing superannuation contributions to help finance a first home deposit under the First Home Super Saver (FHSS) scheme. The scheme allows an individual to make additional voluntary superannuation contributions or after-tax contributions to a complying superannuation fund from 1 July 2017 of up to $50,000, which can be withdrawn to help finance a first home deposit starting from 1 July 2018. The 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  |  |  |  |
| **SUPERANNUATION (CONTINUED)** |
| individual’s assessable income and subject to a 30% non-refundable tax offset. Eligibility conditions need to be satisfied before an individual can access the 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. 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 $1.7 million general transfer balance cap as at 30 June 2023. |  |  |  |
| Consider whether the individual would be entitled to the low-income spouse superannuation tax offset. 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 gradually phased out so 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 2023 year, or where the spouse’s total superannuation balance exceeds the general transfer balance cap of $1.7 million as at 30 June 2023. |  |  |  |
| **MOTOR VEHICLE DEPRECIATION COST LIMIT** |
| Check whether the taxpayer has purchased a car over the depreciation limit of $64,741 prior to 30 June 2023. If so, ensure that the depreciation claimed is based on an acquisition cost not exceeding $64,741 rather than its actual cost. This limit also applies despite increases in the instant asset write-off threshold and the introduction of TFE of depreciable assets. |  |  |  |
| 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 *ITAA 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). Examples of work-related deductions include protective clothing, union fees, professional seminars, conferences and workshops, certain overtime meals, home office expenses, business or professional subscriptions, reference books, technical journals, safety items, work-related computer and phone and internet expenses. See further below under "Working from Home Expenses".However, deductions should only be claimed to the extent that the expense (e.g. phone or internet) was used to derive salary and wages income. A non-business depreciating asset whose cost does not exceed $300 is also deductible to the extent that the asset (e.g. briefcase or calculator) is used for income producing purposes.  |  |  |  |
| **WORK-RELATED DEDUCTIONS (CONTINUED)** |  |  |  |
| Self-education expenses are also generally allowable where the course of study is to maintain the taxpayer’s skills in their current employment or increase the taxpayer’s skills in that person’s current occupation, which will result (or will be likely to result) in an increase in income from current employment as set out in Taxation Ruling TR 98/9.Examples of such costs include course fees, tuition fees, student union fees, textbooks, stationery, computer consumables (e.g. printer cartridges), trade and professional journals, certain travel expenses, internet and phone usage and depreciation. Where applicable, such costs must be apportioned between eligible expenses incurred for study purposes and those for private purposes. Receipts, invoices and diary records must be retained to evidence claims and in some circumstances the first $250 is non-deductible. |  |  |  |
| The Treasury Laws Amendment (2022 Measures No.2) Bill 2022 removes the exclusion for claiming a tax deduction for the first $250 of costs for prescribed education courses from the 2022-23 income year. |  |  |  |
| 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.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. Accordingly, it is necessary to establish that the claim is based on work-related or business kilometres travelled which must be based on documented reasonable estimates. |  |  |  |
| **WORKING FROM HOME EXPENSES** |
| From 1 July 2022, there are two ways individuals can calculate their work from home expenses (PCG 2023/1 ):1. 67 cents per work hour for heating, cooling, lighting, cleaning and the decline in value of office furniture, plus the work-related portion of phone and internet expenses, computer consumables, stationery and the decline in value of a computer, laptop or similar device
2. Actual work-related portion of all running expenses, which needs to be calculated on a reasonable basis.

