

Tax Essentials

Tax Effective Shares & Property Investment

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THE NEWSLETTER

Recent Tax Developments

MICHAEL'S CORNER

Covid-19 Vaccines and The Workplace

Article No. 013

SPECIAL BONUS ISSUE

Tax Effective Shares & Property Investment



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WHAT'S NEW IN 2021

- Commercial Property – Taxation Considerations – an update
- New Home Guarantee
- Common mistakes with Rental Properties – an update
- Reduced Rental income in times of Covid-19
- Draft Taxation Ruling TR 2021/D5 Income Tax: Expenses associated with holding vacant land
- The taxation implications of dealings in cryptocurrency.

The Newsletter

RECENT TAX DEVELOPMENTS

CHANGES TO THE R&D TAX INCENTIVE FROM 1.7.2021

The Research and Development Tax Incentive (**R&DTI**) has been in operation for ten years. This initiative aims to encourage innovation entities to grow and elevate their creative projects in Australia.

The Department of Industry, Science, Energy and Resources (**AusIndustry**) and ATO regulate the R&DTI. AusIndustry administers the R&DTI, and the ATO reviews the R&DTI expenditure claims when lodged by the entity.

Reforms to the R&DTI were announced as part of the Federal Budget in 2020/21. They formed part of the *Treasury Laws Amendment (A Tax Plan for the COVID-19 Economic Recovery) Act 2020*. The following changes apply from 1.7.2021.

Changes to the R&D scheme:

- The tax offset for eligible R&D activities is based on a premium on top of the corporate tax rate for your entity.
- Entities with **less than** an aggregated turnover of \$20 million – may claim a refundable R&D tax offset; this is your corporate tax rate **plus an 18.5% premium**. Previously entities making less than \$20 million could claim a tax offset rate of 43.5%.
- Entities with **more than** an aggregated turnover of \$20 million may claim a non-refundable R&D tax offset, which is your corporate tax **plus an incremental premium**. These incremental premiums are based on an entity's R&D intensity for its R&D expenditure. Previously entities making more than \$20 million could claim a non-refundable R&D tax offset at a rate of 38.5%.
- The expenditure threshold has increased from \$100 million to \$150 million and is now a permanent feature of the law.
- A tax benefit can be denied by the Tax Commissioner in the form of an amount of a refundable or non-refundable R&D tax offset that an R&D entity seeks to obtain from a tax avoidance scheme.

- There is a 'uniform clawback' rule.
- Changes to assessable income for R&D entities.
- Changes to R&D entity's deductions.
- Changes to balancing adjustments for R&D assets held by R&D partnerships.
- Changes to transitional rules are amended to align with the primary amendments. Still, they continue to apply to R&D assets acquired before the R&DTI in 2011.
- The Commissioner must publish information about R&D entities where the entities have claimed notional deductions for R&D activities, including the amounts claimed.

Once eligibility has been determined, the R&D entity must register its entity with AusIndustry to be eligible for the R&DTI. Once the application is reviewed and if approved, your entity will be given a registration number to lodge a request for the RD&TI.

The R&D entity must summarise its eligible expenses by lodging them with the ATO's R&D incentive schedule. Your registration number must be included.

Part of the application process requires a description of your projects and activities. The registration must be lodged within ten months of the income year end and lodged with the entity's company tax return.

FBT RETRAINING AND RESKILLING EXEMPTION NOW LAW

Employers who provide training or education to redundant, or soon to be redundant, employees may now be exempt from fringe benefits tax (FBT).

Eligible employers can apply the exemption to retraining and reskilling benefits provided on or after 2 October 2020.

There are no limits on the number of training or education courses your employees may undertake or the cost of the education or training.

You don't need to include these exempt retraining and reskilling benefits in your FBT return or your employee's reportable fringe benefits amount.

Suppose you've already lodged and paid your 2021 FBT return. In that case, you'll need to amend your return to reduce the FBT paid for any exempt retraining and reskilling benefits.

If you intend to claim the exemption, you must keep a record of all training and education provided to redundant, or soon to be redundant, employees.

AN INCREASE IN SMSF MEMBERSHIP RECEIVES ROYAL ASSENT

Treasury Laws Amendment (Self-Managed Superannuation Funds) Bill 2020 received royal assent on 22 June 2021. From 1 July 2021, self-managed super funds (SMSF) and small APRA funds (SAFs) will be able to have up to six members instead of the previous cap of four.

