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Tax planning strategies 2020

As 30 June 2020 is fast approaching, the following tips can be useful in considering year-end tax planning strategies.

Individual tax rates – 2019-20

Resident tax rates – 2019-20

The resident individual tax rates for the 2020 income year remain unchanged from the 2019 year and are as follows (excluding Medicare Levy):

TAXABLE INCOME ($)	TAX PAYABLE ($)
0 – 18,200	Nil
18,201 – 37,000	19% of excess over $18,200
37,001 – 90,000	$3,572 + 32.5% of excess over $37,000
90,001 – 180,000	$20,797 + 37% of excess over $90,000
180,000 +	$54,097 + 45% of excess over $180,000

The Medicare Levy is also imposed at a rate of 2% once taxable income exceeds certain thresholds. Accordingly, the top marginal tax rate for resident individuals will be 47% (including the Medicare levy) for the 2020 income year.

Non-resident tax rates – 2019-20

The non-resident individual tax rates for the 2020 income year remain unchanged from the 2019 year and are as follows:

TAXABLE INCOME ($)	TAX PAYABLE ($)
0 – 90,000	32.5%
90,001 – 180,000	$29,250 + 37% of excess over $90,000
180,000 +	$62,550 + 45% of excess over $180,000

Non-residents are not liable to pay the Medicare Levy.

Low and Middle Income Taxpayers

Low and middle income taxpayers may be entitled to the Low and Middle Income Tax Offset (LMITO) and/or the Low Income Tax Offset (LITO) for the 2019-20 income year.

Low and middle income tax offset (LMITO)

Australian resident individuals (and certain trustees) whose income for the 2019-20 income year does not exceed $126,000 are entitled to the offset.

The amount of the offset will depend on the taxpayer's relevant income level, as set out in the following table:

RELEVANT INCOME	LMITO
$37,000 or less	$255
$37,001 - $48,000	$255, plus 7.5% of the amount of the relevant income exceeding $37,000 (to a maximum benefit of $1,080)
$48,001 - $90,000	$1,080 (maximum)
$90,001 - $126,000	$1,080, less 3% of the amount of relevant income exceeding $90,000

Low income tax offset

Australian resident individuals (and certain trustees) whose income for the 2019-20 income year does not exceed $66,667 are entitled to the offset.

The amount of the offset will depend on the taxpayer's relevant income level, as set out in the following table:

RELEVANT INCOME	LITO
$37,000 or less	$445
$37,001 - $66,667	$445, less 1.5% of the amount of relevant income exceeding $37,000

Home office expenses

Home office expenses may be deductible where you carry on business or employment activities at home. When it comes to the tax treatment of such expenses, it depends whether the expense concerned is:

- a 'running expense', such as heating, electricity, cleaning, decline in value of equipment or furniture, and phone or internet expenses.
- an 'occupancy expense', such as interest on moneys borrowed to acquire the home, rent, insurance and rates.

Home office running expenses

The impact of COVID-19 on working from home has resulted in the need to consider the 2019-20 year in two parts:

- 1 March 2020 to 30 June 2020;
- 1 July 2019 to 29 February 2020.

1 March 2020 to 30 June 2020

For the period starting 1 March 2020 and ending on 30 June 2020 taxpayers, can choose one of three methods to work out their entitlement to a deduction for home office running expenses:

1. The shortcut method (available temporarily for the COVID-19 crisis);
2. The fixed rate method; or
3. The actual cost method.

The ATO has announced that it will accept a temporary simplified method (or ***shortcut method***) of calculating additional home office running expenses for the period starting 1 March 2020 and ending on 30 June 2020, and possibly for longer.

This shortcut method allows employees to claim a standard deduction of 80 cents for each hour they work from home due to COVID-19, and subjects them to a lesser record-keeping requirement.

The short-cut method is available only to employees:

- working from home to fulfil their employment duties and not just carrying out minimal tasks such as occasionally checking emails or taking calls; and
- incurring additional deductible running expenses as a result of working from home.

Employees who choose to use the shortcut method will not need to keep records of their expenses. However, they will need to use timesheets, diary notes or rosters to record the number of hours they have worked from home as a result of COVID-19.

The normal 'non-COVID-19' rules require employees to choose between the normal 'fixed rate' method or 'actual cost' method:

The ***fixed rate method*** (available only to employees with a dedicated work area, such as a home office) involves deducting the total of:

- a rate of 52 cents per work hour for heating, cooling, lighting, cleaning and the decline in value of office furniture,

- the work-related portion of the actual costs of phone and internet expenses, computer consumables, stationery, and
- the work-related portion of the decline in value of a computer, laptop or similar device.

Note that, while the fixed rate method is available only to employees with a dedicated work area, it can be used even if the room is not exclusively set aside for a home office.

The ***actual cost method*** entails deducting the actual work-related portion of all home office running expenses, calculated on a reasonable basis.

In addition to keeping a record of the number of hours they worked from home, employees choosing to use one of these normal methods, rather than the shortcut method, must also keep records of their expenses.

1 July 2019 to 29 February 2020

Employees entitled to a deduction for home office expenses for the period 1 July 2019 to 29 February 2020 can choose between the ***fixed rate method*** and the ***actual cost method*** described above. Note that, for the period between 1 July 2019 and 29 February 2020, employees who did not have a dedicated work area, such as a home office, must use the actual cost method.

COVID-19 note:

Being required to work from home as a result of COVID-19 restrictions means that deductions for home office running expenses may be available to some taxpayers for the first time in 2019-20, or for other taxpayers may be higher than usual.

As such, increased ATO scrutiny on home office deductions is expected, so extra care should be taken when calculating the deductible amount.

Home office occupancy expenses

- A portion of interest, rent and insurance – commonly referred to as ‘occupancy expenses’ - is deductible only if you are carrying on business from home and the area is separate and distinguished from private living areas, or where an employee is not provided with a workplace by their employer, such that they must dedicate part of their home to be their workplace.
- The impact on the main residence exemption for CGT purposes should also be considered.
- If carrying on business from home, deductibility of interest, rent etc. may be determined by the space occupied by the home office, as well as the extent to which the space is used for income producing purposes.
- If an office is provided by the employer, working from a home office as a convenient place to do part of the work will not be sufficient to claim home office occupancy expenses such as interest, rent and insurance.

Car expenses

- If claiming actual expenses, check the log book is current and that log book details are correct.
- Ensure year end odometer readings are taken.
- Ensure all relevant receipts have been kept.

Denial of deductions relating to vacant land

Expenses relating to the holding of vacant land are not deductible for the first time in the 2019-20 income year, even if the land was first acquired before this year.

Expenses relating to the holding of vacant land that will not be deductible for this year include:

- interest incurred on moneys borrowed to acquire the land;
- land tax;
- rates;
- maintenance costs

There are some circumstances in which deductions are not denied (i.e. continue to be available) including the following:

- the taxpayer is a company;
- the land is used in carrying on a business (such as a primary production business); and
- exceptional circumstances exist (such as a natural disaster, a major building fire, or substantial building defects where the structure can no longer be lawfully occupied).