Where the 67 cents per hour method is used, the number of hours worked needs to be recorded (i.e. timesheet, roster, diary or similar document that shows the hours you worked). If a different method is used, you must keep a record of the number of hours worked and a record of your expenses. |  |  |  |
| **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 four following exemptions apply:1. 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
2. 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 four tests will be met within a commercially viable period or
3. 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.
4. The taxpayer qualifies for the safe harbour listed in PCG 2022/1 to utilise the non-commercial loss which arose due to flood, bushfire, or COVID-19 related restrictions. The guideline applies to non-commercial losses incurred form the 2019-20 to the 2022-23 income years, except for the amounts deferred in previous income tax years under the non-commercial loss rules.
 |  |  |  |
| The four commercial loss tests comprise:1. Assessable income test, which will be met if the business activity has assessable income in the current year of at least $20,000
2. Profits test, where the business has made a tax profit in at least three of the last five years (including the current year)
3. 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)
4. Other assets test, where the value of depreciating assets, trading stock, leased assets and certain intangibles used in a business activity on a continual basis have 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. 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. In applying the non-commercial loss rules, it may be necessary to group together business activities of a similar kind in satisfying the above commercial loss tests where an individual is a partner in a partnership. |  |  |  |
| **MAIN RESIDENCE EXEMPTION FOR FOREIGN RESIDENTS** |
| Foreign resident individuals who held Australian property prior to 7.30pm (AEST) on 9 May 2017 can only claim the CGT main residence exemption for disposals occurring on or before 30 June 2020. If the property is disposed of on or after 1 July 2020 (regardless of the purchase date), the CGT main residence exemption is only available if the individual satisfies the ‘life events’ test. To satisfy the life events tests all of the following elements need to be satisfied.* The individual was a foreign resident for a continuous period of six years or less at the time of the CGT event.
* At least one of the following occurred:
	+ during all or part of the period of a person’s foreign residency, either they, their spouse or their child who was under 18 years of age had a terminal medical condition
	+ during all or part of the period of a person’s foreign residency, their spouse, or their child who is under 18 years of age at the time of their death died
	+ the CGT event occurs in a matter involving the distribution of assets between the person and their spouse in a family law context, such as in the event of divorce or separation or similar maintenance agreements.

All other requirements to claim the main residence exemption must also be satisfied. |  |  |  |
| **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? If so, will the exercise of that amendment power to insert a streaming clause 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 made before year end? 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? This will be essential where there is an income equalisation clause under the trust deed which defines trust income as being net income calculated under section 95 of the *ITAA 1936*. |  |  |  |
| Where the trustee has the power to stream, and this is evidenced by a trustee resolution, have trust funds been distributed optimally whilst the trustee is complying with their fiduciary obligations? 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 or may be refundable
* Franked dividends distributed to company beneficiaries will not generally suffer further tax (subject to the dividend paying company's corporate tax rate for imputation purposes and the tax rate the company beneficiary)
* 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.ST

