New 15% super tax to apply from 1 July 2025

The Government recently announced it will be imposing a 15% additional tax on individuals that have more than $3 million in superannuation. The new measure is expected to commence from 1 July 2025 (i.e., the start of the 2026 income year).

The main takeaways from the information provided thus far include the following:

- The additional 15% tax will broadly apply to the annual movement in the value of an individual's superannuation balance, adjusted for withdrawals and contributions. These 'earnings' are further adjusted to ensure only the proportion corresponding to the balance above $3 million will be subject to the new tax.
- There will be no limit imposed on the size of superannuation account balances.
- Individuals will have the choice of paying the tax liability personally or from their super fund.

In current terms, the Government expects that the new tax will apply to 0.5% of people with money in superannuation (around 80,000 people). However, the proposal does not currently allow for indexation of the $3 million threshold, so more individuals may be impacted in the future.

Editor: The Government will consult on the implementation of this proposed measure, so expect to hear much more about it before 2025!

Start thinking about your FBT obligations

The 2023 FBT year ended on 31 March, so it is now time for employers to get ready to lodge their 2023 FBT returns, where they have provided benefits to their employees (or their associates) between 1 April 2022 and 31 March 2023.

If you have provided fringe benefits to employees during the year, we are able to assist you with satisfying the following requirements:

- ❑ self-assessing your FBT liability for the FBT year;
- ❑ lodge an FBT return (if you have an FBT liability or paid FBT instalments through your activity statements);
- ❑ pay the FBT you owe by the due date; and
- ❑ calculate the reportable fringe benefits amount to be included on each employee's income statement or payment summary (if the total taxable value is more than $2,000).

Employers that have an FBT liability for the year ended 31 March 2023 are generally required to lodge their FBT return and pay their FBT liability by 26 June 2023, where they lodge their FBT return electronically through a registered tax agent (noting the usual due date of 25 June falls on a weekend this year). Employers that are not included on a registered tax agent's FBT client list must generally lodge an FBT return by 22 May 2023.

Employers do not need to lodge an FBT return if they are not liable to pay FBT for the year and have not paid FBT instalments during the year.

FBT exemption for electric cars

Until recently, the FBT consequences for providing electric cars to employees were effectively the same as any other car. However, from 1 July 2022, FBT is no longer payable on benefits provided for eligible electric cars and associated expenses. Practically, this exemption will be relevant for the first time in the 2023 FBT year.

Broadly, benefits provided for electric cars will be exempt from FBT where the following criteria are met:

- the car is a zero- or low-emissions vehicle;
- the first time the car is both held and used is on or after 1 July 2022;
- the car is used by a current employee or their associate(s) (e.g., a family member); and
- luxury car tax has never been payable on the importation or sale of the car.

Registration, insurance, repairs, maintenance and fuel expenses provided for eligible electric cars are also exempt from FBT.

Note that, while the benefit is exempt from FBT, the taxable value of the benefit must still be determined when working out whether an employee has a reportable fringe benefits amount to be included on their income statement or payment summary.

Editor: Please contact our office if you have any queries about this new exemption and how it may affect your obligations for the 2023 FBT year.

Tips to reduce study and training loan balances

If you have a study and training loan balance (e.g., a HELP debt), it may be worthwhile to consider methods of reducing the balance to ensure you are not left with a large tax bill when your 2023 income tax return is lodged.

While there is no interest charged on study and training loans, indexation is added to these debts on 1 June each year, based upon the consumer price index ('CPI'). Given the current rate of inflation, individuals with study and training loan balances should expect a larger than normal adjustment this year.

Indexation will not apply to a study and training loan on 1 June if the balance is nil. Any loan debt over 11 months old will be subject to indexation.

Editor: The compulsory repayment threshold for the 2023 financial year is $48,361. If you earn over this amount, the compulsory repayment is worked out when your tax return is lodged, and it will be included on your notice of assessment.

Reminder of Superannuation Guarantee ('SG')

Employers are reminded that if the correct amount of SG is not paid on time, they will be liable to pay the SG charge, which includes a penalty and interest component.

As a reminder, from 1 July 2022, the compulsory SG rate increased to 10.5% (previously 10%). The compulsory SG rate will increase again to 11% for the period 1 July 2023 to 30 June 2024. So now might be a good time to ensure your payroll systems are updated by the start of the next income year.

Last chance to claim deductions under temporary full expensing

Deductions under 'temporary full expensing' are only available in the 2021, 2022 and 2023 income years, and are expected to come to an end on 30 June 2023.

Editor: Under temporary full expensing, businesses with an aggregated turnover of less than $5 billion can generally claim a deduction for the full cost of eligible new assets first held, used or installed ready for use between 6 October 2020 and 30 June 2023, as well as (in some circumstances) costs of improvements to those assets and also the cost of eligible second-hand assets.

Residential investment property loan data-matching program

The ATO has advised that it will acquire residential investment property loan data from authorised financial institutions for the 2021/22 through to 2025/26 financial years, including:

- client identification details (names, addresses, phone numbers, dates of birth, etc);
- account details (account numbers, BSBs, balances, commencement and end dates, etc);
- transaction details (transaction date, transaction amount, etc); and
- property details (addresses, etc).

The ATO estimates that records relating to approximately 1.7 million individuals will be obtained each financial year.

Electric vehicle home charging rates: cents per km

The ATO recently released draft guidelines setting out a methodology for calculating the cost of electricity when an electric vehicle ('EV') is charged at an employee's or individual's home.