Personal Services Income (PSI)

- If you or an entity you work for (personal services entity) receive income for the reward for personal efforts or skills (e.g. consultants), the PSI rules may limit the deductions you or the personal services entity (PSE) claim, and you may be taxed on the PSI received by the PSE.
- The rules do not apply to a personal services business (PSB) if you or the PSE:
    - Pass the results test (engaged to produce a result); or
    - Do not receive more than 80% or more of PSI from one source and pass one of the PSB tests:

- Unrelated clients test;
- Employment test; or
- Business premises test

- Where more than 80% of the PSI is derived from a single client and you do not pass the results test, you may apply for Tax Office discretion to be classified as a PSB.

COVID-19 stimulus

Cashflow boost

The CashFlow Boost is a payment for small to medium businesses, under which eligible businesses will receive up to $100,000 (but no less than $20,000) between April 2020 and October 2020.

The Coronavirus cashflow boost is a Government assistance payment for ***businesses***. It is not relevant to employees, retirees or the unemployed.

You may be entitled to the Government's Coronavirus cashflow boost if all of the following conditions are met:

- You withheld PAYG amounts from salary and wages (or from one of the other payments on the list subject to withholding, like leave entitlements) paid to employees for January, February, March, April, May, and/or June 2020.
- Your business turnover for the 2018-19 financial year was no more than $50 million.
- You had an ABN on 12 March and you have made at least one sale of goods and services between 1 July 2018 and 12 March 2020.
- As at 12 March 2020 (or a later date as allowed by the Commissioner), you have lodged a BAS since 1 July 2018 or you have lodged an income tax return for 2018-19.

Businesses will get a credit/payment of at least $10,000 on lodgment of their March 2020 BAS and possibly more on lodgment of their April, May and June 2020 BAS (the exact timing and quantum depending on whether they lodge their BAS monthly or quarterly), up to as much as $50,000. The actual quantum credited/received will be equal to the amount of PAYG withholding over that time, subject to the $10,000 minimum and $50,000 cap.

Businesses will also get, over July, August and September 2020 (again, the exact timing being dependent on whether a business lodges their BAS monthly or quarterly) a second round of payments/credits equal to the total amount received over March, April, May and/or June.

The Cashflow Boost Payments are not subject to tax, nor does GST have to be paid on them. It should be noted however that if received by a company, it can represent unfranked profits which are ultimately taxable when paid to shareholders.

Jobkeeper

On 30 March 2020, the Government announced a new 'JobKeeper payment', said to be "designed to help businesses affected by the Coronavirus to cover the costs of their employees' wages, so that more employees can retain their jobs and continue to earn an income".

A payment of $1,500 per employee per fortnight will be made to employers to subsidise their wage bill. In return for receiving that payment, the employer must pay eligible employees at least $1,500 (before tax) per fortnight.

The JobKeeper payment is available to employers (other than the major banks) that can show a reduction in turnover of the following percentage relative to a comparable period from a year ago (of at least one month).

- Businesses with a turnover of less than $1 billion – 30% or more reduction in turnover
- Business with a turnover of $1 billion or more – 50% or more reduction in turnover
- Charities – 15% or more reduction in turnover

COVID-19 note:

Ensure that there is sufficient documentation on file - such as business plans, forecasts, details of relevant Government restrictions and the impact thereof – to support your assertion that there has been a sufficient decline in turnover to qualify for JobKeeper.

Eligible employers will receive payments for each employee who satisfies all of the following conditions (eligible employees):

- they were on the employer's books on 1 March 2020;
- they continue to be engaged by the employer;
- they are an Australian citizen, the holder of a permanent visa, a Protected Special Category Visa Holder, a non-protected Special Category Visa Holder who has been residing continually in Australia for 10 years or more, or a Special Category (Subclass 444) Visa Holder; and
- they were at least 18 years old on 1 March 2020 (16 or 17 year olds are eligible if they are independent or not undertaking full time study).

Payments are available for all eligible full-time and part-time workers. Payments are also available to casual employees who have been with their employer on a regular basis for at least 12 months as at 1 March 2020.

Employees who were employed on 1 March 2020, but have since been stood down, can be re-instated if necessary.

There is no income or assets testing.

Payments will be made monthly in arrears by the ATO. The subsidy started on 30 March 2020, with first payments made in the first week of May.

JobKeeper for owner-operators

Business owners who operate through a company or trust and remunerate themselves by way of drawings through the year and then, at year end, pay dividends or a trust distribution to offset against these drawings, might be entitled to the $1,500 per fortnight JobKeeper payment, albeit on a limited basis.

The fortnightly JobKeeper payment may be available in relation to the following individuals associated with the relevant eligible business, even if they are not strictly employed in that business i.e. they effectively take partnership distributions, trust distributions or dividends 'in lieu of' salary:

- a sole trader;
- one individual partner in a partnership;
- one individual beneficiary of a trust; or
- one director or shareholder in a company

The fortnightly payment can be received by such entities for those individuals along with payments it receives for eligible employees.

Small business entities

Consideration should be given as to whether a taxpayer is eligible to be a small business entity (that is, an entity with an aggregated annual turnover less than the current $10 million threshold).

Benefits of being a small business entity include:

- the simplified depreciation rules, which provide immediate tax deductibility for asset purchases made on or after 12 May 2015 (refer below);
- the simplified trading stock rules, which give businesses the option to avoid an end of year stocktake if the value of the stock has changed by less than $5,000;
- a simplified method of paying PAYG instalments calculated by the ATO, which removes the risk of under or over estimating PAYG instalments and the resulting penalties that may be applied in the case of an understatement;
- the option to account for GST on a cash basis and pay GST instalments as calculated by the ATO;
- immediate deductibility for various start-up costs (e.g. professional fees and government charges);
- a 12-month prepayment rule; and
- the more generous FBT exemption for work-related portable electronic devices (e.g. mobile phones, laptops and tablets) – the FBT car parking exemption for small business already applies to entities with 'annual gross income' of less than $10m.

Trading stock

- Consider an appropriate valuation method - you can choose cost, market selling value or replacement price.
- Identify any obsolete stock – special valuation rule.
- Scrap unwanted stock by 30 June 2020.
- If the taxpayer is a small business entity, stock valuation is not required if the difference between opening and estimated closing value of trading stock for the year is $5,000 or less.

COVID-19 note:

End of year stock takes, choice of valuation method, identification of obsolete stock etc. take on added significance this year for businesses that have suffered a reduction in sales in response to the COVID-19 crisis.

Audit fees

- Audit accruals are not deductible unless the audit contract creates a presently existing liability before 30 June 2020.

