CLIENT ALERT

JUNE 2022

ATO's small business focus for 2022 income year

The ATO announced that it will be focussing on the following matters for small business tax returns for the 2021/22 year:

- **Deductions that are private in nature** and not related to business income, as well as overclaiming of business expenses (especially for taxpayers running a home-based business).
- **Omission of business income** (e.g., income from the sharing economy or new business ventures).
- **Record keeping** – including insufficient or non-existent records that are needed to substantiate claims.

The ATO acknowledges that it has been a tough couple of years for many small business owners and encourages taxpayers to act early to find a solution if they are getting behind in their tax obligations, either by contacting their tax agent or the ATO.

ATO updates 'cents per kilometre' rate for individuals

The ATO has updated the cents per kilometre rate relating to individual car expenses for the **2023** income year to **78 cents** per business kilometre.

The cents per kilometre method:

- uses a set rate for each kilometre travelled for business;
- allows taxpayers to claim a maximum of **5,000** business kilometres per car, per year;
- does not require written evidence to show exactly how many kilometres were travelled (but the ATO may ask taxpayers to show how they worked out their business kilometres, for example by means of diary records); and
- uses a rate that takes all vehicle running expenses (including registration, fuel, servicing and insurance) and depreciation into account.

The cents per kilometre rate was 72 cents for the 2021 and 2022 income years.

ATO to target 'wash sales' this Tax Time

The ATO is warning taxpayers to not engage in 'asset wash sales' to artificially increase their losses to reduce gains (or expected gains).

Wash sales typically involve the disposal of assets (e.g., cryptocurrency and shares) just before the end of the financial year, where after a short period of time, the taxpayer reacquires the same or substantially similar assets. Such sales are usually done to create a loss to be offset against a gain already derived, or expected to be derived, in certain circumstances, in a tax return.

The ATO's sophisticated data analytics can identify wash sales through access to data from share registries and crypto asset exchanges. When the ATO identifies this behaviour, the capital loss is rejected, resulting in an even bigger loss to the taxpayer.

The ATO has warned taxpayers engaging in wash sales that they are at risk of facing swift compliance action and additional tax, interest and penalties may apply. Taxpayers are urged to ignore any advice encouraging a wash sale of any asset. The clear advice from the ATO is to check the ATO website or check with an independent registered tax professional and not to rely on advice received through media, social media, or advertisements.

Downsizer contributions age changes from 1 July 2022

From **1 July 2022**, people aged **60 years and over** will be eligible to make downsizer contributions of up to **$300,000 per person** ($600,000 per couple) from the sale proceeds of their home into their super. For downsizer contributions made prior to 1 July 2022, eligible individuals must have been aged 65 years or older at the time of making their contribution.

Eligible downsizer contributions do not impact or count towards the member's concessional or non-concessional super contribution caps.

During the 2022 Federal election, the previous Coalition Government announced it would support a further reduction to the downsizer eligibility age to 55 years. However, this announcement has not become law. Accordingly, contributions received on or after 1 July 2022 from members who are 55 to 59 will:

- be ineligible for treatment as downsizer contributions; and
- generally count towards either the member's non-concessional or concessional superannuation contributions caps.

Tax time focus on rental property income and deductions

The ATO is focusing on four major concerns this tax season when it comes to rental properties.

Concern 1: Include all rental income
When preparing tax returns, make sure all rental income is included, such as from short-term rental arrangements, renting part of a home, and other rental-related income like insurance payouts and rental bond money retained.

Concern 2: Accuracy of expenses
Not all expenses are the same – some can be claimed straight away, such as rental management fees, council rates, repairs, interest on loans and insurance premiums.

Other expenses such as borrowing expenses and capital works need to be claimed over a number of years.

Depreciating assets such as a new dishwasher or new oven costing over $300 are also claimed over their effective life.

Concern 3: Capital Gains Tax upon sale of a rental property

When selling a rental property, capital gains tax ('CGT') needs to be considered and any capital gains or capital losses need to be reported.

When calculating a capital gain or capital loss, it's important to get the cost base calculation right.

