

Tax Essentials

Federal Budget Update 2021-22

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THE NEWSLETTER

Tax Planning Opportunities for Everyday Business

MICHAEL'S CORNER

Article No.11

End of the Financial Year - HR Impact

EXTRA EDITION – YEAR END TAX PLANNING TIPS

Clarifying the Process of Year End Tax Planning

SPECIAL BONUS ISSUE

2021-22 Federal Budget Update

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Note, we emphasise that at bO2 we always aim to be apolitical while paying due respect to the Government of the day and its regulatory bodies. It is acknowledged that political ideology underpins economic policy when dealing with the collection and allocation of government revenue.

While journalists and politicians' comment on government spending, taxation deficits and debt, we aim to objectively outline the changes that impact directly on our members.

As usual we confine our analysis to taxation measures, government incentives and tax planning opportunities.

As such kindly be aware... these are only proposed changes.

KEY CHANGES and more...

- Underlying cash deficit forecast to reach \$106.6 billion in 2021-22
- The low- and middle-income tax offset to be extended to 2021-22
- Individual tax residency rules reformed to a 'bright line' 183-day test
- A new patent box regime introduced
- Temporary Full Expensing extended to 30 June 2023
- Loss Carry Back extended for losses in 2022-23 year
- Childcare made more affordable to reduce barriers to work
- Women's Statement returns; targets safety and economic security
- Record investment in health and essential services
- Infrastructure focus on productivity, national freight & supply chains

The Newsletter

TAX PLANNING OPPORTUNITIES FOR EVERYDAY BUSINESS

HOW TO CLAIM TEMPORARY FULL EXPENSING AND LOSS CARRY BACK THIS TAX TIME

Temporary full expensing and loss carry back are two JobMaker Plan temporary measures you may be eligible to claim for your business in your 2020-21 tax return.

To claim, or opt-out of, temporary full expensing or claim loss carry back you will need to complete additional labels in your tax return.

Temporary Full Expensing

You will need to include:

- whether you are choosing to opt-out of temporary full expensing for some, or all your eligible assets
- the number of assets you are claiming or opting out for
- the value of the assets (if applicable)
- the total amount of your temporary full expensing deduction
- whether you are using the alternative income test (corporate entities)
- information about your aggregated turnover.

Loss Carry Back

Eligible corporate entities (companies, corporate limited partnership, or public trading trust) will need to provide the information to make their choice to carry back losses, confirm eligibility, and calculate the refundable tax offset being claimed.

This includes information such as:

- your opening and closing franking account balance
- your aggregated turnover for each loss year
- the amounts of your tax losses that you are carrying back.

You can start preparing early by reviewing:

- the information you will need to determine your aggregated turnover
- your franking account.

The ATO website has information about how to check your eligibility and complete your claims.

For further information on the Instant Asset Write-Off, please refer to our analysis of the Federal Budget.

TAXPAYER DENIED A TAX DEDUCTION FOR SELF EDUCATION EXPENSES

Khan and Commissioner of Taxation [2021]

In this Administrative Appeals Tribunal case (AAT) the taxpayer undertook training courses in the view of obtaining new employment with a new employer.

After being advised about his employment termination as an aircraft maintenance technician, the taxpayer enrolled in several training courses related to aircraft maintenance. The taxpayer claimed the expenses as tax-deductible self-education expenses, but the commissioner denied the deduction.

The ATO held that, when the training courses were undertaken, the taxpayer's employment was terminating and there was no prospect of continuing his employment with his employer. It was held that the taxpayer had incurred these expenses to obtain new employment. This means the expenses were not connected with his assessable income derived from his existing employment. As there could be no basis that his employment would benefit from this training, the self-education expenses were not tax-deductible.

SAPTO AND MEDICARE LEVY CONCESSION DISALLOWED

Dodson and Commissioner of Taxation [2021] AATA 484

In this Administrative Appeals Tribunal (AAT) case it has held that a taxpayer was ineligible for the Senior and Pension Tax Offset (SAPTO).

The taxpayer received an Australian government pension that was a tax-exempt carer payment for the care she provided for her adult son, was under the age pension age, and did not receive a pension pursuant to the Veterans' Entitlements Act 1986 (Cth). The AAT found that the taxpayer was ineligible for the SAPTO as she did not satisfy the requirement for her assessable income to include a social security pension as required under section 160AAAA(2) of the Income Tax Assessment Act

19636 (Cth). The carer payment she received was a tax-exempt government payment. As the taxpayer was not entitled to the SAPTO, she was also not entitled to the associated Medicare levy concession.

TAXPAYER'S NET CAPITAL GAIN INCLUDED PROCEEDS REMITTED TO ANOTHER PARTY

ZBFF v FCT [2021] AATA 275

A taxpayer includes a net capital gain in assessable income. The question in this Administrative Appeals Tribunal case was whether an agreement to remit an amount from sale proceeds could reduce the amount of a net capital gain.