If you are considering expanding your fund, you will need to consider things such as:

- what your fund's trust deed allows
- the structure of your fund, and
- its reporting requirements.

Some State and Territory laws restrict the number of trustees a trust can have. Because an SMSF is a type of trust, your fund may be impacted by these restrictions. To avoid this issue, you can set up your SMSF with a corporate trustee and each member as a director of the corporate trustee.

It is important to seek professional advice and check State or Territory law restrictions before registering or expanding your fund.

The ATO has implemented the necessary system changes to enable SMSFs to add members five and six to their fund through the Australian Business Register (ABR).

ATO DATA-MATCHING PROGRAM – LIFESTYLE ASSETS

In July 2021, the ATO announced its intention to acquire lifestyle assets data from insurance policies for 2020-21 through to 2022-23 for the following assets where the value is equal to or exceeds nominated thresholds.

Asset class	Minimum asset value threshold
Marine vessels	\$100,000
Motor vehicles	\$65,000
Thoroughbred horses	\$65,000
Fine art	\$100,000 per item
Aircraft	\$150,000

The data items include:

- client identification details (names, addresses, phone numbers, dates of birth, Australian business number, email addresses), and
- policy details (policy number, policy inspection date, start date of current policy, end date of current policy, total value insured, purchase price of the property insured, registration or identification number of the property, insurance category, policy cost, description of the property insured, primary use type)

The objectives of the lifestyle assets program are to: data-matching

- promote voluntary compliance and increase community confidence in the integrity of the tax and superannuation systems
- assist with profiling to provide compliance staff with a holistic view of a taxpayer's wealth
- identify possible compliance issues with income tax, CGT, FBT, GST and superannuation obligations
- determine avenues available to assist in debt management activities
- gain insights from the data to help to develop and implement treatment strategies to improve voluntary compliance, which may include educational or compliance activities as appropriate
- identify and educate those individuals and businesses who may be failing to meet their registration and/or lodgement obligations and assist them to comply
- help ensure that individuals and businesses are fulfilling their tax and superannuation reporting obligations.

LABOR AIMS TO DELIVER INCOME TAX CUTS AND CERTAINTY ON NEGATIVE GEARING

Earlier this year, the ALP dumped its dividend franking credits policy, which would have abolished franking credits refunds for people who paid no tax. This cost them clearly at the 2019 Federal Election. The coalition dubbed it the 'retiree tax' in their election-winning campaign.

On 26.7.2021, the ALP also announced an Albanese Labor government would deliver the same legislated tax

relief to more than 9 million Australians as the Morrison Government, with the Shadow Cabinet and Caucus confirming that Labor in government would uphold the legislated changes to personal income taxes and maintain the existing regimes for negative gearing and capital gains tax (CGT)

You may recall it was ALP policy to reduce the CGT discount on assets held longer than 12 months from 50% to 25%.

Clearly, Labor intends to take its unpopular tax policies off the table and turn the forthcoming Federal election into a battleground over the Federal Government's handling of the Covid-19 pandemic.

We remain apolitical, and it's up to the voters to decide.

WHAT TO EXCLUDE FROM YOUR BUSINESS'S ASSESSABLE INCOME?

Not all payments you receive are assessable income for income tax purposes. Therefore, some may not need to be included as assessable income.

List of non-assessable amounts

The following amounts are not assessable: betting and gambling wins (unless you operate a betting or gambling business)

- earnings from a hobby
- gifts or inheritance
- GST you have collected
- non-assessable non-exempt government grants for grant recipients
- prizes and awards not related to your business
- money you have borrowed
- money you contribute as the business owner.

Non-assessable non-exempt government grants for grant recipients

The Federal Government can declare eligible business support grants as non-assessable, non-exempt (NANE) income. This means you do not include NANE income in your income tax return, and you do not pay tax on it.

COVID-19 recovery payments

Some COVID-19 recovery payments from the government to support small businesses will be NANE income for tax purposes.

Eligibility

To meet the eligibility requirements to treat support grants as NANE income on your income tax return, you will need to self-assess.

A payment will be NANE if it was received:

- under an eligible grant program
- in the 2020–21 or 2021-22 financial years
- by a small business with an aggregated turnover of less than \$50 million in the income year, the payment was received.

