

# Tax Planning 2022 - Partnership

## In brief

Date	Changes and actions
21 May 2022	<ul style="list-style-type: none"><li>• FBT return and payments due if applicable unless lodging electronically through a tax agent</li></ul>
25 June 2022	<ul style="list-style-type: none"><li>• FBT return and payments due if lodging electronically through a tax agent</li></ul>
Pre-30 June 2022	<ul style="list-style-type: none"><li>• Pay superannuation to deduct contributions in the current financial year</li><li>• Complete a stocktake where required (see Do you need to do a stocktake?)</li><li>• Write-off bad debts and scrap any obsolete stock or plant and equipment</li><li>• Ensure any inter-entity management fees have been raised</li></ul>
30 June 2022	<ul style="list-style-type: none"><li>• Last day of the 50% boosting apprenticeship wage subsidy</li></ul>
1 July 2022	<ul style="list-style-type: none"><li>• Super guarantee rate increases to 10.5%</li><li>• \$450 super guarantee threshold removed</li><li>• Tighter guidelines apply to the allocation of profits of professional services firms</li></ul>
14 July 2022	<ul style="list-style-type: none"><li>• Single touch payroll finalisation declarations need to be made (extensions can apply for closely held employees)</li></ul>
28 July 2022	<ul style="list-style-type: none"><li>• Quarterly super guarantee payment due (1 April – 30 June)</li></ul>
28 August 2022	<ul style="list-style-type: none"><li>• Taxable payments annual reports for payments to contractors due</li></ul>
28 September 2022	<ul style="list-style-type: none"><li>• Temporary 50% reduction in fuel excise ends</li></ul>
1 January 2023	<ul style="list-style-type: none"><li>• Penalties will apply for phase 2 single touch payroll errors</li></ul>
30 June 2023	<ul style="list-style-type: none"><li>• Temporary full expensing for depreciating assets scheduled to conclude</li></ul>
1 July 2023	<ul style="list-style-type: none"><li>• Super guarantee rate increase to 11%</li></ul>

# What's new

## Profits of professional services firms

In December 2021, the ATO released PCG 2021/4; its final guidance on the allocation of profits generated by professional services firms. Applying from 1 July 2022, the guidance takes a strong stance on how the profits of professional services firms are structured and how profits flow through to the professionals involved. The ATO is specifically concerned with structures designed to divert income so the professional ends up receiving very little income directly for their work, reducing their taxable income.

Where these structures appear to be in place to divert income to create a tax benefit for the professional, Part IVA may apply. Part IVA is an integrity rule which allows the Commissioner to remove any tax benefit received by a taxpayer where they entered into an arrangement in a contrived manner in order to obtain a tax benefit. Part IVA may apply to schemes designed to ensure that the professional is not appropriately rewarded for the services they provide to the business, or that they receive a reward which is substantially less than the value of those services.

### Determining the risk rating

The guidance sets out a series of tests which are used to calculate a risk score. This risk score is then used to classify the practitioner as falling within a Green, Amber or Red risk zone, which determines the likelihood of the ATO taking a closer look at you and the firm. Those in the green zone are at low risk of ATO review. Those in the red zone, however, can expect the ATO to conduct further analysis as a matter of priority which could lead to an ATO audit.

Before calculating the risk score it is necessary to consider two gateway tests:

- Gateway 1 - considers whether there is commercial rationale for the business structure and the way in which profits are distributed, especially in the form of remuneration paid. Red flags would include arrangements that are more complex than necessary to achieve the relevant commercial objective, and where the tax result is at odds with the commercial venture, for example, where a tax loss is claimed for a profitable commercial venture.
- Gateway 2 - requires an assessment of whether there are any high-risk features. The ATO sets out some examples of arrangements that would be considered high-risk, including the use of financing arrangements relating to transactions between related parties.

If the gateway tests are passed, then you can self-assess your risk level against the ATO's risk assessment factors. There are three factors to be considered:

- The professional's share of profit from the firm (and service entities etc) compared with the share of firm profit derived by the professional and their related parties;
- The total effective tax rate for income received from the firm by the professional and their related parties; and
- The professional's remuneration as a percentage of the commercial benchmark for the services provided to the firm.