The AAT held that a taxpayer's capital gain on the sale of a property was not reduced by remitting the sale proceeds to another party under an agreement.

In this case, a discretionary trust of which the taxpayer was a beneficiary purchased a property from a friend of the taxpayer, "Mr Green", for \$1.4 million. The sale included an agreement to, later either to sell the property back to Mr Green or on-sell the property at the direction of Mr Green. In the event of a sale, the trust would pay the net proceeds to Mr Green.

In 2016 the trust sold the property for \$2.45 million with the net proceeds being remitted to Mr Green as per the agreement.

The taxpayer said that no capital gain would arise from the sale. The payment to Mr Green would have the effect of either increasing the property's cost base or reducing the capital proceeds. The Commissioner disagreed and increased the net capital gain by the amount of the remittal.

The Commissioner's decision was affirmed by the AAT holding the existence of the agreement did not affect the tax treatment of the sale proceeds. The capital proceeds were the whole amount under the contract for sale irrespective of the agreement between the taxpayer and Mr Green.

The taxpayer's alternative argument that the payment of the proceeds to Mr Green increased the cost base was also rejected. The AAT determined the payment to Mr Green was not fifth element expenditure to "preserve or defend your ownership of, or rights to" the property as there was no interest in the property that Mr Green may plausibly have. Moreover, the payment of proceeds would not have contributed to the first element of the cost base as it was never money that the taxpayer was required to pay to Mr Green.

TRIO PENALISED OVER \$9.4 MILLION FOR THEIR ROLES IN TAX EXPLOITATION SCHEME

The ATO is dedicated to identifying and disrupting arrangements that exploit the tax system.

One investigation, which the Promoters Program took to the Federal Court, uncovered a tax exploitation scheme promoted by a solicitor, financial planner, and accountant.

Investigations by the ATO found Dr Bruce Rowntree, Mr Rinaldo Manietta, and Mr Peter Donkin exploited their positions as advisers to promote a scheme in which they marketed Emission Reduction Purchase Agreements to clients on the wrongful basis of claiming a full deduction on credits that did not exist. Roughly 200 individuals and businesses used this scheme.

The trio charged their clients a 15% non-refundable deposit as a fee. In return, they promised an immediate reduction to their clients' taxable income and a consequential tax saving that far exceeded their initial deposit.

The promoters have now been ordered to pay over \$9.4 million. The solicitor, who was central to the creation, operation, and marketing of the schemes, has been ordered to pay \$7.75 million, while the financial planner has been penalised \$1.455 million and the accountant (who has appealed the decision), ordered to pay \$210,000.

According to the ATO, the penalties handed down reflect the seriousness of the conduct and the scale of the scheme. The behaviour of the promoters, who received significant financial benefits for their actions, showed little regard for their clients who trusted their advice.

The bottom line: if it's too good to be true then look out!

FURTHER GUIDANCE ON PSI AND PSB RULES

On 9/4/2021, the ATO released a draft ruling, TR 2021/D2, that consolidates and updates earlier guidance material on the operation of the personal service income and personal service business rules (TR 2001/7 and TR 2001/8). PCG 2021/D2 also contains useful guidance on this subject.

TR 2021/D2 reflects the various court and tribunal decisions that have shed light on these provisions over the last 20 years and contains 40 worked examples.

Those subject to the personal service income (PSI) and personal services business (PSB) include lawyers, accountants, medical practitioners, architects, engineers, business consultants, and IT professionals. With the ardent emergence of the gig economy, we expect the number of businesses affected by these rules to increase. Please refer to pages 106-108 of our annual publication.

HOMEBUILDER EXTENDED TO SUPPORT MORE JOBS

The Federal Government has extended the construction commencement requirement for the successful HomeBuilder program from six months to 18 months for all existing applicants, bringing the total level of expected Government support for the construction sector under the program to \$2.5 billion.

More than 121,000 Australians have applied for the grant which is expected to support around \$30 billion of residential construction projects.

The HomeBuilder program was specifically designed to protect tradies' jobs and catalyse economic activity in the construction industry, particularly residential construction, in response to the downturn caused by the COVID-19 pandemic.

The Government's decision to provide existing applicants with an additional 12 months to commence construction responds to unanticipated delays in the construction industry caused by COVID-19 related supply constraints including delays in global supply chains and recent natural disasters.

The extension will only apply to existing applicants and provide an additional 12 months to commence construction from the date that the building contract was signed. All applicants who signed contracts during the HomeBuilder eligibility period between 4 June 2020 and 31 March 2021 will have this extension applied to them.