The draft guidelines may be relied on by employers and individuals who satisfy the required criteria for FBT and income tax purposes respectively, as set out in the draft guidelines.

The employer or individual can choose if they want to use the methodology outlined in the draft guidelines, or if they would like to determine the cost of the electricity by determining its actual cost.

The choice is per vehicle and applies for the whole income or FBT year. However, it can be changed by the employer or individual from year to year.

Cents-per-kilometre rate
The rate for the FBT tax year or income year commencing on or after 1 April 2022 is 4.2 cents per km (the "EV home charging rate"), which is multiplied by the total number of relevant kilometres travelled by the electric vehicle in the relevant income year or FBT year.

However, if electric vehicle charging costs are incurred at a commercial charging station, a choice has to be made:

- The EV home charging rate can be used, but only if the commercial charging station cost is disregarded.
- If the commercial charging station cost is used, the EV home charging methodology cannot be applied.

Further, all necessary records (such as receipts) must be kept to substantiate the claim, as per normal record-keeping rules.

Record keeping
If a taxpayer wishes to rely on the EV home charging rate to calculate their electricity charging expenses, they will need to keep a record of the distance travelled by the car (i.e., generally odometer records) in either the applicable FBT year to 31 March or the income year to 30 June.

Also, if an **employer** chooses to apply the draft guidelines and the EV home charging rate for **FBT purposes**, a valid logbook must be maintained if the operating cost method is used.

If an **individual** chooses to apply the draft guidelines and the EV home charging rate for **income tax purposes**, to satisfy the record-keeping requirements, they must have:

- a valid logbook to use the logbook method of calculating work-related car expenses (and it is recommended that a logbook is maintained to demonstrate work-related use of vehicles, regardless); and
- one electricity bill for the residential premises in the applicable income year to show that electricity costs have been incurred.

Application
It should be noted that the draft guidelines can only be relied on in relation to zero emissions vehicles.

The draft guidelines cannot be relied on, and the EV home charging rate cannot be used, if, for example, the vehicle is a plug-in hybrid which has an internal combustion engine.

Once finalised, the draft guidelines will apply from:

- 1 April 2022 for FBT purposes; or
- 1 July 2022 for income tax purposes.

Know the rules for accessing superannuation

The ATO has reminded SMSF trustees that their SMSF must be operated for the sole purpose of providing retirement benefits for its members. This means SMSF trustees can’t use funds from their SMSF to pay for personal or business expenses. This is known as 'illegal early access' of superannuation, and severe penalties apply.

The ATO also reminds SMSF trustees that there are rules regarding what they can invest in when dealing with a related party.

The ATO has recently released a factsheet to help SMSF trustees understand the rules on accessing their superannuation, and make sure they (and their business, if any) comply with the rules surrounding SMSFs.

2023/24 Budget Update

On 9 May 2023, Treasurer Jim Chalmers handed down the 2023/24 Federal Budget.

Some of the measures announced by the Government (including some which were actually announced prior to the Budget), include:

- from 1 July 2026, employers will be required to pay their employees’ superannuation at the same time as their salary and wages;
- providing businesses with annual turnover of less than $50 million with an additional 20% deduction on spending that supports electrification and more efficient use of energy (the 'Small Business Energy Incentive'); and
- increasing the capital works tax deduction depreciation rate for eligible new build-to-rent projects from 2.5% to 4% per year.

In addition to these, one of the most important aspects of this Budget was that the Government has provided some further depreciation relief for small businesses once temporary full expensing comes to an end on 30 June 2023.

Specifically, from 1 July 2023 until 30 June 2024, the Government will temporarily increase the instant asset write-off threshold for small businesses (with an aggregated annual turnover of less than $10 million) from $1,000 to $20,000. Assets valued at $20,000 or more (which cannot be immediately deducted) can continue to be placed into the small business simplified depreciation pool.

Also, the provisions that prevent small businesses from re-entering the simplified depreciation regime for five years if they opt-out will continue to be suspended until 30 June 2024.

Other important measures the Government announced include:

- amending (and limiting) the non-arm's length income ('NALI') provisions which apply to expenditure incurred by superannuation funds;
- reducing the tax concessions available to individuals with a total superannuation balance exceeding $3 million; and
- exempting lump sum payments in arrears from the Medicare levy.

In the ATO's sights this Tax Time

The ATO has announced its three key focus areas for this Tax Time:

- rental property deductions;
- work-related expenses; and
- capital gains tax.

ATO advice regarding year-end trustee resolutions

The ATO has advised that, in the lead up to 30 June, trustee clients who wish to make beneficiaries presently entitled to trust income for the 2023 income year should ensure their trustee resolutions are effective.

This includes where trustees may want to make beneficiaries 'specifically entitled' to franked dividends and capital gains included in that income (i.e., where trustees want to 'stream' those classes of income to certain beneficiaries).

It is important that trustee clients:

- check their trust deed to ensure that the intended beneficiaries are within the class of persons entitled to trust income (or of trust capital, if they intend to stream a capital gain that is not income of their trust) and are not excluded from being beneficiaries;
- comply with any requirements in the trust deed that concern how to validly 'appoint' (or distribute) trust income to beneficiaries;
- recognise that, for tax law purposes, beneficiaries need to be made presently entitled to trust income by 30 June of the relevant year;
- are aware that, if they fail to do what is required in a trust deed, or fail to appoint income by 30 June, this may cause outcomes to arise that differ to what they intended. This could include other beneficiaries being assessed on the relevant share of the trust's net (taxable) income (or the trustee being assessed at the top rate of tax); and
- ensure that resolutions are unambiguous.