Director and employee entitlements

- From 1 January 2020 salary sacrificed superannuation contributions cannot be used to reduce one's super guarantee obligations, regardless of the amount an employee elects to salary sacrifice. This means that the salary sacrificed amount does not count towards an employee's superannuation guarantee obligations.
- Conduct shareholders' meetings before 30 June 2020 to approve directors' fees and bonuses to receive deductions for the 2020 year.
- Ensure arrangements for employee bonuses based on 2020 results are in place before 30 June 2020 to receive the deduction for the 2020 income year.
- Ensure 2020-21 employee salary packages that include fringe benefits and/or additional employer super contributions are in place before 30 June 2020.

Ceasing business or assets sold

- Consider paying a redundancy or long service leave to employees - must be arm's length if paid to associate.
- Defer retirement payment beyond 30 June if employee will be on a lower marginal rate in the following year.
- Consider whether small business concessions, rollovers, or super contributions will still be available.
- Consider whether expenses incurred after a business ceases will still be deductible.

COVID-19 note:

Business taxpayers that have made the decision to cease trading as a result of the COVID-19 crisis should seek professional advice as soon as possible regarding the above issues.

Single Touch Payroll ("STP")

- There is currently an exemption for small employers (those with 19 or fewer employees) from STP for 'closely held payees'.
- In response to the COVID-19 crisis, the ATO has extended the exemption deadline from 1 July 2020 to 1 July 2021.
- A closely held payee is someone who is directly related to the business, company or trust that pays them, such as:
  - family members of a family business
  - directors or shareholders of a company
  - beneficiaries of a trust

Note:

Despite the current exemption for closely held employees, you can choose to report your closely held employees through STP.

Companies

Company tax rate

Since the 2015/16 year, there have been two rates applicable to company taxpayers – 27.5% (28.5% in 2015/16, and to be reduced to 26% for 2020-21) and 30%.

The lower rate is being phased in over a number years. The following table summarises the rates that apply over that phase-in period. Note that, at the time of writing, there are no plans to make any further changes beyond 2021-22.

YEAR	COMPANY TAX RATE		LOW RATE APPLIES IF:	
	LOW RATE	HIGH RATE	AGGREGATED TURNOVER OF COMPANY IS LESS THAN . . .	COMPANY IS . . .
2015-16	28.5%	30%	$2 million	Carrying on a business
2016-17	27.5%	30%	$10 million	Carrying on a business
2017-18	27.5%	30%	$25 million	BREPI ≤ 80%
2018-19	27.5%	30%	$50 million	BREPI ≤ 80%
2019-20	27.5%	30%	$50 million	BREPI ≤ 80%
2020-21	26.0%	30%	$50 million	BREPI ≤ 80%
2021-22	25.0%	30%	$50 million	BREPI ≤ 80%

It can be seen that for the 2020 financial year, companies meeting the following conditions will be taxed at 27.5% for the year:

- aggregated turnover of the company for the year is less than $50 million; and
- Base Rate Entity Passive Income (BREPI) is no more than 80% of the company's assessable income for the year.

All other company taxpayers will be taxed at 30%.

Tax planning opportunity:

Companies need to monitor their income tax rates as these may change from year to year. In particular, where rates are changing across years, companies may seek to time the derivation of income and/or the incurring of deductible expenses to take advantage of the changing rates (subject to prepayment rules and general anti avoidance rules).

Imputation

The introduction of dual company tax rates has resulted in a potential disparity between the rate at which a company is taxed for the 2020 year, and the rate at which it can frank dividends declared in that year.

The rate at which dividends will be franked in 2020 will depend on whether the company's turnover of the previous year (i.e. 2019) is less than the current year's turnover benchmark (i.e. $50 million for 2020) and its BREPI for 2019 was no more than 80% of its assessable income for 2019.

Practically, this means that a company's maximum franking rate for a franked distribution paid in 2019–20 is 27.5% if:

- its aggregated turnover for 2018–19 was less than $50 million (the aggregated turnover threshold for 2019–20); and
- its BREPI for 2018–19 was not more than 80% of its assessable income for 2018–19.

The company's maximum franking rate for a franked distribution paid in 2019–20 is 30% if either or both of the following apply:

- its aggregated turnover for 2018–19 was $50 million or more; and/or
- its BREPI for 2018–19 was more than 80% of its assessable income for 2018–19.

Because company profits may be taxed at different rates from the rate at which dividends are franked, the disparate tax treatment can lead to under-franking of dividends (i.e. if company profits are taxed at 30% but franking is done at only 27.5%) in which case franking credits may become trapped and may not be usable. This may also result in shareholders paying more top-up tax or receiving less refunds of excess franking credits.

Tax planning opportunity:

Seek professional advice about the timing of dividends, so as to avoid the potential detrimental effects of there being a disparity between a company's tax rate and the rate at which it is able to frank dividends – in particular the prospect of dividends becoming trapped. Where the company may move from a 30% franking company in 2020 to a 26% franking company in 2021, there may be advantages in paying franked dividends prior to 30 June 2020 (subject to the position of the shareholders).

- For companies paying less than 100% franked dividends, the benchmark franking percentage rules apply.
- The franking percentage chosen for the first frankable dividend paid in a franking period establishes the benchmark percentage.
- The franking period is usually the income year for private companies and six months for public companies.
- All frankable dividends paid during the franking period must be franked in accordance with the benchmark percentage.
- Companies should determine whether a franking account is in deficit and whether they are liable for Franking Deficit Tax (FDT), payable by 31 July 2020 for year ended 30 June 2020.

- Where the franking deficit exceeds 10% of the franking credits for the company in the year, the company's entitlement to a tax offset for FDT is reduced by 30%.

COVID-19 note:

Companies that receive a refund from varying their PAYG instalments in response to the COVID-19 crisis may experience a franking account deficit as at 30 June 2020.

The ATO has made it clear that it cannot waive or remit such taxpayers' Franking Deficit Tax (FDT) liability but will consider a payment deferral from the usual due date of 31 July 2020 to up to 30 September 2020. It will also consider exercising its discretion to not reduce the offset resulting from the FDT liability by 30%, where the taxpayer's franking account deficit was due to the COVID-19 crisis and to franked dividends paid before 1 March 2020.

- If shares were acquired after 1 July 1997 and are not held at risk for at least 45 full days, the franking offset may not be available (except for individuals whose franking offset is less than $5,000).
- If shares were acquired by a trust after 31 December 1997, both the trustee and the beneficiary have to pass the 45-day holding period rule in order to obtain the benefit of franking credits.
- Trust beneficiaries that have a vested and indefeasible interest in the shares or a fixed interest in the corpus on which the dividends were paid will pass the 45-day holding period rule if the trustee does.
- Beneficiaries of a non-fixed trust (e.g. discretionary trust) will not pass the 45-day rule unless a family trust election is made, or the Commissioner exercises his discretion to deem the trust to be a fixed trust, or the beneficiary is an individual whose franking offset is less than $5,000.
- Companies will need to consider their turnover levels prior to 30 June to determine whether they will suffer a lower franking rate in future tax years.
- Companies that are impacted by a changing rate may seek to pay higher fully franked dividends prior to 30 June to free up excess franking credits.