It is important that each trustee considers the application of section 100A and Part IVA to future and historical distributions made. Section 100A is an anti-avoidance provision that has the potential of imposing a penal tax outcome where one person (beneficiary) is made presently entitled to trust income, but another person effectively receives the benefit of the income. The Commissioner has considered the application of s100A and issues the following tax determinations / compliance guidelines: * Taxation Ruling 2022/4 – Income tax: section 100A reimbursement agreements
* Taxpayer Alert TA 2022/1 – Parents benefitting from the trust entitlements of their children over 18 years of age
* Practical Compliance Guideline PCG 2022/2 – Section 100A reimbursement agreements – ATO compliance approach

For further information, refer to CPA Australia’s [Trust Streaming Manual](https://www.cpaaustralia.com.au/professional-resources/taxation/trusts) |  |  |  |
| **TRUST DISTRIBUTIONS (CONTINUED)**  |
| 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).Where the trust deed requires the trustee to make a beneficiary presently entitled to trust income by way of a trustee resolution, this resolution must generally be made by the end of the income year as specified in the trust deed (being typically 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 a proportional 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, 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)*)? 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 the 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. 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 *ITAA 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% (including Medicare levy) 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 *ITAA 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%. 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. |  |  |  |
| 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 *ITAA 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% (including Medicare levy). |  |  |  |
| **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 2022 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 lodgement date of the trust’s 2022 tax return (assuming this is permitted under the trust deed)? In addition to the section 100A developments, the Commissioner has also issued a determination in relation to Division 7A (TD 2022/11: when will an unpaid present entitlement or amount held on sub-trust become the provision of financial accommodation). The Commissioner has announced a change from 1 July 2022 that the unpaid trust distributions owing to a company beneficiary may not be deemed as a dividend if the financial accommodation is subject to a complying loan agreement meeting criteria on interest rate and term as set out in section 109N of the *ITAA 1936*. . |  |  |  |
| TRUSTEE UNPAID PRESENT ENTITLEMENTS OWING TO COMPANIES (CONTIUED) |
| Where the 2023 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 lodgement day (likely 15 May 2024). Where the trustee satisfies the present entitlement by setting side an amount from the main trust fund and holding it on a new separate sub-trust, if the company beneficiary consents to the sub-trustee allowing the use of funds for the benefit of the company beneficiary’s shareholder or their associate, the funds will be deemed to be a financial accommodation.Subject to the relevant company having a 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 *ITAA 1936*. (See Taxation Ruling TD 2022/11*)*. Refer to CPA Australia’s Division 7A and Division 7A UPE checklists in the [tax time year end resources](https://www.cpaaustralia.com.au/tools-and-resources/taxation/tax-time-year-end-updates-and-resources/checklists) for further information*.* |  |  |  |
| Consider whether the trust has a pre-16 December 2009 UPE owing 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 at this stage, however it is important to note that there have been announcements regarding significant changes to Division 7A. |  |  |  |
| 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 *ITAA 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. Refer to CPA Australia’s Division 7A UPE checklist in the [tax time year end resources](https://www.cpaaustralia.com.au/tools-and-resources/taxation/tax-time-year-end-updates-and-resources/checklists) for further information*.* |  |  |  |
| Consider the implications of the interposed entity rules in Subdivision EB of Division 7A of the *ITAA 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.