PROPOSED FRINGE BENEFITS TAX EXEMPTION – RETRAINING AND RESKILLING

Last year, the government announced it will introduce an FBT exemption for employer-

provided retraining and reskilling benefits provided to redundant (or soon to be redundant) employees where the benefits may not be related to their current employment.

It is proposed that this exemption will not apply for retraining acquired by way of a salary packaging arrangement. It will also not be available for Commonwealth supported places at universities, which already receive a benefit. It will not extend to repayments towards Commonwealth student loans.

If enacted this measure is intended to apply from the announcement (that is, from Friday, 2 October 2020). The government released exposure draft legislation and explanatory materials on 16 April 2021, with responses accepted until 29 April 2021. You lodge your FBT return applying the current legislation and amend, if necessary, when the announced changes become law.

FAMILY ASSISTANCE PAYMENTS

If you receive the Child Care Subsidy and Family Tax Benefit payments from Services Australia, you and your partner must lodge their 2019–20 Individual tax returns by 30 June 2021. Lodgment deferrals with the ATO do not alter this requirement.

If you were entitled to Family Tax Benefit but did not receive any payments in the 2019–20 financial year, you will also need to lodge a lump sum claim with Services Australia by 30 June 2021.

Services Australia needs your income details to balance payments for Child Care Subsidy and Family Tax Benefit.

If tax return lodgement is not made by 30 June 2021:

- Those receiving Child Care Subsidy may:
 - lose their ongoing entitlement
 - receive a debt from Services Australia and have to repay the amount received in the 2019–20 financial year.
- Those receiving Family Tax Benefit may:
 - miss out on additional payments
 - receive a debt from Services Australia and have to repay the amount received for the 2019–20 financial year
 - have their fortnightly payments stopped.

If applicable, you can notify the ATO if lodgement is not required. The ATO can then confirm with Services Australia that you are not required to lodge. You can also do this using the Centrelink online service or Express Plus mobile app.

Services Australia can assist those who have special circumstances preventing them or their partner from lodging before the deadline.

The takeout is that it is necessary to move quickly to ensure your entitlement to these benefits.

HOME OFFICE EXPENSES

For many of us, this will be the second tax year that will involve larger tax deductions for home office expenses due to COVID-19. The ATO has advised that the temporary shortcut method is again available to those claiming working from home deductions this year.

The temporary shortcut method was created at the height of the pandemic last year to respond to the sudden influx of makeshift home workspaces.

While many have shifted back to the office, many of us have opted to continue working from home at least one day a week.

The working from home shortcut method allows claims at the all-inclusive rate of 80 cents per hour, rather than needing to do complex calculations for specific items.

According to the ATO:

- The shortcut method is straightforward; just multiply the hours worked at home by 80 cents.
- The only proof you need is a record of the number of hours you have worked from home, such as a timesheet.
- The temporary shortcut method can be claimed by multiple people living under the same roof and, unlike existing methods, does not require a dedicated work area.
- The shortcut is all-inclusive. You cannot claim the shortcut and then claim for individual expenses such as telephone and internet costs and the decline in value of new office furniture or a laptop.
- Taxpayers can still claim under the existing arrangements if they choose.

For those who chose an existing method, the ATO encourages taxpayers to do their research and keep good records. Keeping track of each individual expense and calculating the work-related use of each one can be fiddly so be organised. If in doubt, seek guidance.

Top 4 no-go expenses

If you chose to claim your working from home expenses through the fixed-rate or actual cost methods, remember you still cannot claim:

- Personal expenses like coffee, tea, and toilet paper. While they might normally be supplied by your employer, they still are not directly related to earning your income.
- Expenses related to your child's education, such as online learning courses or laptops.
- Large expenses up-front. Any asset that costs over \$300 (either in total or per item), such as a computer, cannot be claimed immediately. Instead, these claims should be spread out over a number of years.
- Employees generally cannot claim occupancy expenses such as rent, mortgage interest, property insurance, land taxes, and rates. Working from home does not mean your home is a place of business for tax purposes. If you claim occupancy expenses, you may have to pay capital gains tax when you sell your home, even if it is your main residence.

Three different methods for 2020-21

You can choose one of three ways to calculate your additional running expenses for this tax time:

- Claim a rate of 80 cents per work hour at home for all your working from home expenses.
- Claim a rate of 52 cents per work hour at home for the heating, cooling, lighting, and cleaning of your dedicated work area and the decline in value of office furniture and furnishings. Then calculate the work-related portion of your telephone and internet expenses, computer consumables, stationery, and the decline in value of a computer, laptop, or similar device.
- Claim the actual work-related portion of all your running expenses, which needs to be calculated on a reasonable basis.

Remember, to claim any work-related expense, you must have spent the money yourself and not been reimbursed, the expense must be directly related to earning income (not a private expense), and you must have kept any necessary records (a receipt is best).