COVID-19 note:

The negative impact of COVID-19 on the 2019-20 turnover of many taxpayers, as compared to 2018-19, may lead to a higher franking percentage for 2019-20 (30%) than the tax rate payable for the year (27.5%). Similarly, if the same taxpayer experiences a recovery in turnover for the 2020-21 year, they may be subject to a lower franking percentage (26%) than their applicable tax rate for that year (possibly 30%). Note also that the lower tax rate for 2020-21 (for companies with turnover less than $50 million and that pass the BREPI test) will be 26%, thereby increasing the discrepancy between the two rates even more.

For taxpayers in this category (with turnover numbers that may move above and below $50 million in the current environment) careful thought should be given to dividend strategies for this year and next.

Loans from private companies - Division 7A

Private company directors are reminded to ensure they comply with Division 7A to avoid deemed dividends arising where they provide loans or other financial assistance to shareholders and/or associates or allow them to use company property. Consequently:

- ensure you have complying loan agreements in place for all loans; and
- ensure minimum yearly repayment amounts are paid.

These rules apply to shareholders and associates, which includes relatives of shareholders, trusts, companies and partnerships in which the shareholders or their associates are connected with.

The private use of company owned assets for less than market value consideration can also be a deemed dividend under Division 7A.

Tax planning opportunity:

To ensure all future Division 7A loans are covered by a qualifying loan agreement, consider entering into a Division 7A complying facility loan agreement that will be able to cover all future loans to shareholders or their associates. If such a facility loan agreement is already in place, review it regularly to ensure it complies with current law and covers all relevant shareholders and associates.

- Ensure all Division 7A loans made in the 30 June 2020 tax year are either repaid or put under a complying Division 7A loan agreement by the earlier of the due date for lodgement of the company's 2020 tax return and the actual date of lodgement.

Division 7A – COVID-19

The ATO's automatic extension of the due date for lodgement of 2019 company returns under the tax agent lodgement program, from 15 May 2020 to 5 June 2020, effectively provides extra time for Division 7A loans made by private companies in the 2018-19 year to be repaid or put under a complying Division 7A loan agreement. Further extensions granted by the ATO may also provide extra time for Division 7A loans made by private companies in the 2018-19 year to be repaid or put under a complying Division 7A loan agreement.

Division 7A – Proposed Changes

The following proposed changes to the Division 7A rules have been announced to apply from 1 July 2020. As at the date of this newsletter, there has been no formal announcement to defer the commencement date of these changes.

- All loans from 1 July 2020 are to be made for a maximum term of 10 years.
- No formal written loan agreement required (but there must be some written or electronic evidence showing the loan was entered into by the lodgment day being

the due date for lodgment of the company's income tax return. Such evidence must show the parties to the loan; details of the date of execution of the loan; the loan terms including the amount of the loan, the date the loan was drawn down, the requirement to repay the loan, the term of the loan and the interest rate payable).

- A new annual variable benchmark interest rate will apply being the 'Small Business Variable Other Overdraft-Indicator Lending Rate' published by the Reserve Bank of Australia prior to the start of a particular income year.
- Principal and interest loan payments will be required annually (with the loan principal to be repaid in 10 equal annual instalments). Any shortfall in any minimum annual repayment of these amounts will be treated as a deemed dividend.
- All pre-4 December 1997 loans will fall under the proposed new rules at 30 June 2022 and therefore will have to be either repaid in full or placed under a complying 10-year loan arrangement by the lodgment date of the company's income tax return for the year ended 30 June 2022.
- All 7-year loans in place at 30 June 2020 are to come under the new rules for the remaining life of the loan term including the application of the new benchmark interest rate from 1 July 2020.
- All 25-year loans in place at 30 June 2020 will be exempt from the proposed changes until 30 June 2022 other than the requirement to calculate interest based on the new benchmark interest rate. From 1 July 2022 such loans will effectively become subject to all the other requirements of the proposed single loan model for loans with a maximum term of 10 years.
- Unpaid present entitlements (UPEs) arising on or after 1 July 2020 fall within the scope of new loan rules.
- Unpaid present entitlements (UPEs) arising before 1 July 2020 that are already treated in accordance with 7 or 25 loan terms to fall within transitional loan rules.
- UPE's arising on or after 16 December 2009 and on, or before 30 June 2020 that have not already been placed on a complying loan basis must be put on such a compliant loan basis by 30 June 2021. Where this does not occur, the outstanding amount of any UPE will be treated as a deemed dividend.
- The Board of Taxation has also canvassed whether UPEs arising prior to 16 December 2009 should be brought within the scope of Division 7A. Hence, it is unclear whether quarantined pre-16 December 2009 UPE's will be subject to the above foreshadowed complying loan rules, and if so, what transitional arrangements may apply to such UPEs.
- Removing the concept that a deemed dividend arising under Division 7A of the ITAA (1936) will be limited by the distributable surplus of the private company that provided the benefit to the shareholder or associate.
- Providing for a self-correction mechanism to assist taxpayers to promptly rectify breaches of Division 7A.
- Providing safe harbour rules for the use of assets (except motor vehicles) to provide certainty and simplify compliance for taxpayers.
- Various technical amendments to improve the integrity and operation of Division 7A while providing increased certainty for taxpayers.

Directors' Personal Exposure

As a director, you are responsible for making sure the company meets its Pay As You Go Withholding (PAYGW) and Superannuation Guarantee (SGC) obligations.

If your company fails to meet a PAYG withholding or SGC liability in full by the due date, you will become personally liable for director penalties equal to the unpaid amounts.

Warning:

The director's penalty regime has been extended to include the company's outstanding GST liability, including wine equalisation tax and luxury car tax with effect from tax periods starting on or after 1 April 2020.

Unpaid trust distributions

Distributions made by trusts to private companies which remain unpaid by the lodgement day of the main trust's tax return may be deemed to be a loan made by the company to the trust and become subject to Division 7A.

To avoid the unpaid distributions being treated as a deemed dividend under Division 7A, the trustee has three options. For unpaid distributions that arose in the 30 June 2020 income year, the three options are:

1. Put the amount on sub-trust for exclusive benefit of the company by the earlier of the lodgement date or due date for lodgment of the trust's 2020 tax return;
2. Convert the amount to a Division 7A complying loan by the earlier of the lodgment date or the due date for lodgment of the company's 2021 tax return; or
3. Pay the amount to the company by the earlier of the lodgment date or due date for lodgment of the company's 2021 tax return.

In addition, where there are unpaid distributions to companies, and cash has been provided (through loans or payments) by the trust to shareholders of the private company (or their associates), these may also be subject to Division 7A.

Division 7A – COVID-19

The ATO's automatic extension of the due date for lodgment of 2019 trust returns under the tax agent lodgment program to 5 June 2020, effectively provides extra time for trust entitlements created in the 2018–19 income year to be placed on sub-trust.

