YEAR END TAX PLANNING FOR BUSINESSES

JUNE 2022

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

Company tax cuts - 2022 and beyond

The following table summarises the corporate tax rate going forward:

Income year	Aggregated turnover threshold	Tax rate for base rate entities under the threshold	Tax rate for all other companies
2021-2022 onwards	$50m	25.00%	30.00%

A company is a base rate entity for an income year if:

- the company's aggregated turnover for that income year is less than the aggregated turnover threshold for that income year; and
- it has 80% or less of their assessable income year that is base rate entity passive income.

Depreciation on plant and equipment

In order to claim depreciation during a particular year, it is important that the asset is installed ready to use during the financial year.

Temporary full expensing rules

The temporary full expensing rules have been extended by a further year to the 2022-23 income year. Broadly, under these rules, businesses with an aggregated turnover of less than $5 billion can claim the full cost of an eligible depreciating asset purchased between 6 October 2020 and 30 June 2023. These rules are generally not compulsory, and most businesses can opt in and opt out on an asset-by-asset basis. Furthermore, businesses with an aggregated turnover of more than $5 billion may have access to these rules under an alternate test.

These rules are compulsory for small business entities with an aggregated turnover of less than $10 million which use the simplified depreciation rules. In addition, these entities must claim the full balance of their small business pool during the 2021-22 income year.

Loss carry-back rule for companies

The loss carry back rules have been extended to the 2022-23 income year. Under these rules, companies which carry on a business and have an aggregated turnover of less than $5 billion are eligible for the loss carry back rules. The loss carry back rules are optional and broadly give companies an option to carry back their tax losses to an earlier year and claim a refund for tax paid in a previous income year.

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

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

Review loans to shareholders and associates (Division 7A loans)

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

Shareholder loans from companies need to be properly documented and put on a commercial footing in line with the Division 7A tax legislation. In addition to documenting such loans, it is important to ensure interest rates are correctly applied and the minimum repayments are being made to ensure no deemed dividends arise. The ATO continues to undertake audits to ensure payments made by private companies are correctly accounted for and company loans are not used to distribute tax-free profits.

In addition to Division 7A loans, you should also review any unpaid present entitlements (UPEs) where trust distributions remain unpaid at the end of the year. We recommend speaking to one of our advisors who can guide you through the complexities of the Division 7A rules.

Trust resolutions

Trustees of discretionary and family trusts must make valid distribution resolutions before 30 June to effectively distribute trust income to eligible beneficiaries. The resolution must be made in accordance with the Trust Deed and we will be in touch shortly to ensure you comply with your trustee obligations. If you have not made a valid distribution by 30 June 2022, the Trustee may be liable to pay tax on the Trust's taxable income at the highest marginal tax rate.

Trust distributions - the impact of the ATO's views on s100A

Earlier this year, the ATO released some guidance containing its views on s100A of ITAA 1936. Broadly, s100A gives the ATO powers to assess the Trustee of the trust at the highest marginal tax rate if the ATO considers that distribution to be a sham or part of a tax avoidance arrangement. One of the exclusions from s100A is the "ordinary family and commercial dealings" exclusion and the guidance issued by the ATO provides its views on when the exclusion may apply. The ATO also issued a Taxpayer Alert (TA 2022/1) which focuses on trust arrangements where parents enjoy the economic benefit of trust income appointed to their children who are over 18 years of age. Prior to finalising any trust resolutions for the 2022 income year, we suggest speaking to your Moore Australia advisor to ensure adequate strategies are put in place to minimise your risk.

Franking and dividends

If you are planning on paying any dividends in your company prior to year-end, it is important to ensure that you have met the documentation/notification requirements. In addition, ensure your franking account is up to date as many businesses would have claimed refunds of their PAYG income tax instalments over the last few COVID-19 affected months and it is imperative that you have sufficient franking credits to avoid paying franking deficits tax at a later date.