The resulting 'score' from these factors determines your risk zone. Some existing arrangements that were considered low risk in prior years under the ATO's previous guidance may now fall into a higher risk zone. In these cases, the ATO is allowing a transitional period for those practitioners to continue to apply the previous guidelines until 30 June 2024.

For professional services firms, it will be essential to assess the risk level and this needs to be done for each principal practitioner separately. Those in the amber or red zone who want to be classified as low risk need to start thinking about what needs to change to move into the lower risk zone.

Where other compliance issues are present - such as failure to recognise capital gains, misuse of the superannuation systems, failure to lodge returns or late lodgement, etc., - a green zone risk assessment does not prevent the ATO from looking into these matters.

If you are concerned about your position, please contact us.

## **Superannuation Guarantee increases to 10.5%**

The Superannuation Guarantee (SG) rate will rise from 10% to 10.5% on 1 July 2022 and will then steadily increase by 0.5% each year until it reaches 12% on 1 July 2025.

If you have employees, what this will mean depends on your employment agreements. If the employment agreement states the employee is paid on a 'total remuneration' basis (base plus SG and any other allowances), then their take home pay might be reduced by 0.5%. That is, a greater percentage of their total remuneration will be directed to their superannuation fund. For employees paid a rate plus superannuation, then their take home pay will remain the same and the 0.5% increase will be added to their SG payments.

## **\$450 super guarantee threshold removed**

From 1 July 2022, the \$450 threshold test will be removed and all employees aged 18 or over will need to be paid superannuation guarantee regardless of how much they earn. It is important to ensure that your payroll system accommodates this change so you do not inadvertently underpay superannuation.

For employees under the age of 18, super guarantee is only paid if the employee works more than 30 hours per week.

## **Temporary full expensing to be extended to 30 June 2023**

Temporary full expensing enables your business to fully expense the cost of:

- New depreciable assets
- Improvements to existing eligible assets, and
- Second hand assets

in the first year of use.

This measure enables an asset's cost to be fully deductible upfront rather than being claimed over the asset's life, regardless of the cost of the asset. The last day to utilise the expensing measures is 30 June 2023 at which point, normal depreciation arrangements will apply.

Certain expenditure is excluded from this measure, such as improvements to land or buildings that are not treated as plant or as separate depreciating assets in their own right. Expenditure on these improvements would still normally be claimed at 2.5% or 4% per year.

The car limit will continue to place a cap on the deductions that can be claimed for luxury cars (\$60,733 in 2021-22 and \$64,741 in 2022-23).

### **Small business pooling**

Small business entities (with aggregated annual turnover of less than \$10 million) using the simplified depreciation rules can deduct the full balance of their simplified depreciation general pool at the end of the income year while full expensing applies. The provisions which prevent small businesses from re-entering the simplified depreciation regime for five years if they voluntarily leave the system are suspended.

### **Opt-out rules**

Taxpayers can choose not to apply the temporary full expensing rules to specific assets, although this choice is not currently available to small business entities that choose to apply the simplified depreciation rules for the relevant income year.

## **Tax treatment of disaster and pandemic relief payments, grants & loans**

If you received a government grant or relief to help soften the blow of a disaster, the way these grants and loans are taxed might vary.

The following pandemic related grants can be tax-free if they are received in either the 2020-21 or 2021-22 income year by a business with an aggregated turnover of less than \$50 million:

#### ACT state grants

- COVID-19 Business Support Grant

#### NSW state grants

- 2021 COVID-19 business grant
- 2021 COVID-19 JobSaver payment
- 2021 COVID-19 micro-business grant
- NSW Accommodation Support Grant
- Commercial Landlord Hardship Grant
- NSW Festival Relaunch Package
- NSW Performing Arts COVID Support Package
- NSW Performing Arts Relaunch Package

- 2022 Small Business Support Program

#### QLD state grants

- 2021 COVID-19 Business Support Grants

#### SA state grants

- COVID-19 Additional Business Support Grant
- COVID-19 Business Hardship Grant
- COVID-19 Business Support Grant – July 2021
- COVID-19 Tourism and Hospitality Support Grant