Trust distributions and resolutions

Most trust deeds for discretionary trusts require trustees to make their distribution determination for the year ended 30 June on or before 30 June. It is essential that trustees make these determinations prior to 30 June or other date as required in the trust deed (notwithstanding the requirements of the trust streaming rules discussed below).

The Tax Office has stated that they expect there to be evidence of the trustees making determinations in accordance with their trust deeds by the date as stated in the trust deed.

We suggest that written evidence of the 2019-20 trustee distribution determination (preferably in the form of a trustee resolution) be prepared by 30 June 2020 (or whatever earlier date is required by the trust deed).

Trust streaming

Under the trust streaming provisions, trustees are able to stream franked dividends and capital gains to specific beneficiaries by making them specifically entitled to these amounts, rather than distributing these amounts as part of the general distribution to beneficiaries.

The trust deed must allow these amounts to be streamed and the trust accounts must also separately account for the streaming of the capital gains and franked dividends to the specific beneficiaries. The trustee(s)' distribution resolution in favour of the specifically entitled beneficiary would generally be sufficient for this purpose.

Where beneficiaries are streamed franked dividends for the year ended 30 June 2020, this must be recorded by 30 June 2020. Where beneficiaries are streamed capital gains, this must be recorded by 31 August 2020 if they are part of the trust capital/corpus. Where capital gains are included in the 'income of the trust' (income under trust law as modified by the trust deed), the trust deed will usually require the trustee(s)' distribution determination to be made by 30 June 2020, or earlier.

Where the definition of income in the trust deed includes capital gains and franked dividends, the determination to stream these amounts must be done prior to making the determination to distribute the balance of the trust income. For example, where the distribution of streamed franked dividends and/or capital gains is in the same resolution as the distribution of the balance of the income of the trust, care should be taken to ensure that the distribution of the streamed franked dividends and capital gains is mentioned before the distribution of the other income of the trust.

Reimbursement agreements

Trustees are also reminded of the application of s 100A of the ITAA 1936, especially where a trust has made a distribution of income to a private company.

Where the Tax Office determines that s 100A applies to an arrangement, the net income that would otherwise have been distributed by the trustee is instead assessed to the trustee at the highest marginal rate.

Section 100A will not apply to ordinary commercial or family dealings.

In a recent publication, the Tax Office indicated the following arrangement, referred to as the washing machine, would attract s 100A:

- The trustee owns all the shares in a private company.
- The company is also a beneficiary of the trust and undertakes no activity but derives a small amount of bank interest on its own account.
- The directors of the private company and the trustee company are the same individuals or related individuals.
- The trustee resolves to make the company presently entitled to some or all of the trust income in Year 1 and distributes that to the company prior to the lodgment of the trust's tax return in Year 2.
- The company includes the distribution in its assessable income for Year 1.
- Division 7A does not apply to the arrangement because the company's entitlement is paid before the lodgment of the income tax return.
- The company pays a fully franked dividend in Year 2 to the trustee. This forms part of the trust's income in Year 2.
- The trustee makes the company presently entitled to all of some of the trust income at the end of Year 2.
- The arrangement is repeated.

The reimbursement agreement results in the distribution benefitting a party other than the beneficiary (it instead benefits the trustee). The reimbursement agreement provides for the payment of income from the trustee to the company on the understanding (implied from the repetition in each income year and their common control) that the company would pay a dividend to the trustee of a corresponding amount (less the tax paid).

The agreement is designed to achieve a reduction in tax that would otherwise be payable had the trustee simply accumulated the income.

This agreement is not an ordinary commercial dealing because the ownership structure and, particularly, the perpetual circulation of funds, serve no commercial purpose.

There are hybrids of this scheme that involve money flowing from the company via interposed entities, ultimately ending up back in the trust. These have also been identified by the Tax Office as possibly giving rise to a s 100A determination.

TFN Trust Reporting

Trustees of resident discretionary trusts, family trusts and other closely held trusts are reminded that they are required to report a new beneficiaries' tax file number (TFN) and certain personal information to the Tax Office. For 30 June 2020, the TFN report of new beneficiaries must generally be made to the Tax Office by 31 July 2020.

If the beneficiary has not provided their TFN to the trustee, the trustee will have to withhold tax from the distribution. The beneficiary will be entitled to claim a credit on the tax when they lodge their income tax return.

The report of the new beneficiaries' TFNs to the Tax Office must be made by no later than the end of the month after the end of the quarter in which the trustee received the TFN.

The trustee only has to report each TFN once. Trustees only have to report the TFN for beneficiaries they have not previously reported to the Tax Office.

Affected beneficiaries include individuals, companies, partnerships and other trusts, except for non-residents and beneficiaries under a legal disability, such as minors (the trustee is generally assessed on distributions to non-residents and beneficiaries under a legal disability).

Tax planning opportunity:

To ensure trustees don't miss the reporting of beneficiaries' TFNs, we suggest the trustee report to the ATO the TFNs of all likely beneficiaries of the trust now, even though they may not be receiving a distribution until a future year.

Temporary depreciation concessions

Eligible taxpayers may be able to access either or both of the following temporary depreciation concessions introduced in response to the COVID-19 crisis:

- Immediate deductibility of the asset's cost
- Accelerated depreciation

Immediate deduction for the cost of depreciating assets

Immediate tax deductibility for depreciating assets costing less than a certain amount, previously available only to Small Business Entities (which for 2020 is defined as those business taxpayers with an aggregated turnover of less than $10 million) has been extended. Changes relevant to the 2020 and 2021 years have been made to both:

- extend eligibility for the write-off to a broader range of taxpayers; and
- increase the maximum amount the relevant asset can be purchased for.

The current thresholds for the 2019, 2020 and 2021 financial years may be summarized as follows:

ASSET FIRST USED OR INSTALLED READY FOR USE	UPPER LIMIT OF ASSET COST	AGGREGATED TURNOVER LESS THAN
Before 29 January 2019	$20,000	$10 million
On or after 29 January 2019 but before 7.30pm AEST on 2 April 2019	$25,000	$10 million
At or after 7.30pm on 2 April 2019 but before 12 March 2020	$30,000	$50 million
On or after 12 March 2020 but before 31 December 2020*	$150,000	$500 million
From 1 January 2021	$1,000	$10 million

** Small business entities (turnover less than $10m) can acquire the asset during the period starting at 7:30 pm on 12 May 2015 and ending on 31 December 2020, but the date on which they first used or installed the asset ready for use determines which asset threshold applies, i.e. $20,000, $25,000, $30,000 or $150,000.*

Medium-sized businesses (turnover between $10m - $50m) can access the increased instant asset write off of $30,000 if they both acquire the asset and first use it or install the asset ready for use during the period starting at 7:30 pm on 2 April 2019 and ending on 30 June 2020. The increased threshold of $150,000 can be accessed if they:

- *acquire the asset between 2 April 2019 and 31 December 2020; and*
- *first use or install the asset ready for use between 12 March 2020 and 31 December 2020.*

Large businesses (turnover between $50m - $500m) can access the instant asset write off of $150,000 if they both acquire the asset and first use it or install the asset ready for use between 12 March 2020 and 31 December 2020.