As stated in the Taxpayer Alert TA 2023/1, ATO is currently reviewing arrangements where profits are passed to individual shareholders through an interposed holding company and CGT roll-over is applied, enabling the shareholders to circumvent the operation of Division 7A.  |  |  |  |
| **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 upon 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. 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 (FTE) 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 *ITAA 1997* where the transferor or transferee is a trust which is also a small business entity.
 |  |  |  |
| Where an FTE 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 (IEE). Distributions by a trustee of a trust that has made a FTE, or by an entity that has made an IEE, 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 2023.  |  |  |  |
| Section 272-60 of Schedule 2F of the *ITAA 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 *ITAA 1936*. |  |  |  |
| TRUST LOSSES (CONTINUED) |
| 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) over the loss test period. 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. 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 an FTE. A fixed trust need only satisfy the income injection test and 50% stake test over the lost test period. The legislative distinction between fixed and non-fixed trusts became 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 PCG 2016/16 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.  |  |  |  |

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| --- | --- | --- | --- |
| COMPANIES  | YES | NO | N/A |
| **APPLICABLE COMPANY TAX RATE** |
| A tax rate of 25% applies to a company which is a base rate entity for the year 30 June 2023. Where a company does not satisfy the definition of being a ‘base rate entity’ its taxable income will be subject to tax at a rate of 30%. A company will be regarded as being a base rate entity if no more than 80% of the company’s assessable income comprises ‘base rate entity passive income’ (BREPI) and its ‘aggregated turnover’ is less than $50 million for the year ended 30 June 2022. For these purposes aggregated turnover is only calculated on the relevant annual turnover of the company and its affiliates and connected entities for the current year being 30 June 2023.  |  |  |  |
| A company’s BREPI includes the following:* Distributions (e.g. dividends) other than non-portfolio dividends. A non-portfolio dividend is defined under section 317 of the *ITAA 1936* to mean a dividend paid to a company where that company has a voting interest amounting to at least 10% of the voting power in the company paying the dividend
* Franking credits attached to dividends
* Non-share dividends
* Interest income or a payment in the nature of interest (except interest income derived by an entity which is a financial institution such as a Bank or a Co-operative Housing Society or an entity that holds an Australian credit licence or is a financial services licensee in certain circumstances)
* Royalties and rent
* Deferred and discounted gains on Division 16E qualifying securities
* Net capital gains (as defined under section 995-1(1) of the *ITAA 1997*
* Amounts included in assessable partnership or trust distributions of net income to the extent that they are attributable to base rate entity passive income under one of the preceding items which has been on-distributed to a company which is a partner in a partnership or a company which is a beneficiary of a trust.
* Further guidance on the concepts of ‘base rate entity’ and BREPI can be found in Law Companion Ruling LCR 2019/5.
 |  |  |  |
| APPLICABLE COMPANY TAX RATE |
| An amount that flows through a partnership or trust to a company (either directly or via interposed trusts or partnerships) will retain its character in the hands of the company for the purposes of determining whether or not that amount is BREPI of the company. Accordingly, it is necessary to analyse and dissect partnership and trust distributions to determine the nature of the income which is received by the company where it is either a partner in a partnership or a beneficiary of a trust. LCR 2019/5 provides that if a company is assessed on a share of ‘net’ income of a trust or partnership it will have BREPI to the extent that the amount is included in assessable income as a trust or partnership distribution. However, where the distribution comprises a mixture of BREPI and trading income it will be necessary to allocate expenses in a fair and reasonable way particularly in relation to indirect costs. |  |  |  |
| Comments: |
| 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).
 |  |  |  |
| Check that the company tax rate used for imputation purposes in the 2023 year has been calculated based on the company’s 2022 aggregated turnover, BREPI and assessable income which are taken to have been derived for the 2022 year for franking purposes. Where the company had an aggregated turnover of less than $50 million and no more than 80% of that company’s assessable income is BREPI for the 2022 year it will apply the lower corporate tax rate of 25% in the 2023 year for franking purposes. Where this criteria is not met the corporate tax rate for imputation purposes for the 2023 year will be 30%. Where the company did not exist in the previous year its corporate tax rate for imputation purposes will be deemed to be at the lower corporate tax rate of 26%. |  |  |  |
| Ensure that the 45/90 day holding period rule has been considered in relation to dividends paid/received. |  |  |  |
| Check that section 254T of the *Corporations Act 2001* has been complied with in determining the company’s ability to pay a dividend and that a dividend resolution has been prepared. |  |  |  |
| When determining whether or not to pay a franked dividend to shareholders, consider the impact on the company’s ability to claim a loss carry back tax offset (as the amount of loss carry back offset is limited to the surplus in the franking account on the last day of the income year for which you claim it). |  |  |  |
| DIVIDENDS (CONTINUED) |
| Check whether the franked distributions made are directly or indirectly funded by capital raising activities. The Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 has proposed amendments to prevent companies from franking distributions made outside or additional to the company’s normal dividend cycles, as it is concerned that distributions funded by issue of new equity interest might be prohibited under the anti-avoidance rule in section 177EA of the *ITAA1936*. The proposed measure will be applicable on relevant distributions made on or after 15 September 2022 once the bill receives royal assent. |  |  |  |
| DEDUCTIONS ON PAYMENTS  |
| Payments made or non-cash benefits provided on or after 1 July 2019 to an employee, director, religious practitioner or under a labour hire agreement is not deductible if the payer fails to withhold (or in the case of a non-cash benefit pay an amount), under the PAYG withholding system or fails to notify the ATO where required to do so. |  |  |  |
| **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. Refer to CPA Australia’s [FBT checklist](https://www.cpaaustralia.com.au/tools-and-resources/taxation/2022-year-end-tax-resources) in the [tax time year end resources](https://www.cpaaustralia.com.au/tools-and-resources/taxation/tax-time-year-end-updates-and-resources/checklists) 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. Further details on the rule regarding the provision of minor benefits is set out in Taxation Ruling TR 2007/12*.* |  |  |  |
| 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.