Superannuation Guarantee rate - from July 2021

The superannuation guarantee rate will rise from 10% to 10.5% from 1 July 2022. The rate will subsequently rise by 0.5% each year until it reaches 12% by the 2024-25 income year. It is prudent to review your employment contracts and ascertain whether the employee's package is inclusive of or excluding superannuation guarantee once again.

PAYG withholding obligations and deductibility of payments to workers (including directors and associates)

From 1 July 2019, you must comply with PAYG reporting and withholding obligations in order to claim a tax deduction for payments you make to workers (including employees and contractors). If you fail to withhold PAYG from your workers' payments or do not report the amounts to the ATO prior to an audit/review, they may be considered non-compliant payments and treated as non-deductible for income tax purposes. Particularly, care must be taken when paying associates (e.g. business owners or their family members) and ensure you meet your withholding and reporting obligations.

Reporting - Taxable Payment Annual Report (TPAR)

If you are in one of the following industries, you may need to lodge a TPAR by 28 August 2022 containing information in relation to payments made to contractors:

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

Additional 20% Deduction Boost - External Training

Small businesses with an aggregated turnover of less than $50 million will be able to deduct an additional 20% of expenditure incurred on providing external training courses to their employees.

The boost will only apply to external courses provided to employees in Australia or online and will need to be delivered by entities registered in Australia. In-house training, on the job training and training for persons who are not employees will be excluded for the purposes of the boost.

The boost will apply to eligible expenditure incurred between 29 March 2022 and 30 June 2024. The boost for eligible expenditure incurred by 30 June 2022 can be claimed in the following income year. The boost for expenditure incurred between 1 July 2022 and 30 June 2024 can be claimed in the income year in which the expenditure in incurred.

Note, the boost was announced in the 2022-23 Federal Budget and is yet to be legislated. We are waiting on further detail around the requirements to claim the boost.

Additional 20% Deduction Boost - Digital Adoption

Small businesses with an aggregated turnover of less than $50 million will be able to deduct an additional 20% of expenditure incurred on business expenses and depreciating assets to support digital adoption such as portable payment devices, cyber security systems or subscriptions to cloud-based services.

This will be limited to a $100,000 cap so only expenditure up to $100,000 will be eligible for the boost. The boost will apply to eligible expenditure incurred between 29 March 2022 and 30 June 2023. The boost for eligible expenditure incurred by 30 June 2022 will be claimed in the following income year. The boost for expenditure incurred between 1 July 2022 and 30 June 2023 will be claimed in the income year in which the expenditure in incurred.

Note, the boost was announced in the 2022-23 Federal Budget and is yet to be legislated. We are waiting on further detail around the requirements to claim the boost.

Employee vs Independent Contractor - time to reassess

A recent case represents a significant shift in how the courts will be looking into the age-old argument of whether a person is an employee or independent contractor - *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd [2022] HCA 1.*

In this case the High Court deemed a person to be an employee of a business and the essence of this case was that the High Court considered the contractual agreements between the two parties as opposed the multi-factorial tests considered by the lower courts. Generally, courts consider the following factors in determining whether a person is an employee or independent contractor:

- Ability to subcontract/delegate
- Basis of payment - whether the person is paid to produce a result or on an hourly basis
- Who provides the equipment/tools and other assets?
- Who bears the commercial risk?
- The level of control
- Independence between the two parties

When the matter reached the High Court, the Court essentially ignored the various factors listed above and considered the contracts between the two parties. Based on the contractual agreements, the High Court considered the person to be an employee of the business.

This represents a significant shift in how the courts will be looking at this matter going forward and if your business does use independent contractors, it would be prudent to consider the impact of this case.