#### VIC state grants

- Alpine Business Fund
- Alpine Resorts Support Program (Streams 1, 2 and 3)
- Business Continuity Fund
- Business Costs Assistance Program Round Two
- Business Costs Assistance Program Round Two – July Extension
- Business Support Fund 3
- Impacted Public Events Support Program
- Independent Cinema Support Program
- Licensed Hospitality Venue Fund
- Licensed Hospitality Venue Fund 2021
- Licensed Hospitality Venue Fund 2021 – July Extension
- Live Performance Support Program
- Melbourne City Recovery Fund – Small business reactivation grants
- Outdoor Eating and Entertainment Package
- Small Business COVID Hardship Fund
- Sole Trader Support Fund
- Sustainable Event Business Program

If the grant you received is not tax-free, you carry on a business and the payment relates to your continuing business activities, then it is likely to be included in your assessable income for income tax purposes unless a specific exemption applies. The position can sometimes be different where the payment was made to enable you to commence a new business or cease carrying on a business.

When it comes to GST treatment, the key issue is whether the grant is consideration for a supply. That is, was the business expected to deliver something for the grant? If not, GST does not apply.

## **Making it easier for partners to utilise losses**

New guidance from the ATO makes it easier for individual partners of a partnership that has made a business loss as a result of floods, fires or COVID-19 to apply their shares of the loss against income from other sources.

When an individual who is a partner in a partnership makes a loss from the business activities of the partnership the non-commercial loss rules prevent the loss from being applied against income from other sources unless certain conditions are satisfied. If the taxpayer is not able to pass the 'normal' tests to utilise their business losses against other

income there is an opportunity to seek the Commissioner's discretion to enable the losses to be used.

In recent years, special circumstances such as flood, bushfire and COVID-19 may have led to individuals generating losses from their partnership business activities and might have made it difficult for the individual to pass the non-commercial loss rules. A draft ATO guideline sets out a safe harbour position which allows taxpayers to utilise the losses as if the Commissioner had exercised discretion without needing to apply for this. The ATO intends that the safe harbour approach will apply for the 2020, 2021 and 2022 income years.

To qualify for the safe harbour, the following conditions need to be satisfied:

- The individual must have adjusted taxable income of less than \$250,000;
- The individual has made a loss from the partnership business activity;
- The business activity was affected by one or more of the following events:
  - Flood (including where receiving ATO flood support);
  - Bushfire (including where the business qualified for an ATO bushfire lodgment and payment deferral); or
  - A government-imposed lockdown, business closure and/or restriction due to COVID-19;
- The relevant event meant that the partnership was not able to carry on the business activity, or unable to carry it on to the same scale as was usual, or some or all of the customers of the business were not able to access the business activity, or access it in the same way as usual;
- The individual has not applied for a private ruling requesting the Commissioner exercise the 'special circumstances' discretion in relation to the business activity in the relevant income year; and
- The taxpayer has evidence to support that they are eligible for the safe harbour.

If you are not able to rely on the safe harbour approach, you can still potentially apply to the Commissioner to seek discretion in connection with the use of business losses against other income.

## **Deductibility of COVID-19 tests**

If your business provided RAT or PCR tests to employees, these expenses should normally be deductible to the employer.

While you would then need to consider whether these benefits are subject to Fringe Benefits Tax, a FBT exemption can be available under the otherwise deductible rule. The otherwise deductible allows an employer to reduce the taxable value of the fringe benefit (and therefore the FBT liability) by the amount of the income tax deduction the employee would otherwise have been entitled to claim at the time the benefit was provided had the employee incurred the relevant cost.

From 1 July 2021, employees are now entitled to claim a deduction for the cost of a RAT or PCR test to determine whether they may attend or remain at work.

However, a deduction for the employee is not available if:

- They worked from home and didn't intend to attend their workplace
- The test was used for private purposes (for example, to tests the kids before school).

If COVID-19 tests have been provided, the relevant documentation will need to be in place and a declaration signed by the employee.

## Areas of ATO scrutiny

### Cryptocurrency in the headlines

The ATO has been very active lately trying to dispel myths about how cryptocurrency is taxed.