From 1 April 2021, the turnover threshold to determine if a small business can access this exemption increases to $50 million for an income year that ends or starts in the relevant FBT year. |  |  |  |
| Is the employer a small business that provides car parking to its employees?Employers that are not public companies, and which have derived less than $50 million in ordinary and statutory income in the previous income year or are small business entities, may qualify for a small business car parking exemption.  |  |  |  |
| Check for exempt relocation benefits, such as relocation transport travel and removal and storage expenses. |  |  |  |
| **LOSSES**  |
| If the company has tax losses to be recouped ensure that the continuity of ownership test (COT), the same business test or the similar business test is passed. In order to pass the continuity of ownership test shares carrying more than 50% of all voting, dividend and capital rights must be ultimately beneficially owned by the same persons at all times during the test period which runs from the start of the loss year to the end of the income year in which the loss is recouped. In addition, a person’s share in a company may only be counted if that person owned the same interests in the same shares throughout the test period.Where the continuity of ownership test is breached, reliance can be placed on the business continuity test where the company carries on the same or similar business throughout the business continuity period that it carried on immediately prior to the COT being breachedSame business testThis test involves a comparison between the business that the company carried on in the recoupment year to that carried on immediately before the change in majority ownership of the company to determine whether the business activities have remained the same over that period. However, it is necessary to ensure that the company does not enter 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 same business test.The Commissioner recognises in Taxation Ruling TR 1999/9 that the organic growth of business through the adoption of new compatible operations will not mean that it automatically fails the same business test 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 TR 1999/9 for more guidance. Similar business testThere is an alternate business continuity test to the same business test being the ’similar business test’ which applies to income years commencing on or after 1 July 2015 where the COT is failed and the same business test is not satisfied.The similar business test involves comparing the business carried on by the company in the recoupment year to that carried on immediately before the change in majority ownership of the company to determine whether the current and former businesses are sufficiently similar in nature. LCR 2019/1 sets outs the Commissioner’s views on carrying on a similar business.However, unlike the same business test there are no negative limbs which apply regarding income derived from new transactions or kinds of business in the business continuity period that were not derived prior to the change in majority ownership of the company. Further guidance on the application of the similar business test is set out in Law Companion Ruling LCR 2019/1.  |  |  |  |
| A loss carry back is allowed where a revenue tax loss is incurred by a company in the 2020 to 2023 income years and income tax was paid in the 2019 income year or a later year. Consider whether claiming a loss carry back offset is possible, noting that any offset it limited to the lesser of income tax paid previously and the franking account balance at the end of the income year in which the offset is being claimed. |  |  |  |
|  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 lodgement of the company’s income tax return? |  |  |  |
|  DIVISION 7A (CONTINUED) |
| 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 lodgement 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 *ITAA 1936?* 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). 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.Pursuant to section 109D(5) of the *ITAA 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 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 *ITAA 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. a 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 *ITAA 1936*.Refer to Taxation Ruling TR 2010/8 and Practice Statement PS LA 2011/29 for guidance on the matters that the Commissioner of Taxation consider for requests to exercise discretion under section 109RB. For more information refer to CPA Australia’s [Division 7A Checklist](https://www.cpaaustralia.com.au/tools-and-resources/taxation/2022-year-end-tax-resources) in the [tax time year end resources](https://www.cpaaustralia.com.au/tools-and-resources/taxation/tax-time-year-end-updates-and-resources/checklists). |  |  |  |
| As part of planning, consider announced but not enacted changes to Division 7A. |  |  |  |
| 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 aggregated turnover exceeds $20 million, a 38.5% non-refundable tax offset is available.For income years starting on or after 1 July 2021, changes have been made to the R&D tax incentive. These changes are:* Linking the refundable tax offset to the claimant’s company tax rate plus a 18.5% premium, effectively maintaining the 43.5% for base rate entities
* The 38.5% non-refundable tax offset is changed to a R&D Premium Rate that is dependent on the R&D intensity threshold scale which comprises 2 tiers being 8.5% over the corporate tax rate for notional deductions up to and including 2% of total expenses, and 16.5% over the corporate tax rate for notional deductions representing more than 2% of total expenses. The R&D intensity rate is the R&D expenditure as a percentage of the total business expenditure
* Where an entity’s notional R&D deductions exceed $150 million for an income year, the excess is not taken into account for the purposes of calculating the entity’s R&D intensity.
 |  |  |  |
| **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. An employer will not be required to provide minimum SG support to the extent that an employee’s ordinary time earnings each quarter exceeds the ‘maximum contribution base’ which is $60,220 for the year ended 30 June 2023 and $62,270 for the year ended 30 June 2024.Prior to 2022-23 income year, superannuation guarantee was not required to be paid with respect to an employee earning salary and wages of less than $450 in any given month. This threshold has been removed by an addendum to Superannuation Guarantee Ruling SGR 2009/2 with the effect that from 1 July 2022, all salary and wages paid to eligible employees will be subject to superannuation guarantee contributions.  |  |  |  |
| Has the company identified all eligible employees for superannuation guarantee purposes?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 are set out in Superannuation Guarantee Ruling SGR 2005/1. |  |  |  |
| Consider whether the payroll needs to be reviewed to ensure that the Superannuation Guarantee calculation is based on the employee’s ordinary time earnings as opposed to salary and wages.The term ordinary times earnings is defined 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 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 but is not consolidated for tax purposes, consider whether it is appropriate to tax consolidate, and if so, the best time to do 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. |  |  |  |
| Consider whether tax sharing and tax funding agreements should be put in place for an existing tax consolidated group. |  |  |  |

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| 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.