Tax planning opportunity:

Also note that an outright deduction is available where the balance of a small business pool falls below the instant asset write-off threshold for that year.

This means that the balance of a small business pool which is below $150,000 at 30 June 2020 can be written off in its entirety. The closing pool balance for 2019-20 will then be zero.

COVID-19 note:

To get access to the higher threshold of $150,000, the relevant asset must be first used, or installed ready for use, no later than 31 December 2020. Take care to make appropriate allowances for delays in delivery from suppliers arising from COVID-19 related interruptions to domestic and international supply chains.

Tax planning caution:

Availability of an immediate deduction up to a cost of $150,000 does not change the fact that the cost of a car for depreciation purposes is capped at the car limit for the relevant year ($57,581 for 2019-20).

It follows that an immediate deduction for the purchase of a car is limited to the business portion of the car limit ($57,581 for 2019–20), notwithstanding the temporary increase in the instant asset write-off threshold to $150,000.

Accelerated depreciation

Eligible taxpayers can claim a greater than 'normal' depreciation deduction in the income year that the asset is first used or installed ready for use for a taxable purpose. The remainder of the asset's cost will be deductible in subsequent years in accordance with the normal depreciation rules.

Accelerated depreciation is available for new (not second-hand) depreciating assets first held by the taxpayer on or after 12 March 2020, and first used or installed ready for use for a taxable purpose on or after 12 March 2020 but no later than 30 June 2021. The depreciating asset must not be an asset to which an entity has applied the instant asset write-off rules or depreciation deductions.

The way in which the temporary accelerated depreciation rules apply depend on whether the taxpayer is a small business entity for the year (a business taxpayer with aggregated turnover less than $10 million) or some other taxpayer with aggregated turnover of less than $500 million:

- Small business entity taxpayers will add eligible assets to their general small business pool but, rather than deducting 15 percent of the business portion of the asset's cost in the year it is added to the pool, a deduction of 57.5 percent is available.
- Other taxpayers with aggregated turnover of less than $500 million can deduct, in the income year the asset is first used or installed ready for use, 50 percent of the cost of the asset plus the 'normal' effective life deduction calculated on the remaining 50 percent of the cost.

Depreciation - Ongoing

- Scrap all obsolete items by 30 June 2020.
- Consider reassessing the effective life if the asset has excessive use.
- Balancing adjustment on disposal – excess assessable or deficit deductible (different rules apply if the small business simplified depreciation pool is utilised).
- Consider delaying disposal of items for a profit until after 30 June and bringing forward disposal of items for a loss to before 1 July.
- Cars acquired after 1 July 2002 have an eight-year effective life.
- If you cannot, or have chosen not to, use the simplified depreciation rules, you may opt to allocate assets costing less than $1,000 to a low value pool:
    - Depreciated at diminishing rate value of 37.5%;
    - First year rate 18.75% diminishing value; and
    - New assets costing less than $1,000 must go into the low value pool.

Depreciation for computer software

- If you cannot, or have chosen not to, use the simplified depreciation rules, you can depreciate the value of software using the prime cost method. In-house software you started to hold on or after 1 July 2015 is taken to have a five-year effective life.

Immediate deduction – non-business assets

- Immediate deduction for items less than $300 (non-business taxpayers) for:
    - Income producing assets used predominantly for non-business, e.g. tools of trade or briefcase, or small items of furniture in rental property;
    - Not part of set of assets costing more than $300; and
    - Not substantially identical to other assets which in total cost more than $300.

Depreciation for Rental properties

From 1 July 2017, the rules for deductions for decline in value of certain second-hand depreciating assets in your residential rental property have changed. If you use these assets to produce rental income from your residential rental property, you cannot claim a deduction for their decline in value unless you are using the property in carrying on a business (including a business of letting rental properties), or you are an excluded entity.

This change generally applies to the depreciating assets that you:

- entered into a contract to acquire, or otherwise acquired, from 7.30 pm on 9 May 2017, or
- used, or had installed ready for use, for any private purpose in 2016–17 or earlier, for which you were not entitled to a deduction for a decline in value in 2016–17 (for example, depreciating assets in a property that was your home in 2016–17 that you turned into your residential rental property in 2017–18).

There are no changes to the rules about deductions for decline in value of new depreciating assets in your residential rental property.

Superannuation - New this year

Pension – Minimum annual payment amounts

In response to the COVID-19 crisis, the minimum annual payment amounts for account-based pensions have been reduced by 50 percent for the 2019-20 and 2020-21 income years as follows:

AGE	STANDARD DRAW-DOWN RATES	DRAW-DOWN RATES FOR 2019-20 AND 2020-21
Under 65	4%	2%
65-74	5%	2.5%
75-79	6%	3%
80-84	7%	3.5%
85-89	9%	4.5%
90-94	11%	5.5%
95 and over	14%	7%

Please note that the reduced drawdown amounts apply from 24 March 2020 and there are no special rules to allow pensioners to repay amounts paid in excess of the revised lower minimums to their fund without the returned amount being counted as a contribution (subject, of course, to the regular contribution rules).

For account-based pensions:

- multiply the relevant factor in the above table by the 1 July 2019 account balance
- if a pension commenced after 1 July 2019 but before 1 June 2020, pro-rata the minimum payment by the number of days in the financial year that includes and follows that pension commencement day
- if a pension commenced during 1 June 2020 to 30 June 2020, no minimum pension is required.

For transition to retirement ("TTR") pensions, the minimum annual payment amounts also apply but note that there is a maximum annual payment limit of 10% for TTR pensions.

Early release of superannuation

Certain individuals impacted by the COVID-19 crisis are able to access, tax free, an amount of their superannuation earlier than they would normally be able to.

Eligible individuals can access up to $10,000 before 1 July 2020, and an additional $10,000 between 1 July 2020 and 24 September 2020. The following individuals are eligible for this early access to superannuation:

- the unemployed;
- those in receipt of certain Government assistance, being JobSeeker payments, youth allowance for jobseekers, parenting payment, special benefit or farm household allowance;
- those who have been made redundant, or have had their working hours reduced by 20% or more, since 1 January 2020; and
- sole traders whose business has either been suspended or have suffered a reduction in turnover of at least 20% since 1 January 2020.

Eligible temporary residents can also get early access to up to $10,000 of their superannuation until 30 June 2020.

Superannuation Guarantee amnesty

Employers have until 7 September 2020 to disclose and pay unpaid SGC (including the nominal interest component) for quarters starting on or after 1 July 1992 and ending on or before 31 March 2018 without incurring the administration component ($20 per employee per quarter) or Part 7 penalty (up to 200% of the SGC). Importantly, payments of SGC made before 7 September 2020 will be deductible.