Tax Planning checklist - for Business

Item	Enhance your tax deductions
Accrued expenses	Ensure you accrue expenses where you have a present existing liability to pay the expense irrespective of the fact that you may receive the invoice or make the payment after year end. Example: Accrued wages - for instance, if you have a monthly pay cycle ending on 15 June, you can accrue the costs of your payroll from 16 June to 30 June and claim the wage cost as a tax deduction in the 2022 year itself.
Bad debts	Review your debtors listing and determine whether any debts can be written off. A written record should be kept evidencing the decision to write off the debt from the accounts.
Bonuses	If you have not paid your bonuses by 30 June, you may still be able to claim a deduction provided you have an obligation to pay this. To substantiate this, ensure the amount is quantifiable and approved (via minutes) and the staff are notified of the bonus.
Deferring income	The ability of a business to defer income will depend on each business, cash flows and the type of income derived.
Plant and equipment	Consider the impact of the temporary full expensing rules on depreciating assets purchased during the 2021-22 income year.
Plant and equipment - obsolete	Review your asset register and write off any assets that have been disposed or are no longer in use.
Prepayments - immediate deductions	If you are a small or medium business (aggregated turnover of less than $50 million), you may be entitled to an immediate deduction for certain prepaid expenses where the goods or services will be provided within 12 months from the date of expenditure. Examples of items that may be deductible under the 12-month rule include subscriptions and prepayments of interest on a loan used for income producing purposes.
Simplified trading stock rules	If you are a small business (aggregated turnover of less than $50 million), the simplified trading stock rules may apply. Broadly, you do not have to account for changes in trading stock for tax purposes where the difference between the value of the original opening stock and a reasonable estimate of the closing stock is $5,000 or less.
Stock - obsolete	Review your stock on hand and identify any obsolete stock. You should conduct a detailed physical stock take of all stock on 30 June. Retain your detailed stock sheets as part of your taxation records.
Superannuation - June 2022 quarter	If you would like to claim a deduction for your superannuation guarantee accrued during the June 2022 quarter, ensure it is paid by 30 June 2022 (subject to cash flow). The amount should be received into the employees' fund by 30 June 2022 so you may have to pay it earlier to allow for bank processing times.

Tax Planning checklist - for Business

Item	Preserve your tax deductions
International related party dealings	Ensure your transfer pricing documentation is up to date.
Salary and wages (incl. director fees)	Ensure PAYG withholding and reporting obligations have been met to prevent loss of deduction for non-compliant payments from 1 July 2019.
Superannuation - current year	Ensure paid by the due dates to maintain your income tax deduction. If any amounts have been paid late, ensure you have prepared and lodged the necessary superannuation guarantee charge forms with the ATO to minimise interest charges and penalties.

Item	Comply with ATO Year-end reporting requirements
Single Touch Payroll	Ensure year end payroll procedures have been completed and make a finalisation declaration. You must make a finalisation declaration for your employees by 14 July 2022 for employees that are not closely held payees.
Taxable Payment Annual Reports (TPAR)	If you are in these following industries, you will need to prepare a TPAR: • Building and construction • Cleaning services • Courier services • Road freight services • Information technology services • Security, investigation or surveillance services • Mixed services (provides one or more of the services listed above) Lodge the TPAR (if necessary) with the ATO by 28 August 2022.

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

ABOUT MOORE AUSTRALIA

At Moore Australia, it's not about us. It's all about you. Whether it's for your business, partnership, trust, or individual tax return, our experienced team at Moore Australia can assist you and your business with a range of personalised assurance, accounting, tax, and advisory services.

Our purpose is to help people thrive – our clients, our team, and the communities that we live and work in. We understand that people are the nature of our business and as such, like to provide a friendly and professional environment for both our clients and team members.

Our Moore Australia network of independent firms also enables us to share expert knowledge, and best practice so you are able to receive the best advice and highest quality of service wherever you choose to do business in Australia.

Looking beyond national borders, we also support your international ambitions through the Moore Global network of professional firms.

For more information on how our services and sector experts can help your business thrive, just get in touch.

CONTACT US

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