If your business accepts cryptocurrency as payment for goods or services, these payments are treated in the same way as any other. That is, if your business is registered for GST, the price paid by the person paying in the digital currency should include GST. Likewise, if you purchase goods or services for use in your business then you should generally be able to claim GST credits on the transaction in your activity statement, even if you used digital currency to make the purchase.

It is possible that an entity could hold cryptocurrency as trading stock if it is held for the purpose of sale or exchange in the ordinary course of a business. Any gains from the trades are then taxed in the business's income tax return. If you carry on a business of trading cryptocurrencies, that is, you approach the trading in a business-like manner, then you can generally claim losses and other business expenses as a deduction.

Even if the cryptocurrency is not held as trading stock the disposal of cryptocurrency items will generally trigger a taxing event and it will be necessary to consider whether a gain or loss needs to be recognised for tax purposes.

The tax laws can be complex in this area and it's important to ensure that you get the right advice.

It's also important to keep records of your cryptocurrency transactions. The ATO regularly runs data matching projects and has access to the data from many crypto platforms and banks.

# Financial 'housekeeping'

## Payment deferrals

If you are having trouble paying your tax liability, please let us know as soon as possible so we can negotiate a deferral or payment plan with the ATO on your behalf.

## Reporting payments to contractors

The taxable payments reporting system requires businesses in certain industries to report payments they make to contractors (individual and total for the year) to the ATO. 'Payment' means any form of

consideration including non-cash benefits and constructive payments. Taxable payments reporting is required for:

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

The annual report is due by 28 August 2022.

## Before you roll-over your software...

Before rolling over your accounting software for the new financial year, make sure you:

- Prepare your financial year-end accounts. This way, any problems can be rectified and you have a 'clean slate' for the 2022-23 year. Once rolled over, the software cannot be amended.
- Do not perform a Payroll Year End function until you are sure that your STP finalisation declaration is correct and printed. Always perform a payroll back-up before you roll over the year.

## Employee reporting

### Single touch payroll

Where payments to employees have been reported to the ATO through single touch payroll, a finalisation declaration generally needs to be made by 14 July 2022. However, there are some exceptions to this.

If the entity has 20 or more employees and some of them are closely held employees, then the finalisation declaration for the closely held employees needs to be made by 30 September.

For entities with 19 or fewer employees and which only have closely held employees the finalisation declaration should be made by due date for lodgement of the tax return of the relevant employee.

Employees will be able to access their Income Statement through their myGov account.

### **Closely held payees**

Small employers (19 or fewer) are required to use STP for closely held payees from 1 July 2021. Payments to closely held payees can be reported through STP in one of three ways:

- Reporting actual payments in real time - reporting each payment to a closely held payee on or before each pay event (essentially using STP 'as normal').
- Reporting actual payments quarterly - lodging a quarterly STP statement detailing these payments for the quarter, with the statement due when the activity statement is due.
- Reporting a reasonable estimate quarterly - lodging a quarterly STP statement estimating reasonable year-to-date amounts paid to employees, with the statement due when the activity statement is due.

Small employers that have arm's length employees must report STP information on or before each payday regardless of the method that is chosen for reporting payments to closely held payees.

If your business has closely held employees, it will be important to plan throughout the year to prevent problems occurring at year end.

### **Reportable Fringe Benefits**

Where you have provided fringe benefits to your employees in excess of \$2,000, you need to report the FBT grossed-up amount. This is referred to as a 'Reportable Fringe Benefit Amount' (RFBA).

## **Do you need to do a stocktake?**

Businesses that buy and sell stock generally need to do a stocktake at the end of each financial year as the increase or decrease in the value of stock is included when calculating the taxable income of your business.

If your business has an aggregated turnover below \$50 million you can use the simplified trading stock rules. Under these rules, you can choose not to conduct a stocktake for tax purposes if the difference in value between the opening value of your trading stock and a reasonable estimate of the closing value of trading stock at the end of the income year is less than \$5,000. You will need to record how you determined the value of trading stock on hand.