Affected employers should apply for the amnesty by 7 September 2020. Employers who fail to meet this deadline will incur the $20 per employee per quarter administration component and a Part 7 penalty of at least 100% of the SGC (up to a maximum of 200%). In addition, any payments of SGC and contributions used to offset SGC, post 7 September 2020, will not be tax deductible.

Employers who applied, in anticipation of the amnesty, before 6 March 2020 (the date the amnesty was announced) do not need to re-apply.

Superannuation guarantee amnesty key dates

DESCRIPTION	DATES
Quarters that qualify	1 July 1992 to 31 March 2018
Quarters that don't qualify	Quarter commencing 1 April 2018 onward
Amnesty period	24 May 2018 to 7 September 2020*
No need to apply or lodge again if already notified us of unpaid super	24 May 2018 to 6 March 2020**
Need to apply for the amnesty on the SG amnesty form to be considered for amnesty	Date of royal assent, 6 March 2020 to 7 September 2020*
Payments of SGC eligible for the tax deduction	24 May 2018 to 7 September 2020*
Payments of SGC not eligible for tax deduction	Before 24 May 2018 and after the end of the amnesty period 7 September 2020*
Minimum Part 7 penalty of 100%	From the day after the end of the amnesty period 7 September 2020*

** Six months after the day the Amnesty received royal assent, however as the end date falls on a weekend, employers will have until 11:59PM on 7 September to disclose, lodge and pay under the amnesty.*

*** The day before date of royal assent*

Superannuation - Ongoing

Unused concessional contribution cap catch up

From 1 July 2018, individuals are able to make 'carry-forward' concessional super contributions if they have a Total Superannuation Balance (TSB) of less than $500,000 at 30 June of the previous Financial Year.

Only unused amounts accrued from 1 July 2018 (and not earlier) will be able to be carried forward on a 5-year rolling basis. This means that the first year in which one can access unused concessional contributions is the 2019-20 Financial Year. Amounts carried forward that have not been used after five years will expire.

Voluntary superannuation contributions – Work test exemption for members aged 65 to 74

From 1 July 2019, a superannuation fund may accept voluntary contributions made in respect of a member aged 65 to 74 years where the member does not satisfy the work test in the contribution year, provided the member satisfied the work test in the previous financial year.

The exemption will be available only in relation to one financial year and only for members with a total superannuation balance below $300,000 on 30 June of the previous financial year.

In terms of the amount of money that could be contributed, the existing concessional contribution cap of $25,000 and non-concessional contribution cap of $100,000 will continue to apply.

Deductible contributions

Tax deductions for super contributions will be available in the year ended 30 June 2020 only if the contributions are received by the super fund by 30 June 2020.

Tax planning opportunity:

Although superannuation guarantee contributions in respect of the June 2020 quarter do not have to be paid until 28 July 2020, a tax deduction for such contributions will be available for the year ended 30 June 2020 only if the contributions are received by the super fund by 30 June 2020.

Please note that with respect to member concessional contributions, individuals are required to notify the fund if they intend to claim a deduction for their personal contributions. If the individual is aged 65 or over, they must also satisfy the "work test" (that is, work for at least 40 hours over a period not exceeding 30 consecutive days) during the income year for the contribution to be capable of being accepted by the super fund.

Tax planning opportunity:

To maximise utilisation of the concessional contribution cap, consideration should be given as to whether member concessional contributions should be made in addition to any employer contributions received by a superannuation fund during the financial year. Professional financial advice should be sought in this regard.

Payment summaries – salary sacrifice

On PAYG payment summaries, employers are required to disclose "reportable employer superannuation contributions". These are contributions in excess of the amount required under SG legislation (currently 9.5% of ordinary times earnings) or industrial award or law (if applicable) where the employee influenced the additional contribution (e.g. salary sacrifice).

Note that for employers using single touch payroll (STP), there is no longer a requirement for the employer to issue a payment summary for employees reported through STP. These employees will instead receive an income statement accessible through ATO online services via their myGov account.

Contribution caps

The table below outlines the caps on contributions for the 2020 financial year and the treatment of contributions in excess of the relevant cap.

	CONCESSIONAL CONTRIBUTIONS CAP	NON-CONCESSIONAL CONTRIBUTIONS CAP
2019/20 income year	$25,000 for all individuals, regardless of age (subject to the 'work' test for those aged 65 or over)	The annual non-concessional contributions cap is $100,000 per year, provided the individual's total super balance is less than $1.6 million as at 30 June of the previous financial year (subject to the 'work' test for those aged 65 or over). Individuals aged less than 65 and who are using the 'bring forward' rule have different caps based on their total superannuation balance as at 30 June of the prior financial year. Where the individual's total superannuation balance as at 30 June of the prior financial year was: Less than $1.4m: Cap is $300,000 $1.4m to less than $1.5m: Cap is $200,000 $1.5m to less than $1.6m: Cap is $100,000 Should you require further information, please contact us.

Tax on amounts over the cap	Excess concessional contributions are included in the individual's assessable income and taxed at their marginal tax rate (with a non-refundable tax offset equal to 15% of the tax paid by the fund). An excess concessional contributions charge is also payable. The individual can withdraw up to 85% of their excess concessional contributions from their superannuation fund to help pay their additional tax.	Individuals who exceed their non-concessional contributions cap can apply to have these excess non-concessional contributions refunded rather than pay the excess non concessional contributions tax of 47%. If an election is made, 85% of the associated earnings amount of that refunded non-concessional contribution is included in their income tax return and taxed at their marginal tax rate. A non-refundable tax offset of 15% of the associated earnings amount included in assessable income is provided.

Tax planning opportunity:

Whilst consideration of contributions to superannuation funds is an essential part of the tax planning process, careful consideration should be given towards the caps imposed on these contributions. In addition, care should be taken to ensure that contributions are made (and received by the fund) by 30 June to ensure that they are treated as relating to the current year. As always, a qualified financial adviser should be consulted for bespoke advice with respect to contributions being made to a superannuation fund.

Division 293 – Additional tax for high income earners

Division 293 tax is an additional tax on super contributions which reduces the tax concession for individuals whose combined income and contributions are greater than the Division 293 threshold.

From 1 July 2017 the Division 293 threshold is $250,000.

Division 293 tax is charged at 15% of an individual's taxable contributions.

Some of the following super fund issues require advice from a qualified financial adviser:

- Ensure the minimum pension payments have been made for those in pension phase.
- Before making any contributions prior to year-end, ensure you are aware of your contribution caps.
- Make sure you take into account contributions already made and ensure contributions made for the year do not exceed the concessional and non-concessional contribution limits.
- Review salary sacrifice arrangements, especially if you have more than one employer, to ensure you do not breach your concessional cap in total
- Ensure that contributions made near the end of the year are actually received by the fund by 30 June to ensure deductibility.
- Employers need to ensure they make super contributions for all eligible employees, which includes certain independent contractors treated as employees for superannuation guarantee purposes.