Example - Receiving a grant eligible for NANE income

Fresh Brew is a small business operating a café in Victoria.

Fresh Brew received an eligible grant payment under the Outdoor Eating and Entertainment Package for the 2020-21 financial year.

This package is part of the Victorian Government's response to the economic impacts of Coronavirus.

The Minister has declared that the Outdoor Eating and Entertainment Package is a grant program eligible for NANE income.

In the 2020-21 financial year, Fresh Brew self-assessed and identified that they are a small business. Their turnover was less than \$50 million in the income year the payment was received.

As Fresh Brew received an eligible grant payment in the 2020-21 financial year and is a small business, they do not need to include the grant in their business income.

Natural disasters

Some recovery grants from natural disasters are also NANE. The key takeout is to check out whether any government grant or non-business receipt qualifies as non-assessable non-exempt income (NANE).

To ensure it does not get lumped with your normal business, always include it as a separate income item in your accounting software. This will ensure all NANE gets properly identified.

TIME TO CLAIM THE JOBMAKER HIRING CREDIT

The ATO has advised the JobMaker Hiring Credit scheme's third claim period is now open. Suppose you've taken on additional eligible employees since 7 October 2020. In that case, you may be able to claim JobMaker Hiring Credit payments for your business.

To claim, you need to:

- Register at any time before 6 October 2021 through ATO online services, Online Services for Business, or through your registered tax or BAS agent.
- Nominate your additional eligible employees by running payroll events through your Single Touch Payroll (STP)-enabled software.
- Claim your payments – enter your headcount and payroll information for the Jobmaker period. The ATO will calculate your claim amount based on the information you provide.

Eligible businesses can receive up to:

- \$10,400 over a year for each additional eligible employee hired aged 16 to 29 years
- \$5,200 over a year for each additional eligible employee hired aged 30 to 35 years.

The JobMaker Hiring Credit is available to businesses for each additional eligible employee hired before 6 October 2021.

If you're thinking about taking on extra staff, check if you're eligible to participate in the scheme. The ATO has the resources available to help you, including a guide, key dates, and a tool for estimating payments.

Remember, registered tax agents and BAS agents can help you with your tax.

MUNKAYILAR v C OF T – WORK-RELATED DEDUCTIONS DISALLOWED BUT SHORTFALL PENALTY REDUCED

The taxpayer, a social worker, worked as support staff for an organisation providing services for adults and children with disabilities. In his 2018 tax return, prepared by his tax agent, the taxpayer claimed work-related deductions (laundry, non-slip shoes, mobile phone charges and hand cream) totalling \$670. He also claimed self-education expenses consisting of fees for a child protection course

(\$9,435), a HELP debt (\$4,000), travel expenses from work to Geelong for training (\$1,500) and depreciation of a computer (\$137). When the return was lodged, the taxpayer was yet to pay the course fees and was unsure whether he was obliged to do so. It turned out the employer paid this in disallowing the work-related deductions and the self-education expenses. The ATO also imposed a 50% shortfall penalty.

The Administrative Appeals Tribunal (AAT) held that:

- the course fees were not deductible as the taxpayer had not paid them
- the HELP debt was not deductible by virtue of s 26-20 of the ITAA 1997
- there was no evidence to support the travel expenses; and
- the taxpayer could not substantiate the various work-related deductions (for example, there were no receipts).

In dealing with the shortfall penalty, although the AAT held that reasonable care had not been taken in preparing the 2018 tax return and the "safe harbour" exception did not apply, they were willing to remit the shortfall penalty by 85%. This was largely because the tax agent had made a mistake in claiming the course fees and provided incorrect advice to the taxpayer in relation to the deductibility of HELP loan repayments and the travel expenses.

EXTENDING RELIEF FOR VIRTUAL MEETINGS AND ELECTRONIC COMMUNICATIONS

On 10.8.2021, Parliament passed legislation renewing temporary relief that allows companies to use technology to meet regulatory requirements under the Corporations Act 2001.

These temporary relief measures will allow companies to hold virtual meetings and use electronic communications to send meeting materials and execute documents until 31 March 2022.

This relief ensures that companies can meet their obligations as they continue to deal with the uncertainty of the COVID-19 pandemic. The renewed relief will give much-needed certainty to listed and unlisted companies expected to hold an annual general meeting later this year and early next year.