If you do need to complete a stocktake, you can choose one of three methods to value trading stock:

- **Cost price** – all costs connected with the stock including freight, customs duty, and if manufacturing, labour and materials, plus a portion of fixed and variable factory overheads, etc.
- **Market selling value** - the current value of the stock you sell in the normal course of business (but not at a reduced value when you are forced to sell it).
- **Replacement value** - the price of a substantially similar replacement item in a normal market on the last day of the income year.

A different basis can be chosen for each class of stock or for individual items within a particular class of stock. This provides an opportunity to minimise the trading stock adjustment at year-end. There is no need to use the same method every year; you can choose the most tax effective option each year. The most obvious example is where the stock can be valued below its purchase price because of market conditions or damage that has occurred to the stock. This should give rise to a deduction even though the loss has not yet been incurred.

## Reduce your risks & minimise your tax

### Top tax tips

#### 1. Write-off bad debts

To be a bad debt, you need to have brought the income to account as assessable income and given up all attempts to recover the debt. It needs to be written off your debtors' ledger by 30 June. If you don't maintain a debtors' ledger, documenting the write-off is a good idea.

#### 2. Review your asset register and scrap any obsolete plant

Check to see if obsolete plant and equipment is sitting on your depreciation schedule. Rather than depreciating a small amount each year, if the plant has become obsolete, scrap it and write it off before 30 June. Small business entities can choose to pool their assets and claim one deduction for each pool. This means you only have to do one calculation for the pool rather than for each asset.

#### 3. Bring forward repairs, consumables, trade gifts or donations

To claim a deduction for the 2021-22 financial year, consider paying for any required repairs, replenishing consumable supplies, trade gifts or donations before 30 June.

#### 4. Pay June quarter employee super contributions now

Pay June quarter super contributions this financial year if you want to claim a tax deduction in the current year. The next quarterly superannuation guarantee payment is due on 28 July 2022. However, some employers choose to make the payment early to bring forward the tax deduction instead of waiting another 12 months.

Don't forget yourself. Superannuation can be a great way to get tax relief and still build your personal wealth. Your personal contributions need to be received by the fund before 30 June to be deductible.

## 5. Realise any capital losses and reduce gains

Neutralise the tax effect of any capital gains you have made during the year by realising any capital losses – that is, sell the asset and lock in the capital loss. These need to be genuine transactions to be effective for tax purposes.

## 6. Raise management fees between entities by June 30

Where management fees are charged between related entities, make sure that the charges have been raised by 30 June. Where management charges are made, make sure they are commercially reasonable and documentation is in place to support the transactions. If any transactions are undertaken with international related parties then the transfer pricing rules need to be considered and the ATO's documentation expectations will be much greater. This is an area under increased scrutiny.

## What we need from you

This is a general list of what to have ready when we next meet with you:

- Accounts data file (MYOB, Quickbooks, access to Xero)
- Debtors & creditors reconciliation
- Stocktake if applicable (or if your business is a Small Business Entity, use the simplified trading stock rules mentioned above)
- 30 June bank statements on all relevant loan documents
- Documents on new assets bought or sold, including the date you entered the contract and the date the asset was first used or installed ready for use
- Details of any grants or disaster loans received
- Details of any insurance payouts for your business or business premises
- Payroll reconciliation
- Superannuation reconciliation
- Cash book (if applicable)
- Details of any transactions involving cryptocurrency (e.g., Bitcoin, NFTs)
- 30 June statements on any investment or operating accounts

And, if we are preparing the partner's individual income tax return:

- Income Statement
- Tax statements of managed investment funds
- Interest income from banks and building societies
- Dividend statements for dividends received
- For share sales or purchases, the purchase and sale contract notes
- For real estate sales or purchases, the solicitor's correspondence for the purchase and sale
- Rental property statements from real estate agent and details of other expenditure incurred
- Work related expenses
- Self-education expenses
- Travel expenses
- Donations to charities
- Health insurance and rebate entitlement
- Family Tax Benefits received
- Commonwealth assistance notices

- IAS statements or details of PAYG Instalments paid
- Details of any transactions involving cryptocurrency (e.g., Bitcoin, NFTs)
- Details of any income derived from participating in the sharing economy (e.g., Uber driving, rent from AirBNB, jobs completed through Airtasker etc.,)

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