Foreign residents and the main resident exemption

Individuals who are foreign residents at the time they dispose of their Australian main residence can get access to the CGT main residence exemption only in certain circumstances.

In particular, non-resident taxpayers cannot apply the CGT main residence exemption to the sale of their main residence unless:

- the house was acquired prior to 7:30pm (AEST) on 9 May 2017 and is disposed of no later than 30 June 2020; or
- the taxpayer has been a non-resident for a continuous period of at least six years and, during that time:
    - the taxpayer, or their spouse or child under 18, had a terminal medical condition;
    - the taxpayer's spouse, or child under 18, died; or
    - the house is being sold as a result of divorce or other family breakdown.

Tax planning opportunity:

Non-resident taxpayers have until 30 June this year to dispose of a home acquired prior to prior to 7:30pm (AEST) on 9 May 2017 in order access the main residence exemption. Non-residents whose homes are disposed of after 30 June 2020, or have acquired a home after 7:30pm (AEST) on 9 May 2017 regardless of their date of sale, can access the main residence exemption only if the life events test is satisfied.

CGT - Generally

- Where CGT assets will be realised for a gain, consider delaying sale until after 30 June unless you have losses that may be lost because of the company or trust loss rules.
- Caution is required if you crystallise capital losses to offset against capital gains just before 30 June 2020 as this may result in the loss being denied if the taxpayer does not lose effective control of the loss assets or they are replaced with substantially identical assets (wash sales).
- Timing of disposal under a contract for CGT purposes is generally the date of entering into the contract.
- If assets held for less than 12 months and held by individuals, trusts or super funds, consider delaying sale until 12 months has passed to take advantage of CGT discount if eligible.
- Recoup capital losses against non-discountable and indexed capital gains before discountable gains.

Timing of Income & Expenses

Timing of Income & Expenses

- Consider whether the amount is income or capital.
- What is the appropriate method of income recognition: cash or accruals.
- Consider specific rules to determine when income is derived.
- Consider deferring income until after 30 June 2020.
- Alternatively, if you are in a tax loss position, consider whether you accelerate income receipt prior to 30 June to recoup losses that may not be available in future years.

Income received in advance

- Income received in advance may not be derived (and taxed) until the services are provided.
- Income received in advance is generally credited to an unearned income account.
- Income received in advance must be released to profit when services are provided, or if services are not provided, when it is determined the services will not be provided and no refund is claimed by a customer.

Timing of expenses

- Expenses are generally deductible in the 2020 income year if incurred by 30 June 2020. This requires a presently existing liability.
- Provisions are generally not deductible.
- Some accruals are not deductible.
- There are specific rules that determine when some deductions are incurred (in particular, see prepayment rules below).
- Interest paid after a business ceases may be deductible.

Repairs

- Incur repairs on or before 30 June 2020 to obtain the deduction in the 2020 income year, but they must not be:
  - initial repairs;
  - substantial replacement of an asset; or
  - an improvement to the asset.

Donations

- Donations to an endorsed deductible gift recipient (DGR) may be deductible if made prior to 30 June 2020.
- Donations are not deductible if a benefit is received by the donor, unless the contribution was made in respect of an eligible fundraising event for a DGR and:
  - the contribution was more than $150; and
  - the GST inclusive value of benefits received did not exceed the lesser of 20% of the contribution and $150.
- The deduction will be reduced by the value of any benefits received at the event – example:

  Mel pays $420 to attend a charity dinner. The value of the dinner provided was $80. Her deduction is worked out by taking the cost of the ticket and subtracting the value of the dinner: $420 – $80 = $340. It is an allowable deduction because the value of the benefit ($80) is less than $150 and not more than 20% of her contribution (which would be 20% of $420 = $84).

- An election may be made to spread the tax deduction for a gift of money of $2 or more over a period of up to five income years. The election must:
  - be made before lodging the income tax return for the year in which the gift was made;
  - start in the year in which the gift was made and continue for up to four of the years immediately following;
  - contain the percentage to be claimed in each year. The percentage for each year does not need to be the same, but the total percentage over the years cannot exceed 100%.

Bad debts

- Review bad debts before 30 June 2020
- Physically write-off bad debts before year end.
- Bad debts may not be deductible if there has been a change in ownership or control of a company or trust (unless the company passes the similar business test).

Debt forgiveness

- Where a debt is released prior to 30 June, ensure there are no adverse consequences from the application of the commercial debt forgiveness rules.
- These rules operate where a debt is released and interest on the debt is deductible, or if the debt is interest free, interest would have been deductible if interest was charged.
- The beneficiary of the release may forfeit tax losses, future deductible amounts and CGT cost bases.
- In certain circumstances, there may be advantages in deferring the forgiveness until the following tax year. Where you are considering releasing debts, you should consider the optimal timing of the release.

COVID-19 note:

The COVID-19 crisis has likely led to an increase in debt release for many taxpayers, so take care to ensure that the tax consequences, both positive and negative, have been properly accounted for.

Prepayments

Prepayments

- If expenses are not subject to the prepayment rules, consider prepaying deductible expenditure by 30 June 2020.
- The prepayment rules spread a pro-rated deduction over more than one year, where the expenditure provides benefits after the end of the current income year.
- The prepayment rules do not apply to excluded expenditure, which includes:
  - salary;
  - amounts required to be paid by law or a court; and
  - expenditure under $1,000.

Losses

- Check to ensure companies and trusts seeking to claim a deduction for current year or prior year losses satisfy the company loss and trust loss rules by 30 June.
- Consideration may be given to the new "similar business test" which applies to companies for income years starting on or after 1 July 2015.

Non-commercial losses

- Losses from businesses carried on by individuals (or partnerships which have individuals as partners) are quarantined and deductible only against income from that business, or a related business unless the tests below are met.
- For individuals with adjusted taxable income less than $250,000, at least one of these tests must be met:
  - Assessable income from the business of $20,000 or more;
  - Profit from the business in three out of the five previous years, including the current year;
  - Real property of $500,000 or more, or other assets of $100,000 or more used in the business; or
  - The Commissioner exercises his discretion.
- Individuals in primary production or professional arts businesses do not need to meet any of the above tests to claim their non-commercial loss if their income from other sources is less than $40,000.
- For individuals with adjusted taxable income in excess of $250,000, the only avenue open to them is the Commissioner's discretion (they will have losses quarantined unless they can satisfy the Commissioner the loss was the result of unusual circumstances beyond the taxpayer's control, or because of the nature of the business).

Let's Talk

We hope that the issues raised above assist you in your tax planning preparation for this 30 June.

Should you have any further queries or wish to organise a meeting to work through any outstanding tax planning issues, please feel free to contact us at any time on **+ 61 3 9527 5041.**

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