The provisions may bring gains and losses to account on an accruals 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
* Managed funds and superannuation funds with assets of $100 million or more
* 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 over 12 months at the time that they begin to hold it.
 |  |  |  |
| Where Division 230 does not apply, a taxpayer can make an irrevocable election that it will apply (which may suit associates of entities that are required to apply Division 230). |  |  |  |

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| CORONAVIRUS (COVID-19) CRISIS MEASURES  | YES | NO | N/A |
| JOBMAKER HIRING CREDIT SCHEME |  |  |  |
| All payments under the JobMaker Hiring Credit Scheme are assessable as ordinary income. Normal deductions apply for amounts paid to employees if those amounts are subsidised by JobMaker Hiring Credits. |  |  |  |
| Comments: |

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| PROPOSED CHANGES ANNOUNCED IN THE MAY FEDERAL BUDGET 2023-24  | YES | NO | N/A |
| Global and domestic minimum tax* To ensure large multinationals pay an effective minimum level of tax on the income arising in each jurisdiction where they operate, the government has proposed to introduce the following tax based on the OECD’s Two-Pillar Solution:
	+ A 15% global minimum tax with the Income Inclusion Rule applying to income years starting on or after 1 January 2024 and the Undertaxed Profits Rule applying to income years starting on or after 1 January 2025.
	+ A 15% domestic minimum tax applying to income years starting on or after 1 January 2024.
* Where the global minimum tax rules apply, Australia would be able to apply a top up tax on a resident multinational parent or subsidiary company where the group’s income is taxed below 15% overseas.
* Where domestic minimum tax apply, Australia would be able to collect tax that would otherwise have been subject to global minimum tax in another country.

Small Business – Energy incentive* Small and medium business with aggregated annual turnover of less than $50 million will be able to claim an additional 20 per cent deduction for eligible assets that support electrification and more efficient use of energy.
* To be qualified for this deduction, eligible assets will need to be first used or ready for use between 1 July 2023 to 30 June 2024 and eligible upgrades will need to be made in this period.
* Certain assets such as electric vehicles, renewable electricity generation assets, capital works, and assets that are not connected to the electricity grid and use fossil fuels are excluded from this incentive.

Proposed changes in October 2022-23 budget that are not yet legislatedThin capitalisation rules* The government proposes to change the current asset-based tests to new earnings-based tests, limiting debt deductions to the level of the worldwide group’s net interest expense as a share of earnings, or to 30% of EBITDA earnings, where the deductions exceeding 30% of EBITDA may be carried forward and claimed in a subsequent income year.
* These amendments are proposed to take effect from 1 July 2023 with no grandfathering or transitional period, which indicates that the changes may apply to both existing debt and new borrowings.

Off-market share buy-back rules* When a listed public company undertakes an off-market share buy-back, no part of the purchase price in response of the buy-back will be taken as a dividend and no franking credits will be made available accordingly.
* The proposed amendments will apply to the purchases first announced to the market, or where the buy-back is not announced to the market, occurred after 7:30 pm AEDT on 25 October 2022

These proposed changes have not been legislated at the time of writing and are subject to change. |

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| TRANSACTIONS AT RISK UNDER ATO COMPLIANCE ACTIVITIES  | YES | NO | N/A |
| Consider the application of the following: |  |
| Arrangements to exploit mismatches between trust and taxable income (Taxpayer Alert 2013/1). |  |  |  |
| The general anti-avoidance provisions of Part IVA of the ITAA 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 ITAA 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 section 67 of the *Superannuation Industry (Supervision) Act 1993* (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-arm’s 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’ options |  |  |  |
| 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. |  |  |  |
| 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 ITAA 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 TA 2015/1A) |  |  |  |
| Franked distributions funded by raising capital to release franking credits to shareholders. (Taxpayer Alert TA 2015/2 and the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023) |  |  |  |
| 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 results 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 TA 2017/2, TA 2017/3, TA 2017/4, TA 2017/5 and TA 2017/5A)  |  |  |  |
| Structured arrangements that provide imputation benefits on shares acquired on a limited risk basis around ex-dividend dates (Taxpayer Alert TA 2018/1) |  |  |  |
| Non-arm’s length arrangements and schemes connected with the development, enhancement, maintenance, protection and exploitation of intangible assets. (Taxpayer Alert TA 2020/1) |  |  |  |
| The estimates regime and director penalty provisions have been extended to GST, luxury car tax and wine equalisation tax. (PCG 2020/2) |  |  |  |
| Schemes in relation to the JobKeeper Payment (Practical Compliance Guide PCG 2020/4) |  |  |  |
| Structured arrangements that provide imputation benefits on shares acquired where economic exposure is offset through use of derivate instruments. (Taxpayer Alert TA 2020/5) |  |  |  |

Year ended 30 June 2023

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