It is also important to note that when selling any property for $750,000 or more, vendors/sellers must have a clearance certificate otherwise 12.5% will be withheld.

These clearance certificate applications can take up to 28 days to process so to avoid delays, sellers should apply as early as practical using the online form.

Concern 4: Record keeping

Records of rental income and expenses should be kept for five years from the date of tax return lodgments or five years after the disposal of an asset, whichever is longer.

TD 2022/11 – Discretionary trusts and corporate beneficiaries

When a trustee of a trust makes a decision to create an entitlement to income of the trust in favour of a corporate beneficiary (i.e., a privately held company), certain steps need to be taken to ensure that if the entitlement to the distribution remains unpaid (that is, no cash equal to the amount of the entitlement is paid to the corporate beneficiary), that this does not trigger what is called a 'deemed dividend' in the hands of the trust.

A deemed dividend is likely to give rise to unwanted taxation consequences for the trust.

Historically, one way to avoid triggering a deemed dividend in such circumstances was to place the amount representing an unpaid distribution in a sub-trust for the benefit of the corporate beneficiary.

With these sub-trust arrangements, the relevant funds are generally being invested in the main trust to be used for working capital or to make plant and equipment or real property acquisitions.

These sub-trust arrangements were typically based on interest only loan arrangements, with the requirement that the principal be repaid at the end of either seven years (i.e., as an Option 1 arrangement) or ten years (i.e., to as an Option 2 arrangement).

The ATO has now formed the view that for entitlements to trust income that come about from 1 July 2022 (effectively from the 2023 income year) that these interest only Option 1 and Option 2 arrangements are no longer sufficient to avoid the potential triggering of a deemed dividend with respect to any unpaid present entitlements.

Broadly speaking, from 1 July 2022, in relation to an unpaid distribution payable to a corporate beneficiary, one way to avoid the unpaid distribution giving rise to a potential deemed dividend is for the unpaid distribution to be replaced with what is referred to as a complying Division 7A loan.

These Division 7A loans are made under S.109N of the Income Tax Assessment Act 1936 ('ITAA 1936').

Ordinarily, such a loan is repaid on a principal and interest basis, over seven years, based on an interest rate provided by the ATO for each year of the loan, with annual minimum loan repayments calculated based on a formula provided by the income tax legislation.

Editor: We are happy to advise whether this recently issued Tax Determination has any implications for the way your family group distributes its income.

Small business tax incentives back on the table

The Albanese Government has confirmed its commitment to implementing two tax incentives aimed at supporting small businesses to train and upskill employees, and improve their digital and tech capacity.

The **Technology Investment Boost** and the **Skills and Training Boost** were announced in the 29 March 2022 Federal Budget but remain unlegislated.

Small businesses with an annual turnover of less than $50 million will be able to claim a 'bonus' 20% deduction for eligible expenditure on:

- external training of employees until 30 June 2024; and
- the uptake of digital technologies until 30 June 2023.

The incentives will be backdated to 29 March 2022.

Editor: These incentives are not yet law. If you have spent, or are considering spending, on training or digital technology, please contact our office for an update.

Rental properties and second-hand depreciating assets

The ATO is reminding taxpayers that have a residential rental property, to take care when making claims for 'second-hand depreciating assets' used in their properties.

In most cases, these are items that existed in the taxpayer's property when they purchased it, or were in their private residence (which they later rented out), such as:

- flooring and window coverings;
- air conditioners, washing machines, alarm systems, spas, pool pumps; and
- items used for both the rental property and the taxpayer's own home.

Since 1 July 2017, taxpayers generally cannot claim the decline in value of second-hand depreciating assets (some limited exceptions do apply).

However, this rule does not apply to a property that was rented out before this date, or if it is newly built or substantially renovated (conditions apply).

If you have a residential rental property, to help us get your claim right, please answer the following:

- When did you purchase the property?
- Was it a new or existing build?
- Did you live in the property before renting it out?
- When did you start renting the property?
- Was the asset already in the rental property when you bought it?
- Is the property used for business purposes?

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.